

Taiwan's Road to Marriage Equality: Politics of Legalizing Same-sex Marriage

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Abstract

In May 2017, Taiwan's Constitutional Court reached a landmark decision that marriage should be opened to same-sex couples within two years, making Taiwan potentially the first country in Asia to realize marriage equality. How can we explain the success of the LGBT movement here? I argue that explanations based on cultural proclivity, public opinion, and linkages to world society, are inadequate. This article adopts a "political process" explanation by looking at changes in the political context and how they facilitate the movement for marriage equality. I maintain that electoral system reform in 2008, the eruption of the Sunflower Movement in 2014, and the electoral victory of the Democratic Progressive Party in 2016, stimulated Taiwan's LGBT mobilization, allowing it to eventually overcome opposition from the church-based countermovement.

Keywords: same-sex marriage; marriage equality; Taiwan; LGBT; political process

In 1986, Dayway Chief Chi Chia-wei 祁家威, Taiwan's first gay activist, filed a petition with the Legislative Yuan to challenge a court decision rejecting his request to marry a male partner. The response he received was curt and dismissive. The legislature lectured that marriage was an institution for procreating "new human resources for the nation," while "homosexuals" were no more than a perverted minority who only wanted sexual gratification. Subsequently Chief was jailed for four months for his unconventional behaviour. Thirty-one years later, Chief was among the petitioners to the Constitutional Court in its interpretation on same-sex marriage on 24 May 2017. Taiwan's top-level judges ruled that the denial of marriage to same-sex couples violated the constitutional guarantee of marriage freedom and equality, and therefore demanded the relevant authorities amend the laws within two years.¹

Chief's long march paralleled Taiwan's political transition from one-party authoritarianism to liberal democracy. Taiwan was still under martial-law rule and no opposition party was tolerated when Chief first declared his intention to marry a same-sex partner. At that time, same-sex intimacy was seen as

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1 For the English version of the interpretation, see <https://goo.gl/ijzDTa>. Accessed 13 November 2017.

pathological, deviant, and an outrageous violation of the officially sanctioned Chinese tradition.² When judges finally granted legitimacy to Chief's demand, the country had undergone three peaceful turnovers of power, was sustaining a vibrant civil society and abandoning the claim of representing orthodox Chinese culture. Apparently, there would not have been legal recognition of lesbian and gay rights without the fundamental social and political changes that encouraged tolerance for sexual minority. Marriage equality essentially involved a political contestation that pitched lesbians and gays and their liberal allies against cultural and religious conservatives, just as has happened elsewhere in the world.

This article explains why the movement for marriage equality turned out to be successful in Taiwan. Commonly seen factors, such as favourable cultural endowments, supportive public opinion, and international linkages, offer an insightful but inadequate explanation. Instead, I maintain certain changes in political context, such as the electoral reform in 2008, the eruption of the Sunflower Movement in 2014, and the electoral victory of the Democratic Progressive Party (DPP) in 2016 helped to stimulate Taiwan's lesbian and gay mobilization such that they eventually overcame the strong conservative opposition.

After a theoretical discussion on the political process explanation, this article will compare Taiwan's experience to that of international counterparts for a better understanding of how it converges and diverges with other countries. Then I will analyse the interactions between the lesbian and gay movement and its opponents. Similar to as has happened elsewhere, conservative mobilization emerged as a backlash to the growing social visibility and legal recognition of lesbians and gays, and in some critical moments, tilted public opinion toward disapproval of marriage equality. Finally, I will examine the conducive political conditions that facilitated lesbian and gay activism and eventually paved the way for its victory.

The research data for this article mainly comes from journalistic and internet sources. From April to November 2017, I conducted 15 in-depth interviews and my sample includes lawmakers and their aides as well as movement leaders and activists on both sides. They are selected by purposive sampling for their different roles in the dispute. With one exception, LGBT activists are interviewed in Taipei, where pro same-sex marriage organizations are mostly based, while some of the Christian opponents are based in Taichung, Tainan and Kaohsiung, reflecting the more evenly distributed church organizations.

A Political Process Analysis

Since Charles Tilly's ground-breaking work, social movements have been understood as a collective challenge to advance a claim whose realization conflicts with those who control the government or those whose interests and cultural values

² Damm 2005.

are dominant.³ Movement success comes as a concession from the incumbents due to the superior strength of the challengers over their opponents. As such, a number of political conditions shape movement dynamics by raising or lowering the cost of protest activities. This perspective evolved into a “political process” approach,⁴ and the investigations of favourable political conditions crystallized into “political opportunity structure” (POS).⁵

However, this stream of investigation has incited a lively debate. Critics pointed out POS entailed a deterministic bias to the extent that subjective agency was neglected. An unperceived and unused opportunity could not facilitate protest mobilization.⁶ Some uncritical uses of POS easily resulted in either a tautological claim that movement succeeded because of supporting conditions, or a simplified view of “opportunistic” protesters who only waited for the favourable political wind.⁷ Also problematic was the use of POS purely as a prediction variable on movement outcome because it did not consider that movement mobilization brought about mediation with the pre-existing political conditions.⁸ In response, POS scholars have retreated from structuralist generalizations in their earlier works, and paid more attention to the intermediate causal chains.⁹ Newer studies attempted to bring out clearer specification on how political conditions facilitated or impeded movement courses.¹⁰

This article follows the revisionist trend to focus on the interactions between the authorities and Taiwan’s marriage equality movement. To avoid the deterministic and tautological connotations, I will use “political process” and “political conditions” instead of POS. There are two reasons for my theoretical choice. First, I want to retain these two terms to highlight the fact same-sex marriage is essentially a state-centred politics, involving a legal redefinition of matrimony as an institution. Other proposed conceptual alternatives, such as “relational field,”¹¹ “political context”¹² and “political reform model”¹³ appear too fluid to place enough emphasis on the state. By contrast, the theoretical insights from political process provide a heuristic framework to analyse such state-centred contentions.

