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A Queer Series of Events:
A Comparative Examination of Same-Sex Marriage Legalization

by

Michael D. Shea

Under the Direction of Jennifer McCoy, PhD

A Dissertation Submitted in Partial Fulfillment of the Requirements for the Degree of

Doctor of Philosophy

in the College of Arts and Sciences

Georgia State University

2022

ABSTRACT

As of 2020, same-sex marriage has been legalized at the national level in 28 countries. This dissertation examines the factors that make legalization of same-sex marriage (same-sex marriage) more likely. Using quantitative analysis and a customized index, The Rainbow Index, to capture overall country friendliness towards LGB equality, this dissertation shows that a combination of secular and emancipative values, a high degree of LGB mobilization capacity, and opportunities for transnational advocacy networks to connect with and support local activists make legalization more likely. Furthermore, this combination of variables, which together represent a country's friendliness to LGB equality, is more predictive of same-sex marriage legalization than the effects of modernization. Case study qualitative analysis drawing from the cases of Colombia, Japan, Mexico, and Taiwan will also be conducted based on the quantitative findings.

INDEX WORDS: Same-sex marriage, Human rights, Values, Resource mobilization, Social movements, Transnational Advocacy Networks, Contentious politics, International norms, Democratization, Modernization Theory, Polyarchy.

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A Queer Series of Events:
A Comparative Examination of Same-Sex Marriage Legalization

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December 2022

DEDICATION

To my family and friends, but especially Mom, Dad, Meghan, and Simon. You've been with me through it all – each in your own ways. Thank you all. I could not have done this without your support along the way.

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There are too many individuals that have had a profound impact on this research, on my development as a scholar, and on my career goals as a future educator to list here. I owe each of them a debt of gratitude that I can never repay. However, I would like to single out the following for special acknowledgement: Dr. Jennifer McCoy, PhD; Dr. Christopher Brown, PhD; Dr. Ryan Carlin, PhD; Dr. Mario Feit, PhD; Dr. Kim Reimann, PhD; Dr. Jeannie Grussendorf, PhD; Dr. S. Rashid Naim, PhD; Dr. Peter Lindsay, PhD; Dr. Matthew Gruber, PhD; Dr. Amy Steigerwalt, PhD; Dr. Andrew Wedeman, PhD; Dr. Michael Fix, PhD; and Dr. Yu Tzung Chang, PhD. I would also like to acknowledge the Ministry of Foreign Affairs of Taiwan, R.O.C., the Taiwanese Economic and Cultural Office of Atlanta, and the National Central Library and Center for Chinese Studies in Taipei for awarding my grant and facilitating my research to complete the field work section of my dissertation.

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PREFACE

The Wizard of Oz has long held a special place in the cultural mythology of American gay men. It is the story of a young girl who leaves the small (and perceived as ordinary, if even dull, and confining) town of her birth to go off to a magical, colorful, dangerous place in which she discovers who she really is, makes new and interesting friends (who seem like they could be gay), and embarks upon a life-changing adventure (Michel 2018). The story has often been viewed as a metaphor for the lives of gay men, particularly since the 1950s, many of whom are often first to leave their homes and the confines of the closet in order to seek out liberation and adventure elsewhere. This narrative is not necessarily universal, and while this research will not take a position on the debate surrounding the appropriateness of the mythology outside of the American gay male community, it is noted that the story depicted in the 1939 Metro-Goldwyn-Mayer film can have certain metaphorical value here. In the history of each state that currently recognizes the rights of same-sex couples to marry, there was a time when that state did not. For almost all of those states, there was also a time when same-sex couples were legally sanctioned – up to and including execution – for the “crime” of consensual homosexual sex. Metaphorically speaking, the journey of same-sex couples is like Dorothy’s journey in *The Wizard of Oz*. The long journey on the road of progress leading to equality is filled with dangers and adversaries. Allies are gained along the way. And the destination – a condition of equal recognition and protection for their relationship under the laws of their country – is far more beautiful than the bleakness of the journey’s origin would have suggested possible.

Recently, as part of my research for this dissertation, I took a literal journey of my own. Not a journey to a mythical land, but a journey thousands of miles away from home to the only place in all of Asia to legalize same-sex marriage: Taiwan. While there I made many discoveries,

but none so interesting as a small Taoist temple in an ordinary looking high-rise office building in a working-class neighborhood in the Zhonghe District of Taipei. Tucked away among various ordinary looking offices and businesses, the temple is perhaps not more than a thousand square feet in total – smaller than my Atlanta apartment. Without a gracious local friend to act as a guide, I would never have been able to find it. What makes it worthy of my having sought it out in the first place, and indeed what makes it unique among all the temples in all of Taiwan, is that it is the only temple on the entire island dedicated to Tu'er Shen (兔神) or the “Rabbit God.” Tu'er Shen is the Chinese deity who manages affairs of life, love, and sex between homosexual people. His temple is the only known temple dedicated to the protection and prosperity of homosexuals anywhere in the world. When I enter the temple, I witness dozens of young lesbian, gay, bisexual (LGB) Taiwanese – and a few foreigners like myself – praying, making offerings, burning incense to Tu'er Shen asking for his blessings in all matters – but especially matters of love and sex, or simply watching this unique cultural phenomenon. For a small donation, I am permitted to throw two *jiaobei*, or moon-shaped blocks used to communicate yes or no answers from the deity to the questioner. The answer I receive to my question is most favorable. Roughly 9000 LGB Taiwanese come from all over the island each year to pray at this temple, for better jobs, more understanding families, success in life or work, but most of all for love.¹

¹ Gold 2015.

1 INTRODUCTION

It is perhaps fitting that the world's only temple dedicated solely to the worship of a patron deity for homosexuals sits in the capital city of the first country in Asia to legalize same-sex marriage. The Taiwanese Legislative Yuan legalized same-sex marriage in 2019, nearly two years after the Taiwanese Constitutional Court ruled that laws defining marriage as being only between one man and one woman violated Articles 7, 22, and 23 of Taiwan's Constitution.² That Taiwan was the first country in Asia to adopt same-sex marriage may have come as a bit of a surprise, especially to those outside the region. While it is true that Taiwan is host to Asia's largest annual LGB Pride Parade, there are richer, more secular, and more self-expressive countries in the region.³ Taiwan is also not Asia's most modern country – as currently understood under the tenants of modernization theory. In fact, Taiwan is not even East Asia's most modern country, that distinction goes to Japan. To begin to understand why Taiwan, out of all possibilities, was the first to legalize same-sex marriage in Asia and not Japan, it will be necessary to examine the political and social conditions that led to legalization. That will be the chief goal of this dissertation. But, to successfully do that, we need some context around the case.

But, before going forward, it is necessary for me to recognize an inherent challenge to studies in LGB equality. First, the exclusion of transgendered persons from this policy analysis should not be construed as a dismissal of the validity of rights claims made by the trans community, nor of the significant threats and challenges that community faces. Because this dissertation is concerned with marriage rights and the recognition of the validity of consensual same-sex sexual relationships, an attempt to include trans rights claims in this analysis would be concept stretching

² The Constitution Project, [2020](#).

³ Based on World Values Survey (WVS) and other data. This will be discussed at more length in subsequent chapters.

and potentially hinder analysis, as many trans activists are fighting for the right to simply exist in safety as themselves – analogous *perhaps* to gay rights movements in their earliest stages long before concerns like marriage equality become salient. Second, it is true that LGB persons around the world make rights claims that have nothing to do with marriage – equal opportunity in employment or hate crime protection or inclusive education might be three good examples. But conceptually, it is better again to focus specifically on marriage as the reasons for same-sex marriage legalization are at the heart of the research question of this dissertation. This should not be taken as an assertion that marriage rights are the most important rights claim the LGB community could make or that marriage rights claims are more important than any of the examples given. Finally, because of the inherent patriarchy – to varying degrees – present in the countries studied, it is possible that at some points the gay male experience of identity formation is being universalized for the entire LGB. Where possible, I have taken care to minimize the risk of this, but I recognize that other scholars may find me less successful than they might hope and welcome their input in future as part of the ongoing dialectic that keeps social science research relevant.

1.1 The Puzzle

In 2000, The Netherlands became the world's first country to legalize same-sex marriage. Since then, twenty-seven additional countries have followed the Netherlands' example. As of 2020: Argentina, Australia, Belgium, Brazil, Canada, Colombia, Costa Rica, Denmark, Ecuador, Finland, France, Germany, Greenland, Iceland, Ireland, Luxembourg, Malta, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Taiwan, the United Kingdom (except for Northern Ireland), the United States, and Uruguay have all legalized same-sex marriage.⁴ In addition, several local and state jurisdictions in Mexico have extended the right, and Israel

⁴ See Appendix A for more details on SSM legalization by country.

recognizes the validity of same-sex marriages performed in other countries and territories, though it has yet to legalize domestically conducted same-sex marriage for its own citizens. Figure 1.1, a map created by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), illustrates the spread of countries that either legalized or criminalized same-sex relationships as of 2020. Even though there are a far greater number of countries in the world that either criminalize same-sex relationships to varying degrees, ranging from the imposition of fines to the sentencing of death, or offer no recognition at all, it is hard not to notice the remarkable amount of progress made in the last twenty years.

This presents researchers of human rights norms in general, and LGB rights in particular, with quite a puzzle. Same-sex relationships that far more often than not have been the subject of the harshest legal sanction since the very birth of what we would recognize as the modern state in 1648 now, suddenly, find perhaps the ultimate legal recognition in the form of same-sex marriage rights. Solving this puzzle involves not only discovering why same-sex marriage receives this recognition when and where it has since the start of the 21st Century but also in figuring out why modernization theory does not offer as compelling an explanation for the phenomenon as does a theory which incorporates mobilization capacity of social movements and the work of transnational advocacy networks.

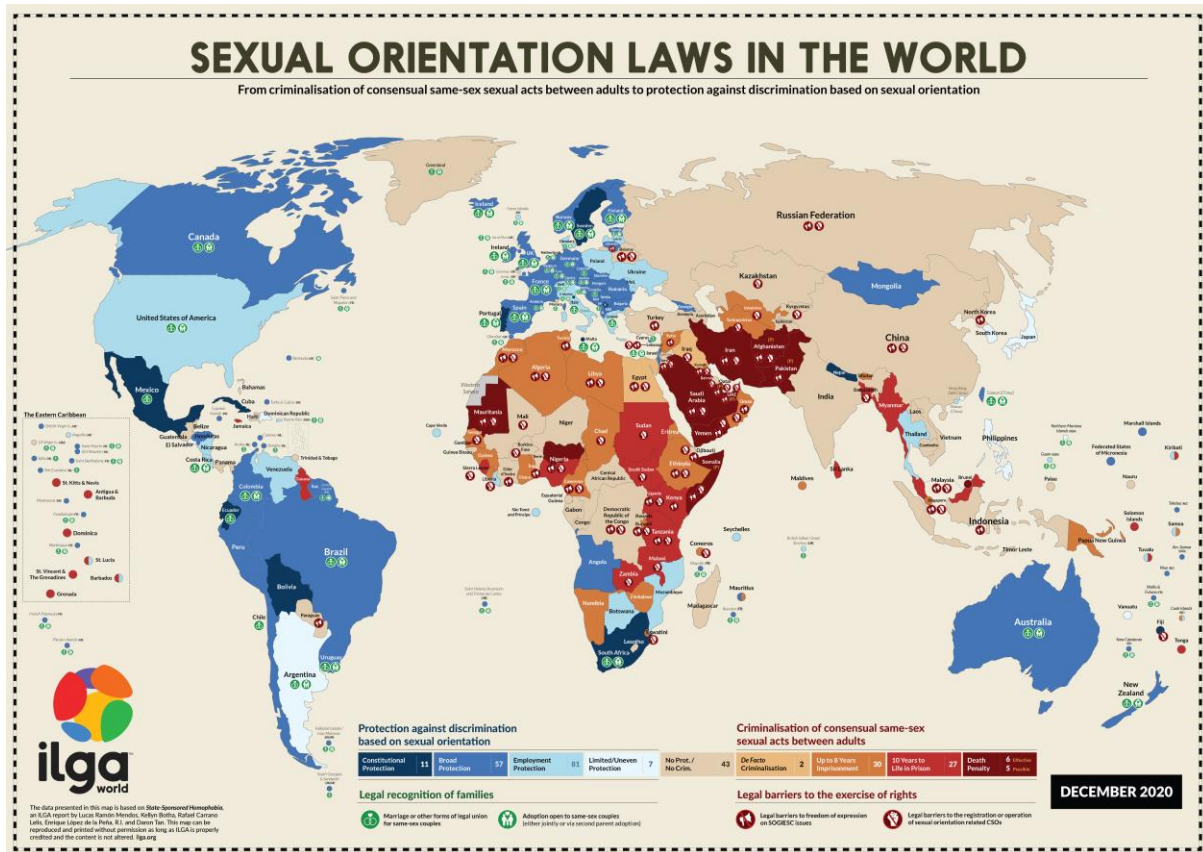


Figure 1-1: Recognition and Criminalization of Same-Sex Relationships as of 2020

1.2 The Question

That so much progress for same-sex couples would be possible in such a compressed span of time is remarkable. The question predicated on this puzzle that this dissertation will seek to answer is as follows: why have some countries legalized same-sex marriage while others have not? In other words, why Taiwan and not Japan? Why Colombia and not Mexico?

This question has been examined by other scholars to be sure – and many of their works will be discussed in the following pages and chapters. However, cross-regional, mixed-method studies at the country level of analysis have rarely been conducted. The hypothesis that I will be testing in this dissertation, employing a country-based, cross-regional, mixed-method approach, is that *certain conditions within a given country or territory – 1) minimal level of emancipative and*

secular values, 2) LGB mobilization capacity, 3) and opportunities for Transnational Advocacy Networks (TANs) to engage and support local actors – increase the likelihood that same-sex marriage will be legalized. These conditions allow for organizations and/or actors within a social movement to engage in contentions politics through existing opportunity structures in order to put pressure on elites to recognize their rights claims. Represented visually, the progression from norm rejection to norm adoption begins with the presence of these social and political conditions needed to make the legalization of same-sex marriage more likely (see Figure 1-2).

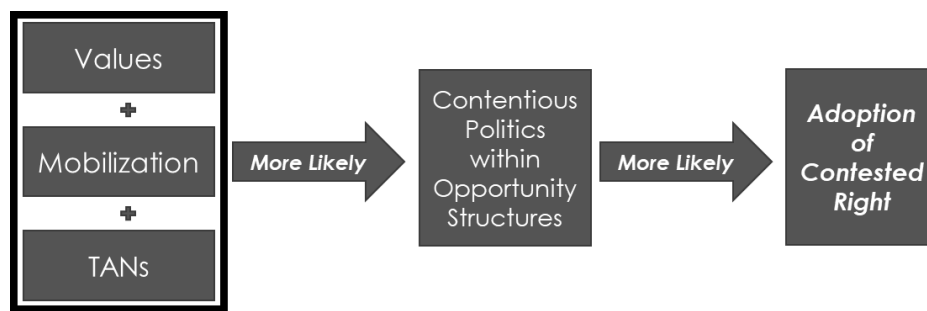


Figure 1-2: The General Hypothesis Visualized

Put another way, if a country has a population that tends to respect emancipative and secular values; and if LGB populations in that country have sufficient resources and support to mobilize political influence, gather to organize, work to shape public opinion, and successfully utilize the country's political and/or judicial system in order to challenge existing barriers to equality; and if TANs have opportunities to form linkages with domestic advocates in that country; that country is more likely to adopt same-sex marriage. And, while the effects of modernization within that country are certainly important, the conditions described above are more predictive of same-sex marriage legalization than modernization alone.

1.3 Definition of Terms

Before proceeding further, it will be helpful to define the key terms used up to this point. These terms have already made an appearance in the hypothesis or the explanation of it and will be important throughout the rest of this dissertation. This is not intended to be an exhaustive list of definitions of independent variables used in testing the hypothesis – that will come in Chapter 3 on the research design of this dissertation.

Emancipative values are a subset of the World Values Survey (WVS) data collected periodically since 1981. Emancipative values include a combination of two value orientations: a liberating orientation, or an emphasis on freedom of choice; and an egalitarian orientation, or an emphasis on equal freedom of choice or equality of opportunity (Welzel 2013, 67). Emancipative values include the values of autonomy, choice, equality, and voice, and these are defined as follows:

Autonomy: The degree to which respondents consider independence and imagination to desirable traits in children but do not consider obedience to be as desirable.

Choice: The degree to which respondents find the following acceptable: divorce, abortion, homosexuality.

Equality: The degree to which respondents value basic gender equality in education, employment, and politics.

Voice: The degree to which respondents value freedom of speech, accountability in government, and autonomy in their personnel and professional lives (Welzel 2013, 66-68).

Secular values involve rational value orientations, or a demystification of traditional sources of authority: religious authority, patrimonial (a form of governance in which all power flows directly from the leader) or patriarchal (male domination) authority, state authority, authority of conformity (group) norms. It should be noted that the term secular as it is used in the WVS and in Welzel's work on human empowerment means, "of or relating to the worldly or temporal; not overtly or specifically religious; or not ecclesiastical or clerical" ([Merriam Webster](#)). Secular values include agnosticism (or disbelief), defiance, skepticism, and relativism, and these are defined as follows:

Disbelief: The degree to which respondents consider faith an important value in children and the frequency of respondents' attendance at religious services.

Defiance: The degree to which respondents are proud of their nationality, how much emphasis respondents place on the approval of parents, and the degree to which respondents feel that a greater respect for authority is needed.

Skepticism: The degree of confidence respondents have in the state's coercive institutions, including the courts, police, and military.

Relativism: The degree to which respondents feel that breaking conformity norms is acceptable, including cheating on a transportation fare, accepting a bribe, and tax evasion. In these cases, any value other than a value of 1 (never justified) on a 1-10 scale is considered to reflect a degree of relativism (Welzel 2013, 63-66).

A **Social Movement** is a loosely organized effort by a large and often diverse group of independent actors aimed at achieving a social or political goal. Actors within social movements seek to mobilize resources in order to affect that change and may often engage in contentious

politics to achieve their goals. Social movements progress through stages and are one-way non-elites can effect change or make demands of elites.

Mobilization Capacity is the ability of actors who are part of a social movement to gather resources – which may include money, supporters, attention of the media, etc. – to help them achieve a desired goal (Edwards and Gilham 2013). The freedoms (such as freedom of speech and expression and freedom of association), education, and relative economic independence that comes with democratization and the formation of inclusive economic and political institutions make resource mobilization within social movements more likely (Tilly 2004).

Contentious Politics are “episodic, public, collective interaction[s] among makers of claims and their objects when (a) at least one government is a claimant, an object of claims, or a party to the claims and (b) the claims would, if realized, affect the interests of at least one of the claimants” (McAdam, Tarrow, and Tilly 2001, 5). Contentious politics occur when organizations, or groups of actors, which are part of a social movement, advocate for policy change through unconventional and sometimes confrontational means. Regular, scheduled, and/or common means of political interaction open to populations, such as elections, petitioning, lobbying, or other normal democratic processes are not considered part of contentious politics. Contentious politics, whether it is violent or not, transgressive or contained, is always intended to be disruptive. Actors engaged in contentious politics do so through selecting any number of actions from among *repertoires of contention*, or “the means by which people engage in contentious collective action” (McAdam, Tarrow, and Tilly 2001, 41). Demonstrations, public meetings, sit-ins, boycotts, strikes, processions, and rallies are among the repertoires of contention.

Opportunity Structures refer broadly to the institutional and sociocultural factors that shape a social movement’s options. Opportunity structures are created or closed off by the relative

openness or closure of a political system to non-elites, the stability or lack thereof of political alliances within the political system, the presence or absence of elite allies, and the propensity and the degree to which the state is likely to respond to demands made through contentious politics with repression or violence (McAdam, McCarthy, and Zald 1999, 23-40). In democratic countries, opportunity structures often include legislative bodies, bureaucracies, and courts.

Norms refer to expectations of behavior about which states or political elites within states may disagree. A norm is an expectation of behavior which informs or constrains state action (Keck and Sikkink 1998). The fight over the right to marriage for same-sex couples is one example of a wider set of LGB rights norms, many of which are contested in most countries around the world, which is to say in most of the countries of the world, LGB persons are not fully equal to heterosexuals under the law. In general, norms can be shaped by any number of factors, and can be influenced from outside the state or from within.

Transnational Advocacy Networks (TANs) include actors working internationally on an issue, who are “bound together by shared values, a common discourse, and dense exchanges of information and services.” One of the things that makes TANs unique and effective is their ability to “mobilize information strategically to help domestic actors within a social movement by persuading or pressuring states and/or elites within those states to accept a norm” (Keck and Sikkink 1998, 2-3). But TANs are also able to offer material or epistemological support to domestic actors who may lack the resources or expertise needed to successfully advocate for their rights. To do either of these things effectively, TANs must have opportunities to form partnerships with domestic actors in order to offer their support.

Modernization refers to the process by which societies within a country become more advanced. This is because of industrialization, urbanization, occupational specialization, and

higher levels of wealth and education. Societies in modern countries also shift from traditional and security-based value systems to postmodern, or “post-material” value systems which prioritize individual liberty, expression, choice, and tolerance (Inglehart 1997, 2003, and 2004; World Values Survey 2021).

1.4 The Process

To clearly demonstrate the validity of the hypothesis, this dissertation will be organized as follows. Following this introductory Chapter will be the literature review of relevant published research on values, resource mobilization, contentious politics, the role of TANs in the diffusion of norms, and the opportunity structures used by social movements to press their claims to equality. I will identify the relevance that cited research in each of these areas has to the legalization of same-sex marriage, and where possible also identify any shortcomings or gaps in the literature reviewed that this dissertation could address. In addition, a brief review of modernization theory literature will be included to allow for the formation of the alternative hypothesis against which this dissertation’s theory will be tested.

Following the literature review, in Chapter 3 I will lay out the research design of the dissertation, explaining both the quantitative and qualitative methods and tools I will be using, including the Robinson Country Intelligence Index (RCII). I will briefly explain the RCII and detail the process by which I use the functionality of its Build Your Own Index (BYOI) tool to construct both a Rainbow Index (RI), which incorporates data from various sources on emancipative and secular values, mobilization capacity, and the presence of transnational advocacy networks; and a Modernization Index (MI), which incorporates data on post-material values, industrialization, wealth, urbanization, education, and modern communication. Within the research design chapter, I will catalogue the results of the quantitative analysis, which will show

that the RI constructed to test the hypothesis captures a single factor – which we will call “friendliness to LGB equality” – and that this factor has a statistically significant predictive power for determining the likelihood of same-sex marriage legalization at the country level. The quantitative analysis will also show that variables used to create the MI and operationalize modernization do not, when taken together, offer as powerful an explanation for same-sex marriage legalization. Chapter 3 will also explain how cases are selected, as well as detail the use of the qualitative methods employed in case study analysis, including elite interviews, process tracing, and historical institutional analysis all aimed at further exploring the hypothesis.

Chapter 4 will explore the case of same-sex marriage legalization in Taiwan in greater detail, based on field work conducted in Taipei in 2020, from February to April and from October to December. Using data contained in the RI and MI on Taiwan as a guide, Chapter 4 will explain how values, mobilization capacity, and opportunities presented to TANs to form partnerships with local actors lead to a greater likelihood of same-sex marriage legalization. Chapter 4 will also detail how modernization, while clearly important, does not offer as compelling an explanation for Taiwan’s legalization of same-sex marriage. In Chapter 4, we will also identify additional country or regional-level variables which may also influence the outcome; however, this dissertation will not explore those additional variables in detail. These additional variables are identified as opportunities for further research.

Chapters 5 and 6 will build on the information contained in Chapter 4 by engaging in comparative, mini-case-study analysis in which legalizers will be compared with non-legalizers to shed further light on the relationship between friendliness to LGB equality and same-sex marriage legalization. This analyses will consist of comparisons between Taiwan and Japan in Chapter 5, using the information in Chapter 4 to guide that comparison, followed an examination of the case-

pair Colombia and Mexico in Chapter 6 to verify that the phenomenon is not confined to the Sinic East. Colombia and Taiwan are the states which have legalized same-sex marriage at the country-level in each pair, whereas Mexico has legalized but the rights are still not fully enjoyed and Japan has not. Chapters 5 and 6, though focused on comparative analysis, will proceed according to the same format as Chapter 4, exploring the relationship between values, mobilization capacity, and opportunities presented to TANs within each country and same-sex marriage legalization. As in Chapter 4, additional variables of interest will be identified as potential avenues for future study but will not be explored in detail here.

The qualitative analysis in each of these chapters is intended to show why some countries legalize same-sex marriage and not others in a way that quantitative analysis alone cannot. Because, while the quantitative analysis detailed in Chapter 3 shows that the RI is more predictive of the likelihood of same-sex marriage legalization than the MI, the RI also predicts that Mexico is more likely to legalize same-sex marriage than Colombia and Japan more likely than Taiwan. This strongly suggests that are either some factors not included in the RI that are unique to the regions or clusters these countries are in, or that some variables are doing more work in some regions or clusters than in others. Therefore, deeper analysis is required. Finally, the dissertation will conclude by considering the implications of the research and laying out areas for possible future study.

It should be noted before proceeding to the argument that there is a trade-off between richness of detail and detailed focus. Because of the comparative nature of this dissertation, there will be claims made about the importance of critical junctures, institutional developments, historical events, or cultural phenomena to the outcome of same-sex marriage legalization. While some effort will be paid to due justification of these claims, those claims will be supported within

the context of comparative analysis. It is beyond the scope of this dissertation to delve deeply into granular analysis of any single case – though there is certainly an opportunity to do so in future. This dissertation should be read with this trade-off in mind.

1.5 The Argument

Referring to Figure 1.2, the argument made in this dissertation is as follows. LGB citizens within a given country perceive themselves to be part of a marginalized or oppressed group or community with a common identity who share a common experience of inequality. Consider this a sort of pre-condition – if LGB persons within a given country have no shared sense of community or no shared sense of inequality, or if persons engaging in same-sex sexual relationships do not tend to even identify as LGB, mobilization is very likely not possible, or at least much more difficult. So, this dissertation will proceed from the defensible assumption that a shared sense of community is required for a social movement to be born. In states which have societies that have embraced secular and emancipative values, it becomes more likely that those social movements advocating for equal rights claims may begin to see some success. Those domestic LGB rights actors begin to do this by mobilizing domestic resources and taking advantage of opportunities to build relationships with domestic political allies as well as outside groups within TANs. This allows those groups to engage in contentious politics drawing more effectively from their repertoires of contention. Common repertoires of contention include but are not limited to creation of associations and coalitions for the purpose of furthering specific claims, public meetings, solemn processions, vigils, rallies, demonstrations, sit-ins, petitions, statements to and in public media, boycotts, and strikes. Repertoires of contention are a means to an end, and in most cases, different actors will choose different means depending in their goals, available resources, and amount of public and/or elite support. However, their choice of actions will also be influenced and

constrained by the opportunity structures – or the character and institutional qualities of the political and/or judicial systems – available to them.

At this point, it is appropriate to mention another pre-condition necessary to LGB rights, and that is democratization. Or, more specifically, polyarchy, as defined by Robert Dahl (1956, 1986) as the form of government in which power is invested in multiple elected officials who are chosen by free, fair, open, and regular elections and in which all adults have universal suffrage, the ability to run for public office if they desire and also enjoy basic civil rights and liberties. Without the condition of polyarchy in government, actors cannot effect change or properly and effectively advocate for human rights through contentious politics. Analysis will show, however, that while regime type is very clearly significant for same-sex marriage legalization, polyarchy alone cannot explain legalization of same-sex marriage. Therefore, this dissertation will also treat polyarchy as a necessary but insufficient pre-condition for legalization of same-sex marriage.

Speaking of polyarchies, while the United States of America is not a case examined in the body of this dissertation, the legalization of same-sex marriage in the United States provides a clear and possibly more familiar illustration of how opportunity structures can dictate the way legalization occurs from which we can launch our analysis. In the United States, federal systems which allocate significant power to the states made it possible for many of states to criminalize consensual homosexual sex. In 1980 in the United States - 11 years after the Stonewall Riots - 23 states and several territories still had sodomy laws which criminalized homosexual activity, most of which with actual prison time possible upon conviction. In addition, there was still a great deal of cultural resistance to the idea that LGB people should be treated equally.

For example, in 1986, 57% of US respondents to a Gallup poll indicated that they felt homosexual sex should be illegal for both men and women, and only around 19% believed that

homosexuality was an innate characteristic (Gallup 2020). Also, around the same time, the LGB community found themselves with a distinct lack of allies among political elites at the national level, and very few LGB persons who served in positions of authority were publicly out as such. For these reasons, LGB rights advocates had to resort to transgressive contentious politics to put public pressure on political elites while simultaneously using the judicial system to advance the equal rights claims that had no chance of success legislatively or through executive order.

The American LGB social movement finally succeeded in overturning state sodomy laws in 2003 with the Supreme Court decision in *Lawrence v. Texas* that held that such laws violated the Due Process Clause of the Fourteenth Amendment to the US Constitution. But it was not until *Obergefell v. Hodges* in 2015 that activists finally succeeded in winning the right for same-sex couples to marry. The American LGB social movement had much more success in the courts than in Congress because American courts were in a much better position to advance LGB claims than either legislatures or executives due to certain qualities of the opportunity structures in the US. These qualities presented a particular set of opportunities which informed the kind of options available from among the common repertoires of contestation already listed. And, while the possibility of the US backsliding on same-sex marriage is outside the scope of this dissertation, at the time of this writing it is entirely possible that, with the confirmation of conservative judge Amy Coney Barrett, the United States will see the legalization of same-sex marriage reversed, precisely because LGB rights activists have never been able to achieve equality through subsequent legislation or executive action as of the writing of this dissertation. What the courts giveth the courts can take away.

But the way in which same-sex marriage came to be legalized in the US – at least on the surface – lends some support to the hypothesis at the heart of this dissertation. Beginning with the

homophile movement of the 1950s, American LGB persons began to conceive of themselves as a community with a shared identity and a shared struggle born out of a shared oppression. American LGB persons formed a social movement to advance right claims of equality. Actors within that social movement found themselves constrained by the nature of the political and judicial opportunities available to them and so mobilized the resources necessary to pressure political and judicial elites for change, often through disruptive, transgressive politics. Actors within the American LGB social movement drew support and inspiration from similar actors making equality claims in social movements in other countries, from LGB rights in Northern Europe to anti-colonial movements in the developing world. As time went on and American LGB activists began to have some domestic success in pressing their claims, well-attended annual events like Pride gave US actors opportunities to form relationships with social movements in other countries as well and draw strength and legitimacy from those partnerships. This support and legitimacy allowed for more successful navigation of the American political and judicial system, the latter of which finally allowing actors to realize success in the legalization of same-sex marriage.

As in the US, LGB persons in Colombia and Taiwan shared a sense of common community and common struggles against inequality. LGB SMOs in Colombia and Taiwan chose tactics from among their repertoires of contention that made sense given the opportunity structures available to them. These opportunities were shaped by political and historical trends. LGB SMOs in Colombia and Taiwan had opportunities to network within TANs to gain epistemic and material support. Data analysis strongly suggests these factors are why Colombia and Taiwan both legalized same-sex marriage. But qualitative analysis is necessary to explain why Colombia and Taiwan legalized same-sex marriage while countries like Japan and Mexico, which both score higher in both the RI and MI, have not – though many sub-national jurisdictions in Mexico have done so.

Both the RI and MI are meant to help quantify and visualize the factors of friendliness to LGB rights and the effects of modernization. Variables in both the RI and MI have been selected based first on the review of the literature in Chapter 2 and then narrowed based on quantitative analysis detailed in Chapter 3. Both the RI and MI are used to score all countries with data available on each of their constituent variables (a country must have data for each variable to be used in either index) from 1-1000. There will be more detail on this process in the research design chapter, but for now it will suffice to say that countries which perform well – or score closer to 1000 – in the RI are the countries in which we would expect to see same-sex marriage more likely to be legalized. Countries which score well in the MI are also more likely to legalize same-sex marriage, but analysis confirms that the relationship between modernization and legalization is not as strong. In both indexes, countries are also grouped into regions and developmental clusters, based on the work of Christian Welzel.

A cursory examination of the country ranks and scores in the RI shows that it is indeed true that countries which score well are more likely to have legalized same-sex marriage and typically perform better than their neighbors or similarly developed countries which have not. Surprisingly, however, this is not the case for Taiwan and Japan (see Figure 1-3) or for Colombia and Mexico (see Figure 1-4). In both case pairs, the non-legalizing country is friendlier to LGB equality according to the data in the RI, and Japan is the highest scoring non-legalizer and the only country to score over 810 that has not legalized same-sex marriage. In the case of Colombia and Mexico, both score very similarly in each variable in the RI, yet Colombia legalized first while Mexico still has not. In addition, in both case pairs, the non-legalizer is more modern, according to the data in the MI. This means that both modernization theory as operationalized in the MI and friendliness to LGB equality as operationalized in the RI suggest that Japan and Mexico should have legalized

first. As this dissertation will show in more detail later, it is this unexpected outcome combined with the first adopter status of both Taiwan and Colombia that make the case-pairs of Taiwan-Japan and Colombia-Mexico suitable and appropriate for studying the puzzle and question with which this dissertation is concerned.

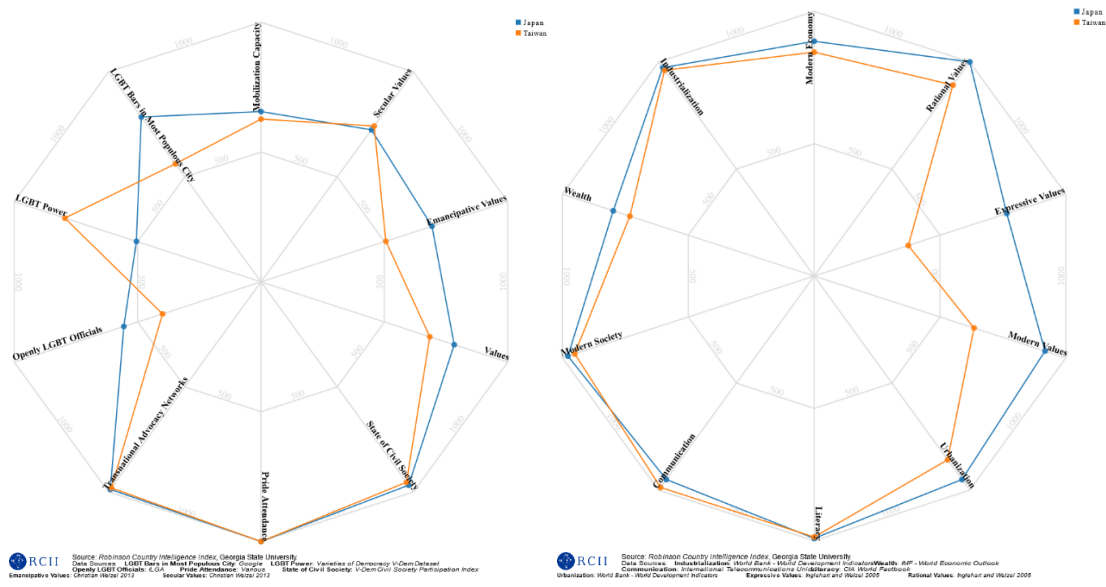


Figure 1-3: Japan and Taiwan Compared

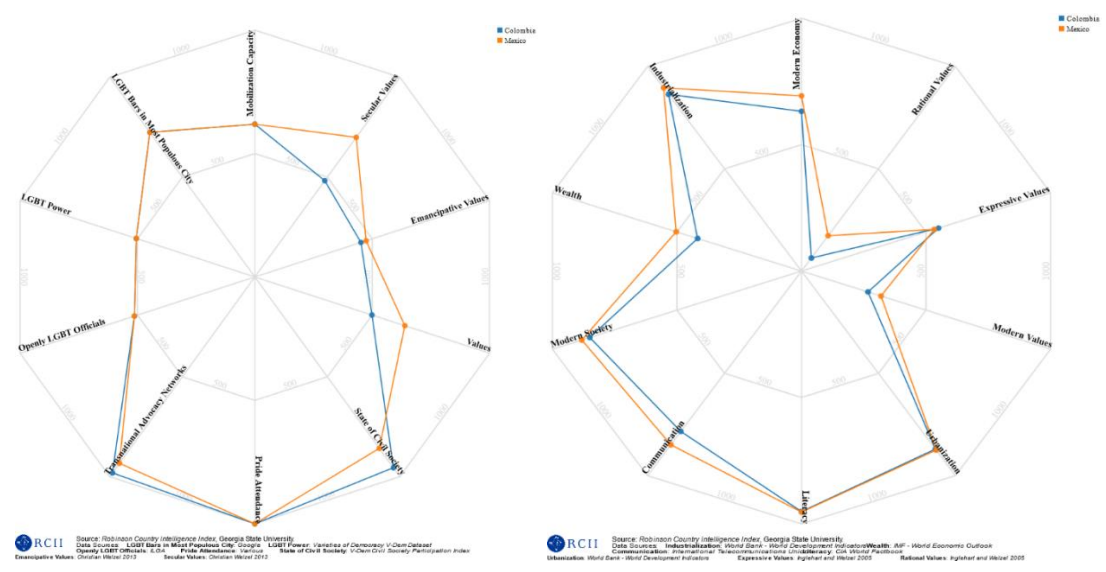


Figure 1-4: Colombia and Mexico Compared

1.6 Summary

Conditions which make same-sex marriage legalization more likely are – 1) a minimal level of emancipative and secular values, 2) high LGB mobilization capacity, and 3) the presence of opportunities for Transnational Advocacy Networks (TANs) to form partnerships with domestic actors. These factors increase the likelihood that domestic social movement organizations (SMOs) acting within their movement will use contentious politics to put pressure on elites through existing opportunity structures – either legal or political – to accept the norm or LGB equality thus making it more likely that same-sex marriage will be legalized. A review of literature touching on these conditions as well as on same-sex marriage legalization will be used to identify independent variables to operationalize these conditions. These variables will be used to construct an index, the Rainbow Index (RI), to measure and visualize country performance in each of these variables, scoring them on a scale of 1-1000 and then ranking them appropriately based on those scores to determine each country's friendliness to LGB equality. Likewise, the Modernization Index (MI) will be created and used to test the alternative hypothesis that the effects of modernization, and not friendliness to LGB equality, is more predictive of legalization.

Quantitative analysis will test the validity of the RI and its efficacy at predicting likelihood of same-sex marriage legalization. The RI will also be used to help identify case pairings with first-adopter countries. These case-pairs will be examined using qualitative analysis methods. Case studies will explain why, even though quantitative analysis proves the RI is predictive of the likelihood of same-sex marriage legalization, Colombia and Taiwan have legalized even though the RI identified countries which should have been more likely to do so.

2 LITERATURE REVIEW

same-sex marriage legalization, being a young phenomenon, is a newer area of study in political science. Much of the literature that does exist is country or region specific, and there has been little published work to-date to embark on cross-regional or global analysis of the topic. This dissertation aims to fill this gap in the literature. This chapter reviews the state of the literature relevant to both the hypothesis and to the alternative hypothesis, and will be drawing from diverse areas of study, including queer studies, values and modernization, social movements and contentious politics, resource mobilization, and transnational advocacy networks and norm diffusion. This chapter will then discuss literature on opportunity structures and put the whole picture together, based on the literature.

2.1 LGB Identity and Heteronormativity

For most of the history of the modern state, laws governing romantic relationships and family life have operated according to the principle of heteronormativity. Heteronormativity is the assumption that society and law should be arranged around heterosexual mores, gender roles, and institutions. In a heteronormative world, it is assumed that men and women will be naturally sexually attracted to one another and that they will want to marry and have children, thus ensuring the continuation of their society and of that society's values, norms, and customs as they are passed on from parent to child. In a heteronormative world, those attracted to the same sex go against that assumption, or against the "natural order" because they have an innate desire to behave sexually and romantically in non-heteronormative ways. Either they may find themselves attracted to members of the same sex occasionally or exclusively, or they may find themselves lacking in sexual attraction at all. For either of these reasons, in a heteronormative world it is assumed that these people, being non-heterosexual, are less likely, if at all, to (naturally) have children.

Therefore, persons attracted to members of the same sex, or persons not sexually attracted to anyone at all, may not contribute to the future survival of their society or its values, norms, and customs because they will not pass those traditions on to the children they do not have. Therefore, the notion of heteronormativity implicitly demands the association of heterosexuality with life and of homosexuality with death – the death of institutions, of traditions, of the family, and of society itself (Feit 2011). In 2004, senators in the United States debated adding the following language to the Constitution:

“Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.” (Congress.gov).

The notion of heteronormativity is why debate around this issue would be given any priority at all, or why, when asked, one of the sponsors of the above language would characterize the “threat” posed by same-sex marriage (same-sex marriage) as an existential one comparable to that posed by global terrorism (Feit 2011). same-sex marriage, in the eyes of its opponents, threatens to undermine the very mechanism by which societies survive: the passing on of shared values and history through procreation. In other words, for the sponsors of the Federal Marriage Amendment (FMA) referenced above, it is as much of or more of an existential threat to American civilization as Russian election interference, North Korean missiles, or al Qaeda sleeper-cells.

In a heteronormative world, heterosexuality is the expected norm and can often be the only socially acceptable orientation for sexual, romantic, and familial aspects of life. Heterosexuality is therefore often used as a social and political standard and is applied when judging the worth of an individual and that individual’s eligibility for inclusion, acceptance, social status, legal rights, and even employment (Corrales and Pecheny 2010). But, in modern societies sexual attraction can be much more than simply what one does in the bedroom to whom or for whom. Table 2 on the

following page demonstrates how sexual desire may inform sexual identity. In other words, in an existence in which non-heterosexual people find themselves marginalized by heteronormativity, their sexual desires can inform how they conceive of themselves – they may come to see themselves as LGB. In a heteronormative society, the primary political concern for LGB persons tends to be the ability to act on their sexual desires and express their sexual identities free from persecution or discrimination, especially since those desires do not conform to heteronormative notions (Corrales and Pecheny 2010).

In Latin American states, for example, this notion of heteronormativity has led to the dual ideologies of *machismo* and *marianismo*. *Machismo* demands that men behave in traditionally masculine ways: they are the authoritarian heads-of-household and have the luxury of sexual freedom and sexual appetites, up to and including infidelity, but they are also expected to have wives and children and provide financially for their families through sufficiently gainful employment; while *marianismo* demands that women be sexually faithful to their husbands and act as the spiritual and emotional guardians of the home and the nurturers and protectors of their children (Tiano and Shea, 2021). These notions of gender roles, with some minor variations, are not unique to Latin America. But they do put non-heterosexual people in the position of having to defy those norms, and their desires are not recognized as equally valid and worthy of recognition, they may find themselves socially, economically, and even politically penalized. The underlying assumptions of heteronormativity that go with those gender norms are challenged by the public demand that non-heterosexual sexual identities be socially and politically recognized as equally valid as heterosexual ones (Corrales and Pecheny 2010).

Table 2-1: Sexual Orientation and Gender Identity

	Desire	Gender Identity	Gender and Identity Expression
	Sexual Orientation	Self-Identity	
Heterosexual	Predominant or exclusive attraction to the opposite sex	May not be an issue	May or may not deviate from heteronormativity (e.g. macho/effeminate men; effeminate/tomboy women)
Homosexual (men are referred to as gay; women as lesbians)	Predominant or exclusive attraction to the same sex	May or may not identify as LGBT	May or may not deviate from heteronormativity (e.g. macho/effeminate men; effeminate/tomboy women), with one caveat: may display different degrees of "outness" at home, at work, or among friends
Bisexual (men and women)	Attraction to the opposite and the same sex	May or may not identify as LGBT	May or may not deviate from heteronormativity (e.g. macho/effeminate men; effeminate/tomboy women), with one caveat: may display different degrees of "outness" at home, at work, or among friends
Transgender (men and women)	May or may not be an issue	Rejects gender identity assigned at birth	May or may not deviate from heteronormativity (e.g. macho/effeminate men; effeminate/tomboy women), with one caveat: may display different degrees of "outness" at home, at work, or among friends
Transsexual (men and women)	May or may not be an issue	Rejects gender identity assigned at birth	Changes appearance, and maybe anatomy

Source: Corrales and Pecheny 2010: page 4.

It is important to understand this reality because it not only informs the struggle for equality for LGB persons, but it also necessitates it. Same-sex desire has been documented in every human society in every part of the planet and in every historical epoch. However, the notion of a sexual identity – that a man might think of himself as gay and that “being gay” is part of who he is in a fundamental and important way – is as far as we know a relatively recent phenomenon. In other words, there is a difference between a same-sex sexual act and an embrace of an identity built at least in part around the desire to engage in that act. One could even argue that the oppression itself creates the need for identity and that as industrialization necessitated the migration of young people away from their homes in the countryside and into cities, the bonds of kinship and the influence of tradition came to have less of a hold over the decisions to act (or to avoid acting) on same-sex desires that are indeed quite natural in the human animal.

So, those persons with a sexual attraction to someone of the same sex, either exclusively or not, or for whom gender expression deviates from the heteronormative, are classified as LGB –

and more importantly will tend to classify themselves as such – when those desires and forms of gender expression transcend into a social and political identity. Men and women may behave in ways that are contrary to heteronormative assumptions regarding “proper” sexual behavior and/or gender roles, for example men who publicly identify as heterosexual may discretely have sex with other men. If, and only if, an identity is formed around those non-heteronormative behaviors are those men (and women) considered LGB. One of the ways in which that identity is created is through the process of “coming out” publicly as LGB – itself a political act – which is enabled and reinforced through the process of creating publications, community centers, web sites and other aspects of LGB urban life which give and create meaning for LGB persons, and in participating in Pride parades and demonstrations that provide much needed visibility (Friedman 2010; Josephson and Marques 2017:241). This is referred to as “queer world making” (Josephson and Marques 2017). Heteronormativity and coming out are political in the poststructuralist sense of the word, i.e. they are determined by the processes, regimes, or logics of language, knowledge, and power inherent in conducting politics within any given society (Varela, Dhawan, and Engel 2011). It is therefore necessary for these concepts to be considered as part of any analysis of LGB rights – indeed the concepts are crucial to understanding the nature of the very formation of an LGB identity that makes rights advocacy and acquisition possible. And this identity is very real. As societies within industrializing or industrialized states began to embrace non-traditional, non-security-oriented value systems, individuals were likely to begin to feel more comfortable acting on those desires or accepting others who did.

2.2 Values and Modernization

What creates the necessary environment that allows for successful challenge of heteronormative assumptions about marriage and relationships? As states industrialize, or

modernize, the societies within tend to adopt new value systems. They turn away from the traditional, religious, and security-oriented values of their forebears and embrace more secular, rational, and self-expressive values (Inglehart and Welzel 2014). The work of the WVS, which will be discussed later in this section, attempts to capture and measure this movement from the traditional to the rational, the religious to the secular, and the security-oriented to the self-expressive. The WVS grew out of observations made by modernization theory.

Modernization theory holds that there are five stages of growth for a society: traditional, pre-conditions for take-off, take-off, drive to maturity, and mass consumption (Rostow 1960). In a traditional society, economic activity is based on “pre-Newtonian science and technology” and accompanying “pre-Newtonian attitudes towards the physical world.” (Rostow 1960; 4). In traditional societies, a very high proportion of resources need to be devoted to agriculture, and because of this these societies typically also feature a closed, hierarchical social structure and a great deal of importance placed on family. Once a society enters pre-conditions for take-off, advances in society allow for technological revolutions in agriculture and improvements in transportation and communication technologies allows for the building of an effective, centralized state and for the challenging of existing hierarchical structures.

In addition, increased social mobility brings with it an abandonment of the fatalistic worldview of traditional societies. When a society enters the take-off phase its political and economic elites begin to regard growth and modernization as a national priority, as “serious, high-order political business.” During take-off, national savings rates rise, rates of urbanization and industrialization increase, and the basic social, political, and economic structure of the society are transformed in such a way to make sustained growth and advancement possible. During the drive to maturity, investments in technological advancements allow for the escape from the cycle of

Malthusian catastrophes when it becomes possible for output to regularly outstrip demand. Industrial processes diversify and become more complex and able to specialize in chosen industries as a matter of political choice rather than necessity. During the stage of mass-consumption, economies further diversify to include the production of durable consumer goods and services.

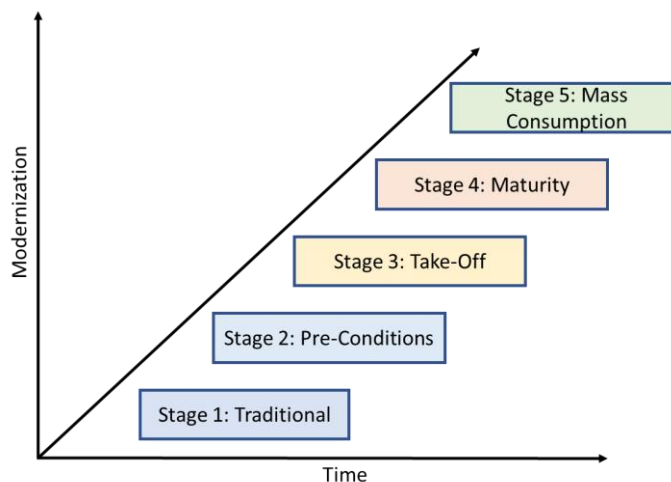


Figure 2-1: Stages of Modernization

Understanding modernization theory is important to understanding the role of development of post-modern or empowering values. This is because the effects of modernization are not confined to the merely economic. As states become industrialized and more prosperous, cultural values within their societies shift. Analysis using WVS data has shown that economic development is associated with shifts in values towards increasingly rational, tolerant, trusting, and participatory sets of principles (Inglehart 1971, Inglehart 1990, Inglehart and Baker 2000). Indeed, by the time a state has reached Stage 5: Mass Consumption, the economic specialization of labor, increased levels of education, and increased incomes are expected to lead to predictable outcomes like gender equality and tolerance for sexual minorities (Inglehart and Baker 2000; Norris and Inglehart 2001). However, while the transition from poverty and underdevelopment to prosperity and mass

consumption does tend to correlate well with increased tolerance, secularism, rationalism, and free expression as modernization theorists supposed, analysis also reveals that some cultural values can be “sticky” and that change in these values is more path dependent, with societies holding on to certain traditional values much longer and more doggedly than modernization theory would otherwise predict. The WVS divides the world up into cultural zones (see Figure 2-2), and this is because states with histories of Protestant or Orthodox or Islamic or Confucian traditions manifest distinctive value systems within their societies that persist after controlling for the effects of economic development and are much more tenacious in the face of modernization than would otherwise be supposed.

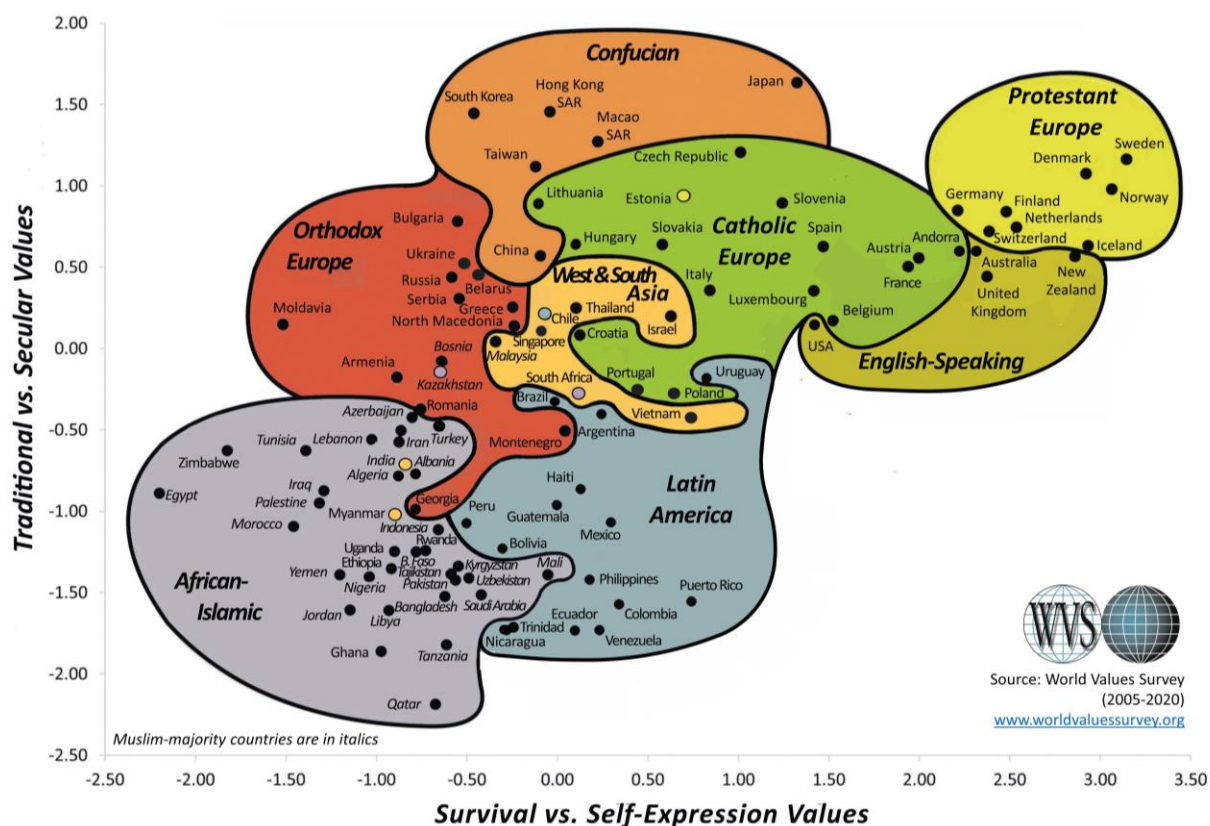


Figure 2-2: World Values Survey Cultural Map (2020)

It turns out that states within these cultural zones progress towards modernization occurs along similar trajectories informed by these sticky value systems that persist through the stages of modernization. Interestingly, within the parameters allowed by the sticky values within these cultural zones, this relationship between modernization and tolerance goes both ways: while modernization leads to greater tolerance for LGB persons, greater tolerance can be an excellent predictor of future development in an ever-globalizing world in which artists, scientists, innovators, and entrepreneurs with the freedom to travel find themselves attracted to more tolerant environments (Florida 2012, 2014). It is therefore not so much a linear relationship as it is a cycle of continuous development supported by increasing levels of tolerance.

Modernization theory also provides our alternative hypothesis, that a combination of three factors; rational and expressive (or post-modern) values, a modern economy marked by high levels of wealth and industrialization, and a modern society marked by high levels of urbanization as well as high literacy rates and advanced means of communication; make same-sex marriage legalization more likely. Indeed, Robert Inglehart observes that industrialization and the accompanying urbanization, specialization, and increased levels of education, tends to have the effect of making a country more modern, which is to say in the case of this dissertation more likely to extend tolerance and equality to LGB persons (1997).

2.3 Human Empowerment

Building on the work of the WVS and modernization theorists, there is research that attempts to quantify the concept of human empowerment as derived from emancipative values, or the universal human desire for an existence “free from domination” and secular values, or the willingness to question and/or demystify traditional sources of authority (Welzel 2013: 2). Since the Industrial Revolution, individuals in industrialized and post-industrialized states experience

improved living conditions due to economic development, and with those improved conditions comes a transformation in their way of life. Life for these individuals transforms “from a source of threats to a source of opportunities, shifting from a struggle to survive to a drive to thrive” (Welzel 2013: 2). In such an environment, homosexuality and other “benign forms of norm deviation” are more tolerated (Welzel 2013). This way of operationalizing values should not be confused with the rational and expressive values of modernization theory, as those values are more concerned with movement away from the priorities of security and tradition. Though, certainly Welzel’s construction of values would not be out of place were it adopted by modernization theorists as a substitute for rational and expressive values. Indeed, Welzel and Inglehart worked closely together to create the WVS.

As emancipative and secular values continue to take hold as a state modernizes, they make possible social movements aimed at achieving equal opportunity, but these values must be combined with two other elements of human empowerment for true progress towards equality to occur, action resources and civic entitlement. In the language of social movements that will be discussed further on this chapter, we might think of these as elements of the opportunity structure. Action resources enhance the individual’s ability to exercise freedom, while civic entitlement empowers the individual institutionally (Welzel 2013). As existential threats fade with increased levels of development, action resources such as knowledge, skills, information, networks of exchange, equipment, tools, and income increase. Emancipative values, such as an emphasis on freedom of choice and a desire for a more egalitarian society also emerge. Civic entitlements, such as the right to vote, or the right to engage in collective action, complete the empowerment cycle and, together with awakening emancipative values and action resources, form a self-sustaining cycle of human empowerment (Welzel 2013).

Table 2-2-2: Culture Zones and Stages of Human Empowerment

Culture Zones	Suffering Stage		Struggling Stage		Thriving Stage
	Low	Modicum-Low	Modicum	Modicum High	
Islamic East	Algeria, Iran, Iraq,	Egypt, Jordan,			
Indic East	Bangladesh,	India, Malaysia	Philippines,		
Sinic East	Vietnam	China	Hong Kong	South Korea, Taiwan	Japan
Orthodox East	Azerbaijan	Albania, Armenia, Belarus, Bosnia, Georgia, Kyrgyzstan,	Macedonia, Moldova, Romania	Bulgaria	
Old West				Cyprus, Greece, Israel	Andorra, Austria, Belgium, Estonia, France, Ireland, Italy, Luxembourg,
Reformed West					Denmark, Finland, Germany, Iceland, Netherlands, Norway, Sweden,
New West					Australia, Canada, New Zealand,
Returned West			Croatia, Latvia, Lithuania	Estonia	Czech Republic, Hungary, Poland,
Sub-Saharan Africa	Burkina Faso, Ghana, Nigeria, Rwanda, Tanzania, Uganda,	Mali, Zambia		South Africa	
Latin America	Guatemala, Venezuela	Colombia, Mexico, Peru	Brazil, Chile, Dominican Republic,	Argentina, Trinidad- Tobago	Uruguay

Like the values captured in the WVS, the processes of human empowerment can be grouped in cultural zones (see Table 2-2). But, Welzel adds another dimension to his comparison which is the stage of human empowerment a country finds itself in. As indicated earlier, this second dimension has just as much to do with institutions as it does with values. It is this use of two comparative dimensions that will inform the division of countries in both the RI and MI which will be detailed later in Chapter 3.

It should be noted that the comparative study of values is not without its criticisms. Some recent research suggests that comparing values across cultural groups is too problematic because there are factors unique to each group that aren't quantified in the WVS data (Alemán and Woods 2015). More traditional critiques include the observation that comparing different, opposing value sets (material vs. post-material; traditional vs. rational-secular; survival vs. self-expressive, etc.) is only valid within certain time frames for cultures that have recently emerged, meaning that, “the equality-freedom orientation underlying the ideologies or political orientations selected for study here, it may be argued, can surely not be generalized to ideologies that prevailed a thousand years ago or to those that might prevail a thousand years hence” (Rokeach 1973, 186). Indeed, we cannot even measure human values from 1900, when many early and mid-industrializers were busily moving up the developmental ladder (Abramson 2011). Others argue that the transition to

rationalism or emancipation or secularism is not a “sharp-edged sword” that cuts the past and future apart from one another (Calista 184, Abramson 2011). However, critics also point out that it is enough to be aware of the limitations in the data and to avoid drawing too deterministic a conclusion, especially since it is clear both Inglehart and Welzel have clearly tapped into a measurable phenomenon, even if the current best measure is imperfect (Abramson 2011, Alemán and Woods 2015).

There are a few notable exceptions when it comes to same-sex marriage legalization that strongly suggest relying on values alone to explain the phenomenon would be a mistake. For example, in the Sinic East, Taiwan has made greater strides towards same-sex marriage than Japan has, even though Japan is at a higher stage of human empowerment. In the Old West, Andorra, Estonia, Italy, and Malta do not recognize same-sex marriage, but Austria, France, Ireland, Luxembourg, Portugal, and Spain do. Switzerland does not recognize same-sex marriage, though all the rest of the thriving states in the Reformed West do, and all states in the New West recognize same-sex marriage. In Latin America, Colombia recognizes same-sex marriage though it is a low-modicum struggling country, while Chile, the Dominican Republic, and El Salvador – all of which are further along on the Human Empowerment cycle – do not.

Failure in the United States to grant homosexuals equal marriage rights through legislation, and the backlash to judicial decisions that have extended those rights despite higher levels of self-expressive values, is due to the combination of several factors, including: America’s fundamentalist strain of Protestantism, American religiosity, the presence of “social constituencies threatened by declining status in capitalist economies who strike out against symbols of modernity in a politics of resentment”, the power of corporate capitalism and corresponding weakness of the American labor/social democracy movement, and nationalist rhetoric that equates survival of

American culture and power with the survival of the heteronormative family (Adam 2003). In contrast, the comparatively clearer success of gay rights movements in Canada at securing same-sex marriage rights may be the result of a relatively weak religious right, low levels of conservative religiosity, the existence of the Canadian Charter of Rights and Freedoms, a historical recognition of “de facto” or common-law couples, an extensive welfare state, a strong labor movement, and an acceptance of diversity (Rayside 2007). It is interesting that WVS data shows Canada as slightly less secular than the United States but significantly farther along the survival vs. self-expression axis.

In addition, a study of tolerance for homosexuals in 35 European states shows that economic development leads to more tolerance among those who benefit most from that development – high levels of economic inequality lead to reduced levels of social trust and consequently intolerance (Anderson and Fetner 2008). Thus, there is at least some research to suggest that economic inequality is at least as important a factor in predicting tolerance as movement along the traditional vs. secular axis and the survival vs. self-expression axis in any given country. It is certainly true that economic inequality may fluctuate over time within societies, but other research has also borne out that when levels of economic inequality rise above a certain point, the resulting concentration of wealth and accompanying political power and opportunity can cause social and economic instability (Picketty 2013).

Therefore, based on the available literature, the values present within a state are not enough to explain the outcome of same-sex marriage alone, but they do make it possible for LGB activists to begin to mobilize for a number of reasons. First, a society that embraces emancipative and secular values is more likely to produce individuals willing to challenge the state and demand equality. Also, a society that embraces emancipative and secular values is more likely to produce

those who might be sympathetic to the cause, especially at first when support is crucial. Third, as the struggle for equality continues, the ability to mobilize public support for the cause of LGB equality in general or same-sex marriage in particular (though, it could be any of number of particular causes) can be a potent weapon as actors within the movement engage with elites. Also, a shift in attitudes from rejection to acceptance can help cement long-term success of a social movement in securing lasting change (Dietz et al. 1989; Johnston et al. 1994; Stern et al. 1999). But, before any of this can happen, actors must mobilize, and social movements must be formed. For that, they need a reason.

2.4 Mobilization Capacity and Social Movements

Identity is socially constructed: people draw their sense of identity from the groups and social networks of which they are already part and this identity allows for the creation of a positive vision of themselves and of their group (Hirshman 2013). From these positive visions, members of a group can form a desire to change the way the larger society perceives them, and in cases in which members of the same group come to understand that they are excluded or persecuted because of their identity, that group has a reason to organize into a movement (Hirshman 2013). LGB rights movements have a history stretching back over a century to the founding of the Scientific-Humanitarian Committee in Berlin in 1897 by Magnus Hirschfeld, which was organized to repeal a German law which criminalized homosexual sex between men (Adam, Duyvendak, and Krouwel 1999). The modern LGB movement owes its genesis to the rise of the New Left in the 1960s and 1970s, which grew out of the Civil Rights Movement in the United States and nationalist anti-colonial movements in Africa and Asia, which included environmental movements, feminist movements, student movements, and gay liberation movements in North

America, Western Europe, Latin America, and even Japan, though at this time gay liberation movements were virtually unknown in Africa and Asia (Adam, Duyvendak, and Krouwel 1999).

The status shared by members of the LGB community as that of pariahs and outcasts in every sense imaginable – indeed collectively as an existential threat to the very survival of the nation – as well as a shared sense of identity provided the conditions for gays and lesbians (and later bisexuals and transgendered) to form social movements and advocate for more equal treatment. However, the kind of identity politics necessary to create an LGB movement is the result of modern forces previously alluded to or discussed: the rise of post-industrial capitalism and a world-system that breaks traditional kinship bonds and atomizes communities (Pichardo 1997; Adam, Duyvendak, and Krouwel 1999; Hirshman 2013). Nevertheless, shared identity is an important first step to mobilization and movement formation. It is a precondition for the social movement to emerge.

