Investigating Chilling Effects:
News Media and Public Speech in Malaysia, Singapore, and Australia

ANDREW T. KENYON[*]

University of Melbourne

News media in Malaysia and Singapore are often said to be constrained in covering political and public issues, in comparison with plural democratic states such as Australia. However, commentary also suggests that online communications are allowing more independent speech. This article investigates whether such restrictions and changes online can be seen. Through analyzing media content, it illustrates factors relevant to the concept of a "chilling effect" on public speech, including matters of law, media ownership, journalistic practices, and civil society. While news is constrained in Malaysia and Singapore, it seems that online media can be less limited. Rather than the Internet itself being decisive, however, it is the extent of civil society and political opposition that appear more significant.

It has often been observed that the media in Malaysia and Singapore is restricted in its coverage of public and political issues when compared with the media of plural democratic jurisdictions (e.g., George, 2007a; Heng, 2002; Williams & Rich, 2000; Goodroad, 1998). Law is one of the factors commonly seen to be important in this situation. As legal academic Tey Tsun Hang has commented in relation to Singapore, decades of political defamation litigation "has constrained the extent of expression and critical

reporting" (Tey, 2008b, pp. 214–215). However, it has also been suggested that online media are widening the range of available news and commentary (e.g., Steele, 2009; Tan & Zawawi, 2008; George, 2007a; Brown, 2005). This article investigates whether such restrictions in speech and changes online can be seen in media content. It uses print and online news content in Malaysia, Singapore, and Australia as a proxy for public speech in those countries. And it takes the presence of defamatory content within that media as a measure of critical, less constrained speech. A brief explanation of the use of defamation law is provided. But its notable benefit is to provide an indication of how far media publications meet ideas of "independent" (Steele, 2009) or "contentious" (George, 2007a) journalism, ideas seen in the existing literature about Malaysia and Singapore. Such publications contain, most simply, journalism that involves criticism of a range of diverse targets.

On one level, this could be obvious: Speech is restricted in Singapore? That is hardly news. However, the study demonstrates how that restriction can be confirmed, and how more can be said about the types of speech that appear to be most affected. The study also suggests points about various factors beyond law that are thought to influence media speech, namely, matters of media ownership and financing, journalistic traditions and practices, and civil society and political opposition. And that is useful when asking what may bring about greater diversity of speech within contexts like Malaysia and Singapore.

The analysis described here supports the view, offered frequently in media studies and in law, that speech concerning political and public interest matters is highly restrained in the formally democratic states of Malaysia and Singapore. And the content analysis accords with existing academic arguments that online sites can change that situation: The online Malaysian media appears notably less constrained than do the country's mainstream print outlets. The analysis also illuminates some points about wider factors that appear relevant to public speech. In particular, it suggests that the extent of civil society and political opposition is a key element influencing media content. That sounds quite plausible: Stronger civil society and political opposition could well lead to more critical things being said about political and public issues. But it is not obvious that this would have importance for the publication of more critical material, beyond other possible influences. The differences found between Malaysian and Singaporean news content suggest that it does. This is important for understanding the possibilities for greater freedom within the region for public speech online. Those possibilities can be seen more confidently in relation to Malaysia than to Singapore. And an important reason for that difference, highlighted through the media content, appears to be the role of civil society and political opposition.

As a final point of introduction, Australia has been chosen as a comparator jurisdiction for several reasons, including its many connections with the region. Indeed, Steven Gan and Premesh Chandran, who are two of the central figures in *Malaysiakini* — one of the news sources investigated here — have substantial experience of Australia (Steele, 2009, p. 95). Of course, more important for the comparison of media content is the common English heritage that Australian defamation law shares with Malaysia and Singapore. Since 2006, largely uniform defamation law has operated in all Australian states and territories under a combination of common law and statute, but the basic approach still follows the English tradition (for an overview, see Butler & Rodrick, 2007, pp. 27–106; Rolph, Vitins, & Bannister, 2010). This is also the tradition underlying Malaysian and Singapore defamation law.

Influences on Media Speech

Of the many factors influencing media content, the first thing a commonwealth media lawyer might mention is defamation law. It has been widely noted in the legal literature that defamation law can "chill" speech (e.g., Barendt, Lustgarten, Norrie, & Stephenson, 1997). The concept of a chilling effect seeks to capture the idea that some socially valuable speech is not made because speakers feel threatened by the risks of legal liability. The concept has been used in relation to defamation law, as in many jurisdictions, it is on paper comparatively easy for plaintiffs to sue. Under the traditional approach, in countries with a common law system derived from English law, defamation plaintiffs face far lesser hurdles than they do in most civil actions, such as those in contract or copyright law.[1] The idea of a chilling effect has had rhetorical force in the United States and much of the commonwealth in arguments to reform defamation law, being referred to in leading academic literature (Schauer, 1978) and in key legal judgments in jurisdictions, such as the United States (*Sullivan*, 1964), England (*Loutchansky*, 2002, p. 817; *Singh*, 2010, para 11) and Canada (*Grant*, 2009, paras 41–57). There is also a wealth of academic legal scholarship that examines aspects of this concept, some drawing from interviews with media professionals and lawyers to investigate the practical effects of the law on public speech in the United States, England, Australia, and elsewhere (Cheer, 2006, 2005; Weaver, Kenyon, Partlett & Walker, 2006; Kenyon, 2006; Barendt et al., 1997; Murchison, Soloski, Bezanson, Cranberg & Wissler, 1994; Bezanson, Cranberg & Soloski, 1987). And the concept has also been used in domestic commentary within the ASEAN region (Thio, 2008, pp. 32, 46). Legal research beyond defamation could also be linked to the concept of a chilling effect, such as the longstanding strand of research into audiovisual media regulation (see Gibbons, 2009). It has examined the value for speech of diverse media ownership and funding models (e.g., Baker, 2007; Hitchens, 2006; Dwyer, Wilding, Wilson & Curtis, 2006; Gibbons, 1998), although it has less often made any explicit connection to the idea of chilling speech. In any event, varied studies have considered how law, viewed in terms of legal doctrine, litigation practice, and some aspects of political economy, can limit public speech. However, clearly more than law could be considered when investigating any chill on public speech. As well as defamation and wider laws regulating speech, the concept could encompass patterns of media ownership and financing, journalistic traditions and practices, and the extent and style of civil society and political opposition. That is, the concept of a chilling effect could be placed within a wider context more familiar within media scholarship. Here, we discuss a little more about each of these factors, starting with defamation law.

It is evident that domestic commentators see defamation as a substantial concern in both Malaysia and Singapore. For example, experienced Malaysian journalist Shaila Koshy (2001) describes defamation as a serious restriction, causing self-censorship, and Teo Yi-Ling notes that "defamation is

---

[1] The situation changed in the United States through a series of cases since the landmark *Sullivan*, 1964. The most important later decisions are *Gertz*, 1974; and *Anderson*, 1986. Now, in the United States, plaintiffs face a difficult challenge in defamation litigation. But the position remains close to the traditional one in jurisdictions such as England, Australia, Canada, Hong Kong, India, Ireland, Malaysia, and Singapore.

probably the most common legal problem faced by the media industry" in Singapore (Teo, 2005, p. 24).[2] The formal defamation law and litigation practices in Malaysia and Singapore are very similar. Both derive from the English common law tradition and operate under a combination of common law and statutory provisions modeled on the *Defamation Act 1952* (UK).[3] Domestic case law is said to have built a "distinctive local approach to the subject" (Chia & Mathiavaranam, 2008, p. 4). Certain differences from defamation law in England and other commonwealth jurisdictions are left aside here, such as the size of damages awards and the availability and application of *qualified privilege* defences for the media. Qualified privilege has seen significant developments since the mid-1990s in jurisdictions, including Australia, Canada, England, Hong Kong, India, Ireland, Malaysia, New Zealand, and South Africa (e.g., Kenyon & Ang, 2010). These are matters that have at least technical legal importance and may well affect public speech. But the concern here is whether any overall chilling effect may exist more than with particular doctrinal rules.

