

THE CHALLENGE OF FREE SPEECH: ASIAN VALUES V. UNFETTERED FREE SPEECH, AN ANALYSIS OF SINGAPORE AND MALAYSIA IN THE NEW GLOBAL ORDER

“[T]hose that develop their branches as they please, in freedom and apart from each other, grow crooked and twisted.”¹

I. INTRODUCTION

Limitations on freedom of speech in Singapore and Malaysia have been sharply criticized in the United States and abroad because unfettered speech freedom is considered essential to individual liberty and human dignity of all people regardless of their culture or history. Although Malaysia and Singapore have numerous shortcomings, the U.S. model of free speech may not be desirable for these states. In Malaysia and Singapore, an “Asian value” model has developed that espouses limitations on individual liberty in the name of public order, national security and morality in order to be free from the “Western disease” — namely crime and disorder. Allowing a wider latitude of government criticisms should certainly be encouraged in Malaysia and Singapore; however, allowing all speech unrelated to the government function to have equal protection of political speech is a value that many countries may legitimately choose not to embrace.

Critics of speech limitations are quick to point out the need for free speech in a liberal democracy; however, myriad flaws still exist in U.S. court opinions and scholars’ theories which are based upon a marketplace of ideas for justifying free speech. A justification based on unfettered political debate may be, in the alternative, a more sound justification for free speech. The leaders and scholars of Malaysia and Singapore point out the flaws in the United States marketplace model, with its inherent bias and lack of ability to be realized outside the town hall meeting from which it developed, while concomitantly ignoring a democratic justification for allowing open political debate in a libertarian model. The result: both sides of the debate need to learn from one another and distinguish between political and non-political speech, the latter being subject to restrictions based on morality without restricting democratic governing ideals.²

1. IMMANUEL KANT, *IDEA FOR A UNIVERSAL HISTORY WITH COSMOPOLITAN INTENT* (1784), *reprinted in* THE PHILOSOPHY OF KANT 116, 122 (Carl J. Friedrich ed., Random House 1949) (writing on the development of a just constitution: balancing unrestricted barbaric freedom with the constraints needed in a civil society).

2. Attempting to distinguish political and non-political speech is almost an impossible task; throughout this paper attempts are made to elaborate on the theoretical positions of the United States, Malaysia, and Singapore in an effort to clearly understand the bases for regulating differing forms of speech, whether labeled political or non-political.

Malaysia and Singapore are considered to have repressive speech limitations compared to their Western counterparts.³ Interestingly, a 1994 study exhibited that a substantial percentage of individuals from Asia believed communitarian values would lead to a higher quality of life, while their Western counterparts — especially the United States — believed individualism led to improvements.⁴

This paper will initially discuss the basis for “Asian values” as espoused by government officials and scholars of Singapore and Malaysia. Section III comprehensively analyzes limitations of free speech allowed by the constitutions of Singapore and Malaysia under the guise of limiting foreign influence, immorality, and preserving the social order and security of Malaysia and Singapore. Section IV will discuss the leading theoretical bases for the U.S. model, which include the “marketplace of ideas” concept developed by J.S. Mill and the democratic value of free speech to a legitimate government. Section V critically discusses the conflicting values

3. Both states have been rated as “Not Free” by Freedomhouse; however, both countries were one point away from being rated “Partly Free.” See Freedom House, *Press Freedom World Wide: 1996* (visited Sept. 29, 1997) <<http://www.freedomhouse.org/Press/ratings.txt>>. Out of 100 points they both received 61 whereas 60 would be a partly-free rating. See *id.* The study takes into account broadcast and print laws, regulations that influence media control, political pressures and controls on media content, economic influences over media content, and repressive actions by the state. See *id.* Interestingly, Malaysia received no negative points in economic influence over media content, whereas Singapore received 17 out of 20 negative points. See *id.* This difference is probably due to the economic constricts in the Singapore Newspaper and Printing Press Act of 1984 and its amendments. The United States government has also expressed concern over the justification of limiting the press in Singapore and Malaysia. See U.S. Dep't of State, *Malaysia Country Report on Human Rights Practices for 1996* (Jan. 30 1997) <http://www.state.gov/www/global/human_rights/1996_hrp_report/malaysia.html> [hereinafter *Malaysia Human Rights Report 1996*]. See U.S. Dep't of State, *Singapore Country Report on Human Rights Practices for 1996* (Jan. 30, 1997) <http://www.state.gov/www/global/human_rights/1996_hrp_report/singapore.html> [hereinafter *Singapore Human Rights Report 1996*]. See also Lee Kuan Yew, *Singapore and the Foreign Press*, in *PRESS SYSTEMS IN ASEAN STATES* 117 (Achal Mehra ed., 1989).

4. See David Hitchcock, *ASIAN VALUES AND THE UNITED STATES: HOW MUCH CONFLICT?* (1994). See also Donald K. Emmerson, *Singapore and the “Asian Values” Debate*, *J. DEMOCRACY*, Oct. 1995, at 95, 101. However, in Singapore a recent government survey found that a large percentage of older students in Singapore felt the government lacks freedom of speech, but 70% had positive views about Singapore on issues of safety and race relations. See *Singapore Students Show Dissatisfaction*, *ASIAN WALL STREET J.*, June 4, 1997, at 12. See, e.g., Yuji Fukuda, *Can Asia Achieve a “Great Harmony”?* (visited Sept. 7, 1997) <http://www.dihis.co.jp/ACTIVITY/2FUKUDA_E.HTML>; Noordin Sopiee, *Asia and the West*, *ASIA WEEK*, Dec. 12, 1997 (last visited Oct. 2, 1998) <<http://www.pathfinder.com/asiaweek/97/1212/cs7.html>> (offering comments on David Hitchcock's study, and reasons why Asian values may lead to positive social conditions); Diane Crispell, *Core Values*, *AMERICAN DEMOGRAPHICS* (Nov. 1996) <http://www.marketingpower.com/Publications/AD/96_AD_9611_AD/9611a25a.htm>.

developed by Singapore and Malaysia for abridging free speech. This section will exhibit the need for these states to develop their laws to allow unfettered political speech. Section VI focuses on the problems of the U.S. model, and its undesirability for the Malaysian and Singaporean governments.

II. ASIAN VALUES — A UNIQUE WAY OF LIFE?

A debate over "Asian values"⁵ has arisen in the last few years between the "Singapore School" and Western scholars. The leading advocates of this unique value system are Lee Kuan Yew⁶ of Singapore and Dr. Mahathir bin Mohamad⁷ of Malaysia. There are several unique Asian values which are purported to ensure the prosperity and vitality of Malaysia, Singapore, and many other countries of East and South East Asia, which include but are not limited to: strong familial connections, sacrificing individual rights for that of the community, and maintaining a well-ordered society.⁸ The central

5. See generally Kishore Mahbubani, *The Dangers of Decadence—What the Rest Can Teach the West*, FOREIGN AFF., Sept.–Oct. 1992, at 1; Bilahari Kausikan, *Asia's Different Standard*, FOREIGN POL., Fall 1993, at 24; Aryeh Neier, *Asia's Unacceptable Standard*, FOREIGN POL., Fall 1993, at 42; Fareed Zakaria, *Culture is Destiny: A Conversation with Lee Kuan Yew*, FOREIGN AFFAIRS, Mar.–Apr. 1994; Emmerson, *supra* note 4, at 95.

6. Mr. Lee Kuan Yew is the former Prime Minister of Singapore and now holds the permanent title of Senior Minister.

7. The present prime minister of Malaysia, and a very influential man since the mid 1960s. He entered the Malaysian parliament in 1964 and served until he lost his seat in 1969. See H.P. LEE, *CONSTITUTIONAL CONFLICTS IN CONTEMPORARY MALAYSIA I* (1995). He was expelled from United Malays National Organization (UMNO) by Tunku Abdul Rahman, the "father" of the Federation of Malaysia. See *id.* Mahathir later became Prime Minister of Malaysia on 16 July 1981. See *id.*

8. See Tommy Koh, *The 10 Values That Undergrid East Asian Strength and Success*, INT'L HERALD TRIB., Dec. 11-12, 1993. Mr. Koh lists 10 values that support the success of Asian Nations:

- 1) East Asians do not believe in the extreme form of individualism in the West.
- 2) East Asians believe in strong families. . . .
- 3) East Asians revere education. . . .
- 4) East Asians believe in the virtues of saving and frugality. . . .
- 5) East Asians consider hard work a virtue—the chief reason this region is outcompeting Europe.
- 6) East Asians practice national teamwork. . . .
- 7) There is an Asian version of a social contract between the people and the state. The government will maintain law and order, provide citizens with their basic needs for jobs, housing, education and health care. . . .
- 8) In some Asian countries, governments have sought to make every citizen a stakeholder in the country. . . . [W]e try to build communitarian societies. . . .
- 9) East Asians want their governments to maintain a morally wholesome environment in which to bring up their children. . . .
- 10) Good governments in East Asia want a free press but, unlike the West, they do not believe that such freedom is an absolute right. . . . [T]he press must act responsibly.

Id.

theme running through these values is the relation of the individual to the community, with the latter being the emphasis and the definition of the former.

A. *The Belief in Strong Families*

The family unit is the fundamental building block of Asian society. It not only includes the nuclear family but also revolves around extended family members where familial obligations are equally heavy.⁹ Many Asians rely on their family, when in trouble they can "collapse into the arms of family members."¹⁰ Divorce rates in East Asia are lower than in the West, and Asians care for their elderly family members in their homes instead of abandoning them.¹¹ Traditionally, throughout most of Asia, the individual only exists within the context of the family and not separately.¹²

B. *The Sacrifice of Individual Rights for the Community*

Many Asians believe that in conducting their activities, they must be mindful of the interests of others.¹³ This is in opposition with America, where Mahubani says a paradox occurs because "a society that places such a high premium on freedom has effectively reduced the physical freedom of most Americans, especially those who live in large cities."¹⁴ He also states that in Asia, "the clear assumption is that the tougher the punishment, the less the likelihood of recurrence. The benefit of the doubt is given to the victim, not to the criminal."¹⁵ Liberation to the individual comes through

9. See Kishore Mahubani, *The United States: "Go East Young Man,"* THE WASH. Q., Spring 1994, at 5, 11-12. The average U.S. household is composed of 2.6 individuals, in Malaysia the average is 4.9, and in Singapore 4.2. See 1995 U.N. DEMOGRAPHIC Y.B. 576-595, U.N. Doc. ST/ESA/STAT/SER.R/26. These figures obviously have separate meanings, but are a good indicator of the general size of households in the respective states.

10. See Mahubani, *supra* note 9, at 12.

11. See Koh, *supra* note 8. The divorce rate in the United States is three times greater than that of Singapore. See 1995 U.N. Demographic Y.B. 560-64, U.N. Doc. ST/ESA/STAT/SER.R/26.

12. See Zakaria, *supra* note 5, at 113; Goh Chok Tong, *Social Values, Singapore Style*, (address of Aug. 21, 1994, delivered at a National Day rally), in CURRENT HIST., Dec. 1994, at 417, 420, 421.

13. See Koh, *supra* note 8. "Unlike Western society, where an individual puts his interests above all others, in Asian society the individual tries to balance his interests with those of family and society." *Id.*: See also Goh, *supra* note 12, at 417.

14. Mahubani, *supra* note 9, at 7.

15. *Id.* See Goh, *supra* note 12, at 419-420. For an in depth study of Singapore penal laws, see Firouzeh Bahrapour, Note, *The Caning of Michael Fay: Can Singapore's Punishment Withstand the Scrutiny of International Law?*, 10 AM. U. J. INT'L L. & POL'Y 1075 (1995). See also Michael Steinberger, *Big and Booming: A New 'Tiger' Hopes to Lead*

increased harmony in the community rather than individual unfettered freedom as practiced in the United States.¹⁶ Unchecked individualism is viewed as a cause of decreasing order in individualistic societies.¹⁷

The majority of the multifaceted religions of Singapore and Malaysia also seem to support this contention when viewed statically. Islam, via the *Qur'an*, sets out strict guidelines for living — from marital duties to criminal punishments — and any attempt to challenge these guidelines by modernity or Western materialism is sharply opposed by the majority of Muslim Malays.¹⁸ Confucianism, as an ideology, places emphasis on proper behavior and reverence for leaders to establish order.¹⁹ Additionally, Buddhism clearly dismisses the concept of individuality because it inherently leads to societal conflicts.²⁰

C. A Well-ordered Society

“A well-ordered society needs to plant clear constraints on behavior in the minds of its citizens.”²¹ This could be deemed a social contract between the government and society in which the government provides law and order

the Muslim World; Malaysia, MACLEAN'S, Mar. 24, 1997, at 28. Mahathir Mohamad believes toughness will guide Malaysia to success. See *id.*

16. See Mahubani, *supra* note 9, at 12. See also Zakaria, *supra* note 5, at 111.

17. See Zakaria, *supra* note 5, at 111.

18. See Fred R. von der Mehden, *Malaysia: Islam and Multiethnic Politics*, in ISLAM IN ASIA: RELIGION, POLITICS, & SOCIETY 177, 180 (John L. Esposito ed., Oxford Univ. Press 1987). See John L. Esposito, *Islam in Asia*, in ISLAM IN ASIA: RELIGION, POLITICS, & SOCIETY 10 (John L. Esposito ed., Oxford Univ. Press 1987). “In classical Islamic theory, therefore, law does not grow out of or develop along with an evolving society as is the case with Western systems, but is imposed from above.” Noel J. Coulson, *The Concept of Progress and Islamic Law*, in READINGS ON ISLAM IN SOUTHEAST ASIA 203 (Ahmad Ibrahim et al. eds., Institute of Southeast Asian Studies 1985).

19. See Julia Ching, *What is Confucian Spirituality?*, in CONFUCIANISM: THE DYNAMICS OF TRADITION 63 (Irene Eber ed., Macmillan 1986). See also KENNETH K. S. CH'EN, THE CHINESE TRANSFORMATION OF BUDDHISM 71 (1973).

20. See WALPOLA RAHULA, WHAT THE BUDDHA TAUGHT 51 (2d ed. 1974).

According to the teaching of the Buddha, the idea of self is an imaginary, false belief which has no corresponding reality, and it produces harmful thoughts of ‘me’ and ‘mine’, [sic] selfish desire, craving, attachment, hatred, ill-will, conceit, pride, egoism, and other defilements, impurities and problems. It is the source of all the troubles in the world from personal conflicts to wars between nations. In short, to this false view can be traced all the evil in the world.

Id.

21. Mahubani, *supra* note 9, at 11. He additionally states that “American society, by permitting all forms of lifestyles to emerge — without any social pressures to conform to certain standards — may have wrecked the moral and social fabric that is needed to keep a society calm and well ordered.” *Id.*

and “provide[s] citizens with their basic needs for jobs, housing, education and health care[;]” in exchange, the citizens are expected to be law-abiding and to respect authority.²² This well-ordered society may also include the government determining the moral high ground. Koh argues that Asians want their government “to maintain a morally wholesome environment in which to bring up their children . . . [and there] is no reason Asians must adopt the Western view that pornography, obscenity, lewd language and behavior, and attacks on religion are protected by the right of free speech.”²³ Individuals in societies, such as Singapore and Malaysia, may value order and fear disorder more than other societies, and in doing so, may democratically restrict personal freedoms just like a society may enlarge personal freedom because it is not as frightened of disorder.²⁴

The concept of a well-ordered society also includes the belief of many Asian governments that press freedom is not an absolute right. The press must act responsibly and “has no right to instigate trouble between racial, religious or linguistic groups, or between countries.”²⁵

D. *Is there Justification for Asian Values?*

Two competing roles of government emerged in the 1990s: The first (Asian model or authoritarian-capitalism) promotes collective judgment manifest in institutions for the attainment of wealth (*viz.*, government regulation), and the second (U.S. model) promotes enriching the community through individual choices over control of income through institutions which promote market freedom (*viz.*, less government interaction).²⁶ Authoritarian-capitalism encourages free-market economic activity while providing political stability and justifies limiting individual freedoms based on high economic growth.²⁷ However, Asian values may only be a politically convenient

22. Koh, *supra* note 8.

23. *Id.*

24. See generally Fareed Zakaria, *The Rise of Illiberal Democracy*, FOREIGN AFF. Nov.-Dec. 1997, at 22; Emerson, *supra* note 4, at 95. Emerson explains:

[I]f differing societies may democratically implement differing views of the relative importance of social order versus individual rights, it follows that alongside rights-tilted or liberal democracies there could be nonliberal — or at any rate less liberal— variants of democracy that are, compared to their liberal counterparts, more order-inclined.

Id. at 96. However, it is important to note that without open political debate their citizens may not truly democratically elect anyone. See *infra* text accompanying notes 211-222.

25. Koh, *supra* note 8.

26. See CHRISTOPHER LINGLE, SINGAPORE'S AUTHORITARIAN CAPITALISM: ASIAN VALUES, FREE MARKET ILLUSIONS, AND POLITICAL DEPENDENCY 39 (1996).

27. See *id.* See generally WORLD BANK, THE EAST ASIAN MIRACLE: ECONOMIC GROWTH AND PUBLIC POLICY (1993); EDWARD FRIEDMANN, THE POLITICS OF DEMOCRATIZATION: GENERALIZING EAST ASIAN EXPERIENCES (1994).

means of limiting economic liberalism that would challenge the well-seated positions of Asian rulers.²⁸

Singapore and Malaysia have both had astronomical gross domestic product (GDP) growth rates in the recent past that dwarf past United States' growth.²⁹ However, doubt has certainly plagued the economic security of many Asian nations, and any claims of economic benevolence are clearly misguided.³⁰ The United Nations reports that the United States has an intentional homicide rate 500% higher than Singapore's.³¹ Some argue the difficulties in the West are not attributable to liberalism but rather are forced upon Western cultures by modernity and all societies are doomed to experience this problem. However, neither Japan nor Hong Kong have seemed to substantially diminish their order in the face of modernity.³² Malaysian and Singaporean success may certainly be transitory; tightly controlled economies throughout the world will eventually encounter a downturn in the transition to a fully developed and sustainable economy.³³

28. See LINGLE, *supra* note 26, at 47. See Victor Mallet, 'Asian Way: Confucius or Convenience?', THE FIN. POST, Mar. 12, 1994, at 51.

29. In 1986, Malaysia's GDP growth was 1.1%, in 1994 it was 8.3%, and between 1988 and 1991 it never fell below 8.7%. See 1994 U.N. Stat. Y.B. 149-165, U.N. Doc. ST/ESA/STAT/SER.S/17. Similarly, in Singapore in 1986, the GDP growth per capita was 1.8% and in 1994 was 10.1%, varying from 11.1% to 6.0% in the years in between. See *id.* The United States in 1986 had 2.8% GDP growth with a high of 4.1% in 1994 and negative growth in 1991. See *id.* See, e.g., Goh, *supra* note 12, at 417; David Thorpe, *Some Practical Points About Starting a Business in Singapore*, 27 CREIGHTON L. REV. 1039, 1048-1050 (1994); Steinberger, *supra* note 15.

30. See, e.g., Bruce Koppel, *Fixing the Other Asia; Poverty in Asia*, FOREIGN AFF., Jan. 11, 1998, at 98; John Brademas & Fritz Heimann, *Tackling International Corruption: No Longer Taboo*, FOREIGN AFF., Sept. 1, 1998, at 17; *Money on the Move*, MACLEAN'S, June 15, 1998, at 59; *Rumpus in Hong Kong*, ECONOMIST, Sept. 27, 1997, at 18; Walter F. Mondale, *Asia is Still our Future*, BROOKINGS REV., June 22, 1998, at 2; James Harding & Laura Tyson, *Another 'Tiger' Starts to Limp in the Storms*, FIN. TIMES (London), Oct. 12, 1998, at Survey 1; *Banking on Free Press to End Fiscal Crisis*, EDITOR & PUBLISHER, Oct. 17, 1998, at 18; Carolyn Hotchkiss, *The Sleeping Dog Stirs: News Signs of Life in Efforts to End Corruption in International Business*, J. PUB. POL'Y & MARKETING, Mar. 22, 1998, at 108.

31. Comparing data provided in U.N. DEP'T FOR ECON. & SOC. INFO. POL'Y ANALYSIS, WORLD STATISTICS POCKETBOOK 1996, at 168 & 196, U.N. Doc. ST/ESA/STAT/SER.V/17 (1997). In 1986, Singapore and the United States respectively had two and ten intentional homicides per 100,000 people. See *id.*

32. See Nathan Glazer, *Money Isn't Everything; Democracy and Capitalism in Asia; The Hard Questions*, NEW REPUBLIC, Mar. 3, 1997, at 29. But see LINGLE, *supra* note 26, at 51.

