

Cultural Arguments Against Offensive Speech in Malaysia: Debates Between Liberalism and Asian Values on Pornography and Hate Speech

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Abstract This article is about analysing two issues of pornography and hate speech in the context of political theory and Malaysian politics. This article examines both issues from liberals arguments and it shows that although liberalism supports the right for free speech, since the 1970s many liberals feel that pornography and hate speech should not be part of free speech doctrine because both are not contributing for the public good in democratic system and they are also detrimental to the society. By using the cultural arguments of Asian values, Malaysia totally rejects these practices because they are not suitable in a cultural and religious conscious Malaysian multiracial society. Although many are sceptic about the use of Asian values for the rejection and the uses of hate speech by people including the government, opposition and NGOs for political gain, in principle, Malaysians are in consensus of rejecting both issues for the good of society.

Keywords: Malaysia, pornography, hate speech, liberalism, freedom of speech, Asian values

1. Introduction

These two months, November 2007 and January 2008, have shocked the Malaysian public with two high profile events which related to the issues of pornography and hate speech. On the eve of New Year, two DVDs were distributed anonymously in several towns such as Muar and Batu Pahat in Johor showing Dr. Chua Soi Lek, Malaysian Health Minister, having sex with a young woman. On 1 January 2008, Chua admitted that he was the person featured in the sex DVDs. He claimed of no involvement in the filming and producing of the DVDs. However, on 2 January 2008, Chua announced of his resignation from the government including as the Health Minister, Member of Parliament for Labis, and Vice President of Malaysian Chinese Association (MCA) (The Star Online, 2008). Although this was a political scandal, distributing the DVDs to the public and the pornographic content of it were totally against Malaysian laws such as the Printing Presses and Publications Act, Penal Code and Broadcasting Act, and taboo to most of Malaysian society who are strong culturally and religiously against this type of misbehave or immoral practice.

Meanwhile one month earlier, Hindu Rights Action Force (HINDRAF), a coalition of 30 Hindu non-governmental organisations (NGOs) committed to the preservation of Hindu community rights and heritage, has organised a rally turned riot on Sunday, 25 November 2007 to submit the petition at the British High Commission. The group has led agitations against what they see as an “unofficial policy of temple demolition” and concerns about the steady encroachment of shariah-based law. They also accused of the United Malays National Organisations (UMNO)-led government of marginalised the ethnic Indian and run a policy of ethnic cleansing (Chandra Muzaffar, 2007, p. 53). According to Chandra Muzaffar (2007, p. 53), the statement about ethnic cleansing is dangerous and utterly a reckless and scurrilous allegation. It is a clear example of hate speech which have hurt and angered many Malaysians especially the Malays. Chandra argues that if the government pursued a goal as diabolical as ethnic cleansing, would the principal language of the Indian Malaysian community, namely Tamil, be a medium of

instruction in the government managed national primary school. The illegal temple, which was built in private area, was not the only place of worship that was brought down; an illegal *surau* (small Muslim place for worship) was also demolished. In most instances, when temples or other places of worship are forced to yield to development projects, alternative sites are made available. It is obvious that there is no ethnic cleansing in Malaysia like what was happened in Bosnia Herzegovina and Rwanda, however, the provocative racial hatred statement by HINDRAF could be easily used by bigots and troublemakers to justify an attack on the Indian community. Many worry about the response by other ethnics toward people or ethnic of the people who made the statement. This makes hate speech so dangerous to be permitted in a multiethnic country like Malaysia.

Both cases of pornography and hate speech are the latest edition of several similar or slightly similar cases in Malaysia that could tarnish and harm the society. Therefore, the purpose of this article is not directly to discuss about those two cases or other cases, but is to analyse pornography and hate speech thoroughly from the perspective of political theory especially from the view of liberalism. This is because there are split between liberals regarding the protection of pornography and hate speech from any restrictions. Some extreme liberals argue that pornography and hate speech are two important components of the doctrine of free speech which is refuted by the more moderate liberals who believe pornography and hate speech are degrading the society. This article will also explore the cultural debate in Malaysia with relation to those two issues. This debate examines the cultural argument of Asian values embraced by Malaysian society in forbidding the practice of pornography and hate speech, and the rejection of Malaysian society toward the concept of unfettered freedom of speech.

