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Challenging antisodomy laws in Singapore and the former British colonies of ASEAN

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ABSTRACT

In 2007, Section 377 of Singapore's Penal Code, a colonial-era law that criminalized sexual activities "against the order of nature," was removed by Parliament. Section 377A, however, the law specifically criminalizing gay male sex, was kept on the books. Three years later, the first judicial challenge emerged, and after a change in standing requirements, a second challenge followed, both to be ultimately dismissed in 2013. By end of 2018, two new judicial challenges emerged, and by September 2019, another lawsuit was mounted—all three to be heard in November 2019. Despite having survived several constitutional challenges, could Singapore's lawsuits to strike down Section 377A provide guidance or inspiration to similar attempts to repeal 377 or 377A in ASEAN? This article begins by examining the roots behind 377 and 377A and the attempts to repeal these laws in Singapore. Next, it explores the legal situation in the Southeast Asian nations with similar laws due to their common British colonial histories (Malaysia, Brunei, Myanmar) and discusses the position ASEAN has taken on anti-LGBT (lesbian, gay, bisexual, and transgender) laws in these nations. The article concludes with a discussion on how Singapore's experience, as well as ASEAN human rights mechanisms, can potentially be used to expand and protect the rights of LGBT people in Southeast Asia.

Although Singapore participates in the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights (AICHR) and has agreed to adopt the ASEAN Human Rights Declaration (AHRD), these mechanisms have not helped in attempts to strike down Section 377A of the Singaporean Penal Code, or the law that criminalizes male homosexual acts in Singapore. Nor did ASEAN take a position in 2007 when debates regarding Section 377, the colonial era law that criminalized sexual activities "against the order of nature" took place. In 2013, one year after the promulgation of the AHRD, the first serious attempt to challenge the constitutionality of Section 377A was dismissed by Singapore's APEX court, with the court completely ignoring the AHRD in its decision. While this was disappointing, in tandem with the legal challenge, lesbian, gay, bisexual, and transgender (LGBT) activism has grown in prominence, while Singapore's annual "Pink Dot" (akin to a gay pride gathering) continues to surge in popularity, becoming one of the largest gay gatherings in Asia.[1] With mounting pressures domestically, and drawing inspiration from India's progress on LGBT rights, three new cases have emerged in Singapore to challenge Section 377A yet again. Could the legal challenges in Singapore provide guidance to other nations in ASEAN that are also dealing with similar laws that criminalize

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LGBT people? Furthermore, despite the fact that ASEAN's human rights mechanisms had little influence on the recent 377A challenges, could ASEAN play a larger role in expanding LGBT rights in Singapore and the region?

This article explores these questions by first outlining the history of antisodomy laws in Singapore, attempts to remove such laws, and finally how ASEAN has or has not played a role in these challenges. Next, it reviews the antisodomy laws of Malaysia, Brunei, and Myanmar—countries with similar colonial legal histories—to trace the parallel development of the same laws in different contexts, and to highlight the role ASEAN has played in shaping this development. Finally, the article concludes that while these nations share similar legal histories that have grown in different directions due to specific cultural, historical, and political reasons, the similar penal codes, common law history, and shared ASEAN goals allow the Singapore challenges to have a greater potential for impact upon the region than similar challenges found in other parts of the world. Also, while ASEAN played little to no role in the Singapore legal challenges themselves, ASEAN has played an important role in shaping and framing the rights discourse in the region in the past and has the potential to make a positive impact on antisodomy law challenges in the future. Although slow, informal pressures—such as regional nongovernmental organization (NGO) activism, country-to-country and diplomatic interactions, and a solidifying ASEAN identity—should all influence and modify formal ASEAN mechanisms to hold nations across the region accountable for ongoing human rights violations such as the ongoing criminalization of LGBT identities.

British antisodomy laws and Singaporean attempts to remove them

Although the United Kingdom resisted the global movement to codify penal legislation, this did not keep it from enacting the incredibly influential Indian Penal Code of 1860 (IPC), which introduced Section 377, entitled "Unnatural Offences" (see Hooker 1988: 581; Indian Penal Code 1860: §377). Section 377 was modeled on the English definition of buggery and stated that "whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life,[2] or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine" (Indian Penal Code 1860: §377; see Buggery Act 1533). The difference between the Buggery Act and the IPC was that the latter capped the punishment for "intercourse against the order of nature" to 10 years and a fine, while conviction under the former could result in a death sentence (Indian Penal Code 1860: §377; Buggery Act 1533). Section 377 eventually made its way to Singapore in 1872 as part of the Straits Settlement Penal Code (1871: Ord. 4 of 1871), which was modeled after the IPC.

Twenty-four years later, England passed Section 11 of the Criminal Law Amendment Act of 1885, commonly known as the Labouchere Amendment after Henry Labouchere, the controversial and enigmatic Member of Parliament who introduced it. Some believe that the Labouchere Amendment was merely a last-minute addition to the Criminal Law Amendment Bill in attempts to sabotage it, and that it was not supposed to have become law (Kaplan 2005: 175). Nevertheless, it provided that

> 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 misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

Despite the law's dubious roots, within a few years Oscar Wilde became one of its first victims, having been charged and convicted under it in 1895 (Holden 2000). For reasons still being debated, about 50 years after its passage, the law made its way to Singapore. Some have argued that the law was meant to strictly enforce heteronormative gender categories, given the "loose" Southeast Asian moral and sexual values and their potentially toxic effects on colonial officers

(Holden 2000; Manderson 1997; Radics 2013). Parliamentary records also made references to containing the vice of male prostitution (see *Tan Eng Hong v Public Prosecutor* [2012]: SGCA 45 ¶ 27). Regardless of the legislative intent, Section 377A of the 1936 Penal Code thus expressly provided that acts of "gross indecency," whether committed "in public or private," were offenses to be treated equally. Moreover, Section 377A explicitly focused on sexual conduct between males, as opposed to sexual acts between females, or general actions "against the order of nature" in Section 377. The law has remained on the books from 1936 onward.

Fast forward to 2007. While the 1990s led to police raids of gay establishments, and gay men caught cruising were publicly shamed through the publishing of names, ages, professions, and the acts these individuals were caught doing, by the late 1990s and early 2000s Singapore's cultural policies began to liberalize (Leong 1997; Lim 2005; Radics 2019a). Plays that had been banned in the past for having gay characters were now being shown, the government began to allow gays to work in the civil service, and the "pink dollar" and "queer capital" were increasingly being used to turn Singapore into a creative hub and "Global City for the Arts" (Chua 2014; Tan 2009; Lim 2005). Thus, Section 377 and Section 377A were increasingly seen as antiquated laws that no longer reflected modern Singaporean values.[3]

In particular, after Section 377 was used to prosecute Singaporeans for performing fellatio in the cases of *Public Prosecutor v. Kwan Kwong Weng*, [1997] SGCA 8, and *Annis bin Abdullah v. Public Prosecutor*, [2004] SGHC 52, support for repeal of Section 377 began to develop. Singaporeans were surprised that, as seen in these cases, consensual sexual acts such as fellatio and anal sex between heterosexual partners were considered illegal and prosecutable offenses under Section 377 if these did not result in "natural sex" (*Kwan Kwong Weng* at ¶ 28). The fact that Section 377 made masturbation or fellatio illegal repulsed many, and it was generally agreed that the law was no longer relevant in contemporary Singaporean society. After a short speech in Parliament, the Senior Minister of State for Home Affairs, Assoc. Prof. Ho Peng Kee, stated, "We will be removing the use of the archaic term, 'Carnal Intercourse Against the Order of Nature' from the Penal Code. By repealing section 377, any sexual act including oral and anal sex, between a consenting heterosexual couple, 16 years of age and above, will no longer be criminalised when done in private" (Singapore Parliamentary Debate Official Reporter 2007).

