



HUMAN RIGHTS monitor



LAW letter



Singapore: Question of human rights

HUMAN RIGHTS FEATURE

FEW States fly as far under the international community's human rights radar as Singapore. A prosperous, in many ways Western-style nation, Singapore is barely mentioned at the United Nations Commission on Human Rights.

Singapore is no better than its neighbours - in many ways, it's worse. It is the Cuba of Asia (but without the crushing poverty or damaging economic sanctions). Indeed, Singapore enjoys Western-style economic prosperity.

It was Singapore's former Prime Minister Lee Kuan Yew who first popularised the idea of "Asian values" as a counter to the universality of human rights. He claimed - and his fellow Asian autocrats supported - a connection between the speed of Asia's economic growth and its authoritarian political systems.

Human rights violations in Singapore are rife: the country detains conscientious objectors to military service, has mandatory corporal and capital punishment for many offences, has some of the most draconian security legislation in the world (and uses it) and institutional discrimination against ethnic Malays results in their poverty and often imprisonment.

Singapore is a parliamentary democracy, which since 1959 has been governed by the Peoples' Action Party (PAP). While political opponents are allowed, the various means employed by the government to suppress dissenting voices mean that opposition parties and politicians are discouraged.

The Constitution of Singapore provides for freedom of expression, subject to limitations imposed by the government. Traditionally, this has meant no free speech whatsoever. Hailed as a breakthrough for free speech in Singapore, a Speakers' Corner was established in September 2001.

Currently, opposition politician Chee Soon Juan faces a fine of up to US\$5,464 for flouting a rule banning the discussion of racial issues at Speakers' Corner. In early February 2001, Mr Chee criticised the authorities for suspending from school three Muslim girls who wore Islamic headscarves in class.

Fines are a common way of suppressing speech and opposition in Singapore. Indeed one of the most popular methods of silencing opposition in Singapore is politically motivated defamation action. The ruling PAP argue that their standing in the electorate and their ability to govern is based on their ability to defend their reputations when allegedly defamed.

The damages and court costs incurred by political opponents who lose defamation suits are crippling. In January 2001, J B Jeyaretnam, leader of the Workers' Party declared bankruptcy as a result of the damages levied against him in defamation proceedings brought by the President. At the time, Mr Jeyaretnam was one of only three opposition members in the parliament. He was elected in 1981 - the first non-PAP politician elected to

parliament. The declaration of bankruptcy prevents Mr Jeyaretnam from running for political office or taking any active part in the campaign, and from practising his profession of law. His long-standing voice of dissent has been silenced.

Chee Soon Juan is also currently being sued by Prime Minister Gok Chok Tong and former Prime Minister Lee Kuan Yew after Mr Chee asked questions during last year's election campaign about secret government loans to the former Suharto regime in Indonesia. Reflecting what can only be described as a climate of fear, no sufficiently experienced local lawyers were able or willing to represent Mr Chee. When Mr Chee applied to the court to allow an Australian barrister, Stuart Littlemore QC to represent him, Judge Lai Kew Chai denied the application.



more than US\$500,000. While laws against defamation have their place in protecting the right to protect a reputation, the campaign of defamation suits in Singapore is out-of-control. While in the other jurisdictions efforts are made to balance freedom of speech and the right to privacy or a reputation, in Singapore the scales of justice give freedom of speech little weight if any.

The media in Singapore similarly operates under the threat of libel suits. The Singapore Press Holding (SPH) and Mediaworld control all of the media. Both enjoy close relations with the ruling PAP. The President of the SPH is Tjong Yik Min, a former director of the state security agency, while its Chairman, Lim Kim San is a former cabinet minister.

The government must approve, and can dismiss the holders of SPH management shares, who control staff and content. The coverage of domestic politics and sensitive international matters closely reflects that of the government. Censorship is common. In December 2000, Mediaworld instructed New Radio 93.8FM to edit a report on the anniversary of the Universal Declaration on Human Rights which contained interviews with Kofi Annan and a member of the Singaporean opposition. A few days later, the programme of announcer Fauziah Ibrahim, who denounced censorship and self-censorship at the station, was cut.

The foreign media have all either been sued or have had their circulation restricted, or both.

