

## Sexual Ethics in Contemporary Taiwanese Legal and Buddhist Contexts\*

Chu, Li-ya \*\*

### Abstract:

Sexual ethics is an area of applied ethics that focuses on human sexuality and sexual behavior. Ethics and religion have been often closely linked, with religious views shaping perspectives on issues such as extramarital affairs, sex work, and homosexuality. Legal and ethical norms are in fact not separate, but overlap each other to some extent.

This paper first introduces the perspectives of four prominent Buddhist masters in Taiwan in regard to the Buddhist third precept: avoiding sexual misconduct. Secondly, to demonstrate the varying interpretations of the third precept, I will then introduce two contemporary Taiwanese legal issues in order to contextualize the Buddhist third precept and its current interpretations. This paper specifically speaks to two changes in Taiwanese law regarding sex and sexuality, including the partial legalization of sex work in 2009, and the legalization of same-sex marriage in 2017. These social changes are collectively studied due to their relationship to the Buddhist third

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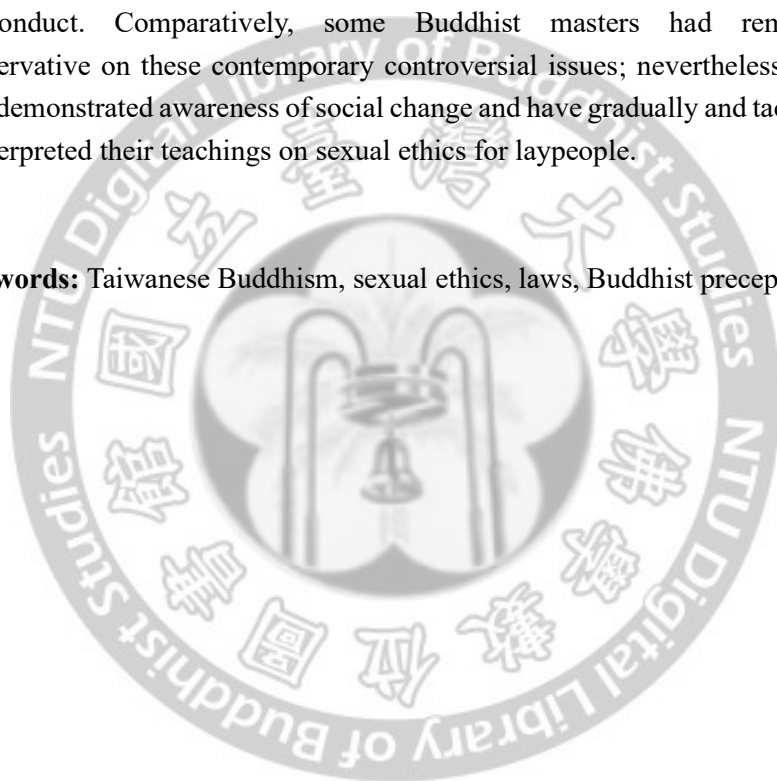
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\*\* PhD Candidate, Department of Philosophy, Tunghai University; PhD Candidate, Department of Languages and Cultures, University of Ghent

precept, and relevance to sexual autonomy within a legal context.

In comparing Buddhist interpretations with legislation, it becomes clear that arguments put forward by some of Taiwan's Buddhist masters transcend their time and go beyond legal regulation. Their pioneering, and progressive, views are concerned with whether these intimate relationships are safe, fair, and harmless to others, rather than fitting within the literal meaning of sexual misconduct. Comparatively, some Buddhist masters had remained conservative on these contemporary controversial issues; nevertheless, they also demonstrated awareness of social change and have gradually and tactfully reinterpreted their teachings on sexual ethics for laypeople.

**Keywords:** Taiwanese Buddhism, sexual ethics, laws, Buddhist precepts



## 當代臺灣法學與佛學脈絡下 之性／別倫理

朱麗亞\*

### 摘要：

性／別倫理是一種應用倫理，聚焦於人類的性向與性行為。倫理與宗教往往緊密相連，因為宗教觀點形塑出人們對於婚外情、性工作與同性戀等性／別議題之看法。另一方面，法律規範與倫理規範亦是密不可分，於某程度相互重疊。

本文首先簡述臺灣四位著名佛教法師——對佛教五戒之第三戒「邪淫戒」即避免不道德性行為——各自之觀點。其次，為凸顯其不同詮釋，我將介紹兩項當代臺灣的法律議題，並以之作為闡釋佛教五戒第三戒之脈絡背景。特別是臺灣法律在性／別性方面的兩項變革，包括2009年性工作的部分合法化，以及2017年同性婚姻的合法化。由於這些社會變遷與佛教五戒第三戒間均具有密切關係，且牽涉法律上之性自主概念，因此一併探究。

藉由上述，佛學詮釋與法律制定之相互對照下，我們可以清楚地看到臺灣一些佛教法師所提出的論點超越了他們的時代，亦超越法律規範。他們先鋒而進步的觀點，關心的是這些親密關係是否安全、公平、

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\* 東海大學哲學系博士候選人，根特大學語言與文化學系博士候選人

對他人無害，而非拘泥於邪淫之文義解釋。相較之下，某些佛教法師就當代敏感議題維持保守立場，實對於社會變遷亦有所覺察，而採漸進與委婉的方式重新詮釋其關於在家居士性／別倫理之教導。

**關鍵詞：**臺灣佛教、性／別倫理、法律、佛教戒律



## 1. Introduction

Sexual ethics is an area of applied ethics that focuses on human sexuality and sexual behavior. Ethics and religion have often been closely linked, with religious views shaping perspectives on issues such as extramarital affairs, sex work, and homosexuality. Legal and ethical norms are in fact not separate, but overlap each other to some extent. However, within present scholarship, there are few analyses of the co-constructive relationship between religion and ethics.

The dynamic connection between legal norms and contemporary Buddhist ethics is worthy of being studied. For example, questions such as, “is the traditional understanding of the Buddhist third precept still applicable in societies that pursue liberty and multi-cultural values?,” come to mind within the context of contemporary Taiwan where non-heteronormative sexual relationships are becoming more and more acceptable, but remain largely contentious with conservative Buddhist thought. This paper aims to showcase different interpretations of the precept on sexual misconduct, in order to determine whether Taiwanese Buddhist masters’ interpretations of sexual ethics have adapted to a rapidly changing society.

When discussing the fundamentals of social transformation, this paper argues that not only legal contexts but also the perspectives of dominant religious teachings, such as Buddhist ethics, must be brought into consideration. In fact, legislation results from compromises between various interested or affected groups, which may be adjusted under disparate circumstances. Further, it is also important to explore the process of lawmaking, which is linked to society-wide values, local customs, and specific cultures.

Taiwan ranks second highest in religious diversity in the world, behind Singapore, according to the Pew Research Center.<sup>1</sup> Taiwan also topped Asian

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<sup>1</sup> Cooperman, Alan, “U.S. Doesn’t Rank High in Religious Diversity”, Pew Research Center, 4, 2014, <https://www.pewresearch.org/short-reads/2014/04/04/u-s-doesnt->

countries in terms of gender equality in 2019 after the legalization of same-sex marriage. Religious freedom and autonomy are securely established in democratized Taiwan, where moral norms derived from religious beliefs play a significant role in people's daily lives. Religious leaders in Taiwan also wield much influence over social change. There is a considerable population in Taiwan who adhere to Buddhism,<sup>2</sup> necessitating the study of Buddhist ethical viewpoints regarding these issues. What's important and needs clarification, is that Buddhism in Taiwan, in a broad sense, could refer to folk religions, i.e. the mixture of Buddhism, Confucianism, and Taoism. In the Taiwanese context, it is rather difficult to clearly distinguish between these traditional "religions," and where religious viewpoints converge and diverge.<sup>3</sup>

Even today, in a secular age, religious morality plays an essential role in most contemporary Taiwanese life. For example, the Buddhist Master Chao Hwei (昭慧)<sup>4</sup> was invited to the Legislative Yuan (*li fa yuan* 立法院),

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rank-high-in-religious-diversity/.

