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FACULTY OF POLITICAL SCIENCE AND SOCIOLOGY

Bachelor's Degree Dissertation

Title: *The Rights of the LGBTIQ+ Community in East Asia: The legalization of same-sex marriage in the Republic of China and in the People's Republic of China*

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Abstract: The rights of the LGBTIQ+ community have become an essential focus on the agenda for the United Nations Human Rights Council (UNHRC). The LGBTIQ+ community has historically suffered discriminatory violence, including physical and psychological aggressions, sexual attacks, tortures and even murders. However, the Universal Declaration of Human Rights (art. 2, 1948) does not recognize sexual orientation nor gender identity as discriminatory variables, which does not facilitate the universal promotion of LGBT rights. Considering the historical contestation against this community in East Asia, the aim of this project is to analyze the current situation of LGBT rights in the region based on the evolution of the legalization of same-sex marriage. In order to tackle the analysis, this investigation is a comparative case study between China and Taiwan, two culturally similar countries with different LGBT outcomes, and it is based on the constructivist theoretical framework of the cycle of norms. This study shows that the underlying argument that explains why the legalization of same-sex marriage differs between China and Taiwan remains on the intentions behind the institutionalization of the norm. In other words, while Taiwan aims at enforcing its national esteem and at gaining international legitimation through soft power by promoting LGBT rights; China prioritizes its traditional values instead of aligning with the ‘universality’ of human rights.

Keywords: LGBT rights, same-sex marriage, cycle of norms, China, Taiwan.

Resumen: Los derechos de la comunidad LGBTIQ+ se han convertido en un aspecto esencial de la agenda del Consejo de Derechos Humanos de las Naciones Unidas (CDHNU). Históricamente, la comunidad LGBTIQ+ ha sufrido violencia discriminatoria, incluidas agresiones físicas y psicológicas, ataques sexuales, torturas e incluso asesinatos. Sin embargo, la Declaración Universal de los Derechos Humanos (art. 2, 1948) no reconoce la orientación sexual ni la identidad de género como variables discriminatorias, lo que no facilita la promoción universal de los derechos LGBT. Teniendo en cuenta la contestación histórica contra esta comunidad en Asia Oriental, el objetivo de este proyecto es analizar la situación actual de los derechos LGBT en la región a partir de la evolución de la legalización del matrimonio entre personas del mismo sexo. Para abordar el análisis, esta investigación es un estudio de caso comparativo entre China y Taiwán, dos países culturalmente similares pero con resultados diferentes en materia LGBT, y se basa en el marco teórico constructivista del

ciclo de las normas. Este estudio demuestra que el argumento subyacente que explica por qué la legalización del matrimonio entre personas del mismo sexo difiere entre China y Taiwán sigue estando en las intenciones que subyacen a la institucionalización de la norma. En otras palabras, mientras Taiwán pretende reforzar su estima nacional y ganar legitimación internacional a través del poder blando mediante la promoción de los derechos LGBT, China prioriza sus valores tradicionales en lugar de alinearse con la "universalidad" de los derechos humanos.

Palabras clave: Derechos LGBT, matrimonio entre personas del mismo sexo, ciclo de normas, China, Taiwán.

Resum: Els drets de la comunitat LGBTIQ+ han esdevingut un aspecte essencial de l'agenda del Consell de Drets Humans de les Nacions Unides (CDHNU). Històricament, la comunitat LGBTIQ+ ha patit violència discriminatòria, incloses agressions físiques i psicològiques, atacs sexuals, tortures i fins i tot assassinats. Tanmateix, la Declaració Universal dels Drets Humans (art. 2, 1948) no reconeix l'orientació sexual ni la identitat de gènere com a variables discriminatòries, cosa que no facilita la promoció universal dels drets LGBT. Tenint en compte la resposta històrica contra aquesta comunitat a l'Àsia Oriental, l'objectiu d'aquest projecte és analitzar la situació actual dels drets LGBT a la regió a partir de l'evolució de la legalització del matrimoni entre persones del mateix sexe. Per abordar l'anàlisi, aquesta investigació és un estudi de cas comparatiu entre la Xina i el Taiwan, dos països culturalment similars però amb resultats diferents en matèria LGBT, i es basa en el marc teòric constructivista del cicle de les normes. Aquest estudi demostra que l'argument subjacent que explica perquè la legalització del matrimoni entre persones del mateix sexe difereix entre la Xina i Taiwan continua es troba en les intencions subjacents a la institucionalització de la norma. En altres paraules, mentre Taiwan pretén reforçar la seva estima nacional i guanyar legitimació internacional a través del poder tou mitjançant la promoció dels drets LGBT, la Xina prioritza els valors tradicionals en lloc d'alinejar-se amb la "universalitat" dels drets humans.

Paraules clau: Drets LGBT, matrimoni entre persones del mateix sexe, cicle de les normes, Xina, Taiwan.

