

**Dialectics of Society, the Court,
and Representative Politics
Multi-Institutional Dialogic Constitutionalism
in Taiwan's Path to Marriage Equality**

Ying-chao Kao, and Chun-yuan Lin

Abstract

Constitutional review, representative politics, or direct democracy—which mechanism best protects LGBTQ citizenship? This debate remains open in international-comparative constitutional studies when nearly 40 countries legalized same-sex marriage, as of late 2025. Most countries achieved this through representative legislation; some sought judicial remedies; a few others pursued referenda. However, these single-institutional approaches were found less applicable for the countries that have insufficient support for LGBTQ rights and/or weaker beliefs in judicial supremacy. Taiwan, facing divided social attitudes and a fragile judicial supremacy, navigated through the “culture war” and became the first Asian country to legalize same-sex marriage in 2019. Also, Taiwan is the only case that exhausted all the national-level constitutional mechanisms, including the administrative, legislature, judiciary, and national referendum. To explore the strengths and weaknesses of the single-institution or multi-institution approaches to LGBTQ equality, this research integrates the constitutional dialogue theory in law studies and sociological political-process theory to examine Taiwan’s socio-legal approaches toward marriage equality. We argue that Taiwan’s path to marriage equality offers a socio-inclusive multi-institutional constitutional dialogue approach, in which political structures experienced ongoing transformation and the following constitutional dialogues about same-sex marriage have evolved among institutions—from civil advocacy and legislature, through constitutional rulings and national referenda, to administrative-legislative collaboration toward concluding with a special law for LGBTQ equality and marital freedom. Compared with the court- and legislature-centered paths, Taiwan’s multi-institutional dialogic constitutionalism provides an alternative model that offers a dynamic, inclusive, and comprehensive approach to

Ying-chao Kao is an associate professor in the Department of Sociology at Virginia Commonwealth University, United States. <yckao@vcu.edu>

Chun-yuan Lin is an associate professor in the College of Law at National Taiwan University, Taiwan. <chunyuanyuanlin0320@ntu.edu.tw>

achieving LGBTQ equality with all social-administrative-legislative-judicial institutions' participation to dynamically change the constitutional meanings, reconcile oppositions, and collaboratively modify the constitutional systems in its path to gender/sexual equality.

Keywords: LGBTQ sexual citizenship, marriage equality, multi-institutional dialogic constitutionalism, political process theories, same-sex marriage, socio-inclusivity.

Introduction

Global LGBTQ scholars and activists have debated about the best approach to protect LGBTQ rights and citizenship and legalize marriage equality; however, the legal pathways to reach these goals remain elusive. In the complex context of the global rise of right-wing populism, domestic public opinions, pro-LGBTQ advocacy, anti-LGBTQ reactionary mobilizations, and international human rights values, the roles of the national constitution in LGBTQ-related laws have been examined more widely in the contexts of North America and Western Europe, yet remain understudied in East Asian contexts. Our research positions the case of Taiwan, the first Asian country to legalize same-sex marriage in 2019, to examine the legal, social, and administrative ways to achieve LGBTQ equality in an Asian constitutional democracy, as part of global third-wave democratization.¹ We employ the social movement theory of political process to disentangle the tensions between constitutionalism and referendum populism.² This Taiwan-based research offers an Asian alternative to Euro-American frameworks for achieving LGBTQ equality, enabling international law experts, activists, and policymakers in Asia and the global South to develop localized strategies of resilience and resistance against state-sponsored legal and political homophobia.³

¹ See generally Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991).

² Constitutionalism means the practice of establishing a society's basic laws that form the framework for organizing the government, set forth the procedures and powers attached to the various governmental institutions, and develop various rights of the citizenry. In this article, "constitutionalism" includes the institutions and procedures that determine the exercise and the limits of public power and embody essential value and principles of the society under study. Constitutionalism also protects minority people from the abuses of power by the government and the majority of the people. For more discussion, please see, e.g., U. K. Preuss, "The Political Meaning of Constitutionalism," in *Constitutionalism, Democracy and Sovereignty: American and European Perspectives*, ed. Richard Bellamy (Brookfield, VT: Ashgate, 1996), 11-12.

³ See generally Meredith L. Weiss and Michael J. Bosia, eds., *Global Homophobia: States, Movements, and the Politics of Oppression* (Urbana, IL: University of Illinois Press, 2013); Ju Hui Judy Han, "The Politics of Homophobia in South Korea," *East Asia Forum Quarterly* 8, no. 2 (2016): 6-7.

As of late 2025, nearly 40 countries have legalized same-sex marriage, with varying paths to legalization.⁴ Many countries have achieved this through direct legislation. Some countries took the path of judicial processes and court decisions, such as the United States' landmark 2015 ruling in *Obergefell v. Hodges*.⁵ A third path has involved direct public votes, though the nature of these votes differs. Ireland, for example, became the first country to legalize same-sex marriage through a binding national referendum to amend its constitution in 2015.⁶ In contrast, Australia's 2017 legalization was achieved through a parliamentary vote, which was preceded by a non-binding national postal survey showing majority support.⁷ Switzerland legalized marriage equality through the process in which its Parliament passed the Amendment to the Swiss Civil Code (the "Marriage for All" amendment) in 2020 and opponents challenged it with a referendum in 2021. Eventually, 64.1 percent of voters accepted the reform, which took effect in 2022.⁸

Single-institutional approaches to LGBTQ equality show strengths and weaknesses. Specifically, through electoral processes and legislative deliberation, congressional legislation is generally regarded as the most legitimate and pragmatic means of policymaking. However, in societies where public opinions on same-sex marriage are extremely polarized and/or where discrimination against LGBTQ citizens pervasively persists, legislative processes often reflect these biases, making it unlikely that legislation delivers justice for same-sex couples.⁹ In response, some activists turn to the judiciary

⁴ Pew Research Center, "Same-Sex Marriage Around the World," *Pew Research Center* (June 2, 2025), <https://www.pewresearch.org/religion/fact-sheet/same-sex-marriage-around-the-world/> (accessed November 2, 2025); Council on Foreign Relations, "Marriage Equality Around the World," *CFR Education* (May 23, 2025), <https://education.cfr.org/learn/reading/marriage-equality-around-world> (accessed November 2, 2025).

⁵ *Obergefell v. Hodges*, 576 U.S. 644 (2015), which required all fifty U.S. states to perform and recognize same-sex marriages.

⁶ The Houses of the Oireachtas, "Thirty-fourth Amendment of the Constitution (Marriage Equality) Act 2015," *Irish Statute Book* (August 26, 2015), <https://www.irishstatutebook.ie/eli/2015/ca/34/enacted/en/html> (accessed November 2, 2025); Henry McDonald, "Ireland Becomes First Country to Legalise Gay Marriage by Popular Vote," *The Guardian* (May 23, 2015), <https://www.theguardian.com/world/2015/may/23/gay-marriage-ireland-yes-vote> (accessed November 20, 2025); The Irish constitutional referendum, held on May 22, 2015, passed with 62.1 percent of the vote, amending the constitution to state that "marriage may be contracted in accordance with law by two persons without distinction as to their sex."

⁷ The Australian postal survey was a non-binding, voluntary survey that concluded in November 2017 with a 61.6 percent "Yes" result. Following this, the Australian Parliament passed the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) which ratified the principle into each corresponding Legislation.

⁸ Domhnall O'Sullivan, "'Marriage for All' Wins Thumping Approval of Swiss Voters," *SWI swissinfo.ch* (a branch of the Swiss Broadcasting Corporation) (September 26, 2021), <https://www.swissinfo.ch/eng/politics/voters-have-last-word-on-marriage-for-all-bill/46969634> (accessed November 29, 2025).

⁹ See e.g., Joseph Mello, *The Courts, the Ballot Box, and Gay Rights: How Our Governing Institutions Shape the Same-Sex Marriage Debate* (Lawrence, KS: University Press of Kansas, 2016), 1-41.

to seek legal recognition and protection. However, the effectiveness of judicial review is substantively influenced by the institutional and social legitimacy of the court. While judicial intervention offers an avenue for advancing marriage equality, judges lack direct democratic legitimacy. Consequently, the judicial rulings may not be effectively implemented while social support remains insufficient. In societies where courts enjoy lower levels of social legitimacy, judges may be reluctant to intervene in contentious issues or may prefer to uphold the status quo. Even in the United States, where the Supreme Court wields substantial constitutional authority and enjoys high social legitimacy, its rulings on same-sex marriage have provoked political backlash and institutional attacks.¹⁰ In addition, several countries used referenda to legalize same-sex marriage; however, the referendum approach may generate a heteronormative majority and create room for political manipulation. Therefore, it remains debatable: what is the best approach to achieve marriage equality and serve the needs of democratic constitutionalism for LGBTQ justice? In many countries, where a pro-LGBTQ political majority or strong beliefs in the authority of judicial supremacy do not exist, the decisions made by single institutions (i.e., the legislature, judicial review, or referendum solely) are deemed less promising for achieving marriage equality.

Comparably, Taiwan offers a case to join the debate as the first Asian country that legalized same-sex marriage. On the surface, the factors that pushed Taiwan toward marriage equality seemingly resemble its Euro-American counterparts with its functional democracy, economic development, thriving civil society, expanding progressivism, and absence of a national dominant conservative religion, along with robust LGBTQ communities/movements and the accompanied conservative backlash.¹¹ Nevertheless, careful scrutiny reveals that Taiwan stands out because it is one of the few countries that exhausted all its national-level constitutional mechanisms—including civil lobbying in the legislative and administrative branches, initiating legislative bills, appealing constitutional rulings, battling with nationwide referenda, and engaging in political negotiations and cooperation—to achieve this human-rights milestone. Thus, our questions raise locally contextualized inquiries in global comparisons: Compared with the American model (judicial review), the German model (representative democracy), and the Irish model (referendum), why had Taiwan taken a complex approach to legalizing same-sex marriage as the first Asian nation achieving this? How did Taiwan navigate through political conflicts and the Constitutional Court's legitimacy crisis and successfully

¹⁰ See e.g., Jane S. Schacter, "Courts and The Politics of Backlash: Marriage Equality Litigation, Then and Now," *Southern California Law Review* 82, no. 6 (2009): 1153-1224; Scott Barclay, "In Search of Judicial Activism in the Same-Sex Marriage Cases: Sorting the Evidence from Courts, Legislatures, Initiatives and Amendments," *Perspectives on Politics* 8, no. 1 (2010): 111-126.

¹¹ See generally Amy Adamczyk, *Cross-National Public Opinion about Homosexuality: Examining Attitudes across the Globe* (Oakland, CA: University of California Press, 2017).

legalize same-sex marriage? What are the strengths and weaknesses that Taiwan's comprehensive approach showed for the reference of other countries struggling for LGBTQ dignity and equality?