2. War Within Liberalism

At its most extreme, liberalism means no control on freedom. Supporters of maximal free speech are inclined to claim that a society will be both more stable and freer in the long run if open discussion prevails. Rodney A. Smolla (1992, pp. 12-17) argues that if societies are not to be undermined by festering tensions, there must be “safety valves” through which the citizens may let off steam. Openness fosters resilience; peaceful protest displaces more violence than it triggers; free debate dissipates more hate than it stirs. Defining rights as individual and absolute, liberals recognise that there will be abuses in the practice of free speech but are willing to pay that price rather than have government set the boundaries. They argue that to establish permissible limits would ultimately lead to a society unable to decide important question for itself and thus easy prey for the demagogue or a manipulative government (Stevens, 1982, p. 14).

In recent years, according to Owen Fiss (1996, p. 3), liberals have also been at war with themselves. For some time, freedom of speech has held them together, but now it is a source of division and conflict. Liberals have divided over the effort to establish a free speech doctrine. Two areas of conflict have been pornography and hate speech.

3. Pornography

During the late 1950s and 1960s in the US, the Supreme Court fashioned a constitutional definition of “obscenity” in order to place limits on state regulation of sexually explicit material. Only books, magazines, and films that met this narrow definition could be proscribed. Fiss argues that while conservatives fought for the right of the state to protect traditional sexual mores and decried the Supreme Court’s stance, liberals uniformly embraced the effort to curb the censorship of pornography and viewed the sexual politics of the late 1960s as an important source of personal freedom and moral autonomy.

The term “moral autonomy”, frequently used by those who defend freedom of speech, is heavily influenced by Kantian accounts of autonomy. This argument suggests that people are

capable of arriving at their own moral convictions but not at their own theories of physics or medicine where they must rely on the opinions of experts. It is assumed that the wish to restrict speech comes from a desire to prevent moral harm (Brison, 1998, p. 323). Ronald Dworkin (1985), in his defence of the right to pornography, appeals to a right to autonomy which he terms as a “right to moral independence”. He writes:

People have the right not to suffer disadvantage in the distribution of social goods and opportunities, including disadvantage in the liberties permitted to them by the criminal law, just on the ground that their officials or fellow-citizens think that their opinions about the right way for them to lead their own lives are ignoble or wrong. I shall call this...the right to moral independence...if someone has a right to moral independence, this means that it is...wrong for officials to act in violation of that right, even if they (correctly) believe that the community as a whole would be better off if they did. (Dworkin, 1985, pp. 353-372)

Dworkin holds the view that to restrict people’s speech or to restrict their access to other’s speech out of contempt for their way of life or their view of the good is a violation of their right to moral independence or autonomy. In agreement with Dworkin, David Richards asserts, in an article defending the right to pornography, that freedom of speech “supports a mature individual’s sovereign autonomy in deciding how to communicate with others...In so doing, it nurtures and sustains the self-respect of the mature person. Further, freedom of expression protects the interest of the mature individual, with developed capacities of rational choice, in deciding whether to be an audience to a communication and in weighing the communication according to his own rational vision of life...The value of free speech, in this view, rests on its deep relation to self-respect arising from autonomous self-determination without which the life of the spirit is meagre and slavish.” (Richards, 1974, pp. 45-91)

During the late 1970s and early 1980s, however, feminists – long a vital component of the liberal coalition – launched a new campaign against pornography, and as a result this area of the law became another contested domain of liberalism. The new campaign against pornography differed from those of the past in that the proposed regulation was intended not to preserve traditional mores concerning sexuality but rather to enhance equality for women. A number of the leaders of the feminist movement, for example Andrea Dworkin and Catharine MacKinnon, claimed that pornography eroticises the domination of women and transforms women into sexual objects to be used by men and thus is partially responsible for their subordination in domains both private and public (Fiss, 1996, p. 3). Although autonomy theorists are generally opposed to restrictions on pornography, it is plausible to argue that such speech succeeds in presenting harmful actions, such as rape, in a favourable light in ways that bypass an individual’s deliberative or cognitive capacities. Pornography can provoke our deepest and unarticulated prejudices and we can find ourselves aroused by pornographic representations, without having fully contemplated the meaning of such representations. MacKinnon (1987, p. 164) even claims that pornography should be understood as part of a practice of sex discrimination, and therefore deserves no legal protection because it is incompatible with gender equality. Laws to control speech that affect people in these ways would not violate people’s autonomy because, the claim is, the influence they have is not rationally mediated. Hence, if autonomy theorists want to defend the protection of pornography, they will have to appeal to something other than people’s autonomy (Dwyer, 2001, pp. 1-18).

4. Hate Speech

Besides, a similar concern about the impact that public utterances may have upon the social status of disadvantaged groups has recently led to a revival of interest in regulation of hate

speech, though the psychological dynamic by which that speech inflicts its harm differs from that of pornography and the group allegedly victimised is not primarily women but racial and religious minorities. As with pornography, the question posed is whether the regulation of hate speech is consistent with, or even required by, an acceptable liberal principle of freedom of speech. On this issue, liberals once again find themselves drawn into sharp combat.