But a shared identity alone is not enough. To move individuals who identify as LGB to cooperative action, there must be a crisis, a cause around which to rally that calls members to action. For the modern LGB movement, this was The Stonewall Riots of 1969. For three days gay men, lesbians, and transgendered persons rioted against the New York City police department. The immediate cause was a raid conducted by the NYPD on a well-known gay bar, The Stonewall Inn. These raids were not uncommon, and often they occurred without incident. Patrons and employees could be jailed, their names and photographed published in local papers all but ensuring an end to their lives as they knew them as many were not out. However, one can easily imagine the simmering rage and festering desperation building up within members of the LGB community who found themselves ostracized in every way and victimized by the very agents of the state that were supposed to protect them. Same-sex attracted persons could not love one another openly – to do

so risked economic ruin, physical harm, imprisonment, or even death. When LGB persons did find themselves victims of a crime, for example getting mugged in a park while cruising for sex (more common in the days of greater oppression when casual and anonymous sex was preferable) or being attacked while coming out of a gay bar, they were unable to go to police for help. So, the 1969 raid on the Stonewall Inn was simply one act of oppression too many. This was the turning point, or coalescence, of the modern LGB movement as we know it (see Figure 2-3). Indeed, New York City's first Gay Rights March was held on the anniversary of the start of the riots, June 28, and this marks the date of many Pride demonstrations across the world to this day.⁵

The simplest way to explain social movements is to begin by understanding that not all members of a community are members of the movement. Which is to say that big things come from small beginnings. Actors within the movement are adherents; those who contribute resources to help mobilize the movement are constituents; and those who watch from the sidelines are bystanders (Edwards and Gillham 2013). The initial challenge for the nascent movement is to turn bystanders into constituents and constituents into adherents, and indeed this remains a challenge throughout the lifecycle of the movement. There are four stages to a social movement: 1) emergence, 2) coalescence, 3) bureaucratization, and finally 4) decline, which can be brought about by any one of several possible outcomes as a result of the movement, including success, failure, cooptation, repression, and the movement going mainstream (see Figure 2-3) (Blumer 1969; Mauss 1975; Tilly 1978; and Christiansen 2009).

⁵ For more on the riots and their effect on LGBQ culture and identity, see *Stonewall: The Riots That Sparked the Gay Revolution* by David Carter (2010); *The Stonewall Reader* edited by the New York Public Library (2019); *Stonewall: The Definitive Story of the LGBQ Rights Uprising that Changed America* by Martin Duberman (2019); as well as "Stonewall then and now" from the [Harvard Gazette](#) and "The Stonewall Riots (June 28, 1969)" from the Georgetown University Law School series on [A Brief History of Civil Rights in the United States](#).

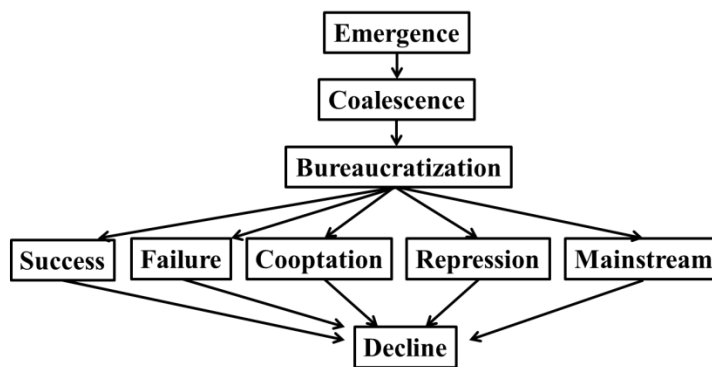


Figure 2-3: Lifecycle of Social Movements

During the emergence stage of a social movement, there will be widespread feelings of discontent shared by members of the community, and there may even be sporadic, disorganized action taken on the part of individuals, but the movement in this stage is unorganized and lacks any formal goals, strategies, or tactics. However, there can also be social movement organizations (SMOs) formed in this stage and they can be active on a small scale, but they lack a united sense of purpose or the authority to speak for large segments of the population in any real sense (De la Porta and Diani, 2006; Christiansen 2009; Hopper, 1950). Two examples of SMOs during the emergence stage of a social movement for the LGB rights movement would be the Mattachine Society⁶ and the Daughters of Bilitis⁷. Both organizations had some successes and were certainly valuable to their adherents and constituents during the emergence stage of the movement, but neither organization could offer anything capable of harnessing, channeling, or focusing the kind of popular excitement that comes during the coalescent stage.

⁶ The Mattachine Society was a “homophile organization” founded by American communist Harry Hay who, together with Dale Jennings and other founding members, was responsible for some of the early movement’s few victories, including a legal victory while fighting police entrapment, common at the time, targeting homosexuals. For more information, see Hay’s obituary [here](#) and Jennings’s obituary [here](#).

⁷ Daughters of Bilitis was also a “homophile organization” and the first lesbian rights organization in the United States. The group, founded by lovers Del Martin and Phyllis Lyon, made it their mission to educate lesbian women and gay men about their rights and about the history of homosexuality. Lyon and Martin were the first same-sex couple to be married in San Francisco after then mayor Gavin Newsom ordered the city to begin issuing marriage licenses for same-sex couples. For more information, see the GLBT Archives [here](#).

During the coalescent stage of a social movement, the feelings of discontent present in the emergence stage become more focused. Action, when taken, is no longer undertaken by disorganized groups of individuals acting sporadically, but is the result of organized, purposeful effort. This effort is made possible by new opportunities that present themselves to adherents of the movement. For the LGB movement, The Stonewall Riots were the exogenous shock to the system the movement needed – that event created an opening for contentious politics. For the first time on a public scale, members of the movement stood up and fought back, so the narrative goes. SMOs that take a leadership role during this stage do so because they are able to frame the struggle for LGB equality in an optimistic way to suggest to both constituents and bystanders that change is possible through collective action, thus converting bystanders to constituents and constituents to adherents (Christiansen 2009; Tilly, McAdam, and Tarrow 2001). Successful framing of the struggle allows for organized action to be taken. The first gay pride demonstration, called the Christopher Street Liberation Day, was held in New York City on the anniversary of the Stonewall Riots. Groups like the Gay Liberation Front (GLF) emerged to take leadership roles in the coalescing movement, and their politics were caught up in and informed by the revolutionary politics of the era (Hirshman 2013; Christiansen 2009).

Bureaucratization is a stage of social movement in which SMOs become more formalized, with higher levels of organization and coalition-building strategies. SMOs in this stage have professional staffs with specialized skills who are responsible for running the day-to-day operations of the organizations. Social movements in the bureaucratization stage cannot simply rely on mass rallies or inspirational leaders alone to make progress on their rights claims or overcome the free rider problem to build memberships and constituencies. SMOs within bureaucratizing social movements rely on trained employees to carry out the activities and business

of the organizations, for many reasons. In the first case, the bureaucratization phase is often a time when political power is greater than in the previous stages in that SMOs may have more regular access to political elites willing to move legislation or regulations friendly to their agendas forward. Additionally, SMOs of a movement in the bureaucratization stage often have access to larger pools of resources, including money, then enthusiastic volunteers can be expected to manage effectively. Movements that do not reach the bureaucratization phase often fade away or are absorbed within other movements (Christensen 2009; De la Porta and Diani, 2006; Macionis, 2001; Hopper, 1950). The decline stage is less relevant to this research, but when studying backsliding on LGB rights claims, it becomes necessary to examine the ways in which movements can decline.

Another facet of the social movement literature known as resource mobilization theory (RMT) holds that groups with a common grievance will seek to mobilize resources and act to redress this grievance (Edwards and Gilham 2013). RMT holds that resources are unevenly distributed in any society, and groups must overcome this inequality through one or more of four means: self-production; aggregation; appropriation; and/or patronage (Edwards and Gilham 2011). In response to structural and cultural marginalization, disadvantaged or persecuted groups must identify strategies that they perceive will meet their needs while challenging structures that constrain their freedom. These strategies typically include developing and mobilizing resources, constructing alternative ideological frameworks, and creating organizations and institutions capable of opposing existing institutions and the barriers they create – all aimed at achieving higher levels of equality (Rimmerman 2015). While RMT is generally considered to have been supplanted by the NSM and opportunity literatures, initial research does indicate that RMT may yet hold some value for studying the LGB movement. In studying LGB movements with an added RMT

component recognizes the importance of resources in social advocacy. The incorporation of an RMT approach allows estimates of LGB populations, the presence of openly gay public officials and candidates for public office and the number of gay bars and gay-oriented services in each community to be used as indicators of the mobilizing potential of the LGB communities being studied (Wald, Button, and Rienzo 1996). The presence of gay bars in major urban areas are crucial to mobilization, especially in the emergent and coalescent stages of the movement. This is because LGB persons face a disadvantage in the development and mobilization of resources (and indeed the creation of a common unifying identity) because the social pressure to hide their identity frequently denies them the use of family, workplace or neighborhood as a venue for socialization to group consciousness and mobilization – all options available to many other marginalized groups. “To the degree that gay people – or at least gay men – have a functional equivalent of the ghetto, the factory, or the church, it is the gay bar” (Sherrill 1993; Wald, Button, and Rienzo 1996). Research shows that gay bars, especially in a populous or capital city, are essential to SMOs in the emergence and coalescence phases – or first and second phases – of a social movement (Altman 1982; D’Emilio 1983; Haeberle 1989; Wald, Button, and Rienzo 1996; Hirshman 2012).

Part of the reason why is that the gay bar tends to be the first place to offer any kind of a haven for LGB persons. As early as the 15th Century, the bar has been a relatively – and often only – safe space for non-heterosexuals to gather. Social networks of men who sought out other male sexual partners are documented in Italian cities, like Florence, as early as the 15th Century. In London, these early gay bars were called “molly houses” in the 1700s, and just like in Florence they were places where mostly gay men could meet and openly discuss their lives and begin to form what Benedict Anderson calls an imagined community, which is a necessary precursor for a social movement. To quote an English historian about molly houses:

Men referred to each other as sisters and using the female pronoun. The mollies had ‘children’, sisters, and husbands. They created their own kinships and family networks. There is a long tradition of homosexuals creating a chosen family with whom they can be open and vulnerable about identity and desire” (McKee 2020).

Gay bars are not simply places where LGB people go to get a drink and find companionship. In a sense, gay bars have always been political, in that simply identifying as non-heterosexual and engaging in same-sex sexual activity is an act of defiance in a city or country that criminalizes such relationships. Gay bars tend to be central to LGB life. Turning away from the Colombia case for a moment, *Glbtcq*, the world’s largest encyclopedia of LGB culture and history, writes this about gay bars in the U.S.:

Historians have suggested that the formation of in-group solidarity, centered on bar life, in the face of social hostility encouraged the formation of a political consciousness around sexual difference during the 1950s and 1960s. Some bar owners of the time, such as Dixie Fasnacht, owner of Dixie's Bar of Music in New Orleans, were known for their support of their patrons, frequently dispatching attorneys and bail money when they were harassed by police during periodic “clean up” campaigns (Johnson and Sommers 2015).

In response to police harassment, early SMOs like the San Francisco Tavern Guild were formed in the 1950s. In 1961, José Sarria, a drag performer at the Black Cat Cafe in North Beach, California ran for a seat on the city's Board of Supervisors, with the Tavern Guild’s endorsement and support. He thus becoming the first openly gay political candidate, over two decades before Harvey Milk succeeded in being elected to the same municipal body – also with the support of San Francisco gay bars (Hirshman 2012; Johnson and Sommers 2015). However, beginning in the 1980s as the LGB social movement began to bureaucratize, partly in response to the AIDS epidemic, gay bars slowly declined in importance as institutions around which activism was centered. That being the case, gay bars are still places where contacts can be made, support networks can be formed, and money can be raised for any number of causes from HIV/AIDS

related charities and NGOs to political campaigns for LGB or LGB candidates to funds for individual LGB persons who have fallen on hard times.

Research conducted on anti-discrimination legislation in U.S. states and cities reveals that gay bars and other LGB-oriented services matter. Gay bars serve as “alternate structures for the generation of gay consciousness, community, and identity” and make it significantly more likely that those municipalities will enact anti-discrimination ordinances or legislation (see Table 2-3, a reproduction of Table 2 from Wald, Button, and Rienzo 1996).

Table 2-3: Regression Models on Anti-Discrimination Ordinances and Gay Bars

Variables	Model 1 <i>Size only</i>	Model 2 <i>All Predictors</i>	Model 3 <i>All Sig. Predictors</i>
I. Social Diversity/Urbanism			
Population (in 10,000s)	.375***	.485***	.453***
Nonfamily households		28.266***	29.304***
II. Resource Mobilization			
Same-sex households		107.499	
Gay-oriented services		74.612*	71.355*
Gay candidates		1.606*	1.485**
III. Political Opportunity Structure			
Democratic vote		.041	
Gay civil rights bill		.653	0.941*
Colleges		-.467	
College enrollment		2.016	
IV. Communal Protest			
Conservative Protestants		-.104*	-.091*
Church affiliation		-.069*	-.070*
Summary Statistics			
-2 log likelihood (begin)	347.955	347.955	347.955
-2 log likelihood (end)	187.941	47.602	50.820
% correctly predicted—overall	83.3%	96.0%	95.6%
% correctly predicted—ord.	74.6%	96.0%	95.2%
% correctly predicted—none	92.0%	96.0%	96.0%

*p ≤ .05.

**p ≤ .01.

***p ≤ .001.

Entries are logistic regression coefficients.

Source: Wald, Button, and Rienzo 1996

That same research shows that constituencies with anti-discrimination ordinances protecting LGB persons, on average, had two-to-three times more such businesses than their comparative communities that did not have such ordinances in place. In fact, those communities were 47% more likely to enact anti-discrimination ordinances protected LGB citizens for each

increase of 1 in the standard deviation (Wald, Button, and Rienzo 1996). Put succinctly, visible gay businesses make communities more tolerant, and bars are of particular importance. So, while there is little cross-national research on the importance of gay bars in LGB politics outside of this dissertation, the research that does exist clearly shows that these establishments are more than just watering holes or places where people meet for romance, even if their influence wanes as the movement bureaucratizes.

In addition, even though these establishments may no longer serve as the focal point for SMOs once their movements have bureaucratized, many LGB persons believe that the gay bar's survival is essential to maintaining a distinct culture. Often located in what has been termed the "gayborhood", gay bars can serve as repositories for movement history, havens for non-heterosexual persons, and public signifiers of the culture. Gayborhoods – which arose out of the need for LGB persons to escape discrimination and persecution for the relative safety of community through proximity – are havens for queer culture so important in identity formation. Some examples include Boystown in Chicago, The Castro in San Francisco, Darlinghurst in Sydney, the Faubourg Marigny in the French Quarter of New Orleans, Eixample in Barcelona, Ipanema in Rio De Janeiro, the Le Marais in Paris, Soho in London, West Hollywood in Los Angeles, and the West Village in New York City (Heidemann 2015). All these gayborhoods have considerable concentrations of gay bars. In the last Chapter, the Ximending District of Taipei is one such gayborhood that continues to be a focal point of LGB activism and culture.

According to research, 56% of American LGB respondents believe the gayborhoods in their cities should be preserved as a way of protecting a distinct LGB culture (Pew Research Center 2013). Returning to the case of Colombia, while there has not yet been much research conducted exclusively on the role gay bars specifically played in Bogota in the run-up to same-sex marriage

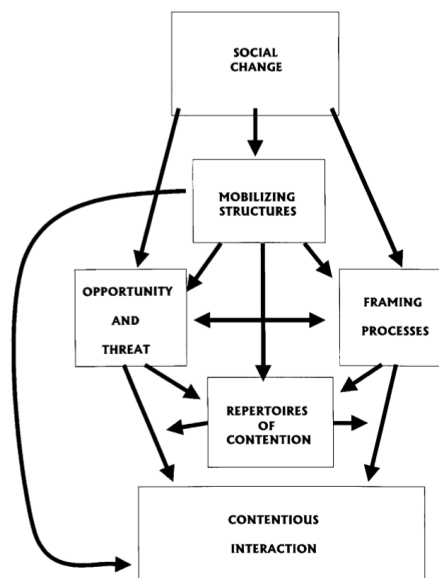
legalization, enough research on the importance of bars to LGB social movements and comparative examples from other countries and sub-national constituencies make it a defensible supposition that gay bars in Bogota played a similarly important role. Future case study research into this specific topic should be conducted to confirm this later.

Gay bars, if big enough and successful enough, can even help draw international attention to LGB SMOs and their struggles. Consider that the Stonewall Inn in New York City is a U.S. federal landmark but is also a tourist destination for LGB travelers from around the world, which can serve to increase international exposure for domestic rights advocates or causes. But, even in the face of the existing research which makes a compelling case that gay bars are important to the outcome, they are an inelegant proxy for LGBT community-building potential in the mobilization process. And since most gay bars in the cases examined tend to cater to men, it is also possible that this is an example of universalizing the male experience in LGB identity formation. These limitations are recognized for want of a conceptually more inclusive operationalization.

Technology also provides a way for LGB citizens and activists to mobilize. Of particular use to LGB activists in Latin America, and elsewhere, was the increased availability of the internet since 2000, which allowed homosexuals to meet, converse, advocate, and build communities in relative anonymity and across great distances (Friedman 2010). The ability to do these things online shielded them from the public scorn, persecution, or even violence they sometimes faced in the machismo/marianismo-dominated societies in which they lived, and Latin American LGB activists made full use of this opportunity to publish newsletters and websites dedicated to gay and lesbian issues, to LGB advocacy, and to the challenges individuals faced in coming out. (Friedman 2010). But, more than that, it allowed rights activists to add LGB concerns to the ongoing dialogues with TANs in a way that might not have been possible through an in-person meeting or the

attendance of conferences, particularly during early waves of liberalization in the region (Friedman 2010; Duarte 2012). The creation of these online communities often served as foundational for gays, lesbians, and bisexuals to gain the support networks needed to empower them to come out more publicly and advocate more forcefully not just for LGB equality within heterosexual societies but for greater equality within the LGB movement as well.

Once mobilized, the repertoires of contention that SMOs can employ beginning in the coalescence stage can be either transgressive in nature – such as sit ins, demonstrations, or boycotts; or they can be contained in nature – such as parades or public statements to the media (McAdam, Tarrow, and Tilly 2001; Opp2009). The exact actions undertaken by an SMO will depend largely on the kinds of resources they are able to mobilize, the opportunities for action, the perceived threats the SMO can respond to, and the degree to which the SMO is able to frame itself as a credible leader in the movement and the struggle in optimistic terms – collective action has a purpose and is aimed at an achievable goal (see Figure 2-4 reproduced from McAdam, Tarrow, and Tilly 2001). A counterfactual example of this principle would be to imagine an LGB group trying to organize a “liberation parade” in 1959 instead of 1969. And, in this example, we can safely assume this hypothetical parade would have failed to accomplish anything for the movement because the framing, threat, and opportunity were not yet ripe for such an action. To put this another way, “since social movements attempt to replace ‘a dominant belief system that legitimizes the status quo with an alternative mobilizing belief system that supports collective action for change’ (Gamson, Fireman, and Rytina 1982: 15), movement leaders proffer the symbols of revolt to gain support and mark themselves off from opponents” (Tarrow, 1998: 106). In 1959, returning to the above counterfactual, invoking the “symbols of revolt” in 1959 would have made no sense.



Source: McAdam, Tarrow, and Tilly 2001

Figure 2-4: Social Movements and Contentious Politics

For example, the GLF adopted a manifesto that denounced racism, sexism, colonialism, capitalism, fascism, and the institutionalization of the heteronormative nuclear family through schools and the media, as well as socio-economically and politically enforced gender roles. This would not have been possible in 1959, any more than a more assimilationist, less confrontational homophile movement approach of the 1950s would have been appropriate in 1969. The GLF also aligned themselves with the Black Panther Party and worked to provide shelter for homeless gay youth (Halsall 2019; Fienberg 2006). Another example of an SMO operating during the gay rights movement's coalescent phase is the AIDS Coalition to Unleash Power (ACT UP), which was one of many early SMOs created as a response to the United States government's failure to act in the face of the early AIDS epidemic which disproportionately and devastatingly effected the gay and bisexual male community. ACT UP's methods included organizing mass "die ins" in which members lay in the street, blocking traffic, in New York City and at the headquarters of the Food and Drug Administration (see Figure 2-5). Ultimately, using this transgressive politics, ACT UP

was successful in getting the pharmaceutical industry to lower drug prices and government agencies to approve more and better treatments (National Public Radio, 2019; Halsall 2019).

However, it should be noted that SMOs like Lambda Legal, the Human Rights Campaign (HRC), which emerged in its modern form in 1989 and which engaged in contained politics like lobbying, research, education, and media outreach, had much more success and longevity than these early radical SMOs. This suggests, at least, that there are limits to transgressive politics and the contentious interactions that go along with them. Groups like the HRC became part of the “gay establishment” – SMOs which were well-connected politically, well-funded, and which engaged in more traditional, less confrontational politics as part of their advocacy (Faderman 2015; Hirshman 2012). Ironically, the fact that these SMOs were so relatively well-funded and well-connected put them in a position to offer financial and political support to liberal elites campaigning for higher public office, and the LGB community, through SMOs like the HRC, began to make political demands, like marriage equality, in exchange for their support (Faderman 2015; Hirshman 2012). But this status as “mainstream” also limited this organization’s options for transgressive politics – the typical transgressive repertoires of contention were closed off as different sets of opportunities for more traditional, contained forms of political activism presented themselves.

Interviews conducted in Taiwan with activists and political elites alike confirmed that when LGB SMOs adopted a less confrontational tone based less on rights demands and more on spreading the message that LGB persons simply wanted to be part of “normal”, legally recognized families they enjoyed more success. But this fact does not negate the importance of transgressive politics in the fight for same-sex marriage legalization. Before a revolution, there are often smaller revolts that make the revolution possible.



Source: National Public Radio 2017.

Figure 2-5: Contentious Politics: Transgressive Politics

2.5 Transnational Advocacy and International Norms

Revolutionaries often need allies. Transnational advocacy – made easier in the internet age – can provide domestic SMOs with resources they may not have access to within their own opportunity structures. One example, shown in Figure 2-6, depicts the “boomerang pattern” found in transnational advocacy, whereby SMOs (or NGOs) which find that their access to progress on their claims through the political process is blocked can turn to potential allies outside of their own state which will put pressure on their state to address these claims (Keck and Sikkink 1998). Much like opportunity structures help dictate the menu of available strategies for activists within social movements, whether domestic SMOs try to avail themselves of opportunities for outside collaboration within TANs depends somewhat on the goals of the movement. For example, national labor movements seeking to affect change within their own countries often held greater affinity to capitalists within their own countries than they did for labor in others and this, combined

with the fact that their desired policy outcomes required specific and definite action by domestic elites, means that labor SMOs tend to be less likely to receive a great deal of support from TANs (Collier and Collier 1991; Della Porta and Diani 1999). Labor movement success often – especially in Latin America – tends to be determined largely by the degree to which they can institutionalize their actions within domestic political systems, inevitably seeking support from political elites within the state who in turn can mobilize labor support for their own ends (Collier and Collier 1991).

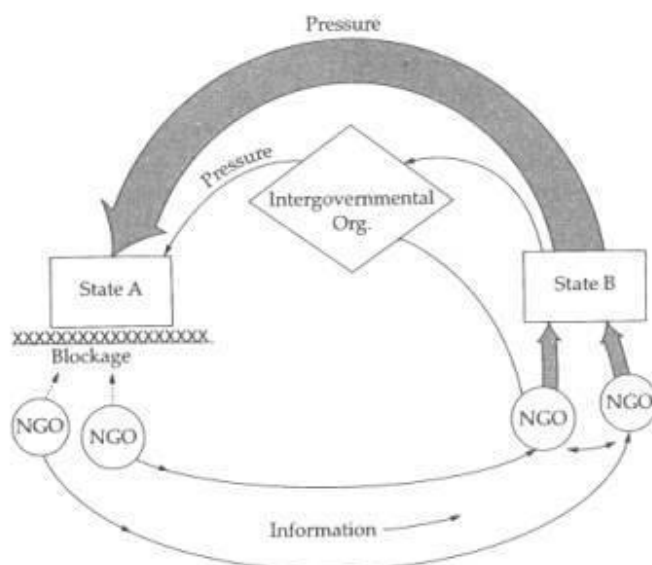


Figure 1 Boomerang pattern. State A blocks redress to organizations within it; they activate network, whose members pressure their own states and (if relevant) a third-party organization, which in turn pressure State A.

Figure 2-6: Boomerang Pattern

However, there are times when the strategically wise option is to create a more cosmopolitan SMO from the start – sometimes called a transnational social movement organization (TMSO). These organizations are cosmopolitan from the start, in part because their goals are international in scope (Della Porta and Diani 1999; J. Smith 1998 and 2005). The modern global environmentalist movement is an excellent example of a TMSO, partly because their policy

goals cannot be confined to any one specific state – states cannot make meaningful progress on reducing greenhouse gas emissions or curb the disastrous effects of global warming unilaterally. (Della Porta and Diani 1999; Della Porta and Tarrow 2005; Keck and Sikkink 1998). They need help, and the increased political interaction across borders enabled by globalization and the improvements in communication technology that drive globalization provides a better means of getting that help early.

The various LGB SMOs in the Western countries of North America, Central and South America, and Western Europe are somewhere between labor movements and the environmentalist movement. North American and European LGB SMOs have long enjoyed the benefits of a robust TAN capable of influencing policy (Kollman 2007; Paternotte and Kollman 2013). Irish LGB SMOs like Yes Equality, for example, availed themselves of epistemic knowledge resources from Freedom to Marry and the HRC in The United States (Healy, Sheehan, and Whelan 2016). European institutions and TANs have continued to have a strong influence on the internationalization (or Europeanization, in this case) of policies favorable to LGB rights and have also worked through international and supranational organizations like the Council of Europe and the European Union (EU) (Ayoub 2016). However, their success is also due in no small part because of efficient transportation and communication networks between European states dating back to the early twentieth century (Ayoub 2016; Ayoub and Paternotte 2014). This effect tends to be even more important in states admitted during periods of EU enlargement after the Cold War and in states which are only recently or nominally democratic (Ayoub 2015; Helfer and Voeten 2014).

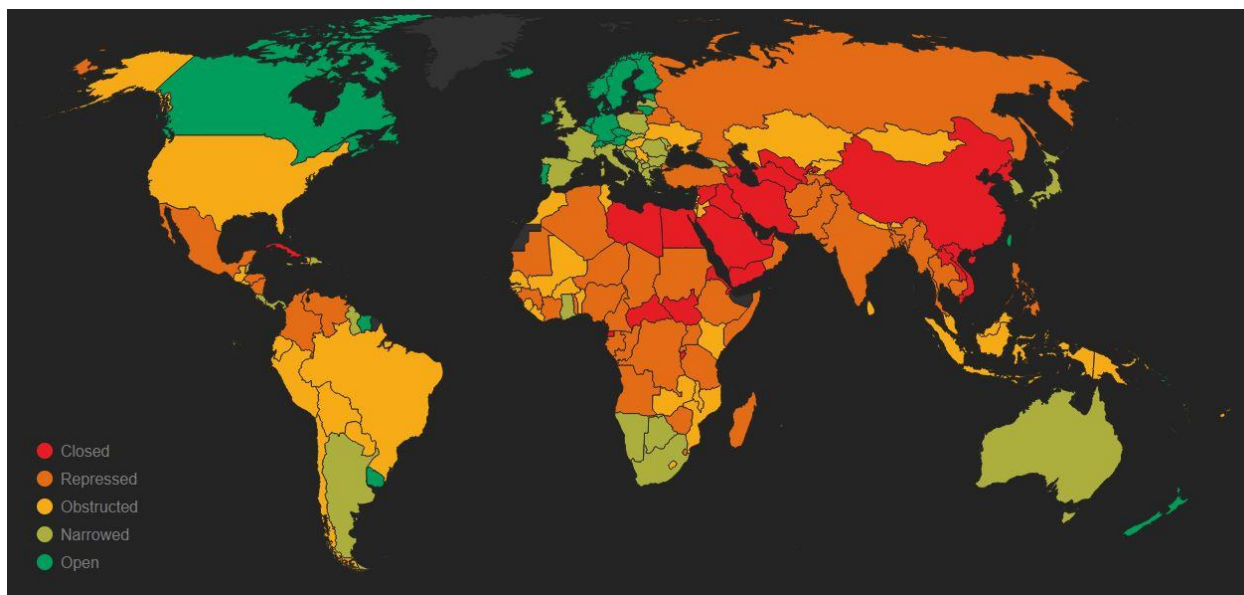
In Latin America, however, there does not exist the kind of robust international network of SMOs cooperating across borders for LGB rights as there does for gender equality or

environmentalism (Diez 2015). While it is certain that domestic actors in the earliest radical gay liberation movements of the 1960s and 1970s adopted a common discourse and common methods influenced by American and European gay liberation groups like the Gay Liberation Front, LGB activists in the global South often must innovate their own strategies to achieving equality dictated by differences in their opportunity structures (Diez 2015). In other words, European models of transnational advocacy built on a strong and effective transnational network are not necessarily instructive of progress in Latin America where gay rights are concerned (Diez 2015; Encarnación 2016). It should be noted that there is scholarly disagreement on this issue. Other scholars argue, for example, that a state's connectedness to international society – the degree to which it is socially globalized and/or influenced by its neighbors – are significant determining factors in same-sex marriage legalization in Latin America, in part because SMOs will have more fertile space in which to act if activists within interconnected neighbor states have made more progress on their claims (Corrales and Pecheny 2010; Kollman 2007; Kollman and Sagarzazu 2016).

These scholars argue that TANs are clearly important in the norm diffusion process. LGB rights groups in Latin America have had so much success, particularly where same-sex marriage is concerned, in part because they represent the “post-left left” in that they embrace globalization and the opportunities afforded them to work with TANs. But that success has also materialized because LGB groups have seized opportunities to work with political parties willing to advance their agendas; and by engaging in a form of protest that minimizes negative externalities (the less confrontational Pride March that has become less as protest and more a celebration); and by moderating their message to avoid alienating heterosexuals who would otherwise be inclined to support them (Corrales 2010). The move from confrontational protests to celebration, the

cultivation of political allies, and the moderation of messaging has allowed them to take full advantage of the political and material support available through TANs.

Opportunity structures, which will be discussed in the next section, can determine the degree to which TANs can effectively operate within any country in which LGB SMOs are working to advance equal rights claims. Data collected by Civicus suggests that states that are more open to activism – in which rights to speak, associate, and assemble are recognized; in which activists are free or relatively free from fear of persecution, intimidation, legal sanctioning, or even violent repression; and in which elites not only tolerate criticism from SMOs and other civil society actors but provide platforms for them to do so – tend to be states in which foreign SMOs will be able to take advantage of opportunities by working through TANs to connect with and support domestic LGB SMOs (Civicus 2020). This is called the “state of civil society.”



Source: Civicus 2020

Figure 2-7: The State of Civil Society (2020)

Ireland and Taiwan (both “Open” according to Civicus data) provide illustrative examples that support this theory of the role of opportunity structures in same-sex marriage legalization, as

in both cases domestic SMOs interacted with and received support from SMOs in the US, UK, and Australia – and Taiwanese SMOs interacted with their Irish counterparts after their stunning success in that country to secure same-sex marriage legalization by popular vote (Ireland is the only country in which this has happened as of the writing of this dissertation, though there was a non-binding referendum in Australia which was also successful). Within countries in which the state of civil society is strong, well-attended Pride celebrations can serve as opportunities for SMOs to network with their international counterparts, gain visibility and legitimacy, and put pressure on elites in a less confrontational, less transgressive way (Corrales 2010). Of course, SMOs are constrained by history as much as they are by their present institutions. But these Pride celebrations and festivals – if well attended – can provide the opportunities needed to connect with TANs due to the international attention and support these larger Pride events often receive.

2.6 Historical Institutionalism

Ultimately, this dissertation will employ mini-case studies of representative cases to examine in more detail the historical-institutional pathways to same-sex marriage legalization and will do so using a historical institutional approach. A historical institutionalist approach “examines how temporal processes and events influence the origin and transformation of institutions that govern political and economic relations” (Fioretos, Falleti, and Sheingate 2016, 3). At the root of historical institutionalism is the idea that institutions provide “the context in which political actors define their strategies” (Stienmo, Thelen, and Longstreth 1992, 8). Historical institutionalism can be used to “flesh out political opportunity structure” because it focuses on the ways in which policy legacies can exert an influence over present political battles and the choices available to social advocacy groups. It has been observed that, “Policy discussion never occurs on a blank slate.” For example, understanding the difference in policy outcomes in the US and Canada, it is necessary to

understand differences in the separation of powers, the role of the courts, federal structures, and in political divisions created by policy legacies – such as the racialization of politics due to the legacy of slavery in the US – in order to understand how different opportunity structures created by these legacies allowed Canada to legalize same-sex marriage before the United States (Smith 2008: 8).

The value of historical-institutional analysis is that it may also reveal the presence of certain critical junctures that exerted policy legacies over time, effecting the opportunities available and determining the eventual success of LGB advocacy work where same-sex marriage is concerned. Critical junctures are periods of significant change that produce “distinct legacies”, or a transmitted effect, that influences future outcomes (Collier and Collier 1992, 29). Critical junctures “generate [these] legacies that reproduce themselves without the enduring presence or recurrence of the originating causes.” (Fioretos, Falleti, and Sheingate 2016). Critical junctures can also be defined, similarly, as major episodes of institutional innovation that generate an “enduring legacy.” (Collier and Munck 2017). As has already been explored, the institutions that grew up simultaneously to defend the practice of chattel slavery in the United States are one such critical juncture that exerted powerful legacies on the opportunities available to LGB advocates over a century and a half later but also determined the character of the institutions policy makers operated within, which in turn dictates the menu of response options available at the state level. It is expected that these critical junctures will differ from country-to-country, though it is possible that countries within regions or clusters – classifications which will be discussed in Chapter 3 – may share common critical junctures.

2.7 Opportunity Structures and Democratization

Returning to the social movement literature for a moment, there is a rich subset of research that is concerned with how social movements affect change through either political or legal

opportunities. Political Opportunity structure refers broadly to the institutional and sociocultural factors that shape a social movement's options (Anderson 2009). Legal Opportunity suggests that courts can serve as modes of social and political change when other political avenues are closed to an advocacy group, and thus should be studied distinctly from political opportunity (Anderson 2009). In the political opportunity literature, actions of the activists are dependent on the existence – or lack – of a specific political opportunity (Meyer 2004). According to this theory, “the context in which a movement emerges influences its development and potential impact” (Meyer 2004: 125). Put another way, the strategies and tactics employed by activists, their wisdom, and creativity, and the outcomes of their choices can only be evaluated by examining the structure of the political institutions they must navigate to accomplish their objectives (Meyer 2004).

For example, the American Civil Rights Movement was empowered by the Supreme Court decision in *Brown v. Board of Education* because that decision gave a new menu of options for civil rights advocates. But, as the federal government became more responsive to the SMO's initial demands and political opportunity began to increase, different groups within the movement began to make competing claims and support different tactics, including riots in urban centers which “strained government and outsider sympathy” (Meyer 2004: 130). This is an example of how interaction with institutions can shape the tactic chosen by different actors within a movement and how the conduct of institutions can determine which tactic might be deemed as attractive or potentially successful to activists. Returning to the Stonewall Riots as an example, the Riots were able to act as a crystalizing force for the modern gay rights movement because domestic institutions of the time had been so unresponsive, indeed hostile to the demands of rights advocates.

The importance of democratization – and of the presence of polyarchy – cannot be overstated. As Encarnación observes, the most favorable environment for LGB rights – and same-sex marriage in particular – are countries in which respect for civil and political liberties, the rule of law, respect for civil society, and other democratic norms have taken hold (2014). Returning to the case of the US, the homophile movement ushered in by the Mattachine Society and the Daughters of Bilitis involved America’s earliest gay rights organizations challenging arrests of gay men in public places where cruising for sexual partners were common on the grounds that such arrests were an example of police entrapment⁸. These challenges were made calling upon the language of equality and human rights and the earliest victories of the American LGB rights movement were in the courts (Cervini 2020; Hirshman 2012). Fast-forward to 2013, and LGB SMOs were still achieving victories in the courts that had long alluded them in Congress. That year, in the case *United States v. Windsor*, the Court ruled the Defense of Marriage Act (DOMA) unconstitutional on the grounds that it violated Fifth Amendment rights protected by the Constitution (Cervini 2020; [Supreme Court.gov 2013a](#)). Simultaneously, the Court also ruled in *Hollingsworth v. Perry* that same-sex marriages could resume in California, affirming lower court decisions invalidating Proposition 8, which had previously outlawed same-sex marriage ([Supreme Court.gov 2013b](#)). These decisions formed the precedent, along with 1967’s *Loving v. Virginia* (which invalidated laws banning interracial marriage on the grounds that marriage is a fundamental civil right) for the legalization of same-sex marriage in the United States with the Court’s ruling

⁸ A common practice at the time was for an attractive male police officer to go undercover into parks, public bathrooms, beaches, or other areas where gay men gathered in search of anonymous sexual encounters. These police would proposition gay men they encountered for sex, and when the victim of the entrapment began to touch the officer in a sexual manner, the officer would reveal himself and arrest the victim. That victim was then charged with public lewdness. Dale Jennings, the famous playwright and early LGB activist, was the first man to challenge these charges. With the help of the Mattachine Society and the Citizens’ Committee to Outlaw Entrapment, Jennings was victorious and his charge was vacated.

in *Obergefell v. Hodges*. These victories required democratic institutions like independent judiciaries capable of checking legislative or executive power.

While such institutions can serve to empower movements by providing them avenues to engage in contentious politics, LGB SMOs can also be empowered by the counter-movements that rise in response to their demands, as is in the case of the LGB rights movement in the United States (and other states) and the various “pro-family” organizations that have proliferated since Stonewall in response, like the Family Research Council. In fact, movement success at creating or exploiting events that further their agenda will usually result in the mobilization of a countermovement to defend the status quo or the “traditional” way of doing things, which will in turn give new motivation and energy to the movement, particularly when governments enable both sides to act and interact within the political sphere (Meyer and Staggenborg 1996). These counter-movements would be examples of previously discussed right-wing counter-movements. These counter-movements can provide external pressure on competing activist groups within a movement to unify in the face of a common foe. The more powerful, effective or extreme the countermovement, the greater the unifying force put on the rights movement will be and the more they will seek out elite allies within the corridors of domestic power.

However, there are cases in which a marginalized or significantly disadvantaged groups may lack the access to the corridors of power necessary to take advantage of political opportunities that might arise. In such cases, groups must avail themselves of the other strategies – which is where contentious politics enters the process. The Stonewall Riots have been discussed, and these were effective in advancing the claims of LGB SMOs in the US precisely because opportunity was so severely limited. Again, the tactics employed are informed by opportunity. The US Supreme Court decision in *Bowers v. Hardwick* limited the legal opportunities of the LGB rights movement

to advocate for the repeal of sodomy laws, and the conservative political union of Reagan-era neoliberalism and resurgent traditionalist politics responding to pressures from New Left movements in the previous decade limited LGB PO as well (Hillson 2011). Protests, ranging from Pride parades to the shutting down of the offices of the National Institutes of Health (NIH) over access to life-saving HIV medication are both examples of this strategy. Litigation in the courts, to challenge other political institutions and force them to act, can be employed where political opportunity is lacking but legal opportunity is not. Analysis of European cases yields the conclusion that where social movements have poor political opportunity – for example in countries in which the domestic LGB SMOs face an entrenched and hostile conservative government – thus legal tactics may be employed to pressure governments otherwise unwilling or unable to respond to political pressure (Hillson 2011).

As has just been illustrated, LGB SMOs at varying times will utilize both political and legal opportunity structures to advance their claims. In the US, the LGB rights movement has been successful because it has used the courts to do what it has failed to accomplish legislatively: challenge the cultural notions of homosexuality as a disease or as criminal behavior or as a threat to the family, thus putting pressure on elites to effect changes in the law, or “rules-shifts” by availing themselves of broad-based cultural phenomena to challenge conventional understandings (Post and Siegel 2007). After the US Supreme Court ruled in *Bowers v. Hardwick* that laws criminalizing homosexual behavior were constitutional, gay rights groups became even more politically engaged, leveraging shifts in popular culture and lower court decisions like in Hawaii’s state Supreme Court to aid in their advocacy (Post and Siegel 2007).

Opportunity is also important in Latin America, with scholars finding that adoption of same-sex marriage policies in Latin America is due to presence (or lack) of access to the policy-

making process by socially progressive parties that are penetrated by activist networks (and a limitation on veto-player power), and the framing of the issue in a larger equality narrative in a space marked by political contestation, as in the cases of Argentina when compared to Chile, which has no same-sex marriage benefits, and Mexico, which has them in some jurisdictions and not others (Diez 2015). The proliferation of the same-sex marriage norm in Latin America is due to a combination of several factors unique to the region: domestic modernization and institutional factors, the decline of Catholicism, domestic constitutional reforms, and, as in the US, the judicialization of politics which have all worked to influence tactics employed by activists and determined the menu of options available to them for accomplishing their goals.

2.8 Alternative Explanations

Up to this point, this dissertation has demonstrated that there is considerable scholarly research to suggest that values, the mobilization capacity of social movements, and robust TANs are each important to determining how likely a state is to accede to claims of LGB equality and grant demands to legalize same-sex marriage. There are alternative explanations. Urbanization allows both for the breaking of traditional kinship bonds and for a rejection of traditional values regarding love and sex (Anderson 1991; Newson, et al. 2005; Newson 2009). The urbanization argument asserts that cultural changes seen in Western societies over the last 150+ years regarding family, tolerance to homosexuality being no exception, are largely attributable to the increased opportunities, representation, and technologies, particularly in communication, afforded in economically developed states which underwent earlier industrialization and urbanization (Newson and Richardson 2013). At first glance, the WVS seems as though it might lend credence to this explanation – values being influenced by modernization that accompanies urbanization.

There is also a suggested correlation between GDP per capita and tolerance for homosexuality, indicating that wealthier states exhibit higher levels of tolerance for homosexuality (Florida 2014). Here again, we see a continuation of the theme that is foundational to modernization theory, that economic development leads to predictable social change. Florida sums up this correlation between development and tolerance thus:

“... 60 percent of Americans, 80 percent of Canadians, and nearly 90 percent of Germans and Spaniards said society should accept homosexuality. The least tolerant attitudes toward gay and lesbian people, according to the Pew survey, were found in less developed nations in the Middle East, Southeast Asia, and Africa” (Florida 2014).

In addition, a study of tolerance for homosexuals in 35 European states shows that economic development leads to more tolerance among those who benefit most from that development – high levels of economic inequality can lead to reduced levels of social trust and consequently intolerance (Anderson and Fetner 2008). Thus, economic inequality is considered by some scholars to be at least as important a factor in predicting tolerance as movement along the traditional vs. secular axis and the survival vs. self-expression axis in any given country. In both the cases of GDP per capita and inequality, one common explanation for the success of LGB movements is inclusive wealth. The work of Benedict Anderson also shows that industrialization brings with it not just the opportunity to generate wealth but also opportunities for individuals to create imagined communities in which persons feel a sense of common experience and common struggle with large groups outside their families (1983).

Modernization Theory has already been identified as providing a potential alternative explanation, and modernization theory concerns itself with urbanization and wealth generation, in addition to other factors previously discussed. Thus, the literature identified in this subsection, taken together with the literature on values and modernization, strongly suggests that the effects of modernization may be a compelling predictor of same-sex marriage legalization. This makes

modernization an ideal alternative hypothesis against which to test the hypothesis of this dissertation.

3 RESEARCH DESIGN AND METHODS

A review of LGB-rights-relevant literature on heteronormativity and identity, values and modernization, resource mobilization and social movements, transnational advocacy networks, and opportunity structures and democracy reveal a potential, possibly cross-regional, answer to the question at the heart of this dissertation of why some countries legalize same-sex marriage while others do not. The hypothesis derived from the review of literature is that certain conditions within a given country or territory – 1) minimal level of emancipative and secular values, 2) LGB mobilization capacity, 3) and the presence of opportunities for Transnational Advocacy Networks (TANs) to engage in contentious politics – increase the likelihood that domestic social advocacy groups acting within a social movement will use contentious politics to put pressure on elites through existing opportunity structures – either legal or political – to accept the right of same-sex marriage, thus making it more likely that same-sex marriage will be legalized. This chapter will detail how this hypothesis is tested, both quantitatively and qualitatively. This will include information on what data has been collected and how, what methods are used to test the data, and what the initial quantitative results – reported at the conclusion of this chapter – suggest as a way forward for the qualitative analysis. The iterative approach to index building that aids in this analysis will also be explored.

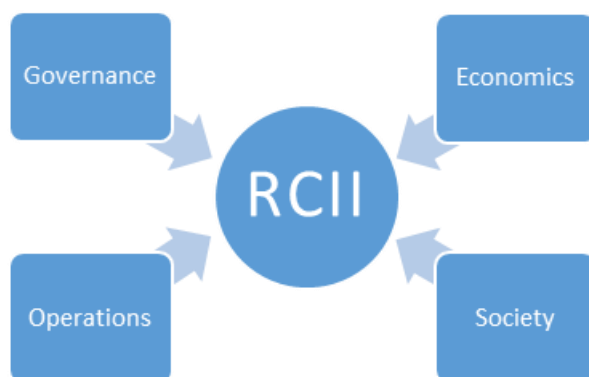
Analysis and testing of this hypothesis happens in two stages applying a mixed-methods approach. In the first stage, data on variables identified as relevant in the literature review are collected for quantitative analysis. In a process that will be detailed in this chapter, that data is fed into the RCII to create the RI, which measures country friendliness to LGB equality, and the MI, which measures the effects of modernization. These indices' scores of 1-1000 for each country are used to perform correlation analysis and factor analysis to determine whether each of the

constituent variables tested loads highly. Factor analysis is then used to create variables representing both friendliness to LGB rights and the effects of modernization, the concepts captured by the created indices of the RI and MI, and these variables in turn are used in regression analysis to quantitatively test both the hypothesis and the alternative. If analysis confirms the validity of the hypothesis that the combination of values, mobilization capacity, and opportunities for TANs offers a more complete explanation than modernization proved valid, RI scores will be used to determine which countries are more likely to have legalized same-sex marriage first within a set of defined regions and clusters. In cases in which the predicted first adopter and the actual first adopter are different, potential case pairs are identified. For example, the RI predicts that Japan should be the first legalizer in the Sinic East, even though Taiwan has that distinction. Since Japan has not legalized same-sex marriage and Taiwan has, this is a potential case pair – and in fact is one of the case-pairs this dissertation will examine.

Once case-pairs are identified, process tracing and historical institutional analysis following a most similar systems design will be used to examine the process by which same-sex marriage is legalized in each country case, drawing on existing scholarly research as well as news coverage and historical accounts where applicable. As Taiwan is the first, and so far, only country in the Sinic East to legalize same-sex marriage even though it was not predicted most likely to do so, first-person elite interviews conducted during IRB-approved field work research are utilized to provide insight on the variables that contributed to same-sex marriage legalization in Taiwan. The case-pairs will then be used to further test the hypothesis by comparing variables identified as significant in the Taiwan case, or by contrasting them in cases in which the variable may be unique (or uniquely manifested) in Taiwan.

This chapter will begin by explaining what the RCII is in some detail and how the RCII is used to create the RI and the MI. This chapter will detail the regression and probability analysis used to test the hypothesis and the alternative but also to test likelihood of legalization within regions and clusters to further guide and justify case selection. The results of this quantitative analysis will be reported in this chapter.

3.1 The Robinson Country Intelligence Index and BYOI



Source: Brown, et al. 2015

Figure 3-1: Robinson Country Intelligence Index GEOS Structure

The RCII is a holistic data analysis and visualization tool used to measure country performance holistically along four dimensions, Governance, Economics, Operations, and Society (or GEOS for short). The idea of using a GEOS structure to measure country performance is one that has its roots in analysis conducted by the Western World’s first political scientist, Aristotle. Governments create markets, those markets create institutions, and those institutions create economic and social outcomes. The RCII was originally conceived as a risk-assessment index, the Robinson Country Risk Index, but in the years since its inception it has grown to include a broader array of analysis beyond risk. To quote the founder and director Dr. Chris Brown,

“it is worthwhile to strive to think integratively and holistically, use the significant sources of data now available at the country level, and build a broad-based and dynamic index with distinct, recallable macro-dimensions that cover major areas of country risk as if the country is a living body” (Brown, et al. 2015, 251).

This structural functionalist approach, combined with the dynamic functionality embedded within the RCII, allows the user of the RCII to analyze any number of problems from any number of perspectives – the RCII is not conceived to test a specific hypothesis. Rather, the RCII is meant to be used by academics, business leaders, government officials, non-profit actors, researchers, or students to examine whatever problem it is they are studying, provided that the problem lends itself logically to country-level, data-driven analysis. To date, the RCII has been used both in and out of the classroom in Georgia State University’s College of Arts and Sciences and Robinson College of Business and in several masters-level theses and doctoral dissertations, primarily in the Robinson College of Business. The RCII’s use as a “dynamic data-literacy tool” as part of an adaptive Global Issues course at Georgia State University is also explained in an article⁹ in the *Journal of Political Science Education* (Brown, Grussendorf, Shea, and DeMas 2022).

As of this writing, the RCII encompasses 126 sub-dimensions, 199 countries, and 17 years of data organized into the holistic GEOS structure. The RCII takes its data from several sources, including the CIA World Factbook, the International Monetary Fund, the United Nations, the World Bank, the World Economic Forum, the Yale and the Columbia Environmental Performance Index to name a few.¹⁰ At this point it should be noted in the interest of transparency and ethical integrity that I am the data and research consultant for the RCII, and have been since 2013. However, no agent or representative of the RCII has provided any monetary compensation or any other form of compensation, inducement, or pressure for the RCII to be included in this dissertation.

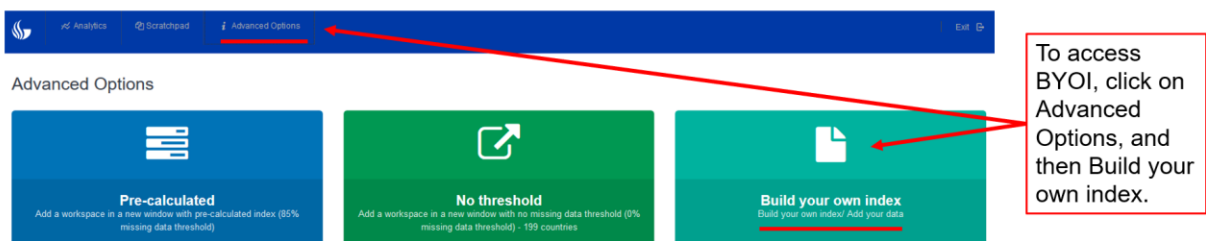
⁹ This article, in an earlier draft as a working paper, won the Political Science Education Section’s Best APSA Conference Paper Award for 2020.

¹⁰ A complete list of sources for the RCII can be found [here](#) by scrolling down and clicking on “View Our Sources.”

The RCII takes the collected data on each country and scores and ranks them. Countries are scored from 1-1000 in each variable, subdimension, dimension, and for the whole index, with a score of 1000 being the best possible score. RCII countries are then ranked comparatively using their scores. For more details on the math behind this scoring system, please see Appendix B of this dissertation. It should be noted that each variable is also assigned a normative directionality based on typical liberal approaches to political economy. For example, the RCII assumes that population is good, so a country with a higher population will score higher in the RCII for variables dealing with population, like population growth or urbanization. Conversely, the RCII assumes that pollution is bad, so a country with high levels of pollution will score lower in the RCII on variables dealing with pollution, such as carbon emissions or indoor air pollution from cooking or heating fuels. Variables are weighted in accordance with a classical liberal approach to political economy, taking into account weighting at the data source when possible.

RCII – Build Your Own Index (BYOI)

The RCII has always allowed users to customize the Index by adjusting the weights of dimensions, sub dimensions, or variables; by adding or removing countries or groupings of countries; and by changing the threshold for missing data. Since the release of the 2019 Index, users can utilize even more sophisticated tools to create unique instances of the Index suited to their particular research or business needs. This new feature, called Build Your Own Index (BYOI) allows users to add or remove variables; alter the structure of dimensions and sub dimensions in ways not previously available; and import their own data.



A dynamic, holistic tool that allows users to undertake insightful, clinical diagnoses of countries and international topics.

RCII.GSU.EDU

Source: Robinson Country Intelligence Index 2021

Figure 3-2: BYOI Tool

Since the creation of the RCII in 2009, one of their chief goals has been to implement a “build your own index” component to the tool, allowing users to customize their iteration of the RCII as needed depending on the problem being studied. In 2017 this functionality became a web-based reality with the help of multiple talented graduate research assistants and interns. As shown in Figure 3.2, the Build Your Own Index (BYOI) functionality of the RCII allows a user to customize their iteration of the tool in multiple ways.¹¹ Users can remove data or add new data, change the directionality of a variable or variables (making good bad and bad good), change the structure of the RCII by modifying the existing three structure of the index or creating a brand new structure, change the data-threshold for a country’s inclusion in the RCII (the RCII currently defaults to an 85% data threshold, meaning that no country with less than 85% available data for the most recent year will be included), and/or change the regions and clusters within which countries are grouped. The BYOI functionality of the tool allowed for the creation of the RI and the MI, and thus the RCII was instrumental in carrying out the quantitative piece of this dissertation. The RCII is also a data visualization tool and was immensely helpful in aiding the analysis contained herein by allowing me to see, at a glance, potential relationships between variables in different case pairs.

Before moving on to a discussion of the RI and MI separately, it is necessary to address a question that is sure to come up: why not simply use raw data for the quantitative analysis? In other words, and more specifically, what is the advantage of using an index score for a variable, for example aggregate gross domestic product (GDP), over the actual data-value of a country’s GDP? The answer to this is two-fold. First, the mathematical calculations that underpin the RCII normalize data in the scoring calculation to account for outliers. This means that a country with

¹¹ For full information on how to use the BYOI functionality of the RCII, see the online tutorials linked on the website [here](#).

extremely good performance in a variable that sets it far apart from other countries – like the multi-trillion-dollar GDPs of the United States and China being vastly higher than any other country – will not be over-rewarded in the scoring. Nor are countries with extremely bad performance in a variable – like the GDP growth of Libya being -66% in 2020 – over-penalized in the scoring as the scoring is calculated upwards through the weighted subdimensions and dimensions. Thus, a normalized score helps ensure a valid country comparison. Second, the ability to rank countries on a normalized score means that countries in the RI can be compared with first-legalizing countries in their respective regions and clusters, particularly in sub-dimensions in which there are multiple variables each with different units of measure and weights. For example, in the Sinic East Japan scores higher than Taiwan by 51 points (849 to 798) in the overall Index. That easily measurable difference in scoring allows for better comparison between the two countries, given that Taiwan has legalized same-sex marriage and Japan has not.

This point becomes clearer if we go back to the example of aggregate GDP. For illustrative purposes, we can continue the comparison between Japan and Taiwan. Japan has an aggregate GDP of over 5 trillion US constant dollars, while Taiwan has an aggregate GDP of 788 billion US constant dollars. The seventeen countries in the RI with the highest aggregate GDPs each have values at over one trillion US constant dollars. It can be difficult to fully understand or analyze the difference between 5 trillion and 788 billion in terms of their potential effect on a dependent variable like same-sex marriage legalization. However, because of the score normalization process of the RCII, Japan's score in aggregate GDP, 890 out of 1000, can be more easily compared with Taiwan's score of 754 out of 1000.

3.2 The Rainbow Index

Potential variables to include in the RI are identified in the literature review. They include Emancipative Values and Secular Values. For these values variables, the data-value assigned by the World Values Survey is used so that a proper comparison can be made with values variables in the MI, which will be discussed later in this chapter. The list also includes the number of openly LGB officials, the number of LGB bars in a country's most populous city, the relative political capital of homosexuals in each country, recorded and reported attendance at Pride celebrations in the most populous city of each country, and the state of civil society in each country. These last two variables are meant to capture the degree to which TANs have opportunities to work with domestic LGB SMOs in a given country. Correlation testing and factor analysis discussed later in this chapter reveals that each of these variables is statistically insignificant to a country's friendliness to LGB rights.

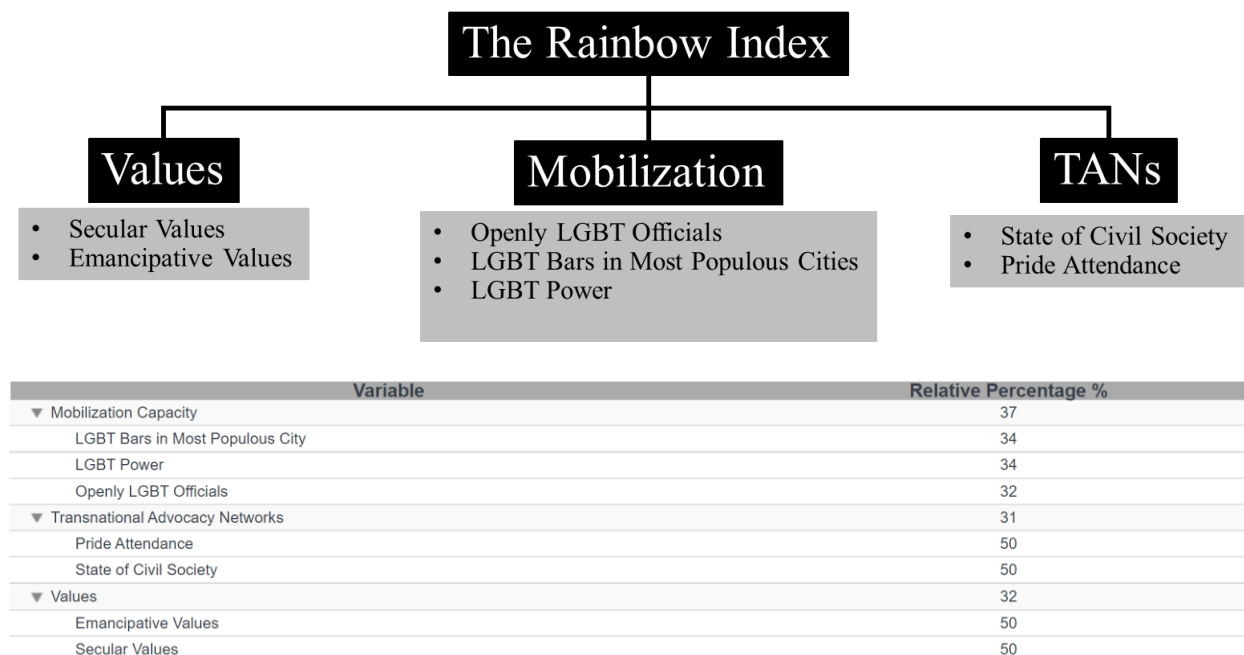


Figure 3-3: Rainbow Index Structure and Weighting

Preliminary also leaves us with a structure for the RI reflected in Figure 3-3, with the variables organized into the three macro-dimensions of Values, Mobilization Capacity, and TANs. The weighting of these variables and dimensions is derived by dividing the sum of the correlation values within each dimension by the correlation value of each variable in that dimension. But, before moving on to a detailed explanation of each of the included variables and the tests performed using the RI data, it is necessary to defend the choice of the RI (and by extension the MI) as a tool for analysis.

The RI is a weighted average index, not an additive or multiplicative index. An additive index is an index in which scores are aggregated, or added, to other scores to make another, more inclusive measure. This only makes sense for use in analysis when there is some meaningful difference between increments of values – and while that may be the case for some of the variables in the RI (like internet users, for which each percentage point represents a countable number of living persons), it clearly does not make sense for the RI. A multiplicative index multiplies variables by one another so that the result is exponential, so that scores in a multiplicative index would produce an increasingly pronounced result as they increase, resulting in “take-off” effects or “hockey stick” graphs.

Figure 3-4 illustrates what the distribution of data points within theoretical multiplicative and raw data versions of the RI would be compared to a weighted average that assigns scores to each country. When the values for the three dimensions of the RI are derived from using unscored raw data instead of scores derived from weighted averages. The distribution is not normal in any of the three dimensions, and multiple countries are outliers for TANs. If the data in the RI were organized as a multiplicative index, the data is even more skewed, with most countries in the RI scoring less than 100 out of 1000. Likewise, when probability analysis is applied to the weighted

average RI (bottom) and the multiplicative RI (top), the multiplicative RI indicates that where friendliness to LGB Equality is concerned, there is a take-off point of >100 after which same-sex marriage are always legal. Clearly, this defies what we can observe in the real-world.

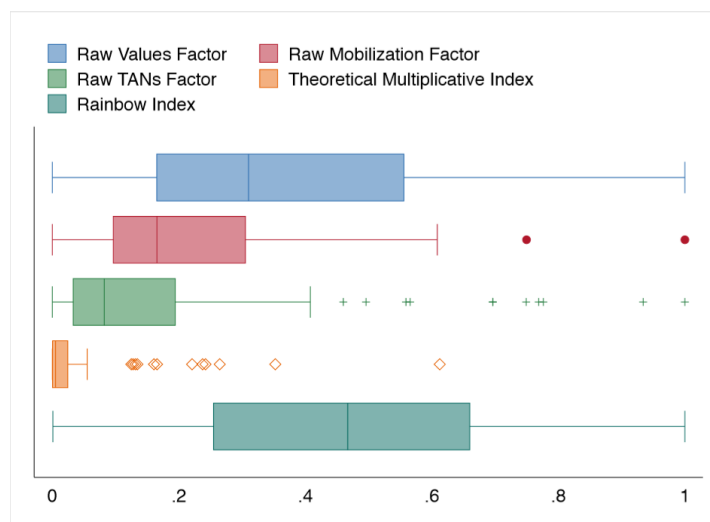


Figure 3-4: Distribution in Types of Indices Compared

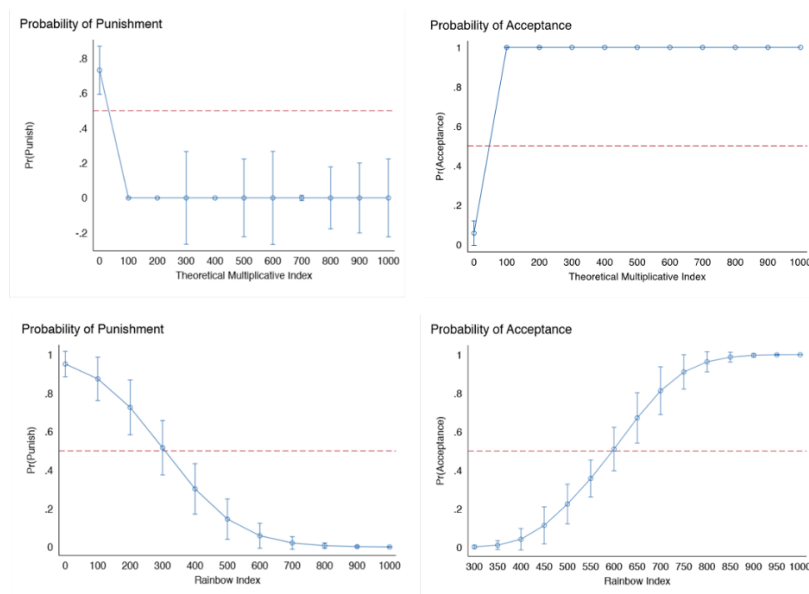


Figure 3-5: Different Results from Different Types of Indices

It is therefore clear that the mathematical methodology used to derive scores in the RI from weighted averages yields a result that is indicative of what we would expect based on observable cases of same-sex marriage legalization. Now it would be appropriate to define the variables used in the RI depicted in Figure 3-3, indicate where data on each of these variables comes from, and explain more about how countries in the RI are organized. First, the Values Dimension contains only two of Welzel's Emancipative and Secular Values: choice and disbelief. Data for each of these variables comes from Wave 7 of the World Values Survey, released in 2020.

Emancipative values are a subset of the World Values Survey (WVS) data collected periodically since 1981. Emancipative values include a combination of two value orientations: a liberating orientation, or an emphasis on freedom of choice; and an egalitarian orientation, or an emphasis on equal freedom of choice or equality of opportunity (Welzel 2013, 67). Emancipative values include the values of autonomy, choice, equality, and voice.

Secular values involve rational value orientations, or a demystification of traditional sources of authority: religious authority, patrimonial (a form of governance in which all power flows directly from the leader) or patriarchal (male domination) authority, state authority, authority of conformity (group) norms. It should be noted that the term secular as it is used in the WVS and in Welzel's work on human empowerment means, "of or relating to the worldly or temporal; not overtly or specifically religious; or not ecclesiastical or clerical" ([Merriam Webster](#)). Secular values include agnosticism (or disbelief), defiance, skepticism, and relativism

For the Mobilization Capacity sub-dimension, the RI includes LGB Bars in most populous cities, LGB political power, and openly LGB officials.

LGB Bars in Most populous Cities: Number of bars and/or nightclubs advertising as LGB in the most populous city of each country according to a Google search.

LGB Political Power: Measure of the level of political power of LGB persons on a 4-point scale, with a 4 indicating that LGBs enjoy somewhat more political power than heterosexuals by virtue of greater wealth, education, and high level of organization and mobilization; and a 1 indicating that LGBs are completely excluded from the public sphere. This data comes from the Varieties of Democracy V-Dem Dataset.

Openly LGB Officials: Number of out and serving LGB politicians or appointed public ministers. This data comes from Google Searches, Wikipedia entries with verifiable sourcing, and ILGA data were available. Also referred to as LGB elites.

Only countries with 100% of their available data in these variables are used in the RI, which leaves us with 100 countries (see Figure 3-6). This is a high bar for data availability but given that the RI and MI have so few variables, one missing data point could have an outsized impact on the results. These countries are divided up into regions and clusters, taken from Welzel's work on Emancipative and Secular Values, with regions being analogous to Welzel's culture zones and clusters being analogous to Welzel's stages of human empowerment. Regions in the RI, like the cultural zones in Welzel's work, contain countries linked by a common history, which often results in strong cultural similarities. Clusters in the RI, like Welzel's stages of human empowerment, contain countries in which people enjoy a common level of capabilities for improvement and prosperity and a common level of guarantees for their civil, political, and economic rights.

Countries with low levels of prosperity and low levels of rights guarantees experience high amounts of suffering and little opportunity for empowerment.

