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# Gay and Lesbian Rights in Confucian Asia: The Cases of Hong Kong, Singapore, and Taiwan

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# Gay and Lesbian Rights in Confucian Asia: The Cases of Hong Kong, Singapore, and Taiwan

## **Abstract**

From being a love that dared not speak its name to one that is legally recognized by many countries today, same-sex acts and relations have indeed undergone a remarkable transformation in terms of how they are perceived and, consequently, regulated. Yet, globally speaking, this transformation is taking place unevenly as many countries continue to criminalize homosexuality and the commission of same-sex acts.

In Asia, a region that has traditionally if misguidedly been seen as more sexually conservative than the so-called 'Wild West,' the debate over the acceptability of homosexuality rages on. As three of Asia's most economically developed, cosmopolitan, and Confucian Chinese-majority societies, Hong Kong, Singapore, and Taiwan nevertheless treat homosexuality very differently; sex between males continue to be a crime in Singapore while Taiwan appears poised to be Asia's first country to legalize same-sex marriage.

This paper seeks to examine the domestic and external factors that combine to produce in each country a unique set of dynamics and logics governing public policy and discourse about homosexuality. It is argued that one-party hegemony in Singapore, transfer of Hong Kong's sovereignty to China, and Taiwan's insecure international status vis-à-vis China represent the primary factors mediating state regulation of homosexuality. This paper also includes a survey of traditional Chinese, Confucian, and Japanese attitudes regarding homosexuality, as well as the implications of Singapore being the only *de jure* independent sovereign state among the three case studies.

## **Keywords**

Gay rights, LGBT, homosexuality, Confucian, Singapore, Hong Kong, Taiwan, Asia, Political Science, Brendan O'Leary, O'Leary, Brendan

## **Disciplines**

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## ABSTRACT

From being a love that dared not speak its name to one that is legally recognized by many countries today, societal attitudes and legal positions regarding homosexuality have undergone a remarkable transformation in the past half a century. Yet, globally speaking, this transformation is taking place unevenly as many countries continue to criminalize homosexuality and the commission of same-sex acts. In Asia, a region that has traditionally if misguidedly been seen as more sexually conservative than the Wild West, the debate over the acceptability of homosexuality rages on. As three of Asia's most economically developed, cosmopolitan, and Confucian Chinese-majority societies, Hong Kong, Singapore, and Taiwan nevertheless treat homosexuality very differently; sex between males continue to be a crime in Singapore while Taiwan appears poised to be Asia's first country to legalize same-sex marriage. This paper seeks to examine the domestic and external factors that combine to produce in each country a unique set of dynamics and logics governing public policy and discourse about homosexuality. It is argued that one-party hegemony in Singapore, transfer of Hong Kong's sovereignty to China, and Taiwan's insecure international status vis-à-vis China represent the primary factors mediating state regulation of homosexuality. This paper also includes a survey of traditional Chinese, Confucian, and Japanese attitudes regarding homosexuality, as well as the implications of Singapore being the only *de jure* independent sovereign state among the three case studies.

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## **I. Introduction:**

Unbeknown to the New York City police officers who raided the Stonewall Inn, a well-established gay bar in Greenwich Village, on 28<sup>th</sup> June 1969 in an otherwise regular harassment of the city's "gay and lesbian underground culture,"<sup>1</sup> that event would go on to become "the defining moment for the dramatic entrance of gay and lesbian"<sup>2</sup> political movements into American public life. Instead of acquiescing in the face of police actions as patrons of such nightlife establishments had usually done in an era when homosexuality was classified as a psychiatric disorder in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM),<sup>3</sup> those at the Stonewall Inn mounted a fierce resistance.<sup>4</sup>

What followed was a flowering of "new and more visible gay groups,"<sup>5</sup> the popular circulation of the term "coming out,"<sup>6</sup> and, as suggested above, a slow but undeniable development toward greater cultural and legal acceptance of homosexuality. Of course, embedded in all efforts to define a particular moment in history as *the* turning point is an inescapable degree of artificiality and arbitrariness; by privileging one set of information or viewpoints, the historian is, by definition, under-privileging another that might lead to very different narratives.

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<sup>1</sup> John David Skrentny, "White Males and the Limits of the Minority Rights Revolution: The Disabled, White Ethnic, and Gays," in *The Minority Rights Revolution* (Massachusetts: The Belknap Press of Harvard University Press, 2002), pp. 315.

<sup>2</sup> David A. J. Richards, "Breaking the Silence," in *The Sodomy Cases: Bowers v. Hardwick and Lawrence v. Texas* (Kansas: University Press of Kansas, 2009), pp. 21.

<sup>3</sup> Not until December 1973 did the Board of Trustees of the American Psychiatric Association decide, in its proposed changes to the sixth printing of the DSM, to declassify homosexuality as a psychiatric disorder. American Psychiatric Association Document Reference No. 730008

<sup>4</sup> For more information on the riots, see David Carter, *Stonewall: The Riots That Sparked the Gay Revolution* (New York: St Martin's Griffin, 2010)

<sup>5</sup> John David Skrentny, "White Males and the Limits of the Minority Rights Revolution: The Disabled, White Ethnic, and Gays," in *The Minority Rights Revolution* (Massachusetts: The Belknap Press of Harvard University Press, 2002), pp. 316.

<sup>6</sup> *Ibid.*

Suffice then to underline that although “a few brave souls had publicly declared themselves and even banded together for limited political purposes [in the pre-Stonewall era,] the vast majority of gay people were locked away in painful isolation and fear, doing everything possible *not* to declare themselves. Many [even] cursed [their] fate [and] longed to be straight.”<sup>7</sup>

In the past forty odd years since Stonewall, a sea-change has occurred in how human sexuality in general and homosexuality in particular have been perceived both within the United States (US) and globally. For example, while the United Nations Declaration of Human Rights (UN DHR) of 1948 and the International Covenant on Civil and Political Rights (ICCPR) of 1966 said nothing about sexual orientation,<sup>8</sup> in 2011, under the leadership of South Africa, the UN Human Rights Council adopted the first UN resolution (Resolution 17/19) that explicitly addressed sexual orientation and gender identity.<sup>9</sup>

While Illinois notably became the first state in America to decriminalize same-sex acts and thus effectively homosexuality in 1961,<sup>10</sup> sodomy laws—legal prohibitions against so-called unnatural sexual conduct such as anal penetration—were deemed unconstitutional by the US Supreme Court in the landmark *Lawrence v. Texas* ruling in 2003.<sup>11</sup> While same-sex marriage was not legal anywhere in the 1960s, it now is in fourteen countries and certain parts of three others.<sup>12</sup> In addition, more Americans today support rather than oppose marriage equality.<sup>13</sup>

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<sup>7</sup> Martin Duberman, “Prologue,” in *Cures: A Gay Man’s Odyssey, Tenth Anniversary Edition* (Colorado: Westview Press, 2002), pp. 3

<sup>8</sup> The full texts of the UN DHR and the ICCPR are available at <http://www.un.org/en/documents/udhr/> and <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> respectively

<sup>9</sup> For a copy of the resolution, visit [http://iglhr.org/sites/default/files/Resolution\\_17%3A19\\_2011\\_%20HRC\\_HRSOGI.pdf](http://iglhr.org/sites/default/files/Resolution_17%3A19_2011_%20HRC_HRSOGI.pdf)

<sup>10</sup> William N. Eskridge Jr., “The Case(s) Against Sodomy Laws, 1935 – 61,” in *Dishonorable Passions: Sodomy Laws in America 1861-2003* (New York: Viking Penguin, 2008), pp. 111

<sup>11</sup> For more information on *Lawrence v. Texas*, consult Dale Carpenter, *Flagrant Conduct: The Story of Lawrence v. Texas – How a Bedroom Arrest Decriminalized Gay Americans* (New York: W. W. Norton & Company, Inc., 2012)

<sup>12</sup> As of March 2013, the following countries have legalized same-sex marriage (bracketed value represents the year in which same-sex marriage was legalized): The Netherlands (2000), Belgium (2003), Canada (2005), Spain (2005), South Africa (2006), Norway (2009), Sweden (2009), Argentina (2010), Iceland (2010), Portugal (2012), Denmark (2012), France (2013), New Zealand (2013), and Uruguay (2013). In United States (2003), Mexico (2009), and Brazil (2011), same-sex marriage is legal in



Notwithstanding the remarkable developments regarding homosexuality's legality and acceptability, there remains in large parts of the world legal regimes and cultural practices that are either resistant or hostile to homosexuality. According to the International Lesbian Gay Bisexual Trans and Intersex Association (ILGA), as of May 2013, there were some 76 countries that continued to treat private, consensual same-sex acts between adults as a crime.<sup>14</sup> Notably, none of these 76 countries are from Europe or Northern America; the bulk of them are from Asia, Africa, and the Middle East.

In other words, a likely conclusion to draw from the current global landscape of gay and lesbian rights is that they have made more headway, that is, happened faster and gone further, in the West than any other region in the world. Still, this observation should not obscure the fact that a broadly comparable development regarding gay and lesbian identities and rights-consciousness is unfolding outside the West.

As “part of the rapid globalization of lifestyle and identity politics,”<sup>15</sup> there is a clear if problematic “emergence of ostensibly Western-style lesbian and gay identities”<sup>16</sup> in the numerous non-Western societies. Given that Asian economies in general and East Asian ones in particular “grew faster than the rest of the world”<sup>17</sup> since the 1960s, it is unsurprising that Western-inflected expressions of sexual identities and differences found many outlets in the region's burgeoning cities. To be sure, the generation of “new forms of social space that

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some, but not all, parts of the country. See James Q. Wilson, John J. Dilulio, Jr., Meena Bose, “Civil Rights,” in *American Government: Institutions & Policies* (Kentucky: Cengage Learning, 2014), pp. 146

<sup>13</sup> Peyton Craighill and Scott Clement, “Support for same-sex marriage hits new high; half say Constitution guarantees right,” *The Washington Post*, March 5, 2014, accessed March 27, 2014, [http://www.washingtonpost.com/politics/support-for-same-sex-marriage-hits-new-high-half-say-constitution-guarantees-right/2014/03/04/f737e87e-a3e5-11e3-a5fa-55f0c77bf39c\\_story.html](http://www.washingtonpost.com/politics/support-for-same-sex-marriage-hits-new-high-half-say-constitution-guarantees-right/2014/03/04/f737e87e-a3e5-11e3-a5fa-55f0c77bf39c_story.html)

<sup>14</sup> For a copy of the ILGA State-Sponsored Homophobia Report, visit <http://ilga.org/ilga/en/article/o5VIRM41Oq>

<sup>15</sup> Dennis Altman, “Rupture of Continuity? The Internationalization of Gay Identities,” *Social Text* 48 (1996): 78

<sup>16</sup> “Introduction,” in *AsiaPacifiQueer: Rethinking Genders and Sexualities* (2008)

<sup>17</sup> Steven Radelet, Jeffrey Sachs, Jong-Wha Lee, “Economic Growth in Asia,” background paper for the Asian Development Bank's *Emerging Asia: Changes and Challenges* available for download at <http://www.cid.harvard.edu/archive/hiid/papers/ecgasia.pdf>

reorganize the discursive practices of marginalized groups”<sup>18</sup> was always mediated, indeed constrained, by the broader political systems responsible for the stellar economic growth.

Nevertheless, Asia’s economic “affluence gave many the opportunity to travel and experience gay/lesbian cultures”<sup>19</sup> beyond the borders of the region. While it is plainly inaccurate to think that homoerotic cultures or concepts did not exist in Asia before the economic boom in the second half of the 20<sup>th</sup> century,<sup>20</sup> it is similarly misguided to ignore the material and complex ways in which gay and lesbian cultures in globalizing Asia have been mediated by the “spread of postmodern consumer capitalism”<sup>21</sup> of which the West in general and the US in particular remain towering icons.

Beyond products and lifestyles, the influence of Western discourses on homosexuality and its place in a free and modern society has been considerable in Asia. This influence is especially visible and acute in Asian societies that have most enthusiastically embraced free market capitalism and the rule-of-law. Indeed, acceptance of and resistance to the claims of gay rights in such Asian countries have, with important differences, mirrored the dominant liberal—conservative dichotomy in the West. For Hong Kong, Singapore, and Taiwan, conservatism is itself a curious if contradictory blend of an ostensibly (sexually) prudish brand of Confucian ‘Asian Values’ and evangelical Christian morality. In these countries, homosexuality-denying groups (of which the state and the judiciary are sometimes important parts) frown upon the aggressiveness and effectiveness of gay rights advocacy groups in the West.

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<sup>18</sup> Chou Wah-shan, “Going Beyond “Cultural Carnival versus Political Confrontation”: Pluralities of Contemporary Taiwanese *Tongzhi* Discourses,” in *Tongzhi: Politics of Same-Sex Eroticism in Chinese Societies* (New York: The Haworth Press, 2000), pp. 144

<sup>19</sup> Peter A. Jackson, “Pre-Gay, Post Queer: Thai Perspectives on Proliferating Gender/Sex Diversity in Asia,” in *Gay and Lesbian Asia: Culture, Identity, Community* (New York: Harrington Park Press, 2001), pp. 2

<sup>20</sup> For more information on indigenous Asian gay and lesbian cultures, refer to Peter A. Jackson and Gerard Sullivan eds, *Gay and Lesbian Asia: Culture, Identity, Community* (New York: Harrington Park Press, 2001) or Fran Martin, Peter A. Jackson, Mark McLelland, and Audrey Yue eds. *AsiaPacifiQueer: Rethinking Genders and Sexualities* (Illinois: University of Illinois Press, 2008)

<sup>21</sup> Chris Berry, *A Bit on the Side: East-West Topographies of Desire* (Sydney: EMPress, 1994), pp. 11

This paper is primarily interested in discerning and scrutinizing the factors that most influence the extent to which negative and positive gay and lesbian rights are enshrined in Hong Kong, Singapore, and Taiwan. For this purpose, negative gay and lesbian right is taken to mean the decriminalization of consensual and private same-sex acts between adults while positive rights refer to the legal enactment of, among others, anti-discrimination regulation and same-sex marriage.

Specifically, this paper will analyse the history and politics regarding negative gay and lesbian rights in Hong Kong and Singapore—both former British colonies that inherited sodomy laws criminalizing consensual and private same-sex acts—and those regarding positive gay and lesbian rights in Taiwan, a former Japanese colony without a history of criminalizing such same-sex acts.

The choice of case studies is informed by the fact that these countries are some of Asia's most Westernized ones; they are certainly some of the most economically developed countries in the region. More importantly, they share the following geographic, demographic, historical, cultural, and economic traits:

- 1) Geography: All three are small and urban (bracketed value denotes percentage of urban population)<sup>22</sup>: Hong Kong is 1,104 kilometres square (100%); Taiwan, 36,193 (78%)<sup>23</sup>; Singapore, 710 (100%).
- 2) Demography: All three are dominated by Chinese peoples (bracketed value denotes percentage of Chinese citizens): Hong Kong (94%)<sup>24</sup>; Taiwan (98%); and Singapore (74.2%)<sup>25</sup>.

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<sup>22</sup> Data from World Bank, available at <http://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS>

<sup>23</sup> Data from the United Nations, available at <http://esa.un.org/unpd/wup/index.htm>

- 3) History: Hong Kong and Singapore were British colonies until 1997 and 1963 respectively; Taiwan was a Japanese colony from 1895 to 1945
- 4) Culture: All three countries lay claim to a common Confucian heritage
- 5) Economy – highly developed and open (bracketed value denotes rank position on annual Index of Economic Freedom/GDP per capita)<sup>26</sup>: Hong Kong (1<sup>st</sup>/\$51,494); Singapore (2<sup>nd</sup>/\$60,410); Taiwan (17<sup>th</sup>/\$38,749)

As aforementioned, despite these similarities, important differences exist in how homosexuality is popularly imagined, publicly discussed, and legally treated in each country. Most conspicuously, Singapore is an outlier among the three countries in that it continues to criminalize private same-sex acts between consenting male adults. Indeed, of the roughly 76 countries that still criminalize same-sex acts globally, Singapore stands out as the only country with what the International Monetary Fund (IMF) classifies as an advanced economy.<sup>27</sup> This paper seeks to account for this apparent incongruity. In addition, this paper will also explain why Taiwan became the most homosexuality-affirming among the three case studies.

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<sup>24</sup> Data from Hong Kong government, available at [http://www.had.gov.hk/ruru/english/info/info\\_dem.html](http://www.had.gov.hk/ruru/english/info/info_dem.html)

<sup>25</sup> Date from Singapore Tourism Board, available at <http://www.yoursingapore.com/content/traveller/en/browse/aboutsingapore/people-lang-culture.html>

<sup>26</sup> Data from Heritage Foundation's *2014 Index of Economic Freedom*, available at <http://www.heritage.org/index/>

<sup>27</sup> Refer to Table B of the Statistical Appendix in IMF's *World Economic Outlook* (April 2013) available at <http://www.imf.org/external/pubs/ft/weo/2013/01/pdf/text.pdf>

## **II. History of Sodomy Laws in Hong Kong and Singapore:**

The earliest recorded mentions of “sodomy” in English law can be traced back to the reign of King Edward I (1239 to 1307) in the medieval period. In particular, *Fleta, seu Commentarius Juris Anglicani*, a Latin survey of English law, and *Britton*, a Norman French summary of English Common Laws both contain explicit references to sexual acts between men as well as any other sexual conduct deemed offensive to Christian theology.<sup>28</sup>

To be sure, sodomites were not the only persecuted class in twelfth- and thirteenth-century Europe: lepers, witches, prostitutes, heretics, and Jews, among other minority groups, also faced the wrath of “clerics and courtiers [eager to] extend the power and advance the interests of their masters, while consolidating their own position and undermining potential rivals”<sup>29</sup> in “a persecuting society, rather than simply a society with persecution.”<sup>30</sup>

This juridical forbidding of sodomy persisted even after King Henry VIII’s decision to remove England from the jurisdiction of the Roman Catholic Church. In 1533, the same year when Henry VIII coerced the Archbishop of Canterbury, Thomas Cranmer, to annul the marriage between him and Catherine of Aragon, England passed its first civil sodomy law named the Buggery Act; until then, sodomy “was unquestionably an ecclesiastical offence only.”<sup>31</sup>

The Act, itself an assertion of Henry VIII’s resolve to challenge and circumscribe the role of the Catholic Church in his Reformation State,<sup>32</sup> punished the “detestable and abominable Vice

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<sup>28</sup> Alok Gupta, ““Sodomy,” Colonialism, and Codification” in *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism* (New York: Human Rights Watch, 2008), pp. 13

<sup>29</sup> R. I. Moore, “A Persecuting Society,” in *The Formation of a Persecuting Society* (Singapore: Blackwell Publishing, 2007), pp. 144

<sup>30</sup> *Ibid.*, pp. 156

<sup>31</sup> Francois Lafitte, “Homosexuality and the Law,” in *British Journal of Delinquency* 9 (1958): 13

<sup>32</sup> *Ibid.*, pp. 15

of Buggery committed with mankind or beast”<sup>33</sup> with death. While the Act was repealed when Mary I, a Catholic, ascended the English throne in 1553, it was reinstated wholesale in 1563 under the reign of Elizabeth I, a Protestant.<sup>34</sup>

By the time Singapore and Hong Kong became British colonies in 1824 and 1842 respectively,<sup>35</sup> then, sodomy remained a crime punishable by death in England. The Indian Penal Code (IPC)—“the first comprehensive codified criminal law produced anywhere in the British Empire”<sup>36</sup>—was completed in 1837 under the lead authorship of Thomas Babington Macaulay and came into force in 1860. Section 377 of the Code read as follows:

*Unnatural Offences – Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment... for a term which may extend to 10 years, and shall be liable to fine.*

*Explanation – Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this Section.*

While the IPC “became the model for British colonies’ legal systems throughout most of Asia and Africa,”<sup>37</sup> it also influenced the English *Offences Against the Person Act* of 1861 which replaced the death penalty for the crime of buggery with “Penal Servitude for Life or for any Term not less than Ten Years.”<sup>38</sup> The criminalization of the act of anal intercourse was imported into the law books of Hong Kong when it, in 1865, adopted an *Offences Against the Person*

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<sup>33</sup> Alok Gupta, ““Sodomy,” Colonialism, and Codification” in *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism* (New York: Human Rights Watch, 2008), pp. 14

