

Challenging the Constitutionality of Section 377A in Singapore: Towards a More Humanist Treatment of Homosexuality in Singapore Law

Baey Shi Chen, National University of Singapore

Abstract

This paper examines the tensions between the law, politics and public opinion in Singapore via a landmark 2014 ruling that upheld the constitutionality of Section 377A of the Penal Code criminalising sex between men. It argues that the ruling dealt a serious blow to the human rights project for minority groups in Singapore due to complex socio-political biases towards homosexuals and a narrow legal logic that is overly deferential to the legislature. This “tyranny of the majority” not only reinforces longstanding prejudices against the Lesbian, Gay, Bisexual and Transgender (LGBT) community and deprives them of their rights, but potentially results in the graver consequence of compromising the integrity of the Singapore Constitution and the country’s democratic ideals. The paper also illustrates how the court of public opinion, split between conservative and liberal pro-humanist camps, not only keeps this issue at an impasse through opposing representations of homosexuality but also reflects an important ideological juncture that Singapore currently finds itself at as it navigates the path to modernisation and liberalisation. It urges a humanistic re-imagination of the law where the formulation and instrumentalisation of laws are constantly renegotiated and reworked to become more responsive as historical contexts and social relations between various parties beyond the State and its apparatus evolve. It also ventures that decriminalising homosexuality presents Singapore with the opportunity to define a new Asian post-colonial modernity and that the concept of “rights capital” can introduce greater equity and dignity within society.

Keywords: decolonisation, decriminalising, formulation of law, homosexuality, human rights, liberalisation, rights capital

Introduction

Homosexuality is a fraught and divisive issue in Singapore, and Section 377A¹ of the Penal Code (1871) lies at the heart of this rift. With roots that can be traced back to Section 377 of the Indian Penal Code (1860), it is a statute left over from Singapore's colonial history. Although it has rarely been enforced since its inception in 1938, it criminalises sex between men even as other countries such as Hong Kong and Australia have adopted more progressive attitudes towards homosexuality by legalising it or granting more rights to Lesbian, Gay, Bisexual and Transgender (LGBT) individuals. Given that Singaporeans are increasingly exposed to global trends and liberal thought through higher levels of education and easy access to the Internet, it is counter-intuitive to many left-leaning citizens that basic rights continue to be denied to the LGBT community, with Section 377A the symbolic manifestation of this dissonance. This is exacerbated by other laws and regulations constraining the options that same-sex couples can explore in Singapore, with a ban on same-sex marriage and restrictions governing the ownership of public property and assisted reproduction (Rajeswari, 2017).

While attempts have been made over the years to challenge the constitutionality of Section 377A, they have all been dismissed. The first legal bid was made by Tan Eng Hong, who was charged for having oral sex with a man in a public toilet in 2010. Two years later, gay couple Lim Meng Suang and Kenneth Chee Mun-Leon pursued a similar challenge. Both cases were heard separately and dismissed by the High Court, which led the appellants to bring their appeals to the Apex Court in July 2014 (Ng, 2014). However, the Supreme Court upheld the legitimacy of Section 377A in the Singapore Constitution, ruling that the contested Articles 9 and 12, which state respectively that “no person shall be deprived of his life or personal liberty save in accordance with law and article” and “all persons are equal before the law and entitled to the equal protection of the law” (Constitution of the Republic of Singapore, 1965), were not in violation.

The following is an analysis of the above appeal, *Lim Meng Suang and Another v Attorney-General and Another Appeal and Another Matter*, and will critique the Supreme Court ruling based on its problematic justifications of the statute. It will examine the tensions between the law, politics and public opinion in Singapore via this case and the possibility of minority rights being granted in the long run based on this constellation of forces. It argues that the landmark 2014 ruling dealt a serious blow to the human rights project for minority groups in Singapore and that complex socio-political biases towards homosexuals and a narrow legal logic that is overly deferential to the legislature led to this outcome. Not only does the ruling reinforce longstanding prejudices against the LGBT community, but the denial of minority rights can lead to the graver consequence of compromising the integrity of the Singapore Constitution. It also illustrates how the court of public opinion, split between conservative and liberal pro-humanist camps, not only keeps this issue at an impasse but also reflects an important ideological juncture where Singapore currently finds itself as it navigates the path to modernisation and liberalisation.

¹ Penal Code. (1871). Section 377A (“Outrages on Decency”) states that “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.”