To answer these questions, this research takes a trans-disciplinary theoretical framework that integrates the constitutional dialogue approach from constitutional law studies *and* the political process theory from sociological studies of social movements.¹² The conventional constitutional dialogue studies focused on the interactions between the court and legislature, yet marginalized the voices of civil society. This research's integral framework enables thinkers to investigate the constitutional dialogues about LGBTQ equality *not only* among constitutional branches, but also the ones between social groups in civil society and constitutional branches as well as between pro-LGBTQ and anti-LGBTQ organizations. This integral approach enlightens an exploration of how LGBTQ-related constitutional dialogues contribute to the collective efforts of defining what the constitutional meanings of same-sex marriage in Taiwan are throughout the interwoven processes of globalization and localization (thus, glocalization) of international constitutionality. The methodology of our socio-legal study includes the first author's 23 months of ethnography and 104 interviews with leaders representing a wide political spectrum ranging from conservatism, liberalism, to radicalism during Taiwan's peaks of culture wars on LGBTQ citizenship (2015–2020), as well as the second author's legal examination and first-hand participation in Taiwan's formation of same-sex marriage law as a law expert. Based on our multi-sourced data, this research argues that the multi-institutional model of constitutional dialogue not only made Taiwan the first Asian country to legalize same-sex marriage, but also illustrates how a dialogic process could embody both democratic and constitutional legitimacy for achieving LGBTQ equality. Thus, Taiwan's dialogic constitutionalism model provides insight for other countries struggling to achieve both marriage equality and democratic constitutionalism.

From Counter-majoritarian Judicial Review to Constitutional Dialogue

Global marriage equality campaigns challenged the symbolic orders of cultural norms, institutional hierarchies, religious doctrines, and hetero-patriarchal capitalism. Conflicts over marital rights within democracies were usually resolved by either socio-political processes or constitutional mechanisms such as judicial review. The debate regarding the best approach to achieve marriage

¹² See generally Louise Fisher, *Constitutional Dialogues: Interpretation as Political Process* (Princeton, NJ: Princeton University Press, 1988); Geoffrey Sigalet, Grégoire Webber, and Rosalind Dixon, "Introduction: The 'What' and 'Why' of Constitutional Dialogue," in *Constitutional Dialogue: Rights, Democracy, Institutions*, eds. Geoffrey Sigalet, Grégoire Webber, and Rosalind Dixon (Cambridge: Cambridge University Press, 2019), 1-32.

equality raises fundamental questions of constitutional law: Should the court intervene in the controversies when the electoral/political majority refuses to legalize same-sex marriage? How does constitutionalism respond to possible malfunctions of democratic processes?

Counter-majoritarian Constitutionalism and Political Process Theory

U.S. jurisprudence of constitutional law focuses on the court's role in a democratic majority, considering when and how judicial review can interfere with democratic political processes. Alexander Bickel characterized the institution of judicial review as counter-majoritarian, arguing that the court should be self-restrained unless ordinary politics has undermined the fundamental values and long-term principles of the Constitution.¹³ In contrast, John Ely believes that judicial review facilitates democratic politics and provides a necessary mechanism of democratic constitutionalism. Because the democratic political process (e.g., elections and representative politics) sometimes suppresses marginalized voices or institutionally disadvantages "discrete and insular" minorities, constitutional review provides a mechanism to safeguard minorities' effective participation in democratic processes.¹⁴ When the democratic processes produce unfair outcomes for a disadvantaged social group (e.g., LGBTQ citizens), the court may legitimately strike them down.¹⁵ For example, some American courts referred to Ely's theory to hold that a decision by the political majority was unconstitutional, such as the case of *Perry v. Schwarzenegger*.¹⁶

Nevertheless, in practical debates on marital rights, Ely's political process theory shows constraints in offering clearer criteria about "what makes a political process fair and how much/what kind of political power a group should have."¹⁷ For instance, the dissenting opinions of *Obergefell v. Hodges* criticized judicial involvement as a "fundamentally undemocratic" process that removes people's deliberation and their representatives. All four dissenting opinions noted the democratic deficit of the majority decision because, as they interpreted, the American Constitution and judicial precedents provide no such

¹³ See Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*, 2nd ed. (New Haven, CT: Yale University Press, 1986).

¹⁴ John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, MA: Harvard University Press, 1980).

¹⁵ *Ibid.*, 135-179; see also Stephen M. Feldman, "(Same) Sex, Lies, and Democracy: Tradition, Religion, and Substantive Due Process (with an Emphasis on *Obergefell v. Hodges*)," *William & Mary Bill of Rights Journal* 24, no. 2 (2015): 353-354.

¹⁶ See *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), *stay denied*, 702 F. Supp. 2d 1132 (N.D. Cal. 2010), *stay granted*, 2010 WL 3212786 (9th Cir. Aug. 16, 2010), and *certifying question to the Supreme Court of California*, 628 F.3d 1191 (9th Cir. 2011).

¹⁷ Jane S. Schacter, "Ely at the Altar: Political Process Theory through the Lens of the Marriage Debate," *Michigan Law Review* 109, no. 8 (2011): 1391-1396.

rights.¹⁸ These critiques reflect conflicting understandings of the extent and characteristics of political failure in which the court can legitimately intervene in the institutional debate on marriage-related citizenship.

Notably, political considerations sometimes shape *majoritarian constitutionalism* (namely, constitutional reviews based on a majoritarian consensus in socio-politics) that deters the courts from intervening in social controversies too prematurely before a consensus is gradually formulated.¹⁹ Some critics warned that proactive judicial rulings may generate conservative backlash and argued that progressive judicial interferences on same-sex marriage issues are ineffective and counterproductive. If civil society has yet to reach a consensus and the legislature refuses to act, the citizens whose rights are violated must await the legislative action to achieve justice. This way, the politics-conscious approach of majoritarian constitutionalism may potentially reinforce the deprivation of minorities' rights, resulting in a "tyranny of the majority" deriving from the dysfunction of democratic politics.²⁰

Considering the strengths and constraints of majoritarian constitutionalism and counter-majoritarian constitutionalism, we argue that both approaches risk overestimating *and* underestimating the courts' roles in the construction of constitutional meanings simultaneously. On the one hand, they *overestimate* the courts' power in determining the ultimate constitutional meanings and ignore that the courts are only one of the many institutional mechanisms that collectively construct constitutional meanings. The courts in a constitutional democracy are not dominant players, but rather collaborate and compete with the government's legislative and executive branches, along with various social forces, to shape constitutional interpretation within a system of separated powers, enabling a participatory thesis that citizens and institutions can practice, contest, and revise over time, collaboratively. For example, in the US, Nan Hunter pinpointed that referenda-based direct democracy helped build social support and shift the constitutional meanings interpreted by society to build the national litigation that led to the *Obergefell v. Hodges* ruling in favor of marriage equality.²¹ The courts fell short in resolving social tensions

¹⁸ See *Obergefell v. Hodges*, 135 S. Ct. 2584, 2611 (2015) (Roberts, C.J., dissenting; Scalia, J. dissenting); Brent G. McCune, "Judicial Overreach and America's Declining Democratic Voice: The Same-Sex Marriage Decisions," *Texas Review of Law & Politics* 20, no. 1 (2015): 73-79.

¹⁹ Reva B. Siegel, "Community in Conflict: Same-Sex Marriage and Backlash," *UCLA Law Review* 64 (2017): 1740.

²⁰ The tyranny of the majority refers to a situation in which a group of people are treated unfairly because their situation is different from the situation of the demographically or hierarchically dominant population in a democracy. Please see the discussion of the history and definition of the tyranny of majority in Tamás Nyirkos, *The Tyranny of the Majority: History, Concepts, and Challenges* (New York: Routledge, 2018), 1-7; Ferdinand A. Hermens, "The 'Tyranny of the Majority,'" *Social Research* 25, no. 1 (1958): 37-52.

²¹ Nan D. Hunter, "Varieties of Constitutional Experience: Democracy and the Marriage Equality Campaign," *UCLA Law Review* 64 (2017): 1687.

or facilitating democratic deliberation.²² Even after the *Obergefell* decision, the policies of same-sex marriage and LGBTQ rights remain subject to public debates and challenges.

On the other hand, both majoritarian and counter-majoritarian constitutionalism *underestimate* the socio-political capacity of the courts to shape public opinion. Indeed, judicial decisions invite backlash; however, they have the potential to constructively change social norms and political processes for equality and justice. Siegel argued that, although some proactive rulings triggered backlashes, the court-based advocacy can help transform public sentiment, redirect public opinions, and redefine constitutional meanings and understandings in society.²³ For example, Ireland's High Court's decision built the foundation to guide the subsequent Constitutional Convention and referendum.²⁴ Thus, both majoritarian and counter-majoritarian constitutionalism theories show constraints in providing a convincing theoretical framework to study the dynamics between the courts and socio-political processes in the context of marriage equality. Existing theoretical approaches need recalibration.

From Court-centered Constitutionalism to Constitutional Dialogue in the Socio-political Process

A core problem shared by both majoritarian and counter-majoritarian constitutionalism theories is their ideological assumption of court-centrism, which assumes the courts as the central and dominant player in determining constitutional meanings (see (A) in Figure 1). This assumption becomes insufficient in the contexts where the judicial decision is not pivotal in constitutional development but subject to “legislative reversal, modification, or avoidance.”²⁵ In young democracies where democratic politics remains unconsolidated and the judicial authority has yet to be well-established, the courts must consider the political environment shaped by both representative politics and direct democracy (see (B) and (C) in Figure 1) and act strategically.

Importantly, the *constitutional dialogue* theory, or *dialogic constitutionalism*, provides a metaphoric paradigm to describe, interpret, and explain the interactions among institutional branches and extra-institutional actors regarding the constitutionality of the presence (and absence) of certain

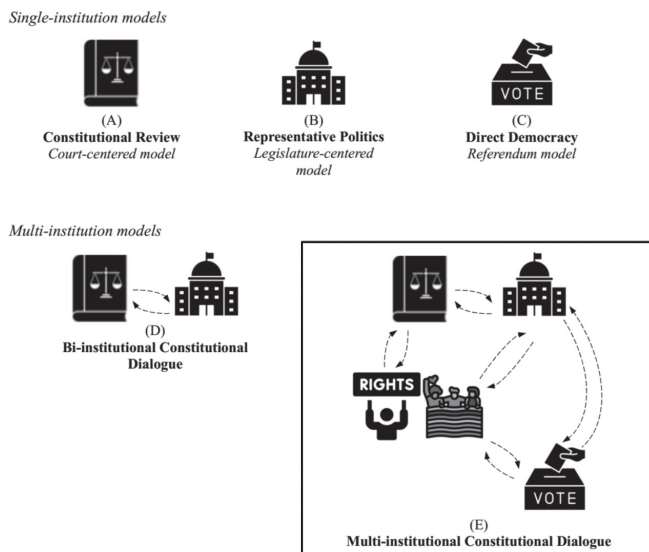
²² Michael J. Klarman, “Rethinking the Civil Rights and Civil Liberties Revolutions,” *Virginia Law Review* 82, no. 1 (1996): 3-8; Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago, IL: The University of Chicago Press, 2023).

