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## The Socio-Cultural Exclusion and the Regulation of Sexuality in Taiwan

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**Abstract** My paper begins with an analysis of recent emergence in Taiwan of public discourse and administrative ordinances that aim to regulate the internet, TV programs, newspapers, romance novels, comics, video games, education, obscenity laws and teenage culture. My analysis points out that the discourse and regulations have signaled significant changes in the relationship between Taiwan's civil society and its nation-state. An exclusive civil society, a concept which I have partly drawn from Jock Young's *The Exclusive Society*, is emerging as an extension of state power rather than as the antithesis of the state. I argue that as a result of this development of the exclusive society and the new regulatory state, a "culture war" between socio-cultural exclusion and social freedom (especially in the area of sexuality) is now being waged in Taiwan's civil society. The role of the mainstream NGOs, the tactics of regulation and the wider context of this culture war will be analyzed in this paper.

**Keywords** Exclusion · Sexuality · Governance · Taiwan

The regulation of sexuality always takes place in a social context, and becomes a part of the social dynamics and change. It is my view that the regulation of sexuality in Taiwan cannot be separated from the essential form and content of the socio-cultural exclusion, as a result of the political, economic and socio-cultural development in recent Taiwan. To analyze the socio-cultural exclusion in Taiwan is to understand not only the social forces and cultural elements that organize the regulation of sexuality, but also the specific shapes that the regulation of sexuality takes.

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Another reason why I want to talk about the socio-cultural exclusion instead of directly the regulation of sexuality is because I would like to articulate an often neglected aspect of the politics of sexuality. There are at least three different but of course interrelated aspects of the politics of sexuality. The first one concerns sexual justice, sex rights, sexual stigma, and so on, in other words, the political relation between sexual minorities and the state and the society; the second one concerns the political relation between different sexual minorities and their movements or organizations; the third one, the often neglected one, concerns the political relation between sexuality movements and other social movements such as labor, women, environmental movements; that is, the political relation between different types of marginal subjects. The third aspect of the politics of sexuality deals issues such as the mutual constitution or constructed antagonism between these marginal subjects, and the convergence or conflict between sexual justice and economic justice, gender equity, and so on. All these different types of justice, marginal subjects and their struggles sometimes are articulated together only in certain historical moment under specific conditions. It is obvious that the topic of socio-cultural exclusion draws our attention to the common fate of various marginal subjects and the common conditions that exclude them. Hence, in analyzing the socio-cultural exclusion, we can demonstrate how the regulation of sexuality is implicated in the exclusion of other marginal subjects, and vice versa. This analysis then is important to the forging of the alliance between marginal subjects and to the legitimation of the cause of sexual marginals. Today, in the circle of social movements, sexuality movement is often relegated to the “and so on” clause. Sexuality movement is marginal to the marginal movements. For example, for Hongkong’s sexuality movement, the legitimate status of its participation in the democratic movement of HongKong was even called into question by some groups. Thus, it is important for the sexuality movement to show that there is a sexual dimension in other kind of struggles, just as Marxists have always tried to show that there is an economic dimension in every other kind of struggles. This is a hegemonic project in the Gramscian sense of articulating various social movements. In short, the discourse of social exclusion provides sexuality movement a language to engage in the oppositional politics and the common ground with other anti-mainstream movements.

This article is in fact an excerpt from a much longer and rather complex paper of mine, written in Chinese, which due to the limit of space cannot possibly be published in full here. However, I want to first outline some relevant points of that long paper in order to contextualize this article. The Chinese paper begins with an analysis of recent emergence in Taiwan of public discourse and administrative ordinances that aim to regulate the internet, TV programs, newspapers, romance novels, comics, video games, education, obscenity laws and teenage culture. My analysis points out that the discourse and regulations signal significant changes in the relationship between Taiwan’s civil society and its nation-state. An exclusive civil society, a concept which I have partly drawn from Jock Young’s *The Exclusive Society*, is emerging as an extension of state power rather than as the antithesis of the state.