In addition to defamation, it is notable that the wider legal context in Malaysia and Singapore is very different to pluralistic democratic countries such as the UK, Australia, Canada, New Zealand, and South Africa; that is, the legal context differs from many other jurisdictions with significant influence of commonwealth law. Malaysia and Singapore each has a host of other laws restricting speech, including official secrets, sedition and security legislation,[4] print licensing laws,[5] contempt of court,[6] societies' legislation,[7] and a constitutional structure and case law that allows speech to be quite easily restricted. (For general discussion of the laws, see Tey, 2008b; Brown, 2005; Seow, 1998; Tan & Thio, 1997, pp. 788–832; Birch, 1993; Tey [2008a] critiques leading cases, while Hor [1992] critically analyzes defamation and the Singapore constitution.) These laws, and their application, are important factors in the media in Malaysia and Singapore, being widely recognized as heavily constrained, both by domestic commentators (Tey, 2008b; George, 2007a; Heng, 2002) and in comparison to international democratic standards (International Bar Association Human Rights Institute, 2008).

Beyond these matters of law, three factors are prominent in the literature across media studies and cultural research. They concern aspects of media ownership, journalistic traditions and practices, and

---

[2] Concerns have also been longstanding among Australian journalists (e.g., Schultz, 1998, p. 163; Perkin, 1970, pp. 13–16).

[3] For Malaysia, see *Civil Law Act 1956* s 3 and *Defamation Act 1957* (Revised 1983); for Singapore, see *Application of English Law Act 1993 (Cap 7A)* s 3 and *Defamation Act 1965* (Cap 75), although the Malaysian and Singaporean defamation legislation includes provisions not in the original UK Act; e.g., *Defamation Act 1965* (Cap 75) ss 4, 10, 18–22 are not in the UK *Defamation Act 1952*.

[4] In Malaysia, *Official Secrets Act 1972* and *Internal Security Act 1960*; in Singapore, *Official Secrets Act 1985 Rev* and *Internal Security Act 1985 Rev*.

[5] In Malaysia, *Printing Presses and Publications Act 1984*, commonly known as the PPPA; in Singapore, *Newspapers and Printing Presses Act (Cap 206, 1991 Rev Ed)*, commonly known as the NPPA.

[6] Contempt by scandalizing is a particularly important form of contempt in this context; see, for example, *Attorney-General*, 1991, and recent proceedings in Singapore against the *Wall Street Journal Asia* (Channel News Asia, 2009).

[7] In Malaysia, *Societies Act 1966*; in Singapore, *Societies Act (Cap 311)*.

civil society and political opposition. Media ownership within Malaysia and Singapore is very concentrated and closely aligned to political interests (Tan & Zawawi, 2008, pp. 14–15; Kenyon & Marjoribanks, 2007; Wong, 2001). The media has been operated for profit — indeed, it appears to have been a valuable source of income for political parties and individuals allied to them (George 2007b, p. 896) — but it has also been used in an instrumental project of service to political owners.[8] In Malaysia, the concentrated and politically aligned ownership sees all the major English, Malay, Chinese, and Tamil language print newspapers being owned either by investment arms of government political parties or corporate figures closely linked to prominent government politicians. As such, there is less need for direct interference into editorial practices — staff appear unlikely to publish articles directly critical of owners or their allies (George, 2007a, p. 49) —although direct interference into editorial practices is not unknown (Tan & Zawawi, 2008, p. 15). The emergence of more independent mediated communication online is complicating this picture, and its potential for promoting speech has received wide academic comment (Steele, 2009; Tan & Zawawi, 2008; George, 2007a). In contrast to both Malaysia and Singapore, Australia's media is not subject to the same sorts of registration and ownership requirements. The print media market is concentrated —though not as much as it is in Singapore — and is mainly controlled by two stakeholders: News Limited and John Fairfax Holdings. While this clearly signals issues with media diversity in Australia (Dwyer et al., 2006), there is no suggestion of concern about the same style of government influence on newspaper content.

The journalistic traditions of Malaysia and Singapore have been subject to various characterizations in debates about journalism and values — debates that can obscure the vitality of at least some journalistic practice within the region. The efforts of more independent media in Malaysia have been revealed by writers such as Janet Steele (2009) through detailed, ethnographic study drawing on classic U.S. journalism research (e.g., Gans, 1979; Tuchman, 1978). In contrast, political leaders in the countries have long emphasized the media's role in serving the government's nation-building purposes, to report good news and promote a single national identity (Thio 1996, p. 72; Lent, 1979). However, as Cherian George (2007b, pp. 905–906) suggests, it may be more the case that the "caricatured construction" of Asian values has allowed Singapore and Malaysian leaders to depict "consensus-building media" as authentic to the region, while "adversarial media" is said to be "an alien Western import." The vital role that domestic journalists, trained in leading Malaysian and Singaporean news media, are playing in the development of more independent media in each country (Steel, 2009; Tan & Zawawi, 2008, p. 80) is just one factor that belies such a characterization of media values. Indeed, experienced media practitioners and observers such as George (2007b) are dismissive of the scholarly validity of the official understandings:

> Efforts to situate uncritically pro-government journalism in indigenous cultures are little more than wishful thinking, since pre-independence journalism traditions in Malay and Chinese were no less adversarial and contentious — and were arguably more so — than the Anglo-American 'fourth estate' model of the media that the two regimes reject. (p. 905)

---

[8] In that, the media environment may bear more resemblance to contexts such as 19th Century U.S. media than to contemporary plural democracies (e.g., Schudson, 2007, pp. 138–139).

Similarly, Jun-E Tan and Zawawi Ibrahim (2008, p. 98) note how a strand of "resistance or dissent also constitute legitimate elements" of traditional Malay political culture. And, as Graham Brown (2005) has noted, impulses toward adversarial journalism remain, even within the mainstream media:

> Stringent as its legislative and corporate controls may be, party-corporate control of newspapers has not guaranteed the political subservience of journalists, many of whom still pursue their profession with relative independence and chafe at limitations placed upon them. . . . Some journalists attempt to 'slip things by' editorial censorship or push the limits of what is acceptable. (p. 43)

Against such academic criticism of arguments that the media's role is limited, it should be noted that the ideas retain significant official recognition in Singapore at least. In 2009, the country's highest court stated that, in Singapore, the media is thought to have "no special role beyond reporting the news" (*Review Publishing*, 2009, para. 277), with there being "no room . . . for the media to engage in investigative journalism which carries with it a political agenda" (ibid., para. 272).

Another matter that differs between the countries, as well as from many of the obvious comparator jurisdictions, is their histories and current forms of civil society and political opposition. Malaysia and Singapore has each had a single governing coalition or party since independence. Singapore, in particular, lacks active and sustained civil society organizations (Rodan 2004, 1996, p. 121). In addition, there has been considerable international criticism of the use by Singapore politicians of bankruptcy law in conjunction with high damages awards in defamation suits to stifle political opposition (International Bar Association Human Rights Institute, 2008; Asian Forum for Human Rights and Development, 2006; Inter-Parliamentary Union, 2002; Amnesty International, 1997). In the 20 years to 1993, defamation suits bankrupted 11 opposition politicians, making them ineligible to sit in parliament (Thio, 2002), and the practice has continued.

Of the 84 elected parliamentarians in Singapore, 82 are members of the governing People's Action Party. In addition to the two elected opposition MPs, there are nine nominated MPs representing various sectors of society and one non-constituency MP representing political opposition.[9] It is notable, however, that the opposition vote is far higher than these figures might suggest; for example, in the May 2006 general election, the governing People's Action Party won only two thirds of all valid votes (Lee, 2008, p. 183).

Malaysia, in contrast, has a longer history of factional rivalry within and between parties in the ruling Barisan Nasional (BN) coalition and its dominant element, the United Malays National Organisation (UMNO), and has experienced more substantial civil society developments since the late 1990s and the *reformasi* movement. Malaysian civil society is appreciably "thicker" and its political culture "broader," as

---

[9] See http://www.parliament.gov.sg/AboutUs/Org-MP.htm. Proposals to increase the number of non-constituency MPs from a maximum of three to nine, which would somewhat increase the representation of opposition views (see Lee Hsien Loong, 2008), were announced in May 2009. http://www.parliament.gov.sg/reports/public/hansard/full/20090527/20090527_HR.html

Cherian George (2005, p. 912) has noted: "Media activists in Malaysia can therefore plug into social networks that their counterparts in Singapore can only dream about" (see also Weiss & Hassan, 2003; Whiting, 2003). As Harding and Whiting (in press) have observed, there are "deep tensions among the Malaysian elite." The vitality of the internal BN political contests is an important difference to the situation in Singapore, where opposition party use of the Internet has been far less dramatic (Gomez, 2008). In Malaysia,

> Control of the media is . . . not just a matter of imposing the BN's political discourse on society at large, but is often also the stage for intra-coalition competition and negotiation. . . . In terms of intra-BN relations, then, the UMNO-controlled papers played a vital role for the party in vocalizing what UMNO leaders and ministers could not themselves say. (Brown, 2005, pp. 50, 52)

Another aspect of the differences between the two countries can be seen in the March 2008 Malaysian general election results, in which the opposition made substantial gains in a "stunning upset" (Steele, 2009, p. 91) for the BN. Members of the newly formed opposition coalition, Pakatan Rakyat, now amount to nearly 37% of the federal lower house, meaning the ruling coalition, for the first time, has lost its two-thirds parliamentary majority. A two-thirds parliamentary majority, which the government had held since independence in 1957, enabled BN to amend the constitution without support from opposition politicians (*Federal Constitution of Malaysia* Art. 159[3]). As Janet Steele (2009, p. 106) notes: "With opposition parties falling only thirty seats short of winning a majority in Parliament . . . this was a loss of unprecedented proportions. Journalists, commentators, and parliamentarians themselves credited — or blamed — the Internet." The Internet "is now a player and channel in Malaysian politics" (Sani, 2009, p. 150).

