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*Same-sex Marriage in Taiwan:*  
*Can It Evade the Normalization of Gays and Lesbians?*

Alain Naze

Maison des Sciences de l'homme Paris-Nord

Translated from French by Julien Queennec

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國立交通大學文化研究國際中心

**International Center for Cultural Studies**

**National Chiao Tung University**

R212 HA Building 2, 1001 University Road

Hsinchu, Taiwan

Tel: +886-3-5712121 Ext.58274, 58272

Fax: +886-3-5734450

Website: <http://iccs.nctu.edu.tw/en/wps.php>

Email: [iccs.wps@gmail.com](mailto:iccs.wps@gmail.com)

## ***Same-sex Marriage in Taiwan: Can It Evade the Normalization of Gays and Lesbians?***

Alain Naze

Associated Researcher

Maison des Sciences de l'homme Paris-Nord

Translated from French by Julien Queleennec

### **Abstract**

Starting from the observation that in a country like France the gay movement passed from an approach of sexual and gender politics in terms of emancipation and experimentation (the 1970s) to an almost exclusive focus on legal issues (same-sex marriage, from the beginning of the new millennium), the author asks himself if the specificities of Taiwanese society could make that the LGBT movement and its supports follow a different path and resist the temptation of normalization and respectability. Besides, he asks himself if making of gay and lesbian rights just a particular case of the global Human Rights issue would solve all the problems the present politicization of gender and sexual issues raises.

We will be focusing in this intervention on the demand, sometimes granted, of access to marriage, as a contractual form of union, for same-sex couples. However, I would not like us to neglect a contemporary and more general phenomenon, what could be designated as a form of generalized judicialization of issues related to sexuality and to the relations between sexes. According to me, it is from this perspective that we can grasp the symptomatic dimension of the demand for same-sex marriage (knowing the fact that obtaining any kind of additional right is considered as an increase of freedom), at least in the French case. Obviously, it does not mean that the legitimate claim for equality which is a part of this demand should be overlooked.

In the French case, the legislation of same-sex marriage has often been depicted as a progress for gays and lesbians. Some would even say that such juridical improvement regarding the question of equality could be considered in the continuity of the so-called “sexual liberation” movements during the 1970s. It might even be seen as their final achievement. And yet, it is quite easy to show that these “sexual liberation” movements were not so much fighting on juridical grounds, except when they aimed at the removal of certain proscriptions and

limitations (claims for equality regarding the legal age of consent for homosexuals and heterosexuals).

Our purpose will then be to identify the turning point between the 1970s and today, especially in France. Why we see a demand for same-sex marriage today, while in the previous period, liberation was conceived in a relation of distance with the marital form of existence, the notion of couple being itself put into question. To realize that times have changed with regard to such kind of issues, we only need to pay attention to the concern for social recognition inherent to the demand for same-sex marriage, a concern for “respectability” which obviously contrasts with, for example, what Guy Hocquenghem called for, a “delinquent” homosexuality.

From this perspective, it seems that these kinds of demands are decidedly the sign of a movement of normalization of gays and lesbians. The demand of access to marriage for the homosexual couples is indeed rooted in a will to develop a logic of inclusion. But assimilation in a heterocentered society was certainly not what most of the 70s homosexual movements were calling for, because such kind of demand would have meant to disavow the homosexual life as an opening up of possible forms of existence breaking up with the general organization of heteronormed societies.

In the case of Taiwan, as it has recently decided to grant marriage to same-sex couples, we will have to see if a comparable logic is at work within such juridical evolution.

If we take a closer look at the 1970s, especially in France but not only, the “sexual liberation” movements (feminist movements included) were largely rooted in a revolutionary ground questioning the capitalist society and the “bourgeoisie” morality. Then, it is not so surprising that someone like Guy Hocquenghem, as a member of the FHAR (Homosexual Front of Revolutionary Action), advocated the idea of a delinquent homosexuality. The purpose was to oppose an objectivist definition of homosexuality (reducing it to the simple fact of having sexual relations with persons of the same sex), and to favor a non-substantialist definition of homosexuality which would concern any one of us (there could be some homosexuality (de l’homosexualité) also in the context of relations between persons of different sexes). In that regard, the intention was to register the fact that a little difference (in the sex of sexual partners) could result in the production of inventive forms of existence – which the whole society could have benefited from, through the questioning of what could be called “the order of families” (l’ordre des familles). Thus, there wasn’t any trace of gay assimilationism, and it is the reason

why homosexuality maintained its revolutionary potential. Therefore, it confirms the idea that the research of a form of respectability was a foreign concept for homosexual activists during that period – indeed, to become respectable in a society means to approve its general organization, on the sexual, political, economic level – something unthinkable for a revolutionary movement.