Attempts to repeal Section 377A, however, did not share the same fate. Member of Parliament Siew Kum Hong submitted a public petition requesting Parliament to repeal Section 377A, and over a three-day period in October 2007, 2,519 Singaporeans signed a petition in support of the Parliamentary Petition to urge its repeal. In response, more than 15,560 Singaporeans signed a petition in an effort to retain the section (Radics 2013: 80). In the end, Parliament decided to maintain Section 377A to placate "conservative" Singaporeans. Upholding the law, Prime Minister Lee noted in his speech that "There are gay bars and clubs .... The Government does not act as moral policemen. And we do not proactively enforce section 377A on them" (Radics 2013: 80). Despite the unfortunate decision to retain the section, for the first time, a robust discussion regarding sexual rights took place, and a tacit guarantee that the law would not be enforced was made. This arrangement was put to the test three years later in March 2010, after Tan Eng Hong was caught committing an act of "gross indecency" in a public restroom and charged under section 377A.

First judicial challenge to 377A

On September 24, 2010, Tan filed suit challenging the constitutionality of Section 377A (*Tan Eng Hong v. Attorney General* [2011]: SGHC 56). Tan argued that Section 377A was inconsistent with articles 9 (right to life and liberty), 12 (equal protection), and 14 (freedom of association) of Singapore's Constitution. After the Attorney General (AG) amended the charge to public obscenity, the Assistant Registrar dismissed the case. Tan appealed the Assistant Registrar's decision to

the High Court, Singapore's intermediate appellate court, which dismissed the appeal with costs awarded to the AG (*Tan Eng Hong* [2011]: SGHC 56, ¶¶ 24, 43). On June 27, 2011, Tan appealed the High Court's decision to the Court of Appeal, Singapore's court of last instance. Reversing the High Court, in a landmark decision, the Court of Appeal opened the door for any Singaporean to challenge what they perceive as unconstitutional laws and held that a violation of a constitutional right makes a prima facie sufficiency of interest, that every constitutional right is a personal right, and that a "violation of constitutional rights *may* be brought about by the very existence of an allegedly unconstitutional law in the statute books … and/or by a real and credible threat of prosecution" (*Tan Eng Hong* [2012]: SGCA 45, ¶ 115). In determining whether a real controversy existed, the Court remanded the case to the High Court to determine whether Section 377A does in fact violate the constitution (*Tan Eng Hong* [2012]: SGCA 45, ¶185). Because *Tan Eng Hong v. Attorney-General* expanded the legal standing requirement, on remand to the High Court, a second set of plaintiffs, Lim Meng Suang and Kenneth Chee Mun-Leon, were able to mount their own challenge to Section 377A. Tan also presented arguments to the High Court (*Tan Eng Hong v. Attorney-General* [2013]: SGHC 199). Ultimately, the High Court ruled against both parties in separate opinions, and in July 2014, the Court of Appeal heard their appeals in a consolidated review.

Addressing the Article 9 argument, the Court of Appeal held that these provisions mainly pertain to capital punishment and incarceration (*Lim Meng Suang and Another v. Attorney-General and Another Appeal and Another Matter* [2014]: SGCA 53 at ¶ 43). Responding to the argument that Section 377A's language is so vague, arbitrary, and absurd that it violates Article 9's right to liberty, on this point, the Court held that the language is not vague or arbitrary, but clear: Sexual acts between males are to be prosecuted (*Lim Meng Suang and Another* [2014] ¶¶ 51–53). In addressing the Article 12 arguments concerning equal protection, the Court found that the purpose of the law was to prosecute gay male acts *generally*, and not just prostitutes as the parties argued, since the historical records showed that 377A was adopted to supplement laws that pertained to not only "soliciting or importuning for immoral purposes," but also "indecent behavior" (*Lim Meng Suang and Another* [2014] ¶ 131). Furthermore, while Section 377 was meant to prosecute "carnal intercourse against the order of nature," 377A took this a step further to prosecute the lesser offense of "gross indecency," which included both penetrative and nonpenetrative acts, thereby broadening the scope of criminally sanctioned activity. Thus, the law was meant to enforce "morals of the community," by targeting acts that were deemed particularly offensive, such as gay male sex, and prohibiting such activities not just in public, but in private as well (*Lim Meng Suang and Another* [2014] ¶¶ 132–149).

At the end of the opinion, the Court addressed many of the "extralegal" arguments raised. Stating that the duty of the Court was to only interpret the law and not legislate, it first dismissed the argument that allowing the legislature to pass a law that violates the rights of minorities could lead to tyranny of the majority by concluding that this logic works both ways. The Court stated, "The majority could turn the argument mentioned on its head and contend that likewise, they ought not to be subject to the 'tyranny of the minority'" (*Lim Meng Suang and Another* [2014] ¶¶ 155–161). Lastly, on the issue of whether or not the homosexuality is an immutable characteristic of one's identity, or that such laws preserve or harm public health, these arguments, the Court declared, should be decided by the legislature (*Lim Meng Suang and Another* [2014] ¶¶ 176–177).

Second judicial challenge to 377A

In response to the decision, many LGBT organizations in Singapore issued a joint statement expressing their discontent and proclaimed, "We are greatly shocked and disappointed by the Court of Appeal's ruling" (Radics 2019a: 43). While it seemed as if the opportunity to challenge

the law had passed, in the wake of the Indian Supreme Court's decision in *Navtej Singh Johar v Union of India* (2016) to strike out Section 377 of the Indian Penal Code, due to several former diplomats and government officials praising the Indian court for its decision, Section 377A was back in the limelight (Radics 2019b: 5–6). Shortly after India's striking out of 377, a petition was started called #Ready4Repeal. The intent was to deliver the petition to parliament on 28 September 2018, the day that Ministry of Home Affairs planned to host a public consultation on the first periodic review of the Penal Code in over a decade, even though an executive decision was taken by the government to exclude Section 377A entirely from the scope of the review (Radics 2019b).

Two of the attorneys involved in the petition and a private town hall discussion held in conjunction with the petition assembled a new challenge at the Court of Appeal. Bryan Choong, one of the speakers at the town hall meeting, filed his challenge in November. In addition, even before the #Ready4Repeal Town Hall meeting, and immediately after the *Navtej* decision in India, another individual, Johnson Ong, and his legal team filed their challenge to the law. Finally, in September 2019, Tan Eng Hong's attorney, M. Ravi, also filed an appeal on Dr. Roy Tan's behalf. The next section briefly analyzes these three cases and the arguments raised in each.

Johnson Ong Ming v. Attorney General

On 12 September 2018, Johnson Ong Ming filed an application to strike down section 377A, stating that he was encouraged to bring the action because of former diplomat Tommy Koh's post encouraging Singaporeans to challenge 377A after the *Navtej* decision (Chua 2018). Johnson, who is in a relationship with another man, was aware of the court ruling in 2014 that rejected the constitutional challenge filed by Tan Eng Hong and a gay couple, Gary Lim and Kenneth Chee (Lum 2018a). Given the global legal and judicial developments concerning same-sex relationships and activity since then, particularly India's recent Supreme Court ruling, he believed that Singapore courts should also depart from precedent. Furthermore, he planned to use recent data previously unavailable during the 2013 hearings, such as the 2015 report by the US Substance Abuse and Mental Health Services Administration, which argues that "sexual orientation is unchangeable or suppressible at unacceptable personal cost" in his challenge (Lum 2018a). Ultimately, Johnson would argue that the law violates the right to equality enshrined in article 12 of the Singapore Constitution because it only penalizes gay men and not gay women, despite the similar nature of their relationships and activity. Johnson's attorney added, "We will be presenting medical and scientific evidence to show that sexuality is inherent and is not a choice," noting that the previous challenge in Singapore did not deal strongly with this point (Lum 2018b). He believes that once this argument is established, then Section 377A would be seen to contradict Article 9 of the Singapore Constitution, which guarantees life and personal liberty (Lum 2018b).