Within all these matters — wider laws, media ownership, journalistic traditions, and civil society and political opposition — defamation law still appears to be significant. In Malaysia, for example, Hoo Ban Khee notes that, among all the country's restrictive media laws, journalists' greatest concern lies in defamation (AMIC, 2000). Similarly, Janet Steele (2009, p. 106) reports defamation as one of two prime concerns for online news media in Malaysia, and Cherian George (2007c, p. 900) states that defamation law "remains a constant threat" in Singapore.

Analyzing Media Content for Defamation

Content analysis is a routine element of media studies scholarship internationally (Riffe & Freitag, 1997) and within the region (e.g., de Nelson, 2004), although it has been drawn on far less frequently within media law research. This study applies methods previously used to analyze U.S. and Australian newspaper content in another study that considered the degree to which mainstream publications in each country included defamatory allegations related to corporate or political activities (Dent & Kenyon, 2004). As demonstrated there, the method is useful for revealing comparative levels of defamatory material in media content. As well as overall comparisons, the method offers information about the individuals and entities that are targeted and the topics about which defamatory statements are made.

Before outlining the media publications chosen for this study, it is useful to note some aspects of defamation law. In jurisdictions following the English common law tradition for defamation, including the countries studied here, a plaintiff needs to prove relatively little in order to establish a case.[10] The burden facing plaintiffs is lower than is usual in civil actions. Once it is shown that material has been published that would identify the plaintiff to ordinary recipients and would convey a defamatory meaning, the plaintiff's case is complete. There is no requirement to prove that the defendant was at fault in publishing the defamatory allegation — for example, that the defendant was negligent in its investigations before publication, or that the defendant published something that it believed false at the time of publication — nor is there a need for the plaintiff to prove any damage. Harm is presumed. Of particular importance in this study is the fact that the legal tests for what is defamatory are relatively easy to meet. Most content which includes criticisms — however well founded — of an identifiable person or entity will meet the legal definition of what is defamatory. Within law, such content will be said to expose the subject to "hatred, contempt or ridicule" (*Parminter*, 1840) or to lower them in the estimation of recipients (*Sim*, 1936, p. 1240). That is, the content will be thought to lower their reputation. Other aspects of defamation law may provide defences, such as the defence of justification for material that is proven in court to be true. But the relatively low legal threshold for what amounts to defamatory content is significant. It means the rate at which media publications contain defamatory allegations can be taken as a useful proxy for how much critical speech they contain.

In each of Malaysia, Singapore, and Australia, two print newspapers were collected over a two-week period in 2007, as well as one online news publication from Malaysia. Online content was not coded for Singapore, as it had no regular, professional online news publications — comparatively small, non-professional sites exist in Singapore that have claimed readerships of "a few thousand people at most" (George, 2007c, pp. 902–903). Specialist online Australian news sites, such as the largely subscription-based political, business, and public affairs site, *Crikey* (http://www.crikey.com.au), could also have been examined. However, limited project resources needed to be targeted, and the Australian print sample already included the largest number of articles, editorials, and letters. The primary interest lay in comparing Malaysian and Singapore content with a more plural democratic media, for which mainstream Australian newspapers were well suited. The publications were each coded for 14 days, from March 18–31, 2007.[11] During this period, none of the countries celebrated major festivals or holidays, nor held general elections. (In Malaysia, the period preceded an unforeseen by-election in the State Assembly of Melaka following the incumbent's death, but the coding period did not cover the nomination and election days.) The time period, however, means that the media content predated the 2008 Malaysian general election noted above, as well as the 2009 transition in which Najib Razak became prime minister.

Each of the chosen publications is published daily,[12] widely circulated, and not distributed for free. (The online news site, *Malaysiakini*, is a subscription-based Web site, although some content is available

---

[10] For overviews of the English approach, see Neill, Rampton, Atkinson, Eardley and Rogers, 2009; Price, Duodu and Cain, 2009.

[11] *Malaysiakini* did not publish articles on Sunday, March 25, 2007, so it was coded for 13 days); *UM* was not published on Sunday, March 18, 2007, and Sunday, March 25, 2007, so it was coded for 12 days.

[12] Except for *Utusan Malaysia*, which is not published on Sundays.

without charge.) The publications reflect, to some degree, the language diversity of each of the Southeast Asian countries, with Malay and English language papers being analyzed for Malaysia and Singapore. Malay is the national language of both the countries, although English is also widely spoken, particularly in Singapore, where it is the primary spoken language. The specific publications analyzed were, for Malaysia, the *New Straits Times*, *Utusan Malaysia*, and *Malaysiakini*, for Singapore, the *Straits Times* and *Berita Harian*, and for Australia, the *Age* and the *Herald Sun*. The selected Malaysian and Australian publications are published by different media groups, although both the *New Straits Times* and *Utusan Malaysia* are owned by companies linked to Malaysia's ruling parties. Both Singapore publications are published by Singapore Press Holdings. (Only one major daily Singapore publication is not published by Singapore Press Holdings, namely, MediaCorp's English language daily *Today*, which is a free title.)

While the newspapers are likely to be familiar in style to readers (further details about them are provided in the Appendix), the online Malaysian service warrants some description here. *Malaysiakini* is widely regarded as a leading independent news source on Malaysia, which, in mid-2008, became the country's most used online news site (*Malaysiakini*, 2008). Launched in 1999, it now operates as a largely subscription-based site publishing mainly domestic news, analysis of domestic politics and public issues, and letters to the editor. Originally English language, the site now includes sections in Malay, Chinese, and Tamil. Since 2007, it has also regularly featured video recordings of press conferences, demonstrations, and other events in a section called *Malaysiakini.tv*. *Malaysiakini* has also been the subject of scholarly analysis (Steele 2009; George, 2007a), aspects of which we will return to in light of the media content analysis.

Specific sections of each publication were coded. For the print publications, the first five pages of news reports were coded, along with opinion pieces, editorials and letters to the editor. (For *Berita Harian*, letters to the editor were published only twice weekly.) For *Malaysiakini*, primarily English language news reports, opinion pieces, and letters to the editor were coded. The first five pages of the newspapers generally focused on domestic news or major international news. However, the coded pages of the *Straits Times* were generally headed "Prime News" and consisted of both domestic and foreign news, with somewhat more foreign and regional news reports than the other publications. The light domestic news, published in a separate section of the *Straits Times* as "Home News," appeared to contain even fewer defamatory allegations than the first five pages. The Home News was material that would, in a country such as Australia, likely be included in a "local" or community free newspaper rather than in a major daily paper.

More than 2,600 print and online articles were coded. Each item in the sample was examined to determine if it contained defamatory allegations, with a total of 1,013 items coded in Australia, 934 in Malaysia and 670 in Singapore. Of the Malaysian materials, 666 items were from the print media, while 268 were from online-only *Malaysiakini*, making the print media sample sizes in Malaysia and Singapore almost identical. Given the importance of cultural and legal understanding to the coding exercise, it is worth emphasizing that the coding process was undertaken by a single researcher — an Australian legal graduate of Malaysian background with close knowledge of all three countries and fluency in English and

Malay — who worked closely with the author during the entire process.[13] While there is undoubtedly an important element of judgment involved in coding media content for defamatory material, this approach adds significantly to the reliability of the figures in terms of the comparisons they allow. The interest here lies less in any sense of absolute figures, but rather in comparing different rates of defamatory content across publications and countries.