Second, there have been studies that applied this conceptual tool to understand the global politics of same-sex marriage. Soule (2004) examined 37 state-level same-sex marriage bans in the US, with the finding that the presence of local conservative organizations was a key factor.¹⁴ Smith (2005) offered a North

3 Tilly 1978, 52–53.

4 McAdam 1982.

5 McAdam 1996; Tarrow 1996.

6 Jasper 2012.

7 Goodwin 2012.

8 Kriesi 2004.

9 Tilly and Tarrow 2007, 29.

10 Meyer and Minkoff 2004.

11 Goldstone 2004.

12 Kriesi 2004.

13 Amenta, Caren and Stobaugh 2012.

14 Soule 2004.

American comparison, demonstrating that Canada's more centralized political regime resulted in a weaker opposition to same-sex marriage than its southern neighbour.¹⁵ Bernstein and Naples (2015) found American and Canadian campaigners for marriage equality adopted a litigation approach, whereas Australian counterparts chose a legislative route because of absence of a bill of rights.¹⁶ This article follows this stream of literature to extend the political process approach to Taiwan.

Taiwan's Breakthrough in Global Perspective

While same-sex intimacy might be coeval with homo sapiens, the granting of the right to form a same-sex family is truly a twenty-first century invention. Ever since the first breakthrough in the Netherlands in 2001,¹⁷ there have been 26 regions/countries (two sub-national regions being Scotland and Greenland) that have conferred marriage rights to lesbians and gays on a territory-wide basis as of March 2018.¹⁸ With its 2017 court ruling, Taiwan is poised to become the first Asian country to follow this path.

Taiwan deserves attention for several reasons. Together with Argentina (2010)¹⁹ and South Africa (2006),²⁰ Taiwan moved to full marriage equality without experiencing an intermediate stage of partial enfranchisement. Most countries that recognized same-sex marriage first tried to include lesbian and gay couples in civil unions or domestic partnerships, constituting a watered-down version of heterosexual marriage because of the weaker protection of rights and benefits under such arrangements. Before Denmark pioneered civil union in 1989, there were countries that granted certain rights to cohabitating couples. Whether the invention of civil union represented a progressive inclusion of sexual minority remained debated. Within the LGBT community, there remained "marriage dissidents" who opposed the extension of heterosexual norm for its assimilationist implications.²¹ Arguably, a civil union designed exclusively for same-sex couples would have represented a solution to broaden the legal protection

15 Smith 2005.

16 Bernstein and Naples 2015.

17 Badgett 2009.

18 Fernández and Lutter 2013; Pew Research Center, <https://goo.gl/GdUSm4>. Accessed 31 March 2018.

19 Argentina legalized same-sex marriage in 2010 via a parliamentary vote, the second country to do so in the Americas. As the champion of LGBT rights in Latin America, Argentina's breakthrough was facilitated by a number of political conditions, including the historical absence of church-based parties, decriminalization of same-sex relationships in the nineteenth-century legal reforms, the 1996 constitution reform to grant autonomy to its gay-friendly capital city, and leadership of President Fernández de Kirchner (2007–15), which generated a strong LGBT movement – see Encarnación 2016, 78–79, 126–27, 145. In the 2015 Civil Code revision, civil union became a nationwide option for same-sex couples.

20 South Africa recognized same-sex rights to marriage and to civil union in a new legislation in 2006. The country was riding on the momentum of democratic transition from the apartheid regime. In 1996, the new constitution pioneered the world's first antidiscrimination clause on sexual orientation, which made easier the later reform. See Yarbrough 2017.

21 Badgett 2009, 129–130.

without erasing their separate identities. Aside from the ideological consideration, LGBT activists sometimes embraced civil union rather than marriage because of tactical consideration. Prior to the Argentinean legalization of same-sex marriage in 2010, the country's lesbian and gay activists actually split into a pragmatic demand for civil union and a radical campaign for marriage right.²² On the other hand, there existed principled opposition to civil unions and other legal arrangements because they often emerged as a conservative attempt to “slow or even stop the political progress that same-sex couples make in moving toward marriage.”²³ The same went for Taiwanese campaigners; by the time the legislature was about to debate on same-sex marriage in 2016, they declared anything less than full marriage rights constituted a discrimination.²⁴

Taiwan's path toward marriage equality took a “big bang” pattern in that there were available no civil union or other legal forms before the Constitutional Court struck down the existing bans in 2017. In Taiwan, the campaign to institute same-sex partnership never gained traction. After lawmakers began to sponsor reform proposals on marriage in 2006, the partnership proposal did not emerge on the legislative agenda. Taiwan's legal system did not confer legal rights on cohabiting partners with the minor exception that they were protected under the domestic violence prevention scheme. Some local governments began to open household registration to same-sex couples, which came with certain entitlements, including hospital visitation rights. Household registration amounted to something much weaker than civil union, and neither was it universally valid across different cities and counties. Therefore, Taiwan's lesbian and gay movement was able to realize marriage equality all in one step, without undergoing the protracted gradualism that involved partial concessions.