<sup>34</sup> H. Montgomery Hyde, *The Other Love: An Historical and Contemporary Survey of Homosexuality in Britain* (London: Heinemann, 1970), pp. 40

<sup>35</sup> For Singapore, see the Crawford Treaty of 1824 and the Anglo-Dutch Treaty of 1824; for Hong Kong, see the Treaty of Nanking of 1842

<sup>36</sup> Alok Gupta, ““Sodomy,” Colonialism, and Codification” in *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism* (New York: Human Rights Watch, 2008), pp. 15

<sup>37</sup> *Ibid.*, pp. 21

<sup>38</sup> See Section 61 of the Act, downloadable at [http://www.legislation.gov.uk/ukpga/1861/100/pdfs/ukpga\\_18610100\\_en.pdf](http://www.legislation.gov.uk/ukpga/1861/100/pdfs/ukpga_18610100_en.pdf)

*Ordinance* based on the 1861 English *Offences Against the Person Act*,<sup>39</sup> and those of Singapore when the *Straits Settlement Law* of 1871, mirrored on the IPC, was passed.<sup>40</sup>

In Singapore, the application of criminality specifically to same-sex acts between males occurred much later. Only in 1938 did the Straits Settlement Legislative Council of Singapore enact Section 377A that in today's amended version reads as follows:

*Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years.*<sup>41</sup>

Curiously, even though Section 377A singled out males, this law was based off Henry Labouchere's 1885 amendment in the Singapore Legislative Assembly to "a Bill to make further provision for the protection of women and girls, the suppression of brothels and other purposes."<sup>42</sup> Equally curious is the similarly gendered language of Section 51 of Hong Kong's 1865 *Offences Against the Person Ordinance*:

*Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of any act of gross indecency with another male person shall be guilty of a misdemeanour triable summarily, and shall be liable to imprisonment for 2 years.*<sup>43</sup>

The gender-specific approach of these legislations dating back to the second half of the 19<sup>th</sup> century during Queen Victoria's reign is "probably connected with the fact that when the relevant provisions were drafted, public acknowledgement of female sexuality would have been

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<sup>39</sup> Carole J. Petersen, "Values in Transition: The Development of the Gay and Lesbian Rights Movement in Hong Kong," in *Loyola of Los Angeles International and Comparative Law Review* 337 (1991): 339

<sup>40</sup> Dominic Chan, "Oral Sex – A Case of Criminality or Morality?" *Singapore Law Gazette*, September 2004, <http://www.lawgazette.com.sg/2004-9/Sep04-feature2.htm>

<sup>41</sup> The full text of the Singapore Penal Code is available at <http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=e40d5913-c2dc-4284-bf68-eb315c55c8fa;page=0;query=CompId%3Ae40d5913-c2dc-4284-bf68-eb315c55c8fa;rec=0#legis>

<sup>42</sup> Lynette J. Chua, "Saying No: Sections 377 and 377A of the Penal Code," in *Singapore Journal of Legal Studies* (2003): 216

<sup>43</sup> The full text of the 1865 Ordinance is available at <http://oelawhk.lib.hku.hk/items/show/2864>

unthinkable in English society.”<sup>44</sup> The prevalent perception of female passionlessness<sup>45</sup> in Victorian England was coupled with the Queen’s personal belief that same-sex acts between females simply did not exist in her empire.<sup>46</sup>

Needless to say, modern understandings of sexuality in general and female sexuality in particular have disproved and discarded much of the Victorian assumptions. Out of this post-Victorian milieu flowed a certain libertinism that today increasingly sees the criminalization of same-sex acts between only males to be legally problematic and morally suspect. It was precisely such an attitude which contributed to the repeal of Hong Kong’s Britain-inspired sodomy laws in 1991 after more than a century. The same attitude was at work in England and Wales when they, in 1967, became the first two countries within the United Kingdom (UK) to repeal sodomy laws with the enactment of the *Sexual Offences Act* which declared that “a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of twenty-one years.”<sup>47</sup>

The decriminalization in parts of the UK came ten years after the famous *Wolfenden Report* was released by the Committee on Homosexual Offences and Prostitution. The Report recommended, in paragraph 62, that “homosexual behaviour between consenting adults in private be no longer a criminal offence.”<sup>48</sup> However, the Macmillan government was reluctant to implement the recommendations of the Report as they pertained to homosexuality because “on that subject public opinion was divided and strong views were held; and there was not sufficient

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<sup>44</sup> Nicholas Bamforth, *Sexuality, Morals, and Justice: A Theory of Lesbian and Gay Rights Law* (London: Cassell, 1997), pp. 25

<sup>45</sup> For more information on the concept of passionlessness and, more generally, Victorian sexual mores, see Nancy F. Cott, “Passionlessness: An Interpretation of Victorian Sexual Ideology, 1790 – 1850,” in *Signs: Women in Culture and Society* 2 (1978): 219 – 236

<sup>46</sup> Lynette J. Chua, “Saying No: Sections 377 and 377A of the Penal Code,” in *Singapore Journal of Legal Studies* (2003): 212

<sup>47</sup> The full text of the relevant chapter of the 1967 Act is available at [http://www.legislation.gov.uk/ukpga/1967/60/pdfs/ukpga\\_19670060\\_en.pdf](http://www.legislation.gov.uk/ukpga/1967/60/pdfs/ukpga_19670060_en.pdf)

<sup>48</sup> The full text of the Report is available at [http://www.humandignitytrust.org/uploaded/Library/Other\\_Reports\\_and\\_Analysis/Wolfenden\\_Report\\_1957.pdf](http://www.humandignitytrust.org/uploaded/Library/Other_Reports_and_Analysis/Wolfenden_Report_1957.pdf)



measure of public support for the Committee's recommendations to justify the Government in introducing legislation to give effect to them... [Consequently,] there was no early prospect of Government legislation to amend the law relating to homosexual offences."<sup>49</sup>

Crucially, the rationale offered for the continued criminalization of homosexual acts made no reference to any notion of fundamental human rights or the UK's obligations to relevant regional or international treaties. Instead, "public opinion" was held up as the sole legitimate arbiter of the legality of homosexual acts; supposedly, decriminalization of homosexual acts required nothing more and nothing less than unambiguous "public support." The distance between relying on "public opinion" as a legitimate justification for the criminalization of homosexual acts and invoking cultural arguments to resist legal equality is a small one.

Indeed, while the Macmillan government did not disingenuously argue that homosexuality was somehow fundamentally alien to English culture, however defined, the governments of Hong Kong, Singapore, and Taiwan would, in a supremely ironic development of post-colonialism, blithely contend that homosexual acts had to be criminalized or at least strongly tabooed because homosexual rights (and presumably homosexuality itself) "are a Western issue."<sup>50</sup>

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<sup>49</sup> The full text of the relevant Cabinet Memorandum (82<sup>nd</sup> Conclusions of the Cabinet meeting held on 28<sup>th</sup> November 1957) is available at <http://filestore.nationalarchives.gov.uk/pdfs/small/cab-128-31-cc-57-82-82.pdf>

<sup>50</sup> Baden Offord and Leon Cantrell, "Homosexual Rights as Human Rights in Indonesia and Australia," in *Journal of Homosexuality* 40 (2001): 233

### **III. Theoretical Framework for Understanding the Legality of Homosexuality Globally:**

Many factors commingle in any given society to determine the degree to which homosexuality is either accepted or rejected. Most importantly, the set of factors is not static but dynamic; all socio-political and legal mores evolve. While not intended to be exhaustive, the following has been posited by a group of scholars who undertook a global cross-national study to be the key factors:<sup>51</sup>

1. Type of Legal System: homosexuality is more likely to be illegal in, on the one hand, common law or Islamic countries, and, on the other, countries where there is a sizeable (and influential) Catholic population
2. Democratic Conditions and Political Opportunity Structure for Minority Population: homosexuality is more likely to be illegal in less democratic countries or/and countries with fewer number of women in the legislatures
3. The State of Economic Development and Modernization: homosexuality is more likely to be illegal in countries with low(er) Gross Domestic Product (GDP) per capita
4. Globalization: homosexuality is more likely to be illegal in countries less exposed to or plugged into the process of globalization

This paper will argue that in general these factors do not adequately or accurately explain the state of affairs in Hong Kong, Singapore, and Taiwan regarding homosexuality. In fact, it is arguable that only in the case of Singapore does a combination of the third and fourth factors—broadly understood as economic imperatives—contribute to an understanding of the city-state’s current live-and-let-live attitude toward homosexuality. Even then, economic imperatives faced

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<sup>51</sup> Victor Asal, Udi Sommer, and Paul G. Harwood, “Original Sin: A Cross-National Study of the Legality of Homosexual Acts,” in *Comparative Political Studies* 46 (2013): 320 – 351

by the small Southeast Asian island only explain a part of the story; as this paper will try to show, the political imperatives of a one-party state prove to be more decisive.

In the cases of Hong Kong and Taiwan, the factors enumerated above are even less directly relevant. This paper will argue that it is ultimately the complex relationship between, on the one hand, these two countries and on the other, the People's Republic of China (hereafter referred to as "China") that generated a set of social and political forces that tended in homosexuality-affirming directions. In particular, Hong Kong's move to decriminalize same-sex acts two years after the 1989 Tiananmen Square incident was chiefly influenced by the prospective transfer of its sovereignty from Britain to China in 1997 while Taiwan's continued embrace of certain positive gay and lesbian rights is inextricably bound up with its geopolitical need to gain international recognition in the context of China's coercive and widely-accepted "One China" policy.<sup>52</sup>

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<sup>52</sup> For more information on the "One China" policy, see Shirley A. Kan, *China/Taiwan: Evolution of the "One China" Policy—Key Statements from Washington, Beijing, and Taipei*, Washington, DC: Congressional Research Service, 2013, <http://www.fas.org/sgp/crs/row/RL30341.pdf>, accessed March 16, 2014.

#### **IV. Chinese Culture and “Homosexuality”:**

It is not uncommon for homosexuality-denying advocates in any of the three countries to ground their opposition in Confucian ethics or more broadly, “Chinese culture.” For example, during the July 1991 Hong Kong Legislative Council (LegCo) debate to decriminalize private homosexual acts between consenting male adults, LegCo Member Pang Chun-Hoi claimed that “homosexuality (buggery) is against the Chinese tradition [and] is considered evil by Chinese.” He further mentioned that for the LegCo to think that the majority of Hong Kongers—Chinese by descent—supported decriminalization would be nothing but “a rape of public opinion.”<sup>53</sup>

In the case of multiracial Singapore, direct references to Chinese culture are eschewed in favour of a more syncretic and thus politically palatable paradigm and rhetoric of “Asian values.” For example, Member of Parliament (MP) Baey Yam Keng, otherwise seen as a liberal vis-à-vis his parliamentary colleagues<sup>54</sup> criticized the information regarding homosexuality on the Singapore Health Promotion Board’s (HPB) website for lacking “the Asian values of family.”<sup>55</sup> In essence, however, “Asian values,” as the Singaporean authorities have defined and articulated them, are virtually indistinguishable from a particular interpretation of Confucianism and communitarianism in which the primacy of the whole rather than the individual is sacrosanct. In fact, the first of five “Shared Values” of Singapore promulgated by then-Deputy

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<sup>53</sup> The full text of the LegCo proceedings on 10<sup>th</sup> July 1990 is available at [http://www.legco.gov.hk/yr90-91/english/lc\\_sitg/hansard/h910710.pdf](http://www.legco.gov.hk/yr90-91/english/lc_sitg/hansard/h910710.pdf)

<sup>54</sup> Baey Yam Keng was one of only three Members of Parliament from the ruling People’s Action Party to have argued for the repeal of Section 377A which criminalizes private same-sex acts between consenting male adults.

<sup>55</sup> Siau Ming En, “‘Disappointed’ MP criticizes HPB for its FAQ on sexuality,” *Today*, February 7, 2014, accessed February 19, 2014, <http://m.todayonline.com/singapore/disappointed-mp-criticises-hpb-its-faq-sexuality>

Prime Minister Goh Chok Tong in 1990 reads “Nation before community and society above self.”<sup>56</sup>

The employment by homosexuality-denying advocates of arguments ostensibly situated within or derived from Chinese culture is, to understate, disingenuous. First, “Chinese culture” is a loaded term which necessarily eludes simple characterizations; it is certainly neither homogeneous nor unequivocal regarding its views on homosexuality, among many other issues. Moreover, given the breathtakingly long history of China, to speak of a monolithic and homophobic “Chinese culture” is almost definitely an exercise in selective memory and arbitrariness; different dynasties and different time periods within a given dynasty treated homosexuality differently.<sup>57</sup> Thus, if indeed a generalization can be made in this regard, it ought to be that, absent “mythological or metaphysical support for treating homosexual acts as especially abominable”<sup>58</sup> as per the Judeo-Christian tradition, “Chinese traditional culture did not react to homosexuality with the same disgust that has pervaded Western Christian responses to same-sex love.”<sup>59</sup>

Second, to invoke “Chinese culture” in general and Confucianism in particular to justify resistance to modern expressions of homosexuality is a classic example of anachronism; the term “homosexuality” was only coined in 1869 by Karl-Maria Kertbeny as “a Greco-Latin

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<sup>56</sup> Kuah-Pearce Khun Eng, “Experimenting with Religious Values as Asian Values,” in *State, Society, and Religious Engineering: Towards a Reformist Buddhism in Singapore* (Singapore: ISEAS Publishing, 2009), pp. 217

<sup>57</sup> For more information on the history of same-sex male relations in China, see Bret Hinsch, *Passions of the Cut Sleeve: The Male Homosexual Tradition in China* (Los Angeles: University of California Press, 1990)

<sup>58</sup> Henry Lethbridge, “The quare fellow: Homosexuality and the law in Hong Kong,” in *Homosexuality and the Law* 6 (1976): pp. 292 – 326

<sup>59</sup> Wu Cuncun, “Historical Origins of Qing male homoerotic sensibilities,” in *Homoerotic Sensibilities in Late Imperial China* (New York: RoutledgeCurzon, 2004), pp. 45

neologism... that became a widely adopted appellation for same-sex behaviour.”<sup>60</sup> According to Michel Foucault:

*The nineteenth-century homosexual became a personage, a past, a case history, and a childhood, in addition to being a type of life, a life form, and a morphology, with an indiscreet anatomy and possibly a mysterious physiology. Nothing that went into his total composition was unaffected by his sexuality. It was everywhere present in him: at the root of all his actions because it was their insidious and indefinitely active principle; written immodestly on his face and body because it was a secret that always gave itself away... The sodomite had been a temporary aberration; the homosexual was now a species.*<sup>61</sup>

In other words, to assert that homosexuality as it is understood today was uniformly condemned by a timeless “Chinese culture” is to purvey a partisan idealization and not a faithful representation of how homoerotic sensibilities had been interpreted throughout Chinese history.

Third, even if it is somehow arguable that “Chinese culture” presents a veritable and vigorous argument against the social and legal acceptance of homosexuality in the 20<sup>th</sup> and 21<sup>st</sup> centuries, such a stance has severe limits. In critiquing the tepid argument that “there should be a ceiling placed on local sexual orientation rights because sexual orientation is a sensitive cultural issue that should be moulded to fit the local culture of Hong Kong,” the Hong Kong Human Rights Monitor reasoned why such culturally relativistic logic is faulty: “The UN Human Rights Committee has explicitly denounced culture as a defence to violations of sexual orientation rights [and] the human rights regime’s purpose is to protect minorities, especially when they are marginalized by local majoritarian cultures.”<sup>62</sup>

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<sup>60</sup> Robert Aldrich, “Gay and Lesbian History,” in *Gay Life and Culture: A World History*, edited by Robert Aldrich (New York: Universe Publishing, 2006), pp. 11

<sup>61</sup> Michel Foucault, “The Repressive Hypothesis,” in *The History of Sexuality, Volume I: An Introduction*, translated by Robert Hurley (New York: Vintage Books, 1990), pp. 43.

<sup>62</sup> The full text of the Hong Kong Human Rights Monitor presentation, “Sexual Orientation and Human Rights in Hong Kong,” at the 2005 Sexual Minorities Forum is available at [http://www.cmab.gov.hk/en/images/issues/20\\_5\\_05/SMF%20Paper%206-2005.pdf](http://www.cmab.gov.hk/en/images/issues/20_5_05/SMF%20Paper%206-2005.pdf)

In sum, “one must problematize the way Chineseness is essentialized through selective historicism (for instance, picking and choosing what aspects of Chinese culture and history to include or exclude) and the conflation of various strands of cultural lineages (for example, appropriating fundamentalist Christian values and rewriting them as Asian ones) all for a specific cultural political agenda: in this case, the perpetuation of homophobic laws.”<sup>63</sup>

Given its role as “a complete way of life”<sup>64</sup> in Chinese society since the end of the Han Dynasty approximately in 220, the Confucian strand of Chinese cultural lineage deserves special attention. The worldviews posited in the *Analects*, a compendium of philosophies attributed to Confucius and his contemporaries, are characterized by “primitive rites of worship of ancestors [and] a hierarchy based upon the sanguinity of patriarchy”<sup>65</sup> although strictly speaking, these rites concerned “a whole set of unwritten laws, ceremonies, proprieties, and shamanistic practices bearing upon the people.”<sup>66</sup>

Of note is that neither Confucius nor neo-Confucian moralists “single[d] out homosexuality when they advocated sexual restraint.”<sup>67</sup> For instance, the prohibitions on officials engaging in sodomy or homoeroticism in both the Ming and Qing dynasties “must be understood in the context of parallel bans on officials visiting prostitutes.”<sup>68</sup> Indeed, “Qing law

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<sup>63</sup> Kenneth Chan, “Gay Sexuality in Singaporean Chinese Popular Culture: Where Have All the Boys Gone?” in *China Information* 2 (2008): pp. 305 – 329

<sup>64</sup> WM. Theodore De Bary and Richard Lufano, “The New Culture Movement,” in *Sources of Chinese Tradition: From 1600 through the Twentieth Century* (New York: Columbia University Press, 2000), pp. 351

<sup>65</sup> *Ibid.*, “Reopening the Debate on Chinese Tradition,” pp. 575

<sup>66</sup> *Ibid.*, pp. 576

<sup>67</sup> Wu Cuncun, “Historical Origins of Qing male homoerotic sensibilities,” in *Homoerotic Sensibilities in Late Imperial China* (New York: RoutledgeCurzon, 2004), pp. 29

<sup>68</sup> *Ibid.*, pp. 31

treated all rapists comparably, regardless of the gender of their victim. Instead, punishment relied entirely on consideration of the age of the victim and the degree of violence perpetrated.”<sup>69</sup>

It appears, then, that “as long as familial obligations were not neglected,”<sup>70</sup> “sexual encounter between two men is never immoral *per se*; homosexuality does not violate the Confucian ethical system as long as it respects the boundaries of propriety assigned to it—the hierarchies of the social pact.’ In some ways it is love that is most problematic... for passion is more threatening to the social order, more likely to lead to... transgression[s].”<sup>71</sup>

However, as benign or as indifferent as this reading of Confucianism regarding homosexuality is, it is inarguable that “the traditional Chinese cosmology of *yin-yang* was gradually abandoned in the name of (Western) modernity, and replaced by a biological determinism that medicalizes a woman’s body as weak and passive, in contrast to the male body, which is said to be active and strong.”<sup>72</sup>

The notion of an ironclad gender binary is a conceptual prerequisite for unidirectional and anatomically-based concepts of sexuality; sex is no longer contextual and relational but mechanical and biological. This “Westernization of Chinese sexual categories and a Westernization of the overall terms of discourse about homosexuality”<sup>73</sup> was accompanied by “imported Western intolerance of homosexuality.”<sup>74</sup> China in the throes of colonial exploitation, domestic ferment, and violent nationalism in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries would eventually elide her own traditional tolerance and appreciation of same-sex eroticism and link

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<sup>69</sup> Bret Hinsch, “Reflections at the End of a Tradition: Qing Dynasty (1644 to 1912),” in *Passions of the Cut Sleeve: The Male Homosexual Tradition in China* (Los Angeles: University of California Press, 1990), pp. 145

<sup>70</sup> Wu Cuncun, “Introduction,” in *Homoerotic Sensibilities in Late Imperial China* (New York: RoutledgeCurzon, 2004), pp. 22

<sup>71</sup> *Ibid.*, pp. 24

<sup>72</sup> Chou Wah-shan, “A World Without Homo-Hetero Duality: Rewriting the Traditional Chinese History of Same-Sex Eroticism,” in *Tongzhi: Politics of Same-Sex Eroticism in Chinese Societies* (New York: The Haworth Press, 2000), pp. 14

