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How is ‘Nothing’ Produced and Justified?

International Inaction in the Face of the Health Disparities of Sexual and Gender Minorities

Po-Han Lee

A thesis submitted to the University of Sussex for the degree of Doctor of Philosophy (Ph.D.)

November 2019
Summary

UNIVERSITY OF SUSSEX

Po-Han Lee

DOCTOR OF PHILOSOPHY

How is nothing produced and justified?
International inaction in the face of
the health disparities of sexual and gender minorities

This work considers ‘nothing’ and its effect upon the reproduction of ignorance and epistemic exclusion, by interrogating a decision to ‘do nothing’ made by the World Health Organisation (WHO). As a functional international organisation, its policymaking is enacted through the interplay and negotiation of scientific knowledge, international legality, and state will. In this context, the thesis contains two parts. In Part I, I look at the discussions between states over health inequities experienced by sexual and gender minorities (SGMs) from 2013 to 2016, which resulted in permanently deleting the agenda proposal in question. In Part II, drawing on and looking beyond the sociology of nothing and the sociology of ignorance, I propose normative and critical policy interventions into the discursive practices that have allowed such indecision and inaction to be justified. Therefore, this study demonstrates that nothing is productive, lending itself to a rhetorical use of sovereignty in order to circumvent a global response to SGM health injustices.

This study identifies the complex power-knowledge nexus, particularly in a field in which legal, political and health discourses are competing for authority over policy legitimacy. In this respect, I employ ‘lack/lacking’ as an analytical concept in capturing the variable relationships between nothing (negative social phenomena) and ignorance (the limits of knowledge). In the current case, states have asserted something that is required/desired (e.g. interstate consensus, global definition, scientific evidence) is lacking, using this to justify the WHO’s inertia, which, however, has reinforced SGMs’ vulnerability across societies. Along with presenting the disappearance of that agenda proposal, I also presentify, based on the decolonial-queer praxis, a critical reimagining of what if another knowledge were/is possible. Taking ‘nothing happened’ as a point of departure for analysis, this study contributes to a better understanding of the production and functioning of ignorance, especially for the studies concerning multilateral policymaking such as international law and political sociology.
Declaration

I hereby declare that this thesis has not been and will not be, submitted in whole or in part to another University for the award of any other degree.

Signature: ………………………………………………………………………………………
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For the past months, I have looked forward to writing these paragraphs to have an opportunity to thank people for all of their extraordinary support, which has enabled me to keep moving forward with all of the energy and hope that this adventure requires.

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October 2019
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<th>Description</th>
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<tr>
<td>AFRO</td>
<td>(WHO) Regional Office for Africa</td>
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<tr>
<td>AIDS</td>
<td>Acquired immunodeficiency syndrome</td>
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<td>ASC</td>
<td>ASEAN SOGIE Caucus</td>
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<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<tr>
<td>BDSM</td>
<td>Bondage/discipline, dominance/submission, sadism/masochism</td>
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<tr>
<td>CAT</td>
<td>(UN) Committee against Torture</td>
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<tr>
<td>CEDAW</td>
<td>(UN) Committee on the Elimination of Discrimination against Women</td>
</tr>
<tr>
<td>CESCR</td>
<td>(UN) Committee on Economic, Social and Cultural Rights</td>
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<tr>
<td>CJEU</td>
<td>Court of Justice of the European Union</td>
</tr>
<tr>
<td>CRC</td>
<td>(UN) Committee on the Rights of the Child</td>
</tr>
<tr>
<td>CSDH</td>
<td>(WHO) Commission on Social Determinants of Health</td>
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<tr>
<td>EB</td>
<td>(WHO) Executive Board</td>
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<tr>
<td>ECHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>EMRO</td>
<td>(WHO) Regional Office for the Eastern Mediterranean</td>
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<tr>
<td>EURO</td>
<td>(WHO) Regional Office for Europe</td>
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<tr>
<td>GRADE</td>
<td>Grading of Recommendations Assessment, Development and Evaluation</td>
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<tr>
<td>HIV</td>
<td>Human immunodeficiency viruses</td>
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<tr>
<td>HRC</td>
<td>(UN) Human Rights Committee</td>
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<tr>
<td>IACHR</td>
<td>Inter-American Court of Human Rights</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICD</td>
<td>International Statistical Classification of Diseases and Related Health Problems</td>
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<tr>
<td>ICJ</td>
<td>International Commission of Jurists</td>
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<tr>
<td>ICTJ</td>
<td>International Court of Justice</td>
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<tr>
<td>ICPD</td>
<td>International Conference on Population and Development</td>
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<tr>
<td>ILA</td>
<td>International Law Association</td>
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<td>ILGA</td>
<td>International Lesbian, Gay, Bisexual, Trans and Intersex Association</td>
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<tr>
<td>IOC</td>
<td>International Olympic Committee</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>IOM</td>
<td>(US) Institute of Medicine</td>
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<tr>
<td>ISHR</td>
<td>International Service for Human Rights</td>
</tr>
<tr>
<td>LGBT(I)</td>
<td>Lesbian, gay, bisexual, transgender (and intersex)</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
</tr>
<tr>
<td>PAHO</td>
<td>(WHO) Pan American Health Organisation</td>
</tr>
<tr>
<td>SEARO</td>
<td>(WHO) Regional Office for South-East Asia</td>
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<tr>
<td>SGMs</td>
<td>Sexual and gender minorities</td>
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<tr>
<td>SOGI(E)</td>
<td>Sexual orientation, gender identity (and expression)</td>
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<tr>
<td>STIs</td>
<td>Sexually transmitted infections</td>
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<tr>
<td>TGEU</td>
<td>Transgender Europe</td>
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<tr>
<td>TREND</td>
<td>Transparent Reporting of Evaluations with Non-randomised Designs</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNAIDS</td>
<td>Joint United Nations Programme on HIV/AIDS</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organisation</td>
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<tr>
<td>UNFPA</td>
<td>United Nations Population Fund</td>
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<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<tr>
<td>UNHRC</td>
<td>United Nations Human Rights Council</td>
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<tr>
<td>UNICEF</td>
<td>United Nations International Children’s Emergency Fund</td>
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<tr>
<td>WAS</td>
<td>World Association for Sexual Health</td>
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<td>WHA</td>
<td>World Health Assembly</td>
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<tr>
<td>WHO</td>
<td>World Health Organisation</td>
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<td>WPRO</td>
<td>(WHO) Regional Office for the Western Pacific</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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Part I.

Presenting the Context of Researching ‘Nothing’
Chapter One. Introduction: Seeing and Contextualising ‘Nothing’

This thesis aims to critically understand ‘nothing’ in its various forms – ranging from non-decision and inactivity to non-existence and non-identification, as well as silence and invisibility – on the international level. Drawing on the case study of WHO’s decisions to do nothing concerning the health disparities of sexual and gender minorities (SGMs), I also explore the relationship between ‘nothing’ and the production of non-knowledge. By doing so I extend the analytical framework of the ‘power-knowledge nexus’ to the effect of doing nothing in terms of reproducing ignorance – the lack of knowledge. Recently, sociologists have paid attention to the existence and productivity of ‘nothing’, the set of ‘unmarked’ events and experiences (Brekhus, 1998), by tracing its social ontology, interactional management and consequentially productive effects (Scott, 2018). This existing theoretical work focuses on interpersonal and micro-sociological contexts and neglects the macro-level political and structural framework. Meanwhile, international political sociology, though considering the functions of epistemic violence that is ‘made up of social inexperience’ (Santos, 2001: 191), has not yet attended to the effect of ‘nothing’ (literal ‘non-being’).

Applying and seeing beyond the sociological and socio-legal perspectives on nothing and non-knowledge to examining multilateral debates, I contend that what ‘nothing’ can do/undo is as much as what something can, demonstrated through states’ discursive practices regarding sovereignty and identity (see Irwin and Smith, 2019). Namely, this study looks at how the WHO has responded to the health injustices suffered by SGMs. As shown in Figure 1, in 2012, the US and Thailand made a proposal to the WHO Executive Board (EB) for international attention regarding SGM health concerns. In May 2013, the WHO Secretariat produced a report in preparation for an agenda item on the subject, to be included in the 133rd EB meeting. An intense debate between states resulted in deleting the topic from the WHO’s agenda, which was nonetheless kept as a footnote and subject to no discussion until 2015. In 2015, the EB decided to remove the footnote permanently, signalling that the WHO would not act on SGM health disparities. Since then, I have sought to explain how and why this deletion occurred.

1 The term ‘SGM’ used here encompasses people who identify as lesbian, gay, bisexual and transgender (LGBT), and those whose sexual practices or gender expressions are considered bad/immoral/abnormal in varied historical and sociocultural contexts.
That is, I explore the epistemological and political potential of the insights into ‘nothing’ with a study on multilateral negotiations regarding SGM health. How can a decision to ‘do nothing’ made by a functional international organisation (i.e. the WHO) be considered legitimate? As identified, it is justifiable only under the circumstances in which the decision is not only lawful but also supported by the related political context and expert discourse. I begin with an inquiry into the emergent body of global health law, greatly shaped by international human rights legal principles, to map out the framework of ‘human rights-based global health governance’. In fact, all of the discussions during the period 2013 to 2016, intriguingly, occurred in the context in which health equity as part of the right to health was uncontested. Therefore, the human rights-based approach to global health, developed from an intellectual and social movement connecting health and human rights, offers a normative lens for evaluating the significance of the ‘deleted item’.

In this light, I consider the limits of international law by analysing the way in which the WHO has addressed (or failed to address) SGM health disparities. As discussed later in this chapter, I bring in the discussion concerning the connections between the regimes of global health and human rights. This is done to contextualise the emergent ‘global health law’ (Gostin, 2014), which aims to turn the focus of global health governance from disease control to international health equity (Gostin and Taylor, 2008). Such an effort has provided great input to the idea of reforming international health organisations, especially the WHO (Hanrieder, 2015; O’Laughlin, 2016), but it has not gained enough political support from its member states (Friedman, 2016). This part of the analysis thus focuses on how a consensus that emerged around an understanding of the WHO’s non-
political vocation counteracts the organisation’s pursuit of leadership in global health governance and the purpose of a human rights-based approach to policymaking.

However, work aiming to understand the effect of law is ineluctably involved with analysing its power in people’s social and political lives, particularly when it is related to human rights (Ashford, 2010). As Hirsch (2015) argues, there are limitations to a sociological inquiry into international law that only focuses on the relationship between states, insofar as this assumes that states are consistent ‘units’. I hence turn to social theories of ‘nothing’, further identifying three reasons for international inaction – the lack of consensus between states, the lack of a definition of SGM people, and the lack of evidence regarding their health – and link them to a broader socio-political context. These ‘lacks’ expose elements of the epistemological and institutional apparatuses of WHO policymaking. These elements are reproduced through state practices concerning the non-existence of something that is (presumptively) required, such as multilateral agreement, universal definition, and sufficient evidence. The international inaction seen in this case has nevertheless reinforced SGMs’ vulnerability, which I demonstrate through examples from Asian societies including Malaysia, Singapore, China, Taiwan, and Hong Kong.

Exploring local discourses from postcolonial/decolonial queer standpoints, I resist the tendency of the sociology of international law to generalise. Through documentary analysis, this perspective facilitates an exploration of the subjects and accountabilities invoked around SGM health inequities as a topic for global health law. I thus consider the ‘decolonial-queer praxis’ in analysing the power relations between states, between a state and its people, and between SGMs in different societies. This has prompted me to look beyond policy documents and legal texts, which do not fully explain states’ negligence and inaction, to investigate the function of ‘nothing’, the ignorance it (re)produces, and the power dynamics it represents. The result of the EB’s removal of SGM health from the policy agenda, which contained a simple request for more international attention, has provoked much disappointment among SGM activists. As suggested, the ‘deleted item’ has been productive and effective; namely, it has made SGM populations invisible, again, from global health policy.

In order to address the questions concerning how international institutional inertia is produced and justified based on those alleged ‘lacks’, the thesis contains two parts. First, I trace the social life of a WHO decision to do nothing about the health injustices against
sexual and gender minorities. In what follows, based on the decolonial-queer praxis, I propose normative and critical policy interventions, considering the importance of actively engaging with existing knowledge production and policymaking processes, and drawing on poststructuralist methodologies. On the one hand, doing so aims to address the concerns regarding an empirical and yet apolitical analysis based on the symbolical interactionist accounts of the presentation of ‘nothing’ (Scott, 2018). On the other, it aims to re-politicISE states’ discursive practices regarding SGM health issues, by linking the presentification of nothing – what could happen otherwise (Scott, 2019b; Husserl, 2012) – to the political and epistemological contexts in which the alternative ‘something’ had been oppressed, suspended, and excluded (see Muñoz, 1999). That is, to borrow Derrida’s (1992: 200) words:

The opening of the future itself, a future which does not allow itself to be modalized or modified into the form of the present, which allows itself neither to be fore-seen nor pro-grammed; it is thus also the opening to freedom, responsibility, decision, ethics and politics, so many terms that would therefore have to be withdrawn from the deconstructible logic of presence, conscience or intention (emphasis original).

Thus, in this introduction, I present a preliminary analysis of the debates concerned at the EB in which I draw on three forms of ‘lacking something’ that inhibited the discussion regarding SGM health. That outcome has attracted little attention from scholars, but I see it as important to illustrate the global health legal system’s failure to address people’s rightless situation and corresponding health injustice. The reasons for this failure are manifold, and here I focus on the nationalisation of cultural relativism, the exclusionary effect of identity politics, and the social determinants of health inequity. These concerns reveal the problems of state-centric international law, particularly with respect to the state’s monopoly on making laws, recognising rights-holders and their rights, and determining the validity of international social norms (Kawaguchi, 2003). That monopoly is legitimised as a universal truth based on the presumption that a state can justly represent its people. Deconstructing it based on the decolonial-queer praxis ‘presentifies’ (Žižek, 2005: 160) a critical reappraisal of global health justice.

I. Research agenda: Contextualising the ‘lack’ rhetoric

In May 2013, the WHO Secretariat produced a report on SGM health, at the request of the US and Thailand, in preparation for the 133rd session of the EB. This was the first
time that such an issue had been put on the table in the WHO governing body. There was a debate over whether to keep the agenda item or not, which resulted in the removal of the item from the agenda. In May 2015, it was permanently deleted, including the footnote that had been kept as a reference to the 2013 meeting (WHO-EB, 2015b: 29). An informal interstate working group was set up after the permanent deletion, but the Colombian delegate, the chair of that working group, announced in 2016 that states had failed to reach an agreement on including SGM health in the WHO agenda (WHO-EB, 2016: 3). The issue has not been brought up again at the time of writing. Reflecting on the interstate dialogues, I argue that there are three ‘lacks’ that caused the deadlock.

From the debate between states, three lacks are important including: (1) a lack of consensus between states on the recognition of SGM rights, (2) a lack of a universally agreed definition of SGMs who do not conform to heteronormativity, and (3) a lack of evidence regarding the existence of health inequities among SGMs. Since the EB is the body authorised by the WHO Constitution to adopt the policy agenda for the WHO governing bodies, and since the meetings involve many reasoning strategies based on human rights, I am interested in these events and consider it necessary to interrogate the justifications given by national delegates. In particular, I question how these ‘lacks’, whether rhetorical or factual, are relevant to the ordering of contemporary international society. In the following, I provide a preliminary analysis of the debate in and beyond 2013, with the aim of opening up the discussion about the relationship between global health governance and international (human rights) law as follows.

Prior to the analysis, I propose that the terminology ‘SGMs’ is more comprehensive and therefore more useful, so the descriptor ‘LGBT’ referred to here is simply repeating the WHO’s employment of identity categories. Theories that focus on identities, especially those of relatively organised groups, may make other experiences and practices invisible in policy, for example, pansexuality and polyamory as well as two-spirit, multi-gender and other queer lives in different social contexts (Blackwood and Johnson, 2012). Although the acronym LGBTIQ (or LGBT-plus) attempts to include all sexual and gender identity categories, it still fails to represent those whose sexuality and intimacy do not necessarily involve self-identity affirmation, such as asexuality (Scott et al., 2016), sadomasochism (Ashford, 2015), non-human eroticism (Fox and Alldred, 2013), and so on. Thus, the notion of ‘SGMs’ – used to encompass all those who might suffer stigma-
induced health inequities because of their gendered body and sexuality – includes, but is not limited to, LGBT-plus persons.

i. A shelved issue regarding LGBT health in the WHO

By problematising controversial debates regarding SGMs that took place at the EB between 2013 and 2016, this study serves to understand how the inertia of an international organisation – the WHO – was produced and justified. In preparation for that meeting, the Secretariat produced a report on *Improving the health and wellbeing of lesbian, gay, bisexual and transgender persons*. Other than the HIV epidemic, the Secretariat drew attention to physical violence and emotional abuse against these people due to ‘widespread stigmatization and ignorance in mainstream society and within health systems’ (WHO-Secretariat, 2013, para 7). According to that report, there were two main health challenges for LGBT persons – their higher morbidity and mortality and the barriers they face concerning healthcare accessibility. The report acknowledged the correlation between discrimination, stigma, minority stress, and health. The LGBT health movement made this a foundation for more global attention (Duvivier and Wiley, 2015).

The analysis studies the debate over the topic related to SGMs between national delegates, revealing the limits of the state-centred framework for enforcing *health as a human right*, and the trajectories that mapped out the debate at the Regional Offices. The discussion of the socio-political dimensions of health is part of the legacy of social medicine in the WHO’s approach to health justice (Packard, 2016), influenced by the evidence-based approach to population health (Brown et al., 2004). However, the rule of evidence-based policy regarding the hierarchy of evidence overlooks the difficulties in obtaining quality evidence in places where the authorities do not support related research or where people fear offering knowledge (Knudsen, 2017). Indeed, there is a lack of evidence regarding SGM health, especially in terms of transgender people and those from low- and middle-income countries. Hence, it is also necessary to rethink the role of the WHO in fulfilling its human rights accountability when the problem at issue is ineluctably political.

Numerous arguments were made by states against the inclusion of this issue on the agenda, and most of them concerned something that was perceived to be lacking (absent, inadequate, insufficient). The reasons given by the 133rd EB meeting participants are as follows. First, people who are non-cisgender or non-heterosexual are seen as engaging in
unhealthy lifestyles. Second, prioritising their health concerns constitutes discrimination against others. Third, it is inappropriate for the WHO to get involved in ‘LGBT’ issues, which are too political. Fourth, promoting LGBT issues is harmful to some countries’ value systems. Fifth, the allegation that LGBT people are excluded from health systems has not been conclusively proven (WHO-EB, 2014; WHO-EB, 2015a; WHO-EB, 2015b). Based on these reasons, since then, except for procedural matters, this topic has been closed, or perhaps one might say, closeted. Out of these reasons, the first contention was expressed by the Nigerian and Tanzanian delegates, who argued that non-normative ‘behaviours’ are a choice of unhealthy lifestyle that should be discouraged and even altered (WHO-EB, 2013).

In this regard, since the identified ‘LGBT behaviours’ were seen as lifestyle choices, including the way people dress and the persons they have sex with, the Secretariat could not define LGBT persons, asserted the Zimbabwean and Egyptian delegates, precisely ‘because there was no universally accepted scientific basis for the term’ (WHO-EB, 2013: 23). Following this, states such as Libya and Senegal considered that prioritising LGBT health would amount to discrimination against other vulnerable social groups who are in need of more urgent attention (WHO-EB, 2013: 29-30). In terms of combatting discrimination, however, ‘a failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification’ (CESCR, 2009, para 13). People’s enjoyment of the right to health is related to resource distribution when it comes to states’ obligation to fulfill the right (CESCR, 2000b). However, as for SGMs, their situation is concerned more with a state’s obligation to respect and protect in medical and general social contexts.

With respect to the third contention, some states claimed that ‘LGBT problems’ had been over-politicised, and, according to Namibia, there was no ‘consensus on the legal standing of the issue under consideration at the international level’ (WHO-EB, 2013: 27). They urged the WHO to step away from issues that are beyond its mandate. The states that disagreed with this view – for example, the US, Uruguay and Canada – argued that the opposition was itself politicising the issue (WHO-EB, 2013: 28-30). Interestingly, both the opponents and some supporters concerning LGBT health equity agreed on the WHO’s non-political vocation (WHO-EB, 2013: 29). Fourth, the Algerian, Lebanese, Pakistani and Iranian delegates contended that ‘LGBT expressions’ are fundamentally against their
social value systems, and requested reciprocity, since they had never attempted to interfere with others’ domestic affairs (WHO-EB, 2013: 23). They argued that, based on national/cultural relativism, the WHO should not ‘impose certain views…on the global community’ (WHO-EB, 2013: 27), despite the existence of sexual and gender pluralism under their jurisdictions.

Finally, yet importantly, many states – including Japan, Azerbaijan, Lithuania and Albania – stated that they would prefer to wait for coordinated studies on an international level since there was not sufficient evidence on LGBT health inequities (WHO-EB, 2013: 30-35), as acknowledged by the Secretariat. However, as the Swiss delegate pointed out, the commitment of the WHO to data collection has always been important in the organisation’s long history of dealing with contentious issues, such as gender equality measures against cultural and sexual taboos (WHO-EB, 2013: 25). Moreover, a lack of evidence should not prevent states from tackling discrimination that contributes to health injustices (Muntarbhorn, 2017; Madrigal-Borloz, 2018). That is, under international human rights law, the anti-discrimination principle is applicable, as an immediate obligation, in correcting situations that disadvantage specific groups of people. This means that the rhetoric ‘waiting for more evidence’ is not justifiable unless human rights concerns are not considered. Yet, the recent multilateral discussion on SGM health resulted in a deadlock due to its divisive nature.

Therefore, I consider, it is noteworthy to see how the topic has been deliberated on the regional level. The WHO member states are grouped into six regions, as shown in Figure 2. Regionally speaking, the members that were most enthusiastic to discuss LGBT health were from the American (PAHO) and European (EURO) regions, and those that were the most reluctant were from the African (AFRO) and Eastern Mediterranean (EMRO) regions. The most divisiveness occurred in the Western Pacific (WPRO) and South-East Asian (SEARO) regions. The PAHO has recognised sexual orientation as a social determinant of health and required a comprehensive understanding of gender diversity since 2010 (CD50.R8). In October 2013, it adopted another resolution addressing the causes of LGBT health disparities (CD52.R6) after the discussion in the EB was suspended. Having required member states to address the socio-political barriers to healthcare for the marginalised, the PAHO (2015: 45) has also accentuated the need for data compiling regarding LGBT people’s health experiences and outcomes.
As for the EURO, it places LGBT health in the context of its Health 2020 policy framework, according to which a people-centred approach to health acknowledges that healthcare is a ‘political choice’ (WHO-EURO, 2015) and that an international health agency cannot be unpolitical. Therefore, it has taken an active role in the informal consultation on the matters concerning LGBT wellbeing since the EB debate was adjourned (WHO-EURO, 2013). In 2014, the EURO emphasised that the many new health threats posed by disease outbreaks should not overshadow the health equity issues, including LGBT persons’ access to health services (WHO-EURO, 2014). Meanwhile, the WPRO and SEARO, instead of viewing sexual orientation and gender identity (SOGI) as social determinants of health, mention LGBT persons only in the context of HIV response as ‘high-risk populations’ (WHO-WPRO, 2012). However, there have been positive developments in addressing the needs of the socially marginalised, such as linking health and social protection (WHO-SEARO, 2012), for ‘unreached populations’ (WHO-SEARO, 2013: 21).

Regarding the other two regions (AFRO and EMRO), the behaviour-based notion of ‘men who have sex with men’ is employed in terms of HIV response (WHO-AFRO, 2013; WHO-EMRO, 2012), but non-cisgender situations have been completely omitted. This resonates with member states’ position at EB meetings, and their belief that one’s sexual practices and gender expressions are no more than a lifestyle choice. The EMRO’s
discussions over social health focus on intraregional disparities, and in fact, there is a
general lack of data at the national level on inequity (WHO-EMRO, 2014; WHO-EMRO,
2015). As for the AFRO, its members adopted a resolution on *Health and human rights*
in 2012, positing that the non-discrimination principle should be enforced ‘within the
context of national legal frameworks’ (AFR/RC62/R6, para 2(b)), and thereby foreclosing
African states’ position of national relativism in the 2013 EB debate. At regional meetings,
many African governments stated that they regard SGMs as ‘irresponsible’ concerning
the burden of the HIV epidemic and mental disorders (WHO-AFRO, 2016).

From these meetings, we can identify stereotypes reinforced by states, for example, the
conceptual division regarding sexuality/gender that separates behaviour-based notions
regarding sexually transmitted infections (STIs) from identity-based ones, and some
biases against SGMs without scientific grounds. These biases have impeded SGM health
issues from being considered on the global health agenda. Today, the global ‘democracy’
on which the WHO prides itself – the symbolic policymaking space open to all states – is
based on state sovereignty over their own people and their lives. Such a formulation has
adversely affected the improvement of the international legal infrastructure for global
health (Gostin, 2005), especially when other global health actors pay more attention to
the prevention and treatment of diseases and illnesses than to their social and political
epidemiology, and are not readily considered as international law-makers (Lakoff, 2012).
Such state-centric multilateralism, determining the capacity of intergovernmental agency,
suppresses the representation of the affected communities for a people-centred approach
to *global* – rather than *interstate* – health justice (Biehl and Petryna, 2013).

**ii. The mixed and knotted meanings of the term *lack***

Drawing on the meetings summarised above, the utmost concern in this study is how
states practised the discourses regarding ‘lacking something’ – be it inexistent, inadequate
or insufficient – to justify their indecision and inactivity. Here, it should be noted that all
of this occurred in the context in which *health as human rights* has been recognised in
many international declarations and domestic policies (Kickbusch, 2003). Yet, when
facing the question concerning SGM health, states still asserted that the WHO should not
be involved with other human rights concerns. Despite the normative and functional
dimensions of the WHO’s capacity, the contentions around SGM health have exposed the
ways in which the organisation vacillates between its state-based constitution and its
mission regarding human rights (Meier and Onzivu, 2014). Such ambivalence has appeared several times in history, not only in terms of sexual and reproductive health (e.g. the elimination of female genital mutilation, and the provision of contraception measures) (Corrêa et al., 2008) but also regarding the implementation of health-for-all strategies (Berkeley and Springett, 2006).

This is the context in which I start with the interrogation of the discursive framings of the ‘lacks’, reflecting on the intersection of international law and global health in the light of the interconnectedness between the domestic and international planes. These lacks, the reasons for suspending the discussion, have contradicted the WHO’s decade-long efforts in promoting the awareness of social health. When national governments only represent the dominant views regarding sexualities and gender expressions in their societies, the ‘lacks’ require us to ask what is really missing – what has been misinterpreted or underrepresented, and what has been neglected, omitted, or selectively highlighted. States have contended that there are ‘lacks’ concerning an international agreement regarding the extent to which the universality of the right to health is legally valid, the definition of the affected communities, and the evidence informing their health disparities. All of these contentions must have been based on certain normative discourses in the global health context – including, as I aim to highlight, state-centrism (Lee, 2018b).

The national delegates did not use the term ‘lack’; it is a term I use to encompass the various reasons for removing SGM health issue from the WHO’s agenda. Lack, as a verb, means ‘not to have any or enough of something that is needed or wanted’, according to the Oxford English Dictionary. As a noun, a lack means ‘the state of being without or not having enough of something’. Deconstructing it reveals several binary oppositions, such as between presence/absence, adequacy/inadequacy, and marked/unmarked, in which the former normally prevails over the latter (see Derrida, 1997) as implied by states, and enables me to identify the latent meanings behind the ‘lacks’. For example, the lack of definition of the affected communities not only indicates the absence of a common understanding of ‘LGBT persons’ but also implies the presence of a desire for a definition. The lack of evidence might mean the insufficiency of knowledge, yet it also points to the question of ‘what counts as evidence’ and the role of evidence in global public health.

These reflections have led me to consider how to study lack. Witnessing the dead end of the discussion regarding SGM health disparities, I originally took it a result of the failure
of international law in addressing SGM health injustices. However, I found that I would need to understand states’ rhetoric around ‘lacking’ and the discourses that support it before identifying the law’s failure. Therefore, the question concerned with the law’s failure was substituted by another question: what makes the law as it is now. That is, this study aims to address the power-knowledge nexus stemming from ‘something not there’, ‘something not enough’, or ‘nothing there at all’ – namely, how ‘nothing’ works towards the making or unmaking of knowledge. In this light, I have turned my focus to whether a particular ‘lack’ is intentional, such as wilful blindness or strategic unknowns, or empirical, in terms of knowledge production or resource allocation (McGoey, 2012a). After all, the thesis addresses the question: How has the WHO justified doing nothing concerning the question of health inequity among SGMs?

The 2013 debate in the EB, compared to other regional meetings, was an important moment because it was the first time that SGM health issues had been discussed in an interstate and, more importantly, an intercultural forum, considering that the UN had not addressed this yet. Both the process and the outcome (the item’s temporary and permanent deletion) reflect the dominant ideologies. First, the report draws on a conclusive linkage between gender/sexuality and one’s personal identity, leaving no room for other possibilities, such as non-identity. Second, the universal entitlement to the right to health loses its certainty when delegates in conflicting positions speak the same rights language. Third, the rigidity in the evidence-based approach to public health neglects the invisibility of some affected communities – or, the evidential value of invisibility – and the potential epistemic exclusion in data production (Adams et al., 2014). Meanwhile, the WHO’s oscillation between parochialism and cosmopolitanism, one of the primary global health policymaking forums, reveals the inadequacy of the statist system of global governance. All of these issues are addressed in the analytical chapters of this thesis.

II. Backgrounding: The sociological perspective on law

Prior to joining academia, working with SGM rights advocates on occasions made me aware of their health concerns (e.g. disparities in access to healthcare and various health needs). I paid attention to activist participation and the progress in terms of health rights on the domestic and international levels. ‘The higher the expectation, the greater the disappointment’: this is how I felt about the deadlock in the WHO, the specialised agency concerning global health research and policy associated with the UN. People, including
me, were asking why they have failed to reach a simple consensus. Indeed, the WHO Secretariat (2013) report regarding the health-related issues of SGMs cited an emergent body of literature in health and social studies, yet within limited geographical areas. The debate indicated that such a discussion, taking place in international organisations such as the WHO, was inevitably involved with interpreting legal texts (including its constitutional and policy documents) and confirming related legal obligations.

International law presents itself as an institution that manages the social life of international community (Hirsch, 2005). Notwithstanding the polemics regarding legal pluralism on the domestic level, international law, born out of a mission to maintain order in the midst of ‘anarchy between states’ (Prichard, 2012: 96), is always open to diverse legal sources. It has recognised multiple sources of law, as elucidated in article 38 of the Statute of the International Court of Justice (Pellet, 2006). None of them is independent of the domestic context in which governments and non-state actors are located, not least regarding matters of transnational concern, such as conflicts between jurisdictions (Slaughter, 2003) or health and travel (Fidler, 2005). Hence, in forums of international negotiation or knowledge sharing, a broader sense of ‘lawyers’ might encompass national delegates, international personnel, expert and civilian representatives who struggle for a certain kind of capital through a legitimization process. Such a process embodies the habitus of the legal field (Bourdieu, 1987; Madsen and Dezalay, 2002).

Throughout this whole study in the sociology of nothing and ignorance, the WHO’s practices of documentation have played an important role. However, this thesis is not located within the academic discipline of Law, and the data analysis does not constitute doctrinal research, which focuses on identifying legal principles. Instead, from a sociological perspective, the law is considered as, to use Scott’s (2018: 6) words, ‘the “unmarked” background of contextual ordinariness’; it is ‘taken for granted as normal’. In particular, international human rights law has been the reference site for governments seeking to show their knowledge about their legal obligations. All states must go through this to justify their rationales for acting/not-acting – as part of the mundane activities of national delegates interacting with each other (Riles, 2000) – in the light of the rule of law of global governance (Tamanaha, 2004). Yet, global health is not covered by the human rights normative regime; instead, the legal infrastructure of global health is still
developing and contested between stakeholders. In fact, this has happened to any law that aims to provide a global governance framework (Trachtman, 2011).

Despite the references to law, the debate at the WHO is full of political considerations, and thus, sociological accounts can complement documentary research method and provide a critical perspective on law, its role in society and its relationship with politics (Banakar and Travers, 2005). These include a close reading of the meeting records of the EB meetings, which has enabled me to identify a rhetoric of ‘lacks’ that caused a deadlock in the discussion. For a better understanding of how the topic on SGM health was discussed in the WHO system, I conducted a preliminary analysis of all the meeting records of the EB and World Health Assembly, and the annual reports of WHO Regional Committees from 2012 to 2016. Doing so enabled me to identify the trajectory of recent developments with respect to social health concerns in global health agenda setting. This also aroused my sociological curiosity about this matter, including that law had become the bracketed background of multilateral events.

Those ‘lacks’, on which the reasons for removing the agenda item from the WHO were based, reflect the incommensurability between what states recognise as law and their corresponding practices (Irish et al., 2013). This has been obvious in terms of the weak link between global health activities and human rights norms, despite the existence of a human rights-based approach to global health policymaking (Fidler, 2001). Therefore, studies of the normative and operational dimensions of an intergovernmental organisation like the WHO are often undertaken separately as either a jurisprudential or a political question (Ku and Diehl, 2003; Lakoff, 2010) due to the complexity of the normative character of law meeting realpolitik between states (Ruger and Yach, 2009). Such a rupture, where the ‘lacks’ rhetoric has come from, is often omitted and less explored sociologically. Considering this, I approached the contradictions with a documentary research method and critical discourse analysis; they were helpful in understanding how ‘nothing’ is productive and how it reinforces ignorance and hence inequities.

III. The role of law in legitimising states’ doing nothing

Seeing law as the necessary background for this study, I see international law as a ‘social phenomenon that reflects and aims to guide a variety of interactions in the international arena’ (Hirsch, 2015: 891; also Bhambra, 2010). So, how can we understand the law of
global health, which encompasses several subfields of international law? According to the WHO Constitution, health is defined as ‘a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity’ (Preamble, para. 1.1). Yet, public health has traditionally taken a utilitarian approach, aiming to promote the health of a population in a collective sense (Winslow, 1920; Boorse, 1977). Deriving from a tension between the personal and policy perceptions of health, especially in the early time of the AIDS epidemic (Mann, 1997), the UN and the WHO have embarked on developing a human rights-based approach to health to balance individual liberty and public welfare. This approach requires health governance to attend more to building people’s capability to become healthy than tackling diseases.

In international law, scientific knowledge of the underlying determinants and risk factors of human health is pertinent to both a state’s right to protect population health (against other states) and an individual’s right to the highest attainable standard of health (against her government). These legal relationships have become complicated due to the globalisation of health problems and concerns resulting from the boom in international travel and transnational social activism (Birn, 2009). This means that international health agencies are expected to play a stronger role in coordinating interests of states (Siddiqi, 1995; Lee, 2008); it also radically transforms the nature of public health governance from a domestic affair to a diplomatic concern (Fidler, 1999; Lee, 2013). In this context, the penetration of human rights into global health governance facilitates a transnational legal process (Fidler, 2008). That means that the concerns of both national governments and relevant non-state stakeholders (e.g. intergovernmental agencies, civil society organisations, health professionals and the affected communities) inevitably influence international policymaking (Taylor, 2004).

Koskenniemi (2006; 2007) has emphasised the interconnectedness and ruptures of the domestic and international planes, arguing that the rule of law between states and other international actors is historically contingent and political, rather than normative. The law’s legitimacy stems from local practices of reasons and affects that are subject to the ideological and material conditions inside and outside a state (Sasley, 2011; Ross, 2013).

In history, international law and international society are not always indifferent to SGMs. National governments have been creating legal subjects for – and selectively entitling – certain groups of people based on their sexual practices and gender expressions in two
particular fields: STIs prevention and non-discrimination law (see Chapter 5). Both resonate with the constitutional purposes of two largest – yet quite inert – actors of today, the UN and WHO, in promoting international cooperation to solve global social problems, making SGM health a good case for studying states’ omission of the nexus between health and rights. It also makes the legitimacy of ‘inactivity’ subject to inquiry.

A study of ‘lack’ – the power-knowledge nexus between no-thing and non-knowledge – can serve to examine critically the influence of human rights in global health. We have witnessed the influence of human rights norms over the research agenda and policymaking (Beyrer, 2007) and the reconceptualisation of health and health inequity (Adams, 2013). The human rights-based approach to global health has turned the attention of international organisations to promoting health equity, especially for marginalised social groups (Koplan et al., 2009). Yet, SGM health inequities are omitted. As the Brazilian delegate commented, upon the removal of the agenda item regarding SGM health, this was ‘a precedent with unforeseen implications for the functioning of the WHO governing bodies’ (WHO-EB, 2013: 26), representing the rupture between the normative and political dimensions of law. In fact, that was the first time that the EB failed to proceed to a substantive discussion, despite lots of mentions of human rights (Daulaire, 2013). Therefore, an international institution becomes a field in which the ruptures are legitimised, that is, according to Bourdieu (1988: 11):

The locus of a struggle to determine the conditions and the criteria of legitimate membership and legitimate hierarchy, that is, to determine which properties are pertinent, effective and liable to function as capital so as to generate the specific profits guaranteed by the field.

This standpoint enables me to deconstruct the multiple ‘lacks’ of something that led the intergovernmental conversation concerning SGM health to cease and based on which the state delegates gesticulated their reasoning with concerns about their own peoples’ right to health. 2 These delegates asserted that the WHO, as a functional organisation, should

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2 The most important legal references with regard to the international right to health include:

The Universal Declaration of Human Rights, article 25(1):

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
keep a distance from matters seized by the UN human rights bodies, despite the nexus between health and human rights having been recognised by states (OHCHR and WHO, 2008). The human rights-based approach to global health governance has been popularised by actors in the field of global health, including states themselves, as well as nongovernmental organisations and the health-related intergovernmental organisations (Packard, 2016). The case concerning the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* in 1996 was one of the most significant moments for the international ‘health and human rights’ social movement since the late 1980s (Annas and Mariner, 2016), and the judges of the International Court of Justice held that:

[The] WHO has an interest in matters of global health...[and] duties as a protector of global health... In this regard, the Organization deals primarily with preventive and more particularly with administrative preventive medicine...[and] the health of all peoples is fundamental to the attainment of human rights and peace and security (ICtJ, 1996, para. 169-180, 223; emphasis added).

Since then, a tension has been created between functional international organisations and their member states. In 2000, the Committee on Economic, Social and Cultural Rights reaffirmed the importance of the WHO and other UN agencies in promoting health equity. Besides their functional capacities, these organisations are legally accountable for ‘the development of the right to health indicators and benchmarks’ (CESCR, 2000b, para. 63). Yet, states of international society have tended to cling to the ideology of the sovereign’s supremacy over domestic affairs, including national culture – assuming it a static, fixed and unified entity. Nowadays there are multiple interactive agents in the field of global health – other than states – who are becoming more influential in setting new agendas and even norms, including pharmaceutical companies, international nongovernmental organisations, grassroots groups, the affected communities, and sometimes groups of individuals with shared interests. However, with no formal recognition in law, these

And, the International Covenant on Economic Social and Cultural Rights, article 12 states that:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
   (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
   (b) The improvement of all aspects of environmental and industrial hygiene;
   (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
   (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.
extra-systemic players’ voices are selectively heard/unheard at governments’ discretion (Ku and Diehl, 2006; Kumm, 2009), giving rise to the ‘lacks’.

Therefore, this study’s research agenda starts with exploring ‘something’ that was created out of ‘nothing’: a question requiring theoretical support beyond juridical thinking. This is because the state-centric theories of international law and international relations have ignored other non-state social orders (Twining, 2009), and veiled the political nature of international law and its purported indeterminacy rendered by those who employ it (Beckett, 2012). Out of the questions such as ‘how a legal-political decision is made/unmade’ and ‘what effect that decision has’, I propose that the production of lacks represents a useful resource within what Koskenniemi (2011: v) describes as ‘a vocabulary for politics’ justifying the international society’s inertia regarding SGM health inequities. It is not just the outcome of particular meetings but also a process reflecting the discursive competition regarding the normative and political priority of global health law, which, I shall stress, is not yet a settled field. Overall, what attracted my attention to that debate is the way that states, on behalf of their people, talk about human rights.

IV. Structure of the thesis and the overview of chapters

In this chapter, I have demonstrated the rationales of this study regarding lacks – something that is absent, inadequate and insufficient – used by states to omit, justifiably in law, SGM health inequities. Prior to the theoretical and methodological accounts, I first identified the law of global health, which is influenced greatly by international human rights law, as a necessary part of the context in which the phenomenon of SGM health inequities is understood/misunderstood and discussed/undiscussed between states in the WHO. Doing so enables me to analyse the problems, in terms of states’ gestures concerned with defining the fuzzily targeted populations, adding ‘enough’ evidence and reaching an unachievable consensus. In the absence of hard law – or out of the rupture between ‘law as law’ and ‘law as politics’ (Mégret, 2012) – regulating ‘what states should do’ in the WHO, informed by the sociology of nothing and the sociology of ignorance, I turn to problematising ‘what they did not do’. To do so, I need to link those lacks to a larger international social and political context.

Initially, from a socio-legal perspective, I evaluated the legitimacy and legality of the EB’s decision to do nothing about the health injustices facing SGMs. However,
considering the relationship between global health governance and international law, the 
case study looking at the suspension and removal of the topic regarding SGM health 
disparities in the WHO-related debates needs to go beyond the question concerning the 
role of international law in global health policymaking. Thus, a sociological approach is 
helpful in understanding how such a decision was negotiated, produced, and justified. To 
do so, I have tracked the social life of ‘doing nothing’, including how it has reinforced 
the existing lack of knowledge on this matter – namely, how it has reproduced ignorance 
on the international level. Yet, I have also considered the limits of the empirically-based 
approaches to ‘nothing’, which risk reproducing the something/nothing binary, and to 
ignorance, which tend to focus on the commissive making of non-knowledge. In order to 
critically engage with the existing policy and political processes, I propose the decolonial-
queer praxis as an intervention.

Therefore, this thesis is concerning how the sociological understanding of ‘nothing’, 
which creates knowledge (or ignorance), is analytically useful in interrogating the power 
dynamics of international relations. By way of analogy with human rights litigation, the 
arguments of those who resisted the discussion at the WHO are effectively saying, there 
is no victim. Even if there is, we do not know who ‘they’ are and how ‘they’ are affected; 
there is not enough evidence. Moreover, many of us do not recognise that situation as a 
human rights issue. Even if it is the case, here is not the right place to deal with it. I have 
become curious about where these ‘not-s’ came from, what they meant to states, and how 
they eventually made states do ‘nothing’. Hence, each chapter is dedicated to a ‘lack’, 
first identifying what really is lacking (something inexistent, disappeared, neglected, or 
unknown), and then deconstructing it by exploring the power-knowledge nexus related to 
the expert and political discourses. The structure of the thesis is as follows.

In Part I of the thesis (including Chapters 1-3), much of the discussion is oriented towards 
build up a critical understanding of ‘what has happened’. This has been enabled by the 
sociology of nothing (e.g. Scott, 2019b) and the sociology of ignorance (e.g. McGoey, 
2019), including their legal and socio-political accounts. Following that, drawing on the 
decolonial-queer praxis, which emphasises active and critical political engagement with 
the status quo (see Duggan and Muñoz, 2009), I consider that it is equally important to 
pursue a utopian practice for proposals concerning ‘what needs to be done’. In effect, as 
part of the deconstructionist strategy, which serves as a critique of the present, doing this
aims to overturn the hierarchy between adequacy versus lack and between ‘there is’ and ‘there is not’ (see Derrida, 1981). That is to say, in Part II of the thesis – including Chapters 4 to 6 - beyond a sociological understanding regarding each ‘lack’ as identified, I propose something that needs to be done, to accomplish the presentification practice of the sociology of nothing.

Chapter 2 (Theoretical Framework) elaborates on a problem-oriented approach to theoretical articulations (including the sociology of nothing, the sociology of ignorance, feminist/queer theories, and postcolonial/decolonial theories) to reinterpret ‘international’ society. That is, in terms of the theoretical approaches taken in this study, primarily I have drawn on the microsociological insights into subjectivity and epistemology as well as transnational and postcolonial queer studies, with the aim of trying to encompass two sets of insightful methodologies in the research framework. One is the articulation of the sociology of nothing and the sociology of ignorance, and the other one aims to decolonise gender and sexuality discourses. In this respect, in particular the symbolic interactionist accounts of no-thing and non-knowledge have guided me to consider the liminality of becoming a subject and the knowability of such, which involves a force that results in non-beings and non-doings. This, in relation to the decolonial-queer praxis, has assisted me to identify the omissive effect of discursive practices, in which the powerless are excluded from the knowledge production process and relevant evidence-based policymaking.

This work pursues a socio-political view of the unmaking of international policy, which, as described in Chapter 3 (Research Methodology), not only requires a critical approach to policy analysis, but also invokes my multi-dimensional ‘selves’ along the research journey. Inspired by Husserlian methodology regarding both presentation and presentification praxes, I have moved from a documentary textual analysis of the debates in the WHO meetings to a utopic presentification of alternative realities and knowledges based on the decolonial-queer praxis concerning proposals for political interventions and social changes. Here, the positionalities of being a researcher, an activist, a member of SGM communities, a student of international law, and a citizen of Taiwan, which is excluded from the UN-related international organisations (e.g. the WHO), have become entangled with my ‘worldview’. A completely apolitical analysis is unlikely. Yet, I am very conscious of the power of critique and the importance of reflexivity; namely, I am
aware of a series of conundrums in addressing ‘queer trouble’ and the ‘decolonial paradox’, with regard to defining and researching SGMs and their needs.