This study presents noteworthy results from the coding, both in the form of raw numbers and as percentages. While the actual numbers provide greater transparency to the results, the percentages assist in comparing the results across countries. However, in relation to those aspects of the content in which the raw numbers are small, particular care should be taken with the percentages and any extrapolations drawn from them (e.g., Seale, 2004).

Media Content Analysis Results

Four aspects of the content analysis are discussed here: the overall rates of defamatory content; rates across different types of media item (news articles, letters, opinion pieces, and editorials); the people or entities targeted; and rates of allegation made against political targets. The analysis indicates the following:

- First, that the print media in Malaysia and Singapore appear to contain less defamatory material overall than does the print media in Australia and notably less in relation to opinion pieces and editorials.

- Second, far fewer defamatory allegations against political figures appear to be published in Malaysia and Singapore, while more defamatory criticism of the public service appears in each of the two countries than it does in Australia.

- Third, the defamatory allegations against political figures made in Malaysia and Singapore usually appear to be less specific, being more often concerned with matters of general political criticism (although an exception existed to some degree for the Malaysian online sample in which allegations of corruption were comparatively prominent).

- Fourth, the results concerning defamatory allegations against political targets were particularly notable: In Australia, more than 40% of all targets were political, and in Malaysia, 30% were political, but in Singapore only 2% of all targets were political. Equally, only 4% of all domestic targets were political in the Singapore publications, compared to half of all domestic targets in the Australian sample.

---

[13] Further information on this style of coding is provided in Dent & Kenyon, 2004. Many thanks to Naomita Royan for her work with me in coding the media content.

Defamatory Targets

Table 1 outlines the targets against which defamatory allegations were made. Australia recorded an overall higher percentage of defamatory material, while the percentage of items containing defamatory allegations was similar across Malaysia and Singapore. The figures were close to 30% in Australia, 20% in Malaysia (17% when *Malaysiakini* was excluded), and just under 20% in Singapore. While this is a notable difference — the Australian rate being approximately one and a half times the others — there were far greater differences in relation to some aspects of the content, as seen in Table 1. However, it is worth noting the marked differences between the English and Malay language publications in Malaysia and Singapore: The English language press contained close to double the rate of the Malay sample and was not far below the Australian rate.

Table 1. Articles with Defamatory Targets

Country	Publication	Articles coded	Articles with defamatory targets	Percentage with defamatory targets
Australia	*Age*	573	160	27.9 %
	Herald Sun	440	131	29.8 %
	Total	**1,013**	**291**	**28.7 %**
Malaysia print	*New Straits Times*	325	73	22.5 %
	Utusan Malaysia	341	41	12.0 %
	Total print	**666**	**114**	**17.1 %**
online	*Malaysiakini*	268	72	26.8 %
	Total	**934**	**186**	**19.9 %**
Singapore	*Berita Harian*	313	39	12.5 %
	Straits Times	357	87	24.4 %
	Total	**670**	**126**	**18.8 %**

Rates Across Different Types of Item

The types of media item in each of the publications were categorized as ether news articles, letters, opinion pieces, or editorials. Table 2 depicts the rate at which each type contained defamatory allegations, with the greatest differences arising for opinion pieces and editorials. In Australia, opinion pieces and editorials contained markedly more defamatory targets than did news articles and letters, while, in Malaysia, the rates for opinion pieces were far lower as were the rates for editorials in both countries. In Australia, more than one third of opinion pieces contained defamatory allegations. In the Malaysian print media the figure was less than 10%. Notably, however, *Malaysiakini* contained only marginally less than did Australia, at just under one third of the sample. The Singapore print media sample was much higher than that of Malaysia, at a rate of one in five, but was still quite a bit lower than that of Australia. Both countries also had much lower rates in relation to editorials, although the sample sizes for editorials were small.

Table 2. Types of Item with Defamatory Targets.

Country	Publication	News		Letter		Opinion		Editorial	
		Total items	Items with defamatory targets	Total items	Items with defamatory targets	Total items	Items with defamatory targets	Total items	Items with defamatory targets
Australia	*Age*	288	81	195	52	62	17	28	10
	Herald Sun	139	44	222	56	50	23	29	8
	Total	**427**	**125** **29.3%**	**417**	**108** **25.9%**	**112**	**40** **35.7%**	**57**	**18** **31.6%**
Malaysia print online	*New ST*	140	30	124	34	47	7	14	2
	Utusan M	207	30	47	7	79	3	8	1
	Total print	**347**	**60** **17.3%**	**171**	**41** **24%**	**126**	**10** **7.9%**	**22**	**3** **13.6%**
	Malaysiakini	161	42 26.1%	82	22 26.8%	25	8 32%	0	0
	Total	**508**	**102** **20.1%**	**253**	**63** **24.9%**	**151**	**18** **11.9%**	**22**	**3** **13.6%**
Singapore	*Berita Harian*	253	36	20	2	28	1	12	0
	Straits Times	156	41	119	26	69	18	13	2
	Total	**409**	**77** **18.8%**	**139**	**28** **20.1%**	**97**	**19** **19.6%**	**25**	**2** **8%**

Types of Target

The types of targets that were subject to defamatory allegations in the publications were analyzed. Targets were classified into these categories:

- *Company, corporate figure*: A corporation or any other privately owned profit-motivated organization; a person known for their position in the corporate world, including, for example, company directors, CEOs, and business people. Companies were included in the analysis, although, since 2006, most companies cannot sue for defamation under Australian law. In both Malaysia and Singapore, companies can sue for defamation. In Australia, however, when a company is defamed, it is often possible for a corporate figure linked to that company (such as a director or manager) to sue for defamation, or for a corporation to avail itself of other legal avenues being open to it directly (Collins, 2008).

- *Government political party, politician*: A party or member of a coalition of parties that controlled parliament during the coding process. It also included parties that controlled a state parliament when the party was attacked in that capacity; for example, when Parti Islam SeMalaysia (PAS) was attacked in the Malaysia media, it was as a national party, but one recognized as an opposition party. Although PAS had control of a state parliament, for attacks on it related to the national political sphere, it was not a "government political party." Although "politician" is commonly limited to those who hold elected political office or candidates for such office, this category included any person who was known as a member of a government political party. The person need not have been a member of parliament or candidate. The category was expanded in this way to encompass the broader role of influential members of political parties in Malaysia and Singapore in politics, governance, and public affairs. The category would include, for instance, former Malaysian Prime Minister Mahathir Mohammad because at the time of the articles' publication he was a member of UMNO, a government political party, and retained a political role beyond that which would be expected for a former leader in a country such as Australia.

- *Opposition political party, politician*: A party or member of a coalition that did not control parliament during coding. As for government "politician," this category included any person known as a member of an opposition political party at the time of coding.

- *Public body, public official*: Government departments, government schools and statutory bodies, as well as non-elected public or civil servants, including members of the judiciary, government officials, and police. The category also included persons who were not public officials at the time, but who had previously been so and were defamed in that capacity. (In Australia, elected bodies would not be able to bring an action for defamation, although individuals associated with the bodies and identified by a publication could do so; see *Ballina Shire Council*, 1994; *New South Wales Aboriginal Land Council*, 1998.)

- *NGO*: Any non-government organization or its leaders.

- *Celebrity*: A famous person not involved in politics or business, including, for example, authors, sporting figures, musicians, singers, and actors.

- *Other individual*: A person who did not fit into any of the previous descriptions.

Table 3 details the domestic targets found in the publications across these eight categories. The most frequently targeted domestic groups in the Australian publications were government parties and politicians at 35% and individuals at more than 20%. In *Malaysiakini*, it was government parties and politicians at just over 30% and public bodies and officials at just under 25%. In the Malaysian print media, it was public bodies and officials at nearly 33%, with companies and corporate figures at nearly 20% and individuals only marginally lower than that rate. In the Singapore print media, however, the most frequently targeted domestic group was individuals not falling into the other categories at nearly 50%, followed by public bodies and officials at 25%.

Two points are suggested by these figures. They concern the overall frequency of political targets and the relative prominence of defamatory allegations against public bodies and public officials. First, the frequency with which government and opposition political parties and oppositions are targeted is markedly lower in Malaysia and, especially, in Singapore than it is in Australia. In Australia, nearly 50% of the domestic targets were political. In Malaysia, the figures were 25% for the print sample and slightly over 40% for *Malaysiakini*. In Singapore, the figure was 4%. This is a key finding from the content study and demonstrates why the print media in Malaysia and, particularly, Singapore has a reputation for muted political coverage.

