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Liberalising Expression at Hong Lim Park: Speakers No Longer Cornered?

The rules at Speakers' Corner have been relaxed, interest groups have stepped up to take advantage of this, but how long this hype will last is questionable.

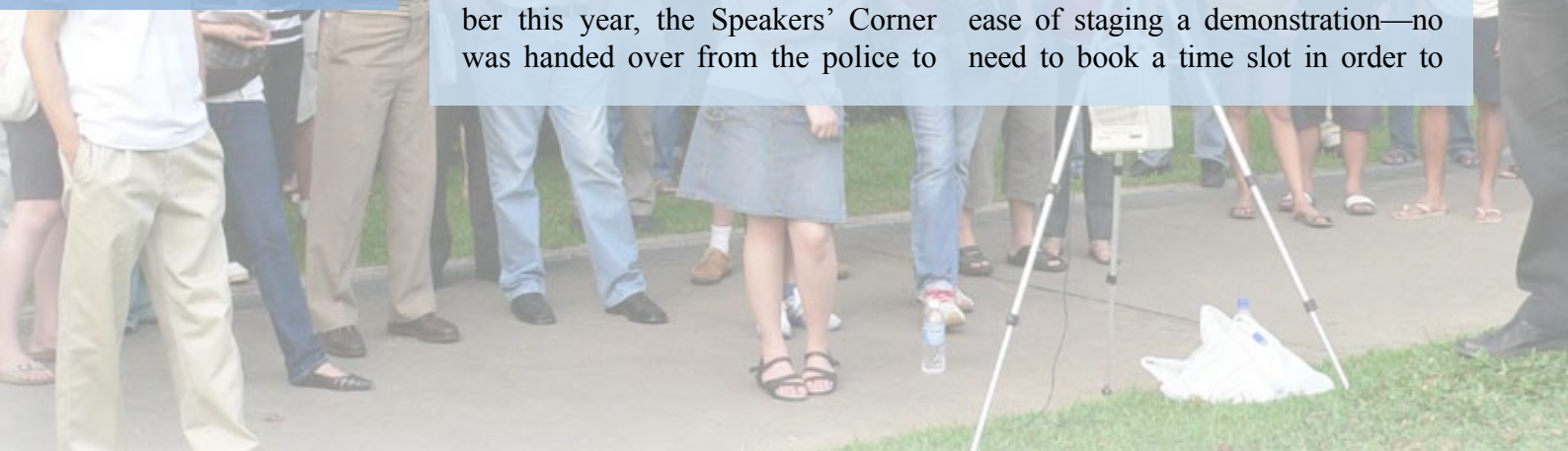
BY HONG JIA
FIRST YEAR NUS LAW, ASSOCIATE EDITOR, SLR

A few Saturdays ago, an uncharacteristic sight awaited the commuter who emerged from Clarke Quay MRT station: a man stands on a grassy knoll and is speaking to a wide swathe of people. Two people beside the banner hold placards that proclaim "World Class Service or World Class Profits". The 150-strong audience is substantial enough that when they roundly cheer and applaud the speaker's denouncement of transport policy, one might indeed wonder if this is the spark of public political activism long lamented to be lacking, or suppressed, in Singapore.

When speakers' corner was first introduced in 2000, it initially drew large crowds but they soon dissipated. Unless there were specific exemptions, obtaining a police permit in order to speak was the default. But there have been some relaxation of these regulations. In 2004, the list of exemptions was expanded and public exhibitions and performances were no longer required to obtain permits. In September this year, the Speakers' Corner was handed over from the police to

the National Parks Board (NParks) and now demonstrations, as well as speeches, can be legally carried out without a police permit. Loudhailers are allowed and the restrictions on which hours of the day activities can be carried out have also been lifted. Prior to the said Saturday's event organized by The Online Citizen, another group had accordingly taken the chance to stage a brief demonstration against maid abuse.

But despite the media spotlight cast by news of the relaxed rules, Saturday's protest against the transport fee hike was not a huge rally. The physical space it took up was dwarfed by the rest of Hong Lim Park that remained occupied in a spirited game of Frisbee. Nonetheless, the speakers spoke with conviction and passion and their words clearly resonated with many of those present, cutting across age groups and demographics. The transfer of control to NParks symbolises a step away from (literally) policing public expression, and the greater ease of staging a demonstration—no need to book a time slot in order to



speak, no screening beforehand—will certainly facilitate civic groups' attempt to reach out to the public. Given a topic close to Singaporeans, and sufficient publicity, it is likely that the Speakers' Corner will be able to attract a certain audience and provoke critical thought upon hot-button issues.

However, it is too early to tell whether it will have any discernible effect in promoting active political engagement in our society. Much will depend on how our opposition party politicians and rights groups

choose to use this medium in the upcoming months, if they even choose to do so, as well as how much the public is willing to respond to issues of not only bread and butter, but also politics and civil rights.

Along these lines, although the Ministry of Home Affairs has indicated express permission for activities including effigy burning and gay pride events, gay rights activist Alex Au was quoted in *Today* as unwilling to “dignify tokenism”. Cynics still feel that whatever changes Speakers' Corner undergoes, and indeed Speakers' Corner itself, are merely tokenistic in nature. Public speech and assembly, after all, are still restricted to this quiet corner of Singapore. Despite the historical significance of Hong Lim Park as a political venue for election rallies and speeches in the 50s and 60s, today it is far from a hotspot of human traffic, limiting the potential audience of Speakers' Corner.

