



# EUROPEAN POLICY BRIEF

## INTEGRATION IN SOUTHEAST ASIA: TRAJECTORIES OF INCLUSION, DYNAMICS OF EXCLUSION

### Authoritarianism in Southeast Asia, Old and New.

This policy brief examines the exercise of power in Southeast Asia from a historical perspective. It argues that the legacies of colonialism should be carefully taken into account when analysing the region's current legal and political systems. Although striving, in rhetoric, to distance themselves from the "colonial state", post-independence governments in **Malaysia, Singapore and Indonesia** have paradoxically continued to apply the rule of law through racial categories and resorted, on occasion, to colonial laws for repressive purposes. The fragility of the transition from colonialism to independence in many Southeast Asian countries was a stimulus to authoritarianism by allowing the persistence of an 'old state' in 'new' Southeast Asian societies. At the same time power is locally rooted and historically produced, it defies generalised analysis and requires policy formulation that is sensitive to local political context.

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## INTRODUCTION

Media commentaries that, over the years, referred to Southeast Asia's 'soft' authoritarian, or semi-democracies, have rarely come to grips with the complexities of power in the region.

The subject of power in Southeast Asia invites reflexion on western perceptions of Southeast Asia that date from the pre-colonial era and the legacies of the more recent colonial past. In public discussion, these legacies are often considered in a very generalised, even polemical way. Given the mood of public controversy in Southeast Asia over these issues, there is a particular need for clarity, transparency and honesty in confronting fraught questions of memory and 'difficult' histories. This requires a more nuanced sense of precisely *what* colonial legacy one is speaking of in any given context and *why* it might matter in any contemporary sense.

This is an area that scholarly research is addressing in new ways, especially by researching across the colonial-post-colonial watershed in a way that was not attempted in the past, when there was a sharper disjuncture between ‘colonial’ and ‘national histories of the region. In this brief we look at the question of power through continuities of law, and its impact on some of the current forms of authoritarianism in the region.

## EVIDENCE AND ANALYSIS

In the collective mind of Europe, Southeast Asian governments and societies have long been associated with authoritarianism forms. The concept of “Oriental Despotism” loomed large in European interpretation and representation of Asiatic states for many centuries, and was central to the way western travellers viewed SEA from the very first encounters in the early modern period. According to this idea, the Orient was ruled by cruel autocrats who considered life cheap and handed out an arbitrary justice. A stark contrast was drawn with Western justice, which was deemed rational, based on a ‘rule of law’. Although capital punishment was also in force in Europe until very modern times, European observers contrasted its (presumed) sober, judicial application in the west, to the alleged ferocity and capriciousness of state justice in Southeast Asia. These images of local misrule often provided a moral alibi for western colonial intervention in the region.

Unsurprisingly, historical studies show that pre-colonial systems of justice in Southeast Asia were not as brutal or arbitrary as depicted by Europeans. A ruler’s justice was often subject to behind the scenes negotiation where sentences, in particular death sentences, could be overturned. Dispensing justice was often used by rulers as a form of political ‘theatre’, as a symbolic demonstration of their power.

During the colonial period, Europeans transplanted their codified legal systems to Southeast Asia. In practice, however, this process was extremely uneven, and systems of legal pluralism prevailed. This was due to characteristic forms of indirect rule through Southeast Asian rulers, where local, traditional, or European adaptations of ‘traditional systems’ of justice continued to operate in parallel with colonial law. Access to European-style colonial courts was governed by complex racial hierarchies: this status determined what law one was subject to, the courts one had access to, the gaol one might be sent to.

Added to this, colonial rule could not escape the logic of its own violent beginnings and was subsumed by the racial thinking of the era. European authorities struggled to reign in the violence of Europeans within the colonies, and leniency in this regard created scandals that further undermined the legitimacy of the rule of colonial law. The operation of law often meant the devolution of a significant power into the hands of the European civil servants, police and their local subordinates, and the use of devices such as collective punishment, banishment, regimes of corporal punishment (sometimes in the private hands of European employers) and widespread capital punishment. The execution of rebels who challenged colonial authority - in the case of French Indochina in the aftermath of challenges in 1908, for instance - could become a grisly public spectacle. In the face of mounting challenges to empire by the early twentieth century, a considerable repertoire of new legislation took force in colonies: marital law, the law of sedition and conspiracy, etc. Many of these laws - as well as notorious aspects of the Penal Code of British India such as Chapter XVI, Section 377 relating to sodomy - remain on the statute books in ex-colonies. In this period too, colonial policing became increasingly international, with cooperation in chasing political fugitives across jurisdiction. However, until the end, the world of empire remained an uneven assemblage of direct rule, indirect rule and sundry extra-territorial jurisdictions greatly complicated questions of legal status.