<sup>2</sup> Based on 臺灣社會變遷基本調查 (Taiwan's Social Change Survey Data), the most academically rigorous survey, in 2019, only 13.2% of Taiwanese claim they have no religious faith. Comparatively, 49.3% of people in Taiwan are followers of folk beliefs. The second most popular response was Buddhist at 14%, and 12.4% believe in Taoism. To sum up, about 75% of people are believers in these three local religions. This proportion has been maintained in the past two decades. See Huang, Ke-Hsien 黃克先, *社會學與臺灣社會 (Sociology: Taiwanese Perspectives)*, Taipei, Chuliu 巨流, 2022, p.177.; and see Survey Research Data Archive. Accessed May 25, 2024, [https://srda.sinica.edu.tw/datasearch\\_detail.php?id=2974](https://srda.sinica.edu.tw/datasearch_detail.php?id=2974).

<sup>3</sup> For more details, see Eastwood, David, *Taiwanese Folk Religions*, OMF International Taiwan Training Materials, 2023.

<sup>4</sup> As a rule, publications nowadays adopt the pinyin system for rendering Chinese names and terms. Consistently, I have employed this system in this article. However, when mentioning authors from Taiwan, I have chosen to honor their romanizations as they preferentially use them on their websites and in their written works.

Taiwan's national legislative body, to give her testimony at a public hearing on the deliberation of the bill for same-sex marriage equality. Additionally, Master Sheng Yen's (聖嚴) teaching of contemporary Buddhist ethics is highly respected by general intellectuals in Taiwan.

## 2. The third precept and its contemporary interpretation

Sexual misconduct (*kāma mithyācāra*) is rooted in traditional Buddhist texts. So-called *xie-yin jie* 邪淫戒 is the third precept of the five precepts (*pañcaśīla*).<sup>5</sup> Peter Harvey pointed out that each precept is a “training precept” (*sikkha-padam*), the same term as that for an item of the monastic code. While the monastic code goes into great detail on rules for monks and nuns, the lay precepts are left fairly general and non-specific. Later commentators have been charged with, in conjunction with the advice of the *Saṅgha* in various cultures, making the precepts more specific in regard to laypeople.<sup>6</sup>

In addition to this unspecificity, Damien Keown's research also finds that the wording of the third precept is imprecise. However, it is almost universally interpreted within Buddhist societies to prohibit, first and foremost, adultery. Little is said about premarital sex, but the impression is given that marriage is the most appropriate forum for sexual intimacy. Some early sources expand the precept to preclude certain classes of women as sexual partners, and medieval as well as subsequent commentators expand on this by prohibiting times, places, and methods of intercourse.<sup>7</sup>

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<sup>5</sup> The five precepts refer to refraining from taking life, refraining from taking what is not given, refraining from the misuse of the senses, refraining from wrong speech, and refraining from intoxicants that cloud the mind.

<sup>6</sup> Harvey, Peter, *An Introduction to Buddhist Ethics: Foundations, Values, and Issues*, Cambridge, U.K.: Cambridge University Press, 2013, pp.67-68.

<sup>7</sup> Keown, Damien, *Buddhist Ethics: A Very Short Introduction*, Oxford: Oxford University Press, 2020, p.78.

Throughout history, there have been diverse interpretations and various forms of practice when it comes to the third precept. As stated by the Sutra on Upāsaka Precepts (*yo po se jiejing* 優婆塞戒經):

There are light and heavy offenses of sexual misconduct. That which is associated with serious afflictions is a heavy offense, whereas that which is associated with trivial afflictions is a light offense.<sup>8</sup>

Under the context of Chinese Buddhism, according to Amy Paris Langenberg's research, the Sutra on Upāsaka Precepts, an Indic text translated into Chinese in the fifth century, contains a discussion of the third precept, including the injunction against adultery, and forbids intercourse with monks, other laymen, animals, prisoners, fugitives, destroyed female corpses, a girl under the protection of her parents, and a teacher's wife. It forbids sex involving the wrong organs and sex in inappropriate places such as stupas, temples, or places where people gather, and it also criticizes the man who has sex with his wife thinking she is someone else, or sex with another, thinking she is his wife. Moreover, if at a time of difficulty, war, tyranny, or fear, one has one's wife renounce the home life and later maintains a sexual relationship with her, one commits the offense of sexual misconduct.<sup>9</sup> The key point is like the virtuous bhikṣu (monk) the virtuous upāsaka (layman) must strive for

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<sup>8</sup> This translation was made by Shih, Heng Ching, *The Sutra on Upāsaka precepts*, Berkely, Numata Center for Buddhist Translation and Research, 1994, pp.173-174. The original text is from 《優婆塞戒經》卷6〈24業品〉：「如是邪淫亦有輕重，從重煩惱則得重罪，從輕煩惱則得輕罪。」(CBETA 2024.R1, T24, no. 1488, p. 1069a16-18)

<sup>9</sup> See Shih, Heng Ching, *The Sutra on Upāsaka precepts*, Berkely, Numata Center for Buddhist Translation and Research, 1994, p.173. For the original text, see 《優婆塞戒經》卷6〈24業品〉：「惡時、亂時、虐王出時、怖畏之時，若令婦妾出家剃髮，還近之者，是得淫罪。」(CBETA 2024.R2, T24, no. 1488, p. 1069a9-10)



purify in both conscious intentions and acts.<sup>10</sup>

In Chinese, the so-called *jie lü* 戒律 were originally compounded by *jie* 戒 (*śīla*) and *lü* 律 (*Vinaya*). The purpose of *Vinaya* is to regulate life within communities of monks and nuns. *Vinaya* are mandatory rules for monastic members; however, when it comes to Buddhist morality for lay Buddhists to practice and follow, *śīla* is only applicable for lay Buddhists who are ready for them, as their commitment to moral and spiritual training deepens.<sup>11</sup> Therefore, the significance of the precept for the laity, under discussion in this paper, is very different from that of *Vinaya* for monks and nuns. The five precepts, including the third precept, are the most fundamental among all the Buddhist precepts. However, in the cases of lay Buddhists, these precepts merely apply to those who are willing to take and keep vows out of one's own free will.

In Taiwan, Buddhist masters often interpret contemporary Buddhist ethics through a lens that integrates traditional Buddhist teachings with modern social values. However, their standard for distinguishing sexual misconduct is varied. To explore this variation, four prominent Taiwanese Buddhist masters are discussed here: Master Hsing Yun 星雲 (1927-2023), Master Sheng Yen 聖嚴 (1930-2009), Master Wu Yin 悟因 (1940-), and Master Chao Hwei 昭慧 (1957-).

According to Richard Madsen's research, Master Hsing Yun, the founder of *Fo Guang Shan* 佛光山 (Buddha Light Mountain), and Master Shen Yen, the founder of Dharma Drum Mountain (法鼓山), have helped revive Buddhism and build the foundations of a vibrant civil society as Taiwan transitioned from the martial law period to the democratic period in the 1970's

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<sup>10</sup> Langenberg, Amy Paris, Sexuality and Buddhism, in *The Oxford Handbook of Buddhist Ethics*, eds, By Cozort, Daniel, and Shields, James Mark (eds.), Oxford University Press, 2018, pp.599-600.

<sup>11</sup> Harvey, Peter, *An Introduction to Buddhist Ethics: Foundations, Values, and Issues*, p.51.

and '80's.<sup>12</sup> Master Wu Yin, the founder of the Luminary Buddhist Institute (香光尼眾佛學院), whose main mission is outreach education, is a respected figure and is known for her deep understanding of the *Vinaya*, the code of monastic discipline in Buddhism.<sup>13</sup> Master Chao Hwei, the founder of Buddhist Hongshi College (佛教弘誓學院), and one of the patrons of the International Network of Engaged Buddhists (INEB), is honored as *tonghun zhanshen* 同婚戰神<sup>14</sup> (War Goddess for same-sex marriage) and *fomen xianü* 佛門俠女<sup>15</sup> (The Chivalrous Buddhist Nun) by netizens and mass media, and she received the Niwano Peace Prize in 2021.<sup>16</sup>

Regarding the Buddhist teaching of the third precept, avoiding sexual misconduct, Master Hsing Yun's interpretation went beyond the classical Buddhist canon. He stated that sexual misconduct is one of *shi xie* 十邪 (ten unwholesome deeds), among which are unwholesome *shuo* 說 (speech), *ming* 命 (occupation), *nian* 念 (mind), *shu* 書 (book), *jie* 戒 (precept), *xing* 行 (behavior), *ren* 人 (people), *di* 地 (place), and *tuan* 團

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<sup>12</sup> For details, see Madsen, Richard, *Democracy's Dharma: Religious Renaissance and Political Development in Taiwan*, University of California Press, 2007.

