

### ***Full transcript of NMP Professor Thio Li-Ann's speech in Parliament (October 2007)***

Two camps championing two distinct criminal law philosophies are polarised over whether to retain or repeal s377A which criminalizes public or private acts of gross indecency between two men, such as sodomy.

The 'liberal' camp wants 377A repealed. They offer an 'argument from consent' –government should not police the private sexual behaviour of consenting adults. They opine this violates their liberty or 'privacy'. They ask, 'Why criminalize something which does not "harm" anyone; if homosexuals are "born that way", isn't it unkind to 'discriminate' against their sexual practices?

These flawed arguments are marinated with distracting fallacies which obscure what is at stake – repealing 377A is the first step of a radical, political agenda which will subvert social morality, the common good and undermine our liberties.

The 'communitarian' camp argues from 'community values' – these social conservatives want 377A retained, to protect public health, morality, decency and order. A Keep 377A online petition attracted over 15,000 signatures after a few days.

Like many, I applaud the government's wisdom in keeping 377A which conserves what upholds the national interest. 'Conservative' here is not a dirty word connoting backwardness; environmental conservation protects our habitat; the moral ecology must be conserved to protect what is precious and sustains a dynamic, free and good society.

The welfare of future generations depends on basing law on sound public philosophy. We should reject the 'argument from consent' as its philosophy is intellectually deficient and morally bankrupt.

Sir, the arguments to retain 377A are overwhelmingly compelling and should be fully articulated, to enable legislators to make informed decisions and not be bewitched by the empty rhetoric and emotional sloganeering employed by many radical liberals, which generate more heat than light.

The real question today is not "if" we should repeal 377A now, or wait until people are ready to move. This assumes too much, as though we need an adjustment period before the inevitable. The real question is not "if" but "should" we ever repeal 377A. It is not inevitable; it is not desirable to repeal it in any event. Not only is retaining s377A sound public policy, it is legally and constitutionally beyond reproach. Responsible legislators must grapple with the facts, figures and principles involved; they cannot discount the noxious social consequences repeal will bring.

Debate must be based on substance not sound-bites. Let me red-flag four red herrings.

First, to say a law is archaic is merely chronological snobbery.

Second, you cannot say a law is 'regressive' unless you first identify your ultimate goal. If we seek to copy the sexual libertine ethos of the wild wild West, then repealing s377A is progressive. But that is not our final destination. The onus is on those seeking repeal to prove this will not harm society.

Third, to say a law which criminalizes homosexual acts because many find it offensive is merely imposing a "prejudice" or "bias" assumes with justification that no reasonable contrary view exists. This evades debate. The liberal argument which says sodomy is a personal choice, private matter and 'victimless crime' merely asserts this. It rests precariously on an idiosyncratic notion of "harm" – but "harm" can be both physical and intangible; victims include both the immediate parties and third parties. What is done in 'private' can have public repercussions.

Fourth, some argue that legislators should be 'open-minded' and decriminalize sodomy. However, like an open mouth, an open mind must eventually close on something solid. They urge legislators to be 'objective' and to leave their personal subjective beliefs at home, especially if they hold religious views which consider homosexuality aberrant.

This demand for objectivity is intellectually disingenuous as there is no neutral ground, no 'Switzerland of ambivalence' when we consider the moral issues related to 377A which require moral judgment of what is right and wrong – not to take a stand, is to take a stand! As law has a moral basis, we need to consider which morality to legislate. Neither the majority or minority is always right – but there are fundamental values beyond fashion and politics which serve the common good. Religious views are part of our common morality. We separate 'religion' from 'politics,' but not 'religion' from 'public policy'. That would be undemocratic. All citizens may propose views in public debate, whether influenced by religious or secular convictions or both; only the government can impose a view by law.

Incidentally, one does not have to be religious to consider homosexuality contrary to biological design and immoral; secular philosopher Immanuel Kant considered homosexuality "immoral acts against our animal nature" which did not preserve the species and dishonoured humanity.