²³ Siegel, “Community in Conflict,” 1740.

²⁴ *Zappone v. Revenue Commissioners*, 2 IR 417, 504 (2008).

²⁵ Peter W. Hogg and Allison A. Bushell, “The Charter Dialogue between Courts and Legislatures (Or Perhaps the Charter of Rights Isn’t Such a Bad Thing after All),” *Osgoode Hall Law Journal* 35, no. 1 (1997): 79.

Figure 1. The Typology of Formulating the Constitutionality of LGBTQ Rights.



Source: Author; logos from Freepik.com, used under Creative Commons license.

legislation.²⁶ During constitutional dialogues, courts can facilitate the processes of constitutional development and democratic transitions by initiating and/or participating in the institutional dialogues regarding constitutional meanings with other social groups and political institutions which engage in the development of collective constitutional meaning.²⁷ The “dialogue” metaphor helps intervene in the debates on majoritarian and counter-majoritarian constitutionalism in struggles for LGBTQ justice and marriage equality to analyze and evaluate interactions between socio-political institutions concerning constitutional issues. The constitutional dialogue studies challenge the assumption of court-centrism and emphasize the institutional processes of communication between various constitutional actors that collaborate in and compete for revealing, producing, negotiating, and eventually determining the meanings of the Constitution.²⁸ Through inter-institutional responses,

²⁶ Bell Yosef, “A Double-Edged Sword: Constitutional Dialogue Confined,” *International Journal of Constitutional Law* 20, no. 5 (2022): 1820-1850.

²⁷ Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2003).

²⁸ Christine Bateup, “The Dialogic Promise: Assessing the Normative Potential of Theories of Constitutional Dialogue,” *Brooklyn Law Review* 71, no. 3 (2006): 1118; See also Anne Meuwese and Marnix Snel, “‘Constitutional Dialogue’: An Overview,” *Utrecht Law Review* 9, no. 2 (2013): 126.

resistances, compliance, and collaborations, dialogic constitutionalism interprets constitutional decisions as dialogic outcomes and captures a broader spectrum of democratic deliberation and popular sovereignty than the court-centric interpretations do.

Dialogic constitutionalism enables us to analyze how government branches and non-government actors co-shape the constitutional meanings.²⁹ It provides a contextualized approach to studying the dynamics of constitutional development in young democracies. For example, Chien-chih Lin's review of East Asian constitutional developments argues that the "dialogic judicial review" model is "a feature of East Asian constitutionalism" given this region's heterogeneity and dynamic changes.³⁰ Recent studies show that the constitutional dialogue approach has been employed to analyze how the courts in Asia use interpretive techniques to avoid directly invalidating unconstitutional laws and to foster inter-institutional dialogues by delaying declarations of invalidity and judicial deadlines, among other techniques, to be self-restraining institutional authority while enabling broader socio-political deliberation.³¹ These studies indicate that many Asian courts participate in the socio-political process to co-construct constitutional meanings and catalyze democratic transformation and inclusive reforms, rather than dominate the process of constitutional determination.

Nevertheless, the constitutional dialogue theory traditionally focused mainly on the dialogues between the judicial and legislative branches (see (D) in Figure 1); it has been criticized for its potentially normative assumption of judicial supremacy on constitutional interpretation, vague boundaries of the definition of dialogue, and the lack of empirical operationalization.³² To remedy these, this study suggests an integration of the constitutional dialogue theory and the sociological "political process" theory in social movement studies to explore the socio-legal processes to achieve marriage equality in

²⁹ Bradley M. Bakker, "Blogs as Constitutional Dialogue: Rekindling the Dialogic Promise?" *New York University Annual Survey of American Law* 63, no. 2 (2007): 216; see also Geoffrey Sigalet, Grégoire Webber, and Rosalind Dixon, "Introduction: The 'What' and 'Why' of Constitutional Dialogue," in *Constitutional Dialogue: Rights, Democracy, Institutions*, eds. Geoffrey Sigalet, Grégoire Webber, and Rosalind Dixon (Cambridge: Cambridge University Press, 2019).

³⁰ Chien-chih Lin, "Dialogic Judicial Review and Its Problems in East Asia," *International Journal of Constitutional Law* 17, no. 2 (2019): 704.

³¹ See Po Jen Yap, *Constitutional Dialogue in Common Law Asia* (Oxford: Oxford University Press, 2015); see also Wen-chen Chang, "Constitutional Dialogue in Common Law Asia," *International Journal of Constitutional Law* 15, no. 1 (2017): 264-268; see also Jiunn-rong Yeh, "Presidential Politics and the Judicial Facilitation of Dialogue between Political Actors in New Asian Democracies: Comparing the South Korean and Taiwanese Experiences," *International Journal of Constitutional Law* 8, no. 4 (2010): 944-948.

³² Christopher P. Manfredi and James B. Kelly, "Six Degrees of Dialogue: A Response to Hogg and Bushnell," *Osgoode Hall Law Journal* 37, no. 3 (1999): 513-527; Bateup, "The Dialogic Promise," 1121.

Taiwan.³³ The political process theory enables our analysis to transcend the bi-institutional dialogue model (see (D) in Figure 1) to further include the voices of civil society—in the forms of referendum (direct democracy), non-government organizations (NGOs), and the public—to form the multi-institutional model of constitutional dialogue (see (E) in Figure 1).

This theoretical expansion features three characteristics: First, the inclusion of political process theory helps explain the contexts in which the increases of political openness and people's access to governmental operations are associated with more stable elite-activist alignments, less state oppression over society, and thus more possible developments of social movements like pro-LGBTQ campaigns.³⁴ Second, the political process theory helps emphasize the dynamics and contingency among the interactions between society and the government, remedy the society-blindness in the bi-institutional model, and accounts for multiple constitutional interlocutors' roles, causes, contributions, and their consequences.³⁵ Third, the sociological theory facilitates the operationalization of the constitutional dialogue theory by highlighting the observable dimensions, including political systems' openness/closeness, the fragility of socio-political alliances, the availability of potent allies, and the decisive changes provoked by earlier mobilization cycles.³⁶ As shown in (E) of Figure 1, our "socio-inclusive constitutional dialogue" framework sheds light on the pivotal roles of Taiwan's Constitutional Court and how the dialogues transferred among the courts, administration, legislature, national referendum, and activist organizations constantly to co-shape the constitutionality of family and marriage. Below, multi-institutional dialogic constitutionalism is applied to analyze how Taiwan achieved the legalization of same-sex marriage in various stages.

Taiwan's Early LGBTQ Movements and the Rise of Constitutional Dialogue on Marriage Equality (1940s–2012)

Taiwan's democratization has demonstrated how the transition from authoritarianism to democracy created political opportunities for the

³³ See David S. Meyer, "Political Opportunity and Nested Institutions," *Social Movement Studies* 2, no. 1 (2003): 17-35.

³⁴ See Ming-sho Ho, "Political Opportunity Structure and Study of Social Movement," *NCCU Journal of Sociology* 37 (2004): 35; See also Sidney G. Tarrow, *Struggling to Reform: Social Movements and Policy Change During Cycles of Protest* (Ithaca, NY: Cornell University Press, 1983).

³⁵ Charles Tilly and Sidney G. Tarrow, *Contentious Politics* (New York, NY: Oxford University Press, 2015), 13-15, 59-61.

³⁶ See Donatella Della Porta and Mario Diani, "Introduction: The Field of Social Movement Studies," in *The Oxford Handbook of Social Movements*, eds. Donatella Della Porta and Mario Diani (Oxford: Oxford University Press, 2015), 1-27; See generally Sidney G. Tarrow, *Power in Movement: Social Movements and Contentious Politics*, 3rd ed. (Cambridge: Cambridge University Press, 2011).

executive and legislative branches to develop pro-LGBTQ policies. Before 2012, Taiwanese LGBTQ activists focused on resisting discrimination and stigmatization and strategically deferred the same-sex marriage issue from their agenda. Constitutional dialogues on marriage equality began during this stage but remained limited, featuring legislative actions.

Developing Democratization and Constitutionalism (1940s–1990s)

During Taiwan's authoritarian period (1949–1987), national elections for central government representatives were suspended and the Court's function of protecting people's constitutional rights was dismantled. This made it almost impossible for citizens to advocate and mobilize for political or social causes, including LGBTQ rights.³⁷ Since Taiwan's democratization in the late 1980s and 1990s, its Constitutional Court has steadily reclaimed its independence of supreme judicature, conducting new interpretations more actively to invalidate outdated laws and regulations and advance constitutional values.³⁸ The democratization shaped Taiwan in the 21st century as a functioning democracy where citizens could legally participate in politics, including engaging in social movements and presidential and legislative elections.³⁹ One of its positive consequences is the development of Taiwan's constitutionalism, which enables civil society to challenge and change laws and policies.⁴⁰ The mutual reinforcement between democratization and constitutionalism has provided LGBTQ activism a favorable political structure to use the mechanisms of representative democracy and constitutional petition to pursue human rights and change socio-political structures.⁴¹

³⁷ See e.g., Richard C. Kagan, "Martial Law in Taiwan," *Bulletin of Concerned Asian Scholars* 14, no. 3 (1982): 48–54.

³⁸ For Taiwan's judicial review development, see Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2003); Wen-chen Chang, "The Constitutional Court of Taiwan," in *Comparative Constitutional Reasoning*, eds. András Jakab, Arthur Dyeve, and Giulio Itzcovich (Cambridge: Cambridge University Press, 2017), 641–678; Wen-chen Chang, "Courts and Judicial Reform in Taiwan: Gradual Transformations Towards the Guardian of Constitutionalism and Rule of Law," in *Asian Courts in Context*, eds. Jiunn-rong Yeh and Wen-chen Chang (Cambridge: Cambridge University Press, 2014), 143–182; Tzu-yi Lin, Ming-sung Kuo, and Hui-wen Chen, "Seventy Years On: The Taiwan Constitutional Court and Judicial Activism in a Changing Constitutional Landscape," *Hong Kong Law Journal* 48, no. 3 (2018): 995–1027.

³⁹ For analysis of Taiwanese democratization, see Te-yu Wang, "National Identity and Democratization in Taiwan: An Introduction," *Journal of Asian and African Studies* 40, no. 1–2 (2005): 5–12.

⁴⁰ Jiunn-rong Yeh and Wen-chen Chang, "An Evolving Court with Changing Functions: The Constitutional Court and Judicial Review in Taiwan," in *Constitutional Courts in Asia: A Comparative Perspective*, eds. Albert H. Y. Chen and Andrew Harding (Cambridge: Cambridge University Press, 2018), 110–140.

