

## LGBT rights versus Asian values: de/re-constructing the universality of human rights

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## **LGBT Rights versus Asian Values: De/Re-Constructing the Universality of Human Rights**

Law, especially from the international human rights regime, is a direct reference on which minority groups rely when it comes to ‘non-discrimination’. Drawing upon LGBT rights in Taiwan, as well as Hong Kong and Singapore, this paper – through an application of K.H. Chen’s (2010) *Asia as method* – critically reviews how global LGBT politics interact with local societies influenced by Confucianism. Along a perpetual competition between the universalism and cultural relativism of human rights, this paper not only identifies the pitfalls of ‘Asian values’ from a cosmopolitan perspective but also contributes to a *queered* approach to human rights-holders against *homonationalism*.

Keywords: Asia as method, Asian values, cultural relativism, human rights, LGBT rights, universality

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### **Introduction**

Exploring possible interpretations of human rights is often undertaken to counter power relations between people and government as well as the marginalised and society. In particular, in terms of equality and non-discrimination, international human rights legal norms are the most salient and direct reference on which opponents of LGBT rights rely. Law presents itself as an institution and dominates social life, which is ‘created, interpreted, and enforced in certain socially established ways, through the use of recognised procedures and agencies’.<sup>1</sup> This paper, by mapping LGBT rights in Confucian Asia, conducts doctrinal research in relevant fields, since law, as social norms, means ‘living’ and flourishing in social settings *in situ* where liberties and

restraints are imputed by cultural values.<sup>2</sup> Locating the discourse of rights in the context in which law is interwoven with social life as a whole,<sup>3</sup> this paper, which aims to provide a social critique from a socio-cultural perspective, inevitably involves a comparative study within a quasi-genealogical framework.<sup>4</sup>

Speaking of LGBT rights in global history, a strategy of ‘women’s-rights-are-human-rights’ was copied almost exactly to reproduce the strategy of ‘gay-rights-are-human-rights’, as if the fluidity and vagueness of sexual beings, including all those constructed socially and performed desirably,<sup>5</sup> were ignored. *Queering* legal politics may be bolder than the gendering project, which has to some extent compromised the essential biological binarism, sacrificed some other social beings, and only empowered those typical and normal women.<sup>6</sup> Beyond the frailties of both principles of formal equality and anti-subordination, a poststructuralist fashion, resulting in abstracting sexual and gender constructs,<sup>7</sup> intends to position a spectrum in the discursive framework of the rights of all *human* beings from a kaleidoscopic perspective. Through an understanding of the legal developments in Confucian Asia, the normative implications stemming from social institutions and communications project a complex socio-legal picture.

There are many ways in which to study LGBT rights from the perspective of the relationship between law and society, and this includes the relevant social movement and legal reform as well as the paradox between identity politics and queer activism. The perceptions of sexuality and eroticism have been challenged a lot by multiculturalism in Asia in postmodern times,<sup>8</sup> and people are required to recognise heterogeneity rather than a universalistic interpretation of social reality.<sup>9</sup> This paper applies first, in terms of methodology, a postcolonial approach, *Asia as method*<sup>10</sup> to Taiwan, as a Westernised-Confucian society, and considers it more useful to picture the

subaltern culture therein. The LGBT social movement in Taiwan faces an internal contradiction derived from the conflicting notions of sexual liberation and homonormativity. Following a debate between legal positivism and critical theories, the movement may have fallen into a trap left by the Euro-American path to modernity.<sup>11</sup>

After dealing with the question of law from a cultural perspective, this paper then turns to focus on discursivities of human rights in Confucian Asia, especially on the intense competition between universalism and cultural relativism.<sup>12</sup> In this regard, several factors driven within the society and from the external world are identified, especially the rise of the Taiwan independence movement and the relationship with China in the post-Cold War era. The former, which constructs a fictive ethnicity, has played a key role in naturalising sexual deviance, as queer Marxism has developed as a historical response to Chinese Marxism (Maoism).<sup>13</sup> As the counterpart of Taiwan, people in urban China are actually more individualistic and independent, in terms of kinship, from their families, which is reflected in their coming out process,<sup>14</sup> since contemporary urban China no longer has as much of a Confucian bond as other places in East Asia.

Besides a larger territory, the tendency for migrant employment, and urbanisation, one key reason could be that China experienced a cultural revolution when Marxism-Leninism displaced all of the traditional teachings in the 1960s and 1970s.<sup>15</sup> It is too arbitrary to thus call China's society deconstructionist, but we may see how the LGBT social movement has developed in urban China so differently from in other places, such as Singapore, Hong Kong and Taiwan, where activists encounter more conflicts in identity politics between neoliberalist and paternalist styles. Concluding with a revisitation of the relationship between legal reform and social change, this paper not only demonstrates how to apply 'Asia as method' to studying LGBT rights, by

taking Taiwan as an example, from a socio-legal perspective, it also presents the pitfalls of the so-called ‘Asian values’ that have otherwise caused the collapse of the cultural legitimacy and personal subjectivity of ‘Asian beings’.

### **Contouring LGBT rights as human rights along Confucius societies**

A hegemony in constructing sexuality and gender was displayed in the history of different cultures until the 1980s, when relevant discourses were shaped by the globalisation of heterosexism and homophobia, on the one hand, as well as identity and diversity on the other.<sup>16</sup> In the vein of the social movement in East Asia, the normative distinction between civil society and state power is however, too simplistic, as it ignores the experience in this area in which civil society has often been subordinated to the state and social struggles have mostly been excluded from both spheres. Setting aside the rights discourse, which also came from the ‘West,’<sup>17</sup> this paper also discusses an additional sphere of *min-jian* – people’s sphere as a space for political society, which does not belong to the state or the civil society of elites – in the Renaissance of Confucianism in East Asia. Since it is important to identify causations in contextualising the social construction located in history, Chen argues that the sphere of *min-jian* should be a priority in East Asian socio-political analysis.

Chen develops this term out of a tension – shared by many East Asian languages that share Chinese terminology – between officialdom (*Kwan*) and a people’s space, in which subaltern struggles are relatively autonomous from the dominant institutions of the state and the civil society of elites, although the latter may appropriate these struggles as part of a project of emancipation. However, this political society of *min-jian*, as a site of engagement, cannot be reduced to a fixed point within the state and civil society, for it often contributes to modifying established relations of power and interest and positioning societal needs, for example new interpretations of gender and

sexuality in this case, in legal and political conceptualisations. In order to portray LGBT rights in Taiwan, a comparison with Hong Kong and Singapore, where the societies have also encountered great challenges and opportunities from both internal intensions and external influences, can also be useful when applying 'Asia as method'.