<sup>73</sup> Bret Hinsch, “Epilogue,” in *Passions of the Cut Sleeve: The Male Homosexual Tradition in China* (Los Angeles: University of California Press, 1990), pp. 169

<sup>74</sup> *Ibid.*, pp. 167



homosexuality with, among others, Western corruption, bourgeois degeneration, and capitalistic immorality. In sum, and with utmost irony, “the Western vision of the decadent Orient is now matched with a parallel Chinese view of the exotic and depraved Occident.”<sup>75</sup>

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<sup>75</sup> Ibid., pp. 171

## **V. Hong Kong:**

### *Majority support for continued criminalization of same-sex acts*

Although Hong Kong's legislature "generally followed England's lead with respect to statutory reform... there was initially very little call in Hong Kong to follow the English example of decriminalizing homosexual acts."<sup>76</sup> This apparent lack of public support for the decriminalization of homosexual acts persisted into the 1980s when the Law Reform Commission (LRC) of Hong Kong, in compiling its *1983 Report on Laws Governing Homosexual Conduct* found that an overwhelming majority (71%) of those surveyed favoured the continued criminalization of homosexual acts.<sup>77</sup> Nevertheless, the Commission recommended that "consensual sexual conduct between not more than two males in total privacy, and provided both are over 21 years of age" should be decriminalized although it was quick to highlight that such a recommendation "does not imply any moral approval of homosexuality."<sup>78</sup>

The reasons behind the Commission's recommendation are as follows: "there are no "victims" of private consensual sex between two adult men; the law should not unnecessarily interfere in private lives; anti-homosexuality laws are difficult to enforce and unlikely to deter homosexual conduct; and such laws caused gay men substantial anxiety because they made gay men vulnerable to blackmail and other forms of abuse and exploitation."<sup>79</sup>

Even though Hong Kong, by virtue of the UK's ratification of the ICCPR in 1976, was expected to protect her citizens from "arbitrary or unlawful interference with [their] privacy,

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<sup>76</sup> Carole J. Petersen, "Values in Transition: The Development of the Gay and Lesbian Rights Movement in Hong Kong," in *Loyola of Los Angeles International and Comparative Law Review* 337 (1991): 340

<sup>77</sup> The full text of the Report, including the results of public surveys, is available at <http://www.hkreform.gov.hk/en/docs/rhomosexual-e.pdf>

<sup>78</sup> The full text of the Report's summary is available at <http://www.hkreform.gov.hk/en/docs/rhomosexualp-e.pdf>

<sup>79</sup> Carole J. Petersen, "Values in Transition: The Development of the Gay and Lesbian Rights Movement in Hong Kong," in *Loyola of Los Angeles International and Comparative Law Review* 337 (1991): 343 – 344

family, home or correspondence,”<sup>80</sup> the Hong Kong LegCo decided stick to the legal status quo and not implement the Commission’s recommendation regarding private homosexual acts between consenting male adults. Expectedly, strong “public opinion” against homosexuality was cited as the justification.<sup>81</sup>

Homosexuality-denying public opinion grew stronger when the moral panic regarding Human Immunodeficiency Virus infection/Acquired Immunodeficiency Syndrome (HIV/AIDS) ensued following Hong Kong’s first reported cases of HIV infection in 1984 and AIDS in 1985.<sup>82</sup> Although not a single one of the ten “principle arguments... in favor of preserving the status quo” included in the 1983 LRC Report addressed the issue of sexually transmitted diseases,<sup>83</sup> the then-Attorney General of Hong Kong, Michael Thomas, revealed in 1985 that the HIV/AIDS scare “must be a factor” in considering any legal changes to the criminality of same-sex acts.<sup>84</sup>

The implicit conflation of homosexuality with HIV/AIDS was despite the fact that in 1985, of the three reported cases of AIDs and 46 reported cases of HIV, an overwhelming majority of them was due to the “transfusion of blood or blood products in Hong Kong before HIV screening became available” and not due to the phenomenon termed “men having sex with men.”<sup>85</sup> Another less-acknowledged factor would be the Executive Council’s concern with not

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<sup>80</sup> The full text of the ICCPR is available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>81</sup> Carole J. Petersen, “Values in Transition: The Development of the Gay and Lesbian Rights Movement in Hong Kong,” in *Loyola of Los Angeles International and Comparative Law Review* 337 (1991): 344

<sup>82</sup> Data from the Hong Kong Government available at <http://www.gov.hk/en/residents/health/sexedu/aids.htm>

<sup>83</sup> Refer to Section 11.42 of the Report available at <http://www.hkreform.gov.hk/en/docs/rhomosexual-e.pdf>

<sup>84</sup> Ann Quon, “Gays Stranded in a Legal Twilight Zone,” *Hong Kong Standard*, April 13, 1986, accessed February 16, 2014, <http://www.lgbthongkong.com/?p=5146>.

<sup>85</sup> Refer to Box 2.2 of the *Epidemiology of HIV Infection in Hong Kong and Beyond* report by the Department of Health’s Virtual AIDS Office of Hong Kong, available at <http://www.info.gov.hk/aids/pdf/g190htm/02.htm>

complicating the then-ongoing negotiations between the UK and China regarding the controversial transfer of sovereignty over Hong Kong from the former to the latter.<sup>86</sup>

Consequently, on the issue of implementing LRC's recommendation to decriminalize same-sex acts, the Executive Council of Hong Kong dragged its feet. When questioned by pro-decriminalization quarters, the government avoided "any clear answer except the usual bureaucratic jargon that other priority prevailed."<sup>87</sup> In June 1988, roughly five years after the LRC Report was released, the Hong Kong public was presented not with a legislative initiative to decriminalize same-sex acts but a Consultative Paper titled "Homosexual Offences: Should the Law be Changed?" which sought public feedback on the following three options: first, to make no changes to the law; second, to decriminalize private homosexual acts between consenting adults; and third, to reduce the penalties for private homosexual acts between consenting adults.<sup>88</sup>

The 1988 Consultative Paper echoed some of the observations of the 1983 LRC Report. In particular, the Consultative Paper underlined that the law against homosexual acts in private was "difficult to enforce" since "few cases come to the attention of the police."<sup>89</sup> It went on to state that enforcement of the law "would require enormous police resources and a complete disregard for an individual's right to privacy."<sup>90</sup> More contentiously, perhaps, it suggested that because "the present law is not important in preventing family or marital breakdown...

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<sup>86</sup> Ann Quon, "Gays Stranded in a Legal Twilight Zone," *Hong Kong Standard*, April 13, 1986, accessed February 16, 2014, <http://www.lgbthongkong.com/?p=5146>.

<sup>87</sup> Speech by Mrs Selina Chow during the Second Reading of the Crimes (Amendment) Bill 1991, available at [http://www.legco.gov.hk/yr90-91/english/lc\\_sitg/hansard/h910710.pdf](http://www.legco.gov.hk/yr90-91/english/lc_sitg/hansard/h910710.pdf)

<sup>88</sup> The Consultative Paper is available at <http://www.lgbthongkong.com/?p=4234>

<sup>89</sup> Paragraph 17 of the Consultative Paper

<sup>90</sup> Paragraph 19 of the Consultative Paper

[Decriminalizing homosexual acts in private between consenting adults] would therefore be unlikely to place significant new pressures on family life.”<sup>91</sup>

The Consultative Paper further mentioned that there is “insufficient evidence to conclude that the control of AIDS would be either helped or hindered if [laws against homosexual acts] were changed.”<sup>92</sup> It also noted that other laws exist to “safeguard standards of public decency”<sup>93</sup> and that because homosexual acts are criminalized, gay and lesbian Hong Kongers “all live under the threat of being derided and ostracized by the community as a result of prosecution and conviction.”<sup>94</sup>

It is noteworthy that the Consultative Paper was, on the whole and notwithstanding its declared neutrality, a progressive one. Although it articulated the arguments both for and against the LRC Report, there was a subtle yet discernible impulse to humanize homosexuals and to problematize the dominant heteronormative discourses surrounding the issue. In a way, this was unsurprising because the Consultative Paper built upon the findings of the LRC Report.

In another way, however, the Consultative Paper could be perceived as a sign that the government was itself hoping to mold and move public opinion in the direction of supporting the decriminalization of homosexual acts. The latter perception is bolstered by the fact that in the same year, the government withdrew Secretariat Confidential Circular No. 106/82<sup>95</sup> which

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<sup>91</sup> Paragraph 26 of the Consultative Paper

<sup>92</sup> Paragraph 24 of the Consultative Paper

<sup>93</sup> Paragraph 28 of the Consultative Paper

<sup>94</sup> Paragraph 29 of the Consultative Paper

<sup>95</sup> Simon Macklin, “Civil Service Ban on Gays Revoked,” *South China Morning Post*, February 11, 1986, accessed February 17, 2014, <http://www.lgbthongkong.com/?p=4071>.

declared, among other homosexuality-denying things, that “no known homosexual should be appointed to the Hong Kong civil service, irrespective of rank or grade.”<sup>96</sup>

The government’s stance regarding homosexuality in 1988, then, appears to be substantially different from that merely a decade ago. In the late 1970s, in response to claims by a prominent European solicitor who was then serving a three-year jail term for abusing young boys that he “was in a position to name many “highly placed” homosexual men,”<sup>97</sup> the government established a Special Investigation Unit (SIU) within the Criminal Investigation Department of the Royal Hong Kong Police Force to investigate allegations of homosexuality generally and the “procuration of youth for homosexual abuse”<sup>98</sup> particularly.

The raids by SIU officers on establishments with a primarily gay and lesbian clientele, and homes of suspected high-ranking homosexual civil servants sparked fears of “a witch-hunt of homosexuals.”<sup>99</sup> Unsurprisingly, the work of the SIU came under widespread criticism, including by the Commission of Inquiry established in the wake of the death, in January 1980, of John MacLennan, a Scottish Inspector with the Royal Hong Kong Police who had been investigated by the SIU; one of the Commission’s conclusions being that some members of the SIU “were improperly motivated or had breached approved standards”<sup>100</sup> in their investigation work.

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<sup>96</sup> The full text of the Circular is available at <http://www.lgbthongkong.com/?p=3769>

<sup>97</sup> See Section 5.19 in page 25 of the LRC Report available at <http://www.hkreform.gov.hk/en/docs/rhomosexual-e.pdf>

<sup>98</sup> See Section 5.20 in page 25 of the LRC Report available at <http://www.hkreform.gov.hk/en/docs/rhomosexual-e.pdf>

<sup>99</sup> Jim Gilchrist, “Arrest Sparks Gays’ Fears,” *South China Morning Post*, February 1, 1983, accessed February 17, 2014, <http://www.lgbthongkong.com/?p=2803>.

<sup>100</sup> See Section 5.33 in page 31 of the LRC Report available at <http://www.hkreform.gov.hk/en/docs/rhomosexual-e.pdf>

## *Transfer of sovereignty from Britain to China*

To reiterate, the Hong Kong government's stance regarding homosexuality appeared to be softening throughout the 1980s. In this regard, it is arguable that the 1985 Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (hereafter "The Joint Declaration") influenced attitudes within the government. The Joint Declaration "created great concern in Hong Kong because most people would have preferred that Hong Kong remain a British-dependent territory."<sup>101</sup>

Indeed, "the people of Hong Kong generally feel very uncertain about their future as change appears inevitable. The middle class would prefer to emigrate, given the opportunity. At least they would like their children to study and settle abroad, so that the next generation will not be affected by the current uncertainties. Many have also begun to invest in real estate in countries like Canada and the United States."<sup>102</sup>

Specifically, a March 1982 survey commissioned by the Hong Kong Reform Club<sup>103</sup> revealed that 85% of respondents preferred Hong Kong to be under British administration, that is, to remain a British colony or become a British trust territory<sup>104</sup> after 1997 when the 99-year rent-free lease of the New Territories under the 1898 *Convention between the United Kingdom*

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<sup>101</sup> Carole J. Petersen, "Values in Transition: The Development of the Gay and Lesbian Rights Movement in Hong Kong," in *Loyola of Los Angeles International and Comparative Law Review* 337 (1991): 345

<sup>102</sup> Joseph S. Cheng, "The Future of Hong Kong: Surveys of the Hong Kong People's Attitudes," in *The Australian Journal of Chinese Affairs* 12 (1984): 115

<sup>103</sup> A political association, the Hong Kong Reform Club was formed in 1949 to contest in the 1952 elections to the Urban Council; partial elections to the Council date back to 1887 but were suspended immediately after the Second World War. For more information on the Reform Club, see Hong Kong Reform Club, *The 2<sup>nd</sup> Ten Years Anniversary Report 1959 – 1968* (Hong Kong: Reform Club of Hong Kong, 1969)

<sup>104</sup> Joseph S. Cheng, "The Future of Hong Kong: Surveys of the Hong Kong People's Attitudes," in *The Australian Journal of Chinese Affairs* 12 (1984): 117

and China, Respecting an Extension of Hong Kong Territory expires.<sup>105</sup> In a larger survey carried out in the same year, 80% and 82% of respondents expressed concern over the future of Hong Kong after 1997<sup>106</sup> and considered the expiration of the *Convention* as “a problem which needed solving.”<sup>107</sup>

In a different survey of policymakers the private sector in the same year, “over 71% of the responding companies revealed that uncertainty over the political status of Hong Kong had an adverse effect on their investment planning, ranging from freezing their business expansion plans in Hong Kong to diverting some of their capital to other places.”<sup>108</sup>

#### *The 1989 Tiananmen Square incident and majority support for human rights protection*

The decided sense of uncertainty and apprehension of the Hong Kong people regarding the transfer of the territory’s sovereignty to China was dramatically intensified by the Tiananmen Square incident of June 1989 in which communist authorities in Beijing forcibly dispersed peaceful student protesters and in so doing, drew sharp criticisms from the international community for gross human rights violations. In the aftermath of the bloody military crackdown in Tiananmen, confidence of the Hong Kong people in their government and the future of the territory sank “to an all-time low.”<sup>109</sup> Indeed, the Tiananmen Square incident “changed the whole course of events”<sup>110</sup> regarding public and governmental attitudes toward the necessity and urgency of human rights legislation.

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<sup>105</sup> A copy of the original convention is available at <http://ebook.lib.hku.hk/HKG/B36227845.pdf>

<sup>106</sup> Joseph S. Cheng, “The Future of Hong Kong: Surveys of the Hong Kong People’s Attitudes,” in *The Australian Journal of Chinese Affairs* 12 (1984): 123

<sup>107</sup> *Ibid.*, pp. 123

<sup>108</sup> *Ibid.*, pp. 132

<sup>109</sup> Norman Miners, *The Government and Politics of Hong Kong* (Hong Kong: Oxford University Press, 1991), pp. 27

<sup>110</sup> Phil C. W. Chan, “The Lack of Sexual-Orientation Anti-Discrimination in Hong Kong: Breach of International and Domestic Legal Obligations,” in *The International Journal of Human Rights* 9 (2005): 71



In an effort to allay public concerns and rebuild confidence in Hong Kong's future, the government announced its intention to introduce a domestic human rights legislation, a draft of which was released for public consultation in March 1990.<sup>111</sup> While the idea of having domestic legislation to augment the ICCPR had been discussed previously, "most notably during local discussion of the first draft of the Basic Law in 1987... public support for such a Bill [only] increased" in 1989.<sup>112</sup>

In June 1990, Mrs Selina Chow, then a member of the Hong Kong LegCo and convener of the LegCo ad hoc group for the *Bill of Rights*, summed up the mood and motivations regarding the said bill:

*I am convinced a Bill of Rights, however imperfect, will **boost the confidence of our people**. It should be seen as an integral part of our democratic evolution. I cannot agree with the thinking that we should let well alone. Is that not a familiar tune that is re-sung from time to time whenever there is call for changes in our system? The fundamental flaw in the "Don't rock the boat" school of thought is a failure to recognize that the boat is rocking. We wish it to be clear of rough waters, but in order to do so we have to steer it, not to let go at the helm. We cannot ignore the fact that **we are in a time of change**, and it is our job to see to it that Hong Kong be given the right system of checks and balances to handle that change. At the same time, we must heed the calls from our community to **progress cautiously**, taking a step-by-step approach, and **explaining our case to China**, who has repeatedly assured us that she is prepared to respect our autonomy. But progress we must. This Bill is a component of that progress.*<sup>113</sup>

In the course of the LegCo debate over the *Bill of Rights*, numerous other LegCo members echoed the themes embedded in the above excerpt. Although the Tiananmen Square incident was only mentioned once (by LegCo member James David McGregor) throughout the debate, China was mentioned 47 times, suggesting the enormous extent to which the Bill was

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<sup>111</sup> Carole J. Petersen, "Values in Transition: The Development of the Gay and Lesbian Rights Movement in Hong Kong," in *Loyola of Los Angeles International and Comparative Law Review* 337 (1991): 345

<sup>112</sup> See Paragraph 5 of Constitutional and Mainland Affairs Bureau's report, *An Introduction to Hong Kong Bill of Rights Ordinance* available at [http://www.cmab.gov.hk/doc/en/documents/policy\\_responsibilities/the\\_rights\\_of\\_the\\_individuals/human/BORO-IndustryChapterandBooklet-Eng.pdf](http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/human/BORO-IndustryChapterandBooklet-Eng.pdf)

<sup>113</sup> The full text of the LegCo proceedings on 27<sup>th</sup> June 1990 is available at [http://www.legco.gov.hk/yr89-90/english/lc\\_sitg/hansard/h900627.pdf](http://www.legco.gov.hk/yr89-90/english/lc_sitg/hansard/h900627.pdf) [Emphasis added.]

introduced because of the widespread concerns surrounding Hong Kong's imminent return to the mainland.

Discarding diplomatic niceties, LegCo member Dr. Leong Che-Hung pointedly remarked that “allowing such a Bill is... the best and the simplest thing China can do for Hong Kong people and to maintain Hong Kong people's confidence... [Because] things are not going to be the same after 1997 unless something is done to ensure that they will.”<sup>114</sup>

*Government support for decriminalization of same-sex acts as part of human rights*

Although the legality of homosexual acts was not immediately linked to the *Bill of Rights*, it was clear that opponents of the decriminalization of same-sex acts knew what the implications were should the *Bill of Rights* be enacted. For instance, David Cheung Chi-Kong, a LegCo member who would go on to oppose the *Crimes (Amendment) Bill 1991* which decriminalizes homosexual acts, warned during the debate on the *Bill of Rights* of “the possible abuse of human right [in] the form of excessive freedom under the spirit of the Bill.”<sup>115</sup> After approximately another year of revisions and deliberations, primarily about when the Bill should kick into operation after its enactment in the LegCo, the *Hong Kong Bill of Rights Ordinance* was enacted on 6<sup>th</sup> June 1991.