33. See sources cited *supra* note 30. Arguably an increase in wealth causes the middle class to rise, this middle class has a higher stake in the socio-economic system; rise in economy causes higher education levels which in turn are more tolerant of diversity and democracy; and economic development causes a higher rate of mass communication which enables the nurturing of democratic values. See STEVE CHAN, EAST ASIAN DYNAMISM: GROWTH, ORDER, AND SECURITY IN THE PACIFIC REGION 84 (2d ed. 1993). See also Thorpe,

Moreover, there are a myriad of cultures, languages, and religions in Asia; any attempt to call the aggregate of these characteristics "Asian values" is nearly impossible. Thus, a broad statement of Asian values encompassing all of Asia is nonsensical.³⁴ Similarly, the idea of one set of universally held moral codes that transcends the myriad cultures of the world is as equally flawed as the notion of Asian values transcending the East, Near East, South and Southeast Asia.³⁵

The debate over Asian values may well be an idealistic struggle for the future.³⁶ Challenging a generalized concept of Asian values is denying leaders of states such as Singapore and Malaysia a generalized civic culture — that which unquestionably holds the diverse people of the United States together. This state-guided nation building under the guise of "Asian values" is at the core of many Asian nations' identities, which suffered during colonialism in their struggle for recognition in the "new world order."³⁷ However, Lim Guan Eng, Deputy Chief of the Democratic Action Party (DAP) of Malaysia,³⁸ has trumpeted the liberal image and the universality of human rights, which is evidence of possible reform that may support a revised "Asian value" ideology that will not restrict countless

supra note 29, at 1049-51. *But see* MAX WEBER, *THE RELIGION OF CHINA* (Hans H. Gerth ed. & trans., 1964) (arguing Confucianism is not conducive to capitalism). However, the theory of Weber has recurred as an antithesis, proving successful to countries throughout Asia. A state-guided economy has proved successful in these countries although running counter to Adam Smith's economic notions. *See* 1 ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* 453-504 (photo. reprint 1981) (1976). *But see* LINGLE, *supra* note 26, at 55. Numerous countries with authoritarian regimes exhibit little or no economic success (Burma, Bangladesh, Pakistan); this is evidence that authoritarianism does not necessarily lead to economic growth. *See id.* at 56.

34. *See* Simon Tay, *Human Rights, Culture, and the Singapore Example*, 41 MCGILL L.J. 743, 758 (1996). *See also* Emmerson, *supra* note 4, at 100. The concept of Orientalism (unique Asian qualities) does not constitute a certain geographic area, but was simply a construct of the West. *See generally* EDWARD W. SAID, *ORIENTALISM* (1978).

35. *See* Emmerson, *supra* note 4, at 100. "These two straw men — one might also call them ultra-Orientalism and ultra-universalism — form the least plausible ends of a spectrum of possibilities." *Id.*

36. *See id.* at 104.

37. *See generally* CHANDRA MUZAFFAR, *HUMAN RIGHTS AND THE NEW WORLD ORDER* (1993) (arguing for the resistance of the United Nations human rights regime because it does not protect the majority of the global populace from oppression in the "new world order" of the North's elites, corporations and governments).

38. Lim Guan Eng has been met with opposition in Malaysia. He is Mahathir's opposition and was jailed under the Internal Security Act. As a member of parliament, Lim Guan Eng had charges (Sedition Act and Printing Presses and Publication Act) brought against him before the 1995 election. Lim and Amnesty International both believe these were politically motivated acts. *See Malaysia Human Rights Report 1996, supra* note 3. *See also infra* notes 286-87 and accompanying text.

freedoms that nations throughout the world enjoy.³⁹

1. *Ethnic Tensions Rationalizing Asian Values*

Background on the ethnic diversity and history of conflicts in Malaysia and Singapore is important when developing an understanding of the problems of the past, which ultimately help explain the rationale of current laws regulating speech and the concept of the purported Asian value of the community over the individual.

Malaysia and Singapore both have diverse populations and a mutual, yet independent history. Malaysia is comprised of a Muslim Malay majority and a one-quarter ethnic Chinese population who practice Buddhism and Confucianism.⁴⁰ Singapore's population is comprised of over seventy-five percent ethnic Chinese who mostly practice Buddhism and Confucianism, fourteen percent Muslim Malays, seven percent Indians, and various other minority populations.⁴¹

In 1948, the Federation of Malaya came into existence.⁴² Singapore

39. See generally Steinberger, *supra* note 15. "Lim fears that rampant cronyism and corruption, coupled with endemic deal-making behind closed doors, could undermine investor confidence. The country runs on the parliamentary system, but the government controls the media, and big business often buys the bureaucrats." *Id.*

40. The Malaysian ethnic communities include 57.9% Bumiputeras (Malays are the main group but this classification includes Bajaus, Ibans, Kadazans, Melanaus, Muruts, and the Dayaks), 26.9% Chinese (Cantonese, Hokkien, and Teochew), 7.6% Indians (Malayalams, Punjabis, and Tamils), and the total population is 18.3 million. These figures are computed by the author from census data in 2 THE EUROPA WORLD YEARBOOK 1998, at 2210 (39th ed., Europa Publications Limited 1998) [hereinafter EUROPA]. Most Muslims in Malaysia are ethnic Malays. See Syed Arabi Idid, *Malaysia, in PRESS SYSTEMS IN ASEAN STATES* 41, 41-42 (Achal Mehra ed., 1989). Islam has been an important force in Malaysia and Singapore since the fourteenth century and many Southeast Asians now make the taxing *haj* (pilgrimage), which is evidence of their devotion to Islam. See FRED R. VON DER MEHDEN, *TWO WORLDS OF ISLAM: INTERACTION BETWEEN SOUTHEAST ASIA AND THE MIDDLE EAST* 1-2 (1993). See also FED. CONST. OF MALAY. art. 3 (providing that Islam is the national religion but others may be practiced freely). The religions of Malaysia include 53% Muslims, 19% Buddhists, 7% Christians, 11.6% Confucianism and Daoism practitioners, and several other smaller religious practices such as Sikhs and Animists. See EUROPA, *supra*, at 2220.

41. See EUROPA, *supra* note 40, at 2997. Total population is 2.7 million. *Id.* at 2991. In Singapore, according to the 1990 census, 68% of the population who were Chinese practiced Buddhism or Daoism, while 14% of the Chinese practiced Christianity. *Id.* at 2997. Of the Malay population in Singapore, 99.7% were Muslims; the Indian population consists of 53.2% Hindus, 26.3% Muslims, 12.8% Christians, and 6.9% Sikhs, Jains or others. *Id.* Additionally, small communities of Zoroastrians and Jews exist in Singapore. *Id.*

42. The Federation of Malaya Agreement of 1948 came into being February 1, 1948 and included nine Malay states, Penang, and Malacca; Singapore continued to be a Crown Colony. See LEE, *supra* note 7, at 6. Great Britain, fearing Communist insurgency and loss of Malay support, appeased the United Malays National Organization (UMNO) and Malay leaders by injecting constitutional negotiations into the process despite the Malay insistence on a strong

was not part of the federation "in deference to the fears of the Malays that they would be dominated by the Malayan Chinese if Singapore's one million Chinese acceded to Malaya."⁴³ These contentions are supported by the countless racially motivated incidents, which have littered the landscape of Singapore and Malaysia.⁴⁴

Conflict was endemic to the Federation of Malaya.⁴⁵ The Alliance⁴⁶ was formed to ease apparent ethnic tensions by resolving communal issues in private to escape open public debate, which could incite violence. In early 1956, talks in London ensued between Malays and Crown officials⁴⁷ to develop the Independent Constitutional Commission⁴⁸ to liberate the Federation of Malaysia.⁴⁹ The new constitution was to include "the safeguarding of the position and prestige of the Malay Rulers[,] . . . a common nationality for the whole of the Federation . . . [and], the safeguarding of the special position of the Malays and the legitimate interest of other communities."⁵⁰ The Crown was aware of the multi-racial society; thus, they delayed granting independence to Malaya until they were certain ethnic minorities would be represented in the state structure.⁵¹ On August 31, 1957, the Federation of Malaysia was created with the Constitution being centrally concerned "with the tortuous hammering out of acceptable terms and compromises among the various racial components of the Malaysian

central government and communal citizenship mandates. See 2 THE CAMBRIDGE HISTORY OF SOUTHEAST ASIA 354 (Nicholas Tarling ed., Cambridge University Press 1992) [hereinafter CAMBRIDGE HISTORY]. The Federation "ensur[ed] British domination at the centre, securing Malay control over the separate states, and further alienating Malaya's Chinese Community." *Id.* See also LEE, *supra* note 7, at 6.

43. LEE, *supra* note 7, at 6.

44. See *infra* text accompanying notes 247-257.

45. In Malaysia, riots ensued in 1952 in response to liberalization of citizenship requirements in an attempt to counter the communist threats of 1948, and a state of emergency was declared from 1952-1960. See LEE *supra* note 7, at 7.

46. An alliance was formed between UNMO, Malays and the Malaysian Chinese Association (MCA) to contest the first municipal election in Kuala Lumpur, in which they won nine out of twelve seats contested in 1952. See CAMBRIDGE HISTORY, *supra* note 42, at 410.

47. This included four Malay ruler representatives, four Alliance government officials, the Colonial Secretary, the High Commissioner and the British Minister of State that met January 18 to February 6, 1956. See LEE, *supra* note 7, at 7.

48. The commission was called the Reid Commission. The Chairman was Lord Reid (UK); members included: Sir Ivor Jennings (UK), Sir William McKell (Australia), B. Malik (India), Justice Abdul Hamid (Pakistan). See *id.* See also IMITIAZ OMAR, RIGHTS, EMERGENCIES AND JUDICIAL REVIEW 16-17 (1996).

49. See LEE, *supra* note 7, at 7.

50. *Id.* at 8. These were not the only recommendations the commission was urged to make. They also included such things as bicameral legislature, a strong central government with federalism, and an elected head of state. See *id.* at 7-8.

51. See CAMBRIDGE HISTORY, *supra* note 42, at 409.

society, especially on matters of communal interests.”⁵²

In September of 1963, Singapore joined the Federation of Malaysia until their division in 1965, which was due to racial tensions.⁵³ In 1969, serious racial violence erupted in Kuala Lumpur, Malaysia;⁵⁴ the government blamed the violent actions on “inflammatory speeches by political candidates from various parties during the election campaigns, and the victory processions staged by some opposition parties.”⁵⁵ The history of conflicts is manifest in the constitutional limits on individual expression in Singapore and Malaysia.

III. CONSTITUTIONALITY OF SPEECH REPRESSION

*“We have freedom of speech, but not freedom after speech.”*⁵⁶

This history of tensions and patent diversity played an important part in developing the constitutions of Malaysia and Singapore, which are substantively similar in respect to speech limitations. Statutory enactments by Malaysia and Singapore (many adopted by Singapore upon separation from Malaysia) have been used for the purposes of stopping foreigners from criticizing government officials, limiting the spread of immoral publications,

52. LEE, *supra* note 7, at 4. This included the Straits Settlements, Federated Malay States and Unfederated Malay States. In 1963, Sabah, Sarawak and Singapore were added to the new Federation of Malaysia — all of which had a history of British colonial rule. See CAMBRIDGE HISTORY, *supra* note 42, at 409.

53. See, LEE *supra* note 7, at 9. Singapore wanted to join the Union to prevent Communist insurgency. See, e.g., *id.* at 8-9; HARRY E. GROVES, THE CONSTITUTION OF MALAYSIA 245 (4th ed. 1986). After repeated conflicts in the constitutional process, Malaysia came into existence September 16, 1963 with the passage of Act No. 26 of 1963 by the Malaysian Parliament. See LEE, *supra* note 7, at 10. In 1965, the state of Singapore was split from the federal government of Malaysia via the Malaysia (Singapore Amendment) Act of 1965 and the Constitution. See *id.* The Act allowed Singapore to become a sovereign nation and provided for the succession of international treaties and international agreements entered into before the Act. See *id.* at 10-11. The split occurred because of political turmoil and “heightened racial tensions.” LEE, *supra* note 7, at 10.

54. This crisis was dubbed the “May Thirteenth Crisis.” LEE, *supra* note 7, at 13.

55. *Id.* (footnote omitted). This resulted in a Proclamation of Emergency under Constitutional article 150. See *id.* The Parliament was not reconvened until February 20, 1971, when they passed the Constitution (Amendment) Act of 1971, which further curtailed the constitutional right to freedom of speech. See *id.* at 14. “The fundamental changes to the Constitution sought to curb public discussion of certain sensitive issues, and to redress ‘the racial imbalance in certain sectors of the nation’s life’.[sic]” *Id.* (quoting *Parliamentary Debates on the Constitution Amendment Bill 1971*, Kuala Lumpur: Government Printers, 1972, at 3).

56. Comments on the Malaysia Constitution in relation to free speech made by human rights activist and lawyer R. Sivarasa. See *Pulling in the Reins on Malaysia’s Media*, WORLD TIMES, INC., Apr. 18, 1997, available in 1997 WL 9862042.

and generally to repel threats to the order and security of Malaysia and Singapore.

The constitutions of Malaysia and Singapore are very different than the U.S. Constitution in areas related to freedom of speech, so much that they are incomparable.⁵⁷ No special provision for freedom of the press is provided for in Malaysia and Singapore — the press has the same rights as any citizen.⁵⁸ In essence, the Parliaments of Singapore and Malaysia are free to pass laws limiting free speech which “it deems *necessary* or *expedient* . . . [for] *security*[,] *public order* or *morality*[,] *contempt of court*, *defamation*, or *incitement to any offence*.”⁵⁹ The validity of these laws generally cannot be questioned by the courts, and have been curtailed by legislators in the past.⁶⁰

57. See Ahmad Ibrahim and M.P. Jain, *The Constitution of Malaysia and The American Constitutional Influence*, in CONSTITUTIONAL SYSTEMS IN LATE TWENTIETH CENTURY ASIA 507, 550-51 (Lawrence W. Beer ed., University of Washington Press 1992).

58. See *id.* at 550-52. See Jeyaretnam Joshua Benjamin v. Lee Kuan Yew, [1992] 2 SLR 310, 330 (Sing. 1992), 1992 SLR LEXIS 412, at *40.

59. FED. CONST. OF MALAY. art. 10, cl. 2(a), *reprinted in* 11 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Gisbert H. Flanz ed., Oceana Publications 1997) (emphasis added). For a discussion of the Malaysian Constitution see Ibrahim & Jain, *supra* note 57, at 513. Because of the Communal riots of 1969, the government of Malaysia has further limited free speech rights by restricting the questioning of sensitive issues. See *id.* at 523. The relevant portion of the Malay Constitution states:

In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under Clause (2) (a), Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, Article 152 [citizenship], 153 [special Malay provisions, and other communities] or 181 [protecting sovereignty of the rules] otherwise than in relation to the implementation thereof as may be specified in such law.

FED. CONST. OF MALAY. art. 10, cl. 4. See also Ibrahim & Jain, *supra* note 57, at 551 (discussing article 10).

For the relevant parts of the Singapore Constitution, see CONST. OF THE REPUBLIC OF SING. art. 14, *reprinted in* 17 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Gisbert H. Flanz ed., Oceana Publications 1995). See generally Valentine S. Winslow, *The Constitution of the Republic of Singapore*, in CONSTITUTIONAL SYSTEMS IN LATE TWENTIETH CENTURY ASIA 627 (Lawrence W. Beer ed., University of Washington Press 1992) (discussing article 14 of the Singapore Constitution). Upon separation, the 1963 Malay Constitution became the Federal Constitution of Singapore. The Republic of Singapore Independence Act of 1965 (Act 9 of 1965) mandated this, but gave authority to some Malaysian constitutional provisions and laws. See *id.* at 628-629. Before it was consolidated it was composed of three different bodies of law — the Malaysian Federal Constitution, the State Constitution of Singapore of 1963 and the Republic of Singapore Independence Act. See Kevin Y. L. Tan, *Singapore Chronology to 1995*, in 17 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, at vii-xv. (1995).

60. See FED. CONST. OF MALAY. art. 10, cl. 4. See IMTIAZ OMAR, RIGHTS, EMERGENCIES AND JUDICIAL REVIEW 22 (1996). See also Ibrahim & Jain, *supra* note 57, at 528 (since the inception of the Constitution, no enactment by the legislative branch has been

When the process of framing the Constitution of Malaysia (which ultimately influenced the Singapore Constitution) was initiated by the Reid Commission, there was debate over whether or not individual liberties should be included in the Constitution.⁶¹ The Commission thought the Constitution should be designed to allow the courts to seek review of legislation to give fundamental liberties effect.⁶² Therefore, the judicial systems of Malaysia and Singapore require that the legislators strike a balance between free speech and public interest, and then the court checks this judgment of parliament.⁶³

The majority of legislative acts relevant to limitations on speech freedom in Singapore and Malaysia are substantively the same and will be discussed as such. Several legislative acts were adopted by Singapore upon separation from Malaysia and for this reason are substantially the same. Examples of substantively similar legislation regulating free speech include Sedition Acts, Official Secrets Acts, Defamation, and the Internal Security Acts. However, differences arise in the structure and substance of laws directly limiting printing presses and publications, such as the Malaysia Printing Presses and Publication Act, and the Singapore Undesirable Publications Act. Each section will discuss and explain the relevant legislative acts, and case law concerning the press limitations in each nation.

Singapore and Malaysia have developed voluminous legislation and common law precedents to ensure that freedom of speech is curbed. Several laws have been effectively used to limit the influence of foreign publications, decrease the spread of immoral publications, and ensure the public order and national security of Malaysia and Singapore.

struck down as unconstitutional). See, e.g., *Madhavan Nair v. Pub. Prosecutor* [1975] 2 MLJ 264 (Malay. 1975); *Jeyaretnam Joshua Benjamin v. Lee Kuan Yew* [1992] 2 SLR 310 (Sing. 1992), 1992 SLR LEXIS 412. But see *Chng Suan Tze v. Minister of Home Affairs & Ors* [1988] 1 SLR 132 (Sing. 1988), 1988 SLR LEXIS 247 (ruling Minister must act within bounds of constitution when making decision).

61. See OMAR, *supra* note 60, at 17. The Commission opined that the Constitution "should also define and guarantee certain fundamental individual rights which are generally regarded as essential conditions for a free and democratic way of life." *Id.* The Commission later went on to calm the weary by saying: "We believe such apprehensions to be unfounded, but there can be no objection to guaranteeing these rights subject to limited exceptions in conditions of emergency and we recommend that this be done." *Id.* (citing *Report of The Federation of Malaya Constitutional Commission*, London, Her Majesty's Stationery Office, 1957, at 69-70).

62. See Michael Hor & Collin Seah, *Selected Issues in the Freedom of Speech and Expression in Singapore*, 12 SING. L. REV. 296, 299 (1991).

63. See *id.* at 300.

A. *Limiting Critical Foreign Speech*

Many publications have been banned or restricted in Singapore, namely: *Time*, *Asiaweek*, the *Asia Wall Street Journal* (AWSJ), and *Far Eastern Economic Review* (FEER).⁶⁴ Additionally, Singapore and Malaysia have restricted the foreign press by less explicit means such as deportation,⁶⁵ revoking work passes,⁶⁶ and detainment.⁶⁷

1. *Financial Limitations*

The Singapore Newspaper and Printing Presses Act⁶⁸ limits the influence of media by restricting funds domestic media may receive. The law provides that no one may own more than three percent stock in a newspaper.⁶⁹ Additionally, all directors of a newspaper printed in Singapore must be citizens, and if the newspaper company receives unsolicited funds from a foreign source,⁷⁰ it must report the circumstances of receiving them,

64. See Anjali Mohan Ramchand, *Freedom of The Press: Regulation Under the Newspaper and Printing Presses Act, 1974*, 11 SING. L. REV. 130, 144-46 (1990). The FEER was allowed to circulate 6000 copies a week, whereas previously it was 4000; the AWSJ could increase copies from 7000 to 9000, while the amount for Asiaweek remained at 15000. See, e.g., *Reporters Sans Frontieres, Asia and the Pacific-Singapore*, (visited Sept. 12, 1997) <http://www.calvacom.fr/rsf/RSF_VA/Rapp_VA/Asie_VA/SINA.html>; *Singapore Human Rights Report 1996*, *supra* note 3.

65. See W.H. Ng, *Singapore Expels Reuter Reporter*, STRAITS TIMES, Mar. 25, 1986. See also Ramchand, *supra* note 64, at 143.

66. See, e.g., *Government Not Renewing Pass for AWSJ Journalist*, STRAITS TIMES, July 14, 1988; *Job Pass Review Bureau Chief not Extended*, STRAITS TIMES, Apr. 9, 1987; *Barring of FEER*, STRAITS TIMES, Feb. 5, 1989; Ramchand, *supra* note 64, at 149.

67. In Kuala Lumpur, Malaysia, ten journalists were arrested while covering the Second Asia and Pacific Countries' Conference on East Timor, and charged with "illegal assembly" and "refusing to disperse." *Reporters Sans Frontiers, Asia and the Pacific-Malaysia* (visited Sept. 12, 1997) <http://www.calvacom.fr/rsf/RSF_VA/Rapp_VA/Asie_VA/MALSA.html>.

68. Newspaper and Printing Presses Act, chap. 258, The Statutes of The Republic of Singapore (1974), *reprinted in PRESS LAWS AND SYSTEMS IN ASEAN STATES* 363 (Abdul Razak ed., 1985) [hereinafter Singapore NPPA 1974]. See also Newspaper and Printing Presses (Amendment) Act, The Statutes of The Republic of Singapore (1977), *reprinted in PRESS LAWS AND SYSTEMS OF ASEAN STATES* 359 (Abdul Razak ed., 1985) [hereinafter Newspaper and Printing Presses Amendment Act].

69. See Newspaper and Printing Presses (Amendment) Act, *supra* note 68, § 9. Previously, the percentage limit was left to the discretion of the minister. See Singapore NPPA 1974, *supra* note 68, § 9.