In addition, the apparent freedom of expression is still restrained by the large sign mounted conspicuously at Speakers' Corner reminding all that certain controversial topics such as race and religion still remain grimly out-of-bounds. If Dr Chee Soon Juan had attempted to discuss the issue of Muslim schoolgirls' headscarves on Saturday, he would still have been arrested and fined for breaching the terms of speaking at Speakers' Corner. Less than three weeks after the new rules came into ef-

fect, real estate agent Thamilselvan Karuppaya experienced the OB-markers for himself when his online registration with NParks led to a call from the police informing him he needed a Public Entertainment Licence for his speech in which he had meant to address the use of Tamil in public signs. His subsequent licence application was rejected and he had to abort his plan to speak.

On the more political side, Saturday's speakers, while denouncing the policies made by the government, pointed to policy-makers' lack of consideration of alternative views as a deeper problem of Singapore's political arena. This may not be an issue that Speakers' Corner can help resolve. In another potentially illuminating moment relating to the ban on holding political events outside of Speakers' Corner, Prime Minister Lee Hsien Loong recently took part in a cycling event at West Coast Park, organized by the PAP Community Foundation. Last year, the Workers' Party had had to apply for a permit for a similar cycling event in East Coast Park to commemorate its 50th anniversary, which was rejected. When Nominated Member-of-Parliament Sylvia Lim asked whether PM Lee had been granted a permit to take part in an outdoors political event, it was explained that although the PAP Community Foundation was affiliated with the PAP, it was a registered charity and its non-political nature allowed the PM to participate without a permit. To some, this was perhaps another complication to the issue of public politicking, but then again, it was never a simple matter to begin with. ☹



Up in arms. Leong Sze Hian, the banner and 2 placard-carrying activists who were unaffiliated with the event organisers The Online Citizen

You Can Take the Train, but Leave My Rights on It

There is a wide variety of content available on the Internet, but what can one do with it? Or rather, what is one legally allowed to do with it? For example, would using a picture downloaded from a website as my MSN Messenger display picture be considered *stealing*?

BY ANG HOU FU

THIRD YEAR NUS LAW, CHIEF EDITOR, SLR

You know, there are some people who do not mind others using their work for free. Some people write their opinions on their blog for pleasure and would not mind you quoting them. Others record music because they enjoy playing music and think that you and your friends would enjoy it too. Others create stunning, almost professional, works of art and let you have it for free for that off-chance that they may be noticed and a hobby becomes more than an intangible reward.

How do you then separate the generous from the tight-fisted? Answer: the Creative Commons licence which Singapore adopted the use of on 25 July 2008.

Such licences allow copyright holders to specify how they want their work to be used. These range from attribution (“you can copy but leave my name on it”) to a virtual free for all (allowing derivative and commercial use). Although the use of such licences is generally limited to the open source community (the people who created the Firefox web browser and lets you use it for free) and other large Internet projects like Wikipedia), hopefully the localisation of the licence will allow widespread adoption.

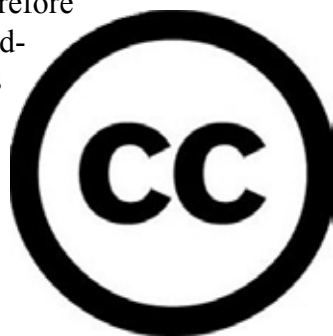
One significant problem with the adoption of these licences is the uncertainty over how much protection can actually be given. Content creators can rest easy in wake of the recent ruling by the United States Court of Appeals for the Federal Circuit in *Jacobsen v. Katzer* (see below) which confirms that even if the copyright holder allows his work to be used for free, the conditions stated in the licence are still enforceable and may give rise to copyright infringement.

The use of such licences therefore does not surrender all of the holder’s rights but only those he has chosen to give up. The Court’s decision will be persuasive here given that the copyright regimes in Singapore and the US do not differ significantly.

For most people who cannot afford the time to enforce their rights in courts, specifying how others may use

their work is not futile. The moral argument that copyright infringement is stealing becomes stronger when your thief cannot rely on the ambiguity of what can be done with your content. Furthermore, by being generous, the resources available to society will increase, giving others more room to derive pleasure from the work of another. This in turn enhances the ability to derive new content from the work of others. This is especially so when there is no need to worry about whether you have been stealing and the contributors from whom you have taken from are protected.

For this writer, the immediate benefit of these licences is that it shows that copyright laws are much more flexible than the all-or-nothing impression that arises from news of big media companies suing families and children. You can “steal” this idea without giving me due attribution – as long as you convince someone else around you to share his ideas and work with society. ♡



You may find out more about the Creative Commons and its various licences at <http://creativecommons.org>. The Jacobsen decision can be referred online at <http://www.cafc.uscourts.gov/opinions/08-1001.pdf>.

PEMA and the Arts in Singapore

Recent productions such as *Apocalypse Live!* and *Swordfish* in the Singapore Theatre Festival have successfully skirted *PEMA* restriction. How long and how effectively can the local art scene dance around them?

