



New Intimacies, Old Desires

*Law, Culture and Queer Politics
in Neoliberal Times*

Edited by OISHIK SIRCAR and DIPIKA JAIN

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CHAPTER 4

Gender Governance through Law

Populist Moralism in Aspiring Democracies/Economies

Josephine Ho

The will to empower others and oneself is neither a bad nor a good thing. It is political; the will to empower contains the twin possibilities of domination and freedom.

—Barbara Cruikshank¹

The growing presence of feminist ideas in legal institutional power,² described by Janet Halley as 'governance feminism',³ and now increasingly embodied in UN protocols and covenants of gender equality, is fast becoming a globalizing project for states (or quasi-states) that aspire to plug into this vision of civility and modernity.

In Taiwan, a similar will to power in the 1990s had followed the Swedish feminist model in calling itself 'state-feminism' to denote its affiliation with the independence-minded nation-state-building project of the Democratic Progressive Party (DPP). And with the DPP assuming state power in 2000,⁴ state-feminists, now inducted into a position of administrative power, locked onto UN protocols and covenants on gender equality for their possible utility in local political restructuring and international diplomacy. Yet, in a social context such as Taiwan where 'feminism' may be more often shunned

than claimed,⁵ the term 'gender equality' is consistently employed instead, so as to invoke the legitimacy of the pursuit for equality already embraced by broad-based democratic movements and further sanctified by so-called 'global trends of progress'. The majority of the women now involved in advancing gender mainstreaming or in overseeing the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Taiwan are hardly self-proclaimed feminists but mostly women technocrats, academics, NGO organizers and other elite women—referred to as a whole by the government as 'gender experts'—who are piggybacking on UN resolutions and protocols of gender equality to make their entry into the government structure and resource-sharing circle. The policies, programmes, rules and regulations that are produced to implement gender equality are hence more bureaucratic than feminist. Shifting focus from cases of litigation/adjudication to more structural strategies of legislation/implementation, the gender experts have been working to bring local and national legislations into alignment with international models of governance under the cause of mainstreaming and prioritizing 'gender'. In this chapter, I will use 'gender governance', instead of governance feminism, to describe the way gender has come to assume a central place in conceptions of law, government policies as well as daily life in Taiwan. Notably, this ascendancy is achieved to a large extent through the construction of a populist moralism that rides upon protectionist sentiments directed against things sexual, especially those considered to be morally unacceptable.

GENDER GOVERNANCE IN THE MAKING

In Taiwan, gender governance is first and foremost the installation of a series of legislations, both punitively and administratively oriented, that aims to foreground gender equality as a core value for Taiwanese society. While this has been described as a sign of progress for Taiwan, it has also resulted in an environment imminently more treacherous

and hostile for the sexually non-normative, and significantly more disciplinary for all.

While legislative processes are notoriously slow in Taiwan due to factional fights along party lines, women's groups have made truly dramatic progress since the 1990s in instituting punitive legislation in the areas of domestic violence, rape, prostitution and child protection—all areas where deep-seated sex negativity and sexual stigma can be easily mobilized and magnified to necessitate the creation of harsher legislation for the cause of prevention and social control.⁶ On its official website, the Gender Equality Committee of Taiwan's central government boasts of the following achievements in legislation in recent years, and almost all of the acts have been drafted and propelled into place by women's NGOs working alongside politicians:

- Child and Youth Sexual Transaction Prevention Act (1995)⁷
- Sexual Assault Crime Prevention Act (1997)
- Domestic Violence Prevention Act (1998)
- Act of Gender Equality in Employment (2002)
- Children and Youths Welfare Act (2003)⁸
- Gender Equity Education Act (2004)
- Sexual Harassment Prevention Act (2005)
- Regulations on the Prevention of Sexual Assault, Sexual Harassment, and Sexual Bullying on Campus (2005)
- Human Trafficking Prevention Act (2009)
- Enforcement Act of Convention on the Elimination of All Forms of Discrimination against Women (2012)

The repeated success was helped in no small way by public outrage following high-profile sex crimes since the 1990s, when the demand for retribution made prohibitive powers and coercive legal structures all the more appetizing. 'In the face of the grave loss, anger, and trauma that gave rise to demands for revenge, how would feminist "rational" political reasoning stand its ground?'⁹ Well, in the case of these acts, charged with strong sentiments of social indignation, penalties were increased and applicability broadened.

Notably, the accumulation of such legislations in Taiwan also documents the gradual formation and consolidation of a gender-oriented 'punitive rationality'¹⁰ that harbours an obvious disproportionality in sexual bias. For example, the Child and Youth Sexual Transaction Prevention Act had been drafted in the late 1980s by women's groups to rescue aboriginal girls sold into city brothels by their parents and traffickers. But as such trafficking declined and disappeared during the process of legislation, the act was reoriented by an alliance of women's groups and Christian groups: rather than the original purpose of rescue after the fact, which affects only those girls actually involved in sexual transactions, the act now targets proactive prevention that puts all teenage girls under protection, that is, surveillance.