Hate speech can be defined as insults and characterisations that are directed against an individual's or a group's race, religion, ethnic origin, or gender, which may incite violence, hatred or discrimination (Rud and Sexton, 1999, p. 1). In the United States (US), hate speech is a broad term that may include a great variety of expression, but according to *Nelson v. Streeter* 1994, it generally refers to words or symbols that are "offensive, hurtful, and wounding" and are directed at racial or ethnic characteristics, gender, religious affiliation, or sexual preference (Trager and Dickerson, 1999, p. 124). The US courts usually consider hate speech part of the "rough and tumble" of discourse that is part of a democratic and open society. On the contrary, some contend that hate speech is deliberately hurtful, morally no better than physical aggression, and should not be permitted in civilised societies. Hate speech is a form of speech that goes to the core issues in society, for example, racism, homophobia, and women's rights. In many countries including Canada, France, the Netherlands, and Germany, as well as Malaysia, it is not protected. In the past ten years, too, there has been a movement in the US to have hate speech removed from its place at the core of protected speech, arguing that it is dangerous and damages individuals and society. Many support the view that hate speech may be legitimately restricted because it is not essential to democracy and indeed, it often undermines the equal respect that is essential to democracy as well as causing other social harms. For instance, it encourages feelings of inferiority, destroys self-esteem as well as personal security and emotion (Matsuda *et al.*, 1993). Thus, a number of minority and female writers argue that the US approach to hate speech is inadequate and that it should be subject to criminal or civil penalties³.

Several theorists criticise the proposal to restrict hate speech, primarily for two reasons. First, there is an idea that speech should be allowed and tested by the people without restriction. One leading supporter of this idea is Henry Louis Gates (1993, pp. 37-38), who decries the effort of critical ethnic theorists who support the punishment of those who engage in hate speech. He claims that the theory behind hate speech codes – if you banish the speech, you banish the hate – is not only simplistic but also unrealistic. Equality, justice, and human dignity, if allowed to remain unchallenged and untested by racists and bigots of every stripe, will not prosper but become Mill's "dead dogma". Gates says that American hate speech codes, which target vulgar language and epithets, do nothing to halt carefully worded bigotry⁴. Gerald Gunter (1994, p. 76) agrees with Gates and argues that opinion expressed in debates and arguments about a wide range of political and social issues should not be suppressed simply because of disagreement with the content or form of the expression. He stresses that speech should not and cannot be banned simply because it is "offensive" to substantial parts of, or a majority of, a community. The proper answer to bad speech is usually more and better speech – not new laws, litigation and repression⁵.

Second, there is also an argument that the restriction of hate speech will harm the democratic system and public discourse. Robert Post (1991, pp. 267-328) argues that the banning of hate speech would sacrifice other important values served by the freedom of speech such as exchange of ideas and open debate. Democracy serves the value of self-determination by establishing a communicative structure within which the varying perspectives of individuals can be reconciled through reason. If the state were to forbid the expression of particular ideas, the government would become, with respect to individuals holding those ideas, suppressive and non-democratic. Although Post argues that all opinions should be tolerated so long as their protagonists urge their acceptance by legal methods, the notion that racist ideas ought to be forbidden within public discourse because of the offensiveness is thus fundamentally irreconcilable with the rationale for freedom of speech. He thinks that the case has not yet been

made for circumscribing public discourse to prevent the kind of pre-emptive silencing that occurs when members of victim groups experience “fear, rage, (and) shock”. If the empirical claim of systematic pre-emptive silencing is accepted, in his view, it is directly the result of the social and structural conditions of racism, rather than of specifically racist speech. This is the logic of the argument from pre-emptive silencing does not impeach the necessity of preserving the free speech of ideas, public discourse could at most be regulated in a largely symbolic manner so as to purge it of outrageous racist epithets and names. Post concludes that it is highly implausible to claim that such symbolic regulation will eliminate the pre-emptive silencing that is said to justify restraints on public discourse, and deliberative self-government is not compatible with such restriction on free speech (Arthur, 1997, pp. 231-232).