Taiwan, Hong Kong and Singapore share much similitude in terms of their colonial history, westernisation and market economy.<sup>18</sup> More interestingly, the mainstream culture rooted in these societies is based on Confucian ideologies.<sup>19</sup> However, against this background, these societies have considerably different attitudes toward sexual and gender minorities. As usual, these societies in current decades have been affected by the global fashion of the LGBT social movement, which is reflected in the internal clash and controversy with regard to the original legislation, social institutions and policies. The causations of the variations in social attitudes towards sexual and gender minorities between these Westernised-Confucian societies rests, to a great extent, on the colonial legacy in their culture and their relationships with China in a geopolitical sense. In Taiwan, same-sex sexual behaviour is legal but same-sex relationships are not yet eligible for the legal protections available to opposite-sex couples. Unlike Singapore and Hong Kong,<sup>20</sup> Taiwan has never had a sodomy taboo in law, even when it was under Japanese rule.

Just like traditional Chinese culture, Japanese culture did not historically 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'.<sup>21</sup> Male homoeroticism in traditional Japan was often an expression and extension of one's social power, but such gender inequality made society turn a blind eye to lesbianism as the focus was simply on 'men'. The Taiwanese were more fortunate than the Japanese as they witnessed the rise of feminism and women's right

movements in the Anglo-American legal reform.<sup>22</sup> This occurred at a critical moment between Chiang Kai-shek's death in 1975 and the abolition of Martial Law in 1987 followed by the democratisation of Taiwan. These coincidences have speeded up the development of the discursivities of equality, and all forms of discrimination and exploitation, including those based on sexual orientation and gender characteristics, have been banned by law.

In March 2010, the Ministry of Education announced the inclusion of LGBT rights in primary school textbooks from 2011, in order to 'root out discrimination,' since students should be able 'to grow up happily in an environment of tolerance and respect.' When Chen Shui-Bian, the first non-KMT (Kuomintang, the nationalist party in Taiwan's postcolonial history) President, promulgated multiculturalism as a fundamental national value after Martial Law,<sup>23</sup> a lot of official references to human rights have encouraged many LGBT rights organisations, including the Taiwan *Tongzhi* (gay) Hotline, which became the first legally registered group.<sup>24</sup> In October 2003, the Executive Yuan proposed the legalisation of same-sex marriages and the right to child adoption within the framework of the *Human Rights Basic Law*, but this was opposed by the legislature. On 22 December 2014, another proposed amendment to the *Civil Code* aiming to legalise same-sex marriage was supposed to be reviewed by the Judiciary Committee of the Legislative Yuan but then closeted in the end.

Despite all this progress, queer politics were invisible from people's daily lives, except on the day of the Taiwan Pride every year, until September 2013, when the Bill of Marriage Equality was placed on parliament's agenda. In 2014, the atmosphere of political struggle became more intensified, not simply between LGBT activists and religious groups but also between people who are LGBT-friendly and hostile in *min-jian*.<sup>25</sup> Again, Taiwan is luckier to have a less complicated socio-political context,

which consists of mostly Han-Chinese and some aborigines and migrants, compared to Singapore, which has a considerable Malay/Muslim population (13.4%), which represents another religious homosexuality-denying force along with the neo-conservatists – who believe in a combination of neo-Confucian teachings and Judeo-Christian tradition against the legitimacy and rights of sexual and gender minorities in East Asia.

As a result of the one-party dominant system, the Singaporean government has, all the time, been ruled by Han-Chinese people from the PAP (People's Action Party), and thus has always dealt with multiracial and cultural issues very carefully. Different from the PRC (People's Republic of China)'s policy of sinicising racial and ethnic minorities, the PAP's technique for social control in this regard is relatively liberal and mild, and based on the principle of coexistence,<sup>26</sup> which may obstruct the promotion of LGBT rights in Singapore since the Muslim population is more negative with regard to issues of homosexuality and gender disconformity. As for Hong Kong, the complexities rest more on the relationship between the Hong Kong government (Government of the Hong Kong Special Administrative Region), led by the Chief Executive, who is in principle appointed by the PRC's Central People's Government, and China. In short, the closer the relationship between these two governments, the more resistant and mobilised the people are.

Although the people's political sphere in China might be more tolerant (or indifferent) and dynamic (or pluralistic) than it appears to outsiders at first glance, the Chinese government poses as conservative in global LGBT politics and this has stimulated the civic force from the *min-jian* of Hong Kong against the official attitude of China. Nonetheless, the juxtaposition of former colonial rule, traditional Chinese customs, a multicultural context, and the intention of the Chinese government has make



Hongkongers 'schizophrenic' between pro and against sexual dissidents, which in turn has generated conflicting views on these topics.<sup>27</sup> Unlike the Judeo-Christian tradition, which is well 'transplanted' into the lay culture of Hong Kong and Singapore, the Protestants and Catholics in Taiwan represent the bourgeoisie and wealthier class, which have a great influence on politics. This reveals a twisted version of democracy, which has been criticised,<sup>28</sup> and marriage equality in Taiwan remains largely a dream because of a lack of legal recognition despite the majority of the population's social acceptance.

As globalisation implies universalisation versus particularisation, which creates similarities or reinforces distinctions across societies, an increasing cross-reference of law and social science happens to identify the impetus and dynamic of social change.<sup>29</sup> One group of researchers undertook an international survey on the key factors of gay-unfriendliness, although it did not intend to be exhaustive.<sup>30</sup> The factors are: (1) the type of legal system,<sup>31</sup> (2) the democratic conditions and political opportunity for the minority population,<sup>32</sup> (3) the state of economic development and modernisation,<sup>33</sup> and (4) the level of globalisation.<sup>34</sup> These factors may explain the legal attitude towards the gay and lesbian population. 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 its legal system is based on the English common law system, although it is unquestionably one of the richest countries in the world and highly exposed to globalisation.<sup>35</sup>

However, this predication is not accurate enough, for there are more variables that a Western synthesis may not properly capture regarding the whole picture in East Asia.<sup>36</sup> In China, before the decriminalisation and demedicalisation of homosexuality respectively in 1997 and 2001, homosexuality was viewed as 'a sign of bourgeois

decadence' by the PRC and such undesirability led to it forming part of 'hooliganism' from the 1960s.<sup>37</sup> With the atmosphere full of uncertainty and anxiety before the 1997 handover, Hong Kong had a big move in advancing the rights of the *tongzhi* population (people who do not conform to heteronormativity) to decriminalise same-sex acts and some miscellaneous offences in 1991 as an immediate democratic reform response to the 1989 Tiananmen Square Massacre.<sup>38</sup> In the aftermath of the political transition, the fear of losing freedoms and 'Hongkongness' in fact made gender and sexuality activism gain more support from local communities.<sup>39</sup>