70. "Foreign source" includes the government agents of any country; any company, association or society incorporated outside Singapore; any non citizen of Singapore, or any anyone or thing that the minister labels foreign source by order of the Gazette. See Singapore NPPA 1974, *supra* note 68, §§ 9A(5)(a)(i)-(iv). See also *id.* § 9(1)(a) (stating that all directors of a newspaper must be Singaporeans).

and the minister may demand the return of the funds to the sender.⁷¹ Singapore further showed its dedication to limiting foreign influence by passing a 1990 law which requires foreign publications reporting on Southeast Asian nations to post a bond of \$141,000 and name a person in Singapore to accept judicial service.⁷²

2. *Requiring Foreigner Registration*

The Malaysian Printing Presses and Publication Act (PPPA)⁷³ requires that, in order to have a printing press,⁷⁴ a person must first be granted a license⁷⁵ by the Minister who has "absolute discretion" to grant, refuse, or revoke a license.⁷⁶ In Singapore, the provision of the 1974 Newspaper and Printing Presses Act is substantively similar except it gives the person a right of appeal to the President.⁷⁷

In order to import or publish a newspaper in Malaysia and Singapore, the person must receive a permit⁷⁸ from the Minister.⁷⁹ A senior authorized officer can refuse importation of anything violating the Act.⁸⁰ Additionally, any publication or recording must have the name of the printer or publisher on the document or container.⁸¹ The acts give police officers and Ministers much power in enforcing the acts by imposing heavy presumptions⁸² against

71. *See id.* §§ 9A(3)-(4)

72. *See Singapore Human Rights Report 1996, supra* note 3.

73. Printing Presses and Publications Act, 1984 (Act 301), Laws of Malaysia, GOLDEN'S FEDERAL STATUTES [hereinafter Malaysia PPPA 1984]. This Act repealed prior legislation to limit the press; namely the Printing Presses Act 1948 and the Control of Imported publications Act 1958. *See id.* § 27.

74. *See id.* § 3(2) (defining "printing press" as any equipment for "printing, copying or reproducing any document described in Schedule I."). Schedule I states the equipment as "Letterpress, Lithograph, Gravure, Intaglio or any other process of printing capable of printing at a rate of 1,000 impressions per hour or more." *Id.* Sched. I.

75. *Id.* § 3(1).

76. *See id.* § 3(3).

77. *See Singapore NPPA 1974, supra* note 68, § 3(3). *See also* Malaysia PPPA 1984, *supra* note 73, § 3(4) (imposing a maximum of three years imprisonment and/or 20,000 ringgit). In Singapore, the possible penalty is three years and/or 10000 dollars. *See Singapore NPPA 1974, supra* note 68, § 7(2) (stating any person without such license may suffer severe penalties).

78. *See* Malaysia PPPA 1984, *supra* note 73, § 5(1).

79. The Minister has absolute discretion to grant, revoke or suspend a permit. *See* Malaysia PPPA 1984, *supra* note §§ 6(1)-(3). In Singapore, it is in "his discretion." Singapore NPPA 1974, *supra* note 68, § 3(1).

80. *See* Malaysia PPPA 1984, *supra* note 73, § 9(1).

81. *See id.* §§ 11(1)-(3); Singapore NPPA 1974, *supra* note 68, § 5(1).

82. *See* Malaysia PPPA 1984, *supra* note 73, § 14(b) (explaining that any person with two or more copies of any publication is presumed to possess those publications for selling and distribution).

the possessor of publications, allowing packages to be opened if they "suspect" violation,⁸³ seizing and forfeiting of printing devices and publications,⁸⁴ permitting arrest without warrant,⁸⁵ imposing liability on corporate officers and partnerships,⁸⁶ and allowing the government to escape all liability for damaging anything while enforcing the Act.⁸⁷

Under the Singapore Newspaper and Printing Press Act of 1986, the Minister may grant, revoke or suspend any foreign publication coming into Singapore that engages in domestic politics without being subject to review.⁸⁸ Whether or not a foreign paper is engaging in the domestic politics of Singapore is solely a question for the Minister unless the Minister "has exercised his power in bad faith [or] has acted irrationally or unreasonably."⁸⁹

The Asian Wall Street Journal (AWSJ) published an article on 12-13 December 1986 by Stephen Duthie entitled *Singapore Exchange Puzzles Financiers*. The article described the background of a new stock exchange (SESDAQ) for small firms. The journal subsequently received a letter from the Director of the Banking and Financial Institutions Department of the Monetary Authority of Singapore accusing the paper of bias and false reporting. The AWSJ refused to publish a rebuttal. Without any notice to the applicant or the AWSJ, the Minister declared the paper to be engaging in the domestic politics of Singapore under the Newspaper and Printing

83. *Id.* § 17. In Singapore, it is "reasonableness." Singapore NPPA 1974, *supra* note 68, §§ 24(2)-(4).

84. *See* Malaysia PPPA 1984, *supra* note 73, §§ 18-19. *See* Singapore NPPA 1974, *supra* note 64, § 24(2).

85. *See* Malaysia PPPA 1984, *supra* note 73, § 20.

86. *See id.* §§ 21-22.

87. *See id.* § 24.

88. *See* Singapore NPPA 1974, *supra* note 68, § 4 (showing that the minister has great power in determining what is published). The minister may "declare any newspaper published outside Singapore to be a newspaper engaging in the domestic politics of Singapore." *Id.* § 4(1). No person shall "distribute or import" any "declared foreign newspaper." *Id.* § 4.2. He may "refuse to grant or revoke such approval without assigning any reason." *Id.* § 4.3. He may restrict the amount of publications distributed and marked in any manner. *See id.* § 4(4). *See also id.* § 2 (defining "declared foreign newspaper"). Recent amendments provide: "(3) For the purpose of subsection (1), a newspaper shall be deemed to be published outside Singapore if its contents and editorial policy are determined outside Singapore and its sales or distribution are not intended primarily for Singapore." *Re Dow Jones Publ'g Inc.'s Application* [1988] 2 MLJ 414 (Sing. 1988), 1988 MLJ LEXIS 601, at *10. "Engaging in domestic politics" is given a very broad meaning in the courts: "All the multifarious and multifaceted activities with which a government is concerned is encapsulated in the phrase 'domestic politics'.[sic]" *Id.* at *14. "[T]here are appellate rights for non-foreign newspapers but no such right is given to foreign newspapers." *Id.* at *12.

89. *Re Dow Jones*, 1988 MLJ LEXIS 601, at *15. The reporter was also a defendant in *Att'y Gen. v. Zimmerman* [1986] 2 MLJ 89 (Sing. 1986), 1985 MLJ LEXIS 507.

Presses Act and restricted the distribution of the newspaper to 400 copies.⁹⁰ Arguably, this restriction was not for the publication of that single article but for repeated meddling in Singapore's national affairs.⁹¹

B. *Abridgment of Immoral Speech*

In Singapore,⁹² "a citizen does not have a constitutional right to see pornographic materials."⁹³ In Malaysia,⁹⁴ there is a constant trend regarding pornographic materials as a serious disruption to morality and public order, especially to youths.⁹⁵

In Malaysia and Singapore, knowledge of the obscene nature of a publication is not an element of obscenity. The fact that a publication is approved by the government does not render the defendant immune from

90. See *Dow Jones Publ'g Co. (Asia) Inc., v. Attorney Gen. of Singapore* [1989] 3 MLJ 321 (Sing. 1989), 1989 MLJ LEXIS 485, at *8-15. See also Singapore NPPA 1974, *supra* note 68, § 18(1).

91. *Re Dow Jones*, 1988 MLJ LEXIS 601, at *44 (listing articles which led to the final decision of the court; however, at the end of the decision the court says the articles are not the basis for the decision by the Minister).

92. The Singapore Penal Code strictly limits freedom of speech. See Penal Code, chap. 224, §§ 292-294, The Statutes of The Republic of Singapore (1985 rev. ed.) (showing that anyone who sells, distributes, exhibits, makes, produces, imports or exports, advertises or receives profits from, or is in possession of obscene material may be punished with a prison term up to three months and a fine). The only exception is if the publication is for religious purposes. See *id.* § 292. If anyone sells or distributes anything under section 292 to a person under twenty years old, imprisonment may be doubled. See *id.* § 293. Additionally, anyone "who sings, recites, or utters any obscene song, ballad or words" may be punished under the penal code. *Id.* § 294. See also Hor & Seah, *supra* note 62, at 322.

93. *Chan Hiang Leng Colin & Ors v. Minister for Information and the Arts* [1996] SLR 609 (Sing. 1996), 1996 SLR LEXIS 267, at *16.

94. The Malaysian penal laws are substantively identical to the Singapore Penal Code. Compare Malaysia Penal Code (F.M.S. Cap 45), Malaysian Law Publishers (1986) and Penal Code, chap. 224, The Statutes of The Republic of Singapore (1985 rev. ed.).

95. See *Pornographic Materials: Stiffer Penalty to be Imposed*, NEW STRAITS TIMES (Malaysia), Feb. 28, 1997, at 17 (increasing monitoring of publications and working on compounding fines for pornographic material under the Printing Presses and Publications Act of 1984). "[A]rticles on sex were allowed for educational purposes but not for publications read by youths such as entertainment magazines and tabloids." *Id.* See also *Petaling Jaya, Pornographic Books, Comics Seized From Shop*, NEW STRAITS TIMES (Malaysia), Jan. 9, 1997, at 8 (Several magazines seized including Penthouse and shop owner expected to be prosecuted under Sect. 7(1) of Printing Presses and Publication Act, 1984 (Amend. 1987)). See also *Action Group on Women Launched*, NEW STRAITS TIMES (Malaysia), Aug. 10, 1997, at 13 (expressing a women's group belief that women are still exploited in Malaysian movies and advertisement and describing their proposal to increase the penalty under PPPA 1986 from 3 years to ten years and to initiate caning for offenders regardless of intent). See generally *Mandatory Jail Sentence for Porn Publishers Proposed*, NEW STRAITS TIMES PRESS (Malaysia), Dec. 1, 1995, at 8.

prosecution, and intent is irrelevant.⁹⁶ The fact that only a portion of the publication is obscene is also not a defense.⁹⁷ The test of obscenity, as laid out in *Reg. v. Hicklin*,⁹⁸ is "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall."⁹⁹ The literary value of a book is "beside the point."¹⁰⁰

The Singapore Undesirable Publications Act bans the sale, distribution and importation of undesirable publications.¹⁰¹ Under Singapore's legislation, publications on issues of pornography, such as *Playboy* and *Penthouse*, are banned as morally undesirable.¹⁰² The Malaysian PPPA also covers unlawful purposes of printing and producing documents which include materials that are obscene or against public decency.¹⁰³ When the Minister believes any publication contains anything likely to be prejudicial to morality, he may limit or prohibit the importation or distribution of the publication in his "absolute discretion."¹⁰⁴ The Minister may also revoke any license or permit granted under the provisions of the Act without showing cause to the license holder.¹⁰⁵

Censoring films and other similar media is another method of suppressing freedom of speech. In Singapore, the Films Act requires that films be granted a certificate before public viewing.¹⁰⁶ In Malaysia, under similar legislation, films must be approved by a Board of Film Censors and cannot be shown unless they are approved by the Board or the Committee of

96. See *Mohamed Ibrahim v. Pub. Prosecutor*, [1963] 1 MLJ 289 (Malay. 1962). See *K S Roberts v. Pub. Prosecutor* [1970] 2 MLJ 137 (Malay. 1970), 1970 MLJ LEXIS 79. The liability is strict under penal code section 292 and lack of knowledge may only be taken as mitigation of the sentence. See *id.* at *4. See also *Hor & Seah*, *supra* note 62, at 322-24 (showing Singapore follows same precedent established in *Ibrahim*).

97. See *K. S. Roberts*, 1970 MLJ LEXIS 79, at *3 (Malay. 1970). See also *Ibrahim* [1963] 1 MLJ 289 (Malay. 1963).

98. [1868] 3 All E.R. 360 (Eng. 1868).

99. See *Ibrahim* [1963] 1 MLJ 289 (Malay. 1962) (quoting *Hicklin* [1868] 3 All E.R. at 371 (Eng. 1868)).

100. See *id.* at 291.

101. See Undesirable Publications Act, chap. 338, The Statutes of The Republic of Singapore (1985 rev. ed.) [*hereinafter* Singapore UPA].

102. See *Basskaran Nair, Singapore, in PRESS SYSTEMS IN ASEAN STATES* 85, 90 (Achal Mehra ed., 1989).

103. See Malaysia PPPA 1984, *supra* note 73, § 4(1).

104. *Id.* § 7(1). The following are subject to review: "any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing . . ."

105. See *id.* § 13(1).

106. See Films Act, chap. 107, §§ 14(1), 21(1), 29(1), The Statutes of The Republic of Singapore (1985 rev. ed.). See, e.g., *Lui Chang Soong v. Pub. Prosecutor* [1992] 1 SLR 734 (Sing. 1992), 1992 SLR LEXIS 364; *Seow Puay Seng v. Pub. Prosecutor* [1988] 2 MLJ 160 (Sing. 1988), 1988 MLJ LEXIS 549.

Appeals whose decision is final.¹⁰⁷ In Malaysia and Singapore, anyone possessing an obscene film may be liable and receive up to six months imprisonment. Furthermore, the Ministers in each country may prohibit any films they broadly deem to be "contrary to public interest."¹⁰⁸

In Singapore, several other legislative acts further abridge freedom of speech. The Singapore Public Entertainments Act creates a bar against providing public entertainment in an unapproved locale without a license.¹⁰⁹ The Indecent Advertisement Act prohibits distribution or exhibition of a picture or written matter which is "indecent or obscene."¹¹⁰ Also, under the Judicial Proceedings Act, criminal punishment is available for anyone who publishes any "indecent matter" in relation to a judicial proceeding "which would be calculated to injure public morals."¹¹¹

The function of the media in Singapore and Malaysia is to introduce cultural values. These cultural values not only include such attributes as dance and music, but also attributes that further a "cultural commitment of excellence[,] . . . social and industrial discipline . . . [and the] handing down of appropriate cultural values to future generations."¹¹²

107. See Films (Censorship) Act, 1952 (Act 35 of 1971), §§ 5(1), 8(1), 17A(3), Laws of Malaysia, GOLDEN'S FEDERAL STATUTES. See also Ahmad Ibrahim, *Communication and Law From Malaysian Viewpoint*, in PRESS LAWS AND SYSTEMS IN ASEAN STATES 62, 68 (Abdul Razak M.Sc. ed., Confederation of ASEAN Journalists 1985). In Malaysia, certain films are exempted from the act, such as those sponsored by the government and individual productions that are not obscene. See Films (Censorship) Act, 1952 (Act 35 of 1971), § 25, Laws of Malaysia, GOLDEN'S FEDERAL STATUTES (describing exemptions from the requirements of the Act).

108. Films Act, chap. 107, §§ 29-30, The Statutes of The Republic of Singapore (1985 rev. ed.); Films (Censorship) Act, 1952 (Act 35 of 1971), §§ 24, 26A(1), Laws of Malaysia, GOLDEN'S FEDERAL STATUTES.

109. See Public Entertainments Act, chap. 257, § 3, The Statutes of The Republic of Singapore (1985 rev. ed.). "Public entertainment" includes plays, operas, exhibitions of models, reading matter, pictures, exhibition of films, play-readings, recitals, lectures, talks, debates, discussions and trade fairs. *Id.* §§ 2(a)-(o). However, the Act exempts government-sponsored entertainments, religious ceremonies and addresses, debates and discussions at public companies, and registered trade unions, registered and exempted societies. See *id.* §§ 2(i)-(iv).

110. Indecent Advertisements Act, chap. 135, § 5, The Statutes of The Republic of Singapore (1985 rev. ed.). The Act also bans the advertising of any venereal disease or treatment for any venereal disease. See *id.* §§ 3, 7.

111. Judicial Proceedings (Regulation of Reports) Act, chap. 149, § 2(a), The Statutes of The Republic of Singapore (1985 rev. ed.). Additionally, any report of names or addresses of parties or witnesses to any marital proceeding is a violation. See *id.* § 2(b).

112. Syed Arabi Idid, *Malaysia*, in PRESS SYSTEMS IN ASEAN STATES 41, 53 (Achal Mehra ed., 1989). See also Hor & Seah, *supra* note 62, at 319. What holds society together in diverse nations such as Singapore and Malaysia is not a common morality "but tolerance among those with different cultures and values." *Id.*

C. *Abridgment For Security and Order*

National security and public order are other methods that have repeatedly been used to limit free speech in Singapore and Malaysia. These constitutionally legitimate methods to limit free speech include contempt of court proceedings against foreign and domestic critics of the judiciary, publication content restrictions, sedition acts, internal security acts and defamation.¹¹³

1. *Limiting Free Speech through Contempt of Court*

The pervasiveness of contempt of court proceedings in Singapore is not limited to the domestic forum. Singapore courts have also resorted to the use of contempt of court proceedings to limit foreign criticisms of the government. Christopher Lingle was charged with contempt when he published *The Smoke Over Parts of Asia Obscures Some Profound Concerns* in the *International Herald Tribune* (IHT).¹¹⁴ The article referred to an "intolerant regime in the region" that suppressed dissent by "relying upon

113. Several statutes and codes beyond the scope of this note also limit speech. In both countries the Official Secrets Acts limit the press by imposing penalties for spying, false declarations, wrongful communications of information and a failure to give information on violators of the Act. See Official Secrets Act, chap. 213, The Statutes of The Republic of Singapore (1985 rev. ed.); Malaysia Official Secrets Act, Act 88 of 1972, Laws of Malaysia, GOLDEN'S FEDERAL STATUTES. Relevant penal codes that are beyond the scope of this paper include: Penal Code, chap. 224, § 298, The Statutes of the Republic of Singapore (1985 rev. ed.) (stating that anyone who, with intent to upset religious feelings of another, utters any word or makes any gesture may be punished by up to one year in prison). In Malaysia, the same substantive penal law exists. See Malaysia Penal Code (F.M.S. Cap 45), § 298, Malaysian Law Publishers (1986). However, Malaysian Penal Code goes even further by providing punishment for anyone who attempts or causes disharmony between religions. See *id.* § 298(a). Additionally, the substantively similar penal codes of Malaysia and Singapore provide penalties for making false documents. Compare Malaysia Penal Code (F.M.S. Cap 45), § 464, Malaysian Law Publishers (1986) and Penal Code, chap. 224, § 464, The Statutes of The Republic of Singapore (1985 rev. ed.). Both countries additionally provide for criminal punishment for insulting and intimidating speech. Compare Malaysia Penal Code (F.M.S. Cap 45), § 504-505, Malaysian Law Publishers (1986) and Penal Code, chap. 224, § 504-505, The Statutes of The Republic of Singapore (1985 rev. ed.). See also Miscellaneous Offences (Public Order and Nuisance) Act, chap. 184, Statutes of The Republic of Singapore (1985 rev. ed.) (stating the Minister may make rules regulating public assemblies and processions). See generally Hor & Seah, *supra* note 62, at 331-332 (discussing Singapore's penal code). See, e.g., CONST. OF THE REPUBLIC OF SING. art. 149; Public Order (Preservation) Act, chap. 258, The Statutes of The Republic of Singapore (1985 rev. ed.); The Maintenance of Religious Harmony Act, chap. 167A, The Statutes of Republic of Singapore (rev. ed. 1991).

114. The article appeared in the *International Herald Tribune*, Oct. 7, 1994 and was published in response to Kishore Mahbuban's article in the *International Herald Tribune*, Oct. 1, 1994. See *Att'y Gen. v. Lingle* [1995] 1 SLR 696 (Sing. 1995), 1995 SLR LEXIS 421. The editor, publisher and distributor of IHT were all charged with contempt. See *id.*

a compliant judiciary to bankrupt opposition politicians.”¹¹⁵ Criticisms of the legal institutions are allowed so long as the discussion is fairly conducted and is honestly directed to some definite public purpose. “The right to criticize is, however, exceeded and contempt of court is committed if the publication impugns the integrity and impartiality of the court, even if it is not so intended.”¹¹⁶ Although the target of the article was not indicated, the court found that Lingle had directed the article toward Singapore (a necessary element of contempt).¹¹⁷ The test was a common objective one: “whether an ordinary reasonable reader of the publication would reasonably conclude that the words referred to the plaintiff.”¹¹⁸ The court found that “the words ‘relying upon a compliant judiciary to bankrupt opposition politicians’ when read in the context of the article, were intended and did refer or would be easily understood to refer to Singapore.”¹¹⁹ The message of judicial precedent is clear: There is a right to criticize, but not if criticizing the judiciary — *i.e.*, there is no right to criticize.

In *Attorney General v. Wain & Ors*,¹²⁰ the Singapore judiciary found that the AWSJ was guilty of contempt of court for publishing an article (at this time circulation was restricted to 400 copies) that criticized a libel judgment.¹²¹ The AWSJ article stated: “[A] Singapore court has entered a libel judgment in favour of Singapore’s Prime Minister based on an article the Prime minister found personally offensive. . . . [W]e can only hope that in the long term, the Review’s punishment will not, as doubtlessly intended, still honest and independent voices in Singapore.”¹²² The judge pointed out that it was important not to “lose sight of the local conditions.”¹²³ Because the judges of Singapore are the determiners of the facts in such proceedings, “[s]uch accusations are harmful to public interest and are clearly calculated to undermine public confidence in the administration of justice.”¹²⁴ The

115. *Id.*

116. *Lingle*, 1995 SLR LEXIS 421, at *15. Intent is not an element of the offense. *See id.* at *16.

117. *See id.* at *18.

118. *Id.* at *19.

119. *Id.* at *20. “[I]t has been the [common] practice of government politicians to sue opposition politicians for damages for defamation whenever the occasion justifies such actions.” *Id.* Lingle was ordered to pay \$10,000. *See id.* at *44.

120. *Att’y Gen. v. Wain & Ors* (No. 1) [1991] 2 MLJ 525 (Sing. 1991), 1991 MLJ LEXIS 155.