⁴¹ See generally Gofyy (Kafei) Shen, *The 30-year Crusade of LGBT Rights Movements in Taiwan: Viewpoints from an Activist* (Taipei: Yi wei wen si, 2021); Hsiao-wei Kuan, "LGBT Rights in Taiwan—The Interaction Between Movements and the Law," in *Taiwan and International*

Litigations in Early Taiwanese LGBTQ Movements (1980s–2000s)

Taiwan's LGBTQ movement began at the dusk of authoritarianism. In 1986, one year before martial law was lifted, Chi Chia-wei (an HIV/AIDS activist and the first openly gay man in Taiwan) petitioned for same-sex marriage to the Legislative Yuan; however, he was dismissed swiftly.⁴² Early LGBTQ activists focused on forming collective identities, combating stigmas, resisting heteronormativity and cisgenderism, and increasing visibility for building supportive communities. The rapid development of Taiwanese LGBTQ groups in the 1990s primed their socio-political capacity in later constitutional dialogues.⁴³

Using the political opportunities after Taiwan's party alternation in 2000, LGBTQ groups joined feminists to engage in legislative lobbying and campaigns for LGBTQ-inclusive bills. In 2004, the Gender Equity Education Act (GEEA) was established to protect students and school employees from discrimination based on sex and "gender, gender temperaments, gender identity or sexual orientation" in educational environments.⁴⁴ In the 2000s–2010s, the LGBTQ-related protective legislation expanded to the GEEA Enactment Rules, Employment Service Act, Domestic Violence Prevention Act, Act of Gender Equality in Employment, Enforcement Rules of the Personal Data Protection Act, and the Long-Term Care Services Act, among other laws and regulations. These legislative waves honed Taiwanese LGBTQ activists' skills and tactics to engage in intra-governmental processes and prepared them for the constitutional dialogues regarding marital equality. The GEEA implemented LGBTQ-inclusive education in K-12 schools and substantively increased the pro-LGBTQ support among younger generations. In this period, several failed litigations on same-sex marriage signaled the courts' conservatism, which partly deterred LGBTQ groups from using litigation but rather prioritized legislation for legal mobilization.⁴⁵

Human Rights: A Story of Transformation, eds. Jerome A. Cohen, William P. Alford, and Chang-fa Lo (Berlin: Springer, 2019), 593-607.

⁴² See Ming-sho Ho, "Taiwan's Road to Marriage Equality: Politics of Legalizing Same-sex Marriage," *The China Quarterly* 238, no. 2 (2019): 482-483; On Chi's actions, see the reasoning in *J.Y. Interpretation No. 748 (Same-Sex Marriage Case)*, *Judicial Yuan ROC-Constitutional Court* (May 24, 2017), <https://cons.judicial.gov.tw/en/docdata.aspx?fid=100&id=310929> (accessed November 29, 2025).

⁴³ See Ying-chao Kao and Remaljiz Mavaliv, "LGBTQ Movements in Taiwan," in *Encyclopedia of Taiwan Studies Online*, eds. Hsin-huang Michael Hsiao and Anru Lee (Leiden: Brill, 2025).

⁴⁴ GEEA Article 2 defines gender equity education as "to generate respect for gender diversity, eliminate gender discrimination, and promote substantive gender equality through education." Articles 12–15 ensure discrimination-free learning environments and Articles 17–19 require educational institutions to promote gender equality. *Gender Equity Education Act* (Taiwan), arts. 2, 12–15, 17–19, promulgated June 23, 2004.

⁴⁵ The Court's refusal of reviewing CHI Chia-Wei's petition for same-sex marriage in 1986 was one of the first signals of judicial conservatism. See Stewart Chang, "Made in Taiwan: Alternative Global Models for Marriage Equality," *Connecticut Journal of International Law* 34, no. 2 (2019): 147.

During President Chen Shui-bian's first term (2000–2004), the administrative branch (Executive Yuan) proposed a ground-breaking protection of same-sex couples' rights in the Drafted Bill of Human Rights Law, suggesting: "Same-sex men and women can legally organize families and adopt children. Their legal rights and benefits should be protected" (Article 31).⁴⁶ However, the Draft never proceeded to the Legislative Yuan for review.

In March 2006, then-legislator Hsiao Bi-khim introduced the first same-sex marriage bill. Despite gaining enough signatures and being groundbreaking, the bill, in its preparation phase, did not recruit the voices from grassroots LGBTQ groups and generated limited dialogue among cross-partisan legislators and LGBTQ groups in only one public hearing. Unfortunately, it was vetoed before the first reading by conservative legislators. Although Taiwan's legislative and executive branches respectively expressed sporadic support for same-sex marriage, no inter-institutional dialogue on the policy was initiated. Thus, Taiwanese feminist and LGBTQ organizations initiated communal conversations on the possibilities of legalizing the recognition and structure of same-sex family, marriage, and partnership rights for LGBTQ citizens, including the cultural meanings and legislative formalities of this legal mobilization. Various visions and imaginations of non-heteronormative families, marriages, and intimacies discussed in 2008 evolved into Taiwan's first national NGO focusing on marriage/family rights reform—Taiwan Alliance to Promote Civil Partnership Rights (TAPCPR), in 2009.⁴⁷

In 2012, the TAPCPR launched the "Diverse Families Movement" to advocate for three bills: 1) the Marriage Equality bill for same-sex marriage, (2) a Partnership bill for partnered citizens of all genders, and (3) a "Multiple-Member Family Households" bill for three or more citizens to build legal contracts on their autonomously consented rights and obligations.⁴⁸ Notably, while TAPCPR initiated the three progressive bills to challenge heteronormative

⁴⁶ Taiwan Executive Yuan, "Draft of Human Rights Law (2006)," *Taiwan Executive Yuan* (May 8, 2022), <https://www.humanrights.moj.gov.tw/media/12944/591093244518.pdf?mediaDL=true> (accessed November 26, 2025)

⁴⁷ Taiwan Alliance to Promote Civil Partnership Rights, "Introduction to the History and Organization of the Taiwan Alliance to Promote Civil Partnership Rights," *Taiwan Alliance to Promote Civil Partnership Rights*, <https://tapcpr.org/tapcpr-news/about-tapcpr> (accessed August 21, 2020).

⁴⁸ Please see the statement from TAPCPR's official website. Taiwan Alliance to Promote Civil Partnership Rights, "Support All Families," *TAPCPR* (September 6, 2013), <https://tapcpr.org/english/statement/2013/09/06/support-all-families> (accessed June 8, 2024); for detailed analysis, see Victoria Hsiu-wen Hsu, "Colors of Rainbow, Shades of Family: The Road to Marriage Equality and Democratization of Intimacy in Taiwan," *Georgetown Journal of International Affairs* 16, no. 2 (2015): 154-164.

familism and marriage supremacism simultaneously, international journalism often only focused on same-sex marriage, portrayed Taiwan as a follower of Euro-American legislations, and thus reproduced an Orientalist gaze that Amy Brainer critiqued as “marriage-washing”.⁴⁹

Legislative-focused Dialogue with Courts and Conservatives

In the 2000s–2012, Taiwan’s domestication of international covenants, the creation of legislator-at-large seats in the 2005 Constitutional Amendment, and changing political environments toward human rights, equality, and inclusivity generated new political openings to enable new pro-LGBTQ legislative possibilities.⁵⁰ However, they concurrently stimulated the anti-LGBTQ movements and brought national attention to the rise of anti-marriage equality conservatism. Religion-motivated moral conservatives and homophobes organized the True Love Alliance to oppose LGBTQ-inclusive education and pedagogies.⁵¹ Conservatives exploited TAPCPR’s “Diverse Families Movement” as a political leverage for mobilizing moral panic nationally, and succeeded partly in stalling or amending some pro-LGBTQ educational policies and undermining the morale of pro-LGBTQ activists and educators. The growing anti-LGBTQ conservatism fundamentally reshaped Taiwan’s political structure and the types, scales, and players in the constitutional dialogues afterward. Paradoxically, this contentious climate helped elevate same-sex marriage into the realm of national political discourse, igniting decade-long constitutional dialogues on marriage equality and LGBTQ citizenship.

Noteworthy, non-legislature constitutional dialogues were postponed during this period because the conservative-leaning Constitutional Court and high thresholds to pass a national referendum shaped a political structure that redirected the TAPCPR to prioritize lobbying and to educate the public regarding LGBTQ awareness.

⁴⁹ See Amy Brainer, *Queer Kinship and Family Change in Taiwan* (New Brunswick, NJ: Rutgers University Press, 2019); Ying-chao Kao, “The Coloniality of Queer Theory: The Effects of ‘Homonormativity’ on Transnational Taiwan’s Path to Equality,” *Sexualities* 27, no. 1-2 (2024): 136-153.

⁵⁰ See Yu-jie Chen, “Isolated but Not Oblivious: Taiwan’s Acceptance of the Two Major Human Rights Covenants,” in *Taiwan and International Human Rights: A Story of Transformation*, eds. Jerome A. Cohen, William P. Alford, and Chang-fa Lo (Berlin: Springer, 2019), 207-225; Vivianne Yen-ching Weng and Yao-ming Hsu, “Domestication of International Human Rights Norms in Taiwan: A Dialogue through Conventionality Review under Construction,” in *The Asian Yearbook of Human Rights and Humanitarian Law*, eds. Ayesha Shahid, Meryl Dickinson, and Javaid Rehman (Leiden, The Netherlands: Brill, 2017), 166-191.

⁵¹ See Ming-sho Ho, “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. David Chiavacci, Simona Grano, and Julia Obinger (Amsterdam: Amsterdam University Press, 2020), 151-52.

Legislative Procrastination and Judicial Participation in Dialogues

Pro-LGBTQ groups collaborated with legislators to proceed with the marriage equality bill in 2013, yet faced rampant conservative opposition. In 2014, LGBTQ activists organized collective marriage registrations at city governments, whose anticipated rejections were deployed by activists and the Taipei City Government to appeal to the Constitutional Court. In 2017, the Court joined the constitutional dialogue by taking up the case and holding a public oral argument. In May 2017, the Court's JY Interpretation No. 748 ruled that the family/marriage system in the Civil Code that had protected heterosexual unions only was unconstitutional and the legislature must amend this inequality within two years. While this groundbreaking ruling provoked a renewed conservative backlash, it established the basic principles for subsequent constitutional dialogues on marriage equality.