<sup>13</sup> For details, see DeVido, Elise Anne, *Taiwan's Buddhist Nuns*, State University of New York Press, 2010, pp.73-74.

<sup>14</sup> “網封「戰神」！釋昭慧兩千餘字挺同全文攏底加” 自由時報電子報, November 25, 2016, <https://news.ltn.com.tw/news/politics/breakingnews/1897485>.

<sup>15</sup> For details, see 【一鏡到底】佛門俠女 釋昭慧, Accessed May 25, 2024, <https://www.mirrormedia.mg/story/20181019pol001/>.

<sup>16</sup> The main reason for this award, according to the Niwano Peace Foundation, is to recognize her work in peacebuilding through the protection of all forms of life, especially her promotion of gender ethics, gender equality, and her approach to open dialogue with different religious leaders and social groups. See Niwano Peace Foundation, Accessed July 25, 2024, [https://www.npf.or.jp/english/peace\\_prize/38th.html](https://www.npf.or.jp/english/peace_prize/38th.html).

(groups).<sup>17</sup> In his publication from the year 2000, the Master lambasted contemporary sexual phenomena.

A proper and satisfactory married life can lead to harmony in the family. However, with the current proliferation of sexual liberalization, there is a great clamor for extra-marital affairs, homosexuality, children born out of wedlock, female sex workers, male hosts, and so on. As the old saying goes, “*Yin* 淫 (Sex) is the worst of all unwholesome deeds.” (*wan e yin wei shou* 萬惡淫為首) Nowadays, there is a proliferation of obscene places, things, and devices everywhere...<sup>18</sup>

Master Hsing Yun pointed out that sexual misconduct refers to unlawful behaviors that are banned by laws and unacceptable according to social moral codes. It encompasses various forms of sexual behavior that are considered unethical, which can be divided into six categories, including sex connected to *baoli jian yin* 暴力姦淫 (violent and forced sex), *fangai feng hua* 妨礙風化 (disrupting social morality), *feihun nannü* 非婚男女 (unmarried man and woman), *feishi feidi* 非時非地 (improper time and place), *tong xing lianqing* 同性戀情 (same-sex intimacy), and *hua yan qiao yu* 花言巧語

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<sup>17</sup> Translated by the author. The original text is “邪說, 邪說 evil speech, 邪命 occupation, 邪念 mind, 邪書 books, 邪戒 precept, 邪人 people, 邪地 place, and 邪團.” For details, see Hsing Yun, 星雲大師全集, Accessed March 15, 2024, <https://books.masterhsingyun.org/ArticleDetail/artcle15545>.

<sup>18</sup> Translated by the author. The original text is “正當美滿的夫妻生活可以促使家庭和諧, 然而在目前性開放的氾濫下, 婚外情、同性戀、未婚生子、娼妓、牛郎等現象甚囂塵上, 古德云:「萬惡淫為首。」現在到處淫地、淫事、淫具等氾濫猖獗, 長此以往, 將使倫理綱常盪然, 豈不動搖社稷根本?” See Hsing Yun, 星雲大師全集, Accessed March 15, 2024, <https://books.masterhsingyun.org/ArticleDetail/artcle15545>.

(sweet talk and flattery).<sup>19</sup> He stated that “Engaging in erotic transactions, such as prostitution, pornographic performances, etc., which involves the destruction of good social customs is considered an act against public decency.”<sup>20</sup>

Comparatively, Master Sheng Yen was known for his open-minded views and efforts to apply Buddhist principles to modern social problems. He emphasized the importance of adapting Buddhist teachings to contemporary society while maintaining the essence of the Dharma. Regarding the significance of avoiding sexual misconduct, Master Sheng Yen maintains that it is the most fundamental precept for a lay Buddhist to follow.

Lay Buddhists should receive the five precepts once they enter the Buddhist gate. If they have not received them, they should also learn about the five precepts. If the five precepts cannot be followed altogether, it is minimal to keep the precept of refraining from sexual misconduct. As pointed out by Master Hong Yi, “Based on what I thought, the easiest of the five precepts is refraining from sexual misconduct and alcohol. You can receive these two precepts first because they are the most fundamental.” If someone cannot receive and obey the third precept, this person cannot learn any other Buddhist practice.<sup>21</sup>

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<sup>19</sup> See Hsing Yun, 星雲大師全集, Accessed May 25, 2024, <https://books.masterhsingyun.org/ArticleDetail/artcle5592>.

<sup>20</sup> Translated by the author. The original text is “從事色情交易，例如娼妓、色情表演等，凡是涉及破壞社會善良風俗者，都屬妨礙風化的行為。” See Hsing Yun, <https://books.masterhsingyun.org/ArticleDetail/artcle5592>.

<sup>21</sup> Translated by the author. The original text is “佛教徒中的在家弟子，只要一進佛門之後，最好能受五戒，如果不受五戒，也應學習五戒，五戒不能全持，最少要持邪淫一戒。據弘一大師說：「據我思之，五戒中最容易持的是：不邪淫，不飲酒。諸位可先受這兩條，最為穩當。」 See Sheng Yen, 法鼓全集 2020

In Master Sheng Yen's early publication, *Jie lüxuegang yao* 戒律學綱要 (*Essentials of Buddhist śīla and vinaya*) written in 1978, he listed four criteria that constitute *zhong zui* 重罪 (serious offenses) against this precept:<sup>22</sup> (1) *fei fufu* 非夫婦 (intercourse with someone who is not your legitimate spouse);<sup>23</sup> (2) *shi dao* 是道 (the three organs);<sup>24</sup> (3) *you yinxin* 有淫心 (the intent for sex, like hunger for food, or thirst for a drink);<sup>25</sup> and (4) *shi sui* 事遂 (the completion of intercourse).<sup>26</sup> However, Master Sheng Yen did not give specific sources or explain which Buddhist texts were adopted to lay out these components for offending the precept.

Nonetheless, in 1995, seventeen years after the publication of *Essentials of Buddhist śīla and vinaya*, Master Sheng Yen's published the monograph *Pu sa jie zhi yao* 菩薩戒指要 (*Essentials of the Bodhisattva Precepts*), in which he had become more flexible with the second criterion: whether sexual partners are extramarital or not. He pointed out that:

The precepts of Buddhism as they have been handed down to the world today are, as we know, encountering many problems which, if not clarified, will hinder the propagation of the Dharma. [...] The traditional precepts of Buddhism in today's world are facing various problems that need to be improved, but they can be remedied and should not be abandoned easily.<sup>27</sup>

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紀念版, Accessed May 25, 2024, <https://ddc.shengyen.org/?doc=05-05-028>.

<sup>22</sup> See Sheng Yen, Accessed May 25, 2024, <http://old.ddc.shengyen.org/mobile/text/01-03/108.php>.

<sup>23</sup> Translated by the author. The original text is “不是自己已經結婚的妻子或丈夫。”

<sup>24</sup> Translated by the author. The original text is “須於口道、小便道（陰道）、大便道行淫。”

<sup>25</sup> Translated by the author. The original text is “樂於行淫，如飢得食，如渴得飲。”

<sup>26</sup> Translated by the author. The original text is “事遂——造成行淫的事實。”

<sup>27</sup> Translated by the author. The original text is “流傳於今日世界的佛教戒律，我

Master Sheng Yen believes that the problems facing the propagation of the Dharma can be improved and remedied. This is because the purpose of the precepts is to purify one's body, speech, and mind—the three karmas—and to guide the behaviors of the body and speech with wholesomeness.<sup>28</sup> Regarding the problems encountered by the traditional precepts in today's world, Master Sheng Yen cited several examples, including the precept of not drinking alcohol, and the precept of refraining from sexual misconduct.