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I. Introduction

Historically, the LGTBIQ+ community has suffered violations and aggressions against its integrity. Although the situation has improved over time and many countries have almost reached the providence of the LGTBIQ+ rights, discrimination against the community has not disappeared yet. Considering that tackling the protection and promotion of the LGTBIQ+ rights is essential to comply with social justice, it is urgent to address this matter.

The purpose of this project is to shed light on the normative evolution of the LGTBIQ+ rights focusing on the legalization of same-sex marriage as an institutionalized norm in two culturally similar countries but with a different outcome on this issue: China and Taiwan. Accordingly, the research question will be:

“Why has the legalization of same-sex marriage diverged between China and Taiwan?”

To tackle this question, this project will be based on a specific theoretical framework and methodology. On the one hand, the constructivist cycle of norms developed by Martha Finnemore and Kathryn Sikkink (1998) is a useful tool tackling the evolution of social constructions that helps to understand the situation of LGTBIQ+ rights in different contexts. This cycle includes three stages: *norm emergence*, *norm cascade*, and *norm internalization*, and in each of them, the role of actors will determine the evolution of same-sex marriage as a norm. On the other hand, this study will use a qualitative methodology based on the analysis of data collected from primary and secondary sources. These will include national laws, declarations, and actions of actors of influence, such as governments or non-governmental organizations; and further sources from academic articles.

The selection of two case studies has been carried out in order to develop a comparative case analysis on the legalization of same-sex marriage. The cases of China and Taiwan have been wisely selected in this topic, since they share cultural backgrounds, but they differ in regards to the LGTBIQ+ community perception. While Taiwan is one of the

most progressive countries in East Asia when it comes to the institutionalization of the LGTBIQ+ rights, China is not as permissive.

The legalization of same-sex marriage is internationally perceived as a significant step towards social justice and equality because it provides a more inclusive legal framework for the LGTBIQ+ community. The comparative case analysis based on the normative evolution of same-sex marriage is an effective strategy, since it provides insights into the identification of the reasons why the process of legalizing same-sex marriage differs between two culturally similar countries. Also, it could predict tendencies among the rest of Asian countries' regarding marriage equality, which would further show future international trends on the universalization of LGBT rights.

This study shows that the underlying argument that explains why the legalization of same-sex marriage differs between China and Taiwan remains on the intentions behind the institutionalization of the norm. In other words, while Taiwan aims at enforcing its national esteem and at gaining international legitimation through soft power by promoting LGBT rights; China prioritizes its traditional values instead of aligning with the 'universality' of human rights.

The following sections will consist of a literature review to acknowledge the extent to which academic scholars have analyzed the issue; the theoretical framework to contextualize concepts of sexuality and the cycle of norms; the analysis, which will use the normative cycle applied to the legalization of same-sex marriage in China and Taiwan; and the conclusion.

II. Literature Review

Law is the main instrument of reference on which minority groups rely when pursuing the principle of 'non-discrimination', based on international human rights (Lee, 2023). This is why analyzing the legalization of same-sex marriage provides an overview of the LGBT rights of a country. According to P-Han Lee (2023), the type of legal system, democratic conditions and political opportunity for the minority population, economic

development and modernization, and the level of globalization are factors that might explain the legal attitude towards LGBT people.

Research shows that China and Taiwan are culturally similar states due to their historical influences of Confucianism and Taoism, whose assumptions of sexuality perceive the union of people of same sex as not immoral, as long as an individual respects familial obligations to enhance offspring (Louie and Edwards, 2006). Nevertheless, sexuality perceptions in Asia have been challenged by multiculturalism, so people are “required to recognize heterogeneity rather than a universalistic interpretation of social reality” (Lee, 2023). But global trends have differently affected China and Taiwan.

Taiwan has been exemplary in naturalizing sexual deviance and legalizing same-sex marriage, while China is more individualistic and has opted for maintaining sexuality in private life, justifying its actions on ‘homonationalism’ (Liu and Zhang, 2022). In China, “homosexuality is not criminalized, but the nature of the Party-state has ensured that there is no national political discourse on LGBT matters” (Jeffreys and Wang, 2017: 3). Kin Ng et al. have studied attitudes towards LGBT people in China and concluded that it is parental attitudes, traditional gender values and filial piety what justifies China’s position of marriage equality, and in comparison to Taiwan, it is less influenced by Western imperialism (Ki Ng et al., 2023).

Chen-Dedman concludes Taiwan’s same-sex marriage aims to align with human rights and establish international legitimation, but especially to progress on reforming heteronormative marriage (Chen-Dedman, 2023). However, this explanation is not shared among all Asian countries.