Finally, Taiwan's lesbian and gay activism was a latecomer with moderate strategy by international standards. It was only in the 1990s that lesbians and gays began to set up their own campus clubs, bookstores, churches and support groups, thereby kickstarting the domestic same-sex movement.²⁵ The late start affected the tenor of Taiwan's lesbian and gay activism. The confrontational tactics of the gay liberation movement in other countries of the early 1970s²⁶ and the angry protests over the AIDS epidemics in the 1980s²⁷ were conspicuously absent. What has been described as “liberal lesbian and gay politics,”²⁸ with an emphasis on identity and inclusion, has been the mainstream strategy. Protests mostly aimed at challenging discrimination and stigmatization, rather than advancing political and policy demands in the early period. Elsewhere in the world, the idea of gay marriage was essentially contentious among the

22 Encarnación 2016, 136–37.

23 Badgett 2009, 165.

24 Interview with an aide to Yu Mei-nu, Taipei, 28 September 2017.

25 Damm 2011, 157–59.

26 Armstrong 2005.

27 Gamson 1989.

28 Fetner 2008, 19–20.

LGBT community because of its seeming conformity with the heterosexual norm.²⁹ Another reason why early activists did not pursue marriage equality was that such a demand was seen as unrealistic.³⁰ Among Taiwan's LGBT community, there existed a radical tendency toward "destroying family and abolishing matrimony" (*huijia feihun* 毀家廢婚) that opposed the extension of marriage to lesbians and gays on ideological grounds. Such adherents represented a marginal voice, and most pro-marriage activists were cautious so as not to uncritically idolize marriage.³¹ In this manner, the internal dissension within Taiwan's LGBT community had been minimized.

With the noticeable exception of Dayway Chief's personalized protest mentioned above, Taiwan's lesbian and gay activists adopted the idea of same-sex marriage rather late. In 2006, Hsiao Bi-khim 蕭美琴, a DPP lawmaker, led the effort to legalize marriage and child adoption for same-sex couples. In that year, Taiwan LGBT Pride, the annual gay parade in Taipei, highlighted the marriage issue by staging wedding ceremonies for lesbian couples. Although the proposal obtained enough lawmaker endorsement, it failed to make it onto the legislative agenda. For lesbian and gay activists, the defeat demonstrated it was still too early to advocate for same-sex marriage.³² The establishment in 2009 of the Taiwan Alliance to Promote Civil Partnership Rights (TAPCPR) (*Taiwan banlu quanyi tuidong lianmeng* 台灣伴侶權益推動聯盟), the first advocacy organization for marriage equality, represented a new beginning for the campaign. The TAPCPR advocated multiple strategies to liberalize the existing regulations in order to promote same-sex marriage, civil partnerships and multiple-person families. In 2013, one of its demands, the equal right to marriage for same-sex couples, gained enough endorsement from lawmakers and became ready for its first reading in the legislature.

We could take the first revision proposal in 2006 as the starting point for marriage equality movement; from there, it took 11 years to activate the intervention of the judiciary to remove the legal barriers to same-sex marriage. To take the experience of the US as a reference, the first time lesbian and gay activists put marriage on their agenda was in 1987.³³ The American movement took eight years to elicit a positive response from the local judiciary (Hawai'i's *Baehr v. Lewin* decision in 1993), and 28 years for the federal Supreme Court to rule in favour of same-sex marriage in the landmark *Obergefell v. Hodges* case in 2015. Certainly, latecomers enjoyed a number of advantages including the hindsight wisdom and the ability to ride on the global wave of success. Moreover, the countries that legalized same-sex marriage were mostly located in the advanced West, and their stable democracy and economic affluence that Taiwanese sought after, bestowed a positive value on marriage equality. Still, Taiwan's progress was

29 Bernstein 2015.

30 Egan and Sherrill 2005, 230.

31 Interview with a staff of the Platform for Marriage Equality, Taipei, 8 November 2017.

32 Chien 2012, 191–94.

33 Bernstein 2013, 3.

comparatively faster. At the time the Dutch government recognized same-sex marriage in 2001, Taiwan's first lesbian and gay organization was finally officially registered in the same year, and the annual Gay Pride parade (starting in 2003) had not yet even taken place.³⁴

Assessing Existing Explanations

The existing literatures offer several approaches to understanding the success in marriage equality. First, culture matters because the acceptability of intimacy among people of the same sex is fundamentally a moral judgment, which is usually guided by inherited cultural norms. A nation is more likely to grant civil rights to same-sex couples if its cultural resources encourage diversity and tolerance. In the wake of Taiwan's progressive court decision, international media commentaries highlighted the country's plural heritages. A *Washington Post* journalist emphasized the "cultural mix," including "indigenous groups, Dutch and Japanese colonizers, and folk practices carried across the Taiwan Strait from mainland China."³⁵ Similarly, an *Economist* writer maintained that outside influences and indigenous traditions helped "to create a uniquely open, hybrid society."³⁶

This culturalist explanation is problematic for several reasons. There is no evidence that external cultural influences, be it colonialism or Chinese culture, promotes respect for different sexual orientations. The emphasis on Taiwan's indigenous people (2.4 per cent of the population) is also questionable. Indigenous people have the highest percentage of Christians among Taiwan's ethnic groups. Although Christians are a religious minority – 6.0 per cent in a 2015 survey³⁷ – they make up the main constituency in the campaign to oppose same-sex marriage. A number of indigenous Christians played a leading role in the anti-gay movement.³⁸ Lastly, Confucianism, as a set of cultural values that places a premium on respect for authority, group harmony and familial piety, has been prevalent in a number of East Asian countries including Taiwan. A study has found the Confucian familial orientation discourages the acceptance of homosexuality.³⁹ Comparative studies on Chinese societies with the same Confucian roots suggests a more nuanced understanding on cultural influence. Hong Kong was a pioneer in LGBT activism in creating the indigenous term "*tongzhi* 同志" (comrades), now a widely-adopted identity among sinophone lesbians and gays. Nonetheless, by the end of 1990s, Taiwan has engendered the most proactive movement, eclipsing that in Hong Kong.⁴⁰ That sexual minority in

34 Lai 2003.

35 Rauhala 2017.

36 "Taiwan debates gay marriage." *The Economist*, 3 December 2016, <https://goo.gl/qj3rSw>. Accessed 15 November 2017.