Choong Chee Hong v. Attorney General

In November, Choong Chee Hong, better known as Bryan Choong, filed another challenge at the Supreme Court. Bryan, 41, is the former executive director of Oogachaga, a nonprofit organization working with the LGBT community (Duffy 2019). According to court documents, Bryan argued that section 377A is inconsistent with the right to personal liberty in Article 9 of the Constitution (Alkhatib 2019). The two other portions of the constitution with which 377A is deemed inconsistent in his pleadings are equal protection (Article 12) and freedom of speech and expression (Article 14). Bryan was represented by Senior Counsel Harpreet Singh Nehal from Cavenagh Law, as well as a team from the Peter Low and Choo law firm (Alkhatib 2019). At the Townhall meeting, Remy Choo Zheng Xi, attorney with the Peter Low and Choo firm, and attorney for Lim and Chee in 2014, raised arguments found in V. K. Rajah's article in the *Straits Times* (Rajah 2018). In discussing the article, Choo stated that V. K. Rajah, Attorney-General

from 2014 to 2017 and a former judge on the Supreme Court and Court of Appeal, highlights that the 2014 decision to uphold the constitutionality of section 377A was likely to be incorrect, because the law is pre-Constitutional and colonial. Choo highlighted that section 377A was enacted in 1937, well before the constitutional protections Singaporeans received in 1963 through the Constitution of Malaya. Because 377A came before the constitution, it should not have received the same presumption of constitutionality as laws that came after 1963 (Ready4Repeal 2018).

Roy Tan v. Attorney General

Dr Tan Seng Kee, 61, better known as Roy Tan, filed the third appeal in September 2019 (Taylor 2019). As one of the main organizers of the first Pink Dot event in 2009, Tan is a retired general practitioner and a prominent activist for LGBT rights in Singapore. He was represented by M Ravi, Tan Eng Hong's attorney in the first judicial challenge of 377A from 2010 to 2013. Dr Tan argued that because the Public Prosecutor has discretion on whether or not to prosecute an accused person under Section 377A, and the government has said that the law will not be enforced against acts done in private, this is incongruous with Section 14 of the Criminal Procedure Code, which requires the police to unconditionally investigate all complaints of suspected arrestable offenses. This situation calls Article 9 rights to liberty into question since it "subjects gay men to the potential distress of an investigation into private conduct where they have a legitimate expectation that the state will decline to prosecute" (Kurohi 2019). With regard to the Article 12 equal protection argument, Dr Tan has argued that "gross indecency" may take place between men only, women only, and a mix of men and women, but "such acts cannot be meaningfully distinguished across the three classes" (Kurohi 2019) He has added that since "Section 377A only proscribes acts between males. There is therefore no intelligible differentia as Section 377A is intended to proscribe acts of gross indecency" (Kurohi 2019). Lastly, Dr Tan submitted as evidence arguments newly made that comment on the "constitutionally unsatisfactory status quo" by former AGs V. K. Rajah, Walter Woon, and Chan Sek Keong, as well as current Deputy AG Hri Kumar Nair.

ASEAN responses

Noticeably missing in the preceding sections was the presence of ASEAN. From the 377 and 377A debates in parliament in 2007, to the judicial challenges in 2012 and 2019, ASEAN made no comments and took no position. Despite the fact that ASEAN has not taken a position on LGBT issues, the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Human Rights Declaration (AHRD) could provide persuasive pressure on courts to interpret laws in a way that respects the human rights of citizens, and on legislatures to pass or repeal laws that reaffirm such rights. The AICHR was inaugurated in October 2009 and was designed to be an integral part of ASEAN organizational structure as an overarching institution with the overall responsibility for the promotion and protection of human rights in ASEAN (AICHR Terms of Reference 2009). Furthermore, the nomination of representatives who report to the ASEAN Foreign Ministers provides another opportunity for activists and citizens to influence ASEAN, since these representatives can be appointed from outside the ASEAN bureaucracy, such as academia or the nongovernmental sector (AICHR Terms of Reference 2009). Lastly, the AHRD declares that "all persons are born free and equal in dignity and rights" and that "every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age … or other status" (AHRD 2012). The AHRD was also meant to "reaffirm Universal Declaration of Human Rights, the Charter of the United Nations, the Vienna

Declaration and Programme of Action"—all three of which have been interpreted in the past to support LGBT rights (AHRD 2012; see Voss 2018: 10; Crook 2010).

Despite the existence of these institutions and documents, the lack of explicit reference to LGBT rights makes their effectiveness in handling related issues extremely limited. The AICHR and AHRD deal with existing commitments that individual member states sign onto and have no enforcement mechanisms, requiring that their terms be implemented by each individual state. Moreover, the AICHR is hamstrung by restrictive terms of reference (ToR) that align them with ASEAN's noninterventionist standards (Davies 2017). Regarding the AHRD, issues of "public morality," reliance on relativist notions of human rights, and lack of the right to self-determination plague the document (Renshaw 2013). Thus, when NGOs in the region campaigned for LGBT rights, Indonesia's AICHR representative in 2012 stated, "These issues are still problematic in almost all ASEAN countries" (Clarke 2012: 22). Langlois (2014: 312) also highlights that "AICHR representatives from Malaysia, Brunei, and Singapore had been directed to oppose any mention of SOGI in the AHRD. By contrast, Indonesia, The Philippines, and Thailand were very much in favor of explicit inclusion." Langlois, Wilkinson, Gerber, and Offord (2017: 714) adds that "No ASEAN state has laws which protect people from SOGIE-based discrimination … notwithstanding the recent creation of the AICHR and its development of an ASEAN Human Rights Declaration, LGBTQ people cannot, in practice, look to these institutions for protection."[4]

Yet there are other ways ASEAN's human rights mechanisms can help affect change. Catherine Renshaw highlights that the ASEAN Human Rights Declaration's "utility will depend on how it is invoked, by civil society actors and by lawyers, and how the governments of the region respond to it" (cited in Langlois 2014: 310; see also Weiss 2021). According to Davies (2017: 99), "The Southeast Asian human rights space has four dimensions: ASEAN, domestic institutions, civil society, and the global United Nations system, all of which are increasingly linked together in a complex whole." Moreover, much has already been written on "the ASEAN way" of making decisions, which relies more heavily on discussion, consultation, and consensus building than in the West (Davies 2017; Davidson 2004). This approach has been explored extensively in the economic sphere, security, and diplomacy (Davidson 2004; Caballero-Anthony 2005; Acharya 1998). Thus, rather than focus on the formal institutions of the AICHR and the AHRD, the following section reveals how the domestic mechanisms of the courts, regional and domestic NGOs, and the "soft" behind-the-scenes influence of ASEAN diplomacy have the potential to bring about a more robust exchange on the rights of LGBT people. Although the nations of Singapore, Malaysia, Brunei, and Myanmar consist of people with different backgrounds and cultures, their similar legal histories and regional identity as ASEAN nations play an important role in facilitating a space for growth and expansion of rights for LGBT people in their respective countries and throughout the region.

Malaysia and the politicization of sodomy

Although Singapore and Malaysia share the same legal history, their postcolonial composition led to a different handling of these British sodomy laws. Singapore adopted the 1936 Straits Settlement Penal Code that included 377A, whereas Malaysia consisted of a federation of several states that upon independence had their own penal codes (Nazeri 2010). It was not until 1976 that all of the states (except Sabah and Sarawak) adopted the 1936 Penal Code (Ibrahim 1976; Nazeri 2010). Moreover, it was at this time that the penalty for 377 was enhanced from a maximum penalty of 10 years to 20 years, a fine, and a whipping (Nazeri 2010). Further changes came in 1989 when due to concerns that the Penal Code did not have sufficient protections against anal rape, Section 377 was amended again and further enhanced (Hansard 1989; Tan 2012). The old Section 377 was revised and limited only to "buggery with an animal," more commonly known today as bestiality. Section 377A was replaced with a new provision that now

referred to sexual acts involving the "introduction of the penis into the anus or mouth" of another person and made it clear that anal and oral sex was illegal, regardless of whether the parties involved were homosexual or heterosexual (Malaysian Penal Code 1997). Sections 377B and 377C were added and set punishments for those found guilty under S377A (Malaysian Penal Code 1997). The former specifies the penalty for anyone who willingly partakes in such sexual acts, and the latter, those who compel others to do so. The difference between the two offenses is that there is a minimum sentence of five years of imprisonment for forcing someone to engage in anal or oral sex. Consensual or otherwise, the maximum penalty remained the same at a maximum of 20 years in jail and whipping.