Authors offer explanations on why Taiwan and China have taken different paths regarding same-sex marriage. Nonetheless, none of them pay attention to the normative evolution of legalizing same-sex marriage in both countries, emphasizing the use of Finnemore and Sikkink’s cycle of norms, which includes relevant variables, such as

norm contestation. This is essential because analyzing the legalization of same-sex marriage using the cycle of norms could predict the next steps of the rest of Asian countries on the matter and, hence, it could show the possible future international scenario in regards of the universalization of LGBT rights. This study will try to fill this gap.

III. Theoretical Framework

Constructivism and Sexuality

From a constructivist perspective, the understandings of sexuality are shaped by social norms, cultural values, and historical developments, rather than being biologically determined. Hence, gender identity and sexual orientation are perceived as socially constructed phenomena, being formed through social interactions, cultural norms, and institutions. These aspects develop what is socially considered as “masculine”, “feminine” or “non-binary” identities. However, to what extent are the coherence and continuity of a person logical in terms of gender and sex?

Judith Butler said that the notion that there might be a “truth” of sex is produced through social interactions that generate coherent identities through coherent gender norms. Considering that gender and sex are perceived as social constructs, their traditional relation, which assumes that a woman is female and a man is male, is also a social construct that has been perceived as logical and coherent – what Butler labeled as “intelligible genders”. This assumption considers that certain “identities” cannot “exist”, referring to those in which gender does not “follow” from sex. By “follow”, Butler referred to the political relation of entailment created by cultural laws or norms that shape and regulate the meaning of sexuality (Butler, 1990: 17).

However, non-intelligible gendered people provide challenging opportunities that expose the limits of this intelligibility assumption, being against the traditional norm of heteronormativity by creating alternative understandings of gender and sexuality. However, Butler developed the “performativity concept” to suggest that gender and

sexuality are performed through regulatory acts and behaviors, which are constructed by social norms (Butler, 1990). Hence, LGTBIQ+ identities are also formed within certain cultural contexts that determine ways of being and behaving.

Digging deeper into the social construction of sexuality, according to Steven Seidman, an expert on sexuality and gender theories, the concept of heterosexuality had remained internalized since 1892. It was on mid-1920s when the term of “homosexuality” appeared, being perceived as “unnatural” (Seidman, 2003: 11). Acknowledging the normative nature of gender and sexuality, the emergence of “heterosexuality” and “homosexuality” places people in categories, creating sexual identities where people define themselves in terms of their sexual desires and behaviors (2003: 12). Nevertheless, according to Michele Foucault (1978), the emergence of such sexual identities is both liberating and constraining.

The Norm Cycle

The norm cycle is the theoretical framework of this project. It is a constructivist approach to theorize the evolution of norms. According to Finnemore and Sikkink, a norm is "a standard of appropriate behavior for actors with a given identity" (1998: 891). The norm is shared by members of a society and it represents the right way to act; that is, logic of appropriateness. Norms constitute actors and their identities, forming their role in the international system. They are regulatory and dynamic, so they prescribe behaviors for actors in order to align with this logic of appropriateness (Barbé et al., 2020: 112). However, not all norms have the same nature; there are three types.

Norms of coexistence restrict and coordinate state action to allow the pursuit of its national interests with the least external interference. They are perceived as ‘negative multilateralism’, since they pretend to avoid confrontations instead of reaching a common problem resolution. Norms of cooperation involve interaction dynamics between States in order to solve a common problem. These go beyond simple coexistence and offer solutions of socioeconomic problems based on interstate agreements and a common action through international institutions. Solidarity norms,

however, enhance a universal ethical agenda that goes beyond the figure of the State and its territoriality. Their main focus is to perceive a universal human community that shares institutions, practices and concerns (Finnemore and Sikkink, 1998: 892).

Norms do not develop in the same way either, since there are normative stages that, in some cases, are not always fulfilled. Finnemore and Sikkink labeled such stages as the “cycle of norms”, composed by norm emergence, norm cascade and norm internalization (see Figure 1). By norm emergence, Finnemore and Sikkink referred to the moment when actors – entrepreneurs – are willing to make their community adopt a certain behavior in a certain matter, so they have a definitional power that affects social relations, creating and enhancing the meaning of the norm. Usually, entrepreneurs have a specific type of organizational platform where they approach a problem differently and construct a new formulation of it, if they are successful (Barbé et al., 2021: 30; Finnemore and Sikkink, 1998: 896).

If the emergence of the norm was properly tackled and approved by the community, norm cascading evolves. To determine the tipping point where the norm has reached this stage, what must be considered is the mass of actors that adopt such norm. This becomes materialized in the juridic institutionalization of the norm or the acceptance of the norm of at least one third of the community that has adopted or complied with it. Although the rest of the community may not adhere to the norm at the beginning, they may have incentives that encourage them to do so, such as the process of “naming and shaming”, or the process of socialization, which is the way of how States adopt or internalize norms (Finnemore and Sikkink, 1998: 902).