Later amendments further broadened the scope of the act to respond to various new developments in youth culture. Among them, the notorious Article 29 of the act was amended in 1999 to make internet sexual inquiries or sexual invitations that cite the fashionable concept of 'compensated companionship' prosecutable for 'possibly causing children (anyone under the age of 18) to be involved in sexual transactions'. To be exact, the act of posting a few words on the internet that make vague references to possible sexual transaction now constitutes a criminal act, irrespective of the age of the person(s) involved, and the penalty could be as high as five years imprisonment plus US\$30,000 in fine.¹¹ (Involuntary manslaughter carries but a two-year sentence in Taiwan.)

The severity of the penalty aside, just the simple fact of being dragged through the judicial process for one's internet speech is scary enough. Imagine the consequence of such legislation for the unsuspecting netizens—especially sexually active youths, both gay and straight—who thought the anonymity of the internet offered up unlimited opportunities for sexual exploration and contact, but only later found that their mere messages of sexual interest constituted violation of the law. Statistics from the Ministry of Justice show that between 2000 and 2008, more than 20,000 such cases were sent through the court process, and all were understandably burdened with huge sexual shame and stigma. In the meantime, sex rights groups

mobilized human rights groups to come together and challenge this infringement of basic freedom of speech and expression. They fought valiantly all the way up to the Constitutional Court, which unsurprisingly decided in favour of upholding the child protection clause. Continued pressure only succeeded in forcing the Bureau of Police Affairs to at least strike off the reward and punishment bylaws in 2008 that had encouraged the prioritization of investigation of such cases. Still, the original advocacy groups for the child protection act refuse to smell the blood on their own hands and, in collaboration with an international online content watchdog organization that targets so-called 'child sexual abuse imagery',¹² continue to push for more amendments that would extend the hands of the law into every individual's own hard disc drive or cloud space.

Clauses in other acts that had been urged into place by women's groups prove to be equally inimical to most things sexual, especially when involving youths. The substitution of the term 'rape' by 'sexual assault' in the Penal Code in 1999 was accompanied by a significant broadening of its definition that greatly enhanced the severity of legal consequence for a wide variety of sexual acts. Hence, sexual 'contact' (broadly defined in terms of sexual organs and nature of contact) involving anyone under the age of 14 is now considered to be sexual 'assault' whether or not consent is present and without consideration of the actual circumstances. Private exchange of verbal or visual sexual materials on the internet, which is quite common among eager and curious youths, has since 2001 been indicted as dissemination of obscenities; while organizing private sex parties has been considered as inducing sexual intercourse or obscene acts for a gain and punished as pimping since 2012. Taiwanese TV news is famous for generously applying mosaic or pixelization to obscure any sexually insinuating image so as to 'prevent the mental health of children from being negatively influenced' by coming into contact with such images. Furthermore, since 2005, any speech, image or behaviour in real or virtual space can be considered sexual harassment if someone complains about 'feeling offended or uncomfortable'. Fighting in jest or fun among students during recess is now 'bullying' or 'sexual harassment' and must be dealt with swiftly and harshly,

possibly leading to expulsion,¹³ as teachers are required to report such incidents immediately to the Ministry of Education so that gender experts can descend upon the campus and conduct detailed and meticulous investigation. Any hesitation on the teacher's part would land him or her a fine of US\$1,000 or other forms of chastisement. Use of legal institutional force is increasingly justified by moral and sex panics that aim to create hypothetical or potential situations of harm, discomfort or threat, both on the internet and on school campuses, two spaces where the social activities of youths often range beyond adult expectation or understanding.

In the final analysis, the protective measures specified in these legal acts amount to an all-encompassing civilizing mission that aims to discipline both adults and children and purify social space so as to create a so-called 'safe and friendly' environment for the growth and development of youths. Furthermore, subjective emotions of shame, embarrassment and repugnance are greatly encouraged,¹⁴ sensitizing people to feelings of offence, inciting them to feel righteous indignation and hence to demand retribution. Since 2004, I have described the consequence of such codification and implementation as 'an infantilization of social space'.¹⁵ Sadly, moral panic and the resulting fear proved to be formidable. Now grafting itself onto international protocols, the gender equality doctrine has constructed a newly gendered normativity through which traditional values of propriety and chastity are returning in full force, though in a very different language and tone. For example, courtship impulses among the young are to be 'respected' if the youngsters can 'respect themselves'; attempts at making language more gender-neutral and gender-sensitive turn out to be occasions for thinly veiled censorship. At the present moment, all forms of sexual contact, sexual information and sexual activities are legally subject to surveillance and possible prosecution in Taiwan—all in the name of protecting vulnerable women and children.

