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Opposite Ends: Why the United States and Singapore have Drastically Different Models of Free Speech

ABSTRACT. This article delves into why the United States and Singapore, despite their shared colonial history, democratic institutions, wealth, and global influence, have drastically different free speech models. This paper will look at three points of comparison: historical context, political theory, and evolution of judicial interpretation. By comparing the current events and the prevalent political theories at the time of drafting the Singaporean and American constitutions, this paper seeks to understand why the nations ratified contrasting free speech clauses. However, the Constitution is only as meaningful as the courts interpret it, so this paper also explores how the respective Supreme Courts of Singapore and America have evolved their interpretation of the Constitution to shape their contrasting free speech models. While this paper will not argue which model of free speech is more effective, it will outline the underlying reasons for Singapore and America's drastically different free speech models.

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INTRODUCTION

The constitutions of Singapore and the United States were written on opposite sides of the world, separated by 9,576 miles and 176 years. Although both nations gained independence from the British Empire, there were drastically different historical contexts, political institutions, and popular political philosophies leading up to the drafting of their respective constitutions. As a result, their constitutions have such drastically different free speech clauses that some scholars, such as Scott L. GoodRoad, contend that they are incomparable.[1] The First Amendment of the United States Constitution includes liberal protections of free speech, which scholar Jacob Mchangama declared has "probably never been matched by any other constitutional or legal instrument in the history of mankind."[2] Recently, the First Amendment has protected a wide range of self-expression, including the right to burn an American flag, make false criticisms of public officials, and publish hate speech. On the other end of the spectrum, Singapore has some of the strictest speech restrictions in the world. The government has almost complete control over the radio, TV, and newspaper.[3] Government internet censorship is widespread as it frequently shuts down online independent news sites and social media posts. Dozens of opposition politicians have received bankrupting libel charges for criticizing government officials.[4] Protests as small as a single demonstrator are illegal, and citizens may face jail time for uttering any insensitive comments on race or religion.[5]

Singapore has grown in the past thirty years to become the international hub of Southeast Asia, dubbed the bridge connecting the East to the West. Currently, Singapore joins the United States as one of the wealthiest and most

[1] Scott L. GoodRoad, *The Challenge of Free Speech: Asian Values v. Unfettered Free Speech*, *and Analysis of Singapore and Malaysia in the New Global Order*, 9 Indiana International & Comparative L. REV 259, 270 (1998).

[2] Daniel Gordon, *A New History of Free Speech: An Interview with Jacob Mchangama*, 60 Society (New Brunswick) 11, 11 (2023).

[3] Martin Albrecht Haenig & Xianbai Ji, *A tale of two Southeast Asian states: media governance and authoritarian regimes in Singapore and Vietnam*, 3 Asian Review of Political Economy 1, 8 (2024); *See also* Valentine S. Winslow, *The Constitution of the Republic of Singapore, in* Constitutional Systems in Late Twentieth Century Asia 627, 643 (Lawrence W. Beer ed., 1992)

[4] James Gomez, *Restricting Free Speech: The Impact on Opposition Parties in Singapore*, 23 CBS Open Journals 105, 119 (2006)

[5]Robin Hartanto Honggare, Uncornering Speakers: On Political Speech in Singapore, in the 22 Avery Review 1, 6 (2017)

powerful nations in the world. The United States government maintains a naval base and a significant diplomatic presence in Singapore. Almost every major American corporation and bank has established its Asian headquarters in Singapore. It is home to two American K-12 schools, American clubs, and American clinics that accommodate thousands of Americans living on the island. However, as Singapore has developed and more Westerners come into contact with Singapore's draconian speech restrictions, the Singapore government receives increasingly more criticism for its model of free speech. Western publications such as Freedom House and Human Rights Watch have repeatedly called on the Singapore government to relax and reform its speech restrictions to match those in other liberal democracies.[6]

As the world becomes increasingly more interconnected with widespread access to the internet and more accessible international flights, it is easy to apply a one-size-fits-all policy to constitutional law. Just because a liberal model of free speech is effective in America does not mean the same will be true for Singapore. Without an informed knowledge of the history, political philosophy, and judicial interpretations in Singapore, it is wrong to judge Singapore for its different model of free speech. Without this knowledge, it is difficult to understand why so many Singaporeans would support this restrictive model of free speech, and in some cases, demand it. Scholar Benedict Sheehy argues that Singapore cannot be measured by Western standards of success and instead must be judged on their "own standards of success...of law and order."[7] The author does not seek to defend Singapore's model of free speech in any capacity but rather explain how and why it came to be. To do so, this paper will compare Singapore and American free speech on three axes: historical context, political theory, and evolution of judicial interpretation.

I. HISTORICAL CONTEXT AND POLITICAL THEORY

"Constitutions are products of their nation's history and circumstance"– Valentine S. Winslow

The root of the differing speech models in Singapore and the United States is the differing speech clauses in the national constitutions of Singapore and the

[6] Fathin Ungku, *Human Rights Watch calls on Singapore to relax free speech, assembly laws*, Reuters, Dec. 12, 2017

[7] *See* Benedict Sheehy, *Singapore "Shared Values" and Law: Non East Versus West Constitutional Hermeneutic*, 34 Hong Kong L.J. 67, 81 (2004)

United States. Given that the United States and Singapore constitutions are the "supreme law of the land," all speech legislation in both countries theoretically must be grounded in their respective constitutions. This section will examine the different historical events and influential political theories that encouraged the drafters of the Singaporean and American Constitutions to include drastically different free speech clauses, Article 14 of the Singaporean Constitution, and the First Amendment of the American Constitution.

This section will first argue that the several outbreaks of violent racial riots at the time of Singapore's founding, combined with the popular neo-Confucianism communitarian ideals, encouraged drafters to codify parliament's power to restrict free speech significantly. Next, this paper will argue that widespread distrust in central governments and the influence of enlightenment philosophy, especially Cato's Letters, encouraged the American public to explicitly prohibit the federal government from restricting freedom of speech in the First Amendment. However, this section does not conclusively determine whether historical context or popular political theory had a more significant impact on the drafting of constitutional speech clauses.

A. Singapore

At the fall of World War II, Singapore gained independence from the British Empire, after 144 years of colonial rule. During the war, Singapore endured a brutal occupation by the Japanese military, in which the Japanese murdered over 50,000 ethnic Chinese Singaporeans during their "purification through purge" campaigns.[8] After the war, the British government could no longer afford the high costs of maintaining colonial control over Singapore. Maintaining the military bases alone in Singapore cost 70 million Pounds a year at the time (over 300 million pounds adjusted for inflation).[9] Unlike other British colonies, Singapore did not seek independence and was left unprepared to rule itself without Britain's support. With nearly no natural resources (no fresh water supply), a failing economy, high unemployment, and an acute housing shortage, Singapore lacked the resources necessary for independence.[10] At the time of independence, in 1963, Singapore's

[8] John Kampfner, Freedom for Sale 17 (2010)

[9] Karl Hack, *Defense and Decolonisation in South-East Asia: Britain, Malaya, and Singapore 1941-1967* 285 (2015)

[10] *Id.* at 17-18

population was highly uneducated as the Japanese military murdered many of the nation's professionals including doctors and lawyers. With a significantly reduced British military presence, Singapore was left to defend itself against its larger, more powerful, and politically unstable neighbors, such as Indonesia and Thailand. Located in the center of Southeast Asia,[11] Singapore has one of the most diverse populations in the world.[12] However, due to the large wealth gap between the Chinese and Malay populations,[13] and religious tensions, Singapore constantly faced "intercommunal strife that threatened to escalate."[14]

Singapore joined the Federation of Malaya in 1963 to fill the void left by the British and to quell widespread fear of a communist revolution.[15] However, the union was quickly threatened as economic differences, ideological division, and ethnic tensions accumulated. In the summer of 1964, two waves of racial riots broke out.[16] Moments before the riots, over 20,000 Malays gathered on a field to celebrate the birthday of Prophet Mohamad.[17] At the celebration, several inflammatory leaflets were distributed to Malays by grassroots organizations which encouraged them to "destroy" the "dictatorial Chinese PAP Government led by the wretched Lee Kuan Yew," similar leaflets reminded Singaporean Malays that "If [they] do not oppose the PAP government from now, within 20 years there will be no more Malays in Malaysia and there will be no more Sultans because the PAP government does not want Malay Sultans," other leaflets went as far to declare that Chinese are "panning to kill Malays" leaving Malays with no choice but to "wipe out the Chinese from Singapore soil" in self-protection.[18] Charged by these pamphlets and

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[11] *See* Jaclyn Ling-Chien Neo, *Seditious in Singapore! Free Speech and the Offence of Promoting Ill-Will and Hostility Between Different Racial Groups*, Nat'l Univ. of Sing. (Faculty of Law) 351, 352 (2011)

[12] John Kampfner, Freedom for Sale 16-17 (2010). *See also* Amos Yee, *Free Speech and Maintaining Religious Harmony in Singapore* 225 (2016)

[13] *See* Wan Hussin Zoohri, *Socio-Economic Problems of the Malays in Singapore,* 2 ISEAS Yusof Ishak Inst. 178, 182-187 (1987)

[14] *Id.*

[15] Valentine S. Winslow, *The Constitution of the Republic of Singapore,* in Constitutional Systems in Late Twentieth Century Asia 627, 628 (Lawrence W. Beer ed.,1992)

[16] Adeline Low Hwee Cheng, *The Past in the Present: Memories of the 1964 'Racial Riots' in Singapore*, 29 Asian J. of Soc. Sci. 431, 435 (2001)

[17] Albert Lau, A Moment of Anguish: Singapore in Malaysia and the Politics of Disengagement 161 (1998)

[18] *Id*. at 162 (PAP refers to the People's Action Party, the governing political party in Singapore since 1954)

other inflammatory speeches, violent riots broke out across the country, forcing the government to deploy military battalions and establish a city-wide curfew to curb further rioting.[19] There are disputes over the exact first acts of violence that sparked the riots, some accounts claim that it was Chinese men throwing rocks and bottles at Malays[20] and others depict mobs of Malay men marching through the streets of Singapore attacking innocent Chinese bystanders.[21] Although the police broke up the initial riot, the clash swiftly eroded race relations between Chinese and Malay Singaporeans and encouraged dozens of smaller retaliatory attacks in the following week.[22] Ultimately, the July riot and the subsequent retaliatory attacks resulted in 23 deaths, 454 injuries, and over 3,000 arrests.[23] Two months later, in September, rampages broke out again following the murder of a Malaysian rickshaw driver, forcing the government to deploy the military again and impose a curfew.[24] Although smaller than the July riots, the September riots caused 13 deaths, 106 injuries, and 1,439 arrests.[25] Ultimately, irreconcilable disagreements between the Singapore and Malaysian governments combined with the deadly racial tensions between Malays and Chinese forced Singapore to separate and declare complete independence only two years after joining the federation.[26]

After Singapore gained independence, a second series of highly violent racial riots shook the nation's nascent government, casting waves of fear throughout its citizenry.[27] The infamous Maria Hertogh Riots broke out in 1950 over a highly publicized trial that transferred custody of a young girl from her foster Musilum

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[19] *Id.* at 169 (1998)

[20] *See also* Adeline Low Hwee Cheng, *The Past in the Present: Memories of the 1964 'Racial Riots' in Singapore*, 29 Asian J.l of Soc. Sci. 431, 431 (2001)

[21] Albert Lau, A Moment of Anguish: Singapore in Malaysia and the Politics of Disengagement 166 (1998). *See also* Adeline Low Hwee Cheng, *The Past in the Present: Memories of the 1964 'Racial Riots' in Singapore*, 29 Asian J.of Soc. Sci. 431, 443-444 (2001)

[22] *Id.* at 171

[23] *See Id.* at 175. *See also* Adeline Low Hwee Cheng, *The Past in the Present: Memories of the 1964 'Racial Riots' in Singapore*, 29 Asian J. of Soc. Sci. 431, 431 (2001). *See also* John Kampfner, Freedom for Sale 17 (2010)

[24] *Id.* at 197

[25] *Id.*

[26] Valentine S. Winslow, *The Constitution of the Republic of Singapore, in* Constitutional Systems in Late Twentieth Century Asia 627, 629 (Lawrence W. Beer ed.,1992); John Kampfner, Freedom for Sale 17 (2010);