The last stage of the normative cycle is norm internalization, when a norm is already taken-for-granted and there is no longer a debate about it. Hence, it does not generate controversy anymore and it is neither questioned (Barbé et al., 2021: 33; Finnemore and Sikkink, 904). Nevertheless, in many situations, emerging norms do not fulfil the tipping point that leads to an effective internalization, and this is mainly due to norm contestation. It appears from firmly embedded norms in a society that do not allow the

establishment of alternative norms, being related to the internalized logic of appropriateness that maintains the status quo.

TABLE 1. *Stages of norms*

	<i>Stage 1 Norm emergence</i>	<i>Stage 2 Norm cascade</i>	<i>Stage 3 Internalization</i>
<i>Actors</i>	Norm entrepreneurs with organizational platforms	States, international organizations, networks	Law, professions, bureaucracy
<i>Motives</i>	Altruism, empathy, ideational, commitment	Legitimacy, reputation, esteem	Conformity
<i>Dominant mechanisms</i>	Persuasion	Socialization, institutionalization, demonstration	Habit, institutionalization

Figure 1. Cycle of norms. Source: M. Finnemore and K. Sikkink (2005). *International Norm Dynamics and Political Change*. <https://www.cambridge.org/core/journals/international-organization/article/abs/international-norm-dynamics-and-political-change/0A55ECBCC9E87EA49586E776EED8DB57>

This project will use the cycle of norms as a source to acknowledge the evolution and understand why the legalization of same-sex marriage is different in China and Taiwan.

IV. Methodology

The research design of this project will have a research methodology, a research method, and a research technique, using a qualitative approach. Since the research question is *why the legalization of same-sex marriage has diverged between China and Taiwan*, a qualitative methodology will be used to acknowledge the differences between both countries on the matter.

To answer the research question, a comparative case analysis will be developed, using the theoretical framework of the cycle of norms. The selection of two case studies has been wisely selected in order to provide an overview of how Asian countries are dealing

with LGBT rights. The cases of China and Taiwan are convenient, since they share a cultural background due to the influence of Confucianism and other cultural aspects, but they differ in regards of the LGTB community perceptions and, hence, on the juridic state of same-sex marriage. While Taiwan is considered to be one of the most progressive countries in East Asia regarding the acceptability of LGBT rights, China is not considered to be as permissive. In fact, it has adopted multiple measures to restrict LGBT rights by even legitimizing that some of its citizens still consider homosexuality to be a mental disease (J. L. Chia, 2019). This is why a comparative case study between these countries will contribute to explain the divergence of perceptions of LGBT rights.

The documentary analysis of primary and secondary sources will be used as a data collection technique. Primary sources will include national laws – especially those related to same-sex marriage –, declarations, public speeches, and news from national and international well-known newspapers. Secondary sources will include academic articles and journals that adequately address the topic.

V. Analysis

This section comprehends two parts. Firstly, I will provide an overview of the construction of sexuality and marriage in both countries. Then, I will use the cycle of norms to analyze the evolution of the legalization of same-sex marriage in the Taiwan and in China.

The legalization of same-sex marriage in the Republic of China (Taiwan)

The Construction of Sexuality and Marriage

Asian countries are influenced by a grand religious philosophy that is essential in the cultural history of China and, consequently, Taiwan. That is, Confucianism. Its main concerns remain on “inner virtue, morality, and respect for the community and its values” (National Geographic, n. d.). This religion has shaped both Chinese and Taiwanese society in many aspects, and sexuality and marriage do not go unnoticed.

For Confucianism, sexuality within marriage is important because it procreates to ensure masculine offspring and the continuation of ancestral cult rites. However, the priority remains on the control of excessive promiscuity, overlooking the sex of the person that an individual decides to count on to discharge their sexual energy (Louie and Edwards, 2006: 366). Although Confucianism did not directly tackle homosexuality, the Chinese culture, predominant in Taiwan, had a more concrete conception of sexuality influenced by the Taoist *yin-yang* spiritual philosophy. According to this spirituality, men are formed by *yang* essences, while women are more endowed with *yin*. The sexual act is union of such essences, constructing a path towards a transcendental state of consciousness (Louie and Edwards, 2006). Hence, the “authentic man” is believed to have more *yang* essence than an effeminate man, but his duty must remain on making both essences meet.

Having this considered, during the decades of the 1950s and 1960s, Taiwan was described as “heterosexual” due to its Confucian and Chinese traditional family values influence. Nevertheless, same-sex relationships were not considered immoral, as long as the individual “respected familial obligations to continue the paternal family line”. However, during the 1970s homosexuality became criminalized and associated with mental diseases, due to the introduction of Western medical discourses (Jeffreys and Wang, 2017: 12).

Nowadays, Taiwan is considered to be the most progressive country in Asia in regards to human rights. Although the mainstream culture is based on Confucian ideologies, globalization has influenced Taiwan through global trends such as LGBT movements (Lee, 2023), which have transformed the concepts of sexuality and marriage into constantly-evolving social aspects.