However, the arguments of Gates, Gunter and Post for allowing the expression of hate speech are rather dangerous. Joel Feinberg (1984) argues that when fighting words are used to provoke people who are legally prevented from using a fighting response, the offence is profound enough to allow for prohibition. However, Feinberg also suggests that a variety of factors need to be taken into account when deciding whether speech can be limited by the offence principle. These include the extent, duration and social value of the speech, the ease with which it can be avoided, the motives of the speaker, the number of people offended, the intensity of the offence, and the general interest of the community at large. In a multicultural and multiracial society where the risk of violence and disorder is real and can undermine the nation’s political stability, the restriction of hate speech should be allowed. Speech influences action and hate speech can spark aggression and violent behaviour. A society that wants to encourage tolerance between races and ethnic groups must choose a policy that creates political stability and not one that promotes enmity, and hostility even in the name of marketplace of ideas. The idea of associating hate speech with democracy and self-government is also unconvincing, as a democratic political system can still flourish in the absence of hate speech. This is clear from the numerous democracies where hate speech is restricted.

Public hate speech can be argued to violate the rights of some members of the community itself. As we have seen, political discourse is often understood on Alexander Meiklejohn’s (1965) model of the town meeting. Free speech is essential to reach informed decisions on matters of common concern. At the same time, Meiklejohn stresses that speakers can be required to observe certain rules of order. These rules do not violate freedom of speech, but rather make free deliberation possible. In particular, he observes that if a speaker is abusive or in other ways threatens to defeat the purpose of the meeting, he may be and should be declared out of order. It would seem to follow from this view that public hate speech should not be protected under the constitution. Like abusive speech in a town meeting, hate speech violates the integrity of the deliberative process by undermining the possibility of reasoned discourse. As Meiklejohn observes, such discourse cannot take place except on the basis of mutual respect among citizens who regard one another as capable of engaging in rational self-government. Of course, public debate in a large modern society differs in many ways from Meiklejohn’s town meeting, and a great deal of speech that would be improper in that setting is considered acceptable within the polity at large. However, Meiklejohn’s basic insight is valid. Democratic self-government is impossible in the absence of a minimal degree of civility and mutual respect among citizens. Although that minimum standard will differ depending on the nature, size, customs, and values of each society, its members must observe some standard or they cease to constitute a democratic community. Thus, however minimal our society’s version of that standard is taken to be, it will be violated by speech that denies recognition to others on the basis of race, ethnicity, gender, or religion (Heyman, 1999, pp. 1380-1383).

5. Malaysia’s Cultural Arguments: The Asian Values

The theory and practice of human rights has emerged in the context of particular social,

economic, cultural and political conditions. The circumstances that prompted the institutionalisation of human rights in the West do not exist in Asia, but it would be a mistake to assume that nothing of theoretical significance has emerged from Asia. The debate on Asian values has prompted critical intellectuals in the region to reflect on how they can locate themselves in a debate on human rights and democracy in which they had not previously played a substantial part. Neither wholly rejecting nor wholly endorsing the values and practices ordinarily realised through a liberal democratic political regime, these intellectuals are drawing on their own cultural traditions and exploring areas of commonality and difference with the West. Though often less provocative than the views of their governments, in the sense that few argue for the wholesale rejection of Western-style liberal democracy, these unofficial Asian viewpoints may offer more considered and less politically motivated contributions to the debate.

As an advocate of “Asian values”, Mahathir Mohamad, former Prime Minister of Malaysia, explains that the Malaysian perspective of “Asian values” is based on Malay-Islamic culture and should be protected against absorption by Western values. He urges the three most basic elements of “Malayness” – feudalism, Islam, and *adat* (traditional customs) as he saw it in 1970 in his book, *The Malay Dilemma*, should all be classed as features to be merely accepted as realities and perhaps adapted to modern needs (Barr, 2002, p. 42). Mahathir (Mahathir and Ishihara, 1995, pp. 71-86) rejects the Western liberal notion of unfettered free speech which, he believes, can corrupt Malaysian culture and religious beliefs. Concerned about the influence of Western individualism, and the future of Asian values and traditions, Mahathir launched the “Look East” policy in 1982 as a broader campaign against “Western values”. Mahathir told the 1982 UMNO General Assembly to “Look East” to emulate the diligence found there and “to rid ourselves of the Western values that we have absorbed” (Khoo, 1995, p. 69).