On 19 April 2001, a bill was passed to amend section 42 of the 1994 Broadcasting Authority Act, permitting the authorities to declare that any foreign broadcasting service is "engaging in the domestic politics of Singapore" and therefore requires prior approval of the Minister for domes-

tic transmission. The amendment allows for the arbitrary suspension and banning of local retransmission of foreign broadcasts. It provides for fines of up to US\$ 55,000 for those found guilty. Even without this development, foreign journalists have been harassed into less-than-critical coverage of Singaporean politics. In the late-1990s, Derek Davies, a former editor of the Far Eastern Economic Review rejected the notion that the government could curtail unflattering reports by suing the foreign media. Admitting defeat, Mr Davies later conceded: "I was wholly wrong and Lee [Kuan Yew] largely right."

With a high number of Internet users in Singapore, restrictions on the press extend to the content of newsgroups and email. According to the Think Centre, even SMS communications are regulated. The Singapore Broadcasting Authority's Internet Code of Practice prohibits material, which is "objectionable on the grounds of public interest, public morality, public order, public security, national harmony, or is otherwise prohibited by applicable Singapore laws". As if this was not enough, on 17 October 2001, the Parliamentary Elections [Election Advertising] Regulations came into effect. The Regulations restrict the contents on websites during elections, providing substantial fines or imprisonment or both.

On 16 November 2001, Robert Ho Chong, a retired journalist for the SPH was arrested for allegedly "posting inflammatory" articles on a website for Singaporeans for Democracy. In the article, Chong alleged that Prime Minister Goh Chok Tong and Deputy Prime Minister Lee Hsien Loong had broken the law during the 1997 elections by visiting polling places without authorities. He urged voters to similarly break the polling rules. Chong was acquitted of the charges after he was judged mentally ill.

The Singaporean authorities are sophisticated in their repression of speech and their control the media. Defamation suits compliment legislation to effectively silence dissent. The United Nations Commission on Human Rights' Special Rapporteur on the freedom of opinion and expression, in his report to the Commission in 2000, discussed libel and defamation suits as impediments to freedom of expression (E/CN.4/2000/63). He has noted "prohibitive fines for libel which in a number of instances would strangle economically the independent press, a political party, an association or any individual. In this regard the Special Rapporteur considers that disproportionate remedies or sanctions can significantly limit the free flow of information and ideas."

The outcomes of defamation proceedings - which almost exclusively rule in favour of politicians - also raise questions about the impartiality of the judiciary. As the United Nations Special Rapporteur on the independence of judges and lawyers has previously observed "allegations concerning the independence and impartiality of the judiciary could have stemmed from the very high number of cases won by the government or members of the ruling party in either contempt of court proceedings or defamation suits brought against critics of the Government, be they individuals or the media".

There have been a few promising signs. In October 2001, the Think Centre, an independent NGO, was approved for registration under Singaporean law. The extent, to which it - and Singapore's embryonic civil society - can effectively function, however will depend on the cooperation of the Singaporean authorities.

In December 2000, the Think Centre was involved in the organisation of a marathon run to celebrate International Human Rights Day. The marathon was cancelled after the government required the organisers to apply for a permit to allow more than five people to assemble. The permit was denied.

Singapore has constructed a veneer of democracy, development and freedom that largely insulate it from international criticism. While Singapore is a parliamentary democracy in name, the effectiveness of its democracy is undermined by the PAP's rigorous controls over speech and the press.

It is perhaps because of their economic prosperity that the people of Singapore do not protest more at their exclusion from the political process. From a human rights stand point, however, the Western-style prosperity of the place makes denials of civil and political rights all the more offensive.

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LAW opinion

The Federal Court System

BRUCE S. JENKINS

RECENTLY, I had a conversation with a computer chip. It is a new and evolving species. Its synthetic voice was a cross between Pavarotti and Paul Robeson. Ten years ago, I would have been required to speak to a spool of tape. A spool of tape has its moments and its gaps. The chip I spoke to was nice, as chips go. The reason I called the chip was to purchase stock.

The first disembodied voice I talked with was not chip. It was seductive, modulated, and feminine. It announced the menu, choices one through five, and told me to choose one of the five choices - that was it - five and no more. I pressed number three, and it was then I was addressed by the hybrid Pavarotti-and-Robeson voice. What shares was I interested in? Was I going to purchase or sell? Did I want to enter a stop order? Was I to purchase at market? I answered all of the questions, and then chip summarized and asked if the summary was correct and the transaction complete.

I responded. He said he could not hear me. I said I was sorry, I would speak up. For a moment, I forgot he was just a chip. I said the transaction was correct, and then chip asked, "what else may I do for you today?"

Pretty nice chip. How about dinner? Care for a potato chip? It would be nice to meet him or her or it face to face, or at least surface to surface. I am confident that if we met, chip's unvarying smile, its happy face, is as nice as the voice, and that chip is as completely indifferent to me as a human being as all of nature.