Although Taiwan is *de facto* independent, its international status is squeezed to a large extent by China. The ROC government in Taiwan thus endeavours to seek political support from the international community by increasing its reputation for human rights protection and differentiating itself from China. In this regard, it is noteworthy that since 2009, Taiwan has voluntarily and unilaterally internalised both ICCPR and ICESCR and other multilateral human rights treaties, although it cannot legally accede to any of them due to China's objection. In 2013, Taiwan's government organised the first Review Committees and welcomed many UN experts to review its human rights reports. Both Committees made several recommendations on LGBT rights that are now considered by the NGOs when monitoring law and policies. Despite unprecedented opposition from the neo-conservatists, Taiwan is just one step away from legally recognising same-sex partnerships, and in fact, is often referred to as the most progressive country in terms of LGBT rights in East Asia.<sup>40</sup>

A socio-legal perspective, in terms of methodology, requires not just rigour in synthesising the complex aspects of socio-political life but also dynamic in imagining the infinite variables of sociocultural actions. We may find, as Weber claims, that a comparative method can help contour the development of law and ideologies within

society,<sup>41</sup> and that symbolic meanings and cultural capital deserve a reflexive critique of the perceived modernity in such a field.<sup>42</sup> In order to systemise a pursuit for justice that law attempts to generalise and conceptualise interpersonal relations, actions and circumstances in abstract terms, this paper is naturally aiming for an implicit and indirect evaluation of the virtues or defects of social reality *per se*.<sup>43</sup> Therefore, with an understanding of the development of LGBT rights in the particular social context of Taiwan, this paper then moves on to see how the so-called Asian values and others frame an anti-LGBT discourse based on neo-conservatism.

### **Rethinking the universality of human rights through Asian values**

Along with the development of global sexualities and corresponding social movements around the world, Singapore, as a microstate, has become China's ally with regard to geopolitical and macroeconomic affairs. Sharing many similarities in terms of political ideology, Singapore and China have jointly contributed to developing the concept of 'Asia values' against international human rights standards. However, within the methodological framework of 'Asia as method', Chen's argument for de-imperialisation does not mean being completely different from the West, since virtues and features, such as care, rights, flourishing and justice can be shared by every culture.<sup>44</sup> Although homosexuality was once forbidden by law in Chinese history,<sup>45</sup> the concepts of homo/heterosexual binarism as well as sexual orientation were actually introduced from the 'West',<sup>46</sup> and the traditional family values asserted by homophobic groups are actually derived from Judeo-Christian rather than Confucian teachings.<sup>47</sup>

The so-called 'Chinese culture' based on Confucianism, today is an exercise in selective memory with arbitrariness, and it is hence necessary to work on the insurrection of subjugated knowledges,<sup>48</sup> which were opted out of by the contemporary dominant power in society. Regardless of the great influence of Taoism and Buddhism

on East Asians' philosophy of life, a combination of Christianity and Confucianism has been strategically taken on by the Singaporean government in claiming 'Asian values' to 'mildly let' people live together. This new version of Confucianism was also interpreted as 'traditional virtues' in Hong Kong, representing a symbol of conservatism against the neo-liberalist movement, as a legacy of the British Empire. Similarly in Taiwan, it is, in the form of 'traditional culture', argued vehemently by people from the church. Most dramatically, they all claim that such a social movement, coming from the 'West', is as radical as raping public opinion.

Held by anti-cultural imperialists, cultural relativism and legal passivism are prevalent at the moment against internationalism and the universality of human rights, whenever issues are brought by the 'West' such as gender and sexuality,<sup>49</sup> the death penalty, sex work and drug intervention. Confucian ethics, either arbitrarily generalised as 'Chinese culture' or rhetorically articulated as 'Asian values',<sup>50</sup> are virtually indistinguishable from collectivism and communitarianism, so an interpretive practice pursuing normativity and solidarity is not surprising<sup>51</sup> given that the primacy of social order is sacrosanct.<sup>52</sup> However, if we take a closer look at Chinese culture throughout history, its view was neither homogeneous nor unequivocal with regard to homosexuality,<sup>53</sup> especially when we consider that Confucianism, Buddhism, and Taoism, on which the traditional culture for Sino Chinese is based, never reacted to homosexuality with the same disgust that has pervaded Christian responses to homoeroticism.<sup>54</sup>

Since the Han Dynasty ended, in approximately 220, neither Confucian nor neo-Confucian moralists 'singled out homosexuality when they advocated sexual restraint'.<sup>55</sup> Before the time of the KMT, once ruled by the authoritarian Chiang Kai-Shek, who sought to aggressively *normalise* the society of Taiwanese,<sup>56</sup> it appears that

as long as familial obligations were not neglected, a 'sexual encounter between two men was never immoral *per se*; homosexuality does not violate the Confucian ethical system as long as it respects the boundaries of propriety assigned to it'.<sup>57</sup> The emphasis on uniform norms served the KMT just as much as it works for the PRC in China and the PAP in Singapore. They all need an ostensibly indigenous ideology to naturalise state omnipresence. Asserting that homosexuality was condemned by a timeless Chinese culture is not only a misreading of the historical facts<sup>58</sup> but also exaggerates the validity of contingency.

Both Sino-Chineseness and Pan-Asianess are problematised by the selective perspective of history and 'the conflation of various strands of cultural lineages (for example, appropriating fundamentalist Christian values and rewriting them as Asian ones) all for a specific cultural political agenda: in this case, the perpetuation of homophobic laws'.<sup>59</sup> Since the issue around LGBT rights has triggered controversies regarding the state paternalism and individual politics on a global plane,<sup>60</sup> intensive attention to linking sexuality and human rights provokes a paradigmatic debate that pertains to two dimensions of the human rights discourse. Primarily, the presumption of universal entitlement to human rights concerns the inclusion, or not, of sexual and gender minorities for full protection under international human rights law. Furthermore, the requirement for international monitoring of the implementation of a globally accepted minimum standard involves the legitimacy of difference in respecting freedoms and satisfying rights.

Core to both dimensions is cultural relativism, which is basically based on multiculturalism, contending that all cultural values must have equal status and any attempt to uphold mainstream ideologies over others is a form of prejudice.<sup>61</sup> However, states that consider universalism to be cultural imperialism do not substantially respect

cultural diversity under their jurisdictions. This paper attempts to discuss the essence of the universality of human rights in response to the Asian values and homonationalism, which concerns a fear of neo-imperialism in the name of liberal democracy brought by the global LGBT social movement.<sup>62</sup> Human rights advocates should never avoid the question of how to define humanity and justice in terms of 'rights',<sup>63</sup> if we consider that human rights are the rights that one has simply as a human being, although the idea of 'being' is very essentialist and rests on human reason and consciousness.<sup>64</sup>

Although international human rights law enshrines the principle of equality and the inalienability of human dignity and fundamental freedoms, a legal positivist view reading the text of multilateral treaties does not help explain how law interacts with the natural subject in terms of sex or gender issues. In whichever form, norms, even those of international human rights protection, perform to institutionalise the dualism or binarism in an organised hierarchy, regardless of whether or not they intend to liberate the subordinate (the *other*) from the dominant (the normal), for 'there is no natural who precedes representation in law. Instead, legal texts and practices constitute the subjects of law, playing a particularly powerful role in the processes that reproduce and naturalise dominant social norms and practices'.<sup>65</sup> Genealogically, the international human rights discourse was born out of all nations' *opinio necessitatis* derived from people's great fear of oppression and depreciation and huge desire for peace and liberty after both World Wars.