The definition of sexual misconduct originally refers to a sexual relationship between any man and woman who are not married to each other. Nowadays, a man and a woman live together in long-term relationships and appear as husband and wife, while not legally married, which is popular in our society. Since they are happy with each other and harm neither their families nor society, is this behavior of living together a kind of sexual misconduct? What is the wrongdoing here?<sup>29</sup>

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們已知道，遇到了許多問題，若不加以釐清，將會有礙於佛法的推廣。……佛教的傳統戒律到了今日世界，雖已面臨種種需要省思改進的問題，然其可以設法補救，卻不可輕言廢棄。” See the article titled “傳統戒律與現代世界” (Traditional Precepts and Modern Societies), 法鼓全集 2020 紀念版, Accessed March 1, 2024, <https://ddc.shengyen.org/?doc=01-06-002>.

<sup>28</sup> For details, see Sheng Yen, 法鼓全集 2020 紀念版, Accessed March 1, 2024, [https://ddc.shengyen.org/?doc=01-06-002&tree\\_id=j1\\_314](https://ddc.shengyen.org/?doc=01-06-002&tree_id=j1_314).

<sup>29</sup> Translated by the author. The original text is “對於邪淫的界定，原來是指在已婚夫婦以外的男女性關係，如今的單身男女，未有法律上的婚姻，卻是生活在一起，長相廝守，形同夫妻，也算邪淫嗎？他們彼此相悅，又不妨害家庭和社會，罪在何處？但其沒有約束，隨時可以分離，缺少相互的保障，也是一種不安定的現象；然在離婚率極高的現代世界，法定的婚姻，也不等於安定的保障，何必一定要把男女同居，視為邪淫？” See Sheng Yen, Accessed March 1, 2024, <http://old.ddc.shengyen.org/mobile/text/01-06/16.php>.

Regarding Master Wu Yin's teaching about the third precept, in 2001 she noted that abstaining from sexual misconduct means not being involved in extramarital affairs. Even in intimacy between spouses, it is important to respect and understand each other's feelings, especially not to force or pressure the other party to do something they are not willing to do.<sup>30</sup> Then, in the article titled “Responsible Love, Safe Sex: Avoiding Sexual Misconduct” published in 2011 in *Glorious Buddhism Magazine* 香光莊嚴雜誌,<sup>31</sup> founded by Master Wu Yin. The precept of abstaining from sexual misconduct has its social value, like a dose of good medicine, in settling family disputes, protecting children from suffering, and maintaining relationships between family members. According to Master Wu Yin, through practicing the precept, one can develop an inner energy of tranquility called *ding li* 定力 (the ability to self-regulate). Once receiving the Buddhist precept, one can manage and overcome inner desires rather than struggling with desire, worry, regret, and feelings of guilt. From Master Wu Yin's interpretation of types of sexual misconduct, unsuitable location or unsuitable timing of sex, even if with one's lawful partner, is also prohibited. *Fei shi* 非時 includes the period when one undertakes *ba guan zhaijie* 八關齋戒 (The Eight Precepts, skt. *aṣṭāṅga-śīla*), or when one is feeling uncomfortable, or pregnant. *Fei chu* 非處 refers to unsuitable environments such as public fields or temples and also refers to unsuitable locations of physical penetration.

Master Chao Hwei, a monastic, social activist, and scholar, emphasized *zingtong zhi fa* 自通之法, the ability to empathize with others based on one's attachment, similar to the Confucian Golden Rule.<sup>32</sup> She notes that

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<sup>30</sup> For details, see “生活中的五戒(下)” 香光莊嚴 Accessed May 25, 2024, <http://www.gaya.org.tw/magazine/v1/2005/67/67vb2.htm>.

<sup>31</sup> For details, see “負責的愛，安全的性：不邪淫” 香光莊嚴, Accessed May 25, 2024, <http://www.gaya.org.tw/magazine/article.php?aid=166>.

<sup>32</sup> For details, see Shih, Chao Hwei, *Shengming lunli yu huanjing lunli lunlijueze de zhongdao zhihui* 生命倫理與環境倫理——倫理抉擇的中道智慧 (*Bioethics*

observance of the five precepts is predicated on this ability to “liken others’ needs to one’s own needs.”<sup>33</sup> Master Chao Hwei has a progressive attitude toward her interpretation of the third precept, which is not bound by the literal meaning of Buddhist texts. She pointed out that the traditional sutra relevant to sexual misconduct, especially the Sutra on the Upāsaka Precepts states, “If one has sex at an inappropriate time or place, with someone who is a virgin, not one’s wife, or not a woman, one commits the offense of sexual misconduct.”<sup>34</sup> Rather, Master Chao Hwei argued that the sutra was intended for male lay Buddhists, namely *upāsaka*, not in regard to homosexual acts. Not to mention that, as a lay Buddhist, one can choose to receive the precepts or not. Without having received the precept, a Buddhist cannot break the vow.<sup>35</sup>

Master Chao Hwei claims that there are only two elements of sexual misconduct: 1) Leaving a harmful impact on innocent bystanders (對無辜他者構成負面影響); and 2) Overindulgence into sensual pleasure (對感官享受的過度耽溺). Thus, if there is neither harm to bystanders nor improper indulgence into sex, homosexual lovers are acceptable within these criteria.<sup>36</sup>

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*and Environmental Ethics: The Wisdom of the Middle Way in Ethical Choice*), Taoyuan, Fa jie chuban, 2022, pp.30-32.

<sup>33</sup> Shih, Chao Hwei, *Fojiao lun li xue* 佛教倫理學(*Buddhist Ethics*), Taoyuan, Fa jie chuban, 2018, pp.66-69.

<sup>34</sup> Translated by the author. See 《優婆塞戒經》卷6〈24業品〉：「若於非時、非處、非女、處女、他婦、若屬自身，是名邪淫。」(CBETA 2024.R1, T24, no. 1488, p. 1069a4-5)

<sup>35</sup> Shih, Chao Hwei, *Xing bie lunli yu shehui guanhuai lunlijueze de zhongdao zhihui* 性別倫理與社會關懷——倫理抉擇的中道智慧 (*Gender Ethics and Social Care: The Wisdom of the Middle Way in Ethical Choice*), Taoyuan, Fa jie chuban, 2022, pp.109-112.

<sup>36</sup> Shih, Chao Hwei, *Gender Ethics and Social Care: The Wisdom of the Middle Way in Ethical Choice*, p.114.



As she responded to Peter Singer in their chapter, “Sexuality,” in *The Buddhist and the Ethicist*:

The Buddha adopted two levels of teaching regarding the satisfaction of sexual desire: one is to satisfy all your desires as you do not harm others, and the other is the exercise of self-control, which means that you avoid becoming addicted to the need for intense stimulation or chasing after new varieties of pleasure.<sup>37</sup>

### 3. Legal transformations and Buddhist perspectives

In Part III of this article, I turn to legal changes in Taiwan, including the conditional legalization of sex work in 2009, and the legalization of same-sex marriage in 2017 to 2019. These social changes have occurred in the last two decades and have inspired or alarmed Taiwanese people and generated intense public debate. Therefore, these social changes are collectively studied due to their relationship to the Buddhist third precept, and relevance to sexual autonomy within legal contexts.

#### a. Sex work

In 2009 when sex work was legalized in Taiwan, there was a discussion about how the criminalization of sex work—since most sex workers are women—constitutes an infringement on women’s constitutional human right to equality. Interpretation No. 666 of the Taiwan Constitutional Court<sup>38</sup>

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<sup>37</sup> Singer, Peter, and Shih, Chao-Hwei, *The Buddhist and the Ethicist*, Shambhala Publications, 2023, pp.110-111.