BY AMOS TOH

FIRST YEAR NUS LAW, YOUNGEST LIFE THEATRE AWARDS JUDGE (IN 2008) TO DATE

The *Public Entertainments (Amendment) Bill** passed in 2000 did not tread new political ground, adhering to the government's longstanding doctrine of anticipatory self-defence against indeterminate evils, namely anything "indecent, immoral, offensive, subversive or improper"*. Among these haphazard amendments was a Demerit Point system aspiring to heighten "transparency in the administration of licence" but, as one Nominated Member of Parliament (NMP) Mr. Zulkifi Bin Baharudin blithely pointed out, was "totally lacking in detail". This article attempts to reconcile the revised scope of the *Public Entertainments and Meetings Act (PEMA)** and new licensing restrictions with the government's post-twentieth century push for artistic vibrancy, and consequently examine the implications *PEMA* exerts on the arts.

While the *Bill* attempted to enhance flexibility of licensing procedures, new powers conferred on licensing officers ultimately retrograded these efforts. The *Bill*'s amendments eliminated clauses enforcing one-year maximum validity periods for a public entertainment or meeting licence, only to replace them with provisions allowing government officials to reject applications for renewal of such a licence based on consultations with "relevant bodies"* (reference). Removing restrictive licensing clauses and conferring statutory powers upon government officials to restrict these licences is a tautological exercise in scrapping old ways and finding novel ones to impose the same measure of restriction on public entertainments and meetings.

These restrictions are imposed mechanically and across the board, on the basis that any exclusion will undermine "public morality and decency". Under clauses 4 and 16 of the *Bill*, the scope of "public entertainment" was revised to include new entertainment media like "computer centre(s)" and "amusement centre(s)", while making generous concessions for activities like "garden parties" and "charitable distributions". These trifling technicalities merely scrape the bottom of the legislative barrel for political change, and obscure the government's reluctance to relinquish any control over civil discourse.

Such a statutory framework appears to run counter to the government's lofty aspirations to transform Singapore into an "arts and culture hub", replete with impressive artistic infrastructure and avant-garde festivals and events. However, if one were to consider the then Senior Minister Lee Kuan Yew's 1995 parliamentary swipes at political activists and freewheeling Western liberals, these efforts cohere with the government's conservative position on rights discourse. Challenging Western conceptions of democracy, Mr. Lee recognised Singapore as an "ideal development country" rather than a Western-influenced "ideal" society. Singapore's rule of law was a "valuable economic asset" that "should not deviate and form a different kind of system." Thus, individual freedoms are only granted insofar as they retain economic value; *a fortiori* artists can exercise their freedoms as long as it is economically viable for them to do so.

A sense of wariness penetrated both Mr. Zulkifi and Mr. Simon Tay's responses to the *Bill*'s amendments in November 2000. Recognising that the expanding scope of public entertainment restrictions applied to an equally wide range of activities, they suggested that the *Bill* was ill-suited to special classes of activities like arts performances. Mr. Tay cautioned the government to exercise "its powers to impose special conditions for the approval (of licences) wisely", while Mr. Zulkifi expressed concerns over the lack of "clear boundaries within which the arts groups are allowed to operate", urging that "(we) must separate arts from politics and make a clear distinction between the regulations for entertainers and that of politicians".

The distinctions Mr. Zulkifi and Mr. Tay make between arts activities and civil discourse are founded on the bare assertion that an artist's reach to the masses will forever be restricted, appealing only to certain class backgrounds. Steep ticket prices effectively limit the kind of audience exposed to their works, while traditional misconceptions that the arts are "abstract" and impenetrable keep artistic discourse on the fringes of society. An artist should be entitled to special freedoms because his work, by circumstance, caters to a highly selective audience. Unlike civil discourse, encouraging artistic development

through the relaxation of legislative restrictions furthers economic growth policies while barely affecting our “ideal development” principles of law.

Thus, the *Bill*'s restrictions, while offering unspecified and arbitrary freedoms, foster a climate of uncertainty and fear. As exhaustive records of erratic censorship indicate, artists can never be certain whether their next film, performance or artwork will pass censor authorities unscathed, or be forbidden from even selective viewing. This led poet and academic Cyril Wong to observe that Singaporean artists “have become so caught up in just being able to survive as an artist that they work with censorship (hence creating a lot of dull work), as opposed to against it”.

Some argue that Singaporean artists have created valuable art despite, and perhaps out of such restrictions. And indeed they have. Natalie Hennedige, artistic director of Cake Theatrical Productions, has not only avoided the wrath of censorship authorities but also overcome the reflexive need to self-censor. In articulating her artistic vision, Ms. Hennedige explained that her “productions tend to be more lyrical and allegorical in nature so even when they do broach (political and social) issues they impact on a less direct, more sub-conscious level.”

However, how long and how effectively can artists dance around *PEMA* restrictions, and more importantly, why should they? These restrictions abrogate not only the right of an artist to perform, but also to fulfill his professional duties. Moreover, *PEMA* is merely a microcosm of a wider, more perplexingly restrictive climate enforced through the letter of the law. Restrictions on press freedom, for example, have contributed to a dearth of artistic criticism and dialogue. Impressive cultural venues might be built at breathtaking pace, but they will remain hollow vessels if artists cannot truly represent themselves on these stages. ♪

The full version of the Public Entertainment Meetings Act can be found at http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-257&doctitle=PUBLIC%20ENTERTAINMENTS%20AND%20MEETINGS%20ACT%0A&date=latest&method=part.