With unstoppable legislative gains by women's NGOs, differences within the feminist camp have become inconsequential. Healthy consensus building through debates, elaborations and arguments among women has now been replaced by negotiations with

lawyers and politicians over legislation and litigation. Rationality is increasingly replaced by emotionality, creating an environment where emotional responses quickly evolve into the self-justified action of filing complaints that necessitate administrative action against the non-complying opponent group. In one obvious example from 1997, when Taipei's mayor issued an order to revoke the licences of existing prostitutes, we sex rights activists debated with anti-prostitution groups on the issue of sex work, and we wrote articles on our own academic webpage to argue how sex work could be good work compared with other forms of labour which entailed worse kinds of exploitation. At one of the supervising meetings held with the Ministry of Interior and the Ministry of Education, one Catholic women's NGO staunchly cited us for 'instigating criminal acts' and 'negatively affecting children'. The demand for investigation came to my university, and our website was forced to move out of the free academic web and onto a commercial site that we had to pay for. Two other incidents happened later in which our website content was faulted for issuing opinions and views deemed 'harmful for children'. As we did not withdraw our efforts even in the face of such immense pressure, the Christian groups' strategy of taking me to court in 2003 for 'dissemination of obscenities' was quite understandable. Thanks to the help of my colleagues, my comrades and my students, I won the case and kept our centre and our website alive.¹⁶ But it is through these actual experiences of censorship that we learned first-hand the real consequences of the child protection imperative in what Lisa Duggan has called 'our incredibly shrinking public sphere'.¹⁷

The expansion of gender-oriented but sex-biased punitive rationality has greatly exacerbated sexual stigma by relegating more and more sexual matters to the possibly criminal. This may be a conservative response to the meagre advances that sex rights activists have fought for since the 1990s. But as gender equality develops into a core state policy that is further sanctified by international covenants and fortified with their accompanying administrative rationality, a new kind of political correctness emerges that carries real political teeth and moral power through meticulous 'institutional

instrumentalization'.¹⁸ It is in these administrative aspects that gender governance functions also as global governance, where the local is efficiently and effectively aligned with and hence subsumed under the global.

GENDER AS GLOBAL GOVERNANCE

While Taiwan's gender equality technocrats celebrate their achievement in upgrading the status of women according to international standards, the impact on local political autonomy is twofold.

First, the Enforcement Act for gender equality decrees that all terms and conditions specified in the UN conventions have the same effect as domestic laws. The provisions and general recommendations of CEDAW are hence legally enforceable in Taiwan without exception. That is to say, international protocols of gender equality, now viewed as national policy, dictate how gender equality is conceived, implemented and assessed, all according to imported and imposed standards and procedures, to the exclusion of complicated local constituency-based issues and needs. A similar relationship of domination by foreign powers had previously led to the Chinese revolution of 1949, yet this current arrangement aroused no such nationalist fervour or resistance. Taiwan's own history of Cold War alliance with and dependency on the US and yet-to-be-decided nation-state status certainly predisposed it to looking eagerly to the West, proudly performing global standards of civility, hoping hence to be considered for inclusion in the international community. Still, such importation and imposition are delivered with such an air of ferocious political correctness that they forcefully override local realities and practices, creating discord in many sites of implementation, especially within the government and on various campuses where existing structures of regimentation are already well in place. Yet such discords are routinely interpreted by the gender experts as either expressions of lingering chauvinism or simply bureaucratic indolence, which calls for more pressure and more monitoring, hence creating more discord, and so on and so forth.

Second, individual behaviour and interpersonal interaction in daily life that are indicative of non-normative sexualities or possible criminal intentions are increasingly codified and framed in terms of newly instituted gender-sensitive propriety norms, and enforced with such a degree of political correctness that any challenge or contention is effectively silenced. Elaborate and proactive sexual harassment programmes in corporate and educational settings are now in place to act as the newest form of social discipline that entails not only pre-emptive reporting but also administrative accountability. In a society such as Taiwan, where the etiquette of erotic and affective negotiations is slow in evolving, where personal feelings of body boundaries are yet to be explored and tried out, and where individual experience and power of consent are yet to be practised and exercised and developed, the new legislations tend only to incite more anxious tension and jealous suspicion in interpersonal communication, consequently leading to numerous cases of misunderstanding, false accusation and vengeful allegation.

Still, as a locus of national/international performance and social control, gender equality and its trajectory of development resolutely assumed a state-centred, top-down, sovereigntist, moralizing approach through which progressive values acquired a new force that is, as described in a Facebook post by a local queer author, 'nice, polite, caring, euphemistic, but sternly non-negotiable'.¹⁹ Civil behaviour that abides by gender norms is now compulsory, to be performed with non-reciprocal compliance because it meets international standards. The unrelenting firmness with which this newly invigorated global gender norm is implemented is assured by a restructuring of the national government's various departments and agencies to achieve 'system-wide coherence' in regard to gender equality measures. For example, Article 3 of the Child and Youth Sexual Transaction Prevention Act spells out the typical arrangement:

Those competent authorities shall make an independent budget and establish special office to deal with prevention work of child and teenager sexual transaction. The correlative units such as justice, education, public health, national defense, news, economical affairs and transportation units shall completely cooperate when involved

in prevention work of child and teenager sexual transaction.... The competent authorities shall establish an institution of supervision and report conference on prevention of child and teenager sexual transaction together with above correlative units in six months after this Act has entered into force, *termly* declare and review the results of education, guidance, succor, punishment to inflictors, settlement and protection ... [emphasis added].