<sup>38</sup> The Constitutional Court of Taiwan is composed of the Justices of the Judicial Yuan (hereinafter the Justices). For over seventy years, the Justices have played a significant role in protecting human rights and facilitating constitutional development. The Justices of the Constitutional Court are empowered to interpret the provisions of the Constitution and to determine the validity of laws and

(hereafter TCC) declared that the provision in dispute, namely Article 80, Section 1, Sub-section 1 of the Social Order Maintenance Act, the policy of *fachang bu fapiao* 罰娼不罰嫖 (to punish the sex worker but not the client), shall become null and void.<sup>39</sup> The judicial reasoning is that the said provision is tantamount to punishing only sex workers, usually socially and economically disadvantaged women, who had participated in sexual transactions under duress. In addition, the TCC authorized each local government to establish and manage sex districts where sex trades can be conducted lawfully. Hence, two years later, in 2011, Article 91-1 of the Social Order Maintenance Act was amended to state, “Municipal (city) or county governments may enact self-governance ordinances that establish and manage sex districts [...]”<sup>40</sup>

At present, more than one decade has passed, and not a single county or city politician in Taiwan dared risk their political reputation to establish such a district. Therefore, sex workers in contemporary Taiwan have continued to make their living without legal protection or the establishment of a safe harbor for their work. Not to mention, they lack fair and just working conditions. Even some law enforcement officers sympathize with sex workers and their predicament in between the legal need for the establishment of sex districts,

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regulations under the Constitution. See Constitutional Court R.O.C. (Taiwan), Accessed July 26, 2024, <https://cons.judicial.gov.tw/en/index.aspx>.

<sup>39</sup> For the complete interpretation no. 666, see “憲法法庭” 釋字第 666 號解釋 - 憲法法庭網站. Accessed July 25, 2024, <https://cons.judicial.gov.tw/docdata.aspx?fid=100&id=310847&rn=-31389>.

<sup>40</sup> Translated by the Laws & Regulations Database, Ministry of Justice. The text is “直轄市、縣（市）政府得因地制宜，制定自治條例，規劃得從事性交易之區域及其管理。” For the complete article, see Social Order Maintenance Act - Article Content - Laws & Regulations Database of the Republic of China (Taiwan), Accessed July 26, 2024, <https://law.moj.gov.tw/ENG/LawClass/Law All.aspx?pcode=D0080067>

and the enforcement of the law when transactions take place outside of sex districts—that do not exist in the first place. The current situation is truly unfair and prejudiced to sex workers who are required to make a living through sex services.<sup>41</sup>

Chia-Hua Wu 吳佳樺, a female judge, also laments that this judicial interpretation has not substantially contributed to any social change but merely reflected the social revolution that already developed in Taiwanese society.<sup>42</sup> As stated by the prominent feminist Ku Yen-Lin 顧燕翎 in her monograph *Taiwan funü yundong* 台灣婦女運動 (Taiwan's Women's Movement):

Taiwan's grand justices, seeing the plight of low-level sex workers, have indicated that it is unfair to only punish sex workers without punishing clients. There are still certain controversies waiting for a consensus reached in a mature society through open discussion, including whether we should punish both (or neither) sex workers and (or nor) clients. If neither of the two is punished, will the third party who profited from prostitution be punished? Should sex work and the sex industry be legally normalized as a line of business? [...] How should sex work be managed to protect the physical and transactional safety of buyers and sellers, but also be accepted by the community and gain space for their business?<sup>43</sup>

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<sup>41</sup> Chang, Jung Che 張榮哲, 大臺北地區旅遊樓鳳新興性產業分析 (An Empirical Analysis of Emerging Tourism Prostitution and Sex Industry in Greater Taipei Area), Master's Dissertation, National Taipei University, Taiwan. 2019.

<sup>42</sup> For details about social change and the significance of the roles of the constitutional court, see Wu, Chia-Hua 吳佳樺, “難以置信的真相——論釋字第 666 號解釋與社會變遷” (The Unbelievable Truth-Comment on Judicial Interpretation No. 666 and Social Change), *Taipei University Law Review* 84, 2012, pp.71-183.

<sup>43</sup> Translated by the author. The original text is “臺灣的大法官看到了底層性工作者的窘境，確認罰娼不罰嫖並不公平，卻仍留下爭議空間，包括：娼嫖皆罰

In fact, since the end of martial law in 1987, several women's movements have emerged in Taiwan. Most feminists and social groups campaigning against child prostitution saw child prostitutes as victims of male violence and in need of legal protection.<sup>44</sup> The campaign to end child prostitution in the late 1980s was led by some Christian welfare organizations.<sup>45</sup> These anti-prostitution activists had successfully lobbied for anti-trafficking provisions to protect victims under the age of eighteen; however, in reality, such provisions had become mechanisms for arresting anyone involved in the sex industry, including adult sex workers.”<sup>46</sup>

One of the Grand Justices, Chen Shing Ming 陳新民 pointed out the dilemma faced by sex workers in contemporary Taiwan as follows:

It is ultimately a “people-oriented” society. At a time when most citizens have already secured their basic needs, why not take a moment to reflect: Why not “awaken” (*dun wu* 頓悟) at this moment and emulate the famous words of Taiwan's Buddhist master, Venerable Master Sheng Yen: “Let great compassion arise” (*da bei xin qi* 大悲心起) to care for and rescue this group of “social outcasts” who are

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或娼嫖皆不罰？若二者皆不罰的話，獲利第三者罰不罰？性工作、性產業應否正常化？……性工作要如何管理，才能既保護買賣雙方身體和交易的安全，又能為社區接受，獲得營業空間？” Ku, Yen Lin 顧燕翎, *Taiwan funü yundong* 台灣婦女運動 (*Taiwan Women's Movement*), Taipei, Owl, 2020, pp.199-237.

<sup>44</sup> Hsu, Ya-Fei 許雅斐, “Sterilizing Society: Social Order and Policing Sex Work in Taiwan”, *Inter-Asia Cultural Studies* 14, no. 2, June 2013, pp.272–286.

<sup>45</sup> Ho, Ming Sho, “The Religion-Based Conservative Countermovement in Taiwan: Origin, Tactics, and Impacts”, in *Civil Society and the State in Democratic East Asia between Entanglement and Contention in Post High Growth*, eds. by David Chiavacci, Simona A. Grano and Julia Obinger, Amsterdam University Press, 2020.

<sup>46</sup> Hsu, Ya-Fei, 2013.

struggling for survival in the dark corners of society? I sincerely pray with folded hands (*he shi dao gao* 合十禱告).<sup>47</sup>

In addition, the website *Taiwan nü ren* 臺灣女人 (Taiwan's Women), run by the National Taiwan History Museum (國立歷史博物館) and Professor Yu Chien Ming 游鑑明, quoted Master Sheng Yen's statement in an article titled “Sex workers are also my sisters!- Collective Of Sex Workers and Supporters (1999-):”<sup>48</sup>

Master Sheng Yen at Dharma Drum Mountain said: “Licensed prostitutes are “lotuses in the fire.” With their miserable and hard lives, they make their families happy and safe. They are social service workers.” [...] If society and the government are willing to sincerely deal with the underlying motives of sex workers, this path could be easier with less suffering.<sup>49</sup>

<sup>47</sup> Translated by the author. The original text is “社會究竟是「以人為本」的社會。當絕大多數的國民已經衣食無虞的時刻，何妨反思一下：何不即刻「頓悟」，起而效法我國佛學大師聖嚴法師的名言：「大悲心起」，來關懷，並拯救這一批躲在社會陰暗角落掙扎求生的「社會棄兒」？本席合十禱告。” For details of each Grand Justice’s opinion on this case, see “憲法法庭” 釋字第 666 號解釋 - 憲法法庭網站, Accessed July 25, 2024, <https://cons.judicial.gov.tw/docdata.aspx?fid=100&id=310847&rn=-31389>.

<sup>48</sup> Translated by the author. The original title is “性工作者，也是我的姊妹！——日日春關懷互助協會（1999-）。”

<sup>49</sup> Translated by the author. The original text is “法鼓山的聖嚴法師說：「公娼們都是『火中蓮』，用她們悲淒辛苦的一生成就一家人的幸福安好，她們是社會服務的工作者。」公娼以一己之力，成就一家人的幸福安好事實，只要社會與政府願意面對正視性產業，這條路其實可以不必走得悲戚辛苦。” For details, see “性工作者，也是我的姊妹！——日日春關懷互助協會（1999-）”，臺灣女人——穿梭的記憶·臺灣女性流轉年華，Accessed July 26, 2024, <https://women.nmth.gov.tw/?p=2102>.