In the French case, but it also could be valid, *mutatis mutandis*, in other parts of the world, the recent demand for the right for people of the same sex to marry clearly indicates a change of direction since then. This time, it is a demand for inclusion within the society, plain and simple. Society is accepted as it is, in this case through the institutionalization of a conjugal relationship between juridical persons of the same sex. Thus, it is the heterocentered order of the society which is perpetuated, same-sex marriage being a simple extension of heterosexual marriage given to the homosexual population. The couple constitutes then a form of existence which is validated by such demand, at the expense of more resonant sexual experimentations which are non-established and implicating sometimes more than two persons, but which also result in the invention of new forms of existence.

In order to confirm this reversal movement, we can point out the fact that the ones called “*les Folles*” (effeminate gays, with exorbitant behaviours branded as feminine) are often stigmatized, for the supposed wrong they would cause to the proper demands of the Gay Pride. The claim for a form of respectability is also at work here. We could as well mention the retrenchment of sexuality within the private sphere which is an aspect of the demand of gays and lesbians for marriage. In that respect, we should not neglect, as an example, the fact that sexual relations in public among gays has receded. Some of the beaches opened to such practices are nowadays mostly used by older gays. The growing repression against such kind of behaviours is not solely accountable for this evolution – it is rather because sexuality seems to be now limited to the private sphere (new norm, new sensibility), that some of the people living next to the beaches we were just talking about started to complain to the authorities about behaviours, which were yet no new.

Whereas the revolutionary gay movements did not want behaviours to be governed by law (they rather aimed at “being governed the least possible”, to use Foucault’s words), today, some homosexuals have turned to the State in order to be granted a form of social recognition through the access to a juridical possibility, “the marriage for all”. This current protest movement

(actually more a form of lobbying by LGBT's associations, at least in France, than a demand from the mass – which really started protesting in reaction to anti-same-sex marriage demonstrations) tends to depict the “marriage for all” step as the Grail for the LGBT community, that is, as what successfully concludes the long march towards equality and freedom (some seeing in the PMA – Medically Assisted Procreation – granted to people of same sex, and sometimes even the GPA – procreation by surrogacy – the logical implication of the access to marriage). Then the previous steps of gays and lesbians movements are reinterpreted as, in fact, simple moments, in the Hegelian sense of the term (that is having value only in relation to this alleged final stage), which have paved the way, in a far and quite obscure manner, with an apparent lack of rationality and contradictions, for the rise of the “marriage for all”. We find here, in plain terms, the so common illusion of progress. Then, countries which do not recognize homosexual marriage are soon qualified as obscurantist (meaning ignorant of the Enlightenment, outside of the path Reason), homophobic, and non-democratic. It is democracy as such (a more and more empty signifier) which is put as the ultimate stage of “progress” in regard to political organization and “human rights”. In these conditions, the postulated association between the possibility of same-sex marriage and democracy deprives us of the possibility to apprehend the oddity that is the centrality of the juridical dimension in the “marriage for all” demand – in reference to “the rule of law”.

Actually, with regard to law, we can consider that to put the discussion on a juridical level can be justified when the issue aims to end the banning of certain practices, and gain in that sense some more freedom. This was the case for example in Germany when the protests called for the removal of paragraph 175 of the Penal Code prohibiting relations between people of the same sex (even if it wasn't being enforced, but was still within the law and ready to be reactivated). More generally speaking, the struggle on the juridical ground can be understood as a fight to obtain more freedom when it is about lifting a ban on certain practices, so that they are not illegal or even the object of the law in the positive sense.