Remember the menu categories are fixed, the choices fixed, and the pre-selected pigeonholes are inviolate. The questions are fixed, and the allowable answers fixed as well. The system is a pre-determined closed system.

Chip is part of a machine, a mechanical and electrical device. It can converse, but it really cannot carry on a conversation. It can record, but it cannot listen. When prompted, it can replay, but it cannot remember. It can count and it can calculate at lightning speed, but it cannot think. It can react as billiard balls react, but it cannot respond to a cry for help, a warm embrace, nor can it respond with sympathy, empathy, horror, or judgement.

I relate this experience to contrast purchasing stock by talking to a machine at a cut-rate brokerage house, and seeking relief for a client in the federal court system. Although some people unfamiliar with the system may assert comparability, both you and I know that the court is a very human institution concerned in the ultimate sense with how human beings, or groups of human beings - states, countries, corporations, LLCs, partnerships, trusts, towns, churches, but ultimately human beings all -- should treat one another. It may be hidden beneath the surface, but it is there if you look hard enough.

As you know, legal propositions come from a multitude of sources -- legislatures, whether national or local, administrative agencies, commissions, (the administrative rules exceed in volume the US statutes) from agriculture to the IRS, from the trade commission to the controller of the currency. Even judges formulate legal propositions, as do attorneys or lobbyists pressing competing propositions having competing moral elements.

Some propositions atrophy and die. We outgrow them. We improve. We no longer burn people for owning a book. It is no longer the practice of the state to carry out a sentence pronounced by an ecclesiastical council so that the state's hands are stained and the ecclesiastics are not. Women can vote and hold office.

I use these examples simply to illustrate that some things are of such a nature that one cannot measure them with an ordinary scale of inches, centimeters, yards, or ounces and pounds, or the modern electronic scale of bits or bytes, or translate them into the language of zeros and ones.

I have brought with me a thirty-five-hundred-year old illustration with which I wish to make my point.

Earlier this year I had the opportunity to travel to Egypt. While there, I acquired a papyrus on which was painted a traditional scene from the Egyptian book of the dead. It is judgement day -- Egyptian style. I have a similar piece from the Smithsonian magazine, the original of which is in the British Museum.

The Egyptians were much concerned with the afterlife, and the opportunity to eventually live with the gods.

Depicted here is the symbolic test one had to pass to be able to board the solar boat with the sun god, and eventually go on to dwell with the gods.

Look closely and you will see a scale not unlike the scale we see in the hands of blind justice. The officials here have no blindfolds over their eyes. They are closely observing, and you will be observed by others, not unlike jurors sitting in a jury box.

One side of the scale is the human heart, often referred to as the "sinful heart." On the other side of the scale is a feather. The feather symbolises truth and justice.

The test is very simple: if the feather of truth and justice, as lived by you, outweighs your sinful heart, you pass the test and can board the solar boat to travel with the sun god for a year in the nether world, and thereafter you can go dwell with the gods. If your sinful heart outweighs the feather of truth and justice, then your heart is fed to a tripartite god -- the devourer -- one-third crocodile, one-third jackal, and one-third hippo. Cruel perhaps, but not unusual.

Of course, the whole thing is metaphor. In the physical world no feather will ever outweigh a human heart, sinful or not, but the challenge, of course, is the weighing of things which cannot be weighed using an ordinary scale -- sin, truth, justice.

Neither freedom nor the process, which is due, can be purchased off the shelf at the 7-11 and weighed, packaged, and paid for with money or credit card. Neither free speech nor the right to worship as you please is subject to mechanical measurement. Yet all are measured in our human institution -- the courts -- by human beings, not by machines with a million circuits on a chip the size of a large gnat's eye.

If we could measure such things with an ordinary scale, or remove them to binary code, there would be no need for judgement.

Yet the miracle of the court system, lighted by the lamp of experience, is the weighing of such matters in the exercise of human judgement, where context is valued, where individuality is noted, and where method and rationality are used to produce a result which is accepted and abided by most. It is the prime form of alternative dispute resolution -- peaceful in nature, and a wonderful substitute for settling our differences in the gutter, or by force of arms. How fortunate we are.

How much could we all benefit from having such means available at the international level to settle disputes? At this point, we can only imagine.

The computer and its chip are creatures of the physical universe. It has no moral sense. It is indifferent.

It is a creature of previously determined categories. You have five choices, or six, or seven, and that is it.

Often similar things are bunched into one category pretending that they are identical. They are treated as if they are identical, and eventually, in our laziness or in our apathy, we regard them as identical. We forget the differences. They are similar, but they are not identical.