Chapter 4 (The Lack of Consensus) is about the absence of a mutual understanding on the recognition of SGMs between states. Reflecting on the polemics on the universality of human rights, I propose to distinguish between two kinds, often confused, of cultural relativism: epistemological and political. The distinction is crucial, demonstrated by the SGM social movement in Asia. Chapter 5 (The Lack of Definition) deals with issues concerning the indefinability of SGMs. Considering the exclusionary effect of SOGI and the LGBT-plus formula, I contend that it is necessary to leave room for situations of non-identity regarding rights-holding status. I thus argue for a theorisation of ‘SGMs’ to account for the variations of sexual and gender norms, and the social disadvantages suffered by different SGM communities. Chapter 6 (The Lack of Evidence) addresses the question of the asserted insufficiency and inadequacy of data regarding SGM health. Informed by systematic invisibility, due to ignorance of states and researchers concerning SGMs’ health needs, I argue that the shortage of data is in itself alarming health inequities.

Chapter 7 (Conclusion) summarises the key findings of this study according to three areas of contribution: the theoretical, the methodological, and the empirical – along with reflections on directions for future research that conclude the thesis. From resisting the status quo created by ‘nothing’ (states’ inactivity in the face of SGM health disparities) to problematising the reproduction of ignorance, I argue for the need to expose the function of states’ discursive practices in maintaining a ‘truth’ – or actually a ‘myth’, to use Weber’s (2010) term – that demarcates the international community from domestic societies. This analysis is timely in responding to the transnational SGM social movement and the emergent global health law; their nexus has been scarcely explored. Moreover, too little attention has been paid to something undone. Drawing on these sociological accounts, I contend that states’ indecisions have uncovered a competition of powers, in which the local, unofficial and marginal discourses are omitted. Echoing van der Rijt and Pang (2013) as well as Dilger and Mattes (2018), seeing the invisible forces us to rethink how ‘global’ global health is.

Along this journey, the thesis has been informed much by, and, in turn emphasises that it is important to bear in mind the multiplicity of actors in play, even those who are made quiet and invisible, especially in international law. Perhaps international law – as
Koskenniemi (2009; 2012) describes – is all about politics, which is all about meanings, and thus, no-law is meaningful. Yet, resistance to hegemonic discourses is not impossible. By recognising the world as having no ‘legible face’ (Foucault, 1981: 67), we can begin to decipher it, raising counter-voices that can be heard even in the absence of noise. After all, I aim to enrich the understanding of the rationalities and implications of ‘something undone’ – particularly in a multilateral context. Furthermore, I hope that this research can indeed promote awareness of SGM health injustices in fields related to global health, in which insufficient attention has been paid to these groups of people. Through exploring the productive effect of the ‘deleted item’, at least we can identify the politicisation effect of a de-politicised discourse.

After all, this study is not only an empirically-based socio-legal or sociological work that documents the production of nothing. It also engages with multiple disciplines such as political sociology, critical social policy, international relations, and international law – through problematising their fundamental premises with the various lacks. Guided by the sociology of nothing, which includes both the presentation and presentification of social non-reality, in Part I, I conduct sociological inquiries into the presentation of the debate in the WHO. In Part II, I draw on an interdisciplinary approach to presentifying alternative epistemologies – based on the decolonial-queer analysis of ignorance production – to provide normative arguments that attend to socio-political functions of ignorance as well as malfunctions of knowledge that have been accepted as ‘truth’. Namely, the ‘presentation’ of doing nothing is concerned with the law and politics that have defined and governed the construct of subjects, the use of evidence, and the scope of functionalism in the global health policymaking processes, while the ‘presentification’ of it considers alternative truths by proposing conceptual and political interventions.
Chapter Two. Theoretical Framework: For and beyond Sociology

This chapter provides an academic context for the work produced in conversation with the critical theories regarding international law and politics, particularly in terms of global health policymaking, including ‘nothing’ is made. Primarily, I draw upon recent theoretical debates within the sociologies of nothing (Scott, 2018), ignorance (McGoey, 2012b) and knowledge (Swidler and Arditi, 1994). Then, through my analysis of states’ participation in the WHO, I apply these models to the empirical debates surrounding the definition of ‘sexual and gender minorities’ (SGMs) and their relevance to evidence-based policymaking. Attention is paid to indecision and inaction taken by states.

Unpacking these ‘in-s’ requires a critical approach to internationalism based on the intersection of decolonial and queer theories. The former set of sociological theories concerning nothing and ignorance are used to examine the ‘lacks’ rhetoric identified earlier, which is produced, and in turn, justifies states’ indecisions and inactions regarding health injustices against LGBT and other SGM members. The latter assemblage of social theories serves to pave the way to bring into light the taken-for-granted ‘-centrism’ embedded in contemporary intergovernmental institutions, for instance andro- and hetero-centrism (Persadie, 2012; Mibenge, 2013), Anglo-Eurocentrism (Frankenberg, 2016), ethnocentrism (Twining, 2003) and of course, state-centrism (Valdes, 2003).

I thus propose a problem-oriented approach to articulating various social theories, aiming to expose ‘the pretension of universalist liberalism to restrain polyvocality by giving to one voice a pervasive authorial function’, to use Carty’s (1991: 3) words. I begin with a discussion concerning that problem-oriented – performative and pragmatic – approach to lacks. Here, I explore the analytic utility of unravelling the nexus of power and knowledge and non-knowledge. ‘Lack’ is the concept applied flexibly throughout the thesis accommodating different rationalities of the power-knowledge nexus.

Central to such conceptualisation are the sociologies of nothing (Scott, 2019b) and ignorance (Gross and McGoey, 2015), which help to analyse the various types of lack. Unlike other social analyses that are concerned more with what is or has been observed, known and embodied, these two sociological theories attend to the epistemology and ontology of ‘nothing’, the ‘unmarked’, the ‘unknown’ and ‘undone’. The role they play in this research is that of a hermeneutic filter that enables me to select a better
interpretation of the reasons for states’ inactions, and to trace, philosophically and politically, where these reasons come from.

Accordingly, beyond interrogating the production of ‘nothing’ and the functioning of ignorance, I draw on the decolonial-queer praxis to propose normative and critical interventions in terms of ‘what is to be done’, as part of the presentification practices that destabilise the status quo. While queer and feminist theorisations deriving from marginal positions actively engage and problematise the heteropatriarchal structure, in which the state-based international system is located (Richter-Montpetit, 2017), decolonial and postcolonial thoughts force us to rethink the presence and absence of epistemologies as not only interrelated but also determined by the modernity-coloniality nexus (Bhambra, 2010).

I. **Reversing markedness, uncovering how nothing matters**

This section introduces the theoretical development in understanding the place of *nothing* in our social life, and the framework for such sociological inquiry proposed by Scott (2019b). The signification and productivity of ‘nothingness’ (a lack of something) and ‘nothing’ (a lack of everything) have been a curious question for Western philosophers, especially those who are interested in phenomenology and existentialism, for instance, Hegel, Heidegger, Levinas, and Sartre (Green, 2011). The question concerning the meanings of nothing as ‘generative emptiness’ also plays an important role in East Asia, such as the Taoist and Buddhist philosophical systems, which have influenced the Kyoto School (Heisig, 2001). Related questions are considered useful in sociological research, not least as Brekhus (1998), who was inspired by linguistic inquiries into phonological and grammatical oppositions, proposed shifting academic attention from ‘marked’ to ‘unmarked’ phenomena. In linguistics, the concept of *markedness*, introduced by Trubetzkoy and then developed by Jakobson, refers to the way in which words are changed or added to give a special meaning (Bybee, 2010).

Here, the *unmarked choice* applies to things that are presumptively ‘normal’. For example, the present tense is unmarked for English verbs (e.g. say → said/saying) and single and male terms are normally unmarked nouns compared to plural and female ones (e.g. tiger → tigers/tigress) (Greenberg, 1966). Arguably, this linguistic order unconsciously affects our cognitive and epistemological perceptions of the self and our relationships with other
persons and things (Battistella, 1990; Brekhus, 1996). A hierarchy exists between the unmarked (normal/general) above the marked (deviant/particular), such as someone present/absent, a finished/unfinished work, or a club/gay club. In sociology nonetheless, Merton’s (1938) research, for example, sheds lights disproportionately on categories of non-conformity (e.g. innovation, retreatism and rebellion), compared to those of conformity, which are comprised of most members of society, who become the background for anomies to be identified (also Becker, 1963). Yet, although we view some patterns and features as more foregrounded and worth attention, markedness is defined relationally, as the linguist Battistella (1996: 133) has argued:

The normative (non-intrinsic) focus of markedness refers to the idea that one pattern, element, or feature takes priority over another. We speak of what is normal, typical, or basic as being unmarked, even though this might not be intrinsically or universally the case.

Therefore, there remains the possibility of reverse marking, depending on the context in which the figures are located. Take Said’s (1994) critique of Camus’ fictions, written in the context of the Algerian War as an example. Despite the contentiousness of his argument, Said problematises the presence of those nameless and faceless Arabs as their absence, whose death was immersed in the background of Camus’ reflection on French civilisation, making the erasure evidence of imperialist mindset. Against the tendency to bracket social unmarkedness, Brekhus (1998: 35) considers ‘the ways social actors actively perceive one side of a contrast while ignoring the other side as epistemologically unproblematic’. Although what we highlight and label occupies our lives much less than what we ignore, the omitted phenomena are seen empirically uninteresting due to their usualness (Brekhus, 1996). Thus, what makes the sociology of the unmarked related to the production of ignorance is its reverse attention to the invisibility of the unmarked, which we thought we know well and treat it disproportionately insignificant.

In response to Brekhus’ call for a ‘sociology of the unmarked’ concerning reverse marking of unmarked social categories and phenomena, Scott (2018) explores further the negative social space in which ‘nothing’ happens. Such a theoretical perspective sees nothing as having a sociological trajectory – a traceable social life that can be observed through its antecedent conditions and productive consequences (Scott, 2019b). Hence,

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3 They include, for example, The Stranger (L’Étranger) originally published in 1942 and The Plague (La Peste) published in 1947.
Scott proposes that we consider not only the silenced and invisible backgrounds of the normal but also something that has never happened in one’s life. This kind of ‘nothing’—the absence of everything—forms a large part of the backgrounds of our everyday lives, for instance, an unchosen option in decision-making, a career path that has never been taken, an unlearned hobby, or an ‘undone research’ (Scott, 2019a). Nonetheless, ‘nothing’ is not meaningless. Regarding these non-happenings, Scott (2018: 4) states that, through a sociological lens: ‘despite being negatively defined by lack or absence, they are constructed as meaningful by the reflexive social actors who manage them’.

For unmarked social things, such as structural and relational factors that shape social actors’ worldview and behaviour, Scott (2018) draws on an analytical distinction between two categories of social nothingness. They are doing/being a non-something (through acts of commission) vis-à-vis non-doing/non-being anything (through acts of omission). According to Scott (2019b), a non-something is composed of social actors’ demonstrative acts of commission (doing nothing), for example, turning down an offer, refusing medical treatment, or rejecting an event invitation—intentionally making something not happen. However, nothing can also be accomplished by passive acts of omission (non-doing anything), for example, not applying for a job as advertised, not going to a doctor for whatever reason, or not seeing an invitation at all—unconsciously letting everything not happen. Such acts of passive non-doings include a series of hypothetical things that remain not done (Scott, 2018). Doing ‘nothing’ always involves some social interactions, which require interpretations and negotiations of meanings concerning the accomplishment of such things and people’s reaction to them.

By attending to how much ‘nothing’ matters to our everyday life, Scott (2019b) demonstrates that negatively defined phenomena such as non-identification, non-participation, non-presence and non-response can be investigated through empirical study. In this regard, curiosity about uncovering the account of ‘epistemological blind-spotting’, to use Brekhus’ (1998: 39) words, is useful as a point of departure for research that studies the productivity and significance of ‘lacks’. The belief that ‘nothingness involves not doing, not being, but also not having symbolic objects, whose absence leaves a void’ (Scott, 2018: 11) and thus is meaningless has often convinced us to ignore its function. To the extent of knowledge production, a sociology of ignorance actually shares a similar concern. If the sociology of nothing attempts to reverse ‘nothing’ as the marked,
ignorance studies aim to highlight ‘ignorance as “regular” rather than deviant’ (Gross and McGoey, 2015: 4), challenging that, very often, we tend to consider knowledge as more solid and stable and thus empirically valuable.

An assumption that knowledge is solid gives knowledge superiority over ignorance, and epistemology (the study of knowledge) superiority over agnotology (the study of ignorance). Because the sociology of knowledge has focused on either the production or the non-production of knowledge omitting its contrast (ignorance), social theorists of non-knowledge argue that we need to mark ignorance, so that we can simultaneously critically reassess the existent knowledge and its validity (Proctor, 2008). This suggests that the unknown is the background of the known, just as the unmarked contextualises the marked. For example, researching how the knowledge regarding abortifacients was uncirculated during the encounters of Dutch colonisers and colonies, Schiebinger (2005: 320) concludes that ‘ignorance is often not merely the absence of knowledge but an outcome of cultural and political struggle’. Thus, remarking on ignorance construction vis-à-vis knowledge consolidation enables us to interrogate why some domains of knowledge are underexplored or considered unimportant, as well as the politics regarding ontological and epistemological unmarkedness (McGoey, 2019).

In this study, what intrigues me is the fact that, although the event of removing the agenda item at issue was unprecedented, it attracted little attention. This recalls Brekhus’ reminder that markedness and unmarkedness of one thing are not fixed, and the intensity of markedness depends on the uncommonness in the particular context. The event per se for the EB was unusual, but it was unmarkable probably because it was about SGM issues. Its boycott was more normal than its welcome. I thus wonder, what makes a ‘failure’ taken for granted. Although it is hard to assert that such a removal is politically unimportant, it might be empirically uninteresting, since disagreement between states over SGM issues is readily predictable, and hence, any success, in terms of adopting a related agenda proposal, becomes a surprise that otherwise deserves marking. Curious about the socio-political contexts and meanings of ‘nothing’, I aim to challenge the

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4 This term was coined by the historian Proctor; when Proctor was creating the neologism with the linguist Iain Boal in 1992, they considered multiple options, for phonological and etymological reasons, for which, interestingly, the prefix a for ‘agnotology’ marks a negative form of ‘gno’ (Greek verb: to know) and ‘gnosis’ (Greek noun: knowledge).
disproportionate attention paid to the marked and unmarked elements of social encounters in international organisations and attempt to reverse the hierarchy between them.

II. Problem-oriented approaches to theoretical articulations

For the unmarked event, the heterogeneous ‘lacks’ of rhetorical use are identified out of a tension between international human rights regime and global health policymaking. These lacks, through states’ discursive practices, have generated non-knowledge (knowing what is unknown). The opacity that accommodates different, and sometimes competing, interpretations of subjects (rights-holders), social reality (empirical evidence) and legal discourse (the contents of rights) makes it necessary to connect the research to the ongoing transnational social movements. This is what poststructuralist epistemology offers as a philosophical practice, challenging the dominant representation of the subject and the hegemonic interpretation of the discourse; that is, according to Butler and Braidotti (2010: 309), it is concerned with “‘problematizing” in its radical empiricism, or anti-universalism, and in the awareness of the partiality of all philosophical statements’. An analytical process for the ‘lacks’ is thus informed: dissecting and classifying them (through sociologies of nothing and ignorance), identifying the rationale behind them and connecting them to a dominant discourse in related fields, and looking for the marginal discourses (via queer and decolonial theories).

Specifically, deconstruction reminds us that ‘every philosophical position, irrespective of how coherent it seems on the surface, contains within it the means of its own self-undermining’ (Buchanan, 2010: 115). Similar to other poststructuralist approaches to social reality, deconstruction aims to destabilise the opposition between what is thought to be present vis-à-vis what is then absent, and to reverse the hierarchy operating upon the opposition. As an analytical strategy, deconstruction demonstrates the conceptual oppositions within a hierarchy that beg for a re-inscription of the context upon which the oppositions were made possible (Royle, 2000). Here, deconstruction aims not to destroy but to destabilise the foundations of the oppositions and related hierarchy and therefore goes beyond the constructivist/destructionist binary. To use Derrida’s (1992: 200) own words, deconstruction is ‘the experience of the impossible’. Notwithstanding all of this ambiguity, although it is understandable that deconstructionists including Derrida himself are reluctant to ‘define’ deconstruction, we still can refer to Derrida’s (1981: 41-42; emphasis original) own accounts that ‘describe’ what it entails as ‘a double gesture’:
On the one hand we must traverse a phase of overturning. To do justice to this necessity is to recognize that in a classical philosophical opposition we are not dealing with the peaceful coexistence of a vis-a-vis, but rather with a violent hierarchy. One of the two terms governs the other (axiologically, logically, etc.), or has the upper hand. To deconstruct the opposition, first of all, is to overturn the hierarchy at a given moment. To overlook this phase of overturning is to forget the conflictual and subordinating structure of opposition. Therefore, one might proceed too quickly to a neutralization that in practice would leave the previous field untouched...thereby preventing any means of intervening in the field effectively. We know what have been the practical (particularly political) effects of immediately jumping beyond oppositions, and of protests in the simple form of neither this nor that.

... That being said – and on the other hand – to remain in this phase is still to operate on the terrain of and from within the deconstructed system. By means of this double, and precisely stratified, dislodged and dislodging, writing, we must also mark the interval between inversion, which brings low what was high, and the irruptive emergence of a new ‘concept’, a concept that can no longer be, and never could be included in the previous regime.

Therefore, the ultimate goal of deconstructing the lacks enunciated by the states is important in exposing and resisting the desire for a universal definition of the affected populations, a generalisable body of evidence regarding health, and the waiting for an international consensus on human rights affairs. Such desires are comprehensible in terms of scientific or legal certainty, but they can also be utilised in a manner that overlooks ‘the social position of the knower’ (Light, 1969: 192). The lack of evidence, for example, indicates the inaccessibility of narrative accounts, especially in places where authorities refuse to listen. It also implies that, considering identity-based presupposition of one’s personhood involved with sexuality and gender, researching SGM health covers only those who identify themselves as LGBT persons. Thus, the silence of evidence requires critical inquiry, concerning its social implications for those who are accountable for health justice such as the WHO. However, these concerns were omitted by member states, so this step is carried out through engagement with the status quo, by reimagining a situation alternative to ‘nothing’.

Drawing on these examples, I can demonstrate the importance of critical voices and elucidate the necessity of treating different ‘lacks’ variably, because the epistemic reasons and political concerns behind them are not identical. I consider a problem-oriented approach to theoretical articulations for different types of ‘lack’. Such an approach reflects another aspect of poststructuralist methodology. The problem-oriented approaches to analysing a question of mixed theoretical and practical dimensions suggest,
in Medina’s (2010) words, a ‘performative turn’ of pragmatism, undertaking an articulation and sometimes hybridisation of viewpoints from diverse philosophical traditions. The process of pursuing an innovative way to address complex problems involves recourse to ‘conceptual tools from a variety of sources, without letting their allegiances to particular traditions become obstacles to their reflections’ (Medina, 2010: 278). Such an explorative endeavour, according to Braidotti (2010), would be suitable for analysing issues concerning identity, knowledge, and values that reach beyond the disciplinary and geographical confines.

A performative approach to problems that are identified as functioning systemic and interpersonal injustices derives from ‘an intense political desire to reflect the changing historical and social conditions of a world that is rapidly becoming globally linked, technologically mediated, and ethnically mixed’ (Braidotti, 2010: 11). The theoretical standpoints included are those around the sociologies of nothing and ignorance, and those of feminist and postcolonial studies, as well as the ‘Asia as method’ approach developed from articulating queer and decolonial perspectives. In a nutshell, the sociological implications of ‘no-thing’ and ‘non-knowledge’ enable me to identify a typology of lacks, such as the lack of consensus, the lack of definition and the lack of evidence. For example, if there is a fixed definition of SGMs (or LGBT persons), it is knowable, so a lack of it means that, it is not unknown but could have been avoided or considered undesirable. Taking the consensus between states as another example, the question does not lie in the fact of the lack of it but in the legitimacy of such lack.

III. Theorising lack: The sociologies of nothing and ignorance

Sociologists have recently addressed the questions regarding a state of affair in which nothing happens, or something happens but is ‘unmarked’ (Brekhus, 1998) especially on a micro-sociological level (Scott, 2018). I want to extend this approach to the macro level of relations between nation-states. Through the lens of the sociology of nothing, I consider how states rhetorically create ‘lacks’ (inadequacy, absence and invisibility) regarding SGM populations and their health concerns. As states, by default, legitimately represent their people based on the sovereignty assumption, these ‘lacks’ were used to justify a collective decision not to act upon SGM health injustices. But, how can a decision to ‘do nothing’ be understood when it is made by a functional international organisation, such as the WHO, that is composed of diverse social actors (national
delegates and professional staff)? The question is further complicated, if we consider each member state not as an individual actor, as conventional International Relations/Law would assume, but as an assemblage of multiple political actors.

Something that is *lacking* indicates the absence of something desirable, important, or necessary. Such absence may imply an absolute non-existence of something (no-thing), the non-presence of something that actually exists (underrepresentation), something existing that is not properly understood (non-knowledge), or a total unawareness of something regardless of its existence (ignorance). These lacks represent different relationships between existence and knowability. To frame the question in symbolic interactionist terms I am concerned with ‘how to study lack’ by interpreting the interactional gestures (Blumer, 1969; Plummer, 1996) that produce or affirm the absence of something or anything. I reflect on how to identify the sociological implications of these ‘lacks’, which can be *no-thing, non-knowledge*, or both; how to interpret the intersections of these ‘lacks’; and how to analyse them in a way accounting for how these ‘lacks’ are affected by and affect the contexts from which they emerge. Therefore, one primary purpose here is to re-politicise the discursive practices that attempted to depoliticise SGM health issues by asserting lacks.

i. **The positive meanings produced by the negative lacks**

Prior to addressing the question raised above, here I aim to illustrate how to understand the WHO’s decision of dropping the discussion on SGM health disparities from the perspective of the sociology of nothing. Rather than paying attention only to the outcome in 2016, it is more important to trace the process regarding how that decision was produced. As mentioned earlier, since the 133rd session of the Executive Board (EB), the social life of the agenda item concerned has changed over time. Despite its eventual removal, *marked* by different lacks, it was kept initially as a footnote, as a reference to the first debate in 2013, throughout the succeeding EB meetings. The footnote was replaced afterwards by a complete removal, leading to an international working group chaired by Colombia. In 2016, announced the then Colombian delegate, WHO member states who had been involved in the negotiation could not reach any mutual understanding over terminologies and actions concerning SGM health (WHO-EB, 2016). Only until then, the agenda item was *dead*, as shown in Figure 3.
As we can see, the eventual ‘nothing happened’ had experienced a life (Scott, 2019b), relying on the progress of negotiation, before it was finally actualised, with the relevant member states’ commissive – conscious and active – actions. Although the non-decision and the decision to do nothing seem similar, they mean differently. The former, represented as a footnote, indicates states’ fluctuation towards the question ‘how to deal with it’, however retaining a certain leeway for proponent states. Nonetheless, the latter has had to result in ending the life of that discussion; in fact, only when the latter situation happens, the WHO’s inertia regarding the question of SGM health inequities is confirmed (no more waiting). Such inactivity consists of a series of happenings – from an act of omission (non-doing) to an act of commission (doing nothing) – and the result of terminating the wait was justified by three main groundings elaborated by member states, as shown in Figure 3. They are the lack of consensus, the lack of definition, and the lack of evidence – all representing different forms of ‘nothing’.

![Diagram](image)

Figure 3. The making of the decision of doing nothing, from non-decision

The first rationale that supported the WHO’s decision not to do anything was the lack of consensus; this means the absence of an agreement between states. The absence, a form of non-presence, can be understood with two categories: disappearance and never-existence. The former – the disappearance of something that had once been there – would produce ghostly figures of the absent object, which can be constructed through discursive practices. This, according to Scott (2018), however implies that the latter – something that has never been there – might not have the same effect, because we cannot memorialise something that never exists. We can only imagine a hypothetical situation about it. The distinction concerning the existence of ghostly figures on the microsocial
level can be true, regarding something ever-there (e.g. miscarriage) versus never-there (e.g. infertility) (Scott, 2019b). Yet, on an international level, I consider that ghostly figures of a thing (the agreement) might happen in both cases, even though in the current case that agreement has never existed.

For example, WHO member states might have had an agreement (over other issues) before, so they would have known what ‘not achieving one’ means and how it is going to be perceived by others. The ghostly figure of an agreement emerges in the process of self-referencing (asynchronously). On the SGM health issues, although they had never had consensus, they would still be able to imagine ‘what if they did’, as they have witnessed how they themselves had done in other occasions, such as the UN Human Rights Council (McCormick, 2016). The ghostly figure of a multilateral agreement emerges from a process of other-referencing (synchronously). This is where decolonial-queer praxis can intervene. For states who had attempted to prevent an institutional response, their success (response avoidance) was phrased as winning a cultural war (Littauer, 2013). Nevertheless, that war can be regarded true only based on a presumption that one state can represent its people’s conscience and lifeform as a whole. However, that taken-for-granted representation can be both the cause and result of violence against SGMs.

For the second rationale that underpins the WHO’s decision not to do anything: the lack of definition of the SGMs (the populations concerned), it could be true that at the moment we really do not have one and probably do not even desire one, drawing on the systematic review I have conducted (see Chapter 3). However, the question seems to be not only whether a definition matters for the question regarding their health disparities, but also why there is no definition and why scholars are struggling to agree on one. This is where decolonial-queer praxis can and has already intervened, concerning the epistemological difficulty in defining non-identity in a systematic way. This situation is considered as ‘queer trouble’ and the ‘decolonial paradox’ throughout the study. SGM members’ non-identity can be developed out of two trajectories. One is dis-identification, based on a conscious choice and intentional resistance to subscribing any particular identity, and the other, out of unawareness, undertakes a non-becoming trajectory (non-identification), as demonstrated by Scott and others (2016).

Dis-identification, reflecting on queer and decolonial theories, is more obvious as a constant negotiation with the normative and scientific understandings of gender and
sexuality – namely, modern and postmodern identity politics (Muñoz, 1999). As for non-identification, SGM members may not ever bother self-identifying because of their gendered feelings and sexual (non-)practices. They are a minority, because they do not find gender or sexuality relevant in life (Scott et al., 2016); they do not know what the majority’s rules are; the majority’s rules have not amounted to social norms that punish deviants (Becker, 1963); or their desires and activities are not yet well recognised and labelled. Namely, for them, there is no need for an identity, or there exists no proper identity category available to them. The situations and related ethnographies of both dis-identification (becoming a non-normative) and non-identification (non-becoming any) have been documented richly by queer and postcolonial researchers. The fact of the existing gender and sexual pluralism has troubled scholars to agree upon a definition of SGMs in different contexts.

The third rationale that justifies the WHO’s decision is the lack of evidence regarding the health inequities among SGM populations. Deciding to do nothing about the phenomenon of SGM health inequities (by the WHO) made it possible not to collect new evidence, not to commission further studies, not to clarify the degree and impact of the situation, and not to show any political stance and policy direction. All of these ‘not to do-s’ were produced by and in turn reproduced the ‘strategic unknowns’, in McGoey’s (2012b) terms, concerning the socio-political determinants of SGM health. Different from the lack of consensus or definition which was just not there, the lack of evidence rationale pointed to a judgement regarding the inadequacy of presented evidence – be it disqualified (under-representative, so not loud enough) or unaccounted (unrepresentative, not even voiced). Such nothingness created by evidential selection process is more relevant to ‘silence’ than invisibility and emptiness, following Scott’s (2019a) classification of related realms of the negative spaces for non-beings, on which decolonial-queer praxis is drawn.

Silence can be made and broken, maintained and interrupted – easily and suddenly, depending on the silencers (either who makes others quiet, or who decides to stay quiet). I borrow Mansnerus’s (2015) notion ‘silence of evidence’, which can be made speak, voicing through the evidence’s incompleteness, by tracing its production/non-production. Silence, in both symbolic and metaphoric senses, can produce ‘a voice [that] sounds all the more audibly’ (Scott, 2018: 14) for its target audience. The silence of evidence stood at a critical point of conjunction, unfolding the journey of WHO member states who
were involved in the debate – from a non-decision to a decision of doing nothing. It subscribed to the lack of definition, which made national delegates believe, logically, the existence of scientific uncertainty. Then, it was readily in the use of the making of the lack of consensus between states; the evidential inadequacy relieved states of much ethical and political pressure to make a positive decision of doing something in this regard.

Following the theoretical discussions regarding these lacks, placed in the various negative spaces, the question comes to: what knowledge can we (or can we not) obtain through analysing them? Gross (2007b) has presented the sociological understanding of the unknown in a way in which non-knowledge produces knowledge. That is, everything (including ‘nothing’) can be known about what is unknown; so much as that something is produced by nothing (Scott, 2018). There exists a dialectic relationship between what is and what is not, territorialising the boundaries of the ontological and epistemological realms of social reality (Smithson, 1989). This territorialisation process is not free from power, which, for whatever purpose, tends to prevent us from probing and knowing (Foucault, 1980c). This is what Jensen and Lauritsen (2005) call the ‘power-knowledge nexus’. The power that dominates knowledge production process predetermines what can be observed and thought; it also makes nothing ‘fade into the background’ (Scott, 2019a: 138) forming the ‘constitutive outside’ (Hall, 1996: 3) of related epistemologies.

So, taking discourse as something that made ‘truth’ possible out of a general politics of truth, Foucauldians consider the political economy of knowledge production as associated with a competition of powers, out of which a particular truth had to win out and become ‘the universal’ one. That is, discourse that presumes a general understanding of something and simultaneously excludes the possibility of non-something (see Scott, 2019b) is, in itself, a force. Namely, according to Foucault (1994: 124), ‘discourse is, with respect to the relation of forces, not merely a surface of inscription, but something that brings about effects’. Discourse does not merely reflect knowledge; it works on it. Therefore, from the Foucauldian perspective, the relationship between knowledge that composes and constitutes truth presented to the world and the power that makes this happen or unhappen is more than subtle, and in effect forms the ground on which the ‘regime of truth’ is established and maintained. Here I would like to quote Foucault (1980b: 131):

[Truth] is produced only by virtue of multiple forms of constraint. And it induces regular effects of power. Each society has its regime of truth, its ‘general politics of truth’: that is, the types of discourse which it accepts and
makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true.

ii. States’ discursive practices of (re)producing ignorance

There have been attempts at characterising situations regarding ‘what and why we know and don’t know’. To reduce the overburden in typological terms for analytical purposes, I am sympathetic to Gross’s (2007b) concern that many concepts have been coined to explore the intent, meanings and functions of ‘ignorance’, yet with little methodological account. For clarity, he hence proposes a simplified yet comprehensive categorisation related to the knowns/unknowns. Along the development process of the unknowns, these are nescience, extended knowledge, negative knowledge, non-knowledge, ignorance and knowledge (Gross, 2007b), as shown in Figure 4. In this categorisation, while ignorance is defined as ‘knowledge about the limits of knowledge in a certain area [that] increases with every state of new knowledge’, non-knowledge means ‘knowledge about what is not known’ but is considered for future investigation (Gross, 2007b: 751). The other two types of unknowns such as ‘negative knowledge’ – knowing what is unknown but considered dangerous to know (Knorr-Cetina, 1999) – and ‘nescience’ (complete absence of knowledge), nonetheless, are less relevant for this study of political discourse.

![Figure 4. The reflective relationship between (in)existent and (un)known (Gross, 2007b; Scott, 2018)](image)

An important task here is to clarify the relationships between ‘something that exists or not’ and ‘knowing that or not’. This is relevant to ask about the limits of knowledge, which
has oriented me to inquire into what constitutes ‘the knowledge of limits’ (Dean, 1994: 54). Such an inquiry aims to assess the boundary between knowledge/non-knowledge of a discipline. From the Foucauldian perspective of the dynamic interplay between knowledge and power (Foucault, 1980b; Foucault, 1997c), non-knowledge reveals the epistemological territory that can be completely unknown, strategically not-known, or known but concealed (Voruz, 2013; Aradau and van Munster, 2011). Reflectively, the epistemological level of non-knowledge (the absence of knowledge) may actually pertain to the ontological level of nothing (the absence of social phenomena and being) in life, regarding which Green (2011) makes a further distinction between nothingness (existent yet absent) and nothing (not even existent). For example, the lack of definition can be something that is inexistent (as nothing) or invisible (as nothingness), and thus, it indicates non-knowledge.

Also confronting methodological challenges, Frickel (2014) contends that too much attention has been paid to the theorisation of not-knowing and its consequences, but too little to how to research the ‘existence of non-existence’, the ‘absolute absence’ of the researched (Frickel, 2014), or ‘no-thing’ (Scott, 2018). Sociologists with diverse research interests have uncovered ‘how far distant a more substantive empirical understanding of absences remains’ (Frickel, 2014: 87; emphasis original), even if there is not absolutely nothing. Yet, the phenomenon of the absence of knowledge can be unattended to by academic and regulatory communities, such as undone science (Hess, 2009; Hess, 2016), which is systematically produced ‘through the unequal distribution of power in society’ (Hess, 2015: 142), where social activists’ epistemic claims are not appreciated or simply neglected. In this vein, sociological curiosity about non-knowledge, translated from Simmel’s Nichtwissen, is focused on the unknowns involved with (under)development and (un)certainties regarding secrecy and information (Gross, 2012) – especially in what Beck (1999) terms a ‘risk society’ – which shapes, along with the unknowns, much of our social and political life (Gross, 2010).

Sometimes the claims against non-knowledge can be used to mobilise scientific and social research to engage in ‘what is known to be unknown’ (Gaudet, 2013: 169). That could be, out of the concern of this study, people who do not possess a fixed sexual and gender identity and that are hard-to-reach due to non-community, as Brekhus (2003; 2004) has argued regarding gay ‘commuters’. However, such an academic curiosity is not always
welcome, and may involve ethical concerns. On a microsocial and interpersonal level, such invisibility may serve for protection based on ‘the reciprocal confidence of members’ (Simmel, 1906: 470), although the individual members’ existences are not concealable. For example, the ‘secret societies’ under cover involved with sexuality- and gender-based subcultural practices do not necessarily have a strong bond and cohesion between their members (Humphreys, 2011). Sometimes, solidarity may not exist, depending on the risk and possible outcomes of related stigmatisation (Goffman, 1963; Halnon, 2001). This is particularly relevant to the discussions on ‘queer trouble’ (Petzen, 2012), which reminds me of the politics of visibility, representation and recognition.

The unmaking of social interactions, though apparently void, contains a repertoire of socially mediated values, sensibilities and rationalities. In response to Brekhus’ (1998) call to account for the unmarked, which foregrounds ‘politically unnoticed’ elements of social reality – or even, non-reality – in our epistemological ornamentation, Scott (2018: 6) proposes to explore negative social spaces, which are ‘filled with reflexive actors working to accomplish nothing, through acts of both commission and omission’. As illustrated previously, even an omission implies some-thing symbolically. As Bourdieu (1989) considers, the legitimation of the social world is possible when the symbolic relations of power that structure our worldview are made sense of by recognising a degree of indeterminacy and vagueness – ‘semantic elasticity’ (Bourdieu, 1985b). Yet, the idea of political delegation substitutes a state’s overall representation of a single society in international dialogues for the multi-layered power relations between societies, between different communities in a society, and between individuals within a community (Bourdieu, 1985a). That delegation reduces the invisibility of certain SGM members into asserted non-existence because of a lack of definition.

In this study, those lacks are ‘filtered’ by the sociological understandings of nothing and ignorance. On the microsocial level, the relationships between being/nothing and known/unknown are made sense of in an inter-reflective dynamic, as shown in Figure 4, interacting with each other in a symbolic way. On the macro, international level, both ignorance (not knowing) and nothing (not doing) are reciprocally causal and politically reasoned: for a state, I don’t know, so I don’t do and I don’t do, so I don’t know. The discursive practices are performative, including the calculated ambivalence and indifference (Teles Fazendeiro, 2016), by which ‘the discourse-emotion nexus’ (Koschut,
2017) represents ideological expressions regarding a state’s interpretation of statehood and its people (Weber, 1998). The danger of states’ denial and inattention lies in legitimising the absences concerned and the ignorance of them. As stated by Moore and Tumin (1949), ignorance – which is used as today’s non-knowledge – should be carefully distinguished ‘from the act of ignoring what is known’ (Gross, 2007b: 788, n. 4; emphasis original).

Linking the ‘lacks’ to a broader context beyond the WHO facilitates the research to investigate the power-knowledge nexus involved with the power of dominant discourse in deciding what can be seen and thought of, in reproducing health injustices against SGMs. As mentioned, a globally agreed definition of the affected community, if there were one, would be knowable, so the lack of it is not accidental. Queer theory and postcolonial queer studies that pose epistemological questions regarding a desire for a universal theorisation of gender/sexuality remind me to be careful in naming rights-holders. Scenarios such as lacking evidence and lacking multilateral agreement for the WHO to act on SGM health disparities are very different. The former is pertinent to the situation of nonknowledge due to the impracticality of related research for epistemological and methodological reasons. The latter may involve states, based on political considerations, minimising the effect of legal doctrines that stand against a cultural relativist claim used to justify people’s rightless situation. In this regard, I have recognised the necessity of drawing on postcolonial and decolonial critiques in rethinking modern statehood.

IV. Exploring the negative spaces by decolonial-queer praxis

Through the filter, a typology of lacks encompasses: the absence of mutual understanding between states regarding SGM rights, the indefinable SGMs as a result of troubling non-identity, and the silence of evidence concerning their health. These lacks were utilised by states to justify the WHO’s inactivity, which reaffirms these ‘lack’ narratives, causing a circular reasoning that serves states’ political concerns and interests. In this section, I consider how to situate the sociological interpretations of these lacks in the context of international relations, drawing on queer and decolonial/postcolonial theories. I propose to ally both schools of thought to unravel the conceptual conflations in international legal discourse, and the competition between global and local knowledges, against the conventional approach to ‘international’ society. Taking Chen’s (2010) Asia as method
as an example, I identify the danger of the statist version of cultural relativism, by elucidating the application of a decolonial-queer praxis to international law. Adding in alternative perspectives I aim to counter ‘the propaganda for a definition of reality within which only certain limited viewpoints are possible’ (Mills, 1999: 222).

i. Reinterpreting the global: Decolonial and queer theories

Speaking of intervening in dominant ideologies, especially regarding legal positivism of international law, the weaknesses of the WHO in promoting a horizontal approach to global health are pointed out because of the established orthodoxy of sovereign equality (Smith and Lee, 2017). Based on the idea of ‘sovereignty as the soul of the commonwealth’ (Brown, 2010: 59), national governments and bureaucrats, delegated by the people as a whole, are endorsed by international lawyers as composing the ‘international’ (Klabbers, 2014). In particular in the de jure postcolonial era, despite the existence of de facto imperial economic and sociocultural forces (Hardt and Negri, 2000; Mishra, 2012), new states have been afraid to yield any part of their ‘regained’ sovereignty/soul to the so-called cosmopolitan order (Douzinas, 2007). This has not only reinforced the delusion of sovereignty, invented by the old Westphalian liberal order, but also impeded the pursuit of a political order based on ‘cosmopolitan solidarity’ (Kurasawa, 2007: 168) and ‘good’ global governance (Weiss, 2000; Fraser, 2005).

The taken-for-grantedness in theory regarding either national parochialism or global cosmopolitanism can be dangerous, so in this subsection I take into account certain post-statist/post-Westphalian approaches to deconstructing the international (i.e. postcolonial, queer and transnational theories), all of which offer a critical reimagining of global health governance. Some argue for radically displacing the ‘rights’ discourse (e.g. Williams, 2010) but provide no solid alternative (Hoover, 2012; Langlois, 2002; Moyn, 2010). In this respect, following other Foucauldian, along with queer and postcolonial, critiques (Odysseos, 2010; Odysseos and Selmeczi, 2015), I try to articulate other non-liberalist entry points to rethinking human rights discourse, exploring its potential to counter power asymmetries between people and states, and between the marginalised and mainstream society. Besides, the input of non-Eurocentric knowledges and social movement experiences enables a sociology of international law to prevent the generalisation of the legal epistemology of ‘Western’ modern societies (Friedman, 1986) and an assumption of its universal applicability (Sin and Chu, 1998; Bhambra and Santos, 2017).
Of course, rethinking, and calling for a definition of, the ‘global’ in global governance is not a new idea, since the whole paradigm has been much haunted by the legal and political discourses around national and territorial boundaries despite the weaknesses of the conventional approach to statist international community (Bozorgmehr, 2010). But, critical theorists have reminded us of the need for a more careful response to states’ rhetoric with respect to cultural relativism and anti-imperialism, by considering ‘Asian’ experiences of queer activism as an example. Many postcolonial and developing Asian societies have been ambivalent towards international human rights. In addition to responding to the lack of definition and, accordingly, empirical evidence regarding SGMs’ wellbeing, or addressing, if they exist, ‘epistemological problems’ in evidence-based health science (Ashcroft, 2004), I should avoid a political agenda that could potentially further victimise local SGMs. That said, while retaining cultural sensitivity, how can we understand queerness in non-Western societies (Bauer and Wayne, 2005; Kapur, 2017)?

I thus endeavour to theorise SGM as an open-ended rights-holding status, as a replacement for the LGBT-plus formula, for the unidentified ones and those who are still absent from the discursive realm regarding sexual rights and gender equality (see Chapter 5). This serves as a starting point to address a series of questions, especially concerning how we can mediate the critique of ‘normalisation as social inclusion’ (Croce, 2014) and the fight for a broader recognition of differences between subjects (Young, 1989; Rancière, 2004). Therefore, queer theory, which questions ‘socially established norms and dualistic categories with a special focus on challenging sexual, gender, class, racial classifications’ (Thiel, 2017: 97), becomes an important resource for my critiques of the hegemonic interpretation of sexual and gender identities. Along with postcolonial critiques, I am able to see the exclusion and even epistemic violence, manifested by underrepresenting many non-LGBT SGM members, as illustrated by Bhambra and Shilliam’s (2009) interrogation of the ‘silencing’ effect of modern human rights discourse.

Inspired by other theoretical concerns such as postcolonial and decolonial standpoints, the trajectory goes beyond the binaries, to contest general political orders (private/public) and theoretical assumptions regarding the domestic/international, security/insecurity, healthy/unhealthy, state/non-state dichotomies and so forth (Rao, 2014b). The anti-colonialism project opens up another intellectual journey to a radical, bottom-up version of cosmopolitanism (Rao, 2010). I turned to consult Chen’s (2010) *Asia as method*, which
highlights the sociocultural dimension of normative order and knowledge production against the state-centric perspective on law. With all of this in mind, I shall elaborate on why queer and postcolonial/decolonial critiques matter. Undoubtedly, whether to queer/undo (or not) the task of defining a right-seeker – the socially excluded – remains a conundrum with respect to the voiced vis-à-vis unvoiced struggles of identity politics (Concannon, 2008; Plummer, 2011; Wiegman, 2017). These theoretical mappings have expanded, rather than diminished, the space for articulating the diverse, yet sometimes competing, perspectives regarding ‘lacking something’.

Queer theorists first targeted the conceptual conflations in legal discourse – such as sex/gender, sexual orientation/practices/homosexuality, transgenderism/transsexualism and gender identity/expression – unpacking the nuances between these notions that represent different epistemologies (Otto, 2015; Valdes, 1996; Waites, 2009). Because of both sexual liberation and the LGBT rights movement, which has prospered globally, people have come to consider that sexuality is significant in shaping people’s perceptions of moral worth that includes desire, identity and wellbeing. This is the context in which queer theory, which converges poststructuralist and feminist critical forces and radicalises sexuality/gender identity politics (Seidman, 1998; Edwards, 1998), emerged and thrived in the 1990s. However, its introduction into international legal scholarship – from international human rights law specifically to public international law in general – is quite a recent phenomenon (Morgan, 2000; Gross, 2008a; Otto, 2007; Otto, 2017). Yet, why and to what extent is queer theory relevant for research regarding ‘lacks’ in global health policy debates?

The critiques of law’s generalisation of people’s lived experiences are indeed pertinent to, in particular, states’ emphasis on preventing an exclusionary effect of health policy and attending to the cultural diversity between states. Hence, this is where queer critiques could intervene, since, for queer theorists, queerness represents the forgotten personal or collective history of gendered bodies and sexual lives beyond national boundaries (Ahmed, 2016). Queer theorists unwrap historical problems and ideological struggles that cannot be addressed at once, including situations of identity construction, dis-identification and non-identification. Beyond the dialectics concerning having and not having a gender/sexual identity, queer theory’s non-dichotomous perspective offers other possibilities for realising the relationship between a person, or a subcultural community,
and the mainstream society in which they are located (Berlant and Warner, 1995). In this light, queer theory challenges the heteronormativity embedded in the concept of ‘nation-state’, where the patriarchy’s knowledge-power nexus functions against ungovernable bodies (Langlois, 2015), namely, the state’s paternalism over the people.