This intricate web of orchestrated action is none other than instrumental reason at its highest level of performance. The law demands that intra-governmental committees and assessment systems be organized on all levels of the government; and then policy tools and techniques are to be created to integrate the gender variable in all policies so that they can be monitored and evaluated from a gender perspective. Gender equality objectives and policies are prioritized among competing objectives, to the extent of reorienting policy ends and means throughout the government, and accountability for outcomes is monitored constantly. To ensure cohesion in action, gender experts convene frequently to address possible fragmentation of policy and execution by initiating stronger coherence and coordination at all levels. Different branches of the government are hence effectively subsumed under the supervision and monitoring of gender equality committees through quarterly reports of performance. In that sense, gender governance operates to rule not only over the people but also over those who are bearers of the governance structure. The only ones not held accountable are the gender experts and NGO delegates who perform such supervision.

Ironically, such government restructuring and its regular work of implementation reveal what good governance is really all about: increased bureaucratization. We can well imagine the unbelievable workload of the gender experts and their desperate work in translating massive international documents, tools and programmes so as to meet local needs. Local deployments of gender mainstreaming have already placed gender equality at the core of all laws, acts, regulations and resource allocation, demanding that all agencies regularly produce gender-based statistics and analyses so as to assess the execution of gender equality measures. Requirements

of accountability not only prescribe but also circumscribe necessary action. Legislation of new laws and amendments to existing ones are further accompanied by intensive, meticulous enforcement rules that exemplify the female virtue of thoroughness, to the dismay of those who have to live by them. To comply with the CEDAW Enforcement Act, from 2011 to 2014, all government bodies were required to review their regulations and administrative measures and revise those that did not conform to CEDAW principles. One can well imagine the enormous work that went into reviewing a total of 33,157 regulations and administrative measures, of which 226 were found to be non-compliant with CEDAW principles; amendments have been under way to make sure local laws comply with international standards. The government is also required to engage professionals, scholars and representatives from NGOs to prepare a national report for the UN every four years on achievements made in eliminating all forms of discrimination against women, and to adjust its policies based on the outcome of reviews of this report.

Although the punitive side of the gender equality project has never been appreciated much by the LGBT movement, many of whose members have suffered at the hands of the anti-sex acts, the great success that women's groups have enjoyed in the administrative side of the project and the legitimacy as well as resources they have gained are more than attractive to the LGBT movement—and other social groups too. After all, the LGBT movement can also stand for achievements in international standards of human rights, and could conceivably become just as important a player in state and global politics as the women's movement. Unfortunately, sex issues prove to be less convincing but imminently more controversial than gender issues. In 2011, gay-friendly, sex-positive reading materials prepared for schoolteachers met with fierce opposition by the Christian True Love Alliance that called the teaching materials sex-emancipationist, hence unfit for 'gender' equality education. Fierce debate raged on for months, invigorating many gays and lesbians into feeling righteously indignant about being 'misrepresented' by the Christians, but also inadvertently exposing their thinly veiled

desire for respectability and legitimacy, to the extent of carefully keeping a distance from queers and sex radicals.

I have written elsewhere about the 'uses' of conservative NGOs, and their respectable causes of rescue, care, education and charity, for the Taiwanese state in the latter's effort to construct a national image that would help promote its desired nation-state status and international diplomatic recognition.²⁰ But respectability can acquire new contents and new meanings in a different historical context that give it a new desirability. After all, in the post-Cold War world, progressive values such as gender equality or LGBT rights and a host of other causes seem to have a better chance than Christian charity and conservatism in convincing the rest of the world of the continued superiority of Western modernity and Western culture, hence Western power. Likewise, properly embodying these progressive values gives Taiwan a definite upper hand when compared with China and its economic exuberance. Defining freedom as the free market, democracy as electoral politics, and, most important of all, equality as both absolute and definite, ignoring all historically sedimented realities—the underlying Cold War mentality consolidates global hegemony in the cultural domain through what my colleague Yin-Bin Ning has termed 'new moralism'.²¹

As a universal progressivism born out of neoliberalism, new moralism says: progress is not conditional upon a specific historical society or to be assessed in relation to concrete realities, but always embodies universal progressive values exemplified in Western civilized modernity, to be achieved by all other countries and cultures in due time through emulation. Such progressive values so far have included liberal democracy, human rights, gender equality, homosexual marriage rights, care for the handicapped, environmental protection, child protection, animal protection, social welfare and so on. The growing eagerness to possess and hence embody such progressive values gives the feminist creed of 'the personal is political' a new vigour with which norms of civility are to be practised in individual moral praxis on a daily basis, monitored in no small way in Taiwan by the all-pervasive presence of surveillance cameras, cell phone cameras and social media gossip. Social progressivism and

political progressivism now merge into a new moral progressivism, a new top-down civilizing mission advocated by progressives and conservatives alike, as testified by the close collaboration between Taiwanese feminist groups and Christian women's groups on the implementation of international protocols on the rights of women or the protection of children.