*Assoc Prof Ho Peng Kee proposed and discussed The Public Entertainments (Amendment) Bill on Nov 13, 2000. The full text of his speech can be found at http://www.mha.gov.sg/basic_content.aspx?pageid=65.



Cake Theatrical Productions. One of Singapore's emerging arts establishments finds novel and creative ways to circumvent censorship and licensing restrictions that *PEMA* evokes without compromising their craft.

An Evaluation of AIMS: Deregulation or A Game of Catch Up?

The iron fist in the regulation of political content in new media may just have loosened its grip - if Prime Minister Lee Hsien Loong were to get his way, that is.

BY GAVIN NG
FIRST YEAR NUS GLB, ASSOCIATE EDITOR, SLR

“We are feeling our way forward step by step... looking for one stone at a time as [we] cross the river,” said Prime Minister Lee Hsien Loong in his National Day Rally speech this year, where regulating internet content with a lighter touch was one of the main topics addressed. The sentiments on this issue were subsequently echoed in the changes made in the Advisory Council on the Impact of New Media on Society (AIMS) report.

Although these changes have met with general approval from the online community, not everyone is satisfied. Blogger groups such as the “Bloggers 13” have had no qualms criticizing these legal changes as merely playing catch up to an environment already flourishing under the radar.

For instance, while AIMS mooted for the removal of the requirement to register individuals or groups who discussed religion or politics, Bloggers 13 argued for a further abolishment of automatic licensing of all internet sites covered under the *Broadcasting (Class Licence) Notification* (Cap. 28, N. 1, 2003 Rev. Ed. Sing.). Automatic licensing forces everyone online to adhere to Media Development Authority’s (MDA) Code of Practice, a code that arguably is vague on the definition of “prohibited materials”. Fear of contravening the Code and being fined inevitably results in self-censorship.

Blogger groups such as the “Bloggers 13” have had no qualms criticizing these legal changes as merely playing catch up to an environment already flourishing under the radar.

Nonetheless, the reality remains that there are more websites addressing religious and political issues than can be practically registered and monitored by MDA. *Public Prosecutor v Koh Song Huat Benjamin* [2005] SGDC 272 clearly illustrates the inability of MDA to

keep up with the speed at which online activities take place. In fact, the authorities had only come to know of Koh’s hate speech on an online forum because someone had lodged a complaint. In acknowledgement of the limits of government regulation, AIMS recommended that the government should encourage “volunteerism” to monitor any instances of hate speeches or pornography being disseminated online.

The legal changes recommended by AIMS are significant in that they seek to reduce the restrictions imposed on the online community and there is also a clear goal of reducing legislation governing internet use. When it comes to restrictions that are hard to enforce because of technology, it may be wiser to limit or to even repeal these laws.

Another recommendation made by AIMS was to change the *Parliamentary Elections (Election Advertising) Regulation* (Cap. 218, R.3, 2007 Rev. Ed. Sing.) to allow podcasts, videos and other forms of online media to be used during the election period. During the last General Elections, videos of various opposition rallies were uploaded to popular video hosting site Youtube as well as other sites – they were not prosecuted.

Concerning politically motivated films, AIMS recommended that s. 33 of *Films Act* (Cap. 107, 1998 Rev. Ed. Sing.) be liberalised as the wide phrasing, ironic as it may sound, would restrict creativity. Furthermore, the proliferation of modern technology circumvents restrictions in s. 33 as films banned by the authorities eventually find their way to an audience through video hosting sites, “Singapore Rebel” by Martyn See being a good example of this. AIMS, though not committing to any specific changes suggested either repealing, limiting the scope or gradually phasing out the section - a recommendation so bold that the only definitive suggestion was that the government should consult the public.

Repealing the section is a great leap towards deregula-

tion but “Bloggers 13” go further to suggest that s. 35 - which gives the Prime Minister the power to ban any film at his discretion - should also be removed. Their rationale is that even if s. 33 were to be repealed, s. 35 could functionally replace it, thus effectively defeating the purpose of repealing s. 33 in the first place. Perhaps the small steps suggested by PM Lee have to be made more quickly in order to catch up with the swift advancement of technology.

The final change recommended by AIMS is the amendment of s. 10 of the *Electronic Transactions Act* (Cap. 88, 1999 Rev. Ed. Sing.) to protect content hosts from intermediary defamation. This was on the condition that they do not actively participate in the defamation and remove the defamatory content once notified. Currently, only internet service providers are protected. Yet, with more sites hosting online content and more internet users posting online content, it has become increasingly difficult for these hosts to actively monitor all users and without protection, internet growth could become sluggish as hosts may start to reject users so as to minimise their liability.

The legal changes recommended by AIMS are signifi-

cant in that they seek to reduce the restrictions imposed on the online community and there is also a clear goal of reducing legislation governing internet use. When it comes to restrictions that are hard to enforce because of technology, it may be wiser to limit or to even repeal these laws.