Growing Confrontations and Judicial Involvement (2013–2016)

In 2013, the TAPCPR lobbied several DPP pro-LGBTQ legislators to propose the three “Diverse Families Formation” bills.⁵² Only the Marriage Equality bill proceeded beyond the first reading, but it soon encountered unprecedented conservative opposition. In November 2013, over 250,000 people reportedly gathered in front of the Presidential Office to obstruct the marriage-equality legislation. They were mobilized by two new but powerful anti-LGBTQ organizations—the Next Generation Happiness Alliance (hereafter Happiness Alliance) and the Taiwan Religious Organization Family Guardian Coalition. Further, conservative Christians established the first Christian-dominant party—the Faith and Hope League, in September 2015, to evangelize Taiwanese politics. In the 2015–2016 legislator election, anti-LGBTQ conservatives’ well-resourced campaigns created chilling effects on politicians, who shunned away from endorsing marriage equality, withdrew support, or turned silent.

Between 2013 and 2015, younger progressives emerged to confront entrenched institutional inequalities, including rallies that opposed military bullying and media monopoly, the Sunflower Movement against the KMT administration’s enforcement of the Cross-Strait Service Trade Agreement, and high schoolers’ Anti-Black Box Curriculum Movement.⁵³ Waves of progressive movements cultivated a social atmosphere for equality and justice. Tsai Ing-wen, then the DPP presidential candidate, publicly supported marriage equality in the week of the 2015 Taiwan Pride and eventually won the 2016 elections with a landslide victory. DPP gained both the presidency

⁵² Hsu, “Colors of Rainbow, Shades of Family: The Road to Marriage Equality and Democratization of Intimacy in Taiwan,” 154–164.

⁵³ Ming-sho Ho, *Challenging Beijing’s Mandate of Heaven: Taiwan’s Sunflower Movement and Hong Kong’s Umbrella Movement* (Philadelphia, PA: Temple University Press, 2019).

and majority legislator seats, which shaped the later constitutional dialogue in favor of LGBTQ citizenship.

In its first five months, the Tsai administration did not prioritize marriage equality until a tragic death shockingly occurred in October. Dr. Jacques Picoux, a National Taiwan University professor of French-language, committed suicide after losing his same-sex partner to death due to illness. His partner's family took away most of Picoux's living properties because Taiwan had few laws to protect same-sex couples' rights in 2016. DPP legislator Yu Mei-nu worked closely with LGBTQ activists to propose a streamlined amendment of Civil Code for legalizing same-sex marriage without changing the heterosexual naming-system.⁵⁴ This bill flew through a first reading and proceeded to committee review, only to confront powerful opposition from the conservative bloc.

In November–December 2016, the culture war escalated when both pro- and anti-LGBTQ groups mobilized waves of rallies and protests to influence the legislature. The Happiness Alliance and allies mobilized roughly 200,000 people to protest in several cities on December 3rd. The pro-LGBTQ communities responded with 250,000 supporters protesting in front of the Presidential Office to push forward the marriage equality legislation on December 10th. Eventually, the Judiciary and Organic Laws and Statutes Committee concluded its substantive review and presented two versions of the Civil Code amendment to the Legislative Yuan for inter-party negotiations and a second reading. Unfortunately, due to KMT's opposition and DPP's hesitation, the amendments failed to proceed.

The legislative deadlock pushed pro-LGBTQ activists to redirect the constitutional dialogue to the Constitutional Court.⁵⁵ In 2015, both the Taipei City Government and LGBTQ activist Chi Chia-wei, supported by TAPCPR, filed petitions to the Court, arguing that the Civil Code exclusion of same-sex marriage was unconstitutional. Five leading feminist and pro-LGBTQ groups established a new platform—Marriage Equality Coalition—Taiwan (MECT, later Taiwan Equality Campaign) to supplement TAPCPR's legal mobilization of constitutional litigations and enhance social mobilization with their larger grassroots constituencies.⁵⁶ Thus, the political deadlock and escalating civilian confrontation urged the Court to engage in marriage-related constitutional debates.

⁵⁴ For this historical development, see Ying-chao Kao, *Organizing Transnational Moral Conservatism: How U.S. Christian and Taiwanese 'Pro-Family' Movements Converge, Diverge, and Collide* (PhD diss., Rutgers University, 2018).

⁵⁵ Hsiao-wei Kuan, "Marriage Equality and Legal Mobilization: The Litigation and Legislative Actions before Judicial Yuan Interpretation No. 748," *Taiwan Democracy Quarterly* 16, no. 1 (2019): 1–44.

⁵⁶ Marriage Equality Coalition Taiwan, "Marriage Equality Coalition Taiwan Work Report 2016–2017," https://equallove.tw/sites/default/files/dl-files/2017婚姻平權大平台_工作報告書.pdf (accessed November 29, 2025); amici curiae—friend of court to appear despite interested person(s) had no direct standing to appear.

The Changing Structure for Constitutional Rulings and Debates (2016–2017)

As discussed, the courts often evaluate the political atmosphere and possible setbacks when reviewing controversial cases. In 2016, Taiwan's changed structure of representative politics led to the Constitutional Court's reorganization and reshaped its decisions.

President Tsai took the opportunity of new judicial appointments and nominated seven liberal-leaning Justices, whom the DPP-majority Legislative Yuan approved smoothly.⁵⁷ The re-configured Constitutional Court was compelled, by societal forces, into the constitutional dialogue about marriage equality amidst conservative-progressive confrontations. To respond, the Court informally accepted *amici curiae* from professional associations (a new milestone in Taiwan's history of judicial reform) and publicly heard the debates regarding the constitutionality of the Civil Code's exclusion of same-sex couples' marital rights in March 2017.⁵⁸ This marked one of the few public hearings held by the Court to cultivate the constitutional dialogues between society and regional and national governmental branches.

The public hearing became a stadium of constitutional debates among various ideological and institutional forces. The anti-LGBTQ conservatives refused to recognize same-sex marriage as constitutional, arguing that it conflicted with their family values and was not recognized as human rights by all European courts.⁵⁹ Pro-LGBTQ groups argued that depriving the marital rights of LGBTQ citizens violated their human dignity, Taiwanese constitutional law, and international human rights. TAPCPR's discourses based on domestic constitutional doctrines and international human rights laws provided an appealing legal authority for the Court's progressive-leaning ruling.

Dialogic Judicial Review (2017)

Taiwan's Constitutional Court announced its ruling in favor of LGBTQ rights on May 24, 2017. Its JY Interpretation No. 748 declared unconstitutional the Civil Code provisions that excluded same-sex partners from the legal protection

⁵⁷ See Kuan, "LGBT Rights in Taiwan," 601-603.

⁵⁸ For the four issues debated in the Constitutional Court, please see Secretary of the Constitutional Court—Judicial Yuan Taiwan, *Justices of the Constitutional Court Scheduled Oral Argument of Constitutional Review for Application Huei-Tai Case No. 12771 by Taipei City Government and Application Huei-Tai Case No. 12674 by Chi, Chia-Wei* (2017), <https://bit.ly/2EKSffg> (accessed August 28, 2020).

⁵⁹ The Coalition for the Happiness of Our Next Generation, "European Court of Human Rights: Same-sex Marriage is Not a Human Right," *The Coalition for the Happiness of Our Next Generation* (July 30, 2014), <https://taiwanfamily.com/2752> (accessed August 25, 2023).

of marriage freedom and equal treatment.⁶⁰ Our critical analysis of the judicial decision reveals four strategies of Taiwan's Court in the constitutional dialogue.

(1) Legitimizing Judicial Intervention and Messaging the Legislative Branch
JY Interpretation No. 748 justified its intervention based on the argument that LGBTQ citizens had historically been a “discrete and insular minority,” nodding to Ely’s theory of representation-reinforcing judicial review to consolidate the necessity and legitimacy of juridical intervention.⁶¹ It exposed the chronic failure of Taiwan’s representative democracy in which LGBTQ citizens were “unable to overturn their legally disadvantaged status through ordinary democratic processes” because of their constrained political power.⁶² Judicial intervention was legitimate to enhance LGBTQ citizens’ representativeness and provide a constitutional framework to an unresolved controversy like same-sex marriage.⁶³

In addition, the Court checked the legislative idleness and noted: “after more than a decade, the Legislative Yuan remains yet to finish the legislative procedures of relevant same-sex marriage bills.”⁶⁴ It recognized the petitioner Chi’s thirty-year efforts for LGBTQ rights, addressing the past failures of legalizing same-sex marriage in the legislative, executive, and judicial branches. The Court deliberated this as “a gross legislative flaw” and thus intervened to reset the tone and cadence of the constitutional dialogue.⁶⁵

(2) “Glocalizing” Global Precedents to Enhance Local Juridical Reasoning
To enhance its reasoning, JY Interpretation No. 748 localized the global dialogue on marriage equality and globalized this local case in the transnational context.⁶⁶ It cited the US Supreme Court’s decision in *Obergefell v. Hodges* not to be self-colonized by American constitutionality, but to agree upon the emerging global consensus that “sexual orientation is both a normal expression of human sexuality and immutable” and align it with domestic and international

⁶⁰ *J.Y. Interpretation No. 748 (Same-Sex Marriage Case)*, Judicial Yuan Constitutional Court (May 24, 2017), <https://cons.judicial.gov.tw/en/docdata.aspx?fid=100&id=310929> (accessed November 26, 2025).

⁶¹ Ely, *Democracy and Distrust*.

⁶² *J.Y. Interpretation No. 748 (Same-Sex Marriage Case)*.

⁶³ Ely, *Democracy and Distrust*.

⁶⁴ *J.Y. Interpretation No. 748*, para. 9; Ming-sung Kuo and Hui-wen Chen, “Responsibility and Judgment in a Muted 3-D Dialogue: A Primer on the Same-Sex Marriage Case in Taiwan,” *International Journal of Constitutional Law Blog* (May 26, 2017), <http://www.icconnectblog.com/responsibility-and-judgment-in-a-muted-3-d-dialogue-a-primer-on-the-same-sex-marriage-case-in-taiwan/> (accessed July 2, 2017).

⁶⁵ *J.Y. Interpretation No. 748*, paras. 3, 13.