Second, in terms of criticizing public bodies and public officials — the public service or civil service — Australian publications, at a rate of less than 6%, were far below Malaysian print and Singaporean publications, at approximately 33% and 25%, respectively. It appears that print publications in Malaysia and Singapore are much more likely to publish criticism of the public service than of politicians or political parties. Even in *Malaysiakini*, which was not so much lower in its rate of political targets than the Australian print media, close to 25% of targets were public bodies and officials.

Table 3. Domestic Targets of Allegations.

Country	*Publication*	*Domestic targets, grouped with percentages*							
		Total	Company, corporate figure	Gov't party, politician	Opposition party, politician	Public body, officials	NGO	Celebrity	Other individual
Australia	*Age*	219	27	83	30	15	2	18	44
	Herald Sun	169	21	51	19	7	0	27	44
	Total	**388**	**48** **12.4%**	**134** **34.5%**	**49** **12.6%**	**22** **5.7%**	**2** **0.5%**	**45** **11.6%**	**88** **22.7%**
Malaysia print online	*New ST*	72	13	13	6	29	2	0	9
	Utusan M	41	9	1	8	8	0	3	12
	Total print	**113**	**22** **19.5%**	**14** **12.4%**	**14** **12.4%**	**37** **32.7%**	**2** **1.8%**	**3** **2.7%**	**21** **18.6%**
	Malaysiakini	116	20 17.2%	36 31%	12 10.3%	27 23.3%	1 0.9%	0	20 17.2%
	Total	**229**	**42** **18.3%**	**50** **21.8%**	**26** **11.4%**	**64** **27.9%**	**3** **1.3%**	**3** **1.3%**	**41** **17.9%**
Singapore	*Berita H*	17	1	0	0	3	2	0	11
	Straits T	57	11	3	0	15	3	0	25
	Total	**74**	**12** **16.2%**	**3** **4.1%**	**0**	**18** **24.3%**	**5** **6.8%**	**0**	**36** **48.6%**

Political Defamations

Table 4 offers some further details about political allegations made against domestic politicians and political parties. It notes the percentages that political targets formed of total targets and of domestic targets. (Minor differences in some percentages between Tables 3 and 4 result from rounding.) Again, the relatively restrained position in Malaysia and the markedly restrained situation in Singapore are evident when compared with Australia. In general terms, in Australia, more than 40% of all defamation targets (and approaching 50% of all domestic targets) were domestic politicians and political parties. The figures for the Malaysian print media were half this rate: 20% of all defamation targets (and 25% of all domestic targets) were domestic political targets. It is notable, however, that the online figures for Malaysia were close to the Australian print sample, with 40% of total targets, but only marginally higher than that figure for domestic targets. Compared with the overall Malaysian figure of 30% of all targets, let alone the Australian figure of more than 40%, the result in Singapore was miniscule — domestic political targets formed less than 2% of all targets (and only 4% of domestic targets). On this measure, the Australian print media raises defamatory allegations about domestic politics up to 20 times more frequently than does the Singapore print media.

Table 4 also outlines the types of allegations that were made against political targets. The defamatory allegations were grouped into four areas:

- *Political criticism*: criticism or insults between political parties, within political parties, or of politicians' personal characteristics or behavior as related to politics; for example, criticizing a politician for being a "useless leader of a party" or for being dishonest (but not involving any of the three areas below).
- *Governance*: criticism of the governance activities of a politician or political party, relating to matters such as the use of public funds (but not involving issues of corruption or other criminal conduct).
- *Corruption*: allegations such as bribery or "money politics" involving politicians or political parties.
- *Criminal*: allegations of criminal conduct other than corruption.

In all three countries, the majority of political allegations were in the form of general political criticism. In Singapore, this was true for all the handful of political allegations. In Australia, more than 80% concerned political criticism, more than 10% involved governance, and 6% concerned corruption. In Malaysia, nearly 90% of political allegations in the print media concerned political criticism, with 7% concerning corruption, and the balance criminal behavior. The main difference with the online Malaysian sample was that a lower percentage of approximately 75% related to political criticism, and nearly 20% involved corruption.

With regard to allegations of corruption, it is worth noting the different levels of perceived corruption in each of the countries, as based on expert assessment and opinion surveys. The 2008

Corruption Perceptions Index from Transparency International ranks 180 countries on a scale from 0 to 10, in which 10 is the highest possible score indicating no perception of corruption.

For the countries considered here, the figures ranged from 5.1 in Malaysia to 8.7 in Australia and 9.2 in Singapore. Malaysia's score places the country at a global ranking of 47, while both Singapore and Australia are ranked in the highest 10 results, at positions 4 and equal 9, respectively (Transparency International, 2008).[14] However, such figures for Singapore could be tempered by scholarly research into the limited transparency that applies for non-commercial information and in relation to government-linked companies (Rodan, 2004). The higher level of perceived corruption in Malaysia is consistent with the fact that more allegations concerning corruption are made there than are made in either Australia or Singapore, but it appears inadequate as an explanation for the degree of difference between the figures.

In relation to these results about the types of political defamatory allegations, it was also evident that allegations concerning governance, corruption, or other illegality generally involved more specific charges. Publication of such allegations would tend to reflect a more open terrain for public speech. When domestic politicians and political parties were targeted, however, these more specific categories were entirely absent in Singapore. In Malaysia, they were found really only in *Malaysiakini* in relation to corruption. Thus, as well as the rate of defamatory political allegations being lower in Malaysia and Singapore, the allegations published were generally of less specific types.

Table 4. Political Allegations.

Country	Total targets	Do-mestic targets	Domestic politician, party targets	% of total targets	% of domestic targets	Nature of allegations against domestic politicians and political parties (% of domestic political targets)			
						Political Criticism	Gover-nance	Corrup-tion	Criminal
Australia	437	388	183	41.8%	47.2%	149 81.4%	20 10.9%	11 6%	3 1.6%
Malaysia print	137	113	28	20.4%	24.8%	25 89.3%	0	2 7.1%	1 3.6%
Malaysia online	120	116	48	40.0%	41.4%	37 77.1%	2 4.2%	9 18.8%	0
Malaysia	257	229	76	29.6%	33.2%	62	2	11	1

[14] In comparison, some other countries' CPI scores and global rankings are Indonesia (CPI 2.6; ranking equal 126), New Zealand (CPI 9.3; ranking equal first), United Kingdom (CPI 7.7; ranking equal 16), Canada (CPI 8.7; ranking equal 9), United States (CPI 7.3; ranking equal 18), Japan (CPI 7.3; ranking equal 18), Thailand (CPI 3.5; ranking equal 80) and China (CPI 3.6; ranking equal 72). The 2008 Index has been used, as it should reflect the situation at the time the media samples analyzed here were published. The subsequent 2009 Corruptions Perception Index is not markedly different, although Malaysia's CPI figure has dropped to 4.5.

Total						81.6%	2.6%	14.5%	1.3%
Singapore	187	74	3	1.6%	4.1%	3 100%	0	0	0

Chilling Effects Considered

The media content in this study shows that the Malaysian and Singapore print media publish fewer defamatory allegations than does the print media in Australia, with the position of Singapore, in particular, appearing to be constrained. Defamatory allegations against domestic political figures were far less common in Malaysia and Singapore than in Australia. And the political allegations made in Malaysia and Singapore were more often matters of general political criticism than specific allegations (although there was a partial exception for *Malaysiakini*, where corruption allegations were relatively common).

At the outset of this article, a range of factors beyond law was raised that appear important in analyzing any chilling effect on public speech; namely, media ownership and resources, journalistic traditions and practices, and civil society and political opposition. The content analysis offers some insights into each of these factors.

Relating in part to the factor of media ownership, communication technologies play a different role in each of Malaysia and Singapore. With lower take-up of the Internet than in Singapore, Malaysia has achieved far more in terms of public speech. This has often been through Internet communication facilitating offline political expression and action (Tan & Zawawi, 2008, pp. 84–87). Even with its comparatively limited reach in Malaysia, the Internet has been important in underlying the changes. While there are variations in the two countries' approaches to Internet regulation, in both there is a "fundamental discontinuity" with the approach to regulating other media. The Internet "became the first medium that citizens of either country were allowed to use for mass communication without first having to secure a government license" (George, 2005, pp. 906–907). And it appears that the opening of a new space for speech has been taken up and developed further in Malaysia. Such changes in communication technologies have previously prompted optimistic analyses: Precursors to contemporary debates about free speech online in Malaysia and Singapore exist in past expectations about satellite television in the region, expectations that were not realized (Brown, 2005, p. 42). But the content examined here suggests the present optimism has a stronger basis. As will be discussed, a significant factor underpinning that use of internet communications appears to be the role of civil society and political opposition.