The metaphoric imagination of state governance as mancraf is in itself patriarchal and paternalistic, taking other states as rivals, to self-inscribe a ‘delusion of sovereignty’ and internationalism of this kind (Cocks, 2014; Weber, 2016a). Recently both international law and global health have expanded its interests in standardising human wellbeing and health programmes in response to a call for good governance (Koskenniemi, 2012; Michael and Rosengarten, 2013). The relationships between states and between a state and its people have subtly changed to accommodate and justify the emergence of new actors, and such a phenomenon is particularly salient concerning global health (Clinton and Sridhar, 2017). Therefore, queer theoretical intervention is urgent, given that the WHO and health professionals have begun to develop strategies concerning LGBT persons’ health promotion. As applied, the queer perspective reminds me to pay attention to all sorts of sexual oppression and gender discrimination, including the risk of reducing the diversity among SGMs to LGBT-plus identity categories.

In addition to queer theory’s emphasis on celebrating sexual and gender diversity, postcolonial and decolonial theorists’ critique of modern knowledge production and circulation are crucial for SGM members in non-Western societies, especially when queer theory itself is often critically examined as perhaps another ‘imperial’ project (Puar, 2001; Morgensen, 2010). However, this cannot be mistaken as a national/cultural relativist gesture contesting the universal imposition of human rights standards, since, as Spivak stated, cultural ‘relativism’ implies an assumption of the existence of ‘a cultural absolute’ (Masciarotte, 1994: 79), by which it is trapped in another modern taxonomical structure regarding ethnic/racial and regional classification (McLennan, 2013). This reminds us of a ‘decolonial paradox’. It is concerned with queer critiques of the rights discourse, which emerged primarily from the West among poststructuralist and postmodernist theories (Barnard, 2004; Hanawa, 1996), used to evaluate SGM social movements in postcolonial societies. I am thus aware of the questions regarding decolonising queer theory and making it comprehensible in non-Western places.
Prior to a nuanced discussion of postcolonialism and decolonial thinking, I shall elaborate on the theoretical concerns with the coupling of queer and postcolonial/decolonial theories, which are not necessarily a perfect match. Central to queer and decolonial theories is destabilising the knowledge with which we are familiar, so that people in a postcolonial/decolonial position are vigilant in questioning the terminologies and taxonomies produced in the name of science. The ‘decolonial queer praxis’ (Hunt and Holmes, 2015), like other decolonisation projects, usually fills people with unease. Here I consider mainly the postcolonial theorists from Asia, a context to which I am more accustomed, but this does not mean that theorists from other parts of the world can be ignored, such as the ‘decolonial turn’ of postcolonialism developed in and indigenous to Latin America, which refuses to privilege poststructuralist/postmodern Western thinkers (Grosfoguel, 2007). There have also been solid critiques of the modern human rights system and LGBT rights movement strategies stemming from non-Asian postcolonial contexts (e.g. Milani, 2014).

To reimagine the world with a critical lens may not be enough to prompt a radical change, as Cocks (2009) remarks, in the absence of a struggle to democratise material power, which foregrounds alternative political aspirations in replacing the sovereignty delusions. To take ‘queer’ plus ‘postcolonial Asia’ as an example demonstrating critical engagements in redefining the inter-national is not just to represent queer populations in Asia but also to queer Asia. Therefore, to queer, as a verb (doing/undoing rather than being/not-being), is to challenge ‘normative knowledges, identities, behaviours, and spaces, thereby unsettling power relations and taken-for-granted assumptions’ (Hunt and Holmes, 2015: 156). Among the theoretical encounters, Asian perspectives and experiences demand, in response, a decolonisation of the Anglo-American understanding of queerness, for instance, the series of ‘Queer’ Asia conferences since 2016, in which people have challenged not only the postcolonial governments’ nation-state thinking but also the gender/sexual and sociocultural norms legitimised by modern medical and juridical judgements (Lee, 2019a).

In the light of the postcolonial wariness of globalising narratives in the contemporary conjuncture, especially for SGMs, the denial of access to a liveable life has been legitimated by the so-called ‘homo-internationalism’ and its counterpart ‘homophobia-nationalism’ – intriguingly, both in the name of decolonisation (Bosia and Weiss, 2013).
The former presents a globalist project to decolonise our ‘Selves’ – encompassing bodies, identities and desires against heterosexism (Symons and Altman, 2015). The latter magnifies the essence of a ‘nation’ – based on the discursive practices concerning the continuity and homogeneity of a population against propagandas that are perceived as threats to ‘Our’ sustainability (Butler and Spivak, 2007). Thus, queer-decolonial activism and scholarship endeavour to forge an anti-imperial consciousness. They aim to subvert the given definitions of state and people, by making knowable and known the subjugated queer knowledges located in both pre-modern and post-modern sites of linguistic and political references, where, respectively and reflexively, the decolonial and postcolonial methodologies against Western modernity are required, as shown in Figure 5.

![Figure 5. Theoretical conjunction of decolonising and queering praxis](image)

Such theoretical conjunction, notwithstanding the risk of overemphasising an artificial division of time, aims to avoid the epistemological trap regarding the binary opposition between cultural universalism and particularism (Chen, 2005). The two approaches to queer radicalness are, more specifically: to ‘discover’ queer beings (LGBT non-beings) in, or that have developed from, a culture that has been disqualified by the modernisation process (queer studies); and to ‘uncover’ the power relations imposed upon – by avoiding becoming-queer – people’s self-knowledge (queer theory). As shown above, both approaches problematise the oppression of non-heteronormative SGMs, but roughly speaking, the former investigates queer existences in (pre-)modern times that we do not necessarily know how to name (non-identification), and the latter applies a poststructuralist understanding of a gendered/sexual body that we consider not naming (dis-identification). Queer theory’s interruption should not be interpreted as preventing people from identifying themselves with similar others. As Butler once exhorted, echoing Foucault in a 1982 interview, this is an ethical issue (Ahmed, 2016).

If identity becomes the problem of sexual existence, and if people think that
they have to ‘uncover’ their ‘own identity’, and that their own identity has to become the law, the principle, and the code of their existence… Then, I think, they will turn back to a kind of ethics very close to the old heterosexual virility… We must not exclude identity if people find their pleasure through this identity, but we must not think of this identity as an ethical universal rule (Foucault, 1997b: 166).

Similarly, the development of postcolonialism and decolonial theory characterises the trajectories of different societies’ responses to colonialism’s consequences, in terms of economic depredations and epistemic injustices (Jansen and Bortoluci, 2013; Bhambra, 2014b). A manifest difference between them lies in the geographical sources of their epistemological and political programmes – postcolonialism emerged in the Middle East and South Asia and decoloniality came from Latin America – and their pragmatic use in resisting different imperialist projects, or sometimes the same projects from different angles. They also vary regarding their historiographical attention to modernity, which sublimes the epistemic power in ordering the colonised subjects and societies (Mignolo, 2009). Postcolonialism is concerned with aggression-colonialism in relatively modern times, and decolonial thinking retraces imperial interlocutors since the arrival of settlers (Quijano, 2007). While postcolonialism deconstructs ‘subjectivity’ – the given consciousness of identity and body – based on which the material precarity and social inequality are reproduced, decolonial theory considers the eventual liberation of intercultural relations as the real path to anti-colonialisation (Quijano, 2002).

After observing several queer academic and activist conferences, I found that there is a mixed combination of queerness-decoloniality, originating from multiple understandings of heteronormativity and colonialism. This has set the stage for dialogues between people with diverse standpoints and agendas, from which no fixed answer is anticipated. If ‘queer’ is always positioned against patriarchy/heterosexism, then ‘decolonial’ is in a similar place in relation to imperialism/colonialism. Theoretically, I am convinced that countering the matrix of power assembled and co-functioned by those dominant forces needs an assemblage of minority and powerless allies, not only in questioning universal ethics but also in unravelling global inequalities (Juris and Khasnabish, 2013; Bhambra, 2014a; Mignolo, 2011). Thus, the combination of postcolonial/decolonial and queer critiques offers a theoretical approach to recognising and identifying ‘the significance of the “colonial global”’ (Bhambra, 2013: 296) in the composition of lacks discursively produced and practised by states in the sovereignty-based intergovernmental agency,
necessarily, the WHO, where ‘people’ are reduced to and represented by ‘states’.

ii. Following the decolonial-queer praxis: ‘Asia as method’

The problem of statist regionalism/internationalism lies in its presumption of the totality of a population – whether recognising cultural diversity or not – as one unitary politics (Weber, 2015). Based on the population-nation-statehood-sovereignty formula, the human race is divided by national boundaries and the corresponding nationalities while peoples are settled as state citizens. This formula is distinct from preceding forms of political entities, such as tribes, poleis, empires, caliphates or dynasties, which were not so-settled in territorial and demographic senses. However, the formula itself accommodates a range of types of state formation, in which a unified will of the people, their self-determination, is the key linkage (Crawford, 2006; Walter et al., 2014). In the light of decolonial/postcolonial ethics, queer theory in Asia intends to de-territorialise/un-settle not just queer bodies but also ‘state science’ (the knowledge of territorial sovereignty), borrowing Deleuze and Guattari’s (2010: 19) words, and its extension to regionalism, for example the state-centric Association of Southeast Asian Nations (Langlois, 2014; Langlois et al., 2017).

Queer theorists have aimed to challenge the reductionist and essentialist approach to generalise across the differences within a community and between ‘peoples’ on which the statehood is established. Such a perspective nevertheless is not merely a state-phobic response, as Dhawan (2016) and others suspect; rather, it is better understood as a reminder of the decoloniality against the preconditions of the ‘international’ based on modern sovereignty. The Asian-ness of queer studies is accordingly a form of resistance to national governments’ self-justified selection of social movement agenda – in the name of ‘people’, the national community, social solidarity and cultural sovereignty (Anderson, 1991; Olson, 2016). A critical conception of human rights based on the decolonial-queer praxis thus contrasts with the totalisation of modern internationalism, which has routinised global human rights affairs and counteracted the vitality of rights-regimes (Koskenniemi, 2011). In so saying, placing states as the only decision-makers and the law as the only source of rights can be dangerous (Brown, 2002; Kennedy, 2002a).

When discussing SGMs’ lived experiences and their rights concerns, especially in Confucian Asian societies, which are related to the ‘lack’ of consensus regarding
enforcing human rights law, I consider the possible ‘silent changes’ concerning the rule of no-law that functions in society beyond the state’s lens (Guo and Zhu, 2016; Zhu, 2015). Guo (2007) argues that ‘no-law’ evades the adversary impact of legal professionalism upon SGMs in a non-democratic society. The inclination towards legal positivism on the domestic level may lead lawyers to overlook the usefulness of a vacuum – a negotiated space (Rorty, 1993) between SGM members and mainstream society. This echoes the dynamics in a min-jian space of (low) politics proposed in Chen’s (2010) Asia as method. It is a space suppressed by governors and elites of Southeast and East Asian societies in postcolonial age, who, encountering ‘the hot Cold War’ with no time critically reflecting on the colonial past (Chua, 2008), tend to accept ‘national’ history produced by colonisers for the sake of social cohesion.

In the min-jian sphere, where the local knowledge of queer lives is hardly quantifiable into statistical evidence regarding health indicators (Doan, 2016; Love, 2016), cultural proprieties and ritualised interactions prevail over state law, and, at times, emotions (interpersonal connections) overwrite reasons, and reasons overwrite laws (Lee, 2016). Such an extra-institutional sphere – the people’s space for running informal politics – symbolises the non-belonging of the state or ‘civil’ society dominated by, respectively, official and expert discourses. It is thus analytically useful to contextualise the occurrence, or even non-occurrence, of social movements. The social sphere of min-jian is distinct from civil society, for they are at times struggling with each other over defining ‘what’s good for society’. Chen develops this concept out of a tension – shared by Confucian Asian societies, for example, Japan, Taiwan, Korea, Vietnam etc. – between officialdom (kwan) and a people’s space, in which ideological constructions are relatively autonomous from the dominant institutions of governors and the knowledge class.

The idea of a min-jian space is consonant with queer theory, recognising the dynamics and agencies of members of constituting counterpublics, which are ‘formed by their conflict with the norms and contexts of their cultural environment’ (Warner, 2002: 63). Counterpublics can be represented in diverse forms – in terms of academic fields and cultural encounters (Chiang and Wong, 2016; Ruvalcaba, 2016). Queer counterpublics have provoked anxiety, mixed with excitements and worries, among SGM rights advocates. Since its introduction, queer theorists have endeavoured to redefine ‘queerness’ in other contexts; by doing so, they may find themselves as another sort of ‘settler’ and
this is where self-reflexivity emerges (Hawley, 2001). In other words, queer theorists do not just loudly protest sexual/gender identity politics, but also identify the power of critique over the situations in which they engage (Liu et al., 2015). Nonetheless, queer theory has never become a metanarrative; rather, it is a manner of *doing* theory, approaching multiple forms of lives in varied texts, times and places.

In this light, *queering* has everything to do with *decolonising*, or at least, counteracting the Westphalian conception of nationalism, statism, regionalism and internationalism. As the LGBT social movement is internationalised, there have been calls for caution against both state violence and the camouflage of neoliberalism, which aims to de-radicalise the queer force (Langlois, 2017). The queer standpoint aligns with other critical explorations of strategies and tactics contesting any kind of ‘identity’ through consumerism, which can be related to one’s gender expression, sexual life, cultural etiquette, national feelings and patriotism, which intend to domesticate, or expel, the assimilation rejecters. Yet, it is also important to acknowledge the constraints of ‘queering’ by recognising the ambivalence of local SGM communities towards the local-global power asymmetries. In so saying, queer theory/studies and postcolonial/decolonial critiques not only identify the struggles but also represent the strugglers; they carry multiple implications and can be a philosophy, a liminal condition of knowing. Namely, for a critical epistemology, ‘queer’ cannot work without ‘decolonial’, and vice versa.

Reflecting the decolonial-queer praxis upon *Asia as method*, both SGM members and their locations, which are ‘constituted by different “lines” of segmented social positioning’ (Chen, 1989: 45), should aim not to subject Asia to a unity that ‘excludes and represses incoherent and unsystematised events’ (Chen, 1989: 53). The task of rediscovering local knowledges locates queerness/decoloniality in lieu of minor discourse beyond the institutionalised form of discipline. Such an intervention would potentially constitute another version of bottom-up cosmopolitanism that is different from the top-down, state-based, political version (Delanty, 2014), and bring both macropolitics and micropolitics altogether into play. It is obvious, in the age where we witness the prosperity yet fluctuation of interwoven decolonial and queer projects, that some kind of coalitional politics, in theory and in practice, is allowed to happen through the collaboration of social activism and knowledge production (Lee, 2018a; Lee, 2019a). Yet, why is this relevant to a study of ‘nothing’ produced through international negotiations?
The pursuit of the rule of law by states in a multilateral setting is thus questionable. The law that governs international relations is also the law over the relationship between a state and its people, based on the principle of sovereign equality, which results in reaffirming state-centrism and hence the principle of voluntariness. In this highly politicised legal system, for states, personified as moral men who always make rational and just choices based on the will of their people, ‘the sovereignty is an artificial soul’ (Hobbes, 1996: 9). Nonetheless, the realities expose the inadequacy of this presumption in terms of human rights protection (Hathaway, 2002), public health promotion (McInnes et al., 2012), and other matters regarding the interactions between the governors versus the governed. The will of a state represents its people’s will – of which, however, only the dominant ideologies in society are adopted. Such representative democracy is achievable normally only by discarding minority voices, or, if states are ignorant of the imbalanced power relations in reality.

Following this thread to reconsider the foundations of international human rights law, Donnelly’s (2007) ‘relative universality’ is interesting. He proposes mediating the universal possession and relative interpretation of rights. Such a distinction between the general ownership of rights and their particular references in context resonates Santos’s (2007) theorisation of ‘mutual intelligibility’ between cultures and between mainstream and subcultures, which considers a space for the law to be adaptive to social transformation. That is, it is not ‘what humans are’ but ‘what humans do’ that defines the need and content of human rights. Based on this, a critical version of cosmopolitanism requires a ‘worldview from below’ – a political conception of justice that is subject to the re-configuration of realities in a given social milieu (McCrudden, 2015). This is at least equally important to, if not more significant than, national interests (Delanty, 2009). Such cosmopolitanism is no longer bound by sovereign boundaries but by subnational ‘peoples’ and does not pursue global citizenship but a translocal understanding.

The relative universalism of human rights conceives of achieving global justice through a process that is open to enlarging ‘rights’ based on the coexistence of cultures and their agents (instead of polities). Therefore, the non-presence of rights-holders in the history of international law should not be read as their absence so much as to a priori deny their rights (see Chapter 5). How is this applicable to ‘Asia as method’? Turning the rights of humans into rights for humans (Golder, 2015) not only deconstructs the significance of
states (and hence the ‘international’) in law, but also subjects ‘Asia’ and the problematic cultural relativism claim – say, Asian values – to critical scrutiny (see Chapter 4). Bottom-up cosmopolitanism, vis-à-vis the state-centric version, is critical of discursive artefacts such as citizenship, territory, and sovereignty (Patton, 2010) and attends to the incommensurability of cultural differences between publics (Otto, 1996; Rao, 2017), which can be incompatible, overlapping or unrelated. These concerns are helpful in reconceptualising rights, rights-holders and their lacks (see Chapter 6).

V. Conclusion

Nothing is socially produced and socially productive (Scott, 2019b). Its meanings can be explored by tracing its social life and its relationship with the production of (non-)knowledge. In this chapter I have argued that macro level social actors – visible or not – are also involved in this process. I demonstrate this through the example of the WHO’s productive inertia regarding SGM health on an inter-state level. I thus propose a problem-oriented, performative approach to articulating different social theories. Taking the sociology of nothing and the sociology of ignorance as a ‘filter’ to clarify the various types of lacks asserted by states, I aim to disengage the superficial interlock of international human rights discourse and global health policymaking practice, in which the international/local and population/personal divides are salient (Lee and Kamradt-Scott, 2014). The former set often prevails over the latter one owing to the legacies of utilitarianism and communitarianism in public health (Petrini and Gainotti, 2008). I have thus considered the critical views of queer and postcolonial/decolonial theorists, who argue against the overgeneralisation of people’s living conditions for analytical purposes.

This theoretical engagement is to approach a lack of conversation between political sociology and the theory of nothing. Political and expert discourses are always an interesting object of sociological inquiry, while policy negotiations taking place in international organisations have opened fruitful avenues for theorisation. Most studies identify the creation of ‘something’, attending less to ‘nothing happened’; others attempt to understand failed policies and lack of action, however involved with an a priori judgement over ‘what should’ve been done’. Meanwhile, some sociologists have been interested in the invisible backgrounds of everyday life – including the way we think and behave and how we become who we are – especially those who are inspired by symbolic interactionism (Scott, 2009) and poststructuralism (Dumont Jr., 2008). The two streams
of theoretical development have infrequently intersected with each other, whereas the latter gives little account of the making/unmaking of law and policy. Building on the articulation of various theoretical concerns, I can analyse a ‘resolved’ debate over SGM health inequities by ‘not resolving’ anything at the WHO, contributing to sociological discussions around the relationship between knowledge/ignorance, law, and politics.

Such complex relationships between law and politics and between the global and the local are inquired into with a sociological understanding of the power-knowledge nexus. All of this has brought to the fore epistemological and ethical questions regarding who the excluded/included are and how they live – represented in legal discourse and health research (Allison, 2015; Mulé, 2005). A crucial task is to unveil the existent polemics and messages therein and to unpack them carefully in each paradigm. The matrix of world realpolitik is interwoven with knowledge production in fields such as international law, global health, and human rights, in which there have existed battles between different schools of thought. A simple core-peripheral or imperial-colonial analysis of power relations between states may not be adequate, especially as almost every society has been contributing to making non-normative sexual and gendered others – minorities. Threading down from deconstructing the ‘lacks’ to mapping out by whom, where and why they are legitimised thus enables me to explore the methodology regarding how to approach them in terms of international law and politics.
Chapter Three. Research Methodology: An Interdisciplinary Study

In this chapter, I explore the methodological questions that have shaped this study, which aims to politicise the discourses around ‘lacks’, and how these questions have informed my approach of doing the research.

The first challenge is how to study ‘things that aren’t there’, as Croissant (2014: 4) asks. Identifying its origin, directionality, intensity and effect, we accept that nothing, as a constitutive part of social reality, denotes a negative social space where ‘something is not there’ (an act of commission, in Scott’s [2018] terms) vis-à-vis ‘nothing is there at all’ (act of omission). Through this epistemological lens, nothing as ‘a constitutive part’ of the WHO’s inactivity, is created by the lacks of consensus, definition and evidence regarding the health of sexual and gender minorities (SGMs). Namely, there exist certain things – the presence of international mutual understanding, a definition of SGM identities, and the sufficiency of health evidence – that are perceived to be missing (absence, non-identity, insufficiency and thus silence). All of these forms of lacking – as a productive and dynamic process – have made related knowledge/ignorance invisible. Such omission, as argued in Eriksen’s (2015) theory of failure, requires ‘nothing to be done’ as a category of practice.

The purpose here is to explain the methodology and methods employed in this study, which attends to discursive practices of WHO member states concerning SGM health. In fact, the debate at the Executive Board (EB) regarding SGM health had motivated me to consider two main aspects of the matter: how was that decision made, and what had made it possible? Considering that the EB had never completely thrown away any agenda item in history, it was a very unusual situation, and yet, surprisingly, such unusualness, as mentioned earlier, was unmarked that has provoked little attention.

To explore this, I consider the practical dimension of ‘doing’ this research. It contains the attempts to conduct systematic and scoping reviews and the implications of the review process and outcomes, and the rationale for a focus on documentary research, including how I approached the documents and the limitations of data collection. Before concluding, I provide a more comprehensive picture of the research trajectory, exploring the connections between the methods I applied and my broader methodological commitments.
Reflexively, I discuss how the complexity of my ‘selves’ have been influenced by and mediated the context of this journey.

I. The presentation and presentification of nothing

Following that nothing forms a component part of social reality, we can further argue that these forms of social reality through discursive practices, on an ontological level as illustrated by Scott (2018), are not necessarily noticeable – made as knowledge – by the social actors involved. The happening of nothing (active/commissive) or the non-happening of anything (passive/omissive), whether it was supposed to happen or not, may or may not fall into the process of constituting knowledge, as shown in Figure 4. That is, on the epistemological level, we are not necessarily aware (cognitively) that ‘nothing already happens’ and ‘what that means to us’, and this matter of fact becomes non-knowledge, the absence of knowledge, simply ignored by us. So, how can we research into this – evaluating the extent to which ignorance plays a role and functions in ‘non-doing’ (passive/omissive) or ‘doing nothing’ (active/commissive)? In this regard, drawing on Husserl’s phenomenological approach to idea/non-idea, Scott (2019a) has proposed two perceptual processes for the methodological recovery of negative phenomena: ‘presentation’ (of the actual) and ‘presentification’ (of the virtual).

Both processes along with their interpretative methods have shared much affinity with Deleuzian distinction between the actual and the virtual, both of which are real (as opposed to simply ‘possible’) and co-constitute the reality. While the actual has come into being and has concrete existence, the virtual has not and probably will never do (Buchanan, 2010: 4). The methodological significance of the distinction lies in the fundamental difference between the methods of presentation and presentification. The former is to bring into light those ‘seen but unnoticed’ things and routines – for example, state-centrism of WHO policymaking, identity-based conceptions of rights, and evidence-based public health. The latter, by creating ‘inverted representations of extant specifics’ (Scott, 2019a: 134), explores the meanings of an otherwise situation, though staying hypothetically for the moment. Say, what if there were a WHO resolution in 2016; what if people-centred approach to health had prevailed over sovereignty concerns; what if the definition of SGMs were not bound by the notions of sexual orientation and gender identity; or what if local voices had been taken into account despite the evidential rules.
We hence can identify the dialectic relationship between ‘what is’ and ‘what is not’ as well as between ‘it is’ and ‘if it were’, making both techniques of presentation and presentification complementary to each other. In this study, to analyse nothing, and the unknowns it produces, draws on the importance and usefulness of decolonial-queer praxis. For both forms of representation, the side-by-side actual and virtual counterparts of reality are juxtaposed and reimagined (see Firth, 2012; Holmes et al, 2006) – by deconstructing the hierarchy of marked over unmarked, certainty over uncertainty, identity over non-identity, knowledge over non-knowledge, cosmopolitan over local, expert over layperson, and orthodox over alternative. Through this study, I attempt to shed light on the WHO’s inactivity regarding SGM health. Perhaps not surprisingly, this event – the shift from a non-decision to an active decision to do nothing – did not attract much attention from media, the general public as well as academic and activist communities, compared to the stories of ‘progressive developments’, ‘victories’ and so on happened in other international organisations, such as the UN Human Rights Council.

I have undertaken documentary and political discourse analysis for this research. The combined use of both methods enables me to approach and interpret states’ understanding and non-understanding of the rationales behind their indecision about doing something (from waiting) and their decision not to do anything (to determining). The rationales surrounding ‘lacking something’ are analysed and, to a varied extent, intervened with decolonial-queer praxis; the corresponding arguments are made for both ‘presentation’ and ‘presentification’ around a particular no-thing/lack in each chapter. One of the restraints of the study nonetheless, due to the limits of time, is that it fails to investigate what effect that WHO’s decision of inactivity has produced. Thorough documentation of the social life of nothing, as Scott (2019a: 139) demonstrates with her story about a piece of undone research, requires researchers to trace its trajectory from origins to consequences and its ghostly presence of absence that ‘agentically affected subsequent events’. For work that follows up to see what has been created otherwise out of the context of a ‘failed’ multilateral negotiation, both documentary and discourse analyses manifest their limitations.

II. Queer trouble emerging from systematic review

The ‘lack’ discourses developed from 2013 to 2016 at the EB triggered my curiosity to find out how much evidence there was about SGM health (positive phenomena,
Recalling that report, where the WHO Secretariat (2013) admitted that there is no sufficient evidence regarding SGM health inequalities globally, it then called for a systematic review related to this topic. In this respect, I attempted to conduct my own systematic review, or alternatively, a scoping review. While the former is often used to make a claim about generalisability of evidence, the latter helps to field what has at least been done/undone and known/unknown in the scenario in which related studies are too limited to be informing or too broad to be relevant. Both methods demand critical appreciation and a meta-analysis of the results of a database search, which aims, following a standard protocol, to map out how ‘insufficient’ it is concerning the evidence regarding the health outcomes of LGBT or other SGM populations.

Out of the different concerns of various disciplines, I identified the difficulty in defining the scope of the question, even with a focus on health ‘inequities’ that are considered illegitimate, namely the sociocultural determinants rather than the biomedical factors of health (see Whitehead, 1991). For the search, the timeframe was set to 2008 and 2015, in relation to findings in the health or social science literature, as shown in Appendix 1. The review aimed to explore special concerns regarding healthcare, beyond the constant focus on sexually transmitted infections (STIs) of SGMs, whose other health issues have long been neglected by public health research (Boehmer, 2002). However, several searches did not succeed in the end, although I tried to break down the search question into multiple elements. Despite the failures, I would like to present the procedure, which led to a discovery of queer trouble. The research question for the systematic review (in the database Web of Science) was: to what extent are ‘health disparities’ in ‘LGBT persons’ (or ‘sexual/gender/romantic minorities’) caused by ‘heterosexism or discrimination’.

Since a systematic review requires a sharp and narrow focus, it is important to have an explicit justification for the review boundaries drawn by the research question (Gough and Elbourne, 2002). After the first two pilot searches, using the database research method, the third endeavour, conducted with Medline, explored the sub-questions derived from the main one, as shown in Appendix 2. They are: (1) how health disparities in sexual, gender, erotic and romantic minorities are evaluated and (2) to what extent they are relevant to heterosexism, stigmatisation, discrimination, or any other societal factors. In addition, I asked, (3) how the public health research community studies them, namely
located in specific disciplines related to medicine and health. To answer these questions, inclusion and exclusion criteria were designed according to Petticrew and Roberts’s (2006) PICOC model: population (who)/ intervention (what or how)/ comparison/ outcome (what to accomplish)/ context (in what circumstances). Yet, the review did not aim to identify any intervention measures. Instead, the review aimed to summarise the research findings, as shown in Appendix 2.

To clarify, as required by the PICOC protocol, the literature targeted by the review had to fulfil the following criteria. (1) It must have been published after 2008, when the WHO introduced the concept of the social determinants of health, via the final report of the Commission on Social Determinants of Health. (2) It must not consist of secondary sources only, namely book reviews or textbooks that add nothing to the research they summarise. (3) It must focus significantly on sexual/gender/romantic/erotic minorities as defined. (4) It must focus significantly on the health issues of these populations; and (5) it must focus on socially related health inequities, that is, not deal simply with STIs, or the medicalisation of sexual paraphilia and gender dysphoria. This time the search resulted in the difficulty of locating the question. The searched ‘field’ was too broad to delimit, even by means of scoping review, which serves to determine the ‘sorts of studies addressing the systematic review question’ (Petticrew and Roberts, 2006: 48).

A scoping review of a body of literature can be desirable, and sometimes necessary, particularly when the research question ‘has not yet been extensively reviewed or is of a heterogeneous nature’ (Pham et al., 2014: 371). After consulting with bibliographical databases such as Medline, the National Institute for Health and Clinical Excellence, the Centre for Review and Dissemination, the Campbell Collaboration Library of Systematic Reviews, and Cochrane Database of Systematic Reviews, I confirmed the ‘lack’ of such a review before 2016. Methodologically, a scoping review, though sharing many virtues with a systematic review, is different especially concerning its practical purpose. It looks to map out the body of literature pertinent to the topic area (Arksey and O’Malley, 2005) and offer a ‘descriptive overview’ of the identified material (Pham et al., 2014). That is, a scoping review, literally, serves to scope the ‘field’ of study (Landa et al., 2011). After all, a review for whatever purpose is pursued to ‘explore social problems’ (Sharland, 2012: 485), particularly when the problems have just been identified.
Notwithstanding the challenges I encounter, these endeavours did not help reduce but reveal some unexpected insights into the complexity of the questions. This does not mean the methods of research review are useless, but they are limited, when in the studied field ‘research questions are not capable of being defined in terms of the effect of a particular variable, or when the subject boundaries are more fluid and open or subject to change’ (Bryman, 2012: 108). The challenges of review method are more salient because the definitions of multiple fuzzy concepts are contested, and furthermore, the request for a converged ‘focus’ between disciplines seems undesirable (Greenhalgh et al., 2005).

Nevertheless, one of the ways to solve the problems is probably to admit to the impossibility of a systematic review and, in a reasonable way, loosen the shackles concerning a hierarchy set up between different kinds of ‘evidence’, which often causes the nuances of social reality to be compromised (Cambrosio et al., 2009; Moreira et al., 2009). The rules regarding defining what counts as evidence could be problematic.

Returning to the original purpose of the review, namely, identifying the lack of evidence, this exposed the definitional difficulty of ‘scoping’ sexual and gender minorities. The findings, underlining some ‘clarity bordering on stupidity’ (MacLure, 2005), reminded me of the impossibility of systematically studying queerness (Warner, 2000), social injustice (Sen, 1992) and many other social problems. Such ‘queer trouble’ highlights a practical and an epistemological question regarding the identification of the researched populations, which is subject to the researcher’s knowledge about the communities. This echoes Browne and Nash’s (2016) concern regarding the incompatibility of certain social scientific methods and queer paradigmatic conceptions. It also confirms Smith’s (2013: 71) finding that, in the realm of public health, ‘it is rare to find policies that are clearly based on scientific evidence (and extremely easy to find examples of policies that seem to run counter to the available evidence)’. Both methodological and empirical arguments, which emphasise the competition of policy needs and social realities beyond scientific lenses, intersect at the point when states are forced to consider SGM health issues.

To avoid distorting social reality, it became clear that looking at SGM health inequities will inevitably touch upon the question of who is being researched and thus who are actually thought of by the WHO and those governmental officials. After my attempts at a systematic/scoping review, the nexus between the lack of evidence and the lack of definition related to SGM health became evident. Instead of a complete absence of
evidence, the search results pointed to an uneven development concerning SGM health research in different countries and the existence of divisive approaches to studying sexuality and gendered body. ‘Who are the sexual/gender minorities I am referring to?’ I asked myself. Concerning the lack of a universally accepted definition of the researched, I considered critically evaluating the usefulness and limitations of terminologies such as ‘sexual orientation’ and ‘gender identity’, as well as the groups of people to whom they are applied. These discourses are repeated in the documents of international organisations, especially in the UN system, so this was why I pursued the documentary research.

III. Redoing the documents, tracing the discourses

Queer trouble does not only happen to academic discussion and to the knowledge production process; it has also troubled the landscape of human rights negotiations in international organisations. The topic of SGM health in the EB spurred ‘a moment of high drama in otherwise staid and laborious proceedings’, just as Riles (2006a: 73) observed with the indecision to include or not – the bracketing – of the term ‘gender’ at the Fourth World Conference on Women in Beijing in 1995. The agenda item 6.3 originally in the provisional agenda was removed after a long debate between states; it appeared, in the end, as [deleted], as shown in Figure 6. The [square brackets] in an international organisation’s bureaucratic documents can be seen as a symbol of waiting, procrastination, and prevention from making any other related texts. The waiting can occur in the period between drafting and adoption of something (Riles, 2006a), or even at earlier stages, between opening and closing the discussion over a proposal for discussion itself.
The difference in terms of the moments bracketing the waiting is important, and in any event, it is a threat of inertia. When the brackets are removed, a conclusion is made – a non-decision transformed to a decision of ‘doing nothing’, substituting the open-ended [deleted] item that had been kept as a footnote, as shown in Figure 7. The threat of inertia had not been realised until the footnote was removed by the 135th EB. The creation and effect of inertia are more obvious in the current case of SGM health, than in the Beijing Conference, as the former has no ‘timetable’ concerning that issue to be considered again. Therefore, that inertia shows no end in sight. This underscores the usefulness of reading bureaucratic documents for analysis, because they reflect an organisation’s motions and motives. Hence, I resort to documentary study not just because it is provisional or ‘unobtrusive’ (Lee, 2000), as befits the general perception of a document as an inert object of investigation, a container of messages and data, or simply a source of data (Scott, 1990), but rather for its own intrinsic merits.
Not only is the documentation regarding agenda or resolution adoption important, but also, what can be helpful is to trace the discussions between national delegates – in the conference room or under the table – and between them and other actors, for instance domestic and international campaigners and the WHO’s staff members. The function concerning methodological complementarity and validity can be fulfilled better by using documentary study and ethnography together (Riles, 1998). However, in arguing this, Riles does not intend to reduce any significance of documents. Quite on the contrary, she considers the importance of representing the production and non-production of particular texts, by redoing the documents, bringing the omitted – the once there but now disappeared – back into sight. In this light, the boundary between written texts and spoken ‘talk’ is blurred thanks to the modern technique of documentation, for example the transcriptions of meeting minutes and interviews – although the written ones are often
taken by social researchers as secondary, subsidiary data or complimentary evidence (Prior, 2003). That is, as Prior (2008: 822) contends:

Documents should not merely be regarded as containers for words, images, information, instructions, and so forth, but how they can influence episodes of social interaction, and schemes of social organization, and how they might enter into the analysis of such interactions and organization.

According to Riles (2006b: 5), ‘practices of documentation are without a doubt ubiquitous features of late modern life’ in response to the emergent principles of transparency and accountability. In this context, sociologists and ethnographers have increasingly seen such modern artefacts – documents – as a result of the mediation of democracy and technocracy, and this is especially significant concerned with topics around health (Prior, 2008) and law (Riles, 1999). The influences of bureaucratic complexity and technological advancement on both professional realms have made their documentation a ‘field’ that is ready for ethnographic investigation and critical appreciation. That is, the life of the modern world is ‘multi-semiotic’; it is organised, recorded and engaged with multiple formal and informal, public and personal documentation practices (Hodder, 1998; Plummer, 2001), which are now a global phenomenon (Riles, 2000). The empirical focus of this research is the question concerning the health of SGM communities in global health forums composed of states – particularly, the UN and WHO – and thus, the documentary activity of both organisations is important to this study.

Overall, for a critical analysis of related legal and political discourses, different forms of documents were useful as data for qualitative research; they included official records, policy statements and published interviews. I collected the data through the documentation services of intergovernmental organisations such as the UN General Assembly, its Human Rights Council and WHO, and nongovernmental organisations, for instance, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), as shown in Appendix 3. This has enabled me to understand the ‘lacks’ produced in the records of the EB meeting. Of course, no method is perfect, and there are indeed limitations of a piece of social research that is purely informed by documentary texts, for example, the intended ‘out-of-record’ or ‘under-table’ topics, and thus omissions from documents. However, as Riles (1999: 809-810) underlines, the documents produced regarding these meetings are significant in inquiring ‘comparatively into the knowledge practices of the theorist and practitioner of international law and the gulf that separates
them’; they are, undoubtedly, ‘the quotidian aspects of the international legal practitioner’s work’.

i. **Seeking the traces of discourses by chasing documents**

For this study, my greatest empirical curiosity is about the discourses concerning the normative and operational elements of human rights in general and the right to health (equity) in particular. These issues had been repeatedly framed as ‘health as human rights’ at international meetings, but they were compromised due to states’ insistence on avoiding political controversies. To situate the texts around the 2013 debate, which are related to the politics within and beyond the WHO, I considered other documents concerning the development in terms of SGM rights produced elsewhere also important. Those documents include legal texts, such as multilateral treaties, international resolutions and domestic legislation and judgements, and non-legal ones, for example government officials’ press conferences and interviews. Through a process of collecting ‘documents as data’ (Flick, 2009: 254), linking the discovery of ‘discourses’ in a particular text to a larger documentary basis in related fields, I was able to identify which discourse existed and which did not, and where these were located (or dislocated).

The documentary data were collected up until the end of 2016, unless any landmark progress or drastic retrogression occurred, for instance, the recent adoption of the *Yogyakarta Principles plus 10* in November 2017, which aim to supplement the 2007 version and extend the scope of human rights protection. Documents subject to consideration rely on a variety of sources based on a comprehensive desk research project, including peer-reviewed academic journals. All of the sources are publicly available, including the official websites of the UN, the WHO and others. Other key sources include the publications of non-profit organisations – such as civil society organisations and university research centres – and online news websites. Among these, the documents produced by the WHO and the UN were frequently consulted for specific purposes in different chapters. I selected documents oriented towards the discourses that are accounted for in the different chapters. The documents I have looked at, for analysing the various types of ‘lacks’, are shown as in Appendices 3 and 4.

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5 Despite the legally non-binding force of both documents on the *Yogyakarta Principles*, they have gained international and normative significance due to the UN Human Rights bodies’ repeated references.
The selection of documentary data is oriented by the thematic discourses that I targeted in the previous chapters regarding the preliminary analysis of the debate in 2013; for that, I resorted to other forms of documents rather than legal texts, as shown in Appendix 3. Legal and quasi-legal documents – with diverse forms such as the original texts, their *travaux préparatoires* and amendments, policy protocols, relevant scholarly debates and court cases – often lead a lawyer to focus on legal argumentations. For a researcher with a legal background, as Niemi-Kiesiläinen and others (2007) point out, the difficulty in identifying ‘discourses’ and pursuing an analytic reading is how to see through the apparent scarcity of discursive practices in legal texts. This does not mean that I could not see many analysable narratives in a text. Instead, what I recognised here was the limitations of treating a text through a legalistic lens, which often results in the closure of discussion, except for developing legal reasoning per se.

In this light, to seek the traces of discourses and map out their relations, I had to look for other texts and documents constituting the discourses that I had targeted for this study. These documents included those that stand on their own as primary data subject to analysis, and others that provide secondary data in published texts and organisational records, as shown in Appendix 4. Despite the fact that the sources of data are based on library and internet searches, I occasionally found other unanticipated, yet relevant – and sometimes competing – discursive practices, which further enabled me to find other citations, references and even databases, which most of the time made the search dispersed (but not disorderly). Bearing in mind the ‘search engine biases’ and possible exclusionary effect of search practices (Goldman, 2008; Hess, 2008), I strategically returned to the old and new legal instruments and policy statements that used, reused or gave rise to the concepts in relation to the ‘lack’ discourses.

ii. Not just texts or pieces of data: Documents as ‘actants’

An important feature of documentary research is its critical understanding and appreciation of relationality (Law, 2004). The relationality perspective informs, first, the way I view nothing/absence and neglect/ignorance, as existing in contrast to something/presence and recognition/knowledge. If some-things do social ‘work’, doing no-things also performs non-work, which involves, especially in this study, the eventual non-recognition of SGMs and non-production of knowledge of SGM health. As discussed earlier, these non-doings have an effect that cannot be understood simply as the negative
reverse of what is manifestly there. The relationality perspective is also concerned with the interiority and exteriority of the documents as data, which will be the focus of this subsection. It not only informs the perception of ‘queer trouble’, but also sees documents as *actant*, to use Latour’s (1996: 373) concept: ‘something that acts or to which activity is granted by others’. Moreover, the relationality perspective encompasses my relationship to the subject matter and setting of this study as a whole, generating the possibility of self-reflection, which will be discussed later.

Due to the limits of time and labour, I was unable to conduct systematic fieldwork. Yet, ineludibly my understandings of related issues were informed largely by my experiences in social movements in the East Asian context, especially in Taiwan. That is, the divide between theory and practice is artificial and, as a researcher/analyst, I should be honest about the situations and limitations under which my study was conducted. While all theories have their own political aims, any theory is ‘no more abstract than its object’ (Deleuze, 1989: 280). In saying that, as Deleuze (2001: 36) maintained, theory is performative; it is the inquiry, ‘a practice of the seemingly fictive world that empiricism describes; a study of the conditions of legitimacy of practices that is in fact our own’. Therefore, although ‘the findings’ might be contingent, the process – from collecting through to selecting the data and choosing the critical discourse analysis of the texts – carefully considered the scarcity of discussion around that 2013 debate alongside rich developments in other parallel fields.

For qualitative documentary research, considering Prior’s (2008) proposal to regard documents as *actors* (or Latourearn *actant*) within a network of relationalities between various constituents, a document that provides traces of discourses is simultaneously acting upon – when consulted – the discourses per se, the producers and readers as its interlocutors, and other documents through its citation and referencing network. Such a perspective is greatly similar to Deleuzian ontology, which defines some-*thing*, including no-thing, by what it ‘does’ (reality) and can/could do (virtuality) rather than what it ‘is’ (Deleuze and Guattari, 1987; Kennedy et al., 2013) beyond the artificial divide between human subjects and non-human objects and between the researcher and the researched (Fox and Alldred, 2016). The phenomenon regarding how the ‘same’ document functions differently in varied sociocultural and geographical contexts happens saliently to texts concerning human rights norms and global health initiatives, for example, the *Yogyakarta*
Principles and the series of WHO fact sheets, which are evaluated and utilised variably by politicians and advocates in different contexts at different times.

Here, questions regarding the ‘uses’ of documents arise. For the contextualisation of the legal and political discourses under consideration, texts released by organisations (e.g. the UN, WHO, and ILGA) were taken-for-granted as primary data. Notwithstanding the effort to cover as much literature as possible from various disciplines, I acknowledge that there are inevitable limitations to what was practical in this study. The first concerns language restrictions, which limited my focus to texts written in English and Chinese, although as Riles (1999) mentioned, there are many political issues behind ‘translation’. Furthermore, at times I had to apply an eclectic approach to the secondary literature through others’ systematic reviews and meta-analyses. Finally, of course, who wrote these texts and in what circumstances, and how they are read, understood and utilised is also important (Prior, 2003) and interesting. However, acknowledging the limit of my timeframe and their less relevance to discourse analysis, I refrained from thoroughly exploring the ‘function’ of documents – with a few exceptions when the texts had been reproduced in other documents.

IV. Politicising nothing: Proposals for interventions

Drawing on and going beyond the occurrence of ‘doing nothing’, the utopian presentification of lacks – through refiguring a hope against the complacency, the uncritical satisfaction with nothing being done by the WHO – aims to propose critical interventions for future engagement. Moving from documents to the political contexts in which the documentary texts are calculatedly agreed is to create lines of fight and flight, in a Deleuzian sense (Lee, 2019a). Along these lines, alternative imaginations for normative and ethical arguments are made thinkable and thus possible (Deleuze and Guattari, 2010). Therefore, in the second part of the thesis, I consider re-theorising and conceptualisations with regard to the making and unmaking of a multilateral consensus, rights-holding subjects, and evidence that qualifies for policymaking. To do so I rely not on a deconstructive reading of documents, which emphasises the method of textual analysis drawing on close reading. Rather, I consider the authoritative discourses and the documents in which they are legitimised from a poststructuralist perspective, which identifies and intervenes in knowledge production fused with power (Foucault, 1980b).
The need for discourse analysis of those ‘lack’ discourses was apparent, as they contain both normative and empirical dimensions. When states maintained these discourses, by asserting ‘something not there’, they intended to de-politicise ‘what actually exists’. For instance, their insistence in the WHO’s not-political vocation can be true only by sticking to the conventional approach to international institutional law (Klabbers, 2009a) and downplaying the political elements of other health issues they handled before. Therefore, one important objective of uncovering of these absence, omission, ignorance and silence is to re-politicise the narratives used to justify those ‘lacks’. Here, law plays a role, though subtler, as it foregrounds the context leading to legitimisation (Banakar, 2011). Even for a decision of doing nothing made by the WHO, it needs to be legitimate, and this can be achieved only under the circumstances in which the law permits, then sided with other support from the related political and expert discourse. All of these issues reminded me to investigate not only what the law says but also how the law was made.