The commanding attraction of Western civilized modernity has become ubiquitous in the gay world too, as the development of homosexual identity and the homosexual movement in Taiwan (and Hong Kong) follows a pattern of thorough Westernization. Western concepts and identity terms are downloaded and absorbed by the Taiwanese gay scene; Western gay lifestyles and fashions and fads are localized; and international progressive narratives urge the gay movement to work on getting gay marriage rights followed by adoption rights. To comply with the accountability requirements of their international funding agencies, local lesbian and gay groups dutifully reproduce modes of activism popular among US gay and lesbian communities, such as Gay and Lesbian Awakening Days or pride marches or equal rights bills. Great satisfaction and a sense of achievement flare up as more and more businesses follow their Western counterparts in presenting themselves as LGBT-friendly and sending their banners or trucks to the annual pride marches. Finally, it becomes a common belief that, like in the West, LGBT problems can be reduced to a question of individual rights, and that the law is the key turf on which individual rights are to be affirmed. Little attention is paid to concrete families, societies and nations with complicated ethnic, religious, caste and generational structures which still need to be navigated and negotiated by the LGBT subjects embedded in them. Speaking only the individual rights language of the West, thinking that progressivism is all-powerful in persuasion, LGBT subjects are afflicted by a fragile conceit that easily flares up into anxious, righteous rage in the face of opposition or criticism, but have little patience to tease out the challenges or complexities.

The growing posture of political correctness on the gender scene as well as in the LGBT movement in Taiwan hence breeds another kind of problem: widespread aphasia.

APHASIA UNDER PROGRESSIVISM:
REFLECTIONS ON 'OUR' MODERNITY

In the 1990s, fierce debates had raged among Taiwanese feminists over issues of female sexuality, pornography, sex work and so on, culminating in no less than a feminist schism in 1997 over the issue of prostitution. Yet since the 2000s, little dialogue has been possible as the state-feminists have busied themselves with the state bureaucratic project of gender mainstreaming while the feminist sex radicals have scrambled to defend and support issues of increasing marginality and social controversy that were induced by the power of growing regulation and normalization. Feminists still hold very different opinions on many issues, but they no longer speak the same language or address the same concerns. After all, the institutionalization of gender equality as a national policy has effectively erased the grounds for further discussion or debate: 'Now that the feminist project of social transformation is already under way and has won the state's support and blessing, what else is there for us to argue about? And why aren't you part of the work team?' The bluntness of the question leaves us with no easy or persuasive answer to propose.

Then we also noticed that the same progressive ideas that we had been advocating for years—such as empowerment of women, women's sexual autonomy, girl power, children's rights—are now perversely employed by the most conservative but this-worldly active Christian NGO in Taiwan, Garden of Hope, in its effort to build sex-negative campaigns that 'promote respect and equality for girls, stop the objectification/commodification of girls, and encourage social concern for the welfare of girls'.²² As we watch these once against-the-grain terms being garnered in new meanings and naturalized to serve purity campaigns under progressive banners, we are at a loss as to how to make the distinction between feminist liberation projects and Christian social purity campaigns clear to the undiscerning public.

The growing popularity/banality of progressive ideas as well as the difficulty in presenting a clearly discernible, non-complying position reveals something very important about contemporary progressivism.

Perhaps the reason why it is increasingly difficult to identify or describe our own non-conformity is because, despite our vast differences, what underlies most contemporary social projects is the same paradigm of values derived from Western historical experiences of civilized modernity and Western social theories constructed to explain that historicity. Whether through mainstreaming or non-compliance, we work towards building a sound legal system that would ensure safety and justice for all. We embrace the ideals of liberal democracy built on self-determination expressed through open electoral processes. We strive to make equality the ultimate measure for every inter-human relationship, even intimate ones within the family. We accept modern ideals such as civility, orderliness, cleanliness, caring for the weak and so on. If there is any difference at all, it's more a matter of degree in radicality than a matter of kind in world vision. In other words, the problem with new moralism may not be that our ideas have been appropriated and misused by the conservatives, but that our ideas and our own conception of non-conformity are in fact in sync with the post-Cold War milieu that proclaims 'the end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government'.²³ It is when we come face to face with the proud embodiment of this 'end of mankind's ideological evolution' in gender governance that we find ourselves speechless.

If the self-proclaimed radicals are beset by a lack of words in the face of politically correct progressivism, what about the conservative-minded who have been left behind by the times and by their more open-minded brothers/sisters who have chosen to follow the progressive trend into modernity? Or, what about the population that is most immediately affected by the implementation of gender equality policies? No, I don't mean women, but the government employees, civil servants and teachers who are required to carry out the prescribed measures under constant monitoring. As it happens, another kind of aphasia, a total or partial loss of ability to articulate (opposing) opinions or ideas, has developed. Here I will give two

examples to illustrate this aphasic consequence of politically correct progressivism in Taiwan.

