Free Speech Regimes and Democratic Cooperation

Joseph Yi

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Abstract

Liberal-democratic polities increasingly diverge on free speech rights, and such divergence undermines their cooperation. A “procedural-rights” (PR) perspective would protect the rights, and promote the capacity, of individuals to express alternative viewpoints. Conversely, a “victim-rights” perspective would restrict speech that offends or psychologically harms victimized (marginalized) groups, although its advocates from the political left and right disagree on who are victims. I posit less cooperation between democratic polities with different rules of public discourse on a contested issue, i.e., different *discourse regimes*. The ruling elites in one discourse regime view that in another as allowing or committing violations of individual rights. Critically, they also access different information, as VR-oriented media report selective information supporting the victimized groups. Cooperation is especially difficult when one polity follows a VR-hegemonic regime (leftist or rightist) that comprehensively restricts discourse among all major organizations. In Europe and North America, democratic polities (national and subnational) with diverging discourse regimes on ‘culture war’ issues frame each other as illiberal and express mutual animus (‘vehemence’). Mutual animus is especially severe in East Asia, as one democracy (South Korea) comprehensively restricts discourse on Japanese colonialism and the other (Japan) does not. Conversely, the discourse regimes of South Korea and Japan increasingly converge (procedural-rights) on other issues, such as communist North Korea and China, which promotes bilateral consensus and cooperation.

Keywords: Liberalism; Discourse; Censorship; Korea; Japan; LGBT.

Introduction

Scholars of regime types and international relations generally theorize stable, cooperative relations among liberal-democracies, which respect individual rights, and the absence of those relations between liberal and nonliberal states (Doyle 1983; Oneal and Russett 1999; see Hyde and Saunders 2020). However, this thesis is qualified by two exceptions: transitional and backsliding democracies.

Mansfield and Snyder (1995; 2005, 23) argue that the liberal cooperation thesis mostly holds among*mature*, consolidated democracies that experienced multiple, peaceful transfers of power. In fact, transitional or newly democratizing states

(e.g., post-communist Armenia, Azerbaijan, Russia) are even more aggressive toward other states, including democracies, than are mature democracies or pure autocracies. Newly democratizing states combine weak political organizations—particularly, the lack of an "efficient free marketplace of ideas to counter false claims with reliable facts" (Mansfield and Synder 1995, 92)—and an energetic public involvement in the political process. This combination incentivizes political elites to mobilize voters with selective or non-corroborated information that stigmatizes, and belligerent policies that target, certain groups (domestic or foreign). Conversely, the information markets of mature democracies are generally open and pluralistic, which allow voters to obtain more accurate information about targeted groups and understand the true costs of belligerent policies (Mansfield and Synder 2002, 300).

Recent scholarship argues that even some mature democracies are vulnerable to "backsliding" and the erosion of civil liberties (Haggard and Kaufman 2021; Samuels 2023): their governments are captured by predominantly right-wing (*rightist*), populist movements (e.g., Orbán in Hungary, Donald Trump in US), who weaken checks on executive power, curtail political and civil liberties, and/or undermine the integrity of the electoral system.

The above literature implies that civil liberties, and thus information markets, are constrained in both transitional and backsliding, mostly right-leaning, democracies. This paper argues that civil liberties and information markets are constrained among mature democracies, both right- and left-leaning; and that such constraints are rooted in a transnational, *victim-rights* (VR) perspective that prioritizes the rights of marginalized groups, such as to dignity and equal standing, over the free speech rights of their oppressors (Waldron 2010).

I subdivide the VR perspective among left- and right-wing variants: the left stresses groups marginalized in the past (e.g., racial and sexual minorities), and the right stresses historically 'privileged' groups allegedly marginalized today (e.g., political and religious conservatives). Both leftist and rightist variants of VR (i.e., LVR, RVR) compete with a *procedural-rights* (PR) approach (Dahl 1961; Sandel 1996), which promotes everyone's right and capacity to contribute to public discourse.

The overall influence of PR, LVR, and RVR perspectives on the rules (formal and informal), i.e., *regimes*, of major organizations differs for each polity.[1] At the extremes are *monist* (hegemonic) regimes, with uniform rules among all major organizations. In a PR-monist polity, the rules of all major organizations (e.g., government, media, university, corporation) support everyone's rights to speak or express nonviolently; in a VR-monist, the rules of all major organizations restrict discourse that offends a defined set of victims. In a less-monist VR polity, most, but not all, organizations restrict such discourse. On a few issues, such as Holocaust denialism, most European democracies and Canada can be classified as VR-monist: all major organizations restrict the offensive speech, and governments impose civil and criminal penalties, without significant opposition (Bleich 2011).

I posit more animus and non-cooperation between polities with different rules of public discourse on contested issues, i.e., different *discourse regimes*. I develop four arguments. Firstly, to the extent that the issue is transnationally contested, the prevailing elites in one discourse regime frame that in another as allowing or committing violations of individual rights. Secondly, to the extent that elites and publics in different discourse regimes access different information, because VR-

oriented media report selective information supporting preferred victimized groups, they frame the other as illiberal (anti-democratic). Thirdly, information divergence and public animus are more severe, to the extent that one democracy follows a VR-monist model that suppresses alternative information polity-wide, and the other does not. Fourthly, discourse regimes vary depending on the issue, that is, a polity can comprehensively restrict discourse for one issue, but not for another; and variance generates competing patterns of bilateral dissensus and consensus.