The issues surrounding s377A are about morality, not modernity or being cosmopolitan. What will foreigners think if we retain 377A? Depends on which foreigner you ask. Many would applaud us! Such issues divide other societies as well! The debate is not closed. A group of Canadians<sup>1</sup> were grieved enough to issue an online apology to the world "for harm done through Canada's legalization of homosexual marriage", urging us not to repeat their mistakes.

Singapore is an independent state and we can decide the 377A issue ourselves; we have no need of foreign or neo-colonial moral imperialism in matters of fundamental morality.

### **There are no constitutional objections to s377A**

Sir, there are no constitutional objections to retaining 377A while de-criminalising heterosexual oral and anal sex. Three legal points are worth making.

First, there is no constitutional right to homosexual sodomy. It is not a facet of personal liberty under article 9. Nor is there a human right to homosexual sodomy though some like to slip this in under the umbrella of 'privacy.' Human rights are universal, like prohibitions against genocide. Demands for 'homosexual rights' are the political claims of a narrow interest group masquerading as legal entitlements. Homosexual activists often try to infiltrate and hijack human rights initiatives to serve their political agenda, discrediting an otherwise noble cause to protect the weak and poor. You cannot make a human wrong a human right.

Second, while homosexuals are a numerical minority, there is no such thing as 'sexual minorities' at law. Activists have coined this term to draw a beguiling but fallacious association between homosexuals and legally recognized minorities like racial groups. Race is a fixed trait. It remains controversial whether homosexual orientation is genetic or environmental, perhaps both. There are no ex-Blacks but there are ex-gays. The analogy between race and sexual orientation or preferred sexual preferences, is false. Activists repeat the slogan 'sexual minority' *ad nauseum* as a deceptive political ploy to get sympathy from people who don't think through issues carefully. Repetition does not cure fallacy.

Science has become so politicized that the issue of whether gays are 'born that way' depends on which scientist you ask. You cannot base sound public philosophy on poor politicized pseudo 'science'.

Homosexuality is a gender identity disorder; there are numerous examples of former homosexuals successfully dealing with this. Just this year, two high profile US activists left the homosexual lifestyle, the publisher of Venus, a lesbian magazine, and an editor of Young Gay America. Their stories are available on the net. An article by an ex-gay in the New Statesmen this July identified the roots of his emotional hurts, like a distant father, overbearing mother and sexual abuse by a family friend; after working through his pain, his unwanted same-sex attractions left. While difficult, change is possible and a compassionate society would help those wanting to fulfill their heterosexual potential. There is hope.

Singapore law only recognizes racial and religious minorities. Special protection is reserved for the poor and disadvantaged; the average homosexual person in Singapore is both well educated, with higher income – that's why upscale condo developers target them! Homosexuals do not deserve special rights, just the rights we all have.

'Sexual minorities' and 'sexual orientation' are vague terms – covering anything from homosexuality, bestiality, incest, paedophilia – do all these minority sexual practices merit protection?

Third, 377A does not breach the article 12 guarantee of equality. While all human persons are of equal worth, not all human behaviour is equally worthy. We separate the actor from the act. In criminalizing acts, we consider the wrongfulness of the act, the harm caused and how it affects the good of society.

Parliament has the power to classify; this involves a choice, like distinguishing murder and manslaughter. Classifications which satisfy the constitutional test of validity are called “differentiation”; only invalid classifications are called “discrimination.” Criminalising same-sex sodomy but not opposite-sex sodomy is valid “differentiation.” S377A does not target any specific actor; it would cover a heterosexual male experimenting with male sodomy.

Valid classifications must have a clear basis and be rationally related to a legitimate purpose. In serving public health and public morality, 377A passes constitutional muster with flying colours.

### **Public Health Argument**

Sir, public health and safety is a legitimate purpose served by the 377A ban on homosexual anal and oral sex. Both these practices are efficient methods of transmitting sexual diseases and AIDs / HIV which are public health problems. These are not victimless crimes as the whole community has to foot the costs of these diseases.

Anal-penetrative sex is inherently damaging to the body and a misuse of organs, like shoving a straw up your nose to drink. The anus is designed to expel waste; when something is forcibly inserted into it, the muscles contract and cause tearing; fecal waste, viruses carried by sperm and blood thus congregate, with adverse health implications like ‘gay bowel syndrome’, anal cancer. ‘Acts of gross indecency’ under 377A also covers unhygienic practices like “rimming” where the mouth comes into contact with the anus. Consent to harmful acts is no defence – otherwise, our strong anti-drug laws must fall as it cannot co-exist with letting in recreational drugs as a matter of personal lifestyle choice.