Some background information concerning the vicissitudes of civil society in Taiwan may be helpful here. Before the lifting of the martial laws in Taiwan in 1987, there was little development in what are considered to be key elements of a

“civil society,” e.g., freedom in voluntary association, institutionalized public sphere, valuation of civic virtues, or public culture of civil participation. With the lifting of the martial laws and the demise of the strong-man dictatorship, civil society finally unfurled as various social movements and organizations rose to demand social justice. The social movements and their causes, due to historical reasons, were often infiltrated by the nationalist and statist ideology of the opposition party, which mitigated against the true autonomy of social movements. Worse, when the opposition party assumed state power in year 2000, organizers and elites of some social movements celebrated the triumph by taking up cabinet or other positions in the government, and the social movements suddenly found themselves deprived of any legitimacy or need to maintain a stance of political opposition.

If part of the social movements dissolved into agents for the political functioning of the nation-state, the social service groups on the other hand came to dominate the civil society with a quite different agenda. A number of Christian-based social service NGOs devoted to the mission of protection of children and other “victims” gained ascendancy and great financial benefits in the form of government grants and projects at this historical juncture when they proved their efficacy in helping the state maintain social control. In the name of protection of children, these big NGOs and some semi-official NGOs effectively lobbied for new legislations that instituted censorship and rating systems for all print and electronic media including websites and books (which also legally appointed these NGOs as watchdog agencies overseeing the enforcement of the legislations). In that sense, they have become not only the franchise for the social service department of the state, but also agents of socio-cultural exclusion and surveillance for the purpose of social control. Internet messages soliciting one-night stands for money may now be sentenced to five-year imprisonment plus a one million dollar fine; sexually explicit, even though playful, messages may be charged and sentenced to two-year imprisonment. In the past 7 years, more than 20,000 cases of such internet communication have been brought before the law, thus effectively silencing sexual dissidence on the internet (Ho, 2011:102n32). In the name of concerned citizen groups, even criminal charges have been brought against an outspoken sex-rights scholar and her website databank, accused of the “disseminating obscene materials.” As similar actions by these NGOs continue to produce the effect of socio-cultural exclusion of various minority groups and marginal discursive practices, surveillance on the “normal” population is also effected. These and other measures have thus made Taiwan into an exclusive civil society.

In my Chinese paper, I argue that a “culture war” between socio-cultural exclusion and social freedom (especially in the area of sexuality) is now being waged in Taiwan’s civil society, much like the culture war that raged in the US during its previous presidential election. The difference is that the US culture war was waged not only in civil society but also in the political society, while Taiwan’s culture war has not much permeated its political society, which is currently preoccupied and overshadowed by another type of exclusion: that of ethnic nationalism. The emergence of “culture wars” in the US and in Taiwan is not a unique phenomenon. In fact, it can be observed in many parts of the world today. I think German social theorist Jurgen Habermas (1975) has provided an initial account for this development. He believes that it is an unintended consequence of the intervention of culture by the

nation-state as the latter struggles for legitimation in the face of constant economic crisis. Of course, the postmodern or late-modern production and proliferation of socio-cultural differences has certainly supplied more ammunition for the culture wars. For as conservatives launch new tactics to resist the fallout of social change in an increasingly pluralistic society—mostly through the institution of an exclusive civil society as described above in the case of Taiwan; the culture war in effect enacts the encounter of encroachments upon human rights and resistance against such encroachment. I would argue further that socio-cultural and political exclusion, always accompanied by the inclusion of some citizen groups, operates in a context of “governance,” by which different forms of power are exchanged between political institutions and the NGOs. Governance in Taiwan means that the state is not the only agent exerting power; various citizen groups and interest groups are also agents of power on different levels. In short, the newly emerged exclusive civil society is another center or cluster of powers, of which the forms could range from brutal suppression to subtle manipulation, which would correspond to different tactics and forms of socio-cultural exclusions.

In the rest of this article, I will limit my discussion to these different forms and tactics of socio-cultural exclusion. I will first explain the nature and forms of socio-cultural exclusion, and then on the basis of Taiwan’s experience, I will talk about certain significant aspects of the development of socio-cultural exclusion, as well as the tactics of exclusive civil society to effect that exclusion.