Against the government's initial proposal for the Bill to have a one-year freeze period while extant legislation was updated for compliance, the finalized version of the Bill came into operation on 8<sup>th</sup> June 1991 and marked, for Hong Kong's gay rights movement, “a

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<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

watershed”<sup>116</sup>: Article 14 of the *Ordinance*—Protection of privacy, family, home, correspondence, honor, and reputation—declared the following:

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.*<sup>117</sup>

Crucially, Section 3 of the *Ordinance* “obligated courts to interpret preexisting legislation in a manner consistent with the *Bill of Rights*, and if this proved impossible, to declare the offending provision invalid.”<sup>118</sup> Furthermore, taking cue from the landmark *Dungeon v. United Kingdom* ruling in 1982 by the European Court of Human Rights which prioritized an individual’s privacy rights,<sup>119</sup> the Hong Kong government knew that the continued criminalization of same-sex acts between males in private violated the *Ordinance* and would not withstand judicial action in the new legal regime.<sup>120</sup>

In July 1990, when the *Bill of Rights* was simultaneously on the LegCo’s agenda, the Chief Secretary, Sir David Robert Ford, moved a motion to debate the issue of homosexuality in which he predicted that the criminalization of private same-sex acts between consenting adults would soon “be open to challenge under the *Bill of Rights* endorsed by [LegCo].”<sup>121</sup> He also prefaced his support to decriminalize private same-sex acts between consenting adults an invocation of classical liberal principles:

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<sup>116</sup> Phil C. W. Chan, “The Gay Age of Consent in Hong Kong,” in *Criminal Law Forum* 15 (2004): 280

<sup>117</sup> The full text of the Bill of Rights Ordinance is available at [http://www.legislation.gov.hk/blis\\_pdf.nsf/6799165D2FEE3FA94825755E0033E532/AE5E078A7CF8E845482575EE007916D8/\\$FILE/CAP\\_383\\_e\\_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/AE5E078A7CF8E845482575EE007916D8/$FILE/CAP_383_e_b5.pdf)

<sup>118</sup> Carole J. Petersen, “Values in Transition: The Development of the Gay and Lesbian Rights Movement in Hong Kong,” in *Loyola of Los Angeles International and Comparative Law Review* 337 (1991): 346

<sup>119</sup> The full text of the judgment is available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57473#{"itemid":\["001-57473"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57473#{)

<sup>120</sup> Carole J. Petersen, “Values in Transition: The Development of the Gay and Lesbian Rights Movement in Hong Kong,” in *Loyola of Los Angeles International and Comparative Law Review* 337 (1991): 349

<sup>121</sup> The full text of the LegCo proceedings on 11<sup>th</sup> July 1990 is available at [http://www.legco.gov.hk/yr89-90/english/lc\\_sitg/hansard/h900711.pdf](http://www.legco.gov.hk/yr89-90/english/lc_sitg/hansard/h900711.pdf)

*What is at issue today is not simply the decriminalization of private homosexual acts between adult males. What is at issue is a matter of principle: the dividing line between the moral and the legal codes, where the individual's right to privacy begins and the Government's duty to interfere ends. This is an important principle. Its implications extend beyond the immediate subject. And it is imperative that in addressing it we clear our minds of preconception, prejudice and emotion. If we do not, if we allow personal morality alone to dictate the scope of criminal law, then there is a real danger that the law will become an instrument for imposing moral values rather than preserving public order and protecting the citizen.*<sup>122</sup>

In a thinly-veiled threat to those who would oppose the motion and thus the decriminalization of same-sex acts, and prefer for the courts to interpret the constitutionality of criminalizing same-sex acts should such complaints be lodged, the Chief Secretary had this to say:

*To borrow the words of an eminent French statesman (Jean Baptiste Co Hert): "If you enact a law and do not enforce it, you are condoning what you condemn." A vote against the motion before this Council will be a vote against condoning and in favor of enforcement. And henceforth the Government would be obliged to seek out and prosecute all, both high and low, who infringe against this law, despite all the problems I have mentioned.*<sup>123</sup>

In effect, the Hong Kong government championed, as it were, the cause and “made it extremely difficult for the LegCo to vote against its motion” to debate the issue of homosexuality. Indeed, the motion passed with 31, 13, and six LegCo Members supporting, opposing, and abstaining respectively.<sup>124</sup> Throughout the course of the next year, the government drafted the *Crimes (Amendment) Bill* on which LegCo eventually passed in July 1991. The *Crimes (Amendment) Bill* repealed Sections 49 through 53—the section of “Abominable Offences”—of the *Offences Against the Person Ordinance*; same-sex acts in private between two consenting adults (defined as 21 years of age and above) of full mental capacity is no longer a

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<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

crime. Under the amended penal code, the following types of male same-sex acts remained crimes:

- Section 118C: Homosexual buggery with or by man under 21
- Section 118F: Homosexual buggery committed otherwise than in private
- Section 118G: Procuring others to commit homosexual buggery<sup>125</sup>

It should be remarked that the legal age-of-consent for opposite-sex acts was 16 in 1991; men between 16 and 21 were thus effectively singled out to be the only class of persons “prone to emotional and material dependence,” or “a limited and possibly distorted knowledge of homosexual activity.” The laughable logic notwithstanding, decriminalization of private same-sex act between consensual adults after 126 years was a watershed development in and of itself.

#### *Beyond the negative right of decriminalization*

The courts in Hong Kong have played an important role in widening the application and practical effects of the landmark 1991 *Bill of Rights and Crimes (Amendment) Bill*. In 2005, 20-year-old William Roy Leung became the plaintiff in a successful legal challenge of primarily Section 118C which, according to Leung’s lawyers, adversely affects his ability to engage in “any fulfilling relationships... for fear of prosecution.”<sup>126</sup> The legal victory was chiefly based on one’s right to privacy and, more importantly, the principle of equality.<sup>127</sup>

When the Hong Kong Court of First Instance ruled that the differing age-of-consent between a private, consensual heterosexual and a homosexual intercourse was unconstitutional, the Hong Kong government—led by Donald Tsang, a devout Catholic—appealed, arguing that

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<sup>125</sup> The full text of Hong Kong’s *Crime Ordinance* is available at [http://www.legislation.gov.hk/blis\\_pdf.nsf/6799165D2FEE3FA94825755E0033E532/46A02C9D714527F1482575EE004C2BC1/\\$FILE/CAP\\_200\\_e\\_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/46A02C9D714527F1482575EE004C2BC1/$FILE/CAP_200_e_b5.pdf)

<sup>126</sup> The full text of the 2006 Leung T C William Roy v. Secretary of Justice ruling is available at [http://legalref.judiciary.gov.hk/lrs/common/ju/ju\\_body.jsp?DIS=54227&AH=&QS=&FN=&currpage](http://legalref.judiciary.gov.hk/lrs/common/ju/ju_body.jsp?DIS=54227&AH=&QS=&FN=&currpage)

<sup>127</sup> Phil C. W. Chan, “Male/Male Sex in Hong Kong: Privacy, Please?” in *Sexuality & Culture* 12 (2008): 100

judicial review should not have been granted Leung in the first place since Leung was not actually being prosecuted for committing same-sex relations deemed illegal.

To the government's argument that for the courts to hear Leung's case would be to dabble in a mere "academic exercise"<sup>128</sup> and "irreversibly open the floodgates for persons to allege [other] statutory offences [to be] somehow unconstitutional,"<sup>129</sup> the Hong Kong Court of Appeal countered in its September 20, 2006 ruling that first, the legislation under scrutiny affects not just the Applicant but many persons in the same position as him; second, the questions raised in the appeal regarding the constitutionality of the laws affecting homosexuals are of significant public interest; third, the resolution of these questions involve pure points of law, unencumbered with the need to make findings of fact; and forth, where the constitutionality of laws (all the more so if they are criminal laws) is involved, the court should be more eager to deal with the matter—put bluntly, if a law is unconstitutional, the sooner this is discovered, the better.<sup>130</sup>

While truly far-reaching positive rights such as same-sex civil unions or marriage are still elusive in Hong Kong, public opinion regarding the place of gay and lesbian Hong Kongers is rapidly changing. A 2006 survey—the first since Hong Kong became part of China in 1997—commissioned by the Home Affairs Bureau reported that 49% of the respondents either disagreed or strongly disagreed with the proposition that homosexuality contradict morals of community while 38.9% either agreed or strongly agreed.<sup>131</sup> More dramatically, in the same survey, 88.8% of the respondents either agreed or strongly agreed with the proposition that work

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<sup>128</sup> See paragraph 18(1) of the ruling available at [http://legalref.judiciary.gov.hk/lrs/common/ju/ju\\_body.jsp?DIS=54227&AH=&QS=&FN=&currpage](http://legalref.judiciary.gov.hk/lrs/common/ju/ju_body.jsp?DIS=54227&AH=&QS=&FN=&currpage)

<sup>129</sup> Phil C. W. Chan, "Male/Male Sex in Hong Kong: Privacy, Please?" in *Sexuality & Culture* 12 (2008): 100

<sup>130</sup> See paragraph 30 of the ruling available at [http://legalref.judiciary.gov.hk/lrs/common/ju/ju\\_body.jsp?DIS=54227&AH=&QS=&FN=&currpage](http://legalref.judiciary.gov.hk/lrs/common/ju/ju_body.jsp?DIS=54227&AH=&QS=&FN=&currpage) [Emphasis added.]

<sup>131</sup> See Figure 3.2 in the full report of the survey available at <http://www.legco.gov.hk/yr05-06/english/panels/ha/papers/ha0310cb2-public-homosexuals-e.pdf>

ability is not directly related to homosexuality while only 3% either disagreed or strongly disagreed.<sup>132</sup>

In addition, a vast majority of the respondents (between 60% to 80%) found it either acceptable or strongly acceptable to have gays and lesbians as colleagues, neighbors, workplace superiors, friends, and teachers; the percentage of acceptability dipped, however, when it pertained to having gays and lesbians as family members.<sup>133</sup> Crucially, 61.6% of the respondents either disagreed or strongly disagreed that anti-discrimination legislation on the grounds of sexual orientation would encourage more homosexual behavior<sup>134</sup> and only 23.5% of the respondents either agreed or strongly agreed that existing means of public education were sufficient to address the problems of discrimination faced by gay and lesbian Hong Kongers.<sup>135</sup>

In 2009, the LegCo included same-sex couples in the scope of the amended *Domestic and Cohabitation Relationships Violence Ordinance*.<sup>136</sup> The Ordinance, first enacted in 1986, previously only offered legal redress for victims of sexual violence in opposite-sex relationships. Even though this amendment merely recognizes the inescapable reality that same-sex partners do cohabit in Hong Kong despite the illegality of same-sex civil unions or marriage, opponents of the amendment decried that the widening of the Ordinance's coverage may lead to "potential negative impacts... on the existing institution of marriage"<sup>137</sup>—a coded way of speaking against homosexuality and its supposedly monstrous discontents.

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<sup>132</sup> See Figure 3.3 in the survey

<sup>133</sup> See Figure 3.2 in the survey

<sup>134</sup> See Figure 3.6.1 in the survey

<sup>135</sup> See Figure 3.5.1 in the survey

<sup>136</sup> The full text of the Ordinance is available at [http://www.legislation.gov.hk/blis\\_pdf.nsf/6799165D2FEE3FA94825755E0033E532/2CD1B62629047F40482575EE004AF537/\\$FILE/CAP\\_189\\_e\\_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/2CD1B62629047F40482575EE004AF537/$FILE/CAP_189_e_b5.pdf)

<sup>137</sup> See the transcript of Mr Tam Yiu-Chung's speech during the December 16, 2009 LegCo meeting available at <http://www.legco.gov.hk/yr09-10/english/counmtg/hansard/cm1216-translate-e.pdf>

At present, notwithstanding the fact that discrimination against non-heteronormative individuals at work is a widely documented phenomenon,<sup>138</sup> laws banning discrimination on the basis of sexual orientation are “still a long way off.”<sup>139</sup> Most of the inertia afflicting legislative efforts to enact anti-discrimination laws originates from the understandable though exaggerated fear of those who see in these laws an assault on their religious freedom to “preach according to their doctrines and beliefs” as well as a harbinger of one, more thoroughgoing positive gay and lesbian rights such as marriage equality and two, a dramatic surge in the numbers of complaints and lawsuits that government agencies and the courts will have to face.<sup>140</sup> At present, there are no plans to conduct public consultation regarding anti-discrimination laws.

Currently under Chief Executive Leung Chun-Ying, the Hong Kong government claimed, as do all conservative forces around the world regarding same-sex rights, in 2013 that because of the “highly controversial” nature of the issue, public debate and legislative action should be avoided.<sup>141</sup> This stance is increasingly problematized not just by homosexuality-affirming activists but indeed by even the highest echelons of Hong Kong’s famed financial and business sectors which are cognizant of the adverse economic implications of a homosexuality-denying legal framework and social climate, especially for “an international financial and commercial center” such as the Special Administrative Region (SAR). This echoes what America’s Human Rights Campaign’s first national corporate spokesperson and Goldman Sachs’ chief, Lloyd

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<sup>138</sup> Community Business Limited. *Hong Kong LGBT Climate Study 2011-2012: Attitudes to and experiences of lesbian, gay, bisexual, and transgender employees*. Accessed March 25, 2014, [http://www.communitybusiness.org/library/other\\_publication/HKUPOP\\_LGBTclimatestudy\\_2012\\_report.pdf](http://www.communitybusiness.org/library/other_publication/HKUPOP_LGBTclimatestudy_2012_report.pdf)

<sup>139</sup> Kent Ewing, “In Hong Kong, a quiet advance for gay rights,” in *Asia Times*, July 15, 2011, accessed March 25, 2014, <http://www.atimes.com/atimes/China/MG15Ad01.html>

<sup>140</sup> Minutes of Third Meeting of the Advisory Group on Eliminating Discrimination against Sexual Minorities, accessed March 25, 2014, [http://www.cmab.gov.hk/doc/issues/3rd\\_mtg\\_minutes\\_e.pdf](http://www.cmab.gov.hk/doc/issues/3rd_mtg_minutes_e.pdf)

<sup>141</sup> The full text of Chief Executive Leung’s 2013 Policy Address is available at <http://www.policyaddress.gov.hk/2013/eng/pdf/PA2013.pdf>



Blankfein, said: “America’s corporations learn long ago that equality is just good business and is the right thing to do. Join me and a majority of Americans who support marriage equality.”<sup>142</sup>

To that end, Hong Kong played host to the first ever *Out on the Street* summit in the region during which senior business executives and government representatives like Dr. York Chow, chair of the SAR’s Equal Opportunity Commission, discussed how best to address gay and lesbian issues in their workplaces and beyond.<sup>143</sup> The ostensibly economic rationale for greater legal recognition of gay and lesbian rights is matched by a rapidly shifting public opinion: in the latest survey of its kind, the Hong Kong University found that “74% of the public supported granting same-sex couples either all or some of the rights that are accorded to heterosexual couples.”<sup>144</sup>

Despite these shifts in public opinion, Chief Executive Leung made no mention of the issue of same-sex rights in his 2014 Policy Address. Absent a dramatic reconfiguration of the electoral landscape in which active support for gay and lesbian rights will yield material electoral gains, it is unlikely that Leung will prioritize the issue. As Hong Kong’s most unpopular Chief Executive since the island’s sovereignty was transferred to China,<sup>145</sup> Leung has his plate absolutely full; given that marriage equality does not, at present, move and affect as many as say, Hong Kong’s stubbornly growing income inequality and soaring housing prices, the agenda for positive gay and lesbian rights are unlikely to witness much government attention or backing.

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<sup>142</sup> As quoted from Human Rights Campaign video on Youtube, accessed March 26, 2014, <http://www.youtube.com/watch?v=cSv5bXC2ANg>

<sup>143</sup> For more information on the inaugural summit, visit the organizer’s website, accessed March 26, 2014, <http://outleadership.org/oots-2/2014/oots-asia-2013/>

<sup>144</sup> A report based on the survey is available at [http://www.law.hku.hk/ccpl/Policy%20Paper%20\(FINAL%20UPDATE%20-%20ENGLISH\).pdf](http://www.law.hku.hk/ccpl/Policy%20Paper%20(FINAL%20UPDATE%20-%20ENGLISH).pdf)

<sup>145</sup> Hong Kong University’s longitudinal data of previous Chief Executives’ approval ratings available at <http://hkupop.hku.hk/english/popexpress/ce2012/cy/cecomparison/datatables.html>

## VI. Singapore:

### *The dynamics of a one-party soft authoritarian state*

At first glance, Ian McKellen, the international Hollywood celebrity, would appear an unlikely authority in a discussion regarding Singapore's regulation of her citizens' (homo)sexual behaviours. However, during an interview with *Reuters* in 2007 when the award-winning artist visited Singapore as part of the Royal Shakespeare Company's touring production of "King Lear" and "The Seagull," McKellen revealed a nuanced grasp of not only the issue of criminalizing male same-sex acts in Singapore but indeed of the broader political milieu in which local discourses and activism on the issue occur:

*"It would be impertinent of me to comment on Singapore society but this happens to be a law that I find personally offensive and I don't think it should be on the statute books because it inhibits my free behavior as an openly gay man. I feel free to comment on behalf of people who do have to suffer laws which the British Empire invented and left behind. It's easier for a foreigner to come in and speak to truth as he sees it."*<sup>146</sup>

Elsewhere in the interview, in response to the point that Lee Kuan Yew, "Singapore's first premier and its guiding spirit ever since,"<sup>147</sup> had said that male same-sex acts could not be decriminalized until the views of the country's conservative majority evolved, McKellen said:

*"Yes. Then he must expect gay people not to come here, he must expect gay people to emigrate, he must expect no company to have their gay employees work here. **Under that pressure he will change the law, I guarantee you. I'll take a bet.**"*<sup>148</sup>

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<sup>146</sup> Sebastian Tong, "Ian McKellen wades in Singapore's gay rights debate," *Reuters Life!*, July 19, 2007, accessed February 24, 2014, <http://www.reuters.com/article/2007/07/19/us-mckellen-idUSSIN7694520070719> [Emphasis added.]

<sup>147</sup> Henry Kissinger, foreword to *Lee Kuan Yew: The Grand Master's Insights on China, the United States, and the World*, by Graham Allison, Robert Blackwill and Ali Wyne (Massachusetts: Belfer Center for Science and International Affairs, 2013), vii.

As an openly gay individual, McKellen is understandably sympathetic to the movement of repealing Section 377A of the Southeast Asian city-state's Penal Code which, as mentioned earlier, criminalizes "any act of gross indecency"<sup>149</sup> between two males regardless of the ages or consent of the parties involved, and the location of the act. Importantly, the law does not define the precise meaning of such acts, relying instead on an open-ended understanding: In 1995, then-Chief Justice Yong Pung How stated that "what amounts to a grossly indecent act must depend on whether in the circumstances, and the customs and morals of our times, it would be considered grossly indecent by any right-thinking member of the public."<sup>150</sup> Nevertheless, based on past convictions, such acts are "usually fellatio and masturbation."<sup>151</sup>

There are at least three significant takeaways from McKellen's comments. First, they underscore the fact that the criminalization of homosexual acts in Singapore is a legacy of British colonialism. Section 377A was written into Singapore's legal framework by unelected officials who were not, by any stretch of the imagination, acting as democratic representatives of the local populace. Indeed, such legislation regulating the expressions of an individual's sexuality in Singapore conforms to the colonialist logic, traceable to the 19<sup>th</sup> century, which mandated that the native customs of Britain's disparate colonies needed to be corrected and civilized, that is, Christianized.<sup>152</sup> The colonialist impulse to control native populations—the "domestications of

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<sup>148</sup> Sebastian Tong, "Ian McKellen wades in Singapore's gay rights debate," *Reuters Life!*, July 19, 2007, accessed February 24, 2014, <http://www.reuters.com/article/2007/07/19/us-mckellen-idUSSIN7694520070719> [Emphasis added.]

<sup>149</sup> The full text of the Sexual Offenses in Singapore's Penal Code is available at <http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=c834c73a-3531-48b0-8040-4450d41d1351;page=0;query=CompId%3Ae40d5913-c2dc-4284-bf68-eb315c55c8fa;rec=0#pr377A-he->.

<sup>150</sup> Lynette J. Chua, "Saying No: Sections 377 and 377A of the Penal Code," in *Singapore Journal of Legal Studies* (2003): 222

<sup>151</sup> *Ibid.*

<sup>152</sup> Alok Gupta, "'Sodomy,' Colonialism, and Codification" in *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism* (New York: Human Rights Watch, 2008), pp. 16

the exotic,” as Edward Said memorably said<sup>153</sup>—manifested in the policing of the colonial subject’s behaviour and body.

Second, McKellen draws attention to the illiberal political system and climate that make it difficult for a citizen to “speak to truth as he sees it.”<sup>154</sup> Whatever else it may be, this political landscape is one which the PAP has given birth to, claimed credit for, and unapologetically nurtured and defended over more than five decades of uninterrupted parliamentary hegemony.<sup>155</sup> Critically, it has also been strenuously justified by the state as a fundamental factor contributing to Singapore’s rapid industrialization and economic growth “from Third World to First”<sup>156</sup> despite being located in a hostile and economically backward region.<sup>157</sup> Accordingly, Lee Kuan Yew opined that should Singapore “move towards a two-party system, [she would be] destined for mediocrity [and] become nothing more than a dull little red dot.”<sup>158</sup> Put differently, political paternalism, with its attendant curbs on individual civic freedoms and rights that are otherwise considered quotidian in Western liberal democracies, is justified in the name of cultural relativism, technocratic competence, economic growth, and social stability.