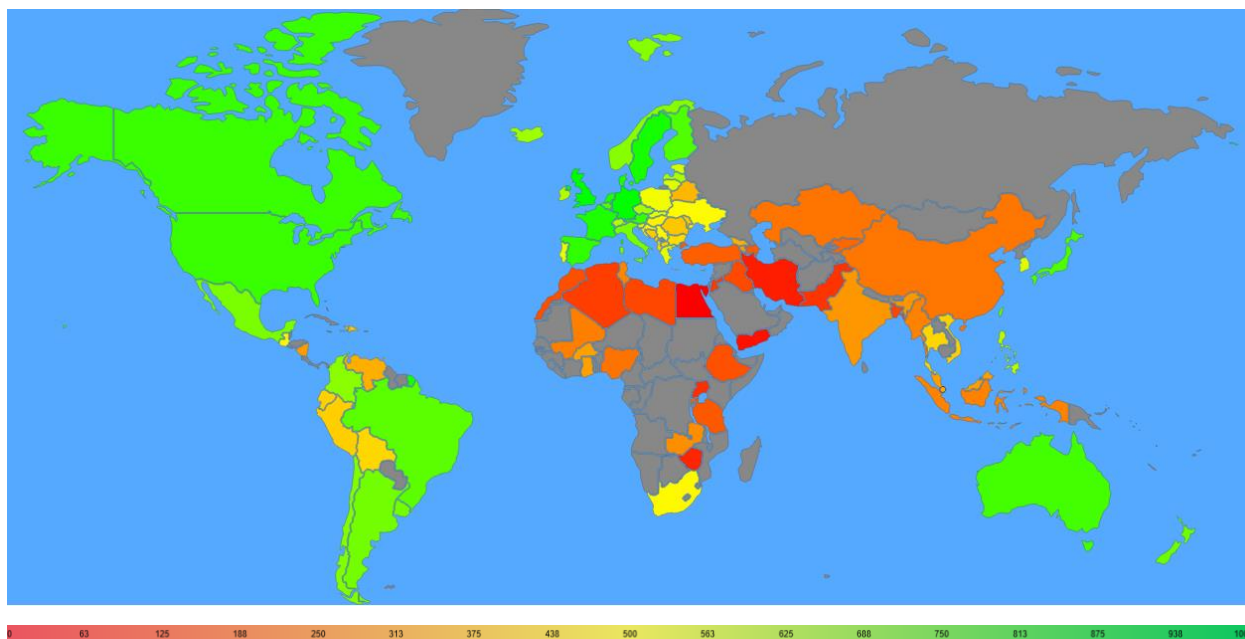


Figure 3-6: Countries in the Rainbow Index

The clusters in the RI are the Islamic East, the Indic East, the Sinic East, the Orthodox East, the Old West, the Reformed West, the New West, the Returned West, Sub-Saharan Africa, and Latin America. Welzel explains his cultural zones and human empowerment zones in *Freedom Rising* (pp16-33) but the below descriptions should provide enough information to understand how countries in the RI are divided.

Islamic East: countries in the Islamic East center around Mesopotamia and Egypt and contain some of the world's oldest civilizations. These countries were Arab, Ottoman, and Persian Empires and were among the first in which Islam spread following a long history of Greco-Roman influence. RI countries in the Islamic East are Algeria, Egypt, Iraq, Iran, Jordan, Lebanon, Morocco, Qatar, Tunisia, Turkey, and Yemen.

Indic East: countries in the Indic East range over South Asia and also contain some of the world's most ancient civilizations. Countries in this region have historically been dominated by Indian traditions, whether that be influence from Buddhism or Hinduism – which both originated in India, or from conquest by the Mughal Empire which brought Islam to India through conquest and much of the rest of the region through trade routes. However, Islamic traditions tend to be less rigid in this region than in the Islamic East. Countries in the Indic East in the RI are Bangladesh, India, Indonesia, Malaysia, Myanmar, Pakistan, the Philippines, and Thailand.

Sinic East: countries in the Sinic East tend to be culturally influenced, if not dominated by, Chinese tradition and Confucianism rather than Buddhism. Unlike countries dominated by Abrahamic religions, in the Sinic east religion has traditionally been a private matter and tends to lack the political and social influence found in some other regions. RI countries in the Sinic East are China, Hong Kong, Japan, Singapore, South Korea, Vietnam, and Taiwan.

Orthodox East: countries in this region were for a long time dominated by Orthodox traditions of the Byzantine and Russian Empires, but these traditions were also shaped by Mongolian conquest which left a tendency towards authoritarianism and despotism. Countries in this region were also largely cut-off from the Reformation and the Enlightenment. Twentieth Century dominance of the Soviet Union only continued the legacy of authoritarianism. All countries in this region were Communist at some point. Countries in this region included in the RI are Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Kazakhstan, Kyrgyzstan,

Macedonia, Moldova, Montenegro, Romania, Russia, Serbia, Tajikistan, the Ukraine, and Uzbekistan.

Old West: countries located in Southern Europe and centered around the Mediterranean Sea. Societies in the Old West were well-integrated in the Roman tradition and the Catholic Church (with a few notable Orthodox and Jewish exceptions) and industrialized and democratized later and with more conflict than did societies in the Reformed West. Countries in the RI that are in the Old West Region are Austria, Cyprus, France, Italy, Greece, and Spain.

Reformed West: countries that include Protestant societies of Central, Northern, and Northwestern Europe. Most of these countries were only briefly or tangentially part of the Roman Empire and were thus not strongly affected by Roman tradition. Most societies in the Reformed West were centers of the Reformation, and Enlightenment ideas gained the most currency earliest. Reformed West countries were the earliest to industrialize and democratize. Countries in the RI that are part of the Reformed West are: Denmark, Finland, Germany, Iceland, Netherlands, Norway, Sweden, Switzerland, and The United Kingdom.

New West: countries in the New West emerged as overseas extensions of the Reformed West. Due to a relative lack of resources like silver that were important in early colonialism, these countries lent themselves poorly to state-run extractive institutions common in other colonies and possessions. Cool, wet climate in these areas allowed for the flourishing of independent, family farms which influenced societies more towards egalitarian ideals. New West countries also industrialized

and democratized early. New West countries in the RI are Australia, Canada, New Zealand, and the United States.

Returned West: countries in the Returned West share many traditions with other Central and/or Southern European states but were separated by four decades of Soviet dominance. After the fall of Communism in Europe and the end of the Cold War, many countries in the Returned West rushed to democratize and integrate with Western institutions like the European Union. RI countries in the Returned West are Croatia, Czech Republic, Estonia, Hungary, Lithuania, Poland, and Slovenia.

Sub-Saharan Africa: countries in Sub-Saharan Africa were the most devastated by European colonialism and imperialism, and societies in these countries are irrevocably altered by European dominance. Because of the nature of the extractive institutions that permeated this region, countries in Sub-Saharan Africa were among the last to democratize and industrialized, with many still neither fully democratic nor fully industrialized. Countries in the Sub-Saharan Africa region of the RI are Burkina Faso, Ethiopia, Ghana, Mali, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Zambia, and Zimbabwe.

Latin America: countries with (mostly) Spanish and Portuguese colonial heritage and that are predominantly Catholic even until today. Countries in this region also suffered from the extractive institutions of European imperialism, which have left a widespread legacy of extreme economic inequality. Countries in the RI in the Latin America region are Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Haiti, Mexico, Nicaragua, Peru, Uruguay, and Venezuela.

Low Stage: traditional economies with generally low levels of technological advancement and high dependence on agrarianism or the export of raw materials or petroleum products and in which most basic freedoms are denied or inaccessible. Levels of human suffering in these countries are often high. Countries in the Low Stage in the RI are Algeria, Azerbaijan, Bangladesh, Burkina Faso, Ethiopia, Ghana, Guatemala, Haiti, Indonesia, Iran, Iraq, Kazakhstan, Myanmar, Nigeria, Pakistan, Rwanda, Tajikistan, Tanzania, Uganda, Venezuela, Vietnam, Yemen, and Zimbabwe. Countries in the Low Stage have scores that range from 1 (Yemen) to 406 (Guatemala) in the RI.

Modicum Low Stage: these countries also have largely traditional economies but may be in the early industrial stages and likely have low but increasing levels of technological advancement. Some basic freedoms may be denied or inaccessible, but some may be protected, and democratization is often in its early stages. Countries in the Modicum Low cluster in the RI are Albania, Armenia, Belarus, Bolivia, Bosnia and Herzegovina, China, Colombia, Egypt, Georgia, India, Jordan, Kyrgyzstan, Lebanon, Malaysia, Mali, Mexico, Morocco, Nicaragua, Peru, Qatar, Russia, Serbia, Tunisia, Turkey, Ukraine, Uzbekistan, and Zambia. Countries in this cluster of the RI have scores that range from 93 (Jordan) to 611 (Mexico).

Modicum Stage: countries in the Modicum Stage have medium levels of technological advancement and are generally industrialized with at least a plurality of the workforce engaged in the industrial sector. Countries in this stage may have higher levels of industrialization or technological advancement but they also have hybrid regimes that are semi-democratic or competitive authoritarian in nature

which limit the enjoyment of and access to many rights. Suffering is lower in modicum countries, but populations are still struggling to gain the means of empowerment. In the RI, countries classified in the Modicum Stage cluster are Brazil, Chile, Croatia, Ecuador, Hong Kong, Lithuania, Macedonia, Moldova, Montenegro, Philippines, Romania, and Singapore. Countries in the RI that fall into this cluster have scores ranging from 328 (Montenegro) to 727 (Chile).

Modicum High Stage: countries in the Modicum High stage are beginning to transition from industrial-based to knowledge-based economies and levels of democratization may be significant. In many cases, the rights needed for empowerment are protected or guaranteed but lagging development in some areas may limit practical access to those rights. While some in these countries may be suffering or struggling, the potential for human thriving is there. In the RI, countries in the Modicum High Stage cluster are Argentina, Bulgaria, Cyprus, Greece, South Africa, South Korea, Taiwan, and Trinidad and Tobago. Countries in the Modicum High Stage cluster have RI scores ranging from 355 (Trinidad and Tobago) to 784 (Taiwan).

Thriving Stage: countries in the Thriving Stage are democratic and have knowledge-based economies in which at least a plurality of workers is employed in post-industrial work. Levels of technological advancement are high, and countries grant more – often far more – rights than they deny, though in some cases the rise of right-wing populism may be eroding democratic traditions and rights guarantees for some. While suffering and struggling have not been eliminated, opportunities to thrive are available to most. Countries in the Thriving Stage cluster are Australia,

Austria, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Italy, Japan, Netherlands, New Zealand, Norway, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and the United States. Thriving countries in the RI have scores that range from 487 (Poland) to 1000 (Denmark).

Clusters have wide – and some cases very wide – overlaps in RI scores because while Welzel's demarcations in Freedom Rising may be somewhat more compartmentalized, the RI is measuring something different from – though certainly related to – human empowerment. Where friendliness to LGB equality at the country level is concerned, there are factors other than value-related variables that are captured in cluster groupings that influence the outcome of whether consensual same-sex sexual relationships are punished or recognized as valid. Though, it is true that thriving countries will tend to score higher than modicum or low countries.

3.3 The Modernization Index

In order to test the alternative hypothesis that the effects of modernization could explain same-sex marriage legalization just as or more completely than friendliness to LGB rights, the same process used to create the RI using the BYOI functionality of the RCII is used. This index is called the Modernization Index, or MI. Based on literature reviewed in the previous Chapter, the potential variables considered to be included in the MI are industrialization, GDP per capita, change in annual household consumption per capita, internet usage, urbanization rates, adult literacy rates, food security, Expressive Values and Rational Values. Before proceeding to definitions of these variables, let it be noted that factor analysis revealed that change in annual household consumption per capita and food security did not fit the model, so these were eliminated,

leaving the final MI consisting of the remaining variables divided into three dimensions: Modern Economy, Modern Society, and Modern Values (see Figure 3-7).

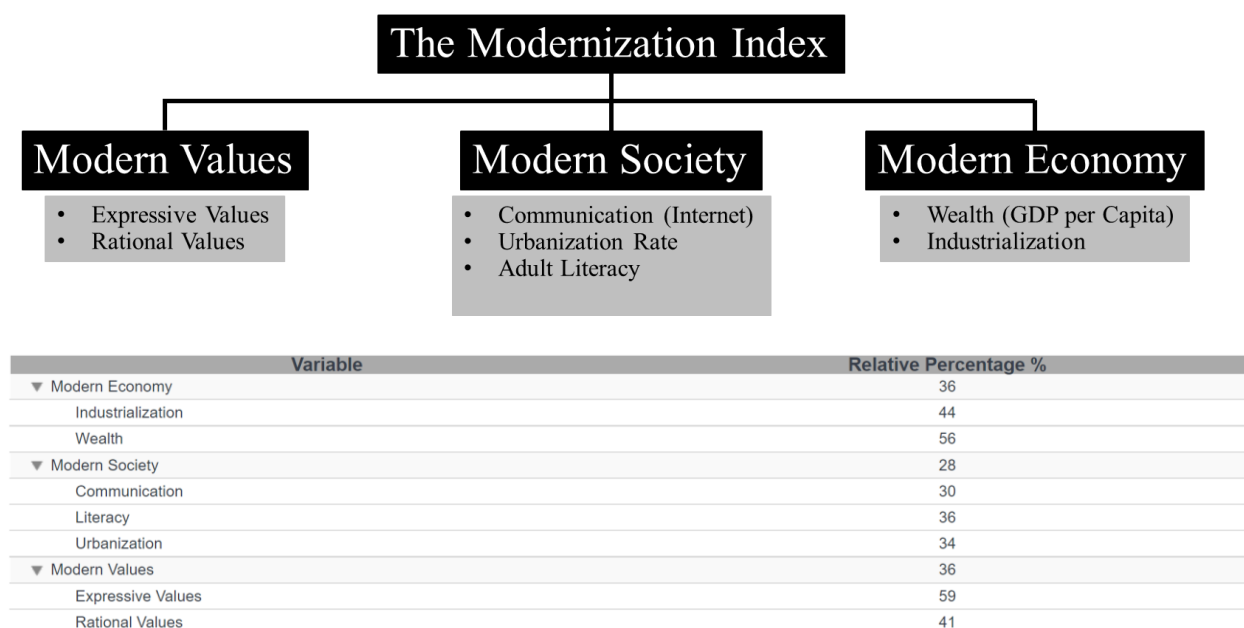


Figure 3-7: Modernization Index Structure and Weighting

Data for each of the Values variables also come from the WVS, Wave 7, but these are different conceptualizations of post-modern values and therefore can be part of a valid comparison against the values variables in the RI. Data for internet usage comes from the International Telecommunications Union. Data for urbanization rate, adult literacy rates, and industrialization each come for the World Bank's World Development Indicators. Data on GDP per capita comes from the International Monetary Fund's World Economic Outlook (or IMF WEO). The variables are defined as follows:

Expressive Values: Self-expression values have the opposite preferences to security values. Societies that embrace expressive values give high priority to environmental protection, growing tolerance of foreigners, gays and lesbians and

gender equality, and rising demands for participation in decision-making in economic and political life. (Inglehart and Welzel 2005).

Rational Values: Rational values have the opposite preferences to the traditional values. Societies that embrace rational values place less emphasis on religion, traditional family, and authority. Divorce, abortion, euthanasia, and suicide are seen as relatively acceptable; though suicide is not necessarily more common. (Inglehart and Welzel 2005)

Communication: Percentage of individuals using the Internet.

Urbanization Rate: Number of literate persons aged 15 and above, expressed as a percentage of the total population in that age group.

Adult Literacy Rate: People living in urban areas as defined by national statistical offices.

Wealth: An approximation of the value of goods produced per capita in the country, equal to the country's nominal gross domestic product (GDP) divided by its population and expressed in constant prices to compensate for inflation rates.

Industrialization: Percentage of the labor force in a country employed in non-agricultural jobs. The Modernization Index publishes the best available data for a given year, and there is a one-year lag for this variable (i.e., data reported by the source in 2020 is from 2019).

Again, to facilitate an apples-to-apples comparison, the same region and cluster designations that are used in the RI are also used in the MI, and the MI also contains the same 100 countries as the RI.

But why use both region and cluster classifications for the two indices? The answer to this question is two-fold. First, the notion that cultural and historical factors, reflected in regions, as well as economic and political factors, reflected in clusters, could be important in helping to explain why some countries are more likely to legalize same-sex marriage is supported by the literature. There can be – and this dissertation argues that there are – factors that countries within both regions and clusters have in common that makes them more or less likely to legalize. For example, we know from analysis that the regions Indic East, Islamic East, Orthodox West are negatively correlated to same-sex marriage legalization, using a ten-point scale described in the following pages to operationalize the dependent variable. This means that countries in these regions are less likely to legalize same-sex marriage due to some regional factors held in common. The correlations are not as strong as the independent variables described earlier in this chapter, but they are present (see Table 3-1).

Table 3-1: Region Correlations to Same-Sex Marriage Legalization

	<i>SSM10</i>	<i>Islamic East</i>	<i>Sub-Saharan Africa</i>	<i>Indic East</i>	<i>Orthodox East</i>	<i>Sinic East</i>	<i>Returned West</i>	<i>Latin America</i>	<i>New West</i>	<i>Old West</i>	<i>Reformed West</i>
SSM10	100%										
Islamic East	-36%	100%									
Sub-Saharan Africa	-31%	-13%	100%								
Indic East	-29%	-12%	-12%	100%							
Orthodox East	-13%	-17%	-17%	-15%	100%						
Sinic East	1%	-9%	-9%	-8%	-12%	100%					
Returned West	15%	-11%	-11%	-10%	-14%	-8%	100%				
Latin America	16%	-15%	-15%	-13%	-20%	-11%	-12%	100%			
New West	28%	-8%	-8%	-7%	-10%	-5%	-6%	-9%	100%		
Old West	29%	-9%	-9%	-8%	-12%	-7%	-8%	-11%	-5%	100%	
Reformed West	41%	-12%	-12%	-10%	-15%	-8%	-10%	-13%	-7%	-8%	100%

Likewise, correlation analysis of clusters shows that Low Stage and Modicum Low stage clusters are both negatively correlated with same-sex marriage legalization (see Table 3-2). This means that countries in those clusters are less likely to legalize same-sex marriage due to some variable or variables that they have in common by virtue of being in those clusters. And when regression analysis is used to test the significance of regions and clusters to the outcome of same-

sex marriage legalization, that analysis shows that, even when controlled for GDP per capita, both regions and clusters have some explanatory value (see Table 3-3).

Table 3-2: Cluster Correlations to Same-Sex Marriage Legalization

	<i>SSM10</i>	<i>Low Stage</i>	<i>Modicum Low Stage</i>	<i>Modicum Stage</i>	<i>Modicum High Stage</i>	<i>Thriving Stage</i>
<i>SSM10</i>	100%					
<i>Low Stage</i>	-51%	100%				
<i>Modicum Low Stage</i>	-28%	-35%	100%			
<i>Modicum Stage</i>	5%	-22%	-25%	100%		
<i>Modicum High Stage</i>	20%	-17%	-19%	-12%	100%	
<i>Thriving Stage</i>	62%	-33%	-37%	-23%	-18%	100%

Table 3-3: Significance of Regions and Clusters to Same-Sex Marriage Legalization

VARIABLES	(1) SSM10	(2) SSM10	(3) SSM10	(4) SSM10
Region	0.638*** (0.100)	0.638*** (0.100)		
GDPperCap	0.000991 (0.000986)	0.000991 (0.000986)	0.000198 (0.00111)	0.000198 (0.00111)
Cluster			1.254*** (0.203)	1.254*** (0.203)
Constant	2.936*** (0.371)	2.936*** (0.371)	2.903*** (0.375)	2.903*** (0.375)
Observations	96	96	96	96
R-squared	0.590	0.590	0.584	0.584

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

3.4 Quantitative Analysis

Before any analysis can begin, the dependent variable is coded in two different ways for testing using data for both the RI and MI. First, the dependent variable of same-sex marriage legalization is operationalized as a ten-point scale (same-sex marriage10) used to capture the degree to which countries punish or recognize the legality of consensual same-sex sexual relationships, based on available information from the ILGA. Values are as follows:

- 1 = Punish by death
- 2 = Punish by \geq 14 years in prison
- 3 = Punish by 8-13 years in prison
- 4 = Punish by 3-7 years in prison
- 5 = Punish by \leq 2 years in prison
- 6 = No punishment, no recognition
- 7 = Minimal or uneven recognition
- 8 = Common-law marriage
- 9 = Civil unions
- 10 = Full marriage equality

Alternatively, this ten-point scale is also converted to a dichotomous variable (same-sex marriage₂) to allow for logistical analysis. For this version of the dependent variable, called marriage, a value of 10 on the ten-point scale receives a value of 1, and all other outcomes receive a value of 0 to facilitate logistical regression analysis. And now that the composition of the RI and MI have been explained in detail and the dependent variable operationalized for analysis, the next step is to expound on the quantitative methods used for this stage of analysis. The goal of the initial quantitative analysis is two-fold. First, the quantitative analysis should show correlation between the dependent variable, same-sex marriage, either operationalized on a 10-point scale (same-sex marriage₁₀) or as a dichotomous variable (same-sex marriage₂). Second, the analysis should aid in case selection by justifying the use of the RI to identify potential case-pairs if modernization has been ruled out as a viable alternative explanation. First, analysis is used to confirm correlation of LGBT acceptance and democratization each to same-sex marriage legalization as preconditions.

3.4.1 *Democratization as a necessary pre-condition*

To test the importance of democratization, data on regime type is taken from the Varieties of Democracy (V-Dem) dataset, version 10, 2020 – specifically the variable v2x_regime_amb. This variable is intended to classify regimes according to competitiveness of access to power and liberal values (V-Dem Institute, 2020). This measure, which is part of V-Dem’s Regimes of the World Index, has two operationalizations, a four-point ordinal scale and a ten-point ordinal scale. This analysis uses the 10-point ordinal scale as it is better at differentiating between ambiguous cases. In this case, the 10-point scale is as follows:

- 0 = Closed Autocracy
- 1 = Closed Autocracy – Upper Bound
- 2 = Electoral Autocracy – Lower Bound
- 3 = Electoral Autocracy
- 4 = Electoral Autocracy – Upper Bound
- 5 = Electoral Democracy – Lower Bound

- 6 = Electoral Democracy
- 7 = Electoral Democracy – Upper Bound
- 8 = Liberal Democracy – Lower Bound
- 9 = Liberal Democracy

Upper and lower bounds of regime categories indicate a confidence interval overlap with the regime category above or below in the ordinal scale. For example, countries that classify as upper bound of the closed autocracy regime type are countries in which confidence intervals of the multiparty election indicators overlap the level of electoral autocracies. In the country classifications, Dahl's institutional prerequisites to polyarchy are mentioned on multiple occasions. V-Dem clarifies this term as follows:

The electoral principle of democracy seeks to embody the core value of making rulers responsive to citizens, achieved through electoral competition for the electorate's approval under circumstances when suffrage is extensive; political and civil society organizations can operate freely; elections are clean and not marred by fraud or systematic irregularities; and elections affect the composition of the chief executive of the country. In between elections, there is freedom of expression and an independent media capable of presenting alternative views on matters of political relevance (V-Dem Institute, 2020).

In a closed autocracy, there are no multiparty elections for the chief executive or the legislature. China, Hong Kong, Jordan, Libya, Morocco, Thailand, Vietnam, and Yemen are the countries in the RI and MI that are classified as closed autocracies or upper bound closed autocracies.

In an electoral autocracy, there are *de-jure* multiparty elections for the chief executive and the legislature, but those elections are not free and fair, nor *de-facto* multiparty, nor do these countries achieve a minimum level of Dahl's institutional prerequisites of polyarchy. In the RI and MI, Algeria, Armenia, Azerbaijan, Bangladesh, Belarus, Bolivia, Egypt, Ethiopia, Haiti, Hungary, India, Iran, Iraq, Kazakhstan, Kyrgyzstan, Lebanon, Malaysia, Mali, Montenegro, Myanmar,

Nicaragua, Pakistan, Philippines, Rwanda, Serbia, Singapore, Tanzania, Turkey, Uganda, Venezuela, Zambia, and Zimbabwe all classify as electoral autocracies (including upper and lower bounds).

Electoral democracies have *de-facto* free and fair multiparty elections and a minimum level of Dahl's institutional prerequisites for polyarchy; but either access to justice, or transparent law enforcement, or liberal principles of respect for personal liberties, rule of law, and judicial as well as legislative constraints on the executive not satisfied. Albania, Argentina, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Chile, Colombia, Croatia, Czech Republic, Dominican Republic, Ecuador, Georgia, Guatemala, Indonesia, Lithuania, Macedonia, Malta, Mexico, Moldova, Peru, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, Trinidad and Tobago, and Tunisia all classify as electoral democracies in the RI and MI (including upper and lower bounds).

Finally, liberal democracies have *de-facto* free and fair multiparty elections and a minimum level of Dahl's institutional prerequisites for polyarchy and guarantees of access to justice, transparent law enforcement, liberal principles of respect for personal liberties, rule of law are all present, as are judicial as well as legislative constraints on the executive. These are polyarchies. In the RI and MI, Australia, Austria, Belgium, Canada, Cyprus, Denmark, Ghana, Greece, Estonia, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Latvia, Luxembourg, Netherlands, New Zealand, Norway, South Korea, Spain, Sweden, Switzerland, Taiwan, the UK, the US, and Uruguay all classify as liberal democracies (including the lower bound) or polyarchies.

Analysis shows that regime type is a statistically significant predictor of a country's score on both friendliness to LGB equality and the effects of modernization – in other words that

country's score in the RI and MI (Table 3-4). Analysis also shows that whether or not a country is a polyarchy (in other words, an 8 or a 9 on the regime scale) is also predictive of a country's degree of friendliness to LGB equality and of the human rights benefits resulting from the effects of modernization (Table 3-5). Moreover, polyarchy explains 51% of the variation in a country's score in the RI. However, polyarchy cannot offer a more complete explanation to a country's likelihood of same-sex marriage legalization than either the RI or the MI (Table 3-6). In fact, when the RI is introduced into the regression, polyarchy ceases to be significant to the outcome of same-sex marriage legalization. So, while we can say that regime type, and polyarchy specifically, are important to both the RI and the MI, regime type cannot account for the outcome of same-sex marriage legalization. This analysis justifies the assumption embedded in the theoretical relationship between friendliness to LGB equality and same-sex marriage legalization that regime type that polyarchy is a necessary precondition for same-sex marriage legalization, whether due to friendliness to LGB equality or due to the effects of modernization.

Table 3-4: Regime Type, LGB Equality, and Modernization

VARIABLES	(1) Friendliness to LGBT Equality	(2) Effects of Modernization	(3) SSM Legalization
Regime Type	76.63*** (6.006)	62.06*** (7.602)	0.666*** (0.0691)
Constant	69.04* (36.27)	273.8*** (45.91)	3.307*** (0.417)
Observations	100	100	100
R-squared	0.624	0.405	0.487

Standard errors in parentheses
 *** p<0.01, ** p<0.05, * p<0.1

Table 3-5: Regime Type, LGB Equality, and Modernization

VARIABLES	(1) Friendliness to LGBT Equality	(2) The Effects of Modernization	(3) SSM Legalization
Polyarchy	409.8*** (40.55)	362.7*** (45.32)	3.332*** (0.460)
Constant	364.8*** (21.83)	504.3*** (24.40)	5.944*** (0.248)
Observations	100	100	100
R-squared	0.510	0.395	0.348

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table 3-6: Polyarchy and Same-Sex Marriage Legalization

VARIABLES	(1) SSM Legalization	(2) SSM Legalization
Polyarchy	0.118 (0.478)	1.309*** (0.497)
Rainbow Index	0.00785*** (0.000833)	
Modernization Index		0.00558*** (0.000862)
Constant	3.082*** (0.353)	3.130*** (0.482)
Observations	100	100
R-squared	0.660	0.545

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

3.4.2 Testing the Indices

Following the establishment regime type as a statistically correlated precondition for the existence of opportunity structures, the analysis for the RI and MI are both done in steps. In the first two-part step, factor analysis is used to test the inclusion of each of the individual variables in both indices. Ideally both indices should capture a single dimension, or Factor, and analysis will reveal this to be the case for both indices – this establishes the validity of both indices. Once this is done, a variable is created representing the phenomenon, or Factor, captured in each index:

friendliness to LGB equality for the RI and the effects of modernization for the MI. Then, a collinearity test is performed to rule out that there is statistical overlap between the two factors that might be skewing the results. Finally, regression is used to accomplish a number of analytical goals. The first of these will be to establish that each variable and each macro-dimension in each index is significant to the outcome, but not so significant that the variable or dimension alone could be used to explain the outcome. The second of these goals is to establish whether friendliness to LGB equality explains the increased likelihood for same-sex marriage legalization more fully than the effects of modernization. Once each of these is established, this chapter will then go on to detail how the case study analysis will proceed from those results.

Each of the variables in the RI mentioned earlier in the chapter are used in a factor analysis to determine that they load well into the dimensions of friendliness to LGB equality and modernization¹². In each case, we see that the factor analysis produces a single dimension – meaning that the variables when taken together are measuring some single phenomenon, or factor. We can tell this because there is only one factor – Factor 1 – in the first table with an Eigenvalue over 1.0. We can also tell that each of the variables is correlated to the factor by looking at the values for each in the second table under the Factor 1 column (see Table 3-7). The same kinds of results are seen when analyzing the variables in the MI (see Table 3-8).

¹² This chapter shows the last step in this iterative process for creating the RI and MI. Some of the variables ruled out by factor scoring include, for the RI: measures of political, economic, and social globalization; quality of governance; physical security, happiness, social capital, and income inequality. Some of the variables ruled out by factor scoring for the MI include food security, cell phone use, happiness, social capital, and income inequality.

Table 3-7: Factoring Friendliness to LGB Equality

Factor analysis/correlation
 Method: principal factors
 Rotation: (unrotated)

Number of obs = 100
 Retained factors = 3
 Number of params = 18

Factor	Eigenvalue	Difference	Proportion	Cumulative
Factor1	3.69330	3.30749	0.9754	0.9754
Factor2	0.38581	0.26550	0.1019	1.0773
Factor3	0.12031	0.14361	0.0318	1.1090
Factor4	-0.02330	0.05879	-0.0062	1.1029
Factor5	-0.08209	0.05631	-0.0217	1.0812
Factor6	-0.13840	0.03070	-0.0366	1.0447
Factor7	-0.16910	.	-0.0447	1.0000

LR test: independent vs. saturated: $\chi^2(21) = 365.95$ Prob> $\chi^2 = 0.0000$

Factor loadings (pattern matrix) and unique variances

Variable	Factor1	Factor2	Factor3	Uniqueness
lgbtbarsin~y	0.7385	-0.0816	-0.0550	0.4449
openlylgbt~s	0.8043	-0.2855	-0.0507	0.2691
lgbtpower	0.7563	0.1903	0.1495	0.3695
prideatten~e	0.7078	-0.3536	0.0050	0.3739
stateofciv~y	0.5552	0.0932	0.2349	0.6279
emancipati~s	0.8802	0.1890	-0.0678	0.1850
secularval~s	0.5875	0.3033	-0.1804	0.5303

Table 3-8: Factoring the Effects of Modernization

Factor analysis/correlation
 Method: principal factors
 Rotation: (unrotated)

Number of obs = 100
 Retained factors = 3
 Number of params = 18

Factor	Eigenvalue	Difference	Proportion	Cumulative
Factor1	4.35194	3.85866	0.9218	0.9218
Factor2	0.49328	0.27669	0.1045	1.0263
Factor3	0.21658	0.24158	0.0459	1.0721
Factor4	-0.02500	0.05691	-0.0053	1.0668
Factor5	-0.08191	0.02820	-0.0173	1.0495
Factor6	-0.11010	0.01343	-0.0233	1.0262
Factor7	-0.12354	.	-0.0262	1.0000

LR test: independent vs. saturated: $\chi^2(21) = 526.00$ Prob> $\chi^2 = 0.0000$

Factor loadings (pattern matrix) and unique variances

Variable	Factor1	Factor2	Factor3	Uniqueness
wealth	0.9365	0.2168	0.0257	0.0753
industrial~n	0.8362	-0.1825	-0.2075	0.2244
communicat~n	0.7938	-0.2240	0.2142	0.2739
urbanization	0.7903	-0.2114	-0.2531	0.2667
literacy	0.7342	-0.2494	0.1823	0.3656
expressive~s	0.6763	0.4416	-0.0900	0.3395
rationalva~s	0.7243	0.2469	0.1469	0.3928

Once the validity of the constructed indices is established through factor scoring by regression, variables are created to measure those Factors, namely friendliness to LGB equality and the effects of modernization. These variables are called Rainbow and Modern, respectively, and it is these variables that are used in regression analysis from this point forward unless otherwise noted (see Table 3-9).

Table 3-9: Creating Factor Variables Rainbow and Modern

Variable	Obs	Mean	Std. Dev.	Min	Max
Rainbow	100	-6.73e-10	.9522606	-1.66557	2.119383

Variable	Obs	Mean	Std. Dev.	Min	Max
Modern	100	1.94e-09	.9737628	-2.415036	1.500733

But, before analysis using these created Factor variables can begin, it is important to rule out one major concern. We need to be able to rule out collinearity between friendliness to LGB equality and the effects of modernization in order to be reasonably certain that both indices are not simply different operationalizations of the same Factor. Or, more likely, that there is some sort of significant statistical overlap between Rainbow and Modern such that the results of the regression analysis would be unreliable. Fortunately, collinearity analysis confirms that both indices are capturing different Factors – or put another way that both indices are measuring something different (see Table 3-10). If there were collinearity, or high correlation, between the two indices the variance inflation factor (VIF) would be somewhere over 5.

Table 3-10: Test for Multicollinearity between Rainbow Index and Modernization Index:

Variance Inflation Factor, Calculated after Model 3-9

Variable	VIF	1/VIF
Modern	2.43	0.412233
Rainbow	2.43	0.412233
Mean VIF	2.43	

Next, regression analysis reveals that the friendliness to LGB equality as captured in the variable Rainbow has more explanatory value to the likelihood of same-sex marriage legalization than the effects of modernization as captured in the variable Modern. The effects of modernization do have some explanatory value for same-sex marriage legalization, but friendliness to LGB equality has more (see Tables 3-11 through 3-16 and Figures 3-7, 3-8, and 3-9). As we can see from these results, when the effects of modernization are introduced as a control for friendliness to LGB equality, the effects of modernization lose explanatory power. According to ordered logistic regression, even when controlling for the effects of modernization, friendliness to LGB equality – again represented as Rainbow – is highly statistically significant and explains 68% of the outcome. Additionally, the effects of modernization never produce 100% likelihood of same-sex marriage legalization, while friendliness to LGB equality does.

Table 3-11: Regressing Modernization on Same-Sex Marriage Legalization, Controlling for

Aggregate GDP

VARIABLES	(1) SSM10
Modernization	1.828*** (0.205)
Agg_GDP	0.000992 (0.00124)
Constant	6.300*** (0.797)
Observations	100
R-squared	0.512

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table 3-12: Regressing Rainbow Index on Same-Sex Marriage Legalization, Controlling for

Aggregate GDP

VARIABLES	(1) SSM10
Rainbow	2.384*** (0.178)
Agg_GDP	-0.00175 (0.00106)
Constant	8.012*** (0.676)
Observations	100
R-squared	0.687

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table 3-13: Regressing Rainbow Index on SSM Legalization, Controlling for Modernization

VARIABLES	(1) SSM10
Rainbow	1.822*** (0.237)
Modernization	0.526** (0.232)
Constant	6.920*** (0.144)
Observations	100
R-squared	0.694

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table 3-14: Logistic Regression of Modernization on Same-Sex Marriage Legalization,

Controlling for Aggregate GDP

VARIABLES	(1) SSM10
Modernization	0.00795*** (0.00200)
Agg_GDP	0.00358 (0.00243)
Constant	-9.079*** (2.008)
Observations	100

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table 3-15: Logistic Regression of Rainbow Index on Same-Sex Marriage Legalization,

Controlling for Aggregate GDP

VARIABLES	(1) SSM10
Rainbow	0.0151*** (0.00359)
Agg_GDP	-0.00517 (0.00354)
Constant	-6.806*** (1.787)
Observations	100

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table 3-16: Logistic Regression of Rainbow Index on Same-Sex Marriage Legalization,

Controlling for Modernization

VARIABLES	(1) SSM10
Rainbow	0.0121*** (0.00290)
Modernization	-3.93e-05 (0.00276)
Constant	-8.232*** (1.991)
Observations	100

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

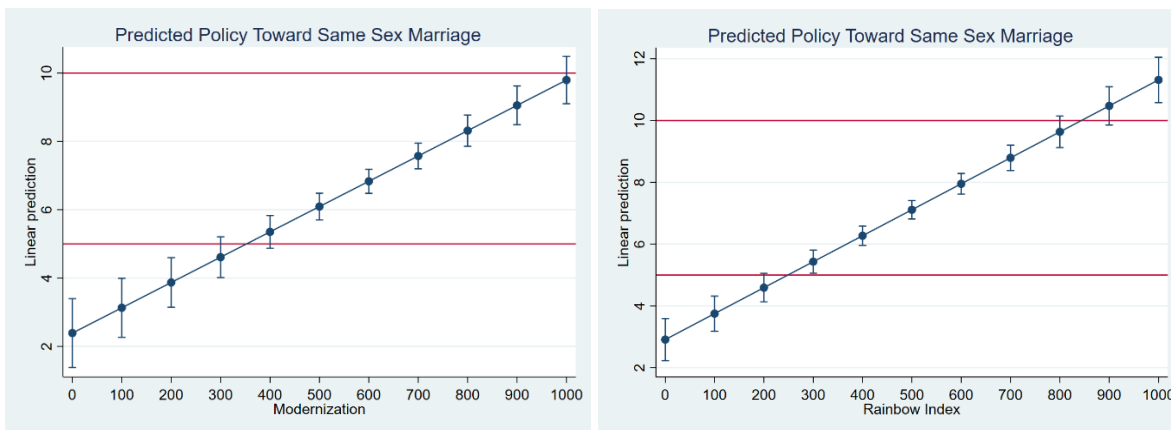


Figure 3-7: Linear Regressions on Modernization and Rainbow Index Compared

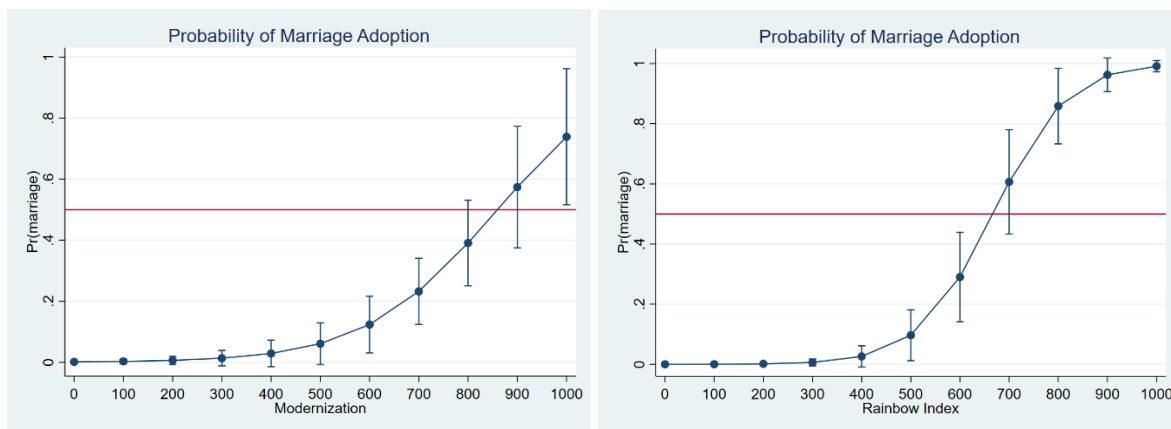


Figure 3-8: Logistic Regressions on Modernization and Rainbow Index Compared

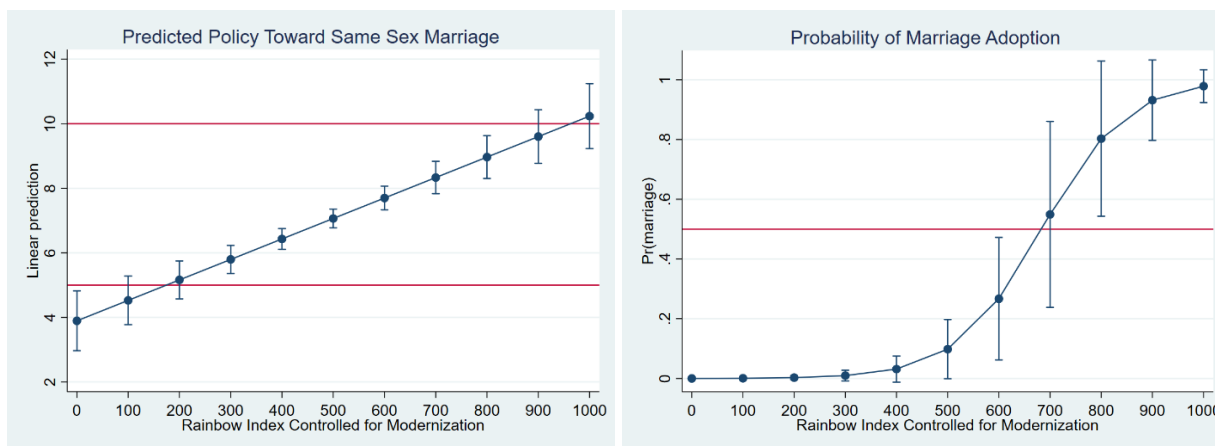


Figure 3-9: Linear and Logistic Regressions of Rainbow Index Controlled for Modernization Compared¹³

¹³ The analysis in Tables 3-14 through 3-16 and Figures 3-7 through 3-9 works with an Ordered Logit test as well.

Regression analysis can also rule out that any one variable in the RI is driving the effect. We already know from factor analysis that each of the variables correlates well to the outcome of same-sex marriage legalization. Linear regression shows that none of the variables is so strongly correlated as to be driving the overall effect. And the only variable to lose explanatory value when controlled for the total effects of modernization is secular values. Likewise, each of the macro-dimensions of the RI is statistically significant and well-correlated to same-sex marriage legalization, even when controlled for modernization (see Tables 3-17 and 3-18).

Table 3-17: Regression of RI Variables on SSM Legalization, Controlling for Modernization

VARIABLES	(1) SSM10	(2) SSM10	(3) SSM10	(4) SSM10	(5) SSM10	(6) SSM10	(7) SSM10
LGBT Bars	0.00369*** (0.000905)						
LGBT Elites		0.00344*** (0.000830)					
LGBT Power			0.00338*** (0.000586)				
Pride Proxy				0.00176*** (0.000447)			
Civ-Soc					0.00258*** (0.000745)		
Emancipative Values						0.00604*** (0.00130)	
Secular Values							0.000978 (0.00117)
Modernization	0.00489*** (0.000825)	0.00520*** (0.000773)	0.00399*** (0.000794)	0.00576*** (0.000718)	0.00588*** (0.000730)	0.00258** (0.00114)	0.00648*** (0.000938)
Constant	2.312*** (0.433)	3.144*** (0.441)	2.784*** (0.398)	2.993*** (0.437)	1.358*** (0.570)	2.508*** (0.417)	2.443*** (0.516)
Observations	100	100	100	100	100	100	100
R-squared	0.584	0.586	0.637	0.579	0.566	0.601	0.516

Standard errors in parentheses
 *** p<0.01, ** p<0.05, * p<0.1

Table 3-18: Regression of RI Dimensions on SSM Legalization, Controlling for Modernization

VARIABLES	(1) SSM10	(2) SSM10	(3) SSM10
Mobilization	0.00627*** (0.000867)		
TANs Proxy		0.00329*** (0.000672)	
Empowerment			0.00433*** (0.00135)
Modernization	0.00263*** (0.000824)	0.00514*** (0.000729)	0.00375*** (0.00121)
Constant	2.822*** (0.372)	2.128*** (0.425)	2.295*** (0.451)
Observations	100	100	100
R-squared	0.683	0.609	0.559

Standard errors in parentheses
 *** p<0.01, ** p<0.05, * p<0.1

3.4.3 Second Iteration of the RI

At the risk of jumping ahead, once the case selection and case analysis are complete, a new version of the RI – RI 2.0 can be created which incorporates variables gleaned from case study analysis. While more detail on the RI 2.0 is contained in the concluding chapter, the variables added to the RI 2.0 are Regime Type, Age of Democracy, and LGBT Acceptance as variables representing the correlated preconditions to same-sex marriage legalization and High Court Independence and Low Court Independence as variables representing the presence of opportunity structures in a given country. The addition of these variables are informed by the case analysis discussed in Chapters 4, 5, and 6. While a full analysis of the RI 2.0 is beyond the scope of this dissertation, for the purposes of illustrating the value of the iterative approach to index-building I have included some basic factor analysis and regression.

Factor scoring shows that with the inclusion of these new variables there are now two factors loaded in, which would indicate that while one of these new subdimensions – Preconditions or Opportunity Structures – may be informative for a particular case pair, region, or cluster but not necessarily for the whole universe of cases in the RI 2.0. Dropping the Opportunity Structure from the RI 2.0 and leaving in the Preconditions loads higher, giving one factor with an Eigenvalue over 1 (Table 3-19). Linear Regression analysis shows that the iterated RI 2.0 yields roughly the same coefficient but a higher R2 value and predicts legalization of same-sex marriage is most likely at an RI 2.0 score of roughly 875 or higher, which is more in keeping with observable outcomes (Figure 3-10). This preliminary analysis confirms both the value of the iterative approach to index-building and the value of the case study analysis that informed that approach.

Table 3-19: Factor Analyses for Iterative Versions 1 and 2 of the RI 2.0

Factor analysis/correlation
 Method: principal factors
 Rotation: (unrotated)

Number of obs = 100
 Retained factors = 6
 Number of params = 57

Factor	Eigenvalue	Difference	Proportion	Cumulative
Factor1	6.59978	5.28002	0.8088	0.8088
Factor2	1.31976	0.85424	0.1617	0.9706
Factor3	0.46551	0.28427	0.0571	1.0276
Factor4	0.18124	0.09023	0.0222	1.0498
Factor5	0.09101	0.05100	0.0112	1.0610
Factor6	0.04001	0.04935	0.0049	1.0659
Factor7	-0.00935	0.03963	-0.0011	1.0647
Factor8	-0.04898	0.04458	-0.0060	1.0587
Factor9	-0.09356	0.02130	-0.0115	1.0473
Factor10	-0.11486	0.01585	-0.0141	1.0332
Factor11	-0.13071	0.00940	-0.0160	1.0172
Factor12	-0.14011	.	-0.0172	1.0000

LR test: independent vs. saturated: $\chi^2(66) = 948.80$ Prob> $\chi^2 = 0.0000$

Factor loadings (pattern matrix) and unique variances

Variable	Factor1	Factor2	Factor3	Factor4	Factor5	Factor6
regimetype	0.7426	-0.2298	-0.1674	0.2415	0.0270	-0.0751
demage	0.9062	-0.1765	-0.1074	0.1028	-0.1318	0.0097
lgbtaccept	0.7975	0.3243	0.0227	-0.1741	-0.0419	-0.0141
lgbtbars	0.6918	0.2944	0.0905	0.0481	-0.0495	0.1415
lgbtpower	0.7740	0.1296	-0.1733	-0.1168	-0.1656	-0.0461
lpbtelites	0.7422	0.3258	0.2942	0.0431	0.0316	-0.0734
pride	0.6433	0.2663	0.3475	0.1338	0.0259	0.0040
civsoc	0.7378	-0.4195	-0.0314	0.0667	0.0003	0.0430
emancipative	0.8500	0.2627	-0.1562	-0.1000	0.1232	-0.0363
secular	0.5283	0.3008	-0.3470	0.0320	0.1340	0.0550
highcourt	0.7258	-0.5022	0.0794	-0.1213	0.0482	0.0145
lowercourt	0.6898	-0.5122	0.1665	-0.1271	0.0644	0.0108

Factor analysis/correlation
 Method: principal factors
 Rotation: (unrotated)

Number of obs = 100
 Retained factors = 5
 Number of params = 40

Factor	Eigenvalue	Difference	Proportion	Cumulative
Factor1	5.69524	4.93558	0.8776	0.8776
Factor2	0.75966	0.38770	0.1171	0.9946
Factor3	0.37196	0.26714	0.0573	1.0519
Factor4	0.10482	0.06732	0.0162	1.0681
Factor5	0.03750	0.07540	0.0058	1.0739
Factor6	-0.03789	0.03351	-0.0058	1.0680
Factor7	-0.07141	0.01808	-0.0110	1.0570
Factor8	-0.08948	0.04176	-0.0138	1.0432
Factor9	-0.13124	0.01809	-0.0202	1.0230
Factor10	-0.14933	.	-0.0230	1.0000

LR test: independent vs. saturated: $\chi^2(45) = 729.59$ Prob> $\chi^2 = 0.0000$

Factor loadings (pattern matrix) and unique variances

Variable	Factor1	Factor2	Factor3	Factor4	Factor5	Uniqueness
regimetype	0.7140	0.4149	0.0563	0.1324	-0.0435	0.2955
demage	0.8763	0.3346	0.0574	-0.0637	0.0475	0.1106
lgbtaccept	0.8306	-0.2373	-0.0936	-0.1234	-0.0290	0.2290
lgbtbars	0.7255	-0.2077	0.0491	0.0060	0.1509	0.4053
lgbtpower	0.7888	0.0412	-0.1588	-0.1817	-0.0246	0.3173
lpbtelites	0.7742	-0.3110	0.2173	0.0302	-0.0686	0.2510
pride	0.6700	-0.2697	0.3164	0.0642	0.0000	0.3742
civsoc	0.6592	0.4330	0.1317	-0.0214	0.0055	0.3601
emancipative	0.8757	-0.1148	-0.2238	0.0688	-0.0552	0.1620
secular	0.5740	-0.0655	-0.3381	0.1572	0.0369	0.5258

Table 3-20: Regressing RI on SSM Legalization, Controlling for Aggregate GDP, Compared with Regressing RI 2.0 on SSM Legalization, Controlling for Aggregate GDP

VARIABLES	(1) SSM10	VARIABLES	(1) SSM10
Rainbow	2.384*** (0.178)	RI2	2.318*** (0.162)
Agg_GDP	-0.00175 (0.00106)	Aggregate_GDP	-0.00115 (0.000985)
Constant	8.012*** (0.676)	Constant	7.637*** (0.631)
Observations	100	Observations	100
R-squared	0.687	R-squared	0.714

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

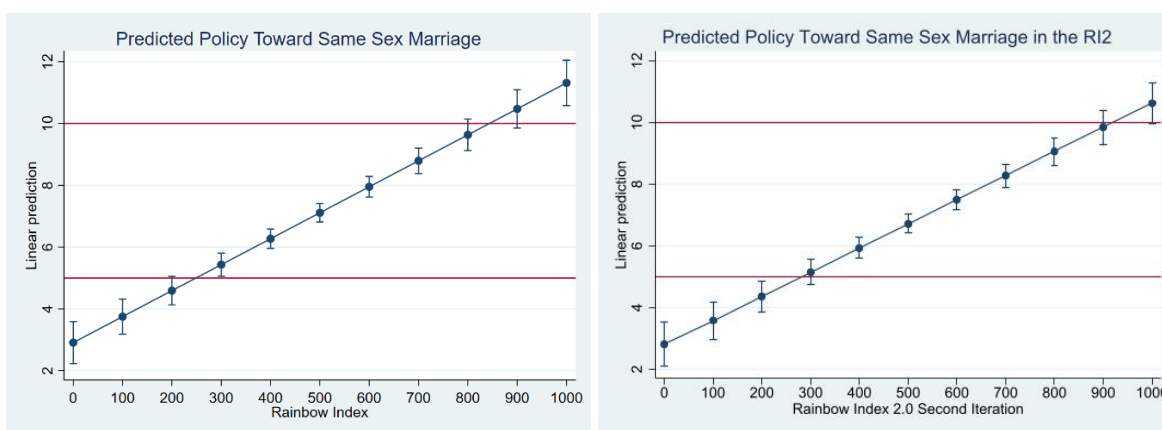


Figure 3-10: Predicted Policy on Same-Sex Marriage for the RI and RI2, Compared

3.5 Case Selection

Quantitative analysis shows that the RI, which representation of a country's friendliness to LGB equality, has a statistically significant and highly correlated relationship to same-sex marriage legalization. This means that country RI scores are predictive of the likelihood of same-sex marriage legalization. Furthermore, analysis demonstrates that the effects of modernization captured in the MI are not as predictive or explanatory for same-sex marriage legalization (see Figures 3-7 through 3-9). Analysis has also shown the construction of the RI to be

methodologically sound¹⁴. This means that the RI is a valid tool for aiding in case selection. This section will explain how case-pairs are determined and eventually chosen for case study analysis to further examine the hypothesis. Part of this case selection is pre-determined: countries which have legalized same-sex marriage are known to have done so. And, based on the region and cluster classifications already explained earlier in this Chapter, it is a simple matter to identify the first legalizers within each grouping.

Table 3-21 breaks down countries that have legalized same-sex marriage against countries that are predicted to be the most likely legalizers by RI score. The regions Indic East, Islamic East, Orthodox East, and the Returned West as well as the Low Stage cluster each contain no countries which have legalized same-sex marriage as of the writing of this dissertation. Countries in these regions and clusters can be eliminated from case selection. Returning to the research methodology of this dissertation, to test the hypothesis case-pairs of adopters and non-adopters are needed, so that, following a most similar systems design, the adopter countries can be compared to the non-adopter countries to determine the key variable or variables that explain the difference in outcome. In regions or clusters in which both the predicted most likely and the actual first legalizer countries have legalized same-sex marriage, a comparison of any of these cases would violate most-similar systems design. This leaves three possible case-pairs: Japan and Taiwan in the Sinic East Region, Brazil and Chile in the Modicum Stage cluster, and Colombia and Mexico in the Modicum Low Stage cluster.

¹⁴ This is crucial and the result of an iterative process, not unlike the process used in constructing the RI and MI – creating a structure and adding or removing variables as appropriate until an index is created that measures what the user is trying to measure. To borrow part of a quote at the beginning of Brown et al 2015, “Keynes. . . used to say that his best ideas came to him from ‘messaging about with figures and seeing what they must mean.’ He could be as excited as any economist at discovering correlations in the data.” (p 246).

Table 3-21: Countries Legalizing Same-Sex Marriage by Region and Cluster

Country (RI Score)	Legalization Date	Region	Predicted Most Likely (RI Score)	Legalization Date
None	None	Indic East	Philippines (537)	None
None	None	Islamic East	Lebanon (292)	None
Argentina (754)	2010	Latin America	Uruguay (842)	2013
Canada (811)	2005	New West	Australia (878)	2017
Spain (893)	2005	Old West	France (929)	2013
None	None	Orthodox East	Bulgaria (487)	None
Netherlands (962)	2000	Reformed West	Denmark (1000)	2012
None	None	Returned West	Czech Republic (696)	None
Taiwan (784)	2019	Sinic East	Japan (880)	None
South Africa	2006	Sub-Saharan Africa	South Africa (439)	2006

Country (RI Score)	Legalization Date	Cluster	Predicted Most Likely (RI Score)	Legalization Date
Netherlands (962)	2000	Thriving	Denmark (1000)	2012
South Africa (439)	2006	Modicum High	Taiwan (784)	2019
Brazil (660)	2013	Modicum	Chile (727)	None
Colombia (587)	2016	Modicum Low	Mexico (611)	None
None	None	Low	Guatemala (406)	None

Country (RI Score)	Legalization Date	Region	Cluster
Netherlands (962)	2000	Reformed West	Thriving
Belgium	2003	Old West	Thriving
Canada (811)	2005	New West	Thriving
Spain (893)	2005	Old West	Thriving
South Africa (439)	2006	Sub-Saharan Africa	Modicum-High
Norway (727)	2008	Reformed West	Thriving
Sweden (962)	2009	Reformed West	Thriving
Argentina (754)	2010	Latin America	Modicum High
Portugal	2010	Old West	Thriving
Iceland (753)	2010	Reformed West	Thriving
Denmark (1000)	2012	Reformed West	Thriving
Brazil (660)	2013	Latin America	Modicum
Uruguay (842)	2013	Latin America	Thriving
New Zealand (775)	2013	New West	Thriving
France (929)	2013	Old West	Thriving
The UK (973)	2013*	Reformed West	Thriving
Luxembourg	2014	Old West	Thriving
United States (804)	2015	New West	Thriving
Ireland	2015	Old West	Thriving
Finland (917)	2015	Reformed West	Thriving
Colombia (587)	2016	Latin America	Modicum-Low
Australia (878)	2017	New West	Thriving
Malta	2017	Old West	Thriving
Germany (972)	2017	Reformed West	Thriving
Ecuador (392)	2019	Not Included	Not Included
Austria (912)	2019	Old West	Thriving
Taiwan (784)	2019	Sinic East	Modicum-High
Costa Rica	2020	Not Included	Not Included

*England and Wales legalized SSM in 2013; Scotland did so in 2014; and Northern Ireland did so in 2019.

These three possible case-pairs all satisfy two requirements for case selection in this dissertation: 1) the actual first legalizer and the predicted first legalizer are different countries; and 2) the predicted first legalizer has not yet recognized same-sex marriage at the national level as of the writing of this dissertation. What remains is to determine which case-pairs will yield the most insight into how same-sex marriage legalization occurs in each. Figure 3-11 shows where each of these countries rests on the probability curve for the RI scores and same-sex marriage legalization, drawing on prior analysis detailed in the last section. The figure clearly shows that, according to the RI, Colombia should not have been likely at all to legalize same-sex marriage while Japan is

the country most likely to have legalized of these possible cases. Since Colombia has legalized and Japan has not, and since analysis using the RI has shown it to be predictive of same-sex marriage legalization, this strongly suggests that the case-pairs of Taiwan and Japan and Colombia and Mexico can offer a more informative exploration of the hypothesis.

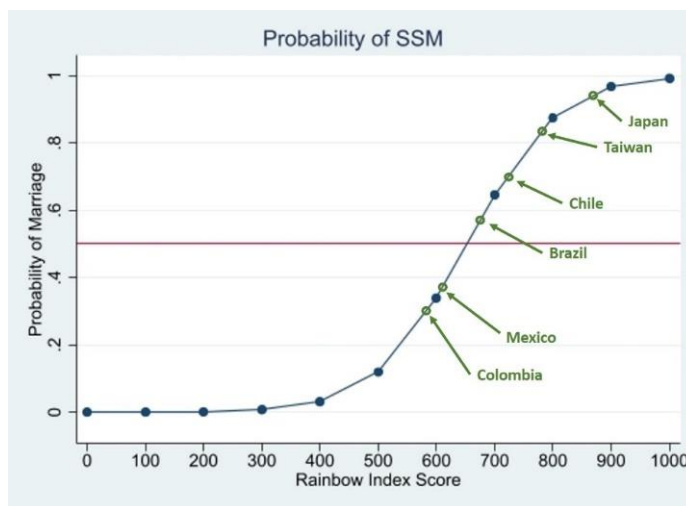


Figure 3-11: Same-Sex Marriage Probability for all Potential Cases

Using the data visualization capabilities of the RCII (now reconceptualized as the RI) shows another way to illustrate the relative likeliness of legalization in each of these six potential cases – neither Colombia nor Mexico have RI scores that indicate a 50% or better probability of legalization and they score lowest out of the six in the Values dimension while performing well in the other two (Table 3-22 as well as Figure 3-11).

Table 3-22: Six Potential Cases Compared

6 Countries	Rainbow Index		Mobilization Capacity		Transnational Advocacy Networks		Values	
	Rank	Score	Rank	Score	Rank	Score	Rank	Score
Japan	10	880	14	765	10	919	12	854
Taiwan	16	784	23	692	1	1000	31	599
Chile	20	727	27	687	17	819	25	638
Brazil	24	660	22	702	17	819	42	449
Mexico	26	611	20	712	20	690	43	442
Colombia	27	587	20	712	20	690	52	381



Source: Robinson Country Intelligence Index, Georgia State University.

In addition, recalling earlier analysis on the importance of regions and clusters (Tables 3-1 through 3-3), a breakdown of probability for same-sex marriage legalization within the three regions and clusters containing these case-pairs yields further insight into the value of each pair to this dissertation. Note that the probabilities displayed will be slightly different from those in Figure 3-7 because in each case, the region or cluster being examined will be separated from the rest, changing the overall probability curve. Beginning with regional analysis, countries in the Sinic East are less likely to legalize same-sex marriage than their similarly scoring counterparts in other regions (Figure 3-12). In fact, neither Taiwan nor Japan crosses the 50% probability threshold for legalization on the RI-score probability curve for just the Sinic East – a fact that makes Taiwan’s legalization even more surprising.

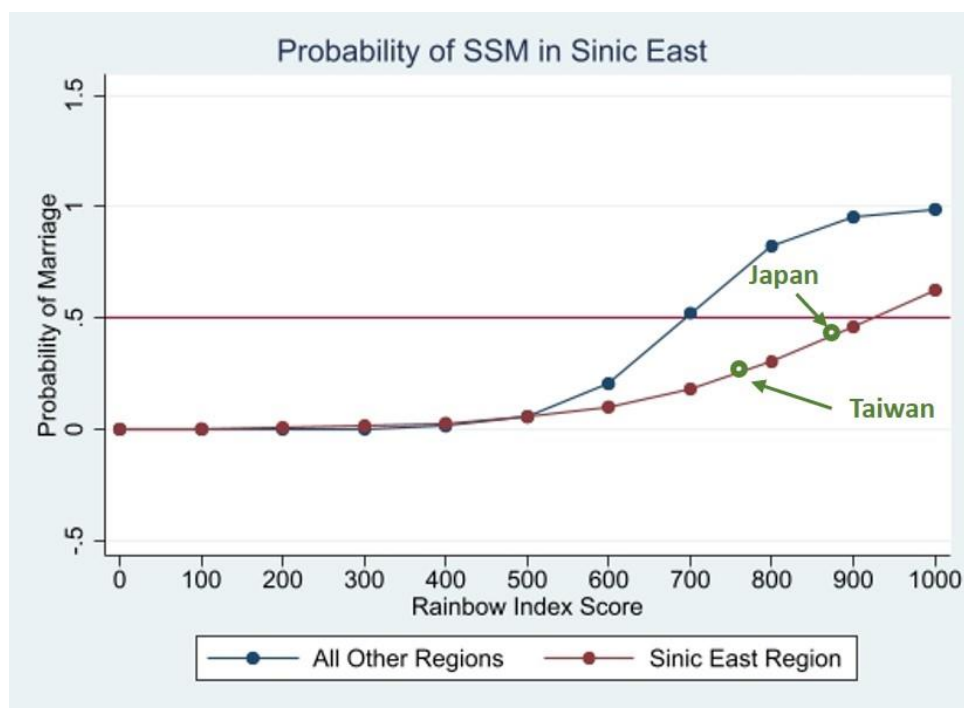


Figure 3-12: Same-Sex Marriage Probability in the Sinic East

When the probability curve for the Modicum Stage cluster is isolated, the figure shows that Brazil is less likely than Chile to have legalized same-sex marriage, and that Modicum Stage

countries as a group are less likely to legalize than similar scoring countries in other clusters (Figure 3-13). On the other hand, similarly-scoring countries are more likely to legalize in the Modicum Low cluster, suggesting that as a country's score in the RI rises, if that country is in the Modicum Low cluster, at least some variables are doing more work than they otherwise would be in higher-scoring countries (Figure 3-14). This could explain why Mexico has >50% probability of legalizing same-sex marriage while similarly scoring countries in other clusters, like Estonia (Thriving) and South Korea (Modicum High) which are each within 100 points of Mexico in RI scoring, do not. Though, in the Modicum Low cluster, Colombia is less likely to legalize than Mexico, and this makes Colombia's legalization even more noteworthy.