The following sections develops my theory and illustrates with economically advanced, mature democracies, i.e., member nations of the OECD. I also include subnational polities ('states') in the United States, whose elites impose (or attempt) speech restrictions from competing VR perspectives.

Two Approaches to Individual Rights and Public Discourse

Two competing approaches shape public discourse in liberal-democratic polities. A procedural (Sandel 1988) or a procedural-democratic (Dahl 1961) perspective supports an individual's rights and capacity to contribute to public discourse. Political theorists offer various rationales, from democratic legitimacy to rational public deliberation to personal autonomy.

Robert Dahl argues that democratic legitimacy requires respect for procedural rights (what Dahl terms the 'democratic creed'), for instance, "People in the minority should be free to try to win majority support for their opinions" (Dahl 1961, 316, footnote 3). William Galston argues that rational public deliberation includes two sets of norms and practices. One is a "self-restraining tolerance," including the willingness to listen to "strange and even obnoxious" ideas (Galston 1988, 1281). The second is the capacity for citizens to rationally discuss public issues and to influence political actors. Tolerance and rationality nurture citizens who "set forth one's own views intelligibly and candidly as the basis of a politics of persuasion rather than manipulation or coercion" (Galston 1988, 1281).

J.S. Mill (1859) argues that the dissemination of false information does not necessarily endanger rational public deliberation, since it provokes others to counter with correct information. Individual expression is also central to what Michael Sandel terms the procedural theory of liberalism, which argues that "the state should not impose on its citizens a preferred way of life, but should leave them as free as possible to choose their own values and ends, consistent with a similar liberty for others" (Sandel 1988, 57). Procedural liberals generally defend the public expression of dissenting views, unless the speech specifically and contemporaneously incites violence or otherwise causes objective, quantifiable, material harm (e.g., defamation, fraud) (Howard 2019). In the procedural-rights (PR) tradition, media journalists should be objective and neutral, and report a wide range of information and viewpoints (Castro 2021), even those that journalists consider morally problematic.

But the PR tradition is contested by a 'victim-rights' strand of liberal thought, which prioritizes the rights of victimized groups over the speech rights of putative oppressors. Since the 1960s, "many liberal democracies have instituted laws that penalise hate speech and hate crimes in ways that limit the freedom for racists to express themselves" (Bleich 2011). Waldron (2010, 1634) justifies legal restrictions against speech that undermines the dignity (equal standing in society) of

victimized, minority groups.

Waldron distinguishes between defamatory speech that damages a group's public dignity, and thus should be legally restricted, and obnoxious speech that simply gives offense. However, this distinction is fluid among VR-oriented liberals, who claim that the exercise of voice among the historically privileged often undermines that of the historically marginalized. Therefore, de-platforming or canceling the former "is aimed not at restricting [speech] freedom but at expanding it — making historically marginalized voices feel comfortable enough in the public square to be their authentic selves, to exist honestly and speak their own truths" (Beauchamp 2020). Departing from procedural-rights liberals, victims-rights liberals would restrict not just speech (expression) that causes quantifiable, material harm, but also those that causes psychological distress to members of marginalized groups and thus discourage their public participation.

Since 2017, many members of historic civil liberties organizations (e.g., ACLU) oppose defending the free speech rights of white nationalists, gun owners, evangelical Christians, MAGA Republicans, and other right-leaning groups (Powell 2021). This trend has developed furthest in Canada and in major European democracies, whose leading institutions (e.g., universities, media, parties) have adopted formal and informal rules restricting hateful speech or expressions against ethnic, racial, religious, and—more recently--sexual minorities. In Canada, a judge who wore a MAGA ('Make America Great Again') hat to his court was suspended for one month without pay (*Global News*, 12 Sept. 2017). Some universities in Britain have expelled (Yi et al 2017), and courts in Sweden and Finland have criminally convicted (*Hungary Today*, 14 Feb. 2022; Koberg 2022), persons for expressing conservative Christian views on homosexuality. In October 2022, the EU parliament signed new legislation (e.g., Digital Services Act) to ban disinformation and "harmful content" on online platforms and search engines (e.g., Twitter, Google) (*Euronews*, 19 Jan. 2023).

The victim-rights perspective was initially adopted by members of the political left, but its language and practices have been embraced by many rightists (conservatives), who emphasize a different set of victims (Fukuyama 2008). From the rightist, victim-rights (RVR) perspective, members of historic majorities are now shamed and silenced ('canceled') by powerful institutions (Norris 2021). Most vulnerable are children, who are 'indoctrinated' into gender and racial ideologies by major organizations (public schools, universities, corporations). Polish Archbishop Marek Jędraszewski identified gender ideology as a new form of totalitarianism (McLean 2019).

RVR-leaning legislators in US states and Europe restricted, or sought to restrict, major organizations from teaching gender and racial ideologies (Atterbury 2022; Magistro 2021; Levesque 2022). Hungary's Child Protection Act (June 2021) banned promotion or portrayal of LGBTQ themes in education and media to minors. Florida's 'Florida Parental Rights in Education Act' (2022) and 'Stop Wrongs to Our Kids and Employees (WOKE) Act' (2022) (aka., 'Individual Freedom Act'), respectively, prohibited instruction on sexual orientation/gender identity in public schools (grades K-3), and critical race theories in public schools, universities, and private companies. At the signing of the Stop WOKE Act, Florida governor DeSantis stood in front of a sign titled, "Freedom from Indoctrination" (*News Service of Florida*, 8 Dec. 2022).