With fewer laws, there is less confusion about legal responsibility and this in turn could lessen hesitancy in speaking up online. This could eventually result in a citizenry that actually feels that there is actual engagement with policy and the government. The overall consensus seems to be that the online community is appreciative of the suggestions made by AIMS yet, as Mohan, a member of Bloggers 13 and a third year law student at the National University of Singapore articulated: “The recommendations were forward looking, but the incremental approach is not necessary as there already have been incremental changes and there is no need to move slowly anymore.”

Perhaps it is time for the government to embrace the internet more fully and make progressive and not just reactive changes to the law. ☺

AIMS Recommendations

E-engagement: “Bottom-up” instead of “top-down” approach

- Allow citizens to make suggestions instead of being consulted on issues selected by the government
- Panel of Young Digital natives to serve as a consultative body

Online Political Content: Remove regulation to allow more discourse

- Amend *Broadcasting (Class Licence) Notification* to remove registration requirement
- Amend or repeal section 33 of *Films Act* to allow for more creativity
- Amend *Parliamentary Elections (Elections Advertising) Regulation* to allow podcasts and vodcasts

Intermediary Defamations: Protect Content Hosts as well

- Amend section 10 of *Electronic Transaction Act* to cover content hosts from intermediary defamation

Protecting Minors: Education as long term solution

- Many possible dangers but legislation is a stop gap measure
- Create educational courses for both young and old
- Provide materials for parents, children and educators
- Education on internet use for digital non-natives
- Promote filtering resources like Family Access Network
- Develop and encourage research for cyber safety
- Promote Volunteerism to flag pornography and hate speech
- Create dedicated coordinating agency for protection of minors from dangers of internet
- Lift ban on the 100 websites, but maintain power to blacklist websites on a case-by-case basis transparently

Crime and Punishment: The Problems of Sentencing

The 22nd Singapore Law Review Lecture delivered by AG Professor Walter Woon.

BY MELANIE HONG

FIRST YEAR NUS LAW, DEPUTY JURIS EDITOR, SLR

Some light has finally been shed on the otherwise murky arena of prosecutorial discretion- we now know what the Attorney-General Professor Walter Woon regards as crucial to meting out sentences.

As Professor Woon highlighted, the concept of justice is a fluid one. Between geographical boundaries and with the passing of time, it morphs to take on different appearances and what was considered just fifty years ago may no longer be considered as such in the modern context. With the notion of justice kept in the forefront of our minds, ensuring that the punishment meted out is befitting of the crime committed is a problem as old as justice itself – a problem that Professor Woon addressed at the 22nd Singapore Law Review Lecture held on 19th September 2008 at the Supreme Court Viewing Gallery attended by a 200-strong crowd of judges, legal practitioners and students.



AG Professor Woon. The 22nd Singapore Law Review Lecture was held on 19th September this year.

Governing the passing of sentences in Singapore, according to him, are the four principles of retribution, deterrence, protection and rehabilitation.

There are two aspects to retribution: punishment and denunciation. Punishment, simply put, is when someone who has broken the law pays for his misconduct while denunciation is the signal sent to the society that this sort of behaviour is unacceptable. Thus, the more unacceptable the behaviour is, the harsher the sentence. Strict sentencing, if as harsh as the Japanese when it came to looters were during World War II, would also serve as a strong deterrent. Yet, the effectiveness of this, as Professor Woon noted, is limited when it comes to impulse crimes unless punishment is so harsh that potential offenders are induced to hold their baser instincts in check. The principle of protection is that if the offender is likely to commit another offence and pose as a threat to society, he should be put away. For this, preventive detention is one of the alternatives to a prison term and it usually applies to an incorrigible offender who shows no remorse and re-offends within a short time of his release.

Nonetheless, harsh punishments are not the only way to reduce crime and the alternative presents itself in the form of rehabilitation, which is meant to ensure that the offender does not commit such a crime again by making him more responsible. This is usually the main consideration when dealing with young offenders and probation sentences ensure that they are kept off the streets and prevented from mixing with wrong company and engaging in unlawful activities.

Even normal terms of imprisonment now have an element of rehabilitation, as highlighted by Professor Woon. Ironically, this militates against short sentences. During one particular Yellow Ribbon Project concert, a senior prison officer remarked that the minimum period for effective rehabilitation was 6 months and a jail term shorter than that had practically no rehabilitative value. Professor Woon thus commented in his address that one should not automatically assume that a lighter sentence is necessarily better if the accused is capable of reform.

When applying these principles in sentencing, one has to consider which one is paramount. If the primary consideration is deterrence, a sentence will usually be more severe and if protection is important, the charge will usually carry a custodial sentence.

One also has to distinguish between facts that affect the culpability of the accused and those that do not. In the case of a gang robbery involving hurt, factors that affect the culpability of the accused may be that he was not the ringleader and merely took orders or that he did not actually hit the victim. Factors involving the remorse of the accused or the fact that he is the sole breadwinner of the family do not affect culpability and are a plea for judicial mercy. One of the most common factors affecting culpability is mental impairment but as Professor Woon noted, it is often difficult to determine how much the impairment should reduce the subject's culpability. Opinion differs from psychiatrist to psychiatrist and there is also the problem of how much one can rely on their reports. All these considerations allow the formulation of a sentence that is appropriate and at the end of the trial the prosecution will make a submission highlighting to the judge the principles that apply, as well as any aggravating or mitigating factors. After the judgement is delivered, the prosecution will not appeal as a matter of course even if they feel that the sentence is too lenient. An appeal is only made if the prosecution felt that the wrong principles were taken into account or the principles were wrongly applied.