One of the most famous Section 377A cases in Malaysian history is the prosecution of Dato' Seri Anwar bin Ibrahim, former Deputy Prime Minister of Malaysia. In 1998, the Prime Minister Dr Mahathir bin Mohamad had a falling out with Anwar. Mark Trowell states that "there had been tension between them for some months … [mainly concerning] how best to respond to the growing Asian Financial Crisis … but increasingly … the real possibility of a leadership challenge … [with] Anwar the prime minister's chief rival" (Trowell 2012: 62). Invoking the Internal Security Act, and attempting to dismiss Anwar on moral grounds, Anwar was charged under Section 377A (Abbott 2000; Marican 2009). Corruption charges were added when it was alleged that Anwar tried to cover up his indiscretions (*Public Prosecutor v. Dato' Seri Anwar bin Ibrahim* [1999]: 2 MLJ 4). Mahathir had since the late 1980s begun to challenge judges who had ruled against the government, culminating in a constitutional crisis in 1988 with the dismissal of the Lord President (now called Chief Justice) of the Court of Appeal, Malaysia's apex court (Po 2015; Trowell 2012). Thus, by 1998, beyond what was perceived to be an overt political motivation behind the charge, the case was riddled with accusations of an unfair trial, from violence against Anwar while in detention, to lack of due process, and questionable evidence being admitted. Ultimately, Anwar was convicted in April 1999 and sentenced to 6 years for corruption, and in July 2000 was sentenced to 9 years for sodomy. In September 2004, Anwar successfully appealed the sodomy conviction, but lost the appeal regarding his conviction for corruption. After his release, Anwar ran for office, winning a parliamentary seat held by his wife in 2008. He was then charged again for sodomy under Section 377A. The second trial resulted in a number of complications, including allegations of evidence tampering, a lower court acquittal, and a reversal of the acquittal. Anwar's sentence was scheduled for 5 years starting in May 2015, but he received a royal pardon in 2018.

What Anwar's case highlights is how antisodomy laws can be used to harass, intimidate, extort, or politically neutralize opponents—a problem with the law that was evident even as early as 1938 (see Radics 2013). Yet what role can ASEAN play in such cases? One could argue that ASEAN did intervene in Anwar's sodomy charge, given his popularity in the region, as well as his instrumental role in the ASEAN response to the Asian financial crisis. Relations between members of the ASEAN took a dramatic turn in late 1998. The presidents of Indonesia and the Philippines criticized the Malaysian government's treatment of Anwar, whom they had worked closely with in his capacity as Deputy Prime Minister (Funston 1999). Indonesian President B. J. Habibie canceled a visit to Malaysia, and at one point both he and Philippine President Joseph Estrada contemplated boycotting the APEC summit in Kuala Lumpur in November that year (Funston 1999). Thai leaders expressed sympathy with Anwar, and Singapore's Senior Minister Lee Kuan Yew expressed concern over allegations of assault upon Anwar while in jail (Funston 1999). Funston (1999: 208) further reminds us that beyond these political statements of ASEAN regarding Anwar Ibrahim's 377A charges, ASEAN leaders have also made strong statements concerning the haze (smoke cause by forest fires across border), the hanging of a Filipino maid in Singapore, and instances of executions of citizens for drug trafficking.

While Anwar was charged and convicted under Section 377A of the Penal Code, at the same time, the Syariah Code is growing in prominence in Malaysia. Amanda Whiting points to the

issue of the "desecularization" of Malaysian law, arguing that "in multicultural Malaysia, only one cultural tradition—Islam—is allowed airplay … [and that] indigenization of the common law … is not being conducted in accordance with human rights law" (Whiting 2008: 254). tan beng hui adds that "Syariah laws have grown in scope and depth over the last two decades … [and its morals and values] have become over time, … established as the marker of acceptable sexuality and gender" (tan 2018: 163–164). In Terengganu, a stronghold of the Pan-Malaysian Islamic Party, two women were publicly caned in front of a Shariah Court for attempted sex in a car. Mahathir, who returned to power as Prime Minister in 2018, denounced the caning in a video released online, stating that "This gives a bad impression of Islam…. It is important that we show Islam is not a cruel religion that likes to impose harsh sentences to humiliate others" (Latiff 2018). Yet given his use of sodomy laws to shame and discredit his rivals, Mahathir's government's position on LGBT rights seems ambiguous at best. Furthermore, Mahathir was silent on the caning and recent attacks on transgender people and marginalized groups in the country (South China Morning Post 2018). In August 2018, for instance, the police and religious officials raided a gay bar in Kuala Lumpur, while a transgender woman was beaten up by a group of assailants in Seremban, near the capital (SCMP 2018).[5] Needless to say, decades of trials within the political realm related to the sodomy prosecutions, in conjunction with the rise of extremely conservative interpretations of Islam, are complicating efforts to advocate for the rights of LGBT people in Malaysia, notwithstanding ASEAN's response to Anwar's sodomy trials.

Brunei and Syariah law

Unlike Singapore and Malaysia, Brunei never inherited Section 377A. According to Horton (1986a: 354), "Brunei was not a *colony* … the Resident exercised his authority in the name of the Sultan, who was always accorded the highest respect." At the same time, however, despite Brunei's rich legal history, M. S. H. McArthur in his famous report on Brunei in 1904 stated that "there is no government in the usual acceptance of the term …—no forces, no police, no public institutions, no coinage, no public buildings … and most crying need of all—no gaol" (Mansurnoor 2013; McArthur 1904 [1987]: 126–128). Thus, when the British government agreed to enhance the Protectorate Agreement of 1888 by installing M. S. H. McArthur as the British Resident in 1906, one of the first things he did was bring Brunei's laws in line with the Malay States, overseeing the Court Enactment Act of 1908 (Horton 1986b). Section 3 of the 1908 Enactment provided for the constitution of five courts for the administration of Civil and Criminal justice (Courts Enactment Act 1908). Along with the courts, the Court Enactment put into place the laws from the Straits Settlement such as the Evidence Act, Criminal Procedure Code, Penal Code, Civil Procedure Code, and laws relating to contract and specific relief (Rahman 2006: 5; see Horton 1985). As discussed earlier, the Straits Penal Code was derived directly from the Indian Penal Code of 1860, which did not include Section 377A. Unlike Myanmar, which was perceived to be crime-ridden and unruly, Brunei was known for its "astonishingly" low levels of crime, perhaps contributing to the lack of need in updating its Penal Code to reflect the changes (i.e., integration of 377A) in the Federated States of Malaya Penal Code and the Straits Settlements Penal Code of 1936 (Callahan 2005; see Horton 1986b: 365).

Although Brunei does not have Section 377A on the books, it does have Section 377. Furthermore, Islam has always been an important part of the Bruneian identity, and the country's recent implementation of Syariah Law, particularly its provisions pertaining to LGBT activities and identities, has drawn more attention than the colonial-era Section 377 provision. In 2013, Brunei became the first country in Southeast Asia to enact strict Syariah law at a national level (Panda 2013). Sodomy, or *liwat*, under this law is subject to a maximum penalty of "stoning to death witnessed by a group of Muslims" (Syariah Penal Code Order 2013: §76[1][a]).[6] Lesbian sex, or *musahaqah*, carries a "fine not exceeding $40,000, imprisonment for a term not exceeding

10 years, whipping not exceeding 40 strokes, or combination of any two of the punishment" (Syariah Penal Code Order 2013: §92[1]). Moreover, "any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place for immoral purposes is guilty of an offence and shall be liable on conviction to a fine not exceeding $4,000, imprisonment for a term not exceeding one year or both" (Syariah Penal Code Order 2013: §198[2]).

The pronouncement of the Syariah Penal Code incited calls—led by the prominent figures in the media such as George Clooney, Ellen DeGeneres, Elton John, and Billie Jean King—for a boycott of businesses owned by Brunei's Sultan Hassanal Bolkiah (Holson and Rueb 2019). The British government, which provides troops to the sultanate, criticized the nation for the adoption of such harsh laws, and Penny Mordaunt, then international development secretary, called its antigay stance "barbaric" (Ellis-Petersen 2019). Labour party politician Emily Thornberry argued, "Unless the sultan changes these laws, [Brunei] should be suspended from the Commonwealth" (Gruenbaum 2019). Michelle Bachelet, High Commissioner of the United Nations Commission of Human Rights, added that the law "in its current form, enshrine[s] in legislation cruel and inhuman punishments that seriously breach international human rights law," while Amnesty International and Human Rights Watch echoed their strong concerns (United Nations 2019; Magra 2019). France and Germany condemned the new penalties, with Robert Palladino, deputy spokesman for the US State Department, declaring, "The United States strongly opposes violence, criminalization, and discrimination targeting vulnerable groups, including women at risk of violence, religious and ethnic minorities, and lesbian, gay, bisexual, transgender and intersex persons" (Magra 2019).

