

1. I have ten minutes today to offer you a framework for thinking about and discussing Rights and Responsibilities of the Individual. While my views may emerge fairly clearly, my principal objective is to get you to think for yourself, while giving you some tools to aid your thinking process. I will make a preliminary observation about the title of the topic assigned to me, followed by some thoughts about four categories of rights/responsibilities, and I will end by referring to three issues on which Singapore is often regarded as out-of-step with modern thinking.

### **Preliminary Observation**

2. My preliminary observation is that the title of the topic already takes us some way into the issue. The phrase and in particular the use of the word 'individual' takes us in terms of political philosophy at least as far as the European Enlightenment, and possibly all the way up to the end of the Second World War, the establishment of the United Nations and the promulgation of the UN Universal Declaration of Human Rights in 1948. It tells us that the individual is the start and the end of political discussion. We don't need to refute any argument there is a delegation of power from above, some mandate of heaven, to an earthly ruler, who then delegates power in turn to aristocrats or provincial governors, who exercise it over the common people. We already understand that individuals transfer power to rulers, so that government must be accountable to the people through constitutional mechanisms, and must be subject to change by the people.
3. The phrase 'rights and responsibilities of the individual' also assumes equality. It is no longer rights of Athenians as opposed to Helots, Roman Citizens as opposed to imperial subjects, property owners as opposed to those without property, whites as opposed to blacks or men as opposed to women. We are past all that business of some having more rights than others, and we do not need to discuss or justify the

proposition that all individuals will have the same political rights and responsibilities, regardless of race, sex or class.

#### **Four categories**

4. So with that out of the way, we can now turn to consider what rights and responsibilities the individual has or should have. Understand at once that discussion can always be at two different levels – descriptive or prescriptive. What are the rights and responsibilities of individuals here today? That requires describing the actual state of affairs. Or what should be the rights and responsibilities of individuals? That requires prescribing the desired or ideal state of affairs.
5. Rights and responsibilities do go together. It is often said that ‘the corollary of a right is responsibility’. But we should think a little bit about what responsibility is the corollary of a particular right. For example, if we say that freedom of expression is a right, but that that right should be exercised responsibly, we need to be careful what we mean by that. Is the requirement of responsibility a legal one, or just a matter of moral suasion? If a legal one, then it effectively sets the limits to freedom of speech. Thus, treating responsibility as a legal requirement, free speech does not extend to irresponsible speech. If critical speech of a particular sort is considered irresponsible, for example, criticism of a king, then one has effectively eliminated freedom of speech in relation to that topic. However, if one puts responsibility at a different level, for example consider it a matter of good practice, or moral responsibility, rather than of law, of legal responsibility, then the effect is very different. On this basis, free journalism is understood to include both responsible and irresponsible journalism. Be careful of arguments that start with moral responsibility, but end up limiting freedom. The real principle must be that freedom includes the right to be irresponsible, to make what others might consider mistakes. The whole point about rights is that they trump other considerations. They trump economic efficiency or

social effectiveness. So if we agree that people have a right not to be imprisoned except by due process of law, then it is no justification for clearing the streets of suspected criminals by locking them up on the say-so of police that this will reduce the crime rate.

6. I will offer to you a simple categorisation of rights for you to think about. I have divided them into four groups.
7. **First**, there are rights against interference by others – these include rights to life and liberty, and freedom of thought and religion, with correlative duties not to kill or enslave other people. These rights are readily underpinned by the golden rule, that one should do unto others as one would be done by.
8. **Secondly**, there are rights of political participation, rights that ensure that individuals can participate freely in the political process. Fundamental to these is freedom of expression. Without freedom of expression, it is not possible for a people to decide whether the power entrusted to government needs to be limited or withdrawn. In addition, rights of association and assembly are critical.
9. **Thirdly**, there are justice rights – equality before the law, rule of law concepts such as due process and an independent judiciary.
10. **Fourthly**, there are economic rights, ranging from the generally accepted right to own and dispose of property, to more contested rights to education, health care, shelter and other goods that can only be provided to all by the institution of government and the effecting of taxation. The extent to which these are matters of right as opposed to matter of good social and economic policy is a matter of controversy. It is generally accepted that at least individuals have a right to non-discrimination in the provision of public goods, as opposed to a direct right to the provision of public goods.
11. Once we introduce a right to non-discrimination into the provision of social goods, we then have to consider whether the right to non-discrimination extends to the actions

of private individuals? Should employers be entitled to discriminate against people who are not of their preferred race, class, sex or sexual orientation? Should non-discrimination be a matter of law, giving remedies to victims of private discrimination, or be left as a matter of morality and education? Should people be entitled to form clubs just for people of a particular type? Consider for example clan associations, women's groups and rich men's golf clubs. A right against exclusion limits rights of association.

### **Current Issues: Is Singapore Out of Step?**

12. I will turn now to three hot-button issues in Singapore. **First** do individuals have a right to their own sexual orientation? In short, should engaging in gay or lesbian conduct be lawful? Singapore is very much out of step with the developed world in its stance that such conduct is criminal. I would suggest that a lot of confusion surrounds this issue, with many people, even apparently smart and thoughtful people, confusing questions of morality with the question of rights and the proper purpose of the criminal law. The criminal law is there to punish people who cause harm to others, not to enforce private morality. One may believe that it is morally wrong or against one's religion for two consenting adults to engage in homosexual conduct in private, but this does not justify criminalising that conduct – for the simple reason that it causes no one harm. Sometimes people say – well, thinking about it causes me offence, and isn't that a kind of harm? Well, it isn't what we think of as legally recognisable harm. It's probably just another way of saying that you don't like or approve of it. Is that really sufficient justification to impose criminal sanctions on another person?
13. **Second**, do murderers and drug traffickers have a human right not to be punished by death, by hanging. Many societies have decided that there is such a human right. That nothing justifies the deliberate deprivation of life, even of a convicted murderer.

But Singapore, and several other countries, including the US, consider that the human right to life is protected by imposing the death penalty on those who take away the life of another. Of course, Singapore goes further by applying the death penalty to drug trafficking, justifying this as a matter of social policy, to contain problems of drug addiction. What do you think about this issue?

14. **Thirdly**, Singapore's law of defamation is considered by many jurists to give insufficient protection to freedom of speech. Countries in Europe, as well as North America and Australia and New Zealand, have all modified their law over the past 60 years to protect to a greater or lesser extent robust and even misguided or false criticism of political leaders and other public figures. This is considered important to ensure democracy – to keep the channels of political participation open. By contrast, in Singapore the principal argument against this is not couched in terms of rights, but in terms of governance – that leaders would lose respect and be unable to govern effectively in the absence of a traditional and broad law of defamation. Again, what do you think – can meaningful free speech co-exist with a traditionally extensive law of defamation?

### **Conclusion**

15. I hope that in these short ten minutes I have offered you some tools to think about this topic, as well as raised some issues for later discussion. In so doing, I hope that I have not only exercised my right to free speech but also done so responsibly, and indeed have discharged my responsibility as someone older and supposedly wiser to offer guidance to the young.