An Issue of Words: Problems with the Ruling

At first glance, the appeal appeared incontrovertible. After all, both Articles 9 and 12 proclaim that all are entitled to the right to life, individual freedom and equal protection by the law. These are human rights congruent with those that have been enshrined and widely-ratified in international documents such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1976a) and the International Covenant on Economic, Social and Cultural Rights (1976b). Nonetheless, the Supreme Court ruling revealed a consistent adherence to narrow legal parameters and a reluctance to challenge the human rights violations that result from upholding Section 377A.

Firstly, the judges' assertions that "only legal arguments are relevant" (*Lim Meng Suang and Another v Attorney-General*, 2014, p. 32) and that the courts are "distinct and separate from the legislature" (*Lim Meng Suang and Another v Attorney-General*, 2014, p. 28) reflect the refusal to delve into the socio-political and ethical implications of the ruling. This is problematic because it reveals the judiciary's deferential approach to the legislature, which Jack Tsen-Ta Lee (2014) argues has less to do with bias than "a judicial attitude of giving political branches much leeway, assuming that action taken by the executive or legislation passed by Parliament is constitutional unless such acts are completely absurd or arbitrary" (p. 1). Even so, this makes little sense given that the interpretation of human rights is inherently political and that the legislature needs to be constantly challenged to ensure rights and dignity are granted to all as times change. Moreover, as rulings are broad expressions of constitutional law, the way that personal liberty and equality are interpreted will send strong signals about what the Constitution means and how it is applied. Thus, such limitations can compromise the dignity and liberty of the LGBT community.

Additionally, the judges' pursuit of this reasoning reflects the iron grip of the ruling People's Action Party (PAP), which has been in power since Singapore attained independence in 1965 and has a vested interest in retaining its dominance through the forceful enforcement of law. Echoing Antonio Gramsci's theory of cultural hegemony, the powerful manufacture 'spontaneous' mass 'consent' through cultural and ideological means that frame their worldview and the socio-economic structures that embody it as just, legitimate and universally beneficial even though these structures may only benefit themselves (Hoare & Nowell-Smith, 1971). In this case, the suppression of homosexuals via the PAP's use of the rule of law is legitimised by the consent of a conservative but vocal bourgeois majority concerned with the apparent threat that homosexuality poses to religious and family values.

Tied closely to the notion of preserving traditional values and cultural roots, the ideal of the nuclear family lies at the core of the critique of homosexuality. It also arose from Singapore's economic realities as a country with no natural resources and a need to assert and preserve its competitive edge. Post-Independence, citizens were encouraged to restrict their family size in order to pursue the goal of rapid economic development, and laws such as the Abortion Act of 1969 sanctioned abortion on non-medical grounds with approval by the Singapore Family Planning and Population Board (Smith, 1980). Such intervention led to Singaporeans idealising the nuclear family and growing accustomed to the State's paternalistic approach to family life. Stella Quah (1998) explains: "Singaporeans are inclined towards social discipline...[and] are likely to have a higher level of tolerance for government intervention in family matters" (p. 118). She also elaborates that, "in the face of serious dangers to the community's well-being, the collective consensus may determine that the common good takes precedence over individual preferences" (p. 121).

Arguably, this has cultivated a defensive mindset and the readiness to make strong appeals for government protection whenever majority values appear to be threatened by the LGBT community. Complicated by their persistent misrecognition and reification (Fraser, 2000) of homosexuals as deviant second-class citizens, the conservative majority's virulent devaluation of the LGBT community through the media and religious institutions includes defending the sanctity of family values and condemning pro-LGBT movements. One example is the "We. Wear. White" campaign initiated by Christian pastor Lawrence Khong to champion the "Natural Family" (LoveSingapore, 2016) and push back on the annual practice of donning pink clothing at the Pink Dot rally. Others include social media drives by anti-LGBT groups to boycott pro-LGBT brands (Teng, 2017). Vehemently opposed to granting same-sex couples the same legal parenting rights for fear that they would pass themselves off as single parents, they warn that the government will "lose the support of the majority of Singaporeans who are conservative" (u/[deleted], 2017) if it gives way to the LGBT community. However, the most overt expression of hostility towards the LGBT community came in the form of a FaceBook status update written by Bryan Lim: "I am a Singaporean citizen. I am a N[atational] S[ervice] man. I am a father. And I swore to protect my nation. Give me the opportunity to open fire. I would like to see these £@€\$^*s die for their causes" (Zannia, 2016). Although Lim subsequently apologised for the comment and was fined for making it, his behaviour was symptomatic of the resistance shown towards the LGBT community in Singapore.