In an unprecedented response to the criticisms, the Sultan made a public announcement in which he stated, "I am aware that there are many questions and misperceptions with regard to the implementation of the SPCO .... For more than two decades, we have practiced a de facto moratorium on the execution of death penalty for cases under the common law" (Bolkiah 2019). He added that "in upholding our international commitments and obligations on human rights, Brunei Darussalam will be ratifying the United Nations Convention Against Torture (UNCAT)" (Bolkiah 2019). According to Phil Robertson, deputy Asia director with Human Rights Watch, "The Sultan's speech shows the international pressure on Brunei is working, but much more is needed because the Sultan's concession doesn't go nearly far enough" (Reed 2019). Unfortunately, ASEAN was noticeably missing from this international pressure. According to Don Greenlees, "Given the direct interests other ASEAN states have at stake in what the Sultan has done, it is time to prove that the rhetoric about ASEAN respect for human rights carries some substance" (Greenlees 2019). A statement signed by several ASEAN nongovernmental organizations highlighted that "Brunei will set a dangerous precedent for its neighboring countries in Southeast Asia and broader Asia as it perpetuates the practice of violating fundamental freedoms, particularly freedom of expression, in the region" (ASEAN SOGIE Caucus 2019). Representatives from these NGOs also sent a several page letter highlighting the numerous ways the Syariah law violated international human rights law to Dr. Amara Pongsapich, Chair of AICHR (Rawski, Silverino, Samuel, and Bacalla 2019). Thus, while ASEAN as an institution took no stance on the highly punitive Syariah laws, ASEAN NGOs and concerned citizens have worked across borders to voice their discontent and are engaging and reaching out to ASEAN human rights language, laws, and bodies—such as AICHR—in the process.

Myanmar, political change, and opportunities for an LGBT movement

Myanmar inherited Section 377 from the Indian Penal Code of 1861. The territories of what was considered Burma came under British Indian administration within the period of 1824–1886 as a result of the Anglo-Burmese wars (Furnivall 1956; Cady 1964). According to Nick Cheesman, "A fellow of the Royal Geographic Society publishing in 1907 wrote that, 'Practically, the whole

criminal law of Burma is contained in the Indian Penal Code'. He may have exaggerated the code's significance, but not grossly" (Cheesman 2015: 39). Ultimately, legislation for British Burma came from India until 1897, when a legislative counsel was set up in Rangoon (Hooker 1978). Unlike Brunei, which was considered to experience little crime, the Penal Code was heavily relied upon in Burma since, according to British historian and former colonial office F. S. V. Donnison, it was considered "consistently the most criminal province in all the empire" (cited in Callahan 2005: 29). As a result, the Indian Penal Code took on great significance and remained largely intact even upon Burma's independence from the United Kingdom in 1948. Cheesman continues, "This continuity was unremarkable. Colonial-era law and judiciaries persisted throughout Asia as an inevitable consequence of modernity" (Cheesman 2015: 64). It should be noted that, unlike Singapore and Malaysia, Section 377A was never implemented in the colony.

While 377 is the controlling law when it comes to the criminalization of LGBT identities, Lynette Chua highlights that legal persecution does not take the form of formal arrests or prosecution under the section (Chua and Gilbert 2015). Given its possible punishment of up to 10 years, if an arrested LGBT person resists or protests during an arrest, the police may threaten to charge them under Section 377 (Chua and Gilbert 2015; Chua 2015). Moreover, a number of other laws restrict the rights of LGBT people and LGBT activism in Myanmar. These include the Association Registration Act of 2014, which requires an interview process with friends and family when an NGO is registered, thereby inadvertently outing LGBT people when they attempt to legally register their organizations (Chua 2015). The Right to Peaceful Assembly and Peaceful Procession Act of 2011 requires all demonstrations to be registered with the police beforehand, and because many LGBT groups are unregistered, applying for permission to protest is risky, and given a "morality" clause in the law, compounded by Section 377, a rejection based on morality could trigger prosecution as well (Chua 2015). Lastly, the Printing and Publishing Law of 2014, when interpreted broadly, could classify any NGO that possesses a photocopier as a "printing house," while pamphlets and blog posts could be considered as "publications," subjecting LGBT speech to potential prosecution, since any content under this law could contravene the laws that could "instigating to commit criminal case," again implicating Section 377 (Printing and Publishing Law 2014; Chua 2015).

Myanmar resisted invitations to join ASEAN as a founding member in 1967. By the 1990s, however, senior officers had concluded that membership in the association could help to counter Western pressure, including the economic sanctions that Western countries had imposed (Davies 2012). It was believed that in the age of globalization and regionalism, the country could no longer continue to isolate itself, and that it needed to identify with a sympathetic group that would treat it as one of its own, and not exploit Myanmar's weak situation (Khin 2001). Thus, by 1997, despite objection from outside observers, and dissent within Myanmar and ASEAN, Myanmar became an official ASEAN member state in 1997. While it has been argued that by 1997 the ASEAN Synthesis prevailed, in which nonintervention and sovereignty took precedence over a regional emphasis on "human rights," at the same time, ASEAN had been pursuing a policy of "constructive engagement"[7] with Myanmar since the early 1990s (Davies 2012; Than 2006). Although Jones (2008) argues that this constructive engagement evolved over the years, Mathew Davies (2012) highlights how at the ASEAN Summit of December 2005 in Kuala Lumpur, ASEAN representatives were "unusually direct," calling explicitly for "the release of those placed under detention." This was the first explicit request by ASEAN on a human rights issue concerning a member state. Davies adds that ASEAN also took a position on the internal affairs of Myanmar in the 2005 decision to deny Myanmar the chair of the organization (Davies 2012). Finally, in 2007, 2009, and 2010 there were numerous statements made encouraging Myanmar to have free and fair elections, a transition to a democratic government, and the release of political prisoners—including the strong admonition of Myanmar's handing of the Saffron Revolution in

which a formal statement was made expressing collective "revulsion" over Myanmar's handling of the affair (Davies 2012).

Such an engagement may not be seen as directly influencing the status of LGBT people in Myanmar, but pressures upon Myanmar to democratize led to rapid change following the 2010 and 2011 elections, and to the National League for Democracy's victory in 2012. Chua and Gilbert (2015) remind us that times of political liberalization serve as opportune moments for domestic LGBT movements to emerge as greater civil–political freedoms become available. Elliott Prasse-Freeman (2019: 138) highlights that despite the emergence of the laws discussed in the preceding, and the troubling crack down on journalists, "activists are now able to take situations that appear the quintessence of defeat … and create new political sites." Lynette Chua (2015) adds that the growing "vernacular mobilization" of human rights in the LGBT community of Myanmar has led to (1) the reframing of grievances as the product of strong social forces of heteronormativity and gender conformity rather than the result of internal failures or bad karma; (2) a fostering of a political community forged in a similarity of experiences; and (3) multiplier effects—or perpetuating the "vernacularization" of human rights among others through workshops, advocacy, and the growing physical presence of an LGBT activist community. Thus, ASEAN's role in facilitating Myanmar's transition to democracy has led to opportunities for greater civic participation and LGBT rights mobilization.