Opposite-sex sodomy is harmful, but medical studies indicate that same-sex sodomy carries a higher price tag for society because of higher promiscuity and frequency levels. The New York Times reported that even informed homosexuals return to unsafe practices like bare-backing and bug-chasing after a health crisis wanes. A British Study showed that the legalization of homosexual sodomy correlated with an upsurge of STDs among gays. Common sense tells us that with more acceptance, any form of consensual sexual behaviour increases. Sodomy laws have some deterrent effect.

It is rational for the state to target the most acute aspect of a problem. The legal issue is not whether the state should be concerned with heterosexual sodomy but whether it is reasonable to believe same-sex sodomy poses a distinct problem. Medical literature indicates that gays have disproportionately higher STDs rates, which puts them in a different category from the general public, warranting different treatment.

The onus rests on opponents of 377A to negate every conceivable basis for treating homosexual and heterosexual sodomy differently. They cannot, because classifications do not

need to be perfect and can be under-inclusive; valid classifications only need to “go some way” to serve the legislative goal, which 377A clearly does.

### **Public Morality**

Sir, the power to legislate morality is not limited to preventing demonstrable harm. The Penal Code now criminalizes the wounding of both religious and racial feelings (s498).

S377A serves public morality; the argument from community reminds us we share a way of life which gives legal expression to the moral repugnancy of homosexuality. Heterosexual sodomy unlike homosexual sodomy does not undermine the understanding of heterosexuality as the preferred social norm. To those who say that 377A penalizes only gays not lesbians, note there have been calls to criminalize lesbianism too.

Public sexual morality must buttress strong families based on faithful union between man and wife, the best model for raising children. The state should not promote promiscuity nor condone sexual exploitation. New section 376D criminalizes the organisation of child sex tours. Bravo.

The ‘argument from consent’ says the state should keep out of the bedroom, to safeguard ‘sexual autonomy’. While we cherish racial and religious diversity, sexual diversity is a different kettle of fish. Diversity is not license for perversity. This radical liberal argument is pernicious, a leftist philosophy based on radical individualism and radical egalitarianism. It is unworkable because every viable moral theory has limits to consent.

Radical individualism would demand decriminalising consensual adult incest; but the Penal Code is not based on consent as s376F reflects. The state has always retained an interest in regulating conduct in the bedroom – the issue is which type?

Radical egalitarianism applied to sexual morality says the state should not morally distinguish between types of consensual sex. It exudes a false neutrality but actually sneaks in a substantive philosophy: Hedonism which breeds narcissism. This extols satisfying desire without restraint as a matter of autonomy. But some desires are undesirable, harming self and society.

The argument from consent ultimately celebrates sexual libertine values, the fruit of which is sexual licentiousness, a culture of lust, which takes, rather than love, which gives. This social decline will provoke more headlines like a 2004 Her World article called: “Gay guy confesses: I slept with 100 men...one of them could be your hubby.” What about the broken-hearts involved?

If you argue from consent, how can you condemn any form of sexual self-expression, no matter how selfish or hurtful? But, no man is an island. Ideas, embodied in laws, have consequences. Don’t send the wrong message.

The issues raised in the Petition fall apart on rigorous analysis.

### **Rule of Law vs. Rule of Good Law**

Sir, government policy is not to pro-actively enforce 377A. Some argue that just keeping this law on the books will erode the rule of law. I disagree. It is not turning a blind eye on the existence of homosexuals here; it is refusing to celebrate homosexuality while allowing gays to live quiet lives. This is prudent, as it is difficult to enforce 'bedroom' offences; such intrusive powers should be judiciously used anyway.

We have other hard-to-police laws which embody communal standards of public decency, such as laws against nudity visible to the public eye, even if you are at home. Law is a Moral teacher and makes a moral statement; 6 years ago, Singapore symbolically blocked access to 100 porn sites, as a 'statement of our values.' We value our values, while remaining realistic. A non pro-active policy does not mean 377A will never be enforced – who knows what another season may require? Policies can change.