If representation is the production of meaning through language, which uses signs to reference objects, people and events in a way that might only be partially truthful if they are presented in the media from a particular ideological perspective (Hall et al, 2013), then these negative representations work by reinforcing the heteronormative identity of the conservative majority by fuelling the court of public opinion with the apparent deviance of homosexuality. The local LGBT community has fought back through events like Pink Dot, where crowds gather at Hong Lim Park annually to openly advocate and affirm the freedom to love. For the LGBT community, Pink Dot symbolises the need for shame to "be heard, to be borne by another, to find a witness [as it] seeks to be allowed the very conditions denied it in its rupture—recognition by another" (Biddle, 2010, p. 113). The organisers of Pink Dot have also implemented community outreach initiatives (Pink Dot SG, 2009b) through their website and set up a YouTube channel to raise awareness about LGBT issues in Singapore (Pink Dot SG, 2009a). In 2013, they roped in celebrated local singer and LGBT supporter Dick Lee, to challenge the ideal of the nuclear family by producing a music video constructed with vignettes about LGBT individuals. More significantly, it features Lee singing the beloved national song he composed, "Home" (Pink Dot SG, 2013), but the music video failed to make ripples despite its compelling message of inclusivity and unity. Instead, the court of public opinion and the legislature's continued reluctance to grant more rights to the homosexuals have proven more successful in dominating public discourse about the LGBT community. Following Prime Minister Lee Hsien Loong's conservative stance in 2007 when he maintained "...there are restraints and we do not approve of [homosexuals] actively promoting their lifestyles to others or setting the tone for mainstream society" ("Full parliamentary speech," 2007), the LGBT position has been further undermined when copies of *And Tango Makes Three*, a children's book that features a male penguin couple, were relocated to the adults book section in the national library, following complaints that it contained homosexual themes (Tan, 2014). More recently, pro-LGBT companies such as FaceBook, Apple and Visa were prohibited from sponsoring Pink Dot as this was construed as interference (Yuen, 2016).

All these confirm the "tyranny of the majority" that the appellants asserted, citing Section 377A as a violation of the minority's constitutional rights and the right to equality under Article 12(1)

(*Lim Meng Suang and Another v Attorney-General*, 2014, p. 83). It is also plausible that these biased perceptions have resulted in the judiciary's rigid adherence to narrow definitions of the Articles. If so, this puts the impartiality of the judiciary in doubt and also calls the PAP's right to rule into question. As Andrew Altman and Christopher Heath Wellman argue, "...rights that are connected in the appropriate way to a decent human life are the rights that form the measure of political legitimacy" (cited in Zoana, 2011, p. 198). David Luban also emphasises the importance of taking a humanist approach in exercising law, asserting that "hardly anything lawyers might do assaults human dignity more drastically than providing legal cover for torture and degradation" (cited in Zoana, 2011, p. 197). By suppressing the appellants' narratives and burying them under the impersonal needs of the legal system, the law has failed in its fundamental duty to preserve human dignity. It is thus unsatisfactory that the judges claim that "the courts had no mandate whatsoever to create or amend laws in a manner which permitted recourse to extra-legal factors as well as considerations and could not amend or modify statutes based on its own personal preference or fiat" (*Lim Meng Suang and Another v Attorney-General*, 2014, p. 28), effectively reducing its function to an executive extension of the legislature.

Next, the judges presumed the constitutionality of Section 377A by employing the "reasonable classification" test. Under the test, a differentiating statute is constitutional if the classification is based on an "intelligible differentia", which means a distinguishing feature that is discernible, if those distinguishing features bear a rational relationship to the objective of the law (Low, 2019). While they maintained that "the classification prescribed by Section 377A was based on an intelligible differentia because there was little difficulty in determining who fell within and without the provision" (*Lim Meng Suang and Another v Attorney-General*, 2014, p. 28), their narrow interpretation of the Articles reflects the refusal to question the clear limitations of the statute.