Norm Cycle

Norm Emergence of Same-Sex Marriage (SSM) Legalization

In 1958, a lesbian couple requested the Court to get married. But following Chapter II on Marriage Part IV on Family of the Civil Code, two persons of the same sex were not

allowed to “create a permanent union of intimate and exclusive nature for the purpose of living a common life” (Constitutional Court ROC, 2017).

In 1986, Chi Chia-Wei applied for gay marriage, but the Court rejected it again because homosexuals were considered as ‘sexually deviant and abnormal’. He made a second attempt in 2000, without obtaining fruitful results, and he even went to prison under Martial Law politics (Magdalena and Amenes, 2021: 140). Nonetheless, with the abolishment of such law, democratization processes were developed, leading to the appearance of discursivities of equality and discrimination, including sexual orientation and gender (Lee, 2023).

In 2001, 2003, and 2006, Hsiao Bi-Khim, a Democratic Progressive Party (DPP) parliament member, proposed a bill to recognize same-sex marriage, but his efforts were unsuccessful. Despite this, reforms towards the promotion of LGBT rights started to be implemented, such as LGBT rights inclusion in primary school books to promote tolerance and respect among children (Lee, 2023). Such reforms were mainly caused by the pressuring and persuading role of norm entrepreneurs.

The LGBT movement in Taiwan was essential due to its contribution to the promotion of LGBT rights. It “mobilized social movements, attracted government attention, and encouraged same-sex marriage to come into law” with its Pride Taiwan Festival (Magdalena and Amenes, 2021: 141). Furthermore, the role of younger generations was pivotal in the legalization of same-sex marriage, since they are more likely to have positive perceptions of homosexuality, and they organized many mobilizations through social media that pressured institutional entities (Krumbein, 2020: 9).

The role of international organizations was also a trigger for the promotion of same-sex marriage. In 1990, the *Wemen zhi jian* (Between Us) organization appeared as the first lesbian group, becoming a “bastion of homosexual discourse and activism in Taiwan” (Taiwan Panorama, 1998). In 2009, the Taiwan Alliance to Promote Civil Partnership Rights (TAPCPR) was established, and it compiled a same-sex marriage bill and convinced the parliament to legalize marriage equality. Indeed, in 2012, the TAPCPR

drafted three bills of ‘diversified family formation’ to state the rights to marry of same-sex couples and to “provide constitutional protection to families who are not in the form of marriage”, but it was not discussed by the Legislative Yuan (Krumbein, 2020; Magdalena and Amenes, 2021). However, in 2013, these proposals were read and reviewed by the DPP legislature.

Digging deeper, international non-governmental organizations (INGOs) are remarkable norm entrepreneurs in diffusing human rights because they “stimulate pressure through consensus empowering local civil society to push the target states to take action” (Wu and Nie, 2021: 172). An example of these in Taiwan is the Marriage Equality Coalition, an affiliation between the Awakening Foundation, the Lobby Alliance for LGBT Human Rights, the Taiwan International Queer Film Festival, the Taiwan LGBT Family Rights Advocacy, and the Taiwan Tongzhi Hotline Association (Krumbein, 2020: 8). Their activities have been focused on promoting women and LGBT rights; advocating for parenting, reproductive, and partnership rights for LGBT couples; and providing gender and sexuality education. They spread international norms from global to local regions, being essential to foster international cooperation. This is due to their ‘moral authority’ to influence governments and contribute to the implementation of norms (Finnemore and Sikkink, 1998).

All these actors have widely contributed to the promotion of LGBT rights, but it has been the government who allowed its institutionalization, more specifically, the Democratic Progressive Party (DPP). It has generated a new national Taiwanese identity and it has been adopting new global trends due to ‘peer pressure’.

Norm Cascade of SSM Legalization

According to Waaldijk (2001), there are three legal sequences that inevitably lead to the legislation of same-sex marriage: the decriminalization of homosexuality; the implementation of anti-discrimination policies around sexual orientation; and the introduction of legal partnerships and parenting for same-sex couples (Van Wyk, 2018: 80). Since Taiwan did not have any LGBT-discriminatory law, the first step cannot be implemented, but the following took place.

In 2013, the issue of same-sex marriage started to be properly addressed due to media influence, and the marriage-equality amendment bill was introduced by the DPP to the Legislative Yuan, who reviewed and read for the first time a proposal of same-sex marriage (Magdalena and Amenes, 2021: 140).

Nonetheless, Taiwanese conservative churches responded to the proposal by marching 150,000 people into the streets to oppose same-sex marriage, leading to intense political struggles (Lee, 2023; Magdalena and Amenes, 2021: 141). However, in Taiwan discrimination against LGBT people also comes from colleagues or family circles who reject their family members who claim to be part of the LGBT community (138).