The discourse of social exclusion is predominantly applied to marginalities such as the underclass, the homeless, the immigrants, the ethnic minorities in rural areas, poverty, crime, unemployment, and so on.<sup>1</sup> But today I want to talk about an even wider form of exclusion in the politics of culture in recent Taiwan, that is, socio-cultural exclusion. Of course, all of the above categories or subjects who suffer social exclusion also suffer some form of socio-cultural exclusion. However, an important target of socio-cultural exclusion in recent Taiwan is aimed at alternative, marginal, deviant or newly emergent sexualities and life-styles, sometimes associated with subcultures or other non-mainstream cultural practices. Therefore, we have seen different sexualities—such as gays, transgenders, SMers, “the second wife”, sexworkers (especially “enjokosai”<sup>2</sup>); and alternative life-styles such as “home-party goers”<sup>3</sup>, “head-shakers” (recreational drug users), teenagers (as “the strawberry tribe”<sup>4</sup>), “otaku”<sup>5</sup> and “fangirl”<sup>6</sup> (the latter two are pan-Asian identities);

<sup>1</sup> My concern and discussion of social exclusion here will be somewhat deviant from the classic formulation of Hilary Silver (1994) and her followers.

<sup>2</sup> The Japanese term of “Enjokosai” refers to teenage girls who date middle age men for money.

<sup>3</sup> To hold a western-style party at home is not a common practice in Taiwan. A so-called home-party in which people meet, drink and mingle in Taiwan’s context usually involves nudist activity, group sex, and/or drugs, all considered illegal activity under Taiwan’s criminal code.

<sup>4</sup> Teenagers are seen as fragile as strawberries, among other negative images.

<sup>5</sup> Otaku, a Japanese term, refers to young men who indulge in pornographic video-products and electronic gadgets and always stay at home (autistic, asocial and so on).

<sup>6</sup> Originated from Japan, “Fangirl” in a broad sense refers to mostly heterosexual girls or young women who indulge in the portrayal of gay men’s love affair and their explicit (usually perverted or deviant) sexualities.

as well as alien labors, wife beaters, the mentally retarded, the patients of HIV+, people with manic-depression or Hansen's disease—all of these groups and individuals experience a wide variety and different degrees of socio-cultural exclusion (for example, recently, half-way houses for HIV positive patients, patients with Hansen's disease, mentally challenged children as well as abused children are being driven out of communities where they did not use to attract such expressions of hostility. A few days ago, a new law was proposed to criminalize any HIV positive person who French kissed others.)

The immediate effect and manifestation of socio-cultural exclusion includes: a) stigmatization, segregation and demonizing; b) intimidation by law or criminalization; c) educational inequality (for example, higher rate of school drop-out, or being discriminated on campus); d) strict surveillance and disciplining. These effects all severely impinge on the citizenship of the excluded as their role as participants in the public sphere.

The essence of such socio-cultural exclusion is first and foremost exclusion from cultural resources, which means on the one hand a restriction of access to mainstream cultural resources and codes, and on the other, a stratification of the value of different cultural resources and codes so that the limited cultural resources of the excluded are evaluated as "bad" or "low". To use a simple example, gays cannot access much of the cultural resources available to straights; furthermore, the cultural resources of gays, the codes and meanings of gay-related cultural representations and practices, are seen as of lesser value or bad—often labeled as abnormal, immoral, uncivilized, vulgar, depraved, despicable, ugly, low-grade, sub-human, etc. In that sense, the true spirit of multiculturalism aims at giving equal value to the cultural resources of the minority or the marginal as well as allowing them equal access to mainstream cultural resources. However, in reality, the practice of multiculturalism is often compromised and under the rubric of this compromised multiculturalism, gays of a certain life-styles could be socio-culturally included to a certain extent.