The first example has to do with the civil servants, teachers and administrative personnel who—on top of their usual workloads—are now *required by law* to plan and implement gender equality programmes and policies within their own institution to comply with the guidelines drafted by the so-called gender experts. Gender equality committees and relevant regulations are set up in all government departments and agencies, all levels of school, and all sizes of industries to propagate the ideas and practices of gender equality. Gender statistics, gender analysis and gender impact assessment are meticulously conducted on all projects to ensure gender equality is strictly enforced. Compliance assessment systems, comprising project planning, mid-term assessment and year-end assessment, necessitate the preparation of reams of paperwork and statistics that are then subjected to severe evaluation by gender experts. All this extra work is said to be done in compliance with ‘prevailing world trends’, and gender equality project demands are hence raised to a level of the utmost national importance and urgency. Over the few years that such practices have been in place, the frustration of civil servants and teachers has been mounting, as they have to forfeit their own familiarity and mastery of how to best do their own jobs, comply with the exact prescribed procedure, and still often suffer relentless chastisement by the gender experts who specialize in reading for insincerity and half-heartedness. Yet few dare to utter any complaint: lower-ranking civil servants or teachers have to worry about their annual evaluation, and higher-ranking officers or administrators would rather not suffer being vilified for gender-blindness or chauvinism. None of them may be saying much; the discontent, however, is only barely muted.

A second example has to do with fundamental Christians faced with the growing possibility of legalized gay marriage. When the gay marriage right was formulated as a legislative effort and about to embark on its due process, gay morale was so high and the marriage project seemed so legitimate that even Garden of Hope joined the

gay petition to encourage steady and faithful gay relationships. The seeming shift toward progressivism by gay-friendly church groups left fundamental conservative Christian groups in great despair and outrage. Contrary to their usual low profile, they surprisingly made a stand firmly against the gay marriage bill by organizing a march ‘in defence of family’ on 30 November 2013. The crowd was reported to be over 150,000, much to the dismay of gay groups who had, on the basis of the size of the annual pride march (the largest one amounting to 50,000 people in 2013), thought the world was getting friendlier, or at least more open-minded. Propelled by anxiety, some members of the progressive gay groups went to the Christian march and demanded a debate with the latter on gay marriage rights. They did not get their wish; instead, they were surrounded by Christians who remained silent all the time, quietly reciting only Biblical verses to affirm their own faith. The lack of confrontation/communication is symptomatic of Christians’ inability or reluctance to master the language of reason so as to properly debate the homosexuals in public, so they chose the traditional Christian language in praying to ‘break off the chains of homosexual lure’.²⁴ The absence of the desire for debate on the part of Christians affects the homosexual side too, leaving the latter reliant on the simplest Enlightenment language or slogans to appeal to the crowd for support. Both sides believe the other side is wrong and evil on the issue of gay marriage rights and refuse to leave their positions of either political correctness or moral correctness. Without a process of rational persuasion, the public is also left without any opportunity to be educated about the issues and disputes, and whatever divides the society remains.

²⁴ Be it silence on the part of non-conforming activists or aphasia on the part of dissenting populations, it is obvious that political correctness thrives on simplification and polarization and breeds only muted discontent. It does little to further dialogue or understanding, not to mention true social transformation. As social contradictions are muted by moral progressivism, greater tension is created and stronger emotions continue to rage.

CONCLUDING REMARKS: GENDER GOVERNANCE
AS COLONIAL RULE

Following in the footsteps of progressive values of Western civilized modernity, we are now left with a world where women and children are to be vigilantly guarded as weak and vulnerable subjects, coupled marriage is idealized as the only desirable form of modern intimacy that must practise egalitarianism, formal gender equality is heralded as a must-achieve goal for so-called backward nations, and the gay marriage right has become a symbol of the envied freedom and equality of the West. The demand for political correctness exiles more and more behaviours, activities, languages and ideas into the domain of the unmentionable, much like the civilizing process that Norbert Elias describes in his classic work. Unthinking, unreflexive recitation of progressive terms such as diversity, respect, equality and human rights resounds in our ears, but we are fully aware of the realities of social life that say otherwise, as well as the muted discontent that continues to fuel social tension and discord.

The impasse created by such moral progressivism in Taiwan has been troubling for many, and work has finally begun to move beyond it. Some of us have turned to our age-old traditional cultures to try to excavate intellectual resources that may for historical reasons provide ideas outside Western paradigms. For if the advancement of Western modernity had made other cultural heritages unappetizing and Western values and practices enviable so far, the table is now turning as, for example, China and India, two of the oldest cultures, regain their power of influence and hence sense of confidence through the new globalizing economy. Consequently, interest has again been ignited to study traditional cultures and knowledges that have—long before Western modernity made its presence felt in this world—held out a complex and diverse wealth of gender/sexualities and other cultural possibilities, but this time, not as underdeveloped, immature hopefuls that serve only to make Western achievements appear all the more desirable, but instead as self-sufficient cultures and subjects

in their own right and in all their brilliant exuberance. Still, we are not blind to the possible limitations of our own indigenous cultures. After all, we have been trained as the children of Western civilized modernity, and, using that as a reference point, we should strive to maintain a critical view on all cultural resources at hand, progressive or conservative, traditional or modern.