Borrowing from LVR discourse, RVR-leaning elites prioritize the rights (e.g., psychological safety) of their preferred victims over the free speech rights of their oppressors ('woke' teachers). Florida's Individual Freedom Act prohibits educators from promoting lessons that would make students "feel guilt, anguish, or other forms of psychological distress because of

actions, in which the person played no part, committed in the past by other members of the same race, color, national origin, or sex" (*News Service of Florida*, 8 Dec. 2022).[2] RVR elites even extend the victimized category to conservative members of ethnic/racial minorities. Arkansas Governor Sarah Huckabee Sanders banned 'Latinx' from state documents, because the gender-neutral term is “insensitive and pejorative” for the vast majority of American Latinos and Hispanics who prefer traditional, gender-specific identifiers (*Fox News*, 10 Jan. 2023).

OECD nations’ political and media elites, left- and right-leaning, may be influenced by non-liberal ideologies, such as Marxism or religious nationalism (Whitehead et al 2018), but they near-uniformly invoke the language of freedom and democracy to justify speech restrictions on allegedly harmful actors (e.g., homophobic/racist, woke/totalitarian) actors.

Discourse Regimes and Transnational Divisions: ‘Culture War’ issues

Discourse restrictions on a few issues, namely Holocaust denialism, do not significantly divide democratic polities. But as VR proponents push for similar restrictions on other issues, animated opposition arises from elites who advocate alternative discourse regimes (rules). In Europe and North America, ‘culture war’ issues related to race/ethnicity and gender/sexuality, among others, generate significant divisions. To the extent that different discourse regimes on contested issues are associated with particular parties and polities, the prevailing elites in one party or polity frame that in another as allowing or committing violations of individual freedom.

Citizens of LVR-leaning governments frame PR-leaning governments of tolerating hate speech, and RVR-leaning governments of censoring the voices of the victims. Thus, LVR elites in Canada and Europe criticize the US legal and cultural tradition of tolerating hate speech against racial and sexual minorities (Bleich 2011), such as the ‘freedom of speech absolutism’ of Twitter owner Elon Musk (Euronews, 19 Jan. 2023).[3] But they especially condemn RVR political and religious elites in Poland and Hungary, and in GOP-led states, who not only tolerate hate speech against marginalized groups (e.g., LGBT persons), but restrict their voices both symbolically (local “LGBT-free” zones) and substantively (censoring gender ideology in schools) (Europarl 2021; RFERL 2021; Atterbury 2022). The EU Commission rejected applications for EU funding from Polish towns that adopted anti-LGBT resolutions (Europarl 2021), and sued Hungary over its Child Protection Act (Euronews, 15 July 2022). Democratic Party-led California banned state-funded travel to Florida and 21 other GOP-led states with anti-LGBT laws (NY Times, 19 July 2022).

Conversely, ruling party members in Poland and Hungary, and rightist-party members in US, strongly criticize LVR elites in Europe and North America, where major organizations punish persons expressing culturally conservative views. The Hungarian government protested to the German government over football team Hertha BSC firing Hungarian coach Zsolt Petry because of his remarks on migration and same-sex marriage (Hungary Today, 8 April 2021). Up to (and even after) the 2022 Russian invasion of Ukraine, some rightist politicians, academics, and media in US and Hungary framed Russia’s Putin regime as less threatening to individual liberty than LVR-leaning elites (Wallace-Wells 2021). *Fox News* host Tucker Carlson asked his (mostly white and Christian) viewers: “Has Putin ever called me a racist? Has he threatened to get me fired for disagreeing with him?...Is he teaching my children to embrace racial discrimination?...Is he

trying to snuff out Christianity?" (Carlson 2022).

Transnational networks of left- and right-leaning actors express mutual animus or 'vehemence' (Doyle 1983, 323), as each side frames the other as 'false' (e.g., illiberal, backsliding) democrats, who betray the values of freedom and democracy.[4] University of Minnesota professor David Samuels (2023, 6) describes a clash between liberal and illiberal visions of democratic citizenship, associates the latter with right-wing religious (e.g., Vatican) and political actors, and criticizes the EU for insufficiently punitive actions against Hungary and Poland, "despite clear violations to both the letter and the spirit of the EU's charter."

Conversely, Hungarian Prime Minister Viktor Orbán argues that he is the true defender of freedom: European leftists (whom Orbán term 'liberals') strive for a hegemony of opinion, by "stigmatising conservatives and Christian Democrats and sidelining them….I'm fighting liberals for freedom. Whereas I'm on the side of freedom, they're on the side of the hegemony of opinion" (*Hungary Today* 2019). *Fox News* host Laura Ingraham argues that progressives today ('new liberals') are actually illiberal: "Liberals used to believe in more - not less - speech, and they were defenders of the First Amendment and the rights of defendants….They believed in a color-blind society. But now they flipped on so many fronts. The new liberals are actually illiberal….They are among the most closed-minded, intolerant people you'll ever encounter" (*Fox News*, 24 Nov. 2021).

