Lying about God (and Love?) to Get Laid: The Case Study of Criminalizing Sex under Religious False Pretense in Hong Kong

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ABSTRACT
Section 120 of the Hong Kong Crimes Ordinances—which traces its origin to the U.K. and which is replicated in several other English common jurisdictions—criminalizes procurement of sexual act through false representations. The provision has been recently used to prosecute individuals who procured sexual acts on the pretext of performing luck-improving religious rituals. Beyond presenting the first ever systematic examination of these intriguing fraudulent sex court cases, this Article makes two arguments. First, this Article explains how the strong skepticisms and at times instinctive rejections by the judges of the purported religious proclamations not only confirm the scholarly concerns over the sincerity test in U.S. v Ballard, but also demonstrates how the often proposed solution of bench trials and other procedural safeguards is of limited efficacy to restrain religious bias. Second, by situating religious fraud with romantic fraud—both being frauds that raise serious conceptual difficulties in terms of objectively proving falsehood—this Article highlights that fraudulent sex criminalization is as much a regulation of fraud as it is a sexual offence. Thus, the inquiry should not only be sensitive to the different normative considerations that varied with the subject matter of the representations, but should also incorporate the economic literature regarding the impact of fraud on market dynamics in appreciating the unintended effects of the law and prosecutorial decisions.