Despite this, there was an event that alarmed the population and put the issue of the same-sex marriage in the spotlight, which facilitated norm cascading. Jacques Picoux, a National Taiwan University lecturer, decided to commit suicide due marriage inequality. This fostered the LGBTQ and non-LGBTQ community to seriously tackle marriage equality “to prevent suicide deaths from happening again in the LGBT community” (Magdalena and Amenes, 2021: 141).

Hence, President Tsai Ing-Wen’s administration developed two draft amendments to Taiwan’s Civil Code, proposing the legalization of same-sex marriage and the allowance of same-sex couples to adopt children. Nevertheless, this was once again contested by conservative churches and the Chinese Nationalist Party (KPT) (Taipei Times, 2016). As a reaction, a massive protest of more than 250,000 supporters of same-sex marriage demonstrated in front of the Presidential Office in Taipei.

Eventually, the Court issued the ‘Taiwan Judicial Branch Constitution Interpretation No. 748 Act’, stating that the previous Chapter II on Marriage Part IV on Family of the Civil Code supposed a “violation of the Constitution’s guarantees of both the people’s freedom of marriage and the people’s right to equality” (Constitutional Court ROC, 2017).

To understand the purposes behind these actions, the concept of socialization suggests that many countries adopt new norms due to ‘peer pressure’. There are three

motivations for responding to such pressure: legitimation, conformity and esteem (Finnemore and Sikkink, 1998: 902-903). In this case, ‘legitimation’ is applied when Taiwan uses the promotion of human rights as a tool of *soft power*¹” (Krumbein, 2020: 6), seeking political support from the international community (Lee, 2023). Then, considering that Taiwan’s main priority is to foster its identity by promoting human rights, it has the will of feeling distinguished from the Chinese society, increasing its national esteem. However, some authors claim that in Taiwan’s post-1990 generation, “fighting for the legal protection of *tonghzi* (gay) rights [...] is today deployed not to ‘other’ Chinese *tonghzi*, [...] but to make Taiwan a less homophobic place to live” (Chen-Dedman, 2023: 280). Finally, Taiwan’s Voluntary National Review (2017) on the implementation of UN Sustainable Development Goals is an example of conformity because it complies to belong to the international society as a development promoter.

Norm internalization of SSM Legalization

The enactment of the Referendum Act in 2018, promoted by Christian groups and the Alliance for Happiness of Future Generations aimed at determining the future of the LGBT community in terms of marriage and equal rights. Results showed that the wide majority voted to “restrict marriage to a union between a man and a woman” (Krumbein, 2020: 4).

Notwithstanding, Taiwan’s Legislative Yuan successfully passed ‘The Enforcement Act of the Judicial Yuan Interpretation No. 748’ and came into effect in May 2019. Under this law, same-sex couples in Taiwan receive the right to marry legally (Magdalena and Amenes, 2021: 138). Taiwan has therefore been the first Asian country to officially legalize same-sex marriage.

Taiwan believes that “as cultures change, so do sexualities” (Lee, 2023). However, many gays and lesbians in Taiwan still prefer to stay ‘invisible’ or ‘hide in the closet’ (Jeffreys and Wang, 2017: 14). This is why ‘social normalization’ is even more important than legislation, since although same-sex marriage might be legal in a

¹ According to Joseph Nye, it is a form of power that uses attraction, persuasion, and other ‘soft’ mechanisms to achieve the purposes an international actor has (Nye, 2004).

country, the internalization of the norm needs to be showed in civil society's arrangements on the issue (Van Wyk, 2018: 99).

Taiwanese society is split on the issue of gay rights due to the contestation of religious groups, which has affected whether marriage equality is a taken-for-granted norm. However, a study showed that same-sex marriage legalization reduced distal sexual minority stress and increased rates of coming out to relatives, due to the decline of internalized homophobia (Huang and Liang, 2022). Therefore, although same-sex is not fully internalized in Taiwan, such decline in homophobia will cause the norm to become internalized in the future.

The legalization of same-sex marriage in the People's Republic of China (PRC)

The Construction of Sexuality and Marriage

The historical background behind sexuality and marriage between Taiwan and China had been similar, until the creation of the People's Republic of China (PRC). Traditional marriage between a man and a woman in China was considered essential because "they were the beginning of human relations" (Botton, 2017: 537). However, the creation of the PRC made the State have a decisive role in defining gender relations and sexuality among Chinese society (Liu and Yi Zhang, 2022).

With the establishment of the Communist Party in 1949, there were multiple changes that transformed individual and family relationships due to the concept of loyalty towards the State. In 1950, marriage was based on "affect, consent and equality among its members, without external interference" (Botton, 2017: 538). But when family planning policies were implemented, the minimum age for marriage increased, resulting into sexuality of youth being delayed. This encouraged the freedom of choice, but was perceived as dangerous, so with the Cultural Revolution, Mao Zedong limited all kinds of freedom, and marriage was based on utilitarian purposes. Homosexuality was

prosecuted and discriminated, being considered as counterrevolutionary (The Guardian, 2001).