Third, and related to the above, is McKellen’s prediction that the PAP will only expend its political capital among Singapore’s vocal homosexuality-denying conservatives and repeal Section 377A should the continued criminalization of male same-sex acts carry material

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<sup>153</sup> Edward Said, “Imaginative Geography and Its Representations: Orientalizing the Oriental,” in *Orientalism, 25<sup>th</sup> Anniversary Edition* (New York: Random House Inc., 1994), pp. 60

<sup>154</sup> For a more comprehensive treatment of Singapore’s illiberal political system and climate, especially as it pertains to the rights and freedoms of citizens, see Thio Li-Ann, ““Pragmatism and Realism Do Not Mean Abdication”: A Critical and Empirical Inquiry into Singapore’s Engagement with International Human Rights Law,” in *Singapore Year Book of International Law and Contributors* (2004): 41—91

<sup>155</sup> Throughout independent Singapore’s history, the PAP has always been returned to power with overwhelming majorities. However, the PAP’s popular vote dropped to 60.1% percent—its worst result—in the last General Elections in May 2011.

<sup>156</sup> The full title of Lee’s best-selling memoir, *From Third World to First: The Singapore Story 1965—2000* (New York: HarperCollins, 2000), has been adopted into everyday discourse and lexicon in Singapore.

<sup>157</sup> Wong Kan Seng, “The Real World of Human Rights,” (speech, Vienna, June 16, 1993), National Archives of Singapore, <http://drm.a2o.nas.sg/DJVU/Server/PdfStampServlet?app=stars&filepath=pdfdoc/19930616-MFA.pdf>

<sup>158</sup> Lee Kuan Yew, “Singapore,” in *One Man’s View of the World* (Singapore: Straits Times Press, 2013), pp. 206

economic liabilities. Put differently, repealing Section 377A is unlikely to be borne out of an ontological recognition on the part of the governing elites that homosexuality is both harmless and innate. Rather, male same-sex acts will be decriminalized if and only if the resultant economic and political benefits for Singapore and the PAP respectively outweigh those derived from a deeply heteronormative and patriarchal public culture amendable to “the transfer of the paternal signifier from the family to the state, the metaphor of state as family then rendering “natural” an “omnipresent government.””<sup>159</sup>

In sum, McKellen outlines some of the most salient features characterizing the political, cultural, and discursive framework that has hitherto kept Singapore, in the words of Lee Kuan Yew, “a few respectable steps behind”<sup>160</sup> the world regarding its legal classification of male same-sex acts as criminal. Elaborating on the logic of keeping pace with but not exactly matching external developments on this front, Prime Minister Lee Hsien Loong stated the following during the October 2007 parliamentary debate on the Penal Code (hereafter “the 2007 debate”):

*When it comes to issues like the economy, technology, education, we better stay ahead of the game, watch where people are moving and adapt faster than others, ahead of the curve, leading the pack. **And when necessary on such issues, we will move even if the issue is unpopular or controversial...** We moved on IRs<sup>161</sup> - it is a difficult subject, not everybody supports the Government, but we decide this is right, we move. On issues of moral values with consequences to the wider society, first we should also decide what is right for ourselves, but secondly, before we are carried away by what other societies do, I think it is wiser for us to observe the impact of radical departures from the traditional norms on early movers. These are*

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<sup>159</sup> Geraldine Heng and Janadas Devan, “State Fatherhood: The Politics of Nationalism, Sexuality, and Race in Singapore,” in *Nationalisms and Sexualities*, edited by Andrew Parker, Mary Russo, Doris Sommer, Patricia Yaeger (New York: Routledge, 1992), pp. 115

<sup>160</sup> Simon Obendorf, “A Few Respectable Steps behind the World? Gay and Lesbian rights in contemporary Singapore,” in *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggle for Decriminalization and Change*, edited by Corinne Lennox and Matthew Waites (London: School of Advanced Study, University of London, 2013), pp. 231

<sup>161</sup> The term “IRs” refers to “Integrated Resorts” which are casino-based vacation resorts. In April 2005, the Government announced that casinos, long banned in Singapore, had to be part of Singapore’s broader project of urban rejuvenation in order to sharpen city-state’s position as Asia’s foremost global city and to boost tourism.

*changes which have very long lead times before the impact works through, before you see whether it is wise or unwise. Is this positive? Does it help you to adapt better? Does it lead to a more successful, happier, more harmonious society? So, we will let others take the lead, we will stay one step behind the frontline of change; watch how things work out elsewhere before we make any irrevocable moves.*<sup>162</sup>

Notably, Lee Hsien Loong chose to situate the question of decriminalization in solely utilitarian terms, that is, whether or not allowing male same-sex acts will enhance Singapore's success, happiness, and harmony. Consequently, the Prime Minister made no mention of legal equality in his speech; *de jure* legal acceptance was deemed to be too herculean a leap for the majority of Singaporeans.

Supporting continued criminalization of male same-sex acts on this basis, MP Dr. Muhammad Faishal Ibrahim claimed that there was a “loud and clear” message that Singapore is “not ready for open homosexuality acts to be part of our way of life yet.”<sup>163</sup> Notwithstanding Dr. Ibrahim's misguided and thus unfortunate characterization of what Section 377A actually proscribes—even *non-open* “homosexuality acts” are considered crimes under the current law—his posture of conservatism was one that most PAP MPs struck during the debate.<sup>164</sup>

### *Situating “Asian Values” between the pragmatic and the prudish*

Animating the conservatism on display during the 2007 debate is, as mentioned earlier, a curious brand of so-called “Asian values” through which claims to international human rights norms are defanged and confrontational activism, severely frowned upon. In 1993, then-Foreign Minister Wong Kan Seng told the international audience gathered at the World Conference on

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<sup>162</sup> The full text of the relevant 2007 parliamentary proceedings is available at [http://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00002031-WA&currentPubID=00004748-WA&topicKey=00004748-WA.00002031-WA\\_1%2B%2B](http://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00002031-WA&currentPubID=00004748-WA&topicKey=00004748-WA.00002031-WA_1%2B%2B) [Emphasis added.]

<sup>163</sup> *Ibid.*

<sup>164</sup> As mentioned in footnote 58, only three PAP MPs—Baey Yam Keng, Hri Kumar, and Charles Chong—argued against the retention of Section 377A during the 2007 debate.

Human Rights in Vienna that while “all cultures aspire to promote human dignity in their own ways... the hard core of rights that are truly universal is perhaps smaller than we sometimes like to pretend.”<sup>165</sup>

Wong then proceeded to embellish his larger point of cultural relativism thus: “Singaporeans, and many people in many other parts of the world do not agree, for instance, that pornography is an acceptable manifestation of free expression or that homosexual relationships is just a matter of lifestyle choice. Most of us will also maintain that the right to marry is confined to those of the opposite gender.”<sup>166</sup> Consequently, passionate efforts to “impose any political pattern or societal arrangement” were described as impractical and immodest “zealotry.”<sup>167</sup>

If Wong’s counsel for pragmatism and gradualism in 1993 was directed squarely at foreign human rights activists given to articulate and habitual criticisms of Singapore’s illiberal political system, as Home Affairs Minister in 2009 during the “AWARE saga,”<sup>168</sup> Wong had a completely different audience to admonish:

***The way for homosexuals to have space in our society is to accept the informal limits which reflect the point of balance that our society can accept, and not to assert themselves stridently as gay groups do in the West. We live in a diverse, multi-racial and multi-religious society. Every group, whether religious or secular, has to live and let live, to exercise restraint and show mutual respect and tolerance. If any group pushes its agenda aggressively, there will be strong reactions from the other groups.***<sup>169</sup>

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<sup>165</sup> The full text of the speech is available at <http://drm.a2o.nas.sg/DJVUServer/PdfStampServlet?app=stars&filepath=pdfdoc/19930616-MFA.pdf>

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> The “AWARE saga” refers to an unprecedented episode in the history of Singapore’s civil society during which the country’s foremost women advocacy group, the Association of Women for Action and Research (AWARE), witnessed a contentious and sensationalistic leadership tussle between a homosexuality-affirming “Old Guard” and a homosexuality-denying “New Guard.” To learn more about the issue, see *The AWARE Sage: Civil Society and Public Morality in Singapore*, edited by Terence Chong (Singapore: National University of Singapore Press, 2011)

<sup>169</sup> “Comments by DPM and Minister for Home Affairs Wong Kan Seng in response to media queries related to AWARE,” Ministry of Home Affairs. Press release, May 15, 2009, on the Ministry of Home Affairs website, [https://www.mha.gov.sg/news\\_details.aspx?nid=MTQ0MA%3D%3D-H1alkdI4Ksw%3D](https://www.mha.gov.sg/news_details.aspx?nid=MTQ0MA%3D%3D-H1alkdI4Ksw%3D), accessed on February 25, 2014. [Emphasis added.]

In other words, while open to reviewing its stance on the criminality of male same-sex acts in the future when public opinion becomes more homosexuality-affirming, the PAP government will not brook the militant brand of gay activism otherwise common in many Western countries. Incidentally, and notwithstanding this particular articulation of government policy and supposed cultural conservatism, Singapore's first public and open-air congregation of homosexuality-affirming individuals in Hong Lim Park<sup>170</sup> was held just one day after Wong issued the statement on the "AWARE saga."

*Social movement, economic imperatives, and de facto tolerance*

Known as *Pink Dot*, this annual non-profit event very rapidly became and continues to be the city-state's most prominent example of (non-confrontational) gay activism. In 2013, it drew a crowd of over 21,000 people (the largest ever civil-society gathering),<sup>171</sup> received sponsorships from major finance and multinational corporations with offices in Singapore, and was widely reported in the international media.<sup>172</sup>

This example illustrates at least three paradoxes in the Singaporean state's regulation of homosexuality: first, while resisting a culture of polling public opinion,<sup>173</sup> the government nevertheless confidently maintains that the silent majority prefers for the continued criminalization of private male same-sex acts; second, while resisting a culture of strident gay or human rights activism, the government nevertheless trusts that mainstream opinion will shift;

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<sup>170</sup> Hong Lim Park is a public park located in Singapore's Central Business District. Since 2000, it has been designated as a Speakers' Corner in which citizens could speak their minds and/or organize public speaking events without applying for a license. The concept was drawn from London's history Speakers' Corner in Hyde Park.

<sup>171</sup> "Gay Rights in South-east Asia: Fifty Shades of Pink" in *The Economist*, July 6<sup>th</sup>, 2013, accessed February 26, 2014, <http://www.economist.com/news/asia/21580526-some-countries-consider-gay-marriage-elsewhere-attitudes-harden-fifty-shades-pink>

<sup>172</sup> For more information on *Pink Dot*, visit <http://pinkdot.sg/>

<sup>173</sup> Lee Kuan Yew has been quoted to say "I ignore polling as a method of government. I think that shows a certain weakness of mind – an inability to chart a course whichever way the wind blows, whichever way the media encourages the people to go, you follow. You are not a leader." See Seah Chiang Nee, "Softening a Top-down Legacy," *The Star*, September 1, 2012, accessed February 25, 2014, <http://www.littlespeck.com/content/politics/CTrendsPolitics-120901.htm>.



third, while resisting a culture of Western liberalism and sexual liberation, the government nevertheless midwived, quite deliberately, “Asia’s new gay capital.”<sup>174</sup>

Just as Rome was not built in a day, “Asia’s new gay capital,” too, took time and effort. Lee Hsien Loong’s comment during the 2007 debate that “*de facto*, gays have a lot of space in Singapore... there are gay bars and clubs... they do not have to go underground... we do not proactively enforce Section 377A on them”<sup>175</sup> demonstrates the government’s calibrated policy shifts over time: since *Ng Huat v. Public Prosecutor* in 1995, “there has... been no reported case where 377A has been used for purely non-consensual homosexual activity.”<sup>176</sup>

In July 2003, then-Prime Minister Goh Chok Tong surprised even the homosexuality-affirming community when he revealed that the Singaporean civil service “now allows gay employees into its ranks, even in sensitive positions.”<sup>177</sup> More remarkably, perhaps, was Goh’s reasoning that “some people are born that way... We are born this way and they are born that way, but they are like you and me.”<sup>178</sup>

To be sure, the evolution of the government’s view toward and use of Section 377A was not for the noble purpose of legal equality. As suggested earlier, state tolerance for homosexuals has largely been prompted by and contingent on the perceived economic benefits associated with making Singapore more attractive for global talent and capital—key prerequisites for the actualization of Singapore’s vision to become “a leading Asian leisure destination” by 2015<sup>179</sup> as

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<sup>174</sup> Gail Wan, “Singapore Emerging as Asia’s New Gay Entertainment Capital,” *Agence France Presse*, September 14, 2003.

<sup>175</sup> The full text of the relevant 2007 parliamentary proceedings is available at [http://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00002031-WA&currentPubID=00004748-WA&topicKey=00004748-WA.00002031-WA\\_1%2B%2B](http://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00002031-WA&currentPubID=00004748-WA&topicKey=00004748-WA.00002031-WA_1%2B%2B)

<sup>176</sup> Michael Hor, “Enforcement of 377A: Entering the Twilight Zone,” in *Queer Singapore: Illiberal Citizenship and Mediated Cultures* ed. Audrey Yue and Jun Zubillaga-Pow (Hong Kong: Hone Kong University Press, 2013), pp. 47

<sup>177</sup> Simon Elegant, “The Lion In Winter,” *Time*, July 7, 2003, accessed February 15, 2014, <http://www.singapore-window.org/sw03/030707ti.htm>.

<sup>178</sup> *Ibid.*

<sup>179</sup> “Singapore Sets Out To Triple Tourism Receipts To S\$30 Billion by 2015,” Singapore Tourism Board. Press release, January 11, 2005, on the Singapore Tourism Board website, <https://app.stb.gov.sg/asp/new/new03a.asp?id=2483>, accessed February 25, 2014.

well as “a global arts city” able “to join New York and London in the top rung of cultural cities.”<sup>180</sup>

Indeed, in the same interview referenced earlier, then-Prime Minister Goh intimated that “the change in policy [was] inspired at least in part by the desire not to exclude talented foreigners who are gay.”<sup>181</sup> In this regard, Singapore’s governing elites show themselves to be faithful and competent students of Richard Florida’s influential urban studies theory of “The Rise of the Creative Class”:

*The economic need for creativity has registered itself in the rise of a new class... the Creative Class... whose economic function is to create new ideas, new technology and/or new creative content... these people engage in complex problem solving that involves a great deal of independent judgment and requires high levels of education or human capital... the key difference between the Creative Class and other classes lies in what they are primarily paid to do: to create and have considerably more autonomy and flexibility than [either the Working Class or the Service Class.]*<sup>182</sup>

More pertinently, Florida wrote that “a place that welcomes the gay community welcomes all kinds of people... gays can be said to be the “canaries of the Creative Age”... a place that is open and tolerant [is] important to high-tech workers and Creative Class people [who] all want places where they can fit in and live as they please without raising eyebrows.”<sup>183</sup> Lee Kuan Yew’s observation, then, that “if [Singapore is] unable to keep pace with the rest of the world, [she] will not be able to attract talent... and talented people will not want to go to a repressive place”<sup>184</sup> conforms neatly to Florida’s insights.

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<sup>180</sup> Ministry of Information and the Arts, *Renaissance City Report: Culture and the Arts in Renaissance Singapore*, Singapore: Government Printing Office, 2000, [http://www.nac.gov.sg/docs/resources/2\\_finalren.pdf](http://www.nac.gov.sg/docs/resources/2_finalren.pdf), accessed February 25, 2014.

<sup>181</sup> Simon Elegant, “The Lion In Winter,” *Time*, July 7, 2003, accessed February 15, 2014, <http://www.singapore-window.org/sw03/030707ti.htm>.

<sup>182</sup> Richard Florida, “The Transformation of Everyday Life,” in *The Rise of the Creative Class: And How It’s Transforming Work, Leisure, Community and Everyday Life* (New York: Basic Books, 2004), pp. 8

<sup>183</sup> Ibid, “Technology, Talent and Tolerance: The 3 T’s of Economic Development,” pp. 255 – 258

<sup>184</sup> Lee Kuan Yew’s interview with Susan Yu on *STAR TV’s Focus Asia 2001* <https://www.youtube.com/watch?v=-zKilvtVgg4>, accessed February 25, 2014

This apparent obsession with revamping Singapore’s international image from that of a clean, safe, and straitlaced “Nanny State”<sup>185</sup> to one of a vibrant, cosmopolitan, and exciting global city<sup>186</sup> is very much generated by the government’s clear-eyed assessment that as a small and open economy, Singapore has no choice but to imagine “new growth paths less vulnerable to external business cycles than the export-driven model on which it had relied.”<sup>187</sup> To the extent that these “new growth paths” rely heavily on the Creative Class, the government has vowed to “do ‘whatever it takes’ to attract talent.”<sup>188</sup> As a journalist with the city-state’s biggest English daily, *The Straits Times*, pithily noted at the end of her editorial commenting on the aforementioned change in the civil service: “Remember, this is not about gay rights. This is about economic competitiveness.”<sup>189</sup>

*Conservative religious-moral entrepreneurs and the “silent majority” leitmotif*

If, for all the reasons cited above, the government appears to be tacitly heading in a more homosexuality-affirming direction, and creating, as it were, gay-friendly “facts on the ground,”<sup>190</sup> the liberalization project is not without its critics who, by and large, interpret it through sanctimoniously religious lenses. For example, “Pentecostals have joined conservative evangelicals, with Pentecostals from mainstream denominational churches often taking the lead,

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<sup>185</sup> Over the years, Singapore’s peculiarly paternalistic brand of governance has prompted many foreign commentators to label her as the quintessential “Nanny State.” For example, Wayne Arnold, “Nanny state Singapore shows some ankle,” in *The New York Times*, May 22, 2006, accessed February 25, 2014, [http://www.nytimes.com/2006/05/22/business/worldbusiness/22iht-casino.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2006/05/22/business/worldbusiness/22iht-casino.html?pagewanted=all&_r=0)

<sup>186</sup> Singapore’s efforts to liberalize (her nightlife scene in particular) have been widely reported in the international media. For example, John Arlidge, “Why Singapore is now the place where the wealthy stay up all night to get lucky,” in *Spear’s*, February 6, 2014, accessed February 25, 2014, <http://www.spearswms.com/news/why-singapore-is-now-the-place-where-the-wealthy-stay-up-all-night-to-get-lucky-4173156#.UwIInvdVHQ>

<sup>187</sup> Lim Eng-Beng, “The Global Asian Queer Boys of Singapore,” in *Brown Boys and Rice Queens: Spellbinding Performance in the Asias* (New York: New York University Press, 2014), pp. 125

<sup>188</sup> *Ibid.*, pp. 127

<sup>189</sup> Chua Mui Hoong, “It’s Not About Gay Rights – It’s Survival,” in *The Straits Times*, July 9, 2003, accessed February 25, 2014, [http://www.yawningbread.org/apdx\\_2003/imp-098.htm](http://www.yawningbread.org/apdx_2003/imp-098.htm)

<sup>190</sup> The phrase is derived from discussions over Israeli settlements constructed in the parts of the West Bank with politically contested sovereignty. It refers to a given situation in reality as opposed to that in theory. In Singapore today, there are at least eight saunas or massage centres catering exclusively to gay clients—a rather remarkable “fact on the ground” considering the small size of the country. See Lim Eng-Beng, “The Global Asian Queer Boys of Singapore,” in *Brown Boys and Rice Queens: Spellbinding Performance in the Asias* (New York: New York University Press, 2014), pp. 124

to oppose liberalizing moves by the state to recreate Singapore as a global city with a cosmopolitan and open culture, which they see as encouraging sinful behavior detrimental to the well-being of Singapore society.”<sup>191</sup>

Being the first time in Singapore’s independent history in which the presence of homosexual Singaporeans was openly recognized,<sup>192</sup> the 2007 debate nevertheless brought deep-seated and religiously-mediated homophobia to the fore as when then-Nominated Member of Parliament (NMP)<sup>193</sup> Thio Li-Ann, in arguing for the continued criminalization of male same-sex acts, pontificated the following:

*377A serves **public morality**; the argument from community reminds us we share a way of life which gives legal expression to the **moral repugnancy** of homosexuality. Heterosexual sodomy, unlike homosexual sodomy, does not undermine the understanding of heterosexuality as the preferred social norm. To those who say that 377A penalizes only gays, not lesbians, note there have been calls to criminalize lesbianism too. Public sexual morality must buttress **strong families** based on **faithful union** between man and wife, the best model for raising **children**. The state should not promote **promiscuity** nor condone **sexual exploitation**. New section 376D criminalizes the organization of **child-sex tours**. Bravo!*<sup>194</sup>

Most arrestingly, perhaps, is her description that “anal-penetrative sex is inherently damaging to the body and a misuse of organs, like shoving a straw up your nose to drink.”<sup>195</sup> Speaking immediately after Thio, MP Alvin Yeo, a Christian, described the lobbying efforts against Section 377A to be “minority views” that were unapologetically “vocal...