The socio-cultural exclusion that I'm proposing here is often accompanied by other types of exclusion, such as: economic exclusion (e.g., the exclusion from labor market or from high-income jobs), political exclusion (e.g., limited access to political participation or to "publicity/publicness"), exclusion in social-life (e.g., exclusion of human relationships, language communication, social space, or community building), and exclusion in material life (e.g., goods or materials that are necessary for the excluded to satisfy their needs, wants and desires are legally banned). As is plainly in view, all of these will have determinant effect on what John Rawls (1999) called "life prospects" or "life chances" of the individual, and hence are closely related to the question of social justice.

Moreover, socio-cultural exclusion is not merely the exclusion of some by others, but often the self-segregation, self-banishment, self-monitoring, and self-disciplining of the excluded. Self-monitoring is a very efficient and rationalized way of surveillance effected by socio-cultural exclusion, while self-disciplining is necessary for people to prevent themselves from falling or slipping into the side of the excluded other. Self-segregation or self-banishment, as a way of life that can sometimes help to shield oneself against the exclusive society, works to creates

one's marginality, which in turn attracts or draws exclusion on oneself. That exclusion (sequestration) and marginality (deviance) go hand in hand and reinforce each other is a fact illustrated most clearly in the case of criminality.

Significantly, it is quite common that the socio-culturally excluded resort to "passing" to evade the hold of exclusion. Because of the anxious fear of exposure and self-alienation due to passing, the excluded often lack what Anthony Giddens (1991) calls "ontological security", that is, a sense of security at the basic level for the immediate as well as unseen surrounding. "Passing" in effect is an extreme form of "impression management", a term used by Erving Goffman (1959) to refer to the way one presents oneself as "normal" or not deviant from social or cultural norms. As a matter of fact, everyone depends upon impression management to cope with the socio-cultural exclusion that lurks in our society, thus posing a potential threat to almost everyone. Ontological security may be retained "under normal circumstances" by inclusive institutions such as privacy, tolerance and social freedom. In other words, the inclusive institutions of privacy, tolerance and social freedom can work to resist socio-cultural exclusion.

However, one would be misguided to think that socio-cultural exclusion and inclusion (operating through protection of privacy, tolerance and social freedom) are two incompatible or mutually exclusive strategies of the state. The state and its partner, the civil society can exert inclusive strategies such as granting certain degrees of privacy, tolerance and social freedom to some marginal but "normal" groups, while deploying exclusive strategies such as denying access to mainstream cultural resources to stigmatized citizens and apply surveillance on the whole population with the help of self-monitoring and self-disciplining by people themselves. In other words, citizens or groups who are included as part of the civil society could be excluded if they don't behave, and people who are excluded could struggle to be included in civil society, as normal citizens, sometimes in the name of multiculturalism. (For example, "otaku" has been stigmatized as asocial, horny, perverted and twisted-mind young men living by the computer and the internet. Yet some of them have been described as "of good taste" in the internet advertisements which target exactly the population of otaku, especially after a favorable portrayal of otaku in the popular net-fiction/movie/TV series/stage-play "The public transit man" <電車男>). This also means that inclusion and exclusion become a matter of degree with shifting boundaries, depending on shifting public opinions constructed by struggles in the field of cultural politics, in which media, activists, citizen groups and experts (with their "risk assessment" and "scientific findings") play important roles. Ironically, the exclusive civil society, as I call it, is itself a result of inclusion, and is legitimized by its inclusiveness in a pluralist, democratic state; still, as we have observed thus far, it is also legitimizing the legal exclusionary measure launched by the state.

The concept of the exclusive civil society is partly drawn from Jock Young's book titled *The Exclusive Society*, in which the author claims that American society is moving from an inclusive society toward an exclusive society, a move that is approximately parallel to the transformation from a homogeneous society towards a heterogeneous society. An inclusive society does not recognize or tolerate social differences; differences must be assimilated in order to achieve homogeneity. For