37 Fu et al. 2016, 168.

38 Interview with the editor-in-chief of *New Messenger Magazine*, Tainan, 14 August 2017.

39 Adamczyk and Cheng 2015.

40 Chou 2000, 2–3, 141.

China and Singapore faced a repressive environment of intolerance while their Taiwanese counterparts emerged as a vocal interest group suggests the limited use of a culturalist explanation.⁴¹

There is another stream of research that examines how the international liberal trend prods different countries toward more acceptance of sexual diversity. Growing global integration has led to the repeal of sodomy laws in many countries.⁴² Same-sex union itself was a globalized idea transmitted across the transnational network.⁴³ In the European context, the supranational governing structure exerted an isomorphic effect that nudged reluctant member states to enfranchise lesbians and gays.⁴⁴ The gist is that a country will be more likely to grant full citizenship to the sexual minority if it is more integrated into world society.

Taiwan's case does not fully sustain the claim of beneficial impacts from the international linkage. The country's diplomatic isolation has hindered the influence of international organizations, such as the UN. It was only in 2009 that Taiwan began to integrate the UN's human rights covenants into domestic laws. The flip side of the lack of international recognition was that governmental leaders were compelled to launch a "human rights diplomacy" to highlight the country's credential of being a respectful member of liberal democracies internationally. Both Chen Shui-bian and Ma Ying-jeou have funded international events for LGBT rights or received their representatives, although Taiwan's activists persistently pointed out their gaps between rhetoric and practice.⁴⁵

On the civil society level, the global liaisons certainly helped Taiwan's lesbian and gay activists gain new information and adopt updated tactics. This beneficial effect, however, was offset by the fact that conservative opposition also grew stronger due to its international linkages. Church leaders had embraced an anti-gay-rights agenda by taking lessons from conservative Christians in Hong Kong.⁴⁶ Some resourceful US right-wing groups have provided tactical support for the domestic opposition against same-sex marriage.⁴⁷ The external influences coming to Taiwan were heterogeneous and conflicting at best, rather than one-sidedly empowering LGBT activism. In fact, there are times when international support turns out to enfeeble the local movement. That the contemporary Chinese LGBT activism is largely restricted to officially sanctioned HIV/AIDS prevention in spite of the generous donation from abroad indicates a more nuanced understanding of the international linkage.⁴⁸

41 Hildebrandt 2011, 1320.

42 Frank, Boutcher and Camp 2009.

43 Kollman 2007.

44 Fernández and Lutter 2013; Gerhards 2010.

45 Ho 2010, 139–140.

46 Huang 2017, 117–18.

47 Cole 2017.

48 Hildebrandt 2012.

Finally, some researchers have looked at the shift of public opinion. As people became less willing to voice negative attitudes, lesbians and gays gained more social acceptability.⁴⁹ Even the conservative opposition had to reframe their rhetoric by not attacking gays, but instead focusing on family and children protection.⁵⁰ Data from the Taiwan Social Change Survey indicate a secular growth in tolerance. On the question whether “same-sex loving people should have the right to marriage,” respondents who expressed “strong agreement” and “agreement” made up 11.4 per cent in 1991, 52.5 per cent in 2012, and 54.2 per cent in 2015.⁵¹ Taiwan’s marriage equality activists often cited this survey finding to justify their widespread support.

The public opinion explanation is insufficient on several accounts. Favourable public attitude did not lead to movement gains or legal reforms. In fact, from 1995 to 2012, the World Values Survey indicated Japanese were more tolerant than Taiwanese.⁵² Yet, Japan lagged behind in the pursuit of marriage equality. Respondent attitude data obtained in an artificial interview milieu does not necessarily reflect the actual preference for the policy. Once a dispute emerged, their attitude was liable to undergo changes induced by the rivalry of contending forces. As Taiwan’s pro-gay lawmakers launched the third attempt to legalize same-sex marriage in 2016, opponents also geared up their protest mobilization. Two surveys carried out by different institutions showed a swift decline in pro-marriage equality opinion. On 28 November, the Taiwanese Public Opinion Foundation released a neck-and-neck result showing 46.3 per cent for same-sex marriage and 45.4 per cent against.⁵³ This survey has been intensely criticized for its overtly misleading wording and the subsequent interpretation. The shrinking of supportive public opinion was corroborated by two unannounced polls done by Taiwan ThinkTank. On 4 November, results showed 54.6 per cent of respondents were strongly supportive or supportive of equal rights, but the figure dropped to 34.8 per cent on 12 December.⁵⁴ Consequently, supportive public opinion was hardly a solid bedrock underpinning progressive reforms; in reality, it fluctuated as the debate heated up.

Cultural endowments, international linkages, and public opinions provide partial or inadequate solution to the puzzle of Taiwan’s breakthrough. One of the common shortcomings is the lack of attention to the contentious dynamics between LGBT activists and their conservative opponents. What follows is an analysis of the political conditions that made marriage equality possible.

49 Andersen and Fetner 2008; Loftus 2001.

50 Rom 2007, 16–17.

51 Academia Sinica, <https://goo.gl/zjDbKA>. Accessed 16 November 2017. The data are arranged and calculated by the author.

52 Cheng, Wu and Adamczyk 2016, 319.

53 Taiwanese Public Opinion Foundation, <https://goo.gl/6tsid8>. Accessed 16 November 2017.

54 The exact wording is translated as follows: “Recently legislators proposed an amendment to the Civil Code to promote marriage equality so that same-sex couples could be married in the future. Do you support this amendment?” The author participated in the poll design and thus could access the unannounced result.

The Conservative Countermovement

Prior to the appearance of the marriage equality issue, a religion-based conservative movement had emerged. In 2003, religious leaders launched a campaign to restrict women's access to abortion. In 2006, the conflict between conservatives and feminists flared up over revisions to the abortion law, and the result was a stalemate, as neither side was able to realize its desired changes to the existing regulations.⁵⁵ The same year also witnessed the first attempt to legalize same-sex marriage, and as such, conservative leaders swiftly redirected their attention to gay rights, which appeared as a more alarming threat. Catholic and Protestant leaders formed a coalition in 2007 to defend marriage as a heterosexual union, a move that actually predated the formation of TAPCPR, the first pro-same-sex marriage organization in Taiwan in 2009.