[27] Karl Hack, Defense and Decolonisation in Southe-East Asia: Britain, Malaya, and Singapore 1941-1967 (2015), at 234

mother to her Catholic birth parents and annulled her marriage to a Malay man.[28] The girl, Maria, was cared for by Malay foster parents while Japanese forces imprisoned her parents during World War Two.[29] Over seven years after the war, the Singapore courts awarded full custody of Maria to her birth parents even though Maria considered the Malay woman her mother, was thoroughly versed in Malay culture, spoke Malay, practiced Islam, and was married to a Malay man.[30] Over 3000 Malays took to the streets in protest, resulting in 18 deaths, 173 injured, and 778 people arrested.[31]

Following the Maria Hertogh Riots, there were two subsequent waves of race riots in 1969, causing 32 deaths, more than 500 injuries, and over five days of disorder. These riots likely stemmed from Singaporean Malays who felt systematically oppressed by the overwhelming economic and political power of ethnic Chinese in Singapore. The aforementioned racial riots in 1950, 1964, and 1969 engrained a deep fear of deteriorating and violent racial and religious relations in the minds of Singapore's political leaders.[32] This "history of conflict is manifest in the constitutional limits on individual expression in Singapore."[33] Abdullah Tarmugi, a member of Parliament, defended Parliament's right to significantly limit free speech by arguing that "any incentive or inconsiderate action by a small minority can easily result in racial riots as Singapore has experienced in the Maria Hertogh Riots and the 1969 racial riots."[34]

The Singapore Constitution emerged from three distinct foundational documents compiled in 1979: The Republic of Singapore Independence Act 1965, the State Constitution of Singapore, and sections extracted from the Federal Constitution of Malaysia.[35] The Constitution outlines eight "fundamental

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[28] Amos Yee, *Free Speech and Maintaining Religious Harmony in Singapore* 226 (2016)

[29] *Id.* at 225-226

[30] *Id.*

[31] Karl Hack, Defense and Decolonisation in Southe-East Asia: Britain, Malaya, and Singapore 1941-1967, at 234 (2015). *See also* Amos Yee, *Free Speech and Maintaining Religious Harmony in Singapore* 226 (2016)

[32] *Id.* at 227

[33] Scott L. GoodRoad, *The Challenge of Free Speech: Asian Values v. Unfettered Free Speech, and Analysis of Singapore and Malaysia in the New Global Order*, 9 Indiana International & Comparative L. REV 259, 269 (1998)

[34] 3 Singapore Parliamentary Debates, Official Report (Oct. 23, 2007), vol. 83, at col. 2416 (Abdullah Tarmugi, East Coast). *See* Amos Yee, *Free Speech and Maintaining Religious Harmony in Singapore* 219 (2016)

[35] Const. of the Republic of Sing.

Liberties" akin to the United States Bill of Rights. However, only two of the eight freedoms are absolute: the prohibition of slavery and the prohibition of banishment of citizens.[36] The other six fundamental liberties can be heavily restricted by Parliament as enumerated by the Constitution. The beginning of Article 14, titled "Freedom of speech, Assembly, and Association" reads as follows:

> (a) every citizen of Singapore has the right to freedom of speech and expression;
> (2) Parliament may by law impose —
> (a) on the rights conferred by clause (1)(a), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offense[37]

After enduring several bloody race riots while simultaneously contending with volatile and powerful regional neighbors, Singapore's political leaders composed the Constitution with national security and stability as imperatives. "Sovereignty, integrity, and unity" was written into the Constitution as a paramount mandate that trumped the need for individual rights.[38] The restrictive view of free speech in Singapore is likely rooted in the Eastern Neo-Confucian ethos of communitarian ideals, which emphasized the "notion of collective well-being over individualism, social harmony over dissent, and socioeconomic progress over human rights."[39] As such, it is believed that citizens should be willing to give up their individual rights to promote the community's success as a whole.[40] Scarred by the racial riots in the 50s and 60s, many Singaporeans regard "adversarial dissent…as destabilizing to social harmony and political institutions" and thus believe that it

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[36] *Id.*

[37] Const. of the Republic of Sing. Dec. 22, 1965, art. 14 (Sing.)

[38] Li-Ann Thio, *Singapore: Regulating political speech and the commitment "to build a democratic society"*, Icon Int. J. Const. Law 516, 520 (2003)

[39] John Kampfner, Freedom for Sale 32 (2010)

[40] Benedict Sheehy, *Singapore "Shared Values" and Law: Non East Versus West Constitutional Hermeneutic*, 34 Hong Kong L.J. 67, 72-76 (2004)

would be in the best interest of the country as a whole to restrict speech.[41] District Judge Kow Keng Siong argued that "the twin considerations of public order and national security assume particular importance" in Singapore as "any disturbance to the delicate equilibrium in our multi-racial and multi-religious country can have potentially catastrophic consequences"[42]

Neo-Confucious values stress the importance of strong family structures, "a well ordered [and stable] society, and highly value 'the sacrifice of individual rights for the community.'"[43] Freedom of speech has never been a popular concept among Singaporeans as it was with Americans because there is a strong belief that an individual should not "be allowed to keep his dignity at the expense of the reputation of another."[44] Free speech rights in Singapore are akin to the balance between individual rights and collective security where "it is difficult to see why free speeches should prevail" when it is at the expense of the community's right to public order.[45] The Singapore government has repeatedly warned that if full speech and expression rights were permitted, "havoc and chaos" would break out across the country.[46] For example, Singapore's Sedition Act, which prohibits the utterance of inflammatory words, demonstrates the "traditional, conservative view of the correct relationship between state and society."[47] Singaporeans believe that along with providing public education and maintaining a national army, it is the government's job to protect themselves and their kids from harmful language. Tommy Koh argued in 1993 that Singaporeans demand that the government "maintain a morally wholesome environment in which to bring up children," and this belief trumps the Western belief that "pornography, obscenity, lewd language, and

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[41] Li-Ann Thio, *Singapore: Regulating political speech and the commitment "to build a democratic society"*, Icon Int. J. Const. Law 516, 517 (2003)

[42] *See Ahmad Osmon, SDP Chief Fined and Barred from Next GE, The Straits Times, Jul. 31, 2002, at H2; See also Li-Ann Thio, Singapore: Regulating political speech and the commitment "to build a democratic society",* Icon Int. J. Const. Law 516, 522 (2003)

[43] Scott L. GoodRoad, *The Challenge of Free Speech: Asian Values v. Unfettered Free Speech, and Analysis of Singapore and Malaysia in the New Global Order*, 9 Indiana International & Comparative L. REV 259, 262-263 (1998)

[44] Michael Hor and Collin Seah, *Selected Issues in the Freedom of Speech and Expression in Singapore,* 12 Sing L.R. 296, 303 (1991)

[45] *Id.* at 303.

[46] John Kampfner, Freedom for Sale 26 (2010)

[47] Michael Hor and Collin Seah, *Selected Issues in the Freedom of Speech and Expression in Singapore,* 12 Sing L.R. 296, 335 (1991)

behavior, and attacks on religion are protected by the right of free speech."[48] A 1994 study, which is the closest poll to the time of the framing of the Constitution available, found that "a substantial percentage of individuals from Asia believed communitarian values would lead to a higher quality of life," wildly contrasting from "their Western counterparts—especially in the United States—[who] believed individualism led to improvements."[49] In line with this belief, journalists, along with Singapore residents, face civil and criminal penalties "when their endeavors deviate from the vague concepts of the 'public interest,' 'public order,' and 'national harmony,' or when they traverse the bounds of 'good taste' and 'decency.'"[50] It is important to note that scholar Benedict Sheehy argues that the Singapore government selectively uses Asian values to justify dictatorial practices while simultaneously applying Western values to justify capitalist practices.[51]

Further, the influence of Eastern communitarian values on Singapore's free speech model is demonstrated by Singapore's defamation laws. Unlike defamation law in the United States, which includes a public figures exemption rule, Singaporean political leaders frequently sue members of the opposition and members of the media for slander.[52] The courts almost always rule in favor of the government and distribute large fines, often bankrupting opposition members for their critiques of government officials.[53] This strict protection of government officials is rooted in the Neo-Confucious concept of Jun Zi ("君子"), meaning "trustworthy gentleman governors."[54] According to Jun Zi it is believed that social harmony is achieved through "hierarchical relations," and it is in the community's best interest for every individual to stay within their lane and entirely focus on their

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[48] Tommy Koh, *The 10 Values That Undergird East Asian Strength and Success,* N.Y. Times, Dec. 11, 1993

[49] Scott L. GoodRoad, *The Challenge of Free Speech: Asian Values v. Unfettered Free Speech*, *and Analysis of Singapore and Malaysia in the New Global Order*, 9 Indiana International & Comparative L. REV 259, 260 (1998)

[50] Martin Albrecht *f*Haenig & Xianbai Ji, *A tale of two Southeast Asian states: media governance and authoritarian regimes in Singapore and Vietnam*, 3 ARPE 1, 8-10 (2024)

[51] Benedict Sheehy, *Singapore "Shared Values" and Law: Non East Versus West Constitutional Hermeneutic*, 34 Hong Kong L.J. 67, 73-75 (2004)

[52] *See Id.* at 287-289 (1998)

[53] Cassandra Chan, *Breaking Singapore's Regrettable Tradition of Chilling Free Speech with Defamation Laws*, 26 LOY. L.A. INTL. & COMP. L.R. 315, 318-320 (2003)

[54] Li-Ann Thio, *Singapore: Regulating political speech and the commitment "to build a democratic society"*, Icon Int. J. Const. Law516, 523 (2003)

assigned job.[55] Therefore, public criticism of the government is not in the community's best interest because it distracts government officials from completing their job. Since government officials are "trustworthy gentleman governors," they are the most qualified people running the government and do not need the input of unqualified citizens.

Further, it is in the country's best interest to procure and retain the best possible leaders. Thus, the country must protect government leaders from defamation, as honorable men would be discouraged from holding public office out of fear that the media and opposition politicians will tarnish their reputations in their capacity as government servants. So, Singapore citizens must be willing to give up their rights to criticize government officials because it distracts officials from best governing and discourages honorable men from holding public office. It is important to note that Singapore's high confidence in its government leaders is not purely a function of neo-Confucious values because "even in communitarian democracies where stability and deference to authority temper the scope of individual rights...confidence in systemic legitimacy, institutional integrity, and government leaders must be earned, not presumed."[56] However, this neo-Confucious view of free speech may only reflect the attitudes of the ethnic Chinese majority in Singapore, who have disproportionate control of the Singapore government and economy. There is scarce literature available evaluating the attitudes of the Indian and Malay minority population on free speech.