We may not forget how the international community unprecedentedly reached a strong consensus over some 'absolute values' subject to no derogation since the establishment of the United Nations in 1945<sup>66</sup> and the unanimous adoption of the Universal Declaration of Human Rights in 1948.<sup>67</sup> We may envisage that the episteme of international human rights was pragmatically desired for the conscience of

humanity,<sup>68</sup> although ‘individuals, groups, and even public authorities often not merely recognize but legitimately act upon differences between groups of people’.<sup>69</sup>

Eventually, the non-discrimination principle only prohibits illegitimate distinction that deprives target groups of the full enjoyment of rights. That is to say, discrimination that is absolutely wrongful is constituted when it has dehumanised individual subjectivity and thus undermines social justice.<sup>70</sup> For those who used to be systematically treated as less than full rights holders within a given political community, being listed for guaranteed protection explicitly in law is like a stamp recording their successful struggles.

In other words, before additional forms of discrimination become recognised as unjustifiable and considered as prohibited grounds, the room given by ‘other status’<sup>71</sup> can provisionally be capable of carrying political and legal forces to combat the unbearable stigmatisation. With regard to LGBT rights, the 2011 OHCHR report documented discriminatory legislations and practices as well as acts of violence against individuals based on their sexual orientation and gender identity throughout the world. In addition to direct threats from social normalisation, judicial correction and medical institutionalisation, restrictions on a wide range of other rights have also been enacted to indirectly interfere with people’s freedoms and autonomy. The most frustrating fact is that LGBT individuals and other sexual and gender minorities are denied by law and reality in some countries, and are still subject to civil disabilities and social prejudices.

The response based on the universality of human rights is thus intended to answer the question of *whether such social attitude can justify the continued exclusion of sexual orientation and gender identity from the prohibited grounds of discrimination*. Opponents of homosexuality and transgenderism may refer to the law of nature (or preferably God), but they neglect the fact that ‘nature’ has never been a concern of

egalitarianism. Although Foucault, Butler,<sup>72</sup> and many other critical theorists all argue that sexuality, sexual orientation, gender binarism, transsexuality, and all of our perceptions of sex and body are socially constructed, this should not affect whether or not people who are not cisgender or heteronormative should be respected since we also accept that religion, language and ethnicity should not be the basis for illegitimate discrimination. Moreover, most, if not all, of the groups of people who are particularly recognised as entitled to non-discrimination from the dominant population and public authority were once seen as a threat to public morals.

Donnelly has properly concluded that pseudo-speciation leading to dehumanising other cultural groups lends itself to being most immoral.<sup>73</sup> In reality, the current stance against *perverts* taken by homo/transphobic countries is based on the same logic that Americans and Europeans used to justify their mistreatment of Africans and Asians in the 1950s. As we can see, public morality itself is fluid and defined by contingency instead of justice. Furthermore, even though we accept that voluntary sexual relations among same sex people and alternation of gender roles contrary to people's biological sex are a profound moral outrage, discrimination against LGBT individuals cannot be justified from a human rights perspective.<sup>74</sup> Those sexual and gender minorities, in the light of the universal possession of rights, are still entitled to equal protection before the law at any rate. In response to neo-conservatism, Donnelly argues that cultural relativism is simply a way for societies to believe that their values are binding although they just happen to be widely practised within a particular context.<sup>75</sup>

Cultural relativists assume the moral infallibility of culture – the impossibility of moral learning or social adaptation except within a specific culture, which often confuses what people have been forced to tolerate with what it values.<sup>76</sup> The relativist's



assertion has ignored the contingency and changing character of a culture – a repertoire of unstructured entities and contested symbols – over which members of a society constantly struggle.<sup>77</sup> Therefore, Donnelly's relative universality of human rights does not consider that the universal possession of human rights is philosophically challenged, but he admits that there can be varying practices to satisfy the needs of human rights holders. In terms of the LGBT social movement, it is uncontested that every part of the world has its own path to progressively accepting a changing norm in law and society and does not necessarily follow the Euro-American model, as long as the subjectivity and enfranchisement of 'being' the rights-holders is not deliberately denied nor degraded.

What non-Western governments fear most, with regard to homonationalism, is ideological colonisation by means of victimising and politicising minorities' identities.<sup>78</sup> Donnelly also warns of the political danger posed by 'excessive' or twisted universalism, especially when a powerful actor mistakes its own interests for universal values.<sup>79</sup> Beyond multiculturalism, the relative universality of human rights, based on the cultural pluralism, applies more to cosmopolitan 'beings' in socio-political-legal contexts.<sup>80</sup> In Plummer's new work on *Cosmopolitan Sexualities*,<sup>81</sup> he also urges, besides the recognition of the multiplicities of genders and sexualities, the identification of common virtues among all peoples of different cultures. He considers a more inclusive approach, based on human norms, for the next step of comparing and persuading each other, and this sheds light precisely on global ethics, in which justice and rights are well-founded, at least in the aftermath of the Second World War.

As for 'Asia as method', a process producing reflexivity of colonial legacy is important. It not only demands that Westerners show special caution and sensitivity when promoting a new rights discourse but also permits that non-Westerners – Asian

beings in this case – to remould the imported idea carefully in a sense of respecting, rather than undermining, the core value of human dignity.<sup>82</sup> As applied, cultural differences should not serve for ‘denial’ or exaggeration of the Cold War;<sup>83</sup> instead, they are indicators of seeking for the commons. In essence, everyone is entitled to life, health, privacy and security, although sexual orientation or gender identity is not yet explicitly included in the prohibited grounds of discrimination. If a state refuses to protect anyone against violence in the name of cultural conservatism, it is still violating the basic human rights (or in any other form of an accepted discourse concerning such entitlements) of the victims.<sup>84</sup> The core values of human rights are inherently embraced by all human beings regardless of where they are from.<sup>85</sup>

