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# Marriage on the Road to Equality

A critical look at Taiwan's  
same-sex marriage "victory"

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[Hundreds of same-sex couples who tied the knot on the first day Taiwan opened the door to same-sex marriage](#) will celebrate their second anniversary on May 24, 2021. In 2019, two years after [Taiwan's Constitutional Court ruled that the same-sex marriage ban was a violation of constitutional equality and an infringement of the freedom to marry](#), Taiwan passed [a law](#) to legalize same-sex marriage registration. It was the first country in Asia to do so and was internationally acclaimed as a regional leader in LGBTQ rights and gender equality. The law was widely recognized as a remarkable achievement that was attributed to the marriage equality movement's indefatigable endeavor, the liberal Constitutional Court's judicial activism, and the government's fearless commitment to marriage equality against the backdrop of a robust antigay movement.

This standard account presents a picture of equation (same-sex marriage = marriage equality = gender equality) and conquest (equality conquers injustice). However, it tells only half of

the marriage equality story in Taiwan. A radical feminist look at the role of marriage on the road to equality leads to a counter-story, which takes the form of a trilogy. It begins and ends with a critique, rather than an affirmation, of the equation and the conquest.

Overture: [Losing the Feminist Voice?](#)

Historically, Taiwanese feminists considered the institution of marriage as a cage, seeing it as the source (not the cure) of gender inequality and focusing on extending the exit (not the entrance) of marriage. Prioritizing the abolition of different legal treatments that perpetrated the subordination of women, liberal feminist legal mobilization pursued the neutralization of family law without extending access to marriage. By the time the marriage equality movement bloomed in the early 2010s, the marriage institution had largely been gender-neutralized in law, and the legalization of same-sex marriage seemed like the final step to make marriage equal. This view ignored the resilient inequality within marriage (such as the unequal division of labor) and through marriage (for example, the privatization and familization of care).

The marriage equality movement began as a movement advocating the idea of diverse families, but the legalization of same-sex marriage escalated to the top of its agenda. The feminist critique of marriage was largely silenced. Queer dissenters opted not to engage with legal mobilization. As "the right to love each other" and "all those who love each other should have the right to marry" became the movement's popular slogans, marriage came to provide "[the framework through which to articulate both support and opposition to LGBT claims](#)," hence

the rise of [marital supremacy](#). Arguing for “treating likes alike” by asserting the likeness between *tongzhi* (同志) and heterosexuals, the marriage equality movement insisted that the only route to marriage equality was the legalization of same-sex marriage by amending the Civil Code. Borrowing the analogy of racial segregation, they fiercely opposed the introduction of a special law to recognize same-sex unions (a compromise that the countermovement had come to terms with) as “separate and unequal.”

## The Court, the People, and the Legislature

In the mid-2010s, bills to legalize same-sex marriage were introduced but could not move forward in the legislature because of non-partisan opposition. The newly elected first female president and her party (which controlled the legislature for the first time in Taiwan’s history) were suffering from harsh criticism for their inability to handle issues of human rights and transitional justice. The Constitutional Court came to their rescue when it ruled for the freedom to marry on May 24, 2017. The court’s intervention reflected “interest convergence”: Taiwan’s interest in international visibility, the majority party’s political interest in downplaying its involvement in the marriage equality controversy, the marriage equality movement’s interest, and society’s interest in maintaining the supreme status of marriage. [The court’s decision demonstrates a remarkable resemblance to \*Obergefell v. Hodges\*](#) in that both embrace formal equality (grounding equality on the likeness of homosexuals with heterosexuals), endorse marital supremacy (praising marriage as the bedrock of society), and render feminist critique of marriage irrelevant or insignificant.

The court’s decision, which granted the legislature two years to pass proper legislation, invited a majoritarian counter-attack in late 2018. Marriage equality opponents initiated two referendums to oppose same-sex marriage by supporting same-sex union/partnership/cohabitation. Both referendums were passed by a landslide along with the ruling party’s disastrous local election defeat.

In the aftermath of the popular vote, the legislature waited until one week before the court’s deadline to pass a law through a fast-track process that deliberately skipped committee review. [The law legalizes “a same-sex marriage that is not the same”](#) because, despite giving permission for a same-sex couple to register for marriage, it does not name the same-sex union “marriage” or the parties of the union “spouses.” A married same-sex relationship is instead referred to as “Article II relationship,” which is treated like a Civil Code marriage in many but not all aspects. For example, a Taiwanese citizen cannot establish an Article II relationship with a foreigner from a country where same-sex marriage is not legalized. In another example, a married same-sex couple is not qualified for joint adoption, and stepparent adoption is permitted only when the adopted child is the spouse’s biological child. Some same-sex couples who are qualified for stepparent adoption choose to marry to become legal co-parents. Other same-sex couples who desire marriage remain outside marriage or even divorce because marriage disqualifies them from adoption. Therefore, the law creates a dual-track system: Civil Code marriages for opposite-sex couples, and “Article II relationships” for same-sex couples.

## Coda

From the court to the people to the legislature, Taiwan’s tortuous journey toward the legalization of same-sex marriage is an ongoing one. Does the new law amount to “[losing forward](#)” ([a loss that puts the movement in a better place for the inevitable next battle](#)) or “[winning backward](#)” (“[a victory the legal basis of which sets back a goal greater than the immediate outcome](#)”)? Many marriage equality supporters might consider the law an incremental gain, hence a loss forward. But a radical feminist might see it as a case of winning backward by upholding the legal supremacy of marriage and underestimating inequality within marriage.

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