It has been argued that although the Malays are facing rapid development and modernisation, especially under Mahathir’s, and his successor, Abdullah Ahmad Badawi’s leaderships, they are still embracing and prioritising certain values. The Malay values of patience, respect and togetherness are applied through people’s tactful actions in everyday social interactions, but more importantly, they are also achieved through linguistic indirectness, hedges and other “positive politeness strategies”. According to Lim Beng Soon, by avoiding disagreements, criticisms, complaints and any other face-threatening acts (FTAs) that might reduce the desirability of the addressee and using hedges or even white lies to avoid conflicts, one shows forbearance, achieves harmony and demonstrates togetherness, thus meeting the essential requirement of Malay etiquette (Yuan, 2003, p. 1). For example, people are warned to guard against speaking in a direct manner as it may lead to serious consequences: “*berapa tajam pisau parang, tajam lagi lidah manusia*” – “knives and machetes are not as sharp as tongues”. Malay culture has significant implications for negotiation processes and outcomes. In negotiation, the Malays’ compromising and obliging conflict-handling styles are probably manifestations of their collective nature, which prioritises group over personal interests. In compromising and obliging styles, negotiators are more concerned with maintaining relationship and safeguarding their partner’s feeling, hence the seemingly perceived “weak-styles” in goal-oriented negotiation. To the Malays, even though achieving their goals in a negotiation is important, their values in preserving harmony and respect for elders take precedence in the negotiation process (Lailawati, 2005, p. 8).

Religion is an integral component of cultural values, although in Southeast Asia its influence is similarly contested. Ismail Ibrahim (2001) admits that as long as Asian values or other values are not contradicted by Islamic teachings and values, those values should be accepted in Malaysian society, e.g. respect to elderly people and good work ethics. He also stresses that all societies have their own measurements of human rights, which are based on local values, religious practices and traditions. Freedom of speech should be used in as appropriate a manner as possible without undermining sensitive issues such as national security, religious beliefs and multiracial harmony. Some Southeast Asian leaders have argued that the aggressive

separation of church and state in the West – in effect limiting religion to the private sphere – and the consequent process of secularisation have contributed to a moral void in public life and accentuated the negative impulses of individualism (Inoguchi and Newman, 1997, p. 1-9). In Malaysia, despite the obvious diversity of religions – chiefly Islam, Buddhism, Hinduism and Christianity – and a similar process of secularisation, it has been argued that religion still plays an important part in everyday life and contributes to group identity and orientation. In fact, according to Joseph Lo, most East and Southeast Asians would prefer some constraints of free speech, perhaps in the form of libel laws to protect cultures from various forms of defamation and hate speech (Bell, 2000, p. 9).

However, many writers criticise the argument of “Asian values” from the context of culture. Wan A. Manan (1999, p. 359-381) thinks that the discourse on “Asian values” is basically a cultural construction aimed at maintaining certain practices that came under threat from globalisation and democratisation. Underlying current global transformations are forces that tend to generate fundamental changes within society. These include issues relating to human rights, civil society, gender consciousness and democratic reforms. However, the cultural position that advocates the division between the “West” and “East” is misleading because these are not two big permanent static blocks. The dynamic relationships between cultures in the age of global interactions keep them in a constant state of flux. In any case, proponents of “Asian values” are not alone in their cultural claim because Western scholars such as Huntington consider their version of democracy and human rights as the only valid and objective one (Huntington, 1993, p. 22).

The most disturbing use, or rather abuse, of the cultural argument is that it is often a central plank in the narrative of those governments who actively oppose the application of international human rights standards in their countries in order to buttress their own power. The presumed “tolerance” and “pluralism” of culture seems to underwrite a conservative political agenda: the tolerance and perhaps even maintenance of highly not egalitarian and repressive political systems, while ironically energies are devoted to the “sentimental education” of ruthless and cruel dictators (e.g., Suharto of Indonesia and Marcos of the Philippine) and the predominantly illiterate and subjugated masses of this world. Cultural particularism is often “one of the most useful ideologies” in mounting a defence and bringing about international acquiescence in state repression (Wilson, 1997, p. 9).

The concept of human rights, therefore, relates to the dignity of the human individual. Some critics think that this philosophy is misunderstood by some Asian political leaders, who conflate the anti-social behaviour of some individuals in the West with the individualism of the theory of human rights (Fareed, 1994, p. 111). A common source of this misunderstanding is the relationship between rights and duties. It is said that “Asian” morality is based on duties, while “Western” morality is based on rights (Ghai, 1995, p. 60). Michael Freeman (1996, p. 361) argues that this misstates the logic of rights. He explains that Locke (1689/1993), for example, held that everyone has the duty to respect the life and dignity of others. Rational individuals consent to live under government on condition that it also implements the same duties. Governments that violate the rights of their citizens deserve condemnation as tyrannies. So, similarly, societies that impose imperial rule over other peoples without their consent are guilty of violating the rights of those people. The concept of human rights justifies democracy and condemns tyranny and imperialism.