The content analysis does not intersect with all of the extensive debates on journalistic traditions and practices in the region. However, it is consistent with a notable recent analysis of *Malaysiakini*. On the basis of quite detailed interview and newsroom observational research conducted during 2007 and 2008, Janet Steele (2009) has suggested that

> *Malaysiakini* uses the norms of good journalism — covering both sides, providing documentary evidence, and giving voice to the voiceless —to legitimize alternative views of events, thus challenging the authoritarianism of the Barisan Nasional . . . [I]n creating a space where citizens are free to express their opinions, *Malaysiakini* deliberately promotes a blueprint for democratic civic discourse in Malaysia. (p. 94)

As Steele notes, this resembles the analysis of Cherian George, who has characterized such practices as "contentious journalism" (2007a), with its key quality being independence. As one of the founding editor's states about that independence,

> The media landscape in Malaysia is highly politicized. After all, most of the mainstream media organizations are either directly owned or indirectly linked to ruling parties. At the other spectrum are newspapers produced by the opposition parties. Malaysians have not come across a truly independent media until *Malaysiakini* . . . That is why the government has tried time and again to dismiss us as an opposition voice. Over the years, we have proven otherwise. That's something which the government does not know how to deal with. (Steele, 2009, p. 98)

One of the more important implications of the media content studied here is the support it offers for these views. The strong claims that have been made for *Malaysiakini* appear warranted: It is a more independent news outlet than the other Malaysia and Singapore titles. In part, this is suggested by the higher rates of defamatory content generally seen in *Malaysiakini* — rates that often resemble the Australian print sample. There are many examples, with an illustrative one being the rates for defamatory targets in opinion pieces depicted in Table 2: The Australian sample was nearly 36% percent, the Malaysian print sample 8% and in *Malaysiakini* 32%. Just as importantly, however, the content analysis also suggests that *Malaysiakini* is criticizing government and opposition political interests in a relatively independent manner.

To make this conclusion clear, some of the content analysis figures are worth considering further. There are several steps to the analysis. First, the style of news journalism being invoked by Steele is quite a mainstream academic view within the sociology of news, based on work such as that of Michael Schudson (2003).[15] Given that, it is plausible to suggest that Australian newspapers may, in general terms, approximate the standard — Australian journalists have clearly articulated that aspiration at least (Schultz, 1998, pp. 154–160).

Second, within such standards of news journalism, governments and government politicians generally receive more media coverage than do opposition politicians. Higher representation of government than opposition politicians is supported by empirical studies internationally (e.g., Tresch, 2009, p. 71). It is also evidenced in Australia. There, weekly commercial reports rank the amount of coverage received by political figures across the domestic media. Government politicians usually occupy the vast majority of positions. In an illustrative week in 2009, government politicians occupied 14 of the highest 20 positions and non-government politicians occupied only two positions in the top 10 (Baume, 2009). The focus on government politicians may be even greater in Malaysia and Singapore, with contemporary Malaysian analysts describing a "government stranglehold on the mainstream media" (Tan & Zawawi, 2008, p. 16), and the U.S. Department of State (2009) observing that opposition coverage is

---

[15] Critical academic analyses of professionalism, such as Nolan (2008), can be noted, but left to one side here.

"tightly restricted and reported in a biased fashion." Even former Malaysian Prime Minister Mahathir Mohamad famously faced difficulties in gaining access to the mainstream media to provide comments on current public issues and turned to *Malaysiakini* to make his contribution (George, 2007b, pp. 901–902). And "elite" opponents such as Anwar Ibrahim have been marginalized by mainstream media, even at the cost of substantial circulation declines (ibid., p. 906). Similarly, the Singapore press has been characterized as an "establishment political institution" due to the ways in which it is interwoven with established political power (Tey, 2008b, p. 203).

Third, the different level of coverage of government and opposition makes it quite probable that, while both would be targeted, there would be more government political targets than opposition targets. For example, taking figures from Table 3, in Australia, approximately 35% of all domestic targets were government political targets and 13% were opposition political targets. Given the much higher level of coverage of government politicians, that sort of difference in defamatory content should not be surprising. It could well arise where journalists approach their work "independently," as that concept is understood by Australian journalists and much media sociology.

In this context, the comparative figures for Australia and Malaysia on government and opposition political targets have special interest. Unlike the Australian difference — approximately 35% government and 13% opposition — in the Malaysian print media, the figures were just over 12% for each group. That suggests a far more critical approach to opposition politics than to government politics in Malaysia. That position might be partially qualified by the higher rate at which public bodies and officials were targeted in Malaysian newspapers. However, that does not appear to be a sufficient factor to explain the difference in the rates of political targets. In comparison, *Malaysiakini* appears much closer to a model of independent journalism, with more than 30% of all domestic targets being government political targets and more than 10% being opposition. While further research into government and opposition coverage could be useful in developing this point, the present results support recent academic arguments that independent and contentious journalism exists online in Malaysia. A question for future analysis is the degree to which that independence can be sustained and broadened through a wider range of online services for news and commentary.[16]

While this finding about independent journalism is significant, perhaps the most important point about a chilling effect arising from the media content involves civil society and political opposition. The analysis clearly supports civil society and political opposition being highly significant in the development of diverse media content. The difference in results here suggests that factor has a marked influence on media content. Many of the other factors related to a chilling effect are broadly similar between Malaysia and Singapore — namely, the formal defamation law and wider legal environment, the ownership patterns for mainstream media, and the journalistic traditions and practices. There do not appear to be marked differences in those factors between the two countries, yet the Malaysian media content suggests a far more vibrant space for public speech than does Singapore media content. It is the extent and style of civil society and political opposition that seems to be the factor of greatest relevant difference between

---

[16]See e.g., *The Nut Graph* (http://www.thenutgraph.com) and *The Malaysian Insider* (http://www.themalaysianinsider.com).

Malaysia and Singapore. As Garry Rodan (2004, p. 181) has suggested, where new media voices have challenged "established controls in Malaysia . . . this has been as result of civil society initiatives fuelled by political conflict — circumstances that have no parallel in Singapore." This casts in a different light the factors of changed media ownership and control (in relation to at least some Internet journalism) and changed journalistic practices. Those changes offer potential for greater speech, but in contexts like Malaysia and Singapore — where the general legal environment for speech is restricted — civil society and political opposition appear more important. As Rodan has argued, it appears that the Internet "can be harnessed to the benefit of political pluralism" — and, one could add, to the benefit of independent journalism — "where there are sufficiently motivated and . . . collectively organised social and political forces." Civil society and political opposition appear to have an important, perhaps crucial, role enabling public speech, at least in countries like these. While noting that power relations need not be presumed any less problematic in civil society than in state institutions (Lyons & Gomez, 2005, p. 121), the content study underlines a central political and social question for the future in Malaysia and Singapore: How will civil society and political opposition interact over time with changed communication technologies and journalistic practices, as well as with the still present restrictive defamation and other laws?

Conclusion

Overall, the differences in content between Singapore, Malaysia, and Australia are consistent with several strands of the existing literature. First, they support the importance of less restrictive ownership laws in allowing the potential for greater speech online. Second, they show the emergence of examples of independent journalism online; examples which, drawing as they do from domestically trained journalists, suggest that normative arguments for ASEAN media serving primarily a national-building and government-supporting role deserve critical examination and substantial modification, if not rejection. Third, and perhaps most importantly, they suggest the importance of civil society and political opposition in underpinning public speech.