Diverging Information Markets

The animus between LVR- and RVR-oriented elites arises not just from favoring different sets of victims, but from accessing differently biased information markets. In the US, a few academics have documented the selective reporting of information, i.e., gatekeeping and coverage bias, in both left-leaning, 'mainstream' (Groseclose 2011) and right-leaning (Broockman & Kalla 2022) media. The media selectively report some information (such as Covid-19 in CNN and racial protests in *Fox*), and neglect others, leading their audiences to adopt a biased set of facts (Broockman & Kalla 2022). Other academics find no significant bias among mainstream media, at least for reporting on the major parties (D'Alessio and Allen 2000) or the ideological leanings of the candidate running for office (Hassell et al 2020; for literature review, Lichter 2017).

My cursory review of media websites finds some evidence of selective reporting on victimized groups. Major media stakeholders consider articles that negatively portray victims (e.g., young black men), and positively portray their oppressors (e.g., white merchants) as harmful (e.g., racist). The 1986 relaunch of the *Washington Post*'s Sunday magazine "was initially disastrous, drawing months of protests from readers who decried as racist both 'a cover story about a black New York rap singer accused of murder and a column sympathizing with Washington merchants who turn away young black men'" (*Washington Post*, 30 Nov. 2022; also 13 Dec. 1986). To the extent that left- and right-leaning media adopt VR-oriented rules, they engage in selective reporting.

For instance, on bathroom access for transgender persons, articles about transgender persons molesting children were prominent in the website of *Fox News*, but virtually absent in the *New York Times*; the latter favored stories of political

conservatives targeting transgender persons, mostly in the US, but also in Uganda.[5] A keyword search ("BYU racial hoax") generated 40 articles on *Fox* (as of 5 Jan. 2022) about a black Duke volleyball player's uncorroborated claim of racial slurs from white BYU fans, but only one opinion article, by the contrarian black writer John McWhorter (14 Oct. 2022), in the *New York Times*.

Conversely, extensive coverage appeared in the *New York Times* (e.g., 28 Dec. 2022) about some MAGA Republicans' uncorroborated claims of FBI agents' bias against conservatives and specifically Donald Trump, but little in *Fox*. Likewise, Germany's national media ignored or delayed reports that asylum seekers assaulted women in Cologne and other cities at New Year celebrations (Karnitschnig 2016; The Local 2017). To the extent that the prevailing elites in one polity are solely exposed to LVR-oriented media (RVR media), they adopt the worldview that the rights of racial and sexual minorities (religious and political conservatives) are commonly violated by the majority (leftist elites); uncorroborated claims from minorities (conservatives) are rare; that minorities (conservatives) should be legally protected from harmful speech ('woke' indoctrination); and that polities that do otherwise do not share liberal-democratic values.

But except for a few issues (e.g., Holocaust), the public is not completely shielded from alternative (e.g., "denialist") information. VR-oriented elites may convert their perspectives into dominant regimes *within* particular organizations (e.g., company, party, university), but not on the polity as a whole. The only organization that can stifle dissent polity-wide is the government, with its monopoly on legal coercion; but attempts at legal restrictions by one VR faction (e.g., RVR) face two sets of opponents: 1) a competing, VR faction (LVR) that would, if given the opportunity, restrict the speech of the other; 2) Millian, procedural-rights (PR) liberals that secularly oppose censorship from the left or right (Gerstein 2022).

Florida's Stop WOKE Act was opposed by both left-leaning (e.g., ACLU, Democratic Party, Florida Education Association) and PR-oriented groups (e.g., Academic Freedom Alliance, First Amendment Watch, Foundation for Individual Rights and Expression); and a federal judge, citing procedural (First Amendment) rights, temporarily blocked its restrictions for private companies (*Washington Post*, 18 Aug. 2022). European legislative efforts to increase speech restrictions (e.g., 2022 Digital Services Act) were also resisted, albeit less successfully, by PR advocates and other actors (CEO 2022; Stegrud 2022).

Even in RVR-leaning Poland and Hungary, with supposedly the most authoritarian government in the OECD, opponents of ruling party policies operated key governmental (e.g., Budapest mayor, 2019-), media, and educational organizations, and offered alternative viewpoints and information. Defying the Polish national government, the Warsaw Deputy Mayor Renata Kaznowska supported the Rainbow Friday initiative in local schools to provide emotional support to LGBT+ students, saying that there was "no place for homophobia" or "any form of discrimination" in the education system (Polskie Radio 2022). A plural information market arguably moderates the expansion of VR-oriented rules. In Poland and Hungary, pro-LGBT speech was not legally prosecuted, and the Polish President vetoed an amendment limiting gender discussion in schools (*The First News* 2022). Likewise, in LVR-leaning Sweden and Finland, criminal convictions for anti-LGBT speech were overturned on appeal (Richburg 2005; ADF 2022).

The moderation of VR rules, especially *not* imprisoning persons for nonviolent speech on 'culture war' issues, limited the

deterioration of ties among democracies with diverse discourse regimes.

VR-monist Regime in East Asia: Discourse on Imperial Japan

If democratic polities did criminalize nonviolent speech on a contested issue, this would seriously impact inter-polity cooperation. The closest example of such a VR-monist regime is South Korea's on Japanese colonialism. Its information market is restricted to the narrative that the Japanese colonial regime (1910-45) matched its Nazi allies in human rights violations: it brutalized independence protesters, forced nearly a half-million Koreans (mostly men) into wartime slave labor, and—most atrociously—abducted or otherwise coerced 200,000 Korean women and girls to work as sex slaves ("comfort women").