Traditionally, as was the case in the United States and France, citizens tend to demand free speech to protect their ability to speak out against the government and criticize its policies. However, since the founding of the Republic of Singapore, there has been near unanimous support in the ruling single party, the People's Action Party (PAP). Since the first elections in 1959, in which the PAP won 43 of the 51 seats of Parliament, the PAP has always held an overwhelming majority in Parliament and enjoyed strong public support.[57] John Kampfner describes the Singapore political system as a pact between the government and the people where the government maintains high living conditions and one of the highest GDPs per capita in the world, currently only second to Luxembourg, and "in return, members

[55] *Id.* at 523

[56] *Id.* at 524 (2003)

[57] Lynette J. Chua & Stacia L. Haynie, *Judicial Review of Executive Power in the Singaporean Context, 1965-2012*, 4 The University of Chicago Press 43, 44-45 (2016). *See also* John Kampfner, Freedom for Sale 23 (2010)

of the citizenry avoid causing trouble."[58] For the most part, Singaporean citizens have high trust in the government and have continued to give the People's Action Party a large majority mandate to use draconian restrictions to rule, including those limiting free speech.[59] As such, most people in Singapore do not have a need or a desire to speak out against the government, and thus, free speech provides them little utility and has not been publicly demanded by the people. Citizens have continued to enjoy the benefits of these regulations, especially the consistent decline of violence and racial riots. However, this claim is difficult to test because citizens who do not support the rule of the PAP have few pathways to demand free speech or express their opinions without facing criminal charges.[60] If individuals were to criticize the government, they would likely "confide only in their good friends" and "meaningful opinion polls do not exist." [61]

Further, unlike colonial America, which experienced relatively little government speech restriction, since the founding of Singapore, the British government enforced several restrictive speech policies. Therefore, Singapore's draconian speech model "must be seen as part of the continuing legacy of colonialist legal structures guarding against challengers to state power," and many of the British colonial speech restrictions, such as the Sedition Act and the Public Entertainment Act are still employed today.[62] As the Republic uses speech regulations to ban insensitive religious or racial comments,[63] Singapore has yet to re-experience mass racial violence since 1969, and racial unity has since become a great source of national pride.[64]

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[58] *Id.* at 16

[59] Eunice Chua, *Reactions to Indefinite Preventative Detention: An Analysis of How the Singapore, United Kingdom and American Judiciary Give Voice to the Law In the Face of (Counter) Terrorism*, 25 Sing. Mgmt. Univ. 3, 12 (2007)

[60] *See* John Kampfner, Freedom for Sale 25 (2010). *See also* Scott L. GoodRoad, *The Challenge of Free Speech: Asian Values v. Unfettered Free Speech, and Analysis of Singapore and Malaysia in the New Global Order*, 9 Indiana International & Comparative L. REV 259, 295 (1998)

[61] *Id.* at 21 (2010)

[62] Jaclyn Ling-Chien Neo, *Seditious in Singapore! Free Speech and the Offence of Promoting Ill-Will and Hostility Between Different Racial Groups*, Nat'l Univ. of Sing. (Faculty of Law) 351, 357 (2011); *See also* Sangeetha Thanapal, *The neo-colonized entity: Examining the ongoing significance of colonialism on free spec in Singapore*, First Amend. Stud. 225, (2021)

[63] *See* Li-Ann Thio, *Singapore: Regulating political speech and the commitment "to build a democratic society"*, Icon Int. J. Const. Law 516, 519 (2003)

[64] Amos Yee, *Free Speech and Maintaining Religious Harmony in Singapore* 229 (2016)

B. The United States

Nearly two hundred years earlier, on the other side of the world, the founding of the United States materialized vastly differently than the founding of Singapore. The liberal protection of freedom of speech and press found in the First Amendment is partly a product of historical context and the leading political theories at the time. This section argues that the United States federal Constitution has significantly greater protections of free speech than the Constitution of Singapore for three main reasons: widespread support for freedom of the press in Colonial America, high public distrust in colonial governments, and the virality of Cato's Letters.

Although free speech was rarely discussed in Colonial America, freedom of the press had long been an overwhelmingly popular concept among Americans. Even before Congress codified free speech rights in the Constitution, "most Americans agreed with Locke's assertions from a century earlier that 'liberty of conscience is every man's natural right,'" and as such, many Americans believed that a free press was fundamental to a free country.[65]

In the 14th and 15th centuries, there was a rich history of censorship across Europe, best exemplified by the Pope's "index of prohibited books," which criminalized the distribution and consumption of a wide range of books believed to be dangerous to the institutions of the Catholic Church.[66] It was exceedingly common for regional lords to require printers to seek royal approval before printing and publishing texts.[67]

This trend continued in Colonial America, although there was a more relaxed approach to censorship. Compared to England's infamous Star Chamber, there "was very little attempt at prior restraint" in America.[68] Nonetheless, the Courts took the consequences of violating seditious libel laws seriously and would vigorously prosecute publishers after criticizing or satirizing public officials.[69] However, given that most printers in the American colonies operated independently with very tight margins, publishers often self-censored themselves out of fear of

[65] Jonathan Barth, *Liberty of Conscience is Every Man's Natural Right: Historical Background of the First Amendment*, 35 Cambridge Univ. Press 435, 436 (2023)
[66] *Id.*
[67] *Id.* at 437-438
[68] Robert Hargreaves, The First Freedoms: A History of Free Speech 148 (2003)
[69] *Id.* at 148

"losing valuable business if the printer stepped too far out of line with those who provided him his livelihood."[70]

America's growing belief in freedom of the press is best demonstrated through the seminal case, *Crown v. John Peter Zenger*[71], in which the editor of the *New York Weekly Journal*, John Peter Zenger, was placed on trial for libel after publicly accusing the royal governor, William Cosby, of corruption and tyrannical practices.[72] At his trial, Zenger argued that his criticism was factually accurate and thus not defamatory. British Common Law is clear that regardless of the factuality of the statement, any criticism of a royal governor is libel. However, despite this, the American jury deemed Zegner not guilty.[73] News of the Zenger case quickly spread across the American colonies and was "well-publicized."[74] The Zenger case initiated the fight for a free press and cemented freedom of the press on the radical agenda.[75] Andrew Hamilton, Zenger's defense lawyer, was treated as a national hero for fighting the tyrannical colonial judiciary to enshrine freedom of the press in American jurisprudence. Gouverneur Morris, the author of the preamble of the Constitution, said that "The trial of Zenger in 1735 was the germ of American freedom."[76]

However, it is essential to note that prominent scholars, such as Leonard W. Levy, challenged the scale of the impact the Zenger case had on spreading the concept of a free press throughout the colonies.[77] He notes that there was no significant advance in freedom of the press after the Zenger trial. The government continued to prosecute Americans for seditious libel, such as the prosecution of Huge Gaine in 1753 and James Parker in 1756.[78] Although the jury found Zenger not guilty, the common law, which made it a crime to publish anything critical of

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[70] *Id.* at 148

[71] We were unable to find the case itself, but we found a source describing it in its entirety. The Trial of John Peter Zinger (1738)

[72] Leonard W. Levy, *Did the Zenger Case Really Matter? Freedom of the Press in Colonial New York*, 17 The WM. & MARY Q. 35, 35 (1960)

[73] Ralph L. Crosman, *The Legal and Journalistic Significance of the Trial of John Peter Zenger*, 10 Rocky MNTN. L. REV. 258, 267 (1938)

[74] *Id.* at 38 (1960)

[75] Robert Hargreaves, The First Freedoms: A History of Free Speech 148 (2003)

[76] *Id.*

[77] *See* Leonard W. Levy, *Did the Zenger Case Really Matter? Freedom of the Press in Colonial New York*, 17 The WM. & MARY Q. 35, 39-45 (1960)

[78] *Id.* 40-41

the royal colonial government, regardless of its factuality, did not change.[79] During the trial, Hamilton did not challenge the criminality of seditious libel nor the power of the government to regulate the press. Instead, he argued that Zenger had not committed seditious libel because his comments were factual. Hamilton's commitment to fighting for a free press has been questioned by recent scholarship because six years before the Zenger trial, he assisted in the prosecution of Andrew Bradford, a printer who published an article that offended the colonial government.[80]

An additional criticism by Robert Hargreaves argues that the jury's acquittal of Zenger is less of a reflection of the American commitment to a free press and more of a reflection of the fact that the jury agreed with the opinions in Zenger's publication.[81] Therefore, if the jury had not agreed with the "seditious material" published by Zenger, they likely would have found the defendant guilty. As such, "Juries can be as prejudiced and intolerant of unpopular opinions as judges."[82]

Thirty-five years after the Zenger trial, freedom of the press was further popularized in the American colonies by Alexander McDougall, a merchant who served as a leader in the Sons of Liberty. In 1770, after anonymously writing a broadside titled *To the Betrayed Inhabitants,* which criticized the New York Colonial government for enforcing the Quartering Act (A legal mandate for citizens to house and feed British soldiers) McDougall was charged with seditious libel. Following his arrest, the judge set a disproportionately high bail at five hundred pounds. Despite some accounts of McDougall describing him as wealthy, he refused to pay the bailout in protest. The Sons of Liberty characterized McDougall as the American John Wilkes, a political martyr who was enduring prison to fight for the ideals of a free press.[83] By comparing McDougall to Wilkes, the Sons of Liberty attached McDougall's struggle to defend himself against libel charges to a national battle to fight for a free American press.[84] Eventually, the star witness, the only person with a

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[79] *Id.* at 36

[80] *Id.* at 43

[81] Robert Hargreaves, The First Freedoms: A History of Free Speech 151 (2003)

[82] *Id.* at 151

[83] *See Id.* at 134-137 (John Wilkes was a British journalist and member of Parliament who was overwhelmingly popular in the United States for fighting back against several charges of seditious libel and transforming his libel trial into a theatrical protest against press restrictions.) *See also* Jacob Mchangama, *Free Speech: A History from Socrates to Social Media* 126 (2022)

[84] Roger P. Mellen, *John Wilkes and the Constitutional Right to a Free Press in the United States*, 41 Journalism History 2, 4 (2015)

first-hand account verifying that McDougall wrote the broadside, passed away before the hearing, forcing prosecutors to postpone the trial indefinitely.[85] Historian Leonard W. Levy argues that McDougall's "imprisonment did more to publicize the cause of liberty of the press than any event since Zenger's trial."[86]

By the mid-18th century, "the notion of a free press and free speech was thoroughly ingrained in the Anglo-American psyche." and Americans started to fight back against British speech restrictions.[87] Concurrently, a significant minority of colonial Americans demanded independence from the British Empire and sought to replace it with a democratic government that would protect their individual rights.[88] Stemming from distrust of the British colonial government, Americans were generally skeptical of powerful centralized government institutions that could limit their personal liberties. This growing government distrust culminated in the United States' first national constitution—the Articles of Confederation. The Articles gave the nascent federal government virtually no power over the people, especially not the power to regulate speech. However, following Shay's Rebellion,[89] a rural uprising led by disgruntled revolutionary war veterans, it became evident that a stronger central government empowered by a new constitution was necessary.[90]

To draft a new constitution, delegates from across the fledgling nation met in Philadelphia at the Constitutional Convention of 1787.[91] During this, Charles Cotesworth Pinckney and Elbridge Gerry (who would later respectively serve as the vice president to James Madison and the Ambassador to France) motioned to introduce a provision in the Constitution that mandated "that the liberty of the Press should be inviolably observed."[92] With very little debate, the drafters voted not to include what would have become Article 1, Section 9 of the Constitution. Based

[85] Leonard W. Levy, *Did the Zenger Case Really Matter? Freedom of the Press in Colonial New York*, 17 The WM. & MARY Q. 35, 46 (1960)
[86] *Id.*
[87] Jonathan Barth, *Liberty of Conscience is Every Man's Natural Right: Historical Background of the First Amendment*, 35 Cambridge Univ. Press 435, 442 (2023)
[88] Robert Hargreaves, The First Freedoms: A History of Free Speech 146-147 (2003)
[89] *See* Patrick Peel, *Freedom of Speech, 1500-1850*, at 194 (Robert G. Ingram et al. eds., 2021)
[90] Ronald D. Rotunda, *The Right to Shout Fire in a Crowded Theatre: Hateful Speech and the First Amendment*, 22 CHAP. L. REV. 319, 329-330 (2019). *See also* Jacob Mchangama, *Free Speech: A History from Socrates to Social Media* 165 (2022)
[91] *Id.* at 194 (Robert G. Ingram et al. eds., 2021)
[92] David L. Lange & Jefferson Powell, *No Law: Intellectual Property in the Image of an Absolute First Amendment* 203 (2008)

on the notes of James Madison, Robert Sherman made the only comment on the topic of free speech during the convention and simply said that the proposed provision "is not necessary."[93] The framers likely did not believe that it was necessary to explicitly protect freedom of speech, as proposed by Pinckney and Gerry, because the federal government did not have the power to regulate speech in the first place.[94] Hamilton posed the question in Federalist 84: "Should it be said, that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?"[95] Hamilton and most of the framers believed in strict constructionism, an interpretation of the Constitution that argues that the federal government may only do what the Constitution enumerates. Thus, if a power is not explicitly promulgated in the Constitution, it is implied that the government does not have that power. Therefore, the framers likely believed they were tacitly protecting freedom of speech by not including the power to regulate speech in the Constitution, so "America ended its revolutionary decade still without a formal commitment to the freedom of speech. Even the new republic's crowning achievement–the Constitution of 1789—made no mention of it."[96]