Although the exact origin of Master Sheng Yen's statement is unclear, he undoubtedly has considerable influence in Taiwanese society and is deeply respected by intellectuals. We can see that Master Sheng Yen has shown great compassion for those sex workers who have no other means of earning a livelihood, however, at the same time, he has also clearly reminded us that the selling of sex itself is not encouraged:

Among the five precepts of Buddhism, sexual misconduct, killing, and drinking alcohol are prohibited. At the same time, these relevant occupations are called businesses of misdeed, wrongdoing, or unwholesomeness. [...] Poor women are not able to engage in other occupations to earn the minimum necessities of life other than selling sex, laughing, and escorting by dancing; Buddhism does not require them to give up their existing occupations before they come to Buddhism. However, once they believe in Buddhism, Buddhism will actively encourage them if they can find a way to change their occupations. This is because the purpose of Buddhism is to encourage everyone to have a good and right livelihood. Moreover, these occupations are unwholesome themselves. Although those who do not take the vows do not commit the offense of breaking the vows, they still have the nature of fundamental misdeed to Buddhism.<sup>50</sup>

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<sup>50</sup> Translated by the author. The original text is “佛教的五戒之中，禁止邪淫、殺生、飲酒。同時，也將上列的這些行業稱為惡業、邪業或不正業。……貧困的婦女，如果除了賣淫、賣笑、伴舞等，就不能從事其他的職業來謀求最低限度的生活所需；……如果由於這些唯一的求生存的理由，佛教並不要求他們首先放棄了原有的行業再來信佛。不過，當他們一旦信佛之後，如果能夠設法改業的話，佛教是會積極地鼓勵他們的。因為佛教的宗旨，是在鼓勵大家都都能從事於善良而正當的職業。何況那些行業的本身就是一種罪惡，不受戒者，雖無破戒之罪，但仍有其根本性質的罪過。” For details, see 法鼓全集 2020 紀念版, Accessed July 26, 2024, <https://ddc.shengyen.org/?doc=05-02-018>.

Additionally, in Master Sheng Yen's monograph *Jielu xue gangyao* 戒律學綱要 (*Essentials of Buddhist śīla and vinaya*), he stated:

*Foshuo youposai wujie xiang jing* 佛說優婆塞五戒相經 said: "An *upāsaka* who has intercourse with a prostitute without paying an equivalent price, breaches the third precept and cannot be exonerated; on the other hand, no precept is breached if fair payment is made." [...] This means that for a layman who had received the five precepts, buying sex with compensation is not an offense of the third precept. The reason is that Indian people live in tropical areas and have an open attitude toward casual sex. Buying sex for Indian men at that time was commonplace. There was no prohibition against prostitution. However, according to the Bodhisattva Precepts, except for a living Bodhisattva to influence or save sentient beings, prostitution is not allowable. In other words, based on today's Chinese customs, buying sex is not in compliance with societal expectations. Since we believe in and practice Buddhism, not to mention those who have received the five precepts, it is undoubtedly regarded that buying sex is a kind of sexual misconduct.<sup>51</sup>

Indian cultural norms, and their difference from contemporary Chinese morality, are not the present focus of this passage. The question worth exploring is, what is meant by the so-called "contemporary Chinese customs?"

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<sup>51</sup> Translated by the author. The original text is "在《優婆塞五戒相經》中說：「若優婆塞，共姪女行姪，不與直（同值）者，犯邪姪不可悔，與直無犯。」[……]這是說，受了五戒的在家信士，給錢嫖妓，不為犯戒。此乃由於印度是熱帶民族，對於男女關係，非常隨便。男人嫖娼妓，是普遍尋常的事，所以不禁，但在大乘菩薩戒中，若非地上的菩薩，為了攝化因緣者，不得有此行為。即在今日中國人的習俗觀念中，狎妓而淫的行為，斷非正人君子的榜樣。我們既然信佛學佛，並且受了五戒的人，自亦應該視為邪淫了。” For details, see <https://ddc.shengyen.org/?doc=01-03-007>.

The above paragraph was written in 1978, more than four decades ago. Ironically, the mainstream value in Taiwan today is more like *xiao pin bu xiao chang* 笑貧不笑娼, which means “we laugh at the poor, but we don't laugh at prostitutes,” implying that being a sex worker is much better than being impoverished.<sup>52</sup>

According to Master Chao Hwei's interpretation, Buddhism would only judge desires to be abnormal if those desires are carried out in a way that harms others, such as sexual assault, sexual harassment, or pedophilia; or carried out for the purpose of overindulgence in sensual pleasure. Based on these criteria, Master Chao Hwei regards the relationship between a sex worker and a client as follows:

The satisfaction of human sexual desire should happen within a secure environment with the consent of both parties rather than one side ravaging the other. Even in the economic relationship between a sex worker and a client, there should be this level of balance. So, the Buddhist perspective on sexual desire is that it is an extension of instinctual self-love and does not necessarily involve morality. Nevertheless, as soon as it involves the suffering of others, it is a different case.<sup>53</sup>

### **b. Same-sex intimacy**

The legalization of same-sex marriage branded Taiwan as a pioneer of gender equality in Asia in 2017. The TCC ruled that the denial of marriage to same-sex couples violated the constitutional guarantee of marriage freedom and equality, therefore mandating the relevant authorities to amend the laws within two years. Part of the ruling in Constitutional Court Interpretation

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<sup>52</sup> The sociologist Chen Mei-Hua 陳美華 has pointed out this phenomenon. See Chen's recommendation forward for *Xing gan qiang shou* 性感槍手 of Toa, Xiao Man 陶曉嫻, 2019.

<sup>53</sup> Singer, Peter, and Shih, Chao-Hwei, 2023, p.101.



No.748, the case regarding same-sex marriage, is as follows:

Un-spoused persons eligible to marry shall have their freedom of marriage, which includes the freedom to decide “whether to marry” and “whom to marry” (see J.Y. Interpretation No. 362). Such decisional autonomy is vital to the sound development of personality and safeguarding of human dignity and therefore is a fundamental right to be protected by Article 22 of the Constitution..... Disallowing the marriage of two persons of the same sex in the name of safeguarding basic ethical orders is different[ial] treatment having no apparent rational basis. Such different[ial] treatment is incompatible with the spirit and meaning of the right to equality as protected by Article 7 of the Constitution.<sup>54</sup>

According to his research regarding the success of same-sex marriage legalization, Ming-Sho Ho 何明修, a professor of sociology at National Taiwan University, argues that certain changes in the political context, including the Democratic Progressive Party (DPP)’s electoral victory, played a crucial role in stimulating Taiwan’s LGBT mobilization, allowing it to eventually overcome opposition from the Protestant and Catholic church-based countermovement.<sup>55</sup> From the perspective of Jurisprudence, Rung-Guang Lin 林榮光 argues that although Christian organizations and individuals are enthusiastic about advocating for enacting a law to restrict others’ rights based on religious reasons in the public sphere, the Christian faith and teachings provide them with good reasons why they should avoid

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<sup>54</sup> Translated by the Constitutional Court. For their complete interpretation, see No.748 - Constitutional Court R.O.C. (Taiwan), Accessed July 25, 2024, <https://cons.judicial.gov.tw/en/docdata.aspx?fid=100&id=310929>.

<sup>55</sup> Ho, Ming-sho, “Taiwan’s Road to Marriage Equality: Politics of Legalizing Same-Sex Marriage”, *The China Quarterly* 238 (December 21, 2018), pp.482-503.

initiating or participating in such political advocacy.<sup>56</sup> Sociologist Ke-Hsien Huang 黃克先 also investigates how Taiwanese conservative Christianity, which had been politically inactive for decades, has publicly mobilized itself since the early 2010s, particularly in reaction to the gay rights movement.<sup>57</sup> As Ming-sho Ho points out, “Protestant and Catholic leaders pioneered the opposition to gender equality and the comparatively relaxed attitude on sexuality, and, over the years, gained support from other religious bases.” Although the conservative movement has largely failed to turn back the clock, their presence was powerfully unforgettable.<sup>58</sup>

The most well-known conservative organization against diversified families is the *Taiwan zong jiao tuanti aihu jiating dalianmeng* 台灣宗教團體愛護家庭大聯盟 (Family Guardian Coalition), which was composed of several religious communities including Christianity, Catholicism, Buddhism, Taoism, the Unification Church and I Kuan Tao 一貫道 (also known as the Religion of One Unity).<sup>59</sup> The members include Master Jing Yao 淨耀, the

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<sup>56</sup> Lin, Rung-Guang 林榮光, 同性婚姻合法化爭議中基督教團體——公共理性、基督教政治神學與宗教自然法政治參與之再思 (Re-examining Christian Organizations’ Political Participation during the Same-Sex Marriage Controversy in Taiwan: Public Reason, Christian Political Theology and Religiously-Based Natural Law), *Zhongyanyuan faxue qi kan* 中研院法學期刊 30, 2022, pp.231-289.