⁶⁶ Although Taiwan’s Constitutional Court relies on comparative law, David Law and Wen-chen Chang observe that it often uses international precedents without attribution. See *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); see also David S. Law and Wen-chen Chang, “The Limits of Global Judicial Dialogue,” *Washington Law Review* 86, no. 3 (2011): 557-567.

medical and psychological evidence to affirm that “homosexuality is not a disease/disorder.”⁶⁷ The Court acknowledged that citizens with homoeroticism had been traditionally denied, socially closeted, and legally vulnerable by “various forms of *de facto* or *de jure* exclusion or discrimination” and applied a heightened standard of scrutiny to review the constitutionality of the Civil Code’s different treatments based on sexual orientation.⁶⁸ Thus, Interpretation No. 748 emphasized two constitutional doctrines—“freedom of marriage” and “right to equality” and recognized that citizens’ marital freedom (including autonomous decisions regarding “‘whether to marry’ and ‘whom to marry’”) are crucial to adequately developing one’s personality and safeguarding human dignity.⁶⁹ It addressed that the different treatments based on sexual orientation violated the constitutional protection of the right to equality.⁷⁰ Eventually, the Court invalidated part of the Civil Code provisions that failed to “allow two persons of the same sex to create a permanent union of intimate and exclusive nature to live a common life.”⁷¹ The Court re-interpreted local constitutional values, hybridized them with global constitutional jurisprudence to enhance local judicial reasoning, and, thus, “glocalized” the notions of marriage equality in Taiwan and re-globalized Taiwan’s jurisprudence back to the transnational dialogues of marriage equality.⁷²

(3) Making Room for Political Deliberation

Taiwan’s Court intentionally avoided single-institutional decision-making and made room for political deliberation. The Court mandated the “authorities concerned” to “amend or enact the laws as appropriate in accordance with the ruling of this Interpretation within two years.”⁷³ This judicial intervention chose not to invalidate the Civil Code immediately. It set up a two-year timeframe and pressured the representative politics to deliberate the formality of legalization with a list of recommendations, including “amendment of the [Civil Code] Marriage Chapter, enactment of a special Chapter in Part IV on Family of the Civil Code, enactment of a special law, or other formality.”⁷⁴ This strategy reduced the risks of juristocracy and enhanced democratic constitutionalism by mandating representative politics to participate in the difficult constitutional dialogue.

⁶⁷ J.Y. Interpretation No. 748, para. 21.

⁶⁸ J.Y. Interpretation No. 748, paras. 19-21.

⁶⁹ J.Y. Interpretation No. 748, paras. 1, 19.

⁷⁰ J.Y. Interpretation No. 748, para. 20.

⁷¹ J.Y. Interpretation No. 748, para. 19.

⁷² See the analysis of “glocalization” of American/Western sexualities in the Taiwanese context in Ying-chao Kao, “The Coloniality of Queer Theory: The Effects of ‘Homonormativity’ on Transnational Taiwan’s Path to Equality.”

⁷³ J.Y. Interpretation No. 748, para. 1.

⁷⁴ J.Y. Interpretation No. 748 (reasoning), para. 17.

(4) Setting Agenda and Principles for Sequential Dialogues

Specifically, the Court acknowledged the complexity and controversy of the case. To avoid continuing overdue legislation, the Court mandated that, if other governmental branches failed to amend or enact adequate laws within the two-year timeframe, same-sex couples can register their marriage with a document signed by two witnesses or more at their local authorities two years after the JY Interpretation No. 748.⁷⁵ Setting up the deadline as May 24, 2019, this ruling re-directed the constitutional dialogue to move from *whether* same-sex marriage should be protected (*constitutionality*) to *how it* should be protected (*legislative formality*). It reprogramed the topic, tone, and cadence of constitutional dialogue.⁷⁶

Importantly, judicial participation in constitutional dialogues in 2017 marked a pivotal yet not a conclusive moment of same-sex marriage legalization in Taiwan. The Court addressed the flaws of representative democracy, evaluated political climates, and strategically participated in the multi-institutional dialogues. Avoiding juristocracy, it reflected the society's increasingly supportive attitudes and reinforced this consensus.⁷⁷ Therefore, Taiwan's Court functioned as both a consolidator of progressive changes toward LGBTQ equality and a creator of new social norms when it intervened in unsettled battles over gender/sexual citizenship. It constructed a new framework for sequential constitutional dialogues while providing space for political deliberation with a conversational agenda.

Thus, our data falsify and complexify the overly simplistic explanation of Taiwan's path as a court decision that some international media or scholarship reported inadequately.⁷⁸ Instead, Taiwan's Court reacted *not* as an authoritarian decision-maker but one of many institutional interlocutors in the democratic constitutional dialogues. Despite its self-humbling, the ruling stimulated another wave of conservative "talk-back."

⁷⁵ Ibid.

⁷⁶ *J.Y. Interpretation No. 748*, paras. 3, 13.

⁷⁷ Public support for same-sex marriage in Taiwan exceeded 50 percent in the early 2010s. This kind of social shift, as Yeh and Chang suggest, is what the Constitutional Court often cautiously reflects in its decisions. See Hoching Jiang, "Marriage, Same-Sex, in Taiwan," in *The Global Encyclopedia of Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) History*, eds. Howard Chiang et al. (New York: Charles Scribner's Sons, 2019), 1004-1008; Yeh and Chang, "An Evolving Court with Changing Functions;" Chang, "Constitutional Dialogue in Common Law Asia;" see also Jiunn-rong Yeh and Wen-chen Chang, "The Emergence of East Asian Constitutionalism: Features in Comparison," *The American Journal of Comparative Law* 59, no. 3 (2011): 830-834.

⁷⁸ Human Rights Campaign, "Marriage Equality Around the World (2022)," *Human Rights Campaign*, <https://www.hrc.org/resources/marriage-equality-around-the-world> (accessed May 3, 2022); The Associated Press, "Taiwan Court Rules Same Sex Marriage Legal in Asia First," *NBC News* (May 24, 2017), <https://www.nbcnews.com/feature/nbc-out/taiwan-court-rules-same-sex-marriage-legal-asia-first-n763931> (accessed November 29, 2025).

Referendum Populism: Anti-LGBTQ People Talked Back (2018)

The conservative “talk-back” was enabled and amplified by a contingent political opportunity: the Referendum Act’s amendment in 2018. The amendment drastically lowered the thresholds of referendum initiation and passage and provided a new institutional platform for homophobic populism to expand and escalate to confront (or even “overturn,” as claimed) the Court’s ruling. In 2017–2018, two possible extreme consequences of constitutional dialogue—juristocracy and referendum populism—emerged, clashed, and jointly influenced the trajectory of Taiwan’s marriage equality debates.

Referendum Reform: A New Political Structure That Nurtures Populism

Taiwan’s national referendum system was criticized as a “birdcage referendum act” because of its high thresholds and mandated governmental reviews.⁷⁹ The 2018 Referendum Act Amendment abolished the Referendum Review Commission and lowered the thresholds of proposing, initiating, and passing a referendum.⁸⁰ The amendment increased the likelihood of overturning legislative decisions via referendum. Although studies warned that referendum decisions may form a majoritarian tyranny to oppress minorities,⁸¹ referendum supporters believed that direct democracy was necessary to remedy the deficits of representative democracy. Nevertheless, pro-referendum radicals became notably silent when anti-LGBTQ conservatives proactively used the new Act to overturn the Court’s ruling and consolidate heteronormative supremacism.

In early 2018, the Happiness Alliance and a new Christian-based party, the Stabilizing Force Party, proposed three anti-LGBTQ referenda. Of the three, two propositions targeted the definition of marriage and the formality of legalizing same-sex marriage; the third aimed to suspend the implementation of LGBTQ-inclusive education in grades 1-9 schools. At their hearing, expert reviewers pinpointed that the propositions were encumbered by ambiguous wording and moral/legal controversies; nevertheless, the hearing did not stop the anti-LGBTQ referenda’s proceeding to the ballot.⁸² To react, pro-LGBTQ activists initiated two pro-LGBTQ “counter-referenda” that addressed pro-

⁷⁹ For the controversies of the 2003 Referendum Act, see Joseph Lee, “The Referendum Law 2003 in Taiwan: Not Yet the End of the Affair,” *China Perspectives* 65 (2006): 1-13.

⁸⁰ See *Referendum Act* (Taiwan), §§ 29, 30 (2017), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0020050> (accessed June 8, 2024).

⁸¹ See, e.g., Daniel Moeckli, “Referendum: Tyranny of the Majority?” *Swiss Political Science Review* 24, no. 3 (2018): 339.

⁸² The Coalition for the Happiness of Our Next Generation, “Post-meeting Press Release: The Happiness Alliance Promotes the Referenda of a Special Law and Unchanging the Marriage Definition to Protect Same-Sex Relations, Not Support Same-Sex Marriage,” *The Coalition for the Happiness of Our Next Generation* (February 9, 2018), <https://archive.is/20181120035502/https://taiwanfamily.com/102965> (accessed July 13, 2020).

marriage equality and pro-LGBTQ-inclusive education respectively.⁸³ After both camps' petitions, Taiwan's referendum ballots, accompanied by the 2018 mid-term elections, included two anti-LGBTQ referenda and one pro-LGBTQ referendum regarding marriage equality:

Anti-LGBTQ referenda

Proposition 10: Do you agree that the definition of marriage in the Civil Code should be restricted to a union between one man and one woman?

Proposition 12: Do you agree to use any forms *other than [amending] the Civil Code marriage regulation* to protect same-sex couples' rights and benefits of managing their permanent cohabitations?

Pro-LGBTQ referendum

Proposition 14: Do you agree to *use the Marriage Chapter in the Civil Code* to protect same-sex couples to establish a marital relationship? (authors' italics)

The outcome was a landslide defeat to LGBTQ activism. The two anti-LGBTQ referenda passed with over 7.65 million (72 percent) and 6.4 million (61 percent) votes respectively. The pro-LGBTQ referendum received 3.3 million votes (32.8 percent), being rejected by 6.9 million voters. Moral conservatives interpreted these as a victory of God's authority and traditional values and a people's challenge to the judicial legitimacy of the Court's Interpretation No. 748.

Taiwan's referendum amendment generated more questions about constitutional dialogue: Can referendum results represent popular sovereignty and overturn the Court's ruling? What can the mechanism of democratic constitutionalism do to respond to the populist backlash, continue dialogues, and maintain a functioning democracy?

Expansion of Constitutional Dialogue

Different from American state-level referenda, Taiwan's referendum reform enables national-level referenda, which potentially generate broader dialogues,

⁸³ Po-ya Miao, *Facebook post* (April 17, 2018), <https://www.facebook.com/miaopoya.sdp/posts/1684323948313853/> (accessed June 8, 2024).

check governmental branches, and construct constitutional meanings about controversial issues. While sexualities were usually not discussable in public in an Asian society like Taiwan, the conservative-initiated referendum war unintendedly broke the societal taboo that silenced sexualities-related conversations, urging all citizens to listen, think, respond, and debate in this nationwide constitutional dialogue. The anti-LGBTQ referenda ironically publicized national same-sex marriage discussions and helped engage more citizens into the constitutional dialogue at an unprecedented level.

However, the dialogic expansion in the new political structure benefited more the political majority and better resourced campaigners. This structure resembles a discursive market where the keys to successful mobilization are human and material resources, organizational networks, and strategies of emotional mobilization, rather than legal arguments in constitutional deliberation. Hunter's American theory resonates with Taiwan's experience, showing that, as the same-sex marriage dialogue switched from elitist politics to populist referenda, the anti-LGBTQ mobilization exacerbated the majoritarian tyranny, spread homophobia, and devastated the stigmatization of sexual/gender minorities.⁸⁴ Unfortunately, the referendum amendment failed to design a mechanism to protect minorities from the majoritarian tyranny.⁸⁵ Its poor design led to low-quality civil deliberation, which was deteriorated by an overwhelming number of convoluted referendum questions forcing voters with limited information to decide in only three months. The amendment also failed to prevent political parties, enterprises, and foreign organizations from unduly influencing Taiwan's political mobilization.