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<sup>191</sup> Daniel P.S. Goh, “State and Social Christianity in Post-Colonial Singapore,” in *Sojourn: Journal of Social Issues in Southeast Asia* 25 (2010): 83

<sup>192</sup> Chua Beng Huat, “Singapore in 2007: High Wage Ministers and the Management of Gays and Elderly,” in *Asian Survey* 48 (2008): 60

<sup>193</sup> The NMP scheme was started in 1990 by then newly-appointed Prime Minister Goh Chok Tong in order to bring more independent, non-partisan voices to Parliament and thereby widening its representative claims in the face of the PAP’s hegemony in the House. Each NMPs are recommended by a Special Select Committee chaired by the Speaker of Parliament and officially appointed by the President for a two-and-a-half-year term; they do not have to stand for elections and do not have a geographically-based constituency. They have full parliamentary voting rights except when it pertains to votes of no confidence, constitutional amendments, presidential impeachment, and motions regarding public funds (i.e. voting to pass the Budget).

<sup>194</sup> The full text of the relevant 2007 parliamentary proceedings is available at [http://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00072393-ZZ&currentPubID=00075231-ZZ&topicKey=00075231-ZZ.00072393-ZZ\\_1%2B%2B](http://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00072393-ZZ&currentPubID=00075231-ZZ&topicKey=00075231-ZZ.00072393-ZZ_1%2B%2B) [Emphasis added.]

<sup>195</sup> Ibid.

articulate... high profile,” and thus callous toward the “views of the vast and silent segments of the population.”<sup>196</sup>

Another Christian MP, Indranee Rajah, arose to argue that “the stance which the Government is taking is, in fact, **an exact reflection** of what Singapore society in general thinks... And I think that many liberal groups have, for a long time, thought that the Government was exaggerating the extent of the conservatives in Singapore, but that is not so.”<sup>197</sup> Such assertions that Singapore remains, at its core, a deeply conservative society “uncomfortable with, even troubled by, homosexual behavior”<sup>198</sup> continue to claim rhetorical and ideological validity by references to two surveys—*Our Singapore Conversation Survey (OSCS)* in 2013 and *Institute of Policy Studies Survey on Social Morality* in 2014—that supposedly show Singaporeans to be in overwhelming support of retaining Section 377A.

The first survey showed that 35% of the respondents strongly “reject gay lifestyles,” 12% of the respondents “reject gay lifestyles,” 27% of the respondents were neutral, 14% of the respondents “accept gay lifestyles,” and 12% of the respondents strongly “accept gay lifestyle.”<sup>199</sup> The second survey reported that 78.2% of the respondents said sexual relations between two adults of the same sex were either always or almost always wrong while 72.9% said the same of gay marriage.<sup>200</sup>

Glaringly, these surveys do not actually poll Singaporeans on their opinions regarding the retention or repeal of Section 377A, that is, the legality of *being* rather than *behaving* gay.

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<sup>196</sup> Ibid.

<sup>197</sup> Ibid. [Emphasis added.]

<sup>198</sup> Ibid.

<sup>199</sup> The full report of the OSCS is available at <http://www.reach.gov.sg/Portals/0/Microsite/osc/OSC-Survey.pdf>

<sup>200</sup> Maryam Mokhtar, “Most Singaporeans conservative: IPS Survey,” in *The Straits Times – Singapolitics*, January 28, 2014, accessed February 26, 2014, <http://www.singapolitics.sg/news/most-singaporeans-conservative-ips-survey>

Equally unfortunate is the surveys' employment of terminologies—for example, “the gay lifestyle”—pregnant with and indeed originating from the rightwing conservative Christian movements in the US.<sup>201</sup> Furthermore, the inclusion of the question regarding same-sex marriage when same-sex acts themselves remained crimes punishable by a jail term is curious at best and cynical at worst for it plays straight into the moral panic and dystopian fear-mongering that homosexuality-denying voices like Thio's have traditionally amplified in their efforts to uncover a sinister and so-called “homosexual agenda” that will inexorably normalize other sexual acts such as bestiality, incest, and pedophilia.<sup>202</sup>

*Political imperatives of a hegemonic ruling party*

A critical interpretation of such survey results must at least be cognizant of the mammoth yet naturalized ideological strictures that the PAP has, over the past five decades in power, assiduously put in place in Singapore's public discourse and imagination; “ideological hegemony [works in tandem with delivering] economic growth and needs to be continually produced”<sup>203</sup> to ensure the centrality and longevity of a dominant and no-nonsense state, that is, the PAP-governed state. The “entrenched [and] dependable practice” of “generating narratives of crisis at intervals”—eloquently captured in Lee Hsien Loong's warning that “overnight, an oasis may

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<sup>201</sup> The reduction, simplistic at best and cynical at worst, of homosexuality from either a sociobiological predisposition or an innate genetic makeup to a “lifestyle” connoting total agency is commonly linked to Reverend Jerry Falwell's *Moral Majority* movement of the 1980s. See Austin Carty, “Jerry Falwell 9/11 Remarks: A Former Liberty University Student Reflects” in *Huffington Post*, September 13, 2011, accessed February 26, 2014, [http://www.huffingtonpost.com/austin-carty/jerry-falwell-911-remarks-reflection\\_b\\_960571.html](http://www.huffingtonpost.com/austin-carty/jerry-falwell-911-remarks-reflection_b_960571.html)

<sup>202</sup> In her parliamentary speech, Thio outlined what she believed were the five prongs of the radical gay agenda. The full text of her speech is available at [http://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00072393-ZZ&currentPubID=00075231-ZZ&topicKey=00075231-ZZ.00072393-ZZ\\_1%2B%2B](http://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00072393-ZZ&currentPubID=00075231-ZZ&topicKey=00075231-ZZ.00072393-ZZ_1%2B%2B)

<sup>203</sup> Youyenn Teo, “Gender Disarmed: How Gendered Policies Produce Gender-Neutral Politics in Singapore,” in *Signs* 34 (2009): 536

become a dessert”<sup>204</sup>—is married with the PAP’s self-conception that it alone can secure Singapore’s prosperity and be all things to all people.<sup>205</sup>

To be sure, these narratives of crisis are fueled by threats from within and without; Singapore’s multiracial and polyglot population<sup>206</sup> reliably affords the state with a credible script that dramatizes the supposed inevitability of internecine racial strife in the event that an alternative political order with looser societal arrangements emerges. Consequently, rather than blurring ethnic divisions, Singapore’s “nation-building strategy—particularly since the 1980s—has been to retain [and] exaggerate[e] them.”<sup>207</sup>

In a word, “more often than not, [racial] diversity has been seen as a threat.”<sup>208</sup> Beyond race, another fault line that the PAP is wont to highlight is that between, on the one hand, liberal Singaporeans characterized as “‘creative’ subjects whose horizons lie further away” and, on the other, conservative Singaporeans characterized as “‘loyal’ subjects whose horizons are local.”<sup>209</sup> Wong Kan Seng, during the “AWARE Sage” warned:

*The debate on Sec 377A of the Penal Code showed how the homosexuality issue polarized our society. Advocates on both sides were passionate and vocal. In the recent AWARE*

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<sup>204</sup> Michael Leifer, “Singapore: The Foreign Policy of an Exceptional State,” in *Singapore’s Foreign Policy: Coping with Vulnerability* (London: Routledge, 2000), pp. 19

<sup>205</sup> As Chairman of a committee set up to establish the youth wing of the PAP in 1985, Lee Hsien Loong said that the PAP ought to continue representing “the population of Singapore, not just a part of it but all of it.” See the Young PAP website, accessed February 26, 2014, <http://www.youngpap.org.sg/about/history/>

<sup>206</sup> Singapore’s current population is 74.1% ethnic Chinese, 13.4% ethnic Malays, 9.2% Indians; the remaining 3.3% is classified, rather unceremoniously, as “Others.” See Department of Statistics, Ministry of Trade and Industry, *Census of Population 2010 Statistical Release I*, Singapore: Government Printing Office, 2011, [http://www.singstat.gov.sg/publications/publications\\_and\\_papers/cop2010/census\\_2010\\_release1/cop2010sr1.pdf](http://www.singstat.gov.sg/publications/publications_and_papers/cop2010/census_2010_release1/cop2010sr1.pdf), accessed February 26, 2014

<sup>207</sup> Kenneth Paul Tan, “Censorship in Whose Name?” in *Renaissance Singapore?: Economy, Culture, and Politics*, edited by Kenneth Paul Tan (Singapore: National University of Singapore Press, 2007), pp. 83

<sup>208</sup> Kirpal Singh, “Keeping Vigil: Openness, Diversity, and Tolerance,” in *Renaissance Singapore?: Economy, Culture, and Politics*, edited by Kenneth Paul Tan (Singapore: National University of Singapore Press, 2007), pp. 122 – 123

<sup>209</sup> Kenneth Paul Tan, “Censorship in Whose Name?” in *Renaissance Singapore?: Economy, Culture, and Politics*, edited by Kenneth Paul Tan (Singapore: National University of Singapore Press, 2007), pp. 72

*tussle, homosexuality was clearly a major issue to both sides. This is unproductive and divisive. Our society will not reach consensus on this issue for a very long time to come.*<sup>210</sup>

Presumably, the “both sides” Wong referred to are the homosexuality-affirming liberals and the homosexuality-denying conservatives. Deputy Prime Minister Teo Chee Hean said as much when he listed “sexual orientation” as one of the many new possible fault lines besieging Singapore.<sup>211</sup> Relatedly, Wong’s assertion that consensus will elude Singaporean society “for a very long time to come” was calculated to reinforce, yet again, the need for Singapore to have “a strong enough government to coordinate the separate advantages that can be reaped from [both sides], while keeping the peace between them.”<sup>212</sup>

In other words, through particular interpretations of domestic affairs, in this instance the “AWARE Saga,” the PAP deftly arrogates unto itself the seemingly indispensable role of an impartial ring-holder that will ward off “intemperate activism [threatening Singapore’s] social fabric.”<sup>213</sup> Indeed, “in communicating reasons against change, the government has sometimes insinuated that the conservative majority of Singaporeans are ignorant, close-minded, prudish... intolerant... parochial—but, it claims, there is absolutely nothing [it] can do about it.”<sup>214</sup> Put differently, by locating itself as merely a helpless mediator between competing groups, the PAP shields itself from blame and simultaneously deepens Singaporeans’ instincts that the party is the

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<sup>210</sup> “Comments by DPM and Minister for Home Affairs Wong Kan Seng in response to media queries related to AWARE,” Ministry of Home Affairs. Press release, May 15, 2009, on the Ministry of Home Affairs website, [https://www.mha.gov.sg/news\\_details.aspx?nid=MTQ0MA%3D%3D-H1alkdI4Ksw%3D](https://www.mha.gov.sg/news_details.aspx?nid=MTQ0MA%3D%3D-H1alkdI4Ksw%3D), accessed on February 26, 2014.

<sup>211</sup> Teo Chee Hean, “Opening Speech to 11<sup>th</sup> National Security Seminar” (speech, Singapore, September 24, 2013), Ministry of Home Affairs, [https://www.mha.gov.sg/news\\_details.aspx?nid=Mjk1OQ%3D%3D-gbW8gkKO2tc%3D](https://www.mha.gov.sg/news_details.aspx?nid=Mjk1OQ%3D%3D-gbW8gkKO2tc%3D)

<sup>212</sup> Kenneth Paul Tan, “Censorship in Whose Name?” in *Renaissance Singapore?: Economy, Culture, and Politics*, edited by Kenneth Paul Tan (Singapore: National University of Singapore Press, 2007), pp. 72

<sup>213</sup> “Comments by DPM and Minister for Home Affairs Wong Kan Seng in response to media queries related to AWARE,” Ministry of Home Affairs. Press release, May 15, 2009, on the Ministry of Home Affairs website, [https://www.mha.gov.sg/news\\_details.aspx?nid=MTQ0MA%3D%3D-H1alkdI4Ksw%3D](https://www.mha.gov.sg/news_details.aspx?nid=MTQ0MA%3D%3D-H1alkdI4Ksw%3D), accessed on February 26, 2014.

<sup>214</sup> Kenneth Paul Tan, “Censorship in Whose Name?” in *Renaissance Singapore?: Economy, Culture, and Politics*, edited by Kenneth Paul Tan (Singapore: National University of Singapore Press, 2007), pp. 73



only reason preventing society—constructed as fundamentally and forever fractious—from descending into a Hobbesian abyss.

A critical appreciation of the aforementioned surveys' results, notwithstanding their leading and thus problematic phraseology, therefore needs to recognize that the sustained state-led production and performance of differences (and their penalties)<sup>215</sup> has contributed to Singaporeans' almost kneejerk aversion to deviance. To ignore this would be to ignore the fact that Singapore and Singaporeans, as "creation[s] of the PAP, [have been] made to its image and likeness"<sup>216</sup> and that, paraphrasing Karl Marx and Antonio Gramsci, "powerful individuals and groups tend to monopolize the interpretation of cultural norms and manipulate them to their own advantage."<sup>217</sup>

While the percentage of Christians in Singapore's population has grown from 14.6% in 2000 to 18.3% in 2010<sup>218</sup>—the single biggest increase in any major religion—and assuming, incorrectly, that all Christians support Section 377A, it would nevertheless be simplistic to argue that it is this trend of heightened religiosity that keeps Section 377A on the books; Singaporean society is not unique in containing groups with drastically different cosmologies according to which they live their lives and make sense of the world. The stark difference between Singapore

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<sup>215</sup> To take a comical but telling example, in the mid-1970s, Singapore instituted a ban against males having long hair. Visitors were either denied entry or told to trim their hair before they would be allowed to enter the country. Public services were also authorized to attend to such individuals last in the event of a queue. The hairdo was seen as unwholesome "Western hippie drug culture." See Kenneth Whiting, "No Long Hairs Wanted in Singapore—They Mean It!" in *Daytona Beach Sunday News Journal*, February 9, 1975, accessed February 27, 2014, <http://news.google.com/newspapers?nid=1873&dat=19750209&id=9UUfAAAIAIBAJ&sjid=fdEEAAAIAIBAJ&pg=3721,2998175>

<sup>216</sup> Catherine Lim, "The PAP and the people—A Great Affective Divide," in *The Straits Times*, September 3, 1994, accessed February 27, 2014, <http://catherinelim.sg/1994/09/03/the-pap-and-the-people-a-great-affective-divide/>

<sup>217</sup> An-Naim, A. A., "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights," in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, edited by An-Naim, A. A., (Philadelphia: University of Pennsylvania Press, 1992), pp. 27 – 28

<sup>218</sup> Department of Statistics, Ministry of Trade and Industry, *Census of Population 2010 Statistical Release 1*, Singapore: Government Printing Office, 2011, [http://www.singstat.gov.sg/publications/publications\\_and\\_papers/cop2010/census\\_2010\\_release1/cop2010sr1.pdf](http://www.singstat.gov.sg/publications/publications_and_papers/cop2010/census_2010_release1/cop2010sr1.pdf), accessed February 26, 2014

and many other countries that have decriminalized same-sex acts, then, is the dynamic of a one-party soft-authoritarian state intent on not rocking any boats in service of its political longevity and the supposed attendant benefits.

To conclude, Singapore's continued criminalization of sex between consensual adult males in private is, above all else, linked to the political imperatives that the PAP faces in its effort to retain power and control in Singapore's increasingly variegated political landscape. "Not... truly concerned with morality," the PAP is instead worried that "a polarized population would less likely vote consensually and repeatedly for the same party."<sup>219</sup>

To be sure, and to its credit, by permitting "social change...without any alteration to formal laws affecting same-sex sexual conduct or expression,"<sup>220</sup> the PAP is arguably anticipating the likely global and generational shifts in attitudes regarding homosexuality. Yet, given that the PAP's traditionally heteronormative worldview has been so diffused and popularized—a hegemon in the Gramscian sense—over the course of its uninterrupted half-a-century rule, it is not unthinkable that what had been historically relaxed and tolerant societal attitudes regarding homosexuality have in fact hardened. Put differently, even if the PAP is indeed as prescient and pragmatic as Lee Kuan Yew's statements over the years imply, it has bred a populace that now expects the state to be all things to all people, including therefore playing the contradictory roles of, on the one hand, conservative moral policemen and, on the other, progressive and cosmopolitan elite.

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<sup>219</sup> Lynette Chua, "Pragmatic Resistance, Law, and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore" in *Law & Society Review* 46 (2012): 728

<sup>220</sup> *Ibid.*, pp. 742

## **VII. Taiwan:**

### *Japanese colonial legacy*

In contrast to both Hong Kong and Singapore, homosexual acts were never criminalized in Taiwan because of its different colonial history; Taiwan was never a British colony. Consequently, its moral and cultural ecology was never suffused with the strongly homophobic Judeo-Christian tradition. Under the 1895 *Treaty of Shimonoseki*, control over Taiwan (along with the Penghu Islands and parts of the Liaodong Peninsula) was ceded over from the Qing Empire in China to the Empire of Japan.<sup>221</sup> Notably, Japanese colonial rule over Taiwan was the first time the entire island has been governed as a single entity.<sup>222</sup>

For the next half a century, Japan would fastidiously remake Taiwanese society to resemble, if only superficially, herself; “conscious efforts were made to wipe out Chinese influence in the cultural sphere,” including populating the island with Japanese immigrants<sup>223</sup> and governing Taiwan according to the Meiji Constitution.<sup>224</sup> Accordingly, a sense of how Japan perceived and treated homosexuality would be helpful to a discussion regarding homosexuality in Taiwan and, in particular, why homosexuality was not criminalized both in colonial and post-colonial Taiwan.

Like Chinese culture, Japanese culture did not historically conceive of a “normative connection... between gender and sexual preferences because all men, whether samurai, priest,

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<sup>221</sup> The full text of the *Shimonoseki Treaty* is available at <http://www.taiwandocuments.org/shimonoseki01.htm>

<sup>222</sup> David Blundell, “Introduction,” in *Taiwan Since Martial Law: Society, Culture, Politics, Economy*, edited by David Blundell (Taiwan: University of California Berkeley and National Taiwan University Press, 2012), xxxv

<sup>223</sup> A. J. Grajdanzev, “Formosa (Taiwan) Under Japanese Rule,” in *Pacific Affairs* 15 (1942): 316

<sup>224</sup> Tay-Sheng Wang and I-Hsun Sandy Chou, “The Emergence of Modern Constitutional Culture in Taiwan,” in *National Taiwan University Law Review* 5 (2010): 5 - 13

or commoner, were able to engage in both same- and opposite-sex affairs.”<sup>225</sup> More generally, “the expression of private sexual practice has tended to be overlooked by both state and religious authorities”<sup>226</sup> in Japanese history. Again, analogous to China, especially during the Yuan and Ming Dynasties (1264 to 1644),<sup>227</sup> male homoeroticism in traditional Japan was often an expression and extension of one’s social standing and power. For example, in Japan, “elite men were able to pursue boys and young men who had not yet undergone their coming-of-age ceremonies” in the context of a code of ethics termed *nanshoku* (male eroticism) and *shudo* (the way of youths).<sup>228</sup>

Just as China under Mao Zedong’s and the Communist Party’s authoritarianism was “eager to instill social and moral order”<sup>229</sup>—revolutions depend on stable and reproductive family units—“Japan’s descent into militarism in the early 1930s saw the government tighten its hold on sexual discourse and practice.”<sup>230</sup> Ironically, however, imperial Japan’s large-scale preparations for the war effort actually created many more opportunities for greater intimacy between men who, because of the military draft, were placed in an environment privileging homo-social brotherhood for the purposes of inspiring valiant and selfless military exploits.<sup>231</sup>

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<sup>225</sup> Mark McLelland and Katsuhiko Suganuma, “Sexual Minorities and Human Rights in Japan: A Historical Perspective,” in *Protection of Sexual Minorities since Stonewall: Progress and Stalemate in Developed and Developing Countries*, edited by Phil C. W. Chan (New York: Routledge, 2010), pp. 197

<sup>226</sup> Ibid.