However, during the campaign to ratify the Constitution, there was significant opposition from Anti-Federalists nationwide who feared that the stronger federal government could infringe on their natural rights, especially the right to free speech. An Anti-Federalist conference in Pennsylvania first demanded that free speech be enumerated in a bill of rights that would explicitly bar the federal government from encroaching on citizens' right to express themselves.[97] Soon, similar conferences in North Carolina and Virginia followed suit.[98] To quell these demands and to increase support for the federal Constitution, James Madison drafted the Bill of Rights, even though, as a strict constructionist, he believed that it was unnecessary.[99] Drawing inspiration from George Mason's Master Bill of Rights, James Madison crafted the initial version of what would evolve into the First

[93] *Id.* at 195
[94] *Id.* at 195-196
[95] Alexander Hamilton, *The Federalist Papers: No 84, May 28 1788, in* The Papers Of Alexander Hamilton, Harold C. Syrett 702-714 (Harold C. Syrett ed., 1962)
[96] Robert Hargreaves, The First Freedoms: A History of Free Speech 175 (2003)
[97] Stephen A. Smith, *The Origins of the Free Speech Clause*, 29 FREE SPEECH Y.B. 48, 56 (1991)
[98] *Id.*
[99] *Id.* at 53

Amendment, stating:[100] "The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable."[101]

Although James Madison wrote very little about the First Amendment, we can derive his intentions from his speech in 1789 titled *Defense of the Bill of Rights in Congress.* In his speech, he argues that "the great object in view (the Bill of Rights) is to limit and qualify the powers of government, by accepting out of the grant of power those cases in which the government ought not to act, or to act only in a particular mode."[102] The Bill of Rights protects "against the abuse of the Executive power, sometimes against the legislative, and, in some cases, against the community itself; or, in other words, against the majority in favor of the minority."[103] From his speech, we can conclude that the First Amendment and the other nine amendments in the Bill of Rights were ratified to safeguard against the abuse of the Necessary and Proper Clause (Article 1 Section 8), which empowers Congress to act beyond their explicit powers. In the balance between individual liberties and the exercise of powers necessary to maintain an effective central government, the Bill of Rights adds significant weight to the side of individual freedoms.[104] As such, in theory, the First Amendment would ban government speech restrictions even if Congress were to find them necessary and proper.

Cato's Letters, political pamphlets written by Thomas Gordon and John Trenchard (writing under the pseudonym Cato), rapidly spread throughout Colonial America, promoting the ideals of free speech and greatly influencing both the drafters of the Constitution and the American public.[105] James Madison's original draft of the First Amendment directly quotes Cato's Letter in referring to free speech as "the great bulwarks of liberty."[106] Like Thomas Paine's pamphlet Common Sense, which inspired hundreds of thousands of Americans to fight for independence, Cato's Letters reached a similar status of virality as "their essay *On*

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[100] Ashutosh Bhagwhat, *Posner, Blackstone, and Prior Restraints on Speech,* 2015 BYU L.Rev. 1151, 1159 (2016)

[101] 1 *Annals of Congress 451* (1789) (Joseph Gales ed., 1834)

[102] Stephen A. Smith, *The Origins of the Free Speech Clause*, 29 Free Speech Y.B. 48, 55 (1991)

[103] *Id.*

[104] *Id.*

[105] Jonathan Barth, *Liberty of Conscience is Every Man's Natural Right: Historical Background of the First Amendment*, 35 Cambridge Univ. Press 435, 435 (2023). *See* Jacob Mchangama, *Free Speech: A History from Socrates to Social Media* 124-125 (2022)

[106] 1 *Annals of Congress 451* (1789) (Joseph Gales ed., 1834)

Freedom of Speech was quoted in every colonial newspaper from Boston to Savannah" and introduced Americans to the concept of free speech.[107] During the drafting of the Constitution, "virtually all of the Founding Fathers possessed a copy of Cato's Letters" and were likely more influenced by the ideas of Cato than those of Locke.[108] Without Cato's Letters, it is possible that freedom of speech would not have been as popular in the United States.[109]

Cato was likely the first English language author to write about a secular view of free speech, describing free speech as the most important natural right and contributing it as the"foundation of all liberty."[110] Cato took a revolutionary step by extending the right to free speech to those who held unpopular ideas.[111] Cato writes, "whoever would overthrow the liberty of a nation must begin by subduing the freedom of speech," as such "there can be no such thing as public liberty without freedom of speech, which is the right of every man, as far as by it he does not hurt and control the right of others to know."[112] Further, he argues that without freedom of speech, there is no wisdom or security of property because if "a man cannot call his tongue his own, he can scarcely call anything else his own."[113] Ultimately, Cato's primary argument was that free speech is a natural right of all citizens and is a necessary prerequisite for a free democratic government because "freedom of speech is the great Bulwark of liberty; they prosper and die together."[114]

The influence of Cato's Letters on America's constitutional protections of free speech cannot be overstated.[115] While Congress eventually removed the direct

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[107] Robert Hargreaves, The First Freedoms: A History of Free Speech 151 (2003). *See* Bernanrd Bailyn, *The Ideological Origins of the American Revolution* 36 (1992)

[108] Jonathan Barth, *Liberty of Conscience is Every Man's Natural Right: Historical Background of the First Amendment*, 35 Cambridge Univ. Press 435, 439 (2023)

[109] Michael W. Spicer, *Passion Power, and Political Conflict: An Examination of Cato's Letters and Their Implications for American Constitutionalism and the Public Administration*, 5 Sage Publ'n Inc. 523, 525 (2012). *See* Fara Dabhoiwala, *Inventing Free Speech: Politics, Liberty and Print in Eighteenth-Century England*, 257 Oxford University Press 39, 39-41 (2022)

[110] *Id.* at 40

[111]Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* 47 (1985)

[112] 1 John Trenchard & Thomas Gordon, *Cato's Letters or Essays on Liberty, Civil and Religious, and Other Important Subjects: Four Volumes in Two* 79 (Ronald Hamovy ed., Liberty Fund 1995). *See also* Robert Hargreaves, The First Freedoms: A History of Free Speech 151 (2003)

[113] *Id.* at 79

[114] *Id.* at 82

[115] Patrick Peel, *Freedom of Speech, 1500-1850* 198 (Robert G. Ingram et al. eds., 2021)

quote from Cato in Madison's original draft of the First Amendment, these edits do not reflect Congress's attitudes towards Cato's ideas because Congress modified Madison's original draft with "more concern for style parsimony than for precision of meaning."[116] Historian Stephen A. Smith argues that the legislative debate on the First Amendment does not provide an accurate depiction of the extent to which Congress intended to protect freedom of speech.[117] Even at the time of the ratification of the First Amendment, very few legislators or jurists could agree on how to define free speech, creating centuries of debate on how to interpret the First Amendment. Scholars such as Genevieve Lakier have even argued that papers like this one over inflate the importance of the First Amendment on free speech jurisprudence, and there are several other legal instruments and mechanisms that protect free speech, such as state constitutions, that are overlooked.[118]

II. EVOLUTION IN CONSTITUTIONAL INTERPRETATION

"The protection of free speech depends not merely on statements of law, but on the actions of men and women with the courage to defend it" – Robert Hargreaves

Free Speech policy is far more complicated than the 18 words in the First Amendment and the 88 words in Article 14 of the Singapore Constitution. What does freedom of speech mean precisely? There is no standard definition that the drafters of the Singapore and American Constitutions made explicitly clear. The meanings of the respective speech clauses are outcomes of the judicial interpretations of the Constitution. When looking at the Constitution alone, it is exceedingly difficult to determine the complexities of free speech policy and apply it to real-life scenarios. As a result, judges and scholars have long debated over the meaning of the Constitution and constantly refine their interpretations. This section analyzes the evolution of judicial interpretation of Constitutional speech clauses to explain why the United States and Singapore have maintained drastically different free speech models.

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[116] Stephen A. Smith, *The Origins of the Free Speech Clause*, 29 Free Speech Y.B. 48, 61 (1991)
[117] *Id.* at 55
[118] Genevieve Laker, *The Non-First Amendment Law of Freedom of Speech*, 134 Harv. L.R. 2299, 2306-2309 (2021)

A. Singapore

Founded nearly 200 years after the United States, Singapore is one of the youngest nations in the world, achieving independence only in 1965. As a result, the judiciary has had a relatively short time to evolve and refine its interpretation of Article 14 of the Constitution. This section will describe the institutions empowered to interpret Article 14 and then discuss their interpretation and applications of Article 14 to speech restrictions cases. Ultimately, this section seeks to argue that Singapore has maintained draconian speech restrictions because the Supreme Court has refused to employ judicial review to check the constitutionality of these regulations and relied on Parliament to determine the necessity of speech restrictions.

Whereas the United States Supreme Court has appointed itself as the final interpreter of the Constitution, Article 14 of the Singapore Constitution explicitly names Parliament as the institution responsible for interpreting the validity of speech restrictions.[119] Article 14 states, "Parliament may by law impose...such restrictions as it considers necessary or expedient."[120] As such, the Singaporean Constitution does not empower any other branches of the government, namely the Supreme Court, to restrict or review this parliamentary power. Since "the text of Article 14 apparently provides little warrant for robust judicial intervention," the Courts have almost entirely stayed out of judging the constitutionality of speech restrictions.[121]

The British Reid Commission recommended the inclusion of a free speech clause in newly independent British colonies and drafted the original version of Article 14. However, when ratifying the Constitution, the Singapore drafters opted not to include the requirement in the proposed Article 14 that speech restrictions must be "reasonable." As a result, without the constitutional requirement that speech restrictions must be reasonable, the Supreme Court is powerless to nullify speech legislation on the grounds that they are excessive. Conversely, the Supreme Court of India frequently reviews free speech claims because the free speech clause in the Indian Constitution, which is nearly identical to Article 14 of the Singapore

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[119] James Gomez, *Restricting Free Speech: The Impact on Opposition Parties in Singapore*, 23 CBS Open Journals 105, 106 (2006)

[120] Const. of the Republic of Sing. Dec. 22, 1965, art. 14 (Sing.)

[121] Thio Li-Ann, *The Virtual and the Real: Article 14, Political Speech and the Calibrated Management of Deliberative Democracy in Singapore*, Sing. J. of Legal Studies, 25, 31 (2008)

Constitution, includes the requirement that all speech restrictions be "reasonable."[122]

The Singapore Supreme Court theoretically has the power of judicial review based on Article 93 of the Singapore Constitution.[123] Article 93 reads, "The judicial power of Singapore shall be vested in a Supreme Court and in such subordinate courts as may be provided by any written law for the time being in force."[124] While Article 93 does not explicitly mention judicial review, the Courts have long interpreted Article 93 as a source of empowerment for judicial review.[125] In *Chng Suan Tze v Minister for Home Affairs,* Chief Justice Wee Chong Jin wrote for the Court that "all power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power."[126] Despite the court repeatedly reaffirming this power on paper, the Singapore judiciary has never found a piece of legislation unconstitutional.[127] When the Courts do use the power of judicial review, it is exceedingly rare and is always used against the executive branch, which usually concerns economic or business interests, not civil rights.[128]

Since, the Courts have never found a piece of speech legislation unconstitutional, they have never tested if the scope of its judicial review powers extends to speech restrictions and interpreting Article 14 of the Constitution.[129] In *Chee Soon Juan and others v Public Prosecutor*[130], regarding political libel, "the judge said that he was powerless to deal with the issue because he did not have the power of judicial review when it came to constitutional matters."[131] Regardless if the

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[122] Const. of India Nov. 26, 1949, art.19 (India)

[123] Kenny Chng, *The Theoretical Foundations of Judicial Review in Singapore*, Sing. J. of Legal Studies, 294, 294-315 (2019)

[124] Const. of the Republic of Sing. Dec. 22, 1965, art. 93 (Sing.)