Informal rules (norms) discourage scholars and journalists from offering contrary information, which is considered equivalent to Holocaust denialism. The few that do are informally blocked from publishing in Korean mainstream media and academic journals (Phillips et al 2020). They also face legal prosecution, as courts have interpreted criminal defamation laws to include defamatory speech against colonial victims, especially comfort women. Korea's government (esp. during left-leaning administrations) prioritize the rights, such as to psychological comfort, of colonial victims over the academic freedom of dissenting scholars.

On 26 April 2017, a Sunchon National University professor (Song) told his class that some "probably" volunteered to become comfort women. Song was subsequently fired and sentenced to six months in prison. Yonsei University professor Ryu Seok-chun described the comfort women as a "kind of prostitutes" during a September 2019 lecture. Seoul police opened a criminal investigation into whether he stated harmful falsehoods, and Ryu was pressured into early retirement (Yi and Phillips, forthcoming).

In the most publicized case, Sejong University professor Park Yu-ha published a book (*Comfort Women of the Empire*, 2013), which chronicled the diversity of comfort women's experiences and challenged the veracity of some testimonials. The book received critical acclaim in Japan, but Park was convicted in Korean civil and criminal courts for defamation. A Seoul appeals court (27 October 2017) ruled that Park's findings that some women volunteered and shared "comradely" relations with soldiers were clearly false, in light of the 1996 UN Coomaraswamy Report and the 1993 Kono Statement, and caused mental stress to former comfort women (*Yonhap News*, 27 Oct. 2017).

In Japan, academics, journalists, and ordinary citizens have long debated colonial history in a plural, open environment. Center-right historian Ikuhiko Hata (2018) reports that Korean comfort women were largely willing prostitutes, and that the post-1945 South Korean government and the US military during Vietnam War operated similar systems of military prostitution. Conversely, left-leaning historian Yoshiaki Yoshimi (2000) stresses that private brokers deceived and coerced many women into becoming comfort women, with the likely complicity of the Japanese colonial government and military. Neither Hata nor Yoshimi finds persuasive evidence that the military abducted women in colonized areas (Korea, Taiwan), although some rogue soldiers and units did abduct local women in combatant zones (e.g., China, Indonesia).

Some left- and right-leaning actors in Japan argue for criminalizing their opponents' speech (e.g., Maeda 2016). But thus far, Japanese courts and universities, respectively, neither criminally indict scholars for diverging views nor terminate their employment. In January 2022, the Tokyo District Court summarily dismissed a 2019 defamation lawsuit against left-leaning documentary producer Miki Dezaki (McNeill 2022). On 25-28 August 2022, a public gallery in Nagoya featured the Statue of Peace (comfort woman) as part of an exhibition on free expression (*Asia Nikkei*, 11 Oct. 2022). The national government (*Tokyo*) largely tolerates speech, both radical right (fascism) and left (communism). Photos of North Korean leaders are banned in South Korean schools, but not in Japanese (e.g., Korean-Japanese) schools. Japanese media, including the right-leaning *Japan Forward* (e.g., McNeill and Suzuki, 2021), have published diverse viewpoints on colonialism and comfort women. On East Asian history and politics, Japanese institutions largely follow PR rules.

Restrictions on colonial discourse in South Korea, and their relative absence in Japan, generated information market divergence. Korean media cited earlier allegations of forced abductions (e.g., Coomaraswamy 1996) and not the more recent, nuanced scholarship (e.g., Park 2013) influential in Japan. Therefore, most Koreans criticized the Japanese government for allowing its citizens to deny the abductions of comfort women. They also lambasted Tokyo's formal apologies and compensation, such as the 2015 comfort women agreement, since it denies "the forcible nature of its mobilization of sex slaves" (*Korea Times*, 31 Jan. 2016). On 8 January 2021, the Seoul Central District Court implicitly rejected the 2015 agreement, by ruling that the Japanese government must pay 100 million won ($90,400) to each of the twelve comfort women plaintiffs. The court rejected Tokyo's claims of state immunity, citing Japan's "systemic crimes against humanity in violation of international standards and norms" (*JoongAng Daily*, 24 Jan. 2021).[6]

Conversely, most Japanese media, including the politically left-leaning *Asahi Shimbun*, denounced Seoul's prosecution of dissident scholars. The right-wing media (*Japan Forward*) also stressed a different group of victims, i.e., Japanese military veterans falsely defamed by leftist activists. The elites of South Korea and Japan largely framed the other's government as illiberal: allowing or encouraging hate speech that denies imperial war crimes (Tokyo) or censoring academic dissent (Seoul). Left-leaning groups in Korea drew on the former frame to persuade most South Koreans that Japan and its elected government cannot to be trusted. In 2018, South Koreans rated Japan (3.55 on a 10-point scale) and then-prime minister Shinzo Abe (2.04) lower than North Korea (4.71) and Kim Jong-un (4.06) (Asan Institute 2018). Seoul lacked a bilateral free trade agreement (FTA) or military alliance with its closest democratic neighbor (Japan), despite mutual security challenges from autocratic China and North Korea.