In any case, there are no grounds for believing that norms originating in one place should be inherently unsuitable for solving problems more generally. Such a belief commits the “genetic fallacy”, in that it assumes that a norm is suitable only to the culture of its origin. However, the origin of an idea in one culture does not entail its unsuitability to another culture. If, for example, there are good reasons for protecting the free speech of Asian people, free speech should be respected, no matter whether the idea of free speech originated in the West or Asia, or how long it has had currency. In fact, Asian countries may have now entered into historical circumstances

where the affirmation and protection of free speech is not only possible but also desirable (Xiaorong, 2001, pp. 42-43). Therefore, some of the criticisms of the “Asian values” position carry the further implication that the stress on “Asian culture” is found only at the elite, leadership level. The wider population in Malaysia, Singapore and the other countries of Asia, it seems to be suggested, hold values that are not radically different from those usually associated with liberal democracy (Kahn, 1989, pp. 5-29).

In response to the criticism, many writers argue that culture, indeed, plays a significant role in everyday life of Asian society. Despite these question marks over the practice of cultural analysis, however, a number of recent studies underline the danger of dismissing entirely the role of different cultural perspectives in analysing processes of change and interaction within the Asian region. In a survey analysis, Joel Kahn (1997, pp. 29-30) has reported on one hundred and twenty interviews with “middle class Malays” he carried out from 1992-1994. He “found that almost all respondents articulated some form of the Asian values argument”. They stressed concerns about the “threat posed to Malay culture by modernisation” and criticised the West for its “lack of family values, individualism and selfishness, a lack of cultural values, permissiveness, secularisation and uncaring”. Although the phrase “Asian values” possesses real inadequacies as a descriptive expression, it also argues that we cannot proceed from this point to the further assumption that there is no need to examine the substantial range of cultural perspectives and values which influence behaviour within and between Asian societies. Mahathir and Lee Kuan Yew, of course, are well aware of the political usefulness of “Asian values”, but the evidence clearly demonstrates that these Southeast Asian leaders do not by any means construct their ideological packages in a cultural vacuum.

6. Freedom of Speech is not Absolute: There is no Such Thing as Pornography and Hate Speech in Malaysia

Regarding the issue of free speech, I am persuaded by Li-ann Thio (1999, pp. 1-86) who argues that a distinction should be drawn between contested human rights norms and those norms upon which all agree, such as the right to free speech. The controversy surrounding the latter category is one with respect to the scope of application, not the substance of the value. The right of free speech, which underpins a democratic society, is, for example, formally guaranteed in the Malaysian Federal Constitution and as well as the US Bill of Rights. The controversy concerns the degree of liberty that should be permitted and the permissible grounds for derogation. This can have extensive ramifications in the practical realm, as illustrated by the following quote from a scholar, Shad Faruqi:

Admittedly, the rugged individualism, un-inhibitedness and licentiousness of what is still “the wild, wild West” is contrary to Asian tradition. Our attitudes to nation, religion and culture, race, family and community are reverential. We draw a line between liberty and license. We do not deem it a matter of constitutional principle that there should be a right to desecrate our national flag, to blaspheme our religions and to walk freely into shops to buy murderous weapons. We view a free-wheeling sexual lifestyle, drug taking and alcohol addiction with revulsion. With the bulk of us, pornography is not part of free speech, abortion on demand is not part of personal liberty and homosexuality is not part of freedom of choice. We acknowledge that rights and responsibilities must go hand-in-hand and that freedom is not an end in itself. (Shad, 1996, p. 17)

Joseph Chan (2000, pp. 59-74) has identified approaches – which he calls “thin” accounts of human rights – as a cause of the disjunction between Western liberalism and the social conservatism of the “Asian values” discourse. He regards such declaratory accounts of human rights as nothing more than “shorthand” for the results of bundles of sophisticated and

contingent arguments. The right to freedom of speech, for instance, is a shorthand that describes several different rights, each with its own rationale; the rights to commercial speech, political speech, artistic expression, and religious expression. Shorthand can be useful for facilitating discussion and for coining a slogan, but the slogan should never be mistaken for the argument. Hence Chan argues that:

...the general right to freedom of speech as such is a generalisation from these independently justified specific rights. Thus to decide whether cigarette advertising should be regulated, it requires substantive reasoning from square one – we need to discuss what sorts of interests and what parties are relevant and how those interests should be balanced. (Chan, 2000, p. 65)