It is entirely different when it comes to a law as a mode of prescription. If the “marriage for all” constitutes the lifting of the prohibition for same sex couples to marry, its scope is however not restricted to this suppression. This new right involves well-established forms of existence, precisely the forms which have until then been reserved to heterosexual couples. This new right do not provide a rich and diverse potential of existence still to come, because it only opens up the possibility for homosexuals to access heteronormative forms of existence – starting with

the reproduction of the union of two, of the couple, and of the juridical relation between individuals (persons). There is no doubt that many gays and lesbians consider such possibility of access as a step towards changing the concrete modalities of marriage, or even of the notion of family itself. However, once the model of the couple and of the family have been endorsed, what latitude do we have left to prevent the dissolution of their union within the exclusive form of the heterosexual marriage?

Let us remember that Guy Hocquenghem did not oppose homosexuals and heterosexuals strictly speaking, but the “hetero-cops”, and even “homo-cops”. In that sense, he showed that his conception of homosexuality did not correspond to an objectivist mode of definition. The call for order (of families, of the couple, and later with AIDS, of the sanitary order) could certainly come from individuals who could be objectively designated as homosexuals. The forms of existence opened up by a non-substantial homosexuality are for instance forms of sub-personal (infra-personnelles) relations where flows of desire encounter partial objects. Where could we locate the idea of marriage in such kind of configurations?

Foucault was not wrong when he wrote: “That in the name of individual rights, we let him/her do whatever he wants, that fine! But if what we aim at is the creation of a new mode of life, the question of individual rights is irrelevant. Indeed, we live in a legal, social, institutional world where there are only a few possible relationships which are both extremely schematic and poor. Obviously, there is the relation of marriage and family relationships, but how much more relations should be allowed to exist, and could discover their own codes outside of the institutions. It is not at all the case now.”<sup>1</sup>

The juridical framework in which certain relations are a priori put can only function as a stranglehold. It does not mold itself on the actual and effective forms of existence in their diversity. And yet, Foucault was not against the potential institutionalization of the relations between people of same sex, even though his proposition results, in fact, in the subversion of the notion of institution itself, as we are going to see. Indeed he writes: “We have to look at things the other way around, and instead of saying, as we have said during a certain moment: ‘Let’s try to reintroduce homosexuality within the general normality of social relations’, we should say on the contrary: ‘No! Let’s escape the kind of relations offered in our society as

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<sup>1</sup> Michel Foucault, «Le triomphe social du plaisir sexuel: une conversation avec Michel Foucault», in *Dits et Ecrits II*, Paris, Gallimard, 2001, p.1128.

much as possible, and let's try to create an empty space where we'll be instances of new relational possibilities'. By proposing a new relational right, we'll see that some non-homosexual people will be able to enrich their life by modifying their own diagram of relations".<sup>2</sup>

In Foucault's proposition, the subversion of the institution consists in the fact that it is not about instating relations which conform to a model, but allowing the nature of the relation open up a kind of new right. Therefore, the goal is not the access to a juridical status equivalent to the one already granted to people of different sexes. Foucault conceives the matter the other way around and proposes that it is the whole society which could benefit from this "new relational right" (an objective which is shared with Hocquenghem's non-substantial homosexuality).

To conclude this first part, and before we look at the Taiwanese case, I would like to add that for me, the pervasive reference to the 1970s does not betray a kind of restorative will. I would rather see myself in line with Walter Benjamin. I am drawing from this period elements which could have a critical function relatively to the contemporary police of discourses. In other words, they can help distance ourselves from what appears as obvious today. If the past is revolutionary, as Pasolini thought, it must be understood in relation to the cut (scar) it is likely to inscribe in our present. Thus, and to remain focused on today's topic, it is because the changes proper to the homosexual movements (labelled today as LGBTQI) are registered as an obvious progress, an illusion according to us, that the contrast with the 1970s discourse on homosexual relations seems useful. We don't believe that homosexual movements reached a form of maturity which was lacking in their predecessors; we don't at all believe that freedom should be reduced to its juridical expression. It is because we think that freedom can be found first within practices that we refuse to consider the "marriage for all" as an effective step in the logic of emancipation of gays and lesbians. This achievement is only limited to a juridical equality. Would it be the same in Taiwan, with this new acquired right to same-sex marriage? That is what we will begin to investigate now.