example, criminals are expected to be rehabilitated. On the other hand, an exclusive society accepts the fact of societal heterogeneity and tolerates many differences, but excludes what is seen as the “difficult” or demonic other; zero-tolerance to the latter kind. In my opinion, in the past two or three decades, Taiwan is similarly moving from an inclusive society toward an exclusive society. Take one very symptomatic example. A serial rapist who has passed the university entrance exam during imprisonment is recently denied parole for the fifth time. This is quite unusual because it has been a tradition that any inmate who passes the competitive entrance exam will surely be granted parole, for passing the exam is considered to be a demonstration of the determination and effort by the inmate to be once again assimilated into society; a convict who desires admission to the university is regarded as desiring admission to the society. In other words, passing the exam itself was seen as constituting the proof of rehabilitation, which was exactly the aim of incarceration in the inclusive society. However, in the case of the rapist and other similar criminals, the discourse of rehabilitation (“born-again” ex-con) has been replaced by the talk of “risk assessment” or “psychological profiling.” One scholar even maintains that the rapist “could never be cured—for life.” Exclusion—for life—seems to be the hidden wish and agenda of the institution of incarceration in the exclusive society. Rapists have been subjected to not only a demonization by the media in its construction of a moral panic, but also to the violence of knowledge construction by experts who serve as representatives of powerful citizen groups.

One important characteristic of the knowledge construction of socio-cultural exclusion consists of grading, often precariously, the degree of the deviance, or the possibility of the danger, so that a line between exclusion and intolerance can be drawn. But since deviance or risk is a matter of degree (because social diversity simply means a deviance from the traditional norm), no one is safe; everyone is potentially deviant or dangerous. As Jock Young puts it, “‘the other’ is everywhere and not restricted to criminals and outsiders”.<sup>7</sup> This implies that everyone is a potential target of socio-cultural exclusion. Of course, some will never worry about being excluded, and a few will always be condemned.

In light of what I have just said, I shall conclude at the end of this article four significant aspects of the development of socio-cultural exclusion in recent Taiwan. First, there is a development of preventive surveillance as a form and tactic of socio-cultural exclusion. For example, in 2002 Ministry of Justice proposed a reporting system to be installed in every school of Taiwan for students who are judged to be of the disposition to engage in *enjokosai*. This reporting system presupposes that schools already have in place a capacity for surveillance so as to be able to discriminate between different degrees of deviance in terms of female sexuality and lifestyle of students. Therefore, those female students who are judged to be, say, sexually active should be reported to the giant computer of Ministry of Justice. (The rationale is probably that when a student gets caught for *enjokosai*, the accountability of the school and the “*Dao-She*”,<sup>8</sup> i.e. the student’s counseling

<sup>7</sup> Young (1999, 66).

<sup>8</sup> *Dao-She* or the counseling teacher is held administratively responsible for student’s affairs and welfare in general, ranging from students’ academic performance to their personal lives.

teacher, depends on whether the case has been reported in advance.) This reporting system is in its local effect a monitoring system with exclusionary consequences. Conceivably, for the reporting system to work, the counseling teacher has to rely on close monitoring as well as reports from other students, since the counseling teacher may not have any sophisticated tools of “risk assessment” at hand. Students considered as difficult or trouble-making in sexual terms will be marked (by fellow students, teachers, parents, etc.) and thus excluded for the prevention purpose.

The second significant aspect of the development of socio-cultural exclusion in recent Taiwan has to do with its various sources of support. Comprehensive and effective socio-cultural exclusion costs, and requires legitimacy and technology/technique. Technologies or techniques required for exclusion, surveillance and risk assessment, sometimes have been developed originally for entirely different purposes, a phenomenon Foucault (1979) noted in his work. For example, the all-day monitoring of TV programs by specially-trained personals, now instrumental for penalizing “improper” content of TV programs, was installed in the early days for the purpose of meeting the demands of American movie industries to spot and then ban pirated films. The various filtering technologies (such as networking of different servers) required for the rating system of websites were likewise originally developed for other joint projects of different computer centers. Furthermore, the website rating system (as far as I know Taiwan is the first nation to install such system) and the crack down of internet enjokosai need the dot-coms to provide funding as well as cooperation that may infringe upon the privacy of the consumer/user. Therefore, to justify the fund-raising and possible violation of rights, the legitimation of these exclusionary practices has become an important issue. Once again, instead of the state applying a visible dirty hand, the civil society—that is, various citizen groups and non-governmental organizations working in the name of (such as) protection of children, prevention of sexual harassment, protection of intellectual property, prevention of cyber crime, promotion of internet civility, and so on—has become the articulating agent of the regulation of internet. In order to monitor and report on website activities to the authorities or NGOs, ordinary folks are called out to work as volunteers to fulfill their civic duty, working side by side with the paid staff of NGOs to patrol the internet, now filtered through numerous invisible technologies. The active consent of dot-coms and citizens lends legitimation to the regulation of the internet. This is a new face of Gramsci’s (2000) hegemony.