Notably, anti-LGBTQ conservatives exploited this opportunity to condemn the JY Interpretation 748 as juristocracy, challenging the Court's legitimacy. Their slogans chanted: "marriage and family, people's decision." They attempted to persuade voters that referenda could redefine marriage, overturn the Court's decision, and rewind history back to the heteronormative past. "The minoritarian judicial elites shall not bully people's majoritarian will," they argued.⁸⁶ This manufactured an illusionary dichotomy between the judicial elites and the presumed-heterosexual voters and formed a new constitutional interlocutor that we identify as "referendum populism." This propaganda disguised the fact that referenda could only determine the legal formality of legalizing same-sex marriage, rather than overturn the constitutional ruling.

⁸⁴ Hunter, "Varieties of Constitutional Experience: Democracy and the Marriage Equality Campaign," 1687-1695.

⁸⁵ Daniel Smilov and Ivan Krastev, "The Rise of Populism in Eastern Europe: Policy Paper," in *Populist Politics and Liberal Democracy In Central and Eastern Europe*, eds. Grigorij Mesežnikov, Olga Gyárfášová, and Daniel Smilov (Bratislava: The Institute of Public Affairs, 2008), 7-8.

⁸⁶ Christian Daily, "The Happiness Alliance Can't Accept the Interpretation 748, Initiating Two Referenda," *Christian Daily* (May 25, 2017), <https://cdn-news.org/news/00000011262> (accessed November 29, 2025).

Unintended Consequence: Embedding Anti-LGBTQ Backlash Within Constitutional Processes

While the amendment enabled anti-LGBTQ referendum populism, Taiwan's legal and constitutional frameworks remained regulating and constraining the choices of populist mobilization. Entering the legal systems of referendum and legislation implied that anti-LGBTQ populists acknowledged the constitutional order and the power of judicial review that could illegitimate unconstitutional laws or propositions. When anti-LGBTQ groups deliberately appropriated constitutional frames to legitimate their moral claims, they revealed internal contradictions within their legal framing of their propositions. For instance, Proposition 10 asked citizens whether to oppose homosexuality by defining marriage as a monogamous heterosexual union in opposition to the Constitutional ruling. Yet, Proposition 12 proposed to grant same-sex couples limited protections, albeit reluctantly, because conservatives understood that the ruling had binding power and their baseline aim was to marginalize LGBTQ citizens from full protections of the Civil Code. Thus, the Constitutional ruling led to a paradoxical consequence for the anti-LGBTQ referendum initiators, who had to advocate for “protect[ing] same-sex couples’ rights and benefits of managing their permanent cohabitations” with a special law (Proposition 12), to conserve the heteronormative privilege of using the Civil Code to marry.

Conservatives’ referendum-populist “talk-back” thus produced unintended consequences: it ironically facilitated mainstreaming social dialogues on same-sex marriage, channeling itself into Taiwan’s constitutional framework to abide by norms of constitutionalism and liberal pressure. Also, it shifted the conversations from the constitutionality of same-sex marriage to the practical techniques of law-making formality.

Building Tentative Constitutional Consensus

Taiwan’s multi-institutional model reduced the risk of referendum populism with functional socio-political processes of democracy. The executive and legislative branches transformed the anti-LGBTQ referenda from a populist attack on the Court’s ruling to a constructive result about the legislative formality—establishing a non-Civil Code special law to legalize same-sex marriage. Unexpectedly, this also dissolved a debate among progressives regarding whether Taiwan should legalize same-sex marriage via amending the Civil Code or forming a special law. This way, referenda became a consensus-making mechanism to facilitate sequential constitutional dialogues between the executive and legislative branches and between the government and society. For example, Proposition 12 helped shifted focus away from protracted debates over the origins and moral framing of homoeroticism and refocused on the form and content of legal protection for same-sex couples under a new law.

Notably, the constitutional consensus-building also relied on the constitutional values and norms established during Taiwan's development of constitutionalism, which channeled conflicts into constitutional contention. JY Interpretation No. 748 has affirmed marriage equality and delegitimated discriminatory laws based on sexual orientation. Society's constitutional awareness further influenced the Central Election Commission, which pushed anti-LGBTQ groups to revise their propositions to comply with JY Interpretation No. 748. Through referenda, the majority of voters sent a collective message to the progressive-leaning Court, pushing society to reconsider the role of judicial review in constructing constitutional meanings regarding same-sex marriage. This way, the Court's ruling framed the political process of referenda to continue, and, conversely, referenda facilitated the implementation of the ruling. Taiwan's referendum reform, despite many traumas and social confrontations during the campaigns, also formulated and cultivated a societal awareness that a direct democracy without adequate rational deliberation may lead to populism against constitutionalism and referendum abuses for political purposes. The referendum defeat urged pro-LGBTQ politicians and activists to be realistic and switch back to the constitutional dialogues in legislative lobbying and bill deliberation.

Finalizing the Dialogue with Administrative-Legislative Collaboration (2019)

President Tsai recognized the contingent consensus of constitutional dialogue: "With this referendum and constitutional interpretation,we did get a highly controversial and divisive issue narrowed down to two issues only." "One, people generally agree that we should provide protections to homosexuals. The second issue is in what form the legal protection should be provided."⁸⁷

The administrative and legislative branches were tasked with finalizing the legalization of same-sex marriage based on the constitutional ruling and referendum results. Their dialogues were regulated by two institutional timeframes: First, Taiwan's Referendum Act required the Executive Yuan to respond to a passed initiative in three months by studying a proposal of the related laws and sending it to the Legislative Yuan for deliberation (deadline: February 24, 2019).⁸⁸ Second, JY Interpretation No. 748 pressured timed legislation of protections for same-sex couples in two years (deadline: May 24, 2019). If either branch failed, same-sex couples could legally register marriage under the Court's mandate; and both branches would shame themselves with procrastination and incapacity.

⁸⁷ Taipei Representative Office in the UK, "President Tsai Ing-wen Interviewed by UK-based Monocle Magazine," *Taipei Representative Office in the UK* (August 21, 2019), https://www.roc-taiwan.org/uk_en/post/5056.html (accessed November 29, 2025).

⁸⁸ *Referendum Act* (Taiwan), art. 30-2, version promulgated June 21, 2019.

While the constitutional dialogue re-focused on the content and formality of legal protection for same-sex couples, two polarized positions emerged: providing same-sex couples the protections as full as what their opposite-sex counterparts have enjoyed, or merely granting them a selectively limited package. The ruling party (DPP), controlling both the Executive and Legislative branches, faced another conundrum. If they legalized same-sex marriage, they risked elevating conservative backlash that might negatively impact the presidential and legislator elections in January 2020. If they failed to resolve the conflicts and fulfill Tsai's promise to achieve marriage equality, they risked losing younger supporters and pro-LGBTQ voters. Fortunately, earlier constitutional dialogues built the foundation for representative democracy to re-participate in the dialogue and solve the conundrum with administrative-legislative negotiation.

Political Polarization and Dialogic Strategies to Build the Consensus

The Executive Yuan's counter-bill and administrative support were important in the new legislative efforts. After their defeat in the 2018 referenda and elections, the DPP president and premier were determined to actively push forward the agenda of same-sex marriage legalization, among other progressive policies, to win back their younger voters. Then-Premier Lai Ching-te announced his support for establishing a separate law to legislate same-sex marriage; this drew immediate criticism from both pro- and anti-LGBTQ camps. His successor Premier Su Tseng-chang's team, based on former research reports and negotiations with civil groups, drafted a bill that fulfilled both the constitutional ruling and referendum results. In February 2019, the Executive Yuan proposed its first officially publicized same-sex marriage bill and submitted it to the Legislative Yuan, marking another historical milestone.⁸⁹

However, the bill faced tremendous opposition from both the political opponents (KMT) and their own intra-party comrades (DPP) based on religious and moral reasons. To build a political consensus in three months, Su's cabinet took four effective strategies:

(1) Managing a Secured Intra-cabinet Lawmaking Process

Su assigned a special, trustful official in his core team to physically hold and secure the circulation of the hard copy of the same-sex marriage bill and run it through the relevant offices to complete the intra-cabinet review. This

⁸⁹ See Taiwan Executive Yuan, "The Draft of the Act for Implementation of J.Y. Interpretation No. 748: General Explanation," *Taiwan Executive Yuan* (2019), <https://www.ey.gov.tw/File/271D3442B7FBCDBF?A=C> (accessed November 29, 2025); Taiwan Ministry of Justice, "Act for Implementation of J.Y. Interpretation No. 748," *Laws & Regulations Database of The Republic of China (Taiwan)* (2019), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0000008> (accessed November 29, 2025).

avoided information-leaking and unnecessary controversies before the bill was published in its maturity.

(2) Launching A Nationwide Social-media Campaign with Explanations and Emotional Mobilization

On the same day when the Executive Yuan announced its bill, Premier Su's Facebook released an emotionally touching and rationally persuasive video of his charismatic public address to reduce misunderstanding and increase social support of same-sex marriage. As a veteran of Taiwanese pro-democracy activism and a cisgender father and grandpa, Su appealed for mutual respect and understanding among people with dissenting voices. He gently spoke to conservatives and invited them to be open-minded and inclusive for other citizens with differences. He also encouraged Taiwanese folks to be nice to one another and collaboratively make Taiwan a greater country with friendliness and equality. Premier Su's speech moved many people, reduced opposition, and re-framed same-sex marriage as an issue of human rights rather than partisan competition.⁹⁰

(3) Neutralizing the Marriage-related Symbolic Order with Material Protections

A focal point of controversy was whether the legal protections for same-sex couples should be named "marriage." The Executive Yuan's bill adopted a strategically neutral title—"Act for Implementation of J.Y. Interpretation No. 748," to avoid the controversies of choosing "marriage," "partnership," or "civil union." The bill's contents encapsulated both the constitutional ruling and referendum results. Acknowledging the political reality, pro-LGBTQ groups accepted this compromised bill because its Article 2 clearly defined that,

the people engaged in a relationship of same-sex marriage refer to two same-sex persons who form a permanent union of intimate and exclusive nature to live a common life.⁹¹

Substantively, the bill provided a wide range of legal protections to same-sex couples and their children, ranging from the rights and obligations in cohabitation, housework representativeness, living expenses sharing, property and debt treatment, and parenthood over children, among others.