<sup>57</sup> Huang, Ke-Hsien 黃克先, “Culture Wars in a Globalized East: How Taiwanese Conservative Christianity Turned Public in Same-Sex-Marriage Controversy and Secularist Backlashes”, *Review of Religion and Chinese Society* 4(1), 2017, pp.108-136.

<sup>58</sup> Ho, Ming Sho, “The Religion-Based Conservative Countermovement in Taiwan: Origin, Tactics, and Impacts”, In *Civil Society and the State in Democratic East Asia between Entanglement and Contention in Post High Growth*, eds. by David Chiavacci, Simona A. Grano and Julia Obinger, Amsterdam University Press, 2020.

<sup>59</sup> I Kuan Tao is one of the Chinese folk religions, which is a combination of five

chairman of *Zhong hua min guozong jiaoyu he pingxie jin hui* 中華民國宗教與和平協進會 (Taiwan Conference on Religion and Peace), and Master Ming Guang 明光, the chairman of *Zhongguo zong jiaotu xie hui* 中國宗教徒協會 (Chinese Religionist Association).<sup>60</sup> Master Jing Yao argued that Master Chao Hwei, who defended and advocated for homosexual rights, is not qualified to represent all Buddhist voices, claiming that only the *Zhongguo fojiaohui* 中國佛教會 (Buddhist Association of the Republic of China)<sup>61</sup> is capable of representing all Buddhist communities.<sup>62</sup>

From the perspective of sociology, Ho's research claimed that conservative activists do not represent a mainstream voice or society-wide value, but rather resist the inevitable trend of cultural modernity, which is built on the value of individual autonomy and freedom. Taiwanese conservatism has been characterized by opposition to the women's movement and gender movements that challenge patriarchal values.<sup>63</sup> The religious roots of the conservative movement include some Buddhist views against same-sex marriage. By contrast, this paper demonstrates that progressive and liberal Buddhist attitudes towards sexuality, such as Master Chao Hwei's advocacy

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religions including Confucianism, Buddhism, Taoism, Christianity, and Islam. Their official website is: <https://www.i-kuantao.com/>.

<sup>60</sup> For more details about religiously-based anti-homosexuality groups in Taiwan, see “因為反同志婚姻集結的宗教團體，會持續改變台灣社會與政治嗎？” 端傳媒 Initium Media, May 24, 2017. <https://theinitium.com/article/20170524-taiwan-same-sex-marriage/>.

<sup>61</sup> The Buddhist Association of China was originally founded in China in 1911. The well-known Chinese Buddhist reformer, Master Taixu 太虛, was the chairman in 1928.

<sup>62</sup> For how Master Chao Hwei responded to Master Jingyao, see Buddhist Hongshi Epaper no.357, <https://www.hongshi.org.tw/userfiles/epaper/hongshi%20pic4/357.html>.

<sup>63</sup> Ho, Ming Sho, 2020.

of gender equality, exist, are applauded by the mass media and a great number of netizens in Taiwan, and are deemed award-worthy.

Master Chao Hwei argues that sexual desire does not necessarily involve morality and is based on the concept of *wu ji* 無記 which refers to the instinctual behaviors that are neither good nor bad. She quoted her teacher Venerable Master Yin Shun's words to support the argument that human love and desire are merely instinctual,<sup>64</sup> just like cows eating grass and spiders weaving webs.<sup>65</sup> She argues that, according to Buddhism, sexual desires, being the most powerful animal instincts, are morally neutral and cannot be judged to be good or bad.<sup>66</sup> On the other hand, Master Chao Hwei pointed out that in most cases, happiness derived from sex can be likened to using drugs,

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<sup>64</sup> Master Yin Shun's saying is: "Whatever is instinctive cannot be said to be good or evil. For example, a cow or a sheep that eats grass cannot be said to have the virtue of "not killing;" nor can a spider that makes a web to catch insects and eat them be said to be specialized in the evil karma of "killing." As the vexation arises by instinct, it moves according to nature and is regulated by the ignorance of the mind. Therefore, in worldly law, it is normal for men and women to eat and drink, otherwise, all human beings would be in hell." See 《華雨集（五）》：「凡屬本能的，不能說是善是惡。如食草的牛、羊等，不能說有『不殺生』的美德；蜘蛛結網捕蟲而食等，也不能說是專造『殺生』的惡業。如煩惱依本能而起，率性而動，無記所攝。所以在世間法中，飲食男女是正常的，否則人類都要下地獄了。」 (CBETA 2024.R1, Y29, no. 29, pp. 251a07-252a4)

<sup>65</sup> Shih Chao Hwei, 2022, p.102.

<sup>66</sup> For more details about the analysis of Master Chao Hwei's Buddhist reasons for supporting LGBT rights, see Hu, Hsiao-Lan, "Bhikṣunī Chao-Hwei's Buddhist-Feminist Social Ethics." In *The Bloomsbury Research Handbook to Chinese Philosophy and Gender*, edited by Ann Pang-White, 2016, pp.377-397. See Hu, Hsiao-Lan, "Buddhism and Sexual Orientation", In *Oxford Handbook to Contemporary Buddhism*, edited by Michael Jerryson, Oxford, UK: Oxford University Press, 2016, pp.662-677.

and hence is addictive. She reminds those who have initially sought liberation, those who promoted LGBTQ+ equality, not to end up becoming a slave of lust.<sup>67</sup>

Likewise, Master Sheng Yen also had comparatively unbiased and sterile views regarding homosexuality. In 2000, he argued in public that if same-sex partners can achieve the four kinds of stableness (*si an* 四安), cultivating stable minds (*an xin* 安心), bodies, (*an shen* 安身), families (*an jia* 安家), and activities (*an ye* 安業), then their relationships are permissible within Buddhist thought.<sup>68</sup> Not until 2016 did netizens and journalists in Taiwan find that Master Sheng Yen's words were ahead of his time. Therefore, he is praised as a "true sage" with "great wisdom."<sup>69</sup> A similar case was, when Master Chao Hwei officiated the first Buddhist same-sex wedding for a lesbian couple in 2012, at a time when same-sex marriage had not yet been legalized and was therefore more controversial.<sup>70</sup>

From Master Sheng Yen's perspective, since times have changed, to help Buddhism, the precepts, and dharma to adapt to new environments, it is necessary to get rid of the strict literal meaning of dogma. Master Sheng Yen remarked, "To promote the Dharma and to benefit oneself and others in an era of different cultures, ethnic groups, regions, customs, and laws, one has to give

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<sup>67</sup> Shih, Chao-Hwei, *Buddhist Normative Ethics*, Taoyoun, Fa jie chuban, 2014, pp.367-371.

<sup>68</sup> See "已故聖嚴法師：如果同性戀做到這「四安」，那就沒有什麼不可以接受的了。" TNL The News Lens 關鍵評論網, December 4, 2016, <https://www.thenewslens.com/article/55935>.

<sup>69</sup> See "16年前這樣看同性戀，聖嚴法師被網友讚「真正的智者」：生活：三立新聞網 Setn.Com", 三立新聞網, December 4, 2016, <https://www.setn.com/News.aspx?NewsID=204198>.