Phyllis McGinley, a prize-winning Utah poet, in her poem "In praise of diversity" has these lines:

Recalling then what surely was The earliest bounty of creation: That not a blade among the grass But flaunts its difference with elation, let us devoutly take no blame If similar does not mean the same.

Order is found in the similarities, but justice is found in the differences. One of the common clichés used by motivational speakers, or management gurus, is the admonition to think "out of the box" -- a suggestion that we depart from our usual habits of thought.

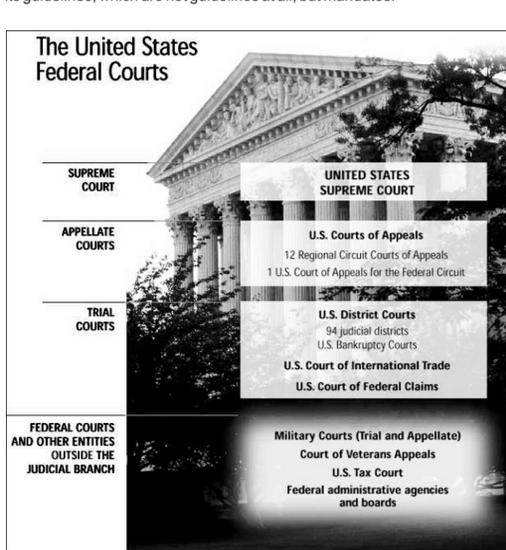
I have a different suggestion: I suggest you examine closely those similar things which have been placed in the computer category, the electronic box, the preprogrammed grouping, and "think in the box". Note the differences. Do not rely on someone else's assumptions as to identify when we are dealing only with similarity.

The most important example that I know of in the social realm of mechanical thinking, pretending an exactitude that does not exist, is in the area of criminal sentencing. In its search for equality, the Congress has institutionalised inequality. Since 1987, sentencing for the most part has become a

mechanical exercise, and because of its mechanical nature, has vested the real power to sentence in the hands of the United States Attorney with his charging power, coupled with a predetermined outcome.

This example is of great importance to those who never are involved in the criminal process, because it is a wonderful example of how governmental power can be mechanised and dehumanised. That kind of mechanistic thought (or absence of thought) can creep into the civil field as well, indeed, the whole process of dispute resolution.

In criminal sentencing, where we used to sentence human beings with special problems, and special needs and capacities, and history, and possibilities, we as a practical matter, sentence categories. To do so is painful where the judgement call has already been made by Congress in minimum mandatory sentences, or by its surrogate, the sentencing commission and its guidelines, which are not guidelines at all, but mandates.



The process is irrational and backwards. It is as mechanical as talking to a pre-programmed computer chip. The answers are limited in advance and by design.

It is imperative that Congress revisit this flawed social experiment, note the burgeoning and ageing prison population, and the non-violent nature of the crimes of many inside. It is one of the ironies of life that there are grants to states to set up drug courts and treatment programmes -- federal money -- when such an option is unavailable to a federal court to engage in the same kind of treatment vs. incarceration. We often, under guidelines, send young people to prison when we ought to be sentencing them to a hospital for medical care and treatment.

In the field of sentencing, it is almost like pressing one for thinking and finding that pre-thinking is all that is available, that compassion is not available at all, and that local hands-on judgement is not wanted.

There is a wonderful story told first by President Eisenhower. The wise men of the world were called into conference to formulate and submit questions to Univac, then the largest computer in the world. They finally got to the most fundamental question: "is there a god?" Back came the answer in the speed of light. "There is now." At that time there was no intel inside.

Where do people go then?

Many thanks for an announcement on your esteemed daily on Sunday, March 17, 2002 regarding Star Law Network (SLN), you have invited articles, features, critiques, letters, reviews, reports from the readers of the Daily Star on law, legal education, legal system, legal decisions, law enforcement, human rights trends etc. Currently, every morning we have some stories on the newspapers about human rights violation. It rose after October 01, 2001 election when BNP led alliance came to power. If you want to keep your position independent, you must confess that the number of human rights violation horribly increased. I do not think, it is necessary to rewrite those stories again because The Daily Star had done enough on the issue honestly. When an elected government disheartened its people imposing misrule, giving support and shelter to the extortionists, rapists, killers and extremists government must be despot-seemed to be tyrant. Political cadres, some grotesque, and atrocious politicians captured all the key points of our state power. Opposition political leaders, noted personalities often barred from getting equal justice. Judiciary often fail to provide adequate remedy for various practical reasons. Where do people go then? In this panic situation, your offer to the readers will be needful to all.