Although its expansionary politics suggested a certain liberalization of values, the PRC's government in the 1980s decided to define the limits of freedom of love and the choice of whom to love. The main criterion to love someone was political compatibility, but other aspects such as age, economic status, education and origin were also considered (Botton, 2017: 542). Later, there were moral and social transformations that led to the appearance of the arts of seduction, and young people realized they knew nothing about sex, so new sex-related articles were published, targeted to newly-married people (Botton, 2017: 549). With this, new moral values about sexuality and marriage emerged, understood as not strictly intertwined.

Regarding homosexuality, until 1997, homosexuals in China had been prosecuted by authorities for engaging in acts of 'hooliganism'. Homosexuality was seen as a "perverse form of human behavior that violated public morality, corrupted social values, destroyed family harmony, encouraged criminality, and contributed to the spread of AIDS" (Jeffreys and Wang, 2017: 4-5). In 1981, the Chinese Society of Psychiatry defined homosexuality as a 'psychosexual disorder' (The Guardian, 2001).

So far, China has promoted heteronormative patterns that have resulted into homophobic or anti-homosexual behaviors, but LGBT movements challenged this situation.

Norm Cycle

Norm Emergence of SSM Legalization

Authors coincide on the statement that China challenges the universality of human rights, and LGBT rights are no exception. This could explain why Chinese political figures claim that international non-governmental organizations (INGOs), which try to fulfil norm adaptation – that is, reinterpreting such universality by adapting the implementation of human rights to each cultural and social context – “must remain

silent in the media in exchange for domestic government support and resources” (Wu and Nie, 2021: 175).

There have been attempts to advocate for legal protections for same-sex couples, such as Li Yinghe’s and Lin Xianzhi’s in the National People’s Congress annual meetings, or Sun Wenlin and Hu Mingliang’s protests in the Chinese courts. Despite this, they failed to convince the government to provide legal protections to gay couples, but they were key figures that raised awareness of the issue (Jeffreys and Wang, 2017).

According to Wu and Nie (2021), LGBT rights have low cultural recognition because they are considered as ‘exotic’ or incompatible norms that do not align with the conservative Chinese culture. In order to survive, INGOs advocating for LGBT rights have had no other choice than “disregarding norms in exchange for more operating space”, such as what IM did, an INGO that spread information about HIV in China and had to change its way of releasing information, “deleting images and words that Chinese audiences might find explicit or uncomfortable, such as ‘equal rights’” (2021: 182). With this, these organizations avoid criticism and can keep up with their operations, limiting their norm diffusion process.

Nevertheless, many LGBT-related public actions have been obstructed by Xi Jinping’s politics. For instance, in 2020 Shanghai’s Pride organizers announced, without any reason, they would cancel all events. Also, many LGBT groups on WeChat were blocked in 2021, and media censorship limited LGBT public advocacy (Time, 2023), restricting the possibility of norm adaptation. The nature of the Chinese government has ensured the absence of LGBT discourses along with laws relating to sexual orientation (Jeffreys and Wang, 2017: 3).

Despite this, official statements do not align with such reality, as they accept LGBT rights to some extent. The Beijing Review, an official Chinese newspaper, stated that “[...] homosexuality has existed in Chinese history and literature for a long time. Chronicled references to same sex practices have been found as early as in the Shang Dynasty (1600-1046 B.C.)” (Beijing Review, 2017).

Also, in the UN Human Rights Council, the Minister of Foreign Affairs said:

“As a responsible major country, China plays an active part in global human rights governance. We have contributed efforts to the conclusion of a series of important international conventions and declarations on human rights. The vision of building a community with a shared future for mankind represents a shared aspiration of people of all countries. It also injects strong impetus into human rights protection worldwide” (H.E. Wang Yi, 2024).

China’s strategy, however, remains on the non-recognition of sexuality as a discriminatory variable, as Art. 2 of the Universal Declaration of Human Rights states: *“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”* (United Nations, 1948).

Norm Re-Affirmation of Anti-Homosexuality

In 1997, the government decriminalized homosexuality and prohibited “non-consensual acts such as rape, sexual assault, forced prostitution and sex with minors” (Criminal Law of the PRC, 1997). Later, in 2001 the definition of homosexuality as a mental disorder was revised, following the international standards of the World Health Organization – that is, due to norm conformity. Nevertheless, medical ‘gay conversion therapies’ were not abolished. Following the legal steps of Waaldijk (2001), China has decriminalized homosexuality, but it has not surpassed the next stages yet.

Indeed, article 49 of the Chinese constitution on the ‘Protection of Marriage and Family’ does not explicitly address the sexual orientation of the marrying parties, but it states that “both husband and wife have the duty to practice family planning” (Constitution of the PRC, 1982).