[125] *Id*. *See also* Valentine S. Winslow, *The Constitution of the Republic of Singapore, in* Constitutional Systems in Late Twentieth Century Asia 627, 631 (Lawrence W. Beer ed.,1992)

[126] Chng Suan Tze v Minister for Home Affairs (1988) 2 S.L.R.(R.) 525;'Tan K. B. Eugene, *'The notion of subjective or unfettered discretion is contrary to the Rule of Law': Judicial review of administrative action in Singapore*, Sing. Mgmt. Univ. 379, 381 (2019)

[127] Lynette J. Chua & Stacia L. Haynie, *Judicial Review of Executive Power in the Singaporean Context, 1965-2012*, 4 The University of Chicago Press 43, 44 (2016)

[128] *Id.* at 45

[129] Kenny Chng, *The Theoretical Foundations of Judicial Review in Singapore*, Sing. J. of Legal Studies 294, 379 (2019)

[130] Chee Soon Jaun and others v. Public Prosecutor 109 SGHC (2012)

[131] James Gomez, *Restricting Free Speech: The Impact on Opposition Parties in Singapore*, 23 CBS Open Journals 105, 112 (2006)

Supreme Court has the power to review the constitutionality of speech restrictions, the Court is likely to stay out of the debate. Singaporean courts have imported a long-standing tradition from the British Judiciary of judicial restraint to respect the principle of parliamentary sovereignty. [132] Parliamentary sovereignty is founded on the theory that members of Parliament are democratically elected representatives of Singaporean citizens and thus have been trusted by the people to interpret the Constitution. Therefore, if Parliament legally passes a law, it is presumed constitutional. For example, in *Starkstrom Pte Ltd v Commissioner of Labour,*[133] the Court noted that although the Constitution has empowered the judiciary with the power of judicial review, judges must stay aware of "Parliament's intention (as expressed in statute) to vest certain powers in the executive."[134]

The Courts have not only turned a blind eye to Parliament's draconian speech restrictions, but they have played an active role in enforcing them[135] as "the government predominantly relies on libel cases, defamation lawsuits, or charges of contempt of court...as the primary mode of control."[136] The Court's participation in speech restrictions is evident in *Lee Kuan Yew v. Jeyaretnam*[137] where the Court upheld the right of politicians to sue citizens for libel and defamation. Specifically, the court enabled Lee Kuan Yew, the former Prime Minister, to sue the secretary–general of the Workers' Party for defamation based on his remarks at an election rally in 1997.[138] While campaigning for a seat in Parliament, J. B. Jeyaretnam proclaimed, "Mr. Lee Kuan Yew has managed his fortune very well. He is the Prime Minister of Singapore. His wife is the senior partner of Lee & Lee and his brother is the director of several companies, including Tat Lee Bank in Market Street; the bank which was given a permit with alacrity, [a] banking permit license, when other banks were having difficulties getting their license. So Mr. Lee Kuan Yew is very adept at managing his own personal fortunes but I am not."[139] Although

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[132] Valentine S. Winslow, *The Constitution of the Republic of Singapore, in* Constitutional Systems in Late Twentieth Century Asia 627, 650 (Lawrence W. Beer ed.,1992)

[133] Starkstrom Pte Ltd v. Commissioner of Labour, 3 SLR 598 (2016)

[134] *Starkstrom*, *ibid*, citing *Tan Seet Eng, ibid* at para. 99

[135] *See also* Cassandra Chan, *Breaking Singapore's Regrettable Tradition of Chilling Free Speech with Defamation Laws*, 26 Loy L.A. Intl. & Comp. L.R. 315, 328 (2003)

[136] Martin Albrecht *f*Haenig & Xianbai Ji, *A tale of two Southeast Asian states: media governance and authoritarian regimes in Singapore and Vietnam*, 3 ARPE 1, 9 (2024)

[137] Lee Kuan Yew v. Jeyaretnam, 233 SGHC (2001)

[138] *Id.*

[139] *Id.*

Jeyaretnam never explicitly claimed that Lee had acted improperly or corruptly, the courts found him liable for defamation and ordered him to pay US $130,000 in damages. In their ruling, the courts directly rejected the public figure exception for libel and defamation lawsuits championed by the U.S. Supreme Court in their ruling in *New York Times v. Sullivan*.[140] The public figure exception protects citizens' rights to criticize government officials without risking a defamation or libel lawsuit. Thus, public officials cannot sue citizens for defamation, regardless of the factuality of the citizen's statement.[141] The High Court's ruling in *Jeyaretnam*[142] is a sharp departure from decisions in other similar common law jurisdictions such as Australia and the United Kingdom, whose judiciary has largely "agree[d] with Sullivan's underlying free speech principles."[143]

In upholding Parliament speech restrictions, the courts frequently reference neo-Confucious communitarian values, in which Singaporeans should be willing to limit their free speech to keep honorable leaders in office. Based on this principle, it is believed that if individuals could make any criticisms of government officials without the risk of lawsuits (such as in America), then few honorable citizens would be willing to serve in public office because these statements could damage their reputation.[144] Thus, the Court finds that the net benefit of having more honorable leaders in government outweighs the net benefit of individual self-expression. The Court has further enshrined its support of the Confucian Jun Zi ("君子") principals in *Tan Seet Eng v Attorney-General*,[145] where the Court argued that "it is presumed that the people in government are honorable men and women who carry themselves with a high level of moral probity" in their "green light" approach to

[140] *New York Times v. Sullivan*, 376 U.S. 254 (1964). *See* Scott L. GoodRoad, *The Challenge of Free Speech: Asian Values v. Unfettered Free Speech, and Analysis of Singapore and Malaysia in the New Global Order*, 9 Indiana International & Comparative L. REV 259, 287-289 (1998)

[141] Scott L. GoodRoad, *The Challenge of Free Speech: Asian Values v. Unfettered Free Speech, and Analysis of Singapore and Malaysia in the New Global Order*, 9 Indiana International & Comparative L. REV 259, 287-289 (1998)

[142] Lee Kuan Yew v. Jeyaretnam, 233 SGHC 224 (2001)

[143] Cassandra Chan, *Breaking Singapore's Regrettable Tradition of Chilling Free Speech with Defamation Laws*, 26 Loy. L.A. Intl. & Comp. L.R. 315, 322 (2003)

[144] Scott L. GoodRoad, *The Challenge of Free Speech: Asian Values v. Unfettered Free Speech, and Analysis of Singapore and Malaysia in the New Global Order*, 9 Indiana International & Comparative L. REV 259, 287-289 (1998)

[145] Tan Seet Eng v Attorney-General, 59 SGCA (2015)

public law.[146] This green light approach, which "is not principally about stopping bad administrative practices but encouraging good ones," demonstrates that the judiciary trusts that the members of Parliament are acting in good faith and thus should be granted extended latitude to fulfill their policy visions.[147]

Despite the title of this section, the reality is that in Singapore's short 59-year history as an independent nation, there has been virtually no evolution in the Constitutional interpretation of free speech. Many of the speech restrictions from Singapore's colonial government and first Parliament are still in effect today. Most of the recent speech laws have been ratified with the intention of applying the same speech principles to new mediums of speech in the 21st century, such as *The Protection from Online Falsehoods and Manipulation Act* of 2019.[148] Further, there has been very little public, parliamentary, legal, or scholarly debate on the constitutionality of speech restrictions. However, the limited debate may be a result of the relatively limited academic freedom in Singapore universities.[149]

Since the People's Action Party has held a significant majority in Parliament throughout Singapore's political history, nearly every speech restriction bill has passed along party lines with limited floor debate. If there had been any significant debate on the interpretation of Article 14, it could have only occurred behind closed doors. The boundaries of how far the Singapore government can restrict free speech are unknown, and the Constitution enables Parliament to stretch that boundary as far as they see necessary in the interest of "the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offense."[150] So, time will only tell how much the government is willing to interpret the Constitution to empower them to restrict speech. Thus far, Singapore has had a short and uneventful history of free speech jurisprudence, and compared to the US Constitution, which is two

[146] Tan K. B. Eugene, *'The notion of subjective or unfettered discretion is contrary to the Rule of Law': Judicial review of administrative action in Singapore*, Sing. Mgmt. Univ. 379, 386 (2019)
[147] *Id.* at 385
[148] *See* Foo Chechao, *Protection from Online Falsehoods and Manipulation Act and The Roles of Internet Intermediaries in Regulating Online Falsehoods*, 33 SAcLJ 438, 441 (2021)
[149] *See* Cherian George et al., *The State of Academic Freedom in Singapore's World-Beating Universities*, Association of Asian Studies 69, 75-81 (2023)
[150] Const. of the Republic of Sing. Dec. 22, 1965, art. 14 (Sing.)

centuries old, "fledgling Constitutions, like the Singapore Constitution, need time to mature." [151]

B. The United States

In contrast to other Constitutions, such as the South African Constitution, which dedicates 970 words to the suspension of rights, the drafters of the Constitution provide zero details as to how far the right to free speech extends.[152] As a result, this opens a massive slew of questions for the judiciary to answer. Can free speech be restricted during times of war? Does the First Amendment apply to state governments? What does free speech mean? Do movies and leaflets qualify as a form of speech protected by the First Amendment? Yet for the first half of America's history, the Court refused to answer these questions, allowing the government to enforce speech laws comparable to those in present-day Singapore. Contrary to common misconception, the United States does not have a rich history of unfettered free speech. For the first half of American history, the First Amendment was narrowly interpreted with weaker analytical foundations.[153] As a result, American citizens did not enjoy the right to freely express themselves as they do today. To document how the Supreme Court's interpretation of the First Amendment evolved, this section will first discuss the ambiguity of the First Amendment when it was ratified, followed by a description of how the court ignored free speech claims. Then, this section will delve into the original leading Blackstonian interpretation of the First Amendment. Finally, this section will discuss the famous Holmes dissent in the *Abrams* case, which catapulted a reimagination of the First Amendment in America.

Following the ratification of the First Amendment most of the founding fathers agreed that "Congress shall make no law... abridging the freedom of speech," but virtually none of them could agree on what free speech was.[154] Neither the author of the First Amendment, James Madison, nor any other jurist at the time was

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[151] Valentine S. Winslow, *The Constitution of the Republic of Singapore, in* Constitutional Systems in Late Twentieth Century Asia 627, 650 (Lawrence W. Beer ed.,1992)

[152] Ronald D. Rotunda, *The Right to Shout Fire in a Crowded Theater: Hateful Speech and the First Amendment*, 22 CHAP. L. REV. 319, 331 (2019)

[153] *See* James Weinstein, *The Story of Masses Publishing Co. V. Patten: Judge Learned Hand, First Amendment Prophet,* Found. Press 61, 82 (2011)

[154] U.S. Const. amend. I

recorded producing a definition or explanation as to what constitutes free speech.[155] According to David L. Lange and H. Jefferson Powell, at the time of the ratification of the First Amendment, it was unanimously understood that abstract concepts such as free speech could not be defined with precision.[156] Concerning the First Amendment, Benjamin Franklin wrote that "few of us, I believe, have distinct ideas of its nature and extent."[157] In contrast to Benjamin Franklin, who generally held a liberal Miltonian view of free speech "that all opinions ought to be heard, that truth would overmatch error," other founding fathers had a far narrower understanding of free speech.[158] For example, John Adams believed that a free press still had to operate "within the bounds of truth," and publishers could still be liable for publishing seditious libel.[159]

Just four years after James Madison declared in 1794 that with the ratification of the First Amendment, "we shall find that the censorial power is in the people over the Government and not in the government over the people," a Federalists controlled Congress passed the Alien and Sedition Act, which was subsequently signed into law by President John Adams.[160] The Sedition Act "prescrib[ed] heavy fines and imprisonment for those found guilty of writing, publishing or speaking matter deemed to be of a false, scandalous and seditious nature against the government or its officers, or either house of Congress."[161] Vermont Congressman Matthew Lyons was the first person convicted under the untested Sedition Act and was eventually found guilty by the nascent American judicial system.[162] Lyons was charged for defending himself in a letter he sent to the Vermont Journal in Windsor, a staunchly Federalist publication that had vehemently attacked him.

In the allegedly seditious letter, "Lyon wrote that John Adams Administration had entirely forgotten the public welfare 'in an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice.'"[163] In another case,

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[155] David L. Lange & Jefferson Powell, *No Law: Intellectual Property in the Image of an Absolute First Amendment* 198 (2008)
[156] *Id.* at 202 (2008)
[157] Paul M. Zall, *Benjamin Franklin's Humor* 157 (2005)
[158] Robert Hargreaves, The First Freedoms: A History of Free Speech 151 (2003)
[159] *Id.* at 176
[160] Iriving Brant, James Madison: Father of the Constitution, 1787-1800 at 416-420 (1950)
[161] Robert Hargreaves, The First Freedoms: A History of Free Speech 179 (2003)
[162] *Id.* at 82
[163] *Id.*

federal officials charged a local intoxicated man after he viewed President Adams receiving a sixteen-gun salute and muttered, "I do not care if they fired through him."[164] All twenty-five people arrested under the Sedition Act were Republican printers and speakers, and ten of those individuals were successfully tried and convicted.[165]

The Sedition Act soon became both a key rallying point for the Republican Party and a crucial component of Thomas Jefferson's political platform during the election of 1800. Once the Republicans took control of Congress, they hastily repealed the Sedition Act.