Seoul (esp. under leftist-party governments) and Tokyo each insist that the other adopt its preferred discourse regime: an LVR-monist regime that strictly limits and criminalizes pro-imperialism discourse (Seoul), or a PR regime that does not (Tokyo). Lacking such convergence, Seoul and Tokyo cooperate less with each other and more with other countries with similar discourse regimes. Democratic Taiwan and Philippines do not censor public discourse on Japanese imperialism, although the former experienced longer, more thorough colonial assimilation and the latter much higher casualties than did South Korea. The two countries share bilateral, free trade agreements (FTAs) and military exercises with Tokyo, partly to balance against China (*Diplomat*, 8 April 2022).

Conversely, Seoul's left-leaning governments unite, at least rhetorically, with other governments that similarly limit pro-

Japan speech (Bandurski 2021). President Moon (2017-2022) declared, when visiting China, “Our two countries endured the travails of imperialism together…as we struggled together against Japanese colonialism” (*Hankyoreh*, 14 December 2017). Moon also thanked the Russian legislature for their nation’s support of Korean independence fighters (*Korea Joongang Daily*, 17 August 2019), and embraced North Korean leader, Kim Jong-un, as a partner in unifying the two Koreas behind the shared history of anti-Japanese struggle (*Yonhap News*, 18 September 2018).

PR Regimes: Discourse on Communist North Korea

The discourse regimes of both South Korea and Japan increasingly converge on other issues, notably communist North Korea (aka., Democratic People’s Republic of Korea, DPRK). Postwar Japan largely tolerated diverse viewpoints and expressions on the DPRK, and hosted ethnic Koreans and South Korean exiles sympathetic to North Korea. In South Korea, until the mid-1990s, rightist-leaning, often-authoritarian governments criminalized ‘pro-communist’ speech, mainly through the 1948 National Security Law (Yi and Phillips, 2022). The diverging discourse regimes sometimes strained Seoul-Tokyo relations, especially in 1973, when South Korea’s KCIA kidnapped opposition leader (and alleged pro-communist) Kim Dae-jung from his Tokyo hotel.

Even after the 1990s transition to civilian-led democracy, South Korea remained the only country to ban official DPRK media, and rightist administrations (Lee Myung-bak, 2008-13; Park Geun-hye, 2013-17) vigorously punished pro-NK speech (Lim 2011). In 2016, a court sentenced a college professor to a suspended prison term for sharing with his students excerpts from North Korea founder Kim Il Sung’s memoir (Jeong 2021). Still, legal punishment of ‘pro-North Korea’ discourse has sharply declined since the mid-1990s, especially during left-party administrations (Kim Dae-Jung, 1998-2003; Roh Moo-hyun, 2003–2008; Moon Jae-in, 2017-2022). Moon’s government declined to punish citizens for praising DPRK leader Kim Jong-un (Smith & Lee 2018), and the current, rightist Yoon Suk-yeol administration (2022-) declared it will gradually lift legal restrictions on accessing DPRK official media (*Korea Times*, 22 July 2022).

Notably, Seoul no longer criminalizes criticism of North Korean defector testimonies. The most dramatic claims of human rights violations (e.g., kidnapping, torture) in Japanese imperial and DPRK communist regimes come from the testimonies of, respectively, a dozen comfort women and defector activists. Critiquing the testimonies of Imperial Japan’s victims (comfort women), and thus causing psychological distress, is considered criminal defamation; but critiquing that of North Korea’s victims (defectors) is not. On 3 February 2021, Unification Minister Lee In-young declared that “there are some gaps and shortfalls in confirming and validating comments from North Korean refugees in regards to North Korea’s human rights issues” (Ko 2021). Four defectors filed a criminal defamation complaint, but it was quickly rejected by the police (*Dong-a Ilbo*, 30 April 2021).

Seoul’s liberalized discourse on North Korean human rights nurtures a more nuanced perspective, such as Smith’s (2014) that North Korea is “oppressive” but “not uniquely oppressive” and that “much can be learned by a comparative perspective across time and space,” such as comparing North Korea to early market openings in China and Vietnam. Open discourse in South Korea and among OECD democracies nurtures international democratic consensus, supporting

both human rights and humanitarian aid for North Korea. In 2016, after ten years of debate, the major left-leaning party (Democratic Party of Korea) joined other parties to overwhelmingly pass the North Korean Human Rights Act (National Assembly vote 220-0, with 24 abstentions) (Boydston 2016). In 2014, Seoul joined Tokyo and other democracies to endorse the 2014 Report of the United Nations Commission of Inquiry on Human Rights in the DPRK (aka., Kirby Report). While the report concluded that the Kim regime committed human rights violations that do "not have any parallel in the contemporary world," the commission chair Michael Kirby acknowledged the "occasional cases of false or exaggerated testimonies" from defectors (Kirby 2018, xix).

Government officials, academics, and mainstream media in South Korea, Japan, and other democracies participated in open, multilateral debate about the human rights claims of North Korean defectors, such as Lee Soon-ok's that security officers killed Christian prisoners "by pouring molten iron on them one by one" or Shin Dong-hyuk's that he was tortured at age thirteen (Yi and Phillips 2022). This ongoing conversation, in a transnational public sphere, generated an always-evolving consensus of which defector claims were credible and which were not.