Both epistemologically and methodologically, with regard to the importance of ‘hoping for’ critical interventions – namely, aspiring to revolutionary consciousness – Muñoz once commented in a conversation with Duggan that, despite the endeavours rendering such desiring impossible, ‘it is not about announcing the way things ought to be, but, instead, imagining what things could be’ (Duggan and Muñoz, 2009: 278; emphasis original). In the same dialogue, Duggan further pointed out that it is not hopelessness that is the opposite of hope, but complacency: ‘a form of happiness that will not risk the consequences of its own suppressed hostility and pain’ (Duggan and Muñoz, 2009: 280). Following their understanding of hope, I aim to think beyond the presentation of what has happened; rather, I wish to simply analyse the event – including the context that made it possible and the relevant and irrelevant actors’ performances and narratives involved therein – as just not enough. This desire has laid the basis for a hope concerned with more proactive political engagement, which therefore requires the presentification of other possibilities (Scott, 2019b).

Therefore, analysing those ‘lacks’ is not enough if it does not go on to consider an approach to rethinking and overturning the power hierarchies determined by contemporary political and legal arrangements. Here the critical interventions stem from an insistence on constantly queering and decolonising the knowledge regarding identity, sovereignty, statehood, and global governance and how that knowledge is transmitted,
following the documentary analysis above. To incorporate normative and ethical arguments in political and policy interventions is to deconstruct, challenge, and destabilise the consensus-, identity- and evidence-based global health policymaking in the present case. That said, such interventions, on the one hand, indicate a critical re-examination of the established orthodoxy in the field of international studies composed of legal, political, and scientific discourses and related professional practices, and on the other, create alternative and yet complementary interpretations of ‘what’s been lacking’, which combine historical consciousness with an awareness of novel theoretical constructs. Hence, in this section, I introduce a critical understanding of the relationships between documents, discourse, and power – on which political and policy interventions are based and presentified.

i. Documents, discourse, and the power-knowledge nexus

Considering the effect of de-politicisation makes discourse analysis distinct from a doctrinal study in terms of the way they understand norms and normativity. While doctrinal research sees law as a normative system, independent from, yet applicable to, facts that represent social relationships between actors, discourse analysis considers ‘law’ as part of discourse – and maybe one of the most influential forms – that construct a social being’s understandings of self-identities and interpersonal interactions. In this light, many socio-legal researchers have shown a reluctance to focus on the production and practices of discourse. Instead, they are more interested in the functions of legal norms and practices in society (Banakar, 1998). However, normativity-oriented empirical inquiries have presumed the existence of law by neglecting moments when there was an absence. Following Nelken’s (1998: 410; emphasis original) argument for deploying social and political insights in law’s reflexivity, which requires ‘more rather than less attention to their…discursive connections’, an analytical approach that interrupts the power-knowledge nexus is valuable, offering interpretations that are different from the positivist legal perspective of social reality (e.g. Sims, 2015; Teubner, 1989).

In short, according to Niemi-Kiesiläinen and others (2007), the discursive turn of socio-legal and sociological study is concerned not with how law is justified through argumentation in its own right (e.g. Wróblewski and MacCormick, 2003). Neither is it with how it is established upon rationalities of communicative society (e.g. Tuori, 2002), nor with how it is performed to influence personal actions (e.g. Amselek, 1988). Rather,
a critical analytical approach aims to study how social interactions construct discursive ordering and practices of certain knowledge, and this is useful in re-examining the taken-for-granted hierarchy of sources of law, which predetermines the authority of legal interpretations and other documentary information. Moreover, it is necessary to recognise that the understandings of a concept or an idea are historically and culturally relative, and thus, an analysis of them can only capture their present signification, which is still developing in social processes. Therefore, situating the participants of the discourse is also crucial, including myself as an analyst who has simultaneously partaken in the process of discursive production and reproduction.

Researching documents draws on varieties of themes and details, which enabled me to interact with document producers through access to and interpretation of the texts and carry out the discourse analysis in Part I. Different hegemonic discourses may have their own relationships within and beyond themselves, and the interiority and exteriority of a discourse can be intertwined and define each other, forming an assemblage (DeLanda, 2006; Laclau and Mouffe, 2001). They can be in an oppressive-subjugated relationship, for example the asserted functionalist institutional role of the WHO, which implicitly depoliticises the precedents concerning the organisation’s political engagement in history. They can also be in an ongoing competitive process, for example, the permanent debate between the proponents of universalism and cultural relativism with regard to human rights, to solution to which seems undesirable. Sketching out a picture of the relationality of the interiority and exteriority, as shown in Figure 8, of these discourses taken as ‘truth’ required locating them in the context of law that is relating to global health policymaking.

![Figure 8. The ‘assemblage’ perspective on the discursive construct](DeLanda, 2006; Lee, 2017a)
Among other disciplines, social and cultural studies concerning related concepts and their interrogation of ‘identifying’ actors and their interactions are useful, in terms of offering empirical data and analytical insights. I have been inclined to apply a poststructuralist and a phenomenological approach to the discourses around ‘lack’ articulated by states, by identifying hiatuses and ruptures within rhetorical practices regarding international law and politics (Hoffmann, 2012; Liska, 2012). This is, in particular, in response to the call to ‘question the ways in which such “examples” and “paradigms” serve to subordinate and erase that which they seek to explain’ (Butler, 1992: 5). The mapping of the ‘discourses taken as truths’ at issue within and beyond the law may challenge – but not revoke – the exceptional power of the language of law, which normally has more authority than other social institutions in shaping political practices and social relations. In this respect, I am concerned with how cultural and social values are reflected in the making and use of law, with the aim of producing interruptions in such normativity.

As a modern phenomenon related to the creation of sovereignty, law is more privileged than other social norms, and within that category, some legal discourses are privileged over others that are less relevant to state authority. On this note, for national delegates in international organisations, basing their statements/actions vis-à-vis omissions/inactions on law is comprehensible. Their ‘interpretation’ of law, based on political concerns as representatives of a state (Hung, 2001), in turn contribute to the authoritative figure of law. That is, through discursive practices, participants in such political processes – who choose and confirm which legal concepts matter – have reproduced the power relations between knowledges and between the subjects those discourses call upon. In that sense, the WHO’s meeting reports are useful as they represent what is deliberately kept on record by states and are informed by and result in the micropolitics between social groups (Hall, 1982) and the macro-level political conditions (Chilton and Schaffner, 1997). Hence, I located the documents in the study, seeing them as the point of departure for critically understanding the institutional inertia they created.

**ii. Critical intervention in knowledge and policy production**

Beyond the documents and discourses they reasserted, in Part II, I move on to re-politicising (Muntigl, 2002: 45) the events – the WHO’s omission of health inequities facing SGM populations – which were depoliticised and ‘unmarked’ by states. Discourse fixes texts, both written and spoken ones, with a specific meaning, to reduce other
interpretations (Foucault, 1981), so to provide alternative knowledge may potentially destabilise or challenge the hegemonic meaning and the power of discourse (Spivak, 1997: ix). For Foucault, one of the political aims of discourse analysis is to follow a commitment to an ‘insurrection of subjugated knowledges’ (Foucault, 1980c: 81), to unfix the accepted meanings by exposing the exclusion of other realities from the dominant interpretations – of facts or of laws – with an analytic lens of power. This perspective, by drawing on the power-knowledge nexus, enables us to consider examining the relationship between social problems and the socio-political conditions that give rise to them and intervening in the issues of violence and social injustice (Fairclough, 1992).

The commitment to addressing the power dynamics within the process of knowledge production is both an epistemological and a political one that has shaped my counterinterpretation of the ‘lacks’. The discourses under critical examination in this research are all relevant to the intersection of international human rights law and global health policymaking, at which the awkward role of the WHO is set up by its interpretable Constitution and the succeeding practices – sometimes as an active guarder of health rights and sometimes as a passive servant for member states. The interpretations, if influenced by legal and scientific positivism, result in, first, the linkage between cultural relativism and the principle of sovereign equality against the universality of human rights; second, the desire for a universally accepted definition of rights-holders; and third, the need of a body of universally generalisable evidence, as predominant today. My proactive engagement and interventions in the deadlock of the debate thus aimed to interfere in such a ‘practice of concepts’, to use Deleuze’s (1989: 280) words.

Therefore, in addition to specifying the power relations embedded in discourses and the apparatus in which they are located, my approach to understanding the relations between these lacks was based on an assemblage perspective that emerges from Deleuzian philosophy (Deleuze, 1994; Deleuze and Guattari, 1987). It is a way of making sense of the articulation of events and subjects, highlighting the process rather than the outcome of arranging things altogether (DeLanda, 2016), as shown in Figure 8. Assemblage perspective, linking the actual and the virtual dimensions of social reality, is particularly useful for studying ‘nothing’. That is, drawing on the representations of something done (presentation) and accordingly something undone (presentification), the analysis deconstructs the boundaries of our view of social reality – the method of de-
territorialisation. Moreover, Deleuze (2007b) sees power to be actualised through discursive practices – by speaking, not speaking, and not letting speak. For example, the orthodoxy of sovereign equality cannot root without a series of presumptions regarding ‘what is sovereignty’, by discarding what is not.

A multiplicity of an event is concerned with the complicated relations between the components of that event (Deleuze and Parnet, 2007). From this perspective, the critical interventions in the debate around one or more legal and policy texts indicate not just all the possible ways of interpreting such an event but the cross-references ‘between’ concepts and discourses (Law and Urry, 2004), which made me consider how to interrogate the debate by reopening its manifest closure. I hence ask: where have these discourses come from and moved to, in a larger context regarding the contingent and yet concurrent phenomena of the internationalisation of SGM rights activism (Kollman and Waites, 2009) and the healthification of global social problems (Fidler, 2004) since the turning point of the Millennium? Both phenomenal processes have gradually become normal/normalised, but counterintuitively at a superficial level, WHO member states made a decision against their progress – a ‘backlash’, in a relative sense, which I aim to interrupt. Such an interruption, according to Foucault (1978: 11), is:

To account for the fact that it is spoken about, to discover who does the speaking, the positions and viewpoints from which they speak, the institutions that prompt people to speak about it and which store and distribute the things that are said.

According to MacLure (2013a: 167), ‘critical’ intervention – an interruption – is not a single method; it refutes the apology for ‘universal truth and objective knowledge’ and sees knowledge as ‘always situated – in other words, produced by and for particular interests, in particular circumstances, at particular times’. This has echoed Scott’s (2018) curiosity about the creation and effect of something not there, something neglected or omitted, and something gone. It also provides methodological possibilities for studying non-knowledge – the absence of knowledge – and ignorance – the knowledge about the limits of the knowns (Gross, 2007b). These critical interventions in the events related to the WHO’s closed debate over SGM health are aimed to re-politicise its dead-lineless, permanent inertia. Attending to the circumstances under which a ‘truth’ is reproduced, the poststructuralist methodology considers discursive production as the performance of power exchange, with which critical engagements aim to ‘investigate how such practices,
events and texts arise out of and are ideologically shaped by relations of power and struggles over power’ (Fairclough, 1995: 132).

Such struggles, according to Fairclough (1995: 133), represent the ‘linkages between discourse, ideology and power’ that are usually not at all apparent and even unclear to the parties engaging in such discursive practices. Approaching the power-knowledge nexus in such a way that the power relations between discursive subjects and between discourse and its object are opaque and ambiguous, leaves room to seek and create lines of flight, as mentioned earlier. This has become a utopian interpretation of the present (Koskenniemi, 2006), a critique of complacency with the status quo (Duggan and Muñoz, 2009). Looking beyond the lens offered by symbolic interactionist and empirically based accounts of ‘no-thing’ and ‘non-knowledge’, two strategies are therefore of particular importance. One is concerned with the commitment to interdisciplinary endeavours, which incorporate not only empirical but also normative and ethical considerations (Hynes et al., 2010), and the other requires the researcher’s self-reflexivity in accounting for the ‘interpretation’ of the facts (Slembrouck, 2001): namely, an awareness of politicising the event at issue.

V. A decolonial paradox of the self-reflective process

One commonly shared concern regarding discourse analytical methods is that they focus more on the ‘production’ of knowledge and ideology than their ‘effect’ on the social; the audience within the context is largely unattended to. The interpretation and analysis of the discourse at issue, which in turn affects the context in which it emerges, are subject to little re-examination. For documentary research in particular (Prior, 2003) and for social science methods in general, as many critical theorists have pointed out, they can never simply describe the worlds being observed but, to various extents, are ‘involved in the invention or creation of the world’ (Coleman and Ringrose, 2013: 1). Therefore, the ‘decolonial paradox’ that accepts and travels across multiple modernities emerged – to use Maldonado-Torres’s (2007) terms – with regard to my own being and ontology against monologic modernity (see Mura, 2012), the circumstances in which they were produced, and how I thus interpreted the events around me. In this respect, self-reflection is important throughout the research and writing processes.
Throughout the whole research process since paying attention to the debate at issue, the intertwined positionalities of being/living someone – as an activist, a member of the gay community and a Taiwanese in East Asia – have invoked ‘multi-dimensional reflexivity’ (May and Perry, 2017: 171). The research per se is complex enough, in terms of the different personal and professional roles involved in the process, not to mention other observations beyond the research: as a participant, a contributor, a knowledge producer and sometimes a ‘translator’ of foreign discourse (Spivak, 2000) engaging in the contexts of formal or informal gatherings of LGBT/queer activists and academics. Thus, it is necessary to disclose again that I did not pursue fieldwork in a particular site, so I consider these observations to be experiences informed by my involvement in social activism rather than the data under scrutiny. However, the interpretations inevitably reflect these experiences from, among others, the sixth ILGA-Asia Conference in 2015 and the ‘Queer’ Asia Conferences from 2016 to 2018.

For me, to avoid generalising queer lived experiences is a primary ethical concern; it is necessary to consider context-dependent knowledge in the light of an awareness of the social construction of meanings in situ (Clarke, 2008; Probyn and Caluya, 2008). Beyond certain identity categories, people might see themselves as simply venturing into alternative (and possibly ‘notorious’) scenes; they can be dismissed and denounced by mainstream society ‘as threats to public order and as harmless buffoons’ (Hebdige, 2013: 2). Indeed, this is not new to me. When I worked with several gay community centres in the past, I learned that some support-seekers do not necessarily identify themselves as gay (or bisexual) men. They could be, for example, men who have had a homosexual relationship with ‘friends’, who have unreasonable anxiety about being intimate with women, or who have an unspeakable desire for polyamory, cross-dressing or certain kinds of ‘primitive’, unruly sexual activities. They could feel discomfort regarding their bodies and desires out of an awareness of social norms.

When using the sociological imagination, ‘neither the life of an individual nor the history of a society can be understood without understanding both’ (Mills, 2000: 3). In the light of Mills’ approach to contextualising lived experiences, including the narratives and vocabularies that reflect contemporary political ideas (Nilsen and Brannen, 2013), a reflexive sociologist always needs to go back to ‘the problems of biography, of history and of their intersections with a society’ (Mills, 2000: 6) to accomplish an intellectual
journey. This raised another significant question throughout the whole research process. How could I detach myself completely from the discourses concerned? Or, should I even consider detaching my ‘self’ from the analysis? In particular with respect to queer activism experiences, I looked back and forth to make sense of how SGM members respond to governments’ actions/inactions by learning and speaking modern ‘human rights’ language, and what makes East Asia so special for me in terms of interrogating the beauty and danger of national cultural relativism.

Considering the Bourdieusian conception of ‘epistemic reflexivity’, on which methodological relationalism is centred (Bourdieu, 1990; Maton, 2003), ‘sociologists should make their own and subject to critical examination instead of ostentatiously distancing themselves from forms of expression and thinking that they deem compromising’ (Bourdieu and Wacquant, 1992: 208). A liminal condition in the study, ‘suspended in a threshold between knowing and unknowing’ (MacLure, 2013b: 228), is when I consider who I am and where I am from. As a Taiwanese, who belongs to a postcolonial society located queerly in the East Asian geopolitical landscape – a country that has developed a liberal democracy and prosperous queer activism ‘without statehood’ (Chiang, 1999; Tansey, 2010), I have a specific worldview regarding the international. After all, I have seen multiple ‘selves’ at different moments regarding my own position in between an insider and an outsider of the field I study, and I find them, in Coleman and Ringrose’s (2013: 6) words, ‘entangled within the assemblages they seek to study’.

Moreover, as an LGBT rights advocate, I realise the positionality of activist fellows and myself; we are relatively ‘powerful’ with respect to knowledge production in the societal space (extra-institutional sphere). The data with which my research engages may subtly come from what I have been working on at the same time, so the interpretations may be affected by (Reay, 2015) my sympathy for activists’ fluctuation between noise and silence and, sometimes, even for postcolonial states’ struggle with powerful players in international politics. Having said this, there is no intention to view the queer/LGBT social movement as a total politics under a single focus, and at any rate, it is not, especially in Asia (Lee, 2017b; Lee, 2019a). Yet, it is necessary to face activists’ symbolic power in the interplay of insiders and outsiders of social movements, in which my role in conducting a ‘within-case analysis’ (Tansey, 2007: 765) is tricky, as not only a miner or traveller (Kvale, 1996: 3) but also a trouble-maker to law-makers.
Therefore, I do not think that I can isolate myself from the research, as I am part of the activism that I am carrying out and studying. The roles involved in knowledge production and discourse analysis are impossibly disentangled; I somehow can identify with Foucault’s confession in an interview, that ‘each of my works is a part of my own biography... I had occasion to feel and live those things’ (Martin, 1988: 11). Despite the fact that other activists and I fall outside the classic typology of the ‘elite’ concerning the state’s traditional networks of power (Mills, 1999), I am aware that this research is involved with the inevitability but political importance of academic subjectivity in ‘taking sides’ (Becker, 1967). Acknowledging the intricateness of representing and being represented by others (Foucault and Deleuze, 1977) has enabled me to trace those discourses reproduced in the international forums to ‘a great variety of milieux’ (Mills, 2000: 11), from which my ‘academic’ identity creates a line of flight nevertheless.

VI. Conclusion

In this chapter, I have mapped out the methodological concerns within this study, which attempts to problematise the ‘dead-end’ of international negotiation and the legal and political discourses involved therein. Concerning the methods of studying ‘nothing’ and thus probably, that no knowledge has been produced, I have considered the phenomenological approach to presentation and presentification (Husserl, 2012). Both interpretative techniques, as explored by Scott (2019a), are useful for recovering the negative phenomena as identified, to trace the actual and virtual dimensions of social realities – that is, the relationality of ‘nothing here’ and ‘something there’, and vice versa. By undertaking systematic and scoping reviews of published studies with regard to SGM health in the various fields, I aimed to identify ‘what is there’, and informed by the sociology of nothing and the sociology of ignorance, I realised that these outcomes had also indicated ‘what isn’t there’. Yet, ‘not being there’ deserves further exploration to find out whether it is somewhere else (nothingness; ignored), or completely non-existent (nothing; unknowable).

To trace these ‘lack’ discourses, I used the documentary research method, mapping out the discursive fields of those lacks of some-thing. This method has not only informed the orientation of my data collection but also led me to consider the epistemological conundrums of addressing the complexity of social realities in general and ‘queer trouble’ in particular. Drawing on diverse positionalities of selves in relation to the ‘decolonial
paradox’ in the research process, and aligning with a commitment to critically engaging in policy and knowledge production processes, I consider the reflexive sociological approach to my own worldview, which is inspired by activist experiences from Taiwan, a non-state political entity. Overall, this chapter attempts to give full accounts of the work upon which the succeeding analyses are built, whilst opening up methodological themes that have shaped the research and reflecting on my ‘multiple intersectional identities’ over time (Narváez et al., 2009: 84). Based on this, the following chapters present both the documentary data and proposed political interventions, which serves partly for the literature review but mainly for problematising the targeted discourses around the ‘lacks’.
Part II.

Presentifying Critical Interventions in ‘Nothing’
Chapter Four. Justifying Non-Response by the Lack of Consensus

In this chapter, I embark upon drawing the analysis of ‘lack’ starting with the lack of consensus between states concerning how health (human) rights are understood and which issues should be prioritised. This form of lack is a total absence, which, in terms of mutual agreement between states, is involved with never-existence rather than disappearance, which, in Scott’s (2018) model, reflects an act of omission rather than commission. However, it is important to bear in mind that such non-existence (of consensus) is the reason for removing the agenda item regarding the health of sexual and gender minorities (SGMs) by the WHO Executive Board (EB). Thus, it is productive, by creating the eventual disappearance of the item. That is, the (omissive) non-existence of consensus led to the (commissive) disappearance of something from the WHO’s agenda.

In this chapter, I will first unpack the relationship between the single decision (to do nothing) and the collective lack of consensus by states, the latter being followed by discussions around the primary rationale behind that non-consensus – the political sensitivities of framing SGM issues as an international issue. In that, I identify different types of cultural relativism, using as a case study the reappearance of the ‘Asian values’ discourse in response to the transnational development of SGM rights. Before concluding the chapter, drawing on decolonial-queer praxis, I propose a pluralist approach to reimagining sovereignty and its relationship with culture. This is a presentification practice concerning the question: how can we imagine a global consensus, not based on the monopoly of state representation of people but in a cultural pluralist sense?

I. Making an [item] disappeared: The dynamics of inertia

The lack of consensus resulted in deleting the agenda item, so the first task was to trace where the deleted item had gone. As contended by the Pakistani delegate at the 133rd WHO EB meeting, in the absence of an international consensus, the agenda proposal should be removed (WHO-EB, 2013: 27). Recalling Figures 6 and 7, SGM health issue developed from a [deleted] item to a footnote, the last time for the agenda item to appear was in the 136th EB’s agenda of 2015, as shown in Figure 9, still as a footnote. Thereafter, from 2015 to 2016, an international consultation was initiated by Colombia regarding the framing of SGM health inequity and the appropriateness of using the term ‘LGBT’ (used by the WHO governing bodies) for all the countries. In those years, the footnote was not
placed anywhere in the meeting agenda, but it had not been suggested to be permanently removed until the ‘interactive dialogue’ between states held on 26 February 2016 failed (WHO-EB, 2016).

The failure mentioned above means that the working group could not achieve any consensus on the inclusion of the agenda item. At the 139th EB meeting on 30 May 2016, the Colombian representative, who had also chaired the informal working group concerning SGM health issues, announced that the multilateral consultation ‘was not indicative of any consensus, actions or way forward’ (WHO-EB, 2016: 3). This raised the suggestion of permanently deleting the item/footnote. Several national delegates – including the original proponents, the US and Thai representatives – tried to talk ‘around’ the topic, ‘as if’, to use the Egyptian delegate’s words, it had been included in the agenda.

Figure 9. The final agenda adopted by the 136th EB (2015)
The Egyptian delegate’s concern with ‘no consensus among member states’ (WHO-EB, 2016: 5) finally terminated the item’s social life. Recalling the debate in those years, the utmost concern seems to be that there was no mutual understanding between states regarding the topic, and that it ‘was being viewed as a dispute between east and west or between different cultures’ (WHO-EB, 2013: 33).

What does consensus mean here? Here I use a resolution on Health and human rights adopted, unanimously, by the 62nd Regional Committee for Africa (AFRO) in November 2012 as an example. In that resolution, AFRO urges its member states to protect the right to health of marginal groups of people without any discrimination. In the same resolution nonetheless, it also maintains the rights to be implemented within the national context (AFR/RC62/R6). This resonates with most African states’ position on national/cultural relativism – such as Namibia, Algeria, Nigeria and Tanzania, with South Africa as the only exception – during the 2013 and 2016 debates. They have held national sovereignty, particularly in terms of cultural appropriateness, against an imposition ‘foreign cultural values on others’ (WHO-EB, 2013: 28; emphasis added), in the Zimbabwean representative’s words. Thus, concerning the reason for the absence of consensus between states, later in the chapter I will examine the polemics related to cultural relativism in international human rights law.

Prior to analysing the disappeared agenda item, the tension between ‘nations’ was well represented, as the international community failed to obtain the consent of all the members/states to do something about SGM wellbeing due to cultural differences. In the fields in which international policymaking is enacted, the consent of interested state parties was taken as the most important criteria in evaluating the legitimacy of the outcome of negotiation (Boyle, 1985). The situations include international agencies established by states (Christiano, 2012). Namely, what an international organisation can and should do is limited to the scope authorised by member states who accede to the Constitutional treaty (Klabbers, 2009b; Ruger, 2014). Such situations also reveal how the human rights contained in a multilateral treaty are realised, which often results in the ‘tremendous implementation gap between the noble aspiration to protect human dignity and the sobering reality on the ground’ (Nowak, 2012: 326). Indeed, this has always been the case for the international legal regime for human rights (Moyn, 2012).
Because of the consensual nature of international policy agenda making, the WHO member states enacted *something* through multilateral ‘inaction’ designed with ‘foreseeable consequences’ (Kühn et al., 2009: 542), which, according to Scott (2018: 9), ‘may be publicly visible and confer communicative meaning’. Due to its symbolic significance, the states’ involvement in a process of producing consensus or non-consensus was performative: the manifestation of ‘nothing’ ultimately demonstrates their conscious avoidance of handling such an issue. Nonetheless, the total withdrawal of the agenda item – rather than making it appear as [deleted] or a footnote – complicates the case, because it brings the end of the story, the termination of the social life of the agenda item. More specifically, the disappearance of the agenda item, as an instant interim, transitioned the state of seeking mutual understanding between national governments to the institutional inertia. The outcome regarding the WHO’s inactivity thus illustrates the process of multiple productions of no-things by states.

To identify the dynamics within and beyond the ostensible inertia/inactivity of the WHO is important because it avoids simplifying the social realities it represents, including the problematic utilisation of cultural relativism by states. Indeed, if for legal doctrinal research, the outcome does not and will never produce any legal effect, both for human rights and global health regimes, due to the confusion of member states’ will and the WHO’s legal and political identity. However, what it would neglect are the various stages at which the *decision of doing nothing* had lived, from non-decision – through bracketing the deletion to keeping a footnote – to the permanent removal. The greatest dynamics of the agenda item’s life occurred at its first transformation; namely, between brackets there existed much political calculation, granting the non-conclusion a provisional status (Riles, 2006a) – for a moment, something pending, nothing happens. All of these indeed, as Riles (1998: 390) remarks, were ‘visual phenomena’, standing out on documents.

The confusion of the identities of states and the international agency makes Scott’s (2018) distinction between inactivity and inertia, beyond the psychosocial level, analytically useful in interrogating the undercurrents behind the bracketed message. Without considering the positive decision *not to act* adopted by states, we only see the negative non-decision – the inertia, the ‘non-doing of something’ (Scott, 2018: 9) – made in and by the organisation, which (is often used to) conceal the states’ intentionality of *not acting* upon the matter concerning SGM wellbeing. Instead of jumping to conclusions regarding
the WHO’s failed governance, the real issue, borrowing Hashi’s (2015: 82) words, is ‘not in a state of blankness, but rather of political absence’. In this light, a critical inquiry into the politicisation of cultural relativism in the name of sovereignty is undertaken, which, to use Wight’s (2017: 250) words, ‘allows us to situate a critique of those practices that block, bar and impede the fulfilment of human flourishing in all its forms’.

II. The debate on LGBT rights as (universal) human rights

The issues around LGBT rights have triggered polemical arguments about the legitimacy of the paternalism embedded in both states’ national governance and international governance over individuals’ gender identification and sexual activities. The intensive translation of ‘sexual liberation’ into human rights language has provoked a great debate between civil society and state, and between states (Beger, 2004). On a global plane, central to this debate is the relativist perspective of culture recognised by international law, which considers that all cultural values are equal and any attempt to uphold mainstream ideologies over others is a form of interference (Brems, 2001). Yet, the development of these rights cannot avoid privileging and universalising the views of a particular set of sexual minority groups, by prioritising their understandings of patriarchy and heterosexism (Schwenke, 2017). Indeed, the current LGBT rights discourse against state-sponsored heteronormativity has been subject to queer and postcolonial critiques as a sort of strategic essentialism.

In the historical development of the human rights discourse, Western modernity has categorised the world into core/metropolitan and peripheral/postcolonial societies, where the legal concept of rights – both individual liberty and the collective self-determination of people – has replaced a radical project of epistemic decolonisation (Escobar, 2007). This has made the normative recognition of cultural diversity preconditioned by privileging a particular form of lived experience, even in terms of pragmatic universalism, such as Leuprecht’s (2013) call for ‘alliance of civilizations’ by affirming the commonality of different societies. Crépeau and Sheppard (2013) have encouraged human rights researchers to switch the focus from the universality of rights to the universal applicability of rights. That is, rather than asking whether human rights are

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6 Here I use the term ‘LGBT’ because the relevant debate, concerning the rights around sexual orientation and gender identity, is largely pertinent to the globalisation of the LGBT identity discourse.
universal, the more important question is ‘how the universal principles underlying human rights are practically and tangibly realized in diverse contexts and communities’ (Crépeau and Sheppard, 2013: 2). The old question has long become a political trap.

Nonetheless, the strategy of evading the debate may result in – borrowing Kennedy’s (2002b: 103) metaphor – ‘a drop of liberation in an ocean of oppression’ by missing the chance to respond to the politicisation of universalism and its by-product: cultural relativism. Ignoring the tension reduces the emancipatory potential of a social movement involved with multiple agents and various agendas, namely, SGM rights activism. We should not restrain ourselves from contesting the instrumentality of human rights, because the human rights knowledge has much represented a Eurocentric perspective of political relations between the state and people and between states. The globalisation of such knowledge implies universalisation vis-à-vis particularisation, paradoxically creating similarities and simultaneously reinforces distinctions across societies (Deflem, 2008). The process, however, is not genuinely interactive between societies; instead, the ‘Western’ pattern is often taken as a more progressive and hegemonic model that justifies its translation into other societies through the practices of comparative and international jurisprudence (Tamanaha, 2008).

The Western hegemony is salient in terms of rights relating to sex/gender and sexuality; the standardisation of the LGB/T rights argument has excluded ‘irrelevant’ queer subjects (Wilcox, 2014). The presumption of universal LGBT identities and the corresponding rights discourse are politicised, affecting the relationships between states. Through an LGBT-friendly versus LGBT-hostile competition, the bloc of ‘liberal democracies’ normalises the knowledge regarding sexual/gender identity formations, thereby formulating global sexuality nomos (not necessarily part of law but attaining normativity through political socialisation practices). These practices tend to single out sex-negative ‘authoritarian regimes’ – as the peripheral reflecting on the plane of global sexuality politics. Hillary Clinton’s voicing of ‘gay rights as human rights’ on 2011 Human Rights Day at the UN headquarters was a crucial moment for the global LGBT rights movement and was followed by the appointment of Randy Berry as the first US Special Envoy for the Human Rights of LGBT Persons in February 2015.

Using ‘LGBT rights’ as a social progress indicator is problematic, especially when it is utilised as a diplomatic tool. For example, the US, under the Obama administration, made
LGBT rights one of its foreign policy priorities, including a trip of Special Envoy around Asia in early 2016. Thereafter, he singled out Indonesia as one of the most homophobic countries in the world, provoking a series of ‘countermeasures’ taken by the Indonesian government against local SGMs (Yulius, 2017). The legitimacy of such countermeasures depends on the political system and dominant religious belief, which co-contribute to domestic sexuality and gender *nomos*. In a (semi-)authoritarian regime, the government seeking to consolidate its ruling power and social conformity would narrow the social tolerance of ‘dissidents’, including non-mainstream sexualities and gender performances (Adamczyk, 2017). Ironically, despite the Trump government’s assault on LGBT people domestically, the US has maintained its position as a leading, ‘core’ actor on gay rights around the world (Toosi, 2017).

Such a naming-and-shaming measure against human rights violators, however, often increases the vulnerability of people who live locally, and sometimes people of the specified religion and culture, and those on the margins within ‘core’ democratic states (Nicol, 2018). In terms of the globalisation of a particular set of sexuality and gender norms, LGBT-friendliness becomes a threshold in circumscribing the battleground between the genres of statecraft and labelling some states as primitive/peripheral/illiberal has compressed local queer spaces (Weber, 2016b). The production of otherness on the international level by liberal democracies, along with the provocation of countermeasures by national governments in defending cultural sovereignty on the domestic level, created the so-called *queer wars*, in Symons and Altman’s (2015) terms, between states, and between SGMs and the rest of population in postcolonial societies. Therefore, we should not overshadow the role of ‘liberal’, core actors in aggravating homophobia, by assuming the universal validity of contemporary sex/sexuality knowledge.

As suggested, a single focus on either international or domestic social relations cannot be the point of departure for the analysis of the effect of ‘LGBT rights as human rights’. Depicting a larger picture of the effect of universalism by acknowledging ‘a certain manipulation of relations of forces’, in Foucault’s (1980a: 196) words, regarding intersocietal ‘connectedness’, is necessary for a social analysis of human rights (Turner, 2013). To problematise the concept – the *inter-national* – is where postcolonial/decolonial and queer theoretical perspectives intervene; they are critical of the globalisation of individualism regarding non-normative sexualities and transgenderism (Ho, 2010; Zabus,
2014). In history, a similar concern has been expressed regarding the international women’s rights movement and feminist internationalism (Charlesworth, 2000), which, despite the diverse standpoints of theorising of the term ‘woman’, are now required to be careful about heterosexist, cisgender and racial/ethnic presumptions (Lugones, 2007; Mohanty, 2013). As Agathangelou (2013: 459) once remarked:

Drawing on human rights to open space for the rights of queers and for expressions of queerness is crucial, but the intended universality of the human rights framework is haunted by an incapacity to agree internationally on basic terms. In fact, the discourse with which states support/do not support the rights of queers legitimates imperial pre-emptive strikes in the very composition of intimacies, global order and understandings of life, terror and death… [T]his move bolsters neoconservative projects and violences.

From the decolonial perspective, the emancipatory force of human rights is not necessarily based on a universalist assumption that the rights-holders in every society ascribe to a particular understanding around that right as claimed (Santos, 2002). Pluralising the notion of human rights requires an articulation of different rights-holding subjects in different societies. From the queer perspective, that articulation, according to Butler (1999: xx), stems from the desire ‘to counter the normative violence implied by ideal morphologies of sex’. Both schools of thought argue that the pursuit of justice based on a universalist presumption requires an evaluation of the virtues or defects of one’s political concerns, and its law tends to generalise similar yet differential ‘subject positions’, where a social agent identifies and is identified (Mouffe, 1992). Such a liberal conception of human dignity and its mapping of rights has always aimed to define the qualities commonly shared by human beings that transcend the conditions of one’s life.

Enfolded in the simple ‘lack of consensus’, there is a complex agonism inherent to international politics, however concealed by a liberal, consensual conception of global democracy (Honig, 1993). It has influenced the liberal conception of human rights – and today’s LGBT rights – and its realisation since the emergence of related law and legal process (Merry, 2006a). Of course, it offers a convenient legal and ethical foundation for immediate protection; it also excludes other versions of liberation that aim at dismantling all sorts of oppression, including those from states – the prearranged rights guarantor (Langlois, 2018). This does not mean opposing rights but reserving a static view that equates holding rights with achieving liberation, by considering the power dynamics between the marked and unmarked actors and their dissensus. If ‘rights’ are to empower
their holders, they are a manifestation of ‘power’ that could configure a novel unequal relationship between the empowered and the rest.

III. The metamorphoses of cultural and national relativism

To explore the WHO’s institutional inertia, I have identified the tension between states regarding the deleted agenda item concerning SGM health, followed by analysing the different ways in which the discourse of cultural relativism has been employed. Cultural relativity, due to geographical and historical variability, is often regarded as challenging the universal acceptability of a rights issue (Donnelly, 2003). The utilisation of cultural relativism by national governments is a political gesture to challenge the legitimacy of SGM rights. This type of practice is categorised here as ‘political cultural relativism’ – in contrast with ‘epistemological cultural relativism’, which is defended from a decolonial-queer perspective. Between these two types, the former often generalises the similitudes of agents who share a cultural root and overrides the variations, while the latter allows for the plurality and contingency immanent in a culture (Sen, 1997). Differentiating the two kinds of cultural relativism in this way is important for distinguishing the responses from national governments and local communities towards the ‘LGBT’ discourse.

In response to SGM rights activism, there always exist counteractions in terms of preserving traditional cultures against gender and sexual pluralism. But, in practice, this situation leaves the interpretation of rights to the state’s discretion, by assuming that national sovereignty is established on the ‘whole’ of a culture within a fixed territory and over a population, according to Olson (2016). Such conception of ‘the state’ compromises the diversity within a population in which there exist more fragmentations than consistencies (Laclau and Mouffe, 2001). The presumption of the unity of national culture is almost the same as universalism’s static view of humanity. Both, respectively, produce the same effect: they exclude improper ‘others’ from, and subordinate them to ‘an established civilisation’, to use Goody’s (1968: 473) words. In fact, political cultural relativism is a by-product of universalism, which was designed for a utopian version of the present but has been ‘hijacked by governments’ (Douzinas, 2000: 236) who subject human rights to national jurisdictional limits.

A government’s reactionary move is often ornamented with narratives for a sovereign’s political independence. The intensification of political cultural relativism gives rise to a
conflict between nationalist ideologies, as a response from postcolonial societies to imperial interlocutors (Lee, 2017a). For example, the rallies of Pride marches across India, at which the participants chanted *azadi* (‘liberty’ in Persian), expressed a will for self-determination – as an autonomous individual and as a free population (Narrain, 2008), as the Indian government became more conservative regarding SGM rights. According to Syed Akbaruddin, the then spokesperson of the Ministry of External Affairs in 2015, the Indian government saw the SGM rights debate as a sovereignty question concerning non-interference of domestic affairs (Haidar, 2015). This rationale is also found in the Supreme Court of India’s 2013 judgement over *Suresh Kumar Koushal v. Naz Foundation*, overruling the Delhi High Court’s 2009 decision that considered the criminalisation of consensual same-sex activity under Section 377 of the *Indian Penal Code* unconstitutional. In particular, the Supreme Court (2013) wrote:

> In its anxiety to protect the so-called rights of LGBT persons and to declare that Section 377 violates the right to privacy, autonomy and dignity, the High Court has extensively relied upon the judgements of other jurisdictions. Though these judgements shed considerable light on various aspects of this right and are informative in relation to the plight of sexual minorities, we feel that they cannot be applied blindfolded for deciding the constitutionality of the law enacted by the Indian legislature (para 52; emphasis added).

However, cultural relativism is not only relevant to a polity’s political defence; it originated as an epistemological standpoint of the social sciences. Cultural relativism emerged from Boas’ perspective, which considers the coexistence and contingencies of multiple civilisations against Western ethnocentrism and its revolutionist view (Park, 2014). The principle of cultural relativism affirms that ‘judgements are based on experience, and experience is interpreted by each individual in terms of his own enculturation’ (Herskovits, 1948: 63). Hence, no particular set of moral standards transcends or is superior to any other (Turner, 2002). On this basis, cultural relativism, which assumes the diversity of civilisations, as an epistemological critique, is opposed to the imposition of certain value judgements on others to synchronise a universal standard (epistemological cultural relativism). Nonetheless, one of its morphologies has been

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7 At the time of writing, the Supreme Court of India has overruled this case, on 6 September 2018, in its judgement over *Navtej Singh Johar v. Union of India*, decriminalising consensual homosexual practices in private. Nonetheless, the struggles prior to the outcome deserve attention, particularly regarding the cultural relativist rationale represented in the Court’s previous rulings.
simplified and instrumentalised as political rhetoric by national governments against the rule of international human rights law (political cultural relativism).

i. Epistemological cultural relativism of SGM lives

According to the reports presented by the UN High Commissioner for Human Rights, many SGM members are denied by law and subject to discrimination, instigated by states (OHCHR, 2011; OHCHR, 2015). State-sponsored homo- and transphobia are based on a belief that SGMs’ *lifestyles* are unnatural, immoral or unhealthy, as we can also see in the EB meetings, but none of these reasons is valid in terms of international human rights law. As Donnelly (2007) points out, referring to a particular life philosophy as the law of nature presents itself as a form of universal essentialism, in this case, heteronormativity. Asserting naturalness does not legitimise unequal treatment against an individual or a group of individuals either, since non-discrimination law prohibits distinction on socially constructed grounds such as nationality, religion and language. Moreover, upholding a certain set of values as ‘morality’ is fundamentally contrary to cultural relativism, in front of which a transcendental version of human nature loses its significance.

In this context, it is necessary to distinguish different types of cultural relativism. A better understanding of cultural relativism is important because most contemporary anti-SGM narratives and practices are based on an anti-imperialist, post-colonial sentiment. Yet, these narratives overlook the fact that the imposition of cultural essentialism upon members is another form of colonialisation. On the contrary, *epistemological cultural relativism* recognises the possibility of the moral fallibility of culture, which is subject to transformation within and beyond its limits (Rose, 1996). This suggests that certain sexual and gender norms become binding perhaps simply because they happen to be widely practised in a particular context and subject to change (Plummer, 2015). Epistemological cultural relativists are careful about the trap of essentialism, which rejects the variability in culture – the repertoire of unstructured entities and contested symbols – with which members of a society may constantly struggle (Silber, 2003). Such a pluralist understanding of sexuality recognises the contingency of the perception of our desires.

Then, how should international law respond to or incorporate epistemological cultural relativism? International law has long been criticised for its state-centrism, namely prioritising the sovereign’s will, by presuming the legitimacy of a state’s representation
of its people as a whole, over the dissenting voices of civil society. However, in terms of matters that are ‘not merely international’ (Reus-Smit, 2014: 282) such as human rights struggles, the tensions exist more between a state and its people than between states, and the presumption of the full self-determination of people seems precarious. As stated by Jessup (1947: 385-386), a previous judge of the International Court of Justice, since individuals have become recognised as legitimate subjects of international law along with the emergence of international human rights regime, ‘a revolution on a world scale’ is foreseeable to ‘circumvent the existing system of states’. With the rise of transnational human rights activism, the world law can no longer be self-sufficient by taking states as the ultimate authority (Douzinas, 2006; Orford, 2006).

We can take as an example how the conceptualisation of SGMs was inspired by epistemological cultural relativism (see Chapter 5). Queer and postcolonial theoretical insights lead us to reappraise the universal validity of the ‘LGBT rights’ discourse. It is necessary to evaluate the dissemination of certain identity-based narratives and challenge the imposition of a foreign model of social activism on various societies (Gross, 2013), sometimes irrespective of needs of local SGM communities through the control of discourses and resources (Haritaworn et al., 2008; Nath, 2013). In terms of SGM health, a health system, if permeated with heterosexist and gender-binary biases, subjects SGM members to the fear of seeking medical services, according to the UN Special Rapporteur on torture (Rodley, 2001, para 19). Relativism is a reminder of the nuances in the causes of discrimination that SGMs experience in different societies, which may influence the core concerns and strategies of local activists, although the violation events look alike.

ii. Political cultural relativism against SGM beings

On the other side of the coin, national governments that refuse to expand the scope of human rights protection tend to appropriate cultural relativist arguments. Such political cultural relativism, assuming cultural sovereignty as fixated and totalised, usually pretends to be purely cultural and politically neutral (Donnelly, 2003). In practice, the polemics do not focus on the existence or normativity of human rights; instead, states disagree with the interpretation of law, which pertains to the art of governing and the relationship between governments and the governed (Hoover, 2013b). In terms of SGM rights, political cultural relativism is invoked by illiberal governments that are sceptical about the purposes of politicising SGM issues, not least when certain states (e.g. the US
and UK) tend to demonise those that are not ready to accept such a human rights agenda. Scholars and activists have challenged the overgeneralisation of linking homophobia to certain ethnicities or nations; simultaneously they also criticise certain governments’ neglect of the existing diversity therein.

Against the totalisation of cultural sovereignty, SGM embodiments are always involved with sexual and gender norms of the nation-state to which they belong. That involvement, voluntarily or involuntarily, presents a form of ‘de-territorialisation’ of related epistemologies. Namely, queerness is always productive within the interiority, and resistant towards the exteriority – as an ‘assemblage’, created through the interaction of discourses and counter-discourses. Here the concept of homonationalism is useful, as a way to analyse the interactive effect between the national and the international planes. This is especially so in terms of the entrenched relationship between the SGM identity construct and the metanarrative regarding national sovereignty (Puar, 2007). Homonationalism, for Puar (2013: 337), consists of ‘geopolitical and historical forces, neoliberal interests in capitalist accumulation both cultural and material, biopolitical state practices of population control, and affective investments in discourses of freedom, liberation, and rights’. These components can be categorised as contextual, material and expressive elements of an assemblage of ‘discourse’, as shown in Figure 8.