Abdur Razzaque Mreedha Barguna Sadar, Barguna

LAWSCOPE

World Intellectual Property Day 'Encouraging Creativity'

April 26 is World Intellectual Property Day, an opportunity to highlight the significance of creativity and innovation in people's daily lives and in the betterment of society. To mark the occasion, WIPO Director General Dr. Kamil Idris issued the following message:

"Encouraging Creativity", the theme of this year's World Intellectual Property Day, springs from the World Intellectual Property Organization's conviction that human inventiveness, harnessed by the intellectual property system, is key to generating wealth, raising living standards and enriching our global cultural heritage.

The ability to generate original and useful ideas and imagine a better future has fuelled human progress since the beginning of time, generating a stream of life-enhancing breakthroughs in areas such as environmental protection, food security and healthcare, and a richer choice of music, films, and books.

WIPO is committed to the development of a universal culture of creativity, in which the intellectual property system is widely used to strengthen economic performance and enhance wealth creation for the betterment of all. The components of the intellectual property system such as patents, trademarks, and copyright are powerful tools to capture the value of creativity and knowledge to promote economic and cultural development.

It is our mission at WIPO to encourage use of this system to realize the creative potential that lies in us all. This will help make this world a better place for current and future generations.

I have lived long enough to have worked under the present system and its predecessor. In my opinion, the paper-shuffling has burgeoned, the personnel has increased, the cost has gone up, and yet the product is no better, and in many instances, far worse than what existed 14 years ago. What used to take two weeks, now takes ten. The federal court study commission -- Rex Lee was a member -- said to do away with minimum mandatory sentences. The Congress added some more. Even the sentencing commission said to do away with them. The Congress added some more.

I have tried to distinguish mechanical process from human thought, mechanical results from human results. I have tried to point out that some things cannot be measured with an ordinary scale. A favourite essayist, Sidney J Harris, once said about not just law, but humanities on a broader scale:

The humanities are not "superior" to technical studies because they are more ancient or more "cultural" or more intellectual; these would be poor, and snobbish, reasons for granting them any sort of priority.

They are superior because they expand the imagination, enlarge the personality, enable us to become something different and better than what we were before. Learning a chemical formula does not make a man different; reading Donne's sermons can change his whole life drastically.

We indulge in a form of social deception when we apply numbers to things, which cannot be numbered, and add up the numbers, and pretend we have accomplished something. It is a modern form of double-talk. We have merely fortified our own illusions.

Our experience these past two hundred years merely points out what we have known for at least thirty-five hundred years. The Egyptian metaphor is very meaningful, fortified by an improving court system, and the reservoir of experience upon which it rests. It appears to me that in this computer age there is a subtle change in the manner in which we think and act. We forget that the computer is just a tool. It is supposed to help -- not substitute for thought. It is completely indifferent to compassion. It has no moral sense. It has no sense of fairness. It can add up figures, but cannot evaluate the assumptions for which the figures stand. Its judgement is no judgement at all. There is no algorithm for human judgement.

Press one. Press two. Press three. Contexts are dynamic. Human beings are infinitely variable. Differences do make a difference. Categories are suspect. Spell checkers are no substitute for proofing, as every principal and principle will tell you.

I started with my conversation with a computer chip. I have tried to point out there are some things in the social realm that are of monumental importance that cannot be weighed or measured using conventional scales, sinful hearts or feathers of truth and justice, for example, and that the assignment of numbers to such is inherently inexact and ignores differences that exist.

Have pointed out the danger of letting a machine do your thinking for you when it is plain it can calculate, but it cannot think.

The world does not stop when the lights go out and the computers are down. This is true particularly in dealing with how we treat one another. As a current horrible example, I have pointed out the dangers and defects in applying the computer mode, the mechanical mode of thought in federal sentencing.

Thankfully we have not completely become the prisoner of a mechanical system where blind justice is deaf and dumb as well. Loud sounds the cry of "the prisoner" in the science fiction show of the same name, who shouts, "I am not a number. I am a free man."

If not one for thought, two for compassion, three for judgement, what do you press? You press nothing, but you tap into the reservoir of human experience, and what we have learned and continue to learn as to how we are to treat one another. After all, the federal court system is a very human institution. When you call for help, you get live operator.

One last observation -- I was told to say something about ethics. I have. I will. "We leave our moral fingerprints on everything we touch."

Bruce S. Jenkins is US Senior District Judge, District of Utah. He delivered the speech to the Federal Bar Association Seminar, Salt Lake City, Utah on October 12, 2001