Although the Sedition Act was never considered by the Supreme Court, which was significantly less influential than it is today, it was upheld several times by lower federal courts, "including three Supreme Court justices riding circuits."[166] While the Sedition Act blatantly violates the First Amendment prima facie in contemporary interpretations, it was consistent with a Blackstonian reading of the First Amendment. The leading interpretation of the First Amendment at the time of the Sedition Act was based on the writings of Sir William Blackstone.[167] Through this interpretation, the First Amendment only banned the federal government from engaging in prior restraint.[168] Blackstone writes the following about his narrow view of freedom of speech:

"The liberty of press is indeed essential to the nature of free state: but this consists in laying no previous restraint upon publications and not in freedom from censure for criminal matters when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequences of his own temerity."[169]

In essence, Blackstone argued that "free speech lies solely in the absence of censorship," meaning that individuals can freely express themselves, but they can be punished by the government afterward.[170] This is evident in Blackstone's famous

[164] Robert Hargreaves, The First Freedoms: A History of Free Speech 83 (2003)
[165] *Id.*
[166] Nat Hentoff, First Freedom: The Tumultuous History of Free Speech 84 (1988)
[167] Patrick Peel, Freedom of Speech, 1500-1850, at 193-196 (Robert G. Ingram et al. eds., 2021)
[168] *Id.* at 201-202
[169] William Blackstone, *Commentaries on the Laws of England* 86 (1767)
[170] *Id.* at 151-152

assertion that "the English common law precludes prior restraints on expression but allows subsequent punishment for the 'bad tendency' of speech to harm the public welfare."[171] Like other aspects of American jurisprudence, early American jurists and legislators heavily drew from their understanding of English law to interpret un-tested American laws.[172] Constitutional historian Leonard Levy argued that the authors of the First Amendment most likely followed the Blackstonian no-prior restraint rule in their interpretation of the First Amendment and were heavily influenced by Blackstone's *Commentaries on the Laws of England* (1767).[173] Similarly, Lange and Powell argue that there is no evidence that at the time of the ratification of the First Amendment, either jurists or the public believed that the Constitution enables individuals to express any personal and political beliefs they held.[174]

In 1907, the Blackstonian prior restraint rule was codified with the Supreme Court's decision in *Patterson v. Colorado*.[175] In the majority opinion written by Justice Holmes, the Court upheld the conviction of a newspaper that had was fined for criticizing the Colorado Supreme Court.[176] The opinion argued that the main purpose of the First Amendment was "to prevent all such previous restraints upon publications as had been practiced by other governments, and they do not prevent the subsequent punishment of such as may be deemed contrary to the public welfare."[177] However, recent scholarship questions the influence Blackstone had over free speech interpretation in America, which is covered in detail in the works of

[171] David M. Rabban, *Historical Perspectives On Holmes's Dissent In Abrams*, 51 Seton Hall L.R. 41, 42 (2020)

[172] *See* Ashutosh Bhagwhat, *Posner, Blackstone, and Prior Restraints on Speech,* 2015 BYU L.Rev. 1151, 1154 (2016)

[173] Leonard W. Levy, Legacy of Suppression: Freedom Of Speech And Press In Early American History, at 195-265 (2011)

See also David L. Lange & H. Jefferson Powell, *No Law: The Origins of the First Amendment and the Question of Original Meaning* 201 (2008)

[174] David L. Lange & Jefferson Powell, *No Law: Intellectual Property in the Image of an Absolute First Amendment* 198-203 (2008)

[175] Patterson v. Colorado, 205 U.S. 454 (1907); Thomas Healy, The Great Dissent: How Oliver Wendell Holmes Changed His Mind – and Changed the History of Free Speech in America 56-57 (2013)

[176] Eric T. Kasper & Troy A. Kozma, *Absolute Freedom of Opinion and Sentiment on All Subjects: John Stuart Mill's Enduring (and Ever-Growing) Influence on the Supreme Court's First Amendment Free Speech Jurisprudence*, 15 U.Mass. L.R. 2, 167 (2020)

[177] Thomas Healy, The Great Dissent: How Oliver Wendell Holmes Changed His Mind – and Changed the History of Free Speech in America 56 (2013)

Lenord Levy, Ashutosh Bhagwat, and Michael Kent.[178]

Both free speech and the First Amendment were rarely discussed in American political or legal circles until the early 20th century, so it had always been presumed that the Blackstone no prior restraint rule was the correct interpretation of the First Amendment. Free speech scholar Thomas Healy noted that at the time, "free speech was hardly more than a slogan, with little practical force. Most law schools did not offer courses on the First Amendment, and textbooks on Constitutional Law touched on it only briefly."[179] Following this trend, the few free speech decisions rendered in the 18th and 19th centuries did not include significant analytical content, and overwhelmingly continued to reject free speech claims by relying on Blackstone's treatment of free speech.[180] Similarly to Singapore, the boundary of First Amendment law at the time was mostly untested.[181] Free speech scholar, David M. Rabban, writes the following:

Courts frequently rejected free speech claims "across a wide variety of subjects and speakers, judges revealed their hostility by often ignoring them entirely, ignoring a claim makes it invisible, suggesting it does not exist. In many cases, lawyers raised free speech issues that judges did not address. In similar cases, lawyers themselves did not raise speech issues, probably because they realized that judges might not address them and if they did, would almost certainly reject them."[182]

Even by 1918, the First Amendment had generated almost no public debate since the ratification debate in 1791, and both the public and the Bar had a relatively hazy understanding of the law.[183] Until *Cohen v. California*(1971),[184] "The Supreme Court itself had never ruled in favor of a free speech claim and lower courts had approved all manner of speech restrictions including the censorship of books and films, the prohibition of street corner speeches, and asserted bans on labor protests,

[178] Ashutosh Bhagwhat, *Posner, Blackstone, and Prior Restraints on Speech,* 2015 BYU L.Rev. 1151, 1151-1181 (2016)

[179] Thomas Healy, The Great Dissent: How Oliver Wendell Holmes Changed His Mind – and Changed the History of Free Speech in America 57 (2013)

[180] David M. Rabban, *Historical Perspectives On Holmes's Dissent In Abrams*, 51 SETON HALL L.R. 41, 42 (2020). See Jacob Mchangama, *Free Speech: A History from Socrates to Social Media* 247 (2022)

[181] *See* Geoffrey R. Stone, *Reflection on the First Amendment: The Evolution of the American Jurisprudence of Free Expression*, 131 University of Pennsylvania Press 251, 251-252 (1987)

[182] *Id.* at *f*42 (2020)

[183] Nat Hentoff, First Freedom: The Tumultuous History of Free Speech 112-130(1988)

[184] Cohen v. California, 403 U.S. 15 (1971)

profanity, and commercial advertising."[185] Further, federal courts rarely entertained First Amendment cases because, until *Gitlow v. New York*[186] in 1925, it was widely accepted that the First Amendment did not apply to state governments.[187] As a result, individual states had a rich history of harsh speech restrictions, and the Courts would not consider questions of state suppression of freedom of speech.

At the turn of the 20th century, the Supreme Court began hearing several free speech cases and almost always sided with the government in upholding the questioned speech restriction. In *Davis v. Massachusetts*(1897),[188] the Supreme Court unanimously upheld the conviction of a Boston preacher who was found in violation of a city ordinance banning public addresses on government property without a permit from the Mayor's office.[189] The Court completely ignored the question of free speech, and instead saw the case as an issue of the government's ability to control public property. Furthermore, in the 1904 case *Turner v. Williams*,[190] The Supreme Court ruled in favor of the exclusion of an illegal immigrant who allegedly wrote and shared anarchist political philosophy.[191] The Court unanimously ruled that the exclusionary law did not violate the First Amendment because the law did not explicitly mention speech restrictions. Further, they concluded that the Constitutional protections articulated in the Bill of Rights only applies to citizens, and thus the First Amendment did not apply to immigrants excluded by the act in question.[192] This exclusion of speech rights to non-citizens is remarkably similar to Singapore's Article 14, which explicitly grants free speech rights exclusively to citizens. *Mutual Film Corp v. Industrial Commission of Ohio Foundation*(1915)[193] is another example of the Supreme Court's history of hostility to free speech. In the case, the Court unanimously upheld an Ohio state government board that was given the indiscriminate agency to review films and legally required that films must be approved by the board before being distributed

[185] Thomas Healy, *The Unlikely Birth of Free Speech*, N.Y. Times, Nov. 9, 2019
[186] Gitlow v. New York, 268 U.S. 652 (1925)
[187] Eric T. Kasper & Troy A. Kozma, *Absolute Freedom of opinion and Sentiment on All Subjects: John Stuart Mill's Enduring (and Ever-Growing) Influence on the Supreme Court's First Amendment Free Speech Jurisprudence*, 15 U. Mass. L.R. 2, 16 (2020)
[188] Davis v. Massachusetts, 167 U.S. 43 (1897)
[189] *Id.* at 16
[190] Turner v. Williams, 194 U.S. 279 (1904)
[191] *Id.* at 16-17
[192] *Id.*
[193] Mutual Film Corp. v. Industrial Comm'n of Ohio, 236 U.S. 230 (1915)

and publicly screened.[194] Even though this Ohio agency blatantly violates even the most narrow Blackstonian interpretation of the First Amendment prima facie, as the Ohio government is engaging in prior restraint, the Court still upheld the conviction. The Court, without explanation, found that movies are not expressive speech and thus the constitutional protections of the First Amendment do not apply.[195] In most cases, the justices defaulted to the classic Bad Tendency Test or used a narrow interpretation of the Clear and Present Danger Test to determine the Constitutionality of speech restrictions.[196]

It is evident that for most of America's history, the United States' treatment of free speech was rather similar to speech management in Singapore. Like Singapore, the American Supreme Court did not protect a wide range of expressive speech claims and the boundaries of speech protection were overwhelmingly vague. But the vagueness seemed to err on the side of repression in the realm of free speech. How did America make an about face to become a bastion of free expression? Although this question is far too complicated to be boiled down to a single event in history, Justice Oliver Wendel Holmes' dissent in *Abrams v. United States*[197] best illustrates the transition from America's Singapore-like treatment of speech to later being hailed as the world's safe haven for free expression.

For the first time since 1798, Congress attempted to regulate and stifle political speech with the passage of the Espionage Act. Similarly to the waves of fear cast from the French Revolution in the 18th century, the rise of communism during World War 1 created widespread fear of destabilizing political speech. Akin to the Alien and Sedition Act of 1798, "under the Espionage Act it became a crime punishable by a twenty-year jail term or a ten thousand dollar fine or both to 'willfully convey false reports or false statements with intent to interfere with the operation or success of the military or naval force of the United States or to promote the success of its enemies...or willfully obstruct the recruiting or enlistment services of the United States.'"[198] Less than a year later, an amendment was added (commonly referred to as the Sedition Act) which made it a crime to "utter, print, write or publish any disloyal, profane, scurrilous, or abusive language about the

[194] Eric T. Kasper & Troy A. Kozma, *Absolute Freedom of opinion and Sentiment on All Subjects: John Stuart Mill's Enduring (and Ever-Growing) Influence on the Supreme Court's First Amendment Free Speech Jurisprudence*, 15 U.Mass. L.R. 2, 18 (2020)
[195] *Id.*
[196] *Id.* at 5
[197] Abrams v. United States, 250 U.S. 616 (1919)
[198] Nat Hentoff, First Freedom: The Tumultuous History of Free Speech 109-110 (1988)

form of government of the United States." The Sedition Act also banned "any language intended to encourage resistance to the United States, or to promote the cause of its enemies."[199] Over the next year, over two thousand individuals were prosecuted under the Espionage and Sedition Act.[200] Influential 20th-century legal scholar Zechariah Chafee argued that judges commonly set an exceedingly low burden of proof and "held it enough if the words might conceivably reach such men [who have been drafted]."[201] As such, if it was in the realm of possibility that language critical of the war could reach drafted eligible men, then the author and publisher could be found liable for hindering the war effort.