As treasures are being excavated from our own cultural traditions, there is also the necessary work of creating discourses that interrogate the basic values of Western civilized modernity. Instead of the usual (ahistorically conceived) human rights claims phrased in individualistic terms, work has begun in Taiwan to challenge the basic premises of politically correct ideas of animal protection, gay marriage or, more fundamentally, equality in intimate relations, by pointing to the historical social conditions that had given rise to them, as well as present conditions that made their desirability natural and incontestable. Some of us have pointed to the underlying connections between the demand for equality in intimate relationships and the ideas of equal exchange in the market economy and contractual agreement in liberal democracy. Others have analysed the historical shifts in affective structure and civil sentiments that have prepared proud Taiwanese subjects for the age of gender governance. As to the seemingly progressive movements such as gay marriage rights in an age of equality and freedom, or affordable housing or property rights in an age of economic polarization, young queers are now writing continuously to critique the staunch family ideology that underlies such seemingly progressive movements. These dissenting voices may be few, but they have kept debates and dialogue alive and well.

Finally, our experience in Taiwan has already taught us this sobering lesson: as the prime target of all kinds of Orientalist discourses, we in the East need to be watchful and critical of the new moralism exemplified by progressive values inherited from the West. We need to examine the knowledge that such progressive discourses cite, the time frame that they presume, the social power that they deploy, and the effect or affect it produces. As we enter the twenty-first century, the civilizations of China, India and the Muslim world are revitalized but also mired in rapid change. Multiple civilizations

are already entangled in tense contention with one another and with Western civilization. To be truly capable of participation or even intervention, we need to get familiar with our own historical cultural traditions by, first, resisting moral dogmatic fundamentalists and their monopoly of our cultural heritage, and, second, seeking innovative frames of thought from working with ideas from multiple sources, ranging from the conservative to the marginal, the classical to the post-modern. If Western civilized modernity continues to monopolize the concept of progressivism while other civilized modernities are relegated to traditional conservatism, if Western civilized modernity continues to be considered LGBT-friendly while other civilized modernities are flatly presented as not, then we have failed our important duty today as Third World intellectuals.

NOTES

1. Barbara Cruikshank, *The Will to Empower: Democratic Citizens and Other Subjects* (Ithaca: Cornell University Press, 1999), p. 2.
2. This paper is revised from my keynote speech on the same topic delivered at the conference on “Left in the Dark?": Postcolonial Conversations on Law, Neoliberalism and Queer-Feminist Futures’, organized by the Jindal Global Law School, O.P. Jindal Global University, New Delhi, 17–18 October 2014. I would like to thank Oishik Sircar and Dipika Jain for inviting me.
3. Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton: Princeton University Press, 2006), p. 22.
4. The DPP lost its presidential bid in 2008, but the returning KMT government did not change the gender equality implementation structure so as to take advantage of the progressive image. As the DPP regained power in 2016 with the first woman president in place, it is expected that existing gender equality policies will only be strengthened.
5. Since the 1980s, feminist organizations in Taiwan have opted to call themselves women’s organizations for fear of being thought of as ‘man-hating spinsters’. Up until now, feminism as a term has currency in Taiwan mostly as it is attached to individual feminists in academic domains.
6. While the Domestic Violence Act has already been amended to include intimate partners rather than just married couples, recently Christian NGOs have begun to call for further amendments that would include violence that occurs between lovers who are not even in cohabitation. When ‘domestic’ violence is extended to such a degree, no social space is beyond the jurisdiction of the Domestic Violence Act.
7. Urged by the Christian NGOs and conservative groups, and helped along by law professionals under the influence of anti-sex-work legal feminist Catharine MacKinnon (who visited Taiwan in May 2014 and lauded the achievement of Taiwan in gender legislation), the title of the act was amended to Child and Youth Sexual *Exploitation* Prevention Act in December 2014 to ‘remove the implied equal exchange between buyer and seller in the term “transaction”, and highlight the already unequal positions of power based on age difference’. In other words, any sexual/material exchange that involves anyone under the age of 18 is now flatly termed ‘exploitation’, hence effectively erasing any possibility of agency on the part of the young in conducting sexual negotiations.
8. Renamed and expanded later as the Protection of Children and Youths Welfare and Rights Act (2012) to include more provisions for the supervision of children and their life activities.
9. Debolina Dutta and Oishik Sircar, ‘India’s Winter of Discontent: Some Feminist Dilemmas in the Wake of a Rape’, *Feminist Studies*, vol. 39, no. 1 (2013), pp. 293–306; see pp. 293, 295.
10. Michel Foucault, *The Foucault Reader* (edited by Paul Rabinow) (New York: Pantheon, 1984), p. 337.
11. The legislation had been put into place by opportunistic legislators who would not dare oppose the harsh but seemingly righteous demand of the women’s NGOs. Judges, on the other hand, have abided by their professional code of proportionality and issued sentences of not more than six months even in obvious cases of violation.
12. The international watchdog organization INHOPE aims at stamping out child sexual abuse material through linking up or building hotlines for developing countries. Its webpage carries this obvious banner: ‘Let’s all practice zero tolerance to child sexual abuse imagery. One report can make a difference. To the digital citizens out there, if you stumble across anything you suspect to be a child sexual abuse image or video, do the right thing, report it and once confirmed, with our industry and law enforcement partners, we will make sure such content is taken down as quickly and effectively as possible.’ See <http://www.inhope.org/gns/who-we-are/at-a-glance.aspx> (accessed 18 September 2016).
13. A 6-year-old boy was reported for sexual harassment because he smelled his girl classmate’s hair and said ‘you smell good.’ And a second grade boy was reported for sexual harassment for pushing his girl classmate on her (not yet present) breast.
14. Norbert Elias’s work has traced how daily life in post-medieval Europe was gradually transformed by advancing thresholds of shame and repugnance as individual psychic structures were moulded by changing social structures. Recent developments in the affectively charged constitution of citizenship in