In the US, the escalating mobilization of the religious right to defend the norm of heterosexual monogamy stimulated a growing emphasis on marriage on the part of lesbian and gay activists.⁵⁶ A similar movement-counter-movement interplay was also discernible in Taiwan. By the time the second reform bill was proposed in 2013, a strong and well-prepared conservative coalition was already there. In September of that year, an Alliance of Taiwanese Religious Groups for Caring Family (*Taiwan zongjiao tuanti aihu jiating dalianmeng* 台灣宗教團體愛護家庭大聯盟) was formed, and Buddhist and Unification Church leaders joined hands with Protestant and Catholic ones for the first time. On 30 November, a large-scale rally with the participation of 300,000 people took place to defend the traditional marriage. Although the estimate of participant number was subject to debate, a pro same-sex marriage activist acknowledged the event played a key role in stopping the reform bill because "so many people took to the streets, easily surpassing the number of gay parade participants."⁵⁷

Anticipating that the ruling Kuomintang (KMT) might lose the general election in 2016, conservatives launched a new party, Faith and Hope League (FHL) (*xinxin xiwang lianmeng* 信心希望聯盟). The FHL launched a signature-collecting campaign for a referendum that would put future changes to marriage to a popular vote. In the end, FHL received 1.70 per cent of proportionate representation and failed to obtain a legislative seat. Although it had collected more than 150,000 signatures, the referendum application was turned down by a government committee.

As the third reform attempt was launched in November 2016, an emergency mobilization by opponents effectively delayed its progress. Religious conservatives staged a mass rally on 3 December 2016, attracting 200,000 participants, according to their estimate, and launched local protests and campaigns to recall pro-gay lawmakers. The concerted effort appeared successful in tilting the hitherto supportive attitude toward same-sex marriage in public opinion, as

55 Kuan 2011.

56 Fetner 2008, 110–112.

57 Interview with a TAPCPR staff, Taipei, 28 June 2017.

mentioned above. Some previously supportive legislators began to dodge the issue so as not to incur voter antagonism.⁵⁸ Within the ruling DPP, a compromise suggestion to legislate a special law for same-sex couples instead of revising the Civil Code began to circulate. The proposal aimed to deflect pressure on DPP lawmakers at the cost of infuriating lesbian and gay activists who thought the ruling party had stepped back from its campaign promise. On 26 December, the reform proposals finished their first reading and were ready to be processed in the next legislative session. When the Constitutional Court announced its decision to review the dispute in February 2017, the case was taken out of the legislative arena and fell under the jurisdiction of judges.

The existing study suggests countermovements are most likely to emerge when their rivals have “achieved some success.”⁵⁹ However, in Taiwan’s case, opponents to same-sex marriage actually predated the lesbian and gay campaign. The advantage in head start was helpful to mobilizing those conservative constituencies who were previously uninvolved in political issues, which explained their success in frustrating the second reform proposal in 2013 and producing a divide among DPP lawmakers in 2016. Facing a more resourceful and organized countermovement, Taiwan’s marriage equality campaigners were facilitated by the following changes in the political process.

The New Electoral System

Taiwan adopted a new electoral system starting with the legislative election in 2008. The new rule reduced the number of lawmakers by half, replaced multiple-member districts with single-member districts, and introduced a second vote for political party for proportionate representative (PR) seats. The reform was a bipartisan response to voter dissatisfaction with the legislature, albeit both KMT and DPP had their own political calculations, yet it generated an unanticipated beneficial result for social movements including lesbian and gay activism.

While the overall number of lawmakers was slashed by half, the reduction of PR seats was minor. Previously, PR seats had constituted 41 out of 225 seats (18.2 per cent); afterwards, the figure became 34 of 113 (30.0 per cent). The relative growth in the PR percentage had a profound impact on the legislative campaign by LGBT activists. Since PR lawmakers were nominated by parties, they were more insulated from constituencies than district lawmakers and thus were more likely to propose or co-sign an “unpopular” reform bill to benefit the sexual minority.⁶⁰ This is not to say that Taiwanese voters opposed the opening of the marriage gates to lesbians and gays overwhelmingly. However, when a small core of determined conservative voters were persistent, only a few district lawmakers were willing to risk

58 Interview with a DPP lawmaker, Taipei, 17 April 2017.

59 Meyer and Staggenborg 1996, 1635.

60 Rich 2017.

their political future by standing firm on marriage equality.⁶¹ District legislators were more likely to cite the excuse of public opinion in their opposition to marriage equality. Liao Cheng-ching 廖正井, a KMT member for the 7th and 8th Legislature (2008–16), suffices as an illustration here. He was instrumental in frustrating the second legislative attempt in 2013 because of his role as a committee convener. Pressed by LGBT activists, Liao replied, “My folks ask me to stand out because they thought homosexuality goes against human nature (*tongxinglian weifan renxing* 同性戀違反人性).” Liao’s frank expression probably cost him his re-election chance in 2016, because marriage equality campaigners, together with newly emergent activists after the Sunflower Movement (see below), launched a vigorous blacklisting campaign against him. His candid remark actually resonated with many district lawmakers, regardless of their party affiliations, because they had to take care of the voice of district voters.

The existence of PR seats encouraged major parties to field people with professional expertise but who lack political skill to canvas for votes. It became a limited but important avenue by which people who were not professional politicians, such as scholars and movement leaders, could become legislators. For instance, Yu Mei-nu 尤美女, a DPP PR lawmaker in the 8th and 9th Legislature, was a feminist lawyer before her political career. She played a key role in proposing marriage equality bills in 2013 and 2016 (see #2, 3, and 6 in Table 1). Similarly, Hsu Yu-jen 許毓仁, a KMT PR lawmaker in the 9th Legislature, was originally a social entrepreneur. Hsu represented the lone KMT voice campaigning for marriage equality and he was responsible for two reform bills (see #7 and 8 in Table 1).