After all, the aim of sentencing is not to mete out the harshest punishment but to ensure that justice is served as best as possible. ☛

The Google Generation: What Are They Reading?

The anonymity of the Internet poses a tricky problem for regulatory bodies but the myth of self-regulation may very well materialize in the form of Wikipedia's genius.

BY YVONNE POON

SECOND YEAR NUS LAW, ASSOCIATE EDITOR, SLR

“Eh, who are Freddie Mac and Fannie Mae...?”
“Dunno. Google it.”

The Internet in its infancy could perhaps never have envisioned how utterly dependent people would one day be on it and the sheer fact that “Google” has evolved from being a somewhat-kooky name for a search engine to a verb we use in our day-to-day conversations is evidence of the extent of the Internet's reach. It has become our information superhighway and the answer to every question that perplexes our minds. Yet every highway must have a set of rules to regulate its usage and people to enforce these rules, and the Internet is no exception. A clear example of this need for policing is epitomized in one of the most popular information portals—Wikipedia.

Wikipedia's users can write “pages” on their pet topics, edit those written by other users, and access a vast online repository of knowledge—ranging from Dick Cheney's biography to the origins of the word “gerrymander”. Wikipedia prides itself on objectivity and encourages discussion—a combination that is supposed to produce the most accurate view of matters.

But where opinions are concerned, emotion inevitably comes into the fray. In 2005, fuelled by world events like the Iraq war, a morass of backbiting ensued, centred most notoriously on the page of US President George W Bush. Users traded insults and fought to establish their own opinions by making numerous edits to his page. Most ironically, an edit was made from a BBC Internet Protocol address, too—changing President Bush's middle name from ‘Walker’ to ‘Wanker’. Wikipedia administrators were forced to intervene—certain IP addresses (including that of the White House!) were blocked from editing, and more politically controversial pages were protected from edits. President Bush's page is indefinitely locked; most recently, another notable editing restriction was also placed on vice-presidential candidate Sarah Palin's page. Wikipedia has been turned from “the free encyclopedia that anyone can edit” to “the free encyclopedia that anyone can edit... sort of”.

The Internet tends to encourage irresponsible and sometimes malicious writing as the apparent cloak of anonymity leads some to think that they can get away with it. When coupled with the fact that these views are not subject to the filtering influence of, say, a print editor, one can see why regulation is more than necessary.

But who is to take on this regulatory role? Our closest local

equivalent is the Media Development Authority (MDA) but its role has been focused on censoring more traditional forms of media—print ads, television, film and books. How is one to even begin regulating something as vast and boundless as the Internet? To give it credit, MDA tries its best: its website (www.mda.gov.sg) states that it uses a “light-touch regulatory framework” with co-operation from the industry's content providers while implementing public education policies to promote online safety awareness. But this approach is not without its faults. Putting pressure on the industry to self-regulate is a top-down approach that does not reach the grassroots of citizen journalists/commentators and “public education” is rather passive.

This might lead one to the conclusion that perhaps MDA is not suitable for the regulation of new media. One can censor or edit film, or books, or art—but how does one bowdlerize ideas and opinions when they are voiced through means that leave almost no virtual footsteps in their wake?

Whichever organisation that takes on this responsibility does not merely filter thoughts and opinions; they also have to manage legal issues. Cases where the web has been used to perpetuate misdemeanours include *Tay We-Jin v Public Prosecutor* [2001] SGDC 220, where the accused had used the Internet to intimidate and threaten. Siva Shanmugam J had stated at paragraph 8 that “crimes involving the electronic medium also take on a grim perspective simply because they are easy to commit and that much harder to detect and prove”.

Is it time, then, for another body to step up to handle this specialized regulation? But then this begs a second question - how we are to carry out this moderation without stifling the freedom that so characterizes and renders popular the Internet?

Perhaps the answer lies (again!) in Wikipedia. Despite the portal's “edit-wars”, Wikipedia's system of having users police and monitor each other's entries actually works. Unfounded allegations are rooted out; pages like “Bush family conspiracy theory” are swiftly condemned as “cruft” (information of poor quality) and deleted by user-voting. The best regulatory eyes are, after all, the same ones that read the pages most often, and the most efficient regulation carried out by the selfsame individuals that have the most contact with the Internet. Maybe this is the way forward—not top-down, intrusive government-implemented supervision, but a self-policing that starts from the grassroots. ♪

In Conversation with Lord Woolf: Issues in the Pursuit of Justice

“Judicial independence doesn’t require judicial isolation.” That was the essence of “In Conversation with Lord Woolf”, a talk by the former Chief Justice of England and Wales from 2000 to 2005, Lord Harry Kenneth Woolf, held in the Subordinate Courts on 10th September 2008, during which he shared his personal insights about his time on the Bench.

BY TEO CHIN GHEE

FIRST YEAR NUS LAW, ASSOCIATE EDITOR, SLR

Lord Woolf’s book, *The Pursuit of Justice*, launched on 27th March 2008, has garnered praise from many reviewers such as *The Law Society Gazette* (UK). With the issues discussed in his book in mind, Lord Woolf presented his views on the tremendous change and reform that the English legal system underwent during his time as the Lord Chief Justice and the challenges that the judiciary faces today.