The ruling rests primarily on two key contentions made in relation to the Articles in question. Firstly, while Lim and Chee's defense lawyer Deborah Barker argued that Article 9 should include "a limited right to privacy and personal autonomy allowing a person to enjoy and express affection and love towards another human being" (*Lim Meng Suang and Another v Attorney-General*, 2014, p. 43), the judges stated that the statute does not violate the right to life and liberty – as stipulated in Article 9 – "as this referred only to the personal liberty of a person from unlawful incarceration or detention" (*Lim Meng Suang and Another v Attorney-General*, 2014, p. 43) and not the right of privacy and personal autonomy. They further asserted that the framers of Article 21 [of] the Indian Constitution – upon which Article 9 of the Singapore Constitution was based – only sought as its particular focus to protect India's citizenry against unlawful detention and "consciously rejected the wider formulation of 'without due process of law' in the Fifth and Fourteenth Amendments to the US Constitution, and did not intend to impute an expansive meaning into the phrase 'life or personal liberty'" (*Lim Meng Suang and Another v Attorney-General*, 2014, p. 27). In other words, both the Indian and Singaporean Constitutions are severely limited in ensuring basic personal freedoms. Secondly, the judges also maintained that the guarantee of equal protection under the law as enshrined in Article 12(2) touched only on issues relating to religion, race, place of birth and descent, and not gender, sex and sexual orientation, thereby rendering the arguments that homosexuals are included in its provisions void. In justifying this, the judges compared Article 12(2) with constitutional provisions by other countries such as Malaysia, India, Canada and South Africa that "expressly prohibit discrimination on the grounds of 'sex', 'sexual orientation' or 'gender'" (*Lim Meng Suang and Another v Attorney-General*, 2014, p. 62) in order to show that the protection of any specific attribute is only valid if it is already included

in the respective statutes of each country, whereas provisions for LGBT individuals are not included in the Singapore Constitution and therefore it cannot be utilised to defend LGBT rights.

Furthermore, while Barker pointed out that Section 377A was intended to suppress the specific “problem” of male prostitution, not penetrative sex, the judges declared otherwise, claiming that “...the available objective evidence demonstrated that Section 377A was intended to be of general application and was not intended to be merely confined only or mainly to the specific problem of male prostitution” (*Lim Meng Suang and Another v Attorney-General*, 2014, p. 28). This pronouncement of male homosexual sex as indecent and punishable shames and silences the homosexual subject, who is “reduced to an object only for the other’s jurisdiction. Sentenced without trial, shame judges, ridicules, terrorises whatever pretense we might hold of being autonomous, successful, self-determining subjects” (Biddle, 2010, p. 113). Even more damaging is how homosexuals are compelled to invalidate their fundamental personhood, and in this case, their very bodies, as shame is “experienced less as about what the self has done but what the self *is*” (Biddle, 2010, p. 115). Thus, in upholding 377A, shame not only works alongside the law as a torturous disciplining practice that forcibly keeps the LGBT community subordinate, it is simultaneously legitimised and institutionalised.

The ruling also reduced Article 12 to a matter of contextual origin, with the judges maintaining that it was formulated due to Singapore’s “multi-racial, multi-cultural and multi-religious composition” to form an “impregnable shield against racial communalism and religious bigotry” (*Lim Meng Suang and Another v Attorney-General*, 2014, p. 59). Certainly, this is understandable given Singapore’s diverse multi-cultural society, where the traumatic memory of the 1964 race riots was pivotal in formulating policies centred on multi-racialism. Nonetheless, to base the ruling on what the Article does not provide for – specifically one’s sexual orientation does not recognise that it is lacking in the provision of equal rights and reflects the argument – made by Ben Golder (1998) that laws are inherently incomplete. Taking his cue from Michel Foucault’s work and his position that “power and its application [are] subjected to constant change and alteration” (p. 751), Golder argues that the formulation and instrumentalisation of laws need to be constantly renegotiated to become more responsive as historical contexts and the social relations between the various parties beyond the State and its apparatus evolve, lest it falls into a “phase of juridical regression” characterised by “the growing importance assumed by the action of the norm, at the expense of the juridical system of the law” (p. 759). Nonetheless, Golder’s re-imagining of law is precisely what was lacking in this instance, where the interpretation of legal language as positivistic and determinate and a reluctance to explore the extra-legal implications of the case invalidated the law’s self-rejuvenating capacity.