## **Conclusion**

Although the UK has repealed sodomy law, it is ironic that Singapore, with an anti-imperial stance,<sup>86</sup> contends that homosexual acts are still punishable since gay rights are simply a ‘Western’ issue. If ‘Asia as method’ sustains, a legitimate process of decolonisation in Singapore, rather than defending the law, should deliberate upon the purpose and function of law that is a colonial product and the meaning of its existence. From the stand point of an Asian being, it is a process of deconstructing an imperialised ideology that remains today to reconstructing or recovering the community’s own values; otherwise people living in former colonies will always be trapped by the pitfalls of colonialism. If we consider that colonisation is a result of suppression and oppression, then a decolonisation process should at least have liberation and emancipation as its critical force,<sup>87</sup> as Spivak cautioned against ignoring subaltern people as cultural *Others* by means of epistemic violence.<sup>88</sup>

The principle of non-discrimination, which aims to protect individuals qua *world citizens*, requires remedying inequalities that resulted from illegitimate power relations

between the state and people,<sup>89</sup> namely emancipating a wrongful and exploitative relationship that has been tolerated and internalised by society between states and individuals. As an example of applying Chen's ontological presumption of 'Asia as method', Liu states that the current LGBT social movements in Taiwan and China have problematised the identity politics – beyond a neoliberal project – within both sociocultural contexts. His reconceptualisation of a new approach to queer theory in the societies of communist China (PRC) and liberal China (ROC) has transcended the ideological clash since the Cold War,<sup>90</sup> although his work is arguable for imbalanced weighting of evidence between both settings. Rather than liberating sex and sexuality, 'queering' may better describe the LGBT social movement in Taiwan's legal politics, although it has been repackaged with another descriptor '*rainbowing*' for Taiwanese.

The latter attempts to deconstruct the symbolic signifiers with regard to gender and sexuality and has been borrowed to legitimise all of the marginalised groups in society, whereas the former tries to de-radicalise the sexuality-centred movement because many LGBT Taiwanese would still rather stay invisible. Such a mild approach manifests a relatively non-aggressive struggle through performing in the private sphere and changing people's lifestyles,<sup>91</sup> as *min-jian* politics versus civil society. Despite the insistence on various sexual identities, the *rainbow coalition* in Taiwan, which encompasses all kinds of civil rights movements,<sup>92</sup> does not intend to *play* the criticism but to *evade* it, because it believes that 'as cultures change, so do sexualities, sexuality for humans is profoundly not like that of other animals. Everywhere it is prone to shifting symbols, contingent contexts and political processes.'<sup>93</sup> The rainbow coalition, besides launching a marriage equality initiative and holding the biggest Pride in East Asia, also looks to replace legislators who have been identified as homo/transphobic or ignorant of minority rights by voting.

Out of fear of facing great opposition from the neo-conservatists, who are mostly religious bourgeoisies, the Ministry of Justice intends to disregard all of the efforts on the work of same-sex partnerships, disregarding the recommendations made by the human rights experts in 2013 that human rights protection should not be subject to public opinion. This has not only undermined the fundamental value of a 'Human Rights State'<sup>94</sup> but also harmed the developing *Taiwanese*ness, which was once consolidated by being liberated from authoritarianism.<sup>95</sup> In fact, similar hot debates over legalising same-sex marriage are also taking place in many other East Asian countries – for example, Vietnam,<sup>96</sup> Thailand,<sup>97</sup> South Korea,<sup>98</sup> and Japan.<sup>99</sup> Playing a pioneer role for Taiwan in creating a truly democratic society is what the Taiwanese are always proud of so as to distinguish themselves from the Mainland Chinese, and fortunately Taiwan is still referred to as the most LGBT-friendly country in Asia.<sup>100</sup>

Such an open attitude of *min-jian* politics caused rainbow power to reach its peak in influencing the voters at Taiwan's largest-scale local elections in November 2014 by scoring candidates on a scale from the most LGBT-friendly to LGBT-phobic<sup>101</sup> – that has also encouraged many LGBT candidates running campaigns for the 2016 parliamentary election. For many who support the symbolic 'rainbow', human diversity rather than particularity falls much within the Confucius notion of collectivism in Taiwan; it is a cosmopolitan approach to coexistence, different from Singapore's multiculturalist approach. The key strategy is all about fighting against the neo-conservatists, masked as the traditional orthodox, and stimulating social change by means of emancipation and inclusion at the same time.<sup>102</sup> From this paper, we can see that doing legal research *per se* on LGBT rights can inevitably involve a critical study of culture, especially when minority interests are not yet the primary concern of

mainstream society and the power relations that structure epistemic violence between the middle class and others still exist.

## Notes

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<sup>1</sup> Roger Cotterrell, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Burlington: Ashgate Publishing Company, 2006), p. 1.

<sup>2</sup> See Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*. Translated by Walter L. Moll. (New Brunswick and London: Transaction Publishers, 2002).

<sup>3</sup> Thomas R. Powell, 'Law as a Cultural Study' *The American Law School Review* 4 (1917): 330-338.

<sup>4</sup> Paul W. Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* (Chicago: University of Chicago Press, 1999), pp. 3-5.

<sup>5</sup> Judith Butler, *Bodies That Matter: On the Discursive Limits of 'Sex'* (New York: Routledge, 1993), pp. 2-12.

<sup>6</sup> See Dianne Otto, 'Lost in Translation: Re-Scripting the Sexed Subjects of international Human Rights Law' in *international Law and Its Others*, ed. Anne Orford (Cambridge: Cambridge University Press, 2006).

<sup>7</sup> Nancy Levit, 'A Different Kind of Sameness: Beyond Formal Equality and Antisubordination Strategies in Gay Legal Theory' *Ohio State Law Journal* 61 (2000): 867-1793.

<sup>8</sup> The elusiveness of the sexual subject and the danger of oversimplification have been proposed by researchers who have attempted to study the modern history of sexuality in Asia. See for example, Gerard Sullivan, 'Variations on a Common Theme?' *Journal of Homosexuality* 40, no. 3-4 (2001): 253-69; Paul Boyce, 'The Ambivalent Sexual Subject: HIV Prevention and Male-to-Male intimacy in India' in *Understanding Global Sexualities: New Frontiers*, ed. Peter Aggleton, Paul Boyce, Henrietta L. Moore and Richard Parker (Oxon: Taylor & Francis, 2012), pp. 75-88; and Paul Boyce and Daniel Coyle. *Development, Discourse and Law: Transgender and Same-sex Sexualities in Nepal*. IDS Evidence Report 13 (Brighton: institute of Development Studies, 2013).

<sup>9</sup> Max Travers, *Understanding Law and Society* (Abingdon: Routledge, 2010), pp. 141-162; see also Tamara Loos, 'Transnational Histories of Sexualities in Asia' *The American Historical Review* 114, no. 5 (2009): 1309-24.