But South Korea lacked such multilateral dialogue about the claims of comfort women activists, such as Lee Yong-soo's that, at age fourteen or fifteen, she was kidnapped by Japanese soldiers at her home in the middle of the night (Soh 2008, 99-100). Outside of a few dissenting (and criminally prosecuted) scholars, no major media or government official challenged Lee's shifting testimonies or lack of corroborating evidence. Rather, LVR-oriented media and officials cited like-minded scholars in US, who declined to critique the motives or evidence of comfort women activists, but instead critiqued that of 'pro-Japan' academic critics, such as Yonsei's Lew Seok-Choon and Harvard's Mark Ramseyer (Yi and Phillips 2022).

The two Asian democracies lacked a Kirby-style multilateral report assessing the claims of comfort women or wartime labor activists. Rather, reflecting their distinct discourse regimes, Tokyo's foreign ministry critically assessed the activists' claims, such as the 200,000 women forcibly taken away (MOFA Japan, n.d.), and Seoul's foreign ministry (Yoon Administration, 2022-) stressed victim-centered resolutions "to restore the honor and dignity and to heal the psychological wounds of the victims" (MOFA Korea, 2022). The preceding Moon Administration added that the "comfort women" issue was "an unprecedented violation of human rights of women in armed conflict" (MOFA Korea, 2021).

Seoul's current Yoon Administration (2022-) prefer closer ties with Tokyo, but the two nation's diverging information markets constrain such reconciliation. Since the Korean and Japanese publics are exposed to fundamentally different information about the colonial past, notably the mobilization and treatment of wartime workers and comfort women, they do not agree on proper compensation. Therefore, the two publics, especially South Korea's, resist their respective governments' attempts at compromise. Most South Koreans opposed the Park Administration's 2015 bilateral agreement on comfort women, and the succeeding Moon Administration effectively rejected it.

Restrictive and Non-Restrictive Information Markets (Issue Arenas)

In South Korea, a small number of 'new-right' activists and intellectuals, led by retired Seoul National University professor

Lee Young-hoon, contested the anti-Japan narratives on comfort women and forced laborers (Phillips et al. 2020). But new-right discourse largely occurred outside mainstream institutions: its scholars were retired professors or from a small think tank, and its reports were disseminated through alternative media (e.g., Youtube) and small-press books. Major Korean news media, academic journals, and book publishers declined to publish its research, universities declined to hire its proponents, and the few already in academia were subject to social ostracism and criminal prosecution. A VR-monist regime restricted the efforts of new-rights proponents to challenge the anti-Japan narrative, even among the mainstream right: the leading right-leaning newspaper *Chosun Ilbo* (13 Jan. 2023) editorialized that Tokyo "must finally stop denying its responsibility for wartime atrocities."

South Korea's restrictive discourse regime on Japan contrasted with its more open one on North Korea and China. Although South Korean scholars risked terminations and prosecutions for challenging alleged misinformation on Japan, they (since 2017) lacked such risks on North Korea and China (e.g., Kim et al 2022). That is, South Korea's major organizations uniformly restricted discourse on imperial Japan (VR-monist regime), but that on North Korea and China--although, one could argue, the two states contributed to more South Korean deaths during the Korean War (1950-53) than did Japan during colonial era (1910-45). Therefore, Korea's mainstream right-wing did not challenge the left's anti-Japan narrative, but instead engaged in, and often won, the relatively open, plural debates over North Korea (Shaw 2022) and China.

Perhaps North Korean security officers did not torture Christian prisoners, and China was neither the main source of 'yellow dust' pollution nor appropriating Korean culture, but a preponderance of evidence did illustrate the two states' threats to South Korean security and liberal-democratic values, exemplified by North Korea's missile tests and China's repression of Hong Kong. In 2021, South Koreans' dislike of China exceeded that of Japan for the first time since its 1992 diplomatic normalization with Beijing, and 92% of South Koreans (and 90% of Japanese) believed that the Chinese government does not respect the personal freedoms of its people (Pew 2021). The South Korean and Japanese publics did not share a common information market on the colonial past, but they did share on North Korea and China, and this moderated bilateral conflicts.[7]

Discussion

Since the 1960s, victim-rights advocates, initially from the political left and then from the right, have imposed ever-more, formal (legal) and informal restrictions on nonviolent speech and expressions. Bleich cautions "that some of the recently proposed restrictions on free speech should raise red flags for those who seek a sustainable balance between free expression and limitations on racist speech" (Bleich 2011, 918-919). Efforts, such as in France, "to outlaw contestation of the Armenian genocide demonstrate that laws against Holocaust denial have opened the door to claimants who want to establish their victimhood as legally unassailable" (Bleich 2011, 930).

Do rising speech restrictions in major organizations, imposed by left- and right-leaning elites, fundamentally undermine traditional liberal democracy? Are left-leaning restrictions (in California, Germany) more compatible with liberal-democratic

values than are right-leaning ones (Florida, Hungary)? These questions are beyond scope of this reflection paper. But I do theorize that diverging discourse regimes on victimized groups undermine cooperation among mature democratic polities, both subnational (e.g., California/Florida) and national (Germany/Hungary, South Korea/Japan) dyads.