Table 1 lists all the nine revision bills for marriage equality introduced to the legislature from 2005 to 2016. Among the 37 proposing (*tian* 提案) lawmakers, 21 were from PR. Clearly, PR lawmakers were at the forefront of marriage equality.

In addition, the 2008 electoral reform lent support to Taiwan’s LGBT activism because of the introduction of a second vote. Previously PR seats were distributed according to the aggregate of each party’s district candidate votes, which effectively deprived the chance of small parties to compete in this arena because they had difficulties fielding candidates in nationwide districts. After the reform, parties that nominated minimally ten district candidates were entitled to compete for PR seats. Taiwan’s Green Party (TGP), the most persistently pro-LGBT political force,⁶² suffices as an illustration. The TGP was established in 1996 but underwent a decline in the early 2000s. Its prolonged inaction ended as the new electoral system opened up new prospects. In the subsequent three elections, the TGP nominated openly gay candidates to compete for lawmaker seats; however, none ended up being elected.

The importance of publicly gay candidates cannot be underestimated because there have not been any elected politicians who were willing to declare a differing sexual orientation. Gay candidates offered a major psychological boost because

61 Interview with a Presbyterian Church pastor in Taiwan, Tainan, 9 June 2017.

62 Fell and Peng 2016, 77.

Table 1: **The Marriage Equality Proposals in Legislature (2005–16)**

#	Legislature Term	Proposers			Co-signers			
		District	PR	Total	Pan-green	Pan-blue	Other	Total
1	6th Legislature (Feb. 2005–Jan. 2008)	5	0	5	29	4	2	35
2	8th Legislature (Feb. 2012–Jan. 2016)	2	5	7	14	1	0	15
3		1	5	6	16	0	0	16
4	9th Legislature (Feb. 2016–Jan. 2020)	3	2	5	5	0	0	5
5		3	2	5	5	0	0	5
6		1	5	6	37	4	1	42
7		0	1	1	7	9	0	16
8		0	1	1	7	9	0	16
9		1	0	1	17	0	0	17

Source:

Taiwan's Legislative Yuan website, http://lis.ly.gov.tw/lylgmeetc/lgmeetkm_lgmem. Accessed 1 May 2017.

Notes:

Pan-green parties include the DPP, the Taiwan Solidarity Union, and the New Power Party, while Pan-blue parties are the KMT and the People First Party.

of their willingness to confront the existing discrimination.⁶³ Both Ma Ying-jeou (a married man with two daughters) and Tsai Ing-wen (a single woman) have been publicly questioned about their rumoured sexual orientation; while the former came forward with a denial, the latter chose not to respond to such an inquiry. In view of this, the resuscitation of TGP's electoral campaigning helped to elevate political visibility of lesbians and gays.

The Sunflower Effect

The Sunflower Movement of 2014 originated from a dispute over a free-trade agreement with China, and evolved into a student-led occupation of the legislature for 24 days. Although the protesters adopted a highly disruptive tactic to suspend the normal working of a state organ, they enjoyed persistently high public support probably because of widespread concerns over economic integration with China as well as the careful civility and politeness of the protest participants. The Sunflower Movement was perceived to be a success because it prevented the immediate ratification of the controversial free-trade bill. Inspired by the massive outpouring of youthful idealism, newer waves of protest activism by the younger generation surged. For marriage equality campaigners, the eruption of the Sunflower Movement was crucial for the following reasons.

The Sunflower Movement was primarily a young people's protest, as an on-site survey indicated participants under the age of 30 made up 74.1 per cent.⁶⁴ And

63 Interview with an ex-convener of Taiwan Pride, Taipei, 14 November 2017.

64 Chen and Huang 2015, 151–52.

similar to research findings elsewhere in the world, young citizens were more likely to accept different sexual orientations. The above-mentioned poll by Taiwan ThinkTank in November 2016 revealed that 78.9 per cent of respondents under 30 supported marriage equality, and the percentage decreased with older age groups, down to 17.6 per cent for respondents over 70. Younger Taiwanese becoming more politically active lent support to the campaign for marriage equality. Before the Sunflower Movement, only conservatives were able to stage mass rallies due to their church base, while LGBT campaigners tended to hold smaller-scale events. Afterwards, marriage equality activists were able to ride on the wave of youthful enthusiasm, holding mass rallies on 5 October 2014 and 10 December 2016.

Some tactics pioneered in the Sunflower Movement reappeared as the dispute over marriage equality intensified at the end of 2016. When the legislature was still occupied, some activists attempted to spread the movement message to different places by staging street speeches and music performances, and by distributing leaflets. At its height, the so-called Beez (*xiaomifeng* 小蜜蜂) had more than a hundred cells (which they called “beehives”) all over Taiwan. The so-called Marriage Equality Beez (*hunyin pingquan xiaomifeng* 婚姻平權小蜜蜂) relied on similarly decentralized, creative and spontaneous volunteering among the young participants, which once amounted to 20,000 people, according to its initiator.⁶⁵ One might argue that Taiwan's Sunflower generation effortlessly metamorphosed into a rainbow generation.

The Sunflower Movement generated a youthful cohort who decided to embrace political careers. There were Sunflower activists who took part in the 2014 local election and the 2016 legislative election, and some of them were openly gay.⁶⁶ Two newly formed political parties which claimed to carry on its legacy, the New Power Party (NPP) (*shidai lilian* 時代力量) and the Social Democratic Party (SDP) (*shehui minzhu dang* 社會民主黨), emerged as important allies to Taiwan's LGBT movement. The NPP won five seats and became the third-largest party in the legislature. NPP lawmakers were the first to initiate marriage reform proposals in the 9th Legislature (see # 4 and 5 in Table 1), and its chair Huang Kuo-chang 黃國昌 was targeted for a recall campaign mounted by conservatives for his support for marriage equality. Although the SDP failed in its first election, two of its lesbian candidates, Jennifer Lu 呂欣潔 and Miao Po-ya 苗博雅, gained attention and became the leading faces for marriage equality movement.