<sup>70</sup> For details, see "台灣首例！女同志辦佛教婚禮" 自由時報電子報, August 11, 2012, <https://news.ltn.com.tw/news/life/paper/606540>.

up the formalistic idea of keeping the precepts.”<sup>71</sup>

Similarly, according to Master Wu Yin, abstaining from wrongful sex refers to respecting *ban lü* 伴侶 (partners) physically and emotionally; not engaging in polyamorous relationships; and not violating the physical integrity of others. What is worthy to remark is that the *Glorious Buddhism Magazine* used the term *ban lü* (partners) instead of “spouses in marriage” or “husband and wife.” It clearly states that even partners without marriages, including same-sex partners are permissible from the perspective of the Buddhist third precept:

In modern society, which is pluralistic and open, some lay Buddhists do not get married but still have an intimate relationship. In this case, on the premise that both parties agree and that it does not violate any law of the state, the principle of this precept is to be faithful to one's partner, not to engage in a polygamous relationship, and not to complicate the relationship between man and woman. The same principle applies to gay couples.<sup>72</sup>

Comparatively, Master Hsing Yun looked to secular law and emphasized

<sup>71</sup> Translated by the author. The original text is “在遇到異文化、異民族、異方域、異風俗、異法令的時代環境，為了使得佛法還能夠推廣，自利、利人，就不得不放棄形式主義的持戒思想。” See Shih, Sheng Yen, *Jie lüyuren jianjing tudejian li* 戒律與人間淨土的建立 (Precepts and Building of Pure Land on Earth), *Chung-Hwa Buddhist Journal* 10, Taipei: Chung-Hwa Institute of Buddhist Studies, 1997, p.11.

<sup>72</sup> Translated by the author. The original text is “現代社會多元開放，有些在家居士不結婚，但仍有男女關係或同居關係。這時，在男女雙方同意，得保護人同意，而且不違反國法的前提下，這條戒的持守原則是忠於自己的伴侶，不搞多角關係，不把男女關係弄得複雜。同志情侶之間，也是一樣的原則。” For details, see “負責的愛，安全的性：不邪淫” 香光莊嚴, Accessed July 25, 2024, <http://www.gaya.org.tw/magazine/article.php?aid=166>.

that same-sex couples should be married to be permissible under the Buddhist worldview:

Even though homosexuality has already been recognized by some countries as a legal act, we can only say that it is difficult to tell right from wrong in this world. However, even so, homosexuality must be recognized by the law, and same-sex couples need to marry, otherwise it is still an improper act.<sup>73</sup>

Master Hsing Yun admitted in 2009 that “it is difficult to tell right from wrong in this world,” and looked to legal definitions to see whether homosexuality is recognized by the law.<sup>74</sup> As stated in his most recent 2015 publication *Pinseng youhua yaoshuo* 貧僧有話要說 (*Hear Me Out: Messages from a Humble Monk*), when being inquired if same-sex love is permissible, he replied, “It is okay to have friendships and speak with one another, but as for marriage, which may be against Chinese ethics and morals, it depends on morality, law, and public opinion.”<sup>75</sup>

#### 4. Conclusions

This paper aims to showcase different interpretations of the precept on

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<sup>73</sup> Translated by the author. The original text is “雖然現在有些進步國家，已經認可同性戀為合法行為，只能說世間諸事，難論是非。不過即使如此，同性戀也要舉行婚禮，才能為法律所認同，否則也是不當的行為。” For details, see Hsing Yun, 星雲大師全集, Accessed July 25, 2024, <https://books.masterhsingyun.org/ArticleDetail/artcle5592>.

<sup>74</sup> For details, see Hsing Yun, 星雲大師全集, Accessed July 25, 2024, <https://books.masterhsingyun.org/ArticleDetail/artcle5592>.

<sup>75</sup> Translated by the author. The original text is “知心交誼、相互傾訴都可以。至於婚嫁，有違中國的倫理道德，那就要看道德、法律、輿論的看法了。” See Humanistic Buddhism reader, Accessed July 26, 2024, <https://hbreader.org/wenji/pinseng030.html#?highlightId=79907>.

sexual misconduct, to determine whether Taiwanese Buddhist masters' interpretations of sexual ethics have adapted to a rapidly changing society. First, I introduced the perspectives of four prominent Buddhist masters in Taiwan regarding the Buddhist third precept "avoiding sexual misconduct." Then, I analyzed two relevant contemporary Taiwanese legal issues in order to contextualize the Buddhist third precept and its current interpretation.

Master Sheng Yen does not encourage but tolerates sex workers who have no choice but to work by offering sexual services. Master Chao Hwei has an unprejudiced attitude toward the intimacy between sex workers and their clients. She consistently emphasizes, regardless of whether she is discussing homosexuality or sex work, two criteria: "leaving no harmful impact on innocent bystanders, and no overindulgence into sensual pleasure."

Master Hsing Yun demonstrated a tendency to adopt conservative stances on sex-related phenomena. However, he also tends to align with and emulate other figures' positions on social change and legal transformation, such as the legalization of same-sex marriage. As to Master Wu Yin's teachings on lay Buddhists' sexual life, it is evident from her consistent attitude towards the interpretation of the third precept from 2001 to 2011 that she places particular emphasis on mutual respect between the parties involved, including spouses and same-sex partners.

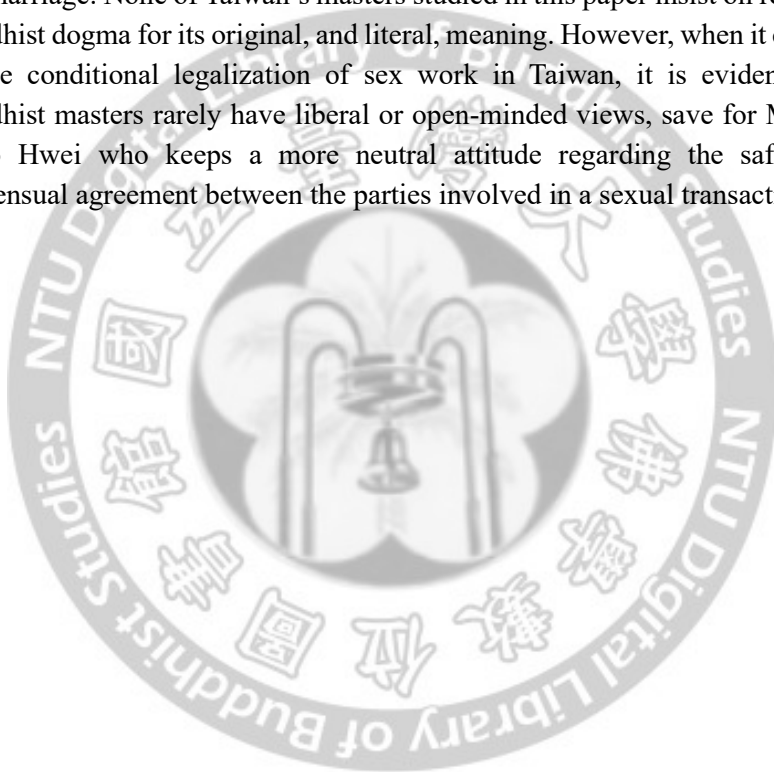
Furthermore, by reconciling prominent Buddhist masters' interpretations of the third precept with analysis of contemporary sexual-ethical legal proceedings in Taiwan, certain trends among the masters' thoughts emerge. For instance, Master Sheng Yen, Master Wu Yin, and Master Chao Hwei transcend both public opinion and existing legal status in their time. Their Buddhist ethical criteria are not predicated on the existing regulations set by the secular government. Even before 2017, same-sex marriage had not yet been legalized in Taiwan, but these Buddhist masters had already shown their compassion towards issues surrounding homosexuality.

In a nutshell, Sheng Yen has emphasized the importance of taking measures according to time and adapting measures to local conditions. Wu Yin emphasizes mutual respect between the parties involved in any intimate



relationship. Chao Hwei emphasizes not harming the innocent or indulging in sensual desires. Hsing Yun highlights the role of existing legislation and public opinion, which seem to be conservative, but as a matter of fact, do not preclude social reality and respond to the times in a measured and indirect manner.

In conclusion, the sexual-ethical teachings of Taiwan's Buddhist masters adapt fluidly with recent legislation, particularly on the legalization of same-sex marriage. None of Taiwan's masters studied in this paper insist on reading Buddhist dogma for its original, and literal, meaning. However, when it comes to the conditional legalization of sex work in Taiwan, it is evident that Buddhist masters rarely have liberal or open-minded views, save for Master Chao Hwei who keeps a more neutral attitude regarding the safe and consensual agreement between the parties involved in a sexual transaction.



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