

Freedom of speech

Singapore can strike a better balance between tyranny and anarchy.

Asking for more freedom of expression in Singapore is a bit like trying to get out of your mobile phone contract. Whatever reasons you give, the customer service department has already prepared a dozen ways to say no. You soon reach a dead end and realise the whole exercise was probably a waste of time.

There's one big difference. The government, unlike your telecom provider, doesn't have to depend only on its own officers' legalese to tell you why you can't get what you want. It can also rely on people around you chipping in to chide you for making a fuss. It's like being surrounded by fellow customers who—despite the fact that they too would benefit from a more flexible contract—recite on cue the reasons why we should be happy to remain locked in.

This is what ideology looks like, and in few areas is People's Action Party ideology more effective than when it rebuffs the case for free speech. Many Singaporeans accept its justifications for the current restrictions, and some are happy to join the chorus when the PAP dismisses calls for more openness.

It works like this. You say the country needs more freedom of expression. They answer that freedom cannot be absolute.

Instantly, the debate becomes about the anarchy of untrammelled free speech versus the status quo. Put like that, many Singaporeans decide they would prefer the latter to the former. In the slightly extended version of the debate, you concede that absolute freedom doesn't exist anywhere. They respond that there's therefore nothing wrong with Singapore applying restrictions to suit its unique local conditions; we are a sovereign nation and don't need to import foreign standards. At which point many people feel obliged to defend Singapore against the liberal West. Check any Facebook debate about free speech involving a cross section of Singaporeans and you'll see how quickly it turns nationalistic. An astonishing number of citizens seem to believe it is unpatriotic to want more freedom.

Thus, Singapore's position as the advanced industrial nation with the least freedom of expression remains remarkably unquestioned. We assent to a situation where citizens can stage a play or publish a magazine only with the government's permission; where a teenager goes to jail for offending people's religious feelings; and where defamation awards are so large they can bankrupt individuals and disqualify them from elections.

Singapore can't go totally against international standards. So it has signed the Asean Human Rights Declaration, Article 23 of which says, "Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice." Our own Constitution, in Article 14, also protects every citizen's right to freedom of speech and expression. But try to get the government to live up to the spirit of these commitments and you will swiftly encounter ideological barriers.

Support for these policies has been achieved through decades of ideological work. One useful myth that the government has constructed is that we have to choose either freedom of expression as an absolute right, or as a totally grey area where governments should be allowed to decide their own standards. In reality, this

is not where meaningful discussions are happening in the 21st century. If we're really interested in getting the best deal for Singapore, we should stop caricaturing free speech salesmen as absolutists. Nobody other than the odd libertarian is asking for free expression with no limits. According to international human rights norms, freedom from torture and freedom from slavery are examples of absolute, unconditional rights. Freedom of expression is not. No constitution in any liberal democracy and no international or regional human rights treaty claims it is. And no international NGO championing the cause says it should be. Not Amnesty International, not Human Rights Watch, Freedom House, Article 19, or Reporters Without Borders. And in Singapore, not Maruah or the Community Action Network.

The questions we should be debating are what count as good reasons for restricting speech, and what are the acceptable means for doing so. International human rights norms provide sensible answers. They are quite specific about what sorts of restrictions are required, are optional, and are unacceptable. By these standards, many of Singapore's speech laws are too extreme, giving the government too much leeway to decide what qualifies as illegal expression, and imposing punishments that are unnecessarily harsh.

The main United Nations human rights treaty is the International Covenant on Civil and Political Rights. Singapore is one of a handful of states that hasn't signed it. But, that doesn't diminish the value of the document as a benchmark for societies that want to do the right thing. Article 19 of the ICCPR says, "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." This is certainly an expansive view of free speech. But the Article goes on to state explicitly that this is a limited right, carrying "special duties and responsibilities". This acknowledges that individuals, although holders of rights, can only develop

themselves within the context of a functioning community, to which they therefore owe certain obligations. (The idea that human rights are purely individualistic, whereas we care about community, is another powerful PAP myth.)

In line with this principle, free speech rights may be “subject to certain restrictions”. The ICCPR doesn’t give states a blank cheque. Article 19 has been interpreted to mean that freedom of expression should be the rule, not the exception; any proposed restriction shouldn’t undermine the essence of the right. We may rightly worry about food hygiene, but that doesn’t mean people should only be allowed to eat at government-run kitchens. Similarly, legitimate concerns about socially harmful expression don’t justify extreme measures that deny people all the benefits of freely sharing information and ideas. To that end, any proposed restriction should be in line with the full wording of Article 19.3, which states that restrictions must be “provided by law” and must be necessary for “respect of the rights or reputations of others” or “the protection of national security or of public order (*ordre public*), or of public health or morals”.

From this emerges what’s called the three-part test, which is useful for when we’re trying to figure out whether a government restriction is in line with free speech principles. First, is the restriction “provided by law”—does it follow written laws that are clear and precise? If not, it would fail the test, because it would allow the government to restrict speech in an arbitrary manner, to serve its own narrow interests. Unfortunately, many of Singapore’s restrictions do not meet the required standard. The Newspaper and Printing Presses Act, for one, gives the government the immense power of deciding whether a newspaper should live or die and who should sit on the board of directors, yet the Act does not dictate the criteria on which ministers should make these determinations, or on what basis they can be challenged. Furthermore, too many of the government’s powers over media are contained in subsidiary regulations written by officials, rather than spelled out in the statutes that have been debated and enacted by parliament.