Operating under the threat of capital punishment or extra-judicial killing, colonial nationalists were vividly aware of the legal system’s blatant inequalities. Many of the first generation of nationalist leaders were exposed to forms of political detention, from Sukarno, Hatta, Sutan Sjahrir in Indonesia to Ho Chi Minh’s arrest in Hong Kong in 1931 and his attempted extradition to Indochina

on a capital charge. Nationalists were also aware of the colonial law's blind spots and pressure points. In this famous case, a skilful appeal by Ho's English lawyer to the Privy Council in London eventually secured his release. Despite their unevenness and inequities of access to colonial systems of law, it remained a recourse for colonial subjects in their struggles with the colonial state in the everyday management of their affairs.

Despite this mixed experience, and troubling legacy, the circumstances of independence, the pressures of the Cold War, and especially the ubiquitous existence of states of 'Emergency', and its repercussion for the suspension of legal processes and detention with trial, led to crucial continuities between the late colonial and post-colonial legal order. For example states that largely adopted British systems of law, and Westminster-style constitutions, such as Malaysia and Singapore retained Internal Security Acts and much of the associated authoritarian repertoires that had been developed by the late colonial state. These Emergency and the counter-insurgency states continue to be the source of public controversy in debates on the legacies of empire within Britain and to potentially bedevil relations with former colonies. There are hotly contested in these countries themselves. In Singapore, there have recently waged, in a quiet way, history wars over the detention of political opponents of the ruling PAP in the 1960s and 1970s - characterised as 'Singapore's original sin' - and the role of the founding prime minister, Lee Kuan Yew, within them.

Even in cases where independence was not a negotiated and gradual 'transfer of power', considerable continuities can be seen. In his seminal essay 'Old State - New Society', Benedict Anderson emphasised how, in the case of Indonesia, following its independence through revolution, the new regimes that emerged made use of the existing state apparatus and bureaucracy and pursued internal and external policies remarkably similar to those of their colonial predecessors.

Another key example of this legacy lies a highly racialised approach to politics, administration and questions of security, for example in policies directed against the ethnic Chinese. The ethnic categories of colonial state, as enshrined in early census categories and within a variety of colonial laws, including those that related to land holding, continue to shape public policy in Malaysia and Singapore.

While striving, in rhetoric, to distance themselves from the colonial state, post-independence governments in Malaysia, Singapore and Indonesia have in fact heavily relied on the instruments of authoritarianism inherited from colonialism to maintain themselves in power. What is even more striking is the use of specific legal instruments dating from this period. To take one high profile case from Malaysia: when in 1998, former Malaysian deputy prime minister and opposition leader Anwar Ibrahim was arrested, he was charged with corruption and sodomy. In 2000, he was sentenced to nine years for engaging in 'unnatural' sex (the language of Chapter XVI, Section 377) with a former aide. Despite national and international protests, he was not released until he had served four years of his sentence when the Federal Court of Malaysia acquitted him of all charges in 2004. If Malaysia's government believed that the colonial-era law mirrored deep social prejudices in Malaysian society, then the case was a perfect tool to discredit him in the eyes of public opinion. Yet according to an opinion poll, two thirds of Malaysians thought politics lurked behind the charges, and only one third believed the criminal justice system could handle Anwar's case fairly (Human Rights Watch 2008b). Regardless of how Malaysians felt about homosexual conduct, they did not trust the government to administer the law.

Malaysia provides further examples of the resurrection of old, even seemingly obsolete colonial laws, retained on the statute book. The recent government crackdown on dissent, which has centred on the revival of a Sedition Act of 1948, has stretched into arenas - such as universities - which have been relatively immune to such overt and determined policing of thought and expression of this kind in the past. More recently, in cracking down on discussion of current financial scandals the government has made recourse to an Official Secrets Act 1972 (based on UK legislation and an earlier Malayan Official Secrets Ordinance of 1950). Indeed, it has been argued by concerned legal NGOs and others that the state's interpretation of powers of both these laws goes beyond the original intention of the Acts.

These legacies are the subject of increasing disquiet within these societies. This is part of a wider sense of how the integrity of legal institutions, judicial independence, has been corroded by abuse of power and corruption. This is even apparent in public discussion of another ‘difficult’ legacy of colonial law and its penal regimes: capital punishment. To stay with the Malaysian case, although the retention of the mandatory death penalty for drug trafficking, murder, certain firearms offences and treason, remains the law, it seems that the old assumption that there is widespread support for it in the country is not quite what it seems. A 2013 report, commissioned by the UK-based Death Penalty Project, in connection with the Bar Council of Malaysia, by the respected Oxford scholar, Roger Hood, presented members of the public with specific scenarios to consider. The majority of those surveyed did not support the mandatory penalty in these cases, and wished instead to use discretion in judging them, such as the law does not currently allow. This suggests that the widespread idea that Southeast Asians are immune to abolitionist arguments is by no means a given, and, as in the strength of feeling in the Anwar case suggests, a lack of confidence in the legal process may in the future strengthen their credence.