In addition, there was another group of Sunflower participants who joined the DPP, and after the turnover of power, obtained various level positions in the government. These young political workers became one of the most steadily pro-LGBT voices within the ruling party. In short, the Sunflower Movement

65 SETN News, 6 March 2017, <https://goo.gl/Quf2CH>. Accessed 20 November 2017.

66 Ho and Huang 2017.

catalysed Taiwan's younger generation into activism, which helped to reenergize the campaign for marriage equality.

The DPP's Political Ascendancy

The 2016 election represented a milestone victory for the DPP: Tsai Ing-wen won the presidency as had been expected, and her party won the legislative majority for the first time by taking 68 out of 113 seats. While there had been a number of DPP politicians who opposed gay rights or made homophobic remarks previously, the DPP on the whole appeared more LGBT-friendly than the KMT. Among the nine marriage equality proposals listed in [Table 1](#), the DPP-led pan-green camp outnumbered the KMT-led pan-blue camp in terms of co-signers. During her electoral campaign, Tsai Ing-wen announced her support for marriage equality, while the other two candidates remained silent on the issue.

After taking office, Tsai and her administration appeared non-committal. The Minister of Justice continued to oppose the revision of Civil Code just like his KMT predecessors. As confrontation between LGBT activists and conservatives flared up, Tsai encouraged both sides to calm down to have a dialogue. As DPP lawmakers split into those who favoured a special law and those who insisted on changes to the Civil Code, both factions claimed to have obtained Tsai's blessing.⁶⁷ Tsai's refusal to take a firm stance disappointed her erstwhile lesbian and gay supporters.

Despite the fact that DPP seemed to have reneged on the pre-election endorsement, its nomination of seven Constitutional Court judges in September 2016 turned out to be critical for the subsequent breakthrough. During the review sessions, the seven nominees all indicated their conditional or full support for marriage equality. With the influx of liberal judges to the 15-seat Constitutional Court, the historical No. 748 ruling on 24 May 2017 that extended marriage rights to lesbian and gay couples could be expected.

Taiwan's Constitutional Court in the recent decades had largely responded favourably to demands by social movements, including the full election of legislature (1990), equal rights in parenthood (1994), the removal of the international travel ban on males with conscription duty (1997), and more liberal regulations on assembly and demonstration (1998 and 2014). As such, while it was an exaggeration to identify Taiwan's judges as a dynamo for reforms, the Constitutional Court had adapted well to a liberal political environment. The decision to liberalize same-sex marriage in 2017 actually revised some of its previous conservative interpretations that mentioned marriage as a heterosexual union or upheld the prosecution of same-sex publications as "obscene."⁶⁸

The Constitutional Court's progressive ruling would not have been possible without the addition of liberal judges, which came as a result of the DPP's control

67 Interview with a Presidential Office aide, Taipei, 11 April 2017.

68 Kuan [forthcoming](#).

of executive and legislative branches of the government. The judiciary intervention came at the right moment as the legislature was deeply divided. Facing the unfavourable turn in the situation, some conservative anti-gay leaders were willing to accept partnership or civil unions in lieu of the overhaul in the legal definition of marriage. Lawmakers who advocated for such a special law solution aimed to placate the conservatives, and yet this conciliatory gesture was not acceptable to Taiwan's LGBT campaigners. As a fractured legislature was unable to reach a decision, the court decision incurred the criticism of "legislating from the bench." For Taiwan's marriage equality campaigners, the judiciary had become the only way to move their agenda forward when executive and legislative branches failed.

Discussion

The above analysis shows that the favourable combination of a new electoral system from 2008, the eruption of the Sunflower Movement in 2014 and its reverberations, as well as the DPP's electoral success in 2016 empowered Taiwan's marriage equality movement to overcome the conservative opposition. This approach is more interested in examining the short-term factors and their interactions which generate consequential outcomes, rather than resorting to some static or structural variables, such as cultural heritage or linkage to world society.

It is better to see Taiwan's progress toward marriage equality as a conjuncture achievement, rather than as a necessary result of social evolution. A historical conjuncture occurs when different causal factors intersect at a particular moment, which gives rise to an unexpected trajectory.⁶⁹ That the joint product might appear different from or counter to the original intention means that we should reserve space for unintended consequences in explaining social changes. The 2008 electoral reform enlarged the share of PR lawmakers at a time when the issue of same-sex marriage had not yet become salient. PR lawmakers, regardless of their party affiliation, were more likely to champion gay rights. The Sunflower Movement was arguably propelled by a visceral fear of political annexation by China. Yet, its success inspired a new cohort of young political activists who took marriage equality as central to their identity, even though they were aligned with different parties. Although the DPP politicians in power appeared reluctant to redeem their campaign pledge, the appointment of liberal judges cleared the legal obstacles to granting full citizenship to lesbians and gays.

Given that the extension of marriage rights to lesbian and gay couples essentially challenges conventional understandings and laws, conservative opposition is bound to emerge. The closer LGBT activists move toward the goal, the stronger the backlash grows. How to effectively overcome or circumvent this reaction becomes the key to the movement success.