Puar’s phenomenological interrogation of the realm and effect of discursive construct, by looking into social interactions including the semiotic and material interchanges, is particularly relevant to the US and Israeli contexts. Yet, I also find ‘homonationalism’ useful in identifying a form of political cultural relativism, adopted by states, to divide the world into modern/primitive, secular/religious, progressive/reactionary societies as well as knowledge producers versus receivers. The powerful, who get to define the limits of knowledge vis-à-vis the existence of non-knowledge, would encounter resistance in attempts to de-territorialise the assemblage (DeLanda, 2006). For example, compare the ‘non-progressive’ (postcolonial) on the international plane and the ‘non-normative’ (queer) on the domestic plane. This can better explain national governments’ political cultural relativist practices, including the countermeasures aiming to reproduce ignorance and violence against SGMs in defending cultural sovereignty. We can hence shed light on the effects of juxtaposing ‘LGBT identities’ and ‘human rights’, which, directly or indirectly, stimulate the renaissance of political cultural relativism.
As queerness is contextually contingent (Puar and Rai, 2002), homophobia is also inconsistent (Rao, 2014a). The phobia discourse does not indicate a particular form of statecraft; it is capable of being used by imperial (e.g. Russia) and postcolonial states (e.g. Uganda), and by both authoritarian (e.g. China) and democratic regimes (e.g. India). Any specific legal or political discourse involved with SGMs is like a performance of states, on the world stage, be it homo- or homophobic-nationalist. Related practices, such as states’ avoidance of agreement in the WHO, are the realisation of that discourse’s effects, between which there is a ‘nexus of prehensions’, in Deleuze (1993: 78) words, ‘participating in the becoming of another event and the subject of its own becoming’. The nexus of a series of deliberate political strategies corresponds to the international pressure that is provoked. The enemy is thus made necessary, in any form, because of its political significance in term of antagonism, in multiple ‘cultural wars’ (Altman and Symons, 2016; cf. Wilkinson, 2017).

IV. A pluralist approach to ‘sovereignty’ and human rights

The distinction between political and epistemological cultural relativism is relevant when it comes to the SGM rights debate, although as Turner (2006: 6) observes, ‘in the academic literature on rights, there has been a movement to reject the debate about universalism and cultural relativism as out of date and unnecessary’. The tension between universalism and cultural relativism has been revived around the debate on SGM rights because of the lacuna in international human rights law, in which there are no applicable legal rules specifically for these people. Standard arguments for cultural relativism rely on examples drawn from precolonial/traditional beliefs along with caution about the dangers of cultural imperialism. Ironically, the ideologies being defended are at times a re-emphasis of the colonial legacy by the new governments (Offord, 2011; Kole, 2007). Nonetheless, earlier discussions around cultural relativism did not consider the question concerning the issue of the agent (e.g. Donnelly, 1984; Perry, 1997; McCrudden, 2015) – namely, who has the power to define and defend the culture.

Undoubtedly, there exists an effort by civil society organisations and scholars, along with the endeavours of UN human rights bodies who have certain authority conferred upon them by states to ‘interpret’ the existent human rights treaties. However, international human rights law has not ‘progressed’ yet if we only take conventional sources of law into account.
To address the question regarding who can claim cultural relativism, it is necessary to identify whom ‘they’ are against – who it is that favour universalism in international law. Santos (2013) has identified two genealogies of the emergence of international human rights discourse. One is an abyssal genealogy that has divided the world into metropolitan and colonial societies, between which only the former’s people attains the entitlements of human rights, and this is now represented as Eurocentric universalism, which, perhaps implicitly, continue global colonial history. The other is a revolutionary genealogy, deriving from a desire for political power among the bourgeois after their attainment of economic dominance – represented today as individualism inherent to political liberalism and economic capitalism. For feminists, universal humanism commits itself to ‘saving the world’ with its ‘muscular’ and paternalistic strategy (Orford, 1999). However, the tension between liberal Western and ‘other’ (such as Third World and postcolonial) feminists occurs concerning ‘the woman question’ (Charlesworth, 2005).

A materialist rather than idealistic approach highlights the asymmetrical power relations at play, creating an awareness of anti-essentialist relativism over values. The relativist claims against patriarchal, Eurocentric, or bourgeois generalisation of their needs as rights, despite their anti-universalist nature, still fall within the scope of contemporary human rights discourse. Today’s non-discrimination law includes the recognition of imbalanced power relations between rights-holders – symbolically and materially – designated to legitimise the resistance from ‘the members of the community of the governed’, as termed by Foucault (2001: 474), against the abuse of power. When such relativist claims are hijacked by states, which are the most likely abusers and simultaneously the guarantors of rights, this creates a dilemma. As Isin (2013: 55) explains, ‘without the force of (state) law human rights remain unenforceable, and yet the most vulnerable are those without the protection of the state’. In that, Balibar (1990) has analysed the overlapping roles of a state in between its people and other states.

To unpack statehood, the presumed unity of a people/population, requires deconstructing the confinement of a given expectation of having or achieving a ‘consensus’ within a national domestic society and between multiple national societies, namely, to adopt a pluralist approach to a state’s cultural sovereignty. The pluralist approach, differentiating the reality and normativity of cultural relativism, considers the discontinuities between the variable means and extents of pursuing a ‘consensus’ within the trinity of nation-state-
sovereignty (identity-body-soul) (Santos, 2002). This perspective interrogates the reason why such a trinity structure could win out over other coexistent political structures (e.g. empires, tribes, dynasties) that have made modern history a history of the division of ‘states’ with defined territories and nationalities stretching from a collective sovereign mind. The production of the ‘people’, through which a nation is discursively constructed as a community, is eventually offered a single name for recognition that forms the basis of collective political power and the origin of individual rights (Balibar, 2009).

From a pluralist perspective, not only do the politics on the international and domestic planes intertwine and interact with each other, but also the pursuit of consensus is nearly impossible and, perhaps, undesirable, especially in an era in which we are moving towards a multipolar world order (Mouffe, 2013). The agonistic coexistence of values and priorities is becoming more normal than in the time of the Cold War, during which most international human rights institutions were established. Considering contemporary international political culture, the ‘lack’ of consensus does not affect the law made for prolonging peacetime, including human rights principles. The pluralist approach to democracy, on the domestic level, can actually embody the enshrined principle of self-determination of peoples, in a plural form. That is, the ‘lack’ – the absence of multilateral agreement – is the product of a multidimensional and multipolar world; that multiplicity gives rise to no-thing, representing a competition between a state and its civil society.

Concerning the significance of people’s presence, take the Statement on the Association of Southeast Asian Nations (ASEAN) Community Vision 2025 as an example. The ASEAN SOGIE Caucus (ASC) convened SGM rights activists, adopting the Statement on 23 November 2015. The initiative incorporates sexual and gender diversity, as part of the shared culture in the region, into the ASEAN citizenship framework. Another notable example is the actions of Vietnam and the Philippines at the 27th session of Human Rights Council’s (UNHRC) meeting regarding a draft resolution on ‘human rights, sexual orientation and gender identity’ in 2014. In related debates prior to 2014, both

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9 Organised at the 2011 ASEAN Civil Society Conference under the auspices of the ASEAN People’s Forum in Jakarta, Indonesia, the ASC encompasses activists from most of the ASEAN countries (except Brunei, which has imposed strict Sharia law since 2014 and now imposes death penalty against homosexuality). The ASC members have actively promoted a new ‘ASEAN culture’ at international events, such as the 2015 ILGA-Asia Regional Conference in Taipei, at which I was present.

10 The draft resolution (A/HRC/27/L.27/Rev.1) was eventually adopted as the UNHRC resolution 27/32, by 25 votes to 14, with seven abstentions (Benin did not cast a vote) (UNHRC, 2014a, paras 931, 958). Out
states had always taken a ‘neutral’ stance by *not voting* on previous proposals, but they voted *for* the draft resolution at the last round of the debate (UNHRC, 2014c, paras 936-957). At the 2015 ILGA-Asia Conference, the ASC members remarked that such a ‘change of position’ of both Buddhist and Catholic states was a ‘symbolic move’ towards reconciling secular and religious values.

The governments of postcolonial societies, which deny SGM rights based on their sovereign right against other states’ neo-imperialism, often ignore the fact that the same groups of *empires* imported modern gender/sexuality norms. For example, although the UK has repealed sodomy law, Singapore, with its strong anti-imperial stance against Western ‘gay rights’, contends that homosexuality deserves regulation for the sake of maintaining social order (Obendorf, 2013), which continues the Christian morality of the colonial times (Obendorf, 2006). It becomes obvious that the nationalisation of cultural relativism mirrors the governor’s *anxiety* (borrowing the Indian Supreme Court’s word) about the unpredictability of sexual liberation. That anxiety is universal, as Plummer (1998: 5) once commented, concerning the liberation movement’s inclination ‘to shifting symbols, contingent contexts and political processes’. The state’s anxiety can be found in other East Asian countries, for instance Thailand (Sanders, 2011), Vietnam (Oosterhoff et al., 2014), South Korea (Choi, 2014), Myanmar (Chua, 2018) and China (Bao, 2018).

V. The case of SGM rights social movements in East Asia

Informed by the SGM rights social movement in Asia, the pitfalls of political cultural relativism and the importance of defending the epistemological version are clear. Their distinction determines the approach taken by the law of human rights. In this context, this section focuses on the development of the *LGBT rights* discourse and governments’ reactions, through a case study in postcolonial East Asia, from which the anxiety about the lack of consensus between states is deconstructed. This case study highlights the contradiction between the two forms of cultural relativism; it also reveals a need for a pluralist approach to reframing SGM rights. Contemporary world politics, despite its multidimensional nature, privileges discourses in that comes in forms of scientific or legal knowledge. A simple core-peripheral or imperial-colonial analysis of power relations of the 13 members for the Asia-Pacific region, among 47 seats, I paid particular attention to the positions of East Asian countries i.e. China, South Korea, Indonesia, Vietnam and the Philippines, whereas I left out Japan, which was originally one of the 50 sponsor states of the initiative.
between states is no longer adequate, against the background in which multiple understandings of sexuality and gender are competing in both fields (Heinze, 1998).

The case study hopes to show that the absence of international consensus is not a single absence, but a multiplicity of absences involved in its production. For example, the concept of ‘Asian values’, which are repeated by Asian governments against ‘Western’ LGBT rights – is used as if there had been a consensus regarding what those values are. As an artefact articulated by multiple governments (e.g. Malaysia, Singapore, China, Taiwan, and Hong Kong), the asserted regional values have resulted in obstructing the grassroots efforts for SGM rights. Such political cultural relativism overgeneralises and underrepresents the differences between peoples. Asian values and their metamorphoses have been invoked to react to the political danger of ‘excessive’ universalism, especially when powerful international actors mistake their interests for universal values (Donnelly, 2007). Yet, the Asian-value claim has, throughout history, been involved with selective appropriations of contested ideologies. This case study demonstrates how such cultural relativism practices tend to forge an ahistorical artefact of political convenience.

i. **Contouring LGBT rights in East Asia with ‘Asia as method’**

To unpack the political discourse of *Asian values*, it is important to note that its aim is the *LGBT* identities and related rights discourse popularised in East Asia, which, for example in China, are often portrayed as ‘enemies of traditional values’ (Chang and Ren, 2017: 317) in the mainstream media. Along with the globalisation of the LGBT rights discourse, understandings of gender and sexuality are more diversified than simplified (Loos, 2009). Historians and anthropologists of sexuality in Asia have often challenged modern scientific perceptions of gender and eroticism (Sullivan, 2001; Boyce, 2014). In this respect, a postcolonial methodology – *Asia as method* (Chen, 2010) – is applied to Taiwan, a Westernised-Confucian society, as an exemplar to apprehend the clashes between governors, the elite-led civil society and *min-jian* (a space belonging to low-degree politics yet significant in defining political culture). The different political agendas based on the Euro-American and local pathways reflect a tension inherent to the Taiwanese LGBT/tongzhi rights social movement.

In effect, before the discourses related to LGB identities and homophobia travelled globally in the 1980s, there had not been a dominant model in framing social movements
for SGM rights in international political discourse (Boellstorff, 2012). In the East Asian context, the distinction between civil society and state power is too simplistic, as it ignores the effect of globalisation upon the knowledge class (Chua, 2015). It can also hardly explain the Cold-War experience in this area, in which civil society is often subordinated to and has to speak for the state (Chua, 2008). Setting aside the rights discourse coming from the ‘West’, what occurred within that min-jian sphere is worth exploring, in the context of a renaissance of traditional Confucianism in many societies. Chen uses min-jian – a term shared by many East Asian languages – to specify the everyday struggles or vernacular narratives against professional discourse, although the two may mingle together as presenting the whole picture of democracy.

I focus on the human rights discourse developed in Confucian Asia, attending to the competition between universalism and cultural relativism. The tension is important in the Cold War and post-Cold War context, between which a series of anti-imperial and Third World social movements emerged (Rajagopal, 2003). Taiwan, as a mirror of China in terms of the dominant Han-Chinese culture, has developed a tendency to differentiate itself from Communist China based on a different political ideology that emerged with the rise of the Taiwan independence movement. In the min-jian sphere of China, especially in urban areas, SGMs do not really live a less free life as ‘imagined’ by many Taiwanese people, particularly in terms of queer people’s relationship with their families, partly because contemporary China no longer has as much of a Confucian bond as other places in East Asia (Wei, 2010). Yet, this does not reflect on the intensive censorship and institutional repression of LGBT-related events (Engebretsen and Schroeder, 2015).

It would be arbitrary to conclude that Chinese society is tolerant regarding sexual and gender diversity, but we witness how the tongzhi social movement in China has developed differently from in other places. By saying other places, I mean those where activists are ambivalent to totally rejecting the Western ‘LGBT’ identity political agenda, such as Singapore, Hong Kong and Taiwan. The differences lie in the impossibility to generalise the social landscapes in China due to unequal economic development between provinces, and in its communist history (Zhou and Jia, 2017). Another key reason for China to be

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11 The notion of the ‘West’ can be problematic. For example, Moscati’s (2010) has challenged the general term by differentiating, based on cultural and historical elements, Italian and Spanish legal reforms regarding family and partnership law. Here, it is used intentionally to indicate knowledge production in the First World, especially regarding global colonial history (see Waites, 2017).
different is the Cultural Revolution experienced in the 1960s and 1970s, during which Marxism-Leninism-Maoism much cancelled Chinese traditional teachings. Although Han-Chinese people dominate all four of these societies (China, Hong Kong, Taiwan and Singapore), their peoples have shown different attitudes to the Confucian legacy. In so saying, even the Sinocentric societies cannot be taken as a cultural unity regardless of other political-historical variables.

To map out the development of LGBT rights in Taiwan, a comparison with Hong Kong and Singapore is useful, in which people experienced ideological challenges due to the intense encounters of Western and Confucian cultures. These three societies share much similitude regarding their colonial history, westernisation, and market economy. In terms of geo-demographic status, all three are small and highly urbanised, and dominated by Han-Chinese people. Greatly influenced by Western capitalism, they were classified as three of the Four Asian Tigers, notable for maintaining high growth rates and rapid industrialisation since the 1960s. The mainstream culture rooted in them, as claimed by governments, is a Confucian ideology; people in these societies claim to have a common Confucian heritage, but the modern conservatism itself is an awkward blend of an orthodox brand of Confucianism and Christian evangelicalism (Lee, 2016). Against this background, these societies however have considerably different attitudes towards SGM populations (*tongzhi*, in Chinese).

In recent decades, these three have been affected by the global fashion of the LGBT social movement. The variation in social attitudes towards *tongzhi* between these Westernised-Confucian societies rests on the colonial legacy in *min-jian* culture and on their political relationships with China. At the time when Singapore and Hong Kong became British colonies in 1824 and 1842, sodomy remained a crime punishable by death in England and this was transplanted into Hong Kong’s *Offences against the Person Ordinance* of 1865 and the Singaporean *Straits Settlement Law* of 1871. Comparatively, Taiwan has never had sodomy law, even when it was under Japanese rule. Like traditional Chinese culture, pre-modern Japan did not conceive of a ‘normative connection between gender and sexual preferences because all men, whether samurai, priest, or commoner, were able to engage in both same- and opposite-sex affairs’ (McLelland and Suganuma, 2009: 330). Nevertheless, pervasive gender inequality has made society ignore women’s desire by focusing on male homoeroticism.
Taiwanese were more fortunate than Japanese as they have experienced the rise of feminism and women’s right movements since the 1980s (Chang, 2009). This occurred at a critical moment between Chiang Kai-Shek’s death in 1975 and the abolition of Martial Law in 1987, followed by Taiwan’s democratisation. These events speeded up the communication of the equality discourse, facilitating a total ban of all forms of discrimination, including those based on sexual orientation, gender identity and expression (SOGIE), for example, the enactment of the Gender Equity Education Act 2004 and the Act of Gender Equality in Employment 2008. At the first time of party alternation, the first non-KMT President Chen Shui-Bian promulgated multiculturalism regarding religions and ethnicities as a fundamental national value. Since then, official references to human rights have opened up a large space for tongzhi communities to negotiate citizenship rights, but their campaigns had been overlooked by mass media until recently when the marriage equality campaign was formally initiated.13

ii. The Chinese entanglements and religious conservativism

Considering the cohabitation of different ethnic and social groups, assertion regarding a unified ‘culture’ is subject to the scrutiny of related political and historical accounts. For example, Singapore has a considerable Malay/Muslim population, which forms another homosexuality-denying force along with the neo-conservatives.14 In this context, the Singaporean government, ruled by Han-Chinese people from the PAP (People’s Action Party), has dealt with multiracial issues carefully. Different from the Chinese Communist Party’s (CCP) sinicisation policy of ethnic minorities, the PAP’s social control technique, based on the ‘coexistence’ principle, is milder (Chua, 2003). Pursuing peaceful coexistence, in addition to the one-party regime’s tendency towards sexual conservatism, has obstructed the promotion of LGBT rights in Singapore. As for multicultural Hong

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12 KMT (Kuomintang, literally ‘nationalist party of China’) dominated the legitimate government of the Republic of China, later defeated by the Communist Party of China and withdrawing from mainland China. In Taiwan’s postcolonial history, the KMT formulated the one-party regime from 1949 to 2000.

13 In October 2003, the Executive Yuan proposed the same-sex marriage legalisation within the framework of the Human Rights Basic Law, but it was opposed by the legislature. In December 2014, another proposed amendment to the Civil Code in the Legislative Yuan, aiming to legalise same-sex marriage, failed again. Since 2014, the tension in min-jian space has become significant, between supporters and opponents regarding the marriage equality campaign.

14 Here ‘neo-conservatives’ are referred to as those whose belief system is based on a combination of Confucianism and Christianity against sexual and gender pluralism in East Asia.
Kong society, the complexities rest on its intensified relationship with the Government of the Hong Kong Special Administrative Region, when the latter has been losing its independence, as guaranteed in the *Hong Kong Basic Law* (Kong et al., 2014).

There exist so-called ‘Chinese entanglements’ (Phillips, 2012: 190); *Chinese* here indicates both the Chinese ethnicity and language, and China’s government. The people’s political sphere in China, based on ‘the Asian values of communitarianism and neo-Confucianism’ (Yue, 2012: 12), seems more dynamic than it appears to outsiders. Yet, the Chinese government has always positioned itself as allying with the conservative, ‘anti-imperialist’ force in international LGBT politics, which has stimulated civic resistance from Hong Kong’s *min-jian* space. Within the political community, along with China’s interference in Hong Kong legislation and policymaking, diverse voices emerge, involved with nostalgia regarding former UK rule, traditional Chinese customs, and other non-Chinese ethnic groups (Fraser and Li, 2017). Civic attitudes towards LGBT issues have fluctuated due to such diversity in Hong Kong. Unlike the situation in Hong Kong and Singapore, where Christianity much influences the lay culture, the evangelicals in Taiwan represent the wealthy class, which has a small population but a greater influence on politics.

Using a comparative sociological approach to explain the differences across societies, Asal and others (2013) undertook an international survey on the key factors of social tolerance regarding homosexuality (non-exhaustive). Those factors included: (1) the type of legal system, (2) the democratic conditions and political opportunity for minority populations, (3) the state of economic development and modernisation, and (4) the level of globalisation. Put together, these factors may explain the general inclination to a social attitude to sexual minorities. For instance, Singapore, with the least respect and equality for homosexual people among the three, has a sizable Catholic and Muslim population and less democratic freedoms in the public sphere, and it employs the English

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15 Homosexuality is more likely to be illegal, on the one hand, in common law or Islamic countries, and, on the other, in countries where there is a sizeable (and influential) Catholic population.

16 Homosexuality is more likely to be illegal in less democratic countries and/or countries with less women in the legislature.

17 Homosexuality is more likely to be illegal in countries with lower GDP per capita.

18 Homosexuality is more likely to be illegal in countries that are less exposed to globalisation.
common law system, although unquestionably it is one of the richest countries in the world and highly exposed to globalisation. Indeed, Singapore stands out as the only country, among the 76 countries that the International Monetary Fund classifies as advanced economies, which still criminalises homosexuality.

This predication may not be accurate enough, as it neglects the transnational inter-societal connections (Bhambra, 2014a). In China, for instance, before the decriminalisation and demedicalisation of homosexuality in 1997 and 2001, homosexuality was viewed as a sign of First-World bourgeois decadence by the CCP government, who characterised non-normative sexualities as ‘hooliganism’ (Guo, 2007). Meanwhile, in 1991, Hong Kong, which was full of uncertainty, made a move to enacting the *Hong Kong Bill of Rights Ordinance* that includes decriminalising homosexual activities, after witnessing the 1989 Tiananmen Square Massacre (Kong et al., 2014). In the aftermath of the political transition, the incentive to preserve the liberal ‘Hong-Kong-ness’ has welcomed more support from *min-jian* sphere for both women’s and *tongzhi* rights activism (Fischler, 2011). Despite Taiwan’s *de facto* political independence, its complicated relationship with China has indirectly popularised human rights discourse, due to, on the one hand, a fear of the restoration of authoritarianism, and on the other, the manifestation of an allied stance with the ‘West’.

### iii. The plural forms of the artefact of political ‘Asian values’

Drawing on cultural and political pluralism immanent in Taiwan, Hong Kong and Singapore, I contend that the discursive framings of ‘Asian values’ that are appropriated to counter the international SOGIE-related rights discourse embody political cultural relativism. Witnessing the Chinese economic reform since the late 1970s and the rapid development of international trade in East Asia, Singapore has become China’s ally regarding geopolitical and macroeconomic affairs. Sharing many similarities concerning statecraft and political ideology, the Singaporean and Chinese governments have jointly contributed to developing the notion of ‘Asian values’ against the global imposition of international human rights standards. Although the law in Chinese history once forbade sexual activities between men (Hinsch, 1990), the concept of homosexuality vis-à-vis heterosexuality has never been significant (Chou, 2001). Meanwhile, the traditional family values and sexual norms asserted by neo-conservative groups in Singapore are
mixed with Christian religious teachings and ‘Chinese culture’, which, in a selective manner, only considers the family-oriented doctrines of Confucianism.

In addition to the historical omission of min-jian knowledge by all Chinese governors/emperors (Liang, 2004), making Confucianism the Chinese foundational value system overlooks the lasting significance of Taoism, Mohism, Buddhism and other philosophical traditions. The Singaporean government has strategically used Asian values (combining Christianity and Confucianism) to make people from different cultural and ethnic backgrounds ‘live peacefully together’ (Küng, 2006: 85). This new variation of Confucianism was perceived as ‘traditional virtues’ in Hong Kong, representing a pro-China political position against the international pressure regarding LGBT rights agenda (Kong, 2011). In Taiwan, it is, in the form of ‘traditional culture’, argued vehemently by politicians and people with a church background, who claim that they are tradition defenders, representing the silent majority in society, against the Western values-based elitist social movements. These groups, however, are more politically and economically influential than those ‘elites’ that they are against (Lee, 2017b). Thus, it is important to identify who gets to define Asian values, the ‘tradition’.

Beyond min-jian space, the tension of ideological differences is politically useful for governments to refuse handling ‘LGBT’ issues. For example, a previous Singaporean Parliamentary Member, Baey Yam Keng, once criticised the ‘gay information’ on the website of the Health Promotion Board for replacing ‘Asian values of family’ with Western ideologies. Confucian ethics have been either generalised as ‘Chinese culture’ or appropriated as ‘Asian values’. The latter was a tricky case, where, in multi-ethnic Malaysia and Singapore, a direct reference to Chinese was avoided, when Asian values were advocated first by Mahathir Mohamad (Prime Minister of Malaysia, 1981-2003) and later by Lee Kuan Yew (while serving Senior Minister of Singapore, 1990-2004). These ‘values’ have been interpreted as a sort of communitarianism that prevails social harmony over personal development (Zakaria and Lee, 1994). According to the then Deputy Prime Minister Goh Chok Tong in 1990, the primary Shared Values of Singapore are ‘nation before community and society above self’.

In terms of ‘Chinese culture’, there has never been a homogeneous view regarding homosexuality and androgyny. Confucianism, Taoism and Buddhism – on which the Han-Chinese tradition is based with influence from other ethnic minority cultures – have
never reacted to homosexuality with the same level of disgust as evangelicalism. Since the Han Dynasty ended, in approximately 220 AD, neither Confucian nor neo-Confucian moralists have ‘singled out homosexuality when they advocated sexual restraint’ (Wu, 2004: 29). In Taiwan, before the KMT ruling, which once sought to normalise Taiwanese society (Damm, 2005), it appears that homosexual encounters had never been morally wrong; according to Wu (2004: 21), ‘homosexuality does not violate the Confucian ethical system as long as it respects the boundaries of propriety assigned to it’. The emphasis on uniform norms served the KMT just as much as it works for the CCP in ‘new China’ and the PAP in Singapore, to naturalise the state’s omnipresence in everyday life.

The assertion that non-normative sexualities and gender expressions are condemned by a timeless ‘Chinese culture’ (or ‘Asian values’ for Singapore) is a misreading of the history and exaggerates the validity of contingency. Chinese history has shown a great representation of homoeroticism and cross-dressing in both the civic and official records (Hee, 2015), as well as in the neighbouring Japanese society (Pflugfelder, 1999). Both Han-Sino-Chinese-ness and Pan-East-Asian-ness are problematic for their ‘conflation of various strands of cultural lineages (e.g. appropriating fundamentalist Christian values and rewriting them as Asian ones) all for a specific cultural political agenda’ (Chan, 2008: 309). Here, Asian values are politically mobilised to institutionalise heteronormativity. It is however less than convincing to represent people who come from these societies, even in the context in which the LGBT rights discourse has provoked the polarisation of sexuality and gender politics, as having a life philosophy that is intolerant of sexual and gender pluralism in Sinophone Asia (Chiang, 2014).

VI. Framing SGM human rights with a pluralist approach

As it is beyond the scope of this study, I will not delve into the genealogy of modern statehood and its nationalisation technology (see Gellner, 1983; O’Leary, 1997). However, I wish to highlight the potential of theorising a pluralist approach, based on epistemological cultural relativism, to SGM rights, contrasting with political cultural relativism based on nationality through framing an ‘us’ for every member of that nation. The pluralist conception of cultural sovereignty focuses on the articulation of different persons’ multiple subject positions, which are given an equivalent but differentiated weight depending on the rights at issue, for instance, the causes and outcomes of being made an SGM member in society. In this respect, I find Turner’s proposal regarding
‘vulnerability’ as the foundation of human rights to be theoretically useful. Due to the experience of pain and shame based on that human beings are vulnerable to precarious living conditions, Turner (2006: 10) argues that:

Although the idea of vulnerability has a clear connection to the basic idea of a right to life, it can also provide an ontological foundation for rights relating to freedom, because there is an intimate connection between the right to life and the existence of the good society.

Perceiving ‘being vulnerable’ as embodying the articulation of subject positions based on cultural pluralism, including, for sure, sexual and gender culture in a society, I have to answer the question regarding ‘who’ can, if not exclusively, claim cultural relativism against the universal presumption of ‘Western’ LGBT rights. The right to judge whether there exists an imposition of foreign ideology and political agenda through ‘the deployment of homonormative nationalism’ (Rahman, 2014: 279) should rest on the SGM members themselves rather than the government, or other normative citizens, who quite possibly have never engaged in local queer cultures. Nonetheless, Turner’s proposal may invoke another universal assumption regarding the embodied experience of the ‘common vulnerability’ of humans (Dumas and Turner, 2015). That is, Turner’s argument for human rights based on the universal social experience of embodied vulnerability may risk another form of essentialism (Hynes et al., 2010; see also Chapter 4) thereby hierarchising the different rights – embodiably over non-embodiably.

Therefore, delinking the concept of vulnerability and the realm of embodiment is important, in order to further articulate one’s relationship with the self and with others, to mediate the individualist (living freely) and collectivist (living harmoniously) conceptions of the fundamental needs as rights – the avoidance of insecurity. That is to say, to correct Turner’s universalist and perhaps foundationalist conception of human rights, I argue for a pluralist approach to vulnerability too, which attends to the forms of unembodied violence against SGMs, for instance non-recognition and misrecognition (see Chapter 6). Moreover, such vulnerability should be understood in relation to the context – how one is made minoritarian – within specific national and local settings. To account for the diversity in vulnerability, a pluralist approach to SGM rights acknowledges the copresence of all possibilities, including one being a minority member or becoming one, and thus, in Butler’s words, ‘vulnerability can be the condition of responsiveness’ (Ahmed, 2016: 485).
In this light, international human rights and Asian values, if they exist, are commensurate with each other, as both aim at addressing vulnerability (of an individual and of a member of society). On the one hand, this is the reason why many human rights researchers still find it important to distinguish types of relativity, especially in terms of the validity of international law, although everyone’s topology is different due to the development of the debate. However, little attention has been paid to the agent and its purpose of claiming relativism. What a pluralist approach offers is to consider the universal entitlement of a right to cultural relativism against the violence of representation. On the other hand, this is also the primary reason for the pluralist perspective regarding various forms of human vulnerability, which should be understood as appreciating different situations of powerlessness in the particular context of claiming such a right.

Since the SGM rights issues have provoked controversies concerning respect for gender and sexual diversity, there are two dimensions of human rights discourse here: the universal entitlement to the rights to equality and non-discrimination, and a pursuit of the implementation of a global standard of safeguarding these rights. Core to both dimensions is epistemological cultural relativism, which acknowledges all cultural values; an attempt to make the mainstream one hegemonic constitutes violence of representation (Brems, 1997). Furthermore, ‘all’ cultural values are not necessarily consistent with national borders; rather, national states that consider universalism to be cultural imperialism at times are the ones that do not respect cultural diversity within their jurisdictions (Balibar and Wallerstein, 1991). In contrast with the state’s appropriation of relativism, for many local human rights and SGM rights advocates, the reliance on the universal entitlement of rights is significant although the interpretation and realisation of rights may be subject to cultural specificities (Hoffmann, 2006).

Although international human rights law enshrines the principle of equality between human fellows, it is not blind to the existence of dissymmetrical dominant/subordinate relationships between individuals and between social groups. Indeed, this is the very reason why international human rights law emerged. The emergence of the international human rights discourse was born out of all nations’ opinio necessitatis – a belief in the making of law out of political necessity – concerning the fear of oppression and the desire for security, which have been (considered) shared by all humans since the World Wars. Such a belief reflects on the unprecedented consensus between old and new states over
the incorporation of human rights into the *Charter of the United Nations*, followed by the unanimous adoption of the *Universal Declaration of Human Rights* in 1948. Aside from the question of a universal liberal approach to understanding the conscience of humankind (Hoover, 2013a), the ownership of rights is rather uncontested.

Remembering this history is important for rebutting political cultural relativism, which intends to impose a popular view in society upon *all* members. It is also important in contextualising the vulnerability of SGM members, who demand – or will demand – rights protection, regardless of their presence/absence. For epistemological cultural relativism concerning SGM rights, whether one’s sexual practices and gendered body are consistent with the expectations from the contemporary dominant culture of the place where they live becomes unimportant. As Donnelly (1999) once remarked, public morality itself is at times contingent, arbitrary, and not necessarily related to deliberation or justice. The assumption of the moral infallibility of a specific culture has confused what people have been forced to tolerate with what they value. What political cultural relativists overlook, or intend to ignore, is the changing character of a culture, over which members of a society constantly negotiate (Zechenter, 1997), as well as the space that allows these negotiations to happen (Swidler, 1986).

From the standpoint of epistemological cultural relativism, the universal possession of rights would not be challenged substantially by the varying practices concerning the satisfaction of different rights-holders’ needs. (Merry, 2006c). In terms of SGM rights, it is without question that every part of the world has its own path to negotiating the existing social norms, which is mediated between the varied social responses to the visibility of sexual and gender diversity. These differences should not be exaggerated as the polarised sexuality and gender norms between states, but they are not insignificant either. Comparable with Merry’s (2006b: 100) observation concerning women’s rights, different societies have their own ‘distinctive cultural repertoire of procedures for dealing with difference, conceptions of how change takes place, and strategies for implementing change’, though they also share many similarities due to multidimensional global processes. Therefore, a pluralist approach offers a way to recognise the dynamics within the synchronous universalisation and particularisation.
VII. Conclusion

I have located WHO member states’ decision of doing nothing in response to SGM health issues in a larger context – the polemics regarding cultural relativism versus universalism of human rights – beginning with tracing the disappearance of the [deleted] item. Such a tension, masked by an insistence on having consensus, is not strange to SGM rights activists. The same drama happens all the time. For example, at the 2014 UNHRC meeting, Egypt (one of the greatest opponents in the WHO) and other states introduced seven amendments to the draft resolution mentioned earlier, attempting to erase the highlighting of SOGIE concerns (UNHRC, 2014c, para 932). They proposed to insert an additional preambular paragraph: ‘reaffirming the sovereign right of each country…with full respect for the various religious and ethical values and cultural backgrounds of its people…’ That shows the identical logic given in the AFRO’s 2012 resolution, as discussed previously – linking national culture, collective rights, and state sovereignty.

This instance demonstrates the significance in differentiating epistemological and political cultural relativism, exposing the nexus between nationalising cultural relativism and consensus avoidance. Drawing on the development of the tongzhi rights discourse in East Asia, I consider that contemporary international human rights law is compatible with epistemological cultural relativism, since its emergence. Such perceived compatibility is reparative in framing a multicultural universality of human rights, encompassing the normative and ethical significance of articulating differences, especially concerning the right to freedom from discrimination. In this light, a state’s contention – as the agent of the total representation of its people – that it defends cultural sovereignty does not stand, if it does not account for the diversity inherent in the constitution of its statehood. Taking Asian-value arguments as an example, I argued that the Asia-as-method approach highlights the special characteristics of cultural politics in East Asia on the one hand, and on the other, a rejection of selective interpretations of history (Chen, 2010).

The disappearance of the agenda item, because of a consensus that it ‘never existed’, may not be legally important, but it is sociologically so. From the perspective of the sociology of nothing, it signifies the danger of international law’s sovereignty assumption, which omits the existence of non-normative and thus undesired nationals. The consequence of that disappearance is effective, reinforcing the violence of representation against SGMs by reaffirming states as the only legitimate agent of practising cultural relativism.
Concurrent with the presentation of the lack/absence of agreement is the presentification of polyvocality within local and transnational queer activism, of which Sinophone Asia is an example. A pluralist approach to sovereignty abandons the idea of divided worlds: progressive/primitive, liberal-totalitarian, knowledge producer/receiver etc. Thus, what Scott (2018: 10) calls ‘decision avoidance’ occurred at the WHO meetings, through which states’ decision not to act, overlapped with their neglect regarding the existence of multiple ‘populations’ rather than simply ‘a population’.
Chapter Five. Ignoring Non-Identity out of the Lack of Definition

Having linked the state’s total representation and its omission of diversity, I now explore the issues regarding the definition of ‘sexual and gender minorities’ (SGMs). This chapter aims to address the lack of a universal definition of groups of people suffering minority stress and health inequities, including LGBT populations and other non-LGBT SGM members. As argued earlier, the lack of a definition of the affected communities indicates the absence of a way in which that can identify all of the SGMs in different societies, also suggesting a strong desire for such an identification that reflects a longstanding scientific curiosity about sexualities and gendered bodies. Locating this situation in international law and drawing on postcolonial and transnational queer studies, I will explore the reasons for the unreachability of a global definition. In terms of rights-holding status for health equity, I consider the need for a reconceptualisation of the notion of ‘SGMs’, being capable of encompassing people of ‘non-identity’, in Scott’s (2018) terms.

One reason why ‘SGMs’ are difficult to define is confusion between what people do/don’t do and who they are/aren’t. Sexuality may form an integral part of our identity, but that concept is useful in law only when judging one’s ‘behaviour’, since the law is uninterested in one’s inner experiences – desires and feelings – as long as they are perceived as not affecting others (Waaldijk, 2013). National delegates’ narratives in the WHO meetings also demonstrate the varied perspectives upon identity/behaviour divide. This divide can be paradoxical for people who undo, or simply don’t do, sexual and gender identities as expected, for instance, those who are drag, asexual, or non-binary (Muñoz, 2000; Dawson et al., 2018; Darwin, 2017). The growing visibility of these experiences has challenged the contemporary social movement approach to the recognition of sexual and gender ‘identities’. Informed by the sociology of non-identity, which emerges from either disidentification or non-identification process (Scott, 2019a), ‘SGMs’ attempt to include those who are ‘unmarked’ in everyday life and hence invisible in human rights discourse.

Regarding health disparities, I would like to take my experiences of working with tongzhi community organisations as an example. In Taiwan, despite the legal prohibition of

19 They include, among others, the Taiwan Gender Queer Rights Advocacy Alliance and Taiwan Tongzhi Hotline Association. In Taiwan and other Sinophone societies, tongzhi is a term that encompasses non-normative sexualities and gender expressions. Beyond the notions of homosexuality and transgenderism, tongzhi is a cultural product that blurs the line of morality/immorality by borrowing the positive reference
healthcare discrimination, many SGM members avoid seeking medical care due to ‘anticipated’ clinical prejudices concerning their lifestyles and bodies. For instance, health professionals would imply a link between their genital infections or mental issues to ‘indulgent’ sex life or ‘unstable’ relationships, or presume these health conditions as occurring in a heterosexual relationship. The history that related non-normative sexualities to mental and childhood illnesses in the 1950s and later the ‘gay cancer’ (AIDS) in the 1980s (Chi, 2015) suggests that tongzhi in contemporary Taiwan encounter much subtle discrimination in many aspects of everyday life despite the enactment of a series of gender/sexuality equality legislation. This made me consider that SGMs should be entitled to a particular protected status, which is theoretically capable of addressing the vulnerable positions, including implicit ones, of SGM members in varied contexts.

In this chapter, I first examine the discourse concerning ‘sexual orientation, gender identity and expression’ (SOGIE) developed in international law and present a genealogy of how the international community has addressed issues regarding human sexuality. In this regard, the Yogyakarta Principles (2007) and the Yogyakarta Principles plus 10 (2017) are considered the most important texts, which offer references to relate the SOGIE discourse to international human rights instruments (Thoreson, 2009). It is also important to look at the documents produced by the UN human rights bodies, which make, through citations, these non-binding ‘principles’ interpretatively authoritative. Here I mean the documents adopted by the treaty monitoring committees, such as the Committee on Economic, Social and Cultural Rights (CESCR), the Human Rights Committee (HRC), the Committee on the Rights of the Child (CRC) and so on. I also look into those produced by the UN Charter-based bodies, including the Special Rapporteurs and Independent Experts on various issues, appointed by the Human Rights Council (UNHRC).

To address the insufficiency of the LGBT-plus rights framework of international law, which recognises people’s SOGIE-based rights from an individualistic perspective, I propose to theorise ‘SGMs’. The identity-based understanding of gender and sexuality may produce exclusionary effects against those who do not own or pursue a fixed sexual

of that term from the Mandarin language (comradeship) and the Japanese expression (like-mindedness) (Chi, 2017; Chou, 2000).

20 This chapter will not deal with the problems around SGM health disparities in detail. An elaboration on the conceptual and legal characterisations of the rights-holding status for ‘SGMs’ is nonetheless essential for the later discussion on related health issues (see Chapter 6).
and gender identity, or those whose sexual stigma is not directly related to heterosexism but other sexual and social norms, for instance, those who engage in polyamory (Aviram, 2008). Indeed, much of the literature has employed the terms sexual and/or gender ‘minorities’, singly or jointly, but they are used mostly as a descriptive reference to the disadvantaged situation – without exploring the potential legal implications – that non-heteronormative individuals commonly share (e.g. Fellmeth, 2008). With very few exceptions (e.g. de Vos, 2015; Axelson, 2016), a collective rights-holding status deriving from the ‘minority’ discourse, which has global resonance regarding various types and forms of sexual stigmas and gender stereotypes in different social contexts, has seldom been considered and hence is under-theorised.

Though in general, stabilisation might be one of the most important functions of law, international human rights law, which also prefers conceptual certainty, does not simply equate uncertainty with a justification for the absence of rights, as discussed previously. Yet, along with the incorporation of SOGIE-related notions into international human rights law, queer critiques have been cautious about the legitimization process. Queer theory contains multiple theoretical standpoints, which however share a similar goal – to overturn, by critically reinterpreting, the realities that we take for granted based on the habitus in which we are socioculturally positioned (Butler, 1993; Jagose, 1996). In particular, queer scholars hope to produce ‘queer counter-narratives’, an alternative interpretation of history and law concerning sexuality and gender (Getsy, 2017) stemming from ‘a positionality vis-à-vis the normative’ (Halperin, 1997: 62). Queer interventions aim at exposing the law’s complicity in sustaining the dominant ideologies regarding sex/gender and sexuality, and simultaneously, pursuing ‘an experiment with the possibility of going beyond them’ (Foucault, 1984: 50).

Both queer critiques and the postcolonial/decolonial critiques of queer theory are important for theorising ‘SGMs’ because they represent the tension between the presence and absence of different rights-holders in history. Defying the mainstream ideology of gender and sexuality, queer theorists embrace uniqueness in rejecting the enforcement of normalcy, which often de-politicise the existence of alternative desires and imaginations (Getsy, 2016; Halperin, 1996). Through re-politicising the normalisation process and related policing, queers fight to regain its agency in the international legal world – ‘to de-normalise it and destabilise its assumed naturalness’ (Wilkinson, 2017: 239). As Edelman
(1995: 348) points out, queer theory is utopian and ‘its realization remains impossible’; in practice, it involves with memorialising the lost spaces and exploring new ones, for those sexual practices and gender bodies that are supposed to be discreet, hidden and unspeakable to be represented and remembered (Muñoz, 1996). Thus, the theorisation of SGMs desires to be more open-ended in retaining both the political and the idealistic elements of queer theory.

Conventionally, legal status such as a ‘minority’ requires people to fulfil the following criteria: an objective element – the existence of a shared culture – along with a subjective element, whereby a group of individuals self-identify as members of that minority or have beliefs concerning practising such cultures (Barzilai, 2003). From this perspective, I also contend that the absence of a global approach to defining sexual and gender ‘others’ cannot justify denying their actual existence, as held by some WHO member states. It is noteworthy that in international human rights law, the generalisability of the ‘victimhood’ of structural discrimination is a sufficient, rather than a necessary, condition of an equality claim (Bayefsky, 1996). Therefore, the theorisation of ‘SGMs’ proposed here calls for a shift concerning minority rights status from identity (identification) to sexuality- and gender-related experiences. That is, an SGM group consists of individuals whose sexual practices and gender expressions differ from the normative standards in the society in which they live.

I. The SOGIE-related discourse and queer critiques

In this section, I first analyse the use and impact of the terminologies regarding SOGIE and related LGBT identity discourse in international law, which, indeed, are not completely absent, as contended by some WHO member states (WHO-EB, 2013). There has been a long history of states attending to issues around sex/gender and sexuality, especially in the realm of international health policymaking. Principally there are two important cues: one takes sex and sexuality as an intrinsic part of identity, and the other focuses on sexually transmitted infections (STIs). Both have been supported with reference to medical knowledge. The former encompasses the changes in medical attitudes towards transgenderism and homosexuality, for example, the revisions reflected in the updated *International Statistical Classification of Diseases and Related Health Problems* (ICD). The latter pertains to the definition HIV/AIDS cases, among others, since the mid-1980s, which also drastically affected SGM communities, for example, the
conscious separation of discourses regarding sexual practices – men who have sex with men – and sexual identities – gay men (Young and Meyer, 2005; Khan and Khan, 2006; Martinez-Lacabe, 2019).21

The SOGIE-based identity narratives emerged later in the fields of international health and international law. There has been increasing recognition of LGBT-plus identities and rights in regional courts and treaty-based mechanisms of human rights. As the LGBT rights movement prospers globally, though disproportionately focused on urban areas (Plummer, 2015), it is now well acknowledged that sex/gender and sexuality are a significant part of determining our social positions concerning attaining wellbeing, according to the Special Rapporteur on the right to health (Hunt, 2004). Yet, those identity categories may overlook certain unidentifiable others who are also subject to sexual stigmas and gender stereotypes. SGM groups are not only different from each other but also each group is diverse within itself, for instance, people with non-binary or fluid gender identities, and people who engage in sexuality-based subcultures, such as sexual fetishism and non-monogamous relationships. As an alternative to the limited categorical approach to identity politics, the use of the term ‘SGMs’, I argue, encompasses those who possess, and those who do not possess, a particular sexual and gender identity.