<sup>227</sup> Bret Hinsch, “Husbands, Boys, Servants: Yuan and Ming Dynasties (1264 to 1644)” in *Passions of the Cut Sleeve: The Male Homosexual Tradition in China* (Los Angeles: University of California Press, 1990), pp. 118 – 138

<sup>228</sup> Mark McLelland and Katsuhiko Suganuma, “Sexual Minorities and Human Rights in Japan: A Historical Perspective,” in *Protection of Sexual Minorities since Stonewall: Progress and Stalemate in Developed and Developing Countries*, edited by Phil C. W. Chan (New York: Routledge, 2010), pp. 197

<sup>229</sup> Chou Wah-shan, “A World Without Homo-Hetero Duality: Rewriting the Traditional Chinese History of Same-Sex Eroticism,” in *Tongzhi: Politics of Same-Sex Eroticism in Chinese Societies* (New York: The Haworth Press, 2000), pp. 54

<sup>230</sup> Mark McLelland and Katsuhiko Suganuma, “Sexual Minorities and Human Rights in Japan: A Historical Perspective,” in *Protection of Sexual Minorities since Stonewall: Progress and Stalemate in Developed and Developing Countries*, edited by Phil C. W. Chan (New York: Routledge, 2010), pp. 198

<sup>231</sup> Ibid., pp. 199

Unlike its Allied counterparts, homosexuality was not perceived by the Japanese military establishment as an enervation or an aberration meriting swift and unequivocal condemnation.<sup>232</sup>

This backdrop of, at best, colonial acceptance or, at worst, colonial indifference regarding homosexuality helps explain why Taiwan never had laws explicitly targeting same-sex relations. Nevertheless, Taiwan's current reputation for having "the most openly gay life in the Chinese world"<sup>233</sup> was anything but inevitable. Indeed, Taiwan under the autocratic rule of the Kuomintang (KMT) from 1949 to her democratization in the late 1980s and early 1990s was in many ways intolerant of homosexuality although to be sure "there has never been systematic persecution of homosexuals."<sup>234</sup>

#### *Kuomintang's authoritarian project and intolerance of homosexuality*

This state-led intolerance of homosexuality in the early period of Taiwan's history was intimately bound up with the KMT's political project of consolidating its grip on power over the island, continuing the abortive fight against the so-called "Communist Rebellion"<sup>235</sup> in continental China, and "constructing Taiwan as a model Chinese province."<sup>236</sup> Consequently, the KMT under strongman Chiang Kai-Shek sought to aggressively "heterosexualize" Taiwanese society.<sup>237</sup> For example, Article 66 of the *Law for Punishment of Police Offences* prohibiting the

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<sup>232</sup> A. Berube, *Coming Out Under Fire: The History of Gay Men and Women in World War Two* (New York: Free Press, 1990)

<sup>233</sup> *Gay Histories & Cultures: An Encyclopedia*, edited by George E. Haggerty (New York: Garland Publishing, 2000), pp. 187

<sup>234</sup> *Ibid.*, pp. 188

<sup>235</sup> Bo Tedards, "Opening Essay: Trajectories of Democratization," in *Taiwan Since Martial Law: Society, Culture, Politics, Economy*, edited by David Blundell (Taiwan: University of California Berkeley and National Taiwan University Press, 2012), lxvii

<sup>236</sup> Jens Damm, "Discrimination and Backlash against Homosexual Groups," in *Politics of Difference in Taiwan*, edited by Tak-Wing Ngo and Hong-zen Wang (Oxon: Routledge, 2011), pp. 152

<sup>237</sup> Jens Damm, "Same Sex Desire and Society in Taiwan, 1970 – 1987," in *The China Quarterly* 181 (2005): 68

“wearing of odd/inappropriate outfits” was “primarily directed against men with long hair or women wearing trousers.”<sup>238</sup>

In addition, “Confucianism was invoked essentially as a set of stripped down ethical values which had a specific role in the service of the state. As a generalized moral philosophy, Confucianism entailed... respect for social authority.”<sup>239</sup> This emphasis on Confucianism served the KMT in much the same way as it did the PAP in Singapore. In both cases, a one-party state needed an ostensibly indigenous ideology to naturalize the omnipresence of the state.

In this climate, homosexuality was marginalized and rendered invisible. Only rarely did homosexuality make it into the interstices of public discourse and even then, homosexuality was portrayed negatively as a “mental illness” or a “relatively rare occurrence... in Chinese societies.”<sup>240</sup> Furthermore, even “regulations governing censorship did not mention same-sex contacts.”<sup>241</sup> Police raids of locales popular with homosexuals and the subsequent sensationalistic media coverage were regular affairs.<sup>242</sup>

To be sure, this silencing of homosexuality-affirming voices was part of the larger illiberal political regime sustained by Martial Law that, among other things, “banned formation of any new political parties, gave the military wide censorship powers and was used by military courts to convict thousands of civilians of sedition and other crimes.”<sup>243</sup> In aggregate, because the period between 1950s and early 1970s was especially uncondusive for any form of civic

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<sup>238</sup> Ibid., pp. 70

<sup>239</sup> Allen Chun, “From Nationalism to Nationalizing,” in *Chinese Nationalisms*, edited by Jonathan Unger (Armonk: M. E. Sharpe, 1996), pp. 137

<sup>240</sup> Jens Damm, “Same Sex Desire and Society in Taiwan, 1970 – 1987,” in *The China Quarterly* 181 (2005): 71

<sup>241</sup> Ibid., pp. 69

<sup>242</sup> Ibid., pp. 74 – 77

<sup>243</sup> “Taiwan Ends 4 Decades of Martial Law,” *The New York Times*, July 15, 1987, accessed March 5, 2014, <http://www.nytimes.com/1987/07/15/world/taiwan-ends-4-decades-of-martial-law.html>.

activism, “oppositional and marginalized voices”<sup>244</sup> of which homosexuality-affirming ones are a part were, for all intents and purposes, silent.

In the late 1970s, with the demise of Chiang Kai-Shek, political strictures relaxed slightly in response to an emboldened and enlarged Taiwanese urban middle class which was no longer singularly concerned with economic livelihood<sup>245</sup> but rather was “blatant in [its] demand for democracy and political diversity.”<sup>246</sup> This trend persisted into the 1980s during which “the first cracks began to appear in the vast control structure of the KMT.”<sup>247</sup> Notably, in 1986, the Democratic People’s Party (DPP) was founded as Taiwan’s first major opposition party and one that enjoys the support of the rapidly proliferating civil society groups. In 1987, Martial Law was lifted. In 1988, hitherto suffocating government regulations and censorship over print publications eased.<sup>248</sup>

### *Political liberalization after Martial Law*

While homosexuality-affirming voices existed frailly on the margins in general and in literature in particular before the late 1980s,<sup>249</sup> a coherent and active social movement—the *Tongzhi* movement<sup>250</sup>—working for greater legal and political rights for homosexuals in Taiwan came of age only with the broader political liberalization of Taiwanese society. This transition

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<sup>244</sup> Chou Wah-shan, “Going Beyond “Cultural Carnival versus Political Confrontation”: Pluralities of Contemporary Taiwanese *Tongzhi* Discourses,” in *Tongzhi: Politics of Same-Sex Eroticism in Chinese Societies* (New York: The Haworth Press, 2000), pp. 143

<sup>245</sup> *Ibid.*, pp. 144

<sup>246</sup> *Ibid.*, pp. 142

<sup>247</sup> Jens Damm, “Same Sex Desire and Society in Taiwan, 1970 – 1987,” in *The China Quarterly* 181 (2005): 70

<sup>248</sup> Jens Damm, “Discrimination and Backlash against Homosexual Groups,” in *Politics of Difference in Taiwan*, edited by Tak-Wing Ngo and Hong-zen Wang (Oxon: Routledge, 2011), pp. 157

<sup>249</sup> *Ibid.*, pp. 156

<sup>250</sup> The term ‘*Tongzhi*’ refers to “comrade” in Mandarin. It was first used by scholars and activists in Hong Kong to refer to individuals with same-sex attraction.

from “dictatorship”<sup>251</sup> to democracy provided the *Tongzhi* movement with “a new catalogue of social values... based on pluralism and individualism.”<sup>252</sup> Universities, in particular, played a critical role in the dissemination of queer theories and the congregation of like-minded activists. Other feminist and HIV/AIDS self-help groups also contributed to the visibility and vigor of the *Tongzhi* movement in Taiwan.

When Chen Shui-Bian, against “angry rhetoric from Beijing,” became the first non-KMT President of Taiwan in a “truly historic” episode in the island’s democratization,<sup>253</sup> multiculturalism was promulgated as “the basic national policy.”<sup>254</sup> Chen’s election and subsequent “frequent references to human rights” were encouraging signs for *Tongzhi* groups, one of which—the Taiwan Gay Hotline—became, during Chen’s administration, “the first national group to register legally with the Ministry of Interior.”<sup>255</sup>

Barely six months into his presidency, Chen held a meeting with international activists and representatives of the *tongzhi* groups in Taiwan.<sup>256</sup> In November 2003, Taipei, the island’s capital city, became the first territory in the Chinese world to host a state-sanctioned gay Pride parade during which then-Taipei Mayor and current President Ma Ying-Jeou was quoted as

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<sup>251</sup> Tay-Sheng Wang and I-Hsun Sandy Chou, “The Emergence of Modern Constitutional Culture in Taiwan,” in *National Taiwan University Law Review* 5 (2010): 18

<sup>252</sup> Jens Damm, “Discrimination and Backlash against Homosexual Groups,” in *Politics of Difference in Taiwan*, edited by Tak-Wing Ngo and Hong-zen Wang (Oxon: Routledge, 2011), pp. 157

<sup>253</sup> Terry McCarthy, “Chen’s Triumph,” in *Time*, March 27, 2000, accessed March 5, 2014, <http://content.time.com/time/world/article/0,8599,2054994,00.html>

<sup>254</sup> Wang Lijung, “Multiculturalism in Taiwan: Contradictions and Challenges in Cultural Policy,” in *International Journal of Cultural Policy* 10 (2004): 301

<sup>255</sup> Jens Damm, “Discrimination and Backlash against Homosexual Groups,” in *Politics of Difference in Taiwan*, edited by Tak-Wing Ngo and Hong-zen Wang (Oxon: Routledge, 2011), pp. 160

<sup>256</sup> *Ibid.*



saying: “I want to tell our homosexual friends: If you live in Taipei, you won’t be discriminated against.”<sup>257</sup>

*Geopolitical imperatives in the face of “One China” policy*

Animating the efforts to project Taiwan in general and Taipei in particular as gay-friendly is the island’s arguably existential geopolitical need to “gain global legitimacy”<sup>258</sup> and positively differentiate itself from an undemocratic but incomparably stronger China which insists that Taiwan is “a renegade province”<sup>259</sup> belonging to China. While Taiwan is by no means unique in drumming up domestic developments for foreign consumption,<sup>260</sup> there is a particularly performative aspect of Taiwan’s pursuit of democracy in general and homosexuality-affirming policy stance in particular. For example, in his inaugural address in 1996 after Taiwan’s first presidential elections, President Lee Teng Hui declared the following:

*Today, we in Taiwan firmly tell the world, with great pride and self-confidence: We now stand on the apex of democratic reform and will remain there resolutely. We have proved eloquently that the Chinese are capable of practicing democracy; we have effectively expanded the influence of the international democratic camp and made significant contributions to the cause of freedom and democracy. Therefore, this gathering of today does not celebrate the victory of any candidate, or any political party for that matter. It honors a triumph of democracy for the 21.3 million people. It salutes the confirmation of freedom and dignity—the most fundamental human values—in the Taiwan, Penghu, Kinmen and Matsu area.*<sup>261</sup>

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<sup>257</sup> Cindy Friedman, Transcript of *This Way Out* radio program #814, November 3, 2003, accessed March 5, 2014, <http://thiswayout.org/summary/newswrap/2003/N814-11.03.2003>

<sup>258</sup> Jens Damm, “Discrimination and Backlash against Homosexual Groups,” in *Politics of Difference in Taiwan*, edited by Tak-Wing Ngo and Hong-zen Wang (Oxon: Routledge, 2011), pp. 153

<sup>259</sup> James Pomfret, “China’s Xi says political solution for Taiwan can’t wait forever,” in *Reuters*, October 6, 2012, accessed March 15, 2014, <http://www.reuters.com/article/2013/10/06/us-asia-apec-china-taiwan-idUSBRE99503Q20131006>

<sup>260</sup> For example, then-President Chen Shui Bian announced his government’s long-awaited proposal to introduce the Human Rights Basic Law while on his way to New York to receive an award from the International League for Human Rights. In addition, then-Taipei Mayor Ma Ying Jeuo announced that he has earmarked NT\$1 million of the city’s budget for homosexuality-affirming programs while he met with Berlin’s then-openly gay and leftist mayor, Klaus Wowereit, in 2000. For more examples, see Jens Damm, “Discrimination and Backlash against Homosexual Groups,” in *Politics of Difference in Taiwan*, edited by Tak-Wing Ngo and Hong-zen Wang (Oxon: Routledge, 2011), pp. 162 – 163.

<sup>261</sup> The full text of President Lee’s address is available at <http://www.taiwantoday.tw/ct.asp?xItem=14224&CtNode=122>

In his inaugural presidential address in 2008, President Ma Ying-Jeou adopted a similar, performative tone:

*This remarkable experience has let Taiwan become "a beacon of democracy to Asia and the world." We, the people of Taiwan, should be proud of ourselves. The Republic of China is now a democracy respected by the international community.*<sup>262</sup>

The enthusiastic embrace of democracy by Taiwan's ruling elites is, as suggested above, a deliberate foreign policy strategy to sustain and cement America's commitment to the 1979 *Taiwan Relations Act*<sup>263</sup> and to expand its international space. It must be recalled that the Carter Administration's decision to normalize relations with China was a "massive blow" to and "traumatized" Taiwan.<sup>264</sup> To be sure, this does not mean that Taiwan's democracy is in any way a farce calculated only to convince the world to offer sympathy and support for the island's bid for either continued autonomy or, more radically and unrealistically, independence. Nevertheless, the politics of gay and lesbian rights in Taiwan cannot be understood without an appreciation of the larger geopolitical environment in which Taiwan exists.

While Taiwan has had an internationally ambiguous status since 1971 when China officially replaced it in the UN, it was not until the spectacular rise of China in the early 1980s as well as the end of the Cold War that its national security as an illiberal polity became truly fragile: just as Taiwan's dependence on the US became even more acute with a militarily and economically resurgent China, its undemocratic system hinders the sustenance of eager American support. Therefore, in order to consolidate its position under the American security umbrella, it "has repositioned itself as a political and economic model, one that espouses a

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<sup>262</sup> The full text of President Ma's address is available at <http://www.chinapost.com.tw/taiwan/2008/05/21/157332/Full-text.htm>

<sup>263</sup> The full text of the Taiwan Relations Act is available at <https://www.govtrack.us/congress/bills/96/hr2479/text>

<sup>264</sup> Shelley Rigger, "American is Boring at Night," in *Why Taiwan Matters: Small Island, Global Powerhouse* (Plymouth: Rowman & Littlefield Publishers, Inc., 2011), pp. 111

democratic political order and a dynamic market economy... making it more difficult for China to use force to unite Taiwan with the mainland.”<sup>265</sup>

As Harvard Professor Joseph Nye puts it, “as long as Taiwan stands for democracy and human rights, [selling out Taiwan for something the US wants from China] will be impossible in American political culture.”<sup>266</sup> Put differently, Taiwan must position itself in such a way as to enable the American political, military, business, and academic establishment to continually declare, without serious contradictions, the following: “Our enduring relationship under the *Taiwan Relations Act* represents a unique asset for the United States and is an important multiplier of our influence in the region. This friendship is grounded in history, shared values, and our common commitment to democracy, free markets, rule of law, and human rights.”<sup>267</sup>

Accordingly, both the DPP and the KMT have pursued policies that, at least on surface, afforded greater legal equality to gays and lesbians. For instance, in 2001, the Ministry of Justice produced a draft of the *Basic Law on the Protection of Human Rights* in which an article stipulated that homosexuals shall be allowed to have families and legally adopt.<sup>268</sup> Two years later, the Executive Yuan proposed legislation—*Basic Law on Human Rights*—to permit marriage between same-sex couples which would have made Taiwan indisputably the most homosexuality-affirming place in the whole of Asia.<sup>269</sup>

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<sup>265</sup> Elizabeth Freund Larus, “Taiwan’s Quest for International Recognition,” in *Issues and Studies* 42 (2006): 24

<sup>266</sup> Ko Shu-Ling, “Soft power behind cross-strait peace,” in *Taipei Times*, December 9, 2010, accessed March 15, 2014, <http://www.taipeitimes.com/News/taiwan/print/2010/12/09/2003490480>

<sup>267</sup> Kin Moy, “The Promise of the Taiwan Relations Act,” (Testimony, Washington, DC, March 14, 2014), US Department of State, <http://www.state.gov/p/eap/rls/rm/2014/03/223461.htm>

<sup>268</sup> Daniel Bowman, “Righting the Wrongs of the Past? The Human Rights Policies of Chen Shui-Bian and Ma Ying-Jeou,” in *Taiwan Since Martial Law: Society, Culture, Politics, Economy*, edited by David Blundell (Taiwan: University of California Berkeley and National Taiwan University Press, 2012), 495

<sup>269</sup> Chris Hogg, “Taiwan move to allow gay unions,” in *BBC News*, October 28, 2003, accessed March 15, 2014, <http://news.bbc.co.uk/2/hi/asia-pacific/3219721.stm>

Indeed, Chen's desire to "make [Taiwan] a pioneer in the progressive introduction of new, so-called 'third-generation' human rights" would have "grant[ed] rights that many Western countries had not approved."<sup>270</sup> However, the radical scope of the draft of the *Basic Law on Human Rights*—for example, Article 2 concerned Taiwan's right of self-determination while Article 5 called for the abolishment of the death penalty, above and beyond the requirements of the ICCPR—coupled with the fact that the KMT still had control of the Legislative Yuan meant that the Chen administration's attempts to ratify a human rights legislation was, if not doomed from the outset, destined to face vigorous opposition.<sup>271</sup> Ultimately, the draft *Basic Law on Human Rights* never survived backroom dealings, public murmurings, and legislative opposition; it was neither debated nor voted on during Chen's first term.<sup>272</sup>

However, shortly after Chen won the controversial 2004 presidential elections by a razor-thin margin,<sup>273</sup> his administration successfully passed the *Gender Equity Education Act* that aimed to "promote substantive gender equality, eliminate gender discrimination, [and] uphold human dignity." To that end, it stipulated that schools "shall respect the gender temperaments and sexual orientation of students, faculty and staff," and shall "affirmatively provide assistance to students who are disadvantaged due to their gender or sexual orientation in order to improve their situation."<sup>274</sup>

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<sup>270</sup> Daniel Bowman, "Righting the Wrongs of the Past? The Human Rights Policies of Chen Shui-Bian and Ma Ying-Jeou," in *Taiwan Since Martial Law: Society, Culture, Politics, Economy*, edited by David Blundell (Taiwan: University of California Berkeley and National Taiwan University Press, 2012), 496

<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*, pp. 498

<sup>273</sup> For more on the 2004 Taiwanese presidential elections, see Steve Chan, "Taiwan in 2004: Electoral Contests and Political Stasis," in *Asian Survey* 45 (2005): 54 – 58

<sup>274</sup> The full text of the *Gender Equity Education Act* is available at <https://www.wcwonline.org/pdf/lawcompilation/TaiwanGenderEquityEducation%20Act.pdf>

In 2007, the *Employment Service Act* of 1992 was amended to include birth place, age, and sexual orientation as grounds on which discrimination is illegal<sup>275</sup> while the *Gender Equality in Employment Act* of 2002 was amended to stipulate that “employers shall not discriminate against applicants or employees because of their gender or sexual orientation in the course of recruitment, screening test, hiring, placement, assignment, evaluation and promotion.”<sup>276</sup>

The same trend of institutionalizing human rights continued after May 2008 when KMT’s Ma was inaugurated as Taiwan’s third democratically elected President. In December 2008, while delivering the keynote address at the Asia Democracy and Human Rights Award Ceremony, Ma reiterated his campaign promise to have the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICESC)<sup>277</sup> ratified, noting that while Taiwan had signed unto both Covenants before losing its UN membership, its subsequent diplomatic isolation and domestic Martial Law conspired to prevent their ratification in the Legislative Yuan.<sup>278</sup> Notably, the ratification of both Covenants was one of Chen’s legislative priorities during his two terms although the DPP’s lack of a legislative majority from 2000 to 2008 proved to be veritable obstacles for Chen’s agenda.