First, we should notice that if the question of same-sex marriage is immediately considered on a juridical ground, it is because the vote of the Taiwanese Parliament on the 17th of May followed a prior judgment by the Constitutional Court in 2017 in which the impossibility for same sex people to get married was found unconstitutional. The introduction of marriage in the

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<sup>2</sup> *Ibid.*, p.1130.



juridical sphere is itself a novelty from the years 2000s, since before that marriage was considered by Taiwanese a private act engaging two families, or two clans, and was not necessarily required to be officially recorded by local authorities. In that respect, it is the development of a more constraining public law, with the influence of Western law, which has led the government to urge, and then force, married couples to get officially registered.<sup>3</sup> But in a deeper way, we must pay attention here to the Taiwanese government's mode of commitment with regard to same-sex marriage, inasmuch as it puts this issue within the perspective of "Human Rights". We will try to see if this juridical dimension circumscribes the whole issue (by making it a simple question of "Human Rights"), or if this legal anchoring is circumstantial – in which case we must question both the specific motivations of gays and lesbians in Taiwan who hare at the front of the demand for same-sex marriage, and the real effects of such legislative evolution from the point of view of social mores. I need to add that what I say remains a form of questioning, a way to propose a base for the opening of future exchanges. There is of course no pretension from me to say what exactly is this demand for same-sex marriage in Taiwan, or what will be its possible consequences, especially here, when addressing a Taiwanese audience.

If, during the 2000s, gay and lesbian organization have actively been campaigning for the development of a homosexual culture as well as for the access to a right to marry, Valérie Mespoulet also notices in *Being a Woman and a Lesbian in Taiwan* (a book which has been very useful to prepare this second part of my intervention) that during that period of time, there is a favourable context for a political reception of these demands: "While, since his election in 2000, the independentist Chen Shui-bian leads an international campaign of lobbying in favor of the recognition of Taiwan, a series of progressist bills have been enacted by his government. As to homosexual rights, a project of law called 'human rights securing' has been written; this project includes then the right to marry and to adopt for all. The clause 6 states that 'the government must protect the rights of homosexuals, and that it must be allowed for homosexuals to establish familial links...' [...] From that time on, the question of homosexual marriage will turn around the issue of Human rights applicable to all".<sup>4</sup>

We should also not forget that since the end of the 1980s, Taiwan looks for a way to reintegrate

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<sup>3</sup> Valérie Mespoulet, *Etre femme et lesbienne à Taiwan*, L'Ecritoire du Publieur, Paris, 2013.

<sup>4</sup> *Ibid.*, chapter V (I use a numerical version, and so I don't have the specific pages of the quote)

into the UN after its exclusion in 1971. In that regard, the lift of martial law in 1987, and also the decision of Taiwanese leaders to end the assimilation of homosexuality to a form of deviance after the WHO removed homosexuality from the international classification of diseases in 1990, are both signs of this desire of recognition. Furthermore, it is the will to make Taiwan look as the most democratic Asian country, with a scrupulous respect of Human Rights, that will eventually lead the island to grant same-sex marriage in 2019 (or should be say rather the authorization, for people of the same sex, to contract “exclusive permanent unions” which can be recorded in the “registry book of marriages”).<sup>5</sup> There is indeed here a way to appear to the world as the Asian champion of human rights, and to willingly play the contrast with its Chinese neighbour.

The international benevolence regarding the evolution of Taiwan on the acknowledgments of the rights of homosexuals, especially the American one, generated effects in the manner young gay and lesbian activists envisioned their demands. The Anglo-Saxon acronym LGBTQ has been used, in spite of its clear relation to the Latin alphabet, and the Rainbow Flag became their banner. In that sense, the gay and lesbian revendicate movement seems to blend into the global mold of the 2000s LGBTQ's demands, in their style as well as in the content of their demands. Same-sex marriage appears then as a desirable horizon and a step forward in the social recognition (first juridical) of same-sex couples. Thus, we could well be facing a current planetary homogenization of homosexual demands. From this point of view, the will of social recognition, of inclusion, which is at work in Taiwan through this demand for same-sex marriage, would lead us to a meeting point with the forms of normalization previously mentioned in the context of Western countries. A comparable rupture with a certain past of gay and lesbian existences could be observed, if we take as an example of this past the beautiful book by Xiantong Bai (*Garçons de Cristal* in French, Nie Tzu, 孽子), in which young boys prostituting themselves are reduced to a form of marginal existence after having been rejected by their families because of their homosexuality. In spite of all the dangers surrounding their existence and their misery, some solidarities manage sometimes to take shape, enlightening their existences. Of course, the point is not to bemoan in any way the past times, when homosexuals were subjected to such precarious existences, because of their homosexuality. But we do not have to praise either the in-and-out individualism and consumerism of normalized