Sir, citizens are not just concerned with the rule of law but with the rule of good law. Laws which violate core moral values will alienate many and bring the system into disrepute. Indeed, many citizens see keeping 377A as evidence the government is defending the right moral values, which lends legitimacy.

### **Criminalising Moral Wrongs – which?**

Sir, it is true that not all moral wrongs, such as adultery, are criminalized; yet they retain their stigma. But adulterers know they done wrong and do not lobby for toleration of adultery as a sexual orientation right.

### **Homosexual Agenda and Social Consequences**

Conversely, homosexual activists lobby hard for a radical sexual revolution, waging a liberal fundamentalist crusade against traditional morality. They adopt a 'step by step' approach to hide how radical the agenda is. Liberals never ask: what happens next if you repeal 377A. Responsible legislators must see the Big Picture.

Pro-gay academics identify 5 main steps in this agenda in their study of foreign jurisdictions. Step 1: repeal laws criminalizing homosexual sex. They consider this "pivotal" to advancing the homosexual agenda. Why? Without this, they cannot advance in the public sphere or push for government funding and support for special programmes, such as the New York Gay High School. Governments don't promote criminal activities. You need to change the criminal law before changing civil law.

But decriminalizing sodomy is only the tip of the iceberg which is 1/8 of an ice mass – we must see what lies beneath the water to avoid a Titanic fate.

Step 2 is to equalize the age of consent for heterosexual and homosexual sex; in some countries, this is as low as 13. Do we want to expose Sec 1 boys to adult sexual predators? To be sexually creative?

Step 3 is to prohibit discrimination based on 'sexual orientation'. But would this not include all sexual behaviour? "Sex before 8 or else it's too late" is the motto of the North American

Man Boy Love Association. Should we judge pedophilia or be relativist and promote “anything goes” sexual experimentation?

Sir, to protect homosexuals, some countries have criminalized not sodomy but opposition to sodomy, making it a ‘hate crime’ to criticize homosexuality. This violates freedom of speech and religion; will sacred texts that declare homosexuality morally deviant, like the Bible and Koran, be criminalized? Social unrest beckons. Such assaults on constitutional liberties cannot be tolerated.

Steps 4 and 5 relate to legalizing same-sex marriage or partnerships, child adoption rights. This subverts both marriage and family, which are institutions homosexuals seek to redefine beyond recognition. Will MOE then commission a book copying the US “Heather has 2 mummies” called “Ah Beng has 2 daddies?” What if parents disagree with their kids studying homosexual propaganda?

Is legalizing same-sex marriage progressive? It is if you want a genderless planet where “husband” and “wife” are considered discriminatory terms, to be replaced by “spouse”. We want to be able to say, Majullah Singapura, not Mundur Singapura!

Repealing 377A will further batter the institution of ‘marriage’ which we must bolster! This is because the arguments raised to challenge a distinction between heterosexual and homosexual sodomy, equally apply to challenge legal distinctions between lawful heterosexual marriage between man and wife and unlawful homosexual unions.

To reinforce the moral foundations of a pro-family policy that permits only heterosexuals to marry, it is permissible to differentiate between heterosexual and homosexual sodomy. To say that 377A discriminates is effectively to say that marriage laws discriminate and are unconstitutional.

Legalising sodomy would set a bad example; by signaling approval, it may change both attitude and conduct; coupled with sexual hedonism, it makes a mockery of strong family values. 377A helps to protect against this harm.

Academic supporters of the homosexual agenda like my colleague Michael Hor argued online that even if 377A was not enforced, discriminatory policies against homosexuals could be built on the logic of its existence. But taking his logic, repealing 377A would mean the government would be less able to resist claims for homosexual marriage or for promoting homosexuality as a desirable lifestyle in schools, as this would be ‘discriminatory’. These foreign developments warn us that the advance of the homosexual agenda here is not remote.