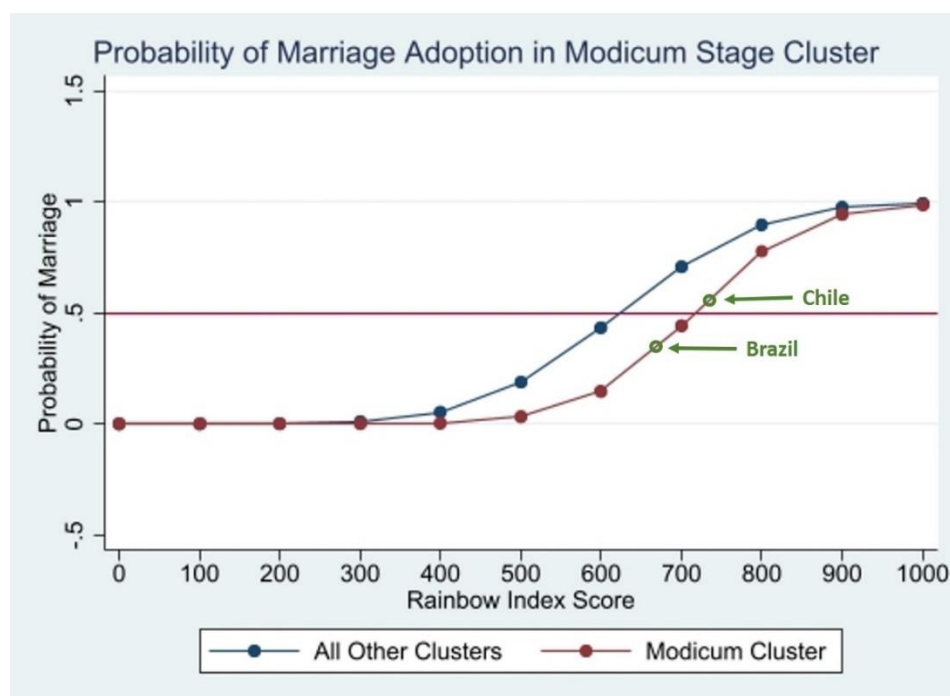


Figure 3-13: Same-Sex Marriage Probability in the Modicum Stage Cluster

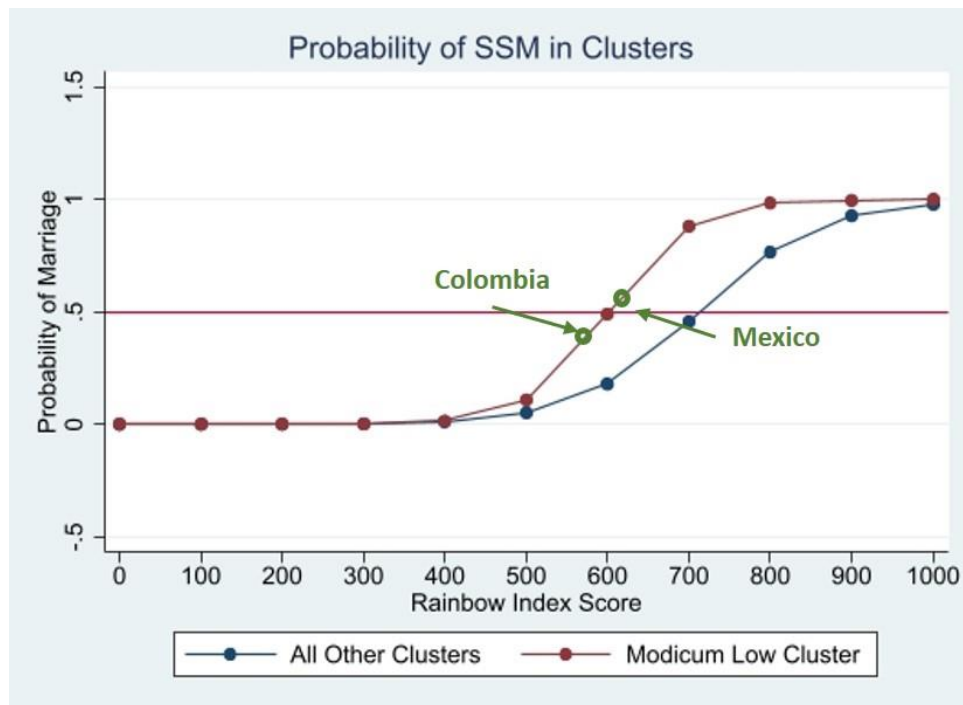


Figure 3-14: Same-Sex Marriage Probability in the Modicum Low Stage Cluster

In all three potential case pairs, the actual first adopter is less likely to have legalized than the most likely adopter in their respective regions and clusters. However, since Japan is the highest scoring country among these six in the RI and Colombia is the lowest, the case-pairs involving these countries should make for the most informative comparisons. In addition, for comparative purposes, having a case pair from one region and a case pair from one cluster will help increase the external validity of this study. This will yield a higher possibility that the findings are applicable globally, even if there are region and/or cluster-specific additional variables to be considered.

As a prelude to the case pair analysis in the coming chapters, initial visualization of RI scores for the case-pairs Taiwan and Japan and Colombia and Mexico in the individual variables previously identified indicates several interesting possibilities (see Figure 3-15). First, Taiwan is by far the best performer of the four cases in LGB Power, meaning that LGB persons in Taiwan

enjoy greater influence in the levers of power than do their counterparts in Japan, Mexico, or Colombia. This could prove decisive in the case analysis. Second, Mexico performs as well or better than Colombia in every measure, and particularly so in Secular Values. This suggests that some un-accounted for factor has held legalization efforts back in Mexico. Third, Pride attendance in all four countries is very good, comparatively. This does not discount the importance of Pride as an explanatory variable for increased likelihood of same-sex marriage legalization. It does suggest that Encarnación (2011 and 2016) is correct when he asserts that domestic factors, like Pride, are important in explaining same-sex marriage legalization because they give TANs the opportunities necessary to network with and support local actors.

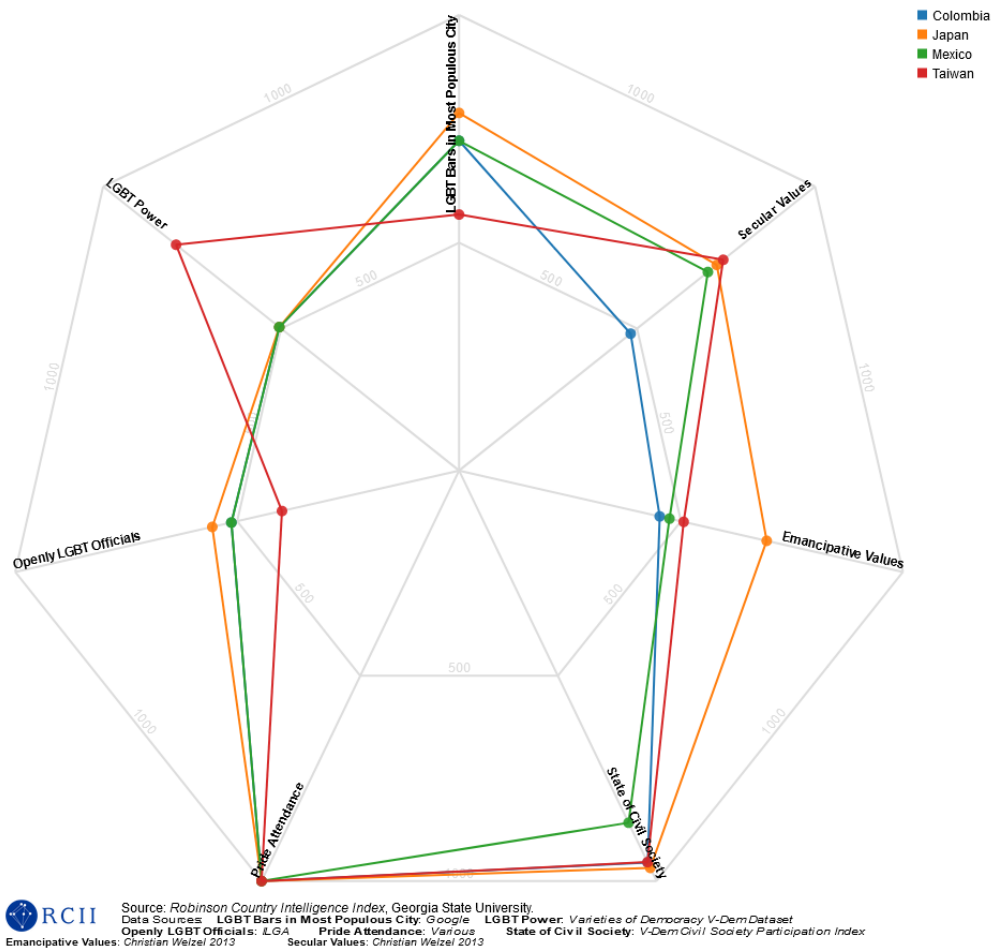


Figure 3-15: Case-Pairs Compared

3.6 Summary

This chapter has discussed the RCII and how it is useful in constructing a customizable index, the RI, for analysis of and the visualization of data related to same-sex marriage legalization and has detailed the various quantitative methods used to test the validity of the structure of the RI, including groupings of countries by both region and cluster. Quantitative analysis has also shown that the hypothesis of this chapter – that a combination of values, mobilization capacity, and transnational advocacy networks, represented as friendliness to LGB equality or the Rainbow Index (RI) – is valid and has greater explanatory value than does the alternative hypothesis that the effects of modernization as represented in the Modernization Index (MI). This chapter has also detailed how cases were selected using data from the RI to identify possible case pairings with known first adopters within regions and clusters. Analysis shows that the most informative case-pairs for this dissertation are Taiwan and Japan in the Sinic East region and Colombia and Mexico in the Modicum Low cluster. The next chapter will examine the case of Taiwan in detail using data gathered from field work conducted in 2020 in Taipei to help explain why same-sex marriage has legalized there first in the region.

4 TAIWAN: A CASE STUDY

In 2020 I travelled to Taiwan twice to conduct interviews with activists, journalists, and political elites concerning same-sex marriage legalization in Taiwan, from January through March and again from October through December. My travel and research were funded, in part, by the Taiwanese Ministry of Foreign Affairs through the Taiwan Fellowship Grant, which is awarded to researchers and faculty on a competitive basis. Much of the information contained in this chapter is derived from research and interviews conducted during this field work. In addition, I surveyed existing scholarly research and media coverage on same-sex marriage and LGB rights in Taiwan to help provide some valuable context around what I was being told in interviews. As appropriate, I will refer to these sources as well.

The goal of this chapter will be to explain why Taiwan legalized same-sex marriage, despite the fact that the RI predicted Japan as the most likely first-legalizer in the Sinic East. This will be done through process tracing in which the relationship between variables identified as statistically significant within the RI and the outcome of same-sex marriage legalization will be examined. In addition, additional variables which may have played a significant role for Taiwan specifically will be identified for potential future analysis.

This chapter will be laid out as follows. First, I will provide a brief history of same-sex marriage legalization efforts in Taiwan, beginning with the early activism of Chi Chia-wei in the late 1980s during Taiwan's authoritarian period and running through the activism of the Taiwan Marriage Equality Coalition (later called the Taiwan Equality Campaign) headed by executive director Jennifer Lu. Following this, I will discuss how Taiwan satisfies the preconditions necessary to pro-LGB contentious politics, namely LGB identity formation (an endogenous precondition) and democratization (an exogenous precondition). Then, the effects of mobilization

capacity, opportunities for TAN involvement, and empowering values is discussed, with particular emphasis paid to LGB power, which is not only the variable that seems most to separate Taiwan from the other three cases (see Figure 3-11 in the previous chapter) but also one of the two most highly correlated variables to same-sex marriage legalization (see Table 4-1). Attention will be paid to critical junctures allowing for repertoires of contentious politics to be employed through legal and political opportunity structures. In addition to this analysis, I will briefly discuss potential country-specific moderating variables that made same-sex marriage legalization possible in Taiwan as suggested by research and interviews. These include the influence of youth-driven domestic political movements like the Wild Lilly Movement and the Sunflower Movement, the process of concentrating power over time in the hands of Taiwanese-born citizens known as Taiwanization, Taiwan's desire to create a national identity as being distinct from The People's Republic of China, and the degree to which Taiwanese culture tends to assimilate foreign ideas and norms more readily than other Sinic East countries. While these variables are briefly discussed, no new quantitative analysis involving these variables is included here – that analysis being reserved for future research. The chapter will conclude with a summary of findings.

Table 4-1: Correlation to Same-Sex Marriage Legalization

	SSM Legalization	LGBT Bars	LGBT Elites	LGBT Power	Pride	Civil Society	Emancipative Values	Secular Values
SSM Legalization	100%							
LGBT Bars	66%	100%						
LGBT Elites	63%	62%	100%					
LGBT Power	74%	54%	56%	100%				
Pride	55%	58%	72%	45%	100%			
Civil Society	53%	39%	38%	52%	39%	100%		
Emancipative Values	76%	63%	70%	72%	54%	50%	100%	
Secular Values	53%	44%	37%	47%	30%	30%	64%	100%

4.1 A Brief History of same-sex marriage Legalization Efforts in Taiwan

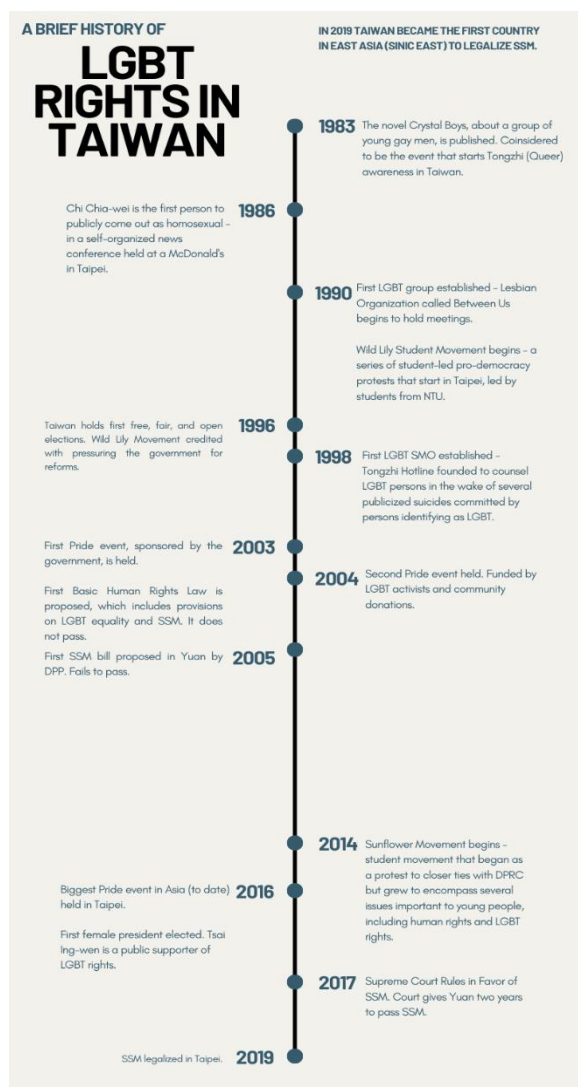
In 1983, Pai Hsien-yung, published the novel *Crystal Boys*¹⁵ about a gay high school student and his journey into the underground LGB subculture of Taipei in the 1970s. For many Taiwanese, hetero and homosexual alike, this was their first inkling that there was even such a thing as an LGB identity in Taiwan. Indeed, *Crystal Boys* is often pointed to as the event that gave rise to *tongzhi* culture¹⁶ in Taiwan, which will be discussed later in this chapter. Then, in 1986, Chi Chia-wei became the first person in Taiwan to come out on television. He was twenty-eight at the time. He chose to organize a press conference at a popular McDonald's restaurant in Taipei to announce his identity. Prior to this event, there were no public activists for LGB rights, nor was there even a public LGB community. Chi became Taiwan's first LGB activist and the country's first activists for persons with HIV/AIDS (Chi^A 2020; Chi^B 2020). While there was no public LGB community, there was a growing underground community as early as the 1970s in Taipei.

The first LGB group – a lesbian group called *Between Us* – was established in 1990. The first legally registered LGB SMO, called the Taiwan Tongzhi Hotline Association, was founded in 1998, after a series of teen LGB suicides shocked the nascent gay community (Xiao 2020). Then, in 2003 the first Gay Pride parade in Taiwan was held, attracting some 20,000 participants and spectators. In 2005, the first bill to legalize same-sex marriage was introduced in the Legislative Yuan by a member of the Democratic People's Party (DPP), though it was defeated. LGB groups began openly advocating for marriage equality, and in 2016 several of these groups

¹⁵ As an illustration of how ostracized Taiwan's gay community was in 1983, the novel was originally published under the title *Niezi* (孽子) or "Evil Sons".

¹⁶ The word *tongzhi* (同志) means "comrade" and was originally used to describe the followers of Sun Yat-sen. On the Chinese mainland, it was used to mean "comrade" in the communist sense. In modern Taiwan – as well as Hong Kong and Macau – the word is used to refer to LGB people.

banded together, led by Jennifer Lu, to form the Marriage Equality Coalition of Taiwan¹⁷ (Lu 2020). Lu spent ten years involved in local LGB and feminist advocacy in Taipei and in 2016 became one of the first openly lesbian candidates for national office in Taiwan when she ran for a seat in the Legislative Yuan under the DPP banner (Lu 2020). By 2019, Taiwan's Pride was the largest in Asia and one of the "world's 15 biggest LGBQ celebrations" according to USA Today (USA Today 2019). In politics the LGB community and their supporters flexed their political muscle, slowly gaining political power (V-Dem 2021).



The activism of Chi and of Lu both drew on and depended on a degree of acceptance of emancipative and secular values, though both activists approached their roles in contentious politics in different ways. Chi often consciously avoided involvement in organized politics or formal advocacy groups, preferring instead to be an individual voice agitating for change from outside the system (Chi^A 2020; Chi^B 2020). This included speaking out publicly, raising money for HIV/AIDS services and safe-sex campaigns, attending Pride rallies and parades, giving interviews, and filing several lawsuits in Taiwanese

¹⁷ The constituent groups of the Marriage Equality Coalition were Taiwan Tongzhi Hotline Association, Taiwan LGB Family Rights Advocacy, Awakening Foundation, The Lobby Alliance for LGB Human Rights, and Gagoalala.

courts challenging LGB discrimination – one case of which eventually led to

Figure 4-1: Timeline of LGB Rights

the legalization of same-sex marriage in the country. Lu, after obtaining her bachelor's degree in social work from National Taiwan University (NTU)¹⁸ and a master's degree in policy studies from Sydney University, became involved in organized LGB and feminist activism, first as a senior fellow at the previously mentioned Tongzhi Hotline and then eventually as director of an umbrella organization – the aforementioned Equality Coalition of Taiwan – which acted as an epistemic resource for local LGB rights activists and actors as well functioned as an organizing force to coordinate efforts towards same-sex marriage legalization through legislation (Lu 2020).

Around the time Pai was writing his groundbreaking novel, Chi was coming out, Lu was beginning her education, and the first LGB groups were quietly forming, Taiwan was going through a momentous political change. Beginning in the 1980s, the ruling Kuomintang (KMT) Party begin slowly instituting democratic reforms. Opposition to the KMT was legalized. The island also began a process of Taiwanization, which involved transferring political power to citizens born in Taiwan as opposed to mainland China. Then, in 1996, Taiwan held its first direct presidential election. In 2000, the KMT would lose control of Taiwan for the first time in 55 years. At each step of the way, formerly authoritarian leaders chose to accept the principles of democracy and rule of law, rather than attempt to maintain control by any means. In 2005, legislative and electoral reforms further democratized the island, eventually helping to bring about legislative control of the DPP, the first opposition party in Taiwan and the first non-KMT-affiliated party to

¹⁸ National Taiwan University (NTU) helped support the field work of this dissertation by acting as a host institution for my grant and research. It is considered the flagship university of Taiwan.

hold an outright majority in the Legislative Yuan, in 2016. All-in-all, it was an exciting time to be in Taiwan.

By 2014, a stage adaptation of *Crystal Boys* was exhibited at Taiwan's National Theater and in 2020 Chi Chia-wei was named one of Time Magazine's 100 Most Influential People. That Taiwan's LGB community went from ostracized underground subculture to politically powerful equal members of Taiwanese society – an equality that is now arguably part of Taiwan's culture – is remarkable. That this happened around the same time Taiwan moved to democratize is important, as without this democratization it would have been much less likely that LGB persons would achieve the necessary political power to advocate for their rights, including same-sex marriage. The next section of this chapter will go into more detail about the birth of tongzhi culture and the democratization of Taiwan as pre-conditions for LGB SMOs to successfully lobby for same-sex marriage legalization.

4.2 Satisfying Pre-conditions of LGB Identity Formation and Democratization

Crystal Boys was the first Taiwanese novel written about the struggles faced by homosexuals in Taiwan. It was written at a time when Taiwanese society was defined in part by institutionalized patriarchy and homophobia (Huang 2011; Shi 2017). The opening of *Crystal Boys* describes the life of the narrating character and his fellow teenage outcasts working as hustlers in New Park, Taipei, in poetic but non-euphemistic terms.

“There are no days in our kingdom, only nights. As soon as the sun comes up, our kingdom goes into hiding, for it is an unlawful nation. We have no government and no constitution, we are neither recognized nor respected by anyone, our citizenry is little more than rabble.” (Pai 1990, 17).

This is not simply an author's literary expression but the language of identity: kingdom, nation, citizenry. Around the time Taiwanese LGB persons were reading *Crystal Boys*, a similar argument

for queer nationhood was being made in the West. Born out of anger at the slow response of Western governments to the HIV/AIDS epidemic that was decimating homosexuals – particularly gay men, groups like Queer Nation and ACT-UP argued that they were more than a social movement – they were a people, with their own history, struggles, culture, language (or at the very least a lingo), tastes, and ambitions¹⁹ (Walker 1996). And, while Pai was not an activist in the sense of the early members of Queer Nation or ACT-UP, his language of identity resonated with LGB Taiwanese who had never read about homosexuals in Chinese literature described compassionately or empathetically as a people united by their status as exiles or outcasts.

But how can a novel give rise first to feelings or identity, and later, to a desire on the part of people who share that identity for equal human rights? Historian Lynn Hunt argues that the novel is actually crucial to Enlightenment societies of the West embracing the notion of human rights. Hunt argues that in order for “human rights require three interlocking qualities: rights must be natural (inherent in human beings), equal (the same for everyone) and universal (applicable everywhere)” (2008, 20). In order for men who owned slaves and property to begin thinking of others – the woman, or the slave, or the propertyless – unlike themselves as deserving of the same rights as they had, they needed to be able imagine what the lives of these people were like as a foundation for empathy. And, for that, they had the novel, for the novel, “made the point that all people are fundamentally similar because of their inner feelings” (Hunt 2008, 27). If the novel can do this for the acceptance of human rights, it is not a far cry to argue that the novel can also impart

¹⁹ Walker argues, in “Social Movements as Nationalism, or On the Very Idea of a Queer Nation” that groups like ACT-UP and Queer Nation used the language of nationalism in new ways. Nationalism, traditionally, has been based on racial or geographical identity, e.g., the Palestinians, or the Turks, or the Kurds, etc. But the gay liberation movement showed that a nation indeed does not have to be racial or geographical, that essentially any group that shares a common identity, a common history, a common struggle, and a set of common goals or a common destiny informed by that struggle can, and perhaps should, be considered a nation. In any case, Walker argues for a much broader conception of the nation, one that places issues of identity at the center of social movements.

a sense of identity to people sharing a struggle or a status that have not heretofore considered themselves a people or a nation.

The novel *Crystal Boys* does this in several ways. First *Crystal Boys* reinterprets the Confucian notion of filial piety – or devotion to the family – as a quality shared by homosexuals as a way of humanizing them in a culture that had (and often does) regarded homosexuality as the ultimate rejection of the family (Hu and Wang 2013; Huang 2011). In *Crystal Boys*, the narrating character Li-Qing shows respect for his father even after being kicked out of the house, but he and the other homosexuals in the novel struggle against their fathers' expectations – a struggle not unfamiliar to any son, Taiwanese or otherwise. Another Taiwanese artist, a filmmaker Ang Lee²⁰, explores similar themes in *The Wedding Banquet*, a 1993 film about a Taiwanese man living in the United States with his same-sex lover who goes through the charade of a wedding banquet, pretending to marry a Taiwanese woman, in order to avoid shaming or disappointing his parents (Sun 2019). *Crystal Boys* also makes possible the notion of LGB identity – or *tongzhi* – because it talks about the characters as members of a community struggling together for survival, rather than isolated individuals who have transgressed their familial duties (Shi 2017).

In 1995, when the Taiwanese government announced plans to revitalize Taipei, a group of LGB Taiwanese students calling themselves the Tongzhi Space Action Network (TSAN) demanded that New Park, near the Presidential Palace (the setting for much of the action in *Crystal Boys* and the country's most well-known – if notorious meeting place for gay men) be recognized for its historical significance using that very language of community (Huang 2010 and 2011). TSAN's invoking of the novel in its demand for recognition for Taiwanese LGB cemented the

²⁰ This is the same Ang Lee who would go on to direct *Brokeback Mountain* in 2005. Indeed, the fact that a Taiwanese heterosexual director would take on such a controversial (by 1993 standards) topic as same-sex, interracial relationships only underscores the universality of the struggle faced by same-sex couples.

book's significance in Taiwanese LGB culture. Indeed, TSAN reimagined Pai's "sorrowful" narration about the LGB community as a "nation of rabble" from the novel into a modern affirmation of pride and an assertion of equality:

In tongzhi's kingdom, we are no longer afraid of daylight, are not forced to remain invisible, for it is no longer an unlawful nation: we have reasonable distribution of resources from the government, we are fully protected by the laws of the country, we are recognized and blessed by the multitude, we are being respected by History, which also inscribes us. (Huang 2010, 374).

It is therefore no coincidence or surprise that several of my interview subjects mentioned *Crystal Boys* as deeply important to Taiwan's LGB identity formation (Chi^A 2020; Chi^B 2020; Lin 2020; Lu 2021; and Hsaio 2020).

Discussing the efforts of groups like TSAN is appropriate here as it brings attention to the second precondition for same-sex marriage legalization, democratization. While we will return to the role of civil society and Taiwanese youth movements in same-sex marriage later in this chapter, it is important to recognize that by the 1990s, SMOs that were typically marginalized, coopted, persecuted, or outright banned under the authoritarian KMT state (1947-2000) had begun to find their voice.

After the death of Chiang Kai-shek in 1975, subsequent KMT leaders began slowly liberalizing the state. First, the KMT began to allow competitive elections at the local level. Some scholars argue that the beginning of democratic transition began with this limited electoral reform in the 1980s and restrained themselves from imprisoning members of the *Tangwai* Movement²¹ that would eventually become the DPP (Riggers 1999; Wong 2001). In fact, these local elections, though tightly controlled by the KMT at first, helped to normalize democracy and this in turn

²¹ The Tangwai Movement were a loose collection of KMT politicians who ran in local elections as "Independents" or as "party outsiders" at a time when opposition parties were banned in Taiwan.

emboldened nascent SMOs and activists like Wei to make greater demands on the state (Copper 1998; Hsiao 2008; Wong 2001). As grassroots SMOs became more demanding and more powerful, they actually helped loosen KMT control even further, thus creating a virtuous cycle which helped to transform Taiwan from a competitive authoritarian state to a vibrant liberal representative democracy in a relatively short period of time and with relatively little bloodshed (Hsiao 2008). Later in this chapter, I will argue that this represents a critical juncture which allowed for greater use of contentious politics on the part of human rights SMOs in general and LGB SMOs advocating for same-sex marriage in particular.

In addition, KMT power structures, which had been designed to benefit the Chinese “mainlanders” who came with Chiang as they fled Communist rule began to be reformed to include native-born Taiwanese – a process known as Taiwanization²² (Hu 2005). During this time, restrictions on freedom of assembly, freedom of expression, and freedom of the press were gradually lifted, along with martial law in 1987 (Hu 2005). In 1991 the government began to place greater emphasis on local culture and history as opposed to the pan-China viewpoint of the mainlanders and restrictions of the use of the Taiwanese language in media and schools was also ended (Hu 2005). Because Taiwanization was part of the democratizing process, the notion of identity – and an identity distinct from the mainland – became ingrained in Taiwanese politics, also making the path easier for LGB SMOs using the language of nationality and identity in their advocacy for equality. Taiwanization also represents a critical juncture which shaped the opportunities available to SMOs. All interview subjects indicated the importance of

²² Essentially, as the island has democratized, the people of Taiwan have increasingly identified as *Taiwanese* – a distinct nationality from Chinese. For more, see Bruce Jacobs, “Whither Taiwanization? The Colonization, Democratization and Taiwanization of Taiwan” in the Japanese Journal of Political Science, 2013.

democratization in same-sex marriage legalization and as a potential explanation for why Taiwan legalized before China.

4.3 Testing the Hypothesis

Revisiting the hypothesis, I argue that certain conditions within a given country or territory – 1) minimal level of emancipative and secular values, 2) LGB mobilization capacity, 3) and opportunities for Transnational Advocacy Networks (TANs) to engage and support local actors – increase the likelihood that same-sex marriage will be legalized where preconditions of democratization and LGB identity formation are present. But quantitative analysis in Chapter 3 strongly indicated the need to incorporate country-specific variables as part of the explanation for same-sex marriage legalization. Figure 4-2 on the following page is a visualization of that country-specific version of the hypothesis, customized for Taiwan’s legalization of same-sex marriage in 2017.

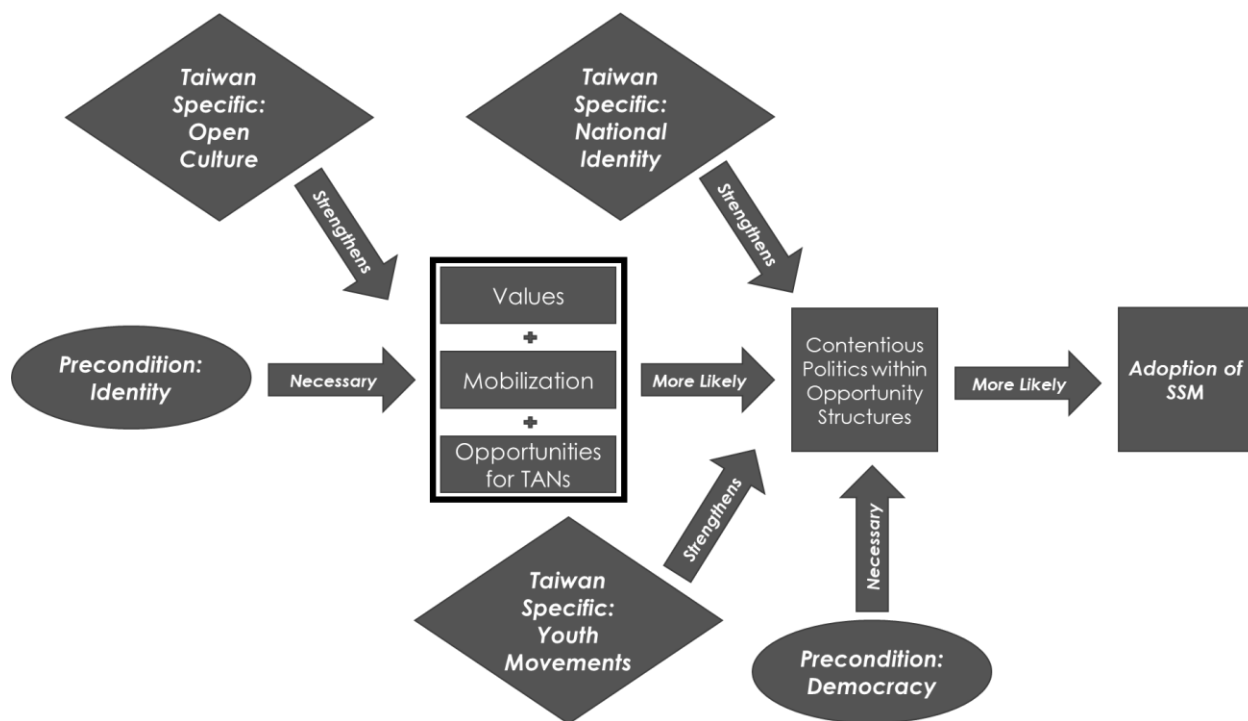


Figure 4-2: Taiwan-Specific Hypothesis

First, the formation of LGB identity must occur, and we see that with the publication of *Crystal Boys* and the beginning of the Tongzhi movement. Taiwan's history of embracing foreign ideas and foreign cultures, discussed in more detail later in this chapter, acts as a moderating variable strengthening this process of identity formation. Meanwhile, democratization and Taiwanization begin to create the opportunity structures that make contentious politics possible – like identity formation this is a necessary precondition as well. The LGB community begins to mobilize resources, civil society begins to open and Pride celebrations create opportunities for TANs to create linkages with domestic SMOs, and Taiwanese society accepts empowering emancipatory and secular values. The confluence of these occurrences allows the LGB community, through advocacy SMOs, to use contentious politics utilizing the aforementioned opportunity structures to demand same-sex marriage legalization. Interviews and scholarly research confirm the strong probability that this provides a defensible explanation for Taiwan's status as first-adopter in the Sinic East.

4.3.1 The Effects of Mobilization Capacity

Once an LGB identity has been established, in a state that denies equal rights to members of identity, that community must begin to mobilize resources, ranging from money to volunteers to political alliances, in order to achieve the goal of greater equality – in this case same-sex marriage legalization. We see that clearly in the case of Taiwan. The Tongzhi Hotline, mentioned earlier, is an example of this kind of resource mobilization. Founded in 1998, today it is Taiwan's oldest and largest LGBQ organization in Taiwan (Lu 2021; Tongzhi Hotline 2021; Xiao 2020). In 1997 and 1998, there were several highly publicized LGB teen suicide attempts and a group of advocates from within the LGB community came together to provide counseling services through the creation of a toll-free hotline, staffed and funded by LGB volunteers (Lu 2021; Tongzhi Hotline

2021; Xiao 2020). At first, it was a challenge even to get registered as a non-profit organization with the Taiwanese government and volunteers worked from their homes or from a shared, discreetly tucked away rented space in a small building (Lin 2020; Xiao 2020). Eventually, the group became involved in rights advocacy, being one of the organizations that would join the umbrella group, along with a dozen other organizations, that would eventually come to be known as the Marriage Equality Coalition of Taiwan (Lu 2021; Xiao 2020).

Today, the Tongzhi Hotline has grown into an organization with a budget of over 18,000,000 NTD (over \$600,000 USD) that provides counselling and support services, HIV and STD testing, HIV medications, educational videos on safe-sex practices and pleasurable sexual techniques, addiction counselling, relationship advice, youth meetings, senior citizen support, and chat rooms – all aimed at an LGB audience that, despite Taiwan’s relatively impressive progress towards LGB equality, still finds themselves underserved in these areas (Tongzhi Hotline 2021). Tongzhi Hotline is still funded primarily by donations from the LGB community, and their Board of Directors is an impressive combination of professional activists, clinicians and doctors, journalists, academics, civil servants, lawyers, and other LGB or LGB-allied professionals (Tongzhi Hotline 2021).

Resource mobilization theory scholars would point out that the formation of the Tongzhi Hotline is an example of a cohesive group responding to perceived threats (in this case, a lack of equality and acceptance resulting in a deterioration of mental health to the point of attempted suicide) by mobilizing available resources to achieve a response to that threat (Jenkins 1983; Moore 1978; Useem 1980). Issues of importance include the kinds of resources available to this group (like time, money, willing volunteers with relevant expertise) and the manner in which they are able to mobilize these resources (Jenkins 1983). But resources also necessarily include allies

among political elites which are open to hearing the group's grievances – in this case politicians and staff working mostly with the DPP, where some of the earliest supporters of LGB equality were to be found as early as 1999 (Lu 2021; OfTaiwan.org 2021; Xiao 2020). Though, as we will soon see, early support of LGB rights was not limited solely to the DPP.

This brings us to the variable LGB Power, which is the measure of the level of political power of LGB persons on a 4-point scale, with a 4 indicating that LGBs enjoy somewhat more political power than heterosexuals by virtue of greater wealth, education, and high level of organization and mobilization; and a 1 indicating that LGBs are completely excluded from the public sphere. This data comes from the Varieties of Democracy V-Dem Dataset. Resource mobilization is at the heart of any conception of LGB power, and political allies are just as important a resource as time, money, or skilled volunteers. The quality of the tongzhi community's political allies as a resource can be seen in the following examples:

1. Beginning in 1999, then-Mayor of Taipei and KMT politician Ma Ying-Jeou (who would eventually be the President of Taiwan from 2008-2016) allocated \$1 million USD in public funds to support gay rights, becoming the first politician in Taiwan to publicly do so. This included a same-sex group "wedding" in 2006 that was widely criticized by the city's religious leaders (Hsu 2006; OfTaiwan.org 2021). It is rumored within Taiwan's LGB activist community that Ma's support did not extend to actual legislation because Ma was afraid of giving credence to multiple and persistent rumors that he was himself a closeted gay man (OfTaiwan 2021; Wee 2014; Yan-chih 2009). Ma has consistently denied these rumors.
2. In 2002, newly-elected President Chen Shui-bian of the DPP invited LGB rights activist Nan Hunter and human rights lawyer Michael Bronski to a meeting in the

Presidential Office to discuss possible legislation on LGB rights. Some LGB rights scholars mark Chen's presidency as the beginning of the modern Taiwanese gay rights era, as the DPP had a long history of involvement with rights SMOs, including LGB rights SMOs (Chen and Fell 2021; Chu 2003; Fan and Wu 2016; Sanders 2020).

3. In 2013, Vice-President Annette Lu of the DPP drafted a basic human rights law that included an article on same-sex marriage and adoption rights for gay couples (see Figure 4.1). While this law was not passed, some scholars attribute the creation of this draft law to President Chen's creation of the Presidential Office Human Rights Consultative Committee in 2000, promising to make Taiwan, "a nation founded upon the principles of human rights" (Lin 2000). The creation of this committee for this stated purpose will be revisited in the section on Taiwan-specific variables later in this chapter.
4. In 2016, President Tsai Ing-Wen published [a video](#) of her publicly supporting LGB equality and same-sex marriage in particular. Several of my interview subjects pointed to this support as a significant factor in same-sex marriage legalization (Hsieh 2020; Lu 2021; Ro 2020). In the video, she says, "Everyone is equal. I agree (or approve) of equality. People should have a right to love whomever they love," referring to same-sex marriage and LGB equality (translated by Yuhnian Lee, 2022). No Taiwanese leader to that time had made such a public and unambiguous statement of support for same-sex marriage legalization.
5. In 2017, the Taiwanese Constitutional Court ruled that laws prohibiting same-sex marriage were a violation of Taiwan's constitution. This was the result of a case

originally brought by Chi Chia-wei as an appeal to being denied a marriage license for he and his same-sex partner in 2013. Each interview subject mentioned this is perhaps the most crucial factor in the legalization of same-sex marriage, and multiple subjects talked about the legal philosophies of several of the justices on the Court as being aligned with the notions of equality, equal rights, and human rights (Chi^A and Chi^B 2020; Hsieh 2020; Lin 2020; Lu 2021).

Another resource that the LGB community was able to mobilize were journalists who were willing to write openly about LGB issues. During the White Terror²³, it was common for students, teachers and journalists who were critical of the KMT government to be executed or imprisoned, as was the case during the 1947 Keelung Senior High School Incident and the 1984 assassination of Henry Liu (Arax and Holly 1985). With the start of the LGB struggle for equal rights, some LGB journalists began covering attempts to persecute or oppress homosexuals, who were traditionally portrayed in Taiwanese media as perverts or deviants. A big part of Chi's advocacy strategy was to win over journalists in order to win more favorable or sympathetic coverage of the LGB community (Chi^A and Chi^B 2020; Yang 2020). After democratic reforms lifting the restrictions on freedom of the press, LGB journalists began using their voices and reporting more openly about their community's struggle for equal rights, such as this [video essay](#) published by William Yang in 2021.

The role of LGB bars cannot be omitted from this discussion of resource mobilization. In the earliest days of LGB rights movements in many countries, the gay bar was one of the few

²³ The White Terror was the period of time from 1947 to the late 1990s in which civilians protesting or criticizing policies of the ruling KMT were either imprisoned or killed for doing so. It was during this time that Chi Chia-wei was imprisoned for eight years on trumped-up charges of burglary – a practice that was commonly used to silence human rights activists. The White Terror is related to the February 28th Massacre in which an anti-KMT uprising was violently put down by the military, killing between 18,000 and 28,000. Both the White Terror and the Massacre were perceived as examples of authoritarian means of controlling Taiwan for the benefit of “mainlanders” over Taiwan-born citizens.

relatively safe havens for non-heterosexuals to gather, to meet, and to socialize. These meeting places became instrumental in the formation of advocacy SMOs because they provided a physical space in which to gather, network, and coordinate. The gay bar was what the early Black Churches were to the Civil Rights Movement, and the factory floors were to the Labor Movement. In the case of Taiwan, gay bars became a source of funds and a weapon in the fight for hearts and minds.

The Ximen District around the landmark Red House is today recognized as the epicenter of Taiwan's gay life. But it wasn't always so. In the 1970s and 1980s, the area was unremarkable and the Red House a largely abandoned relic of Japanese occupation. Then businessmen like Chang-ming Hsiao opened up gay bars in the area as intended safe-spaces for patrons to gather. Hsiao told me that in those early days, he made significant effort to show the residents of the area that homosexuals were non-threatening, ordinary people, far from their portrayal in the media as perverted deviants (Hsiao 2020). As these bars became sources of revenue for the area, the neighborhood and then the city itself started to support these businesses, or at least direct police to not raid them.

This started a revitalization of the Ximen District of Taipei. Today, it is one of the most popular and well-known parts of the city for Taiwanese and expats alike²⁴. Hsiao pays for the display and maintenance of permanent Rainbow Flags around Red House (see Figure 4-3) and has even contributed significantly to the funding of Pride celebrations in Taipei as well as Tokyo and Seoul (Hsiao 2021). In recognition of Ximen as the center of Taipei's LGB life, there is a permanent Rainbow Crosswalk across from MRT Station 6 in Ximen (see Figure 4-3). Based largely on this revitalization, the area around Red House; which is home to more than a dozen LGB bars, shops, bookstores, restaurants, and saunas; is also the sight of seasonal outdoor markets,

²⁴ During my second field research trip to Taipei, I rented a small apartment in the Ximen area, a five-minute walk to Red House and the MRT. It was always a hub of activity, particularly during the 2020 Pride season.

festivals, concerts, and performances and Red House itself is a major exhibition space, gallery, and shopping area. It could be argued that Red House is one of Taipei’s most well-known landmarks, and the LGB community and the gayborhood²⁵ is at its heart.



Figure 4-3: Red House and Ximen

Political allies, volunteers, activists, journalists, and businesses like bars are examples of resources that can be and have been mobilized by LGB communities around the world in countries that have legalized same-sex marriage, and Taiwan is certainly no exception. In the next subsection of this chapter, we will discuss the importance of opportunities for TANS – especially Pride celebrations – to network with local activists and groups.

²⁵ The notion of “gayborhood” – meaning an area of a city that houses concentrations of LGB businesses and residents – is a subject that will be revisited in the comparative chapter covering Colombia, Japan, and Mexico.

4.3.2 *The Effects of Opportunities for TANS*

Transnational advocacy networks – or TANS – can provide crucial support to domestic actors and activists, including knowledge and expertise, funding, and other resources necessary for any group fighting for their rights. Regarding the LGB communities of the world, Pride celebrations can often be their most visible and publicized events. In countries like Russia or Turkey, it is newsworthy when one of these events is cancelled or when attendees are attacked or harassed. In countries like Taiwan, these events are newsworthy because they have become accepted and successful – indeed Taipei’s Pride celebration is the largest in Asia. In 2003, Taipei held its first Pride celebration, attended by 20,000 people and funded by government donations. By 2019, Taipei’s Pride had grown to a celebration of more than 200,000 and became a forum for international participation as well (Chi^A and Chi^B 2020; OfTaiwan 2020). Scholars have noted that as part of a repertoire of contention, Pride celebrations can be very effective because their festival-like quality and party-atmosphere are less threatening than other, more confrontational means of contestation (Ayoub 2016; Corrales 2010 and 2016; Encarnación 2011, 2014, and 2016; Pecheney 2010).

Taiwan’s Pride celebration – being the largest in East Asia – now draws international attention and as such funding and presence of international SMOs and NGOs. And with this funding and presence and attention comes opportunity. For example, Taiwan has been chosen to host East Asia’s first World Pride Parade by InterPride, the coalition of LGBQ Pride organizations from throughout the world (Chibarro 2021). Kaoishung, the chosen host city and home to Taipei’s second largest Pride celebration, beat out cities like Washington DC during the selection process. Resulting from the kind of visibility that makes a bid like this possible, Taiwan hosted ILGA-

Asia's regional conference in 2015, which was at the time Asia's largest international LGB conference, attended by 300 activists from over 30 countries.

The Marriage Equality Coalition of Taiwan drew heavily on contacts made as a result, in part, of these highly visible, well-publicized, and well-attended events. During the campaign for same-sex marriage, Taiwanese SMOs consulted representatives from the Human Rights Campaign (HRC) and Ireland's "Yes Equality" campaign on the most effective ways to lobby for support for same-sex marriage legalization. For example, based on polling in part funded by and facilitated by the HRC and Yes Equality, the Marriage Equality Coalition focused on family values during their campaigning – highlighting that queer families were like any other families (Lu 2021). This decision was based on polling results that among those opposed to same-sex marriage legalization, one of the biggest concerns was the integrity of the family unit along Confucian values – including the notions of filial piety and the duty of children, especially sons, to carry on their family lineage. The Marriage Equality Coalition also produced leaflets designed to help Taiwanese understand the questions on the 2018 ballot concerning same-sex marriage, encouraging them to vote "yes" (see Figure 4-4). This leaflet asks voters to vote "yes" on questions 14 and 15, or "Do you agree to the protection of same-sex marital rights with marriage as defined in the Civil Code?" and "Do you agree in accordance with the Gender Equality Education Act that national education of all levels should educate students on the importance of gender equality, emotional education, sex education, and same-sex education?"²⁶ (Focus Taiwan 2018; Lu 2021; Taipei Times 2018; Taiwan News 2018).

²⁶ Original text: 您是否同意，以民法婚姻章保障同性別二人建立婚姻關係？and 您是否同意，以「性別平等教育法」明定在國民教育各階段內實施性別平等教育，且內容應涵蓋情感教育、性教育、同志教育等課程？

1124 九合一大選綁公投
兩好三壞這樣投

LGBTQ

投完大選
領公投票

<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
同意 (O)	不同意 (X)	同意 (O)	不同意 (X)	同意 (O)	不同意 (X)	同意 (O)	不同意 (X)	同意 (O)	不同意 (X)
10		11		12		14		15	
你是否同意民法婚規定增 添在一男一女的結合?		你是否同意在國民教育階段 內(國中及國小)、教育部 及各級學校不應對學生實施 性別平等教育法施行細則所 定之同志教育?		你是否同意以民法婚規定 以外之其他形式來保障同性 別二人經營永久共同生活的 權益?		你是否同意,以民法婚標準 保障同性別二人建立婚姻關 係?		你是否同意,以「性別平等 教育法」制定在國民教育各 階段內實施性別平等教育, 且內容應涵蓋情感教育、性 教育、同志教育等課程?	

Source: Marriage Equality Coalition of Taiwan 2021

Figure 4-4: “Vote Yes” Leaflet Example

But opportunities for interactions with TANs cut both ways, and while major Pride demonstrations in Taipei attracted the attention of pro-same-sex marriage SMOs, the 2017 Court ruling galvanized anti-same-sex marriage SMOs who received support from socially conservative organizations abroad. For example, the pro-marriage LGB equality campaign organized in Taiwan was opposed by Christian religious groups who saw same-sex marriage as a threat to the family. These groups launched their own marketing campaigns targeting parents around schools and in markets, encouraging them to vote “no” on those same questions and arguing that equal rights for LGB Taiwanese constituted a threat to children. Ironically, the Taiwanese opposition to same-sex marriage legalization also drew on resources from the West, particularly conservative Catholic and Evangelical groups, in devising this campaign (see Figure 4-5) (Lu 2021). One of these opposition leaflets even offers voters four “scenarios” that will result if same-sex marriage is legalized, including the grooming of and recruitment of children by homosexuals as well as loss of respect for parents and the disintegration of the traditional nuclear family (Chi^A and Chi^B 2020; Lu 2021).

Some activists even allege vote tampering by opposition groups during the referendum (Chi^A and Chi^B 2020).

反同婚救台灣
不會拚經濟 只會起爭議 接受同婚案 家庭就完蛋

法案通過後的後果 國外的實例，我們要學嗎？

讓孩子一輩子沒有爸爸或沒有媽媽！
美國實例：
「我愛我母親的同性伴侶，但另一個媽媽永遠無法填補爸爸遺留的空缺。」—Heather Barwick (Heather Has Two Mommys 一書主角)「同性婚姻推廣的家庭觀念，否定了我們孩子渴望爸爸、媽媽陪伴的最基本需求與渴望。同時之間告訴孩子們，你們並不需要這些天生的渴望，你們會好好的。但我們並沒有好好的，我們受傷了。」Heather 如此說。

一夫一妻的婚姻觀念 遭受威脅！
美國實例：
麻州同婚自 2003 年至今已合法 14 年。這幾年下來，該州的民眾不但人身自由、家長教育權、信仰自由受到迫害，兒少教育權益也遭受威脅，例如「老師須和學生討論同性戀的行為」、「在小學、幼兒園教導同性戀」、「父母沒有權力涉及關於學校之同性關係之教學」、「夏多羅州的學生開始出現自我認同為同性戀者」、「公衛部門在高中發放有環聚性的同志小冊子」、「拒絕為同性伴侶服務的商家會被控規」、「公開表達反對同性婚姻的人被公司解雇」、「反對同婚者遭到攻擊、甚至被縱火」。

到那時再上街抗議 就是違法了！
法國實例：
2013 年，法國通過同婚法案。在通過前少有非常多場的抗議行動，但在通過後，一切都不一樣了。2013 年百萬法國人民走上街頭反對同婚，不僅訴求無效，更遭逮捕數萬警察的鎮壓，上百人遭警方束縛綁起來管束。未來再上街抗議，除了無濟於事，也是違法（因為法律改了）！

不能拒絕為同性戀者 服務！
歐洲實例：
北愛爾蘭的一家烘焙店，2 年前因拒絕烘焙「我支持同婚」主題蛋糕，而被告上法院；原告指控該店歧視同性戀者。2016 年 10 月 24 日公布最新判決：烘焙店維持有罪判決，並需賠償對方 500 歐元的台幣 (2.5 萬元)。
加拿大實例：
安大略省政府規定，天主教學校必須定期舉辦「同性戀/異性戀聯合生日學」(且規定使用同性之類的名稱)，並且行文各公立學校，不得將禮堂租借給「不接受同性婚姻儀式」的小型教會。

一位英國作家說：「人們從歷史學到最重要的教訓，就是人類無法從歷史中學到任何教訓。」同婚究竟好不好，看其他國家通過後產生的後果就知道！歐洲美國的性解放法律提案要入侵台灣，與中華文化、台灣草根的家庭倫理價值產生衝擊這些國家當了苦頭，我們還要跟隨嗎？這些國家想走回頭路，我們還要跟隨嗎？

蘋果即時

《11月24號，九合一選舉辦公投，其中有關於同性教育的五大公投》
為了我們的下一代，為了承襲傳統的道德價值觀，請「看清楚條文，再如下圈選」
★★下一代幸福聯盟的三個提案都選「同意」，同運團體的二個提案都選「不同意」★★

☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
同意	不同意	同意	不同意	同意	不同意	同意	不同意	同意	不同意
你是否同意民法婚姻規定應限定在一男一女的結合？	你是否同意在國民教育階段內(國中及國小)，教育部及各級學校不應對學生實施性別平等教育法施行細則所定之同志教育？	你是否同意在民法婚姻規定以外之其他形式來保障同性別二人經營永久共同生活的權益？(另立同婚專法)	你是否同意，以民法婚姻章保障同性別二人建立婚姻關係？(另立同婚專法)	你是否同意，以「性別平等教育法」明定在國民教育各階段內實施性別平等教育，且內容應涵蓋情感教育、性教育、同志教育等課程？					
下一代幸福聯盟					平權前夕·彩虹起義 (同運團體)				

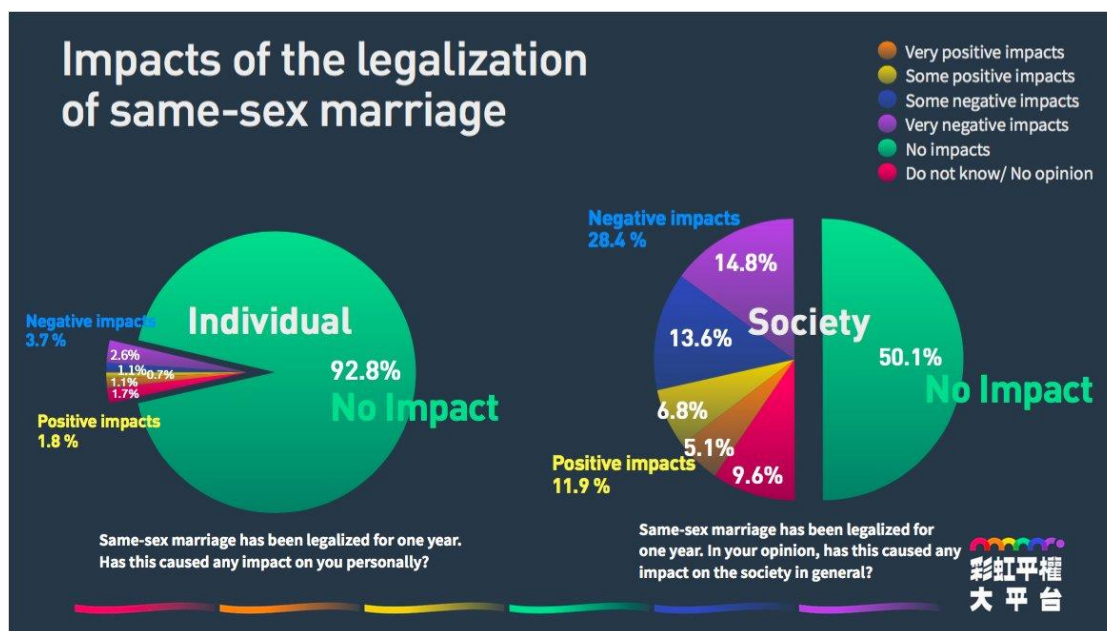
Source: Marriage Equality Coalition of Taiwan 2021

Figure 4-5: “Vote No” Leaflet Examples

Both the pro-same-sex marriage and anti-same-sex marriage campaigns, internationally supported, were effective in their own way. Activists credit TANs with helping the pro-same-sex marriage campaign to succeed by providing funding, knowledge, and support to local activists – though domestic actors remained in control of the campaign itself²⁷ (Lu 2021). But these same activists also note that the rhetoric of anti-same-sex marriage campaign had been effective as well, as seen in results of polling done in 2020 which indicate that even though very few Taiwanese

²⁷ This is an important point to Latin American scholars like Corrales, Encarnación, and Pecheny who argue that Western scholars from the US and Europe sometimes attribute outsized influence to Western-based TANs while underplaying the contributions of local actors. Subjects I interviewed in Taipei agreed that the success of SSM legalization depended both on the bravery and dedication and domestic activists and the local resources they mobilized, and the support of TANs primarily based in Europe and the US.

know of any negative effect of same-sex marriage legalization suffered by them personally, over one-in-four think that same-sex marriage legalization has had a negative effect on Taiwanese society as a whole (see Figure 4-6). It is an additional irony that the growing visibility of Pride celebrations along with the 2017 Court decision crystalized religious opposition to Taiwanese same-sex marriage, making Taiwan the next battleground for anti-same-sex marriage TANs (Chi^A and Chi^B 2020; Lin 2020; Lu 2021; Yang 2020).



Source: Marriage Equality Coalition of Taiwan 2021

Figure 4-6: Post-Same-Sex Marriage Legalization Poll Results

It would be remiss not to pay attention to the fact that these opportunities for TANs would matter far less in a system that is closed off to civil society. Recalling the data collected by Civicus visualized in Chapter 2, Figure 2-7, Taiwan is a country that is rated as “Open” to civil society organizations, meaning that citizens are free to engage with civil society organizations to affect change. A Civicus rating of “open” is described as a condition when:

The state both enables and safeguards the enjoyment of civic space for all people. Levels of fear are low as citizens are free to form associations, demonstrate in public places and receive and impart information without restrictions in law or

practice. The authorities are tolerant of criticism from civil society groups and provide space and platforms for open and robust dialogue with members of the public. As a rule, the police protect public protestors, and laws governing the freedom of peaceful assembly adhere to international law and standards. There is a free media, online content is uncensored, and citizens can access government information easily. (Civicus 2021 – [Civicus Monitor](#)).

While critical junctures will be discussed later in this chapter, it is helpful to recall that scholars of democratization in Taiwan note that KMT leaders opening opportunity structures for domestic rights SMOs was a key factor in that country’s transition from competitive authoritarianism to democracy. In my interviews, multiple subjects spoke to the importance of civil society in Taiwan, arguing that their country’s comparative openness in the region was partly an explanation for Taiwan’s legalization of same-sex marriage while countries like Japan and South Korea, which Civicus ranks as having “narrowed” civil society access have not (Chi^A and Chi^B 2020; Civicus 2021; Lin 2020; Lu 2021; Yang 2020).

Like LGB mobilization capacity, the existence of opportunities for TANs through public events like Pride and the openness of civil society play crucial roles in same-sex marriage legalization. But in order for the benefits of mobilization capacity and opportunities for TANs to be realized in full, the society within that country – especially the heterosexual majority – will have had to embrace the post-material values that allow for human empowerment. The next section of this chapter will examine those values and how to measure whether or not they have been embraced in Taiwan.

4.3.3 The Effects of Empowering Values

Revisiting information from chapter 1, empowering values fall into two categories, emancipative and secular. Both are a subset of the WVS. Emancipative values include a combination of two value orientations: a liberating orientation, or an emphasis on freedom of choice; and an egalitarian orientation, or an emphasis on equality of opportunity (Welzel 2013).

Emancipative values include the values of autonomy, choice, equality, and voice, and these are defined at length in Chapter 1. Secular values involve rational value orientations, or a demystification of traditional sources of authority: religious authority, patrimonial (a form of governance in which all power flows directly from the leader) or patriarchal (male domination) authority, state authority, authority of conformity (group) norms. Secular values include agnosticism (or disbelief), defiance, skepticism, and relativism, and these are also defined in Chapter 1.

6 Countries	Emancipative Values		Secular Values	
	Rank	Score	Rank	Score
Japan	18	693	18	724
Hong Kong	28	564	5	853
Taiwan	40	506	16	742
South Korea	41	504	1	1000
Vietnam	59	414	22	688
China	65	384	37	636


 **RCII** Source: *Robinson Country Intelligence Index*, Georgia State University.

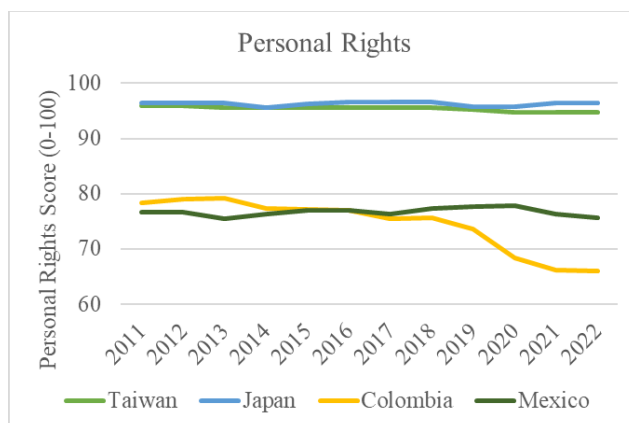
Figure 4-7: Values in the Sinic East

Figure 4-7 shows that Taiwanese society has embraced emancipative values to a lesser degree than societies in Japan or Hong Kong have and have embraced secular values to a lesser degree than those in South Korea or Hong Kong have. Remembering that emancipative and secular values come from a subset of WVS data, scholars Dalton and Ong, analyzing past waves of WVS data, found that, contrary to the Asian Values²⁸ (or Confucian Values hypothesis) “acceptance of authority” is not much different from that of many Western countries (2003). Other factors like

²⁸ This concept of Asian Values will be discussed at greater length in the next chapter.

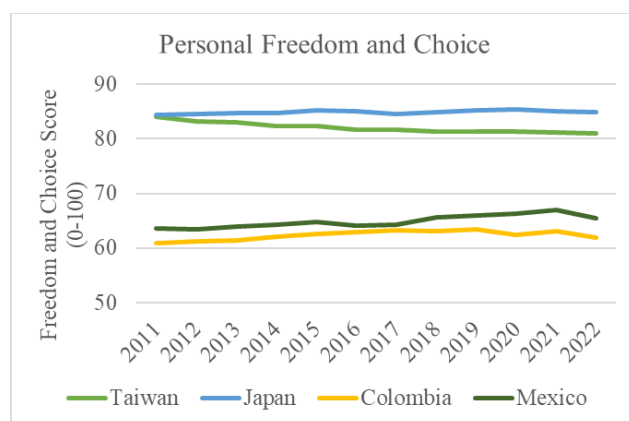
feelings of individualism vs. collectivism (highly collective in South Korea and more individualistic in Taiwan), or filial piety (lower in Taiwan than in Japan) can lead to different policy outcomes than might be expected of post-material countries in the West (Dalton and Ong 2003). This could also partially account for Taiwan's status as first legalizer.

There are other measures which could be used to cross-check RI data on Emancipative and Secular Values. The Social Progress Index (SPI), published by the Social Progress Imperative, publishes data intended to “comprehensively and systematically focus exclusively on the non-economic dimensions of social performance across the globe” (Social Progress Imperative, 1). Of interest here are the Personal Rights, Personal Freedom & Choice, and Inclusiveness variables as these taken together most analogous to Emancipative and Secular Values. The SPI Personal Rights variable includes data on access to justice, freedom of religion, political rights, property rights for women, freedom of assembly, and freedom of speech. The Personal Freedom & Choice variable includes data on satisfied demand for contraception, control of corruption, early marriage, youth (15-24) who are both unemployed and not enrolled in school, vulnerable employment as a percentage of total employment, and freedom of domestic movement. The Inclusiveness variable includes equal protection under the law, equal access to political power, political power distribution by sexual orientation, equal access to public services, violence against minorities, and tolerance of LGB persons. Moving back to our case pairs for a moment, according to data in the SPI Japan outperforms Taiwan and Mexico outperforms Colombia in each of these aggregate measures (see figures 4-8 through 4-10 on the following page). This mirrors what we see in the RI – from a values perspective, Japan and Mexico should have legalized first but they did not. However, when we focus specifically on acceptance for gays and lesbians, Taiwan's status as first legalizer in the Sinic East begins to make sense.



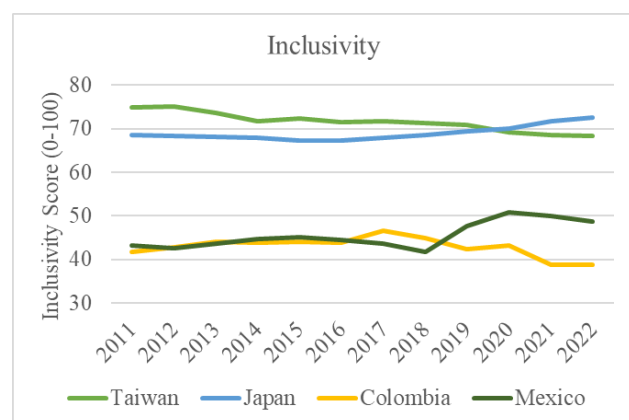
Source: Social Progress Index 2022

Figure 4-8: Personal Rights in Case Pairs



Source: Social Progress Index 2022

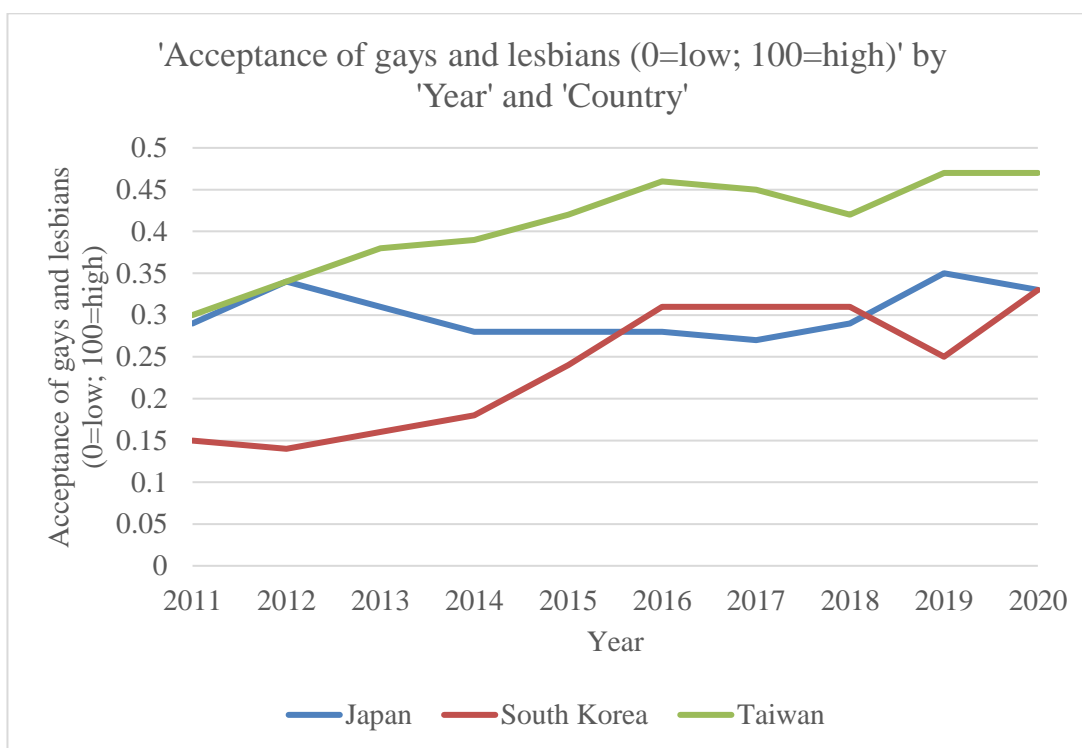
Figure 4-9: Freedom and Choice in Case Pairs



Source: Social Progress Index 2022

Figure 4-10: Inclusivity in Case Pairs

While the Taiwanese are on the whole less emancipated than the Japanese, the Taiwanese potentially have a greater willingness to place the wishes of their parents at a lower priority than do the Japanese, and it is possible that in Sinic East countries this is important. The Taiwanese are less secular than South Koreans, but Taiwanese report higher feelings of individualism. This might also have some explanatory power for Taiwan having a higher degree of acceptance of homosexuals than either Japan or South Korea (see Figure 4-11). Indeed, Taiwan has the highest rate of acceptance of homosexuality in the Sinic East, though Figure 4-8 only includes Japan, South Korea, and Taiwan as these three countries have the highest probabilities of same-sex marriage legalization in the region.