Highlighting the importance of separating the legislative, executive and the judiciary, he recounted his concern when Lord Falconer of Thornton, the Lord Chancellor and the head of the judiciary, was also appointed the Secretary of State for Constitutional Affairs in 2003. As Lord Chief Justice at that time, Lord Woolf was perturbed as he felt that this move would blur the line between the respective duties of the legislative and the judiciary.

Calling this move “a constitutional change right at the heart of the system”, he emphasised the importance of the judiciary’s role in a working democracy, without which democracy would “become an elected dictatorship”.

In March 2004, in a speech at Cambridge University, Lord Woolf spoke out against the *Constitutional Reform Act* that sought to create a Supreme Court of the United Kingdom (UK) that would replace the House of Lords as the final court of appeal in the UK and questioned the Lord Chancellor’s handling of recent constitutional reform. The debate over the *Constitutional Reform Act*, criticised by judges and lawyers alike, had just culminated in a concordat achieved by Lord Woolf with the Lord Chancellor, which would afford protection of the judiciary’s independence. That agreement put his concerns to ease.

Explaining his grounds for rejecting the bill to the audience in the Subordinate Courts, Lord Woolf said: “It seemed inevitable that judges will come into conflict with parliamentary decisions for the first time. A renouncement of these changes is based on no great principles of the law but great principles of justice.”

While Lord Woolf recognises the importance of judicial independence, he also subscribes to the belief that there should be “a spirit of partnership between the judiciary, the legislature and the executive”, which he views as crucial for the judiciary to meet the changing needs of society. With this in mind, he brought up one area of one judicial reform he wanted to achieve in England, which was

the establishment of a proper legal aid system. This, he believes, is the key to making justice accessible.

“The state has to recognise that it has to provide access not just to civil but also criminal justice. The English le-



Lord Harry Kenneth Woolf. Photo credit: CUHK.

gal aid system used to provide the most monetary aid out of the many jurisdictions, but the government found it riding an unruly horse as the expenditure went out of control.”

His concern is that as a result, whenever it is possible to save money on legal aid, the government will now do so. However, Lord Woolf feels that under the *Human Rights Act*, the defendant has a right to legal representation and to be properly looked after. This, he said, is a serious change he wants to effect, given the chance.”

Lord Woolf also expressed his view that judicial independence does not require, and should not come at the expense of judicial isolation. To illustrate his point, he recounted how during his trip to Japan he discovered that the Japanese judges were “revered and treated with immense respect” by the people, much like their national icons, the sumo wrestlers. However, because of their high social standing, the judges, like the wrestlers, do not interact with the average joes but instead remain in their ivory towers. This, in his opinion, is a great pity because being “a people apart”, they could not share their knowledge and experience with others, not even with the local law students. 🐾

Organ Sales: Local Courts Tackle Organ Sale Offence Amidst Talk of Liberalisation

Case highlight on *Public Prosecutor v Sulaiman Damanik and Another* [2008] SGDC 175 and *Public Prosecutor v Tang Wee Sung* [2008] SGDC 262.

BY CHERYL CHAI
FIRST YEAR NUS LAW, ASSOCIATE EDITOR, SLR

In the first prosecution against illegal human organ trade in Singapore, two Indonesian men, Sulaiman Damanik and Toni, were convicted on 2 July 2008 of selling their kidneys to two Singaporeans, Tang Wee Sun and Juliana Soh respectively. District Judge Bala Reddy held that Sulaiman and Toni had committed an offence punishable under s. 14(1) read with Section 14(2) of the *Human Organ Transplant Act (HOTA)* Cap 131A “Prohibition of Trading in Organs and Blood”. Toni had also committed an abetment offence, under s. 109 of the *Penal Code* (Cap. 224), by acting as a liaison between Sulaiman and the middleman Wang Chin Sing.

This landmark case raised two different issues in the Singapore court and in Parliament. While parliamentary debates centered on the issue of legalising organ sale, this was not a question within the court’s purview. Instead, the court was concerned with what mitigating factors it should consider when meting out just sentences for the offenders.

“Justice will only be done if each individual in the human organ trafficking chain who is prosecuted, is punished according to the extent of his or her involvement in the arrangement and the degree of his or her culpability.”

- BALA REDDY DJ

Reddy DJ was guided by three principles on sentencing. First, judges should assess the individual circumstances related to each offence and offender. This principle is reflected in Reddy DJ’s statement, “Justice will only be done if each individual in the human organ trafficking chain who is prosecuted, is punished according to the extent of his or her involvement in the arrangement and the degree of his or her culpability”. Second, statutory maximums are set by parliament to reflect the gravity with which the public views the associated offence; hence, judges should determine where “the offender’s conduct falls within the spectrum of punishment devised by Parliament” (per Judge of Appeal V K Rajah in *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR 653). Under *HOTA*, the criminal offence of illegal organ supply is punishable with a fine of up to \$10,000 or with imprisonment for a term not exceeding 12 months or with both. The third principle is that sentences are also meant to have a deterrent effect.