121. *See id.* at *2. The original libel judgment was awarded in *Lee Kuan Yew v. Derek Gwyn Davies & Ors* [1990] 1 MLJ 390 (Sing. 1990), 1990 MLJ LEXIS 623.

122. The article appeared in the *Asia Wall Street Journal*, Dec. 1-2, 1989. It described the libel suit against FEER that the Prime Minister won. *See id.* at *29.

123. *Id.* at *30.

124. *Id.* at *31. *See also* *Att’y Gen. v. Lingle & Ors* [1995] 1 SLR 696, 1995 SLR LEXIS 421 (Sing. 1995). *Cf.* *Att’y Gen. of Singapore v. Zimmerman & Ors* [1985] 2 MLJ 89 (Sing. 1985), 1985 MLJ LEXIS 507.

court again reiterated, this time more explicitly, that one cannot criticize the courts because people will become critical and upset. Consequently, this will cause a loss of confidence in the judiciary.

In Malaysia, contempt of court¹²⁵ prosecutions are also allowed as an abridgment on freedom of speech. In *Manjeet*,¹²⁶ a member of the bar association was convicted of contempt of court for alleging that the Lord President of the Supreme Court was acting without authority and was therefore in contempt of court.¹²⁷ The Malaysian court relied on the historic English common law standard of contempt¹²⁸ which allowed prosecution of contempt when “[a]ny act done or writing published [is] calculated to bring a court or a judge of the court into contempt, or to lower his authority.”¹²⁹ However, this standard is subject to an exception. “Judges and courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no court could or would treat that as contempt of court.”¹³⁰ The standard of the court is further concerned with protecting the “dignity and integrity” of the courts “in the interest of maintaining public confidence in the judiciary,”¹³¹ and more importantly for citizens not losing site of the volatile “local conditions.”¹³² The rationale for stringent contempt laws is twofold: 1) the harm to the public through loss of confidence, and 2) the embarrassment to the judge.¹³³ While the court found the defendant guilty, it did not rely

125. Contempt of court limitation is authorized by article 10(2)(a) and article 126 of the Constitution. See FED. CONST. OF MALAY. art. 10, cl. 2(a). “The Federal Court, the Court of Appeal or a High Court shall have power to punish any contempt itself.” *Id.* art. 126. Cf. The Courts of Judicature Act 1964, § 13, Laws of Malaysia. (giving reinforcement to article 126 powers). *Accord* Att’y Gen., *Malaysia v. Manjeet Singh Dhillon* [1991] 1 MLJ 167 (Malay. 1990), 1990 MLJ LEXIS 257, at *30-31.

126. *Manjeet*, 1990 MLJ LEXIS 257.

127. See *id.* at *11-24.

128. See *R. v Gray*, [1900] 2 Q.B. 36 (Eng.).

129. *Manjeet*, 1990 MLJ LEXIS 257, at *32 (J. Harun Hashim, dissenting) (quoting *Gray*, [1900] 2 Q.B. at 40).

130. *Id.* at *32-3 (J. Harun Hashim, dissenting).

131. *Id.* at *34. *Accord* Attorney Gen. v. Arthur Lee Meng Kuang [1987] 1 MLJ 207 (Malay. 1987).

132. *Manjeet*, 1990 MLJ LEXIS 257, at *67. *Accord* Trustees of Leong San Tong Khoo Kongs (Penang) Registered & Ors v. S M Idris & Anor, [1990] 1 MLJ 273 (Malay. 1990), 1989 MLJ LEXIS 595; *Pub. Prosecutor v. The Straits Times* [1971] 1 MLJ 69 (Malay. 1970), 1970 MLJ LEXIS 142.

133. The *Manjeet* court stated:

[There] will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court’s administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties.

Manjeet, 1990 MLJ LEXIS 257, at *43-44 (Malay. 1990) (J. Harun Hashim, dissenting).

on a case where Prime Minister Mahathir Mohamad was charged with contempt because Mahathir Mohamad's comments were a "general criticism" of the judiciary.¹³⁴

In *Lim Kit Siang v. Dato Seri Dr Mahathir Mohamad*,¹³⁵ Prime Minister Mahathir Mohamad was charged with contempt for his interview responses in Time Magazine. The court found the statement: "Although you passed a law with a certain thing in mind, we think your mind is wrong, and we want to give our interpretation' — is not a correct statement because the Court does not substitute the intention of the Legislature with that of its own."¹³⁶ They found this statement non-contemptuous but merely a "dilemma" and "confusion" on the function of the separation of powers.¹³⁷ The criticism was considered a ventilation¹³⁸ while in the *Manjeet* case, the language was considered a "violent criticism."¹³⁹

2. Content Restrictions: Building Well-ordered Societies

The content matter of publications is regulated in Singapore and Malaysia, but in separate press laws. The Malaysian PPPA covers unlawful purposes of printing and producing documents, which includes materials relating to obscenity, incitement to violence, legal disobedience, breach of the peace, or the promotion of the feeling of ill-will, disharmony or disunity.¹⁴⁰ When the Minister believes any publication contains anything¹⁴¹ "likely to be prejudicial to public order, morality, security, the relationship with any foreign country or government, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest,"¹⁴² the Minister may limit or prohibit the importation or distribution of the publication in his "absolute discretion."¹⁴³

134. *Id.* at *45 (J. Harun Hashim, dissenting).

135. *Lim Kit Siang v. Dato Seri Dr Mahathir Mohamad* [1987] 1 MLJ 383 (Malay. 1986), 1986 MLJ LEXIS 282. For a general discussion on contempt of court proceedings see Ibrahim, *supra* note 107, at 77-80.

136. *Lim Kit Siang*, 1986 MLJ LEXIS 282, at *10-11.

137. *Id.* at *13.

138. The court further drew the distinction as a "ventilat[ion], perhaps understandably, [of] the vexation of the executive in not being able to get through some desired objective or end without curial intervention." *Id.* at *19-20.

139. *Manjeet*, 1990 MLJ LEXIS 257, at *67.

140. See Malaysia PPPA 1984, *supra* note 73, § 4(1). See, e.g., Iddid, *supra* note 112, at 47; Ibrahim & Jain, *supra* note 57, at 557.

141. The term "anything" denotes "any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing." Malaysia PPPA 1984, *supra* note 73, § 7(1).

142. *Id.*

143. *Id.* §§ 7(1)-(2). See also *id.* § 13(1).

Singapore regulates the content matter of publications in the Undesirable Publications Act.¹⁴⁴ The Minister has discretion to "prohibit the importation, sale or circulation" of publications that are "contrary to the public interest."¹⁴⁵ The Act was amended to "penalize foreign publications that 'consistently interfered' in Singapore's domestic politics 'for their own ends.'"¹⁴⁶

The Malaysian High Court once gave a glimpse of confidence to those hoping for greater constraints on the bureaucracy's ability to limit the publication of materials the Minister finds offensive. In *Persatuan Aliran Kesedaran Negara v. Minister of Home Affairs*,¹⁴⁷ the court overturned the Minister's decision to not allow the publication of materials by *Aliran*¹⁴⁸ under the Printing Press and Publication Act of 1984. In the *Aliran* opinion, the court held that although the Minister's discretion is "absolute it is not unfettered . . . [and] is subject to judicial review."¹⁴⁹ The court further considered that the "Minister's discretion is limited to protecting the public interest or national interest in respect of public order, morality and security as is shown in . . . [sections] 4 and 7 of the 1984 Act."¹⁵⁰ This decision was not surprising considering that *Aliran's* publication was aimed toward promoting "a common sense of nationhood and a genuine understanding of development in accordance with the aspirations of the *Rukunegara*."¹⁵¹ Nevertheless, the Appellate Court quashed the High Court's order and set out three grounds for reversal, none of which fit within the realm of *Aliran*.¹⁵² They found no evidence of "illegality, irrationality or procedural

144. Undesirable Publications Act, chap. 338, The Statutes of The Republic of Singapore (1985 rev. ed.) [hereinafter Singapore UPA].

145. *Id.* § 3(1). See also *id.* § 4 (allowing a three year penalty for violation). This power is also given to lower officials; if they find publications not in the interest of Singapore, they can seize them, and appeal only lies to the minister "and shall not be called into question in any court." *Id.* §§ 6, 15.

146. *In Re Dow Jones*, [1988] 2 MLJ 414 (Sing. 1988), 1988 MLJ LEXIS 601, at *24-25. See Francis Seow, *Press Bill Doesn't Make Sense for Singapore*, ASIA WALL ST. J., May 27, 1986.

147. [1987] 1 MLJ 440 (Malay. 1987), 1987 MLJ LEXIS 443, *rev'd*, Minister of Home Affairs v. *Persatuan Aliran Kesedaran Negara* [1990] 1 MLJ 351 (Malay. 1990), 1990 MLJ LEXIS 6.

148. The President is Dr. Chandra Muzaffar. His views are consistent with Malaysia's purported view of decadent Western influence. See *infra* text accompanying notes 324-27.

149. *Aliran*, 1987 MLJ LEXIS 443, at *8 (Malay. 1987).

150. *Id.* at *9.

151. *Id.* at *5 (emphasis added). See also *infra* note 271 (describing the meaning of *Rukunegara*).

152. Illegality, irrationality and procedural impropriety are the three grounds for reversal. See *Minister of Home Affairs v. Persatuan Aliran Kesedaran Negara*, 1990 MLJ LEXIS 6, at *24-25 (Malay. 1990). Illegality exists when the "authority . . . [is] purporting to exercise a power which in law it does not possess." *Id.* at 24. Irrationality exists where the authority "exercises a power in so unreasonable a manner that the exercise becomes open to review

impropriety” and reversed the quashing of the Minster’s decision.¹⁵³ Although the court set out a potential limitation that would seem to co-exist with the values espoused by the state to ensure public order, national security and public interest, the Appellate Court failed to affirm the decision of the High court. The common core of Asian values, community before the individual, seems not to matter in the present case. Although *Aliran* espoused *Rukunegara* as the philosophy of the publications, the Minister refused publication. The High Court found that *Aliran* was attempting to promote values that would not disrupt public order, but the Appellate Court usurped the promotion of Asian values after setting out a review standard that would have easily allowed the decision of the High Court to be affirmed.

Recently, in the Singapore case of *Chan Hiang*, the Minister for Information and the Arts was found to have acted rationally in banning publications produced by the International Bible Studies Association (IBSA) — a denomination of Jehova’s Witnesses.¹⁵⁴ The Court of Appeals upheld the Minister’s decision by finding that Jehova’s Witnesses do not partake in warfare, which threatens the national security of Singapore.¹⁵⁵ The *Chan Hiang* court additionally stated that issues of “national security are not justiciable.”¹⁵⁶ But, the court is not precluded from determining whether facts exist for the decision to be made by the Minister, which they did in this case.¹⁵⁷

3. *Sedition Acts: Keeping the Status Quo*

The sedition laws of Malaysia and Singapore are substantively similar.¹⁵⁸ The laws are based on the definition of sedition espoused by the

upon what are called . . . Wednesbury principles.” *Id.* Procedural impropriety exists when they act contrary to “principles of natural justice’ . . . [i.e.], a duty to act fairly.” *Id.* at 25. *See also* Associated Provincial Picture Houses Ltd v. Wednesbury Corp, [1947] 2 All E.R. (Eng. 1947).

153. *Aliran*, 1990 MLJ LEXIS 6, at *28.

154. *Chan Hiang Leng Colin & Ors v. Minister for the Information and the Arts* [1996] 1 SLR 609 (Sing. 1996), 1996 SLR LEXIS 267, at *39 (prosecuted under the Singapore Undesirable Publications Act, § 3). *See* Singapore UPA, *supra* note 144, § 3.

155. *See Chan Hiang*, 1996 SLR LEXIS 267, at *24-26.

156. *Id.* at *25. *See also* Chng Suan Tze v. Minister of Home Affairs & Ors [1988] SLR 132 (Sing. 1988), 1988 SLR LEXIS 247. “[W]hat national security requires . . . is to be left solely to those who are responsible for national security.” *Id.* at *71.

157. *See Chan Hiang*, 1996 SLR LEXIS 267, at *25.

158. *See, e.g.*, Sedition Act, chap. 290, The Statutes of The Republic of Singapore (1985 rev. ed.); Sedition Act, 1948 (Act 15 of 1969), Laws of Malaysia, GOLDEN’S FEDERAL STATUTES [hereinafter Sedition Acts of Malaysia and Singapore]. Malaysia has further abridged freedoms by adding article 3(1)(f) to the Sedition Act, which provides that a seditious tendency includes questioning any “matter, right status, position, privilege, sovereignty or prerogative” protected by part III or articles 152, 153 or 181 of the Constitution. *Id.* § 3(1)(f).

English judge Sir James Stephen.¹⁵⁹ Anyone who attempts, conspires or prepares to do any act which would have a "seditious tendency" or "utters any seditious words" or "prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication" or "imports any seditious publication"¹⁶⁰ will be guilty of a violation and face a maximum penalty of three years imprisonment and a fine.¹⁶¹ A seditious tendency is broadly defined to include anything that will cause public dissatisfaction of the government or incite racial hatred within Malaysia and Singapore.¹⁶² The intent of the person who is charged with sedition is irrelevant so long as the act had or would have a seditious tendency.¹⁶³ Additionally, the government need not show that the speech is likely to cause disorder. Only the tendency to cause disorder needs to be shown.¹⁶⁴ There is also no need to show that the speech was "true or false." However, evidence showing a falsehood would increase the "seditious tendency."¹⁶⁵ A court may, in lieu of or in addition to other penalties, prohibit the publication of the seditious thing.¹⁶⁶ It may also prohibit the person convicted of publishing a newspaper matter from publishing, writing or assisting the publication of any newspaper in the future.¹⁶⁷ The Act also gives police officers the power to arrest people for

See Ibrahim & Jain, *supra* note 57, at 556. See also Idid, *supra* note 113, at 48.

159. See ANDREW HARDING, LAW, GOVERNMENT AND THE CONSTITUTION IN MALAYSIA 192 (1996).

160. Sedition Acts of Malaysia and Singapore, *supra* note 158, §§ 4(1)(a)-(d). A person cannot be convicted under this Act on the "uncorroborated testimony of one witness." *Id.* § 6.

161. See *id.* § 4. The second offense allows a five-year sentence to be administered. *Id.*

162. See generally *id.* In Malaysia and Singapore, seditious tendency is a tendency to "bring hatred or contempt or to excite disaffection against . . . Government." *Id.* § 3(1)(a). To attempt to bring change to the government "otherwise than by lawful means." *Id.* § 3(1)(b). "[T]o bring into hatred or contempt or to excite disaffection against the administration of justice." *Id.* § 3(1)(C). "[T]o raise discontent or disaffection amongst [citizens]." *Id.* § 3(1)(d). "[T]o promote feelings of ill-will and hostility between different races or classes of the population." *Id.* § 3(1)(e). Things that will not be deemed to be seditious will be those things which have "been misled or mistaken." *Id.* § 3(2)(a). Or, to point out errors in government or legislation with the intent to remedy the problems. See *id.* § 3(2)(b). Or to point out things that cause ill-will between people "with a view to[ward] their removal." *Id.* § 3 (2)(d).

163. See *id.* § 3(3). See Pub. Prosecutor v. Ooi Kee Saik & Ors [1971] 2 MLJ 108 (Malay. 1971), 1971 MLJ LEXIS 59, at *22. Disaffection — a definition in the statute as seditious tendency — in the context of section 3(3) was interpreted as "enmity and disloyalty tending to make the government insecure." *Id.* at *22. See also Pub. Prosecutor v. Param Cumaraswamy [1986] 1MLJ 578 (Malay. 1986), 1986 MLJ LEXIS 163.

164. See Pub. Prosecutor v. Oh Keng Seng [1977] 2 MLJ 206 (Malay. 1976), 1976 MLJ LEXIS 220, at *33. See generally Ibrahim & Jain, *supra* note 57, at 554.

165. Oh Keng Seng, 1976 MLJ LEXIS 220, at *34

166. See Sedition Acts of Malaysia and Singapore, *supra* note 158, § 9(1)(a).

167. See *id.* § 9(1)(b).

violating the Act without a warrant.¹⁶⁸

The definition of sedition was broadened in Malaysia in response to the 1969 racial riots by adding section 3(1)(f) to the Sedition Act to cover speech pertaining to the "sensitive issues."¹⁶⁹ For example, in *Public Prosecutor v. Ooi Kee Saik*, an individual was convicted under section 3(1)(f) when he "charged the Government with providing 'comfortable shady places for one group of citizens, and hot uncomfortable places for other groups of citizens.'"¹⁷⁰ The court has developed this broad, all-encompassing standard, yet ironically continues to reiterate that criticism itself will not constitute sedition.¹⁷¹

In the Malaysian case of *Public Prosecutor v. Mark Koding*,¹⁷² the court even found seditious tendencies in proposing to change article 152 of the Federal Constitution, seemingly a democratic duty, which provides for language protections.¹⁷³ The sedition laws of Malaysia do not state in section 2(b) of the Act that pointing out errors in the constitution with a view toward remedying the errors are allowed; however, the Singapore provision of the Sedition Act allows constitutional criticism in theory.¹⁷⁴

168. See *id.* § 11.

169. See HARDING, *supra* note 159, at 192; Ibrahim & Jain, *supra* note 57, at 553; See also Sedition Act, 1948 (Act 15 of 1969), § 3(1)(f), Laws of Malaysia, GOLDEN'S FEDERAL STATUTES.

170. Pub. Prosecutor v. Ooi Kee Saik & Ors [1971] 2 MLJ 108 (Malay. 1971), 1971 MLJ LEXIS 59, at *22. In effect he charged the Malays of being biased toward the Chinese. The court explained:

[I]f the court comes to the conclusion that the speech used naturally, clearly and indubitably, has the tendency of stirring up hatred, contempt or disaffection against the Government, then it is caught within the ban of para (a) of s 3(1) of the Act [It is a violation if the speech] is apt to produce conflict and discord amongst the people or to create race hatred, the speech transgresses para[graphs] (d) and (e) of s 3(1). Again paragraph (f) [the new amendment after the 1969 riots] of s 3(1) comes into play if the impugned speech has reference to question any of the four sensitive issues—citizenship, national language, special rights of the Malays and the sovereignty of the Rulers.

Id. See HARDING, *supra* note 159, at 194. See also Ibrahim & Jain, *supra* note 57, at 554-55.

171. If the court "finds that it was intended to be a criticism of Government policy or administration with a view to obtain its change or reform, the speech is safe." *Ooi Kee Saik*, 1971 MLJ LEXIS 59, at *21-22. See also *Fan Yew Teng v. Public Prosecutor* [1975] 2 MLJ 235 (Malay. 1975), 1975 MLJ LEXIS 254 (holding mere criticisms themselves will not constitute sedition).

172. Pub. Prosecutor v. Mark Koding [1983] 1 MLJ 111 (Malay. 1982), 1982 MLJ LEXIS 463, at *26.

173. See *id.* at *22-29. See also FED. CONST. OF MALAY. art. 152.

174. See Sedition Acts of Singapore and Malaysia, *supra* note 158, § 3(2)(b).

4. *Internal Security & Government Insecurity*

The Singapore and Malaysia Internal Securities Acts (ISA)¹⁷⁵ are substantively similar in respect to limitations on freedom of speech. The Acts are designed to prevent Communist insurgency in the government and to enable preventative detention to be practiced.¹⁷⁶ The Internal Security Acts were also drafted to ensure internal security and to prevent subversion.¹⁷⁷ The Minister in charge of Printing Presses and Publications may absolutely prohibit or condition publication or distribution when he finds that the publication "counsels disobedience to the law," "contains any incitement to violence," will "promote feelings of hostility between different races or classes of the population," or is "prejudicial to the national interest, public order, or security" of the nation.¹⁷⁸ For example, in 1987 three national newspapers in Malaysia were shut down because they reported on racial underpinnings of a political conflict; they were allowed to reopen a

175. See Internal Security Act, chap. 143, The Statutes of The Republic of Singapore (1985 rev. ed.) [hereinafter Singapore ISA]; Internal Security Act, 1960 (Act 82 of 1972), Laws of Malaysia, GOLDEN'S FEDERAL STATUTES [hereinafter Malaysia ISA].

176. See Ibrahim & Jain, *supra* note 57, at 522. See generally Iddid, *supra* note 112, at 47.

177. See Malaysia ISA, *supra* note 175, preamble. See also FED. CONST. OF MALAY. art. 149.

178. Malaysia ISA, *supra* note 175, §§ 22(1)(a)-(d); Singapore ISA, *supra* note 175, §§ 20(1)(a)-(d). Any person who has in his possession a publication which violates the Act is also in violation. Malaysia ISA, § 26; Singapore ISA, § 24. Any person who imports or helps to import a document in violation of the Act without lawful excuse is subject to punishment under the Act. Malaysia ISA, § 26; Singapore ISA, § 24. It is a violation of the Act to post a placard or circular which does not conform to the Act. Malaysia ISA, § 27; Singapore ISA § 25. Spreading false news by word of mouth or by publication that will likely cause "public alarm" is also a violation. Malaysia ISA § 28; Singapore ISA § 26. Any person who possesses or has control over a subversive document, without lawful excuse shall be guilty of an offense. Subversive document is defined as a document in part or in whole, which has a tendency to do any of the following:

to excite or organise violence[,] . . . to support, propagate or advocate any act prejudicial to the security . . . or the maintenance or restoration of public order . . . to invite, request or demand support for or on account of any collection, subscription, contribution or donation, whether in money or in kind, for the direct or indirect benefit or use of persons who intend to act or are about to act, or have acted, in a manner prejudicial to the security . . . [of the nation] or to the maintenance of public order . . . or who incite violence . . . or counsel disobedience. . . .