#### *Ratification of international covenants*

On March 31, 2009, the Legislative Yuan ratified both the ICCPR and the ICESC, as well as mandated all governmental entities to review laws, regulations, directives and administrative measures within their respective jurisdiction with the aim of bringing them into conformance

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<sup>275</sup> Cing-Kae Chiao, “Employment Discrimination in Taiwan,” in *New Developments in Employment Discrimination Law*, edited by Roger Blanpain, Hiroya Nakakubo, Takashi Araki (The Netherlands: Kluwer Law International, 2008), pp. 175 – 231

<sup>276</sup> The full text of the *Gender Equality in Employment Act* is available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=N0030014>

<sup>277</sup> The full text of the ICESC is available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>278</sup> “Ma calls for Human Rights Endorsement” in *The China Post*, December 11, 2008, accessed March 16, 2014, <http://www.chinapost.com.tw/print/187079.htm>

with the covenants. On December 10, 2010, the ICCPR and ICESCR came into force, and the Presidential Office Human Rights Consultative Committee was established to monitor and ensure the steady implementation of the terms of both Covenants.<sup>279</sup>

From 2011 to 2013, the Ma administration prepared detailed reports regarding the implementation of both Covenants in Taiwan and invited a group of independent experts to review these reports. The expert group published their report—*Review of the Initial Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants*—in March 2013 and noted that it was “deeply impressed by the dramatic progress that has been made since 1987, when Taiwan began to emerge from a long and dark period of martial law.”<sup>280</sup>

The report was effectively a vote of confidence for how the Taiwanese government has dealt with the legal rights of gays and lesbians in that it only called for greater awareness of transgenderism which, strictly speaking, is unrelated to homosexuality, and expressed concern that “as in many other countries, [lesbian, gay, bisexual, transgender, and intersex persons] frequently face...marginalization...by large parts of the general population.”<sup>281</sup> In other words, the report suggests that the key challenge for the gay and lesbian community in Taiwan is not so much state-sanctioned discrimination as it is societal attitudes that unfortunately though unsurprisingly take a longer time to evolve and often persist despite homosexuality-affirming policy stances by the government.

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<sup>279</sup> Office of Information Services, *The Republic of China Yearbook 2012*, Taiwan: Executive Yuan, 2012, <http://www.ey.gov.tw/en/cp.aspx?n=EC1A79D64983E21F>, accessed March 16, 2014.

<sup>280</sup> The full text of the report is available at <http://www.humanrights.moj.gov.tw/public/Data/335164448594.pdf>

<sup>281</sup> *Ibid.*

### *Conservative pushback*

Of course, many in the homosexuality-affirming camp would challenge the suggestion that public attitudes stand resolutely in the way of marriage equality which is seen as the ostensibly ultimate positive gay and lesbian right. While various survey results “show a constant increase in the support for same-sex marriage,”<sup>282</sup> the legislative move by various DPP lawmakers allied with civil society organizations such as the Taiwan Alliance to Promote Civil Partnership Rights in late 2013 to amend the *Taiwan Civil Code*<sup>283</sup> governing marriage—currently defined as between a man and a woman—provoked a fierce backlash that saw over 150, 000 take to the streets of Taipei to protest against legalizing same-sex marriage.<sup>284</sup>

Many legislators were present at the anti-same sex marriage demonstration including Wang Chien-shien, President of Taiwan’s Control Yuan, a governmental organ charged with impeachment, audit, censure and other functions. Wang was quoted to have said that a referendum should be held on the matter given its far-reaching implications.<sup>285</sup> At present, while the draft ‘Marriage Equality’ bill has passed the first reading in the Legislative Yuan on Christmas Day 2013, its fate is inconclusive. Still, the preceding discussion shows why Taiwan is the most homosexuality-affirming of the three case studies.

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<sup>282</sup> Chang Sheng-en, “Is Taiwan not ready for gay marriage?” in *Taipei Times*, December 17, 2013, accessed March 16, 2014, <http://www.taipeitimes.com/News/editorials/archives/2013/12/17/2003579186/1>

<sup>283</sup> The full text of the relevant portions of the *Taiwan Civil Code* is available at [http://www.international-divorce.com/taiwan\\_marriage\\_contract.htm](http://www.international-divorce.com/taiwan_marriage_contract.htm)

<sup>284</sup> “Gays in Taiwan: Going nuclear” in *The Economist*, December 7, 2013, accessed March 16, 2014, <http://www.economist.com/news/asia/21591232-move-legalise-same-sex-marriage-provokes-surprisingly-large-backlash-going-nuclear>

<sup>285</sup> “Tens of thousands march in Taiwan against same-sex-marriage bill” in *South China Morning Post*, November 30, 2013, accessed March 16, 2014, <http://www.scmp.com/news/china/article/1369672/tens-thousands-march-taiwan-against-same-sex-marriage-bill>

## **VIII. Conclusion:**

This paper has shown that, despite the apparent historical, geographic, cultural, demographic, and economic similarities, gay and lesbian rights in Hong Kong, Singapore, and Taiwan have developed largely independently and rather differently. To reiterate, the discussion's emphasis for Hong Kong and Singapore has been on the politics regarding negative gay and lesbian rights, that is, the decriminalization of consensual same-sex acts between adults in private. This emphasis is informed by history—both Hong Kong and Singapore inherited sodomy laws from the British—as well as the indisputable importance of the legality of same-sex acts for any subsequent (or consequent) positive gay and lesbian rights to even be possible.

To the chagrin of Singaporean conservatives, economic imperatives confronting the city-state have drastically expanded the space within which gay and lesbian Singaporeans can somewhat freely live their lives. Hong Kong, too, has evolved with the times but in a much more official fashion: in 1991, the sodomy laws were repealed; in 2006, the differing age-of-consent between heterosexual and homosexual intercourse was equalized (to 16); and in 2009, same-sex couples were included under the amended *Domestic and Cohabitation Relationships Violence Ordinance* that gestures, however obliquely, toward greater legal recognition of their existence and rights as Hong Kong citizens.

While it was the then-impending return to China that jolted Hong Kong into adopting a comprehensive human rights bill that incidentally brought down its sodomy laws, today, both Singapore and Hong Kong—economic competitors across various sectors—see gay and lesbian



rights in a largely conservative if economically pragmatic light: each holds off making irreversible legislative changes wherever possible, lest, in the case of Singapore, a polarized society threatens the PAP's hegemony and, in the case of Hong Kong, a radically liberal and rights-based society unnecessarily complicates relations with Beijing.

Facing a different and arguably more unforgiving set of geopolitical conditions, Taiwan has emerged from the shadows of her Martial Law years with a renewed determination to, as it were, make up for lost time in her democratic and human rights development. Her need to become a model 21<sup>st</sup> century nation—democratic, well-governed, cosmopolitan, capitalistic—deserving of continued American security guarantee in the context of the “One China” principle has greatly aided the development of gay and lesbian positive rights. It bears recalling that the island's Japanese colonial masters never criminalized same-sex acts; negative gay and lesbian rights were technically always present. Still, the debate on same-sex marriage wages on in the context of a Taiwan drawn inexorably into China's enormous economic orbit.

In the final analysis, Singapore stands out as a particularly conservative outlier—as far as its legal classification of same-sex acts goes—among the three case studies. Of relevance is the fact that among the three case studies, Singapore is the only sovereign nation with official membership in various regional and international organizations. Since membership in such organizations can, at least in theory, mediate domestic legal and political situations, it is useful to briefly discuss how Singapore's involvement in the Association of Southeast Asian Nations (ASEAN) further hinders the advancement of gay and lesbian rights in the city-state.

Historically speaking, regional organizations like the European Union (EU)<sup>286</sup> have played critical roles in the advancement of both positive and negative gay and lesbian rights in the West. For instance, the landmark 1981 *Dudgeon v. The United Kingdom* ruling by the Council of Europe's European Court of Human Rights successfully pressurized Northern Ireland's government to bring its laws in conformity with the other countries within the UK.<sup>287</sup> Additionally, membership conditionality of the EU has been very useful in steering, as it were, "national developments in the candidate countries in order to assure that the new-comers comply with the pre-accession requirements of article 6(1) EU, including *inter alia*, democracy, the rule of law, and the protection of human rights (gay rights included)."<sup>288</sup>

Beyond the legal recourse and suasion associated with regional organizations, they also enable domestic non-governmental organizations "to bring pressure on their states from outside [and tap on] new resources, opportunities, and alternative targets."<sup>289</sup> This is especially crucial when the domestic political opportunity structure is particularly inhospitable to gay and lesbian activism, as was the case in the UK in the 1950s and 1960s because of, among others, the continued salience of class, the somewhat closed nature of British political system, and the lack of elite allies.<sup>290</sup>

In this light, it is noteworthy that "there is currently no Asia Pacific human rights treaty, no regional human rights commission, and no regional human rights court that is even remotely

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<sup>286</sup> For more information on the EU, visit [http://europa.eu/index\\_en.htm](http://europa.eu/index_en.htm)

<sup>287</sup> Robert Wintemute, *Sexual Orientation and Human Rights: The United States Constitution, the European Convention, and The Canadian Charter* (New York: Oxford University Press, 1995), 93.

<sup>288</sup> Dimitry Kochenov, "Democracy and Human Rights—Not for Gay People?: EU Eastern Enlargement and its Impact on the Protection of the Rights of Sexual Minorities." *Texas Wesleyan Law Review* 13 (2007): 465.

<sup>289</sup> Ronald Holzacker. "State-Sponsored Homophobia and the Denial of the Right of Assembly in Central and Eastern Europe: The "Boomerang" and the "Ricochet" between European Organizations and Civil Society to Uphold Human Rights." *Law & Policy* 35 (2013): 6.

<sup>290</sup> Kelly Kollman and Matthew Waites, "United Kingdom: Changing Political Opportunity Structures, Policy of Success and Continuing Challenges for Lesbian, Gay and Bisexual Movements," in *The Lesbian and Gay Movement and the State*, edited by Manon Tremblay, David Paternotte and Carol Johnson (Surrey: Ashgate Publishing Limited, 2011), 183.

comparable to the institutions in the European, Inter-American, and African systems.”<sup>291</sup> Nevertheless, a sub-regional human rights body was established by ASEAN in 2009. Named the ASEAN Intergovernmental Commission on Human Rights (AICHR), the primarily promotional and advisory body produced the 2012 ASEAN Human Rights Declaration (AHRD)<sup>292</sup> that was however roundly criticized by homosexuality-affirming groups such as the International Gay and Lesbian Human Rights Commission:

*As the most recent in the region to develop a rights monitoring body, the drafters of the ASEAN Human Rights Declaration are out of step with developments in the broader human rights arena. Thus far they have missed the opportunity to adopt a progressive vision of human rights. Instead, AICHR has blamed religion and culture for holding back its commitment to recognizing that all human beings have human rights and that LGBT rights are human rights.*<sup>293</sup>

Separately, the UN Human Rights Council released an *Open Letter* to the drafters of the AHRD which strongly implied that the document fell short of international standards.<sup>294</sup> In addition, the US State Department expressed its deep concern that the AHRD “could weaken and erode universal human rights and fundamental freedoms as contained in the United Nations Declaration of Human Rights.”<sup>295</sup>

Indeed, several months before the AHRD was adopted on November 19, 2012, criticisms regarding the drafting process of the Declaration had already surfaced: over 130 regional human rights organizations issued a *Joint Statement* criticizing the lack of public consultation,

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<sup>291</sup> Carole J. Petersen, “Bridging the Gap?: The Role of Regional and National Human Rights Institutions in the Asia Pacific,” in *Asian-Pacific Law & Policy Journal* 13 (2011): 191

<sup>292</sup> The full text of the Declaration is available at <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>

<sup>293</sup> “On the Exclusion of Sexual Orientation Gender Identity (SOGI) Non-discrimination in the ASEAN Human Rights Declaration,” International Gay and Lesbian Human Rights Commission (IGLHRC). Press release, September 13, 2012, on the IGLHRC website, <http://iglhrc.org/press-room/press-releases/exclusion-sexual-orientation-gender-identity-sogi>, accessed March 17, 2014.

<sup>294</sup> The full text of the Open Letter is available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12796&LangID=E>

<sup>295</sup> “ASEAN Declaration on Human Rights,” US Department of State. Press release, November 20, 2012, on the Department of State website, <http://www.state.gov/r/pa/prs/ps/2012/11/200915.htm>, accessed March 17, 2014.

transparency, and accountability surrounding the drafting process.<sup>296</sup> In a *Joint Letter*, fourteen other international human rights organizations echoed the Joint Statement.<sup>297</sup>

To be sure, given that the nonintervention in the internal affairs of member states is a cardinal principle of ASEAN,<sup>298</sup> any expectation that AICHR and AHRD would substantively advance either negative or positive gay and lesbian rights in the region was at best starry-eyed and at worst delusional. In this context, coupled with the fact that unlike both Hong Kong and Taiwan, Singapore is not a signatory to either the ICCPR or the ICESCR, Section 377A of the Singaporean Penal Code is thoroughly shielded from any external monitoring or enforcement legal mechanism. Moreover, the comparatively more punitive reprisals and intolerant attitudes toward gays and lesbians in neighboring Malaysia also take the negative spotlight off Singapore.<sup>299</sup>

Last, Singapore's considerable Malay/Muslim population (13.4%)<sup>300</sup> also represents another religiously-mediated bastion of homosexuality-denying forces that both Hong Kong and Taiwan do not face. While it is not within the scope of this paper to adequately discuss Islamic attitudes toward homosexuality, it bears noting that some of the most homosexuality-denying countries today are Islamic ones<sup>301</sup> even though historically speaking, "strict religious codes regarding sex have always rubbed shoulders with more permissive cultural expressions."<sup>302</sup> Indeed, in the traditional societies of Malaysia and Indonesia—the two Southeast Asian states

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<sup>296</sup> The full text of the Joint Statement is available at <http://www.forum-asia.org/?p=12451>

<sup>297</sup> The full text of the Joint Letter is available at <http://www.hrw.org/news/2012/05/07/joint-letter-asean-human-rights-declaration>

<sup>298</sup> See Article 2 of the ASEAN Charter, available at <http://www.asean.org/archive/publications/ASEAN-Charter.pdf>

<sup>299</sup> For instance, an individual found guilty of committing sodomy in Malaysia can be punished with "imprisonment for a term which may extend to twenty years, and shall also be liable to whipping." See Section 377A and 377B of the Malaysian Penal Code available at <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574%20-%20Penal%20Code.pdf>

<sup>300</sup> 98.7% of all Malays in Singapore identify as Muslims. See census report available at [http://www.singstat.gov.sg/publications/publications\\_and\\_papers/cop2010/census\\_2010\\_release2/indicators.pdf](http://www.singstat.gov.sg/publications/publications_and_papers/cop2010/census_2010_release2/indicators.pdf)

<sup>301</sup> See ILGA State-Sponsored Homophobia Report at <http://ilga.org/ilga/en/article/o5VIRM41Oq>

<sup>302</sup> Pierre Hurteau, "Islam," in *Male Homosexualities and World Religions* (New York: Palgrave Macmillan, 2010), pp. 136

that are predominantly Muslim—“gender categories are not dualistic and transgressive gender behavior or gender pluralism has many centuries of history with often pre-Islamic origins related to shamanistic practices.”<sup>303</sup>

Nevertheless, Western colonialism and its pathologizing of same-sex attraction at the turn of the 20<sup>th</sup> century materially “overruled a tradition of social tolerance vis-à-vis homosexual practices” in many Islamic societies such as the Ottoman Empire.<sup>304</sup> To acknowledge this historical point is not to overlook the numerous Quranic passages that, directly or otherwise, condemn sodomy and same-sex attraction. Indeed, one of the most homophobic statements in Singapore’s recent public discourse regarding greater societal tolerance for gays and lesbians came from a Malay Studies academic at the National University of Singapore, Dr. Syed Muhd Khairudin Aljunied, who likened lesbianism to “cancers” and “diseases.”<sup>305</sup>

In the midst of the furor sparked by Dr. Aljunied’s controversial statements, the university’s Fellowship of Muslim Students Association issued a statement supporting him, and expressed concern over what the Association deemed, rather inventively, as “the Neo-Sodom-Gomorra community in Singapore and their efforts to mainstream and legalize LGBT values and lifestyles.”<sup>306</sup> The Singapore Islamic Scholars and Religious Teachers Association also

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<sup>303</sup> Ibid., pp. 146

<sup>304</sup> Ibid., pp. 145

<sup>305</sup> Pearl Lee, “NUS prof’s comments on lesbians spark protests from past and present students,” *Straits Times*, February 28, 2014, accessed March 26, 2014

<sup>306</sup> See scanned copy of FMSA’s official statement available at <https://www.facebook.com/photo.php?fbid=594992057249562&set=pcb.594992950582806&type=1&theater>

voiced its displeasure at the HPB for presenting what it considered to be unrepresentatively homosexuality-affirming public health information on its website.<sup>307</sup>

In the 2007 debate on Singapore's Penal Code, two Malay/Muslim MPs who spoke against the repeal of Section 377A—Mr. Zaqy Mohamad and Dr. Muhammad Faishal Ibrahim—cited strongly homosexuality-denying sentiments from their Malay constituents.<sup>308</sup> Additionally, of the three PAP MPs who spoke for decriminalization of same-sex acts between consensual adults in private, none was Malay/Muslim; one was Indian and two were Chinese of whom one was a Christian and the other, non-religious.<sup>309</sup>

In closing, it is perhaps appropriate to underscore that the so-called *Kulturkampf*<sup>310</sup> over gay and lesbian rights appears to be largely over in the West; a generational shift in public opinion has decidedly come of age.<sup>311</sup> More generally, recent developments in gay and lesbian rights in the West support the sanguine claim that there is certain inexorable logic behind how human rights begin and expand within societies:

*“Mainstream groups, that is, males of the dominant ethnic group, are likely to gain increased rights as arbitrary state power collapses. Later, other forms of civil and political rights emerged, such as freedom of the press and the right to vote. While mainstream groups are securing basic rights, nonmainstream groups tend to be ignored. In due course, as the government abandons military and police methods for dealing with minorities, the status of minorities improves. As a government develops a welfare state, women's rights improve. After*

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<sup>307</sup> “Islamic association calls HPB's FAQ insensitive to prevailing view on homosexuality,” *Today*, February 15, 2014, accessed arch 26, 2014, <http://www.todayonline.com/singapore/islamic-association-calls-hpbs-faq-insensitive-prevailing-view-homosexuality>

<sup>308</sup> The full text of the relevant Parliamentary proceedings is available at [http://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00002031-WA&currentPubID=00004748-WA&topicKey=00004748-WA.00002031-WA\\_1%2B%2B](http://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00002031-WA&currentPubID=00004748-WA&topicKey=00004748-WA.00002031-WA_1%2B%2B)

<sup>309</sup> Information from the Singapore Parliament website at <http://www.parliament.gov.sg/list-of-current-mps>

<sup>310</sup> Republican Patrick Buchanan famously said at the 1992 Republican National Convention that gay and lesbian activism, among other developments in American society, equated to the waging of a kind of “cultural war.” The transcript of Buchanan's speech is available at <http://voicesofdemocracy.umd.edu/buchanan-culture-war-speech-speech-text/>

<sup>311</sup> The PewResearch Religion & Public Life Project data on changing public attitudes on same-sex marriage is available at <http://features.pewforum.org/same-sex-marriage-attitudes/slide2.php>

*minorities and women enjoy victories in their struggle for equal civil and political rights, gays and lesbians begin to enjoy success in achieving equal rights.*”<sup>312</sup>

While the above pattern is most visible in Taiwan, as two of the freest economies in the world, Hong Kong and Singapore are anything but immune from the global winds of change regarding gay and lesbian rights. As in everywhere else, progress that upsets the status quo will inevitably unleash conservative forces that will gleefully ascribe “to the least oscillations of sexuality... an imaginary dynasty of evils.” In addition, from the foregoing discussion, it is arguably the case that the drama regarding gay and lesbian rights is, paradoxically, not merely about whom one can legally bed or marry; the politics of sexual liberation have and will always implicate larger structures of power-relations. It is only by putting these structures—specifically their rhetoric, logics, ironies, and pathologies—on trial can one properly make sense of the politics of gay and lesbian rights in Hong Kong, Singapore, and Taiwan.

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<sup>312</sup> Michael Haas, “Quantitative Dimensions,” in *International Human Rights: A Comprehensive Introduction* (New York: Routledge, 2008), pp. 186

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