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<sup>5</sup> Internet reference : <https://www.lepoint.fr/monde/taiwan-le-parlement-legalise-le-mariage-gay-une-premiere-en-asie>

homosexual existences, remembering in that sense Hocquenghem's warning against the homosexual desire for respectability at the end of the 1970s: "When homosexuality is confessed and is rationalized, it tends to repel in the shadow its old companions of the underworld. The rupture displayed by the interclassist love relations is the condition of the homosexual salvation".<sup>6</sup>

The fact that the union between individuals of the same sex is designated as "exclusive" reminds us a Taiwanese specificity which, in spite of all, still makes same-sex marriage here look a little odd ("exotic") in our modernity: adultery is still punishable by law in Taiwan. So the new rights acquired by homosexuals in Taiwan must be precisely replaced in the context of Taiwanese society. It is the only way to eventually make something specific about same-sex marriage in Taiwan emerge, so that we could avoid turning it into a simple movement of normalization of gays and lesbians.

We notice that the adoption of the right for same sex unions by the Taiwanese parliament was preceded by a rejection of this proposition during a referendum. Indeed, Taiwanese legislation gives priority to parliamentary vote over the referendum modality. We should not induce too hastily from that remark that the Parliament went against a clear-cut opinion of a majority of Taiwanese who would have rejected any juridically secured idea of same-sex unions. The results of this referendum deserve a closer look, particularly in relation to the specific questions which were then asked: from the affirmation that marriage must necessarily be the union between a man and a woman, to the demand for a specific law for same-sex unions (which got a majority of 6.5 million for, and 4 million against), but also the request to end the compulsory teaching of LGBT topics in school. It is true that the results of the referendum are quite clear: there is an opposition to the marriage of people of the same sex. However, the Taiwanese society did not appear to be unwilling to acknowledge a specific juridical form of union for them. It forces to ask questions about the status of marriage in Taiwan, on the social and symbolic meaning it has, for it could help explain both the manifest reticence towards same-sex marriage, and the aspiration of LGBT activists when they demand the right to marry.

If it is obvious that Taiwan entered modernity, in particular on the technical and economical level (22nd world economic power, one of the four so-called "Asian tiger" with Singapore, Hong Kong and South Korea), the island remains rooted in a Confucian cultural soil that we

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<sup>6</sup> Guy Hocquenghem, *La dérive homosexuelle*, Paris, Jean-Pierre Delarge Editeur, 1977, p.18.

cannot ignore, especially if we want to grasp its peculiarities. As Valérie Mespoulet writes: “In the Chinese world and in Taiwan, it is not religion which is the fundamental base of society but Confucian thought and the Yin/Yang cosmology which structure the relation between human beings to reach social harmony. Unlike monotheist religions, it is not the sexual orientation which is the main concern but the idea of a continuity between generations, family and marriage being put then at the heart of the social organization”.<sup>7</sup>

If this Confucian base is really presenting a binary aspect which tends to give to the world a hierarchical order (the Yang as light, the emergence of life, movement, heat and so masculinity, situated at the top; the Yin as shadow, disappearance, cold, interiority and so femininity and inferiority), it is also true that the Yin and Yang distinction does not depict an absolute opposition but rather a complementary relationship. The goal is to reach a social harmony, through harmonious human relationships secured by the fact that each one of us is behaving adequately, that is according to the place it is supposed to hold. Thus, the relations between men and women is codified, with, by way of consequences, the social obligation to start a family. According to this thought system which is both philosophical and an organization of social life (each individual must act in relation to the place it holds – “the sovereign must act as sovereign, the father as father, the son and son”),<sup>8</sup> the problem for homosexuals as such is that they precisely do not have a place. It is through that angle that we can grasp the significance for Taiwanese homosexuals the access to marriage – significance which prevents the strict assimilation of this demand to the globalized agenda of LGBT NGOs.

If marriage is central in Taiwanese society, it is in relation to the constitution of the family which is seen as securing the continuity of lineage. Therefore, the single person, after a certain age, will be looked at with a reproachful eye, homosexual or not. As Valérie Mespoulet writes: “The family is the structuring base of relations between individuals and it provides them with a status. In this ideological framework where marriage is at the heart of society, the single person is not worth of much trust and respect, for he or she offends the Confucian filial piety in which ‘the biggest failure is to not extend the lineage’ as a Chinese proverb reminds us”.<sup>9</sup>

We can understand then the strong pressure put by parents on their children’s shoulders

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<sup>7</sup> Valérie Mespoulet, *op. cit.*, « Avant-propos ».