Malaysia ISA, § 29(3)(a)-(c); Singapore ISA § 27 (3)(a)-(c). A lawful excuse arises if the person did not know the nature of the contents of the document and had no reasonable cause to suspect it was a "subversive document." Malaysia ISA, §§ 29(4)(a)-(b); Singapore ISA, §§ 27 (4)(a)-(b). Violators of the Act are subject to a maximum of five years imprisonment and a fine. Malaysia ISA, § 29 (1); Singapore ISA, § 27(1).

year later when a change in management occurred.¹⁷⁹

The Minister may additionally prohibit the importation and distribution of the specific publication and any other publication that comes from the publishing house or agency.¹⁸⁰ The person subject to this prohibition can seek review by the *Yang di-Pertuan Agong* (in Singapore, the President) and no court can call his decision into question.¹⁸¹

The Malaysian Act also limits entertainment and exhibitions by authorizing the Minister or anyone authorized by the Minister, to seek information concerning the entertainment or exhibition.¹⁸² If any information requested is known to be false or incomplete, it will result in three years imprisonment and a fine.¹⁸³ In Malaysia, the Minister may also prohibit the entertainment or close the exhibition if the Minister believes that it is "likely to be in any way detrimental to the national interests."¹⁸⁴ There is a duty for the promoters to know what their agents are doing because the ISA imposes a respondeat superior duty,¹⁸⁵ and the promoter will be liable for the acts of its employees.¹⁸⁶

5. Defamation

The defamation laws of Singapore and Malaysia are substantively identical, and will be discussed concurrently unless otherwise noted.¹⁸⁷ Prosecution for the crime of defamation has been used in Singapore and Malaysia to repeatedly quell the voices of government opposition. The

179. See Eric Loo, *Media Tightly Prescribed*, NIEMAN REP., Fall 1996, at 79. See also *White Paper on Last October's Crackdown; Banned Newspapers Reappear*, Country Rep., ECONOMIST, June 14, 1988.

180. See Malaysia ISA, *supra* note 175, §§ 22(2)(a)-(b); Singapore ISA, *supra* note 175, §§ 20(2)(a)-(b).

181. See Malaysia ISA, *supra* note 175, § 23; Singapore ISA, *supra* note 175, § 21.

182. See Malaysia ISA, *supra* note 175, § 32 (1)(a)-(d). This includes the interests of promoters, the intention of use of the profits and any "such matters as the Minister may direct." *Id.*

183. See *id.* §§ 32(2) & 41. This is regulated in Singapore by the Films Act, chap. 107, The Statutes of The Republic of Singapore (1985 rev. ed.).

184. Malaysia ISA, *supra* note 175, § 35.

185. "This doctrine of *respondeat superior* means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent." BLACK'S LAW DICTIONARY 1311-12 (6th ed. 1990).

186. See Malaysia ISA, *supra* note 175, § 40.

187. See, e.g., Defamation Act, chap. 75, The Statutes of The Republic of Singapore (1985 rev. ed.); Defamation Act, 1957 (Act 286 of 1957), Laws of Malaysia, GOLDEN'S FEDERAL STATUTES [hereinafter Defamation Acts of Singapore and Malaysia]. Both penal codes of Malaysia and Singapore, in respect to criminal defamation, are substantively the same. Compare Penal Code, chap. 224, §§ 499-502, The Statutes of The Republic of Singapore (1985 rev. ed.) and Malaysia Penal Code (F.M.S. Cap 45), §§ 499-502, Malaysian Law Publishers (1986).

Defamation Act of Singapore was created in Singapore upon separation from Malaysia.¹⁸⁸ The Defamation Act provides a privilege for newspapers, but no publication will be protected unless it is determined to have a public interest or public concern.¹⁸⁹ The Defamation Act expressly states that any person involved in or taking part in an election who publishes a defamatory statement has no privilege even if the statement "is material to a question in issue in the election."¹⁹⁰

This message was reiterated in Singapore when Lee Kuan Yew's son, Deputy Prime Minister Lee Hsien Loong, won a libel judgment against the IHT for an article that insinuated that he was appointed because he was Lee's son.¹⁹¹ The court awarded damages and made the IHT post an apology which was later determined not to be in good faith. Consequently, aggravated damages were awarded.

In the Singapore case of *Jeyaretnam Joshua Benjamin v. Lee Kuan Yew*,¹⁹² the court decided that the remarks¹⁹³ by Lee Kuan Yew's political adversary were defamatory because "they impute dishonourable and discreditable conduct and disparage him in his office . . . and lower him as

188. See CONST. OF THE REPUBLIC OF SING. art. 162 (mandating the extension of all existing law to become part of the Constitution but can be changed to conform with the Constitution). See *Jeyaretnam Joshua Benjamin v. Lee Kuan Yew* [1992] 2 SLR 310 (Sing. 1992), 1992 SLR LEXIS 412 (holding extension of law to new Singapore republic justified the imputation of intent of Parliament on the existing rules of defamation when adopted in Singapore in the split of the Singapore from Malaysia). See generally Michael Hor, *The Freedom of Speech and Defamation*, 1992 SING. J. LEGAL STUD. 542, 549-551 (1992). Hor criticizes the court's reasoning of imputing intent of the Singapore parliament and the Constitution of existing defamation laws — and any other law — because the Constitution clearly gives the court power to make "modification, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution." CONST. OF THE REPUBLIC OF SING. art. 162.

189. See Defamation Acts of Singapore and Malaysia, *supra* note 187, § 12(1). Both allow privileged reporting, as long as no malice is shown, which is enumerated in the Schedule for Newspaper Statements Having Qualified Privilege. See *id.* Sched. I. The Schedule's main requirement is a "fair and accurate report" of certain public events. See *id.* § 1. However, research has uncovered no exceptions allowed in the case law. "Nothing in this section shall be construed as protecting the publication of any blasphemous, seditious or indecent matter . . . the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit." *Id.* § 12 (3).

190. *Id.* § 14.

191. See *Singapore Human Rights Report 1996*, *supra* note 3.

192. [1992] 2 SLR 310 (Sing. 1992), 1992 SLR LEXIS 412.

193. The pertinent remarks by the appellant dealt with the circumstances of Cheang Wan's suicide and were spoken at a political rally with 7000 people present. See *id.* at *15. Cheang Wan is the former Minister for National Development. The appellant remarked the following: "[E]verybody . . . knows you can't buy poison over the counter. . . . [W]hy hasn't the government conducted any inquiry [The decedent wrote a letter before his death to Lee Kuan Yew] saying I am very sorry; I will do as you advise. . . . Did he respond to that letter? . . . If he did respond, what was his response?" *Id.* at *17-18.

such in the estimation of right-thinking people in Singapore.”¹⁹⁴ The court denied the defense of fair comment¹⁹⁵ on three grounds: 1) Freedom of speech can be abridged by laws of Parliament;¹⁹⁶ 2) Article 162 of the Constitution calls for the extension of all laws in force when they separated from Malaysia, including common law;¹⁹⁷ and 3) the Malaysian courts have reached the same result.¹⁹⁸ The court rationalized the decision by firmly rejecting the United States’ *New York Times*¹⁹⁹ decision and held that public officials have the same protection as any citizen.²⁰⁰ Even if there is no malice, the publisher is still responsible.²⁰¹ The court opined that honorable men would not seek office if their reputation were at stake, and it would therefore “do the public more harm than good.”²⁰² The court further held that “the circumstances of a general election are not sufficient to give rise to an occasion of privilege even if the subject matter of the publication is material to an issue in the election.”²⁰³

In Malaysia, the same circumstances surrounding the Lee Kuan Yew criticisms and the Minister’s suicide gave rise to *Lee Kuan Yew v. Chin Vui Khen & Anor*.²⁰⁴ The court denied a fair comment defense because there

194. *Id.* at *39.

195. “[A] writer may not suggest or invent facts and then comment upon them, on the assumption that they are true. If the facts upon which the comment purports to be made do not exist, the defence of fair comment must fail.” *Id.* at *40.

196. No prohibition, like that of the U.S. First Amendment or that of article 10 of the European Convention on Human Rights, is provided for in the Constitution of Singapore. *See id.* at 59. The Constitution of Singapore expressly allows abridgment of speech by defamation laws. *See id.* at *59-60. *See also* Hor, *supra* note 188, at 547.

197. The court saw no need to change the defamation law as codified in the Defamation Act because it was not in conflict with the Constitution, and Parliament intended that the Act be extended to Singapore via section 74 of the Malaysia Act of 1963. *See Jeyaretnam*, 1992 SLR LEXIS 412, at *62-65.

198. *See Lee Kuan Yew v. Chin Vui Khen & Anor* [1991] 3 MLJ 494. (Malay. 1989), 1989 MLJ LEXIS 700. *See Jeyaretnam*, 1992 SLR LEXIS 412, at *66.

199. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). *See also infra* text accompanying notes 223-237.

200. *See Jeyaretnam*, 1992 SLR LEXIS 412, at *66-67. *Accord New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

201. *See Jeyaretnam*, 1992 SLR LEXIS 412, at *67.

202. *Id.* at *70. “We think that not only is such a sacrifice not required of every one who consents to become a candidate for office, but that to sanction such a doctrine would do the public more harm than good.” *Id.* at *71-72 (quoting *Post Publ’g Co. v. Hallam*, 59 F. 530, 540 (6th Cir. 1893)).

203. *Id.* at *78. “It is not enough that the publication should be of general interest . . . in receiving the information contained in it, and there must be a correlative duty in the publisher.” *Id.* at *81. The case further states that the privilege would only attach if the speaker had some “legal, moral or social duty on his part to communicate the subject matter of his speech to the audience.” *Id.* at *79.

204. [1991] 3 MLJ 494 (Malay 1992), 1989 MLJ LEXIS 700.

were no facts to justify what the defendants said.²⁰⁵ The court found that the defamation law was imposed by Parliament — a requirement under the Constitution — and was therefore constitutional.²⁰⁶ They set out the importance of free speech in a democracy but reinforced limiting this speech in the name of public order, and security of the state.²⁰⁷

The Malaysian and Singaporean lawmakers have clearly gone to great lengths to ensure the communities of Singapore and Malaysia stay safe, moral and orderly. Conversely, the United States' focus is on the individual right of people to speak and not the community's right to safety, order and morality.

IV. UNFETTERED FREE SPEECH — THE U.S. MODEL

Scholars have recognized that the First Amendment of the U.S. Constitution does not protect all speech but rather protects freedom of speech.²⁰⁸ However, the United States has failed to construct a theory of free speech that is consistently applied with its various values.²⁰⁹ Two central values are used interchangeably to justify free speech in the United States: the value of reaching sound democratic decisions and the value of

205. *See id.* at *28. The court also stated the following:

Under such circumstances where the alleged defamatory article alludes to charges which are not specific but general in nature, a defendant who pleads justification must state some specific acts and instances of misconduct imputed to the plaintiff and follow these with the precise particulars of fact as tending to show the truth of such misconduct.

Id. at *30.

206. Although required, it is seemingly a case of circular logic with judicial passivism. The Civil Law Act of 1956, § 3(1), extended all the common law of England to Malaysia. This was later modified by the Defamation Act of 1957. Article 162 of the Constitution extends all laws to Malaysia, which includes the common law under article 160 of the Constitution. The court reinforced this decision with the fact that Congress in 1983 introduced new Criminal defamation laws. *See* Malaysia Penal Code (F.M.S. Cap. 45), § 298(a), Malaysian Law Publishers (1986).

207. The court stated:

The right to freedom of speech and expression is undoubtedly a valuable and cherished right possessed by a citizen in our Republic Freedom to think as one likes, and to speak as one thinks are, as a rule, indispensable to the discovery and spread of truth and without free speech, discussion may well be futile. But at the same time, we can only ignore at our peril the vital importance of our social interest in, inter alia, public order as security of our State.

Lee Kuan Yew, 1989 MLJ LEXIS 700, at *43.

208. *See* ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* 19 (1948).

209. *See, e.g.*, Martin H. Redish, *The Value of Free Speech*, 130 U. PA. L. REV. 591 (1982); THOMAS I. EMERSON, *THE SYSTEM OF FREEDOM OF EXPRESSION* 15 (1970).

discovering the truth in an open market place of ideas.²¹⁰

A. *Democracy Rationale*

In the United States, two central democratic values are inherent in allowing open discussion of political topics. The first of these is the value to the individual in contributing to democratic decision-making. This first value simultaneously ensures that speech is not suppressed and then violently released against the government. The second value hypothesizes that governments, which determine what is released to the populace, are going down the slippery slope of ultimately not allowing free speech when it threatens the status quo.²¹¹

Unfettered free speech has been justified as a pressure release for society. If not allowed to freely criticize the government, society would drive their hatred for the government and its policies underground and subversively destroy public order.²¹² This notion has been expressed by Emerson as "achieving a more adaptable and hence a more stable community . . . [by balancing] healthy cleavage and necessary consensus."²¹³ The courts of the United States have also adopted this idea: "order cannot be secured merely through fear of punishment for its infraction . . . fear breeds repression . . . repression breeds hate . . . [and] hate menaces stable government"²¹⁴

210. Unfettered freedom of expression also ensures a third value — self-fulfillment to the individual. A person must be free to realize his self being and share in the decision-making process in society which will ultimately affect him; to deny a person this right is to "place him under arbitrary control of others." EMERSON, *supra* note 209, at 6. Redish believes that this is the only function of freedom of speech. See Redish, *supra* note 209, at 593. See also Lee C. Bollinger, *Free Speech and Intellectual Values*, 92 YALE L.J. 438 (1983). This value is two-fold: first, it allows the individual to discover his maximum potential; and secondly, it gives an individual control over his destiny by making "life-affecting decisions." Redish, *supra* note 209, at 593. But see, C. Edwin Baker, *Realizing Self-Realization: Corporate Political Expenditures and Redish's The Value of Free Speech*, 130 U. PA. L. REV. 646 (1982) (criticizing Redish's thesis on the basis of the Supreme Court upholding freedom of speech as protecting "profit-orientated corporate political speech" as undermining people's ability to control their destiny because of corporate influence overriding the weight of individual speech).

211. For a discussion on the democratic value of free speech in the context of the United States, see Harry H. Wellington, *On Freedom Of Expression*, 88 YALE L.J. 1105 (1979). E.g., William T. Coleman, Jr., *A Free Press: The Need to Ensure an Unfettered Check on Democratic Government Between Elections*, 59 TUL. L. REV. 243 (1984); Robert H. Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1 (1971).

212. See *Whitney v. California*, 274 U.S. 357, 372-380 (1927) (Brandeis, J., concurring).

213. See EMERSON, *supra* note 209, at 7. "[S]uppression of discussion makes a rational judgment impossible, substituting force for reason" *Id.*

214. *Whitney*, 274 U.S. at 375 (Brandeis, J., concurring). "[T]he path to safety lies in the opportunity to discuss freely supposed grievances and proposed remedies" *Id.*

"Once one accepts the premise of the Declaration of Independence — that governments derive their just powers from the consent of the governed,"²¹⁵ individuals must have freedom of expression in forming community opinions. Many commentators have emphasized this value rigidly as the only value of free speech while others have not.²¹⁶ Meiklejohn focuses on the agreement between the government and the governed, that "public issues shall be decided by universal suffrage,"²¹⁷ and that only speech which relates to the issues of public interest have the full protection against encroachment while unrelated speech has less protection.²¹⁸

Within this democratic rationalizing model, private speech must be distinguished from public interest speech; while the former requires due process, it may also require abridgement for public interests.²¹⁹ Drawing the line between public and private speech is very difficult; indeed, some would exclude things such as obscenity from the political process and others would not.²²⁰ Political and therefore protected speech, in Bork's view, is speech broadly concerned with government behavior.²²¹ This may raise concerns over protecting non-political speech, but speech that does not deal with concerns of governing may legitimately be regulated for public purposes by elected representatives with values similar to the population that elected them.²²²

215. EMERSON, *supra* note 209, at 7.

216. See, e.g., ALEXANDER MEIKLEJOHN, *POLITICAL FREEDOM; THE CONSTITUTIONAL POWERS OF THE PEOPLE* (1960); Bork, *supra* note 211; Vincent Blasi, *The Checking Value in First Amendment Theory*, 1977 AM. B. FOUND. RES. J. 523; Lillian R. BeVier, *The First Amendment and Political Speech: An Inquiry Into the Substance and Limits of Principle*, 30 STAN. L. REV. 299 (1978).

217. MEIKLEJOHN, *supra* note 208, at 27.

218. See MEIKLEJOHN, *supra* note 216, at 94.

219. See *id.* at 95.

220. See Wellington, *supra* note 211, at 1112-20. See also Alexander Meiklejohn, *The First Amendment is an Absolute*, 1961 SUP. CT. REV. 245, 262-263 (1961) (arguing obscene literature should be protected and the government cannot decide what people see or do not see). See, e.g., Harry Kalven, Jr., *The Metaphysics of the Law of Obscenity*, 1960 SUP. CT. REV. 1, 15-16 (1960) (arguing obscene novels and books do not need the protection of free speech because they are not central to self-government); Bork, *supra* note 211, at 29 (stating "art and pornography are on a par with industry and smoke pollution").

221. See Bork, *supra* note 211, at 27. "[G]overnmental behavior, policy or personnel, whether the governmental unit involved is executive, legislative, judicial or administrative . . . [and] speech about how we are governed . . . [are political; however this] does not cover scientific, educational, commercial or literary expressions . . ." *Id.* at 27-28.

222. See *id.* at 28. "Freedom of non-political speech rests, as does freedom for other valuable forms of behavior, upon the enlightenment of society and its elected representatives." *Id.*

B. Marketplace of Ideas Rationale

The "marketplace of ideas"²²³ is the core justification for freedom of speech in the American system²²⁴ and is based on an inherent value of establishing truth in a democracy.²²⁵ J. Milton, and later J.S. Mill, elaborated upon the value of freedom of speech as preventing errors through ignorance: The marketplace is needed for the competition of ideas, and suppressing any idea inherently risks elimination of the correct idea for others to identify.²²⁶ This ideology espouses the view that truth can only be established through the incessant competition of ideas in an intellectual marketplace to ensure an effective democracy. The very nature of this model is based on the aggregate benefit to society of the free exchange of ideas.²²⁷

The marketplace of ideas has two inherent values: the social value of informed citizens and the individual value of citizenry having open access to the decision-making process.²²⁸ The social value represents the benefits to society in reaching decisions from a multitude of tongues,²²⁹ and the individual value stresses the importance of the government decision-making process being open to individual citizens²³⁰ who have equal worth and right

223. See generally JOHN STUART MILL, *ON LIBERTY*, reprinted in *THE UTILITARIANS* 475 (Dolphin Books 1961) (putting forth the central theory for the justification of free speech based on a marketplace of ideas).

224. See, e.g., *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974); *Miller v. California*, 413 U.S. 15 (1973), *reh'g denied*, 414 U.S. 881 (1973); *New York Times Co., v. Sullivan*, 376 U.S. 254 (1964); *Brown v. Hartlage*, 456 U.S. 45 (1982); *Bd. of Educ. v. Pico*, 457 U.S. 853 (1982); *Widmar v. Vincent*, 454 U.S. 263 (1981); *Red Lion Broad. Co. v. FCC*, 395 U.S. 367 (1969); *Time, Inc. v. Hill*, 385 U.S. 374 (1967).

225. See *United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943), *aff'd*, 326 U.S. 1 (1945). See also *Dennis v. United States*, 341 U.S. 494, 584 (1951).

226. See JOHN MILTON, *AREOPAGITICA* (3d ed. rev. 1882).

227. See Stanley Ingber, *The Marketplace of Ideas: A Legitimizing Myth*, 1984 DUKE L.J. 1, 4 (1984). See also EMERSON, *supra* note 209, at 6-7. Mill's ideas are an attempt in explaining the merits of a marketplace of ideas. Suppressing a true opinion by censorship is in effect substituting the alleged false opinion with that of the censor's, with the latter being an "absolute certainty" and hence infallible. MILL, *supra* note 223, at 491. In censoring an opinion that is correct, the censors effectively miss the opportunity to exchange their potentially fallible opinion for the truthful one. See *id.* Additionally, if the censored opinion is true, the censors would lose the benefit of reinforcing their opinion by the obvious fallible opinion and may lose the opportunity of letting their potential truthhood be relegated to "dead dogma." *Id.* at 491, 509. The competition of opinions must be debated to form an understanding of a given opinion, whether fallible or truthful, and the merits and demerits of competing opinions whether true or false. See *id.* at 509-514, 521-524.

228. See Ingber, *supra* note 227, at 9-12.

229. See, e.g., *New York Times Co. v. Sullivan*, 376 U.S. 254, 270; *United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943).

230. See EMERSON, *supra* note 209, at 6-7.

in the participation of government.²³¹ This notion is a rejection of an authoritarian regulation of speech because only decisions reached through an individual's participation deserve obedience.²³²

If one believes that the purpose of free speech is to further self-government, then it is easy for government to regulate speech and only extend protection to that which is relevant to democratic decision-making.²³³ However, if free speech is an ultimate quest for truth, then restrictions are not justified.²³⁴ Once this benefit is regarded as accruing to society, speech can be regulated more easily by government under the guise of benefitting society through regulation,²³⁵ and indeed this has happened in the United States.²³⁶ Yet, determining the truth is an impossible task.²³⁷ If determining truth is impossible, then by necessity, it must also be unattainable.