Acting on these principles, Reddy DJ imposed a low fine and short imprisonment on Sulaiman and Toni for selling their kidneys. The reason? They deemed victims and not perpetrators of illegal organ trade. Toni received a stiffer sentence for his offence of abetment of organ trade because he was profiteering from the sale by acting as the syndicate’s runner facilitating the trade. This ‘clear signal’ was sent with the intent of deterring others profiteering from exploiting the destitute via organ trade.

While this case examined the culpability of sellers and facilitators in illegal organ trade, the buyer, Tang, was charged under *HOTA* in a separate hearing on 3 September 2008. This conveys the strong message that *HOTA* applies to all parties involved in illegal organ trade.

This case also sparked parliamentary debates on the possibility of legalised organ trade in Singapore. Minister for Health, Mr Khaw Boon Wan, did not rule out such a possibility because a flourishing black market is but an inevitable corollary of criminalising organ trade. The law is unable to eliminate the demand for and supply of kidneys: the rich prefer kidney transplants to kidney dialysis due to the prospect of a better quality of life and the poor are willing to sell their kidneys for money. Black markets pose a large risk to the sellers because without regulation, there tends to lack a proper medical healthcare structure. Also, the middleman is at liberty of absorbing a large proportion of the compensation money given to the organ sellers who are usually poorly educated and ill-informed.

With the fifth highest kidney failure incidence rate in the world, Singapore’s shortage of suitable kidneys for transplant poses a fatal problem that warrants immediate practical solutions. Instead of debating over whether organ trade should be legal, perhaps the more pertinent question we should be asking is how a regulatory system of ethical organ sale, that not only eliminates the waiting list but also protects organ sellers from being disadvantaged, can be implemented.

In the near future though, Singapore is likely to amend *HOTA* to encourage more altruistic organ donation. Mr Khaw suggested learning from Spain and Norway, where organ donation schemes created an organ supply that almost met demand – a feat that Iran, the only country to legalise organ trading, did not even achieve. This suggests a possibility of meeting the high demand of organs without decriminalising organ trade, a move many still deem unacceptable on ethical grounds. ♡

Forum Illuminae

Responses to the Article "Discrimination Enshrined in the Law: A Short Commentary" (Published August 2008)

BRYAN CHANG
SECOND YEAR NUS LAW

Upon my first reading, I, as a proponent of positive discrimination, believed the author failed to distinguish her examples between positive and negative discrimination in what was otherwise an excellent article. However, my initial views have been tempered, or even completely changed by recent developments in Malaysia.

It is the first example stated in the article to which I would like to draw attention. Art. 152 of the *Constitution* enshrines the special status of the Malay population. In the modern context of Singapore, there is ample reason to adopt policies and laws in favour of a struggling minority. On the two most important fronts, economic and educational, Singaporean Malays have been proportionally under-represented and this issue was highlighted in the 2007 National Day Rally.

However, art. 152 enshrines the special status of Malays only, and not of all minorities. It is a remnant of historical necessity and as mentioned by the author: 'outdated'. Racial discrimination, whether positive or negative, is bound to create tension and one look across the border would show you a clear failure of racial policies. In Malaysia, positive discrimination has been so firmly entrenched that it has fostered dependence and abuse, and as such failed in its initially virtuous aims. In my opinion, there is nothing wrong with posi-

tive discriminatory laws. However, the main problem as witnessed in Malaysia is the inability to have open mature discussion of racial issues without the discussion descending into a case of "us against them". Any mention of the relaxation of Malay privileges has only ended in heated words and inaction.

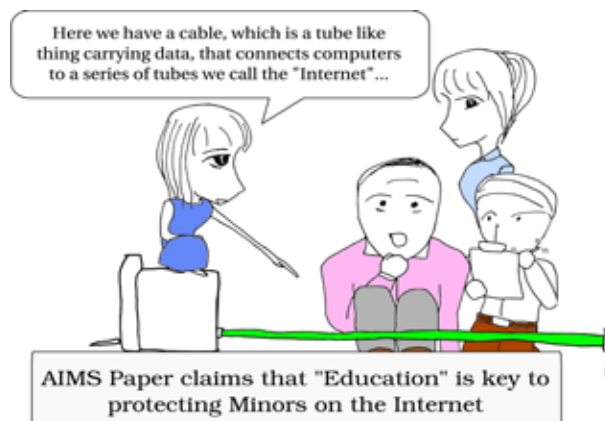
This article is a clear sign that Singapore is heading forwards, and hopefully a precedent and model for a region still torn by inter-racial strife. ☺

The following is a short extract. Read the full commentary online at our website: www.singaporelawreview.org.

MUHD AIDIL
THIRD YEAR NUS LAW, DEPUTY EDITOR, SLR

While I am personally an advocate of meritocracy, I believe Art. 152(2) should be retained solely for symbolic reasons and as a historical reminder of the role of the Malays as natives. I would preemptively reject arguments that such symbolism can be phrased in a proper Preamble along the likes of the Indian *Constitution* because to have outright, what may be perceived as, 'favouritism' in the opening sentences of a *Constitution* will strike at the root of a multi-racial and meritocratic country. ☺

Have something to say? Submit a Forum Illuminae reply to sookzhen@singaporelawreview.org and you stand to win a Borders voucher for the best response!



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