Furthermore, the judges’ contention that homosexuality is not a natural and immutable attribute (*Lim Meng Suang and Another v Attorney-General*, 2014, p. 38) added a layer of complexity that effectively denied the fundamental humanity of the LGBT community. Indeed, while Tan’s defense lawyer, M. Ravi, argued that the statute was “vague, arbitrary and absurd” in the way it criminalised a minority of citizens based on an aspect of their identity that was “either unchangeable or suppressible only at a great personal cost” (*Lim Meng Suang and Another v Attorney-General*, 2014, p. 45), the judges’ defense ultimately sidestepped the egregious problem of exclusion. Instead, they contended that “Section 377A prohibited, at its core, sexual acts between males. Section 377A was not absurd: in so far as the supposed immutability of a person’s sexual orientation was concerned, the conflicting scientific views on this issue suggested that there was, at present, no definitive conclusion” (*Lim Meng Suang and Another*

v Attorney-General, 2014, p. 27). This line of reasoning renders the LGBT community invisible and dehumanised in Singapore's society.

The lack of humanistic consideration in the ruling is clear. Indeed, until one is regarded as human in the eyes of the law, one is not entitled to legal protection. As John Erni (2019) asserts, “no human rights theory can afford to ignore the question of ‘the human,’ and the constellation of discursive constructions around it, including that of identity, subjectivity, the legal personality, individuality versus collectivity, multiplicity, ‘the inhuman’” (pp. 23–24). Yet, these different constructions were disregarded in this case, the humans in question judged in a manner completely divorced from the socio-political contexts inextricably associated with these constructions. In doing so, the ruling ignores the increasing global concern for safeguarding LGBT rights, reflected in the creation and ratification of international declarations such as The Yogyakarta Principles (2007) and the United Nations Resolution on Human Rights, Sexual Orientation, and Gender Identity (2014), which were drafted to protect the rights of the LGBT community. The former notably prioritises the “universal enjoyment of human rights,” “the rights to equality and non-discrimination,” “the right to recognition before the law” and “the right to privacy” among its first six declarations (pp. 10–14). The latter, fashioned in similar language to the Universal Declaration of Human Rights (1948), “express[es] grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity,” and “welcome[s] positive developments at the international, regional and national levels in the fight against violence and discrimination based on sexual orientation and gender identity” (p. 1). Of course, Singapore is not a party to either of these resolutions, but that only reveals that, deliberately or otherwise, it is out of step with international developments in relation to LGBT issues. This is somewhat ironic, given that anti-discrimination based on religion, race, descent or place of birth is enshrined in Article 12 – the very statute that is in question in this particular case – , is a cornerstone of the Singapore Constitution and a point of pride in a national narrative that promotes high inclusivity and harmony. Instead, it reinforces the vested interest the ruling party has in prioritising domestic stability and preserving its political power rather than seeking full alignment with international sentiments that have a strong humanistic rationale.

Repercussions Beyond the Case

Aside from the ruling's problematic reasoning, larger concerns such as the integrity of the Constitution of Singapore and the political legitimacy of the PAP are at stake. Leaving aside the debatable violations of the Constitution in this case, the fact that Section 377A has not been actively enforced (Rakin, 2018) merely uncovers more uncomfortable questions about the legislature and the much-vaunted rule of law in Singapore.

The ruling also reveals a hesitance to relinquish an archaic colonial statute that has been abolished in many countries and carries deeper implications about Singapore's reluctance to divest itself of colonial ties. According to Rosemary J. Coombe (1998), “law develops...as constitutive of civilisation and thus of Culture as the preserve of European nation-states” (p. 23). This notion of development has been retained by Singapore, where the governance is based on the Westminster Model and the legal framework derived from the English system (Ministry of Law, n.d.). However, given Singapore's early attempts to break away from colonial rule after World War II and the government's progressive and prescient move to ensure equality amongst all religious and racial groups post-Independence, the reluctance to abolish or even extensively question a Western colonial relic leaves Singapore in a nebulous relationship with

its historical legacy instead of having it lead the charge in defining a new Asian, post-colonial modernity.

It is also worth noting that despite anxieties about the West and its apparent influence on conservative “Asian values” in Singapore, the ideal of the nuclear family is a colonial concept, a site that preserves and institutionalises Western patriarchal notions of gender and kinship relations while signifying modernity, civilisation and progress within Eurocentric knowledge construction (Blaut, 1993). Indeed, with the rise of various family compositions that include single-person, childless, single-parent, matrilineal and blended households (Lee, 2018), it is time to reconsider the relevance of the nuclear family.