To slouch back to Sodom is to return to the Bad Old Days in ancient Greece or even China where sex was utterly wild and unrestrained, and homosexuality was considered superior to man-women relations. Women’s groups should note that where homosexuality was celebrated, women were relegated to low social roles; when homosexuality was idealized in Greece, women were objects not partners, who ran homes and bore babies. Back then, whether a man had sex with another man, woman or child was a matter of indifference, like one’s eating preferences. The only relevant category was penetrator and penetrated; sex was not seen as interactive intimacy, but a doing of something to someone. How degrading.

It was only when marriage was invented by the Jewish Torah that the genie of sexual impulses was forced into the marital bottle, so that sex no longer dominated society – this discipline provided the social base for the development of western civilization.

Homosexuals as fellow citizens have the right to expect decent treatment from the rest of us; but they have no right to insist we surrender our fundamental moral beliefs so they can feel comfortable about their sexual behaviour. We should not be subject to the tyranny of the undemocratic minority who want to violate our consciences, trample on our cherished moral virtues and threaten our collective welfare by imposing homosexual dogma on right-thinking people. Keep 377A.

### **Democracy and Debate**

Sir, we Singaporeans will continue to debate and disagree over controversial moral issues as they arise. We should make substantive arguments and not think with our feelings; the media should present both sides fairly, without bias.

However, I have noted a disturbing phenomenon over the 377A debate– the argument by insult. Instead of reasoning, some have resorted to name-calling to intimidate and silence their opponents. People with principled moral objections to the homosexual agenda are tarred and feathered ‘homophobes’, ‘bigots’, to shut them up. This strategy is unoriginally imported from foreign gay activists, which stifles creative thinking and intellectual enquiry. When you shout, full of sound and fury, and call your opponents nasty names, this terminates public debate. No one wants to be called a bigot. But think about it – if I oppose incest, am I an incestophobe? If I oppose alcoholism, am I a winophobe? If having an opinion means you are bigoted, then we are all bigots! What is your phobia?

Where certain liberals accuse their opponents of being intolerant, they demonstrate their own intolerance towards their opponents! They are hoist on their own petard, guilty of everything they accuse their detractors of!

One of my colleagues, a young professor, suffered these vicious tactics when the Straits Times published an article this May where Yvonne Lee argued against repealing 377A. This well-researched, cogent article so incensed homosexual activists that they flooded her with a torrent of abusive, lewd emails and wrote to her head of department calling for her to be removed from her job. This appeared to be a co-ordinated campaign.

We academics are used to disagreement, but why write to her employer and threaten her livelihood? Why vilify someone and seek to assassinate their personal and professional reputation? I hope the House joins me in deploring these malicious attacks which also assault academic freedom. She is owed an apology. I would be ashamed to belong to any academic institution that cravenly bowed down to such disgraceful bully-boy tactics.

This August, I had my own experience with this sort of hysterical attack. I received an email from someone I never met, full of vile and obscene invective which I shall not repeat, accusing me of hatemongering. It cursed me and expressed the wish to defile my grave on the day 377A was repealed.

I believe in free debate but this oversteps the line. I was distressed, disgusted, upset enough to file a police report. Does a normal person go up to a stranger to express such irrational hatred?

Smear tactics indicate the poor quality of debate and also, of character. Let us have rational debate, not diatribe, free from abusive rhetoric and tantrum-throwing. As Singapore approaches her Jubilee, My hope for the post-65 generation is that we will not become an uncivil civil society borne from an immature culture of vulgarity which celebrates the base, not the noble.

I speak, at the risk of being burned at the stake by militant activists. But if we don't stand for something, we will fall for anything. I was raised to believe in speaking out for what is right, good and true, no matter the cost. It is important in life not only to have a Brain, but a Spine. One of my favourite speeches by PM Lee, which I force my students to read, is his Harvard Club speech 2 years ago where he urged citizens not to be "passive bystanders" in their own fate but to debate issues with reason and conviction. I took this to heart. To forge good policy, we need to do our homework and engage in honest debate on the issues. Let us also speak with civility, which cannot be legislated, but draws deep from our character and upbringing. Before government can govern man, man must be able to govern himself.

Sir, let speaking in the public square with reason, passion, honesty, civility, even grace, be the mark of a Citizen of Singapore.