- aspiring democracies reflect another stage of the civilizing process that works hand in hand with the governance project that is under way.
15. Josephine Ho, 'Adult Social Space Is All but Gone', Press Conference for 'Top Ten Violations of Sex Rights: An Annual Report', 30 December 2005, http://gsrat.net/events/events_post.php?pdata_id=135 (accessed 14 October 2016).
 16. For details on the incident, see Zoophilia Hyperlink Incident, http://sex.ncu.edu.tw/members/Ho/english_new/zoophilia.html (accessed 18 September 2016).
 17. Duggan uses this term as the title of chapter 2 of her book, *The Twilight of Equality? Neoliberalism, Cultural Politics, and the Attack on Democracy* (Boston: Beacon Press, 2004).
 18. Dianne Otto, 'Power and Danger: Feminist Engagement with International Law through the UN Security Council', *Australian Feminist Law Journal*, vol. 32, no. 1 (2010), pp. 97–121; see pp. 97, 106.
 19. Ling Hong, 'Whose/What Homeground? Right to Inhabitation and Forms of New Intimacies', in Yin-Bin Ning (ed.), *New Moralism* (Chungli: Center for the Study of Sexualities, National Central Universities, 2013), p. 208.
 20. Josephine Ho, 'Queer Existence under Global Governance: A Taiwan Exemplar', *Positions: East Asia Cultures Critique*, vol. 18, no. 2 (Summer 2010), pp. 548–51.
 21. Y. Ning, 'Modern Progressivism and Its Fragile Conceit: The Rise of New Moralism in Civil Society', in Y. Ning (ed.), *New Moralism* (Taiwan: Center for the Study of Sexualities, 2013), pp. 1–11.
 22. <http://formosa.goh.org.tw/2013/learn.asp> (accessed 14 October 2016).
 23. Francis Fukuyama, 'The End of History?', *National Interest* (Summer 1989), <http://ps321.community.uaf.edu/files/2012/10/Fukuyama-End-of-history-article.pdf> (accessed 18 September 2016).
 24. This is taken from the sermon of one of the Christian ministers who prayed for God to show His mighty hand in 'breaking off the chains' of homosexuality. This part of her sermon has now been remixed into quite a few dance numbers that are extremely popular in the gay community. See, for example, <https://www.youtube.com/watch?v=Sszv7p9jo0I> (accessed 18 September 2016).

CHAPTER 5

Post/Colonial Queer Globalization and International Human Rights

Images of LGBT Rights

Aeyal Gross

While the editors of this volume talk of the 2000s as the 'Decade of Sex Rights',¹ its precursor can be traced to the 1990s, when, through a set of almost simultaneous developments, sexuality started carving a place for itself in international human rights discourse. In 1995, two seminal books on the topic were published, entitled *Sexual Orientation—A Human Right*² and *Sexual Orientation and Human Rights*.³ This was preceded in 1994 by the UN Human Rights Committee's first decision on sexual orientation, holding that a statute enacted in Tasmania, Australia, criminalizing various forms of sexual contact between men, including all forms of sexual contact between consenting adult homosexual men in private, was in violation of the International Covenant on Civil and Political Rights and, moreover, that discrimination based on sexual orientation is prohibited under the Covenant.⁴

In the same year, Amnesty International (AI) became the first major international human rights NGO to publish a report on sexual orientation, significantly titled *Breaking the Silence: Human Rights Violations Based on Sexual Orientation*.⁵ Other NGOs, both general