Many speech laws are too broad, allowing the government to interpret them as it chooses. One small example is the prohibition on campaigning on Cooling-off Day, the eve of Polling Day. News coverage is exempted from this rule, but the government says only the output of licensed news organisations—basically the conservative mainstream media—qualifies as “news” under the law. Independent news sites, even if they limit themselves to factual reports, risk prosecution if they published on Cooling-off Day. This is why some legal scholars say that although Singapore prides itself on the rule of law, a lot of media regulation is a case of rule by law. Law is supposed to serve as a constraint on the actions of the powerful, but in Singapore it is also used to justify the government’s excessive use of force.

The second part of the three-part test determines if the restriction is based on legitimate grounds. Article 19 cites very specific justifications for restricting free speech. Defamation law is allowed, for example, to protect people’s reputations. National security, public order and public morals are all recognised as legitimate reasons, if the restrictions are written narrowly and not used as an excuse to silence debate. There can also be restrictions to protect the rights of others. So, to protect the right to vote, states can shield citizens from expression that is meant to intimidate or coerce them during elections. Hate speech restrictions are not just allowed; they are actually required under Article 20 of the ICCPR, which tells states they must prohibit speech that incites the audience to inflict harm on other communities based on their racial, religious or other identities.

The list of legitimate grounds is not open-ended. It does not include protecting people’s feelings, or shielding religious or other beliefs from insult, and certainly not making government officials’ job easier—all of which the PAP uses to justify various restrictions. If we apply test two to, say, Singapore’s laws designed to protect racial and religious harmony, we find some passing, but not all. For example, Section 505 of the Penal Code bans statements and rumours that incite a community to commit an offence against any

other community. This provision is broadly in line with the ICCPR's requirement that states clamp down on hate speech. Then there is Section 298A, which prohibits anyone from deliberately trying to promote enmity between different religious or racial groups. This could be justified under the ICCPR as necessary for maintaining public order.

In contrast, Section 298 fails the legitimacy test. It criminalises any expression made “with deliberate intention of wounding the religious or racial feelings of any person”. Instead of trying to protect people from objective harms, which would be a legitimate function of the law, Section 298 declares that the state will protect people's feelings from being hurt. This is an unwise threshold to apply, because human progress is impossible if people can't express new ideas that some section of the population finds unsettling. Furthermore, because wounded feelings are inherently subjective, there is a high risk that individuals and groups will game the system—playing the victim in order to get a speaker in trouble with the state (Chapter 6).

The third test is one of necessity and proportionality. If we sincerely respect freedom of expression as a basic right, we have to ensure that our restrictions are really needed to achieve the legitimate aims identified in test two. They shouldn't impose excessive punishments that would chill speech. Society's interests shouldn't be used as an excuse by governments to silence political debate. This principle requires that states find the least restrictive way to achieve the stated goal. Don't jail someone or ban a publication when a fine would suffice. Don't make speech a crime when the problem could be addressed through civil law.

Unfortunately, our Constitution isn't aligned with the ICCPR. It allows parliament to impose restrictions on expression even if they are merely “expedient”—meaning convenient or practical, which is a much lower bar than being “necessary”. Thus, we have many constraints that are considered constitutional even though they wouldn't pass test three of the human rights standard. For example, the ICCPR might consider it unnecessary and disproportionate to

award damages in political defamation cases that are so large they bankrupt opponents and thus prevent them from running for election. Evidently, though, Singapore courts don't see a constitutional problem with this. The ICCPR's test three would also require defamation to be dealt with as a civil matter and not come under criminal law, the way it still does in Singapore.

Also failing the third test are most instances of so-called "prior restraint"—such as licensing systems that silence a newspaper even before it launches its first issue, based on assumptions about what it might say. The PAP usually justifies its strict press laws by citing Singapore's volatile demographic mix. If the government maintains that prevention is better than cure in countering the ethnic discord that media can provoke, one could see the logic of requiring the company's board directors to be multiracial, and to show it has no ties to race-based or religious organisations. But there is no logical connection between the problem of race riots and the solution of giving the government blanket authority to decide which publisher deserves a publishing permit. As in so many other spheres, the PAP has a penchant for overkill.

None of this is to say that Singapore must adopt wholesale the American or any other single country's approach to free speech. Laws need to suit the local context. Germany's hellish experience with Nazi hate propaganda has pushed it to police hate speech much more strictly than the United States, for example. Some democracies believe in strong press councils for media industry self-regulation, others don't. Some regulate commercial broadcasters more strictly than others. But there is also a broad consensus among democracies about the soundness of basic human rights principles. We should, for example, prohibit speech that victimises the vulnerable. At the same time, we should give maximum protection to expression that may speak truth to power. A mature discussion about free speech is long overdue. It won't happen if we turn our backs on the global conversation.