<sup>10</sup> Kuan-Hsing Chen, *Asia as Method: Toward Deimperialization* (Durham and London: Duke University Press, 2010).

<sup>11</sup> Josephine Chuen-Juei Ho, 'Queer Existence under Global Governance: A Taiwan Exemplar' *Positions* 18, no. 2 (2010): 537-54.

<sup>12</sup> Eva Brems, *Human Rights: Universality and Diversity* (Dordrecht: Kluwer Law international, 2001).

<sup>13</sup> Petrus Liu, 'Queer Marxism in Taiwan' *inter-Asia Cultural Studies* 8, no. 4 (2007): 517-39.

<sup>14</sup> See Wei Wei, Tongxinglian Shehui Biaoxian Xingshi de Lishi Bianqian he Zhongxi Bijiao [The Historical Change and Sino-West Comparison of Homosexual Expression in Society], in *Fei Xiaotong Xueshu Luntan Jiangtan Lu* [Collection of Fei Xiaotong Academic Forum Lectures]. Shanghai: Shanghai University Press, 2010.

<sup>15</sup> Petrus Liu, 'Why Does Queer Theory Need China?' *Positions* 18, no. 2 (2010): 291-320.

<sup>16</sup> Tom Boellstorff, 'Some Notes on New Frontiers of Sexuality and Globalisation' in *Understanding Global Sexualities* (see note 8), pp. 171-185.

<sup>17</sup> The notion of 'West' itself can be traditionally stereotypical and thus problematic, for example, Leben's discussion of a European approach to human rights. Here, it is used intentionally to highlight all the non-Asian sphere of knowledge, especially those of colonisation. See Charles Leben, 'Is There a European Approach to Human Rights' in *The EU and Human Rights*, ed. Philip Alston (Oxford and New York: Oxford University Press, 1999), p. 72.

<sup>18</sup> In terms of geo-demographic status, all three are small and highly urbanised, and all are dominated by Han-Chinese. Three were classified as three of the Four Asian Tigers, which were notable for maintaining high growth rates and rapid industrialisation between the 1960s and the 1990s. They are all cosmopolitanised, open, and influenced by Western capitalism.

<sup>19</sup> All these societies claim to have a common Confucian heritage, but the modern conservatism itself is an awkward blend of a prudish brand of Confucian teaching and evangelical means of Christian morality.

<sup>20</sup> At the time when Singapore and Hong Kong became British colonies in 1824 and 1842, sodomy remained a crime punishable by death in England. That was also imported into: Hong Kong's *Offences against the Person Ordinance* of 1865, based on the 1861 English *Offences against the Person Act*, and Singapore's the *Straits Settlement Law* of 1871, which mirrored the Indian Penal Code.

<sup>21</sup> Mark McLelland and Katsuhiko Suganuma, 'Sexual Minorities and Human Rights in Japan: An Historical Perspective' *The international Journal of Human Rights* 13, no. 2-3 (2009): 329-43.

<sup>22</sup> See Doris T. Chang, *Women's Movements in Twentieth-Century Taiwan* (Champaign: University of Illinois Press, 2009).

<sup>23</sup> Wang, Li-Jung. 'Multiculturalism in Taiwan' *international Journal of Cultural Policy* 10, no. 3 (2004): 301-18.

<sup>24</sup> Jens Damm, 'Discrimination and Backlash against Homosexual Groups' in *Politics of Difference in Taiwan*, ed. Tak-Wing Ngo and Hong-zen Wang (Abingdon and New York: Routledge, 2011), p. 160.

<sup>25</sup> Po-Han Lee, 'How 'Rainbow Factors' Are influencing Taiwan Local Elections' *Gay Star News*, 03 December 2014, <http://www.gaystarnews.com/article/how-%E2%80%99rainbow-factors%E2%80%99-are-influencing-taiwan-local-elections031214>.

<sup>26</sup> Beng Huat Chua, 'Multiculturalism in Singapore: An instrument of Social Control' *Race & Class* 44, no. 3 (2003): 58-77.

<sup>27</sup> Shirley Zhao, 'Most Hongkongers Believe Anti-Gay Attitudes Should Be Tolerated: Research' *South China Morning Post*, 06 January 2015, <http://www.scmp.com/news/hong-kong/article/1674815/anti-gay-attitudes-should-be-tolerated-hong-kong-society-new-research>.

<sup>28</sup> Steve Lee, 'Marriage Equality in Taiwan Lacks Force of Law Despite Social Acceptance' *LGBT Weekly*, 09 April 2014, <http://lgbtweekly.com/2014/04/09/marriage-equality-in-taiwan-lacks-force-of-law-despite-social-acceptance/>; Darren Wee, '68% of Taiwan Backs Gay Marriage: Poll Finds Women Are More Supportive Than Men' *Gay Star News*, 07 November 2014, <http://www.gaystarnews.com/article/68-taiwan-backs-gay-marriage071114>.

<sup>29</sup> Mathieu Deflem, 'The Globalization of Law' in *Sociology of Law: Visions of a Scholarly Tradition*, Mathieu Deflem (Cambridge: Cambridge University Press, 2008), pp. 250-270.

<sup>30</sup> Victor Asal, Udi Sommer, and Paul G. Harwood, 'Original Sin: A Cross-National Study of the Legality of Homosexual Acts' *Comparative Political Studies* XX, no. X (2012): 1-32.

<sup>31</sup> 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.

<sup>32</sup> Homosexuality is more likely to be illegal in less democratic countries and/or countries with less women in the legislatures.

<sup>33</sup> Homosexuality is more likely to be illegal in countries with lower GDP per capita.

<sup>34</sup> Homosexuality is more likely to be illegal in countries that are less exposed to, or plugged into, the process of globalisation.

<sup>35</sup> Singapore stands out as the only country, among 76 countries that the IMF classifies as advanced economies, which still criminalises same-sex acts globally.

<sup>36</sup> Mark McLelland and Vera Mackie. 'Introduction: Framing Sexuality Studies in East Asia' in *Routledge Handbook of Sexuality Studies in East Asia*, ed. M. McLelland and V. Mackie (Oxon and New York: Taylor & Francis, 2014), pp. 1-4.

<sup>37</sup> Donald Cochrane, 'Policy Issues Concerning Sexual Orientation in China, Canada, and the United States' in *Social Issues and Policy Challenges in Western China: Lessons Learned and Lessons Borrowed Conference* (University of Saskatchewan, Saskatoon, 29 August 2013), a keynote speech for the Social Issues and Policy Challenges in Western China: Lessons Learned and Lessons Borrowed Conference.

<sup>38</sup> Travis S.K. Kong, Hoi Leung Lau, and Cheuk Yin Li, 'The Fourth Wave? A Critical Reflection on the *Tongzhi* Movement in Hong Kong' in *Routledge Handbook* (see note 36), pp. 188-202.