V. FAILURE TO ALLOW POLITICAL SPEECH IN ASIA

The numerous justifications used by scholars and judges in the United States for a liberal press system may not be as clear in the context of Singapore and Malaysia. While the marketplace rationale may be weak when applied in Malaysia and Singapore, the democracy rationale cannot be denied on the basis of national unity and public order even though there is a long history of racial animosities and conflict.

Both Singapore and Malaysia have long histories of political entrenchment. In Malaysia, the National Front coalition has held power since 1957.²³⁸ In Singapore, the People's Action Party (PAP) has held power since 1959, through Lee Kuan Yew, former Prime Minister (1965-1990) and Goh Chok Tong, the present Prime Minister.²³⁹ The laws of Singapore and Malaysia lead to journalist self-censorship and difficulty for opposition parties to gain prominence.²⁴⁰

Malaysia's and Singapore's constitutional histories clearly indicates that the framers prized free speech and democratic values, but with a view

231. See Ingber, *supra* note 227, at 10 & nn.45-47.

232. See C. Edwin Baker, *Scope of the First Amendment Freedom of Speech*, 25 UCLA L. Rev. 964, 991 (1978). See also Wellington, *supra* note 211, at 1135.

233. See, e.g., Ingber, *supra* note 227, at 12; Bork, *supra* note 211, at 31.

234. See Ingber, *supra* note 227, at 12. See also MEIKLEJOHN, *supra* note 208, at 24-25.

235. See Ingber, *supra* note 227, at 4-5.

236. See *infra* text accompanying notes 344-362.

237. See Ingber, *supra* note 227, at 7-8 & nn.28-30.

238. See *Malaysia Human Rights Report 1996*, *supra* note 3.

239. See *Singapore Human Rights Report 1996*, *supra* note 3.

240. See *id.* See also *Malaysia Human Rights Report 1996*, *supra* note 3.

toward only protecting political speech.²⁴¹ Idid claims the press systems of Malaysia and Singapore cannot be compared to the U.S. system on a continuum from authoritarian to Western because the Western model concept is "ideological."²⁴² However, the ideologies of Singapore and Malaysia Constitutionalism are democratic; hence, the value of citizen involvement in government cannot be denied.²⁴³

Critics of Asian values have pointed out that censoring the media in Asia is self-serving because it is used by the government to cover their failings; effectively keeping the populace uninformed while propounding the government's legitimacy.²⁴⁴ There can be no true debate between citizens when they are unable to espouse their views without government approval.²⁴⁵ By limiting freedom of speech in Singapore and Malaysia, the government does not allow a domestic forum for debate but rather engages in a "self-righteous, paternalistic monologue where citizens are more likely to be on the receiving end of a sermon."²⁴⁶

Although limitations on free speech seem self-serving for the leadership, ethnic conflicts and social disruptions cannot be denied. The affiliations of different media sources are racially stratified between different ethnic groups within the states, and these groups' respective political parties have ownership.²⁴⁷ To lessen inter-racial problems, Singapore and Malaysia have banned each other's newspapers for the past twenty years.²⁴⁸ The press is viewed as having the potential to erode national cohesion by playing on racial and religious emotions of the diverse citizenry.²⁴⁹

Many racially motivated riots have occurred in Malaysia which lend support to the assertion that the press can promote social upheaval. The Maria Hertogh riots of 1950 were in response to reports of a Dutch girl being forced to practice another religion. Muslims felt this was religious injustice and the resultant violence ended in eighteen dead and 173 wounded.²⁵⁰ In 1964, during Prophet Muhammad's birthday, thirty-six people were killed in riots fueled by a Malay newspaper accusing the

241. This is demonstrated by reports of the Reid and Wee Commissions and a member of Singapore Parliament. See Hor & Seah, *supra* note 62, at 301-304. "Freedom of speech as an end in itself is unlikely to be very convincing in a situation where other public interests are adversely affected by speech." *Id.* at 302.

242. Idid, *supra* note 112, at 49.

243. See *supra* text accompanying notes 61-63.

244. See LINGLE, *supra* note 26, at 48-49.

245. See *id.* at 49.

246. See *id.* at 51.

247. See Idid, *supra* note 112, at 50.

248. See Lee Kuan Yew, *Singapore and The Foreign Press, in PRESS SYSTEMS IN ASEAN STATES* 117, 122 (1989).

249. See Nair, *supra* note 102, at 86.

250. See *id.* at 86-87.

Chinese minority of oppressing Malays.²⁵¹ In Malaysia, Chinese have a disproportionate amount of wealth compared to the Malay majority, and race riots ensued in response to economic discrimination during the late 1960s.²⁵²

In Singapore, the *Nanyang Siang Pau* glorified communism while depicting the government as anti-Chinese; the government saw this as an attempt to enhance racial and cultural stratification and detained three members of the editorial board.²⁵³ The *Eastern Sun* was banned because it was funded by Communists through a Hong Kong organization which gave them financial backing for putting forth Communist views.²⁵⁴ The *Singapore Herald*, which took an anti-government stance and was funded by foreign banks, was eventually closed down due to government pressure.²⁵⁵

The concern with Communist insurgency and racial riots seems warranted; however, Malaysia and Singapore in practice do not limit only these potentially harmful forces. They also limit opposition and good faith government criticisms. Dividing political speech from non-political speech may solve many problems in Malaysia and Singapore; however, when potential political speech has appreciable effects on social order and the democratic process,²⁵⁶ the problem multiplies.²⁵⁷

In Singapore and Malaysia the press has a duty to ensure responsible reporting. However, in countless instances, Singapore and Malaysia take the duty a step beyond responsible reporting and impose a duty on the press and others to ensure a stable democracy. This duty to ensure a stable democracy is problematic because the scope of allowable comments is inconsistent, and ensuring a stable democracy has effectively meant no criticisms of government.

A. *Inexcusable Contempt Standard*

The United States clearly allows a greater latitude of comment on the

251. *See id.* at 87.

252. *See Chinese Judge, Malaysian Judgement. Malaysia Bars Taiwan-produced TV Program 'Judge Pao' by Using Old Anti-Chinese Law*, *ECONOMIST*, Oct. 21, 1995, at 40.

253. *See* Anjali Mohan Ramchand, Note, *Freedom of The Press: Regulation Under The Newspaper and Printing Presses Act, 1974*, 11 *SING. L. REV.* 130, 130-31 (1990).

254. *See id.* at 131.

255. *See id.*

256. This could be a simple hypothetical: The press, although intending to tell the truth, receives a false report about a scandal by a prominent, omniscient leader who is well respected. The press breaks the story, the politician is not elected. Does this serve the democratic process if repeatedly tolerated?

257. *See* Wellington, *supra* note 211, at 1113-16 (discussing effects of misleading political speech in a democracy).

judiciary than do Singapore and Malaysia.²⁵⁸ However, the impact of judicial decisions is sure to cause displeasure and hatred toward the administration of justice in any government, as it did after the Rodney King verdict. Given the history of social unrest in Malaysia and Singapore, open criticism of judges could arguably destroy social order. However, in contempt of court proceedings in both Malaysia and Singapore, the courts are concerned with lowering the stature of the justices in light of “local conditions” that may potentially turn hostile.²⁵⁹ Although the justice’s character may be diminished in the eyes of society, these criticisms may not necessarily lead to racial riots and religious animosities. Allowing criticism does not mean the judge is favoring a particular race or religion.²⁶⁰ Surely, the fair administration of justice is needed for the public to have confidence in the judiciary. However, when fairness is determined by the judiciary, and whenever criticized — even in the broadest sense like the *Lingle* case — it is labeled contempt, the court is playing the wrong card in racial animosity control. Ideas will be suppressed and erupt all at once instead of being dealt with in an unbiased manner in a public forum.²⁶¹

The standard of looking at the local conditions may be workable for change in Singapore and Malaysia contempt of court proceedings. The conditions may initially only include direct reference to racial or religious

258. See *Garland v. State*, 325 S.E.2d 131, 134 (Ga. 1985), *aff’d*, 332 S.E.2d 45 (Ga. Ct. App. 1985) (holding that criminal contempt not supported where attorney said judge conducted “sham proceeding” outside the courtroom and violated ethical rules). In *Bridges v. California*, 314 U.S. 252 (1941), the Supreme Court determined that criticism of a judge during a proceeding outside the courtroom does not override the protection of free speech. “The likelihood . . . that a substantive evil will result [from judicial criticisms] cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be ‘substantial.’” *Id.* (citing *Whitney v. California*, 274 U.S. 351, 374 (1927) (Brandeis J., concurring)). The United States test was historically concerned with whether or not the criticism creates a “threat of clear and present danger to the impartiality and good order of the courts.” See *id.* at 261-65. See also *Pennekamp v. Florida*, 328 U.S. 331, 335 (1946) (holding where newspaper satirized justice as being sympathetic to a criminal, freedom of public comment still prevails). See also *Wood v. Georgia*, 370 U.S. 375 (1962) (where police officer was protected even though he equated the grand jury to the KKK, and issued press statements claiming judge was partaking in judicial discrimination against minorities). In *Brutkiewicz v. State*, 191 So. 2d 222 (Ala. 1966), vulgar statements by district attorney pertaining to judge uttered during recess were not contempt. *But see State v. Gussman*, 112 A.2d 565 (N.J. 1955) (upholding contempt charges when no public interest in defendants accusations). This standard is more focused on the right of the criminal in the administration of justice in not having the trial influenced by outside speech. See also *Pennekamp*, 328 U.S. at 346, 348 (holding that judge’s remedy lies in defamation like all other public servants when a judge is criticized after judgment).

259. See *supra* text accompanying notes 114-139.

260. See *Hor & Seah*, *supra* note 62, at 308-310 (arguing that not allowing fair comment because it was not allowed at common law is improper).

261. See *supra* text accompanying notes 212-14.

bias as the determiner of contempt of court that lowers the authority of the justices in the public's eyes — although much more protection is needed. Public criticism should be allowed on the merits of judicial acts when there is no direct reference to race or religious bias in the judicial decision. Because of racial animosities, America has dealt with the problems in a similar way, and when they are not discussed, they only tend to become subversive.²⁶²

B. *An Unjust Defamation Standard*

The United States', Singapore's, and Malaysia's views on protecting public officials from potentially damaging speech are diametrically opposed. In the U.S. Supreme Court decision of *New York Times*, the Court held that the Constitution protects speech that is a defamatory falsehood relating to public conduct unless actual malice is shown.²⁶³ Hor opines that the *New York Times* rule was rightfully rejected in *Lee Kuan Yew v. Jeyaretnam* because the U.S. rule has failed to protect the reputation of individuals because malice is so hard to prove.²⁶⁴

The defamation standards in Singapore and Malaysia put the right of public figures to their integrity on the same level as the private individual's right to integrity. The impact of this may certainly have a chilling effect on public discourse, but it may also allow people who are not as willing to put their reputation on the line a chance to govern or have public influence. But what good is this person if their integrity is that of an eggshell, not allowing

262. This may be a misleading model because America is indeed heterogenous but is bound by a dominant race and largely dominant language, whereas Singapore and Malaysia are not. See S. Jayakumar, *The Singapore Constitution and the United States Constitution*, in CONSTITUTIONALISM IN ASIA 181, 185 (Lawrence W. Beer ed., 1979).

263. See *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) (involving accusations on a public official for mistreating black students in Georgia). The United States has a "national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Id.* at 270. Factual error does not remove the shield of constitutional protection. See *id.* at 273. The protection of this sort of speech is only lost when made with "'actual malice'— that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* at 279-280. See, e.g., *Henry v. Collins*, 380 U.S. 356 (1965); *Rosenblatt v. Baer*, 383 U.S. 75 (1966); *St. Amant v. Thompson*, 390 U.S. 727 (1968).

264. See Hor & Seah, *supra* note 62, at 316. In *Garrison v. Louisiana*, 379 U.S. 64 (1964), the court stated that "false statements made with reckless disregard of the truth do not enjoy constitutional protection." *Id.* at 76. This was refined to require that "reckless disregard" must include "serious doubts as to the truth of . . . publication." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). This must be proved with "convincing clarity," a standard higher than preponderance of the evidence. See, e.g., *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 331-32 (1974); *Beckley Newspapers Corp. v. Hanks*, 389 U.S. 81, 83 (1967).

criticism? This is certainly an ideal that countries may view differently, but in a democracy, the government in its governing capacity must be checked and criticized to ensure the legitimacy of governmental actions.²⁶⁵

A rule that protects the integrity of public officials may be desirable in theory, and arguably the United States has gone overboard in protecting comments on government officials by requiring convincing clarity of malice, but at the opposite end of the spectrum, the courts of Malaysia and Singapore do not consider the intent of the person uttering the word.²⁶⁶ A strict liability standard is imposed in Singapore and Malaysia even though a negligence standard could easily strike a balance between ensuring government legitimacy in the public eye through free speech while protecting the character of the hypothetical omniscient politicians that do not want to serve the public because of the risk of ruining their character.

C. *Responsible Journalism & Content Regulation — Not an Excuse*

A primary rationale for regulating media in Singapore and Malaysia is its great influence on the citizenry of the nation. The media shapes the values of the citizens in a way that does not conform to those governments' nation building goals; it furthers subversive tendencies, and it can influence racial and religious animosities which cause riots.²⁶⁷ Mahathir Mohamad's view on press freedom is quite clear: The choice is specifically up to each country depending on the social ability to adopt a certain press system whether based upon a libertarian, authoritarian, communist, or social responsibility model.²⁶⁸ Indeed, many Asian nations share this view on the role of the press in their countries.²⁶⁹

265. See *supra* text accompanying notes 212-22.

266. See *supra* text accompanying notes 158-68.

267. See *Brigadier-General Lee Hsien Loong speech to 40th World Congress of the International Federation of Newspaper Publishers in Helsinki 1987*, STRAITS TIMES, May 31, 1987, reprinted in 11 SING. L. REV. 130 n.2 (1990). But see G.P. Daniel, *It Is the Laws that Put Fear Into Us*, NEW STRAITS TIMES (Malaysia), Feb. 14, 1996, at 9. See also A. Kadir Jasin, *ASEAN Stand on Cambodia Commendable*, NEW STRAITS TIMES (Malaysia), July 13, 1997, at 13 (supporting the infusion of values in responsible reporting but later stating: "As we approach a new millennium and leave further behind the baggage of the Emergency and Cold War, we should guard more jealously our freedom and liberty, failing which the war we fought would end up a lost cause and the caring society we cherish will remain an illusive dream.").

268. See Mahathir Mohamad, *The Social Responsibility of The Press*, in PRESS SYSTEMS IN ASEAN STATES 107, 108-109 (1989).

269. "The promotion and preservation of political stability, rapid economic growth, social justice and greater regional cohesion should and will be the main priority of the ASEAN press." *Final Report of the Consultation on Press Systems in ASEAN, Jakarta, Indonesia, 23-26 August 1988*, reprinted in PRESS SYSTEMS IN ASEAN STATES 103, 103 (1989). See also *id.* at 105 (stating that the primary functions of the ASEAN press include: 1) "nation

The idea of the press being responsible to society is seemingly an Asian value ideal: People in societies must uphold their duty to the society as a whole because of the individual benefits received from living in the society.²⁷⁰ Malaysia has a philosophy, called *Rukunegara*,²⁷¹ that prizes the order and well-being of a very diverse nation. The role of the press in Singapore is also considered an integral part in nation-building by educating the populace on values.²⁷²

Mahathir Mohamad posits the proposition that countries such as Malaysia and Singapore are constantly living in clear and present danger, and opines that press limitations must consider these historical underpinnings.²⁷³ In theory, this may seem justified, but in application the contention does not hold true. Although the Singapore and Malaysia limitations in the name of national security and public order would prohibit speech that creates imminent violence, it also restricts speech that is nowhere near creating racial riots, and in fact, the speech abridged by this rationale may have helped quell tensions.²⁷⁴ For example, denying circulation of Jehova's Witness publications because they may threaten war efforts is not an imminent threat to the security of Singapore.²⁷⁵ If any threat exists, it is the spread of pacifist ideals that may challenge the apparent extreme political realism that was exemplified by the court.

building;" 2)"promote and enhance relations between ASEAN member countries;" 3)"mould a national identity;" 4)"promote social harmony;" 5)"explain public issues and policies;" 6)"inform and educate;" and 7)"exercise self-restraint and good sense so as not to cause misunderstanding or tension between different ethnic, racial and religious groups"). See also *Idid*, *supra* note 112, at 51-54.

270. See Mohamad, *supra* note 268, at 116.

271. What does this term actually mean? *Idid* says it encompasses:

1. [A]chieving a greater unity of all her peoples;
 2. [M]aintaining a democratic way of life;
 3. [C]reating a just society in which the wealth of the nation shall be equitably shared;
 4. [E]nsuring a liberal approach to her rich and diverse cultural traditions;
 - and 5. [B]uilding a progressive society that shall be oriented to modern science and technology.
- To achieve these objectives, Malaysians are urged to pledge themselves to the five principles of the *Rukunegara*: 1. Belief in God. 2. Loyalty to the King and country. 3. Upholding the constitution. 4. Rule of law. 5. Good behaviour and morality.

Idid, *supra* note 112, at 49.

272. "[T]he press should avoid portrayal of situations as the norm which should not be accepted as the norm. For instance, homosexuality and living out of wedlock . . . should not be presented as acceptable . . . in the Singapore press." Nair, *supra* note 102, at 89.

273. See Mohamad, *supra* note 268, at 108-09. But he also points out that he is a "firm believer in the greatest freedom consonant with the vital interests of society," and not an apologist for repressive regimes. *Id.* at 109. Additionally, Mohamad freely criticizes the communist and authoritarian models. *Id.* at 109-11.

274. This is clearly the case in *Aliran* and Jehovah Witness limitations. See *supra* text accompanying notes 147-57.

275. See *supra* text accompanying notes 154-57.

Although criticisms of the government purportedly do not constitute sedition, mere criticisms without racial or religious pronouncements have been held likely to cause disorder because of their "seditious tendency," even if completely true.²⁷⁶ Such practices will simply lead to an entrenched discontent for the government and will resurface time and again unless the debates are brought to public attention and openly discussed. The laws were designed to ensure that racial and religious conflict stay at a minimum, but they should not be used to ensure political change does not happen, and that people will be punished for challenging the views held by government leaders if change is advocated.

To develop a vague concept of responsible journalism, which is manifest in the laws of Singapore and Malaysia, laws must be worded in a clear and understandable manner for the populace to take notice of them and for the laws to be viewed as legitimate.²⁷⁷ A cultural sense (Asian values) of a responsible press cannot be formed without freedom of expression. Culture and norms are not static, and restricting freedom of speech by calling for social order and unity ossifies the leadership's norms in lieu of the people's right to cultural development, which is clearly not static.²⁷⁸

In the Malaysian *Aliran* case, the Minister banned a publication that was aimed at promoting the integrity and national unity of Malaysia according to the unique philosophy of nation-building — *Rukunegara*.²⁷⁹ Although the publication cherished Asian values, it was arbitrarily denied publication based on the Minister's undisclosed bias and favoritism that the court found to be legitimate. For people to enjoy Asian values as a community, they must be allowed to exercise their individual right to come

276. See Pub. Prosecutor v. Ooi Kee Saik & Ors [1971] 2 MLJ 108 (Malay. 1971), 1971 MLJ LEXIS 59, at *16-17. See *supra* text accompanying notes 159-175.

277. See Lyndell V. Prott, *Cultural Rights as Peoples' Rights in International Law*, in THE RIGHTS OF PEOPLES 93 (James Crawford ed., 1992).

278. All the religions practiced in Southeast Asia meet and many times exceed the rights set forth in the Universal Declaration on Human Rights. See Asoka De Z Gunawardana, *An Asian Perspective of Human Rights*, 1994 SING. J. LEGAL STUD. 521, 522 (1994). Additionally, religions are adaptable to change and may be subject to change when society decides adaptation is necessary — Islam, Confucianism and Buddhism are no exceptions. See Coulson, *supra* note 18, at 206-209 (stating that *ijtihad* has been used to bring the *Qur'an* in conformity with changing views of society). See CH'EN, *supra* note 19, at 70-71 (noting that Buddhism and Confucianism when merged have been reconciled and adapted to fit societal needs). See Ching, *supra* note 19, at 65 (Confucian Analects support proposition that reverence becomes hypocritical without individual realization). See also William Theodore de Bary, *Human Rights — An Essay on Confucian and Human Rights*, in CONFUCIANISM: THE DYNAMICS OF TRADITION 109, 112 (Irene Eber ed., Macmillan 1986). See also Donald K. Emmerson, *Can East Meet West on Human Rights?*, L.A. TIMES, April 22, 1996, at B:5 (accounting attempts to reconcile Muslim, Buddhist, and Confucian ideals in everyday life).