If instruments of authoritarianism are colonial in their origins, post-colonial Southeast Asian governments have continued to apply the rule of law through racial categories and resort, on occasion, to colonial laws for authoritarian purposes. The lingering effects of colonialism should be studied more deeply; they should be seen as something of the present rather than the distant past, and policy-makers should be alert to this fact. This is not just a question of awareness of context. In Malaysia, given the pressure the current prime minister is under, and the coalition that in a fundamental sense has governed since independence, the stakes in this current crisis have rarely been higher.

## POLICY IMPLICATIONS AND RECOMMENDATIONS

1. Historical literacy. Colonial legacies in Southeast Asia are complex and entangled and, even sixty or seventy years after independence, sensitivities are never far below the surface. Regional debates on these issues are acutely well-informed, historically speaking. Any engagement with them should be equally aware.
2. Confronting difficult histories. There is now a much wider debate in Europe and in Southeast Asia on the painful pasts and the memory and commemoration of them. There is little reason to hold back on honest and open dialogue now. Although some cases brought from former colonies have involved claims for restitution, the more fundamental issue is recognition.
3. Advocacy for legal reform. This should be attempted in close dialogue with the well-developed networks of relevant NGOs in the region, for example in Malaysia where they have exceptionally deep societal roots and a long tradition of sponsoring high quality research in areas such as human rights law and the abolition of the death penalty.
4. Political awareness. Although this brief has argued for a long historical view on Southeast Asian authoritarianism, the situation with regard to specific cases and issues - government actions against dissent in Malaysia, for example - is fast changing and its outcome may yet signal more fundamental political alignments. It may even be that as a result of them, the ‘post-colonial’ era may be approaching a terminus.

## RESEARCH PARAMETERS

### 1. Main scientific objective

Integrative processes offer the promise of economic and cultural development, the free movement of people, the promotion of citizenship and knowledge networks with extensive links with the wider world. At the same time, failure to take advantage of these benefits can result in processes of

exclusion that undermine national/regional frameworks, and entail risks in the fields of human development/security, including the danger of framework disintegration.

In examining these processes, SEATIDE's research will be informed by an awareness that dynamics of exclusion should be studied in tandem with dynamics of inclusion to produce holistic analyses of integrative processes and their contemporary forms, which take into account long-term local perspectives.

## 2. Research capacity building

By reinforcing European research on SEA, the project will contribute to the coordination of EU-ASEAN scholarly exchange, the improvement of networking capacity, and the promotion of a new generation of field researchers on SEA.

## 3. Methodology

The project will conduct field research and produce analyses that take into account local knowledge as well as macroeconomic studies and expert perspectives. Qualitative and quantitative data will be presented in case studies structured by a common analytical framework, centred on but not restricted to four SEA countries (Thailand, Vietnam, Indonesia, and Malaysia), with a unifying focus on transnational issues.

### PROJECT IDENTITY

<b>PROJECT NAME</b>	Integration in Southeast Asia: Trajectories of Inclusion, Dynamics of Exclusion (SEATIDE)
<b>COORDINATOR</b>	Yves Goudineau, EFEO, Paris, France, <a href="mailto:direction@efeo.net">direction@efeo.net</a> .
<b>CONSORTIUM</b>	Ecole française d'Extrême-Orient – EFEO – Paris, France University of Hamburg – UHAM – Hamburg, Germany Centre for History and Economics – CHE – University of Cambridge, UK Tallinn University – TU – Tallinn, Estonia Università di Milano-Bicocca – UNIMIB – Milano, Italy Universiti Sains Malaysia – USM – Penang, Malaysia Universitas Gadjah Mada – UGM – Yogyakarta, Indonesia Chiang Mai University – CMU – Chiang Mai, Thailand Vietnamese Academy of Social Sciences – VASS – Hanoi, Vietnam
<b>FUNDING SCHEME</b>	FP7 Framework Programme for Research of the European Union – Collaborative Project (small or medium-scale focused research project) for specific cooperation action dedicated to international cooperation (CP-FP-SICA) – Activity 8.4 Europe in the world
<b>DURATION</b>	December 2012 – March 2016 (40 months).
<b>BUDGET</b>	EU contribution: 2 415 017 €.
<b>WEBSITE</b>	<a href="http://www.seatide.eu">www.seatide.eu</a>
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## FURTHER READING

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