<sup>39</sup> Lisa Fischler, 'Womens Activism during Hong Kong's Political Transition' in *Gender and Change in Hong Kong: Globalization, Postcolonialism, and Chinese Patriarchy*, ed. Eliza Wing-Yee Lee (Toronto: UBC Press, 2011).

<sup>40</sup> Anna Leach, 'Why Is Taiwan the Best Place to Be Gay in Asia?' *Gay Star News*, 12 November 2012, <http://www.gaystarnews.com/article/why-taiwan-best-place-be-gay-asia121112>.

<sup>41</sup> See Stephen Kalberg, *Max Weber's Comparative-Historical Sociology Today: Major Themes, Mode of Causal Analysis, and Applications* (Surrey and Burlington: Ashgate, 2012), especially pp. 2-8, for an overview.

<sup>42</sup> Mikael R. Madsen and Yves Dezalay, 'The Power of the Legal Field: Pierre Bourdieu and the Law' in *An introduction to Law and Social Theory*, ed. Reza Banakar and Max Travers (Oxford and Portland: Hart, 2002).

<sup>43</sup> Cotterrell (see note 1), pp. 1-5.

<sup>44</sup> Ken Plummer, 'Contingent Sexualities: Fifty Years of Sexual Stories' (University of Sussex, Brighton, 8 May 2015), a keynote speech for the Researching Sex and Sexualities Conference and Workshops.

<sup>45</sup> See Bret Hinsch, *Passions of the Cut Sleeve: The Male Homosexual Tradition in China*. (Berkeley, Los Angeles, and London: University of California Press, 1990).

<sup>46</sup> 'The sodomite had been a temporary aberration; the homosexual was now a species'. See Michel Foucault, *The History of Sexuality. Volume 1: An introduction*. Translated by R. Hurley.



(New York: Random House, Inc., 1978), p. 43. The term 'homosexuality', as a modern product, was coined in 1869 by Karl-Maria Kertbeny as a Greco-Latin neologism that 'became a widely adopted appellation for same-sex behaviour'. See Robert Aldrich, 'Gay and Lesbian History' in *Gay Life and Culture: A World History*, ed. Robert Aldrich (New York: Universe Publishing, 2006), p. 11. See also Wah-Shan Chou, 'Homosexuality and the Cultural Politics of *Tongzhi* in Chinese Societies' *Journal of Homosexuality* 40, no. 3-4 (2001): 27-46.

<sup>47</sup> K.E. Kuah-Pearce, 'Experimenting with Religious Values as Asian Values' in *State, Society, and Religious Engineering: Towards a Reformist Buddhism in Singapore* (Singapore: ISEAS Publishing, 2009).

<sup>48</sup> Michel Foucault, *Power/Knowledge: Selected interviews and Other Writings, 1972-1977*, ed. Colin Gordon (New York: Pantheon Books, 1980), p. 81.

<sup>49</sup> Previous Parliamentary Member *Baey Yam Keng*, for example, criticised the information regarding homosexuality on the website of the Singapore Health Promotion Board for neglecting the Asian values of family. See Siau Ming En, "'Disappointed' MP criticises HPB [Health Promotion Board] for its FAQ on sexuality' *Today*, 7 February 2014, <http://www.todayonline.com/singapore/disappointed-mp-criticises-hpb-its-faq-sexuality>.

<sup>50</sup> In Singapore, which is multiracial, direct references to 'Chinese culture' are thus intentionally prevented. This notion was first advocated by Mahathir Mohamad (Prime Minister of Malaysia during 1981-2003) and later by Lee Kuan Yew (leader of Singapore during 1990-2004).

<sup>51</sup> See Seng-Chau Ou, *Yazhou Jiazhi de Quanshi yu Shijian: Xinjiapo zhi Gean Yanjiu* [The interpretations and Practices of Asian Values: Singapore Case Study]. Master's thesis, National Sun Yat-sen University, 2002.

<sup>52</sup> The first of five *Shared Values* of Singapore promulgated by then-Deputy Prime Minister Goh Chok Tong in 1990 reads 'Nation before community and society above self'.

<sup>53</sup> Hinsch (see note 45).

<sup>54</sup> See Cuncun Wu, *Homoerotic Sensibilities in Late Imperial China* (Abingdon and New York: RoutledgeCurzon, 2004), p. 45.

<sup>55</sup> *Ibid.*, p. 29.

<sup>56</sup> Jens Damm, 'Same Sex Desire and Society in Taiwan, 1970-1987' *The China Quarterly*, no. 181 (2005): 67-81.

<sup>57</sup> Wu (see note 54), p. 21.

<sup>58</sup> In fact, Chinese history has shown a great representation of same-sex, transvestism, or cross-dressing in both the civic and official records.

<sup>59</sup> Kenneth Chan, 'Gay Sexuality in Singaporean Chinese Popular Culture: Where Have All the Boys Gone?' *China information* 22, no. 2 (2008): 305-29.

<sup>60</sup> A comprehensive discussion upon such controversies can be found in Nicole J. Beger, *Tensions in the Struggle for Sexual Minority Rights in Europe: Que(e)rying Political Practices* (Manchester: Manchester University Press, 2004).

<sup>61</sup> Eva Brems, 'Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse' *Human Rights Quarterly* 19, no. 1 (1997): 136-64.

<sup>62</sup> Scott L. Morgensen, 'Settler Homonationalism: Theorizing Settler Colonialism within Queer Modernities' *GLQ: A Journal of Lesbian and Gay Studies* 16, no. 1-2 (2010): 105-31.

<sup>63</sup> Florian F. Hoffmann, 'Human Rights, the Self and the Other: Reflections on a Pragmatic Theory of Human Rights' in *international Law and Its Others*, ed. Anne Orford (Cambridge: Cambridge University Press, 2006).

<sup>64</sup> See Universal Declaration of Human Rights (UDHR), article 1.

<sup>65</sup> Otto (see note 6), pp. 319-20.

<sup>66</sup> See Charter of the United Nations, article 1.

<sup>67</sup> See UDHR, article 2.

<sup>68</sup> Christopher McCrudden, 'Human Dignity and Judicial interpretation of Human Rights' *European Journal of international Law* 19, no. 4 (2008): 655-724.

<sup>69</sup> Jack Donnelly, 'Non-Discrimination and Sexual Orientation: Making a Place for Sexual Minorities in the Global Human Rights Regime' in *innovation and inspiration: Fifty Years of the Universal Declaration of Human Rights*, ed. P.R. Baehr, C. Flinterman and M. Senders (Amsterdam: Royal Netherlands Academy of Arts and Sciences, 1999).