Source: Social progress Index 2021.

Figure 4-11: Acceptance of gays and lesbians (0=low; 100=high) by Year and Country

In the following pages of this subsection, I will explore some of the policy outcomes that have potentially been driven by this higher level of acceptance. Each of these were mentioned in

the interviews I conducted as being examples of Taiwan's tolerance and acceptance. These policy outcomes were also always mentioned as proof of Taiwan's status as exceptional in the region as well. But, before getting to those topics, it is necessary to explore – briefly – one variable that is entirely unique to Taiwan, and that is the worship of Tu'er Shen, or the "Rabbit God" that was mentioned briefly in the preface.

Some of the interview subjects mentioned Taiwan's particular version of religiosity as being a potential contributing factor to same-sex marriage legalization (Chi^A and Chi^B 2020; Hsiao 2020). Buddhism, Taoism, and Confucianism are the three primary religions of Taiwan but in my experience most temples in the major cities offer a fusion of all three religions, allowing adherents to take from each what they value, leaving the rest. It has been argued that one of the reasons Confucian values are often associated with a rejection of liberal democratic norms is because the authoritarian regimes of East Asia (particularly the Sinic East) used an interpretation of those values to justify oppression (Fetzer and Soper 2014). But Taiwanese, especially those born on the island after the KMT fled, are not only embracing some of these norms, they are reinterpreting them – reimagining them.

Younger political activists whose views are not scarred by a political manipulation of the Confucian tradition by the state are making powerful arguments that Confucian values like ren (benevolent empathy), filial piety, and even social harmony are consistent with liberal ideas. It is not so much that these thinkers are rejecting traditional norms as that they are revising them in light of evolving circumstances (Fetzer and Soper 2014, [online](#)).

This explains why Taiwanese can simultaneously report being less secular than South Koreans or Hongkongers and less emancipated than Japanese or Hongkongers and yet more accepting of human rights and homosexuality than any of these. Thus, Confucianism as practiced in Taiwan is unique in the region in that it seems to have played a supporting role in the struggle for greater LGB equality on that island.

Perhaps of equal importance is that Taoism on the island has also been uniquely practiced, particularly in the worship of Tu'er Shen. Tu'er Shen is the patron of homosexuals in the Taoist pantheon, and Taiwan is the only place in the world where he is worshipped. Taiwan is, in fact, the only place in the world in which any patron or deity explicitly and primarily protecting or supporting homosexuals has a place in the pantheon. To put this in perspective, Christianity in some parts of the world may be fairly accepting of homosexuality, as is suggested as a possibility from the number of Christian countries which have legalized same-sex marriage, and some churches in some of these countries have ordained homosexual clergy²⁹. But no Christian denomination has a patron saint or a guardian angel for homosexuals, and these might be the nearest equivalent to Tu'er Shen. This is important because 81.8% of Taiwanese practice a mix of Chinese folk religions, Buddhism, and Taoism, while only 6% identify as Christians (World Religion Database 2021). So it isn't surprising that many of the young people I spoke to during my stay in Taiwan – students, bar patrons, Pride revelers, and friends who frequented the Ximen District knew about Tu'er Shen and none of them seemed particularly surprised that he would be worshipped in Taiwan. To them, and to some of the subjects that I interviewed, it was also no surprise that Taiwanese religion would be that tolerant (Chi^A and Chi^B 2020; Hsiao 2020). This could be part of the reason homosexuality was never criminalized in Taiwan, instead regarded as simply a private matter – though admittedly one that carried a significant social stigma until the last twenty years or so. And while this chapter will not deal much more with the subject of religion in Taiwan, it is helpful to recognize that it could be part of the reason Sinic values have been channeled towards different ends there than elsewhere in the region, creating a uniquely (one might

²⁹ The Right Reverend Gene Robinson became the first known homosexual man to be ordained a bishop of a major Christian denomination in 2003 – in the Episcopal Diocese of New Hampshire. He retired in 2010.

say even *queer*, in the sense of the unusual) Taiwanese interpretation of emancipation and secularism.

Returning to the question of values, beyond existing WVS data, either as used to produce the Inglehart-Welzel Cultural Map (refer back to Figure 2.3) or as used in creating the deriving Emancipation Values and Secular Values variables used in this analysis, it is possible to arrive at an approximation of the degree to which a country has embraced post-material values by the policies legally enacted by the people's representatives. These policies should be regarded as proxies for the degree to which post-material values are embraced on the assumption that, in a representative democracy, policy outcomes tend to reflect the will of the majority, or at the very least the will of a majority of the decision-making elite. Therefore, in countries where we see pro-LGB-rights policies adopted, it would be reasonable to conclude the strong possibility of an embrace of post-material values. Indeed, this assumption lies at the heart of the World Values Survey. In Taiwan, there are several such policies that would seem to indicate a very high degree of acceptance for LGB persons.

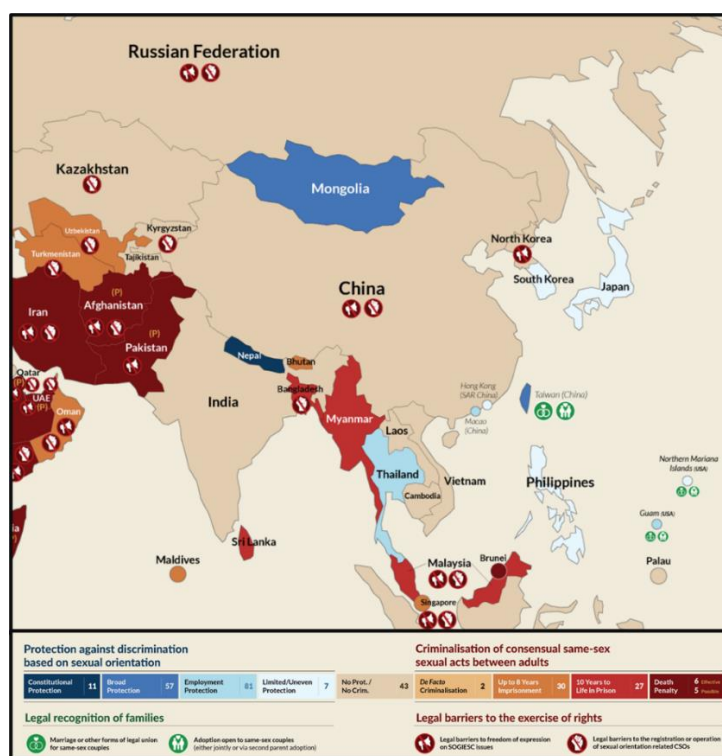
1. Military Service – Taiwan has allowed LGB persons to serve openly in the military since 2002 (Ottoosson 2006).
2. Gender Equity Education Act of 2004 (GEEA) – This law mandates that each school have a gender equity education committee, at least half of which must be women and two-thirds of which must be experts in a relevant field of study, which answers to the national Ministry of Education, whose tasks include promoting curricula, texts, and assessments on gender equity education. In addition, the GEEA outlaws discrimination based on gender or sexual orientation and requires sex education courses to include information on same-sex sexual activity. The GEEA also requires that the gender equity education committees aid students

who are members of groups historically marginalized or disadvantaged because of their sexual identity, including LGB students (Laws and Regulations Database of the Republic of China 2022^a; Sinacore, Chao, and Ho 2019).

3. Employment Service Act and Act of Gender Equality in Employment of 2007 and 2008 (ESAAGEE) – This law was enacted to protect gender equality in the right-to-work, and to “implement thoroughly the constitutional mandate of eliminating gender discrimination” and promote the spirit of substantial gender equality (Laws and Regulations Database of the Republic of China 2022^b). ESAAGEE stipulates that employers may not discriminate against applicants or employees because of their gender or sexual orientation during recruitment, screening, hiring, placement, assignment, evaluation, and/or promotion unless the nature of the work to be performed is only suitable to a specific gender.
4. Long-Term Care Services Act of 2017 (LTCSA) – this law bans discrimination based on the gender, sexual orientation, gender identity, marriage, age, physical or mental disabilities, illness, social class, race, religious belief, nationality, or place of residence of the persons receiving long-term care services, which the law defines as, “the living support, assistance, social participation, care and relevant healthcare services in accordance with the needs of any individual whose mental or physical incapacity has lasted or is expected to last for six months or longer” (Laws and Regulations Database of the Republic of China 2022^c).
5. Banning of Conversion Therapy in 2018 – The Ministry of Health issued a binding directive to local health authorities and care providers stating that any doctor or caregiver practicing any form of “therapy” aimed at changing the sexual orientation of a minor could

be subjected to fines and suspensions of licenses as well as face prosecution under Taiwanese Criminal Code (Taiwan News 2018).

In addition to the above laws and regulations, same-sex couples have been able to legally register as such nationally in Taiwan since 2017. Figure 4-9 and Table 4-2 (following page) show that Taiwan outperforms other Sinic East countries (including those not included in the RI for data availability reasons) in the matter of LGB equality. While admittedly this is not a direct measure of post-material values, these legal and policy outcomes combined with the observed and previously referenced survey data strongly indicate the Taiwanese embrace of these values in a way that is unique in the region.



Source: ILGA 2021

Figure 4-12: Map of LGB Protections in the Greater Sinic East

Table 4-2: LGB Rights in the Greater Sinic East

COUNTRY	CRIMINALISATION			PROTECTION							RECOGNITION			
	CSSSA LEGAL?	DATE OF DECRIM	MAX PENALTY	CONST.	BROAD PROT.	EMPLOY.	HATE CRIME	INCITEMENT	BAN CONV. THERAPIES	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION	
China	YES	1997	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	
Hong Kong (SAR China)	YES	1991	-	N/A	NO	LIMITED	NO	NO	NO	NO	NO	NO	NO	
Japan	YES	1882	-	NO	LIMITED	LIMITED	NO	NO	NO	NO	LIMITED	NO	NO	
Macao (China)	YES	1996	-	N/A	NO	YES	NO	NO	NO	NO	NO	NO	NO	
Mongolia	YES	1961	-	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO	
North Korea	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	
Singapore	NO	-	2	NO	NO	NO	NO	LIMITED	NO	NO	NO	NO	NO	
South Korea	YES	NEVER CRIM	-	NO	LIMITED	LIMITED	NO	NO	NO	NO	NO	NO	NO	
Taiwan (ROC)	YES	NEVER CRIM	-	NO	YES	YES	NO	NO	YES	YES	YES	YES	YES	
Vietnam	YES	NEVER CRIM	-	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	

Source: ILGA 2021

The ability of the LGB community to mobilize resources, the presence of open civil society and opportunities for TANS to interact with and support domestic actors, and the embrace of post-material values have all been shown to play an important role in same-sex marriage legalization. But quantitative analysis also indicated that country-specific variables also affect the outcome of same-sex marriage legalization efforts. In the case of Taiwan, these variables are its open culture, the unique nature of Taiwan's national identity, and the influence of powerful youth movements during and after Taiwan's democratization. The next subsection of this chapter will briefly explore these variables and speculate as to their role in legalization.

4.3.4 *Potential Country-Specific Factors to Consider*

As a result of conducting my interviews and in doing my research, it becomes clear that the combination of mobilization capacity, opportunities for TANS, and post-material values – while certainly predictive of same-sex marriage legalization – is not enough to fully explain outlier cases like Taiwan. There are three factors which came up over and over again that also likely play a very important role in Taiwan becoming the first in the Sinic East, and indeed all of Asia, to legalize same-sex marriage. Those factors are open culture, the unique nature of Taiwan's national identity, and the influence of powerful youth movements during and after Taiwan's democratization. It is not the aim of this dissertation to fully evaluate the power of these variables in influencing the dependent variable. But it is within the scope of this work to identify their existence and establish the potential for future research on these topics, and that is what this subsection will do.

One of the first things I noticed when traveling around Taipei was the multicultural aspect to the city. One cannot visit Ximen without being reminded of a scaled-down New York City Times Square. The crown jewel of the area where I stayed – The Red House – is a physical manifestation of the heteroglossic nature of the country. Red House was built in 1908 under Japanese occupation as a shopping center, but after liberation from Japanese rule in 1945 a troupe performed Peking Opera there until the site was transformed into a cultural and artistic exhibition space in the 2000s. The building is a mix of Western and Japanese artistic styles. Since 2003 it has been the site of Pride celebrations, the Mr. Gay Taiwan pageant, and LGB New Year's Eve celebrations (Ferber 2015; Lin 2015; www.redhouse.org/tw). A symbol of Japanese occupation influenced by Western architecture is transformed into a space to celebrate Chinese mainland culture and then is transformed into a space in which Taiwanese artists and merchants exhibit their wares and Taiwan's LGB community is celebrated, the Red House is a physical manifestation of Taiwan's multicultural past – an island conquered and reconquered by European and Asian powers and dually influenced by Confucian and Enlightenment values.

Several of my interview subjects pointed to this history and remarked that Taiwan is special in the region because, rather than rejecting foreign influence, as the Japanese had done for centuries; or attempting to control it, as the Qing Dynasty had, much like they had in their religious practices the Taiwanese simply take from each culture ideas they like and incorporate them into their own (Chi^A and Chi^B 2020; Xiao; Yang 2020). And Taiwan had many opportunities to do so, even though some of those came at a high cost. Taiwan's strategic location along trade routes between China and the Philippines and Japan made it a strategically valuable location for Europeans intent on establishing dominance in the East. In 1624 the Dutch East India Company establishes a base in southwestern Taiwan (Fort Zeelandia), employing Chinese laborers from the

mainland to work on rice and sugar plantations established there. In 1626 the Spanish establish a fortress (Fort Santo Domingo) near a bay in the northern part of the island but are soon driven out after a brief conflict with the Dutch. In 1662, the Ming General Zheng Cheng-gong (himself born in Japan to a Chinese father and Japanese mother) takes control of the island after fleeing Qing conquest from Manchuria, and in the process, he drives the Dutch and remaining Spanish off the island. Two hundred years later, in 1885 the Qing take possession of the island and claim it as a province of Qing China, only to cede control to the Japanese ten years later (www.taiwan.gov.tw). But each of these left their mark on the island's culture, especially the Japanese.

Take, for example, Taiwan's bathing culture around the Beitou Hot Springs in the north of the island. Because of its sulfurous hot springs fed by the volcanic core of Mount Datun, for centuries indigenous inhabitants, Chinese mainlanders, as well as Dutch and Spanish travelers and traders regarded Beitou as an evil place (its name in the language of the indigenous Ketagalan people means "home of the witch") (Taiwan Today, 2009). But, once the Japanese took possession of the island, Japanese colonizers, coming from a culture that appreciated the therapeutic nature of hot springs, built a public bath house on the site in 1913. Ever since, this kind of bathing has gained popularity on the island, where Taiwanese enjoy visits to the hot springs for recreational and therapeutic reasons. Like the Red House, even the building's architectural design reflects a kind of multiculturalism. Quoting an official from the Department of Culture under the Taipei City Government,

"The building combines Japanese and European styles, and the design was an imitation of resorts in Izusan Onsen, a famous hot spring site in Japan. The first floor was constructed using bricks, while the second floor is mainly timber. The façade of the house is decorated with European arches and British colonial slanted weatherboards, while the interior design adopts a more traditional Japanese style with tatami flooring and sliding paper doors.

The main bath is located on the first floor surrounded by Roman arches and columns. Covering an area of 58.8 square meters, the pool was lit by stained glass windows, rare and expensive decoration in those days. The pool facilities were also segregated, reflecting social norms during the Japanese era” (Taiwan Today 2009).

Even the Presidential Palace of the Republic of China, established as such in 1950, is the former site of Taipei’s Japanese colonial administration, built by the Japanese in 1919. Red House, Beitou Hot Springs, and the Presidential Palace are all treasured cultural landmarks in modern Taiwan, incidentally, as are Fort Zeelandia and Fort Santo Domingo. No effort is made to hide their origins or history. But Japan’s influence is not the only one currently perceptible on the island.

If one visits *Ximending* after dark³⁰ on the weekends or goes to any urban nightclub with a dance floor, one will see Taiwanese youth dancing intricately choreographed routines to South Korean K-Pop hits. According to a survey conducted in Taiwan in 2019, 40% of respondents to an online poll aged 15-59 considered K-pop to be “very popular” within the country and another 36% considered it “quite popular” (Statista 2022). During my second visit to Taipei, the South Korean government sponsored an exhibition on life in South Korea in the Red House Square, at which Taiwanese could learn about travelling to or working in South Korea. And it would be remiss to dismiss the gradually increasing influence of the West, especially the United States, on the island since the Cold War and which is regarded as at least partially responsible for Taiwan’s embrace of LGB rights (Yang 2020). Ironically, the influence of the United States can also be felt in opposition to same-sex marriage and LGB equality, primarily driven by an increasingly globalized and interconnected Religious Right movement (Chi^A and Chi^B 2020; Yang 2020). To be clear, I am not suggesting that Japanese colonialism or hot springs or K-Pop or architectural heteroglossia or even Cold War politics per se made Taiwan more likely to legalize same-sex

³⁰ The public K-Pop dances are usually performed on or near the Pride crosswalk, just near the multistory H&M storefront there.

marriage, but rather the demonstrated willingness in evidence on the part of the Taiwanese to embrace new ideas and integrate aspects of other cultures into their own, however they are exposed.

Speaking of Cold War politics, Taiwan's national identity is a legacy of the conflict between Maoist Communists of the People's Republic of China, at the time supported by the Soviet Union (prior to the Sino-Soviet Split of the 1960s), and the Nationalists led by Chiang Kai-shek, supported by the United States. At the founding of the United Nations (UN) the Nationalist government represented China in the United Nations. In 1971, the UN General Assembly passed a resolution declaring that the Communist government in Beijing was the only legitimate representative of China and the Taiwanese delegation lost representation and the international recognition that comes with it. Then, in 1979, the United States withdrew its troops which had been permanently stationed in Taiwan since in the end of World War II under the United States Taiwan Defense Command (USTDC)³¹. Meanwhile, Beijing continued and continues to insist that Taiwan is a part of the People's Republic of China (PRC) and has vowed to "retake" the island by force if necessary³². Under constant threat of invasion and without formal representation at the UN, without international recognition, and without the permanent presence of US armed forces on the island, Taiwan has found it necessary to engage in a kind of "queer diplomacy", meaning that Taiwan must approach international relations in unusual ways as the traditional avenues of communication and interaction between states are closed to it (Chen and Fell 2021).

One aspect of this queer diplomacy since the island's democratization began has been a diplomatic approach prioritizing human rights, including LGB rights. Specifically, Taiwan does

³¹ Interestingly, the former headquarters of the USTDC is now the Taipei Fine Arts Museum.

³² While always a threat, rhetoric from Beijing regarding possible invasion and occupation of Taiwan has become increasingly bellicose under President Xi Jinping.

not seek to influence LGB-related policies in other countries – how could it, but instead tries to use the issue of LGB equality (and same-sex marriage since 2019) to enhance its reputation in the world as a liberal democracy and to differentiate itself from the mainland (Hsieh 2020; Lin 2020; Nia-chia and Fell 2021). Taiwanese take great pride in their country’s status as the first legalizer of same-sex marriage. Just one year after same-sex marriage was legalized in Taiwan, the PRC moved to shut down the mainland’s largest Pride celebration, held in Shanghai since 2009 (Li and Wang 2020; Reuters 2020). This stark contrast is not lost on the Taiwanese themselves. The Taiwan Economic and Cultural Office (TECO) of Atlanta routinely Tweets out an official commemoration of Pride Month in June and Atlanta Pride in October every year (see Figure 4-13), most recently highlighting its status as the “first country in Asia to legalize same-sex marriage” (teco_in_atl 2022). As part of Taiwan’s renewed push to rejoin the UN and as a lead up to National Day in 2020, Taiwan’s Ministry of Foreign Affairs released a series of videos, through their TECO offices on social media, highlighting Taiwan’s human rights record, including specific videos on transitional justice, freedom of religion, gender equality, and same-sex marriage legalization.



Source: Taiwan Economic and Cultural Office of Atlanta, 2021

Figure 4-13: Examples of Taiwan's "Queer" Diplomacy

Some might be critical of such overt displays of support for LGB rights as a possible form of “pinkwashing”, given that Taiwan seems to be using its human rights record performatively to build international support and legitimacy. But pinkwashing connotes an insincere commitment to LGB rights for some hidden and usually nefarious and violent agenda³³. These Tweets and videos and official statements (refer to 4.3.1 on the Effects of Mobilization Capacity) from Taiwan on LGB rights are in keeping with a consistent dedication to respect for human rights. For example, the Economist Intelligence Unit (EIU) ranked Taiwan 8th in its 2021 Democracy Index (the United States ranked 26th in that same report) (Economist Intelligence Unit 2022). The EIU scores countries based on their perceived performance in five categories: electoral process and pluralism, functioning of government, political participation, political culture, and civil liberties. In the category of civil liberties, Taiwan scores 9.4 out of a possible 10 (the United States scores 8.53) for its free press, freedom of expression, freedom of expression, open internet, independent judiciary, and equality before the law (Economist Intelligence Unit 2022). Taiwan also ranks as one of the best countries in the world for expatriates to live and work, in large part because of human rights issues like safety and security, access to healthcare, and LGB equality³⁴ (InterNations 2021).

Further, those Taiwanese I did speak with, including my interview subjects, spoke of Taiwan’s dedication to human rights as part of their national identity. To them, Taiwan is the

³³ Pinkwashing is the strategy of promoting LGB rights protections as evidence of liberalism and democracy, especially to distract from or legitimize violence committed against their own citizens or against others. For example, Taiwan still practices the death penalty, for which it has received much criticism from Amnesty International. However, I would argue that the death penalty, when applied as a result of due process, does not rise to the level of violence usually implied by the term. For more, see Atshan, Sa’ed (2020); “Global Solidarity and the Politics of Pinkwashing”; *Queer Palestine and the Empire of Critique*; Stanford University Press.

³⁴ Taiwan ranked 1st in the InterNations Expat Insider Survey in 2019, 2020, and 2021. In 2018, Taiwan ranked 2nd, behind Bahrain. In 2017, Taiwan ranked 4th.

country it is because of the human rights they enjoy as citizens, and these rights were hard-won after decades of authoritarian rule (Chi^A and Chi^B 2020; Lin 2020; Hsieh 2020; Xiao; Yang 2020). In fact, this dedication to human rights as a matter of identity was at the heart of the Wild Lily Movement made up of student protestors pressing for political reforms who occupied Liberty Square during a sit in that lasted for six days (Chen 2006; Wright 1999). Among the demands of the Wild Lily protestors were that the degree of martial suspending Taiwanese civil liberties be lifted. The public were largely supportive of these protests, going so far as to donate food, water, and blankets to those sitting and even participating in the protests themselves, swelling their ranks to over 10,000 (Global Nonviolent Action Database 2022). The political pressure created by this genuine grassroots movement – protestors refused to align with the DPP in order to maintain their independence – is credited in part with forcing the regime to speed up the reform process. Nearly fifteen years later, the Sunflower Movement would see student protestors occupy the Legislative Yuan for twenty-four days in opposition to increased economic integration with Beijing, sparking the “biggest pro-democracy protest rally in the island’s history” (Rowen 2015, 5). More importantly for this topic, the Sunflower Movement ushered in a new wave student activism involving such issues as wealth equality, civil rights, labor rights, same-sex marriage rights, and Taiwanese independence (Ho 2018).

Multiculturalism, a prioritization of human rights as a matter of identity, and youth activism are all likely significant variables in Taiwan’s same-sex marriage legalization process. Future research conducted to ascertain the exact nature of the relationship between these variables and the outcome would be fruitful. Though, it is uncertain that such variables could be operationalized in such a way so as to be incorporated in the RI as their importance in different countries in which youth activism is not so intertwined in the democratization process may be negligible. In

particular, Taiwan's focus on human rights as a matter of national identity is unique, given its contested status as a self-governing stateless nation under constant threat of invasion and without the needed access to the traditional corridors of power in international relations. Still, the addition of a brief examination of these variables are an informative addition to the theory that mobilization capacity, opportunities for TANs to network with local actors, and the embrace of post-material values make same-sex marriage legalization more likely.

Mobilization capacity, opportunities for TANs to network with local actors, and the embrace of post-material values, along with any combination of country-specific variables, are far less likely to produce an outcome of same-sex marriage legalization if legal and political opportunity structures for rights advocacy are lacking. This next subsection will address the critical junctures in recent Taiwanese history that have opened these opportunity structures. Three of these, early competitive local elections, the Taiwanization of politics, and the increased activity of SMOs after the lifting of martial law, are all related to Taiwan's process of democratization and are classified as having created political opportunity structures. The fourth, the creation of independent judiciary during the period of reform in the 1990s, created the necessary legal opportunity structures.

4.4 Critical Junctures

Before we begin to explore the critical junctures in Taiwan that make it possible for SMOs to engage in contentious politics, it should be noted that the aim of this section is to demonstrate that these critical junctures occurred, that they created sufficient opportunity structures to allow for the possibility of same-sex marriage legalization, and that they were utilized by SMOs or activists to some degree sufficient to support the theory. A thorough and detailed, qualitative historical institutional analysis of exactly how these structures were utilized is a worthy future

endeavor for which it is my goal that this research will lay the foundation for. That having been addressed, to engage in their repertoires of contention, SMOs and activists must have opportunities to reach those in power in order to affect change. A historical institutional approach requires that we identify certain events, or critical junctures, that occur and create these opportunities within legal and political systems – which is why we call these opportunity structures. In the context of same-sex marriage, we can think of these opportunity structures as gateways to legalization. This chapter will examine the critical junctures of early competitive local elections, increased SMO activity following the lifting of martial law, the movement to Taiwanize politics on the island, and judicial reform undertaken by influential judges during Taiwan’s period of liberalization.

One of the first steps the KMT took towards liberalization was to allow for local, competitive elections, even if at first on a limited basis. As early as 1950-1951, a few local offices were up for single-party elections – opposition parties were illegal in Taiwan until 1987. In 1968 Taiwan held a series of elections organized by the ruling KMT and the aging Chiang were held, in part to replace many of his original compatriots who came with him from the mainland, in part to prepare the way for his son to take over as president, and in part to reinvigorate the government and continue the “Taiwanese miracle” of economic boom during its period of cohesive capitalist state-directed development (Chao and Meyers 2000; Kohli 2004; Plummer 1969; Reuters 2011). That year, in a series of two separate elections 312 village chiefs, 847 city and county councilmen, 20 city chief executives, and 71 Taiwan Provincial Assembly members stood for election (Plummer 1969). The elections limited though they were and absent any official opposition (candidates could either run under the KMT banner or as “independents”) had a profound effect on the island. Of Taiwan’s eligible voters, 75% cast ballots; the average age of office holders on the island was reduced to 40; and most of the victors, especially at the local level, were native-

born Taiwanese. This meant that while the KMT certainly maintained tight control of the island, seeds of future democratic reforms had been planted.

From 1960 to 1979, several political magazines aimed at the island's intellectual and political elite were published³⁵ and then banned, but their call for reform and democracy had a profound influence on political candidates (Chai and Meyers 2000). In the late 1960s and early 1970s, encouraged by the limited electoral reforms and emboldened by these political publications and the intellectual movement behind them, a new breed of Taiwanese politician emerged. They called themselves *dangwai* candidates (translated: "outside the ruling party") and acted as Taiwan's first real opposition candidates (Chai and Meyers 2000). By 1977, voters on the island elected four *dangwai* candidates to be county magistrates, another 21 to the Taiwan Provincial Assembly³⁶, and six to Taipei's city council (Chai and Meyers 2000). This election year was the political equivalent of an earthquake on the island and a signal to the ruling KMT that Taiwanese voters were hungrier for ever-increasing reform and more of the island's elite were both listening and willing to offer an alternative to single-party rule. Beginning in 1978, the KMT began allowing *dangwai* candidates to campaign freely and without pressure from the ruling party. For this reason, these early local elections act as a critical juncture, or periods of significant change that influence future outcomes. During this period, Taiwanese politics become more and more influenced by a growing opposition movement that prioritized (relative) youth, democracy and human rights, and reform – all important to the success of same-sex marriage legalization. This growing influence was protected by the fact that Chiang himself had promised that these local elections would be the

³⁵ The most famous of these was *Daxue zazhi* (The Intellectual) which circulated from 1968-1973 before it was banned.

³⁶ The Taiwan Provincial Assembly was Taiwan's early democratically elected representative body, which fell under the authority of the executive. It was constituted of representatives from each of the country's administrative districts. In 2000, its duties were formally transferred to the Legislative Yuan. See Appendix G for a map of the administrative divisions of Taiwan.

beginning of a “democratic revolution” in Taiwan, which committed KMT leaders to, among other things, respect the independence of the dangwai politicians.

Francis Fukuyama has written at length about all democratic states having three characteristics in common: rule of law, a strong bureaucracy, and accountability of government to the governed (whether through elections, or the courts, or both). Fukuyama has also written that the order in which these characteristics become a part of the democratic fabric of a country matters (2012). In Taiwan, a strong bureaucracy was put in place by the nationalist KMT government after fleeing the mainland at the end of the Chinese Civil War. In the years that followed, as democratic reforms were introduced and the island’s leadership became more and more constrained in the name of reform and respect for human rights, rule of law was slowly strengthened³⁷. Finally, as elections proliferated during the early reform era, especially after the lifting of martial law and with it the lifting of the bans on free press, free expression, and opposition parties (free association), a tradition of accountability grew. But because this accountability came last, the nature of democracy as it evolved in Taiwan was one for which government (i.e., bureaucracy) was not automatically regarded with suspicion but was and is perceived as part of a potential solution to any number of problems³⁸. This order of evolution itself should be regarded as a critical juncture – it means that Taiwanese SMOs and activists were comfortable working within the system to a greater extent than LGB activists in other countries like the United States.

³⁷ Rule of law in this case being defined as a system of legal checks on government that are binding and enforceable. We might substitute the term “constitutional” here – as in constitutional democracy. It is important to note, however, that to qualify as having “rule of law”, this constitutionalism would have to be both *de facto* and *de jure*.

³⁸ Contrast this with America’s natural suspicion of authority and bureaucracy – in the US rule of law came first, then accountability, and finally bureaucracy. So, for that reason (among others), many Americans tend to think of government solutions as a contradiction in terms. This feeling was perhaps best summed up by President Ronald Reagan when he famously remarked that the scariest words in American English are “I’m from the government and I am here to help.”

This relative trust in institutions is evidenced by Taiwanese LGB activists' willingness to avoid more aggressive means of confrontation like the public outings, sit in protests, and other more aggressive forms of protest surely available to them and instead focus on lobbying political elites by appealing to a shared sense of respect for human rights. In fact, LGB SMOs like the Equality Coalition of Taiwan made it a point to frame the call for equality not in terms of sexual liberation, as was done in many Western democracies in the early Stonewall Era, but in terms of universal human rights (Lin 2020; Lu 2021; Hsieh 2020; Xiao 2021). The institutional legacies of democratic liberalization and early competitive elections in which reformers were often rewarded made this sort of lobbying more likely to be effective – consider that the chief executive of Taiwan was meeting with officially invited LGB activists in the capital a year before the United States Supreme Court invalidated sodomy laws in the United States³⁹.

Returning to the subject of early Taiwanese elections, that so many of this new crop of political leaders swept into power during these early political reforms were native-born Taiwanese and not mainlanders was also to have significant impact on the future of Taiwan's politics in general, and same-sex marriage legalization in particular. Earlier in this chapter, we read that a respect for human rights and democratization has become part of Taiwan's national identity, as distinct from mainland Chinese (read communist and authoritarian) identity. While the social forces that continue to drive this trend can be traced back to the February 28th Massacre of 1947, as a political reality Taiwanization began during this early stage of democratic reforms. Taiwanization is more than the simple transfer of power to native-born Taiwanese, although that is the earliest political manifestation of the phenomenon. Taiwanization means the politization of a developing Taiwanese identity that is distinct from the Han Chinese identity of the Communist-

³⁹ *Lawrence v. Texas*, 2003.

controlled mainland. As the link between Taiwanese identity and a respect for democracy and human rights has been discussed in this chapter already, I will simply add here that such a link has been reinforced by Taiwanization because the political parties have been pressured to embrace policies favored by Taiwanese citizens, and these policies are increasingly divergent from the will and priorities of the mainland (Horowitz and Tan 2005). As such, Taiwanization itself can be considered a critical juncture as this process, begun in the early reform stages of Taiwanese competitive authoritarianism, has had lasting policy implications which include the legalization of same-sex marriage⁴⁰.

Around the same time Taiwanization was exerting its influence over the island's politics, the lifting of martial law signaled the opening up of Taiwanese institutions to civil society, including SMOs. But SMOs had been a growing force in Taiwan beginning in the early 1980s, at a time when the authoritarian government signaled a limited but significant tolerance for demands for change on their terms. Beginning in 1980 and through the 1990s, multiple social movements emerged, which including SMOs advocating for consumers' rights, anti-pollution, environmental conservation, women's rights, student's rights (the student movement eventually helped manifest both the Wild Lily and Sunflower Movements), the rights of Christians, labor rights, farmers' rights, teachers' rights, the rights of persons with handicaps, and indigenous peoples' rights (Hsaio 1992 and 1996). While it is well beyond the scope of this dissertation to explore each of these movements in detail, it is important to note that each of these movements had one thing in common: each set about making demands of the state.

⁴⁰ Among other implications of Taiwanization are the rise of the DPP, greater calls for independence, more support for economic integration with the DPRC – but as coequal countries, adaptive defensive strategies aimed at maintaining independence in the face of growing Chinese aggression, the aforementioned “queer diplomacy” aimed at increasing external legitimacy, and even the potential for nuclear deterrent as China continues to assert regional hegemony.

For example, the early student movement sought less government control over education, eventually managing to force liberalization at NTU even though the KMT maintained stricter control at other, smaller universities for some time to come (Hsaio 1996; Wright 1999). But their efforts were not met without opposition. Prior to the lifting of martial law, it was standard practice at Taiwanese universities to assign loyal students as KMT “counselors” (*jiaoguan*) who lived with students in the dormitories and were responsible for keeping tabs on student behavior. In addition, each class-year included at least one individual who was a long-devoted KMT member (usually having been recruited in high school) who was responsible for recruiting potential future party members and for informing their superiors of potential disloyalty. The identities of these student-spies were always kept secret, even from non-KMT affiliated administrators (Wright 1999). Emboldened by the previously discussed success of dangwai candidates in Taipei, students at NTU began to demand greater freedom in electing student representatives to the student government and to the relaxation of prescreening on student publications designed to stifle critique. Their efforts culminated in the first free and open student government elections in Taiwan in 1987 (Wright 1999). When members of student organizations pushing for reform were threatened with punishment, NTU students held demonstrations that put pressure on administrators to relent.

As students at other universities across the country became inspired by early victories and NTU and began making demands on their own campuses, elites within the KMT moved to coopt the student movement by directing their various government-sponsored organizations to adopt similar demands. Leaders believed they could take control of the movement from within and defuse it. But this strategy backfired as student groups’ demands began to reach beyond campus reform and into larger areas of politics like human rights and liberalization. Once the door to civil society had been opened, the government found it much more difficult to close that door than they

had perhaps anticipated (Wright 1999). The reason this is important for same-sex marriage legalization is that the rise of SMOs and the opening of Taiwan's political institutions to civil society created a new opportunity structure that later social movements, like the LGB Rights and same-sex marriage movements could exploit. Indeed, early LGB activists often used feminist discourse and found their first support within the feminist movement (Hsieh 2020; Lu 2021; Nianchia and Fell 2021; Xiao 2020). Early SMOs not only tapped into reform-minded political alliances led by sympathetic elites, they also engaged in various forms of contentious politics and built up a collective repertoire of contention for Taiwanese activists that included sit-ins, marches, peaceful demonstrations, and the publication of materials demanding reform – all of which at one time or another were used by LGB activists in their fight to legalize same-sex marriage in Taiwan.

Multiple interviews quoted earlier in this chapter reveal the importance of the Taiwanese Constitutional Court's 2017 ruling that laws barring same-sex marriage violated the constitution. This was important because it settled the political question, freeing up the legislature to act as the question of same-sex marriage legalization was no longer whether but when. But this ruling might never have come about without the independence of Taiwan's judiciary. Unlike other Third Wave democracies that emerged after the end of the Cold War, Taiwan's judiciary experienced a wave of reform carried from within the judicial branch itself and carried out by a coalition of reform-minded judges which also could constitute a social movement. In 1993, a group of reform-minded judges in the Taichung District Court set about enacting judicial reforms in the name of human rights and democracy.

Under the single-party rule of the KMT, the ruling party exercised a great control over the judiciary. They did this in two ways, first by making it very hard to pass the bar examination needed to begin a career as a judge and second by creating a rigid system of promotion to full

judgeship which would allow them to weed out “undesirable” candidates before they could become full judges (Wang 2010). In addition, party loyalists still exerted a great deal of control over case assignment, ensuring that cases involving bribery allegations, for example, would be assigned to KMT-controlled or sympathetic judges. These policies allowed the KMT to exert a great deal of control over who got to be a judge (Wang 2010). Partly for this reason, prior to reform the Taiwanese judicial branch was regarded as the “most conservative institution in Taiwanese society” and an integral part of maintaining KMT control of the government through favoritism and corruption (Wang 2010, 131). But this early group of reformers, who first met in Room 303 of the Taichung District Court House, wanted Taiwan’s judiciary to be fully independent and governed by rule of law. These early judicial reformers, despite their different politics, had two other things in common besides their desire for reform: each came from lower middle-class families rather than elite lineage, and each was under the age of 40 (Wang 2010). Through a strategy of non-politicized reform based on reading of the law, these judges were able to gather supporters in the judiciary in other cities and, together were able to accomplish several reforms that went on to ensure the independence of the Taiwanese judiciary, including case assignment reform, reform to the judge selection process, and reform to the judicial budgeting process (Wang 2010). While none of these reforms in themselves touched on human rights issues per se, without these reforms the judiciary would have been far less free to rule in human rights related cases in a way that would be contrary to established policy.

Two of the subjects I interviewed commented on the legal philosophies of the justices who ruled in the same-sex marriage case as being influenced by the reforms undertaken during this era, both to the judiciary and to Taiwan’s political system as a whole. In their view, it would have been less likely that the Court would rule in such a way so as to challenge the state had their philosophies

been otherwise (Hsieh 2020; Lin 2020). Other subjects I interviewed commented that the independence of the judiciary itself was essential to the same-sex marriage ruling – and independence that would not have been possible without these reforms (Chi^B 2020; Lu 2020). Because of this, we can consider these reforms to the judiciary, popularly known as the 303 Movement, as another critical juncture that made same-sex marriage legalization more likely in Taiwan.

4.5 Conclusion and Lessons Learned for Case Comparison

Research and field work quoted and/or referenced in the chapter confirms the findings of the quantitative analysis in Chapter 3, that for same-sex marriage to be legalized in Taiwan there had to be a high degree of LGB mobilization capacity, which included a relatively high degree of LGB power; an open system to civil society that allowed for TANs to take advantage of opportunities to connect with local SMOs and advocates through high-profile events like large Pride celebrations; and an embrace of post-material emancipative and secular values. There also had to exist legal and judicial opportunity structures that permitted these LGB SMOs and activists access to the levers of power such that they were capable of challenging the state, and these structures often came about as the result of critical junctures during Taiwan's reform period as it transitioned from authoritarian rule to democracy. The field work and research also confirm that country specific variables can help explain why Taiwan legalized first, and these were Taiwan's open culture, its distinct Taiwanese identity, and the influence of youth and reform movements within the system. This combination of variables would be unique to Taiwan.

The next chapter will show that in the case of Colombia, mobilization capacity, opportunities for TANs, and Emancipative and Secular Values are all important but that courts will also play a pivotal and country-specific role and that LGB SMOs in that country used the

courts, and more importantly a form of judicial politics to win same-sex marriage legalization. It will also show how Japan (as compared to Taiwan in the Sinic East) and Mexico (as compared to Colombia in Modicum Low countries), two countries in which LGB SMOs also benefit from high mobilization capacity, opportunities for TANs, and an embrace of Emancipative and Secular Values, have country-specific variables explaining why they have not legalized as expected. In addition, the next chapter will show some key differences within those three macro-variables that could also explain the unexpected outcome in Japan and Mexico. In the case of Japan, there are differences in the LGB bar culture that make bars less of an opportunity for significant mobilization and there are differences in the judiciary that change the nature of the opportunity structures there. In Japan, youth have also been significantly less likely to become involved in politics, leaving social policy in the hands of their more traditional parents and grandparents. In the case of Mexico, aspects to Mexican democracy, including federalism, regime type, and age of democracy have potentially made access to same-sex marriage uneven even though that country's highest Court has ruled that bans against same-sex marriage are a violation of the constitution, resulting in roughly 20% of the population lacking access to same-sex marriage rights.

4.6 Summary

Taiwan is the Sinic East's first country to legalize same-sex marriage because of strong LGB ability to mobilize, specifically a thriving bar scene and access to elite allies; and open civil society providing opportunities for TANs to take advantage of major events like Pride to network with and support domestic actors; and a wide-spread embrace of Emancipative and Secular Values, including a uniquely Taiwanese interpretation of Confucian value systems. This is in keeping with expectations derived from the theory and quantitative analysis. But country specific variables also help explain why Taiwan legalized before other countries in the Sinic East, like Japan, which the

theory indicates should have been more likely to legalize than Taiwan. These country specific variables include an open culture that permits the assimilation of outside values into its matrix, a history of youth involvement in politics that has historically added to pressure for reform, the Taiwanization of domestic and international politics, and opportunity structures which both favored SMO participation in contentious politics and judicial activism.

5 CASE-PAIR COMPARISONS IN THE SINIC EAST: JAPAN AND TAIWAN

The last Chapter examined the question of why Taiwan legalized same-sex marriage first in the Sinic East. Lessons learned from this analysis are that a thriving bar scene and access to elite allies; and open civil society providing opportunities for TANS to take advantage of major events like Pride to network with and support domestic actors; and a wide-spread embrace of Emancipative and Secular Values, including a uniquely Taiwanese interpretation of Confucian value systems helped to create favorable conditions for same-sex marriage legalization. In this Chapter, the hypothesis will be tested qualitatively in the case pairs of Taiwan-Japan and Colombia-Mexico (full legalizers listed first in the pairs).

Within each case pair, first there will be a general comparison of the state of LGB rights in each country. This will include a brief analysis of the history of LGB rights and LGB activism in each, or a brief review in the case of Taiwan as this was already presented in detail in the last Chapter. Then, the RI hypothesis for each country will be presented as it was for Taiwan in the last Chapter (see Figure 4-2). This will include an examination of the preconditions, the independent variables of mobilization capacity, opportunities for TANS, and values, and of the potential country specific variables which could be the focus of future analysis. Finally, the Chapter will close with a conclusion based on the analysis presented in each case pair.

This Chapter first turns to a region-based comparative case pair study involving Taiwan, the first legalizer in the Sinic East region, and Japan, the highest scoring country for the region in the RI and the highest-ranking country not to have legalized same-sex marriage. Countries in the Sinic East tend to be culturally heavily influenced, if not dominated by, Chinese tradition and Confucianism rather than Buddhism. Unlike countries dominated by Abrahamic religions, in the Sinic East religion has traditionally been a private matter and tends to lack the political and social influence found in some other regions, unless it is being used by the state to enforce authoritarian rule as it was in pre-democratic Taiwan. But that is not to say that religion has no bearing on life in East Asia, it just influences behavior in a more subtle way.

There should be a brief note on methodology before going on - unfortunately, sample sizes for regions (like the Sinic East) and clusters (like Modicum Low) are far too small to utilize tools like correlation analysis or regression analysis to test variables for their significance within those groups. So, analysis will be guided, as it was in the case of Taiwan, based on quantitative results either from the RI as a whole or on analysis done on regions or clusters as a whole.

Any conversation about the Sinic East region has to begin with an understanding of what comparative researchers have termed Asian values. C. Y. Yoon first articulated for academic purposes the four claims generally made by proponents of the Asian Values theory, especially East Asian governments:

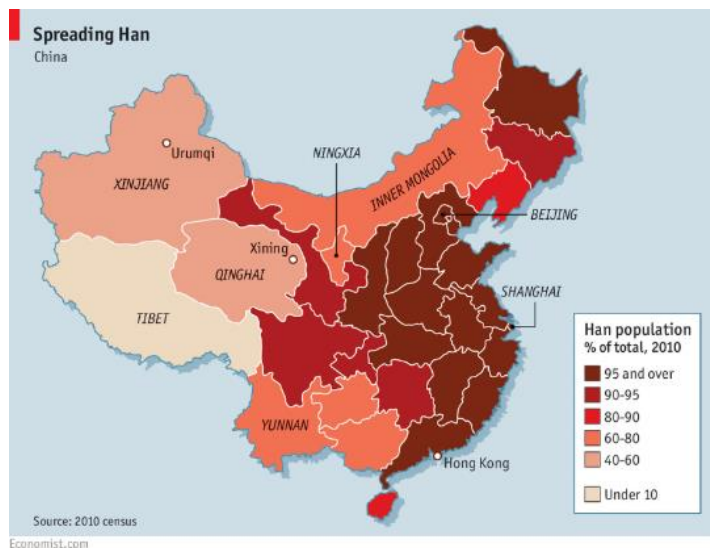
The “Asian Values” theory, in brief, makes four claims. First, human rights are not universal, and neither can they be globalized. They emerge differently according to the context of particular social, economic, cultural, and political conditions. Second, Asian societies are not centered on the individual but on the family. The nation is like a big family. It supposedly comes naturally for Asians to let the combined interests of the family and the nation go before the interests of each individual. Third, Asian societies rank social and economic rights over an individual’s political rights. Finally, the right of a nation to self-determination includes a government’s

domestic jurisdiction over human rights. This implies that other nations should not interfere with the internal affairs of a state, including its human rights policy” (Yoon 2004, 155).

Consensus, unity, harmony, and community are said to be the priorities valued most highly in East Asian countries (Huntington 1996; Yoon 2004). This contrasts with what is commonly understood to be the core value of Western liberalism, individualism, which brings conflict and disunity. Critics of the Asian Values theory, however, point out that the Asian values argument is most often employed by countries that wish to violate what the West views as universal human rights. Leaving aside debates about the application of the Asian Values theory for the moment, understanding where these values supposedly come from will shed light on why this region is named the “Sinic” East – or Chinese East.

Modern Chinese culture is derived from values and traditions set forth in the Han Dynasty (206 BCE-220 CE) – in fact the inheritors of this legacy today refer to themselves as “Han Chinese.” It was during the Han Dynasty that the values of the scholar and philosopher Confucius were used to create a political culture, centered around a meritocratic civil service bureaucracy based on Confucian values⁴¹. As the Han conquered territory stretching from Korea and Manchuria in the north to northern Vietnam in the south and west to the borders of modern Xinjiang province, which closely corresponds with census figures showing provinces in which 80% or more Chinese surveyed identity as “Han” (see Figure 5.1).

⁴¹ Confucian Values are understood to be benevolence, righteousness, propriety, wisdom, and fidelity.



Source: The Economist 2016

Figure 5-1: Examples of Taiwan's "Queer" Diplomacy

During the Han Dynasty, young aristocrats could study Confucian values in preparation for the civil service exam. In subsequent dynasties, the civil service was opened to any worthy scholar, aristocratic or not, which created a new elite of scholar bureaucrats. Those males wishing to achieve upward mobility could attend local universities where they would be trained in Confucian values and classic writings, and these became the dominant values of Han Chinese culture. Future dynasties would carry these values to the lands they conquered, and Chinese merchants would carry those values to the lands in which they traded or lived. This is one factor leading to the Sinic cultural dominance of the region.

The Qing Dynasty (1644 CE-1912 CE) at one time or another controlled territory in present China, Mongolia, and Taiwan, as well as parts of Russia, Kazakhstan, Kyrgyzstan, and India. But they also inherited from the Ming Dynasty what Western scholars since the 1940s have called "the tribute system." This is another factor that has led to Sinic cultural dominance. Weaker states bordering the Chinese Empire and falling under its hegemony regularly sent emissaries to the Chinese emperor to pay tribute – that is to acknowledge the superiority and authority of China. In

return, those states received favorable terms of trade and even military protection under certain circumstances. And, while Korean and Japanese kings at various points during the Ming Dynasty challenged that hegemony from time-to-time, for nearly six hundred years China was the dominant military, economic, and cultural force in East Asia (Lee 2016). That military, economic, and cultural hegemony was reinforced through the tribute system.

The weight of centuries of Chinese hegemony can be felt in East Asia even today. Japanese culture has roots in Tang Dynasty traditions. Korean art and literature, K-Pop notwithstanding, show a strong Chinese influence. Japan, Korea, and Vietnam used Chinese characters in their written languages for centuries, and Japan and South Korea still do in some cases. One consequence of Chinese hegemony in the region was the spread of Confucian morality: respect for parents and hierarchy, loyalty to family and government, and “keeping to one’s place” in society (Bader 2005, Adamczyk 2017). Because of the centrality of family to Confucian morality, individuals are seen to have a duty to their parents and ancestors to have children of their own and thus continue the family lineage. In large part for this reason, homosexuality has often been either discouraged or condemned throughout much of Chinese history, though not for the same reasons that homosexuality was condemned in European states (Adamczyk 2017). Homosexuality was (and still is in many cases) seen as immoral because it is a dereliction of one’s duty to procreate. It should be noted, however, that many countries in the Sinic East either never had any laws against sodomy, or adopted them only after the opening of trade with industrializing Western powers.

According to traditional interpretations of Confucian morality, homosexuality represents the shunning of the community in favor of the desires of the individual. But, scholarship on development and modernization assert that as countries modernize and grow richer, religious traditions should hold less sway. Persons in Sinic East countries have typically expressed lower

levels of religiosity than their counterparts in Latin America, the Orthodox East, the Islamic East, or in much of the West. Countries like Singapore and Japan have higher GDP per capita than the U.S. or the U.K. or the Netherlands (Inglehart and Welzel 2005 and 2020). And yet, the Sinic East lags behind much of the rest of the world in terms of its tolerance for homosexuality. Returning our attention to the quantitative analysis in Chapter 3 in the Section on case selection, Sinic East countries have a lower probability of same-sex marriage legalization at almost any given score than do their counterparts in other regions (refer to Figure 3-14).

To date, Taiwan is the only country in the Sinic East that recognizes same-sex marriage marriages, and none recognize civil unions. This is in part due to the reimagining of Confucian values in Taiwan discussed in the last chapter, in which benevolence, righteousness, propriety, wisdom, and fidelity are recontextualized to be compatible with evolving sexual and social norms which challenge the traditional heteronormativity that has been the foundation of the accepted form of family for much of human history. But there has been some progress in the region, outside of Taiwan however.

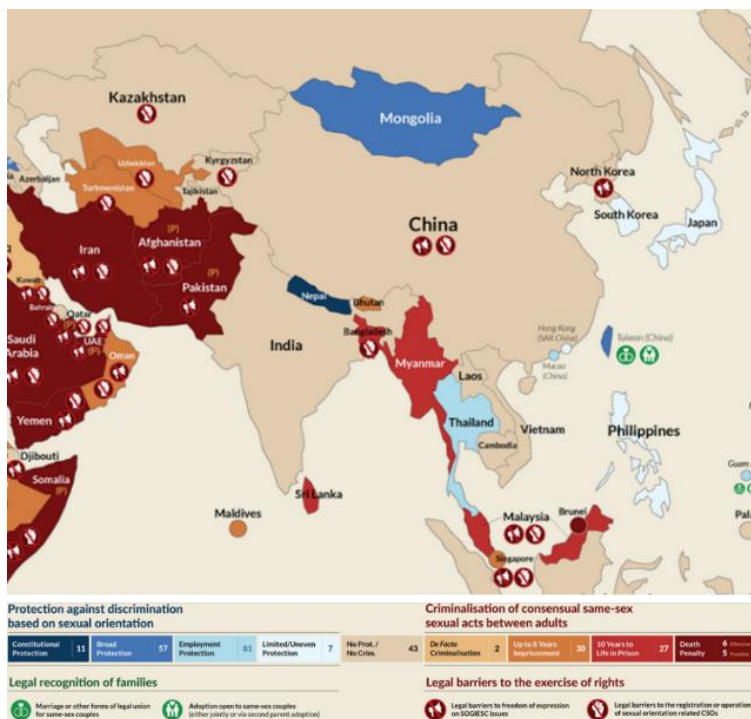
Some cities in Japan issue ceremonial certificates to same-sex couples recognizing their bond, but these come with no legal rights or privileges and are entirely symbolic (Masanori 2016; Osumi 2016). Same-sex partners of residents of Hong Kong may apply for and receive spousal visas and spousal benefits (Kang-chung 2018; Chan 2019). Mongolia offers some broad protections, but it is not included in the RI for data availability reasons (ILGA 2020). But this progress is not universal throughout the region.

South Korea and Vietnam offer no benefits of any kind to same-sex couples, symbolic or otherwise. Singapore, up until very recently, maintained a colonial-era sodomy law inherited from the British Empire that criminalizes same-sex sexual activity between men, even though the law

has yet to be enforced post-independence (Bader 2005, Adamczyk 2017). Outside of Taiwan, the environment for same-sex couples in most of the Sinic East ranges from mostly indifferent to unwelcoming. China has even started cracking down on LGB events, backtracking from what seemed like progress over the last decade. In 2020, Shanghai Pride was cancelled by Chinese authorities for the first time in its eleven year history, meaning that there are now no LGB Pride events in mainland China (Zhang 2020).

The RI predicts Japan, not Taiwan, to be the most likely country to break from Chinese Confucian cultural hegemony, but Japan has yet to offer any protections or recognition at all for same-sex couples, beyond the previously mentioned symbolic certificates available in a handful of prefectures. And it is Taipei, not Tokyo, that boasts the largest Pride celebration in the region and is considered to be the most LGB-friendly city in East Asia. Despite COVID restrictions making international travel into Taiwan almost impossible, it is estimated that around 130,000 people attended Taipei's 2020 Pride celebration in October. And the Ximen District – home to Taipei's gayborhood located around the Red House – is often awash in rainbow flags even when Pride isn't being celebrated. For all of these reasons, Taiwan has a reputation as the best destination for LGB persons in all of East Asia. (see Figure 5-2).

The next sections of this Chapter will briefly review the progress made in Taiwan and explore in some detail the relative lack of it in Japan. Special attention will be paid to RI variables that research suggests are of particular importance in the region. And, just as in the last chapter, country-specific variables unique to Japan that could be hindering progress towards same-sex marriage legalization will be identified and briefly discussed.



Source: ILGA 2020

Figure 5-2: LGB Rights Environment of the Sinic East

5.1 Refresher on the History of LGB Rights in Taiwan

As covered at length in the last chapter, a shared sense of LGB identity became possible with the publication of the popular novel *Crystal Boys*, and that identity took on a political dimension when LGB SMOs like TSAN began using the language of community as part of political demonstrations and protests. As Taiwan began to liberalize and transition from an authoritarian state to a liberal democracy, the human rights claims of SMOs became an organic part of the democratization process, making a respect for human rights, including LGB rights, a part of democratic Taiwan's national identity. LGB groups mobilized resources – including using LGB bars as both meeting places and as venues to present the public face of the LGB community as good neighbors, business partners, and members of the community. In part because of the importance of human rights to Taiwan's national identity and political culture, LGB activists were

able to cultivate political allies within the DPP, Taiwan's first opposition party and the party in control of Taiwan's government since 2016.

Starting in 2003, Taiwan began holding Pride celebrations, and the yearly Pride event in Taipei has become the largest in East Asia, presenting numerous high-profile opportunities for domestic LGB SMOs and activists to connect with Western LGB SMOs through TANs. Organizations like the Marriage Equality Coalition formed to combine and coordinate the efforts of local activists and SMOs and provide more efficient ways to network through TANs. And, Taiwan has a history of incorporating outside values into their culture, including emancipative and secular values which prioritize equality and freedom of choice. So, the combination of ample LGB mobilization capacity, numerous opportunities for SMOs to make connections through TANs, and an embrace of post-material values made Taiwan more likely to legalize same-sex marriage, which it did in 2019.

But there are also country-specific variables which may have played a role in Taiwan's status as first-adopter in the Sinic East. The multiculturalism of Taiwan, as evidenced by the many architectural styles seen in Taipei and the blending of numerous religions into a faith-way that is uniquely Taiwanese, likely played a role in same-sex marriage legalization. The fact that youth movements, including grassroots student protest movements like the Wild Lilies or the Sunflower Movement focusing on human rights, were an integral part of Taiwan's liberalization process and identity formation through Taiwanization may also be significant. Taiwan's unique status as a country that is *de facto* independent of China but unable to engage in traditional forms of diplomacy, forcing Taiwan to use the power of attraction through the promotion of universalist human rights, including LGB rights, to gain the support of Western allies and to differentiate

themselves from authoritarian Communist China likely also played a role in making same-sex marriage legalization more likely.

The next subsection will examine the presence (or lack of it) of preconditions in Japan as well as the Japanese LGB community's mobilization capacity, opportunities for Japanese LGB SMOs to connect with outside allies through TANs, and Japan's embrace of post-material values in order to determine why Japan has not legalized, even though the RI shows them as more likely to have done so. Then, potential country-specific barriers to legalization, including differences in the LGB bar culture, differences in the Japanese judiciary and their approach to human rights issues, and a lack of youth involvement in politics will also be explored. But first, the next subsection will present a brief history of LGB rights in Japan as a means of providing a little historical context.

5.2 The History of LGB Rights in Japan

Homosexual activity has only ever been criminalized briefly during the Meiji era, from 1872-1880. Since 1880, consensual homosexual sex has been legal in Japan. But social acceptance is another matter. When male homosexuality is depicted in modern Japan, it is often conflated with transgenderism, transsexuality, or youthful indiscretion and curiosity⁴². The word most commonly used to describe a male homosexual is *okama* which literally means "pot" but colloquially means "queen" and in Japanese slang means "buttocks" (Lunsing 1995 and 1997; McLelland 2000 and 2006). Early depictions of male homosexuals in post-war Japan were as cross-dressing male prostitutes known as *danshō*. *Danshō* were always depicted as passive recipients in male-to-male sexual encounters and were often thought of as *ūruningu*, literally having a "female soul" in an

⁴² Historically, prior to the Meiji Era, Japanese male homosexuality was often depicted as *Nanshoku*, or pederastic relationships between either older and younger samurai warriors or between young *kabuki* actors and their male patrons. This could explain the modern depiction of homosexuality described here, but more research is needed.

effeminate male body (McLelland 2006). Later depictions of male homosexuality during the so-called Japanese “Gay Boom” of the late 1960s and 1970s presented gay men as sex-obsessed. In early gay magazines like *Barazoku*, Japan’s first magazine aimed at gay men, there was little talk of politics or communal identity or even of non-sexual relationships. But there was plenty of erotica and advertisement of masturbatory aids. And adds for marriages to women as a way of camouflaging their homosexual desires were also prevalent (Lunsing 2008).

However, the most popular depiction of male homosexual desire was and is actually aimed at young heterosexual women. A certain genre of *manga*, or Japanese graphic novels, depict conventionally attractive, effeminate young men engaging in homosexual sex or romantic relationships, sometimes nonconsensual in nature, and are intended for a primarily heterosexual female audience (McLelland 2000). Categorically, these manga are known as *yaoi* and frequently depict instances of what can be described as rape or sexual assault. But these rapes are not always depicted as violent, criminal acts but very often rather as manifestations of uncontrollable sexual desire ignited by the irresistible beauty of these effeminate young men that ultimately culminates with the two men falling in love (Kazumi 2003; McLelland 2006). Once again, these characters conflate male homosexuality with hypersexuality and transgenderism – the men in these manga, at least the objects of the initial desire that creates the dramatic tension of the stories, are almost always delicately beautiful and androgenous. This depiction resonates because, as McLelland observes,

The idea that same-sex attraction necessarily involves some kind of transgenderism or desire to be like or even become the opposite of one’s biological sex is constantly reinforced by Japanese media which discuss homosexuality and transgenderism in the same context (2006, 461).

This is not to be confused with another type of manga called *bara*, which are erotic graphic novels by gay men written for gay men depicting same-sex desire and sexual acts between stereotypically masculine-looking men and as more consensual in nature. See Figure 5-3 for a comparison between the artistic styles of the two.



Sources: Kincaid 2013 and Kolbeins 2014.

Figure 5-3: Contrasting Depictions of Male Homosexuality in Yaoi and Bara Manga

But why is this issue of depiction important to same-sex marriage legalization? This hypersexualized characterization of homosexuality as being gender-bending, perverse, transgressive, or even initially non-consensual against the backdrop a fairly conservative Confucian culture are just one factor that exerts pressure to keep homosexual men from coming out as gay. The men depicted in the stories of these manga often do not identify as homosexual, they are merely in love with one another and pursue a sexual relationship, helpless to resist their urges. In the case of the yaoi, this sexual relationship starts as involuntary, with the *seme* (top) pursuing and overpowering the *uke* (bottom) who subsequently comes to see the seme as a dominant romantic partner and protector. The relationships depicted in the bara are similarly problematic, from a Western sensibility, and usually involve an older or more powerful man using a younger or less powerful man for sexual gratification. Themes of bondage and sadomasochism are common (McLelland 2000; Kincaid 2013; Kolbeins 2014; Ishii, et. Al. 2014). Neither of these

are healthy depictions of same-sex love between two men capable of enjoying a shared identity that might encourage one to come out. Since the 1990s, popular media in Japan has begun to present more positive portrayals of non-heterosexual celebrities. It is likely not a coincidence that (male) homosexuality is depicted in this way and that there are no national protections for LGB Japanese against discrimination and no legal recognition of same-sex relationships.

5.3 The RI Theory of same-sex marriage Legalization in Japan

Returning to the original theory, conditions which make same-sex marriage legalization more likely are – 1) a minimal level of emancipative and secular values, 2) high LGB mobilization capacity, and 3) the presence of opportunities for Transnational Advocacy Networks (TANs) to form partnerships with domestic actors. These factors increase the likelihood that domestic social movement organizations (SMOs) acting within their movement will use contentious politics to put pressure on elites through existing opportunity structures – either legal or political – to accept the norm or LGB equality thus making it more likely that same-sex marriage will be legalized. But before these conditions can be met, two preconditions must also be fulfilled: LGB persons must form a sense of community – of a common and uniting struggle, and democratic institutions must provide access to opportunity structures. These next subsections will show that Japan fails to meet the identity precondition and that Japan’s specific iteration of democracy creates unique challenges to LGB activists. They will also show that emancipative and secular values are not as readily embraced concerning sexual norms, that mobilization capacity is limited due to differences in the LGB bar scene, and that opportunities for TANs are limited due to the relatively closed nature of Japanese civil society. Further, there are country-specific variables in Japan which are possibly working against legalization of same-sex marriage, including a lack of youth involvement in

politics and a judiciary that has remained largely closed to challenging the state on human rights issues.

5.3.1 *Preconditions of LGB Identity Formation and Democratization in Japan*

LGB identity formation is a key precondition for social movements to coalesce and advocate for change. Without a shared sense of LGB identity – an imagined community – there can be no sense of shared struggle against heteronormative oppression. The first step to ending this oppression is often coming out. Western studies on the act of coming out have identified the process as having stages involving coming out to oneself as non-heterosexual and then coming out to others as such, with identity synthesis or integration being the ultimate and desired result (See Table 5-1, reproduced from Motoyama 2016, page 18).

Table 5-1: Comparison of Cass's and Coleman's Coming Out Models

Cass	Coleman
	1 st Stage "Pre-Coming Out" Realization of difference from others without identifying as homosexual or heterosexual
1 st Stage "Identity Confusion" - Doubt own sexuality as homosexual without knowing what it means to be a homosexual that confuses them and feel alienated = "potentially" homosexual - Seeking information, rejecting attractions to people of the same-sex that might resolve their confusion and alienation	2 nd Stage "Coming Out" - Acknowledge homosexuality as the difference. - Two ways to accept their homosexuality: 1) Gaining acceptance from numbers of persons 2) Seeking acceptance from other homosexuals
2 nd Stage "Identity Comparison" - Concern about both how they perceive themselves and how others perceive homosexual behavior → isolation - Pretend to be heterosexual to reduce feelings of isolation - Extreme isolation motivates them to contact others	
3 rd Stage "Identity Tolerance" Perceive their sexuality as homosexuals; thus, they are more aware of how others see them → Isolation → Seek interaction with other homosexuals or "homosexual subcultures" to reduce isolated feelings	3 rd Stage "Exploration" Exploring, testing or experimenting with their new sexuality to gain a positive self-image
4 th Stage "Identity Acceptance" - Frequent interaction with other homosexuals helps to normalize homosexuality and fosters acceptance of homosexual self-image - Choosing where to portray a homosexual self-image to avoid risks	
5 th Stage "Identity Pride" Less concern about how others see them, provides "the freedom to choose disclosure as a strategy for coping"	4 th Stage "First Relationships" Extend the interaction with other homosexuals that makes them desire a relationship
6 th Stage "Identity Synthesis" Homosexual identity infuses all aspects of identity; there is one consistent self across social contexts	5 th Stage "Integration" Comfortable with their sexuality so that they start seeking a long-term relationship

Source: Motoyama 2016, page 18

Partly because of the way Japanese non-heterosexual sex is often depicted, and partly because of the unique way Japanese tend to conceive of identity⁴³, there is little coherent LGB community in Japan as westerners might recognize it – though that is starting to slowly change – because many LGB Japanese simply do not publicly come out to others often, and when they do it is usually to other homosexuals (Motoyama 2016). Thus, many Japanese LGB persons are stuck in Cass’ Stage 2 or Stage 3 or Coleman’s 1st Stage or 2nd Stage. This makes political action much more difficult. There may be some hope that prospects for LGB Japanese to come out to others will improve. That it hasn’t yet, or at best that it has only slowly improved, may well be part of the explanation why there have not been greater strides towards LGB equality, including same-sex marriage legalization, in this highly developed country.