For legal analysts, it is worth noting the results are certainly consistent with defamation law affecting public speech. There are differences in the overall rates of defamatory content found in Australia compared with the rates in Malaysia and Singapore, particularly in relation to what is traditionally thought of as political and public interest material. Indications that speech is constrained, and that law may be a factor, in turn support further investigation of how the legal rules — or their application — may differ from contemporary commonwealth standards. As Tey Tsun Hang (2008a, pp. 452–453) has noted, the success rate of defamation plaintiffs from Singapore's governing Peoples' Action Party is "overwhelming," with no leader having "ever lost a defamation action against an opposition leader in the Singapore courts." While plaintiffs are thought commonly to succeed in defamation actions under the traditional English law, the Singapore experience is still quite unlike that in other common law jurisdictions. At the same time, the reasoning offered by judges in Singapore defamation cases has long been criticized as disappointing and insufficient (Tey, 2008a, p. 456; Hor, 1992). The results here reinforce such concerns and underlie the value in closer examination of the application of defamation doctrine in Malaysia and Singapore — particularly in comparison with the approach in English law and other commonwealth jurisdictions — to see what part the law and its operation plays in the limited speech that is evident in the media content of Malaysia and Singapore. However, a useful caution for lawyers also follows from this study of media

content. At least in contexts like Malaysia and Singapore, where multiple factors tend to constrain media speech compared to more plural democracies, law may well not be the most significant element.

Finally, the implications are wider than the three jurisdictions examined here. This study suggests the value in considering a range of factors in relation to any chilling effect on public speech. Law, media ownership and control, practices of journalism, and the style and extent of civil society, and political opposition all interact within an ecology of public speech. To consider only one of these elements may be unnecessarily limiting. For example, suppositions about legal effects on the media, which are commonplace within the media law literature, can be investigated through a variety of theoretical and empirical means. But if legal scholarship is to understand the role of law within mediated speech, it could usefully remember the wider context in which law exists. For it is in that context that one might understand a little more about how the law might matter. Thus, research into public speech could take account of a range of relevant factors, such as media ownership, journalistic traditions, and civil society, as well as law. Equally, the study illustrates how media content research can, perhaps especially for questions related to free speech, benefit from the judicious use of legal concepts and techniques. Here, a legally informed analysis has revealed the importance of some existing strands of non-legal scholarship about the region, especially those related to the roles of technology, journalism, and politics in public speech.

Appendix: Media Products Analyzed

In Malaysia:

- *New Straits Times*: English language daily currently published as a tabloid, though previously a broadsheet, and owned by New Straits Times Press, which is controlled by Media Prima Bhd. In 2007–2008, its audited average daily circulation was 136,530 copies on weekdays and 156,910 copies on Sunday (Media Specialist Association, n.d.).

- *Utusan Malaysia*: Malay language daily broadsheet owned by the Utusan Group. In 2007–2008, its audited average daily circulation was 197,952 copies on weekdays and 458,296 copies on Sunday (Media Specialist Association, n.d.).

- *Malaysiakini*, http://malaysiakini.com; See description in text.

In Singapore:

- *Straits Times*: English language daily broadsheet owned by Singapore Press Holdings. In 2006, its weekday daily average print circulation was 386,167 copies (Singapore Press Holdings, 2007).

- *Berita Harian*: Malay language daily broadsheet owned by Singapore Press Holdings. In 2006, its weekday daily average print circulation was 55,658 copies (Singapore Press Holdings, 2007).

In Australia:

- *Age*: English-language daily broadsheet owned by Fairfax Media. Its average daily circulation in June 2008 was 208,000 on weekdays, 301,500 on Saturday, and 227,500 on Sunday (Fairfax Media, 2008, p. 4).

- *Herald Sun*: English language daily mid-market tabloid owned by the Herald and Weekly Times, a division of News Limited, which is controlled by News Corporation. It is the highest circulation newspaper in Australia, with average daily circulation in June 2008 of 530,000 on weekdays, 510,500 on Saturday, and 622,000 on Sunday (Fairfax Media, 2008, p. 4).

References

Anderson (1986). *Anderson v. Liberty Lobby*, 477 US 242 (1986).

Asian Media Information and Communication Centre. (2000). *Media and democracy in Asia*. Singapore: AMIC.

Amnesty International. (1997, October 15). *JB Jeyaretnam: The use of defamation suits for political purpose.* AI Index ASA 36/04/97. Retrieved January 18, 2010, from http://www.amnesty.org/en/library/info/ASA36/004/1997/en

Asian Forum for Human Rights and Development. (2006, March 24). *A Shadow on Singapore's Judiciary: Use of Defamation and Contempt of Court on Government Critics* [Press Release]. Retrieved March 10, 2009, from http://www.forum-asia.org/news/press_releases/fa/24Mar06_defamation_singapore.shtml

Attorney-General (1991). *Attorney-General v. Wain* [1991] 2 MLJ 525.

Baker, C. E. (2007). *Concentration and democracy: Why ownership matters.* New York: Cambridge University Press.

Ballina Shire Council (1994). *Ballina Shire Council v. Ringland* (1994) 33 NSWLR 680.

Barendt, E., Lustgarten, L., Norrie, K., & Stephenson, H. (1997). *Libel and the media: The chilling effect*. Oxford: Oxford University Press.

Baume, P. (2009, April 22). *Media monitors top 20*. Retrieved April 24, 2009, from http://www.crikey.com.au/

Bezanson, R., Cranberg, G., & Soloski, J. (1987). *Libel law and the press: Myth and reality.* New York: The Free Press.

Birch, D. (1993). *Singapore media: Communication strategies and practices.* Melbourne: Longman Cheshire.

Brown, G. (2005). The rough and rosy road: Sites of contestation in Malaysia's shackled media industry. *Pacific Affairs, 78*, 39–56.

Butler, D., & Rodrick, S. (2007). *Australian media law* (3rd ed.). Rozelle, New South Wales: Lawbook Co.

Channel News Asia. (2009, March 19). *Deputy Editor of Wall Street Journal Asia fined $10,000 for contempt of court.* Retrieved January 18, 2010, from http://www.channelnewsasia.com/stories/afp_asiapacific/print/416354/1/.html

Cheer, U. (2005). Myths and realities about the chilling effect: The New Zealand media's experience of defamation law. *Torts Law Journal, 13,* 259–301.

Cheer, U. (2006). Defamation in New Zealand and its effects on the media: Self-censorship or occupational hazard? *New Zealand Law Review, 3,* 467–524.

Chia, D., & Mathiavaranam, R. (2008). *Evans on defamation in Singapore and Malaysia* (3rd ed). Singapore: Lexis-Nexis.

Collins, M. (2008). Protecting corporate reputations in the era of uniform national defamation Laws. *Media & Arts Law Review, 13,* 447–467.

de Nelson, S. A. (2004). Southeast Asian press coverage of terrorism and the Bali bombing. *Copenhagen Journal of Asian Studies, 20,* 47–69.

Dent, C., & Kenyon, A. T. (2004). Defamation law's chilling effect: A comparative content analysis of Australian and US newspapers. *Media & Arts Law Review, 9,* 89–111. Available from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=586684

Dwyer, T., Wilding, D., Wilson, H., & Curtis, S. (2006). *Content consolidation and clout: How will regional Australia be affected by media ownership changes?* Melbourne: Communications Law Centre.

Fairfax Media. (2008, June). *Fairfax media publications circulation and readership results for newspapers, inserted magazines and websites—to June 2008* [Media Release]. Retrieved April 24, 2009, from http://www.fxj.com.au/readershipcirc/Jun08_Mediarelease.pdf

Gans, H. J. (1979). *Deciding what's news.* New York: Pantheon.

George, C. (2005). The internet's political impact and the penetration/participation paradox in Malaysia and Singapore. *Media, Culture & Society, 27,* 903–920.

George, C. (2007a). *Contentious journalism and the Internet: Towards democratic discourse in Malaysia and Singapore.* Seattle: University of Washington Press, Singapore: Singapore University Press.

George, C. (2007b). Media in Malaysia: Zone of contention. *Democratization, 14,* 893–910.

George, C. (2007c). Credibility deficits: Why some news media don't pay the price. *Journalism Studies, 8,* 898–908.

Gertz. (1974). *Gertz v. Robert Welch* [1974 418 US 323.

Gibbons, T. (1998). *Regulating the Media* (2nd ed.). London: Sweet & Maxwell.

Gibbons, T. (Ed). (2009). *Regulating audiovisual services.* Surrey: Ashgate.

Gomez, J. (2008). Online opposition in Singapore: Communications outreach without electoral gain. *Journal of Contemporary Asia, 38,* 591–612.

Goodroad, S. L. (1998). The challenge of free speech: Asian values v unfettered free speech, an analysis of Singapore and Malaysia in the new global order. *Indiana International and Comparative Law Review, 9,* 259–318.

Grant. (2009). *Grant v. Torstar* [2009] SCC 61.