The same caveats apply to the application of the “freedom of speech” mantra to pornography, expressions of racial hatred, and sexist language, not to mention issues to which we barely give second thought, such as a child’s “freedom of speech” vis-à-vis a parent’s or teacher’s authority. It is because we have mistaken imprecise shorthand generalisations for the real thing that so many supposedly fundamental and universal human rights commonly conflict with other fundamental and universal human rights (Barr, 2002, pp. 188-189). For example, consider the right to freedom of speech in the case of pornography. Pornography has been more heavily censored in some Asian countries, e.g. Singapore, Malaysia, and Indonesia, than in most Western ones. Does the prohibition of pornography unjustifiably violate freedom of speech? Adopting the three-party analysis of interests mentioned above, some may judge that what is required is a balancing of the interests of the publishers (commercial and ideological interests), the audience/consumers’ interests (in erotic excitement) and third-party, or community, interests. Important disagreements may centre on the third-party interests, some may take the view that the community as a whole has an interest in maintaining its moral standards, and that society’s morals should, therefore, enter into our judgements. However, this view offends many liberals who uphold a particular mid-level principle, namely, that it is not the business of the state to enforce a society’s particular moral ethos. On this view, the maintenance of morals is never a legitimate interest to enter into the balancing calculus. According to Chan (2000, pp. 70-72), those accepting the legitimacy of, for example, the principle of legal moralism would allow society’s morals to be put on the scale; those liberals who are against legal moralism would not. In Malaysia, moralism is parallel with the cultural and religious (Islamic) practices and normally, principles of political morality guide Malaysian society to make this kind of fundamental decision, such as banning pornography. The government has an essential role to represent society’s moralism and act on cultural value and religious belief.

There is strong consensus amongst Malaysians whether they are Malays (or other indigenous tribes), Chinese, or Indians, which rejects materials of a pornographic or sexual nature as immoral and obscene. Pornography is seen as a kind of exploitation as it degrades, endangers, and harms the lives of women. Although many in the business argue that the women’s involvement in pornography is voluntary, many Malaysians believe that there is an element of exploitation by the pornographic industry. Mahathir argues in this context:

...there are limits to freedom, and I believe it is important for every member of a society to know these limits. One good example is pornography. You can have computer animation, which may be ever so creative – and thus should be freely available – but if this “freedom” is used to produce pornographic films that are purveyed to the impressionable young, then the fruits of the freedom should not be accepted and allowed by society. In Malaysia, it is not my impression that business ingenuity or creativity have been stifled by our Malaysian value system which sets clear limits to individual freedom and generally emphasises the community over the individual. To the

contrary, I believe that our value system has been the foundation for our society's stability and prosperity, at least until the economic crisis struck. (Mahathir, 1999, pp. 73-74)

On this matter, the government takes the initiative to protect public morality and the traditional way of life from pornography and sexual exploitation. For instance, in February 2002, the government banned a rerun of the controversial feminist play *The Vagina Monologues*. The play, presented by local performers, and according to the producer of the show, the play contained adult material but was neither vulgar nor obscene. The play was banned because of alleged complaints by members of the public on the vulgar content and title of the play.

Mahathir also attacked Western liberal democracy which often tolerates offensive and hate speech:

Malaysian democracy is not a liberal democracy and not bound to accept every new interpretation of democracy in the West where democratic fanatics have pushed devotion to a pedantic notion of democracy to include the protection of neo-fascists or the empowering of a vocal minority of political activists over the silent majority of ordinary citizens. (Leigh and Lip, 2004, p. 320)

Mahathir's successor, Abdullah Ahmad Badawi, in his first speech to the Parliament on assuming his appointment as the Prime Minister in November 2003, expressed his conviction that democracy is the best system of governance, but:

Democracy does not mean absolute freedom. Issues that inflame religious, racial (ethnic), and cultural sentiments should not be sensationalised, while attempts to undermine national security must be dealt with firmly. (SUARAM, 2004, p. 21)

Abdullah will pledge to ensure ethnic harmony and stability, and continue restricting hate speech that is deemed to be a threat to national security and public order.

Furthermore, K.J. Ratnam (2003, pp. 34-35) rejects the liberal argument that every time a regime embarks on actions that curtail political freedoms it does so without legitimate cause and only for self-interested reasons, or that opponents of governments are themselves always believers in democracy and civil rights. He argues that the importance of social and political stability, especially in multiracial society, is strong enough to justify substantial restrictions on hate speech. With regard to the media, Ratnam (2003, pp. 54-55) urges that editors should disallow the publication of views that inflame ethnic feelings or in other ways undermine the fabric of society, even though the reasons for publishing those views are to honour their commitment to freedom of speech and their opposition to censorship. He concurs with the decision by the editor of a major Malaysian newspaper not to publish letters, reports or articles that incite people to racial hatred.