There is another aspect of heteronormativity that effects the formation of a cohesive LGB culture in Japan. That is the fact that one’s citizenship in Japan is expressed in terms of one’s paternal familial lineage and one’s marital status. Since consensual same-sex sexual relationships in Japan are not recognized as valid, and since LGB couples do not have adoption rights in Japan, the concept of family in Japan is entirely heteronormative, and by extension the concept of citizenship is as well (Baudette 2016). To be Japanese is to be assumed to be a heterosexual, by definition. The Japanese nation is defined, in part, by heteronormativity – and any homosexual relationships which may occur in private are expected to be discreet and fleeting.

For this reason, Japanese LGB persons suffer from an internalized homophobia that leads them to expect their parents, teachers, coworkers, bosses, friends, etc. will not except them if they come out publicly (Motoyama 2015). The assumption is that coming out, for the reasons

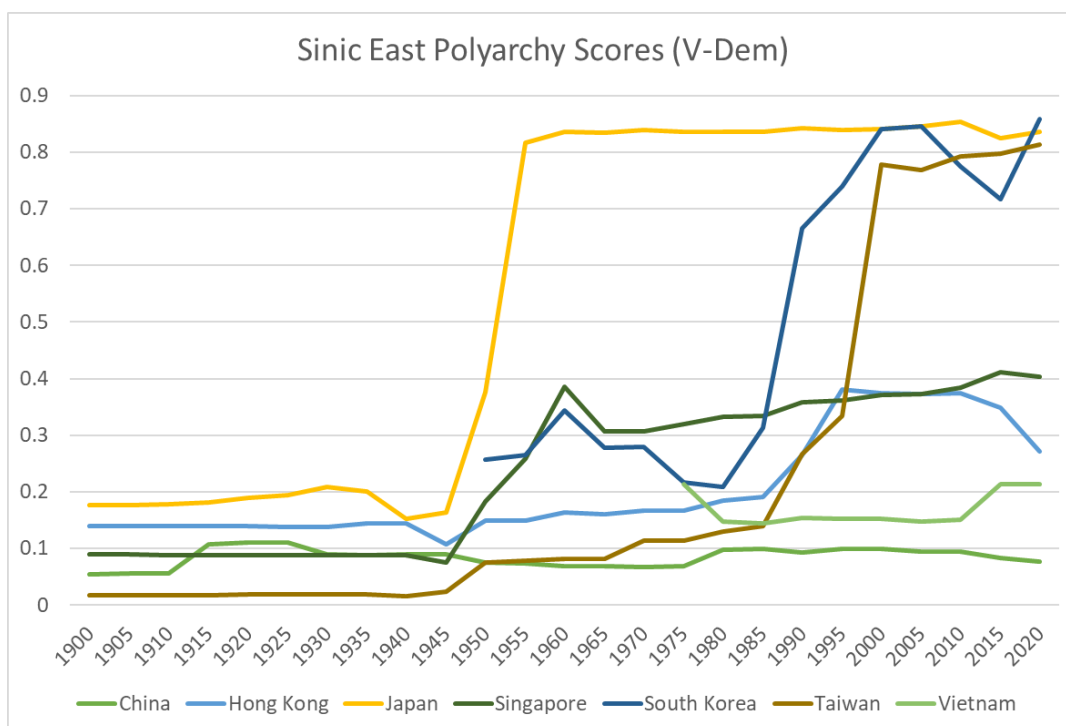
⁴³ Japanese identity formation involves navigating one’s place in their *seken*, or traditional group. Under this model, homosexuality is considered *kegare* (unnatural, impure, disgraceful) because it goes against the notion of conformity within the *seken*. For more on the effects of Japanese identity formation and LGB identity, see Motoyama 2016.

previously mentioned, will disappoint the authority figures in an LGB person's life. Another element to this internalized homophobia is the fact that most Japanese LGB persons are cognizant of the fact that Japanese society, relatively speaking for the region, is tolerant of homosexuals. Japanese police do not have a history of raiding gay-owned establishments. The sodomy law criminalizing homosexual activity in Japan, passed at a time when Japanese elites were attempting to modernize by emulating behaviors of Western powers, was abolished in 1880. But this tolerance is extended at a price – silence. Given these realities, coming out is often seen as needlessly disruptive (Tamagawa 2018). In such a tolerant society the need for confrontational political activism seems much less urgent. The fact that relatively low numbers of Japanese LGB persons are willing to come out as such makes the identity formation that is a precursor to an effective social movement difficult. Interestingly, gay and bisexual men refer to themselves as *kocchi* euphemistically, which can mean “here”, “over here”, or “our side” (Moriyama 2010). And, while this term does imply a kind of group awareness – as in “our side” – it avoids the use of more straightforward and potentially politically powerful terms for identity.

Turning to the issue of democracy in Japan, while Taiwan democratized through a process of elite-driven liberalization, Taiwanization, and grassroots pressure for greater respect of human rights, Japan's modern transition to democracy came at the point of a gun, so-to-speak. During Japan's Meiji Era, there were nominal democratic institutions, but the Meiji Constitution of 1889 vested sovereignty in the emperor and in the wake of the Great Depression, Japan descended into a fascist military dictatorship. It wasn't until the adoption of the 1947 “MacArthur Constitution” that the concept of popular sovereignty was institutionalized in Japan (see Figure 5-4). Under this new constitution, women were given the right to vote, civil liberties were introduced, local governments were strengthened, land reforms and labor protections were enacted, and mandated

civics lessons were taught in schools (Colombia University 2022; Council on Foreign Relations 2022; Huntington 1991; Kohli 2004; Scheiner 2006; Takemae 2002).

But, since shortly after the end of the American Occupation in 1952, the conservative Liberal Democratic Party (LDP) has maintained a virtual stranglehold on national politics, controlling the government for the vast majority of the last seven decades by institutionalizing a form of corruption driven by clientelism which creates strong incentives for local governments, organizations, and politicians to align with the central government, dominated by the LDP. This is especially true in rural areas, where the LDP has been able to use centralized control of fiscal policy to deliver pork-barrel benefits to Japanese prefectures. This creates a sort of dual system in Japan in which urban districts are competitive while rural ones are not (Bowen and Kassiola 2016; Pekkanen et al 2018; Scheiner 2006).



Source: V-Dem 2021

Figure 5-4: Democracy in the Sinic East

For the study of same-sex marriage legalization, this is significant in that, while Japan democratized earliest in the Sinic East, the way in which Japan democratized in an absence of grassroots activism and the clientelism-driven single-party dominance of the LDP which is dependent on rural support have combined to create significant challenges. Japanese, particularly in rural areas, have also demonstrated a resilient resistance to accepting the norm of same-sex marriage legalization. According to a 2021 Ipsos poll measuring approval for same-sex marriage in 27 countries, Japan had an approval rating of 69%, placing between South Africa and Peru⁴⁴. This is a remarkable improvement since 2013, when Ipsos conducted a similar poll asking the same question, and in that poll only 24% of Japanese respondents indicated an acceptance of same-sex marriage – the second lowest in the survey after Poland⁴⁵ (Ipsos 2013). Further, in a 2019 Pew Research poll, 38,426 people in 34 countries were asked if they approved of homosexuality, and in Japan 68% of respondents indicated that “homosexuality should be accepted by society.”⁴⁶ And, yet, despite this seemingly widespread approval only two prefectures in the whole country offer nonbinding partnership certificates in all municipalities – Ibaraki and Osaka, though several others offer them in some municipalities (see Figure 5-5). But, even in Osaka the judiciary has been slow to except the same-sex marriage norm, as will be discussed later in this chapter, having found that prohibitions on same-sex marriage do not violate the Japanese constitution. The policy lag on same-sex marriage could be explained by the alliance between the conservative LDP and its rural voters who tend to be less accepting of LGB rights norms. If further study shows this to be the

⁴⁴ Argentina, Australia, Belgium, Brazil, Canada, Chile, China, Colombia, France, Germany, Hungary, India, Italy, Japan, Malaysia, Mexico, Netherlands, Peru, Poland, Russia, South Africa, South Korea, Spain, Sweden, Turkey, the UK, and the US were included in this [survey](#).

⁴⁵ Argentina, Australia, Belgium, Canada, France, Germany, Hungary, Italy, Japan, Norway, Poland, South Korea, Spain, Sweden, the UK, and the US were the countries included in the [survey](#).

⁴⁶ Argentina, Australia, Belgium, Brazil, Bulgaria, Canada, Czech Republic, France, Germany, Greece, Hungary, India, Indonesia, Israel, Italy, Japan, Kenya, Lebanon, Lithuania, Mexico, Netherlands, Nigeria, Norway, Philippines, Poland, Russia, Slovakia, South Africa, South Korea, Spain, Sweden, Tunisia, Turkey, Ukraine, the UK, and the US were the countries included in the [survey](#).

case, it could explain how single-party control in Japan creates challenges to same-sex marriage legalization.

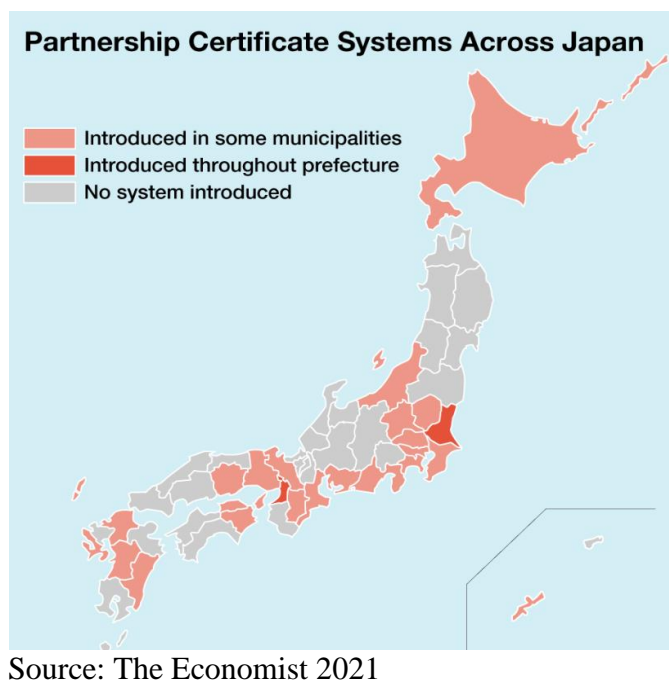


Figure 5-5: consensual same-sex sexual relationships Recognition Limited in Japan

5.3.2 Mobilization Capacity, Opportunities for TANs, and Values in Japan

Japan outperforms Taiwan in the RI – Japan has a rank/score of 13/849 while Taiwan’s in 16/798. These countries are the two top ranked and scored countries in the Sinic East. South Korea comes in third at a rank/score of 34/563. When comparing the two countries at the dimension level, the two countries score well in all three variables of Mobilization Capacity, Transnational Advocacy Networks, and Values (see Figure 5-6). When drilling into the individual measured components of these variables, we can see some clear indicators of possible critical differences that could help explain Taiwan’s legalizing same-sex marriage first while Japan has yet failed to make any significant steps towards doing so – and indeed remains the only one of the top-ten RI countries not to have done so. Taiwan significantly outperforms Japan in LGB Power – this is

actually Japan’s worst-performing variable (see Figure 5-7). In Chapter 3, it was indicated that this could prove a decisive variable to consider – at least for the Sinic East.

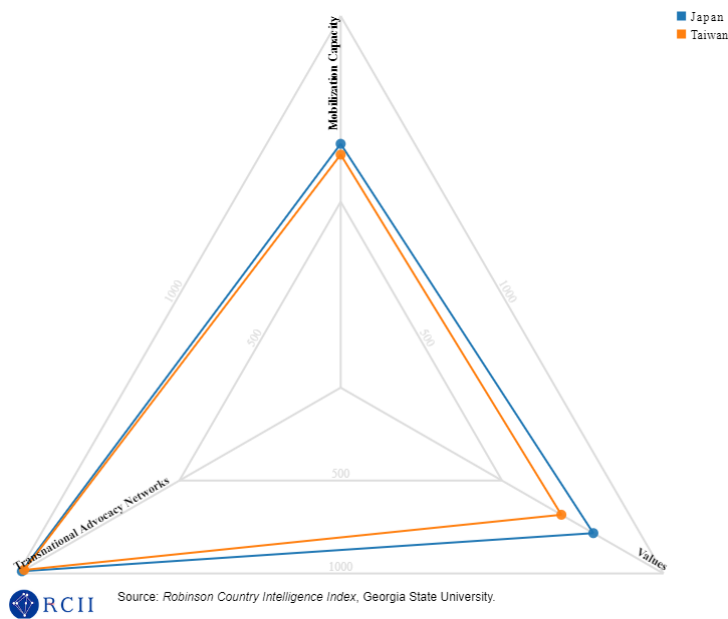


Figure 5-6: Mobilization, TANs, and Values in Japan and Taiwan

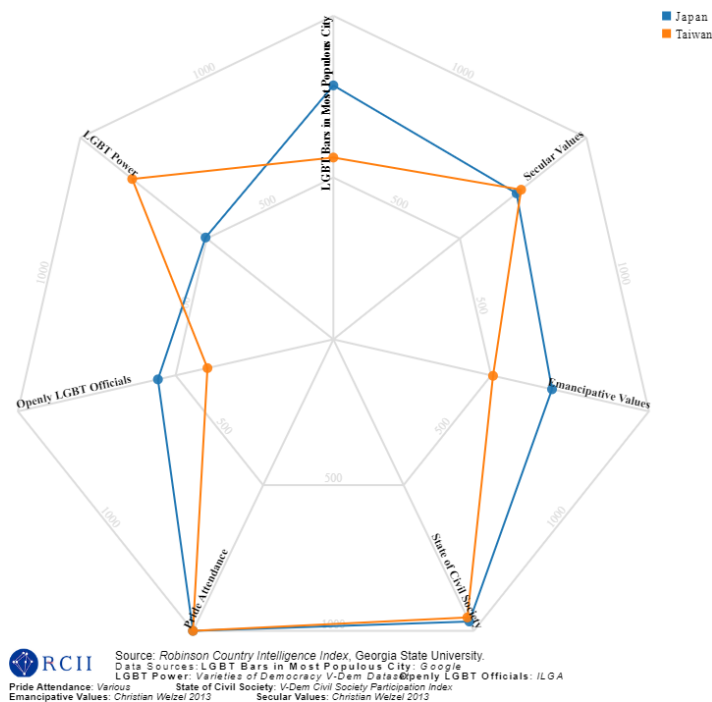


Figure 5-7: The Importance of LGB Power in Japan and Taiwan

But there are some other issues that might occasion a re-examination of other variables, in much the same way that Emancipative and Secular Values were in the case of Taiwan in accounting for that country's unique take on Confucian Values as reinforces of human rights norms. According to a simple count of LGB Bars, Japan outperforms Taiwan significantly. But a deeper examination of how LGB bars operate in Japan will offer added insight and potentially evidence to warrant reconfiguring the variable in future analysis. Secondly, Japan's Civil Society is ranked as slightly better than Taiwan's in V-Dem, but Civicus notes that Japan's civil society environment is less open to than Taiwan's, which could indicate a crucial difference in opportunity structures in the two countries that needs to be explored (Civicus 2020). This subsection will detail these elements of the theory that may be holding Japan back from legalizing same-sex marriage. As we will see, Japanese LGB SMOs face a number of challenges that Taiwanese LGB SMOs did not face in their efforts to legalize same-sex marriage. These include barriers to mobilization in the form of a lack of suitable public spaces in which to gather and reduced political power for LGB persons. Additionally, Japan's civil society is more closed off than Taiwan's, thus potentially depriving LGB SMOs of opportunities to avail themselves of the benefits of TANs devoted to same-sex marriage legalization. All of these factors help explain why Japan, though it scores higher in the RI overall, was not the first in the Sinic East to legalize same-sex marriage.

5.3.2.1 Challenges to Mobilization Capacity in Japan

In the Chapter on Taiwan, LGB Power was highlighted as an important component of mobilization – and it also happens to be the one measure for which Japan and Taiwan are the furthest apart. As a refresher, the V-Dem variable of “Power distributed by sexual orientation (C) (v2pepwrt)” is an ordinal variable with a 0-4 score. The values are indicated as follows:

0: LGBs are entirely excluded from the public sphere and thus deprived of any real political power (even though they may possess formal powers such as the ballot).

1: LGBs have much less political power than heterosexuals. LGBs enjoy formal rights to participate in politics but are subject to informal norms that often serve to exclude them from the halls of power.

2: LGBs have somewhat less political power than heterosexual citizens.

3: LGBs have about the same political power as heterosexuals. Each group enjoys degree of political power that is roughly proportional to their population.

4: LGBs enjoy somewhat more political power than heterosexuals by virtue of greater wealth, education, and high level of organization and mobilization.

These are the values that are used to create the measure in the RI, and it should be noted that no country in the RI or in the entire V-Dem dataset scores a “4” on this measure. While Taiwan scored a “2” on the scale, Japan scored a “1” – indicating significant lack of power of the LGB community in Japan. There are only four countries that score a “1” on this measure that have legalized same-sex marriage: Australia, Colombia, Ecuador, and South Africa. So, while it is evidently possible for countries to legalize same-sex marriage even though LGB persons in those countries have “much less political power than heterosexuals”, it is not the statistical norm. The closest Japan has come for the kind of empowering political support given to Taiwanese LGB persons by their elites is that in 2009, Japanese officials in the Justice Ministry began providing Japanese LGB persons of legal age to apply for paperwork allowing them to marry citizens of other countries in which same-sex marriage had been legalized but these marriages would have to be performed in those countries and would not be recognized as valid in Japan. In 2021 a Japanese district court in Sapporo ruled that bars against same-sex marriage were unconstitutional, but a

district court in Osaka handed down a contradictory ruling in 2022 (BBC News 2021; NPR 2022). This means that the Japanese Supreme Court will have to decide the issue eventually, and as we'll see later in this Chapter, the prospects of a victory for LGB SMOs are unlikely.

The previously discussed challenges to coming out for Japanese non-heterosexuals certainly contribute to this significant lack of political power. And the lack of public approval for LGB rights from political elites – partially because of LDP control of the political system that relies on rural support – only exacerbates and reinforces both attitudes against LGB equality and internalized homophobia, both of which are disempowering for SMOs. It could be possible that an availability of public spaces in which to organize an emergent movement. But, as we will see, the LGB bars in Japan (Tokyo, specifically) provide no such opportunity for mobilization on a large scale.

We know from earlier quantitative and qualitative analysis that LGB bars have played a particularly important role for SMOs in countries with legalized same-sex marriage when the movements in those countries were in their emergent and coalescent phases. For many reasons, the same may not be true in Japan. The history of gay bars is very different in Japan than in most Western countries, or even in Taiwan. Japanese gay bars historically serve as small businesses where young Japanese men go to meet potential sexual partners or for prostitutes to meet potential clients. Beginning in the late 1950s, these *geibā* (Japanese transliteration of gay bar) began springing up in what had historically been the heterosexual red-light district, and, with this proliferation, they began catering to both male and female clientele (McLelland 2006). Because there was no sodomy law and police generally left *geibā* alone, these businesses could advertise openly as such and did so – attempting to attract both heterosexual and homosexual clientele.

Modern-day LGB bars in Japan no longer focus on catering to both homosexual and heterosexual clientele, but they have retained some character of the historical *geibā*. For example, Tokyo’s modern gay bar scene in the *Shinjuku Ni-Chome* – Tokyo’s gayborhood – could best be described as bifurcated. There are larger bars which cater mainly to tourists or expats and the Japanese LGB persons who frequent them are interested in meeting foreigners. These are the bars one is likely to find advertised in travel guides aimed at foreign LGB tourists. The smaller venues that cater to local Japanese LGB clientele, and which might potentially serve as a place for early resource mobilization are a different matter.

These bars are usually quite small, some as small as 10’ by 10’, and typically seat between four and six customers in total but never more than ten or fifteen (Senju 2018; Japan Visitor 2020). Because space is at such a premium, it is not uncommon for these smaller gay bars to specialize in the clientele they want to attract. Visitors who are not the target clientele can be barred from entry, but even if they are not, the reception they receive will be typically polite but chilly (Japan Visitor 2020). This tendency to specialize is indicated by the suffix *sen*⁴⁷, which is short for *senmon*, meaning “specialty.” According to LGB travel blogs which share information for those wishing to travel to Japan and experience a more authentic bar scene, some examples of *sen* that a Japanese LGB bar might cater to are:

- *Gai-sen* (外専) — Japanese people who prefer Western foreigners (外国人, *gaikokujin*).
- *Debu-sen* (デブ専) — Refers to those who likes heavier men (*Debu* means chubby).
- *Fuke-sen* (老け専) — Typically for younger guys who prefer older, “mature” men.

⁴⁷ In place of the term *sen*, sometimes *taipu*, a transliteration of the word “type” is used. See Baudinette 2016.

- *Gatai-sen* (ガタイ専) — Used to describe those who focus purely on muscularity (often equating it to sexual prowess). *Gatai* relates to body building (Japan Visitor 2020; All About Japan.com 2021).

Such a bifurcated and specialized LGB bar environment is not conducive to identity formation or SMO emergence in the same way that LGB bars in Western countries have been at the beginnings of their rights movements. While there is little research on the specific effects of LGB bars in Japan on the gay rights movement there, extrapolating from research discussed previously it is reasonable to postulate that part of the reason for the lack of a shared sense of struggle is that there historically have not been safe spaces for large numbers of diverse LGB people to gather and interact. Ironically, however, Japan's LGB bar scene collectively is regarded domestically and internationally as one of the world's most welcoming, precisely because any type of person will find a bar that caters to their *sen* if they only look hard enough (Baudette 2016). But the lack of larger, more inclusive LGB bars makes mobilizing the necessary resources for engaging in contentious politics difficult.

Another aspect of LGB life in Japan that should be briefly discussed, and which will further illustrate the point that LGB bars in Japan do not have the same community-building potential as they do elsewhere, is the ethno-eroticism that permeates Japan's LGB community. The reality is that *taipu*, mentioned earlier, can refer to ethnicity as well, and certain ethnicities will find the Ni-Chome more welcoming than others. In Japan, nationality is often equated with the concept of "race" in the sense that persons from different countries are seen as having different identities in a substantive and inherent way that goes deeper than mere citizenship (Chapman 2008; Kawai 2015; Baudette 2016). As such, Japanese LGB persons care about racial or ethnic identity a great deal, even to the point of forming sexual desires based on them.

In terms of sexual desire, studies show that there is a hierarchy of ethnicity in Japan. The *gaijin*, or white men, especially the muscular and masculine type depicted in popular gay media from the West, have often been considered the apex of sexual desirability for many Japanese. It is theorized that this is due to a kind of internalized complex created by the symbolic emasculation of Japan during the American occupation (Mackintosh 2010; Baudette 2016). However, Japanese gay men are starting to regard themselves as equally desirable and “relatively white” when dealing with other Asian ethnicities, especially those from Southeast Asia (Baudette 2016). One study in particular conducted with the participation of Chinese and Korean gay men visiting Ni-Chome, most as businessmen on extended trips of several weeks or students on exchange programs, found that these gay men often felt excluded or unwelcome. This is despite their preferring Japanese gay men specifically for various reasons⁴⁸. Many respondents described being refused entry or asked to leave local gay bars because they were not Japanese, with one Korean respondent indicating that the only bar he was made to feel welcome in was a bar that catered to *gai-sen*, and in which no Japanese men showed any interest in him (Baudette 2016). On the other hand, Japanese gay men who participated in the study expressed no outright antipathy for Chinese or Korean men, but nor did they express anything like acceptance. Their responses are described as “ambivalent”, as they simply did not regard Chinese or Korean gay men as having a place in their sexual hierarchy (Baudette 2016).

This brief discussion on racialized desires in Japanese LGB sub-culture of Ni-Chome is important because it further illustrates the possibility that LGB bars in Japan simply do not play

⁴⁸ Chinese and Korean respondents in the Baudette study characterized Japan as more progressive than their home countries with regard to acceptance of homosexuality; were consumers of Japanese media, including erotic manga previously discussed; had an unfavorable view of white gay male culture as “over-sexed and consumeristic; and where regular consumers of Japanese gay pornography as there was, at the time of the study, little to no domestic gay pornographic industries in their own countries. All of these conditions taken together created the perception in these respondents that Japanese gay men were more attractive. See Baudette 2016.

the same role in identity formation and movement emergence as research indicates their counterparts in other countries like the U.K. or the U.S. do because they do not contribute to a shared sense of struggle which could extend to all Japanese LGB and even to foreign LGB persons as well. So, while LGB bars do remain important to the legalization of same-sex marriage in general – as quantitative research has shown, and case study research in Taiwan has corroborated – they may not be important at all for the LGB rights movement in Japan. So, the fact that Japan has so many LGB bars in relation to many other countries (Japan ranks 9th out of 100 RI countries) likely is not helping Japanese LGB SMOs in their efforts to legalize same-sex marriage because LGB bars simply don't function in the same way with regard to the movement in Japan as they have in other places.

5.3.2.2 Challenges to Leveraging TANs in Japan

In addition to challenges facing mobilization for Japanese LGB SMOs, there are barriers to taking advantage of what opportunities would typically exist to leverage global rights TANs networks in the same way Taiwan was able to do. This is because Japanese civil society can be more closed than is typical for developed representative democracies or polyarchies. Japan's civil society environment is "narrowed." Civicus defines "narrowed" as:

While the state allows individuals and civil society organizations to exercise their rights to freedom of association, peaceful assembly and expression, violations of these rights also take place. People can form associations to pursue a wide range of interests, but full enjoyment of this right is impeded by occasional harassment, arrest or assault of people deemed critical of those in power. Protests are conducted peacefully, although authorities sometimes deny permission, citing security concerns, and excessive force, which may include tear gas and rubber bullets, are sometimes used against peaceful demonstrators. The media is free to disseminate a wide range of information, although the state undermines complete press freedom either through strict regulation or by exerting political pressure on media owners.

Such harassment occurred when Japanese LGB SMO Occur (アカー akā), one of the first LGB SMOs in Japan encountered hostility and ridicule in Tokyo when their youth members were kicked out of a youth hostel, after being called “okama”, on the grounds that their presence in the hostel was endangering other young people (Lunsing 2005). While this may seem like a trivial example, it is indicative a common attitude, still held by many political elites today in Japan, that LGB equals a threat to the youth (similar to the narrative of right-wing opponents to same-sex marriage in Taiwan discussed in the last chapter). For example, in 2011, then-governor of Tokyo Shintaro Ishihara called LGB people “deficient” and said that activists and public figures in the LGB community had become “untamed”⁴⁹ (Human Rights Watch 2011). In another high-profile example, during a speech before the Diet entitled, “The LGB issue is getting out of control”, LDP member Koji Shigeuchi told a trans woman elected official in the audience, “There is no need for you to have your hormone therapy covered by insurance because you are healthy. You should live with the body you were born with” (Doi and Knight 2021). Even among LGB activists, heteronormative attitudes have historically created an anti-same-sex marriage bias that is only recently began to be overcome (Tamagawa 2016).

What this could mean is that any LGB SMOs which are able to overcome the significant barriers to effective mobilization – and there are LGB SMOs in Japan to be certain – find it difficult to avail themselves of the kind of support SMOs in countries like Taiwan received. Recalling from the Taiwan Chapter, the Marriage Equality Coalition of Taiwan consulted representatives from the Human Rights Campaign (HRC) and Ireland’s “Yes Equality” campaign on the most effective ways to lobby for support for same-sex marriage legalization, and received valuable support in the

⁴⁹ The full quotes, widely reported at the time, were “We have got homosexuals casually appearing even on television. Japan has become far too untamed.” and “I saw a parade made up of gays, and I really felt sorry for them. There were pairs of men and women, but it certainly did feel like they were deficient somehow.”.

form of material, epistemic knowledge, and even field workers to help in polling. The Marriage Equality Coalition of Taiwan formed these contacts in part with the help of the exposure that comes from massive and successful Pride celebrations. In Japan, the Pride celebrations exist in the major cities, but are not as large – in 2019 Tokyo’s Pride exceeded 10,000 attendees for the first time since the celebrations there began in 1994 (Fahey 2019). By contrast, Taipei’s 2019 Pride saw 200,000 attendees⁵⁰ (Hioe 2019; Jenson 2019). So, the scale of the event in Tokyo is simply smaller, which can translate into a reduced opportunity for forming connections with high-profile LGB SMOs in other countries. But, even if this were not the case, the social and cultural barriers domestic SMOs face in Japan are significant and cannot be overlooked and this keeps them from fully taking advantage of those reduced opportunities that may exist.

The first of these social and cultural barriers to SMO action is that same-sex marriage has simply not become the topic of human rights conversation to the same extent that it has in countries like Taiwan or other legalizers (Tamagawa 2016). That is in part because Japan doesn’t have a history of human rights discussions around many other LGB rights that may be considered “small steps” towards same-sex marriage – namely the repeal of sodomy laws and the enactment of some basic protections against discrimination (Tamagawa 2016; Waaldijk 2004). Japan hasn’t had any sodomy laws to repeal since the Meiji Era, as already discussed, though neither has Taiwan. There are very limited protections against LGB discrimination as of yet, and certainly not to the degree we see in Taiwan, in some part because there has never been a robust LGB social movement on the scale we tend to see in other countries which have legalized same-sex marriage, for reasons already explored in the previous section of this Chapter (see Table 5-2).

⁵⁰ Estimates range from 175,000 on the low end of attendance and 250,000 on the high end. But, most reports put the number at 200,000.

Table 5-2: Comparison of Steps Towards Same-Sex Marriage in Japan and Taiwan

COUNTRY	PROTECTION						RECOGNITION			
	CONST.	BROAD PROT.	EMPLOY.	HATE CRIME	INCITEMENT	BAN CONV. THERAPIES	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
Japan	NO	LIMITED	LIMITED	NO	NO	NO	NO	LIMITED	NO	NO
Taiwan (China)	NO	YES	YES	NO	NO	NO	YES	YES	NO	YES

Source: ILGA Homophobia and the State dataset, 2020.

As of this writing, only the Tokyo Metropolitan Government has enacted antidiscrimination laws protecting LGB persons from discrimination in employment, while the LDP has steadfastly refused to legislate those employment protections nationally (Out Leadership CEO Brief 2022). In 2018, the Ministry of Health, Labor and Welfare issued a regulation requiring companies with ten or more employees to draft antidiscrimination policies for the workplace, but this regulation has not been strictly enforced or judicially reaffirmed as of yet. In 2018, the Japanese Ministry of Health outlawed discrimination against persons based on sexual identity in housing, but as recently as 2021 this discrimination continues to occur, and the regulation also remains largely unenforced (Nijiro News 2018). Whereas in Taiwan, the Employment Service Act of 2007 and the Act of Gender Equality in Employment of 2008 have been updated to include specific protections for sexual orientation and sexual identity, as discussed in the last Chapter.

Another reason for the difference between Japan and Taiwan in the environment SMOs face is that the early phases of the AIDS epidemic of the 1980s and 1990s was treated in Japan with a sort of nationalized panic. Media in Japan tended to report on AIDS as an “American disease” and conservative researchers and politicians alike successfully steered the national conversation on HIV/AIDS as one of blame – LGB rights movements, or “gay liberation” was understood in Japan to be the reason for the severity of the epidemic in the United States (Kawaguchi et al 1997; Tamagawa 2016). In one example, a member of the Ministry of Welfare in 1991 said, “America has the [greatest] number of AIDS patients, and an overwhelming majority are homosexual males. It could be said that gay liberation is the cause” (Tamagawa 2016, 166).

To be fair, similar levels of stigmatization and fear were present in Taiwan's response to HIV/AIDS well into the 21st Century (Yamamoto and Ito 2006). But over the last ten years, as public attitudes towards homosexuality have changed and laws protecting LGB Taiwanese from discrimination have been enacted, so too have the Taiwanese political and medical elites changed their attitudes towards HIV/AIDS. In 2015, Taiwan revised laws so as to lift the long-standing restrictions on the entry, stay, and residence of foreigners with HIV in Taiwan, and the HIV screening test for foreigners' health examinations was removed for those applying for residency in Taiwan and the Taiwanese CDC covers HIV treatment for Taiwanese nationals, whereas previously they had been solely responsible for their own care (HIVTravel.org 2021; People with HIV/AIDS Rights Advocacy Association of Taiwan 2021).

5.3.2.3 Empowering Values in Japan

Challenges to mobilization and barriers to SMO opportunity are part of the explanation as to why Japan has not legalized same-sex marriage. But values also play a key role. According to a 2018 Dentsu Diversity Lab survey, more than 65% of questioned LGB people said they had not come out to anyone at work or home (Fabre 2019). At first glance, this puzzling, since in many polls Japanese report higher levels of acceptance for homosexuality than in other Sinic East countries surveyed (Ipsos 2021; Pew Research 2019; World Values Survey 2020). But, these surveys are random sampling surveys, presumably without regard to the sexual identity of the respondent. When only LGB Japanese people are interviewed, they report feeling tremendous pressure to keep their sexual identities hidden out of respect for their families or out of a sense of obligation to societal harmony (Fabre 2019). In the last Chapter, anti-discrimination laws were pointed to as proxy measures for the embrace of empowering values in Taiwan, and the same could be done here, even though the lack of such protections in Japan has been discussed in the context

of barriers to SMO action as that is certainly the case. Indeed, my theory indicates that it is the *combination* of mobilization, opportunity, and values that leads to a greater likelihood of same-sex marriage legalization, so these variables are expected to interact with and potentially reinforce one another.

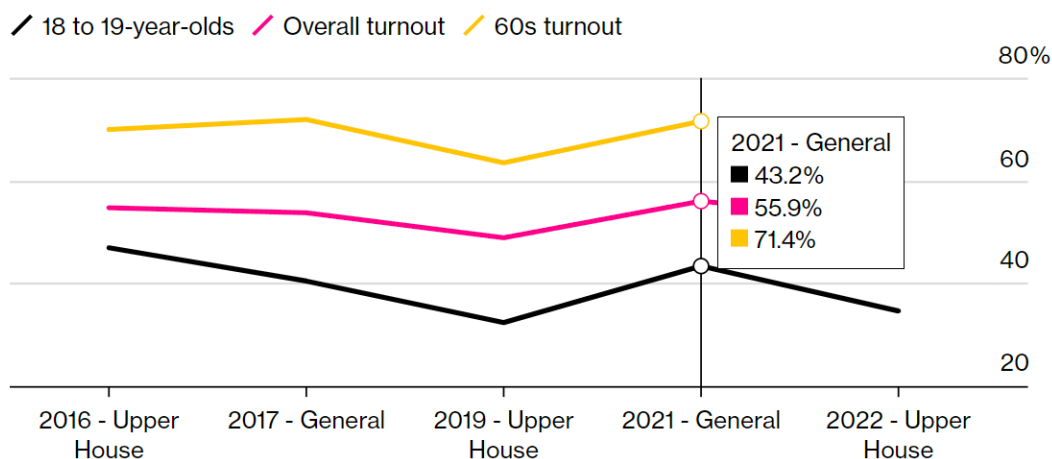
Another canary in the coalmine, as it were, for the embrace of post-material values is the degree to which same-sex couples move to build families of their own and adopt children. Same-sex couples in long-term relationships in Japan have been comparatively slow to adopt children. This is in part because Japanese courts tend not to process applications for adoptions from same-sex couples as only married couples are permitted to adopt children. Same-sex couples also have difficulty starting families because there are few reproductive assistance technologies legally available to them, because of the same family restrictions (Tamagawa 2016). Because so few same-sex couples actually raise children, the cultural norm in Japan to view same-sex relationships as a threat to the continuation of the family remains unchanged. When Taiwan's Marriage Equality Coalition pivoted their strategy to focus on LGB couples and their families, they were able to credibly do so because Taiwanese same-sex couples had been legally able to adopt children through second-parent adoption for some time (ILGA 2020).

5.3.3 Country Specific Variables in Japan

In addition to the challenges to mobilization, the barriers to SMO opportunities, and the limited embrace of empowering values in such a way so as to be liberating to LGB persons, there are some specific variables unique to Japan that may help explain the country's failure to legalize same-sex marriage. These include a cultural norm against youth involvement in politics and a lack of judicial independence where politically controversial issues are concerned.

5.3.3.1 Lack of Youth Involvement in Politics

Japan lowered its voting age in 2016 from 20 to 18. Yet, since then, youth political engagement has been on a downward trend (see Figure 5-8). Experts speculate on many factors in Japan that could be driving this youth disengagement, including an inability to decide on a party to support, a lack of feelings of voter efficacy, or being discouraged from being “political” in schools (Glass 2022; Lee and Inuma 2021). Gill Steele, a political scientist at Doshisha University in Kyoto, notes that the LDP-controlled Japanese political apparatus as well centrally administered educational institutions (Japan’s is a unitary system) has designed a system intended to actively discourage youth turnout. Steele says, “The Japanese state has cultivated or even mandated an atmosphere of depoliticization that discourages citizen interest and engagement” (Kuhn 2021). This can include the publication dense and jargon-laden political platforms, unexciting political reporting by Japanese media, and an educational environment which generally and actively discourages political debate and protest (Kuhn 2021).



Source: Ministry of Internal Affairs and Communications

NOTE: The turnout for people in their 60s is not yet publicly available for the 2022 upper house election

Figure 5-8: Youth Disengagement in Japan

This low voter turnout among Japan's youth could be one of the factors helping the LDP to maintain its six-decade-long grip on political control of the country, and Japanese youth certainly are not attracted to the LDP platform in significant numbers – which could also help contribute to youth apathy regarding politics. Japanese laws that ban student-led political organizing only help to solidify this disconnect. In addition, there is a significant generational gap between Japanese political elites and young would-be voters – Japanese youth simply don't have many inspiring political figures to look up to or get excited about. The controlling LDP is over 90% male and publicly hostile to issues, like gender equality or LGB rights, that matter to young Japanese. All of these institutional and cultural factors have created a political norm that Japanese young people simply tend not to be political. By contrast, multiple domestic and international news agencies reported in 2020 that a surge in youth turnout (Taiwan's voting age is set at 20) helped the DPP retain power in a tough electoral climate. The potential addition of youth voter turnout data to the RI could yield some significant findings.

5.3.3.2 Limited Judicial Independence

Reform to Taiwan's judicial system was discussed in the previous Chapter, and what we find in Japan is that there have not been similar reforms undertaken there which could have constituted a critical juncture for LGB SMOs to exploit. For example, Japan still practices internal control over its judges, potentially rendering the judiciary effectively much less independent of controlling political elites in cases that challenge the political status quo (Wang 2010). Japan has created a judiciary that is conservative and constitutionally restrained by design, in which judges who wish to retain their positions or move up within the ranks are pressured to rule in favor of the LDP in politically contentious cases. Judges who are more willing to challenge the status quo, on the other hand, find themselves effectively silenced – assigned to low-ranking positions in rural

courts. (Srour 2012; Wang 2010). The most noteworthy example of this judicial constraint imposed by political elites is the *Naganuma Jiken Hiraga shokan Case*⁵¹ in which the Japanese Supreme Court simply circumvented a lower court's ruling that would have impeded government plans for the construction of a Japanese Defense Force Airbase (Ramseyer and Rasmusen 2003; Tsuji 2011; Wang 2010). Thus, even reform-minded judges find themselves discouraged from challenging the ruling party or from reforming the judiciary in the way the 303 Movement did in Taiwan.

Japanese political elites also control the training of judges and prosecutors, as Taiwanese elites did in their own country prior to reform (Wang 2010). This gives the LDP considerable influence over the hiring and promotion of prosecutors and judges, essentially stacking the deck in their favor, judicially speaking. Looking at the judicial rulings issued in same-sex marriage cases or cases involving the recognition of consensual same-sex sexual relationships on any level, it appears this strategy has met with some success. In 2020, a Tokyo court ruled that cohabitating same-sex couples should have the same rights as opposite-sex couples, though stopping short of holding that bans on same-sex marriage were unconstitutional. This ruling was upheld by the Supreme Court of Japan in 2021. In 2021, a Sapporo Court ruled that bans on same-sex marriage were unconstitutional, but stopped short of compelling the legislature or bureaucracy to take any action to rectify the violation. Later, in 2022, an Osaka court held the opposite, that Japan's ban on same-sex marriage was constitutional – specifically ruling that marriage was legally defined as “being between one man and one woman” (Jiji Press 2021; Montgomery 2022). What is most

⁵¹ The Naganuma Case involved plans to build a Japanese Defense Force Airbase on federally protected forest land in Hokkaido. The Ministry of Agriculture removed the protections so that the base could be constructed, and locals sued. A lower court held that the removal of protections violated the Japanese Constitution as it did not serve the interest of the effected community. During the case, it came out that the presiding judge had been pressured to rule the other way by a senior member of the judiciary. When the government appealed the case to the Japanese Supreme Court, that Court simply focused on a different aspect of the case and ignored the question of constitutionality altogether, essentially nullifying the lower court's ruling without expressly overturning it. For more, see Ramseyer and Rasmusen 2003.

interesting about these examples is that they seem to offer compelling contradictions to generally favorable ratings on Japanese judicial independence by groups like the World Economic Forum and the World Justice Project. If measures of judicial independence are added, data that focuses more on outcomes in politically contentious cases might be preferable.

5.4 Conclusion and Lessons Learned for Japan

Concluding this subsection, Japanese SMOs face significant challenges to mobilization, limits on opportunities to avail themselves of TANs in a way that would allow them to challenge the status quo ban more effectively on same-sex marriage, and an embrace of empowering values that liberates only those who conform to traditional notions of sexuality. A political culture which discourages youth involvement in politics, and which is reinforced by institutional pressures on young people to politically disengage potentially adds to these challenges. And the ability of the LDJ to effect a kind of control over an already conservative judiciary could lessen the chances of SMOs successfully challenging bans on same-sex marriage at the highest level for at least the foreseeable future. Still, Japan is the next most likely case to legalize in the Sinic East, based on the theory tested by the RI. Future research endeavors might do well to include a refining of the RI to include variables on youth involvement in politics and judicial independence.

5.5 Summary

Japanese LGB persons have not formed a large-scale social movement due to a lack of a shared identity, though this may be slowly starting to change. The LDP's virtual stranglehold on political control of the countries for the last seven decades creates an environment in which political elites who might be willing to advocate for same-sex marriage rights are silenced in favor of more conservative, traditional voices. Those few LGB SMOs that do exist, like Occur, face barriers to mobilization which include a lack of political power enjoyed by LGB Japanese, in part

because of cultural attitudes about the nature of same-sex sexual relationships – which can even be internalized by LGB Japanese themselves – and also because of the way in which Japan’s LGB bar scene operates. Japanese SMOs face challenges interacting with LGB TANs due to decreased opportunities resulting from smaller Pride celebrations and a civil society environment that tends to be hostile to LGB rights demands. The embrace of empowering values in Japan may be impressive, but only insofar as Japanese are willing to conform to heteronormative cultural norms – the Japanese resistance to LGB rights is not religious in nature. In addition, Japanese youth who tend to feel much more liberally about issues related to sexuality and LGB rights are often actively discouraged from political action and therefore tend to disengage from the political process to a higher degree than other Sinic East democracies. And, finally, the conservative LDP is able to exert considerable pressure and influence over Japanese courts so as to close off potential legal opportunities for the advancement of LGB rights claims.

In the next Chapter, we will examine the cases of Mexico and Colombia in order to determine if similar patterns can be uncovered in the comparison. What we will find will be that aspects of Mexican democracy, including age of democracy, federalism, and regime type could provide the explanation for the differences in outcomes.

6 A COMPARISON OF LGB RIGHTS IN MODICUM LOW COUNTRIES:

COLOMBIA AND MEXICO

In this Chapter we will examine the cases of Colombia and Mexico. What makes this next case pair so interesting is that the two countries involved have both legalized same-sex marriage and share very similar ranks and scores in the RI overall and across all three dimensions (see Table 6-1 on this page and Figures 6-1 and 6-2). And, yet all Colombians enjoy legal access to same-sex marriage while about 20% of Mexico’s 128.9 million people still lack access despite a Mexican High Court ruling in 2019 declaring bans on same-sex marriage unconstitutional. What qualitative analysis will show is that it may be aspects of Mexican democracy, including age of democracy, federalism, and regime type could provide the explanation for the differences in outcomes. Given this possibility and given that Mexico and Colombia are most-similar systems, this subsection will take a slightly different approach than the last and focus on how domestic LGB SMOs used contentious politics within their respective opportunity structures (in these cases, the courts) to achieve their goals of getting same-sex marriage recognized as being legally equal to heterosexual marriage. I will then move on to explore the difference in outcomes. But, first, I will explore the theory in these cases to show that mobilization, values, and opportunities for TANs helped explain why both states legalized – though the results in Colombia fully extend marriage rights to same-sex couples while in Mexico this is still done unevenly. But first, a refresher on what makes a country like Colombia or Mexico “Modicum Low” and why it matters.

Table 6-1: Comparison of Colombia and Mexico in the RI

	Rainbow Index		Mobilization		Transnational		Values	
	Rank	Score	Rank	Score	Rank	Score	Rank	Score
Mexico	20	761	21	619	22	933	37	639
Colombia	24	727	21	619	11	981	60	499

Source: *Robinson Country Intelligence Index*, Georgia State University.

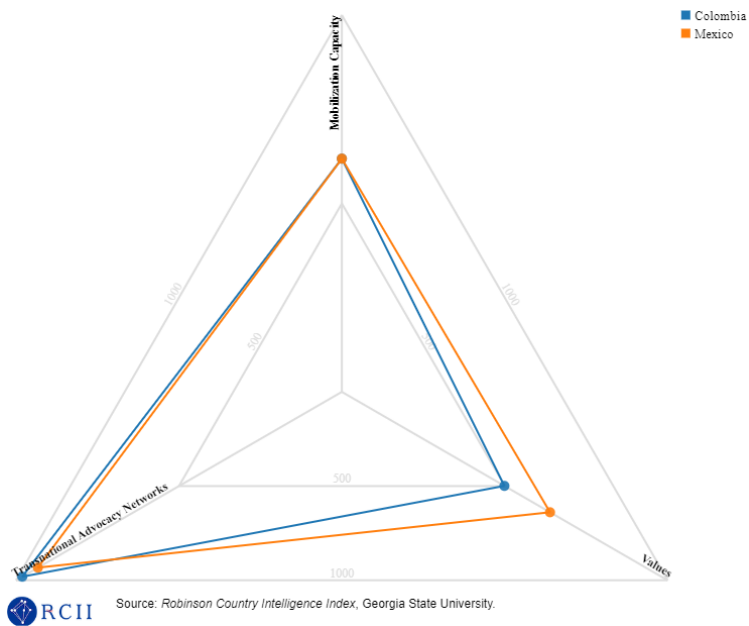


Figure 6-1: Mobilization, TANs, and Values in Colombia and Mexico

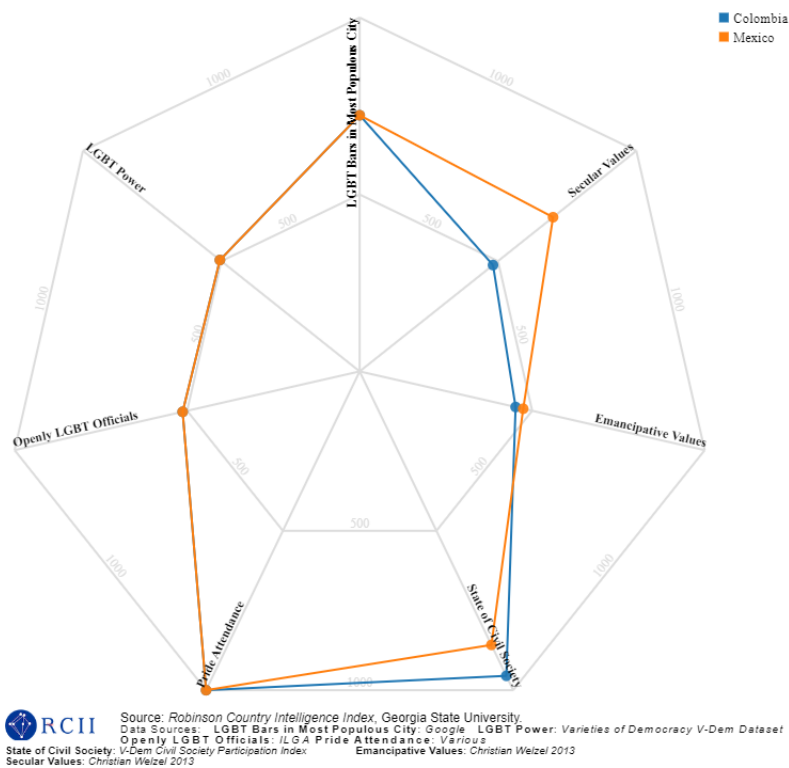


Figure 6-2: Similar Performance, Different Outcomes

6.1.1 Refresher on Modicum Low Classification

As a refresher, Modicum Low Stage cluster countries have largely traditional economies but may also be in the early industrial stages and likely have low but increasing levels of technological advancement. Some basic freedoms may be denied or inaccessible, but some may be protected, and democratization is often in its early stages. The classification of these countries as Modicum Low comes directly from the work of Christopher Welzel in *Freedom Rising*, (Table 1-3, pages 23-24) but the classification can be defended by examining data from Freedom House, the CIA World Factbook, and the RCII on the state of democracy; the state of economic development; the degree of internet communication technology (ITC) adoption; and the level of internet freedom in each country.

An examination of this data reveals only two countries in the Modicum Low Stage cluster in the RI, Peru and Tunisia, rank as “free” in terms of their civil liberties and political rights – and they are only barely so. This means that most countries in the Modicum Low Stage cluster may not have fully free and fair elections, may not have competitive elections, may not have governments that are accountable to the public, may have high levels of corruption, may not have free and independent media, may not have freedom of religion and/or belief, and may not have academic freedom. Individuals in these countries may not enjoy freedom of expression or assembly, NGOs in these countries are not free to work without state pressure or interference, and labor unions may not free to organize. Rule of law in Modicum Low Stage cluster countries may be lacking, as countries tend not to have independent judiciaries and citizens do not benefit from due process or freedom from the illegitimate use of force. Finally, citizens in Modicum Low Stage countries may not enjoy personal autonomy, as they may not have freedom of movement, freedom

of employment, the protection of private property, and citizens may have low levels of social freedom, equality of opportunity, and freedom from exploitation (see Table 6-2).

Table 6-2: Justification of Modicum Low Stage Classification

Country	Political and Civil Rights	% GDP from Agriculture	% GDP from Industry	ICT Adoption	Internet Freedom
Albania	66	21.7%	24.2%	590	na
Armenia	55	16.7%	28.2%	679	75
Belarus	11	8.1%	40.8%	na	38
Bolivia	66	13.8%	37.8%	510	na
Bosnia and Herzegovina	53	6.8%	28.9%	556	na
China	9	7.9%	40.5%	825	10
Colombia	65	7.2%	30.8%	609	66
Egypt	18	11.7%	34.3%	453	26
Georgia	60	8.2%	23.7%	762	76
India	67	15.4%	23.0%	333	51
Jordan	34	4.5%	28.8%	469	49
Kyrgyzstan	28	14.6%	31.2%	549	56
Lebanon	43	3.9%	13.1%	421	52
Malaysia	51	8.8%	37.6%	697	58
Mali	33	41.8%	18.1%	282	na
Mexico	61	3.6%	31.9%	613	61
Morocco	37	14.0%	29.5%	491	52
Nicaragua	30	15.5%	24.4%	522	na
Peru	71	7.6%	32.7%	507	na
Qatar	25	0.2%	50.3%	765	na
Russia	20	4.7%	32.4%	840	30
Serbia	64	9.8%	41.1%	581	na
Tunisia	71	10.1%	26.2%	549	64
Turkey	32	6.8%	32.3%	639	35
Ukraine	60	12.2%	28.6%	635	61
Uzbekistan	11	17.9%	33.7%	na	27
Zambia	52	7.5%	35.3%	268	59

Political and Civil Rights scale: 0-34 Not Free; 35-70 Partly Free; 71-100 Free

ICT Adoption scale: 0 (lowest adoption) to 1000 (highest adoption)

Internet Freedom scale: 0 (least free) to 100 (most free)

Sources: Freedom House 2020; CIA World Factbook 2021; RCII 2021

Before going further, it would be helpful to consider what it is that is meant by the term “democracy” in the context of freedom and civil liberties mentioned in Freedom House reports. Political scientists often define democracies according to their procedures and outcomes, specifically on whether or not a country’s decision-making political elites are elected through free and fair elections and in which citizens are guaranteed by law certain basic negative freedoms, like

freedom of speech and association, to allow for those decision makers to be held accountable between elections (Schumpeter 1943; Dahl 1971; Huntington 1968 and 1991). Colombia and Mexico both satisfy these minimum criteria, as evidenced by their “partly free” rankings in Freedom House. Both countries score very well in the procedural elements of democracy. But there are also important principles of democracy that go beyond the procedural.

The degree to which all citizens within a democracy are equal before the law is necessary for a country to be considered democratic, over and above procedural concerns like elections (Beetham 1993 and 1994). To be sure, there are stages of democracy – not all democracies are equal. A simple breakdown of these stages might be electoral democracy, or minimal procedural democracy; liberal democracy, or democracy that has free and fair and competitive elections but also basic protections in place for at least some negative rights; and advanced democracies, or democracies which satisfy the previous conditions but go beyond (Collier and Levitsky 1997; Schedler 1998; Levitsky and Way 2002; Levitsky and Way 2010). Mexico, at least, does not yet qualify as an advanced democracy, as it only began to democratize in the early 21st Century and still has deficits in civil and political rights (Levitsky and Way 2010; Freedom House 2020). It is debatable whether either Colombia or Mexico would qualify as a liberal democracy, though Colombia is probably a stronger case. In any case, they can both at least be considered democracies in the minimal sense that also provide some rights protections to citizens – what might be termed flawed democracies. What is important for this research is that even in minimal democracies (democracies which moved beyond competitive authoritarianism but not much further) opportunity structures for SMOs exist.

Economically speaking, countries in the Modicum Low cluster tend to generate significant amounts of their economic wealth in agriculture and industry, though several are starting to

develop significant service industry capability. Countries in the Modicum Low cluster also tend to have comparatively lower rates of ICT adoption, which means citizens have limited access to fixed-broadband internet, mobile broadband internet, mobile cellphone subscriptions, fiber internet subscriptions, as well as comparatively low rates of internet use, though this is changing as the forces of globalization make it harder for governments to keep consumer internet technologies out of the hands of their citizens and as those technologies become cheaper and more user-friendly (Freedom House 2020, also see Table 5-3 on previous page). And those who do gain access to the internet in Modicum Low cluster countries tend not to enjoy high levels of internet freedom. For example, in Georgia – the highest scoring Modicum Low country for internet freedom as measured by Freedom House – citizens encounter obstacles to free access, such as infrastructural limitations that prevent high levels of internet penetration, and violations of user rights due to only nominal protections being in place as well as limits on the non-independent judiciary to enforce those protections (Freedom House 2020). These economic considerations are important because inclusive economic development can lead to the deepening of democratic institutions, though development by itself is not sufficient to do so (Huntington 1968 and 1991; Acemoglu and Robinson 2012; Fukuyama 2014).

An examination of RI data on countries in the Modicum Low stage reveals similar conditions that further justify the classification from the perspective of LGB rights. Using RI scores of 1-1000, with 1000 being the best possible score for any variable, an examination of the data shows that in terms of LGB Bars in Most Populous City, Openly LGB Officials, LGB Power, Pride Attendance, State of Civil Society, Emancipative Values, and Secular Values most countries in the Modicum Low cluster perform very poorly on some or many of these measures, meaning that the ability of LGB persons to mobilize, the propensity of the general society to be responsive

to LGB rights claims made by SMOs, and opportunities to interact with TANs are both comparatively low. For example, there tend to be few gay bars in the most populous cities of Modicum Low countries, meaning that those LGB SMOs have little or no safe space in which to emerge or to coalesce. As discussed in Chapter 2, gay bars are important because the social pressure to hide their identity frequently denies members of the LGB community the use of family, workplace, or neighborhood as tools for identity formation, the development of a group consciousness, and mobilization – all options available to many other marginalized groups (Wald, Button, and Rienzo 1996). Because of that limitation, the gay bar has typically served as the primary safe space for organization, mobilization, and calls to action. Interestingly, only two countries in the Modicum Low Cluster have significant Pride celebrations – Mexico and Colombia (see Table 6-3).

Table 6-3: Modicum Low Stage Cluster Countries in the RI

	LGBT Bars in Most Populous City		Openly LGBT Officials		LGBT Power		Pride Attendance		State of Civil Society		Emancipative Values		Secular Values	
	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
Colombia	12	724	13	513	42	505	1	1000	24	955	46	452	65	482
Mexico	12	724	13	513	42	505	1	1000	55	858	44	474	19	699
China	18	651	41	1	72	1	24	1	100	1	65	384	37	636
Turkey	18	651	41	1	72	1	24	1	97	193	74	325	83	308
Bolivia	18	651	41	1	42	505	24	1	70	706	64	385	50	565
India	23	562	24	318	42	505	24	1	88	344	77	279	90	240
Lebanon	35	448	41	1	72	1	24	1	53	860	55	424	52	552
Morocco	35	448	41	1	72	1	24	1	81	504	83	247	96	129
Peru	35	448	24	318	72	1	24	1	42	908	60	406	48	583
Serbia	35	448	32	205	12	795	24	1	73	693	52	433	40	623
Nicaragua	35	448	41	1	42	505	24	1	92	296	68	359	54	529
Albania	64	286	41	1	12	795	24	1	47	895	54	430	77	392
Armenia	64	286	41	1	72	1	24	1	28	949	81	250	43	610
Belarus	64	286	41	1	42	505	24	1	93	289	58	415	6	836
Egypt	64	286	41	1	72	1	24	1	98	164	99	56	99	49
Georgia	64	286	41	1	42	505	24	1	22	959	76	308	81	331
Jordan	64	286	41	1	72	1	24	1	77	632	94	133	98	52
Kyrgyzstan	64	286	41	1	72	1	24	1	74	650	91	181	75	411
Malaysia	64	286	41	1	72	1	24	1	69	716	50	439	45	590
Tunisia	64	286	41	1	72	1	24	1	45	898	80	253	76	410
Ukraine	64	286	41	1	12	795	24	1	61	813	62	398	7	825
Zambia	64	286	41	1	72	1	24	1	76	634	61	399	51	560
Bosnia and Herzegovina	64	286	41	1	42	505	24	1	35	935	57	418	67	474
Mali	89	1	41	1	42	505	24	1	50	872	85	231	91	236
Libya	89	1	41	1	72	1	24	1	56	857	97	112	92	228

Source: *Robinson Country Intelligence Index*, Georgia State University.

It is telling that the two countries in the Modicum Low cluster that tend to score highest in the RI variables in Table 6-3 are also the two countries in the cluster in which LGB SMOs have made the most progress on their rights claims.

6.1.2 Initial Comparison of Colombia and Mexico

Colombia and Mexico both lead the Modicum Low cluster in overall RI score, and their scores are only 34 points apart on a 1-1000 scale (see Figure 6-3). Previously conducted quantitative analysis indicates that Mexico and Colombia have the highest probability for same-sex marriage legalization in their cluster, to which the map will also attest. That same analysis

also shows that Mexico only barely crossed the 50% probability threshold, but also that as countries in the Modicum Low cluster scored higher in the RI, their probability for same-sex marriage legalization increased at a slightly steeper rate than countries in other clusters (you may refer to Chapter 3, Figure 3-13).

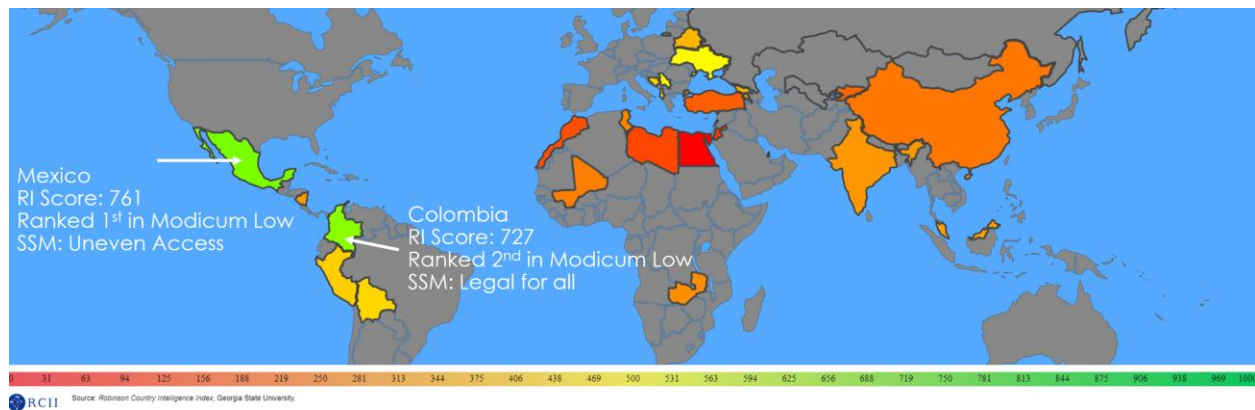
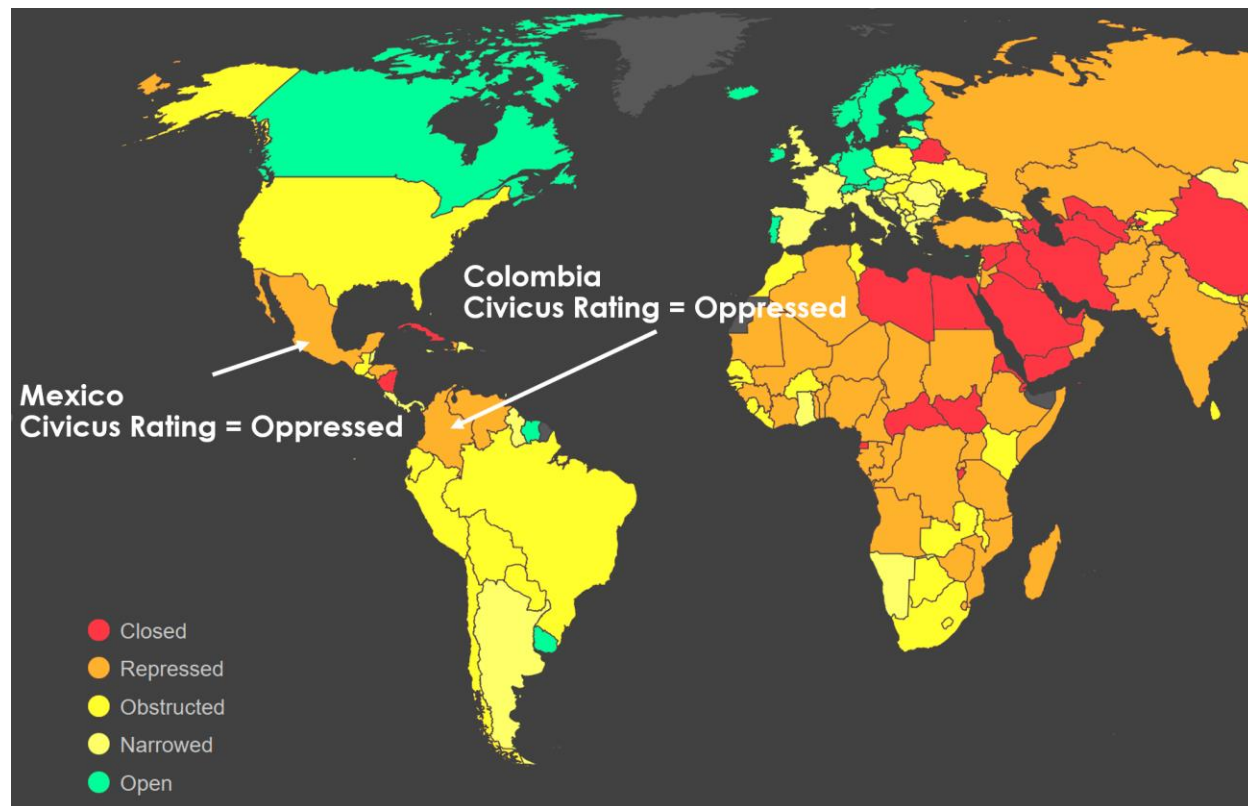


Figure 6-3: Modicum Low Cluster Mapped

Another similarity is that according to Civicus State of Civil Society Report 2020, every country in the RI's Modicum Low cluster is either obstructed or repressed (see Figure 6-4), meaning that either "civic space is heavily contested by power holders, who impose a combination of legal and practical constraints on the full enjoyment of fundamental rights"; or that "civic space is significantly constrained [and] active individuals and civil society members who criticize power holders risk surveillance, harassment, intimidation, imprisonment, injury and death" (Civicus 2020). This tracks somewhat with arguments made by Encarnación (2011 and 2016) that TANs are not the cause of same-sex marriage policy diffusion for many reasons but have extended rights and protections of citizenship to LGB persons for primarily domestic reasons and without significant assistance from the outside (Encarnación 2016). For example, in Mexico activists for the rights of indigenous peoples still face high risk of disappearances, murders, and imprisonments while in Colombia social, community, environmental, territorial, community, and human rights

activists opposed to “predatory extractive megaprojects” by mining conglomerates have been the victims of attacks and murders (Civicus 2021^b and 2021^c). Limitations to the effectiveness of TANs in Colombia and Mexico will be discussed in more detail later in this Chapter. For now, it will suffice to point out these similar challenges.