Conclusion

After the 2016 *Navtej* decision in India deemed Section 377 unconstitutional, three challenges to Section 377A emerged in Singapore. But how much can the Indian Supreme Court's decision provide guidance to the Singaporean Supreme Court? In 2013, when India's more expansive interpretation of the right to personal liberty was raised in the 377A challenge, the Singapore Supreme Court rejected such an interpretation, stating that "this approach must be understood in the context of India's social and economic conditions" (*Lim Meng Suang* [2014]: SGCA 53 at ¶ 48). Thus, despite being the progenitor of the criminal code in all of the countries discussed in this article, India's social and cultural conditions were deemed too distant from local conditions to influence the court's decision. In contrast, because Malaysia, Brunei, and Myanmar share a common law system, very similar penal codes, and deep geographical and historical ties, Singapore's legal challenges could potentially give guidance, if not inspiration, to similar challenges in these countries. Furthermore, they could learn from the LGBT rights mobilization process in Singapore of placing pressure on parliament, judicial challenges, and engaging NGOs. Finally, if Singapore's apex court decides to strike down Section 377A, nations in the region that look up to Singapore as the local role model for modern judicial interpretations and rule of law implementation (see Harding 2018) would have to reconsider the legal basis behind their current laws and increasingly stand alone in defense of them.[8]

Furthermore, as seen in this article, in addition to the courts, ASEAN and regional channels can also be used as an avenue to challenge such laws. ASEAN was founded because of distinct regional political and identity concerns, and its practices and institutionalization remain intrinsically linked to the original rationales. Thus, Davies (2012: 17) reminds us that "ASEAN cannot integrate hard compliance mechanisms such as courts and detailed intrusive standards which are incompatible with its normative architecture." Although its formal mechanisms may not provide effective mechanisms to force a change of laws, ASEAN consists of people, and people can be persuaded—the association serves as a very influential set of peers that look to one another for support. For instance, Teddy Baguilat, member of the House of Representatives in the Philippines, recently urged Indonesia to reject draft amendments to the country's criminal code, saying that they severely violate the rights to privacy and nondiscrimination, and reminding Indonesia that the law violates the rights of vulnerable communities in the country, as well as

Indonesia's political ideology of *pancasila*—five principles that include respect for humanity (Ismail 2018). In an attempt to address its own mounting concerns over regional issues such as human trafficking and money laundering, Singapore played an instrumental role in the passing of the ASEAN Mutual Legal Assistance Treaty in 2004 (Radics 2014b).

Thus, it can be seen that regional pressures affect the ASEAN nations differently from the outside, "Western" institutional pressures of the United Nations or Amnesty International. Regional leaders know their ASEAN counterparts personally understand the history and culture of their neighbors, and have a personal stake in the laws of the countries around them. Citizens of ASEAN nations, too, are beginning to identify as being a citizen of ASEAN. Through regional NGOs, ASEAN nationals are making inroads in engaging and utilizing the AICHR and the AHRD. Although Weiss in this special issue talks of the benefits of ambiguity within ASEAN legal frameworks, and this article investigates the impact of legal specificity and similarity in national legal systems, both articles show how "ASEAN's human-rights premises *has* arguably seeded a platform for discussion and solidarity" (Weiss 2021: in press). Thus, albeit slow, perhaps this is the best way forward—allowing ASEAN's informal mechanisms to take the lead, have these informal mechanisms shape and transform the formal, and gradually build a regional community that holds its neighbors accountable at the national level for human rights violations. Singapore's challenges to Section 377A, therefore, highlight not only the long and arduous process of pushing for rights for the LGBT population in Singapore and the region, but also how ongoing informal ASEAN human rights mechanisms should inform and alter formal ASEAN mechanisms. The legal challenges also reiterate how we need to understand ASEAN in context and to study Southeast Asia historically to truly appreciate the challenges, opportunities, and activism of rights that such an institution can provide.

Notes

1. It should be noted that the Pink Dot is not endorsed by the government and is only possible because changes in the law in 2008 allowed for public demonstrations. In fact, in 2017, amendments to the Public Order Act were made to ban foreign participation, perhaps in order to restrain the growth and popularity of the event and to appease religious groups in Singapore who opposed it. See Radics (2019a: 39–41) for further details.
2. The phrase "transportation for life" involved the sending of a convict into banishment or exile (see Malik 1994).
3. While this was a period of relative openness, it is also important to recognize that Singapore retained many restrictive laws to facilitate economic growth but also to maintain control over its citizenry under the guise of "Asian values." See Radics (2014a: 63–76), Langlois (2001: 21–24), and Barr (2000: 310–313). Such restrictions on personal liberties can be seen in Singapore's refusal to sign on to international agreements such as the United Nations International Covenant on Civil and Political Rights, which has been interpreted by the Human Rights Committee as prohibiting antihomosexual criminal laws (Tan 2015: 419; Gerber and Gory 2014: 404).
4. It should be noted that when Langlois wrote this piece, Thailand was still considering the Gender Equality Bill that was eventually passed in September 2015. The Philippines has a similar bill entitled the Sexual Orientation and Gender Identity Expression Equality Bill and has struggled over the past 20 years to recruit enough support to pass it.
5. See Meredith Weiss (2021), "Building Solidarity on the Margins: Seeking SOGIE Rights in ASEAN," in this issue for a discussion on how the government's policing of LGBT communities has worsened after the recent elections and a more professedly Islamist government supplanted Mahathir's party in March 2020.
6. The punishment for *liwat* is the same for *zina* (adultery). See Syariah Penal Code Order (2013: §82[1]).
7. According to Lee Jones (2008: 273), "Constructive engagement (CE) was initially devised by Thailand's foreign ministry to normalize its relations with Burma following decades of interference there.... CE in relation to Burma ... reflected the economic and security interests of ASEAN's dominant elites, who were seeking to displace the Cold War security framework in favor of expanding regional trading networks."
8. While the article was in production, the Court of Appeal of Singapore eventually struck down all three challenges to Section 377A. See *Ong Ming Johnson v Attorney-General and Other Matters* [2020] SGHC 63, released on March 30, 2020.

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References

ABBOTT, Jason P. (2000) Bittersweet victory: The 1999 Malaysian general election and the Anwar Ibrahim affair. *The Round Table*, 89(354), 245–258.

ACHARYA, Amitav. (1998) Culture, security, multilateralism: The 'ASEAN way' and regional order. *Contemporary Security Policy*, 19(1), 55–84.

ALKHATIB, Shaffiq. (2019) LGBT rights advocate files case against attorney-general, stating Section 377A of Penal Code is void. *Straits Times*, 22 January. [Online]. Available: https://www.straitstimes.com/singapore/courts-crime/lgbt-rights-advocate-files-case-against-attorney-general-stating-section-377a [8 May 2020].

ANNIS BIN ABDULLAH v. PUBLIC PROSECUTOR. (2004) SGHC 52 (Singapore).

ASEAN SOGIE CAUCUS. (2019) *Statement of ASEAN Civil Society Organizations on the Full Enforcement of Sharia Law in Brunei Darussalam*. [Online]. Available: https://aseansogiecaucus.org/news/external-news/132-statement-of-asean-civil-society-organizations-on-the-full-enforcement-of-sharia-law-in-brunei-darussalam [8 May 2020].

BARR, Michael D. (2000) Lee Kuan Yew and the "Asian values" debate. *Asian Studies Review*, 24(3), 309–334.

BOLKIAH, Sultan Hassanal. (2019) *Syariah Penal Code order clarified. Brunei Prime Minister's Office: Brunei Darussalam*. 5 May. [Online]. Available: http://www.pmo.gov.bn/Lists/News/DispForm.aspx?ID=1188 [8 May 2020].

BUGGERY ACT OF 1533. (1533) 25 Hen. 8 c. 6. (United Kingdom).

CADY, John F. (1964) *Southeast Asia: Its Historical Development* (New York: McGraw-Hill).

CABALLERO-ANTHONY, Mely. (2005) *Regional Security in Southeast Asia: Beyond the ASEAN Way* (Singapore: ISEAS).

CALLAHAN, Mary P. (2005) *Making Enemies: War and State Building in Burma* (Ithaca, NY: Cornell University Press).

CHEESMAN, Nick. (2015) *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order* (Cambridge: Cambridge University Press).

CHUA, Alfred. (2018) Repeal of Section 377A will end "online vitriol and abuse" against LGBTQ community, says DJ who filed legal challenge. *Today* (Singapore), 12 September. [Online]. Available: https://www.todayonline.com/singapore/dj-mounts-fresh-legal-challenge-against-section-377a [8 May 2020].

CHUA, Lynette J. (2014) *Mobilizing Gay Singapore: Rights and Resistance in an Authoritarian State* (Philadelphia, PA: Temple University Press).

CHUA, Lynette J. (2015) The vernacular mobilization of human rights in Myanmar's sexual orientation and gender identity movement: Vernacular mobilization of human rights. *Law & Society Review*, 49(2), 299–332.