Among the different concerns, queer and symbolic interactionist theorists concurrently agree that acronyms such as LGBT-plus (including e.g. intersex, asexual, pansexual and questioning/queer), which attempt to be inclusive, are problematic because of their assumption that everyone ‘has’ a sexual/gender identity (Gross, 2007a) and that identity is a fixed attribute to ‘have’ (Dawson et al., 2018). For instance, to include ‘Q’ (people of questioning [still exploring] or queer [resisting any] identity) to save a space for all other possibilities is an awkward trend. It assumes a timeless category for everyone – all are becoming, but they will one day settle as being something/someone (Ahmed, 2006), leaving no room for non-becoming and non-being (Scott et al., 2016). The compounding acronyms also fail to represent those whose eroticism and intimacy involve little regarding self-identity affirmation, but rather, involve relational interaction (Liu and Ding, 2005), for instance, asexual and polyamorous experiences that are not necessarily related

21 Here I focus more on the ‘identity-based’ definition than the ‘behaviour-based’ definition, as the former has greatly influenced international human rights discourse. The latter will be discussed in detail in Chapter 6, with regard to global public health discourse.
to the identity construct (Rubin and Butler, 1994). A narrative reported by Mahdavi’s (2012: 223) ethnography in post-revolution Iran is thus remarkably provocative:

In Iran, we don’t say okay we are gay or we are, what? Lesbian. No, that’s so American of you to even ask such a question. We are not homosexual, we are not heterosexual. We are just sexual. Get it?

Instead of treating sex/gender/sexuality as a stable part of identity, poststructuralist queer theorists argue that these ‘human’ characteristics are constructed symbolically and materially in a particular time and space (Halberstam, 2005; Dinshaw et al., 2007). Namely, they are not as consistent as the SOGIE-related discourse assumes. Butler (1999) has praised transgressive performances that subvert the prearranged gender dispositions upon our bodies, as undoing heterosexism – or, doing nothing to conform to heteronormativity in terms of Scott’s (2018) ‘commissive’ actions. This has foregrounded an alternative path for people to unsubscribe from any particular form of gender expression that renders gender acts performative pending the desire for recognition (Butler, 1988). Outside academia, activists understand ‘queer’ as a strategy to repel the erasure of certain SGM members’ lived experiences that do not align with the ‘assimilationism proposed by many in gay and lesbian communities who aspire to be just “normal”’ (Getsy, 2016: 12). These radical arguments, along with Sedgwick’s (2007) deconstruction of the heterosexual/homosexual dichotomy, have provoked much debate to date, in and beyond the West (Huang, 2011; Huang, 2007).

i. ‘Sexual orientation’ and ‘gender identity’ in international law

The constitution of an ‘identity’, with which the conceptualisation of specific elements and their grouping are involved, requires explicating the intensity of relations between the elements fundamental to the identity grouping. This is generally the starting point for formulating an identity politics (Rubin, 2011a), including defining sexual orientation and gender identity. The definitions offered by the Yogyakarta Principles are referred to here, because they are regarded as the most significant instrument on SGM rights, having been developed by 29 distinguished human rights experts in 2006. International documents have cited these Principles, especially the UN Human Rights Council’s universal periodic review and special procedures (O’Flaherty, 2015). These documents are not legally binding themselves, but are considered authoritative, through achieving ‘the necessary clarity and the essential consistency of international law’ (ICTJ, 2010, para. 66), according
to the judgement of the International Court of Justice on the Ahmadou Sadio Diallo case.\textsuperscript{22}

From this perspective, the Yogyakarta Principles are significant in terms of the legal process regarding the recognition of ‘sexual orientation’, which is defined as:

Each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender (emphasis added).

Moreover, the definition of ‘gender identity (and expression)’ is:

Each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms (emphasis added).

These definitions broaden the scope of the LGBT-plus formula, by replacing particular labels with the two more global notions as the grounds for human rights protection. This has been done to address the exclusionary effect of the LGBT-plus categories, which can hardly represent or explain SGM experiences in other cultures (Weeks, 2007). For example, for communities where three (e.g. the Samoan fa’aafafine and Balkan sworn virgins) or more genders (e.g. the five gender roles that existed in the Indonesia Bugis community) are recognised (Lorber, 1993; Fausto-Sterling, 1993), the LGBT-plus formula is apparently insufficient. As for the SOGIE rights discourse, however, the construction of ‘sexual orientation’ and ‘gender identity’ are, subject to little conceptual examination. Yet, these two notions are trapped in their overreliance on the concept of ‘gender’ (Waites, 2009), making these three concepts interrelated and subject to varied understandings of ‘gender’ in different contexts (Hemmings, 2007; Risman, 2009). Take the revised edition of the International Technical Guidance on Sexuality Education (UNESCO et al., 2018) as an example, which defines ‘gender’ as:

The social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes,

\begin{footnote}
The case was concerning the legality of the Democratic Republic of the Congo’s (DRC) detention and expulsion of Mr. Diallo, a decades-long resident in the DRC of Guinean nationality. In this case, the IJ considered the non-judicial human rights mechanisms’ (e.g. the HRC) interpretations of rights as an integral part of international jurisprudence.
\end{footnote}
opportunities and relationships are socially constructed and are learned through socialization processes (emphasis added).

In addition to the obvious exclusion of gender non-binary and asexual people, binding different sexual and gender ‘minority’ experiences with a particular notion ‘gender’ risks losing that notion’s subversive potential for re-theorising social identity (Scott, 1986; Scott, 2010). Although the Yogyakarta Principles include a more diffusive concept of gender expression, leaving the possibility for including diverse situations in which one is gendered (Thomas, 2006), they still assume a universal definition of ‘gender’. In contrast with the identity-construct approach, the orientationalist view of sexuality, now seen as an essential aspect of human nature (Wilson and Rahman, 2005), originated from medico-psychological theories that created a ‘taxonomic tool by which human beings are subdivided’ (Wilton, 2004: 20). This approach was adopted quickly in jurisprudence for conceptual certainty in law, but the presumed omnipresence of sexual orientation has in turn denoted the rigidity of gender categories. Unlike sexual orientation that has gained faster recognition in law, gender identity is considered more problematic due to its involvement with subjective experience, which can be a process rather than a resolution.

After all, gender or sexual ‘non-identity’ is omitted from human rights legal discourse, as its existence would be fundamentally contradictory to identity-based rights claims. I thus ask: is it possible or desirable to group people with identical ‘elements’, ranging from attraction to behaviours and relations, regardless of their differences (in orientating the sexualised thoughts), or encompassing sensibilities, feelings and lived experiences in the social world (through identifying the gendered bodies)? In particular for the latter, the assumption that one’s ‘deeply felt internal experience’ does not conform with ‘the sex assigned at birth’ has reinforced the sex/gender dualism and denied the possibility of transgender ‘non-identity’ (genderqueer), which, theoretically, is not – or does not become – male or female (Otto, 2013). Terminologically, trans-gender makes difference prevail over an identity (Garner, 2014); nonetheless, it is arguably considered less practically useful for political mobilisation (Stryker, 1998) and overburdens the transgender rights movement with ‘queer utopianism’ (Valentine, 2007). I then turn to explore the legal and political potential of the notion of ‘minority’ as discussed later, to avoid identity fixation.
ii. The rights discourse(s) about sexualities in international law

States of the international community have changed their attitude towards issues around sexual and gender diversity over time from being indifferent to being enthusiastic, because of different social movements. One of these pertains to the development of the SOGIE discourse in the international human rights mechanism, traceable back to the Toonen case before the HRC. In December 1991, Australia ratified the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), allowing individuals to appeal to the HRC based on the rights contained within the ICCPR. On the day it came into force, Mr. Toonen filed a complaint, challenging the then Tasmanian Criminal Code, which criminalised sexual contact between adult men. At that time, Tasmania was experiencing a ‘large-scale, public, popular mobilisation of anti-gay feeling’ (Willett, 2013: 224). The Australian federal government acknowledged that ‘consensual sexual activity in private is encompassed by the concept of privacy in article 17’ and requested the HRC’s guidance on ‘whether “sexual orientation” may be subsumed under the term “...or other status” in article 26’ (HRC, 1994b, paras 6.2, 6.9).23

The HRC upheld Mr. Toonen’s contention, holding that Tasmania’s law had interfered with Toonen’s privacy without reasonable grounds. Notably, the HRC considered sexual orientation as being included in the reference to ‘sex’ related to the non-discrimination clause. The laws at issue constituted violations of the ICCPR, and the appeal of such legislation would be an effective remedy. The HRC also rejected Tasmania’s public health argument, which asserted that the criminalisation of male homosexuality could prevent the spread of HIV/AIDS (paras 8.4-8.6). This argument, nonetheless, is still held by many states regarding sodomy legislation, although evidence has shown that punitive measures would ‘impede public health programmes by driving underground many of the people at the risk of infection’ (HRC, 1994b, paras. 8.5; see also UNAIDS and UNDP, 2009; Ahmed et al., 2011). Indeed, the Toonen case drew worldwide attention by bringing homosexuality-related issues into the UN (Tahmindjis, 2005), notwithstanding the

23 ICCPR, article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (emphasis added).
jurisprudential progress in the European Court of Human Rights since the 1980s, for example, *Dudgeon v. United Kingdom* (1981) and *Norris v. Ireland* (1988).

International law governs the legal relationships between subjects that are entitled to international rights and bear pertinent obligations; traditionally, the law deals with what Bentham (1781: 236) calls, ‘the mutual transactions between sovereigns, as such, for the subject of that branch of jurisprudence which may be properly and exclusively termed international’. While historically only states fulfilled all of the criteria of that fundamental status, individuals have gained a greater space in international jurisprudence, in terms of both rights and duties, since the end of the Second World War (Clapham, 2010; Parlett, 2011). However, only since the 1994 *Toonen* case has homosexuality become not just a European and American issue but an international concern with respect to recourse to the regime of human rights law. Almost at the same time as the introduction of the SOGIE discourse in international law, ‘sexual rights’ were comprehensively articulated to combat all forms of violence and coercion against bodily integrity and sexual autonomy, and thus sexual health, freedom, safety and pleasure were reframed with a human rights-based approach (Corrêa et al., 2008).

The dual roles that individuals play in international law (as rights-holders against states and stakeholders of global policies) are relevant when the international community deals with issues around sexuality as, separately, *sexuality-related subjects* and *sexuality-related things*, as shown in Figure 10. Both roles are resonant with the LGBT and the women’s rights movement. The campaign for liberating women’s bodies through sexual rights discourse was also contentious between states at the 1994 International Conference on Population and Development (ICPD) in Cairo and the 1995 Fourth World Conference on Women in Beijing. Due to the increasing attention paid to HIV infection among heterosexual women and maternal mortality by the international community in the 1990s, the conceptualisation of ‘sexual rights’ was then limited to a focus on women’s sexual and reproductive health (Petchesky, 2000; Parker, 2007). Undeniably, huge progress was still made with the ICPD Program of Action, which recognises women’s ‘right to a…satisfying sex life’ and affirms that sexual health is, beyond STI-related care, ‘the enhancement of life and personal relations’ (UN, 1995, para 7.2; Saiz, 2004).

The distinction between the framing of the rights regarding, respectively, *sexuality-related subjects* and *sexuality-related things* can be seen, in a simplified manner, as
‘LGBT rights as human rights’ and ‘sexual rights as human rights’. Many civil society organisations attempted to include sexual freedom, as a source of physical and mental wellbeing, in the package of sexual rights, for instance, the *Valencia Declaration on Sexual Rights* adopted by the XIII World Congress of Sexology in 1997, and the *Declaration of Sexual Rights* adopted at the 2014 World Association for Sexual Health. In contrast to the SOGIE discourse, which resorts to an identity-based approach, the sexual rights discourse draws on new rights that are considered to be needed by every human being (not just heterosexual women), such as sexual health, intimacy and pleasure (Corrêa and Parker, 2004). However, the universalist approach to sexual freedom was not welcomed by states and was resisted (Sheill, 2008). In the end, sexual rights were made, due to state-centrism of international law, unable to embrace non-heteronormative sexualities (Girard, 2007; Coomaraswamy, 1994).

![Figure 10. The differential traces of sexuality-related human rights](image)

While the sexual rights discourse fails to promote ‘the right of all persons to express their sexual orientation’ and address people’s ‘fear of persecution, denial of liberty or social interference’ (Hunt, 2004, para 54), the UN human rights bodies have taken up an active role in protecting non-heterosexual persons. Since the *Toonen* case, the HRC has referred to the non-discrimination clause on numerous occasions when discussing sexual orientation issues.24 Other treaty-based Committees responsible for respective human rights treaties have also constantly pronounced their concerns regarding discrimination.

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24 See e.g. the HRC Concluding Observations upon Sudan (1997, para 8); Zimbabwe (1998, para 24); Lesotho (1999, para 13); Egypt (2002, para 19); Poland (2004, para 18; 2005, para 19).
based on sexual orientation, such as the CESCR, the CRC, and the Committee against Torture. Though often contested by states, these Committees form an integral part of the international human rights regime and have a strong impact, especially for civil societies, on the development of legal discourse (ILA, 2004). In the case of the SGM rights social movement, these Committees’ authority and capacity in reviewing state activities – including their actions and inactions – have contributed to defining the SOGIE-related concepts (ICJ, 2007) and accumulating relevant jurisprudential and quasi-judicial practices (Waaldijk, 2009).

II. The international construct of SOGIE’s legitimacy

Despite the progress, the practices of interpreting SOGIE are not always consistent. The variation in choosing legal sources stemmed from the lacuna in international treaties, which, conventionally, had little mention of sexuality. Interpretations were made case by case depending on the subject matter, for example, ‘sexual orientation’ was sometimes referred to as part of ‘sex’ in a broad sense and sometimes as implicitly included in ‘…other status’. In this respect, civil society organisations have advocated the international use of SOGI(E), such as in the 2006 Declaration of Montréal, adopted at the International Conference on LGBT Human Rights, which mentions SOGI (without gender expression at that time) as distinct categories of non-discrimination. The 2008 Declaration of Principles on Equality, adopted by the Equal Rights Trust and endorsed by the Parliamentary Assembly of the Council of Europe in 2011, took the same position. These documents, however which link SOGI equivalently to LGBT persons, have profoundly influenced international and domestic law, for instance, the Judicial Yuan Interpretation No. 748 published by Taiwan’s Constitutional Court in May 2017 regarding the legality of same-sex marriage.

As mentioned, international law addresses sexuality issues with two strands of concerns: a protected feature of identity (sexuality-related subjects, such as LGBT-plus or SOGIE-
based non-discrimination) and a significant part of wellbeing (sexuality-related things, such as sexual health, autonomy, pleasure). The former set has become important for SGMs in seeking rights protection. Since the codification of the International Bill of Human Rights, the international human rights system has been laced with heterosexist and cisgender assumptions, which ‘make heterosexuality seem not only coherent…but also privileged’, to use Berlant and Warner’s (1998: 548) words. The submission of the Statement on Human Rights, Sexual Orientation and Gender Identity (A/63/635), to the UN General Assembly (UNGA) on 18 December 2008, sponsored by 66 states, demonstrates state practices, though not universal, in confirming the legal status of SOGI. Foreseeably, it confronted an opposing statement (A/63/663) on behalf of 57 states, which challenged the legal basis of SOGIE-related rights and paralleled homosexuality with paedophilia. Despite the failure to adopt any resolution, the debate was a significant moment in internationalising SOGIE issues.

In fact, much advancement in making SOGIE part of the global human rights agenda is attributable to an active UN administration, owing to the 1993 Vienna Declaration and Programme of Action (Liao, 2008). That document, according to Teng (2016), signifies the end of the Cold War and the start of a new era, where human rights constitute the overarching principles of international law (see also Normand and Zaidi, 2008). At an international conference on human rights and SOGI, which took place almost at the same time as the EB meeting, the then UN Secretary-General Ban Ki-Moon (2013) commented that the struggle for LGBT rights is ‘one of the great, neglected challenges of our time’. In July 2013, the Office of the UN High Commissioner for Human Rights (OHCHR) launched the Free & Equal campaign, in response to its first report published in June 2011 on the investigation of state-sponsored discrimination against people based on SOGIE. In July 2014, the UN Secretary-General announced that the UN, as an employer, would extend equal benefits to staff members who have entered into a same-sex partnership or marriage in jurisdictions where these are legal.

Nowadays, the UN and other international organisations become the main field in which states contest and negotiate SOGIE-related rights. This ranges from human rights treaty bodies, to the UNGA and its sub-organ UNHRC (established in 2006 to replace the original Human Rights Commission), and the administrative bodies such as the Secretariat. An example is a joint statement on Ending Violence and Discrimination
against LGBTI People endorsed by 12 UN-related bodies in September 2015.\textsuperscript{28} Prior to that, 25 governments and 5 multilateral institutions sponsored a Joint government and multilateral agency communiqué to advance the human rights and promote inclusive development for LGBTI persons in November 2014, committed to incorporating LGBT issues in international policymaking agendas. The International Olympic Committee (IOC), in December 2014, approved Recommendation 14 in the Olympic Agenda 2020, to include non-discrimination on the grounds of ‘sexual orientation’ regarding the sixth Fundamental Principle of Olympism, which connotes international cooperation and global solidarity. In January 2016, the IOC further declared that, in terms of transgender rights, female-to-male athletes would be permitted to compete without the restriction of sex reassignment surgery.\textsuperscript{29}

Through repeated international practices, SOGIE issues have gained increasing visibility in multilateral forums; this phenomenon has pushed the boundary of international law towards national legal systems. In effect, international forums have become the primary resort in addressing domestic problems, such as, for instance, legal tolerance of non-consensual medical interventions (Madrigal-Borloz, 2018). Such an international legitimation process of SOGIE affirms particular groups of individuals due to the emphasis on the nexus between distinctive ‘identities’ and equality. Nonetheless, for those who are left out due to having no corresponding identity, ‘their plight is not that they are not equal before the law, but that no law exists for them’, to use Arendt’s words (1951: 293). In the case regarding sex/gender and sexuality issues, the existence or absence of relevant legal discourse relies on the societies to which the SGM members belong, national governments, and most importantly, the scientific community, which represents the authority in knowledge production. By rationalising one’s sexual desires and intimacies, such a human rights project has nevertheless caused unease for many members involved in the fight.

\textsuperscript{28} They are: International Labour Organisation, OHCHR, Joint UN Programme on HIV/AIDS (UNAIDS), UN Development Programme (UNDP), UN Educational, Scientific and Cultural Organisation (UNESCO), UN Population Fund (UNFPA), UN High Commissioner for Refugees (UNHCR), UN International Children’s Emergency Fund (UNICEF), UN Office on Drugs and Crime, World Food Programme (WFP), UN Women and the WHO.

\textsuperscript{29} However, it should be noted that, in the same statement, the IOC still requires male-to-female athletes must at least be receiving hormone therapy.
III. The theorisation of ‘SGM’ as rights-holding status

How, then, can a human rights movement for SGMs incorporate non-identity? The SOGIE-related discourse, which had the potential to transcend categorical identity politics, has become static and been linked back to LGBT-plus when being translated into international law, due to a desire for the legal identification of rights-holding status. Yet, the identities based on gendered and sexual experiences that people narrate and perform do not come from a linear history, and at times, there are ruptures regarding the making (or unmaking) of sexual and gendered subjects (Chiang, 2012). Thus, the presumption of a fixed identity neglects the differences between individual lived experiences and leaves little room for the refusal of a particular identity (Foucault, 1997a). This is the reason for a conscious choice to employ the concept ‘SGMs’ here. Prior to exploring the concept’s richness, in this section, I would like to identify the exclusionary effect of identity politics and elaborate on how to locate the concern in the field of international human rights law, to pursue an anti-essentialist conceptualisation.

The problem with current SOGIE-related rights discourse is its limitations regarding our perception of, and attention to, certain ‘forms’ of gendered and sexual subjects, due to the disposition of law, where definiteness prevails over uncertainty (Stychin, 1995). On the other hand, scientific curiosity about the causes of human sexuality, gender tendency and sex characteristics has boomed, especially in the 21st century (Rosario, 2009), and has been used to justify, for instance, ‘gay gene’ studies and sometimes requests for conversion therapy (Rosario, 2002). In response, the Special Rapporteur on the right to health once stated that, ‘sexuality is a characteristic of all human beings’ that defines ‘who a person is’ (Hunt, 2004, para 54). However, this statement implicitly denies the existence of asexuality and neglects other sexualities in which one’s personal identity is not involved or does not play a significant part, such as sadomasochism. Yet, we can hardly say that people who engage in these intimate relationships are free from social stigma and minority stress – the primary causes of health inequity among SGM populations.

i. Against the exclusionary effect of identity politics

Due to identity politics based primarily on the hetero/homosexual and male/female dichotomies, the history of the SGM rights movement has often excluded and ignored bisexual, transgender (and lately intersex) people. These lessons have informed me that
defining the affected communities is not necessarily harmful as long as the definition is not a closure. The tension between the usefulness of identity politics versus the reality of incompatible differences has always existed (Weeks, 2014). It arose from the principle of *resemblance*, which Foucault (1994: 21) vividly describes as ‘a sort of convenience that has been freed from the law of place and is able to function, without motion, from a distance’. The current sexual and gender identity-based discourse, nonetheless, should not prevent social movements from stepping forward, and indeed, there are doubts about the lack of representation of sexuality- and gender-based subcultures in international legal discourse. Hence, the presumption that identity formation is necessary for all SGMs risks producing exclusionary effects against others who are neglected or less understood.

In terms of identity formation and its philosophical link to the contemporary human rights discourse, Honneth’s (2012) recognition theory is influential. He considers that the psychosocial aspect of self-esteem in relation to one’s ability to *recognise* others has fundamental significance in ‘a politics of respect’, to use Thompson’s (2006: 44) words. Due to its presumption of the existence of an ultimate and accomplished status of full recognition, Honneth’s ‘recognition’, however, cannot explain the situations in which *identity* formation is not involved, and in which conferring recognition itself repeats violence against autonomy. While this theory is important for identity recognition, it neglects the possibility of one’s desire to undo recognisability – the desire not to be recognised, in McQueen’s (2015) words – when people find difficulty to live with the given identification system, even just for a temporary period of time. Nonetheless, respect for non-identity seems implausible for Honneth, even in the circumstances in which recognition becomes an imposition of authority bypassing a critical examination and thus compulsory and harmful (Butler, 2004; McNay, 2008).

When the right to be recognised *with an identity* are translated into domestic practices, identities are employed to achieve ‘social citizenship’ – stemming from the links between a person, their fellow citizens and the state (Lewis, 2004) – and guarantee one’s rights to social inclusion and political participation (Weeks, 1998). However, on the one hand, social inclusion is a process rather than a result, and one that often goes together with one’s selection and the exclusion of others, leading to the stabilisation and reproduction of social stratification (Allman, 2013). On the other hand, as Butler once commented in relation to Honneth’s proposition, misrecognition injustices occur when recognition per
se becomes an acute problem for those ‘who can only enter the existing structures of political representation by assuming a position as a subject that actually effaces their historical and cultural history and agency’ (Willig, 2012: 140). Concerning the differential distribution of recognisability, it is important to consider and interrogate the operation of powers as well as its effects upon the ‘regulated non-being’ (Willig, 2012: 141; emphasis original).

Social exclusion, the primary target of seeking recognition justice, is defined comprehensively as ‘the lack of recognition of basic rights, or where that recognition existed, lack of access to political and legal systems necessary to make those rights a reality’ (Burchardt et al., 2002: 3). In this light, the creation of sexual citizens aims to combat disenfranchisement, because of one’s sexuality, from enjoying the rights that a state promises to its people (Richardson, 2015). But, the process that goes along with ‘normalisation’ of specific identities is not without danger. How law defines sexual and gendered rights-holding subjects will significantly influence the narration of one’s self. Yet, interactively, the production of such story-subjectivity may be subject to ‘a set of decisions and impositions that reduce the uncapturnable complexity of our sensual and emotional responses to a convenient story and history’ (Hall, 2009: 1). As Plummer (2017: 191) acknowledges, ‘there are no “pure” stories’, but such incoherence – impurity – is, very often, not welcomed and even repaired by the narratives of ‘successful survivors’ (Schwarz and Britton, 2015: 67).

To identify the risk of such strategic essentialism, perhaps for political reasons and practical concerns of law, is to uncover a ‘new persecution of the peripheral sexualities [that] entails an incorporation of perversions and a new specification of individuals’ (Foucault, 1978: 42). The making of sexual and transgender citizenship occurred because sexual and transgender issues – unlike class, gender and race – had never been a priority on the welfare agenda (Richardson, 2000). It became relevant when an LGBT social movement arrived at the stage beyond decriminalisation and demedicalisation. The way in which strategic essentialism works may function better for SGMs’ negative individual rights, such as freedom from punishment and interference. Yet, its flaws are revealed regarding the positive aspect of rights (such as care needs, spaces for cultural practices, etc.), which require differential understandings of social citizenship. The dichotomous approach to recognisability/non-recognisability and, hence, social inclusion/exclusion
cannot capture the situation of being a stranger or in exile in terms of rights protection due to the fear of not being socioculturally accepted (Botti and D'Ippoliti, 2012).

ii. Locating SGMs in international human rights law

A hierarchical system has gradually categorised people into standard citizens, normalised citizens, the becoming-normal, and the rest. Among the types of sexuality, there are classes, in which transgenderism was once ‘grouped with the sexual perversions when modern sexological taxonomies took shape’ (Rubin, 2011b: 215) until the disentanglement of sexuality and gender identity in the early 1990s (Stryker, 2008). Similarly, the notion of sexual orientation, referring to one’s erotic desire towards a particular sex/gender, casts out, for example in the US, other sexual and intimate practices that are not just about one’s self but related to relational practices (Rubin, 2002), such as sadomasochism (Langdridge and Butt, 2004) and polyamory (Klesse, 2014). These other sexualities, which are seen as a threat to the social order and political stability, as homosexuality used to be, have become the objects of scientific inquiries, on which biomedical, psychiatric and legal judgements are based (Foucault, 1978; Lee, 2019b). While story-subjectivity is therefore produced, and perhaps pending the recognition in terms of knowledge production, the hierarchisation of story-subjects would follow.

This is where and why queer theory and queer studies can intervene – as a Husserlian ‘presentification’ practice, attending to law that has excluded non-identity. Here, I resort to an often-ignored legal notion – *opinio necessitatis*, which denotes the ‘need’ to reframe legal subjects deriving from the fact that the rights, as such, do not properly serve their objectives (Mendelson, 1996). This notion, contrasting with *opinio juris* that indicates a belief in the existence of law, plays an important part in the process of reimagining and creating the law. To be more specific, *opinio necessitatis* stems from ‘an assertion of political necessity and reasonableness’ (Mendelson, 1998: 271). The development of new rights and new rights-holders, through international recognition of both the significance of sexuality-related things and the equality between sexuality-related subjects, actualises the potential of human rights norms’ adaptability to the urgent need for social change. That said, perhaps unintentionally due to the fundamental thesis regarding identity-based recognition, the law always seeks to *identify* emergent subjects, which, however, has permanently omitted the existence of non-subjects.
In addition to non-identity, the domination of the universal SOGIE discourse in law is also insufficient to cover the SGM groups whose meanings are complicated by the culture they emerged from, such as tongzhi in Chinese and takatāpui in Māori. Despite the absence of legal recognition regarding this kind of non-universal understanding of gender and sexuality, from the perspective of opinio necessitatis, the emergent awareness of the existence of historically and socially disadvantaged people generates the necessity of reimagining the law. The application of opinio necessitatis in the like situation is not new and has gained success in making new law. For example, persons with mental and physical disabilities won victories to code their needs into rights in the existing system prior to the final adoption of the Convention on the Rights of Persons with Disabilities (Kanter, 2015). Another example could be the international attention to protecting persons with mental illness because of a persistent, yet unfinished (OHCHR, 2017), destigmatisation social movement that requests others to consider contextual accounts of identifying one’s insanity/sanity (Perlin and Szeli, 2012).

Rather than replacing SOGIE and sexual rights, I contend that it is necessary to consider ‘SGM’ as a legal concept addressing the limited nature of both discourses. This concept attempts to supplement both discourses with themselves in a reciprocal manner: that is, to undo the ‘identity’ requirement contained within the SOGIE discourse, and to cancel the heterosexist assumption embedded in sexual rights discourse. Recalling the various concerns of queer theorists and activists, the global embrace of SOGIE, especially by international agencies, is not sensitive enough to the social contexts in which SGM communities are located. Here, I attend to the political use of cultural relativism, which reproduces the violence of state representation against SGMs themselves. I also consider including the actors engaging in diverse forms of intimate relationships and sexuality- and gender-based subcultures – regardless of whether they accordingly subscribe to a particular identity or not (Halberstam, 2005). In this light, to presentify the opinio necessitatis concerned with relocating ‘SGMs’ in the present law forms a constitutive part of the lack of related definition.

30 Takatāpui is an umbrella term used by Māori people for all kinds of SGMs in pre-colonial New Zealand, once eradicated due to the imposition of Victorian morality. Recently, the concept has seen a resurgence among those who resist the perpetuated coloniality regarding their sexual identities and gendered bodies (Murray, 2003; Hutchings and Aspin, 2007).
IV. Leaving the uncertainty for the indefinable others

Claiming ‘SGMs’ as a rights-holding category is a presentification practice; it means that such a category does not (yet) exist in law, and to name its non-being performs as a utopian reinterpretation of the present involved with the often-neglected virtual – non-actual, non-pragmatic – dimension of realities. The representation of the members of the presentified SGM communities can no longer be patterned with particular traces, and yet, according to Muñoz (2009), its non-presence cannot be denied either. To clarify, I do acknowledge the use of the term in different disciplines including law, but such visibility has never amounted to a reframing of legal subject in substituting or supplementing LGBT-plus formula. Therefore, I argue to use SGMs, as a human rights subject, to whom no single identity is referred. Rather, SGM subject refers to situations in which people are placed. Who SGMs are is not defined by who they think they are (a priori self-identification) but by how society responds to what they do, in terms of the way they express their sexualities and gendered bodies.

Doing so is to consider the non-SOGIE-related SGMs’ ambivalence to identity-based protection. Since the 1940s, the international community has unprecedentedly agreed on legalising states’ duties to provide their people with an adequate standard of living. The undefined ‘adequacy’ leaves much room for inconsistent state practices in responding to different people’s needs, making human rights theorists have to actively engage in the defining and redefining work (Hoover and De Heredia, 2011). For example, the cumulative list of guaranteed status for non-discrimination is like a stamp album of successful social movements, such as that the legal recognition of SOGIE has given protection for SOGIE-related SGM individuals. The protection gap, nonetheless, lies in those who still struggle with non-conformity with mainstream sexual and gender norms, even between LGBT-plus persons. Many people who engage in certain subcultural practices – e.g. BDSM (Stiles and Clark, 2011), ‘furry fandom’ (Howl, 2017), public sex (Edwards, 1994) – may share LGBT-plus identities, but they are marginalised by LGBT communities because of their ‘kinkiness’, which is considered improper or unintelligible.

The making of ‘SGM’ status aims to address the systematic as well as particular insecurity and injustice suffered by non-conforming individuals due to what they think and do. The social exclusion stemming from sexual oppression and gender binarism, to which SGMs are related, includes also others whose erotic desires or bodily practices are disapproved
of by modern medicine, psychology and law, for example people associated with leather subculture and cross-dressing. To juxtapose ‘sexual’ and ‘gender’ minorities indicates that their issues should be addressed distinctively but not divisibly (Rubin, 2010), to account for the complexity between sexual hierarchy and gender inequality in different societies (Butler, 2009). As Richardson (2007) summarises, the relationship between gender and sexuality is not always the same, and actually has changed dramatically especially since the 1970s when a tension emerged out of different feminist analyses of power, patriarchy and heterosexism. For the pluralised interconnections between gender and sexuality, she invites us to think of their dynamic relationship as ‘the land and the sea, as gender and sexuality respectively’, which constitute the shoreline in which:

Land and sea bleed into each other and are inter-related (they shape each other), but are also distinguishable. This is also a metaphor that enables us to think of the relationship between gender and sexuality as specific to certain localities and historical periods. At different times and places, shorelines disappear and new ones form… New sexualities and genders emerge as others disappear (Richardson, 2007: 470).

From this perspective, SGM members’ precarious situations can hardly ‘be tamed with a unifying politics of representation’ (Lorey, 2015: 109). These considerations, through the introduction to the concept of *opinio necessitatis* as mentioned earlier, are still consistent with contemporary international human rights law, particularly regarding the legal status and protection for members of minority groups. On the one hand, the collectivist understanding of rights forms a discursive assemblage including individuals who share similar situations in terms of social disadvantage due to their non-conformity with mainstream social norms. On the other hand, the conscious choice of not specifying particular categories of sexual and gender subjects is to imagine a ‘stamp’ – to use the previous metaphor of stamp album – that can never be collected despite its collectability. Such a utopian interpretation of social/sexual realities attends to the fact that there are always the ghostly figures of members who have been invisible, neglected, forgotten, or simply not there yet (see Scott, 2019b; cf. Muñoz, 1996). Thus, this also suggests the potential of ‘presentification’ as critique.

i. Defining SGMs by recognising its indefinability

International human rights law at its emergence, ‘as a potential site of emancipatory struggles’ (Jouannet, 2011: 21), conferred, through states’ approval, a positive and
general legal status upon individuals. Some individuals and their particular struggles remained concealed back in 1948 when the UNGA adopted the *Universal Declaration of Human Rights*, for instance SGM communities. This can be observed from the exclusion of SOGIE from the list of the prohibited grounds of discrimination, and today, the SGM communities that are not covered by the SOGIE narratives are still largely unconsidered (UNHRC, 2011; UNHRC, 2014b). From the perspective of queer theory, notwithstanding its total denial of identity-based narratives, we may have to decide whether there is a human ‘right’ to live outside the social norm. For Wight (2017: 249-250), what it means to be human depends on the realm where human beings interact, so ‘the “social” has its own properties that causally affect what humans can (and will) do’, and that is what determines the significance of a human right (Offord, 2006).

Concerning SGMs being rights-holding subjects, I am particularly concerned with two issues, in response to the legal discourse sponsored by the UN and other international agencies. One is regarding whether such a concept leaves enough space for unidentifiable and underrepresented others, and the other is regarding whether the theorisation attends to the freedom to manifest one’s sexual (non-)desires and gender (dis)embodiments. For example, in the UN-related agencies, the rights advocates rely heavily on the naturalist (*born-this-way*) argument (Gross, 2008b), as if the moral grounds for equality would be less solid if SOGIE were optional. However, the naturalist argument has neglected other legally prohibited distinction on socially constructed grounds, such as religion, political opinion and language. It also excludes the scenarios in which people consciously attempt to ‘undo’ gender (Connell, 2010; Deutsch, 2007; Butler, 2004; cf. West and Zimmerman, 2009), and the scenarios in which ‘no’ identity emerges (Scott et al., 2016). All of these critical engagements have informed me to be careful about the international community’s discursive framing regarding sex/gender and sexuality.

The rights-holding status of SGMs does not determine whether people should appropriate or overturn any identity-labels. The discrimination against SGMs is attributable to the intertwinenment of patriarchy and heterosexism, but, of course, it differs in its extent and form in various settings. At times, gender inequality and sexual stigma induce and worsen each other, so the notion of ‘SGMs’ accounts for both together; these should not be considered separately, as happens in the contemporary rights discourse (Browne and Nash, 2014). Because of the nexus between the modern constructs of sexuality and gender, the
two forms of injustice, discrimination and exploitation, respectively related to misrecognition of the minority and misdistribution against the marginal (Fraser, 1997), are interlaced for SGMs (Butler, 1997). I hence consider the intersectionality of abuses and the indivisibility of different rights regarding a liveable life. In this light, ‘SGM’ rights, despite the lack of its delimitation, are latently implied, though under-explored, in the existing human rights regime, which includes the rights-holders who were and perhaps still are absent or unconsidered in history.

The way in which international law governs international affairs has been transformed since the boundary between the domestic and international planes became blurred, as discussed earlier. In this context, SGM issues, like many other transnational social problems provoked by domestic societies, come onto the scene when the global interests around the freeing of the governed are translated into legal discourse. The legal discourse contains both rights and responsibilities simultaneously, which, in relation to sexuality, signify an identity-based right to non-discrimination (sexuality-related subjects) along with a label regarding mental and sexual health risk (sexuality-related things), as shown in Figure 10 (Pūras, 2016). The rights to non-normative sexuality and gender expression are governable, by registering freedoms and their conditions and limitations at the same time along with the development of sexual rights and SOGIE discourses. Thus, an aspect of the term ‘SGMs’ aims to reserve a place for all types of situations where SGMs are produced and positioned by ‘the apparatus of sexuality’ (Foucault, 1988: 114), by calling upon the legally recognised and the unrecognised in a coalitional term.

The idea of ‘SGM’ is concerned, substantially, not only with what the law provides for SGMs but also with whether the law can see diverse forms of oppression. Take General Recommendation No. 28 of the UN Committee on the Elimination of Discrimination against Women (CEDAW) as an example. The CEDAW considers discrimination against women based not on the female body or identity of being a ‘woman’ but on the real suffering from patriarchy and gender inequality in society, making the interpretation preferable for transgender persons as well as persons of non-masculine expressions. The extensive scope of women’s rights protection suggests an anti-essentialist position of feminist theory after a long debate (Butler and Braidotti, 1994), which, however, still occurs at times (Wong, 1999; Meyer, 2016). The transgression of gender binarism complicates the understanding of a person’s sex/gender, and thus, the CEDAW’s refusal
to take the ‘body’ as the only indicator in determining ‘gender’ opens up protection for people who struggle with the gender hierarchy, for instance, *hijras* in South Asian societies (Bakshi, 2010).

Also allowing for solidarity, ‘SGMs’ hope to retain the dynamics of a *coalition*, which is significant for them to fight collectively against the violent imposition upon the body, and vital for the survival of subcultures (Bernstein, 1997; D’Emilio, 1998). An SGM community is composed of members engaging in similar sexual practices and gender expressions who should have the right to protection from personal harassment and institutional discrimination. Transgender/third-gender rights advocates have called for such a coalitional imaginary against identity politics in the light of the inherent indefinability of ‘trans-ness’ (Currah, 2006; cf. Johnson, 2007). The indefinable nature of SGMs, in parallel with the perpetual struggle with sexual and gender biases, is ‘by nature transgression or exception, always revealing a singularity opposed to the particulars subsumed under laws’ (Deleuze, 1994: 5). Namely, the term ‘SGMs’, I argue, should not be used simply in a descriptive manner and should not be limited to indicate LGBT persons; rather, it should encompass the various situations whereby sex/gender and sexuality are governed.

### ii. Attaining special protection for being ‘minority’

I have cautioned not to render ‘SGM’ a descriptive term as another substitute for LGBT. Now I shall explain the legal significance of the term ‘minority’ in human rights law. SGMs register a collectivist perspective, which is different from the individualism embedded in the SOGIE discourse. Without a fixed definition, a minority should at least fulfil certain criteria, including objective and subjective elements. Indeed, it is never easy to define one’s identity based on ostensible facts. Take the UK Supreme Court’s judgement on the 2009 *JFS (the Jewish Free School)* case as an example. The Court ruled that the JFS’s admission preference for ethnically Jewish pupils, whose mothers were ‘recognised’ by the chief rabbi as Jewish, constituted racial discrimination and was in breach of the then *Race Relations Act 1976*. The case has exposed the problem of determining ‘ethnic’ identity based simply on the requirements set by the religious authority or law. According to the definition provided by the Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, a ‘minority’ is a group:
Numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture… (Capotorti, 1977, para 568; emphasis added).

Among these elements, the criteria related to numerical minority and nationality have often been challenged for being exclusive, for example, the Blacks under the apartheid regime in South Africa, or asylum seekers and undocumented migrants in a host country (Medda-Windischer, 2009). However, the working definition given by the Special Rapporteur on protection of minorities was almost identical (Eide, 1993, para 29). Nonetheless, the HRC (1994a) later considered, dissenting from both Special Rapporteurs, in its General Comment No. 23, that the rights conferred on persons belonging to a minority simply require them to exist in a state and they ‘need not be citizens of the State party’ (para 5.1). The HRC, read with the equality clause, restates that the rights are ‘available to all individuals within its territory and subject to its jurisdiction’ (para 5.2; emphasis added), except the rights that are explicitly exclusive for citizens. Hence, states are obligated to ensure that the existence and exercise of SGMs’ rights are ‘protected against their denial’ (para 6.1) such as granting asylum for SGM members who flee from the place of persecution (UNHCR, 2012; CJEU, 2014).

The difficulty in reaching a satisfactory global definition rests on the variety of situations in which minorities exist, but there is a consensus upon the determination of a minority group depending on its members’ non-dominant position, regardless of the scale of the population (OHCHR, 1998). Minority rights are argued to be applicable more extensively to the ‘minority-like situation’ (OHCHR, 2010), when minority members’ sense of solidarity is ‘motivated, if only implicitly, by a collective will to survive’ (Deschênes, 1985: 30) to achieve equality. Here, survival connotes SGM members’ lives and security as well as the way in which they live, so the right to be a minority member includes the freedom to preserve and profess one’s identity, practise one’s beliefs, and communicate and assemble with other members. Therefore, central to SGM rights-holding status is each SGM group’s existence and visibility in the society to which it is attached, without harassment and persecution. One important question is whether LGBT people and other SGMs are qualified as minority rights-holding subjects in a minority-like situation.

Recognising minority status would effectively stress states’ obligation to respect SGMs’ subcultural practices and defend their survival. The UNHRC’s recent appointment of
Independent Expert on SGM rights through its resolution 32/2, since 2016, as soft jurisprudence, shows a tendency to place SGMs as ‘a reference point for these vulnerable groups to denounce and/or report violations of their rights’ (Tomaselli, 2015: 327). As Tomaselli (2015) notes, in the judgement on Atala Riffo and Daughters v. Chile decided by the Inter-American Court of Human Rights in 2012, sexual minority status is relevant to anti-discrimination norms in combatting the perpetuation of personal and structural violence (IACHR, 2012, para 92). Though only LGBTI persons were referred to in its reasoning, they were imagined to constitute a minority that faces greater difficulty ‘in removing discrimination in areas such as the legislative sphere’, and in ‘avoiding negative repercussions in the interpretation of regulations by officials of the executive or legislative branches and in access to justice’ (IACHR, 2012, footnote 114). Therefore, the Chilean government has the duty to empower them, individually and collectively.

Again, it is important to note that this reconceptualisation of ‘SGMs’ refers to both the performance and non-performance of sexuality and gender. Therefore, the term minority is employed to include people who are discriminated against because of their ‘unnormal’ (commissive) sexual practices and gender expressions, as well as those who are socio-politically marginalised due to their ‘non-normal’ (omissive) sexualities and gender identities – namely, non-practices and non-expressions, such as asexuality and agender (Darwin, 2017; Chu, 2014; Scherrer, 2008). That is, the context in which one is considered either unnormal or non-normal because of the mainstream society’s sexual and gender norms has rendered one’s social position powerless, and this fact is sufficient for one to claim a special protection of rights. All of this demonstrates that, on the one hand, one’s need for human and minority rights due to vulnerability is not limited to embodiment but should be extended to non-embodiment (Hynes et al., 2010). On the other hand, such vulnerability should be understood in relation to the dynamic relationship between gender and sexuality discourses in the society.

Beyond LGBT identities and the SOGIE discourse, it is not difficult to foresee other victims of multiple forms of social exclusion that are marked out and stigmatised, or even ‘unmarked’ for their presumed unimportance (Brekhus, 1996). In history, SGM rights social movements normally started with demedicalisation and decriminalisation, seeking favourable scientific and moral judgements, followed by the wish to eliminate discrimination in all aspects of life, to build a more liveable society (Waaldijk, 1994;
Chang, 2002). This trajectory, and the lessons it provides, are important in reconceiving a strategy to negotiate with a desire to define, which makes the lack of definition problematic under international human rights law. I thus contend that SGMs’ minority-like situation fulfils an *opinio necessitatis* for law to account for all marginal/marginalised sexual and gender subjects. Despite their contemporary presence or absence in existing law, they are entitled to, for instance, a right to health equity against minority stress that contributes to their health disparities in particular, and a right to a sex-positive and gender-neutral social environment in general.

**V. Conclusion**

Drawing on the analysis of the SOGIE and sexual rights discourse in international law and accounting for related queer critiques, I argue that, in response to the lack of a universal definition, the ‘lack’ is due to the irreducible diversity between SGMs. In this respect, I also argue for the legal characterisation of ‘SGMs’ as a presentification practice, as a utopian critique that is significant in formulating their rights to a liveable life, by addressing the hierarchy that exists between them in terms of the degree of social visibility and acceptance. As Rubin (1984) identifies, the hierarchy of sexual acts and sexual subjects based on societal attitudes to sex has consequently determined social inclusion/exclusion. Hence, problematising SOGIE discourse in law enables me to make visible the power imbalance not only between SGMs and mainstream society, but also between different SGM groups (Morton, 2001). Beyond individualism, notwithstanding the connectedness between its members and the extent of its visibility and stability, every SGM community is subject to the sexual and gender norms of particular societies.