Source: Civicus 2021

Figure 6-4: The State of Civil Society in Mexico and Colombia

6.1.3 The RI Theory of same-sex marriage Legalization in Colombia

It is surprising that Colombia should have legalized at all. Mexico also scores and ranks better in the Modicum Low cluster than does Colombia, so it is doubly surprising that Colombia should have legalized same-sex marriage and provided for universal access to same-sex marriage rights while Mexico still suffers from uneven access to the same right. How same-sex marriage came to be legalized in Colombia will be the focus of this subsection.

The theory that the combination of mobilization capacity, values, and TANs increase the likelihood that SMOs will be able to take advantage of opportunity structures to successfully pressure governments to legalize same-sex marriage holds in Colombia. Pride celebrations, LGB bars, and out politicians are all important to changing norms in that they all provide visibility for same-sex couples. As early as 2010, a poll conducted by local newspaper *El Tiempo*, 63% of Bogota residents supported the right of same-sex couples to marry (Herlinger 2015). Lobbying and public campaigns from right wing groups eroded that support down to 29% by 2014 (Semana 2014). But change to the social and political culture has occurred despite these counter-efforts, as is evidenced by the 48% of Colombians who responded that LGB persons should be accepted (Gallup 2020). This section will demonstrate that this is likely in no small part due to Pride celebrations, LGB bars, and out politicians which help give domestic SMOs the tools they need.

6.1.3.1 Mobilization Capacity in Colombia

Bogota is home to 43 LGB bars and/or nightclubs (or gay bars for short). This makes Bogota the second “gayest” city in the Modicum Low cluster (see Table 6-4). The Theatron in Bogota’s *Chapinero* district – Bogota’s gayborhood – is known as “one of the best gay bars in Latin America” and is said to be the largest gay bar in the world, with a capacity of 8,000, seven rooftop terraces, and five floors of music, dancing, and entertainment (Culture Trip 2021; Siemasko 2021). Bars also remain community focal points during annual Pride celebrations, which are crucial to the success of the movement, in Colombia and beyond.

Table 6-4: Bogota's LGB Bar Scene

LGBT Bars in Most Populous City

Colombia ranks: 12 in the world, 1 in Modicum-Low, 2 in Latin America, 2 in Latin America.			
WORLD	Modicum-Low	Latin America	Latin America
Canada 4	Colombia 1	Brazil 1	Brazil 1
France 5	Mexico 2	Colombia 2	Colombia 2
Greece 6	Bolivia 3	Mexico 3	Mexico 3
United Kingdom 7	China 4	Bolivia 4	Bolivia 4
United States 8	Turkey 5	Chile 5	Chile 5
Japan 9	India 6	Ecuador 6	Ecuador 6
New Zealand 10	Lebanon 7	Argentina 7	Argentina 7
Philippines 11	Morocco 8	Dominican Republic 8	Dominican Republic 8
Australia 12	Nicaragua 9	Guatemala 9	Guatemala 9
Austria 13	Peru 10	Nicaragua 10	Nicaragua 10
Colombia 14	Serbia 11	Peru 11	Peru 11
Denmark 15		Uruguay 12	Uruguay 12
Mexico 16			
Spain 17			
Bolivia 18			
China 19			
Italy 20			
Latvia 21			
Turkey 22			
Belgium 23			
Chile 24			

Source: *Robinson Country Intelligence Index*, Georgia State University.
Data Sources: **LGBT Bars in Most Populous City**: Google

When politicians or other elected or appointed officials come out publicly as LGB, they become very visible symbols of the community and are well-positioned to press the movement's rights claims. There is little cross-national comparative research on descriptive representation of LGB persons in country legislatures, but the research that does exist shows that it almost certainly matters. As of 2011, according to a study of out LGB politicians, the only Modicum Low country with any out members of the national assembly was Mexico (Reynolds 2013). However, since then Colombia has had a handful of politicians come out – including current mayor of Bogota Claudia Nayibe López Hernández, who once served as a senator in the Colombian upper house from 2014-2018 and is the first openly-lesbian legislator elected in her country; and her now-wife Angélica Lozano Correa, who currently serves in the Colombian senate and is the first openly bisexual elected to the national legislature (Corrales 2014; Associated Press 2019).

Much like other minorities seeking to advance rights claims, descriptive representation of the LGB community – that is the presence of out LGB representatives in the national assembly –

makes it more likely that a country will adopt LGB-friendly policies (Reynolds 2018 and 2013). This is confirmed by studies done on state legislatures in the United States (Schwindt-Bayer and Mishler 2005) and on the national legislatures in the U.K., the U.S. and Canada (Rayside 1998). In addition, qualitative studies on the U.S. state legislatures of California, Massachusetts, Minnesota, Oregon, Virginia, and Washington show that out representatives can advocate for equality-friendly policies and promote LGB rights claims in ways that non-LGB allies cannot. These out representatives frequently act as “educators” for their fellow representatives, increasing the likelihood that they will also support equality-friendly legislation (Haider-Markel 2007 and 2010). But, even in cases where their efforts are unsuccessful, the presence of openly LGB representatives – and indeed politicians at any level, like mayors or governors or secretaries of departments – positively affects the views on equal rights and perceptions of gay people held by the electorate of the country where they serve (Reynolds 2018 and 2013; Corrales and Pecheny 2010).

In part thanks to change of opinion on same-sex marriage – gradual though it was – driven in part by the presence of a robust bar scene, large and successful Pride demonstrations, and political allies in the form of out politicians and elites, LGB SMOs were able to mobilize capacity domestically and press the Colombian government to address their rights claims on greater equality. Through their efforts, groups like *Caribe Afirmativo* and the *Santamaria Foundation* helped make Colombia the first country in the world to recognize LGB people as a group as victims targeted for violence during armed conflict (HRC 2017). Quoting the director of *Caribe Afirmativo*,

“Four thousand LGB people and more than 7,000 acts of violence, including murders, forced displacement and threats, are recognized in the [peace] process [between the Colombian government and armed guerrilla rebels]” (HRC 2017).

However, as important as successes like this are, efforts to get same-sex marriage legalized through political opportunities failed as they constantly ran up against unified and well-organized pressure campaigns and lobbying from right wing and religious groups like the Evangelical Confederation in Colombia.

6.1.3.2 Opportunities for TANs in Colombia

In 1982, when Bogota held its first Pride parade, 30 people took part in the march. In 2019, that number had swollen to 200,000 according to reported attendance records (Deri 2019), making it one of the largest in Spanish-speaking Latin America and the second largest in the Modicum Low countries, behind Mexico which will be examined later in this Chapter. This is of particular importance for, as repertoires of contention go, Pride celebrations can often be a winning strategy.

To quote Javier Corrales at length on the value of Pride:

Like good old leftists, LGB groups understand the power of a massive protest, especially in the streets. But their approach to taking the streets is not to go on strike, interrupt traffic during rush hour, shut down schools and hospitals, or vandalize private property, but rather, throw an annual gay pride march. A gay pride march achieves all the empowering feats that any protest is meant to achieve, with almost none of the inconveniences. ... Protests have serious negative externalities, but gay pride marches minimize them. They [occur] only once a year. They are even scheduled on weekends so as to minimize disruptions. Furthermore, gay pride marches have a different tone than your traditional protest marches. ... Marchers wear flamboyant costumes or very little costumes, thus providing entertainment for all tastes. Local fashions and international trends are on full display. This festiveness and showiness gives Gay pride marches an intrinsic popular appeal that other leftist marches lack (Corrales, 2010).

This repertoire pays off. According to Gallup polling, public approval for same-sex marriage country-wide in Colombia has steadily increased since 2011. Approval for same-sex marriage in Colombia rose to 46% in 2021 and has been steadily rising for years, with another 21% saying that same-sex couples should have some recognition other than marriage for their relationships (Ipsos

2021). In addition, data from this set of polling shows that the Colombian public overwhelmingly agrees that SMOs and other groups have a right to protest peacefully (74% to 25%), and they approve in principle of groups that protest peacefully (96% to 3%). But, just as important, Pride celebrations have high levels of buy-in from LGB persons who are not formally associated with an LGB SMO – which effectively solves the problem of free-riders faced by all SMOs. For illustration of that point, a national LGB community survey conducted by Gallup in 2013 in the United States revealed that 77% of respondents agreed that Pride events increase popular acceptance of LGB people (Gallup 2013). Though, those same respondents indicated that, while Pride events were important for increasing acceptance of LGB persons, publicly visible LGB politicians and officials were even more so, and this potentially translates into increased opportunities for TANs.

Unfortunately, as we have already seen, Colombian rights SMOs face an oppressive civil society system. But there are other reasons why SMOs in Colombia (and much of the rest of the Latin America) tend not to avail themselves of opportunities to engage with western-dominated LGB TANs. The first is that domestic LGB SMOs in Latin America, including Colombia, began linking LGB rights to the larger conversation on human rights earlier even than many SMOs in the United States or Europe – Argentinian SMOs were the first. Secondly domestic LGB SMOs in the developing world – and this includes Modicum Low countries – tend to make rights claims through the lenses of domestic value systems which may not be shared by American or European LGB SMOs like the HRC. Third, it is widely recognized by domestic LGB SMOs in Latin America, including Colombia, that evangelical and conservative SMOs opposed to LGB rights who are becoming more and more active in places like Latin America and Africa are very often from the United States (Encarnación 2016). So, there tends to be a general distrust of outside actors in

Colombia that is not found in places like Taiwan. As Encarnación put it, “conventional wisdom [of LGB rights scholars] fails to recognize that external influence is a double-edged sword...” (6). Based on this, it’s possible that the same RI framework that incorporates TANs on an equal weighting with mobilization and values may be defensible for the whole universe cases, but not ideal for Modicum Low Cluster countries or Latin America.

6.1.3.3 Values in Colombia

From a values perspective, Colombia is an interesting case in that, out of all of the countries that have legalized same-sex marriage to-date, the approval for same-sex marriage in terms of public opinion in support of same-sex marriage is one of the lowest – only Costa Rica, Ecuador, and Malta are lower. It also has lower rates of respondents to the World Values Survey who indicate that homosexuality is “justifiable”, acceptance of gays and lesbians, and support for same-sex marriage legalization than Mexico (see Table 6-7). Certainly, these are imperfect measures of the embrace of Emancipative and Secular Values in Colombia with relation to same-sex marriage. But they are a start. For better insight, we might examine actual policy outcomes as manifestations of the acceptance of post-material values by political elites. What we see in Colombia, and indeed in Mexico as well (though to a lesser extent), is that protections for LGB persons in these countries are greater even than in some higher-scoring countries in the RI, some of them legalizers (see Tables 6-5 and 6-6).

Table 6-5: Policy-Driven Outcomes in Colombia and Mexico

COUNTRY	PROTECTION						RECOGNITION			
	CONST.	BROAD PROT.	EMPLOY.	HATE CRIME	INCITEMENT	BAN CONV. THERAPIES	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
Colombia	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
Mexico	YES	YES	YES	LIMITED	YES	LIMITED	YES	LIMITED	LIMITED	LIMITED

Source: ILGA 2021

Table 6-6: Policy-Driven Outcomes in Selected RI Countries

COUNTRY	PROTECTION						RECOGNITION			
	CONST.	BROAD PROT.	EMPLOY.	HATE CRIME	INCITEMENT	BAN CONV. THERAPIES	SAME SEX MARRIAGE	CIVIL UNIONS	JOINT ADOPTION	SECOND PARENT ADOPTION
Burkina Faso	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
South Africa	YES	YES	YES	NO	YES	NO	YES	YES	YES	YES
Tunisia	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Argentina	NO	LIMITED	LIMITED	YES	NO	LIMITED	YES	YES	YES	YES
Brazil	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES
Chile	NO	YES	YES	YES	NO	NO	NO	YES	NO	NO
Colombia	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
Guatemala	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Mexico	YES	YES	YES	LIMITED	YES	LIMITED	YES	LIMITED	LIMITED	LIMITED
Uruguay	NO	YES	YES	YES	YES	LIMITED	YES	YES	YES	YES
Canada	NO	YES	YES	YES	YES	LIMITED	YES	YES	YES	YES
United States	NO	LIMITED	YES	YES	NO	LIMITED	YES	LIMITED	YES	YES
Japan	NO	LIMITED	LIMITED	NO	NO	NO	NO	LIMITED	NO	NO
Lebanon	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Philippines	NO	LIMITED	LIMITED	NO	NO	NO	NO	NO	NO	NO
Thailand	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
Vietnam	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Czech Republic	NO	YES	YES	NO	NO	NO	NO	YES	NO	NO
France	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
Germany	NO	YES	YES	NO	NO	YES	YES	NO	YES	YES
Latvia	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
Serbia	NO	YES	YES	YES	YES	NO	NO	NO	NO	NO
Spain	NO	YES	YES	YES	YES	LIMITED	YES	YES	YES	YES
Ukraine	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO
United Kingdom	NO	YES	YES	YES	YES	NO	YES	YES	YES	YES
Taiwan (China)	NO	YES	YES	NO	NO	NO	YES	YES	NO	YES

Source: ILGA 2021

Table 6-7: Values and LGB Rights in Legalizing Countries

	Justifiability of Homosexuality	Acceptance of Gays and Lesbians	Support for Legal SSM
Argentina	36%	72%	73%
Australia	62%	84%	62%
Belgium	na	75%	72%
Brazil	29%	77%	55%
Canada	69%	89%	75%
Colombia	24%	61%	46%
Costa Rica	na	na	35%
Denmark	86%	83%	86%
Ecuador	18%	50%	33%
Finland	63%	82%	64%
France	51%	76%	59%
Germany	68%	71%	68%
Iceland	85%	89%	89%
Ireland	na	80%	66%
Luxembourg	na	81%	83%
Malta	na	85%	41%
Mexico*	24%	65%	63%
Netherlands	80%	91%	84%
New Zealand	57%	83%	50%
Norway	78%	92%	72%
Portugal	26%	71%	59%
South Africa	17%	64%	59%
Spain	60%	88%	76%
Sweden	81%	90%	79%
Taiwan	22%	57%	61%
UK	62%	77%	73%
US	48%	81%	59%
Uruguay	41%	84%	75%

Sources: World Values Survey 2022; Equaldex 2022; Social Progress Imperative 2022.

What Table 6-6 shows is that Colombia has more protections for LGB persons than Argentina, Germany, Mexico, the US, and Taiwan. This despite Colombia being one of the most religious countries in the Modicum-Low Cluster and in Latin America – only 5% of Colombians reported no religious affiliation in a Pew Research poll conducted in 2014 (Encarnación 2016). Figure 6-2 earlier in this Chapter does illustrate that in the RI Mexico is significantly more secular than Colombia, but that both countries are almost equal in their embrace of the Emancipative Values of autonomy, choice, equality, and voice. The policy outcomes illustrated in 6-7 bears this out, if even only in the case of political elites. This would seem to indicate that, at least for the cases of Mexico and Colombia, Emancipative Values are more important than Secular Values to the outcome. It also reinforces the possibility that policy outcomes are a better measure of the degree to which empowering values are embraced by decision-making elites who, having embraced these values, might be more inclined to legalize same-sex marriage in the face of popular opposition.

Evidence of this can be found in the fact that Colombian president Juan Manuel Santos indicated his support for same-sex marriage legalization in 2014 when he said, “Marriage between homosexuals to me is perfectly acceptable and what’s more I am defending unions that exist between two people of the same sex with the rights and all of the same privileges that this union should receive” (Lavers 2014). In the next subsection of this chapter, the role of the courts in Colombian same-sex marriage legalization is examined, and it is telling that Santos also indicated that he would move his administration to accept and implement the rulings of the Colombian high court.

6.1.3.4 Opportunity Structures in Colombia

In 2007, LGB SMOs came close to realizing their goal of greater equality for same-sex couples in Colombia. The lower house of the Colombian Congress approved a civil union bill 62 to 43 on Thursday night after a long lobbying effort by gay rights activists, who argued that “gay couples have a human right to the benefits that heterosexual couples enjoy” (Forero 2007). So effective had the pressure campaign to get the civil unions bill passed that then Colombian president Álvaro Uribe, a conservative Catholic, was expected to sign the bill into law. However, several conservative senators in the upper house abused a procedural formality to defeat the bill in its final stage (Goodman 2007). Similar, subsequent attempts to pass civil union bills in the legislature failed.

LGB groups in Colombia, as in other countries, pursued multiple opportunities to press their claims, including through legal opportunity structures in the judiciary, and to much more success. On April 28, 2016, Colombia became the fourth country in Latin America to legalize same-sex marriage, following Argentina, Uruguay, and Brazil. The country’s Constitutional Court, by a 6-3 vote, ruled that that “all people are free to choose independently to start a family in keeping with their sexual orientation ... receiving equal treatment under the constitution and the law” (Pew 2019). The Court had already ruled, in 2011, that same-sex couples constituted a family (Brodzinsky 2016). In fact, in the twenty years between 1991 and 2011, the Colombian Constitutional Court ruled on the rights of same-sex couples a total of seven times. These seven cases established the rights of homosexuals as individuals for the first time in Colombian history and marked a shift in thinking on LGB rights and laid the legal framework for eventual marriage recognition. It is noteworthy that each of the seven rulings was either unanimous or supported by a sizeable majority of the Court and were often delivered by otherwise conservative jurists (Bonilla

2011). These legal victories were necessary for legalization as legislative progress had been previously blocked. This section will briefly trace the process by which this legalization through the courts occurred and then analyze how LGB bars and Pride celebrations in Bogota, as well as out LGB officials may have influenced the Court.

The seven cases that confer basic human rights for same-sex couples fall into three stages: recognition, consolidation, and expansion (see Table 6-8). In the recognition stage, the Court establishes that same-sex couples exist as citizens and are therefore entitled to legal recognition and have rights and obligations like any other. In the consolidation phase, the Court rules in various cases that same-sex couples may constitute *de facto* marital unions, even if they are not *de jure* recognized as such. In the expansion phase, the Court rules that legal norms governing heterosexual couples are only constitutional if they are equally applied to homosexual couples (Bonilla 2011; Bonilla and Ramirez 2014; Corrales and Coombs 2012; Wilson and Gianella-Malca 2019).

Table 6-8: Legal Foundation for Legalizing Same-Sex Marriage in Colombia

Case	Stage	Ruling
C-075/2007	Recognition	Court acknowledges the existence of same-sex couples. Applies Law 54 to all couples regardless of sex, so that same-sex couples may form de facto unions. Court states that this decision is limited only to Law 54.
C-811/2007	Consolidation	Norms governing heterosexual couples in the healthcare system also apply to same-sex couples.
C-336/2008	Consolidation	Members of same-sex couples are entitled to survivor benefits.
C-798/2008	Consolidation	Members of same-sex couples are entitled to receive alimony after separation.
T-856/2007	Consolidation	Tutela ruling indicating that members of same-sex couples may be affiliated for the purposes of social security.
T-1241/2008	Consolidation	Tutela ruling that re-affirms C-336/2008
C-029/2009	Expansion	Ruled that criminal, civil and commercial, social security, and political norms as well as those relating to armed conflict apply equally to same-sex couples as they do heterosexual ones. Court rules for the first time that dignity of person is inalienable.

Source: Bonilla, Daniel. "Same-Sex Couples in Colombia: Models for the Legal and Political Recognition." 2011

Before proceeding further, it is necessary to explain a feature of Colombia's 1991 constitution: the *acción de tutela*. The tutela is established in Article 40 (6) and Article 241 of the Colombian constitution, the latter of which reads, in part, that the Court must "decide on the petitions of unconstitutionality brought by citizens against the laws, both for their substantive content as well as for errors of procedure in their formation" (Bonilla and Ramirez 2014; Constitution Project, 2021). In practice, this means that any citizen can petition before the Court that their constitutional rights have been violated by a specific law, regulation, or action and the Court can rule in a short amount of time. This is important, and a feature this Chapter will return to later.

Bonilla argues that there are three different normative models that Colombian judges used in these seven cases to understand, evaluate, and rule on issues involving same-sex couples: the model of dignity, the model of equality, and the model of autonomy (112; Bonilla and Ramirez 2014) These normative models form the basis of the basic rights spelled out in the Colombia constitution: the right to equality, the right to free development of personality, and the right to live in dignity.

The model of autonomy argues that "issues related to sexual and emotional life concern only the individuals involved" and that "individuals have the right to be 'left alone'" (Bonilla 2011, 119). This demands a hard separation between the private and public spheres. The model of equality demands that like things be treated alike, affirming the basic equality of all human beings. This model recognizes violations in the weak sense and in the strong sense. Equality is violated in the weak sense when sexual orientation is used unjustifiably as a criterion for differentiation among citizens, while equality is violated in the strong sense when the character of same-sex couples as human beings is denied in a way that does not apply to heterosexual couples. The model

of dignity implies that all human beings have dignity in that we each have the capacity to define, modify, and realize life plans by making use of reason and therefore the lives of same-sex couples are valid in every way when compared with the lives of heterosexual couples (Bonilla 2011). These models provide a framework to recognize fundamental human rights for LGB persons in ways that had not been before in Colombia.

The case rulings listed previously are important in that they represent a fundamental shift in the legal tradition of Colombia, but they also reflect a change in Colombia society. No doubt, discrimination against non-heterosexuals remains an unfortunate part of life in Colombia for many same-sex couples. But there is a growing consensus, especially for younger Colombians, that same-sex couples are entitled to the same rights as heterosexual ones. This consensus does not occur in a vacuum, however. Nor does the consensus come as a product of law or judicial rulings. If anything – and as we will see in the Chapter on Taiwan – court decisions in favor of same-sex couples have a way of galvanizing opposition. But norms are changing, and norms inform law making and adjudication. The growing consensus around LGB rights, both domestically and regionally, has benefited Colombian same-sex couples in the long run.

Colombia's same-sex marriage legalization came about through legal opportunity structures even as efforts to win relationship equality through legislation had failed. Beginning in 2007, justices on the Colombian Constitutional Court began changing their country's legal recognition of same-sex couples, throwing out nearly two centuries of precedent to the contrary. While research on influences on judicial opinion-making specific to Colombia and the cases itemized earlier in this Chapter is lacking, there is ample evidence presented so far to show that gay bars, Pride celebrations, and out LGB politicians – especially (but not exclusively) representatives – all have a significantly normalizing effect where LGB politics

and rights claims are concerned. Discrimination becomes harder when LGB persons come to be seen as just ordinary people, and visible gay businesses, Pride celebrations, and descriptive representation humanize members of the community, making equality by any means – political or judicial – more likely. Gay bars, Pride celebrations, and the advocacy and work of out politicians and officials help spread the message of the LGB movement that same-sex couples are equally entitled to have their relationships recognized and respected by the state. Even though public approval for same-sex marriage in Colombia was at 41% when it was legalized, this message clearly made an impression on political and judicial elites. Quoting the decision of the Court in SU-214/16, which resolved six different *acciones de tutela*:

“Regarding the fundamental issues, the Court decides that the principles of human dignity, and individual freedom and equality, imply that every human being can get married, according to his or her sexual orientation. The Court considers that celebrating a civil contract of marriage is a legitimate and valid way to materialize constitutional principles and values and a way to ensure the exercise of their right to human dignity, individual freedom, and equality (Corte Constitucional – translation, 2016).

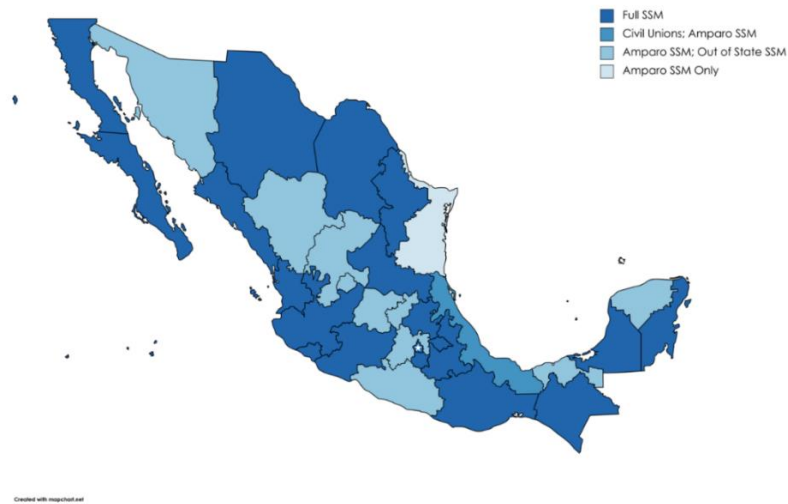
Up to this point, this Chapter has shown how gay bars, pride, and openly LGB politicians helped SMOs advocating for equality for same-sex couples overcome opposition to same-sex marriage legalization and secure victory in Colombia’s highest court.

The visibility and opportunities for early mobilization provided by the proliferation of gay bars and nightclubs, the pressure created by the international spectacle of Pride celebrations as repertoires of contention, and the tireless advocacy of brave politicians and officials who came out as openly LGB to help achieve descriptive representation, helped to change the culture of political and judicial elites. This allowed activists to be more successful

as they navigated legal opportunity structures. Now, building on research and data already presented, this Chapter will turn to Mexico as a contrasting case. For, although Mexico's LGB movement has access to similar (in many cases superior) resources, visibility, and advocacy, activists there have yet been unsuccessful in achieving total access to same-sex marriage rights despite Mexico's legalization.

6.1.4 The RI Theory of same-sex marriage Legalization in Mexico

same-sex marriage was approved by Mexico City's Legislative Assembly in 2009, which made that city the first city to legalize in Latin America and the Modicum Low cluster. However, unlike Colombia or Argentina, marriage laws in Mexico are administered by the thirty-two "federative entities" that make up the country – thirty-one states plus Mexico City (Diez 2015). In Mexico all the same repertoires of contention, the same tactics, and the same levels of mobilization capacity can be found as can be in Colombia – and often to a greater degree. And, yet progress towards same-sex marriage legalization has been unequal in Mexico (see Figure 6-5). The following sub-sections will examine possible explanations for this unexpected outcome after briefly detailing legalization efforts and the context within which they were undertaken.



Note: For the purposes of same-sex marriage legalization, *recurso de amparo* in Mexico is analogous to *acción de tutela* in Colombia.

Figure 6-5: Same-Sex Marriage Access Across Mexico

After World War II, Mexico practiced an import substitution strategy which led to sustained economic and industrial growth from 1954 to 1970 (Kolhi 2004). This period is known as The Mexican Miracle. Increased levels of prosperity, urbanization, and literacy that accompanied this economic growth began to produce changes to norms around traditional morality, sexual freedom, and the patriarchal family. The environment of widespread social mobilization made it possible for Mexican homosexuals, inspired by the Stonewall Riots in the U.S., to mobilize and demand equality. Even in Mexico the Stonewall Riots were an exogenous shock that made coalescence of the LGB rights movement possible. The Homosexual Liberation Movement (*Movimiento de Liberación Homosexual*) formed and held meetings to discuss their shared experiences and their goals for a more equal Mexico (Diez 2011 and 2015). Because Colombia and Mexico rank and score so closely together in the RI on the three variables of Mobilization Capacity, Opportunities for Interaction with TANs, and Values; because they share some common challenges; and because they are both legalizers, the rest of this Chapter will focus

on potential explanations for why Mexico's outcome – effective partial legalization – is different from Colombia's.

6.1.4.1 A Brief History of LGB Rights in Mexico

The Mexican government began a brutal crackdown in 1970, its second in a decade, partly in response to SMO-led protests and demands for more political and social freedom. Known collectively as The Dirty War, these crackdowns included torture of, disappearance of, and sometimes extrajudicial killing of those suspected of being part of or being sympathetic to groups deemed subversive or dangerous by the government. While the groups targeted most by this government campaign of repression were primarily student groups and union groups, homosexuals were also targeted and the risk for them to mobilize was increased as many LGB activists during this period were also part of student groups or unions (Diez 2015). Exemplifying the institutional contempt for LGB persons prevalent at the time, President Echeverria said, in his State of the Union address in 1974, that “among other things that characterized the background of the terrorists operating in Mexico was high incidents of both masculine and feminine homosexuality” (Diez 2015). Homosexuality was associated with “the enemy.” Tolerance for homosexuality among Mexicans at that time was exceptionally low.

Part of the reason for this was the legacy of the infamous “dance of the 41,” or *el baile de los cuarenta y uno*, in which Mexico City police raided a private party in which nineteen out of forty-one men in attendance were discovered in drag. This event attracted a large amount of attention in the Mexican press at the time because several of the attendees were part of Mexico's political and economic elite, and none of the attention was favorable (see Figure 6-6).



Figure 6-6: Two Illustrations of The Dance of the 41, by José Guadalupe Posada

Newspapers deemed the event a “shameless ball” that “amounted to an affront to public decency and public morals” (Diez 2015). So controversial and scandalous was the event that the number forty-one was taboo in Mexico for generations – in some places even the buildings have no 41st floor. However, in part because of the fluidity surrounding the formation of sexual identities

in Mexico, particularly for men, homosexuality was often tolerated in private, especially among elite sectors of society, even if it was ridiculed in public. This fluidity is best illustrated in studies on sexuality in Mexico that revealed that 30% of Mexican males had engaged in same-sex activity at least once between the ages of fifteen and twenty-five (Carrier 1995; Murray 2010; Diez 2015).

Private sexual proclivities notwithstanding, the Dance of the 41 and the ill will for homosexuals that was its aftermath created an institutional legacy that would have ramifications for policy outcomes for decades. As in other countries where homophobia dominates public discourse on sexuality, homosexuality in Mexico was for many decades characterized as an attack on the Mexican nation itself – a betrayal of one’s duties and obligations to family and country. Only recently has the number forty-one been reclaimed by LGB SMOs as a source of pride, in the same way that the pink triangle – a symbol used by Nazis to identify homosexuals in concentration camps – has become a global symbol for the movement. In other Latin American countries, like Colombia, effeminate homosexual men were the victims of constant derision to be sure (Corrales and Pecheny 2010). But the disdain against homosexual men in Mexico created by the Dance of the 41 controversy is unique.

After setbacks and a loss of visibility during the AIDS epidemic in Mexico in the 1980s, the late 1990s were promising for same-sex marriage legalization in Mexico. Democratization in Mexico and the rise of the left-leaning Party of the Democratic Revolution, or *Partido de la Revolución Democrática* (PRD), with which LGB SMOs had allied themselves, were positive developments that revitalized the movement after the twin tragedies of The Dirty War and the AIDS pandemic. Mexico City hosted its first Forum on Sexual Diversity and Human Rights, coordinated by David Sánchez Camacho, one of the first openly gay politicians in Mexico. This conference provided an excellent opportunity for LGB activists, feminists, academics, lawyers,

and state actors to strengthen their networks and work together towards common goals. It was broad-based coalitions like this that helped LGB activists in Mexico City capitalize on political developments using newly democratized opportunity structures in the early 2000s and win support for civil union recognition in Mexico City in 2007 and same-sex marriage in 2009 (Murray 2010; Diez 2015).

The legalization of same-sex marriage in Mexico City kicked off a national debate on the issue that brought the rights claims of LGB SMOs to the fore. On one side of the debate were a coalition of LGB activists and SMOs, academics, celebrities and public figures, and PRD leadership, including the mayor of Mexico City Marcelo Ebrard. Their arguments were steeped in the language of human rights and democratization – not unlike the models of autonomy, equality, and dignity discussed previously. On the other side of the debate were right wing social conservatives, groups like the National Confederation of Christian Evangelical Churches, and the Catholic Church, represented often in the public debate by Cardinal Norberto Rivera. The opposition’s arguments centered around one basic message – as we saw in the Taiwan case in the last Chapter as well – that same-sex marriage would put “the children” in danger, especially if same-sex couples were permitted to adopt. Insinuations that homosexual men were pedophiles were not uncommon (Diez 2015). Despite an intense and often personal public pressure campaign from the right, the first five same-sex couples were officially married on March 11, a short time after the law came into force (see Figure 6-7).



Figure 6-7: First Five Same-sex Couples Married in Mexico City, March 2011

But the pressure campaign from same-sex marriage opponents had an effect on the national debate, and efforts to legalize same-sex marriage nationally in the legislature failed. Conservative then-president Felipe Calderón challenged Mexico City’s same-sex marriage law in the Mexican Supreme Court. The governments of six Mexican states; Morelos, Guanajuato, Sonora, Jalisco, Baja California, and Tlaxcala; likewise lodged constitutional challenges to Mexico City’s same-sex marriage law on the grounds that reforms undertaken in Mexico City could have effects on the legal frameworks of their own states, many of which defined marriage explicitly as being between one man and one woman (Diez 2015).

6.1.4.2 Fragmented Outcome in Mexico

LGB SMOs assembled a coalition of human rights NGOs, legal scholars, and even faculty from the *Centro de Estudios y Docencia Economicas* – one of Mexico’s elite universities – to write *amicus curiae* briefs and affidavits supporting same-sex marriage legalization. Partially on the strength of these arguments, the Mexican Supreme Court upheld Mexico City’s same-sex marriage

law as being constitutional, and ruled that other states had to recognize same-sex marriages performed in Mexico City. However, because of Mexican federalism, states governed by right-wing or conservative parties passed laws defining marriage as exclusively between one man and one woman in states where these laws did not already exist, essentially nullifying the effects of the Court's decision in their states. These laws remain in place today, even though the Court ruled in 2015 that such laws were unconstitutional. The result is that same-sex marriage policy in Mexico is fragmented, meaning that a same-sex couple's ability to marry depends on their geography (Archibald and Villagas 2015; Diez 2015).

According to the data in the RI, this fragmentation should not have occurred. Mexico is the most likely country in the Modicum Low cluster to legalize same-sex marriage, based on RI scores. In terms of the three key variables for the cluster, Mexico scores higher in two of them – gay bars in the capital city and Pride attendance. The LGB bar scene is so extensive that Mexico City is often praised as one of Latin America's premiere queer tourist destinations (Queer in the World 2020; Travel Gay 2021). RI data puts the number of gay bars in Mexico City at 45, which ranks the country at 9th out of 96 countries in the RI (see Figure 6-8). Note that while many travel websites, blogs and guides aimed at the LGB community often list Amsterdam as a gay utopia with well over 100 gay or gay-friendly establishments in the city, this is including many types of businesses other than LGB bars and nightclubs, including bookstores, cafes, restaurants, hotels, shops, spas, saunas, etc. which, though surely important, the RI does not take into account as none of them have quite the same significance to resource mobilization. Research previously outlined on the role of gay bars in the LGB movement in the U.S. and other countries strongly suggest that bars in the Mexico City gayborhood *Zona Rosa* (pink zone) were early gathering places for LGB persons in the emergent stage of the movement and played a key role in its coalescence.

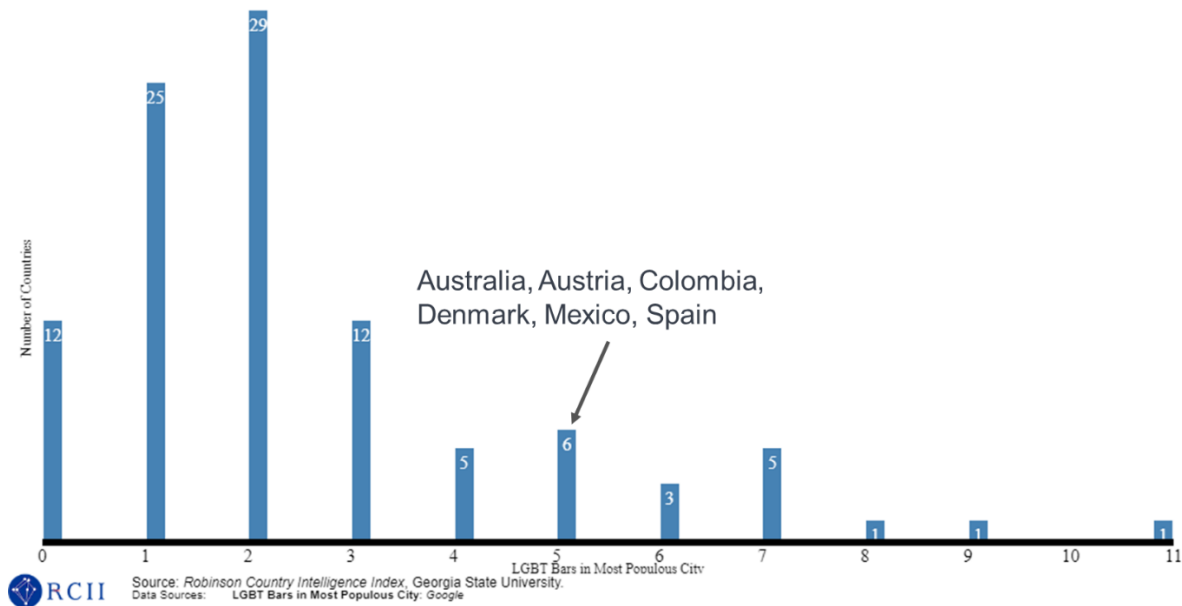
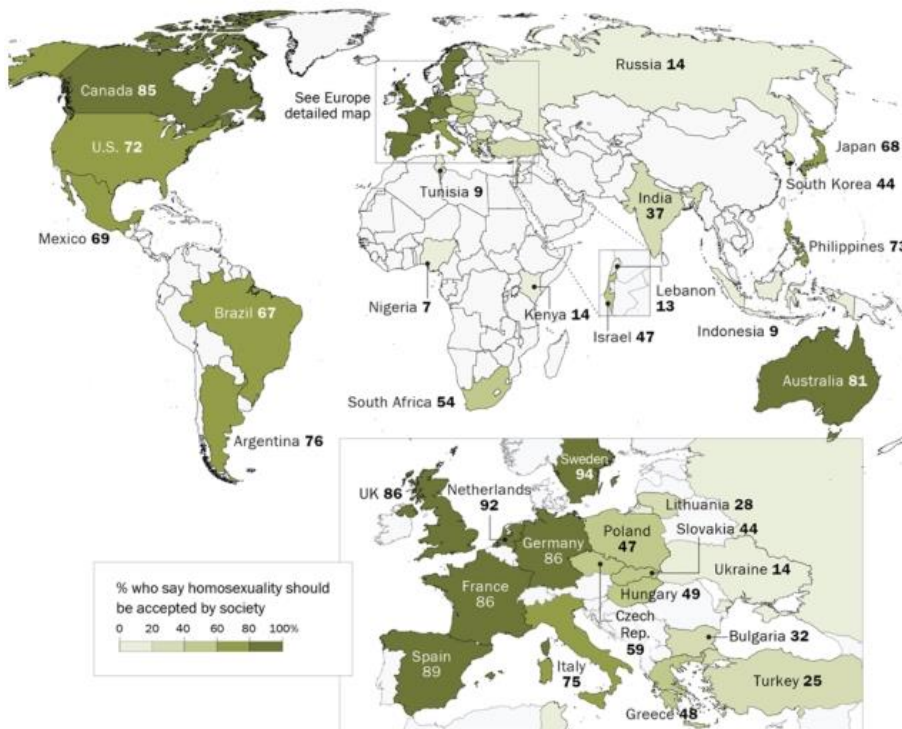


Figure 6-8: Countries Compared by LGBT Bars in Most Populous Cities

When it comes to Pride celebrations, Mexico City boasts among the world's largest. The first Pride event in 1978 attracted only a handful of marchers, but most recent attendance figures publicly available put the number of participants in modern Mexico City Pride celebrations at over 500,000 (Insurrectasyunto 2010). For context, this is greater attendance than in cities like Los Angeles, Montreal, or Sydney. Much like in the case of Colombia, country-specific research on the effects of Pride on the LGB movement in Mexico is thin. But there is again research detailing Pride's importance to the LGB movement and this case study analysis has uncovered no evidence to suggest that this principle would not hold true in Mexico. Given that, since Mexico City's Pride celebration is more well-attended than Bogota's, it stands to reason that the event is at least as beneficial. As of 2020, 69% of Mexicans surveyed by Pew Research Center indicated they felt homosexuality should be accepted by society, so by that measure it is certainly possible that larger Pride celebrations translate to eventual higher levels of acceptance (see Figure 6-9).

The global divide on acceptance of homosexuality

% who say homosexuality *should* be accepted by society



Source: Spring 2019 Global Attitudes Survey, Q31.

PEW RESEARCH CENTER

Figure 6-9: Public Approval of Homosexuality in 2020

Mexico also has similar numbers of out LGB politicians. David Sánchez Camacho was Mexico's first openly gay politician – serving on the legislative council of Mexico City federal district and as a deputy in the Mexican Chamber of deputies. As previously stated, Camacho organized Mexico City's first forum on LGB rights as human rights (Diez 2015). Enoé Margarita Uranga Muñoz is another example of an out politician acting to advance the rights claims of Mexican same-sex couples. Muñoz, also from Mexico City, is a representative to the Mexican Congress, where she serves as Secretary of the Commission on Human Rights (Sequera and Bajak 2012; Diez 2015). She was instrumental in getting social security benefits extended to same-sex couples (Lopez 2018). There are other examples certainly, but it will suffice to say that Mexico and Colombia have comparable numbers of out politicians advocating for the LGB movement at

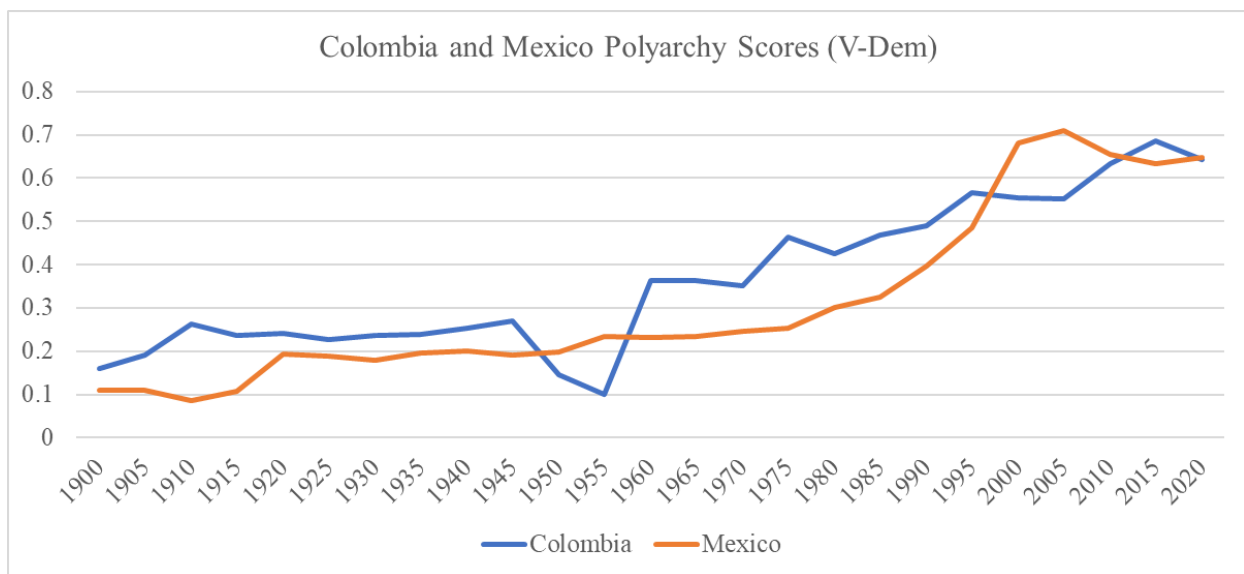
some level. However, the slight edge given to Colombia in this variable, as reported in the RI, is not enough to explain why Colombia legalized same-sex marriage completely while Mexico still has not. Since none of these three primarily significant variables can explain the difference in outcomes between predicted likely and actual legalization, there must be another variable needed.

6.1.5 Potential Crucial Differences in Democracy

Both Colombia and Mexico have legalized same-sex marriage. Both have similar performance in the RI. Both offer evidence of strong mobilization capacity in the form of gay bars and out politicians who can serve as allies within the political elite. Both have the largest – and indeed only internationally significant – Pride celebrations in the Modicum Low cluster. Domestic LGB SMOs successfully navigated opportunity structures in both countries to accomplish legalization against the odds. And, in both countries the influence of TANs on the legalization process has been minimal. So, why then does Mexico still offer only partial access to the right, even though it should be more likely to legalize than Colombia, according to the RI theory. This section will explore those possible differences: the degree of democracy, the regime type, the age of democracy, and federalism.

For progress on rights claims to occur, the opportunity structures in place must be stable. Returning to the Freedom House rankings in Table 5-3, Colombia ranks 61/100, or partly free, though it is important to note that Levistky and Way do not list Colombia as a competitive authoritarian regime (2010). Digging deeper into the Freedom House report on Colombia from 2020, it is noted that Colombia is among the “longest-standing democracies in Latin America (Freedom House 2020). The report scores Colombia well on electoral measures but observes that smaller guerilla groups still active even after the 2016 peace agreement that ended decades-long conflict may prevent citizens from enjoying their rights in some parts of

the country. The report also notes that while freedoms of association, press, and speech are all provided for in the Colombian constitution, in practice the government has at times resorted to violence to silence protest or dissent and human rights-based NGOs often face interference in their work (Freedom House 2020). Despite these limitations, there are stable opportunity structures in place for LGB SMOs to engage in contentious politics, as we have seen. LGB representatives and their allies were able to press for legislative change. LGB citizens were able to petition for their rights in Colombian courts. In fact, for most of the 20th and significant parts of the 21st centuries, Colombia has a higher polyarchy score (liberal democracy) than Mexico does (see Figure 6-10).



Source: V-Dem 2021

Figure 6-10: Liberal Democracy in Colombia and Mexico Compared

Until the last 30 years or so, Mexico was still classified as competitively authoritarian. That is to say that democratic institutions served mainly as a means of legitimizing the ruling party as opposed to providing real competition. When Mexico finally did democratize, this democratization came about partly because politicians with ties to Western liberal democracies sought reform from

within the existing party structure due to high levels of linkage⁵² with the West and the lower levels of leverage⁵³ that the West had on Mexico. Low levels of leverage are important because it means that Western democracies must put indirect pressure on competitive authoritarian countries to liberalize, meaning that progress towards democratization often has more domestic legitimacy as it is seen as coming from within rather than as being imposed from outside (Levitsky and Way 2010). In addition, echoing the basic tenants of modernization theory, economic development also played a role in democratization in Mexico. As time went on, Mexican leaders and policy makers interested in liberal reform were able to establish stable and effective formal institutions normally associated with liberal and advanced democracies. Figure 6-11 shows the comparative transitions of Colombia and Mexico from closed authoritarianism to electoral democracy⁵⁴.

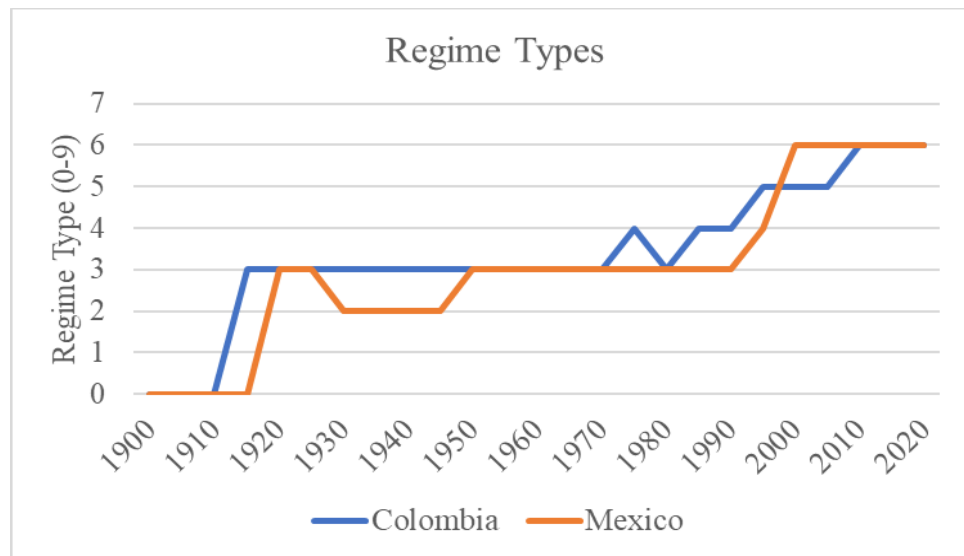


Figure 6-11: Transitions to Democracy

⁵² Linkage comes in the following categories: economic, diplomatic, technocratic, social, informational, and non-governmental (Levitsky and Way 2010).

⁵³ Leverage comes from the size and power of the country, the foreign policy goals of the country, and a lack of “Black Knight” actors capable of limiting or countering democratic pressure (Levitsky and Way 2010).

⁵⁴ V-Dem defines “electoral democracy” as having free and fair multiparty elections and a minimum level of Dahl’s institutional prerequisites for polyarchy as measured by V-Dem’s Electoral Democracy Index (v2x_polyarchy), but either access to justice, or transparent law enforcement, or liberal principles of respect for personal liberties, rule of law, and judicial as well as legislative constraints on the executive are not satisfied as measured by V-Dem’s Liberal Component Index (v2x_liberal).

Then, why does Mexico score as only “partly free” in Freedom House rankings if it has achieved the status of electoral democracy? In short significant problems with organized crime, lingering levels of corruption that persist in part because of organized criminal influence, and problems with consistent rule of law make the enjoyment of full civil and political rights difficult in large parts of the country (Freedom House 2020). Drug cartels and other affiliated organized crime groups have significant power to violently confront government forces in response to attempts to establish rule of law. For example, in 2006 organized criminal groups facilitated or carried out 2000 political assassinations targeting law enforcement and government officials across the country, and that number increased to 2,673 in 2007 (Milenio 2007; Bailey and Taylor 2009). More recent examples include an assassination attempt on the Mexico City chief of police and the killing of a Mexican federal judge in Colima, both in 2020 and both attributed to the *Cartel Jalisco Nuevo Generación* organized crime group (Beitell 2020). The RCII scores Mexico at a 347 out of a possible 1000 in Security, in large part because of the activities of organized crime and the corruption, erosion of state of capacity, and breakdown in trust of law enforcement institutions that comes along with such high levels of organized crime (RCII 2021). Figure 6-12 illustrates Mexico’s poor performance in this area.

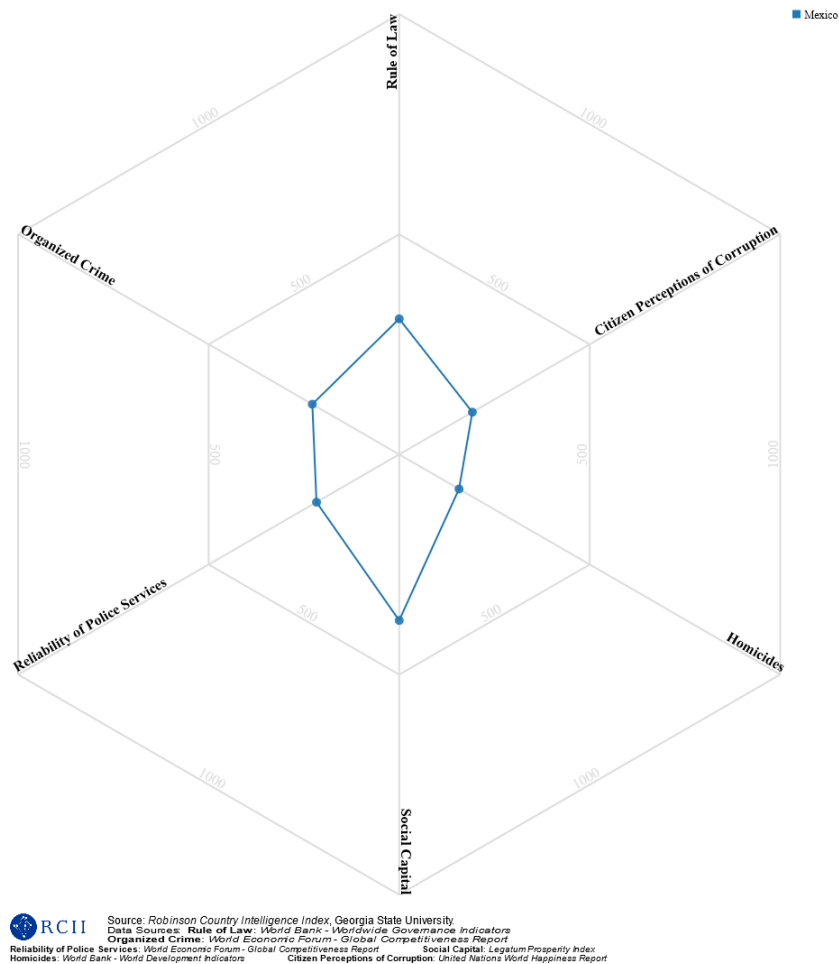


Figure 6-12: The Effect of Organized Crime in Mexico

Although Mexico still does not have an advanced level of democracy, or possibly even a liberal level of democracy, as has been listed in this Chapter, political and legal opportunity structures still exist for LGB SMOs to press their rights claims through contentious politics. Case study analysis has already shown that SMOs within the LGB movement have had some success in achieving marriage equality for same-sex couples in much of the country. Lack of success on the national level may be attributed in part to Mexican federalism but also in part to lower levels of democracy that limit state capacity and erode public trust making progress more difficult to achieve. However, the quality of democracy in Colombia and Mexico is not the only aspect of democratization that matters to this analysis.

Research on the Mexican and Colombian cases reveal another possible variable of importance when considering LGB rights in Modicum Low countries. That variable is the age of democracies. Analysis has already indicated that democratic institutions are important, like independent judiciaries capable of rendering verdicts at odd with legislative policy or priorities, for example. Or the ability of citizens to petition courts directly for the protection of their constitutional rights through the use of amparo or tutela. But both Colombia and Mexico have these institutions. Though scholars may differ on whether Colombia and Mexico qualify as liberal or advanced democracies, there is agreement that both qualify as democracies at least in the procedural sense, and that both offer some protection for some basic civil and political rights. But the length of time since democratization is important as well. Scholars who study the consolidation of democracies characterize consolidation as either an avoidance of regression to authoritarianism or as a deepening of democratic institutions so that persons in a country are more equal under the law and have a greater enjoyment of their civil and political rights (Schedler 1998). Age of democracy, or how long a state can be rightly classified as democratic, may be a good proxy for democratic consolidation. Older democracies have more opportunities to deepen institutions.

Qualitative research suggests that in young democracies, human rights are at the forefront of the public consciousness in ways that are not typical in older, more established democracies (Corrales and Pecheney 2010; Diez 2011 and 2015; Encarnación 2016 and others). So, it may not be unusual to see a young democracy moving faster than anticipated to adopt contested rights norms. On the other hand, the longevity of a democracy matters too, as longevity often implies consolidation of democratic norms. Often cited research by Boix, Miller, and Rosato (2013, 2018) assign age to the world's democracies for the number of years since 1800 for which countries meet specific criteria, like popularly elected and accountable executives; legislatures that are elected in

free, fair, and regular elections; and at least universal male suffrage – a procedural definition (see Appendix C). Using this data, we can see that out of the top ten oldest democracies, nine of them have legalized same-sex marriage – only Switzerland stands out as the lone country in that list that has not yet done so (see Table 6-9).

Table 6-9: Age of Democracies and Same-Sex Marriage Legalization – All RI Countries

Country	Age of Democracy (Years)	SSM Legalized (Year)	VARIABLES	(1) SSM10
United States	216	2015	Dem_Age	0.0183*** (0.00565)
Switzerland	168	Not Legal	GDPperCapita	0.00423*** (0.000883)
New Zealand	159	2013	Constant	3.907*** (0.416)
Canada	149	2005	Observations	96
United Kingdom	131	2013	R-squared	0.485
Luxembourg	126	2014	Standard errors in parentheses	
Belgium	122	2003	*** p<0.01, ** p<0.05, * p<0.1	
Netherlands	119	2000		
Norway	116	2008		
Australia	115	2017		

Table 6-9 also clearly shows that, even when controlled with GDP per capita, the age of democracies is statistically significant when testing all countries in the RI. In other words, the older a democracy is, the more likely it is to have legalized same-sex marriage when all countries in the RI are included in the regression. Furthermore, as democracies age, the probability of legalization goes up for each year of age, so that a democracy that is 200 years old or more has a nearly 100% of legalizing same-sex marriage in a given year (see Figure 6-13).

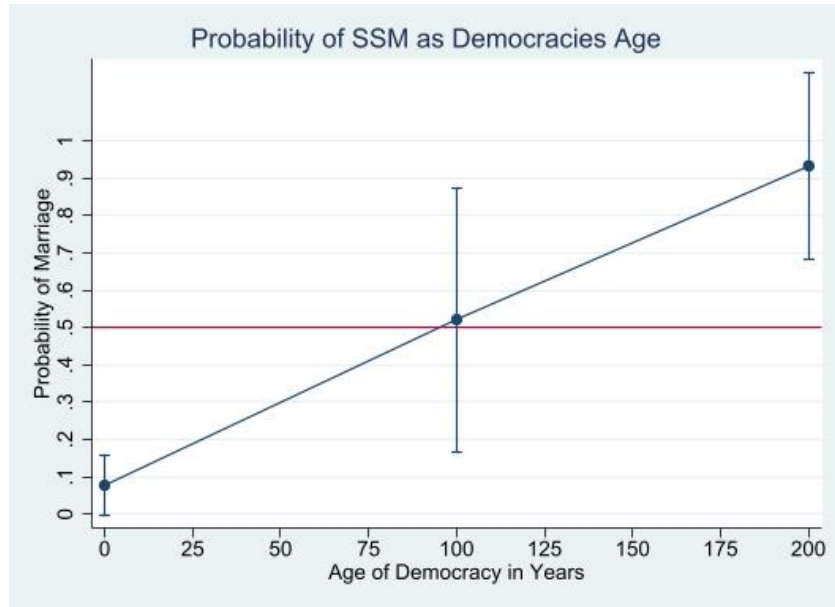


Figure 6-13: Probability of Same-Sex Marriage Legalization as Democracies Age

This pattern also holds up when only Modicum Low countries are examined. This suggests that while conversations about human rights for oppressed minorities may be more common or more immediate in young democracies with recent experiences of authoritarian repression – like Mexico’s Dirty War discussed earlier – for those conversations to result in real policy change at the national level the democracy needs to be more mature. These results strongly suggest that the age of the democracy may account for Colombia legalizing same-sex marriage before Mexico, given that Colombia’s democracy is older and more consolidated.

Age matters. A historical institutional approach to examining these two cases would focus on the role of democratization in same-sex marriage legalization in the Modicum low cluster. The transitions to democracy in Colombia in the 1950s and in Mexico in the late 1990s and early 2000s both created policy legacies in that they opened up previously non-existent or inaccessible opportunity structures through which LGB SMOs could engage in contentious politics. Colombia’s 1991 constitution establishes the *acción de tutela*. In Mexico, the *recurso de amparo*

serves much the same purpose, with LGB activists using the amparo to file suits to challenge the constitutionality of laws defining marriage as exclusively between one man and one women.

The tutela and the amparo could represent critical junctures – or institutional innovations – which allowed for SMOs to advocate for rights claims in ways not possible prior to democratization. The use of the tutela and amparo create new opportunity structures, in this case legal opportunity structures, through which SMOs can advocate for their rights. Previous historical analysis in this Chapter on both Colombia and Mexico indeed shows that, when faced with political resistance, LGB SMOs had better luck advancing their equality agenda in the courts. This is in part due to their use of tutela and amparo, respectively. And while Mexico's amparo was established in the 1917 Constitution in Articles 103 and 107 and is technically older (Vázquez 2005), the fact that until the early-to-mid 2000s Mexico would have been properly classified as a competitive authoritarian country indicates that the right of filing amparo was not fully enjoyed until the country democratized. If this is true, then the age of democracy is clearly an important factor in explaining why Colombia, democratizing in the 1950s, legalized same-sex marriage first.

However, it should be acknowledged that the age of democracy may well be standing in for another unknown variable or set of variables, something which further single-case study might illuminate. For example, as democracies age, more robust opportunity structures may develop as critical junctures introduce more access and accountability into legal and political institutions. So, it isn't so much the age of democracy that could matter if this were the case, but rather the quality of the opportunity structures available. Additionally, the age of a democracy could also indicate a more robust set of informal norms that govern the actions of political elites or higher levels of consolidation making those democracies more electorally responsive, more liberal, and more

egalitarian, in other words less likely to revert to authoritarianism⁵⁵. Again, it is beyond the scope of the dissertation to fully unpack what might really be driving the correlation between age of democracy and same-sex marriage legalization. For now, it is enough to acknowledge that such a relationship seems to exist.

Other than the age of democracies, there is one other obvious difference between Colombia and Mexico that should be investigated which could account for the different outcomes in same-sex marriage legalization. That difference is that Colombia's is a unitary system while Mexico has a federal system. This means in Colombia, marriage policy is decided at the national level, and if sub-national units like cities or states choose to make different policy they do so only if the central government allows them that authority – authority which can be revoked at any time by the central government. By contrast, as previously discussed, marriage policy in Mexico is made at the sub-national level, meaning that it is possible for one city or state to have a different policy on same-sex marriage than its neighbor, or than the country. This condition leads to what Diez terms “fragmented progress.” In doing research for this Chapter, this difference seemed an obvious possibility to explain Colombia's legalization and Mexico's failure to deliver equal access to same-sex marriage rights. Further analysis on this potential variable in detail could yield significant findings.

6.2 Conclusions Drawn for Case-Pair Comparisons

The comparison of Colombia and Mexico confirms the value of mobilization capacity and the embrace of Secular and Emancipative values, especially since civil society is notoriously more closed and potentially hazardous to navigate for activists and outside SMOs tend to be met with skepticism at best, both limiting the effectiveness of TANs in Latin America. It might be fruitful

⁵⁵ For more on consolidation theory, see Linz and Stepan (1996) or O'Donnell (1996).

to extend this qualitative analysis to more countries within the Modicum Low Cluster – especially those outside of Latin America – to determine if this limitation is regionally limited. The fragmentation of outcomes in Mexico could be due to the unique effect of the Dance of the 41 controversy on public perception of homosexuality. The case comparison of Colombia and Mexico also suggests that regime type, age of democracy, quality of democracy, and government type (unitary or federal) could also play important roles in explaining the uneven access to same-sex marriage in Mexico despite legalization. These variables could be included in future iterations of the RI to make the theory even more robust and capable of more accurately predicting probability of legalization based on a measure of friendliness to LGB equality.

6.3 Summary

In this Chapter, we confirmed through qualitative analysis that the theory that a combination of high mobilization capacity, the embrace of secular and emancipative values, and opportunities for interaction with TANs allows for LGB SMOs to utilize contentious politics within existing opportunity structures in order to advocate for the legalization of same-sex marriage is valid in the Modicum Low Cluster. Several potential variables were identified as potentially being able to explain variations in outcomes between Mexico and Colombia. These include youth political engagement, judicial independence, regime type, government type, age of democracy, and quality of democracy. In the concluding chapter we will examine how these possibilities might impact future research, and what this might mean for the theory.

7 CONCLUSION: SOMETHING QUEER

This dissertation set out to test the hypothesis that a combination of empowering values, mobilization capacity, and opportunities for domestic actors to work with the support of LGB rights TANs makes it possible for SMOs to navigate domestic opportunity structures in order to press rights claims and make same-sex marriage legalization more likely. In testing this hypothesis, the hope was that an answer to the puzzle of why so many states seemed to have legalized same-sex marriage in so relatively short a time would emerge. What the findings, detailed in this chapter, have shown is that the theory holds and is valid across regions and clusters. The findings also show that it is likely that in each country that has legalized same-sex marriage, there are possible additional variables that help explain the outcome of same-sex marriage legalization, particularly when a country legalizes faster than theoretically anticipated. These findings also help to provide an answer to the puzzle of recent same-sex marriage legalization. That answer can be found partially in the preconditions of LGB identity formation and democratization that are necessary for LGB SMOs to take advantage of opportunities presented by the combination of empowering values, mobilization capacity, and opportunities for domestic actors to work within LGB rights TANs. Indeed, without LGB identity formation, mobilization isn't possible. And without democratization, opportunity structures are likely to be extremely limited or non-existent. It takes time for all of these factors to fall into place, and that may well be the beginning of the answer to the puzzle. IN the following sections, the findings presented in the previous chapters will be summarized and potential future areas of research identified.

7.1 Findings

The overall findings of both the quantitative testing of the hypothesis in Chapter 3 and the case-study analyses of the Colombian, Japanese, Mexican, and Taiwanese cases in Chapters 4-6

are that values, mobilization capacity, and opportunities to work with TANs make it more likely that an LGB rights SMO will successfully navigate existing opportunity structures in pressing rights claims for access to legalized same-sex marriage. The hypothesis is visualized in Figure 7-1.