Furthermore, adopting decolonisation as a progressive step in Singapore is underscored by Coombe’s argument that the law is the “ideal site and resource for counterhegemonic struggles just as it is fundamental to the hegemonic process” (1998, p. 35). Indeed, by seriously questioning the validity of inherited colonial statutes and structures while also taking into consideration the current social climate and evolving cultural values, Coombe argues that “law provides means and forums both for legitimating and contesting dominant meanings and the social hierarchies they support” (1998, p. 35). Most importantly, it allows for a more inclusive legal system that ensures fairness and dignity for all.

Conclusion: Towards a More Humanistic Approach

The tension over Section 377A continues today, and debate over its repeal was re-ignited by India’s decriminalisation of homosexuality, reflecting a move towards liberalisation and decolonisation. In September 2018, a five-judge bench decriminalised homosexuality, ruling that the 160-year-old law banning sex “against the order of nature” under Section 377 (Safi, 2018) in the Indian penal code amounted to discrimination on the basis of sexual orientation and was unconstitutional. In words that closely resembled the defense mounted by Barker and Ravi, Indian Chief Justice Dipak Misra declared the statute to be “irrational, indefensible and manifestly arbitrary” (Safi, 2018), and defense attorney Anand Grover added that “the future is for everybody to be included, to realise their fundamental rights of equality, privacy, dignity et cetera” (Safi, 2018).

This watershed development was all the more remarkable given that India’s bid to legalise homosexuality was arduous. Cases filed in 1994 and 2001 to legalise homosexuality in India bounced back and forth for years between courts reluctant to rule on the issue before homosexuality was finally decriminalised. That a society and fellow ex-colony that was so rigidly opposed to homosexuality was able to arrive at this point led to rival online petitions being set up in Singapore to lobby for the retention or repealing of the statute, and familiar arguments pitting personal freedom against heteronormative family and religious values resurfaced. While the more liberal “Ready4Repeal” camp urged for tolerance towards the LGBT community by highlighting that it is time for a more “inclusive Singapore” (Ready4Repeal, 2018) on their Facebook page, a petition posted on Change.org called “Please Keep Penal Code 377A in Singapore” reiterated that Singapore is “a conservative society with traditional family values” (P., 2018). Catholic Archbishop William Goh also weighed in, stating that he was in favour of decriminalising homosexuality only if no further demands are made “to legalise same-sex unions, same-sex adoption of babies, surrogacy, or to criminalise those who do not support the homosexual lifestyle” (Tan, 2018), which nonetheless implies that homosexuality is shameful and subordinate. While proponents of repeal were hopeful that India’s similar

trajectory to Singapore would provide momentum for the repeal, the discussions have since died down, reflecting that the prospect of repealing Section 377A remains slim.

Since protracted debates in the public sphere and legal appeals have gone nowhere and the judiciary remains unwilling to question the legislature, perhaps the solution lies in presenting the decriminalising of homosexuality as a pragmatic option for the country's continued development. According to Erni (2009), the fact that neo-liberalism tends to supersede the impulse towards humanitarian endeavours across the world calls for the re-imagination of international politics via the application of market rationality to humanitarian politics and social action. By using human rights as a tool to measure political legitimacy, states focus on accruing human rights capital, or "rights assets" (p. 425) as a way to maintain international standing, equal friendly relations among states as well as to advance national security, political interests and sovereign power. Erni argues that in a decentred world where absolute sovereignty has increasingly given way to networked sovereignty, "the operational logic of the new sovereignty is derived from 'the active role of the [new sovereignty] regime in modifying preferences, generating new options, persuading the parties to move toward increasing compliance with regime norms, and guiding the evolution of the normative structure in the direction of the overall objectives of the regime'" (p. 422). Therefore, by presenting their human rights concerns as if they were properties that can be traded among partners in the network, Erni asserts that "a new human rights imaginary whereby economic capital and 'rights capital' forms a trade nexus forms, and that what mediates this trading are various practices of collective learning, technical knowledge transfer and rule-making" (p. 426). In other words, the decision to comply with human rights regulations, how much effort goes into the compliance, and what level of human rights "output" to produce are forms of state behaviour that have bearing on their relative sovereign power. It is hoped that "even though human rights abuses cannot be totally eliminated, through inter-state negotiations they will someday be reduced to what might be deemed a 'morally efficient' level" (p. 427).