279. See *supra* text accompanying notes 147-53.

together as a collective and determine their community rights and values.²⁸⁰ Fleeting governments are not the sole legitimators of rights, but rather it is the underlying collection of the people's legitimacy that determines rights.²⁸¹

Irene Fernandez was prosecuted in Malaysia under the Printing Presses and Publications Act of 1984 (Rev. 1987) for allegedly publishing false reports about conditions that lead to deaths at alien detention camps.²⁸² The report details the inhumane conditions of detention centers, but does not point to religious or racial causes within the Malaysian government.²⁸³ The report is centered on remedying the mistreatment and horrors of the detention centers, and the end of the report delineates positive measures to remedy the problem. Although a Board of Visitors was appointed to investigate the conditions alleged by Ms. Fernandez, no misconduct or ill treatment was found. Ironically, the board recommended that improvements be made in health and sanitation facilities, and the Home Affairs Department announced they would seek funds for improvement.²⁸⁴ When Ms. Fernandez called attention to the horrific conditions, the government indirectly admitted faults in the detention centers, but the government would not rescind her prosecution because her report was allegedly irresponsible. Ms. Fernandez's report was an attempt to alleviate the racial animosities directed at immigrants; however, it was labeled false under a law designed to ensure that racial riots and hatred did not flare up within the country. This is clearly a case in which the law was not "necessary" or "expedient" in preserving the security or public order of the nation.²⁸⁵

More recently, two developments have raised concern in the international community over injustice in the Malaysian judiciary. Lim Guan Eng, DAP Member of Parliament, received an eighteen month jail sentence

280. See generally Gillian Triggs, *The Rights of 'Peoples' and Individual Rights: Conflict or Harmony*, in *THE RIGHTS OF PEOPLES* 141, 145 (James Crawford ed., 1992).

281. See generally Richard Falk, *The Rights of Peoples (In Particular Indigenous People)*, in *THE RIGHTS OF PEOPLES* 17 (James Crawford ed., 1992).

282. For a detailed account of the judicial procedures surrounding detainment under the Act, and a description of particulars surrounding the charges, see George E. Edwards, *Freedom of Expression and the Right to a Fair Trial in Malaysia: The Prosecution of Human Rights Worker Irene Fernandez*, 2 *HUM. RTS. SOLIDARITY: NEWSL. ASIAN HUM. RTS. COMM'N* 34 (Sept. 1996).

283. See *Press Statement on Abuse, Torture and Dehumanised Treatment of Migrant Workers at Detention Centres*, Tenaganita Women's Force, July 27, 1995, reprinted in George E. Edwards, *Observers Report, Deputy Public Prosecutor of Malaysia v. Irene Fernandez: Charge of Maliciously Publishing False News in Contravention of the Malaysian Printing Presses and Publications Act 1984*, Aug. 1996 (*HUMAN RIGHTS WATCH ASIA*) (accusations pertaining to the government are general accusations of guard corruption).

284. See *Malaysia Human Rights Report 1996*, *supra* note 3.

285. Necessary and expedient are constitutional requirements. See *FED. CONST. OF MALAY*, art. 10(2). See *supra* text accompanying notes 56-60.

for sedition.²⁸⁶ He received the sentence and fine after publicly criticizing the government's handling of allegations of statutory rape against the former chief minister of Malacca.²⁸⁷ In response to the sentence handed down, a large group of respected lawyers, including the former Lord President of the Federal Court, summarily denounced the sentence as being a message that no one can criticize the judiciary.

Dato' Param Cumaraswamy, the Special Rapporteur of the UN Commission of Human Rights on the Independence of Judges and Lawyers, was sued by two companies over an article which appeared in the November 1995 issue of *International Commercial Litigation*.²⁸⁸ The libel suit is centered on Param Cumaraswamy's comments regarding his investigation of complaints that several corporations were influencing decisions made by the Malay Judiciary.²⁸⁹ Although his comments related to official duties of the UN, and were therefore clearly entitled to protection,²⁹⁰ the Malaysian Judiciary upheld the fine levied upon him. The Federal Court ruled that the scope of Param's mandate relating to his mission is determined by the jurisdiction where the libel suit is brought.²⁹¹ However, the International Court of Justice, the United Nations Economic and Social Council, and Malaysian lawyers all see the court as derogating from well-established

286. See *Former DPM Sings New Tune for Guan Eng, Signs Petition*, NEW STRAITS TIMES (Malaysia), Sept. 17, 1998. He was prosecuted under the Printing Presses and Publications Act of 1984 and Sedition Act of 1948. See *id.*

287. See *Amnesty Criticizes Malaysia Over Sedition Case*, REUTERS NORTH AMERICA WIRE, Apr. 6, 1997.

288. See, e.g., David Samuels, *Malaysian Justice on Trial*, INT'L COM. LITIG., Nov. 1995, at 4; Ruslaini Abbas, *Judiciary Won't be Dictated to by Anyone, Says Judge*, NEW STRAITS TIMES (Malaysia), Oct. 2, 1998, at 5; See *Param's Case: UN Commission Concerned Over Court's Decision*, NEW STRAITS TIMES (Malaysia), Sept. 7, 1998, at 5.

289. See LAWYER TO LAWYER NETWORK, *Action Update, Dato' Param Cumaraswamy - Malaysia UN Special Rapporteur on the Independence of Judges and Lawyers* (Aug. 1998) <<http://www.lchr.org/121/cumar898.htm>> [hereinafter *Action Update*].

290. Special Rapporteurs are accorded:

in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations.

Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, art. VI (b), reprinted in 43 A.J.I.L. Supp. 1, at 1 (1949). Malaysia has been a party to this convention since 1957. See LAWYER TO LAWYER NETWORK, *supra* note 289.

291. See Ruslaini Abbas, *Param Denied Leave Over Immunity Issue*, NEW STRAITS TIMES (Malaysia), Feb. 20, 1998, at 13. See also Ruslaini Abbas, *Question of Law on Param's Immunity*, NEW STRAITS TIMES (Malaysia), Feb. 19, 1998, at 8.

international law.²⁹²

D. *Justifying the Limitations on Foreign Influence*

Singapore and Malaysia will clearly limit attempts of foreigners and communists to influence the opinions of their populace.²⁹³ The separation of Singapore from Malaysia exemplifies the notion that keeping racial tension low has been necessary to prevent security encroachment on the state, *vis-a-vis* ethnic conflicts which may cause separations. The foreign press in Singapore is allowed to take any ideological viewpoint when reporting outside of Singapore; but within Singapore the foreign press is not allowed to play the adversary to government as is done in the United States.²⁹⁴ However, Singapore has attempted to remove foreign influence in domestic affairs and to concurrently reduce the inherent bias of the press by loosening restraints on the free flow of information by allowing reproduction of publications with certain restrictions.²⁹⁵

Lee Kuan Yew firmly believes that the U.S. model is not a universal one, and that the role of the press in society relies on "different historical experiences, political systems, and . . . national temperaments."²⁹⁶ He is referring to Singapore's history under British colonial administration where the Communist²⁹⁷ party would have infiltrated and dominated Singapore and Malaysia just as it did in China; he points out that Communist views should be left to the political arena and not the press.²⁹⁸ This is a clear indication of the limits that have been and will continue to be imposed on political speech — not only in Singapore and Malaysia, but also in the United States.

The United States, Singapore and Malaysia limit the influence of

292. See *ICJ Advisory Opinion on the Immunities of Special Rapporteurs*, 85 I.L.R. 301 (Int'l Ct. of J. Dec. 15, 1989). See also *IBA Head Welcomes UN Decision on Param's Case*, NEW STRAITS TIMES (Malaysia), Aug. 12, 1998, at 2 (showing support for Param by International Bar Association). See *Param Issue: Council Hails Move*, NEW STRAITS TIMES (Malaysia), Aug. 18, 1998, at 2 (showing Malaysian Bar Council support for the International Court of Justice (ICJ) opinion and belief that he is protected by article VI, section 22 of the 1946 Convention). The UNESC has referred the case to the ICJ. See Abbas, *supra* note 288. The Secretary General of the UN has also issued two certificates claiming Param's immunity. See *id.*

293. See Nair, *supra* note 102, at 87.

294. See Lee Kuan Yew, *supra* note 248, at 122-123. "The terms are that they should report us as outsiders for outsiders, i.e. [sic] do not become a partisan in our domestic debate. If they do not want to accept these conditions, they do not have to sell in Singapore." *Id.* at 123.

295. See *id.* at 124.

296. *Id.* at 117-19.

297. Malaysian Communist Party (MCP) in the 1950s - 1960s. See *id.* at 118.

298. See *id.* Although the media is free in India and Sri Lanka, he points to the failure of the liberal system in these nations because of their heterogenous, multi-racial societies. *Id.*

foreign propaganda in differing degrees.²⁹⁹ The United States does not limit the content of foreign media, but rather ensures that the reader understands the ideological basis of the source.³⁰⁰ In Malaysia and Singapore, the power of regulation is given to Ministers and officials to completely ban or regulate.³⁰¹ Under the printing press acts, these officials continually ban publications that are clearly marked as foreign, in effect belittling the intellect of the populace. This form of regulation will not ensure that the nation will not go astray, but conversely, the regulations will create a yearning for information. People must be able to explore alternative thoughts and visions to foster individual development when it does not threaten the security or well-being of others in society.³⁰²

E. *Sedition: National Security or Government Insecurity?*

Political speech is a “double-edged sword;” it is beneficial to democracy, but it can create public disorder — especially when there is a conflict between political factions in a country.³⁰³ However, the limits imposed on speech seem to favor the national unity as determined by the leadership. Comparing the *Manjeet* and *Mohamad* cases reveals this bias. Both cases alleged judicial ignorance, yet Prime Minister Mahathir was not prosecuted while Manjeet Singh Dillon was prosecuted. The difference in result is attributable to the court’s decision that Manjeet’s words were “violent” and that the Prime Minister’s words were mere “confusion.”³⁰⁴

This contradiction is clarified by looking at *Public Prosecutor v. Ooi Kee Saik & Ors*,³⁰⁵ where the court adopted the idea that legislators had a divine, unquestionable right; however, in a later case, *Public Prosecutor v. Oh Keng Seng*,³⁰⁶ the court found the rationale of the Sedition Act to be the preservation of public order. These cases show the convenience of shifting values to legitimize government ossification.

Ensuring that unfettered speech freedom is protected would free the courts from deciding whether particular speech has social value — an issue with pornography. In fact, such a decision is effectively impossible because

299. For a discussion on Malaysian and Singaporean law, see *supra* text accompanying notes 64-207. For a discussion on United States law, see *supra* text accompanying notes 208-37.

300. See, e.g., *supra* text accompanying notes 44-298; *infra* text accompanying notes 302-62.

301. See *supra* text accompanying notes 64-91.

302. See Redish, *supra* note 209 (expressing the value of individual development).

303. Hor & Seah, *supra* note 62, at 332. See also MILL, *supra* note 223, at 68.

304. See *supra* text accompanying notes 125-139.

305. [1971] 2 MLJ 108, 111, 135 (Malay. 1971), 1971 MLJ LEXIS 59, at *22. See *supra* text accompanying notes 166-171.

306. [1977] 2 MLJ 206 (Malay. 1977), 1976 MLJ LEXIS 220.

everything people consume has some redeeming social value to them or they would not consume it.³⁰⁷ Malaysia and Singapore have failed to allow beneficial political speech in countless areas while concomitantly restricting obscene speech.

The expansive limitations on free speech in Malaysia and Singapore are effective in suppressing critical speech and at the same time equally efficient in limiting speech that will questionably corrupt or change the morality of the societies. The requirement of registration and censorship of foreign media sources, and other limitations in the name of morality and public order, equally quell the voices of opposition in Singapore and Malaysia. Although these laws may pass current constitutional muster, the question remains whether or not this system is warranted. If not, should it be changed to resemble that of the United States?

The United States is no stranger to abridging political speech based on national security and concerns relating to public order. Additionally, the United States has ironically protected non-political and arguably socially harmful speech — *e.g.*, pornography — which negatively effects women throughout the United States and the world everyday. Dr. Mohamad believes that the legitimacy of codes is based on morality, which differs from country to country, not only in regards to obscenity principals, but unfettered individualism as a whole.³⁰⁸

Are all three nations wrong? Or, alternatively, is any one nation correct?

VI. THE U.S. MODEL — NOT A PANACEA

The U.S. model is seemingly just and desirable; however, it is not a cure for all the world. The concept of the marketplace of ideas has failed because truth cannot be substantiated, because the speech form tends to be regulated instead of the substance, and because of unequal access to media sources. These problems become substantial when looking at the pervasiveness of pornography and the inherent subjective bias of regulating such expression. Additionally, the U.S. model, like its Asian counterparts, has failed to protect political speech when it threatens the status quo. The United States uses measures such as sedition and alien acts, the clear and present danger test, and statutes that limit the influence of foreign media in domestic print and broadcast to restrict free speech.

307. See Bork, *supra* note 211, at 29.

308. See Mohamad, *supra* note 268, at 108.

A. *Problems in the U.S. Marketplace*

1. *Truth Only Discoverable in Theory*

The idea that a multitude of tongues will arrive at the truth has been criticized by many espousing Asian and Western values alike. Few people believe in objective truth today, although it is crucial to the classic marketplace idea.³⁰⁹ Truth must be discoverable in debate, and it must be capable of substantiation. Truth prevailing in a marketplace is unprovable without substantiation,³¹⁰ and it must be objective, not merely subjective. A subjective "truth," viewed with the lenses of social status and experience, will lead to irreconcilable differences because perceptions are different, and will ultimately lead to the dominant truth being that of the power holder.³¹¹ Proponents of Asian values, within the context of free speech, claim that their truth is better than the media's truth although neither can be substantiated. Mahathir Mohamad criticizes the concept of truth-prevailing with the example of what the multitude of voices have said about Arabs in the United States.³¹²

2. *Regulating Form Instead of Substance*

Individuals may not be able to differentiate between the form and substance of competing opinions.³¹³ Mahathir points to the assumption of social stability in the liberal model, but in reality one true or false word could lead to serious calamity, as evidenced by the United States' development of the clear and present danger test.³¹⁴ In the U.S. courts, the determination of what is protected and what is not protected is biased in favor of those with wealth and power when U.S. courts purport application of "neutral" principles such as protecting speech rather than conduct.³¹⁵

309. See Ingber, *supra* note 227, at 25 n.121.

310. See *id.* at 15.

311. See *id.*

312. See Mohamad, *supra* note 268, at 113. The problem Mahathir encounters with the philosophy of Mill is that man is as irrational as he is rational and that people do not go in relentless search of the truth, evidenced by the consumption of tabloids in Britain. See *id.* at 112. However, the utility of the self-development rationale clearly explains the tabloid consumption, and the seriousness of such publications is clearly questionable to the reader. See *supra* note 210 (explaining importance of self-satisfaction in free speech).

313. See Ingber, *supra* note 227, at 15-16.

314. See Mohamad, *supra* note 268, at 114.

315. See LAURENCE H. TRIBE, CONSTITUTIONAL CHOICES 188-220 (1985). See also Ingber, *supra* note 227, at 20. In draft cases the focus should not be on whether they can form a demonstration in the city, but should be on whether there should be a draft. See *id.* Limiting unfavorable political speech has led to the focus being on the procedure of the

"Consequently, the very market process reputed as the only way to determine which perspective should win merely reflects the preexisting perspectives of the market participants."³¹⁶

3. *Access is Unequal in the Market*

Public forums give low-status individuals, who cannot pierce the mass media veil, an opportunity to be heard.³¹⁷ But courts in the United States have restricted this means of communication of the less able in the marketplace of ideas.³¹⁸ Monopolies, economies of scale, and unequal resources have made matters difficult for people hoping to participate in mass communication.³¹⁹ Mahathir points out that the liberal model falsely assumes that the press will adhere to ethics and have a drive towards public good; he points to the ex-publisher of the Wall Street Journal, who said "[a] newspaper is a private enterprise owing nothing whatsoever to the public . . . [and is] affected with no public interest."³²⁰ Government communications dominate the marketplace, and the mass media will not disseminate dissident views which leaves challengers to the established status quo with only public forums.³²¹ Additionally, the free speech system is biased in favor of corporate interests and people who have access to the media.³²² Singapore responded to the access problem by making amendments to the Newspaper and Printing Presses Act, which would allow more opinions to be viewed while eliminating a certain amount of profit motive.³²³

marketplace and not the substance of social problems. *See id.* The distinction between "fighting words" and the "provocative speaker hostile audience doctrine" from that of the marketplace of ideas free speech has also been criticized because of its arbitrariness. *See id.* at 32-36. The speech that does not promote rational discourse is differentiated from free speech in a contradictory manner. "The distinction merely seems, at times, to forbid 'low' styled speech from a 'low' statured speaker. This 'class' focus only further entrenches a bias for established norms and respectable proponents." *Id.* at 34.

316. Ingber, *supra* note 227 at 26-27. *See* Jakob Oetama, *The Press and Society, in* PRESS SYSTEMS IN ASEAN COUNTRIES 135, 138 (Achal Mehra ed., 1989).

317. *See* Ingber, *supra* note 227, at 41.

318. *See id.* *See, e.g.,* Hague v. Comm. Indus. Org., 307 U.S. 496, 516 (1939); Cox v. Louisiana, 379 U.S. 536 (1965); Adderley v. Florida, 385 U.S. 39, 48 (1966), *reh'g denied*, 385 U.S. 1020 (1967).

319. *See* Ingber, *supra* note 227, at 38 & n.188.

320. Mohamad, *supra* note 268, at 113-114 (pointing also to violence and pornography in the U.S. film industry).

321. *See* Ingber, *supra* note 227, at 40.

322. *See* Trudy Lieberman, *Censorship That Dare Not Speak Its Name*, NATION, June 23, 1997, at 10.

323. *See* Nair, *supra* note 102, at 90. The Newspaper and Printing Presses (Amendment) Act, effective Sept. 1, 1986, allowed the Minister for Communications and Information to restrict the sales and distribution of foreign publications which have "engaged in the domestic politics of Singapore." *Id.* However, it allows reproduction of the restricted publications if

An idea of equal access has also been criticized on the international level as simply imposing Western notions of the way rights should be determined (normative basis) which ignores many problems of states throughout the world.³²⁴ Scholars criticize the human rights objective of the United States as a means of achieving political objectives.³²⁵ For example, the United States is unconcerned with human rights or democracy in the Middle East and does not attempt to export its values unless its vital interest of maintaining a stable government structure from which it can ensure oil interests is threatened.³²⁶ Muzaffar, who was detained in 1987 under ISA and who has had the *Aliran* censored by Malaysian press laws, nevertheless criticizes Amnesty International for irresponsible reporting surrounding the Persian Gulf crisis.³²⁷

Mahathir Mohamad has clearly upheld the denouncement of unfettered individualism and the importance of the individual's responsibility to others in the community.³²⁸ Mahathir proclaims the "social responsibility" model

no profits are made and other conditions are met, including removal of advertisements; these reproductions can be made and circulated and sold in Singapore only. *See id.* When the amendment took effect in February of 1988 the *Far Eastern Economic Review* was reproduced and available under this statutory guise. *See id.*

324. One protest of universal rights is the manner in which they are enforced by Western Nations, and not necessarily the lack of universality common to all citizens, as put forth in the Universal Declaration of Human Rights (UDHR). *See* Gunawardana, *supra* note 278, at 522. *See also* CHANDRA MUZAFFAR, HUMAN RIGHTS AND THE NEW WORLD ORDER 4-5 (1993). The United Nations Development Programme (UNDP) has been criticized as not effectively measuring rights of developing nations in its Human Freedom index on several grounds: 1) it has a normative Western slant, 2) it does not measure subsistence rights of individuals and 3) it is biased toward individual rights. *See id.* One example Muzaffar gives is that out of the 40 measuring tools to determine the status of human rights one of them is the right to engage in homosexual activity which is a normative determination not in accord with Asian Cultural traditions. *See id.* Another is the right to determine the amount of children, but in many countries there are serious demographic problems that make such regulations imperative for the countries well-being. *See id.* A third example is that individual rights are an entrenchment of the West left over from the fight over the dominance of the Medieval European Church, but in Asia and Africa the struggle is to end colonialism and Western dominance. *See id.*

325. *See* Gunawardana, *supra* note 278, at 528. *See also* Association of Southeast Asian Nations Declaration (Bangkok Declaration) ¶ 4, Aug. 8, 1967, *reprinted in* 6 I.L.M. 1233 (1967).

326. *See* Mahbubani, *supra* note 5, at 9. *See also* Kausikan, *supra* note 5, at 24.

327. *See* Mahbubani, *supra* note 5, at 9. However, Muzaffar criticizes the Internal Security Act: "[U]nder the ISA the lie is protected. It is sanctified. It is made sacrosanct. This is the ultimate power of the lie: it crucifies the truth." *Id.*

328. *See* Mohamad, *supra* note 268, at 107. Mahathir Mohamad has stated:

'In the beginning, there was Individual Man, living in splendid isolation, doing 'his own thing', [sic] behaving exactly as he pleased, unfettered by a single rule, regulation, or code of behaviour of any sort.' In fact, from the beginning, there never was this Individual Man, born free, living completely unfettered in isolated splendour. From the beginning of time man lived in groups — first, the

of the press, which takes the rights of society (strong in communist models) and the rights of the individual (strong in libertarian models) and blends the two together to come up with a qualitative balancing of the two.³²⁹ His clear philosophy is that the media must be responsible to society and must not possess unchecked power, similar to the government not having unchecked power.³³⁰ Lee Kuan Yew supports this contention by espousing the goal of creating a system of shared values and a single national identity while embracing divergent cultures and religions.³³¹

4. *Lack of Moral Justice in the United States*

*The theory of the First Amendment under which most pornography is protected from governmental restriction proceeds from liberal assumptions that do not apply to the situation of women.*³³²

The marketplace of ideas has clearly failed in protecting over half of the U.S. population. The U.S. test of obscenity is not concrete and is ultimately up to the majority of the Supreme Court, which has substantial trouble determining the standard.³³³ Justice Harlan once said that obscenity determinations must be "pricked out on a case-by-case basis."³³⁴ U.S. courts, although seeming to promote the free exchange of ideas, refuse to protect free speech based on what they arbitrarily find objectionable.³³⁵

family, then the village, then the district, then the state — because he was instinctively gregarious and because he needed the security and the services and values that only living in a group could provide.