The Supreme Court frequently upheld convictions under the Sedition Act, most notably in *Schenck v. United States*[202] in 1919. Charles Schenck, the general secretary of the American Socialist Party, was convicted under the Espionage Act for attempting to cause insubordination among men drafted for the military.[203] In his leaflets, which were mailed directly to drafted men, he argued that the Conscription Act was unconstitutional and, therefore drafted men had the right to oppose the act.[204] Justice Holmes was assigned to write the majority opinion, ruling unanimously in favor of the government to uphold the conviction. In his opinion, Holmes argued that even though such speech would be protected under the First Amendment in times of peace, the leaflets created too much danger to be accepted in times of war, such as during World War I. To come to this conclusion, Holmes used the Clear and Present Danger test in place of the No Prior Restraint Rule, in which he wrote "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that congress has a right to prevent."[205]

Holmes's opinion in *Schenck*[206] was the first time the Court distanced itself

[199] *Id.*

[200] Geoffrey R. Stone, Reflection on the First Amendment: The Evolution of the American Jurisprudence of Free Expression, 131 UPENN Press 251, 251 (1987). *See also* Jacob Mchangama, Free Speech: A History from Socrates to Social Media 244 (2022)

[201] *See* Zechariah Chafee, Free Speech in the United States 52 (1967)

[202] Schenck v. United States, 29 U.S. 47 (1919)

[203] Nat Hentoff, First Freedom: The Tumultuous History of Free Speech 123-124 (1988)

[204] *Id.*

[205] Eric T. Kasper & Troy A. Kozma, *Absolute Freedom of opinion and Sentiment on All Subjects: John Stuart Mill's Enduring (and Ever-Growing) Influence on the Supreme Court's First Amendment Free Speech Jurisprudence*, 15 U. Mass. L.R. 2, 19 (2020)

[206] *Id.*

from the Blackstone interpretation of the First Amendment by writing, "it well may be that the prohibition of laws abridging the freedom of speech is not confined to prior restraints."[207] At the time of the trial, the Blackstone interpretation had come under considerable criticism from recent scholarship.[208] Even though Holmes enshrined the Blackstone view in First Amendment jurisprudence in *Patterson v. Colorado,*[209] he likely did so out of precedent and respect for his predecessor, Isaac Parker.[210]

Holmes read and discussed free speech at great lengths with his academic sparring partners Harold Laksi and Felix Frankfurter.[211] Laksi, a Harvard Law professor, frequently supplied Holmes with liberal books and organized for Holmes to meet with Professor Chaffee—a vocal advocate of free speech rights—to convince Holmes to subscribe to a broader interpretation of the First Amendment.[212] Laksi especially urged Holmes to revisit *On Liberty* by John Stuart Mill.[213] *On Liberty,* one of the most influential books on modern free speech theory, partially influenced Holmes to transform his beliefs on free speech. In *On Liberty*, Mill argues that in contrast to the Bad Tendency Test used by the majority of the American judiciary, the Harm principle should be used to determine when individual liberties, such as free speech, should be restricted.[214] Mill writes, "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."[215] As such, Mill advocates that governments must err on the side of protecting individual rights even if they are immoral unless

[207] Schenck v. United States, 29 U.S. 47 (1919); Thomas Healy, The Justice Who Changed His Mind: Oliver Wendell Holmes, Jr., and the Story behind Abrams v. United States, 39 J. Hopkins Univ. Press 35, 40 (2013)

[208] Thomas Healy, The Great Dissent: How Oliver Wendell Holmes Changed His Mind – and Changed the History of Free Speech in America 154-155(2013)

[209] Patterson v. Colorado, 205 U.S. 454 (1907)

[210] *Id.* at 61 (2013)

[211] David M. Rabban, *Historical Perspectives On Holmes's Dissent In Abrams*, 51 Seton Hall L.R. 41, 57 (2020)

[212] *Id.* at 158-161

[213] *Id.* at 98

[214] *See* Eric T. Kasper & Troy A. Kozma, *Absolute Freedom of opinion and Sentiment on All Subjects: John Stuart Mill's Enduring (and Ever-Growing) Influence on the Supreme Court's First Amendment Free Speech Jurisprudence*, 15 U. Mass. L.R. 2, 5 (2020)

[215] John S. Mill, On Liberty 13 (2001)

they create a reasonable enough level of harm.[216] Through the harm principle, Mill believed that "the liberty of expression was so important...that it over-rode the question of truth."[217] Thus, almost all speech should be protected, regardless of whether it is true or not. This is because, in the present, we cannot be certain if something deemed false or offensive today will be false or offensive in the future. Therefore, if we silence a voice we believe to be false in the present, we may completely remove a beneficial idea from society. Mill writes that "every age [has] held maybe opinions which subsequent ages have deemed not only false but absurd; and it is as certain that many opinions, now general, will be rejected by future ages."[218]

Even if speech is inexplicably false, Mill argues that it should still be protected because it forces others to defend the truth and articulate why they believe it is true to prevent "both teachers and learned go[ing] to sleep at their posts as soon as there is no enemy in the field."[219] In sum, Mill believed that free expression should be protected because of the value new ideas bring to society. The government must protect these ideas "not because they necessarily believed them to be true, but because they believed them to be useful."[220] Mill's Harm Principle argument would later be used almost verbatim by Holmes in his *Abrams* dissent.[221]

Although the connection is more difficult to trace, it is possible that federal judge Lenord Hand partially influenced Holmes to revalue his interpretation of the First Amendment.[222] Hand's decision in *Masses Publishing Co. v. Patten*[223] is one of the first judicial opinions expressing a modern Mill-like interpretation of the First Amendment and was delivered two years before the Supreme Court would hear a major free speech case.[224] In the case, a monthly magazine sued the postmaster for

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[216] *See* Eric T. Kasper & Troy A. Kozma, *Absolute Freedom of opinion and Sentiment on All Subjects: John Stuart Mill's Enduring (and Ever-Growing) Influence on the Supreme Court's First Amendment Free Speech Jurisprudence*, 15 U. Mass. L.R. 2, 7 (2020)

[217] Robert Hargreaves, The First Freedoms: A History of Free Speech 220-225 (2003)

[218] John S. Mill, On Liberty 20 (2001)

[219] *Id.* at 41

[220] *Id.*

[221] Thomas Healy, The Great Dissent: How Oliver Wendell Holmes Changed His Mind – and Changed the History of Free Speech in America 99 (2013)

[222] Thomas Healy, The Justice Who Changed His Mind: Oliver Wendell Holmes, Jr., and the Story behind Abrams v. United States, 39 J. Hopkins Univ. Press 35, 45 & 56 (2013)

[223] Masses Publ'g Co. v. Patten, 244 F. 535 (S.D.N.Y. 1917)

[224] Vincent A. Blasi, *Learned Hand's Seven Other Ideas about the Freedom of Speech,* 50 Ariz. St. L.J. 717, 744 (2018)

refusing to distribute their publication. The postmaster argued that the magazine should not be distributed through the mail system because it violated the Espionage Act by featuring four political cartoons that were critical of the United States involvement in World War 1.[225] The case was argued just a month after the passage of the Espionage Act and was the first case to test the validity of the act in the country.[226] Deviating from most jurists's Blackstonian interpretation of the First Amendment, Hand ruled in favor of the magazine and protected their ability to criticize the government, declaring that they should not be denied mailing privileges.[227] In his revolutionary opinion, Hand wrote "they [Masses Publishing Co] fall within the scope of the right to criticize...which is normally the privilege of the individual in countries dependent upon free expression of opinion as the ultimate source of authority."[228] Mill's influence is evident in Hand's ruling as he noted in his opinion that "hostile criticism" is not damaging to a country, but rather necessary for a government to source its power from the consent of the people which is crucial for a country founded on the concepts of popular sovereignty.[229] Ultimately, while he did not strike down the law because it would interfere with the doctrine of judicial restraint, he narrowly interpreted the Espionage Act to only criminalize speech directly discussing the draft.[230]Although he did not base his decision on the First Amendment,[231] he interpreted the Espionage Act based on America's historic commitment to democracy and free speech.[232] His bold protection of freedom of expression would be reversed three months later.

Two years after the *Masses*[233] ruling, Holmes accidentally bumped into

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[225] James Weinstein, *The Story of Masses Publishing Co. V. Patten: Judge Learned Hand, First Amendment Prophet,* Found. Press 61, 62 (2011)

[226] Thomas Healy, The Justice Who Changed His Mind: Oliver Wendell Holmes, Jr., and the Story behind Abrams v. United States, 39 J. Hopkins Univ. Press 35, 56 (2013)

[227] *Id.*

[228] Masses Publ'g Co., 244 F. at 539**;** Vincent A. Blasi, *Learned Hand's Seven Other Ideas about the Freedom of Speech,* 50 Ariz. St. L.J. 717, 720 (2018)

[229] *Id.* at 71

[230] Thomas Healy, The Great Dissent: How Oliver Wendell Holmes Changed His Mind – and Changed the History of Free Speech in America 20 (2013)

[231] David M. Rabban, *Historical Perspectives On Holmes's Dissent In Abrams*, 51 SETON HALL L.R. 41, 50-52 (2020)

[232] James Weinstein, *The Story of Masses Publishing Co. V. Patten: Judge Learned Hand, First Amendment Prophet,* Found. Press 61, 70 (2011)

[233] Masses Publ'g Co. v. Patten, 244 F. 535 (S.D.N.Y. 1917)

Leonard Hand on a train to Boston, which Constitutional Scholar Geoffrey R. Stone later referred to as "one of constitutional law's more memorable coincidences."[234] Hand hoped to convince his hero, Holmes, to support his wider view of free speech and support his opinion in *Masses.*[235] Much to his dismay, Holmes was indifferent to the cause and bluntly responded "you strike at the sacred right to kill the other fellow when he disagrees."[236] While Holmes ended their conversation on that train hastily, Hand eventually followed up with a letter explaining the logic behind his tolerant view that he failed to articulate on the train, pushing Holmes' to consider and reevaluate his beliefs.[237] Although his dialog with Hand encouraged Holmes to discuss free speech with Laksi further, Holmes was not convinced and continued to join the rest of the Court in ruling against free expression in *Debs v. United States*[238] and *Frohwerk v. United States*.[239] Nevertheless, just a few months later, Holmes, followed by Justice Brandeis, abruptly dissented to fight to protect freedom of expression.

Even after the First World War concluded, federal officials believed seditious language was a threat to national security and continued to use the Sedition Act to restrict speech and quell the spread of Communism.[240] Similarly to the other speech cases brought before the Court that year (*Schenck*, *Debs*, and *Frohwerk*), in *Abrams V. United States*,[241] the defendants were convicted for printing and distributing leaflets that encouraged resistance to the US war effort.[242] Scholar David Dewberry writes that "In *Abrams v. United States*, Jacob Abrams' actions are strikingly similar to Schenck's,"[243] however, instead of mailing the leaflets directly to drafted men, such as in the case of Schenk, Abrams indiscriminately threw leaflets out of

[234] David Dewberry, *In the Line of Fire: Reconsidering the Holmes of Schenck and the Holmes of Abrams*, 42 Free Speech Y.B. 17, 19 (2005)

[235] Masses Publ'g Co. v. Patten, 244 F. 535 (S.D.N.Y. 1917); Thomas Healy, The Great Dissent: How Oliver Wendell Holmes Changed His Mind – and Changed the History of Free Speech in America 21 (2013)

[236] Thomas Healy, The Great Dissent: How Oliver Wendell Holmes Changed His Mind – and Changed the History of Free Speech in America 21 (2013)

[237] *Id.* at 22

[238] Debs. v. United States, 249 U.S. 211 (1919)

[239] Frohwerk v. United States, 249 U.S. 204 (1919)

[240] *Id.* at 5

[241] Abrams v. United States, 250 U.S. 616 (1919)

[242] Nat Hentoff, First Freedom: The Tumultuous History of Free Speech 124-126 (1988)

[243] David Dewberry, *In the Line of Fire: Reconsidering the Holmes of Schenck and the Holmes of Abrams*, 42 Free Speech Y.B. 17, 24 (2005)

windows in New York City.[244] The leaflets, printed in both English and Yiddish, advocated for munition factory workers to stop "producing bullets, bayonets, cannons, to murder not only the Germans but also your dearest best who are in Russia and are fighting for freedom."[245] Instead of attempting to thwart the war in Germany, Abrams sought to prevent President Wilson from interfering with the Bolshevik revolution in Russia. Unlike the first three cases where Holmes wrote the majority opinion in favor of restricting free speech, Holmes dramatically about-faced to dissent.