This could be a compelling proposition for Singapore, where the perpetual navigation of global transformations to stay relevant and survive is a perennial preoccupation. Thus far, Singapore is integrated into this system of networked sovereignty by maintaining geopolitical and economic alliances with various countries such as the United States, China, Japan, India and Australia via key partnerships to advance common interests and mutual benefits in its foreign policy strategies. Currently, Singapore has 22 Free Trade Agreements that have been implemented with 33 trading partners, and it signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership with 10 other countries in 2018 (Siau, 2018). It also shares its developmental and technical expertise with other countries in return for political and economic clout on the international stage. One prominent example is the exporting of Singapore's urban planning strategy to cities such as Kigali and Tianjin in a combination of public sector diplomacy with private sector consultancy, a catalytic process of state capitalism that does not only create economic space for Singapore's public agencies but also brings a host of benefits such as special investment conditions, political endorsements from local governments and a host of operational benefits while also benefitting foreign firms (Chye, 2018).

However, with the paradigmatic shift towards an economic re-articulation of human rights globally, the need to secure Singapore's competitive edge in the international arena could pave the way to a more humanistic approach in law and governance at the same time. Indeed, while Singapore has not budged from its position on Section 377A and issues relating to LGBT, it has been an active player in the international climate change negotiations. It ratified the United

Nations Framework Convention on Climate Change to address climate change alongside other governments in light of different national circumstances in 1997 and acceded to the Kyoto Protocol in 2006. Singapore further ratified the Doha Amendment to the Kyoto Protocol in 2014 and continues to work with other parties to advance the international climate change agenda (National Climate Change Secretariat, n.d.). Singapore has also signed onto three international conventions – the International Convention on Elimination of All Forms of Racial Discrimination, the United Nations Trafficking In Persons Protocol, and the Convention on the Rights of Persons with Disabilities – in recent years (Yong, 2015), indicating the country's desire to be in alignment with global values and of “brokering” an improved international standing through various human rights and humanitarian projects. Of course, these protocols relate to issues with relatively low stakes locally, while Singapore's heavy restrictions on freedom of expression and use of capital punishment persist. For instance, the prosecution of civil rights activist Jolovan Wham, who organised an event that featured speakers such as Hong Kong pro-democracy activist Joshua Wong in 2017 without a permit, amounted to a breach under the Public Order Act. The treatment of Wham attracted the attention of local as well as regional and international groups, including European Union parliamentarians, Malaysian civil society organisations, Human Rights Watch and Amnesty International, who deemed Wham's charges “disproportionate and unjust” (Wong, 2019). Nevertheless, the Singapore government was uncompromising in its position to strongly enforce what it viewed as a threat to public order and harmony. Moreover, it has also consistently maintained that stability, security and social harmony are key prerequisites for economic growth, which enables it to care for and protect Singaporeans (Yong, 2015). However, with greater international pressure to take action on pressing global issues like climate change as well as a more progressive populace vocal about change, there is a growing possibility that Singapore will eventually adopt a more humanistic approach in law and governance as it is politically logical and expedient.

Furthermore, there is a need to take an active approach towards decolonisation by vigorously questioning and re-examining the institutions that have been inherited from the West, which include the government, law and family. However, even as these decolonial strategies are enacted, care needs to be taken in the approach to human rights lest one falls back on old models of Western universalism again. Here, the argument that Boaventura de Sousa Santos (2007) makes for establishing ur-rights is helpful in considering the way forward to a more progressive politics of human rights, where a post-imperial re-construction of human rights centred on undoing the massive effects of constitutive suppression supports the emancipatory potential of human rights politics in the double context of competing globalisations as well as cultural fragmentation and identity politics. Defined by de Sousa Santos as rights that were suppressed by the Western colonialist and capitalist modernity “in order to build, upon their ruins, the monumental cathedral of fundamental human rights” (p. 29), they are rights that exist only in the process of being negated and as negotiations,” (p. 29). He argues that “to vindicate them is to open the time-space for a post-colonial and post-imperial conception of human rights” (p. 29). In this case, disentangling oneself from a deeply-entrenched colonial legacy and mindset allows for the examination of notions of family beyond imposed stereotypes and for an understanding of what it means to truly exhibit tolerance, inclusivity, and common decency to those who share a common space despite having vastly different worldviews and values.

Ultimately, a legitimate state takes measures to protect its citizens' human rights, and this starts with re-configuring the law. This entails an accurate and unambivalent recognition of LGBT individuals' inherent humanity and their legal status in society, and only with this fundamental

understanding in place will Singapore be on the road to becoming a modern State that honours all.

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Corresponding author: Baey Shi Chen
Contact email: shichen.baey@u.nus.edu