69 Mahoney 2000.

A comparison with South Korea is illustrative. Similar to Taiwan, riding the wave of political liberalization in 1987, the LGBT movement emerged and flourished in the 1990s.⁷⁰ Yet the Korean right-wing movement represented a more formidable force as it involved an entrenched coalition of old conservatives (anticommunism), neoconservatives (neoliberalism) and religious conservatives (evangelicals).⁷¹ For them, lesbians and gays were not only “sinners” who committed a moral offence, but also “leftists” and “*jongbuk* (pro-North sympathizers)” with dubious political loyalty. Korean conservatives appeared more willing to adopt militant tactics, including a protest against Lady Gaga’s tour and the disruption of a queer film festival, which were absent in Taiwan.⁷² Even liberal politicians had to take the vocal anti-LGBT sentiments into consideration. Both Moon Jae-in (before his assumption of presidency in May 2017) and Seoul Mayor Park Won Soon retracted their previous endorsement of LGBT rights.⁷³

Aside from a more powerful conservative opposition, the political process approach used in this article identifies two other conditions that impeded the progress of same-sex marriage in Korea. First, although Korea’s liberal camp was analogous to Taiwan’s DPP for being more amendable to the demands from civil society for their shared experience in challenging authoritarianism, Korean liberal parties did not establish an institutional relationship with social movements, and such disarticulation was not found in Taiwan.⁷⁴ The DPP was responsive and accountable to its social movement allies to a greater extent than its Korean counterparts. Therefore, when Tsai Ing-wen campaigned on a pro-LGBT platform, Moon Jae-in, a former human rights lawyer, stated his opposition to same-sex marriage and support for the gay ban in the military during his presidential campaign.⁷⁵

Secondly, both Taiwan (2008–16) and Korea (2008–17) witnessed two consecutive conservative presidencies, which generated massive civil protests that eventually ousted them from power. Taiwan’s DPP came back to power after the political landscape was radically altered by the Sunflower Movement, just as Moon won a decisive victory after the 2016–17 candlelight protest against Park Geun-hye for her corruption scandal. The anti-Park protest attracted unprecedented participants and sustained over five months, and by the time it subsided, the besieged president was impeached and removed from office. Despite its spectacular success, the Korean protest did not generate a spillover effect to other movement activisms, and neither did it encourage political participation from the younger generation. As such, there was no “candlelight effect” comparable to that of Taiwan. A comparison of political process indicated Korean LGBT

70 Bong 2008; Kim and Cho 2011.

71 Shin 2012, 301–04.

72 Kim 2016, 81, 98, 105.

73 Yi, Jung and Philips 2017.

74 Lee 2011.

75 Steger 2017.

campaigners were facing a more challenging political context in promoting marriage equality.

Conclusion

Dayway Chief chose the idiosyncratic spelling of his family name instead of the conventional Chi because he liked its potent image. Since his coming-out in the mid-1980s, he initiated a one-man crusade by dressing up like Jesus or Cleopatra and distributing condoms to spread the message of safe sex on Taipei streets. Whether Chief's behaviour as heroic or grotesque was an issue subject to aesthetic judgment, there is no doubt that he has won an iconic position in Taiwan's LGBT history because he represented the lone dissenting voice before the emergence of an organized campaign. Taiwan's legislature dismissively rejected his petition for same-sex marriage as deviant and pathological in 1986, but 31 years later the Constitutional Court upheld his petition as a legitimate demand and chided the executive and legislative authorities for procrastination.

This article aims at explaining the success of the marriage equality movement in Taiwan, which deserves closer scrutiny because Taiwan is likely to be the first country in Asia to recognize same-sex marriage. The case is also interesting because the local lesbian and gay movement started rather late and adopted a moderate strategy, yet it achieved the milestone quickly by international standards. The static explanations of cultural affinity, international linkages and public opinion were not adequate. Instead, I used insight from political process analysis to search for the favourable conditions that enabled LGBT campaigners to overcome the energetic opposition of religious conservatives. The electoral reform, the Sunflower Movement, and the turnover of power all facilitated the pursuit of marriage equality. These conditions emerged as a consequence of complicated interactions among political parties and civil-society organizations, and they did not immediately benefit lesbian and gay activists. It was their unexpected conjunctural combination that empowered the marriage equality campaign.

Winning the court's recognition of same-sex marriage is a milestone, but it is not the movement's terminus; neither will religious conservatives retreat from political activism to maintain traditional norms. On 24 November 2018, three referendums regarding the right of lesbians and gays were held during the municipal election as a result of the conservative mobilization. All three ballot questions, which included the restriction of the legal definition of marriage to one husband and one wife, a special law to protect the rights of same-sex couples, and the banning of same-sex education in junior high and elementary school, won the overwhelming support and met the quorum requirement. The result demonstrated the organizational strength on the part of church-based conservatives which easily surpassed LGBT activists and at the same time its acumen by choosing not to confront the top court's decision but rather to seek to narrow the forthcoming enfranchisement in the form of a special law. The referendum signified a temporary setback for those campaigning for marriage equality in Taiwan.

Nevertheless, this result can still be explained through the political process approach. Amid widespread voter dissatisfaction, the ruling DPP took a beating with a hefty reduction of its local executives from 13 to six, whereas the KMT grew from six to 15. The marriage equality opponent rode on the massive wave of voter defection since the DPP government was associated with this issue, even though many KMT candidates chose to endorse its demand. In the wake of this referendum, a special-law legislation in the form of partnership appeared the most likely scenario, rather than a redefinition of marriage. Core campaigners might be disappointed by this likely evolution, but it still represents progress from the status quo, and the further evolution of sexual minority politics will continue to be a fascinating topic for researchers of Taiwan.

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Biographical note

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摘要: 在 2017 年 5 月, 台湾的大法官会议提出重大的释宪案, 同性伴侣应在两年内可以获得婚姻权利, 这使得台湾有可能成为亚洲第一个达成婚姻平权的国家。要如何解释性别少数运动的成功, 既有的关于文化亲近性、舆论支持与世界社会理论等解释, 都是不够充份的。相对于此, 这篇文章指出, 2008 年的选举制度改革、2014 年的太阳花运动、2016 年的民主进步党之胜选, 激化了性别少数的动员, 使得他们有机会克服来自于教会的反制运动。

关键词: 同性婚姻; 婚姻平权; 台湾; 性别少数; 政治过程

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