However, we also have to beware of the government's leaders, members and supporters who use hate speech in strengthening their grip in power and exploiting ethnic issues for political purposes. Sumit K. Mandal (2004, p. 57), for instance, realises this and criticises the Malaysian government's policy on racial hatred, arguing that racialised, and even racist, instruments of state and politics find their place in the public spaces of Malaysia without much sustained and rigorous criticism. Notable examples of racialised language are the primordialist terms "Malay supremacy" (*ketuanan Melayu*) and "newcomer" or "immigrant" (*pendatang*) used by chauvinist elements in the Malay leadership to assert an inherent difference between their "own" and "migrant" others. In recent decades, according to Mandal, these chauvinist terms have come to the fore during elite political crises in order to galvanise groups along racial lines. Hence, when oppositional groups, including NGOs, accuse the state of racist politics, their arguments often run aground and do

not find widespread support. The racialisation of state initiatives like the New Economic Policy (NEP) soon after the watershed of 13 May 1969, have institutionalised race and made it part of an effective political system, thus furthering its unproblematised existence. As a result, according to Mandal, the state may be credited with making colonial era racialisation, with a policy of divide and rule, a post-colonial success.

Anwar Ibrahim also made a same argument and accused the government of appealing to puritanical Muslim sentiment to reinforce support ahead of the vote in the next 12th general election. Commentators in multiracial but Muslim majority Malaysia have sounded alarm over the growing “Islamisation” of the country and the increasing polarisation of the three main ethnic communities. Anwar, speaking in the Institute of Southeast Asian Studies’ Regional Outlook Forum, argued that Malaysia’s problem is not radicalism but the issue of state-sponsored Muslim Puritanism which is more by racist sentiments than religious principles. Anwar said that “for some reason it is the belief of the present administration in Kuala Lumpur that playing the puritanical card would be best bet for the UMNO-dominated ruling coalition to secure electoral success in the coming election...By holding themselves out to be the staunchest defender of Islam, UMNO hope to garner greater support” (Agence France-Press, 2008, p. 1). Clearly, hate speech is not only spoken by bigots and racists, but also sometimes by some people in power who try to achieve their objective of retaining the political power. They will use any mechanism to ensure they get what they want including by using hate speech. Germany’s Nazi in the Holocaust during World War II and Rwanda’s Hutu/Tutsi in Genocide in 1990s proofed that hate speech could be used to achieve certain racist policy of the government. In Malaysian history, the 13th May 1969 racial incident was the obvious example that hate speech had been utilised to gain seats and win constituencies for political power.

Therefore any practices of hate speech should be stopped in order to ensure the real racial harmony and political stability exists in Malaysia. Any disagreements or dissatisfactions should be resolved in civil as manner possible. Proper peaceful dialogues and discussions could be the way in resolving any problems especially with regards to racial issues. In general, Malaysians can accept that the restrictions on pornography and hate speech are for the common good. No such campaign, either by the government, opposition and NGOs, in legalising the pornography and hate speech in Malaysia is a comprehensible proof that Malaysians dislike those kind of speeches or expressions.

7. Conclusions

The liberal argument for free speech is not suitable to be implemented in a multicultural or multiracial society if pornography and hate speech are allowed to be practised and state intervention in maintaining social order is discouraged for the purpose of defending unfettered free speech. Speech such as pornography and hate speech, which certain societies may value as important for individual rights and freedom of choice, are not included under special constitutional protection, especially in Malaysia, because they are not contributing anything to the democratic process and, of course, against cultural values of many societies, thus restricting them cannot be seen as a breach of civil liberties or free speech. The constitutional protected political speech has value for the community as a whole, beyond its value to the speaker, and consequently ought to be specially nurtured. Suppression may be especially justifiable because “evil” speech is not just a private wrong to another individual but a public bad that may lead to harm to the whole community (Mill, 2002; Baker, 1989, p. 35).

There are two reasons why the “Asian values” thesis provides a legitimate basis restricting freedom of speech particularly pornography and hate speech. These are first, to protect cultural identity, and second, to defend national stability. Asian values are the best protection for Malaysian culture from the invasion of negative Western culture. “Asian values” has been used as shield to prevent Western culture from overwhelming Malaysian culture.

Although the Malaysian people do not totally reject all of Western culture and its values, certain practices such as pornography and hate speech are unacceptable to the Malaysian multiracial society. These practices are also unacceptable in the sense that they conflict with the dominant cultural and religious beliefs of Malaysian peoples. Although, many are sceptic about the government intention of promoting Asian values, the use of cultural values in containing pornography and hate speech should be encouraged in order to promote public good in the society.

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