Harding, A., & Whiting, A. (In Press). Custodian of civil liberties and justice in Malaysia: The Malaysian bar and the moderate state. In T. Halliday, M. Feeley & L. Karpik, (Eds.), *British colonialism, post-colonialism, and the fortunes of political liberalism.*

Heng, R. H. K. (Ed). (2002). *Media fortunes, changing times: ASEAN states in transition*. Singapore: Institute of Southeast Asian Studies.

Hitchens, L. (2006). *Broadcasting pluralism and diversity: A comparative study of policy and regulation*. Oxford: Hart.

Hor, M. (1992). The freedom of speech and defamation. *Singapore Journal of Legal Studies*, 542–556.

International Bar Association Human Rights Institute (2008). *Prosperity versus Individual Rights? Human Rights, Democracy and the Rule of Law in Singapore*. Singapore: IBAHRI.

Inter-Parliamentary Union. (2002, March 23). *Singapore: Case No SIN/01 – Joshua Jeyaretnam* [Resolution adopted by IPU Council at 170th session]. Retrieved January 10, 2010, from http://www.ipu.org/hr-e/170/Sin01.htm

Kenyon, A.T. (2006). *Defamation: Comparative law and practice*. London: UCL Press.

Kenyon, A. T., & Ang, H. L. (2010). Reynolds Privilege, common law defamation and Malaysia. *Singapore Journal of Legal Studies*, (in press).

Kenyon, A. T., & Marjoribanks, T (2007). Transforming media markets: The cases of Malaysia and Singapore. *Australian Journal of Emerging Technologies and Society*, *5*(2), 103–118.

Koshy, S. (2001). Living in interesting and trying times. *Media Asia, 28,* 111.

Lee, T. (2008). Gestural politics: Mediating the new Singapore. In K. Sen & T. Lee, (Eds.), *Political regimes and the media in Asia* (pp. 170–187). London: Routledge.

Lent, J. A. (1979). Social change and the human right of freedom of expression in Malaysia. *Universal Human Rights*, *1*, 51–60.

Loutchansky. (2002). *Loutchansky v. Times Newspapers* [2002] QB 783.

Lyons, L., & Gomez, J. (2005). Moving beyond the OB markers: Rethinking the space of civil society in Singapore. *Sojourn, 20,* 119–131.

Malaysiakini. (2008, July 8). Malaysiakini is no. 1 news site. *Malaysiakini*. Retrieved April 24, 2009, from http://malaysiakini.com/news/85773

Media Specialist Association. (n.d.). *Analysis of print media: Audited circulation 1988–2008.* Audit Bureau of Circulation. Available from http://www.abcm.org.my/

Murchison, B. C., Soloski, J., Bezanson, R. P., Cranberg, G., & Wissler, R. L. (1994). Sullivan's paradox: The emergence of judicial standards of journalism. *North Carolina Law Review, 73,* 7–113.

Neill, B., Rampton, R., Atkinson, T., Eardley, A., & Rogers, H., (2009). *Duncan and Neill on defamation* (3rd ed.). London: LexisNexis.

New South Wales Aboriginal Land Council. (1998). *New South Wales Aboriginal Land Council v. Jones* (1998) 43 NSWLR 300.

Nolan, D. (2008). Journalism, education and the formation of public subjects. *Journalism: Theory, Practice and Criticism, 9*(6), 733–749.

Parminter. (1840). *Parminter v. Coupland* [1840] 6 M &W 105; 151 ER 340.

Perkin, G. (1970). Massaging the medium. In D. Whitelock (Ed.), *The message and the medium: The future of the news media in Australia.* Adelaide: University of Adelaide Press.

Price, D., Duodu, K., & Cain, N., (2009). *Defamation: Law, procedure and practice* (4th ed.). London: Sweet & Maxwell.

Review Publishing. (2009). *Review Publishing Co v. Lee Hsien Loong* [2009] SGCA 46.

Riffe, D., & Freitag, A. (1997). A content analysis of content analyses: Twenty five years of journalism quarterly. *Journalism and Mass Communication Quarterly, 74,* 515–524.

Rodan, G. (1996). State-society relations and political opposition in Singapore. In G. Rodan, (Ed), *Political oppositions in industrialising Asia* (pp. 95–127). London: Routledge.

Rodan, G. (2004). *Transparency and authoritarian rule in Southeast Asia: Singapore and Malaysia.* London: Routledge Curzon.

Rolph, D., Vitins, M., & Bannister, J. (2010). *Media law: Cases, materials and commentary.* Melbourne: Oxford University Press.

Sani, A. (2009). *The public sphere and media politics in Malaysia.* Newcastle upon Tyne: Cambridge Scholars Publishing.

Schauer, F. (1978). Fear, risk and the first amendment: Unravelling the chilling effect. *Boston University Law Review, 58,* 685–732.

Schudson, M. (2007). The concept of politics in contemporary US journalism. *Political Communication, 24,* 131–142.

Schudson, M. (2003). *The sociology of news.* New York: Norton.

Schultz, J. (1998). *Reviving the fourth estate: Democracy, accountability and the media.* Cambridge: Cambridge University Press.

Seale, C. (2004). Coding and analysing data. In C. Seale (Ed.), *Researching society and culture* (pp. 305–321, 2nd ed.). London: Sage.

Seow, F. T. (1998). *The media enthralled: Singapore revisited*. Boulder, CO: Lynne Rienner.

Sim. (1936). *Sim v. Stretch* [1936] 2 All ER 1237.

Singh. (2010). *British Chiropractic Association v. Singh* [2010] EWCA Civ 350.

Singapore Press Holdings. (2007). *Singapore Press Holdings Annual Report 2006*. Singapore: SPH.

Steele, J. (2009). Professionalism online: How *Malaysiakini* challenges authoritarianism. *International Journal of Press/Politics, 14*, 91–111.

Sullivan. (1964). *New York Times v. Sullivan* [1964] 376 US 254.

Tan, J., & Zawawi, I. (2008). *Blogging and democratization in Malaysia: A new civil society in the making*. Petaling Jaya: Strategic Information and Research Development Centre.

Tan, K. Y., & Thio, L. (1997). *Constitutional law in Malaysia and Singapore* (2nd ed.). Singapore: Butterworths Asia.

Teo, Y. (2005). *Media law in Singapore* (2nd ed.). Singapore: Sweet & Maxwell Asia.

Tey, T. H. (2008a). Singapore's jurisprudence of political defamation and its triple-whammy impact on political speech. *Public Law, 55*, 452–462.

Tey, T. H. (2008b). Inducing a constructive press in Singapore: Responsibility over freedom. *Australian Journal of Asian Law, 10*, 202–232.

Thio, L. (1996). Human rights and the media in Singapore. In R. Haas (ed.), *Human rights and the media* (pp. 69–77). Kuala Lumpur: Asian Institute for Development Communication. Singapore: Friedrich Naumann Foundation.

Thio, L. (2002). Lex rex or rex lex? Competing conceptions of the rule of law in Singapore. *UCLA Pacific Basin Law Journal, 20*, 1–76.

Thio, L. (2008). The virtual and the real: Article 14, political speech and the calibrated management of deliberative democracy in Singapore. *Singapore Journal of Legal Studies, 25,* 25–57.

Tresch, A. (2009). Politicians in the media: Determinants of legislators' presence and prominence in Swiss newspapers. *International Journal of Press/Politics, 14*, 67–90.

Tuchman, G. (1978). *Making news: A study in the construction of reality.* New York: Free Press.

Transparency International. (n.d.). *Corruption Perceptions Index 2008.* Available from http://www.transparency.org/policy_research/surveys_indices/cpi

U.S. Department of State. (2009, February). *2008 Country Reports on Human Rights Practices: Malaysia*. Available from http://www.state.gov/g/drl/rls/hrrpt/2008

Weaver, R. L., Kenyon, A. T., Partlett, D. F., & Walker, C. P. (2006). *The right to speak ill: Defamation, reputation and free speech.* Durham, NC: Carolina Academic Press.

Weiss, M. L., & Hassan, S. (Eds.). (2003). *Social movements in Malaysia: From moral communities to NGOs.* London: Routledge.

Whiting, A. (2003). Situating Suhakam: Human rights debates and Malaysia's national human rights commission. *Stanford Journal of International Law, 39,* 59–98.

Williams, L., & Rich, R. (Eds.). (2000). *Losing control: Freedom of the press in Asia.* Canberra: Asia Pacific Press.

Wong, K. (2001). *Media and culture in Singapore: A theory of controlled commodification.* Cresskill, NJ: Hampton Press.