Speech restrictions (formal-legal and informal) on contested issues incite animated opposition, as they directly impinge on expressive freedoms and the democratic principle that "People in the minority should be free to try to win majority support for their opinions" (Dahl 1961, 316, footnote 3). Critics also argue that censorship, as practiced, is often arbitrary, since the censors, depending on their perspective, selectively ban some, not all, uncorroborated and offensive claims. If the EU invokes the Digital Services Act to sanction Musk-owned Twitter, for reinstating Donald Trump and other right-wing populists, this would impact EU ties with a future US GOP Administration.

Not all, but many, elites in one discourse regime frame that in another as allowing or committing rights violations, and this Manichean frame is fueled by biased media coverage (e.g., 'partisan coverage filtering'). Competing elites expresses mutual, moral vehemence, which liberal-democrats usually reserve for autocrats (Doyle 1983, 323), and this contributes to rising, mutual intolerance.[8]

Conversely, sustained exposure to diverse information moderates such animus. In one US experimental study, when strong partisans (conservative Republicans) switched from inpartisan (*Fox*) to outpartisan (CNN) media for a sustained period (month), they learned a new set of facts (e.g., President Trump's missteps and failures) that shifted their beliefs and attitudes; for instance, the treatment group were significantly less likely than control group to believe that "If Joe Biden is elected President, we'll see many police get shot by Black Lives Matter activists" (Broockman and Kalla 2022, 23). Recently, both left- (e.g., Baker [NYT] 2023) and right-leaning (WSJ 2022, Pandolfo [*Fox*] 2023) media have published alternative information and viewpoints that challenged ingroup assumptions (and favored victims), and *Fox News* has aggressively expanded its audience to non-Republicans (Lonas 2021). A similar trend in South Korea (for instance, journalists critically investigating claims that some comfort women advocates falsely defamed Japanese soldiers) would require changes to the rules of both media and government organizations, so that such journalists would be neither terminated nor criminally prosecuted.

Troubled relations between left- and right-leaning democracies in Europe and North America (Haggard and Kaufman 2021; Samuels 2023), and between South Korea and Japan (Cha 1996; Shaw 2022), have generated a voluminous literature. This essay offers a novel theory that parsimoniously links diverging discourse regimes and inter-polity relations. It encourages empirical research on these links, and their implications for theories of regime types and international cooperation.

Footnotes

[1] I define an organization as a collection of two or more persons cooperating for a common end; and institution as a well-

established organization or set of organizations. They can range from a volunteer club to the national government. Rules are regulations and principles governing the conduct of persons and organizations; they can be either formally written and explicit (e.g., laws and regulations, judicial rulings) or unwritten, informal social norms. Elites are persons who exercise disproportionate power, skill, or influence in an organization or institution; and major organizations exercise disproportionate power or influence in the larger polity.

[2] Conversely, Democratic-led California required students in high schools and community and state colleges to learn such 'woke' ideologies, in the form of a semester-long course in ethnic studies (EdSource, 2 Nov. 2020; 8 Oct. 2021; Inside Higher Ed, 21 July 2021).

[3] Conversely, most American elites (until recently) opposed European-style restrictions on racist speech. Bleich (2013, 284) notes that the "US Supreme Court struck down a city ordinance banning cross burnings (a decision virtually inexplicable to most Europeans), while the ECtHR upheld a French decision penalising Holocaust denial (a judgement virtually inexplicable to most Americans)."

[4] On 20 November 2022, Rep. Alexandria Ocasio-Cortez (D-NY) slammed Rep. Lauren Boebert (R-Colo.) for her tweet offering 'prayers' after Club Q shooting in Colorado, when Boebert "played a major role in elevating anti-LGBT+ hate rhetoric and anti-trans lies," which contributed to the shooting (The Hill, 21 November 2022). That is, left-wing Democrats focused their ire on right-wing Republicans who pretended to care about the well-being of the LGBT community, than on honest autocrats who lacked such pretensions.

[5] On 5 January 2023, a Fox News keyword search ("transgender molests child") generated 62 stories, topped by "California trans child molester, 26, gets 2 years in juvenile facility thanks to progressive DA Gascon" (27 Jan. 2022). A similar search in New York Times generated 39 results, topped by "After Roe, Republicans Sharpen Attacks on Gay and Transgender Rights" (22 July 2022); none of the stories mentioned transgender persons molesting children.

[6] In my 11-years of teaching in South Korea, the typical Korean university student both expressed her nation's dominant narrative of victimhood and rejected Japan's information market as mostly false 'denialism'. Japanese exchange students reported more interest in different viewpoints and information. One Japanese student wrote: "I had the opportunity to talk with Korean students at my university about the comfort women issue. Students said that Japanese people do not know the news reported in Korea. They also told me that Japanese news is wrong. Since I am here in Korea, I would like to read more news about comfort women on the Korean side" (1 Dec. 2022).

[7] In 2020 (Moon Administration), 71.6 percent of South Koreans claimed a "bad" or "relatively bad" impression of Japan, and 46.3 percent of Japanese expressed the same of South Korea; in 2022 (Yoon Administration), this dropped to 52.8 percent of South Koreans and 40.3 percent of Japanese (Genron 2022), as both governments stressed the mutual threats from North Korea and Japan.

[8] During 2014-17, 44% of US Democrats and Democratic leaners expressed 'very unfavorable' opinion of the out-party, and 45% Republicans and Republican leaners did the same; in 1994, only 16-17% of partisans viewed the out-party very unfavorably (Pew 2017; c.f., Iyengar et al 2019).

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