As for the subjects of the right to survival and a liveable life – for the marked but mistreated SGMs – and the right against rightless situations – for the unmarked and temporarily absent SGMs, I have considered queer theoretical accounts. Informed by the sociology of nothing, which attends to absence, disembodiment and non-identity, the notion ‘SGMs’ aims to link these negative existences to the social settings from which they emerge. In this light, expanding the scope of rights-holders to encompass those who are ‘not there yet’ reflects on the dynamics of human rights, addressing the exclusionary effects and temporal delimitation of identity politics. Therefore, the notion ‘SGMs’, beyond the progressively incremental categories of sexual and gender identities, avoids reducing a comprehensive social movement to an identity-based rights campaign, which
has exposed ‘the unqualified dissipation of inequalities in human rights relating to sexuality and gender’ (Waites, 2009: 153). After all, the presentification of present and non-present SGMs is aimed, as Stychin (1995: 155) maintains, ‘at the exclusions caused by the constitution of the dominant background norm itself’.
Chapter Six. Utilising the Lack of Evidence to Reinforce Ignorance

Considering non-identity and other queer troubles, as identified previously, this chapter addresses the question of the lack of evidence concerning health inequities among sexual and gender minority (SGM) members, including but not limited to LGBT populations. Here ‘health inequities’ does not simply mean the differences in health between groups of people (health disparities, or health inequalities), but rather how these differences are unjust and eliminable. The WHO Secretariat (2013), based on the limited data, has expressed concern regarding the health inequities experienced by LGBT persons, including the barriers regarding access healthcare.

In this context, I identify two forms of ‘no-evidence’ – non-recognition (omissive) and misrecognition (commissive) of SGM communities – due to the ignorance of states or researchers of SGMs’ existence, health needs and minority stress. As highlighted by the Albanian delegate at the 2013 WHO Executive Board (EB) meeting, ‘further research was needed to understand the underlying causes’ of the existence of differences in SGM health (WHO-EB, 2013: 30), and this, among others, is a primary function of the WHO, according to article 2 of its Constitution. However, the lack of evidence turned out to be one of the reasons for deleting the agenda item.

Under international human rights law, even in the scenario that systematic neglect has induced scientific ignorance of SGM health concerns, states are not exempted from fulfilling their obligations concerning the right to health (Grover, 2010). The extended understanding of the right to health has drawn on theorisation of the social and political determinants of health, which explains the relationship between health disparities, the unequal distribution of health-related resources, and institutional constraints (Rasanathan et al., 2010). In the circumstances in which health disparities between populations are considered illegitimate and, through social inclusion or social justice policies, preventable,

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31 I distinguish between ‘unavoidable health inequalities’ and ‘preventable health inequities’, where the former ‘refer to differences in the health of individuals or groups’ while the latter denote health differences that are unnecessary, and ‘allowing them to persist is unjust’ (Arcaya et al., 2015). Hence, efforts addressing health inequities are different from those focused on promoting a population’s overall health outcomes.

32 In the WHO Constitution, articles 18 and 28 identify conducting and promoting health research as an important function of both the World Health Assembly and the EB (see also WHO, 2012).
a disparity amounts to ‘inequity’ that would constitute social injustice against the population in question (Braveman et al., 2011).33

The reasons for health disparities are multiple, but the most problematic one, which is the focus of this chapter, occurs when the health needs of specific groups are not recognised or intentionally omitted because of their invisibility in health research. I thus argue that the shortage of evidence in itself may represent a health inequity, or even discrimination, against SGMs in society, and this should be sufficient for states to take action.

I. Approaching ignorance: The need for evidence

The primary purpose of this chapter concerns the evidential value of a lack of evidence with regard to the social phenomenon of SGM health inequities. Although such a phenomenon had been recognised by regional health institutions such as the Pan American Health Organisation and the European Regional Committee of the WHO as an issue that deserves international attention and political commitment, it was blocked by the WHO’s central governing bodies after debates between states from 2013 to 2016. In order to interrogate the ‘lack’ of evidence per se, I examine what is known about the health status of SGM populations. Doing so enables me to demonstrate what relevant evidence is available, whether global or not, and what approaches have been used to understand the phenomenon.

Two dominant models (McDermott et al., 2018) are discussed here – namely, the ‘minority stress’ (Meyer, 1995) and the related ‘reserve capacity’ theories (Gallo and Matthews, 2003), with the former focused on the role of psychosocial factors in health and the latter concerned with the association between socioeconomic status and health. Notwithstanding the contributions of both theoretical models to our understanding of SGM health disparities as a social phenomenon, they have their limits in fully addressing the social determinants of SGM health inequities. One limitation is their focus on the sexual/gender minority ‘status’ as an attribute of persons, which neglects the fact that such a status (e.g. related stigma and prejudice) is context specific, not always negative

33 Although according to Bonnefoy and others (2007: 19), the use of the words inequity or inequality reflects the cultural differences, ‘with “inequalities” being the preferred term in Anglo-Saxon influenced societies and “inequities” or “disparities” being the preferred usage elsewhere’, I refer to the term ‘inequity’ as a situation in which unjust inequalities exist.
in social life, circumstantial, and relational to other ‘statuses’ of the person concerned (Goffman, 1963; Scambler, 2009). Another limitation concerns the methodological dimension of these theories; by overemphasising the affected ‘persons’ themselves, other dimensions such as the structural and material factors linked to the social determinants of health are less investigated. The other limitation is due to the nature of the social determinants of health; most research demonstrates strong correlation, but the causal pathways remain contested.

A psychosocial explanation of SGM health disparities may not be enough. As Meads and others (2012) consider, pursuing a better understanding of SGM health requires interdisciplinary commitments to incorporating epidemiological and sociological dimensions of the relationship between poor health and relative social disadvantage (Farmer, 2003; Braveman, 2006). The relationship between health and social position inextricably relates to one’s health capital: the capacity influenced by one’s social position of being healthy compared to others (Blaxter, 1990; Mustard, 1996). The conception of health as a fundamental human need and hence dignity-related human right (Oppenheimer et al., 2002), and capital that can be reserved and accumulated, has inspired a prominent view regarding one’s capability to be healthy (Venkatapuram, 2011). This perspective evaluates the relationship between individual wellbeing and social arrangements and acknowledges health outcomes as a state reflecting our status quo capacity and potential to address everyday risks (Robeyns, 2005). Health disparities between reference populations become an ‘inequitable’ situation when a structural cause exists that makes certain social groups less capable of staying healthy.

Therefore, following an introduction to both primary theoretical approaches in the field of SGM health, it is important to draw attention to the relationship between related social disadvantages and health injustice. Although different theories offer various explanations about the association between being a member of SGM communities and having worse health outcomes than others, concurrently they all emphasise a connection between societal hostility to SGMs and negative impacts on their members’ health (Meads et al., 2012). For this, I turn to the systematic reviews published in academic journals or as book chapters (e.g. Meyer and Northridge, 2007). 34 Yet, rather than engaging in the debate

34 Systematic review method emerged in the context in which experimentalism has become dominant in the field of health. It normally requires a detailed plan and a search strategy, aiming to summarise the outcomes of all the trials/studies included and map out what has been known/unknown as well as what works and
regarding the extent to which sexual orientation and gender identity (SOGI) is related to one’s socioeconomic status (see IOM, 2011), I investigate the reasons for the lack of evidence. Thus, I will focus on the sociological accounts of ignorance that have not only identified ‘what we do not know’ but also mapped out ‘what causes the unknown’.

Speaking of evidence, it is important to identify the rationale for evidence-based public health and its influence on global health. It is often pointed out that the heavy reliance on specific kinds of quantitative metrics and medical experimentalism has assisted in prioritising selective concerns, which are ‘managed carefully’ by states (Adams, 2016: 3). The experimentalist approach, practised through randomised controlled trials and applied to health policymaking, is very disease-focused and pays more attention to biomedical advancement than health equity issues, for which there exist not only too many uncontrollable variables but also an absence of ‘real’ patients. Undeniably, medical experimentalism has paved the way for mediating various social relations and enabling policy prioritisation. However, the application of experimentalism to inform health policymaking without a critical lens may produce what Will and Moreira (2010: 159) call *epistemic exclusion*, which reinforces socioeconomic exclusion and casts out the unattended problems and populations. They remind us, beyond the pursuit of gold standard evidence, that the ‘absence of evidence might be a good indicator of forms of exclusion’ (Will and Moreira, 2010: 160).

Relationally, health research and discourse have always concerned SGM social movements because of the intensive medicalisation behind the production of SGM categories and subjectivities. The emergence of studying SGM health beyond sexually transmitted infections (STIs) since the 2000s was inspired by racial/ethnic minority health research (Pascoe and Richman, 2009). Despite the lack of public interest in and attention paid to SGM health issues, for example, in the US and Taiwanese contexts, a research agenda was initiated and promoted primarily by a coalition of social scientists, health professionals and rights advocates (Epstein, 2003a; Lin, 2017). However, as many systematic reviews identify, we do not have sufficient evidence to conclude that this is a *global* problem. SGM activists have still sought to speak about the issue, providing narrative accounts of their lived experiences. In this respect, to address the lack of

what doesn’t. Reviews sometimes include a meta-analysis ‘using statistical techniques to synthesize the data from several studies into a single quantitative estimate or summary effect size’ (Uman, 2011: 57).
evidence that meets professional standards, I also consider the critical observations provided by SGM activists, for instance their presentations and discussions at events such as the ILGA-Asia 2015 and ‘Queer’ Asia Conferences (Lee, 2019a).

Many health and social researchers have identified ‘queer trouble’ with respect to researching SGM health, unavoidably fixing the definition of an SGM community and omitting the heterogeneity of the members of an SGM group. Queer theorists point to this as both an epistemological and an ethical problem. Besides the concerns regarding the diversity of different ‘identities’ (Epstein, 2007a), another problematic issue emerges from invisibility in the accounts produced in health sciences, which is directly related to the questions of research ethics and state obligations. The unavailability of evidence regarding SGM health is at times a result of their existence being ignored by the society in which they live. Based on both the epistemological and social causes of the lack of evidence, I enquire into the need for universally generalisable evidence in the field of health policy. Such a need is subject to a long debate, related to the ‘decolonial paradox’ discussed among researchers as a question of what constitutes ‘good’ science (Parkhurst and Abeyesinghe, 2016; Mignolo, 2012), whereas Vanagas and others (2017: 1) also acknowledge that:

The most critical problem for EBPH is the absence of evidence and the lack of a conceptual framework regarding how much evidence is sufficient to judge and evaluate our policy decisions. Often, we have evidence that something should be done…but, in most cases, we lack evidence regarding what should be done…or how to do it.

In the history of global health, several critical turns have reflected on the changes in the understanding of health, including the shift from international health (state-focused) to global health (people-focused) (Jacobsen, 2014). Another change occurred in the 1990s – in response to the call for a human rights-based approach to public health – when the HIV epidemic was considered not just a biomedical, but also a social issue involved with moral panic and sexual stigma that obstructs disease prevention (Beracochea et al., 2011). The human rights perspective emphasises the interdependence between ill health and the violation of liberty and welfare rights (Mann et al., 1999). Both shifts have contributed to promoting the idea of the social determinants of health between states, which is concerned with the conditions in which people live and the forces that shape those conditions (Velji and Bryant, 2013). Interestingly, the globalisation of health injustice concerns – between
states and within them – has in turn encouraged a stronger international commitment to human rights-based health governance (Bayer and Fairchild, 2004).

Despite all this, the WHO member states have made a commissive decision not to act, taking advantage of the silence of evidence to further silence SGMs in the global health agenda. The input of human rights norms has reoriented the development of public health law and ethics (Bennett, 2008). The four ethical values for public health law articulated by Gostin (2004) – including transparency in decision-making, protection of vulnerable populations, fair treatment and social justice, and the use of the least restrictive alternative – have been widely recognised in regulatory frameworks (Benatar et al., 2003; Benatar, 2013a). Basing public health practices on human rights accounts for the reflexive and dynamic relationship between individual and communal interests in different contexts (Benatar, 2013b; Bennett and Carney, 2017). Therefore, this chapter would set out the landscape of evidence on questions of SGM health inequities, exploring areas of undone science and its relationship with invisibility, and thereby argue that, through their collective inaction, states’ wilful ignorance letting SGM health inequities be unaddressed indicates a human rights concern.

II. The available evidence concerning SGM health

An early systematic review found that LGB (not including transgender) people are at higher risk of experiencing mental disorders, suicidal ideation, substance misuse (King et al., 2008), and deliberate self-harm than heterosexual people (Hughes and Eliason, 2002). The review by King and others (2008) includes 25 studies that met their inclusion criteria, none of which involved clinical research or used a case-control method. Notably, all of the papers reviewed were published in English, including studies conducted in seven countries such as the US (17), the Netherlands (2), New Zealand (2), Australia (1), Canada (1), Norway (1) and the UK (1). A few years later, another systematic review looking at the UK context found a worse result concerning mental health for these populations, and concluded that there was no quality evidence regarding transgender people’s health outcomes (Meads et al., 2012). The studies in this review were restricted to the English language too, encompassing 10 published papers and 5 unpublished surveys (which included more than 1000 participants). Both reviews excluded studies related to STIs, sexual behaviour and sex transitioning.
It is noteworthy that both review articles identified the difficulty in defining target populations, which concerns the various ways of understanding SOGI, such as behavioural, self-identity, and mixed approaches. Since around the mid-1980s, articles focusing on ‘men who have sex with men’, particularly concerning HIV/AIDS, have outnumbered articles about other health concerns related to SGM populations ‘by at least two to one’ (Eliason et al., 2012: 762). The prevalence of the behavioural approach more or less contradicts the identity-based approach to SGM health disparity research (Snyder, 2011). Meanwhile, the emergent concept of gender ‘non-binary’, which is challenging the gender landscape of the societies concerned (Bornstein and Bergman, 2010), complicates notions regarding gender nonconformity (Shepard, 2006). In this regard, King and others (2008) have strongly urged health researchers to define SOGI. On the other hand, Meads and others (2012: 28) pointed out SGM’s invisibility in health research in general due to a presumption of unimportance, followed by a ‘lack of, among other factors, interest, perceived need, funding, or staff, or combinations of these factors’.

A more recent systematic review focused on investigating the potential bisexuality-suicidal behaviour link showed that bisexual people experience more psychological distress than homosexual and heterosexual people do (Pompili et al., 2014). Again, the research results that qualified for the review were based on samples in late-modern Western societies, for example, the US, the Netherlands, Sweden, and Ireland. Research of this kind was not pursued in Taiwan and China, for instance, until recently (Zhang et al, 2015; Chang et al., 2015), and very few of the relevant publications in these countries are based on local data (e.g. Chung, 2012; Chung and Lee, 2017). The marginalisation and underrepresentation of SGMs in health research has resulted in a lack of motivation to regard sexual practices and gender expressions as social determinants of mental health, though. The US Institute of Medicine (IOM, 2011: 2) considered that many of the health disparity concerns of SGM populations are related to psychosocial consequences as a result of ‘the stigmatization of non-heterosexual and gender-variant individuals’ (see also IOM, 1999; Johnson and Browne, 2012).

There was little information regarding SGM physical health disparity until a systematic review published recently looking at the prevalence of physical and sexual violence motivated by perceptions of SOGI (Blondeel et al., 2018). The review includes papers that contain data from 202,607 SGM participants in 50 countries, and encompasses grey
literature (e.g. reports, working papers and government documents that may or may not be available to the public). While the review considers that no explicit link is proven between violent events and homo/transphobia, the studies included show a correlation of epidemiological significance. It finds a high prevalence of violence experienced by SGM members, particularly transgender people, but the selected studies did not consider people who self-identify as heterosexual with a small degree of same-sex sexual or romantic attraction (see Savin-Williams and Vrangalova, 2013). As highlighted by the authors, the quality of the data is relatively poor ‘due to a lack of standardized measures and sometimes small and non-randomized samples’ (Blondeel et al., 2018: 36), indicating a lack of validity of the available evidence.

i. Multiple theoretical approaches to SGM health inequity

There are several approaches to studying SGM health disparity, and drawing on the review articles mentioned above, there is a diversity of interpretations of the related data from different disciplinary perspectives. This raises a question: how do researchers make sense of SGM health disparities? As the IOM (2011: 19) pointed out, multiple frameworks have been used to examine ‘how multiple identities and structural arrangements intersect to influence health care access, health status, and health outcomes’; they identified four theories that are primarily used for SGM health research. These include the minority stress model (focusing on the psychosocial effect of SGM-related minority stress), the life-course framework (normally with a cohort study, see Glass and McAtee, 2006), ‘intersectionality’ theory (recognising other identities that influence SGMs’ health), and the socio-ecological perspective (attending to the impact of interpersonal relationships and social circumstances on health). Between them, psychosocial and epidemiological researchers often resort to the first two with an observational study, while sociologists mostly conduct in-depth qualitative research based on the other two theories (Meads et al., 2012).

Drawing on the systematic reviews above (i.e. King et al., 2008; Meads et al., 2012; Pompili et al., 2014; Blondeel et al., 2018), the psychosocial approach using cross-sectional analysis has developed relatively rapidly, whereas the lack of resource and attention has limited the development of case-control or cohort studies. In the US context, for instance, as identified by the IOM (2011: 8), ‘the existing body of evidence is sparse’. Meads and others (2012) share a similar concern from the UK perspective, that it is
important to address the general lack of curiosity about this issue, in order to facilitate a research agenda involving epidemiology, sociology and biomedicine for a better understanding of SGM health (disparities). However, here I would like to shed some light on the primary thesis of the minority stress model, which has been quickly developed and popularised between health researchers, despite its limitations as mentioned earlier, which are exactly why other (e.g. life-course, intersectionality, and socio-ecology) approaches are considered as both a critique and a complement.

Extending the social causation hypothesis, minority stress theory was introduced around the 2000s to explain SGM health disparities, and the notions of ‘minority stressor’ and ‘reserve capacity’ are used to explain SGM members’ poor health outcomes. The theory is based on the premise that SGMs living in a hostile society are subject to chronic stress (Dohrenwend, 2000). According to Meyer (2007), a strong minority stress effect can be detected also in samples of people who are socioeconomically advantaged, making relevant factors controllable. It is simultaneously noteworthy that stress implies ‘the potential to arouse the adaptive machinery of the individual’ (Pearlin, 1999: 163) if the stressors are managed properly. Such minority stress, stemming from one’s perceived stigma and discrimination, has been studied for a long time as a result of racism and a cause of negative effects on the health of racial/ethnic minorities (Paradies, 2006) – e.g. African Americans and Indians (Williams et al., 1997), and British Muslims (Sheridan, 2006) – when socioeconomic status is controlled (Williams and Mohammed, 2013a).

Such a psycho-pathological approach has endeavoured to incorporate the socio-ecological perspective, making the idea of ‘minority stressors’ more diversified and complex than it was at the onset of theoretical development. Now minority stressors are conceptualised along a continuum from the objective/distal (social context and physical environment) to subjective/proximal (the self), though they may be termed variably by authors, as shown in Figure 11. In addition to direct prejudice, structural discrimination and negative social attitudes to SGMs are considered able to cause psychosocial distress, inducing self-reproach and self-devaluation (Garnets et al., 1990; Herek et al., 2007). On the other hand, SGM members may also experience stress due to the stigma that they ‘feel’ they have (see Scambler, 2004), which results in a risk to their health (DiPlacido, 1998). More subtly, SGM members’ oscillation between self-concealment and self-disclosure leads them to an affective ‘private hell’ (Smart and Wegner, 2003: 229),
preventing themselves from identifying and contacting others who may suffer marginalisation for similar reasons (Newheiser and Barreto, 2014).

Figure 11. Different interpretations of minority stress-related health disparities (Meyer, 2007; Lick et al., 2013; Phelan et al., 2010)

The psychosocial model, however, dismisses people’s agency in negotiating and resisting the omnipresent stressors (Liu, 2017). Yet, its reminder regarding the processing and production of minority members’ judgement of themselves as non-mainstream, non-normative, and hence abnormal is important (Rosenfeld, 2009; Kertzner, 2007; Esterberg, 1997). The tendency towards self-blaming and self-victimisation has often been used as a cover or an excuse for ‘contextual oppression’, to use Fassinger and Miller’s (1996: 56) words, that is tolerated by states, according to the report submitted by the UN High Commissioner for Human Rights (OHCHR, 2011). In this regard, another notion, ‘reserve capacity’, has been introduced to complement the minority stress theory, considering the socioeconomic impact of minority stressors, such as discrimination in regard to health as well as one’s ability to obtain and manage resources in handling stress (McGarrity, 2014).

Despite its popularity, scholars have cautioned against an overreliance on an individual-focused perspective of stress. The psychosocial explanations often omit the personal strategies and community support created by and available to people (Berjot and Gillet, 2011) and other social and political determinants of health, for instance, the diversity of SGM lived experiences within a society and between different societies (see Chapter 5). Meanwhile, minority stress studies have not fully established an explicit link between SGM status and their health outcomes (Meads et al., 2012). For example, a systematic review looking at the studies of non-STI-related physical health disparities in sexual minorities found that, despite a strong correlation between physical health problems and minority stress experiences, the data included did ‘not permit causal claims’ (Lick et al.,
2013: 534). Drawing on Pascoe and Richman’s (2009) meta-analysis, although the negative impacts of multiple forms of perceived discrimination (including racism, sexism, and SOGI discrimination) on health are evident, a direct causal pathway cannot be determined due to the non-experimental nature of most of the studies included.

ii. Not just personal: Socio-political determinants of health

We have very limited evidence concerning SGM health; such evidence is generally only available in North America, Western Europe, Australia and New Zealand. However, we have multiple theoretical approaches that aim to provide different perspectives on SGM health disparities. These dominant models have also attracted the most attention from researchers from the societies in which those studies have been conducted; they may not fully grasp the health concerns of SGMs living in other social contexts or governed by different political structures. Yet we can at least be confident to argue that, based on the conceptual framework in Chapter 5, the construction of sexual/gender ‘minority’ categories is co-produced by sociocultural and political forces. Thus, viewing SGM members’ minority status as part of the social determinants of their health would be consistent with the contemporary internationally accepted approach; that is, according to the WHO, ‘the context of people’s lives determines their health’.

In this light, it is crucial to locate the issue in the global health context. In fact, neither the WHO Commission on Social Determinants of Health’s (CSDH) final report in 2008 nor the Rio Political Declaration adopted by the World Conference on Social Determinants of Health in 2011 includes sexuality- and gender nonconformity-related factors. The five widely referenced textbooks on global health that I reviewed do not mention SGM health either (i.e. Birn et al., 2009; Parker and Sommer, 2010; Skolnik, 2008; Skolnik, 2011; McCracken and Phillips, 2012). Marmot, the CSDH’s Chair, in the edited book on the Social Determinants of Health (Marmot and Wilkinson, 2005), includes a chapter that mentions LGBT people briefly, regarding STIs (Johnson et al., 2005). The public attention paid to the SGM health movement in Western societies (Damarin et al., 2016) did not win any representation in these texts. A regional project on Being LGBTI in Asia

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35 The review includes 21 published studies (16 from the US, 2 from the Netherlands, 1 from Canada, 1 from Australia, and 1 from Switzerland).
focuses on combating discrimination and promoting SGMs’ access to healthcare, however without an epidemiological study that links human rights and health concerns.\textsuperscript{36}

I consider a need to bring the perspective of the socio-political determinants of SGM health inequities, which can, on the one hand, relate the limitedness of available evidence regarding SGM health to human rights concerns, and on the other, scrutinise the situation regarding the ‘lack’ of evidence. In the domain of international health policymaking, states and other global health actors have recognised four categories of the determinants of health. Biological determinants (e.g. genetic conditions and aging) are related closely to policies regarding biotechnological innovation and ethics. The underlying determinants including human basic needs and opportunities to stay healthy are recognised as a fundamental right (CESCR, 2000b), and these include access to clean water and air, sanitation, essential medicines and primary healthcare. The social determinants of health, identified to address social justice, are pertinent to health inequities in relation to a group of people’s socioeconomic status and sociocultural identity, and the social environment in which they are located (WHO-CSDH, 2008), and yet, they have been incorporated into the human rights-based approach later (CESCR, 2016).

Despite a series of political and legislative commitments to combating preventable inequities around the world, the structural elements of health injustices are subtler. For example, an unfair distribution of the social determinants of health does not amount to a justiciable legal issue and thus a litigable rights issue, except that a related discrimination event is identified, for instance, refusal of clinical attention or health education because of ‘who you are’ (Lee, 2013). This suggests, at times, health disparities are not personal but systematic, endorsed or tolerated by the state or indirectly resulted from a larger context in which a health system was designed and health policies were developed (e.g. governors’ ideological positions, power relations between social groups, etc.). Despite a divergent approach to their definition and research strategies (Mackenbach, 2014), these contextual and structural elements are now considered as the political determinants of health (Kickbusch, 2015). Therefore, viewing SGMs’ minority situation in social policy

\textsuperscript{36} This programme is supported by the UN Development Programme, the Hong Kong’s Faith in Love Foundation, and the governments of the US, Sweden, Australia, Malta and Canada. Comparatively, SOGI-related concepts are still omitted from, for instance, the analysis in the first official report on Health inequalities in Taiwan, which was prepared by the UCL Institute of Health Equity (Chiou et al., 2016).
and health research as part of the socio-political determinants of their health goes beyond a psychosocial perspective on SGM health disparities.

Translating the existence of health disparities into ‘health inequities’ in legal language would have to rely on these notions regarding the social and political determinants of health (Kenyon et al., 2018). It is therefore important to refer to different studies, in which the psychological, epidemiological and sociological perspectives converge. In addition to the direct discrimination expressly prohibited by law, the more difficult task is to identify and intervene in subtle, distal stressors. This situation concerns the state’s obligation to fulfil actively – rather than just ‘not violate’ (a passive construction of respect) – people’s health rights, including the provision of health education programmes that aim to address structural violence. There have been frequent calls for further research on health inequity concerning public policy and the institutional and social barriers to policy implementation (e.g. Diderichsen et al., 2001; Williams and Mohammed, 2013b). As follows, a comprehensive strategy to address SGM health inequity should include a range of features, from eliminating the structural barriers and environmental stressors to building personal capabilities negotiating hostility.

III. ‘No-evidence’ speaks as much as evidence does

Informed by the conviction that ‘nothing’ is productive, in this section I consider the sociological implications of ‘no-evidence’ – that is, a silence of evidence (Mansnerus, 2015) – and its relationship with the socio-political determinants of health. The conceptualisation of these determinants of health has helped us to see health as affected by the interaction between people’s social positions and the social circumstances in which they live (Krieger, 1994). The CSDH’s final report in 2008 confirms several societal factors (e.g. income, education level, gender, ethnicity, race, etc., but not including SOGI) that are associated with the health distribution biases experienced, even in clinical practice. As of today, the WHO has still not considered properties around sexualities and gender expressions. The development of the social determinants of health is not surprising, because public health, characterised as a science of populations, has been a social practice since its emergence (Foucault, 2004). As Will (2017) remarks, public health is always ‘multiple’ rather than unitary in practice.
Concerning the phenomenon of SGM health disparities, even within the social and health research community, there exist diverse interpretative practices, arising from the various approaches to gender/sex and sexuality. Their fundamental difference depends on how they define ‘who SGMs are’. Paradoxically, the existence of SGM subjects may be both the reason for and the result of health disparities, from the pathologisation to the demedicalisation and then the health promotion of, say, ‘LGBT’ persons, which, as pointed out by Epstein (2003b), signifies a normalisation process that ineludibly excludes some others. Perhaps unintentionally, most of the theoretical frameworks for studying SGM health (e.g. psychosocial, life-course, and intersectionality) reinforce a need for identity affirmation in relation to inclusive health policies. A presumption of the existence of health disparities requires an affirmative identification of the self and by others, in which queer trouble is omitted, or strategically ignored (Epstein, 2007b). These accounts of the social and political functions of ignorance (Japp, 2000) have directed me to rethink the highlighted ‘lack’ of evidence, which is produced by a presumption of enough-ness.

Pertinent to the question of evidence for SGM health inequity, I identify two primary forms of a silence of evidence: first, the conceptual difficulty in researching SGMs; and second, the general neglect of SGM health issues unrelated to STIs, before the 2000s (Boehmer, 2002). The former involves a total omission of certain SGMs from the SOGI-related identity discourse – non-recognition (omissive), for instance, street cruising men who have sex with men (Apostolopoulos et al., 2011). The latter results from social exclusion, for instance, of SGM women from ethnic minority groups (Roseneil et al., 2012) and the notorious ‘bisexual erasure’ due to monosexual assumptions (Yoshino, 2000), regardless of an awareness of their existence – misrecognition (commissive). Both kinds of reasons that cause no-evidence stem from a socially constructed invisibility of people whose existence is not (fully) recognised. Such invisibility is problematic but addressable from the perspective of the socio-political determinants of health inequities.

Following this, I interrogate the social and political factors regarding the lack of (good) evidence – primarily, commissive misrecognition and omissive non-recognition – that are involved in shaping structural and epistemological invisibility (Adams, 2013; Knaapen, 2013). Both the social medicine and human rights paradigms have contributed to making visible the ‘unseen’ beyond the biomedical or epidemiological lens, and deepened public health ethics (Austin, 2001). In this light, I aim to discuss the circumstances in which the
‘lack’ of evidence per se informs the existence of health inequities. For instance, in societies where SGMs are discriminated against, it is difficult to collect evidence about their health needs. Even if there is evidence, it can be interpreted in a biased way through, for example, linking ill health to immorality. The reduction of one’s illness to ‘a deviation from the normal’ (Blaxter, 2004: 4) not only disservices public health programmes, from the sampling of health research to the provision of health services (Beyrer, 2007; Beyrer, 2014), but also strengthens the social stressors that SGMs suffer at different levels.

i. Decoupling SGM representation from medicalisation

Although there are systematic reviews regarding LGBT health, it seems implausible to conduct one if one considers queer critiques, which attend to those who do not possess or claim a fixed sexual and gender identity. I myself attempted a review of the related literature (see Chapter 3), but it did not work due to the difficulty of deciding how to define the target populations, including LGBT and others who do not identify themselves as either heterosexual and cisgender or LGBT. Throughout the history of health and social sciences, there have been different proposals to conceptualise SGMs, which make such scoping difficult, for instance, ‘romantic minorities’ and ‘erotic minorities’. In addition, SGM communities in non-European cultures may be understood in different ways, for example, tongzhi in Chinese, takatāpui in Māori, kathoey in Thai,37 and bissu, calabai, calalai in Buginese.38 Such a broad range of conceptualisations, perhaps inconsistent with ‘modern’ scientific discourse, reveals the ‘trouble’ with defining the target populations and, therefore, in achieving a common understanding across disciplines.

Another conceptual issue is around the definition of ‘health’ itself. Since the establishment of the WHO in 1948, which sees health beyond ‘the absence of disease or infirmity’, a holistic view that frames health as a necessary condition for happiness and liveability of life has become significant (Callahan, 1973; Boyd, 2000). This change in defining health resulted from an awareness of the restrictive nature of a purely biological view of human conditions, which is inclined to draw a line distinguishing the dysfunctional from the functional. An institutionalisation process thus took place, as

37 Kathoey (or katoey) is used to refer to non-cisgender but also not transgender people (Winter, 2011).

38 Bissu, calabai, and calalai are referred to as three other gender categories that are not cisgender men (oroanē) and women (makkunrāi) among Buginese people located in the South Sulawesi province of Indonesia (Davies, 2010).
identified by Illich (1976), to hybridise the biological and sociocultural understandings of health. This has resulted in the so-called ‘medical nemesis’, which infiltrates the differentiation between good and bad living beings and their lifestyles in modern health science ‘by transforming pain, illness, and death from a personal challenge into a technical problem’ (Illich, 1974: 918).

Foucault (2004), instead of seeing this as a ‘rising’ phenomenon, contended that medicine had linked our body to the moral and political realms and assumed its social functions at least since the 18th century, with the increase in knowledge regarding modern population health. Critical of Illichian post-developmental anti-medicineactivisms, Foucault argued that even their contentions were based on an alternative medical knowledge, which facilitated, rather than counteracted, the medicalisation process, and itself reinforced the authority of health discourse. From this perspective, the medicalisation of social problems, since it reached beyond biology and clinical practices, has become ‘part of an economic system and of a system of power’ (Foucault, 2004: 19) that forms an integral part of modern history. For SGM ‘subjects’, the pathologisation of unusualness regarding their appearances and behaviours (such as hermaphroditism and homoeroticism), according to Conrad and Schneider (1980; 1992), is based on that social authority of medicine, which justifies medical interventions in sexed bodies and sexual practices.

In fact, one of the greatest obstacles to researching SGM health is the intensification of medicalising diverse sexualities and gender expressions that fixates SGM members’ explorations of self-other relationships due to predetermined scientific judgements (Tiefer, 1996; Dreger, 2000; Hart and Wellings, 2002). For instance, there are still many SOGI-related disorders in the International Classification of Diseases (ICD), such as ego-dystonic sexual orientation (F66.1) and sexual relationship disorder (F66.2), as well as whole categories for ‘gender identity disorders’ (GID, F64) and ‘disorders of sexual preference’ (F65), in the 2016 version of the ICD-10.39 These classifications are used, diagnostically, to refer to various SGM situations that obscure the legitimacy of those claiming healthcare (Muntarbhorn, 2017, para 58). Compounded by the authority of

39 The 11th edition of the ICD (ICD-11) was finally adopted by the World Health Assembly on 25 May 2019, and will come into effect on 1 January 2022. It is noteworthy that the revision has replaced GID-related diagnostic categories with gender incongruence; more importantly, structurally speaking, gender incongruence now belongs to the new Chapter on ‘Conditions related to sexual health’ instead of the Chapter regarding mental and behavioural disorders.
medical knowledge in modern history (Porter, 1994), the universalisation of Western medical discourse, and the stigmas related to non-normative sexualities and gender expressions, SGM members would have to justify the legitimacy of their own existence prior to pursuing other social movement agenda (Lee, 2019b; Mosbergen, 2015).

Because of this history of medicalisation, SGM activists who advocate addressing health concerns facing SGMs simultaneously have to carefully deal with the medical labels used for ‘minority’ health disparities. A notable example is, the decision that Indonesian Psychiatrists Association ‘reclassifies’ homosexuality and transgenderism as mental disorders in 2016 has frustrated many SGM members and drawn a lot of criticisms (Yosephine, 2016). Another example is that sexual orientation conversion therapy was declared illegal in Taiwan recently, in February 2018. It was not free from min-jian (non-political civic space) opposition due to the ‘impression’ of a link between non-heterosexual orientation and psychiatric disorders (Lee, 2019b). The moral wrongfulness of being abnormal and the social norm of being/staying healthy (Hamilton, 2010) are well articulated concerning SGM health. Some WHO member states (e.g. Tanzania and Nigeria), at the 2013 meeting, regarded LGBT health as simply a ‘lifestyle’ issue (WHO-EB, 2013) that obstructs the development of related demographical and health research by repeating the science-endorsed biases (Foucault, 2014; Chou et al., 2015).

The inclusion of social perspectives in public health has substantiated the holistic view of health adopted by the WHO (Lowenberg and Davis, 1994), indirectly pushing the focus forward from medicalisation to health equity (Williams and Calnan, 1996). However, advocacies based on the perspective of the social determinants of health have subjected the notion of health (and illness) to uncertainty in terms of ‘proof’. Establishing a causal pathway can be impractical in terms of restrained resource and multiple variables, and yet, as Jasanoff (2007: 33) remarks on the unending pursuit of scientific knowledge, ‘ignorance and indeterminacy are always present’. Here, it is noteworthy to introduce the guidance document concerning the evidence base regarding the social determinants of health, developed by the Measurement and Evidence Knowledge Network (MEKN), part of the CSDH.40 Acknowledging the general scantiness and difficulty in identifying the

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40 The MEKN of the WHO CSDH was established in 2005 with contributions from nearly 20 international experts. Based at the UK National Institute for Health and Clinical Excellence and the Universidad Del Desarrollo in Chile, the MEKN aimed at collecting and assessing ‘global knowledge on existing methodologies’ regarding the social determinants of health (Bonnefoy et al., 2007: 8).
causations of ill health, the MEKN urges researchers to work around, instead of resolving, uncertainties, because proving which social factors create health inequities, and how, is much harder than showing their existence (Bonnefoy et al., 2007).

Concerning the social determinants of health inequity, the multiple conceptual difficulties should not prevent us from addressing the problem, since its aetiology is not entirely unknown, for instance minority stressors and institutional barriers (Lee, 2018b). On the one hand, the means of countering the medicalisation-related stigma requires another health discourse, competing for authority rather than overruling the discipline, which, for Foucault (2004: 19), ‘should not be rejected or adopted as such’ but needs modesty in its power over people’s bodies and lives (Crawford, 1980). On the other hand, we should not forget the reality of human vulnerability (Jasanoff, 2003) and neglect the function of communicating non-knowledge with the public, which can open up democratic deliberation about what is unknown and among which what is to be addressed (Nielsen and Sørensen, 2017). In this regard, both states and the WHO have obligations in addressing health injustices by, for example, promoting public awareness and collecting data – including clinical experiences, where possible (CESCR, 2000b) – with the aim of combatting discrimination (CESCR, 2016).

ii. ‘Omission’ as one of the social determinants of health

In addition to the troubling definition of the affected populations and the inevitable engagement with uncertainties and non-knowledge, another element that is crucial for understanding SGM health disparities is the struggle for recognition both in society and in policy. One’s structural location prearranged by certain social categories – e.g. race/ethnicity and SOGI – is relational to and effective upon one’s sense of (non-)belonging and wellbeing (May, 2015). Take ‘minority stress’ theory as an example to illustrate the complexity of how such relationality works. Provoked by stressors, the psychological account of the lack of ‘recognition’ (mis-recognition or non-recognition) gives rise to feelings of denial and injustice; this is not only the root cause of all social struggles, as contended by Honneth (1995; 2007), but can also generate motivation for change (May, 2011). In this light, when our need and desire for recognition, if it exists, goes unsatisfied, ‘we are compelled to struggle to rectify this lack’ (McQueen, 2015: 45) by expanding or improving the existent intersubjective relations of recognition (McBride, 2013; Anderson and Honneth, 2005).
The resistance to being ignored may explain the significance of linking social and political recognition and health promotion in an SGM rights social movement; it also highlights the necessity of treating SGM health issues as a social and structural problem. In its final report, the CSDH declares that ‘achieving health equity within a generation is achievable…and now is the right time to do it’ (WHO-CSDH, 2008: 3). In the MEKN guidebook, however, none of the SGMs’ health concerns is considered in the discussion of the social determinants of health, although the guide provides a comprehensive account of different and intersectional socioeconomic factors that affect one’s ability to stay well (Bonnefoy et al., 2007). As discussed, neither the textbooks on global/international health nor the CSDH and MEKN make any mention of factors such as sexual orientation and non-normative sexual practices, or gender identity and non-binary gender expressions. Hence, the effect of gender binarism and heteronormativity, and the extent to which it affects people’s quality of life, still needs to be identified, evaluated, and recognised.

Indeed, a lack of evidence does not mean that there is no evidence at all. With the sparsity of SGM representation in health research, I wonder, to what extent might the lack of evidence inform the health inequities debate? Recently, some health professionals and social scientists have proposed that SOGI should be considered as one of the social determinants of health. However, the evidence is yet to be generalisable in geographic and demographic terms (Logie, 2012; Pega and Veale, 2015). Assume that one’s sexuality and gendered body, which affect others’ perceptions, in turn, influence one’s health and social life. We might draw on a linkage between sexual/gender majority/minority position and one’s health, though the minority status is relational in different contexts (Parker and Cáceres, 1999), and very often, ‘systematically poorer health…is associated with each successively lower position in any given system of social stratification’ (Macintyre, 1998: 20). Reflecting on the current progress in understanding SGM health inequities, the silence of evidence, which justifies the political self-restraint of the WHO, has indicated systematic invisibility of SGMs in the history of global health.

In terms of health equity, the rights concerns encompass the condition of staying healthy and the equal opportunity to achieve it (Rylko-Bauer et al., 2009). Concerning ‘equal opportunity’, population-based surveys are required, but they can hardly be executed if the aggregate health data is unreachable (Timmermans and Berg, 2010; Timmermans and Mauck, 2005). The development of evidence-based public health, which emerged in the
1990s, has been recognised as an essential step in addressing the non-standard variation in clinical practice and improving the effectiveness of health care delivery. Its reliance on ‘the process of integrating science-based interventions with community preferences to improve the health of populations’ (Kohatsu et al., 2004: 419) supports health policymaking in a democratic political system (Widmer, 2009). Nonetheless, such a research tendency has been critiqued as being blinded by a ‘myth of evidence’, which is too outcome-oriented, insensitive to contextual variables, and arbitrary in terms of judging the validity of evidence, among other things (Brownson et al., 2009; Nevo and Slonim-Nevo, 2011; Roe and Lysaker, 2012).

These concerns, despite the combined use of both epidemiologic (quantitative) and qualitative findings, come from the imbalanced preference for statistical over qualitative data.\(^{41}\) This in turn is due to the pursuit of representativeness, and creates a hierarchy between types and sources of evidence (Goldenberg, 2009).\(^{42}\) There has been a direct uptake of this principle from medicine through to public health and global health, which, developing in a resource-constrained situation, is affected by the requirement of cost-effectiveness (Every-Palmer and Howick, 2014). In this context, the rigour of evidence-based policymaking may be useful to inform agenda- and priority-setting but tends to omit ‘unimportant’ problems (Murray and Lopez, 2013). Nevertheless, the fact that SGMs might experience poorer health than their peers is attributable to a gender-binary and sex-negative environment. In this light, addressing the social conditions that construct or tolerate the unknowns – including the refusal of states to collect data and of SGM members to offer data – is required to bring about a critical social change.

\(^{41}\) For example, scientific literature in systematic reviews is considered the more objective than studies published in a single journal article and public health surveillance data and programme evaluations. Positioned in the middle of the evidential hierarchy, qualitative data is regarded only more objective than media data, word of mouth and personal subjective experience (Brownson et al., 2009). Overall, the criteria set for evaluating the quality of evidence prefer quantitative method, as also seen from the popularly used Grading of Recommendations Assessment, Development and Evaluation (GRADE) and the Transparent Reporting of Evaluations with Non-randomised Designs (TREND) systems.

\(^{42}\) In this respect, Whitehead and others (2004) have identified five types of evidence that may inform public health policymaking: observational studies, narrative accounts, controlled evaluations, natural policy experiments, and historical evidence.
iii. Tolerance of no-evidence as justifying misrecognition

For SGM health studies, the main methodological challenge concerns the causes and scales of, for instance, minority stressors such as homophobia (individual level), heterosexism (societal level) and discrimination (institutional level) (Hudson and Ricketts, 1980; Neisen, 1990; Huebner and Davis, 2007; Hatzenbuehler et al., 2009). There is some scepticism about the validity of the existing evidence and its interpretation concerning SGM health disparities (Dean et al., 2000). The fuzziness of these concepts makes ‘measuring’ the hostility of a social environment nearly impossible (Costa et al., 2013; Grey et al., 2013), not to mention the difficulty in proving the effectiveness of psychosocial interventions (Herek, 2004; Tucker and Potocky-Tripodi, 2006). This implies that individual-level solutions can do little, if they do not address the root cause embedded in a ‘culture of fear’ (Poder, 2008: 106) that is against a radical change of the existing social ordering (Bauman, 1999). Then, this is how ignorance, lacking knowledge or the certainty of it, can be mobilised and functions (Smithson, 1985; Bauman, 2006).

So, what can the silence of evidence tell us? In their fine collection of theses, Meyer and Northridge (2007) express concern regarding the lack of research and awareness outside of the West, which causes – if not justifies – policy makers’ inertia in terms of taking action. It is argued that the evidence-based approach cannot work at ease for the social determinants of health without considering the diversity in evidential types and sources, which is needed to actualise its hope for tackling inequities (Bonnefoy et al., 2007). In many scenarios regarding evidential invisibility, non-scientific knowledge coming from local communities appears to be valuable in the absence of scientific knowledge (Hammer and Berman, 1995; Biehl and Petryna, 2013). A complementary and inclusive approach is justifiable, when the knowledge that meets ‘professional’ standards is unreachable or does not yet exist (Knaapen, 2013). Accounting for alternative sources of data can also give voice to ‘subjugated knowledge’, to use Foucault’s (1980c: 81) words, considering silencing and omission as part of the socio-political determinants of health.

This is when silence sounds loud and clear. An evidence-based understanding of the social determinants of health should not privilege any particular method (e.g. controlled studies) (Bonnefoy et al., 2007). The specific nature of the social determinants of health requires insights from everyday lived experiences. These include ‘tacit knowledge’ or so-called ‘lay knowledge’ (El Ansari et al., 2002; Popay and Williams, 2006) between SGM
members. I consider the narratives of SGM activists regarding the health concerns of the members they engage with quite useful, at least in informing an urgent need for attention. Breaking the evidential hierarchy, the silence of data regarding SGM health reveals the existence of disparities in terms of health research and policy agenda (Wilson, 2009). For example, the health inequity of transgender people is under-researched, even in Western societies such as the US and Canada (Miller and Grollman, 2015; LeBreton, 2013). To take another example, transgender and hijra activists from South Asia have often expressed concerns regarding the linkage between poor health and discrimination, which is largely ignored by society (Goel, 2019).