<sup>8</sup> Confucius, *Les Entretiens* (Analects), XII, 11.

<sup>9</sup> Valérie Mespoulet, *op. cit.*, chapitre 1.

regarding the obligation to marry, especially when we know that the disgrace also falls on the parents in the case of lasting celibacy. For parents carry the responsibility of marrying off their children. Once again, we see that it is not sexual orientation which is at stake, but its consequence, when it prevents the union of a girl with a boy, or a boy with a girl. In these conditions, marriage (of convenience) can constitute a solution, as long as it leads to the production of a descendant. But we also understand that if this solution allows homosexual men to have a double life, it is much more difficult for women who, when they are confined to the domestic space, have few opportunities to live a homosexual existence outside of their marriage. So it is the possibility to be attached to a family which matters, and the homosexuals who refuse to get married become isolated, as if they were deprived of social existence and social status. Valérie Mespoulet clearly states it here:

“Family remains in Taiwan and in the Chinese world the base of the social organization. Family provides relationships, prestige, the necessary forces to live in society. It is by getting married and by having a descendant that children acquire a status in the social network. [...] In the Chinese/Taiwanese society, an individual is not an isolated subject, he is the member of a network of social relations. To refuse to play this social game means the exclusion by one's family, by one's clan, but also by friends and colleagues. To exempt oneself from marriage is to make one's parents lose face and to force them to shoulder a bad reputation within the Taiwanese society”.<sup>10</sup>

Of course, today, Taiwanese society has largely entered into the modern era, and this family-centric model has certainly disappeared in certain parts of society, in particular for the Western educated “elites”. We noticed that feminist, gay and lesbian activists have largely been appropriating theories and practices from Western activists. But all things considered, some parts of the country, mainly the rural areas, are still imbued with this social moral originating in Confucianism. We wonder then if Taiwan is on the path of modernity, making a clean sweep of the past (identified to an alleged obscurantism), or if another path will be looked for, aiming at a form of conciliation between modernity and tradition.

To conclude, we can first notice that the demand for a same-sex marriage in Taiwan is loaded with a cultural and historical background relative to the centrality of the family, something which cannot be deciphered in the demands of activists in Western countries. To go through

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<sup>10</sup> *Ibid.*, chapitre 3.

the marriage issue in Taiwan might be the compulsory passage to obtain a social existence, in order not to be deprived of any status, of financial and other kinds of support. For some, marriage in Taiwan do not seem to be a potential option, but constitutes an obligation in order to avoid a kind of social death and the disgrace of one's own family. This demand might have been held by activists who do not have such kind of problems, and who were aiming at the so-called “progress” of homosexual existence, by copying the demands made in Western countries. That being said, the demand for same-sex marriage in Taiwan cannot simply have the same meaning as the one in France for example. There is sometimes something deeper at stake in this demand, something which might explain the emotion that some have felt when they learned that the Parliament voted in favor of same-sex unions.

Now, we need to know if this decision will have the expected effects it is supposed to generate. Will this law, which was voted against (globally speaking) in prior referendums, have the force to convince certain families that this union is worth the same as the one between people of different sexes? Or will this juridical recognition be found void or invalid, as a kind of violence against Chinese/Taiwanese culture? Only the future will tell if the modalities of such union between same-sex people is part of a current planetary homogeneization/globalization of gays and lesbians, or if the Taiwanese will know how to make it the starting point of the invention of multiple and original forms of existence, inventing at the same time new forms of solidarity.

Will the general phenomenon of globalization in the domain of mores end up with the pure and simple negation and suppression of the historical and cultural specificities of Taiwan, or will part of this specific background be preserved, including at once the concrete forms that these unions will take and the ones which have already been celebrated?

In that regard, what I see as a danger is the absorption of these same-sex unions within the heterosexual model, that is in a purely inclusive logic, the LGBT globalized forms of existence included. But to end on a more optimistic note, or at least to keep up the sense of the undecidable regarding the better or worse future to come, I'll quote Hölderlin's famous words: “Where danger grows, grows also that which saves.”