Holme's dissent was based on two separate arguments. Firstly, he rejected the conclusion that the defendant violated the Sedition Act because nothing in their leaflets advocated against the U.S. form of government nor opposed the war in Germany.[246] Secondly, he rejected the argument that the defendant attempted to curtail the production of war materials. He argued that while the leaflets did encourage workers to stop producing bullets, they did so not with the intent to prevent war materials for the war in Germany, but rather for America's interference with Russian politics.[247] Abrams made his intentions blatantly obvious by writing at the bottom of his leaflets, `It is absurd to call us pro-German. We hate and despise German militarism more than do your hypocritical tyrants."[248] Unlike in his opinion in *Schenck*,[249] Holmes applied Mill's Harm Principle and attempted to assess the amount of harm Abram's speech created, and whether it warranted being suppressed.[250] In this assessment, Holmes concluded that "now nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate danger that its opinions would hinder the success of the government arms or have any appreciable tendency to do so."[251] As such, he quietly diminishes the claim that the government has complete power to restrict speech at times of war, and instead argues that the government must prove

[244] Nat Hentoff, First Freedom: The Tumultuous History of Free Speech 124-126 (1988)
[245] *Id.*
[246] Thomas Healy, *The Justice Who Changed His Mind: Oliver Wendell Holmes, Jr., and the Story behind Abrams v. United States*, 39 J. Hopkins Univ. Press 35, 47 (2013)
[247] *Id.*
[248] Robert Hargreaves, The First Freedoms: A History of Free Speech 172 (2003)
[249] Schenck v. United States, 249 U.S. 47 (1919)
[250] Eric T. Kasper & Troy A. Kozma, *Absolute Freedom of opinion and Sentiment on All Subjects: John Stuart Mill's Enduring (and Ever-Growing) Influence on the Supreme Court's First Amendment Free Speech Jurisprudence*, 15 U. Mass. L.R. 2, 22-23 (2020)
[251] *Id.*

that an imminent danger will be caused by the form of speech.[252] Holmes concludes his dissent with a theoretical discussion of the value of free speech and a need for a marketplace of free ideas, greatly reflecting the influence of John Stuart Mill.[253] This argument affirms that Abrams's right to publish his beliefs derives from the same natural right that empowers Congress to publish the national Constitution.[254]America had never been faced with such a tolerant view of free speech, sanctioning those from the farthest ends of the political spectrum to openly express their radical opinions without penalty, especially one endorsed by two members of the highest court in America.

Four months later, the Court decided on another free speech Espionage Act, *Schaefer v. United States,*[255] in which Holmes and Brandeis once again dissented from the majority. In their minority opinion, Brandeis reaffirmed the Clear and Present Danger Test as the preferred test for speech restrictions over the Bad Tendency Test used by the rest of the court, which gave the government wide latitude to restrict speech rights.[256] Again, the duo dissented in *Pierce v. United States*,[257] where Brandeis reasoned that free speech could not be restricted because there were no signs of clear and present danger. Disputing the argument that the distributed pamphlet encouraged rebellion within the U.S. armed forces, Brandeis demonstrated that the pamphlets had only been created for civilians and were not designed to encourage sedition but to recruit members for the Socialist Party. Thus, the pamphlets did not constitute clear and present danger.[258] Holmes would later convince the rest of the bench that the First Amendment applied to state governments in *Gitlow v. New York*.[259] He argued that the 14th Amendment banned states from depriving any citizens of life or liberty without due process of the law, and freedom of speech is one of those fundamental liberties protected by the 14th Amendment.[260]

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[252] *Id.*

[253] Thomas Healy, The Justice Who Changed His Mind: Oliver Wendell Holmes, Jr., and the Story behind Abrams v. United States, 39 J. Hopkins Univ. Press 35, 47 (2013)

[254] David Dewberry, *In the Line of Fire: Reconsidering the Holmes of Schenck and the Holmes of Abrams*, 42 Free Speech Y.B. 17, 19 (2005)

[255] Schafer v. United States, 251 U.S. 466 (1920)

[256] *Id.* at 49 (2013)

[257] Pierce v. United States, 252 U.S. 239 (1920)

[258] *Id.*

[259] Robert Hargreaves, The First Freedoms: A History of Free Speech 264-265 (2003)

[260] *Id.*

Although Holme's famous Clear and Present Danger Test would eventually be replaced 50 years later with the Imminent Lawless Action Test, his impact on the evolution of American free speech policy matches, if not exceeds, those of James Madison who wrote the First Amendment. His dissent in *Abrams*[261] marks a turning point in American free speech jurisprudence, referred to as the most important minority opinion in history as it would become the "foundation of modern free speech law."[262] While his dissent has no legal power, it puts a wider interpretation of the First Amendment in the mainstream media and in the minds of scholars, lawyers, and citizens across the country.

Although the Supreme Court would continue to restrict speech rights well into the 20th century, Justices Louis Brandeis, Hugo Black, and William Douglas would continue to carry on Holmes' spirit and dissent to defend free speech rights.[263] By the second half of the 19th century, the Court and the rest of the country would come to believe in the value of free speech. By 1969 in *Brandenburg v. Ohio*, the majority of the Supreme Court would vote to protect the rights of Klu Klux Klan members to express hateful opinions.[264]

However, many publications, perhaps including this paper, tend to inflate Holmes's influence on American free speech policy while minimizing the contributions of other factors, such as Justice Brandeis.[265] Holmes's dissent in *Abrams* can be used as an illustrative example of America's transition to a more tolerant view of free speech. On another note, scholars such as David R. Dewberry disagree on the importance of Holme's dissent in *Abrams* on American free speech policy and argue that his dissent focused on the mode of communication rather than the value of constitutionally protected free speech. Many argue that Holmes never had a transformation of his free speech beliefs, as the famously stubborn and proud justice never admitted to doing so. [266] As such, they argue that Holmes ruled differently from *Abrams* in *Schenck* because Abrams was charged under the Sedition

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[261] Abrams v. United States, 250 U.S. 616 (1919)

[262]Ashutosh Bhagwhat, Posner, Blackstone, and Prior Restraints on Speech, 2015 BYU L.Rev. 1151, 1198 (2016)

[263] Eric T. Kasper & Troy A. Kozma, *Absolute Freedom of opinion and Sentiment on All Subjects: John Stuart Mill's Enduring (and Ever-Growing) Influence on the Supreme Court's First Amendment Free Speech Jurisprudence*, 15 U.Mass. L.R. 2, 5 (2020)

[264] Brandenburg v. Ohio, 395 U.S. 444 (1969)

[265] Robert Hargreaves, The First Freedoms: A History of Free Speech 259-263 (2003)

[266] Thomas Healy, The Justice Who Changed His Mind: Oliver Wendell Holmes, Jr., and the Story behind Abrams v. United States, 39 J. Hopkins Univ. Press 35, 51 (2013)

Act, which is far more restrictive of free speech than the Espionage Act debated in the *Schenck* case.[267]

CONCLUSION

This paper sought to answer the question of why Singapore and the United States have such drastically different models of free speech. In answering that question, this paper found that the root of the differences stems from differing constitutional free speech clauses and contrasting models of judicial interpretation.

Singapore's Article 14 and the United States's First Amendment are drastically different from each other because of the political events and popular political philosophies that took place at the time the nations were founded.

Hypothetically, when drafting the Singapore Constitution, the drafters could have replicated the First Amendment. While keenly aware of the United States' liberal approach to free speech, the drafters opted to explicitly empower Parliament to restrict free speech without any requirement that such restrictions are reasonable. Deeply scarred by the violent racial riots that shook the young nation, the drafters of the Constitution intended to prevent the fiery speeches and inflammatory pamphlets that raised racial tensions. Unlike Singapore, insensitive racial and religious comments posed little risk in the United States, which had a relatively homogeneous population.

Singapore was abandoned by both the British Empire and the Malaysian Federation and left to protect and support its people with no significant natural resources, military, or industry. As such, the government needed to prioritize national security, development, and stability by enabling the government to operate without criticism. In contrast, when it was founded, the United States had nearly unlimited natural resources and established trade routes to Europe. Having just defeated the most powerful army at the time, and isolated from other North American colonies, national security was not at the forefront of the drafter's minds. As a result, the United States had more leeway to enable its citizens to freely express themselves without risking starting racial riots or wars with neighboring countries.

As a colony, Singaporeans experienced stringent speech restrictions enforced by the British colonial government. As a result, the people were accustomed to holding their tongue in public, and many of the same colonial laws are still in place

[267] *Id.* at 52

today. In comparison, there was limited censorship in the American colonies. Free speech had long been a popular concept that was introduced to the mainstream media from several high-profile defamation trials.

Popular neo-Confucian communitarian philosophy justified the use of stringent speech restrictions in Singapore. Neo-Confucianism argues that individual rights must be put second to the country's needs as a whole. Further, it stresses that the people do not need the power to criticize the government because honorable leaders will always serve the people. These communitarian ideals clash directly with the Enlightenment philosophy, popularized by Cato's Letters, which heavily influenced the American public and stressed the importance of individuality and natural rights. The United States and Singapore subscribed to opposing political philosophies and experienced widely contrasting events while drafting their constitution, resulting in opposing models of free speech.

Additionally, free speech in Singapore and the United States are so different from each other because their respective Supreme Courts have employed different strategies to interpret their constitutional speech clauses. Judicial interpretations give the Constitution meaning and apply the words on the page to real-life scenarios. Despite the lofty words of the First Amendment, the US government enacted draconian speech restrictions on two occasions. In both cases, the American judiciary either ignored the free speech claims altogether or used a narrow Blackstonian interpretation of the First Amendment, giving Congress a blank cheque to restrict speech so long as they do not engage in prior restraint. Despite initially demanding free speech rights when ratifying the Constitution, the American public rarely discussed freedom of speech and tolerated state-level speech restrictions until the mid-20th century. However, as Justice Holmes read the work of John Stuart Mill and conversed with Judge Hand, Professor Laksi, and Professor Chafee, he re-evaluated his understanding of the First Amendment. His powerful dissenting opinion in *Abrams v. United States*[268] marks the Supreme Court's transformation in free speech jurisprudence. Over the next three decades, the Supreme Court would reject the Blackstonian interpretation and the Bad Tendency Test to enforce a much broader model of free speech that is present today.

Conversely, Singapore has had close to zero judicial evolution in interpreting Article 14. Even though the Singaporean Supreme Court has the power of judicial review in some areas, Article 14 of the Constitution specifically empowers Parliament to judge the necessity of speech restrictions. It is unclear

[268] Abrams v. United States, 250 U.S. 616 (1919)

whether the Supreme Court could assert its power of judicial review for speech legislation. In Singapore's short history as an independent nation, there have been very few court cases on free speech that could test the boundaries of Article 14. As a result, Parliament has been allowed to dictate the constitutionality of speech restrictions unchecked and impose a wide range of authoritarian speech laws.

In this rapidly globalizing world, it is easy to blindly apply Western standards of free speech in other countries like Singapore. Since Singapore has such a drastically different history from the United States, its citizens do not value free speech like Americans do. For many Americans, like the author, who have grown up surrounded by the preconceived notion that free speech is a fundamental human right that cannot be infringed upon, it is difficult to genuinely engage in alternative free speech models. As such, it is important to examine and attempt to understand the reasoning behind alternative free speech models.

Future research should examine which model of free speech is more beneficial and effective based on the context of the country. Further, other future research should investigate the impacts of Singapore limiting constitutional free speech rights solely to citizens and compare it to the United States, which extends First Amendment protections to everyone inside the US.

While this paper has not concluded whether a wider model of free speech would be beneficial or harmful to Singapore, it demonstrates why Singapore has thus far not surrendered to the surmounting pressure to reform its speech legislation. Conversely, this paper has outlined the steps that led to America adopting a wide model of free speech and highlights the reasons why Singapore has not had similar experiences.