These observations would always alert the participants at the various conference meetings to the need to scrutinise the progress of Bangladeshi laws, which now recognise ‘transgender’ identification but conflate hijra with transgender people (Hossain, 2017). Furthermore, Ahmed, the Executive Director of the Bandhu Social Welfare Society, stated that the official system classifies hijra as ‘full-grown males’ in the medical tests for governmental positions (Yusuf, 2015; Ibrahim, 2019), which does not conform with the law’s recognition of ‘third gender’. At another session of the Conference, transman activists expressed similar but different concerns about health professionals’ insensitivity. ‘Most trans health information is accessible only to transwomen’, and ‘there’s little [information and service] available for transmen’, according to the Transmen Alliance of Thailand (see also Itthipongmaetee, 2016). These narratives are little documented but call on us to rethink the absence of evidence in certain places, as reported. This is important with regard to interpreting states’ inertia, reluctance and inaction, such that the reproduction of health inequities – through tolerating no-evidence – should not be excused by the shortage of scientific knowledge.

IV. The danger of partial visibility in global health

Indeed, the lack of evidence demonstrates in itself the socially constructed invisibility of SGMs and their health concerns; yet, how is this relevant to global health ethics? First, global health should be understood differently from the traditional scope of international health, which attends only to disease-causing agents or products that transcend national boundaries. In other words, the call for global health justice is concerned with the health inequities between states and between different groups of people within a state (Birn et al., 2009). The problems involved in the making of no-evidence – the commissive
silencing of evidence – can be overlooked, when studies aim at representativeness and rely only on quantitative studies, or when states are unwilling or unable to support related research. Recalling the debate at the EB, the substantive contentions concerning the removal of the agenda item included not only that SGM health inequity was unproven as yet, but also that the allocation of attention to SGMs would cause discrimination against others. Nonetheless, this does not make sense from the human rights perspective.

Structural violence encapsulated in cisgenderism and heterosexism deserves attention, because the functioning of it is directly related to stressors against SGMs, though varied in different contexts. In its General Recommendation No. 28, the Committee on the Elimination of Discrimination against Women (2010b, para 18) considers the analytical usefulness of ‘intersectionality’ in explaining how different social determinants affect non-male persons’ health. According to a cross-national study published in 2016, there were more than 2000 reported killings of transgender and gender diverse people in 65 countries worldwide between 1 January 2008 and 31 December 2015 (TGEU, 2016). This is just the tip of the iceberg if we consider the likely scale of unreported cases. In its General Recommendation No. 27 on elder women’s rights, the CEDAW (2010a, para 11) finds that ‘the impact of gender inequalities throughout their lifespan is exacerbated in old age and is often based on deep rooted cultural and social norms’. The UN Independent Expert on minority issues expresses concern that SGMs within ethnic and religious minority communities experience multiple forms of social exclusion (McDougall, 2006).

Yet, addressing the ‘decolonial paradox’ of the modern discourses concerning health and gender/sexuality (Lugones, 2010; Connell, 2014) requires us to consider the diverse situations in which SGM members become powerless or stressed due to being a ‘minority’. For example, gender minority members encounter threats from both the heterosexual and homosexual worlds for being androgynous, but the reasons for this vary across cultures (Sinnott, 2011). In societies where gender pluralism has long existed, the precarious lives of gender minority members are closely related to the supremacy of masculinity, rather than gender binarism. Such a situation could have been aggravated by the introduction of Western scientific discourse and in relation to colonial history (Chiang, 2018). For instance, the British colonial government’s humiliation of the hijra community was followed by the enactment of the Criminal Tribes Act in 1871, which called for the surveillance of ‘certain tribes and eunuchs’, who were ‘reasonably suspected of
kidnapping or castrating children, or of committing offences under Section 377 of the Indian Penal Code (Roy, 2016: 417).

The problems that many SGM members living in such societies face result from a worldview that contingently governs secular realms (Jackson, 2009; Peletz, 2011; Bearak, 2016); this is important to bear in mind when addressing ‘global’ issues. It requires a way of thinking beyond state-centrism, since these variables and contingencies are often unattended or unnoticed from a statist perspective. That is, global health ethics should consider both the connectedness and variedness between local struggles that diverse SGM communities face. As argued by Kickbusch (2015), ‘health is a political choice’, and at times, politics tends to simplify complex issues. While the US and Thailand failed to include SGM health in the EB agenda, Egypt and others considered themselves to have ‘succeeded’ in keeping the proposal locked in the closet (Littauer, 2013). The politics concerning (under)representation and knowledge (non)production have involved local SGM communities in a transnational social movement, and yet, the social determinants (omission of sexual/gender nonconformity) and political effects (tolerance of that omission) regarding no-evidence are intertwined and reinforced by each other.

i. Reinforcing minority stressors through prejudice

Where there is evidence, a biased interpretation of the data can still be a reinforcement of minority stress, making SGMs more vulnerable (Epstein, 1996). A recent example is a narrative that links black gay men and the HIV epidemic in the US (Millett et al., 2006), which suggests that HIV/AIDS is no longer a ‘white gay disease’ (Monroe, 2015), as the mass media have referred to it since the 1980s. That narrative does not lessen, but rather reinforces the HIV-related stigma, through racism as well as homophobia within African American communities (Cohen, 1999; Brooks et al., 2005). Another instance is the assumption that lesbian women are at higher risk of breast cancer, which has been extrapolated from findings of the correlation between childlessness, failure to breastfeed, and the risk of developing malignant breast disease (Kerner, 1995). Such a conclusion, based on an overgeneralisation of ‘lesbian lifestyles’, not only dismay many lesbian women but also overlooks one of the real questions concerning their childlessness: the impediments in law (Wilton, 2002).
There are many similar examples, such as lesbian women’s allegedly high risk of cervical cancer (Sabol, 2015) and gay men’s inclination to skin cancer (Potts, 2015). One damaging consequence of associating health risk with particular social groups is the re-medicalisation of those ‘high-risk’ identities in medico-psychiatric history, which is inclined to pathologise identifiable ‘differences’ (see e.g. Gilman, 1985; Proctor, 1988; Jordanova, 1989; Waldby, 1996; Ninnis, 2016). Wilton (2000) and Epstein (2004) commented critically on the indiscriminate moves between behaviours and identities in the production of the health risk discourse, which tends to conflate ‘who you are’ with ‘what you do or you don’t do’. The high-risk discourse is manipulatable to support an idea that a particular group of people who share the same identity is susceptible to certain illnesses, ‘as a result of “bad habits” and customs that are intrinsic to the group’ (Epstein, 2003b: 161). That is, the way in which the data are interpreted can affect and be affected by the way in which the media represents SGM health issues (Daley, 2006).

Just as no-evidence talks, the existence of evidence can also have negating effects. A biased interpretation of population health data omits the diversity between SGM members and can be utilised by states to justify the imposition of disciplinary power over the people. Yet, recognising diversity with the identity-based ‘inclusion’ discourse has another problematic effect, for example, in the US and Canada (Mulé, 2005; Mulé and Smith, 2014). That kind of ‘inclusion of diversity’ discourse, according to Epstein (2007a: 6), is aimed at ‘the inclusion of members of various groups generally considered to have been underrepresented previously as subjects in clinical studies’ and ‘the measurement, within those studies, of differences across groups with regard to treatment effects, disease progression, or biological processes’. The recognition of differences based on identity politics is influenced by intersectionality theory, which considers multiple forms of social marginalisation. As far as SGM health is concerned, their worse health outcomes are nonetheless reposed on ‘who they are’ – as a calculable data subject.

Nevertheless, the purely behaviour-based considerations in the health paradigm are as dangerous as the identity-based discourse, as argued by Young and Meyer (2005). Both sexual behaviours and identities are involved with the relation of one’s self and others, in which there exists a correlation between objective conditions and subjective expectations (Plummer, 2017). Research-informed intervention policy based on ‘behaviours’ may overlook the fact that one’s susceptibility to certain diseases is related to structural
location as well as one’s own perceptions of body and pleasure (Epstein, 2004). From the right to health perspective, both national and international health systems are obligated to provide an environment that enables people to achieve the highest attainable standard of health (Baxi, 2010; Tasioulas and Vayena, 2014), including adequate information. Therefore, although strategies may vary in different societies, the information producers and providers (e.g. government, researchers, business and media) should be aware that minority stress caused by, for instance, sexual stigmas and gender biases, is reproducible through incomprehensive understandings and prejudiced narratives.

ii. Local ambivalence towards global healthification

Concerning the danger of a biased interpretation of SGM-related health data by states, mass media and mainstream society, indeed SGM activists are ambivalent to the global ‘public healthification’ of social problems such as sexual stigma and gender hierarchy. Analogical to medicalisation, ‘public healthification’ indicates the translation of social and cultural issues into health concerns (Meyer and Schwartz, 2000; King, 2013). This process, to raise public awareness and attention in the health language, often makes diseases/illnesses into a repertoire of metaphors around ‘warfare’ for the whole society (Sontag, 1989), which polarises the various perspectives and value judgements regarding good/bad health. In fact, such a strategy can be useful in a society that tends to avoid risk in a rational way (Fusco, 2006); however, it can also be harmful if prejudices are involved, making knowledge and ignorance indistinguishable (Lupton, 1993). This may be the reason why SGM rights activists, in particular those from Asia, have been cautious about the healthification of their vulnerability and precariousness (Lee, 2017a; Lee, 2019a).

For these SGM activists, their ambivalence towards the phenomenon of healthifying social injustice is concerned with ‘the hegemony of medicine’, to use Wilton’s (2002: 260) words. Such hegemonic power to govern ‘unhealthy people’ for a public good (Fusco, 2006) is often realised through states – health service regulators and sometimes providers. For instance, in the US, the UK, and Canada, a state-centred LGBT health politics has emerged and involved concerted efforts by advocates and researchers since the 1990s, demanding the governments to institutionalise LGBT health as a formal public health concern (Mulle, 2007; Daley and MacDonnell, 2011). A notable example is the establishment of the National Coalition for LGBT Health; such a state-centred approach has successfully promoted LGBT visibility in the US, but this has come with ‘the playing
down of sexual topics and sidestepping of non-normative sexual practices’ (Epstein, 2007b: 150). The danger, according to Epstein’s (2007b: 158), lies in such an approach making the state ‘the ultimate guarantors of equal treatment in the domain of health’.

Such mixed feelings about the public health discourse come from the close relationship between public health regimes and state power, which is, as we are reminded by the Special Rapporteurs on the right to health (Grover, 2011; Pūras, 2017), itself a source of discrimination and stigmatisation. That is to say, structural violence against SGMs, which stems from heteronormativity and the ineffability of sex, can reproduce rather than counteract biases even through the public health and medical discourses. Therefore, any advocate who engages in the global healthification of SGM social/health inequities should be aware that increasing international attention is ‘a fundamentally transnational phenomenon involving the interplay of meanings, practices, and vulnerabilities that extend beyond the purely local’ (Padilla et al., 2007: 209). Along with the development of an awareness (or omission) of SGM health, the relations between data collection, interpretation, representation, and reaction need to be critically examined from a perspective that combines human rights principles and public health ethics, so as to include voices from below – the historically silenced (Farmer and Campos, 2004).

V. Conclusion

In this chapter, I have located SGM health inequities in the public and global health context to address the question of the lack of evidence regarding SGM health – one of the reasons why the WHO member states halted the debate and decided not to take any action. It is obvious that the global health policymaking process was impeded by strategic claims to ignorance, under the banner of evidence-based public health. Such a decision does not consider further the social and political conditions in which the situation of ‘no-evidence’ was produced. That is actually in contravention of the WHO Constitution, which holds a holistic view of health. From previous systematic reviews of related topics, I consider different factors in determining whether such a disparity amounts to injustice – namely, what causes socially constructed invisibility, including the evidential rule and hierarchy, conceptual and definitional difficulty, and systematic non- and misrecognition. In this light, I have identified the positive/commissive effect of the absence of evidence, as well as the negative/omissive effect of the presence of evidence (see Scott and Stephens, 2018).
There are two main types of socially constructed invisibility identified here: one is someone having an identity but not being counted as a figure (commissive misrecognition), and the other is practising something that is not considered a figure (omissive non-recognition). The former can be the wilful silencing of evidence emerging from unequal power relations between SGMs and others in terms of knowledge production. Sometimes, structural discrimination against them can also silence the research community (Mayer et al., 2008). The latter refers to other SGM members who are not identified as subjects of research and policy, in which the exclusionary effect of identity politics occurs (Rust, 1996). Those who possess an identity may be recognised as having a right to health equity due to their positive existence as measurable ‘data’ while others are not (Eliason and Schope, 2007). Nevertheless, in many societies, prejudices against SGMs have been further reinforced, rather than reduced, through stigmatisation and discrimination against these communities, fuelled by the same set of evidence.

The omission of certain problems and populations in global health may potentially be a human rights issue if it is involved with injustices of misrecognition or non-recognition (underrepresentation) – epistemic exclusion. In that the current global health system is not readily accountable for SGM health inequities that ‘perpetuate the mechanisms of subordination instead of producing social justice’ (Fabeni and Miller, 2007: 95). With respect to the production and interpretation of health data, Unnithan (2015) calls for a pluralist approach that accepts epistemological and methodological diversity. This view is not new, but its influence is limited (Erikson, 2016). How can we ‘imagine health in a truly global way’, asks Adams (2016: 6), that transcends the limits of national borders and governments in terms of knowledge production and agenda setting? To fill the evidential gap that sponsors such injustices, to include local voices and efforts becomes significant in complementing the picture of erasure. After all, the ‘lack’ of evidence not only expresses the fact of insufficient data, but also denotes the power-knowledge nexus working on the making of health injustice.
Chapter Seven. Conclusion: Remarking/Intervening into ‘Nothing’

The thesis contributes towards the sociological and critical understanding of ‘nothing’ in its various forms – ranging from non-decision and inactivity to non-existence and non-identification, as well as silence and invisibility (Scott, 2019b). It also explores the relationship between these forms of ‘nothing’ and the production of ignorance (non-knowledge): the power of doing nothing and its corresponding power-knowledge nexus.

It could be true for sociologists that nothing is unimportant, but at times, they do not really mean ‘nothing at all’ but rather the negative space in which absence occurs. In that, they look around for ‘something’ that exists: an object, a conversation, an event, an encounter, or a feeling that has come into existence at some time. Namely, only the actual dimension of social reality is considered productive (see Deleuze, 2007a). Recently, academic attention has been paid to the mundaneness of life (Moran, 2005), the socially unmarked (Brekhus, 1998), the exclusion of alternative epistemologies (de Oliveira, 2017), undone scientific studies (Frickel et al., 2010), and something that just ‘didn’t happen’ (Scott, 2018). Nonetheless, they are focused mostly on interpersonal and micro-sociological contexts, while international political sociology has not yet considered ‘nothing’ (see Guillaume and Bilgin, 2016).

Drawing on the case study of a decision to do nothing in the face of the health disparities of sexual and gender minorities (SGMs), I consider the production and effect of ‘nothing’ in global health policymaking. This is demonstrated through an analysis of states’ discursive practices concerning different types of lack: lack of consensus, lack of definition, and lack of evidence, as shown in Figure 12. Considering the complexity surrounding the production of a multilateral decision to do nothing and hence the WHO’s inertia, I have proposed a pragmatic approach to applying different social theories. Other than the sociologies of nothing and ignorance, I primarily consulted queer and feminist, postcolonial and decolonial theories, which have enabled me to see international relations not merely ‘as a “state science”’ (Gammon and Reid, 2010: 323). To articulate these theories serves not only the point of departure for critique but also the presentification of the virtual dimension of reality ‘in the realm of imagination’ (Scott, 2019a: 140). Paralleling the virtual with the actual, I argue that nothing, as a social action, is accomplishable by precluding alternative epistemologies – by comissively removing a something else that would otherwise pose an obstacle.
In Part I of the thesis, through reviewing the debate regarding the proposal on SGM health disparities and undertaking a documentary and discourse analysis of the justifications to which the states resorted, I explained the institutional inertia of the WHO. A multilateral act of ‘doing nothing’ – resulting in the WHO’s neglect and inactivity – regarding SGM health disparities has been critically redone here. We may be inclined to interpret the outcome as follows: states do nothing because they don’t care or don’t understand. This study illustrates otherwise: such a decision shows how much they care and know. The significance of an international decision to do nothing lies in what it has done; it is performative as it embodies the interactions of multiple agents and discourses, in terms of interstate and international-domestic relations. Namely, ‘nothing’ achieves something, and can be performed only with support from many things, especially in the context in which global policymaking relies heavily on political considerations and professional opinions. Thus, the occurrence of nothing does not suggest a conclusion that ‘states, or the WHO, fail to…’ It is not a closure – it requires us to interrogate, retrospectively, the backgrounds and rationalities that legitimise states’ decision avoidance.

Figure 12. Theoretical and empirical aspects of the typology of ‘lacks’

Beyond the sociological accounts, this thesis also speaks to the theorisations regarding international society, sexual and gender subjects/non-subjects, and knowledge/non-knowledge production. Linking the sociological understanding of nothing to its macrosociological and political contexts, the study of ‘lacks’ has engaged with disciplines such as international relations and international law by considering the power dynamics
between different actors including visible and invisible ones. That is, beyond the sociological inquiries into no-thing and non-knowledge, in Part II, I have argued for considering pluralism in terms of critical political interventions, encompassing various epistemological, normative, and ethical accounts. Respectively, concerning the lack of consensus, a pluralist approach to international society unpacks the discursive construction of cultural relativism and its relationship with nationalism by viewing state sovereignty as an assemblage composed of, and functioning through multiple parts. Concerning the lack of definition, a pluralist approach to human rights theorises rights-holding subjects based not on identity but on one’s social position vis-à-vis other members in society. Concerning the lack of evidence, a pluralist approach to health evidence accounts for the power relations in defining the socio-political determinants of health, through exposing the limits of an evidence-based approach to global health governance and policymaking.

The aim here is to bring together the arguments that thread through this work – including the presentation and presentification of ‘lacking something’ – and indicate the insights the study makes into the sociological study of no-thing and non-knowledge, as shown in Figure 12. The inaction, accomplished on the international level, has reinforced SGMs’ vulnerability across societies. In resistance, the presentification of a utopian version of the present that is open to the future is important (Firth, 2012; Derrida, 1992); in that, I have been aware of ‘queer trouble’ concerning the unidentifiable sexual and gender others, and the ‘decolonial paradox’ regarding the coloniality of modern scientific knowledge production. As a result, the occurrence of nothing and the production of ignorance are interrelated, as are queer trouble and the decolonial paradox. The latter pairing produces what I call the decolonial-queer praxis. Bearing all of this in mind, this final chapter offers summative thoughts on this study, with a focus on addressing the questions of ‘how to study nothing’, ‘what nothing can do’ and ‘how I arrived here’, by exploring theoretical, empirical and methodological contributions to larger academic conversations. This chapter, and ultimately the thesis, concludes by identifying spaces for future inquiry.

I. How to study ‘nothing’?

In this study, I identify the rationales used by states to support their decision to do nothing concerning SGM health inequities. I begin by mapping out the institutional and legal context in which the related debates in the WHO started and ended, respectively, in 2013
and 2016. The preliminary analysis of the background – including what happened in the WHO and its Regional Committees – is important in clarifying the effect of the decision to remove the whole topic of SGM health. Above all, institutional inertia in the WHO has to be legally permissible and politically intelligible; the decision to drop the discussion must have been justified in all circumstances. In this regard, in addition to the principle of state voluntariness in international institutional law, I consider the legal discourse that influences, if not binds, the agenda setting work of the WHO – the human rights-based approach to global health policymaking. Legal discourse based on the idea of ‘health as a human right’ has largely directed the ‘to-dos’ and ‘not-to-dos’ of international actors, including states, regarding public health. This explains why the discussion over SGM health repeatedly draws on human rights references, from both proponents and opponents.

In this section, I outline the theoretical and methodological contributions of this study to the sociological conceptualisation of ‘nothing’. The theoretical contributions are categorised into two themes: the first is a theorisation of ‘nothing’ on the international plane, which is closely related to the (re)production of knowledge and non-knowledge; hence, ‘nothing’ is productive, both sociologically and politically. Unlike a policy decision to do something, a decision for inaction gains much less attention from researchers and activists, partly because it is assumed ineffective upon policymakers. The second theme engages social theories regarding queerness and decoloniality in conversation with studies of ‘nothing’ and ‘ignorance’, which have endeavoured to deconstruct cases of presence/absence and known/unknown binaries (Scott, 2019b; McGoey, 2019). Queer and decolonial perspectives have further deconstructed the international/local, metropolitan/colonial, and core/peripheral divides, particularly for a study of SGMs. Thus, I can argue that nothing is not only productive; it is also produced, not just by agents (states) based on their will, but also by a series of discourses – ranging from law to science – that have framed their will. This makes the methodological contributions clear, including the presentification exercise based on the decolonial-queer praxis, which offers an alternative interpretation of ‘nothing’.

i. Theoretical contributions

Using debates at the WHO enables me to demonstrate how an international decision to do nothing can be traced back to an earlier non-decision, which kept the deleted/bracketed agenda item as a footnote, pending the negotiation. It is a process, which moves from
waiting (omissive) to stopping waiting (commissive). Exploring the tension between prolonging and terminating that waiting time, I identify three forms of ‘lacking something’ that eventually inhibited the whole discussion and led to dismiss the agenda proposal. Drawing on Scott’s (2019b) sociological interrogations of ‘negative symbolic objects’ (nothing) such as non-doing, non-being and non-having, and the unknowns they may produce, including negative knowledge, non-knowledge and ignorance (Gross, 2007b), this study proposes to use ‘lack/lacking’ as the conceptual hook to capture the dynamics between such a social ontology and epistemology. In this light, I understand the lack of consensus as the absence of a multilateral mutual understanding; the lack of definition as acknowledgement of un-representable non-identity (including wilful dis-identification and unconscious non-identification); and the lack of evidence as the silence of evidence, due to no data (because of commissive misrecognition or omissive non-recognition), and systematic bias. They all involve something that is unknown or unknowable.

Through a study developed by analysing the discursive practices of ‘identity’ and ‘sovereignty’, I unpack these lacks in different chapters. The rationales behind the dismissal – lacking consensus, definition and evidence – are related to, respectively, the nationalisation and politicisation of epistemological cultural relativism, the prioritisation of notions such as ‘sexual orientation’ and ‘gender identity’ (SOGI) in law and its exclusionary effect, and the evidential hierarchy in the contemporary mode of health knowledge production. The negative phenomenon (lacking something), represented through states’ discursive practices and taken for granted as a justification for doing nothing, happened because the lacks had ‘faded into the background’, to use Scott’s (2019a: 138) words, of the dominant discourses in international law, human rights, and global health. That preceding, yet often omitted, movement – fading – gives rise to the power-knowledge nexus that has predetermined the legitimacy of these reasons. I thus wonder how we can intervene in this nexus. This is where I consider decolonial-queer praxis important and helpful as a critique of modern knowledge concerning identity and sovereignty, a political stance, and an epistemological standpoint. Namely, it refuses to overgeneralise SGMs’ living conditions for analytical purposes and problematises the state-centric approach to international relations.

That said, understanding ‘nothing’ as productive and effective enables us to engage with the context in which the issues around SGM health were omitted and ignored. Of course,
the process of the making of ‘nothing’ is more complex in international institutions than in interpersonal interactions. It requires justifications in order to fulfil civil society’s desire for accountability and transparency in terms of contemporary global governance. What has become important here is to identify the justifications for ‘doing nothing’ (or ‘non-doing anything’) concerning an obvious violation of SGMs’ right to health justice. Thus, the decolonial-queer praxis also serves as the point of departure from which political and policy interventions are developed across disciplines, such as law, politics, and public health, in this study. After all, human rights research – even in the domain of the sociology of rights – is interdisciplinary, in terms of re-engaging with the construction and non-construction of rights-holding subjects and non-subjects as well as the knowledge and non-knowledge about them (Morgan, 2009). Hence, simply (re)presenting ‘what has happened’ (Part I) can hardly be satisfactory if it is done without offering any upfront critical and normative interventions, namely, what more should be done (Part II).

### ii. Methodological accounts

Oriented by the theoretical approaches to the power-knowledge nexus between no-thing and non-knowledge as stated above, I find micro-sociological methods rather unviable in a case of international negotiation. Negative symbolic objects, as Scott (2019b) proposes, drawing on symbolic interactionism, may be studied with different qualitative methods, such as auto-ethnography and biographical interviews, ethnomethodology, and ‘thick description’ of the scenes – both noticed and unnoticed ones (Scott et al., 2016). This can hardly be applied to a space that is physically inaccessible to the researcher, for instance, the WHO Executive Board (EB) meetings. Nonetheless, inspired by Riles (2006b), the production and transformation of an international organisation’s bureaucratic documents can be a field for research, concerning the tangible and intangible manifestations of documentation. The making and unmaking of these documents per se are political events (Riles, 1999), in which any decision with respect to footnoting, bracketing, rewording and deleting is meaningful, representing the power relations and dynamics between states, between their national delegates, and between them and the society they represent. In this light, I can give a ‘thick description’ of the deleted agenda item, which, as an ‘actant’ (see Prior, 2008), produces meanings by disappearing.

Treating documents as a site in which the states ‘perform’ their competitions ‘in texts’ provoked my curiosity about the member states’ assertion that WHO-related forums are
a non-political space. This statement was attempting to *de-politicise* the institutional inertia that characterised the WHO’s stance on SGM health. How to critically understand and *re-politicise* such inactivity became the primary task of my analysis. Thus, a reflexive sociological approach to addressing this issue is the greatest methodological contribution of this study. Throughout the thesis, I undertook systematic review and documentary research, which has informed me of a series of conundrums that can be understood in terms of ‘queer trouble’ and a ‘decolonial paradox’, pertinent to defining SGMs and their needs. Reflexively, I have realised how the complexity of my ‘selves’ – in multiple concurrent roles – has been influenced by and mediated the content of this academic and activist journey. Therefore, I have argued that a *presentification* practice – the imaginative representation of an object that is not manifestly present or is non-existent (Husserl, 2012) – based on the decolonial-queer praxis is a necessary step towards an epistemology of ‘the global’ beyond state-centrism, and hence a critical reimagining of and engaging in global policymaking.

**II. What does ‘nothing’ do?**

In this section I aim to draw attention to the empirical contributions of this thesis, which sets out a a case study of debates in WHO-related forums. Drawing on sociological perspectives on nothing and ignorance, I am able to critically analyse states’ discourses regarding ‘lacking something’, in terms of the health inequities experienced by SGM populations. I have linked these discourses produced in international forums to the different fields (political, legal and scientific) that have made them possible – that is, to legitimate these lacks (see Bourdieu, 1988; Bourdieu, 1989), as shown in Figure 12. Specifically, I have identified three reasons given for the decision not to act and analysed them as three types of ‘lacks’. The first one is *the lack of consensus* regarding how to address SGM health by a state-based international agency. The second is *the lack of a definition* that can universally categorise SGMs. The final one is *the lack of evidence* about SGM health inequities, due to epistemic exclusion and wilful ignorance. Different types of ‘lacks’ are actualised through the states’ discursive practices concerning the non-existence of something that is desired, such as a multilateral agreement, a global definition, and sufficient evidence.

Here, I aim to highlight what ‘nothing’ can do. In this thesis, the lack of consensus in international relations, the lack of definition regarding SGM rights, and the lack of
evidence for global health policymaking denote, respectively, as follows. ‘Nothing’ is produced through the discourse of sovereign supremacy, reaffirming national cultural relativism. ‘Nothing’ is produced at the request of law for ‘conceptual stability’ (Onuf, 1991: 428) and yet it uncovers ‘queer trouble’ in defining SGMs. ‘Nothing’ is produced by a desire for greater certainty in terms of scientific knowledge and yet it reveals a ‘decolonial paradox’ in processes of knowledge production and evidence selection. These have all contributed to the creation of states’ decision for non-doing, and the corresponding inertia of the WHO. This case also demonstrates that, at times, scientific uncertainty is a consequence, rather than cause, of social conflict. Scientific uncertainty, as Zehr (2017: 17) contends, should not be understood ‘as simply a scientific knowledge gap, but rather as a function of social and cultural factors’. This is obvious when such a conflict is a product involved with powerful agents’ attempt to impose their views regarding the certainty/uncertainty boundary and its implications.

Studying ‘nothing’ has enabled me to expose a tension that has been taken as signalling an antagonism between various ethical values and between different states’ cultural sovereignty, which links together national culture, a collective right to self-determination, and statehood. Using the development of LGBT/tongzhi rights vis-à-vis ‘Asian values’ as a case study, I have argued that political rhetoric regarding desiring an international consensus not only ignores the pluralist nature of international society but also plays out against SGMs’ struggle over social justice. Similar questions regarding a static understanding of sovereignty are raised to challenge contemporary SOGI-related notions, which prefer identity to non-identity. This has led me to consider the usefulness of the underexplored concept of ‘minorities’, which articulates the minority stress theory in public health and the special protected status concerning minority rights. Nevertheless, this is also concerned with the discourse of evidence-based health policymaking, revealing that the emphasis at the WHO on the adequacy of evidence overlooks the difficulty in doing SGM health research in societies in which systematic discrimination and misrecognition exist. Therefore, I argue that taking no action based on a shortage of evidence has signposted and perhaps reinforced the health injustices faced by SGMs.

III. Final concluding remarks

Employing the discourses regarding different types of lack to avoid global attention and endorsement concerning SGM health disparities would further harm SGM communities,
by neglecting their needs and strengthening their minority stress. From 2013 to 2016, the nuances of the difference between omissive non-decision (not being sure what to do) and commissive non-doing (deciding not to do something) at the WHO exemplifies how ‘nothing’ can be more complex on the international plane – in terms of its production, the longer timeframe, the multiple actors involved, and the global effect at different levels. All of these factors suggest that there will be a need to conduct other qualitative research beyond a document-based study and discourse analysis. This may include ethnography and participant observation in international organisations, and elite interviews with national delegates, professional staff members, and international and local activists, who might comment on that situation and whether such ‘inactivity’ has had any influence on their agenda and strategy. In effect, conferences of various forms and purposes may be excellent sites for fieldwork. Therefore, an extension of my current work could be addressing more empirical research around symbolic interactionism with respect to the sociology of knowledge and ignorance.

There is a great deal of literature with which my research is in conversation, but which has not been explicitly discussed in this thesis. Having drawn inspirations and influences from poststructuralist, queer, feminist, decolonial and postcolonial epistemological approaches to law and social sciences, through this study I have developed a strong research interest and intellectual curiosity around the constructions, perceptions and embodiments with regard to identity, vulnerability, wellbeing, oppression and resistance. This is, of course, much related to my knowledge of human rights and experiences of social activism. From the original proposal to study the nexus between human rights law and global health governance, through choosing the transnational SGM social movement as the empirical focus, to a piece of work that aims to critically unpack the reasoning, process and result concerning the creation of ‘nothing’ based on international human rights discourse, I have been much enlightened. Nevertheless, it is only by making theory practical and intelligible to a larger audience – particularly, governments and those known and unknown SGM activist peers – that I will prolong the social and political life of this study. That ultimate aim is, I hope, to make ‘nothing’ and ‘ignorance’ accountable.
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Appendices

Appendix I. Database search results [Web of Science] of SGM health

<table>
<thead>
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<th>Time frame</th>
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<th>2nd search with Web of Science</th>
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<td>Elements</td>
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<td>Health (disparities, problems, or <em>equ</em>) = 2,833,201</td>
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<td></td>
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<td>AND <em>sexual</em> (orientation, preferences, or practices) = 395,975</td>
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<td></td>
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<tr>
<td></td>
<td>OR Erotic = 9005 / erotic* = 12404</td>
<td>OR erotic* = 96,960</td>
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<tr>
<td></td>
<td>OR Lesbian = 24082 / Lesbian* = 21418</td>
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<td></td>
<td>OR Gay = 42942 / Gay* = 51803</td>
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<td>OR Intersex = 6406 / Intersex* = 13466</td>
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<td>OR LGBT* = 4569 / LGBT* = 5907</td>
<td>OR LGBT* = 9005 / Erotic = 96,960</td>
</tr>
</tbody>
</table>

43 It was the year when the WHO removed ‘homosexuality’ from the ICD-10 (International Classification of Diseases), endorsed by the 43rd WHA on 17 May 1990.

44 It was the 10th International Day against Homo/Trans/Biphobia founded by Louis-Georges Tin.

45 It was the year when the WHO Commission on Social Determinants of Health published its final report ‘Closing the Gap in a Generation’.

46 These numbers indicate the search result filtered by ‘topic’ in the database, which encompasses mentions in titles, abstracts or contents.
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<td></td>
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### Appendix II. Database search results [Medline] regarding SGM health

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<th>Elements</th>
<th>2008-17/05/2015 Results</th>
<th>Elements</th>
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<td><em>sexual and gender minorit</em>*</td>
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<tr>
<td>gay*</td>
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<td>hijra</td>
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<td>OR</td>
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<td>OR</td>
<td>8633775</td>
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Appendix III. Documents consulted throughout the research process

<table>
<thead>
<tr>
<th>Documents used throughout the research</th>
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<tbody>
<tr>
<td>WHO publications, including the <em>World Health Report</em> (1995-2013) and the <em>WHO strategy on research for health</em> (2012)</td>
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<tr>
<td>UN documents, including:</td>
</tr>
<tr>
<td>- UN-based international human rights treaties</td>
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<tr>
<td>- Reports of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2003-2016)</td>
</tr>
<tr>
<td>- Publications of the Office of the United Nations High Commissioner for Human Rights (OHCHR)47</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Documents used for problematising the ‘debate’ [theoretical and methodological chapters]</th>
</tr>
</thead>
<tbody>
<tr>
<td>WHO Secretariat’s reports (2012-2016)</td>
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<tr>
<td>WHO EB documents, including:</td>
</tr>
<tr>
<td>- Resolutions and decisions (2012-2016)</td>
</tr>
<tr>
<td>- Provisional agendas (2012-2016)49</td>
</tr>
<tr>
<td>- <em>Rules of Procedure</em></td>
</tr>
<tr>
<td>- Method of Work50</td>
</tr>
<tr>
<td>WHO Regional Offices’ documents, including:</td>
</tr>
<tr>
<td>- Pan American Health Organization (PAHO) reports (2012-2016)</td>
</tr>
<tr>
<td>- Regional Committee for Africa (AFRO) reports (2012-2016)</td>
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<tr>
<td>- Regional Committee for Europe (EURO) reports (2012-2016)</td>
</tr>
<tr>
<td>- Regional Committee for South-East Asia (SEARO) reports (2012-2016)</td>
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<tr>
<td>- Regional Committee for the Eastern Mediterranean (EMRO) reports (2012-2016)</td>
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<td>- Regional Committee for the Western Pacific (WPRO) reports (2012-2016)</td>
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<td>World Health Assembly (WHA) documents, including:</td>
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<tr>
<td>- Resolutions and decisions (2012-2016)</td>
</tr>
<tr>
<td>- Method of Work51</td>
</tr>
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</table>

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47 Especially those regarding the right to health, for example, the *WHO-OHCHR Joint Fact Sheet on The Right to Health*.

48 Both adopted by a group of international human rights experts and become authoritative in interpreting relevant human rights law recently, see [http://www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org).

49 Not necessarily shown in the finalised meetings records.

50 Adopted by the 121st EB in 2007 as the Decision EB121.R1.

51 Adopted by the 122nd EB in 2008, as the Decision EB122.R8.
In addition, theoretical and empirical studies and systematic reviews regarding the role of the WHO in global health governance published in academic journals\textsuperscript{52}.

### Documents used in interrogating the lack of consensus regarding the implementation of health rights

<table>
<thead>
<tr>
<th>Online news stories (2011-2016) regarding LGBT social movement particularly in Asian and African societies, published on: \textsuperscript{53}</th>
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</thead>
<tbody>
<tr>
<td>• BBC online news (UK), The Guardian (UK)</td>
</tr>
<tr>
<td>• The Huffington Post (US)</td>
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<td>• The Jakarta Post (Indonesia)</td>
</tr>
<tr>
<td>• Taipei Times (Taiwan)</td>
</tr>
<tr>
<td>• Asia Pacific Forum (APF) Bulletin (regional), UN News (international), WHO News (international)</td>
</tr>
<tr>
<td>• Gay Star News (UK)\textsuperscript{54}</td>
</tr>
<tr>
<td>• LGBTQ Nation (US), Washington Blade (US)</td>
</tr>
</tbody>
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Non-profit organisations’ reports, including: \textsuperscript{55}

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<tr>
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<tbody>
<tr>
<td>• ILGA Annual Reports (2010-2016)</td>
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<tr>
<td>• Human Rights Watch (HRW) reports on the topic of ‘LGBT Rights’\textsuperscript{56}</td>
</tr>
<tr>
<td>• The SOGI Legislative Database\textsuperscript{57}</td>
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</table>

The Boolean keyword search with: health, sexuality, sexual, gender, LGBT, gay, lesbian, bisexual, transgender, tongzhi (and their corresponding Chinese translations) in the database of:

<table>
<thead>
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<th>The database of:</th>
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<tr>
<td>• Airiti Library (Taiwan)\textsuperscript{58}</td>
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<tr>
<td>• National Digital Library of Theses and Dissertations in Taiwan</td>
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</tbody>
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Especially for the case study of ‘Asian values’:

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<tr>
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<tr>
<td>• Related legislations in Taiwan, Hong Kong, and Singapore</td>
</tr>
<tr>
<td>• The book series Queer Asia, published by Hong Kong University Press</td>
</tr>
<tr>
<td>• The publications, including the book series on Sexuality and conference proceedings, of the National Central University Centre for the Study of Sexualities (Taiwan)</td>
</tr>
</tbody>
</table>

\textsuperscript{52} Specific journals were targeted, such as Globalization and Health; Global Health Governance; Global Public Health; Global Health; Global Governance; Health and Human Rights; and Bulletin of the World Health Organization.

\textsuperscript{53} With special attention paid to the news regarding health issues.

\textsuperscript{54} This and the following are all particularly LGBT news media.

\textsuperscript{55} With special attention to health issues, with ‘health’ for a keyword search.

\textsuperscript{56} Filtered by the topics ‘Asia’ and ‘LGBT rights’, only one considered This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism (2008).

\textsuperscript{57} An online project collaboratively maintained by the International Commission of Jurists and the University of Toronto, see https://www.icj.org/sogi-legislative-database/.

\textsuperscript{58} The largest database of academic journals published in (traditional/simplified) Chinese.
Published records of the two ‘Queer’ Asia Conferences (2016-2018) at SOAS, University of London, and sixth ILGA-Asia Conference in 2015

Theoretical and empirical studies concerning the influence of ‘Asian values’ upon the LGBT social movement published in academic journals

Documents used in interrogating the lack of definition of the affected communities and thus rights-holders

Treaty-based human rights bodies
Committee on Economic, Social and Cultural Rights (CESCR):
- General comments
- Concluding observations
- Communications (concerning individual complaints)
Human Rights Committee (HRC):
- General comments
- Concluding observations
- Communications (concerning individual complaints)

Other general comments and recommendations adopted by, for example:
- Committee on the Rights of the Child (CRC)
- Committee against Torture (CAT)
- Committee on the Elimination of Discrimination against Women (CEDAW)
- UN Human Rights Council (UNHRC) resolutions
- OHCHR official materials regarding the Free & Equal campaign (2012-2016)
- UN High Commissioner for Refugees (UNHCR) Guidelines on International Protection No. 9 (2012)
- Joint UN statement on ending violence and discrimination against LGBTI people (2015)
- International Statistical Classification of Diseases and Related Health Problems

Documents used in interrogating the lack of evidence concerning the phenomenon of health inequities

59 Including official reports, blogposts of organisers or participants, and videos (e.g. the visual materials on the QueerAsia channel: https://www.youtube.com/channel/UCXZDoZrcjNZYzRbpsfubK9g).

60 Specific journals were targeted, such as Asian Studies Review; Inter-Asia Cultural Studies; and Critical Asian Studies.

61 In particular, the General Comment Nos. 14 (2000) and 22 (2016).


63 In particular, those which are titled Human rights, sexual orientation and gender identity (2011-2016).

64 Including related policy statements, expert guidelines and press releases.

65 Especially the versions ICD-9 (1990) and ICD-10 (2016) and publicly accessible proposals for ICD-11.
• Chapters contained in *The Health of Sexual Minorities* (eds. Meyer and Northridge, 2007a)\(^{66}\)
• Empirical studies and systematic reviews regarding the health of lesbian, gay, bisexual, transgender, or altogether ‘LGBT’ published in academic journals\(^{67}\)
• Five textbooks on global health (i.e. Birn et al., 2009; Parker and Sommer, 2010; Skolnik, 2008; Skolnik, 2011; McCracken and Phillips, 2012)\(^{68}\)
• UN Development Programme (UNDP) *Being LGBTI in Asia* Country Reports \(^{69}\)

Other documents, including:
• *Valencia Declaration on Sexual Rights*, adopted by the XIII World Congress of Sexology (1997)
• *Declaration of Sexual Rights*, adopted by the World Association for Sexual Health (WAS) (2014)
• Final report of the WHO Commission on Social Determinants of Health (2008)
• Institute of Medicine Report on *Lesbian Health: Current Assessment and Directions for the Future* (1999), National Academy Press.

\(^{66}\) The most comprehensive book on this topic thus far.

\(^{67}\) Specific journals were targeted, such as *American Journal of Public Health*; *BMC*-series; *BMJ*; *Journal of Sex Research*; *Journal of Sexual Medicine*; *Journal of Homosexuality*; *Sexualities*; and *GLQ*.

\(^{68}\) However, none of these mentions SGM populations at all.

\(^{69}\) There are reports on Cambodia, China, Indonesia, Mongolia, Nepal, the Philippines, Thailand and Vietnam thus far.
Appendix IV. Bibliography of the official documents cited in the thesis

<table>
<thead>
<tr>
<th>Documents of the UN Charter-based human rights bodies, incl. Special Rapporteurs(^{70})</th>
</tr>
</thead>
<tbody>
<tr>
<td>OHCHR <strong>1998.</strong> Fact Sheet No. 18 (Rev.1), Minority Rights.</td>
</tr>
<tr>
<td>RODLEY, N. <strong>2001.</strong> Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment. A/56/156.</td>
</tr>
<tr>
<td>OHCHR &amp; WHO <strong>2008.</strong> The Right to Health. Fact Sheet No. 31.</td>
</tr>
<tr>
<td>GROVER, A. <strong>2010.</strong> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A/HRC/14/20.</td>
</tr>
<tr>
<td>GROVER, A. <strong>2011.</strong> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A/66/254.</td>
</tr>
<tr>
<td>OHCHR <strong>2011.</strong> Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. A/HRC/19/41.</td>
</tr>
<tr>
<td>UNHRC <strong>2014a.</strong> Bahrain, Congo, Djibouti, Egypt, Malaysia, Nigeria, South Sudan, Sudan, Uganda, United Arab Emirates: amendment to draft resolution A/HRC/27/L.27/Rev.1. 1, 27th Human Rights Council.</td>
</tr>
</tbody>
</table>

\(^{70}\) Here, the documents are listed chronologically rather than alphabetically on purpose, in order to highlight the development of various issue topics in the UN.


Documents of the UN treaty-based human rights bodies


CRC 2013. General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24). CRC/C/GC/15.
<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994a</td>
<td>HRC, CCPR General Comment No. 23: Article 27 (Rights of Minorities), CCPR/C/21/Rev.1/Add.5.</td>
</tr>
<tr>
<td>2002</td>
<td>HRC, Concluding observations of the Human Rights Committee: Egypt, CCPR/CO/76/EGY.</td>
</tr>
<tr>
<td>2004</td>
<td>HRC, Concluding observations of the Human Rights Committee: Poland, CCPR/CO/82/POL.</td>
</tr>
<tr>
<td>2005</td>
<td>HRC, Concluding observations of the Human Rights Committee: Poland, CCPR/CO/83/GRC.</td>
</tr>
</tbody>
</table>

Documents of the WHO and its Regional Offices/Committees


WHO-CSDH **2008**. _Closing the gap in a generation: Health equity through action on the social determinants of health_, WHO.


WHO-SECRETARIAT **2013**. Improving the health and well-being of lesbian, gay, bisexual and transgender persons. EB133/6.


WHO-EB **2016**. Executive Board, 139th Session: Provisional Summary Record of the First Meeting. EB139/PSR/1.


WHO-AFRO **2016**. Progress report on the implementation of the Health and Human Rights resolution. AFR/RC66/INF.DOC/2.

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71 Here, the documents are listed chronologically rather than alphabetically on purpose, in order to highlight the development of the WHO, followed by that of Regional Committees.


**WHO-EURO 2014.** Report of the 64th session of the WHO Regional Committee for Europe. EUR/RC64/REC/1.

**WHO-EURO 2015.** Promoting intersectoral action for health and well-being in the WHO European Region: health is a political choice. 17 September 2015, 65th WHO Regional Committee for Europe, Resolution EUR/RC65(1).

**WHO-PAHO 2015.** 54th Directing Council (67th Session of the Regional Committee): Final Report. CD54/FR.


**Other international documents and judgements cited in the thesis [chronology]**

**ECHR 1981.** Dudgeon v. United Kingdom. Application No. 7525/76.


**ICTJ 1996.** Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion. International Court of Justice.


**UNHCR 2012.** Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. HCR/GIP/12/01.

**BAN, K.-M. 15 April 2013.** Struggle for LGBT Right One of the Great, Neglected Human Rights Challenges of Our Time (International Conference on Human Rights, Sexual Orientation and Gender Identity) [Online]. Oslo: UN Web TV.


**INGO documents cited in the thesis [chronology]**


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<tr>
<th>Domestic documents and judgements cited in the thesis</th>
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