Id.

329. *See id.* at 114-15. In his writings Mahathir clearly espouses his belief that free press is conducive to good democratic government — that which most Westerners believe. But he is also quick to qualify the free press: "The media must be given freedom. But this freedom must be exercised with responsibility." *Id.* at 115.

330. *See id.* at 115-16.

331. *See* Lee Kuan Yew, *supra* note 248, at 119.

332. CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 204 (1989) (footnote omitted). *See generally* Baker, *supra* note 210 (summarizing these liberal assumptions).

333. *See, e.g.,* Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973) *reh'g denied*, 414 U.S. 881; Interstate Circuit, Inc. v. Dallas, 390 U.S. 676 (1968); Marcus v. Search Warrants of 104 East Tenth Street, 367 U.S. 717 (1961); Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963); Blount v. Rizzi, 400 U.S. 410 (1971); Jacobellis v. Ohio, 378 U.S. 184 (1964).

334. Jacobellis v. Ohio, 378 U.S. 184, 204 (1964) (Harlan, J., dissenting).

335. Justice Stewart once said, "I know it when I see it." Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). *See* LAWRENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW § 12-16, at 904-05. *See* Ingber, *supra* note 227 (showing evidence of judges discriminating on social and economic grounds in decisions). Recent civil rights legislation has been introduced in the U.S. Congress, Minneapolis, Indianapolis, and Bellingham, Washington; these attempts met opposition by lower government officials and

In the United States, rape and overall crime rates are perplexing, and the causes of these astronomical rates are multifaceted. However, many scholars and activists point to pornography as a culprit in violence against women.³³⁶ In *Roth v. United States*, the court abandoned the *Hicklin* test (which Malaysia and Singapore have upheld as the judicial standard) because it looked at the effect of a particular part of the publication on an individual and not at the whole value of the publication.³³⁷ The U.S. *Miller* test requires that the work be taken as a whole to determine if it lacks any literary, artistic, scientific, or political value.³³⁸

What men and women find morally evil is differently played out in politics; what men find morally harmless — pornography and the subordination of women — is found to be valuable as protected speech in the United States.³³⁹ The reason why pornography leads to sexual violence against women is simple: Women are portrayed in pornography as continually available to men; these images are regarded as not having feelings or opinions of their own, hence they are commodities for male

have been struck down as unconstitutional. See Steven Hill & Nina Silver, *Civil Rights Antipornography Legislation: Addressing the Harm to Women*, in TRANSFORMING A RAPE CULTURE 283, 285 (Emilie Buchwald et al. eds., 1993). See generally Ingber, *supra* note 227, at 23-24 (arguing that “[o]fficial determination of what social change is unacceptable and should not be contemplated is just as antithetical to an open search for the truth as is official determination of truth itself”).

336. See, e.g., TRANSFORMING A RAPE CULTURE (Emilie Buchwald et al. eds., 1993); MACKINNON, *supra* note 332; Diana Scully & Joseph Marolla, “*Riding the Bull at Gilley’s: Convicted Rapists Describe the Rewards of Rape*,” in FEMINIST FRONTIERS III, at 402 (Laurel Richardson & Verta Taylor eds., 1993); Jane Caputi & Diana E. H. Russel, “*Femicide: Speaking the Unspeakable*,” in FEMINIST FRONTIERS III, *supra*, at 424; CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSE ON LIFE AND LAW (1987); CATHARINE A. MACKINNON, ONLY WORDS (1985); ANDREA DWORKIN, PORNOGRAPHY: MEN POSSESSING WOMEN (1981).

337. See *Roth v. United States*, 354 U.S. 476 (1957), *reh’g denied*, 355 U.S. 852 (1957). “Material is obscene if, considered as a whole its predominant appeal is to prurient interest, that is, a shameful or morbid interest, in nudity, sex or excretion, and if in addition it goes substantially beyond customary limits of candor in describing or representing such matters.” MODEL PENAL CODE § 251.4 (1962). The *Hicklin* test of obscenity is “whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.” *Reg. v. Hicklin*, 3 Q.B. 360, 371 (Eng. 1868).

338. This is a rejection of the *Memoirs* test that made anything “utterly without redeeming social value” obscene. See, e.g., *Miller v. California*, 413 U.S. 15 (1973), *reh’g denied*, 414 U.S. 881 (1973); *Roth v. United States* 354 U.S. 476 (1957), *reh’g denied*, 355 U.S. 852 (1957); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963); *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973), *reh’g denied*, 414 U.S. 881 (1973).

339. See MACKINNON, *supra* note 332, at 201.

pleasure.³⁴⁰ The dividing line between obscenity and pornography is a difference between morality and political power, or powerlessness, in the latter.³⁴¹ If women are subjected to violence inextricably linked to pornography, why should it be protected as valuable speech?³⁴² Malaysia and Singapore clearly give no merit to obscenity within an otherwise beneficial publication; however, pornography in the United States is repeatedly upheld as valuable speech.³⁴³

B. *Faults in the U.S. Model: Keeping the Status Quo*

1. *Failure to Protect Political Speech in the United States*

Abridgment of political speech in the United States is not as succinctly tendered as in Singapore and Malaysia, but in theory, it supports the Asian value contentions. The United States has a long history of abridging civil liberties when its national security has apparently been threatened.³⁴⁴ The Alien and Sedition Act of 1798³⁴⁵ was the first U.S. law which is similar to present day Malaysian and Singaporean sedition legislation.³⁴⁶ When the United States Federalist majority passed this Act, it led to "at least 25

340. *See id.* at 196. MacKinnon elaborated on feminist concerns with pornography:

Sex forced on real women so that it can be sold at a profit to be forced on other real women; women's bodies trussed and maimed and raped and made into things to be hurt and obtained and accessed and this presented as the nature of women; the coercion that is visible and the coercion that has become invisible — this and more grounds the feminist concern with pornography.

Id. *See also* Hill & Silver, *supra* note 335, at 286-87. There are numerous studies that lend positive support to this proposition. *See, e.g.*, NEIL M. MALAMUTH & EDWARD I. DONNERSTEIN, *PORNOGRAPHY AND SEXUAL AGGRESSION* (1984); DOLF ZILLMANN, *CONNECTIONS BETWEEN SEX AND AGGRESSION* (1984). Some findings of these studies include: After average men were exposed to pornography they were more likely to believe "no means yes," and the men believed women to be more responsible for their own rape; males said that 30% of women they knew would enjoy being forced into sex; and repetitious exposure to sex and violence in the media desensitized men to women's experience of being attacked. *See* Hill & Silver, *supra* note 335, at 286-90. Portrayal in Penthouse and Playboy, so called 'soft-porn,' may even have a greater impact on this effect than 'hard core' porn. *See* MACKINNON, *supra* note 332, at 196 & n.6.

341. *See* MACKINNON, *supra* note 332, at 192.

342. A question first posited by MacKinnon. *See id.* at 202.

343. *See* *Penthouse Int'l v. McAuliffe*, 610 F.2d 1353 (5th Cir. 1980). *Accord* *Coble v. City of Birmingham*, 389 So. 2d 527 (Ala. Crim. App. 1980).

344. *See* Justice William J. Brennan, Jr., *The American Experience: Free Speech and National Security*, in *FREE SPEECH AND NATIONAL SECURITY* 10 (Shimon Shetreet ed., Matinus Nijhoff Publishers 1991).

345. 58 Stat. 570 (1798).

346. *See supra* text accompanying notes 158-74 & 292-302.

arrests, 15 indictments, and 10 convictions” against Republicans.³⁴⁷

During World War I, Congress passed the Espionage Act of 1917, which made it unlawful to interfere with the success of the Military by uttering false statements; in 1918, it was amended to make it a crime to “willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about” the U.S. government or the Constitution.³⁴⁸ During World War II, the civil liberties of “untrustworthy” Japanese³⁴⁹ were called into question, and the United States further abridged civil liberties under the guise of security. The Alien Registration Act also made it a crime to print anything advocating the overthrow of the government or to urge the subordination of the military.³⁵⁰ When Congress initiated its witch hunts for the Communists, it passed the Internal Security Act of 1950³⁵¹ and the Communist Control Act of 1954.³⁵²

Clear and present danger³⁵³ has also limited free speech in the United States by forbidding speech when the audience cannot reasonably consider

347. Brennan, *supra* note 344, at 11.

348. 40 Stat. 553 (1918). About two thousand convictions resulted, most of which were based upon “false statements” about the war which conflicted with President Wilson’s speeches. Brennan, *supra* note 344, at 14.

349. *See, e.g.*, *Hirabayashi v. United States*, 320 U.S. 81, 95-99 (1943); *Korematsu v. United States*, 323 U.S. 214, 218 (1944), *reh’g denied*, 324 U.S. 885 (1945).

350. Alien Registration Act, 54 Stat. 670 (1940).

351. This Act was a very strong anti-Communist piece of legislation to stop the “world communist movement.” *See* Internal Security Act of 1950, 64 Stat. 987 (1950).

352. “Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact . . . a conspiracy to overthrow the Government of the United States.” 68 Stat. 775 (1954).

353. Justice Holmes originated the theory in *Schenck v. United States*, 249 U.S. 47, 52 (1919). Mr. Schneck as head of the Socialist Party circulated pamphlets urging draftees to resist the draft during World War I. Justice Holmes upheld the Espionage Act on grounds that his acts presented a “clear and present danger that . . . Congress has a right to prevent.” *Id.* at 52. In the Holmes dissent to the ‘bad tendency’ test development in *Abrams v. United States*, 250 U.S. 616 (1919), he expounded a belief that Congress “certainly cannot forbid all effort to change the mind of the country . . . the best test of truth is the power of the thought to get itself accepted in the competition of the market.” *Id.* at 628-30. He further warned that a check on free speech should only be used when it “is required to save the country.” *Id.* at 630. In *Gitlow v. New York*, 268 U.S. 652, 671 (1925), the court rejected “clear and present danger” relevancy; however, it resurfaced in *Whitney v. California*, 274 U.S. 357 (1927). Ms. Whitney was convicted of being a member of the Communist Labor Party who violated the Syndicalism Act, which was to prevent violent overthrow of the government. In his concurrence, with which Holmes joined, Justice Brandeis opined the state cannot “ordinarily” prohibit doctrines “which a vast majority of its citizens believes to be false and fraught with evil consequences . . . [liberty is justified] . . . as an end and as a means.” *Id.* at 374-75. “[N]o danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion.” *Id.* at 377.

the message before it.³⁵⁴ The Supreme Court, during the Red Scare, upheld modifications of the *Whitney* clear and present danger test,³⁵⁵ which later was refined to regulate speech if the speaker intended incitement, the words were likely to cause imminent action, and the words objectively encouraged incitement.³⁵⁶

2. *United States Constraints on Foreign Criticisms*

The United States, like Malaysia and Singapore, has exhibited failure in the marketplace of ideas for discovering the truth and allowing equal access to the open forum; U.S. limitations on foreign influence in domestic reporting is a clear example.

The United States Foreign Agents and Propaganda Act³⁵⁷ is a case of manifest failure of the marketplace of ideas by the United States government. The thrust of the Act is to protect United States security and foreign relations by providing disclosure of foreign propagandists.³⁵⁸ The Act requires "foreign principals" and agents of the principal to register the following information with the Attorney General: the nature of business, the source

354. See *Whitney v. California*, 274 U.S. 357, 375-77 (1927).

355. See *Dennis v. United States*, 341 U.S. 494 (1951), *reh'g denied*, 342 U.S. 842 (1951). Attempts, even when not imminent, to overthrow the government violently is "a sufficient evil for Congress to prevent." *Id.* at 509. They adopted the typically methodical approach of Learned Hand's decision allowing the danger to be less imminent if the gravity of the danger was high. *Id.* at 510. See also *Yates v. United States*, 354 U.S. 298 (1957). *Accord Scales v. United States*, 367 U.S. 203 *reh'g denied*, 366 U.S. 978 (1961).

356. See *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (per curiam) (overruling *Whitney*). See also *Hess v. Indiana*, 414 U.S. 105 (1973) (affirming the conviction of the stringent test of *Brandenburg*).

357. 22 U.S.C.A. §§ 611-21 (West 1990 & Supp. 1998). See, e.g., Robert G. Waters, *Foreign Agents Registration Act: How Open Should the Marketplace of Ideas Be?*, 53 MO. L. REV. 795 (1988); Karim G. Lynn, *Unconstitutional Inhibitions: "Political Propoganda" and the Foreign Agents Registration Act*, 33 N.Y.L. SCH. L. REV. 345 (1988). Deportation for violation of 22 U.S.C.A. may be allowed. See 8 U.S.C.A. § 1251 (West 1990 & Supp. 1998). Another failure on the market place of ideas is the limitations of foreign nationals on federal elections. See 2 U.S.C.A. § 441 (West 1995 & Supp. 1998). See also Lobbying Disclosure Act of 1995, 2 U.S.C.A. § 1602 (West 1997 & Supp. 1998). See, e.g., Michael I. Spak, *America for Sale: When Well-Connected Former Federal Officials Peddle Their Influence to the Highest Bidder*, 78 KY. L.J. 237 (1989-90); Donna M. Ballman, *Political Campaign Contributions by Foreign Nationals in Florida Elections*, FLA. B.J., Mar. 1991, at 31.

358. See *Attorney Gen. v. Irish Northern Aid Comm.*, 346 F.Supp. 1384 (D.C.N.Y. 1972), *aff'd*, 465 F.2d 1405, *cert. denied*, 409 U.S. 1080 (1972). See also *Meese v. Keene*, 481 U.S. 465 (1987) (ruling the Act is not unconstitutional because it does not restrict access to materials, and the use of the Act does not have an impact on distribution of the foreign materials).

of funding, the names of employees, and the activities of the business.³⁵⁹ Additionally, propaganda must include, within the publication, the relationship of the propagandists and the foreign principal and the fact that it is registered as such with the Attorney General.³⁶⁰

Lee Kuan Yew recognizes other failures of the libertarian market model, namely, the FCC regulations on foreign ownership in broadcast media and United States outrage of attempts of foreigners to control newspapers in the United States.³⁶¹ The United States Communications Act clearly restricts foreign corporate activities in broadcast and telecommunications industries, chiefly by not allowing more than twenty percent ownership by a foreigner.³⁶²

The U.S. model will not cure all the ills of Singapore and Malaysia. Although purporting to allow unfettered expression, the United States has repeatedly limited public speech. Moreover, the United States has allowed the First Amendment to permit non-public speech to be nearly unregulated to the detriment of women. The appropriate model for Singapore and Malaysia must arise from democratic norms that provide the foundations for the two systems and that are developed fully by judges loyal to open political discourse, but not to unfettered individualism.

VII. CONCLUSION

The Asian model may indeed challenge the U.S. system in the

359. "Foreign principal" and agents are defined by section 611 and include nearly all foreigners and organizations except for citizens domiciled in the United States not working for a principal, and their agents. Section 611(d) excepts news sources in the United States that are 80% owned by U.S. citizens and have U.S. directors and officers, and 611(q) provides an exception to commercial actors not funded by a foreign political party or government. Section 612 requires that all activities and funding sources and purposes be registered and supplemented. Section 613 excepts registration of diplomatic and consular officials so long as it is within the scope of their official duties. See 22 U.S.C.A. §§ 611-613.

360. See 22 U.S.C.A. § 614(b). Section 614(a) also provides that the extent of propoganda transmission must be sent to the Attorney General. See also 22 U.S.C.A. § 618(a) (violation of the Act provides a maximum fine \$10,000 or a maximum of five years imprisonment, or both).

361. See Lee Kuan Yew, *supra* note 248, at 122-23. Outrage ensued when stories broke over John McGoff, a sympathiezer to South Africa, when he tried to use funds allegedly tied to South Africa to try to buy the *Wahington Star* and *Sacramento Union*. See Sanford J. Ungar, *South Africa's Lobbyists*, N.Y. TIMES, Oct. 13, 1985, at 30. See also Claudia Maclachlan, *NAACP to FCC: Turn Off Murdoch*, NAT'L L.J., July 4, 1994, at B1.

362. See 47 U.S.C.A. §§ 301 & 310(b) (West 1991 & Supp. 1998). See generally *Barring Foreigners From our Airwaves: An Anachronistic Pothole on the Global Information Highway*, Note, 95 COLUM. L. REV. 1188 (1995); Henry Geller, *Ownership Regulatory Policies in the U.S. Telecom Sector*, 13 CARDOZO ARTS & ENT. L.J. 727 (1995).

future.³⁶³ Kishore Mahbubani believes the American mind has become ossified. In effect, Americans worship abstract concepts such as human rights, freedom, and liberty without ever challenging the system; the U.S. Constitution cannot govern eternally — “no society has ever in history devised social arrangements that suit all times and all circumstances.”³⁶⁴ The quest in determining whether or not liberal democracy will prevail or if a sort of Asian style democracy or soft authoritarianism will prevail is a difficult one. The determination centers on a fundamental question of whether or not the populace of a nation is willing to sacrifice individuality and concomitant individual speech freedoms for the community as a whole.³⁶⁵

Determining the merit of individual rights versus collective rights is a normative balancing act.³⁶⁶ An individualistic focus takes the individual as the sole unit of value and accordingly measures the level of freedom according to rights allocated to the individual. Alternatively, the community can be deemed the focus (Asian values) with the valuation of rights commensurate with the choices the community makes.³⁶⁷

A universal speech right, in order to be universal, must depend on a common notion of humanity, which is not based on “culture, history or anything else.”³⁶⁸ Does a system like Singapore’s and Malaysia’s that limits not only pornography — even so called “soft porn” like *Playboy* — but also speech that would incite racial or religious uprisings have any merit? The question centers on how to order a modern industrial society: Should

363. For example, Lee Kuan Yew questions the present democratic model: “We would have a better system if we gave every man over the age of 40 who has a family two votes because he’s likely to be more careful, voting also for his children . . . and at 60 . . . go back to one vote.” Zakaria, *supra* note 5, at 119.

364. Mahbubani, *supra* note 9, at 19.

365. See generally Thio Li-Ann, *The Post-Colonial Constitutional Evolution of the Singapore Legislature: A Case Study*, 1993 SING. J. OF LEGAL STUD. 80 (1993).

366. See Virginia A. Leary, *Postliberal Strands in Western Human Rights Theory*, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS 105 (Abdullahi Ahmed An-Na’im ed., U. Pa. Press 1992). Several Western scholars (Emmanuel Mounier, Jacques Maritain, and Roberto Unger) have developed a concept of a person’s rights within communities distinguished from individual rights. This is an attempt to reach for a consensus between two conflicting world views of communism and capitalism. See *id.* at 113-14.

367. See Michael McDonald, *Should Communities Have Rights? Reflections on Liberal Individualism*, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS 133, 154 (Abdullahi Ahmed An-Na’im ed., U. Pa. Press 1996). See also Stephen J. Toope, *Cultural Diversity and Human Rights*, 42 MCGILL L.J. 169, 180-81 (1997) (showing that the Western tradition of human rights may change to focus on the community and is not necessarily individualistic).

368. See Peter R. Moody, Jr., *Asian Values*, 50 COLUM. J. INT’L AFF. 166, 169 (Summer 1996).

freedom trump social order? The proponents of “Asian Values” clearly say “yes,” while suppressing unfavored political speech and speech which would arguably usurp social order, and America says “no.” In this decision the first step necessarily must be allowing the populace to determine its community rights in an open forum, which Malaysia and Singapore have clearly failed to do.

When criticizing freedom of speech in Singapore and Malaysia, it is important to take notice of the United States historical trend of limiting free speech when threatened with outside views that may disrupt the status quo of the state. Malaysia and Singapore are no different in this respect, except they take it a step further based on history, moral values, and potential racial and religious conflict.

Any limitation on political speech should not be allowed, nor justified by any leaders based on their interpretation of history. No legitimate government may claim that people do not have a right to political speech. Political speech may not include immoral or blatant, racially upsetting comments; however, it must include speech remotely connected to the function and duties of government. In Singapore, Malaysia, and the United States, political speech has been limited under the guise of national security and public order. This has happened with Communist threats in all of these nations, but it does not reduce the legitimacy of criticizing these institutional arrangements.

The movement to increase political freedom must be challenged throughout the world — on both the domestic and international fronts. The wide spectrum of allowed political speech differs in degree between nations based on their domestic situation, but the value of wide-open political debate should be pushed beyond any abridgment, in any nation, to develop a stable and legitimate order that people have confidence in and can participate in regardless of their political view. Obviously, the market inequalities in the fight for a favored political ideal will be troublesome, but the source of dominance in such a system should not become entrenched in legitimacy in the beginning of a cyclical debate and claim legitimacy throughout the debate.

If an entrenched system — whether Democratic, Soft-Authoritarian or Communist — claims dominance to a competing ideology, it will be subject to violent change. Although there is a strong claim of the finality of the liberal democracy,³⁶⁹ entrenching this view with institutional legitimacy is once again denying the efficacy of a potentially more or less egalitarian

369. See generally FRANCIS FUKAYAMA, *THE END OF HISTORY AND THE LAST MAN* (1992) (claiming liberal democracy has conquered all other governance systems). See generally Alex Y. Seit, *Globalization and the Convergence of Values*, 30 CORNELL INT'L L.J. 429 (1997) (arguing the United States and its industrialized partners should foster the promotion of a “liberal democracy”).

system that may serve the populace of the world more effectively. However, the freedom of political speech must be allowed in order to determine the legitimacy of such forthcoming views; whether it leads to a social democracy or another ideology taking precedence in the tumultuous decades the world is sure to face.

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