⁹⁰ See SETN, "Same-sex Marriage Bill Released, Su: Equal Protection of Same-sex Couples' Marital Freedom," *SETN YouTube* (February 20, 2019), <https://youtu.be/2chnFoARno0> (accessed November 29, 2025).

⁹¹ Taiwan Executive Yuan, "Executive Yuan Passed the 'Act for Implementation of J.Y. Interpretation No. 748' Bill," *Taiwan Executive Yuan* (February 21, 2019), <https://www.ey.gov.tw/Page/9277F759E41CCD91/5edd0f9a-0d45-4069-a94c-6a5485ef9915> (accessed November 29, 2025).

(4) Emotional Interpellation and Multi-channel Mobilization

On May 16, 2019, one day before the legislators' vote, Premier Su organized an "Executive-Legislative Negotiation Report Meeting," where his administrative team convened with all DPP legislators. Su reminded them, the political workers of his generation and younger, that their party was established during the Martial Law period when initiators could die at the dictator's hand for promoting democracy. "You as legislators may pass hundreds or thousands of bills in your lifetime, but few will be remembered. This is one of the few that people will recognize in history," Su encouraged his legislator comrades to create history together.⁹²

To ensure their bill to be prioritized, the DPP legislators organized squads, took turns, and used their bodies to guard the congress building's door from midnight to dawn to prevent political foes' agenda obstruction. Meanwhile, Su's administrative team and the DPP party office mobilized multiple channels to encourage legislators to bear the political pressure from conservatives and vote on the right side of history for human rights.

Political Consensus through Collaboration

On May 17, 2019, after hours of confrontational debates, the first same-sex marriage law in Taiwan and Asia was passed under the title "Act for Implementation of J.Y. Interpretation No. 748" (hereafter JYI 748 Act). The strategic ambiguity with no marriage in the title helped reduce opposition. Compared with the Executive Yuan's bill, the JYI 748 Act showed another compromise by removing the term "marriage" in Article 2 and rather stated that,

[t]wo persons of the same sex may form a permanent union of intimate and exclusive nature [to live] a common life.

Marriage was clearly mentioned in the way to register a marriage:

A union, as stated in Article 2, shall be affected in writing, which requires the signatures of at least two witnesses, and by *marriage registration* at the Household Administration Bureau. (Article 4; emphasis added)

This Article was passed with a majority vote—Yea: 66 (58.4 percent), Nay: 27 (23.9 percent), Absences: 20 (17.7 percent), marking a meaningful milestone in legalizing same-sex marriage and LGBTQ equality.

⁹² Tseng-chang Su, "Letter to the Members of the Democratic Progressive Party Legislative Yuan Caucus," *Facebook* (May 13, 2019), <https://www.facebook.com/gogogoeball/photos/a.186955736269/10156412730306270/> (accessed November 2, 2025).

Importantly, some protections were missing in the JYI 748 Act—2019 version. For example, one party in a Taiwanese same-sex marriage could adopt the genetic child of the other party but could not adopt their/his/her spouse's non-genetic child. Another unfinished battle was same-sex couples' transnational marriage, given that the Act only legitimated a Taiwanese citizen to marry a same-sex foreigner whose country also legalized same-sex marriage. The constitutional dialogues regarding these compromised clauses continued; several pro-LGBTQ amendments passed with little opposition. As of March 2025, same-sex couples in Taiwan can legally co-adopt genetic and non-genetic children as equally as different-sex couples. The scope of transnational same-sex marriage has been expanded to cover same-sex marriages between Taiwanese citizens and foreigners from most countries.⁹³ Cross-Strait same-sex marriage between Taiwanese and Chinese citizens can register their marriage in Taiwan, conditionally, if they have been legally married in a third country where same-sex marriage has been legalized and followed the same procedure that the cross-Strait different-sex couples have used.⁹⁴

Conclusion: Taiwan as A Model of Multi-Institutional Constitutional Dialogue toward Marriage Equality

Compared with the single-institutional models (e.g., court-centered and legislature-dominated models), Taiwan's approach highlights the model of multi-institutional constitutional dialogue to legalize same-sex marriage. Figure 2 visually summarizes Taiwan's model that contains a series of constitutional dialogues among various institutions and interlocutors: In the 2000s—2012, civil society advocated for progressive changes, and minority legislators discussed them yet faced conservative opposition and administrative procrastination. In 2015, pro-LGBTQ groups and a city government urged the Court to speak. The Court's 2017 ruling established the "glocalized" constitutionality based on the rights of freedom and equality, arranged the timetable, and focused the dialogic topic on legislative formality, which was paradoxically determined by an anti-LGBTQ referendum in 2018 to be legalization via a special law.

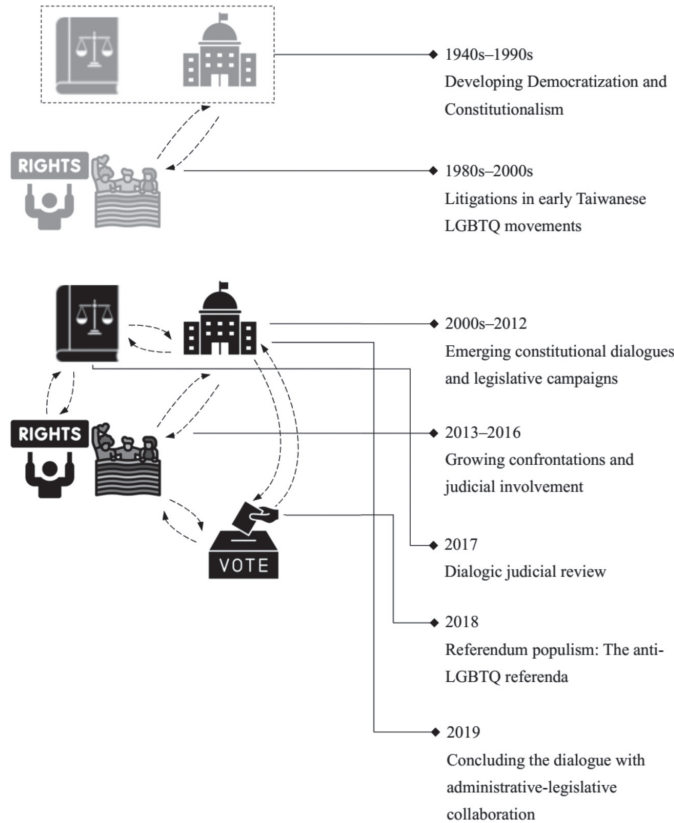
⁹³ See Taiwan Ministry of Justice, "Act for Implementation of J.Y. Interpretation No. 748," *Laws & Regulations Database of The Republic of China (Taiwan)* (2019), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0000008> (accessed March 12, 2023); Taiwan MOI Household Registration, "Regarding Transnational Same-Sex Marriage Applicable to the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements (No. 1120240466)," (2023); Brian Hioe, "Following Amendments in Legislature, Full Adoption Rights Allowed for Gay Couples," *New Bloom Magazine* (May 18, 2023), <https://newbloomag.net/2023/05/18/adoption-rights-gay-couples-passed/> (accessed November 29, 2025).

⁹⁴ Taiwan Mainland Affairs Council, "Cross-Strait Same-Sex Couples May Marry in Taiwan in Accordance with the Provisions of Cross-Strait Opposite-Sex Couples Who Married First in the Third Country," *Taiwan Mainland Affairs Council* (January 19, 2024), https://www.mac.gov.tw/News_Content.aspx?n=B383123AEADAEE52&sms=2B7F1AE4AC63A181&s=3C669B126B485864 (accessed November 20, 2025).

The executive-legislative collaboration in 2019 helped propose and pass a bill to legally protect same-sex couples’ marital rights in accordance with the referenda and the constitutional interpretation. Despite backlash, the pro-LGBTQ President Tsai’s victory in her 2020 reelection and DPP’s majority in Congress consolidated the legislation.

Taiwan’s functioning constitutional democracy proves that the social-executive-legislative-judicial collaboration can help mediate society’s polarizations and transform them into a policy for equality and inclusivity. In contrast to the court-centered model achieved by counter-majoritarian judicial review and the politics-centered model of popular sovereignty and populism, Taiwan’s multi-institutional model nationally empowered multiple voices from society and governmental branches to co-formulate the constitutional values and legislative formality for LGBTQ rights. The

Figure 2. Taiwan’s Historical Developments of Multi-institutional Dialogue.



Source: Author; logos from Freepik.com, used under Creative Commons license.

Court's judicial review in this model is neither counter-majoritarian nor purely consensus-based. It participates in continuing constitutional dialogue to facilitate consensus building by evaluating political climates and social attitudes, ruling in a constitutional interpretation to determine the direction and baseline of the following dialogues, and making room for direct and representative democracies to negotiate legislative formality. While the Court could not eliminate controversies, its decision has constitutive effects on the social norms, legal claims, and agenda/timeline for subsequent constitutional dialogue.

Taiwan's dialogic constitutionalism helps respond to a long-term debate: What should constitutional decision-making accomplish in a democratic and diverse society?⁹⁵ The dialogic process enables deliberation on different values to enhance the democratic legitimacy of public decisions. The openness of Taiwan's political opportunity structure provides platforms for various ideological agendas and gives activists reasons to persist in constitutional dialogues. Multi-institutional constitutional dialogues—including discursive contestation, ideological disagreement, and negotiated compromise—have facilitated a more democratic deliberative process to construct the constitutional meanings and consensus on a controversy like same-sex marriage than single-institutional determinations, thereby preventing power abuses and compensating for the democratic deficits in single-institution decision-making. To balance constitutional principles and competing social interests, constitutional institutions interact and check each other through dialogue.⁹⁶ Taiwan's socio-inclusive multi-institutional constitutional dialogue approach has expanded from bi-institutional (judicial-legislative) dialogues to further incorporate social groups and all citizens' opinions through social movements, national referenda, and administrative-legislative collaboration, inviting all stakeholders to co-determine the constitutional meanings and values.

Therefore, Taiwan's model for marriage equality exemplifies an extended framework of socio-inclusive multi-institutional constitutional dialogue, which provides an alternative approach for societies with neither a political majority supporting same-sex marriage nor strong beliefs in judicial supremacy to pursue LGBTQ equality. It contributes to a more deliberative and legitimate decision-making model that embodies the collective sovereignty of the people. This multi-institutional approach to marriage equality provides an alternative model for future pursuits of LGBTQ dignity worldwide. To what extent this multi-institutional approach can be applicable in other societal contexts remains open to future researchers' exploration in comparison with Taiwan's democratic experiences analyzed in this research.

⁹⁵ Bateup, "The Dialogic Promise," 1111-1112.

⁹⁶ See generally Bell E. Yosef, "Constitutional Dialogue Under Pressure: Constitutional Remedies in Israel as a Test Case," *The American Journal of Comparative Law* 70, no. 3 (2022): 597.