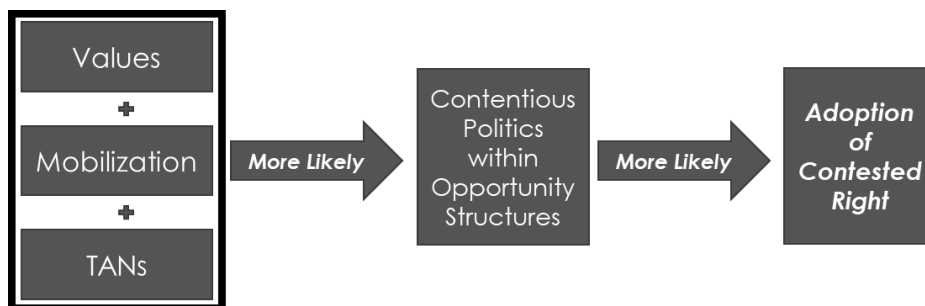


Figure 7-1: The Hypothesis Revisited in Conclusion

What the case studies show us is that this theory holds overall, but that there will be regional, cluster-based, or even country-specific variations that help explain early legalizers like Taiwan of Colombia, and in future potentially outlier cases like South Africa, which is the only country to legalize in Sub-Saharan Africa.

These findings are important because they represent, to the best of my knowledge, one of the first cross-national studies on same-sex marriage legalization to employ both quantitative and qualitative analysis to test the hypothesis. In addition, the findings present a possible avenue for a revision, of sorts, of modernization theory, which potentially fails in explaining outcomes like same-sex marriage legalization through contentious politics because modernization theory does not fully take into account the importance of identity, mobilization, and TANs and also has a conceptualization of post-material values that is less helpful than the Emancipative – Secular framework. The next few sections will detail the findings for each case.

7.1.1 Taiwan

Taiwan legalized same-sex marriage first in the Sinic East due to a high degree of LGB mobilization capacity, which included relatively high levels of LGB power, an open system to civil society that allowed for TANGs to take advantage of opportunities to connect with local SMOs and advocates through high-profile events like large Pride celebrations, and an embrace of post-material Emancipative and Secular values. These factors were made possible by the formation of a coherent LGB identity after the publication of the novel *Crystal Boys* in 1983. Empowered by mobilization capacity and TANGs and benefitting from elite embrace of Emancipative and Secular values, Taiwanese activists and LGB SMOs navigated political and legal opportunity structures to press their rights claims for same-sex marriage. LGB bars also played a significant role in helping early LGB SMOs to mobilize, particularly in their early stages of development. And political elites helped SMOs navigate opportunity structures, advocating on their behalf from time-to-time and showing their support for same-sex marriage rights.

But Taiwanese LGB SMOs also benefitted from other factors that played a role in moving the country towards legalization. These are a history of youth political involvement, a liberalization towards democratic institutions that incorporated human rights discourse from its earliest stages, multiculturalism, a move to embrace a national identity distinct from the Chinese identity of the first Nationalist members of the KMT and supporters of Chiang Kai-shek who came to the island from the mainland, a need to engage in human-rights based asymmetric (queer) diplomacy, and domestic judicial reform that encouraged high levels of judicial independence. We see examples of youth political involvement in the student-led protest movements like the Sunflower Movement and in youth voter turnout in elections like the presidential election of 2020, which saw the reelection of Taiwanese President Tsai Ing-wen (DPP) over her KMT opponent who advocated

friendlier ties to mainland China in the wake of the Chinese crackdown on protests in Hong Kong. We see examples of human rights discourse in the earliest pro-democracy protests towards the end of the White Terror – including the student-led Wild Lily Movement that began on the Taipei campus of NTU. We see examples of multiculturalism in the blending of Taoism and Buddhism and in the embrace of Confucianist values reimagined along humanist ideals that might be more expected in the inheritors of the Enlightenment.

Taiwanization, or the process of creating and embracing a national identity that is distinct from mainland China can be seen throughout the liberalization process but particularly in the rise of the pro-independence DPP. Because most states in the world recognize the People’s Republic of China (PRC) and the PRC lays claim to the island of Taiwan, considering it a “renegade province”, most states do not formally recognize Taiwan, and so the country has had to resort to a unique approach to diplomacy in which legitimacy on the world stage is cultivated through the embrace of human rights, like LGB rights, and value systems of supportive countries like the US. And, during Taiwan’s liberalization, the judiciary was reformed from within by activist judges in order to become a more independent body capable of defending human rights against a sometimes-reluctant central government. These factors have not been analyzed in as great a detail as variables that are part of the hypothesis, but they do suggest the possibility to incorporate them into a more comprehensive of the RI – RI 2.0.

7.1.2 *Japan*

In the RI, Japan is predicted to be more likely to legalize same-sex marriage than Taiwan. However, there are several issues which prevent legalization there and help explain why another country like Taiwan could legalize first. Case study analysis reveals the formation of a cohesive Japanese LGB identity as a precondition for mobilization is hindered due to a number of cultural

factors, including the hyper-sexualization of same-sex desire resulting in the partial dehumanization of LGB persons, and an intense pressure for LGB Japanese to remain closeted to their families. In addition, Japanese SMOs face significant challenges to mobilization, including the fact that LGB bars in Japan operate differently than do their counterparts in other countries in that they tend to cater to very small niche sub-groups of the wider LGB population. There are also limits on opportunities for LGB SMOs to avail themselves of TANs in a way that would allow them to challenge the status quo on same-sex marriage, due to the narrowed environment faced by Japanese civil society organizations. Indeed, Taiwan is the only Asia-Pacific country in which civil society environment is rated as open by Civicus. Finally, the way in which empowering Emancipative and Secular values are embraced in Japan liberates only those who conform to traditional notions of sexuality – in other words these empowering values are viewed almost exclusively through a heteronormative lens.

Case study analysis also reveals there are also some factors at work in Japan specifically that could help explain the lag from the expected outcome for same-sex marriage legalization. Japan has a political culture which discourages youth involvement in politics, and which is reinforced by institutional pressures on young people to politically disengage and these factors potentially adds to the challenges faced by LGB SMOs looking to avail themselves of potential activists to swell their ranks. And the ability of the LDJ to affect a kind of control over an already conservative judiciary could lessen the chances of SMOs successfully challenging bans on same-sex marriage at the highest level for at least the foreseeable future. This is because in Japan the high court is perceived to rule in favor of the government in cases salient to government interests about half the time, and the LDJ-dominated government remains opposed to same-sex marriage legalization.

The comparison of the Japanese and Taiwanese cases strongly suggests that the addition of measures of judicial independence and LGB acceptance to a more comprehensive RI 2.0. This could help the index more accurately predict Taiwan as being more likely to legalize same-sex marriage than Taiwan. And, given the importance of the preconditions to legalization as shown in the quantitative and case study analysis, it is likely that the addition of a variable aimed at capturing the potential cohesiveness of LGB identity is warranted. As we'll discuss later in this chapter, LGB acceptance could potentially serve as a proxy for this measure.

7.1.3 *Colombia*

Colombia legalized same-sex marriage in 2016 following a series of court decisions affirming the rights of same-sex couples. Analysis of the Colombian case confirms the importance of both LGB bars and descriptive representation in the form of out LGB politicians to mobilization. Additionally, the Colombian case shows the importance of gayborhoods as focal points of LGB power and mobilization and of Pride celebrations as a means of engaging in contentious politics in a less overtly confrontational manner. But, interestingly for Colombia and for Mexico, Pride celebrations do not necessarily translate into increased opportunities for SMOs to interact with LGB TANs in order to help press rights claims. This is because in Latin American cases, case study research shows that domestic SMOs – or at least domestic LGB SMOs – tend to look with suspicion on international LGB SMOs for a number of reasons. These reasons include a conception of LGB identity that does not always fit within the universalist paradigm of American and Western-European dominated LGB identity discourse and the fact that American anti-same-sex marriage SMOs are quite active in developing countries attempting to force a backslide on LGB equality. Additionally, Latin American LGB SMOs were using the language or rights discourse in pressing for LGB equality in some cases earlier than rights movements in North America and

Western Europe. While there is not evidence to suggest that these conditions extend to countries in the Modicum-Low cluster outside of Latin America, it does at least suggest one partial explanation for a lack of progress on LGB rights in some developing democracies.

The Colombian case, like Taiwan, also shows the importance of the courts. Colombia has recognized same-sex unions since 2007 and same-sex marriage was legalized in 2016 following a string of rulings that affirmed the equal rights of same-sex couples on issues ranging from healthcare, social security, survivor benefits, and alimony. More importantly, the courts recognized the inherent dignity of LGB persons as a category of person, allowing for crimes targeting the LGB community to be addressed during peace negotiations with the FARC. Judges in Colombia used the notions of dignity, equality, and autonomy in considering cases involving same-sex couples – meaning that the Court ultimately found that LGB persons have the same right to decide their futures, that their lives are as valid in every way as heterosexuals, that laws banning same-sex marriage unjustly differentiate rights based on sexuality, and that LGB persons have the right to be left alone in their own consensual affairs, free from interference from state institutions.

The Colombian case adds to the possibility that some measure of judicial independence as a measure of the existence of opportunity structures should be added to the index. But the Colombian case, and indeed the Mexican case as well, also suggests the real possibility that the influence of TANs is overestimated in the literature. Though, further research would need to be conducted to ascertain whether this remains true outside of Latin America, so a more robust version of the RI would, for now, still contain the measures of opportunities of domestic SMOs to avail themselves of the benefits of support from international LGB rights organizations working within TANs. In any case Colombia's legalization of same-sex marriage before Mexico is an unexpected

outcome based on the current configuration of the RI, and the addition of variables on judicial independence may help the index more accurately reflect the outcome.

7.1.4 Mexico

The Colombian-Mexican case pair is different from the Japan-Taiwan case pair in that Colombia and Mexico have both legalized same-sex marriage. But, while the Mexican Supreme Court ruled in 2015 that laws prohibiting same-sex marriage were unconstitutional, the nature of Mexican federalism meant that some states have taken years to pass legislation codifying the outcome⁵⁶. Mexico and Colombia are so close in rank and score in the RI, that analysis on this case focused on the differences between the pair that might explain Colombia's full legalization even as Mexico lagged behind. What is ultimately revealed is that several factors related to the precondition of democratization may be significant. These include regime type and the age of democracy. According to case study analysis, Mexico was classified as competitively authoritarian until 1999 while Colombia achieved the status of competitive democracy in 1957. With age of democracy can come consolidation of democratic institutions and their accompanying opportunity structures. Additionally for the Mexican case, problems with perceived corruption and high levels of organized crime related to the international drug trade have sapped some institutions of their domestic legitimacy and of their ability to deliver equal rights and protections under the law. Though, further analysis is warranted to determine if high levels of organized crime and perceived corruption are significant specifically to the outcome of same-sex marriage legalization.

The Mexican case suggests that age of democracy, in addition to regime type, could be an important addition to the RI 2.0. Luckily, data on both measures is readily available. But, the

⁵⁶ The Tamaulipas state legislature became the last Mexican state to legalize SSM as of October 27th, 2022 – but this event is outside the timeframe for the research in this dissertation. So, it is merely noted here for the sake of factual accuracy.

Mexican case also suggests that federalism – or the degree to which institutions of the central government can affect policy change at the sub-national level – would also be helpful to consider. Unfortunately, data on federalism is harder to come by. The Organization for Economic Cooperation and Development (OECD) has measures of fiscal federalism which at first seem promising, but the country-coverage of the data is far too small to be included in the RI – only OECD member states are included in the data. A more promising measure is the Regional Authority Index Dataset, which aims to measure federalism on a continuum of autonomy, though 30 countries in the RI are not measured in this index⁵⁷. It is hoped that this may change in future. So, measures on federalism will be left for future consideration.

7.2 The Power of the Rainbow Index

As possible additional variables for inclusion into the RI 2.0 have already been discussed, this would be an appropriate time to circle back to the RCII and the power of the tool in creating both the original RI and the RI 2.0. As stated previously, the RCII scores and ranks country-level data as part of a holistic approach to research and analysis. The RCII allows for visualizations of this data that can help a researcher focus on a particular variable or set of variables as a means of explaining a particular outcome – in this case same-sex marriage legalization. But the most significant contribution of the RCII to this dissertation is the ability to construct customized indices containing data imported by the user. This is previously referred to in Chapter 3 as the BYOI functionality.

To create the RI, data on measures of mobilization capacity, opportunities for TANs, and values were imported into the RCII framework. These variables were weighted and organized into

⁵⁷ For more, see The Regional Authority Index Dataset: <http://garymarks.web.unc.edu/data/regional-authority/>.

a coherent structure. The same process can be used to create the RI 2.0, and in future years to augment the structure with new data as it becomes available, or to enter data for subsequent years to create a longitudinal measure of friendliness to LGB rights. The value of this ability is obvious – data visualization of future iterations of the RI can be used to inform continued case study analysis and even quantitative analysis. With more customization, the RI could also be used to study other LGB rights outcomes, such as constitutional bans on and/or protections of same-sex marriage, LGB-antidiscrimination protections, or death penalties for consensual same-sex sexual relationships. In the next subsection of this chapter, new variables for an RI 2.0 will be reviewed and the results of the incorporation of these new variables into the RI utilizing the BYOI functionality of the RCII will be briefly analyzed.

7.3 Potential New Variables and Future Research

As discussed briefly in Chapter 3, based on the case study analysis on Colombia, Mexico, Japan, and Taiwan, the following variables have been identified for inclusion in the second iteration of the RI: Regime Type, Age of Democracy, LGB Acceptance, High Court Independence, and Lower Court Independence. Regime Type was originally identified as a precondition for the existence of opportunity structures in general, based on the literature review. But case study analysis indicated that regime type might play a significant role in same-sex marriage legalization. The addition of these variables should help to capture the level of the preconditions to same-sex marriage legalization and the degree to which opportunity structures exist for SMOs to engage in contentious politics. These variables are defined and sourced as follows.

Regime Type is the perceptive classification of political regimes considering the competitiveness of access to power (polyarchy) as well as the degree to which liberal

principles are institutionalized. This variable is on a ten-point scale, as explained in the Varieties of Democracy Codebook.

“0: *Closed autocracy*: No multiparty elections for the chief executive or the legislature.

1: *Closed autocracy upper bound*: Same as closed autocracy, but the confidence intervals of the multiparty election indicators overlap the level of electoral autocracies.

2: *Electoral autocracy lower bound*: Same as electoral autocracy, but the confidence intervals of one or both of the multiparty election indicators overlap the level of closed autocracies.

3: *Electoral autocracy*: De-jure multiparty elections for the chief executive and the legislature but failing to achieve that elections are free and fair, or de-facto multiparty, or a minimum level of Dahl’s institutional prerequisites of polyarchy as measured by V-Dem’s Electoral Democracy Index (v2x_polyarchy).

4: *Electoral autocracy upper bound*: Same as electoral autocracy, but the upper bounds of the confidence intervals of the indicators for free and fair and multiparty elections and the Electoral Democracy Index overlap the level of electoral democracies.

5: *Electoral democracy lower bound*: Same as electoral democracy, but the lower bounds of the confidence intervals of the indicators for free and fair, or multiparty or the Electoral Democracy Index overlap the level of electoral autocracies.

6: *Electoral democracy*: Free and fair multiparty elections and a minimum level of Dahl’s institutional prerequisites for polyarchy as measured by V- Dem’s Electoral

Democracy Index (v2x_polyarchy), but either access to justice, or transparent law enforcement, or liberal principles of respect for personal liberties, rule of law, and judicial as well as legislative constraints on the executive not satisfied as measured by V-Dem's Liberal Component Index (v2x_liberal) (Varieties of Democracy 2021).

7: *Electoral democracy upper bound*: Same as electoral democracy, but the confidence intervals of the indicators for access to justice, and transparent law enforcement, and the liberal component index overlap the level of liberal democracies.

8: *Liberal democracy lower bound*: Same as liberal democracy, but the confidence intervals of the indicators for access to justice, and transparent law enforcement, and the liberal component index reaches the level of electoral democracies.

9: *Liberal democracy*: De-facto free and fair multiparty elections and a minimum level of Dahl's institutional prerequisites for polyarchy as measured by V-Dem's Electoral Democracy Index (v2x_polyarchy) are guaranteed as well as access to justice, transparent law enforcement and the liberal principles of respect for personal liberties, rule of law, and judicial as well as legislative constraints on the executive satisfied as measured by V-Dem's Liberal Component Index (v2x_liberal)" (Varieties of Democracy 2021, 288).

Age of Democracy represents the number of years that a country qualifies as a democracy, based on the classification and assessment by Boix et al. (2013). This is an electoral definition of democracy, in which democracies are understood here as political systems in

which political leaders are elected under broad right to vote for men in free and fair elections.

LGB Acceptance is used here as a proxy, or indirect measure, of the degree to which there is potential for the creation of a cohesive LGB identity as a precursor to mobilization. Created by the University of California at Los Angeles School of Law's Williams Institute, LGB Acceptance is defined as "the extent to which LGBTI people are seen in ways that are positive and inclusive, both with respect to an individual's opinions about LGBTI people and with regard to an individual's position on LGBTI policies" (Flores 2021, 5). This measure is derived through advanced statistical modeling of survey results from questions included in the World Values Survey and Pew Global on LGB rights issues, including respondents' opinions on whether or not homosexuality can ever be justified, whether or not they would like to have a homosexual as a neighbor, and whether or not homosexuality should be accepted by society at large. The theoretical justification for the inclusion of this variable, particularly in light of the Japan case analysis, is that in societies which are more likely to accept homosexuality, LGB persons may be more likely to come out and potentially be politically active.

High Court Independence is also taken from the Varieties of Democracy dataset and is a perceptive measure of the frequency to which high courts "make decisions that merely reflect government wishes regardless of its sincere view of the legal record." A response value of 0 indicates "Always"; 1 indicates "Usually"; 2 indicates "About half of the time"; 3 indicates "Seldom"; and 4 indicates "Never" (Varieties of Democracy 2021, 172).

Lower Court Independence is the same measure with the same response values as High Court Independence but applied to lower courts.

The case analysis also suggests that a measure of youth engagement and a measure of federalism would also be highly valuable to the RI 2.0, however measures with suitable country coverage are not to be found at present. World Values Survey data would exclude 11 cases from the RI 2.0, while the Regional Authority Index Dataset would exclude 30 cases. I am hopeful that these sources will expand their country coverage in future, or that more robust and inclusive measures can be found. However, the addition of Regime Type, Age of Democracy, LGB Acceptance, High Court Independence, and Lower Court Independence already brings the RI more in line with observed phenomena (See Figure 7-2) in these case studies.

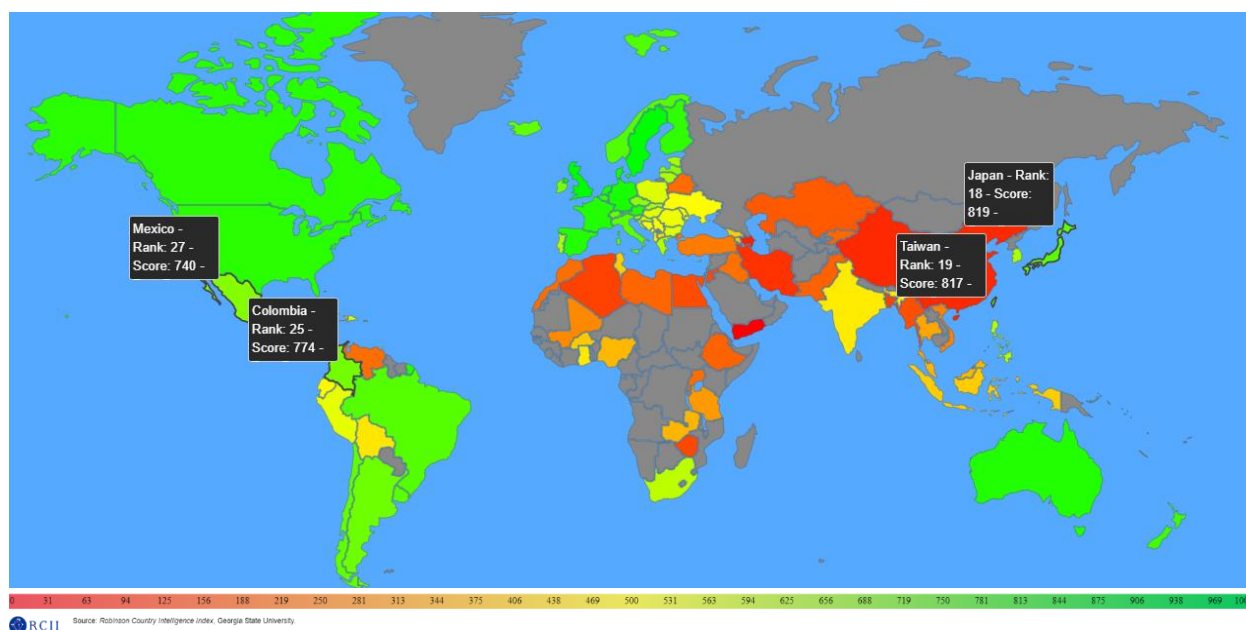


Figure 7-2: Rainbow Index 2.0

The RI 2.0 now predicts Colombia as more likely to legalize same-sex marriage than Mexico, though just so. The RI 2.0 also still predicts Japan to legalize same-sex marriage than Taiwan, but again only just so. These outcomes are much more in-line with observed phenomenon. Additionally, an examination of only same-sex marriage legalizers shows Ecuador to be a clear global outlier in having legalized same-sex marriage even though it ranks 11 places lower than the next-lowest-ranking legalizers, South Africa (38th) and Malta (40th), suggesting that Ecuador could

be a fruitful choice for potential future case study analysis. Interestingly, as shown in Chapter 3, while court independence does seem to lend some value to analysis of the two case pairs, factor scoring indicates that these variables may not be valuable to the model for the entire universe of cases in the RI. Once these variables are dropped out in keeping with the results of factor scoring in Chapter 3 (3.4.3), Colombia and Taiwan resume similar relationships in scoring to Mexico and Japan. However, Italy and Japan are the only two countries in the final RI 2.0 version top-20-ranked countries that have not legalized, which also suggests potential future case-studies, including a more in-depth examination of Japan (see Table 7-1).

Table 7-1: Outliers in the RI 2.0

	Rainbow Index		Preconditions for SSM Legalization		Mobilization Capacity		Openness to TANs		Values	
	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
United Kingdom	1	1000	6	973	1	1000	11	981	15	803
Sweden	2	977	3	981	12	716	1	1000	1	1000
Germany	3	966	21	855	2	981	17	971	9	838
Netherlands	4	952	8	962	6	802	21	938	5	896
Denmark	5	950	13	928	9	766	3	998	4	913
France	6	933	17	901	4	856	6	991	16	796
Canada	7	925	1	1000	4	856	19	958	27	698
United States	8	914	4	980	6	802	1	1000	26	702
Spain	9	907	16	908	14	688	5	994	7	874
Australia	10	894	9	956	17	662	10	986	12	818
Austria	11	885	22	851	10	739	14	978	11	821
Finland	12	879	12	944	23	613	16	974	8	841
Belgium	13	862	14	922	13	710	15	976	24	705
New Zealand	14	849	7	969	3	887	34	481	10	830
Japan	15	834	23	824	18	651	9	988	18	762
Norway	16	811	11	946	15	667	25	496	2	944
Brazil	17	805	26	801	8	784	8	990	46	548
Uruguay	18	792	20	856	32	530	3	998	23	708
Italy	19	790	18	876	25	600	6	991	36	615
Iceland	20	789	2	991	29	567	31	485	3	941

Data visualization in the RI 2.0 also shows that the addition of the new variables to represent preconditions to same-sex marriage legalization and opportunity structures may help

explain Taiwan’s and Colombia’s legalization (see Figures 7-3 and 7-4). In the case of Colombia and Mexico, we see Colombia performing better in the Age of Democracy variable and the Judicial Independence variables, which case study analysis in the last chapter suggested would be the case as Colombia’s Constitutional Court declared bans on same-sex marriage unconstitutional in 2016. In the Taiwanese case, again we see that Taiwan outperforms Japan in both Judicial Independence variables, also confirmed in the case study analysis. This suggests that, at least for these two cases of Colombia and Taiwan, the addition of the two Judicial Independence variables improved the analytical power of the RI.

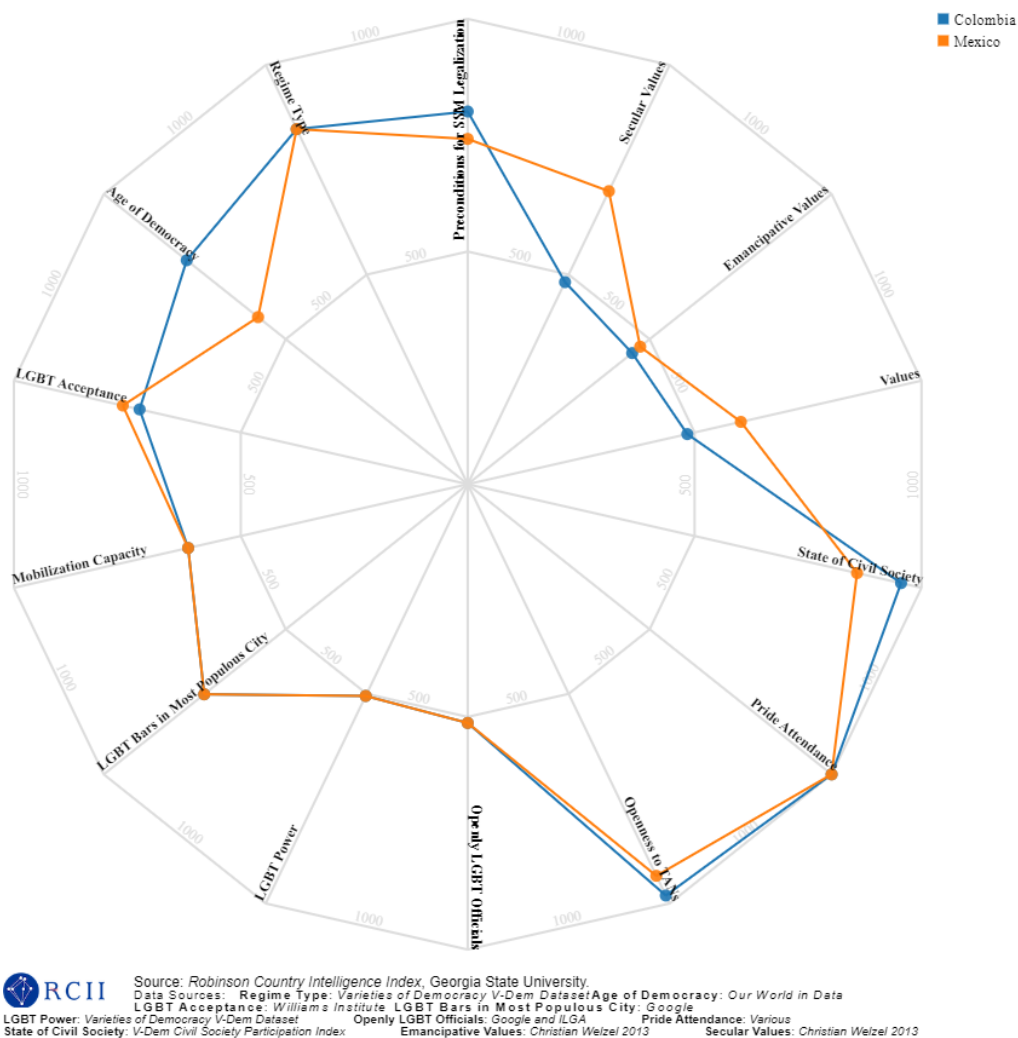


Figure 7-3: Colombia and Mexico Compared in the Rainbow Index 2.0

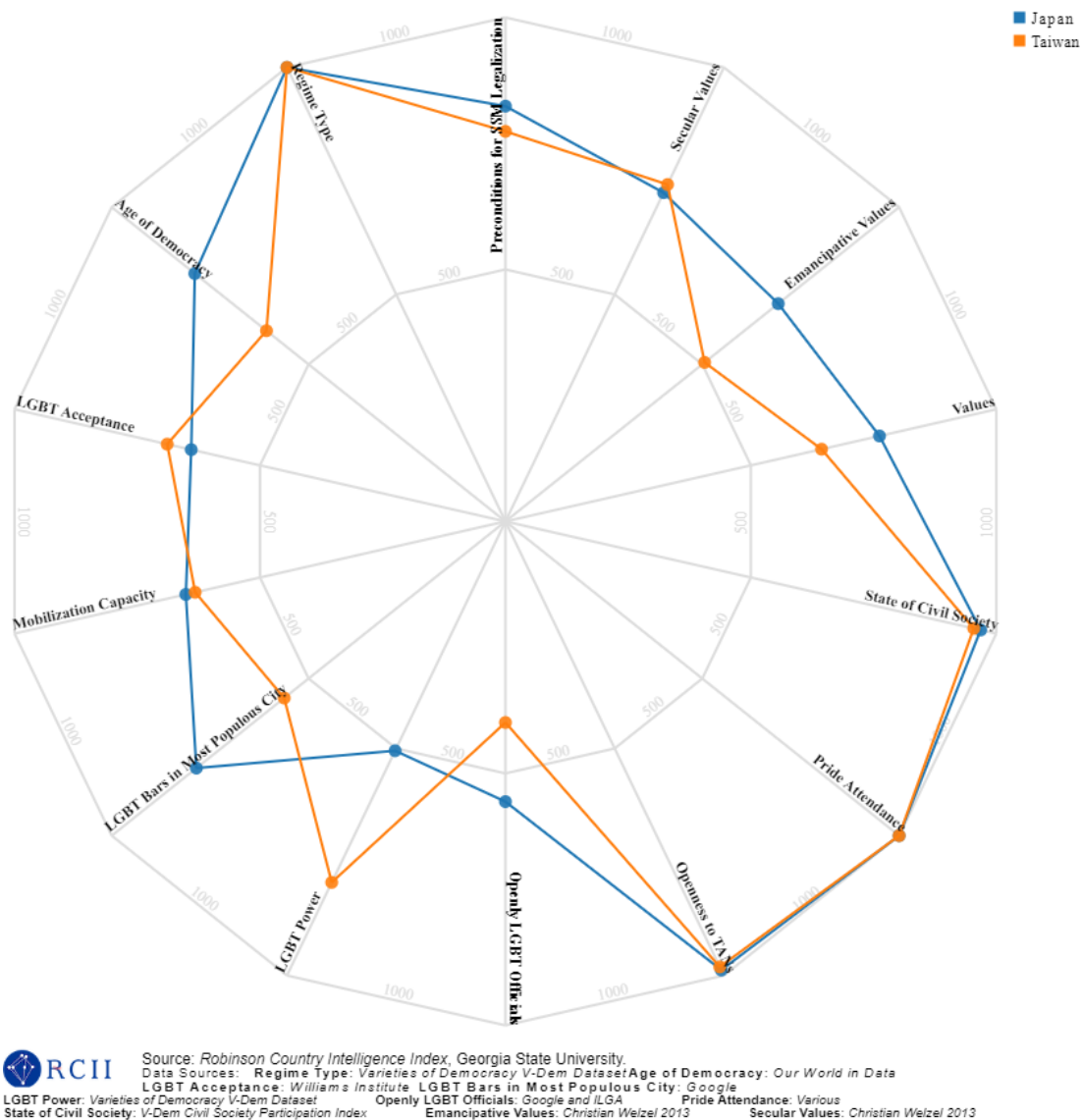


Figure 7-4: Japan and Taiwan Compared in the Rainbow Index 2.0

I will leave it to future research to run a full quantitative analysis on the opportunity structure variables as performing that analysis now would be outside the scope of this dissertation. But my expectation is that the addition of the variables will prove to add explanatory power to the index, though the addition of a variable to measure political opportunity structure would also be helpful. However, this first-glance examination is promising – the RI now accurately predicts the Colombia-Mexico outcome and Taiwan ranks higher in the overall index, nearly besting Japan. My suspicion is that the addition of a robust variable to capture youth political involvement would

tip the balance in favor of Taiwan, if the case study evidence bears out. The hope is that the World Values Survey Wave 8 will once again ask the question about whether or not people aged 18-29 vote in national elections, and that more countries will be included. As this question appeared in Waves 6 and 7, this seems a reasonable expectation – all the more so because there doesn't seem to be readily available country-level comparative data on youth engagement.

7.4 Final Thoughts

Quantitative and case-study analysis confirms the hypothesis that a combination of high mobilization capacity, the embrace of Secular and Emancipative Values, and opportunities for interaction with TANs allows for LGB SMOs to utilize contentious politics within existing opportunity structures in order to advocate for the legalization of same-sex marriage. The research also points to the importance of preconditions to mobilization and engaging in contentious politics, namely LGB group identity formation and democratization. A second version of the RI with these variables incorporated as informed by case-study analysis seems more predictive than the initial version. Future research should endeavor, as a first priority, to confirm that this is the case through quantitative analysis. But there are a number of other exciting avenues for future research suggested by this dissertation.

The most obvious choice would be deeper dive into the Taiwanese case, as it is the first legalizer in the Sinic East – legalizing earlier than the theory operationalized and tested in this dissertation might suggest. There are a number of promising factors to explore that time, space, and scope considerations dictated could only be examined here in a limited, though still clearly informative, way. For example, the exact nature of the relationship between Taiwanese religion and Taiwanese LGB group identity formation as a precondition for mobilization could be explored. The role of Taiwanese LGB bars as mobilization facilitators in the lifecycle of the social movement

could be analyzed in greater detail. The roles of Taiwanization and the need to pursue “queer diplomacy” in the outcome of same-sex marriage legalization should be examined. And the role student-led youth movements in the lifecycle of the social movement as participants in the larger human rights discourse that shaped Taiwan’s transition to democracy could also be analyzed in greater detail.

Jumping off from the Taiwan case, a region-specific exploration of the Sinic East in greater detail could help further illuminate additional factors that explain why so many countries in the region seem so far away from legalization. Japan and South Korea might be the next likeliest cases in the region to legalize, but case study analysis suggests that legalization of same-sex marriage in Japan may be far off. Hong Kong, Vietnam, and China seem quite unlikely to legalize (see Table 7-2). Is there a region-specific factor to the Sinic East that explains this outcome? Future research could shed light on this. And in so doing, this Sinic-East regional analysis could shed further light on why Taiwan seems so exceptional.

Table 7-2: The Sinic East in the RI 2.0

	Rainbow Index		Preconditions for		Mobilization		Openness to TANs		Values		Opportunity	
	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
Japan	18	819	23	836	18	656	9	988	18	783	61	689
Taiwan	19	817	30	788	19	627	11	981	32	684	21	864
South Korea	35	660	35	759	55	390	51	451	10	834	21	864
Hong Kong	68	382	86	234	36	496	85	201	18	783	82	441
Vietnam	77	256	92	185	42	453	89	179	42	598	90	226
China	98	81	96	127	70	242	100	1	51	549	96	1

As previously mentioned, the case of Ecuador legalizing same-sex marriage now stands out as a potential crucial case in future research. In the RI 2.0, Ecuador ranks 51st out of 100 in the world, 11th out of 15 in the Latin America region, 10th out of 15 in the Modicum cluster, and last among all legalizers to-date (see Table 7-3). The next-fourteen-higher ranked countries in the RI

have not legalized. In Latin America Chile⁵⁸, Guatemala, Trinidad and Tobago, the Dominican Republic, and Peru have all failed to legalize despite each being ranking better in the region. All In the Modicum cluster, only Brazil (1st in that cluster) and Ecuador (10th in that cluster) have legalized. And, as already stated, South Africa and Malta rank 39th and 40th in the world respectively. Clearly, Ecuador is an outlier that should be explored in case-study or quantitative analysis.

Table 7-3: Ecuador in the RI 2.0

Rainbow Index					
Ecuador ranks: 55 in the world, 11 in Latin America, 10 in Modicum, 26 in Legalizers.					
WORLD	Latin America	Modicum	Legalizers		
Bulgaria	45	Brazil	1	Uruguay	16
Hungary	46	Uruguay	2	Chile	2
Trinidad and Tobago	47	Chile	3	Latvia	3
Dominican Republic	48	Argentina	4	Lithuania	4
Peru	49	Colombia	5	Philippines	5
Romania	50	Mexico	6	Croatia	6
Serbia	51	Guatemala	7	Dominican Republic	7
Bosnia and Herzegovina	52	Trinidad and Tobago	8	Romania	8
Moldova	53	Dominican Republic	9	Moldova	9
Ukraine	54	Peru	10	Ecuador	10
Ecuador	55	Ecuador	11	Montenegro	11
Montenegro	56	Bolivia	12	Macedonia	12
Albania	57	Haiti	13	Hong Kong	13
India	58	Venezuela	14	Thailand	14
Ghana	59	Nicaragua	15	Singapore	15
Bolivia	60				
Macedonia	61				
Lebanon	62				
Tunisia	63				
Armenia	64				
Georgia	65				

Source: Robinson Country Intelligence Index, Georgia State University.

Japan and Italy are the only two countries in the RI 2.0 top-twenty that have yet to legalize same-sex marriage. According to case study analysis conducted so far, Japan would not be expected to legalize same-sex marriage for some time for many reasons, not the least of which are barriers to group identity formation and mobilization of resources. Analysis of Italy could confirm whether LGB persons face similar challenges, or if a whole different set of country-specific variables explain that country's failure to legalize. And while Japan's failure to legalize has already been somewhat explored, Italy clearly presents an interesting case as well. In the Old West

⁵⁸ Chile legalized SSM in 2022, which outside the scope of consideration for this dissertation.

region, Ireland, Luxembourg, Portugal, and Malta have all legalized same-sex marriage despite lower ranking in the RI 2.0. Likewise, in the Thriving cluster, Iceland has legalized despite a lower ranking – 19th out of 28 to Italy’s 18th rank in the cluster (see Table 7-4).

Table 7-4: Italy in the RI 2.0

Rainbow Index		
Italy ranks: 19 in the world, 5 in Old West, 18 in Thriving, 5 in Old West.		
WORLD	Old West	Thriving
Austria 9	Spain 1	France 8
Canada 10	France 2	Austria 9
United States 11	Austria 3	Canada 10
Finland 12	Belgium 4	United States 11
Belgium 13	Italy 5	Finland 12
New Zealand 14	Ireland 6	Belgium 13
Norway 15	Luxembourg 7	New Zealand 14
Brazil 16	Portugal 8	Norway 15
Uruguay 17	Greece 9	Uruguay 16
Japan 18	Malta 10	Japan 17
Italy 19	Cyprus 11	Italy 18
Taiwan 20		Iceland 19
Chile 21		Switzerland 20
Iceland 22		Ireland 21
Switzerland 23		Czech Republic 22
Argentina 24		Luxembourg 23
Colombia 25		Estonia 24
Ireland 26		Slovenia 25
Mexico 27		Slovakia 26
Latvia 28		Portugal 27
Czech Republic 29		Malta 28

Source: *Robinson Country Intelligence Index*, Georgia State University.

The role of religion in Reformed West countries could also be explored. Out of nine countries included in the RI region, only Switzerland had not legalized as of the time of this analysis⁵⁹. Case study analysis could help ascertain why Switzerland lagged behind Denmark, Finland, Germany, Iceland, Netherlands, Norway, Sweden, and the UK. Likewise, Latin America, despite being heavily Catholic, has a very high proportion of legalizing countries to non-legalizing countries. It is possible that there is something inherent in the religions that inform the value

⁵⁹ SSM has been legal in Switzerland since July 2022, but this date falls outside the range of analysis conducted for this dissertation.

systems of these cultures that could explain such a notable and obvious convergence of outcome. Complementary region-based studies of the Reformed West and Latin American regions could be revealing (see Figure 7-5).

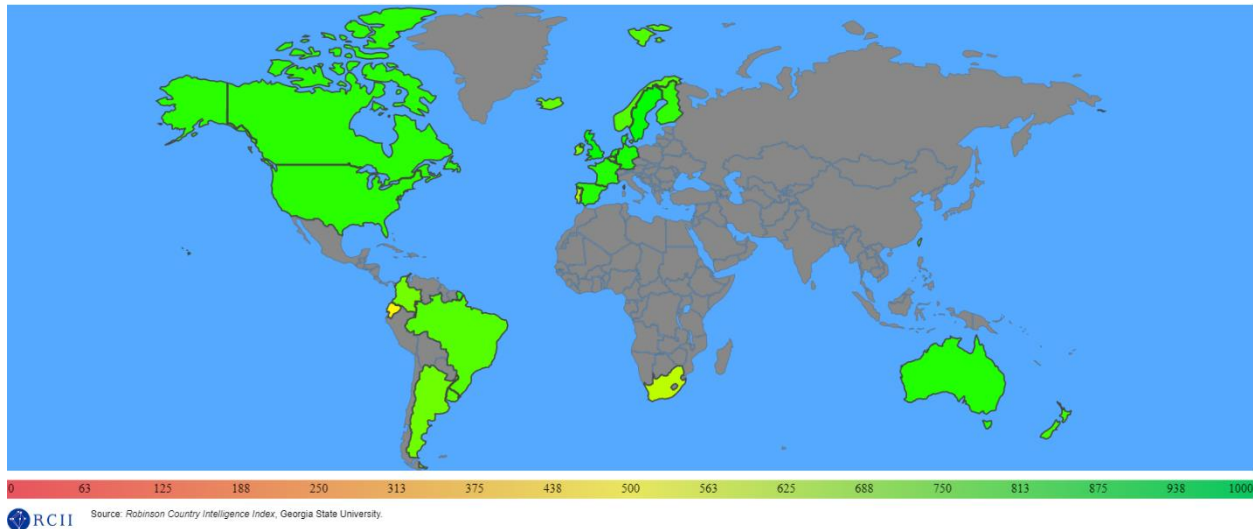


Figure 7-5: Map of Same-Sex Marriage Legalizers in the RI as of 2021

The South African case is another obvious choice for future analysis and could be another critical case for the theory. South Africa is the only country in the sub-Saharan Africa region to legalize same-sex marriage (see Figure 7-5). Can this be explained through the combination of mobilization capacity, TANs, and values leading to successful navigation of opportunity structures? Has South Africa met the precondition of LGB group identity formation? Or is some other event in South African history that a historical institutional approach to analysis might reveal? The legacy of Apartheid certainly springs to mind as one contender for such an event. It could be possible that the legacy of Apartheid informed how SMOs navigated opportunity structures in the country. Or it could be that the legacy of Apartheid allowed South Africa to legalize same-sex marriage earlier than it should have.

Another potential puzzle to explore would be why countries in the Orthodox East, the Indic East, and the Islamic East have remained so resistant to same-sex marriage legalization efforts.

Activists in India have met with little success, and for a time India recriminalized consensual same-sex sexual activity from 2013 – 2018, after Section 377 (India’s colonial-era sodomy law) had initially been struck down by the Delhi High Court in 2009. The Supreme Court in the Philippines in 2020 seemed to shut the door on the possibility of same-sex marriage legalization through legal opportunity structures. These are the two most likely countries in the Indic East to legalize same-sex marriage, which is to say, given the aforementioned circumstances, that same-sex marriage legalization in any country in the Indic East seems unlikely in the foreseeable future. Countries in the Islamic East have some of the harshest punishments imposed on same-sex couples, and LGB SMOs in that regions two most likely legalizers of Tunisia and Turkey have suffered considerable setbacks as well. For example, in 2015 Turkey’s largest city Istanbul banned Pride celebrations altogether. There is some promise in the Orthodox East’s most likely legalizer in Bulgaria as their high court ruled in 2018 that same-sex couples may be granted legal residency as such in that country, in compliance with European Court of Justice case law. But same-sex marriage legalization seems a far-off prospect in Bulgaria as well, though it does rank higher in the RI than Ecuador.

Finally, analysis in Chapter 3 revealed that the theory of legalization of same-sex marriage presented here does not predict the outcome of the death penalty for consensual same-sex sexual relationships for any case, and yet Iran, Nigeria, Pakistan, and Yemen are all countries in the RI in which the death penalty exists for LGB persons (and non-LGB persons for that matter) who chose to indulge in non-heteronormative sexual activity. This suggests a whole separate research question of why countries still institute the death penalty for consensual same-sex sexual relationships when this is clearly outside the norms of expected outcomes for punishment or acceptance. Possible explanations could include religion, degrees of authoritarianism, legacies of

colonialism, poverty, and political instability all spring to mind. Or it could be that mobilization capacity, opportunities for TANs, and the degree to which empowering values are embraced are so low as to fall below some threshold which might explain why LGB persons in those countries are put to death.

In closing, this puzzle is still revealing itself. After 2021 – the analytical cut-off for analysis in this dissertation, Andorra, Chile, Cuba, Slovenia, and Switzerland have all legalized same-sex marriage, and an updated RI should take this into account. Analysis has revealed the theory that the combination of mobilization capacity, TANs, and empowering values provides a compelling explanation as to why some countries are more likely to legalize same-sex marriage than others. As the universe of cases expands, the theory for explaining same-sex marriage legalization can be refined, and even more robust quantitative and qualitative analysis could be undertaken. No matter which of the potential areas of future research related to same-sex marriage legalization I explore, it is certain that the RCII will be a valuable tool in that research. And it is equally certain that a solid grounding in the data will light the way to fruitful case-study analysis. As a mentor of mine is fond of saying, numbers are where the conversation begins.

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APPENDICES

Appendix A: same-sex marriage Legalization by Country, Region, Date, Scope, and Mode

Country	Region	Date	Scope	Method
Netherlands	Europe	2000	Full	Legislation
Belgium	Europe	2003	Full	Legislation
Canada	North America	2005	Full	Legislation
Spain	Europe	2005	Full	Legislation
South Africa	Africa	2006	Full	Court Decision/Legislation
Mexico	Latin America	2009	Limited	Court Decision/Legislation
Norway	Europe	2009	Full	Legislation
Sweden	Europe	2009	Full	Legislation
Argentina	Latin America	2010	Full	Legislation
Iceland	Europe	2010	Full	Legislation
Portugal	Europe	2010	Full	Legislation
Denmark	Europe	2012	Full	Legislation
Brazil	Latin America	2013	Full	Court Decision
France	Europe	2013	Full	Court Decision/Legislation
New Zealand	Oceania	2013	Full	Legislation
The UK	Europe	2013	Limited	Legislation
Uruguay	Latin America	2013	Full	Legislation
Luxembourg	Europe	2014	Full	Legislation
Finland	Europe	2015	Full	Legislation
Greenland	North America	2015	Full	Legislation
Ireland	Europe	2015	Full	Referendum
The United States	North America	2015	Full	Court Decision
Colombia	Latin America	2016	Full	Court Decision
Australia	Oceania	2017	Full	Referendum/Legislation
Germany	Europe	2017	Full	Legislation
Malta	Europe	2017	Full	Legislation
Ecuador	Latin America	2019	Full	Court Decision/Legislation
Taiwan	East Asia	2019	Full	Court Decision/Legislation

Appendix B: Rainbow Index Math

The following is a description of the math used by the Rainbow Index to calculate scores for each country. This math is the same as used in the Robinson Country Intelligence Index (RCII) and is thus part of the tool's functionality. The RCII's approach was developed by Chris Brown and several graduate students working on the project over several years. The following language was originally written by one of those graduate students, Camilo Martinez. I have edited it slightly and reproduced it here with permission from the RCII team.

The following are the steps used by the RCII to calculate a score derived from raw data inputs for any given variable.

Define Directionality

Addressing the directionality of the data is the first step to start the calculation; whether a high score is good or bad changes the way we compute the variables. We refer to this as directionality. There are three defined directionalities.

- Positive: High levels of the variable are generally desired and should result in a high score (ex. Aggregate GDP)
- Negative: High levels of a variable are generally not desired and should result in a lower score (ex. Unemployment)
- Absolute: For some variables high positive numbers and high negative numbers are both negative traits (ex. Inflation)

Transformation

Data for country performance is rarely ever normally distributed. In order to shift the data to a less skewed, more normal distribution; the RCII uses a logarithmic transformation of the raw data variables, changing the scale from a decimal scale to logarithmic scale.

$$f(x) = -\ln(|x| + 1) \quad x < 0$$

$$f(x) = -\ln(|x| + 1) \quad x \geq 0$$

Standardization

To make variables comparable, the RCII standardizes the data with a mean of 0 and a standard deviation of 1. Each data point (x) in the variable needs to be standardized with the mean (μ) and standard deviation (σ) of the year the data is in using the following formula:

$$\frac{x - \mu}{\sigma}$$

If the directionality is negative (meaning more of the variable is not desired, e.g., pollution) this result should be multiplied by -1 to guarantee the appropriate result.

Rescale

Finally, to rescale the result to a score between 1 and 1000; the RCII uses the formula:

$$\frac{Score_{Country\ i} - Sample\ Minimum_{All\ countries}}{Sample\ Maximum_{All\ countries} - Sample\ Minimum_{All\ countries}} * 999 + 1$$

Aggregation

The aggregated variables are computed according to the weights to create the new data. From that point, the same standardization and rescaling is applied to aggregate variables as to the raw data variables.

Missing values

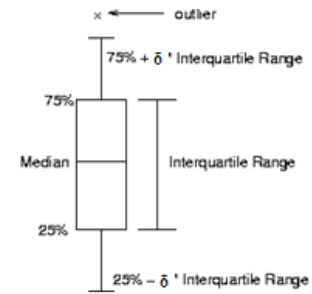
Sometimes, data needed to compute aggregate variables can be missing due to data availability (for example, there is not a lot of publicly available data for Cuba). In this case the RCII applies a 50% rule. If the number of variables is less than 50% the aggregation cannot be

computed, otherwise, the RCII calculates the aggregate variable resizing the weight of the available variables in the same proportion of the missing variables.

$$New\ Weight_i = \frac{Previous\ Weight_i}{1 - Weight\ Missing\ Variables}$$

Outliers

Under the methodology to rank the countries used in the RCII, we suppose a normal distribution in the data once it has been transformed. Moreover, we apply a logistic regression to achieve these normality assumptions. However, in some variables, there are data points which we consider extreme values because they seriously



change the mean and variance of the data. This would result in a miscalculation of the score that groups the data points that are not extremes. In order to avoid this problem, we apply an interquartile range methodology, so we can find a range in which the data makes sense for the purpose of the calculation methodology.

That is why we use the parameter $\delta=20$ to multiply the interquartile range in order to give the boundaries of each variable enough flexibility to show the variable distribution but also allowing the RCII to execute the calculation without being affected by extreme outliers.

Appendix C: Age of Democracies

Age of Democracies (as of 2020)

country	year	Age of Democracy (Years)
United States	2020	216
Switzerland	2020	168
New Zealand	2020	159
Canada	2020	149
United Kingdom	2020	131
Netherlands	2020	119
Norway	2020	116
Australia	2020	115
Denmark	2020	115
Sweden	2020	105
Finland	2020	99
Iceland	2020	98
Austria	2020	70
France	2020	70
Italy	2020	70
India	2020	66
Japan	2020	64
Tunisia	2020	60
Colombia	2020	58
Trinidad and Tobago	2020	54
Greece	2020	42
Cyprus	2020	39
Spain	2020	39
Bolivia	2020	34
Argentina	2020	33
Nigeria	2020	33
Turkey	2020	33
Nicaragua	2020	32
Brazil	2020	31
Uruguay	2020	31
Guatemala	2020	30
Philippines	2020	30
South Korea	2020	28
Poland	2020	27
Bulgaria	2020	26
Chile	2020	26
Germany	2020	26
Hungary	2020	26
Estonia	2020	25
Macedonia	2020	25
Moldova	2020	25
Romania	2020	25
Slovenia	2020	25
Ukraine	2020	25
Bosnia and Herzegovina	2020	24
Lithuania	2020	24
Czech Republic	2020	23
Slovakia	2020	23
South Africa	2020	22
Taiwan	2020	20
Albania	2020	19
Ghana	2020	19
Indonesia	2020	17
Croatia	2020	16
Mexico	2020	16
Peru	2020	15
Ecuador	2020	13
Georgia	2020	12
Montenegro	2020	10
Serbia	2020	10

Appendix D: Elite Interview Questions

Georgia State University

Queer Series of Events Interview Questions

Title: *A Queer Series of Events: A Comparative Examination of Same-Sex Marriage Legalization*

Principal Investigator: Dr. Jennifer McCoy, PhD

Student Principal Investigator: Mr. Michael D. Shea, PhD Candidate

Procedural Notes (not shared with interview subjects)

- Each interview will begin with a few brief questions on background relevant to the subject. For example, why they got into politics, why the issue of same-sex marriage important to them, etc.
- Each interview subject will be asked each of the questions under General Questions.
- Each group of Elites (Political, Judicial, Activist) will then be asked the questions for their elite group only. In other words, a Political Elite will not be asked questions intended specifically for Judicial Elites.

Interview Questions – General Questions

1. Do you support the legalization of same-sex marriage in (insert country name)?
2. Follow-Up: Why/Why Not?
3. What factors do you feel were most important in leading to the legalization of same-sex marriage in (insert country name)?
4. How were values important in the legalization of same-sex marriage in (insert country name)?
5. What degree do you think a respect, or lack thereof, for traditional institutions of authority played a role in the legalization of same-sex marriage?
6. Follow-Up on country-specific institutions of authority and their reaction to same-sex marriage.
7. How was religion, or the lack of it, important in the legalization of same-sex marriage in (insert country name)?
8. Follow-up on country-specific religious institutions and their support/opposition to same-sex marriage.
9. Would you say that people in your country value imagination, independence, or obedience more?
10. Follow up: Is that an important factor in your country's adoption of same-sex marriage?

11. According to the World Values Survey, people in your country value autonomy (highly/lowly) at (figure). Do you think this played an important role in the legalization of same-sex marriage?
12. Divorce was legalized in your country in (date), abortion in (date), and consensual homosexual sex in (date). Do you what /if any degree do you think a tolerance for reproduction or sexual freedom mattered in the legalization of same-sex marriage?
13. According to the World Economic Forum's Gender Gap Report, your country performs (well/poorly) where gender equality is concerned. Is gender equality important in the legalization of same-sex marriage?
14. According to the World Values Survey, people in your country value their freedom of speech and their ability to influence events in their political, personal, and professional lives. Is this aspect of personal choice important in the legalization of same-sex marriage?

Interview Questions – Political Elites

1. For publicly identified LGB political elites only: what made you decide to come out publicly?
2. For publicly identified LGB political elites only: to what extent do you feel your being LGB helped you to advocate for the legalization of same-sex marriage?
3. For publicly identified LGB political elites only: do you think your membership in the LGB community gave you political leverage to use in helping to legalize same-sex marriage?
4. (Percentage) of people in (insert country name) have access to the internet. Was this important in helping to legalize same-sex marriage?
5. The internet is increasingly used to help bring marginalized groups together and to help them find a voice. To what extent do you feel access to the internet helped or hurt the chances of legalizing same-sex marriage?
6. According my research, there are (number) of LGB bars in your city. Historically, these bars have served as gathering spaces for LGB persons and as a way or “normalizing” LGB people for others outside that community. Do you think this relatively (high/low) number of LGB bars (helped/hurt) efforts to legalize same-sex marriage in your country?
7. To what degree, if any, were you lobbied by LGB advocacy networks?
8. Follow-up: Examples, if any?

Interview Questions – Judicial Elites (not used)

1. For publicly identified LGB judicial elites only: what made you decide to come out publicly?
2. For publicly identified LGB judicial elites only: do you feel your membership in the LGB community influenced how you viewed (specific case)?
3. Why do you feel activists in your country felt the need to turn to the courts to help them secure same-sex marriage rights?
4. To what degree, if any, were you lobbied by LGB advocacy networks?
5. Follow-up: Examples, if any?

Interview Questions – Activists

1. What made you decide to be an advocate for LGB rights in general and same-sex marriage rights in particular?
2. What resources did you mobilize to help you advocate for same-sex marriage?
3. How did you mobilize those resources?
4. What tactics did your group employ to help you advocate for same-sex marriage rights?
5. Were out LGB political/judicial elites important in helping you mobilize resources and/or accomplish your goals?
6. Was the internet important in helping you mobilize resources and/or accomplish your goals?
7. Were LGB bars important in helping you mobilize resources and/or accomplish your goals?
8. Did your group receive any help from LGB advocacy groups outside your country?

Appendix E: “Vote Yes” Leaflet Translation



11/24 Nine-In-One General Election And Referendum

LGBTQ

Two Yeses, Three Nos. Vote This Way.

After the general election
Get the referendum ballot

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Agree (O)	Disagree (X)	Agree (O)	Disagree (X)	Agree (O)	Disagree (X)	Agree (O)	Disagree (X)	Agree (O)	Disagree (X)
10		11		12		14		15	
Do you agree that civil law marriage should be limited to the union of one man and one woman?		Do you agree that the Ministry of Education and schools at all levels of national education (junior high school and elementary school) should not provide students with the gay education stipulated in the Enforcement Rules of the Gender Equality Education Act?		Do you agree that the right of two persons of the same sex to live together for long-term should be protected in a form other than civil law marriage?		Do you agree that civil law marriage should protect marriage between two persons of the same sex?		Do you agree that gender equality education should be implemented in all stages of national education, and that the content should cover emotional education, sex education, and gay education, as explicitly stipulated in the Gender Equality Education Act?	



Appendix F: "Vote No" Leaflets Translation

Anti-gay marriage, Save Taiwan.

Won't work for the economy. Only stirs controversy. Accept gay marriage. Family will be doomed.

Consequences of passing the bill	Examples from other countries. Are we going to follow?
<p>Would leave children without a father or mother for life!</p> <p>Note: The passage of the same-sex marriage bill not only cut families off but left children without a mother or a father.</p>	<p>Example from US:</p> <p>"I love my mother's same-sex partner, but another mom can never fill the vacancy of not having a dad" - Heather Barwick (the author of Heather Has Two Mommies) "The family values promoted by same-sex marriage denies the most basic needs and desires of our children who desire the company of their fathers and mothers. At the same time telling our children: you don't need these innate longings; you will be fine. But we're not fine, we're hurt." Heather said.</p>
<p>The concept of marriage as one husband and one wife would be threatened!</p> <p>Note: That's how the term "heteronormative hegemony" was coined. Actually, in mid 2016, Taiwan University's Mechanical Engineering Department was fined 30,000 yuan by the Ministry of Education just for mentioning "one husband and one wife is natural" in an exam question.</p>	<p>Example from US:</p> <p>Massachusetts same-sex marriage has been legal for 14 years since 2003. During these years, people in the state have not only been persecuted for their personal freedom, parents' rights in education, and freedom of worship, but the rights of children's education have also been threatened. For example, "teachers must talk to students about gay sex", "teaching homosexuality in elementary schools and kindergartens", "parents have no right to interfere with the teaching of same-sex relationships in schools", "more Massachusetts students are beginning to self-identify as gay", "Public health departments hand out obscene gay pamphlets in high schools," "Businesses that refuse to serve same-sex couples are charged with discrimination," "People who publicly express opposition to same-sex marriage are fired from their companies," and "Opponents of same-sex marriage are attacked and even set on fire."</p>
<p>By then it will be illegal to take to the streets to protest again!</p> <p>Note: Now you go out on the streets to protest against gay marriage, you could already be tied up and restrained by the police. In the future, it would be not only to no avail, but also against the law (because the law would have been changed) !</p>	<p>Example from France:</p> <p>In 2013, France passed the same-sex marriage bill. There were very many protests on the eve of its passage. But after its passage, everything was changed. In 2013, millions of French people took to the streets to fight against same-sex marriage. Not only were their demands ineffective, but they were also suppressed by the riot police. Over a hundred people were arrested. In 2014 and 2015, There were multiple demonstrations with hundreds of thousands of participants. People held up signs saying, "In 2017, my vote was for family". But these actions were to no avail.</p>
<p>Would not be able to refuse services to gays!</p> <p>Note: Religious freedom, conscience freedom, parents' rights in education, ... would all be impacted! even be fined, convicted and jailed. There're examples from other countries! Goddamnit! Gay rights are so mighty, we're so scared.</p>	<p>Example from Europe:</p> <p>2 years ago, a bakery in Northern Ireland was taken to court for refusing to bake an "I support same-sex marriage" themed cake. The plaintiff accused the store of discriminating against gays. On October 24, 2016, the latest verdict was announced - the guilty verdict was upheld, and the bakery had to pay 500 euros (about 25,000 Taiwan dollars) in damages.</p> <p>Example from Canada:</p> <p>The Ontario government requires Catholic schools to regularly hold "joint gay/straight Sunday schools" (and must use terms like same-sex) and has written to public schools that they must not rent auditoriums to small churches that "do not accept same-sex marriage ceremonies".</p>






A British writer said: "The most important lesson learned from history is that human beings are unable to learn any lessons from history." Gay marriage is good or bad? Just look at what happened after other countries passed it, we would know the answer. The sexual liberation proposals from the western countries are invading Taiwan and the Chinese culture, impacting the family ethics and values of the Taiwanese grass-roots. These countries have tasted the bitter fruit. Do we still want to follow? These countries want to turn back. Do we still want to dive in?

Apple Daily Realtime

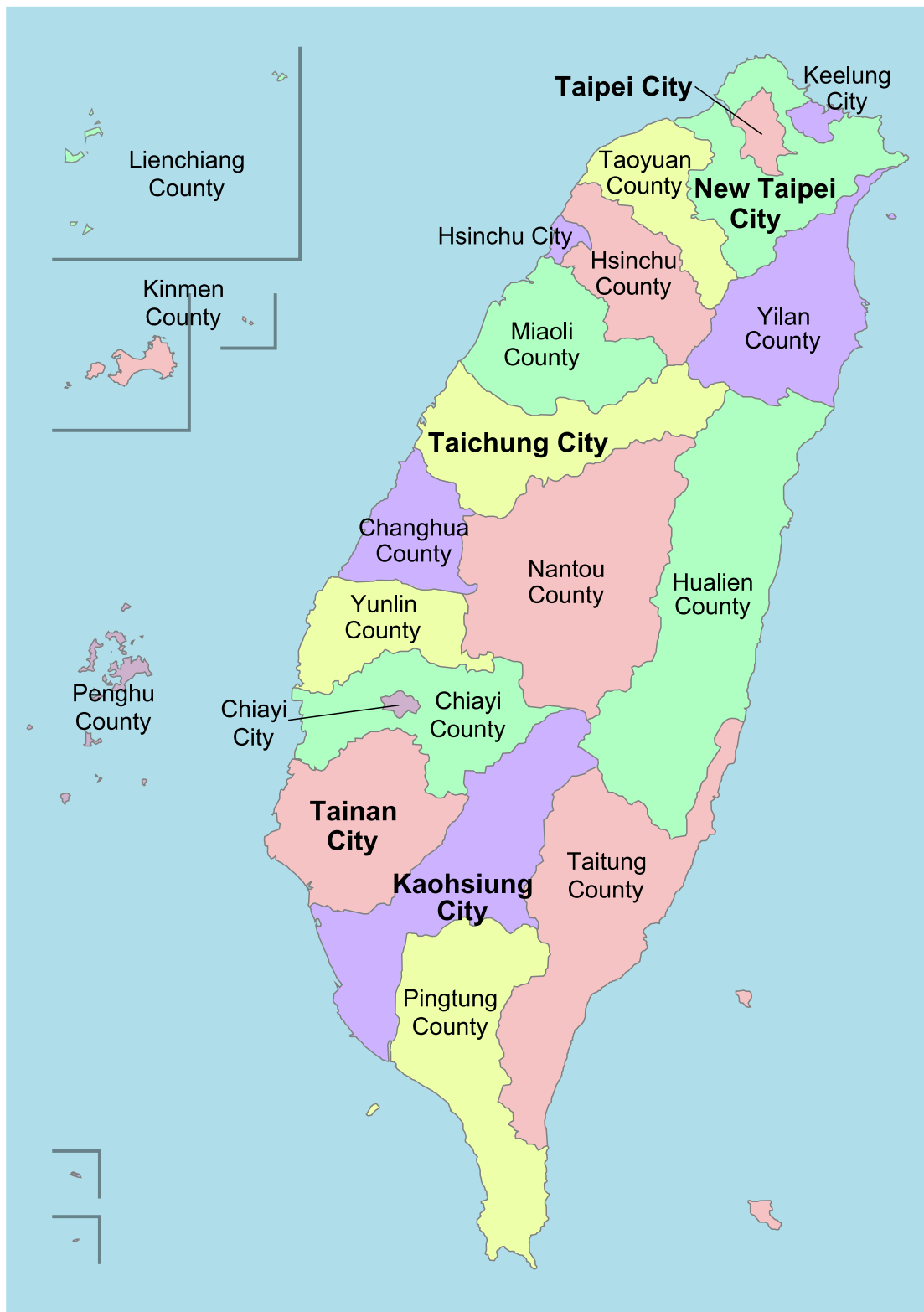
<< On 11/24, 9-in-1 general election and referendum, with 5 proposals on same-sex education >>

For the sake of our next generation and the inheritance of traditional moral values,
 please "read the articles carefully before circling as follows"

★★Select "agree" on all three proposals from Next Generation Happiness League,
 Select "disagree" on both proposals from Gay Rights Movement Organizations★★

									
Agree	Disagree	Agree	Disagree	Agree	Disagree	Agree	Disagree	Agree	Disagree
Do you agree that civil law marriage should be limited to the union of one man and one woman?		Do you agree that the Ministry of Education and schools at all levels of national education (junior high school and elementary school) should not provide students with gay education as stipulated in the Enforcement Rules of the Gender Equality Education Act?		Do you agree that the right of two persons of the same sex to live together for long-term should be protected in a form other than civil law marriage? (A separate law on same-sex marriage)		Do you agree that civil law marriage should protect marriage between two persons of the same sex? (no separate law on same-sex marriage)		Do you agree that gender equality education should be implemented in all stages of national education, and that the content should cover emotional education, sex education, and gay education, as explicitly stipulated in the Gender Equality Education Act?	
Next Generation Happiness League						The eve of equality, the uprising of rainbow (Gay Rights Movement Organizations)			

Appendix G: Administrative Divisions of Taiwan



Source: Wikipedia – Geography of Taiwan