Norm cascading of same-sex marriage has not been fulfilled in China due to the traditional gender role values promoted by the government and the filial piety that

children have with their parents (Lee et al., 2023). With this, the mainstream norm of anti-homosexuality is being reaffirmed. As a result of previous restrictions on homosexuality, many Chinese gays and lesbians have internalized the dominant norm of heteronormativity (Louie and Edwards, 2006: 369). This does not mean that the Chinese society criminalizes the LGBT community, but factors such as restriction of their organizations, containment of ‘homonationalism’, along with traditional values, have caused Chinese LGBT people to not feel their country is a safe space to express their identity and sexual orientation.

Same-sex marriage has never been a priority for China, and its arguments rely on the ‘homonationalist’ assumption of believing that the LGBT movement is a form of Western imperialism in the name of liberal democratic principles. That is, Western culture claims to be the most developed due to its respect of human rights, without considering that it was the one who once spread homophobic ideas through colonialism (Van Wyk, 2018).

Chinese LGBT people are still experiencing violent and discrimination actions, such as gay conversion therapies, non-acceptance of their relatives, or schoolyard bullying (Jeffreys and Wang, 2017: 7). However, despite some homophobic stances, “the social climate is increasingly becoming more tolerant towards sexual minorities and queer subjects” (Liu and Yi Zhang, 2022: 35). The intentions behind such tolerance might be a consequence of legitimation, making China being “labeled as a ‘rogue state’ if it does not adapt to international normative behavior” (Finnemore and Sikkink, 1998: 903-904). Anti-homosexual countries do not align with international norms and prioritize their national values, but the Chinese case might be different due to its interest to gain international legitimacy.

VI. Conclusion and Discussion

Historically, Confucianism caused China and Taiwan to have similar perceptions on sexuality, being homosexuality not perceived as a threat. But with the establishment of the People’s Republic of China, such commonalities diverged. Since the purpose of this project aimed to explain *why the legalization of same-sex marriage has diverged*

between China and Taiwan, a comparative case study has been developed, using Finnemore and Sikkink's normative cycle (1998).

Norm emergence is the first stage that determines the origin of legalizing same-sex marriage, and the role of norm entrepreneurs has been crucial to settle the success of the norm. The LGBT social movement has been powered by multiple actors that have widely contributed to promote LGBT rights, such as INGOs, public figures, and youth generations. In China, the role of INGOs is remarkable, since they have tried to advocate for LGBT rights by adapting to a context of restrictions in order to keep up with their operations, despite Xi Jinping's obstruction.

During norm cascading, Taiwan developed bills and legislative proposals powered by the DPP and the Legislative Yuan to gain marriage equality. However, this second stage could not be applied in China because norm contestation has been more powerful than the norm marriage equality.

Regarding norm internalization in Taiwan, the country might be split in two blocs regarding same-sex marriage, but it is supported by the wide majority of the society. Despite its contestation, same-sex marriage has been favorable to the Taiwanese society, but since it is a recent policy, it might not be a taken-for-granted norm yet, although it is causing a decline in homophobia.

Digging deeper into the aim of this project, the aspects that show the reasons why the legalization of same-sex marriage differs in both countries remains on the norm cascading stage, considering that it could not be applied in China.

According to Finnemore and Sikkink (1998), legitimation, conformity and esteem explain the development of the norm of same-sex marriage. After its independence,

Taiwan has been complying with international norms as a tool of *soft power*, and its promotion of LGBT rights could be justified on the will to be distinguished from Chinese society. Taiwan might aim at showing states it complies with norms to illustrate its adaptation and belonging to the system, which would enhance its national esteem. In China, these aspects are not fully suitable. Since it challenges the universality of human rights, actions related to legitimation from other states might not be as important, and its priorities remain on preserving its traditional values and enhancing principles of non-intervention in national affairs. Therefore, the underlying argument that answers the research question remains on the intentions behind the institutionalization of the norm of marriage equality.

Taiwan was the first Asian country to legalize same-sex marriage, and some authors believe it could be an entrepreneur to expand such norm, especially among Thailand and Cambodia. This is a social advancement in regards to LGBT rights, while China is still adopting restrictive measures against them. This is due to the intentions behind legalizing same-sex marriage, where Taiwan prioritizes international legitimation, while China prioritizes the preservation of its traditional values. However, its influence on the international system is essential to gain national legitimacy.

Nonetheless, the success of norms comes with its internalization, which remains on social acceptability, and not only on the institutionalization. There is still a path to make same-sex marriage become a taken-for-granted norm that is no longer questioned in Taiwan, especially when it is surrounded by 'anti-homosexuality countries'. Additionally, the case of China is an evidence of the constant challenge that the universality of human rights is facing due to different perceptions of the international system and its power relations. However, since China still has a reputation to maintain, it might be possible that in the future, the norm of marriage equality evolves a bit more, but further research needs to tackle this issue.

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