<sup>70</sup> See, for example, HRC, *Toonen v. Australia*, Communication No. 488/1992 (1994); *Mr. Edward Young v. Australia*, Communication No. 941/2000 (2003); *X v. Colombia*, Communication No. 1361/2005 (2007)

<sup>71</sup> See UDHR, article 2.

<sup>72</sup> In her monologue, she attempted to portray a picture comprehensively portraying the *becoming* of who are sexually marginalised. See Judith Butler, *Undoing Gender* (New York and Oxon: Routledge, 2004).

<sup>73</sup> Donnelly (see note 70), p. 105.

<sup>74</sup> *Ibid.*, p. 106.

<sup>75</sup> Jack Donnelly, 'The Relative Universality of Human Rights' *Human Rights Quarterly* 29, no. 2 (2007): 281-306.

<sup>76</sup> *Ibid.*, p. 296.

<sup>77</sup> Ilana F. Silber, 'Pragmatic Sociology as Cultural Sociology: Beyond Repertoire Theory?' *European Journal of Social Theory* 6, no. 4 (2003): 427-49.

<sup>78</sup> Jasbir Puar, 'Rethinking Homonationalism' *international Journal of Middle East Studies* 45, no. Special Issue 02 (2013): 336-39.

<sup>79</sup> Donnelly (see note 75), p. 303.

<sup>80</sup> Jürgen Habermas, 'The Constitutionalization of international Law and the Legitimation Problems of a Constitution for World Society' *Constellations* 15, no. 4 (2008): 444-55. See also Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (Cambridge: Cambridge University Press, 2002), pp. 7-14; 66-68.

<sup>81</sup> Ken Plummer, *Cosmopolitan Sexualities: Hope and the Humanist Imagination* (Cambridge and Malden: Polity Press, 2015).

<sup>82</sup> Ann-Belinda S. Preis, 'Human Rights as Cultural Practice: An Anthropological Critique' in *Human Rights: An Anthropological Reader*, ed. Mark Goodale (Malden, Oxford, and Chichester: Blackwell Publishing Ltd., 2009).

<sup>83</sup> Chen (see note 10), pp. 4-8.

<sup>84</sup> Elizabeth M. Zechenter, 'in the Name of Culture: Cultural Relativism and the Abuse of the individual' *Journal of Anthropological Research* 53, no. 3 (1997): 319-47.

<sup>85</sup> Brems (see note 61), p. 136.

<sup>86</sup> People also argue that it is a result of the paternalism that came out of the one-party authoritarian system, and this may properly capture the reasoning conceptualising the 'Asian values', which accentuates pro-family completeness and anti-individualism. See Ju-Chun Chien, Fu Ai Zengzhi xia de Tongzhi Quan Fazhan: Xinjiapo Gean Yanjiu [The Development of Gay Rights in the Paternalism: The Case of Singapore]. Master's thesis, National Chi Nan University, 2005.

<sup>87</sup> Boaventura de Sousa Santos (see note 80), pp. 21-61; see also Foucault (note 48), pp. 81-92.

<sup>88</sup> Gayatri C. Spivak, 'Can the Subaltern Speak?' in *Marxism and the interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg (Urbana and Chicago: University of Illinois Press, 1988).

<sup>89</sup> See David Ingram, *Habermas: introduction and Analysis*. (Ithaca and London: Cornell University Press, 2010), p. 286.

<sup>90</sup> Petrus Liu, *Queer Marxism in Two Chinas*. (Durham: Duke University Press, 2015), pp 138-169.

<sup>91</sup> Yu-Shuan Huang, *Si Lingyu zhong de Rentong Zhanyan: Taiwan Tongzhi Yundong Ling Yimian* [Performing an Identity in Private Sphere: The Other Side of Gay and Lesbian Movement in Taiwan]. Master's thesis, Nanhua University, 2006.

<sup>92</sup> This is mainly contributed to by the 'Taiwan Alliance to Promote Civil Partnership Rights (TAPCPR)', 'Lobby Alliance for LGBT Human Rights Declaration', 'Intersex, Transgender and Transsexual People Care Association (ISTScare)', 'Taiwan's Gender Queer Rights Advocacy Alliance', and 'the Appendectomy Project'. It concerns not only sexual and gender minorities but also persons with disabilities, migrants, labours, sex workers and aboriginals.

<sup>93</sup> Ken Plummer, 'introducing Sexualities' *Sexualities* 1 (1998): 5-10, p. 5.

<sup>94</sup> Daniel Bowman, 'Towards a Human Rights State? A Comparison of Taiwan's Human Rights Policies under Chen Shui-Bian and Ma Ying-Jeou' (Master's thesis, National Chengchi University, 2010).

<sup>95</sup> C.R. Pramod, 'Political Process Sequencing in the institutionalisation of Human Rights in Taiwan' *China Report* 46, no. 2 (2010): 121-41.

<sup>96</sup> See Pauline Oosterhoff, Tu-Anh Hoang, and Trang Thu Quach. *Negotiating Public and Legal Spaces: The Emergence of an LGBT Movement in Vietnam*. IDS Evidence Report 74 (Brighton: institute of Development Studies, 2014); Catherine Earl, 'Life as Lived and Life as Talked About: Family, Love and Marriage in Twenty-First Century Vietnam' in *Routledge Handbook* (see note 36), pp. 101-111.

<sup>97</sup> See Yanapon Musiket, 'Legalising Love' *Bangkok Post*, 26 March 2013, <http://www.gaystarnews.com/article/how-%E2%80%98rainbow-factors%E2%80%99-are-influencing-taiwan-local-elections031214>.

<sup>98</sup> See Hyaewool Choi, 'Constructions of Marriage and Sexuality in Modern Korea' in *Routledge Handbook* (ibid), pp. 87-100; Steven Borowiec, 'South Korea's LGBT Community Is Fighting for Equal Rights' *Time*, 11 February 2014, <http://www.gaystarnews.com/article/how-%E2%80%98rainbow-factors%E2%80%99-are-influencing-taiwan-local-elections031214>.

<sup>99</sup> See Editorial, 'Tokyo's Shibuya Ward Adopts Ordinance to Recognize Same-Sex Unions' *The Japan Times*, 31 March 2015, <http://www.gaystarnews.com/article/how-%E2%80%98rainbow-factors%E2%80%99-are-influencing-taiwan-local-elections031214>.

<sup>100</sup> Elvis Anber, 'Taipei: A Rising Star for Gay Travelers' *Taipei Times*, 11 July 2010.

<sup>101</sup> Lee (see note 25).

<sup>102</sup> In reality, the conflict between ‘Taiwan Family Association’ (the religious group) and the rainbow coalition becomes more and more furious, when the quintessential form of partnership and family as well as sexual revolution among the youngsters are challenged simultaneously by both sides.