CHUA, Lynette, and GILBERT, David. (2015) Sexual orientation and gender identity minorities in transition: LGBT rights and activism in Myanmar. *Human Rights Quarterly*, 37(1), 1–28.

CLARKE, Gerard. (2012) The evolving ASEAN human rights system: The ASEAN Human Rights Declaration of 2012. *Northwestern University Journal of International Human Rights*, 11(1), 1–27.

CONSTITUTION OF THE REPUBLIC OF SINGAPORE. (1999) *The Constitution of the Republic of Singapore*, 1985 Rev. ed., 1999 Rep. Singapore, reprint.

COURTS ENACTMENT ACT OF 1908. (1908) Brunei.

CROOK, John R. (2010) United States supports UN consultative status for ILGHRC. *American Journal of International Law*, 104(4), 662–664.

DAVIDSON, Paul J. (2004) The ASEAN way and the role of law in ASEAN economic cooperation. *Singapore Year Book of International Law*, 8, 165.

DAVIES, Mathew. (2012) The perils of incoherence: ASEAN, Myanmar and the avoidable failures of human rights. *Contemporary Southeast Asia*, 34(1), 1–22.

DAVIES, Mathew. (2017) Important but de-centred: ASEAN's role in the Southeast Asian human rights space. *TRaNS: Trans-Regional and -National Studies of Southeast Asia*, 5(1), 99–119.

DUFFY, Nick. (2019) Singapore's ban on gay sex faces legal challenge. *Pink News*, 23 January. [Online]. Available: https://www.pinknews.co.uk/2019/01/23/singapore-ban-gay-sex-lawsuit [8 May 2020].
ELLIS-PETERSEN, Hannah. (2019) Brunei introduces death by stoning as punishment for gay sex. *The Guardian*, March 28.
FUNSTON, John. (1999) Challenges facing ASEAN in a more complex age. *Contemporary Southeast Asia*, 21(2), 205–219.
FURNIVALL, J. S. (1956) *Colonial Policy and Practice: A Comparative Study of Burma and Netherlands India* (New York: New York University Press).
GERBER, Paula, and GORY, Joel. (2014) The UN Human Rights Committee and LGBT rights: What is it doing? What could it be doing? *Human Rights Law Review*, 14(3), 403–439.
GREENLEES, Donald. (2019) Why ASEAN needs to take a stand on Brunei's new Islamic law. *AsiaLink,* 5 April. [Online]. Available: https://asialink.unimelb.edu.au/stories/counting-the-costs-of-bruneis-new-laws [8 May 2020].
GRUENBAUM, Oren. (2019) Commonwealth update. *The Round Table*, 108(3), 223–228.
HANSARD. (1989) Seventh Parliament, Third Session, Vol. III, No. 12, Col. 2158 (March 22).
HARDING, Andrew. (2018) Multi-level, recursive law and development: Singapore's legal role in ASEAN. *Asian Journal of Law and Society*, 5(2), 251–269.
HOLDEN, Philip. (2000) *Modern Subjects/Colonial Texts: Hugh Clifford and the Discipline of English Literature in the Straits Settlements and Malaya, 1895–1907* (Greensboro, NC: ELT Press, University of North Carolina).
HOLSON, Laura M., and RUEB, Emily. (2019) Brunei hotel boycott gathers steam as anti-gay law goes into effect. *The New York Times*, 13 April.
HOOKER, M. B. (1978) *A Concise Legal History of South-East Asia* (New York: Clarendon Press).
HOOKER, M. B. (1988) *The Laws of Southeast Asia, Volume II: European Laws in South-East Asia* (Singapore: Butterworths & Co. Pte. Ltd.).
HORTON, A. V. M. (1984) *The British Residency in Brunei, 1906–1959, vol. 6(6)* (Hull, England: Centre for South-East Asian Studies).
HORTON, A. V. M. (1986a) British administration in Brunei 1906–1959. *Modern Asian Studies*, 20(2), 353–374.
HORTON, A. V. M. (1986b) *The Development of Brunei During the British Residential Era 1906–1959: A Sultanate Regenerated* (PhD dissertation, University of Hull).
IBRAHIM, Ahmad. (1976) The Penal Code (Amendment and Extension Act, 1976) Act A 327. *Jernal Undang-Undang*, vol. 3 (Kuala Lumpur: Fakulti Undang-Undang, Universiti Malaya).
INDIAN PENAL CODE. (1860) Act. No. 45 of 1860. [Online]. Available: https://www.indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf [23 November 2020].
ISMAIL, Saifulbahri. (2018) ASEAN lawmakers urge Indonesia to reject changes to criminal code. *Channel News Asia*, 7 February. [Online]. Available: https://www.channelnewsasia.com/news/asia/asean-lawmakers-urge-indonesia-to-reject-changes-to-criminal-9935950 [8 May 2020].
JONES, Lee. (2008) ASEAN's albatross: ASEAN's Burma policy, from constructive engagement to critical disengagement. *Asian Security*, 4(3), 271–293.
KAPLAN, Morris B. (2005) *Sodom on the Thames: Sex, Love, and Scandal in Wilde Times* (Ithaca, NY: Cornell University Press).
KHIN, Ohn Thant. (2001) ASEAN enlargement: Economic and financial implications for Myanmar. In *ASEAN Enlargement: Impacts and Implications*, Mya Than and Carolyn L. Gates (eds.) (Singapore: Institute of Southeast Asian Studies).
KUROHI, Rei. (2019) LGBT activist and retired GP Roy Tan files new court challenge against Section 377A. *Straits Times*, 25 September. [Online]. Available: https://www.straitstimes.com/singapore/lgbt-activist-who-is-a-retired-gp-files-new-case-against-section-377a [8 May 2020].
LANGLOIS, Anthony J. (2001) *The Politics of Justice and Human Rights: Southeast Asia and Universalist Theory* (Cambridge: Cambridge University Press).
LANGLOIS, Anthony J. (2014) Human rights, 'orientation,' and ASEAN. *Journal of Human Rights*, 13(3), 307–321.
LANGLOIS, Anthony J., WILKINSON, C., GERBER, P., and OFFORD, B. (2017) Community, identity, orientation: Sexuality, gender and rights in ASEAN. *Pacific Review*, 30(5), 710–728.
LATIFF, Rozanna. (2018) Malaysian PM says caning of lesbians counter to 'compassion of Islam.' *Reuters*, 6 September.
LEONG, Wai-Teng. (1997) Decoding sexual policy in Singapore. In *Social Policy in Post-Industrial Singapore*, Kwen Fee Lian and Chee Kiong Tong (eds.) (Boston: Brill, 2008).
LIM, Eng-Beng. (2005) The Mardi Gras Boys of Singapore's English-language theatre. *Asian Theatre Journal* 22(2), 293–309.
LIM MENG SUANG AND ANOTHER v. ATTORNEY-GENERAL AND ANOTHER APPEAL AND ANOTHER MATTER. (2014) SGCA 53 (Singapore).

LUM, Selina. (2018a) Court challenge filed by Singapore DJ against Section 377A. *The New Paper*, 12 September. [Online]. Available: https://www.tnp.sg/news/singapore/court-challenge-filed-singapore-dj-against-section-377a [8 May 2020].

LUM, Selina. (2018b) Singapore DJ files challenge against gay-sex law; court should depart from 2014 precedent, he says; lawsuit comes days after India ruling. *Straits Times*, 12 September. [Online]. Available: https://www.straitstimes.com/singapore/singapore-dj-files-fresh-court-challenge-against-section-377a-arguing-it-is [8 May 2020].

MAGRA, Iliana. (2019) Brunei stoning punishment for gay sex and adultery takes effect despite international outcry. *The New York Times*, 3 April. [Online]. Available: https://www.nytimes.com/2019/04/03/world/asia/brunei-stoning-gay-sex.html [8 May 2020].

MALAYSIAN PENAL CODE. (1997) Act No. 574 of 1997.

MALIK, Balwant Singh. (1994) Punishment of transportation for life. *Journal of the Indian Law Institute*, 36(1), 111–120.

MANDERSON, Lenore. (1997) Colonial desires: Sexuality, race, and gender in British Malaya. *Journal of the History of Sexuality*, 7(3), 372–388.