The joint effort of the state and the NGOs mentioned above and many other similar cases, signal the emergence of a particular form of governance, which I shall call “flat governance”, that is, the relation among different centers or agents of power is no longer vertical or hierarchical, but horizontal and often networked. It is the third significant aspect of the development of the socio-cultural exclusion that the exclusion situates in the context of flat governance emergent in recent years. As a result, the power of social control represented by socio-cultural exclusion can now reach private and personal domains, with the help of many other forms and agents of power other than the state itself, whose hierarchical apparatus of power alone simply cannot effectively enforce new regulations and laws to maintain social order in the face of cultural diversity amplified by new communication technologies and

globalization. Parenthetically, globalization has undermined not just the sovereign power of the state, but also the cohesive power of the civil society. Hence, it is the common interest of both the political state and the civil society to maintain the cultural boundary of the nation-state. This common interest and the collusion of the state and civil society pretty much shapes the context of the present development of socio-cultural exclusion.

The fourth significant aspect of the development of the socio-cultural exclusion is its frequent use of blunt and severe measure of punishment when it comes to a new and complicate issue with which no efficient means can adequately deal at present. This fourth aspect is best illustrated by the rules of punishment of “Lianzho” (連坐),<sup>9</sup> the third party liability, to use an insurance term. That is, you are responsible for someone who has done wrong to a third party. For example, in the case of regulation of the internet, dot-coms or webpage owners are held responsible for any unlawful content of messages posted by users. Webpage owners are considered to be disseminating obscene materials through providing hyperlinks to pornographic sites. Such rules of punishment are taken up by socio-cultural exclusion because the legislative process is rushed to disperse a pending moral panic and the legislative process is monopolized by powerful NGOs without full consultation or negotiation, and maybe also because the required technologies, funding and resources for a differentiate approach to punishment are still lacking at the moment. As a result, the blunt and severe measure of punishment such as “the third party liability” on the internet produces a chilling effect and forces companies like Yahoo into depriving some of the fundamental rights of net users, leaving the state behind as the invisible hand. Such pressure and punishment can also cause dissatisfaction, scattered protests and even resistance of the people.

The indiscriminate nature of the punishment, in contrast to the general tactic of exclusion in discriminating degrees of deviance, shows that socio-cultural exclusion is still in a process of developing and still learning from its consequences, its mistakes, its insufficiency as well as people’s resistance to it, in order to achieve a coherent, comprehensive and efficient tactic of exclusion. It also suggests that socio-cultural exclusion as a whole will not be engineered or masterminded by one power center, but is always over-determined by many powers producing various effects at different levels.

In the end, let me try to say something related to the topic of social well-being, which is proposed to replace the GDP-centered socio-economic development in Taiwan. I think the relevance between socio-cultural exclusion and social well-being is that any effort at enhancing social well-being today must work to reduce internal conflicts, such as value conflicts due to the multiplication of values and worldviews. Today in Taiwan and certainly elsewhere, talks of multiculturalism, good governance, deliberative democracy, and social inclusion are prevailing discourses, but these discourses may have their pitfalls, as I have suggested, in that they may co-exist with and could even legitimize socio-cultural exclusion. It is my contention that one of the functions of contemporary socio-cultural exclusion is to

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<sup>9</sup> “Lianzho” literally means to be punished as accomplice for being related to or friendly with somebody who has committed an offence.

regulate, not necessarily reduce or induce, the proliferations and production of social differences and conflicts. While it is important to minimize conflicts and promote welfare for the majority of the greatest number, the basic rights and social freedom of minorities should not be sacrificed on utilitarian grounds such as the welfare for the majority.

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