MANSURNOOR, Iik A. (2013) Re-establishing order in Brunei: The introduction of the British legal system during the early residential period. *Islamic Studies*, 52(2), 155–182.

MARICAN, Pawancheek. (2009) *Anwar on Trial: In the Face of Injustice* (Petaling Jaya, Malaysia: Gerakbudaya Enterprise).

MCARTHUR, M. S. H. (1904) Report on Brunei in 1904. In *Report on Brunei in 1904: Introduced and Annotated by A.V.M. Horton*, A. V. M. Horton (ed.) (Athens: Ohio University Monographs in International Studies, No. 74).

NAVTEJ SINGH JOHAR v. UNION OF INDIA. (2016) WP (Crl) No. 76 of 2016 (India).

NAZERI, Norbani Mohamed. (2010) Criminal law codification and reform in Malaysia: An overview. *Singapore Journal of Legal Studies*, 2010(2), 375–399.

ONG MING JOHNSON v. ATTORNEY-GENERAL AND OTHER MATTERS. (2020) SGHC 63.

PANDA, Ankit. (2013) Brunei becomes first East Asian state to adopt Sharia Law. *The Diplomat*, 25 October. [Online]. Available: https://thediplomat.com/2013/10/brunei-becomes-first-east-asian-state-to-adopt-sharia-law [8 May 2020].

PO, Jen Yap. (2015) *Constitutional Dialogue in Common Law Asia* (London: Oxford University Press).

PRASSE-FREEMAN, Elliott. (2019) Of punishment, protest, and press conferences: Contentious politics amid despotic decision in contemporary Burmese courtrooms. In *Criminal Legalities in the Global South: Cultural Dynamics, Political Tensions, and Institutional Practices*, Pablo Ciocchini and George Radics (eds.) (London: Routledge).

PRINTING AND PUBLISHING LAW. (2014) (Myanmar). [Online]. Available: https://www.mlis.gov.mm/mLsView.do;jsessionid=01A33480229B18DAFA77B8F74220FC6F?lawordSn=9583 [23 November 2020].

PUBLIC PROSECUTOR v. DATO' SERI ANWAR BIN IBRAHIM. (1999) 2 MLJ 4 (Malaysia).

PUBLIC PROSECUTOR v. KWAN KWONG WENG. (1997) SGCA 8 (Singapore).

RADICS, George B. (2013) Decolonizing Singapore's sex laws: Tracing Section 377A of Singapore's Penal Code. *Columbia Human Rights Law Review*, 45(1), 57–99.

RADICS, George B. (2014a) Singapore: A 'fine' city—British colonial criminal sentencing policies and its lasting effects on the Singaporean corporal state. *Santa Clara Journal of International Law*, 12(3), 57–90.

RADICS, George B. (2014b) Singapore's Mutual Assistance in Criminal Matters Act (Chapter 190A) and its application to Thailand. *Thammasat Law Journal*, 43(2), 444–455.

RADICS, George B. (2019a) 'First world problems' in the 'Third World:' LGBT rights in Singapore. In *Criminal Legalities in the Global South: Cultural Dynamics, Political Tensions, and Institutional Practices*, Pablo Ciocchini and George Radics (eds.) (London: Routledge).

RADICS, George B. (2019b) #Ready4Repeal? Viewing s 377A of the Singaporean Penal Code through the lens of legal actors and artists. *Australian Journal of Asian Law*, 20(1), article 16.

RAHMAN, Azrimah Binti Haji Abdul. (2006) Legal system In Brunei Darussalam after the signing of the Supplementary Agreement 1905/1906 between Brunei & Great Britain. *Working Paper for National Day Seminar* (Brunei: Attorney General's Office). [Online]. Available: http://www.bruneiresources.com/pdf/nd06_azrimah.pdf [8 May 2020].

RAJAH, V. K. (2018) Section 377A: An impotent anachronism; time for serious reconsideration of Section 377A. *Straits Times*, 30 September. [Online]. Available: https://www.straitstimes.com/opinion/section-377a-an-impotent-anachronism [8 May 2020].

RAWSKI, Frederick, SILVERINO, Ryan, SAMUEL, John, and BACALLA, Tess. (2019) Urgent concern about the 2013 Syariah Penal Code of Brunei Darussalam. 29 April. [Online]. Available: https://aseansogiecaucus.org/images/2019/Brunei-AICHR-Letter-April-10-2019.pdf [8 May 2020].

READY4REPEAL. (2018) Ready4Repeal Townhall. Facebook, 30 September. [Online]. Available: https://www.facebook.com/ready4repeal/videos/533652883726990 [18 November 2020].
REED, John. (2019) Brunei says death penalty will not be enforced on gay sex. *Financial Times*, 6 May. [Online]. Available: https://www.ft.com/content/0ef1e636-6fa6-11e9-bf5c-6eeb837566c5 [8 May 2020].
RENSHAW, Catherine. (2013) The ASEAN Human Rights Declaration 2012. *Human Rights Law Review*, 13(3), 557–579.
SINGAPORE PARLIAMENTARY DEBATE OFFICIAL REPORTER. (2007) Vol. 83, Line 2397, 22 October.
SOUTH CHINA MORNING POST (SCMP). (2018) *Mahathir's Malaysia Accused of 'State-Sponsored Homophobia' after LGBT Crackdown*, 22 August. [Online]. https://www.scmp.com/news/asia/southeast-asia/article/2160781/mahathirs-malaysia-accused-state-sponsored-homophobia-after [23 November 2020].
STRAITS SETTLEMENT PENAL CODE. (1871) Ord. 4 of 1871.
SYARIAH PENAL CODE ORDER. (2013) No. S69/2013 (Brunei).
TAN ENG HONG v. PUBLIC PROSECUTOR. (2012) SGCA 45 (Singapore).
TAN ENG HONG v. ATTORNEY GENERAL. (2011) SGHC 56 (Singapore).
TAN ENG HONG v. ATTORNEY-GENERAL. (2013) SGHC 199 (Singapore).
TAN, beng hui. (2012) *Sexuality, Islam and Politics in Malaysia: A Study of the Shifting Strategies of Regulation* (PhD Thesis, National University of Singapore, Singapore).
TAN, beng hui. (2018) The rise of Islamic sexual morality and state power in Malaysia. In *Law and Society in Malaysia: Pluralism, Religion, and Ethnicity*, A. Harding and Dian Shah (eds.) (New York, NY: Routledge).
TAN, Chris K. K. (2009) 'But they are like you and me': Gay civil servants and citizenship in a cosmopolitanizing Singapore," *City and Society*, 21(1), 133–154.
TAN, Eugene K. B. (2015) Country report: Singapore. In *Keeping the Faith: A Study of Freedom of Thought, Conscience, and Religion in ASEAN* (Singapore: Singapore Management University, Research Collection School of Law).
TAYLOR, Michael. (2019) Retired doctor turns to Singapore's judiciary to scrap gay sex ban. *Reuters*, 27 September. [Online]. Available: https://www.reuters.com/article/us-singapore-lgbt-legal/retired-doctor-turns-to-singapores-judiciary-to-scrap-gay-sex-ban-idUSKBN1WC18B [8 May 2020].
THAN, Tin Maung Maung. (2006) "Myanmar: Challenges galore but opposition failed to score. *Southeast Asian Affairs*, 183–207.
TROWELL, Mark. (2012) *Sodomy II: The Trial of Anwar Ibrahim* (Singapore: Marshall Cavendish Editions).
UNITED NATIONS. (2019) Bachelet urges Brunei to stop entry into force of 'draconian' new penal code. United Nations Commission for Human Rights Press Release. (Geneva). [Online]. Available: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24432&LangID=E [8 May 2020].
VOSS, M. J. (2018) Contesting sexual orientation and gender identity at the UN Human Rights Council. *Human Rights Review*, 19(1), 1–22.
WEISS, Meredith. (2021) Building solidarity on the margins: Seeking SOGIE rights in ASEAN. *Journal of Human Rights*, 20(2), 194–210.
WHITING, Amanda. (2008) Desecularizing Malaysian law? In *Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia*, Sarah Biddulph and Penelope Nicholson (eds.) (Leiden: Martinus Nijhoff Publishers).