

Exploring the Obstacles to the Legalization of Same-Sex Marriage in Macau: The Interplay of Law, Culture, and Politics

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Abstract: With the development of the times and the continuous change of social concepts, the awareness of sexual minorities on their rights is increasing, and more and more countries and regions are promoting the legalization of same-sex marriages in response to the trend of social pluralism and the protection of marriage equality and other related issues. The adoption of legal provisions and institutions for same-sex marriage provides legal protection for sexual minorities in marriage and family. However, Macao, as a region with a highly developed economy, where East meets West and where inclusiveness is strong, is lagging behind developed countries and regions such as Europe and the United States in the legalization of same-sex marriages. Currently, there is no legal provision in the legal system of Macao that stipulates the validity of same-sex marriages, and there is no legal recognition of the legalization of same-sex marriages in any legal form. This institutional gap makes same-sex couples lack the protection of family rights at the legal level, and they do not enjoy the same rights as heterosexual couples in terms of property inheritance and adoption. In this paper, we will analyze the legal provisions, interpret the institutional structure, and observe Macau's local society and culture to explore the resistance factors to the legalization of same-sex marriages in Macau: firstly, at the level of the legal system, it is clearly stipulated that the subject of the marriage is of the opposite sex in Macau's Civil Code, and there is a lack of anti-discriminatory mechanism and design of a pluralistic marriage system; secondly, at the level of culture and religion, the traditional Confucianism is deeply entrenched, coupled with Catholicism, which has long influenced the culture and values of Macau's inhabitants. Secondly, at the cultural and religious levels, the deep-rooted traditional Confucianism and the Catholic culture have long influenced the culture and values of Macao residents, resulting in a lack of social acceptance of same-sex marriages; and finally, at the social level, the low level of political participation of Macao residents and the limited mobilization capacity of the civil society have further weakened the impetus of the society. This paper argues that the resistance to the failure to legalize same-sex marriage in Macao is not merely a matter of legal technicalities, but rather the result of a confluence of multiple factors. Through the analysis of legal texts and realities, it can be found that the current exclusion of sexual minorities in Macau is characterized by the dual features of institutional and cultural, thus the foundation for the subsequent legalization of same-sex marriage in Macau can be laid through the reform of the legal system, the guidance of cultural perceptions and the reconstruction of the political participation mechanism.

Keywords: The Interplay of Law, Culture, and Politics; Same-Sex Marriage in Macau; Obstacles to the Legalization of Same-sex Marriage.

1. Introduction

1.1. Background

In recent years, the global trend of protecting the rights of same-sex groups has started, and the legalization of same-sex marriages has become an important issue in the legal policy reforms of many countries and regions. Denmark became the first country to recognize civil unions for homosexuals in 1998 (The Danish Registered Partnership Act, D/341-H-ML Act No. 372 of June 1, 1989). The Netherlands became the first country in the world to legalize same-sex marriages in 2001, and Ireland became the first country in the world to legalize same-sex marriages through a comprehensive referendum in 2015 (Excluded. (2018, August 3). Plataforma Media. <https://www.plataformamedia.com/zh-hant/2018/08/03/%E6%8E%92%E9%99%A4%E5%9C%A8%E5%A4%96/>). To date, 38 countries and regions around the world have completed the process of legalizing same-sex marriage or amending their laws to give same-sex couples the same or nearly the same marital rights as opposite-sex couples. The formulation of these policies not only provides legal protection for sexual minorities at the level of marriage contracting and adoption, but also safeguards the human rights of sexual minorities.

China's four regions on both sides of the Taiwan Straits, with the exception of Taiwan, established the right to marriage equality in the 2017 Interpretation of the Judicial Yuan Interpretation No. 748, and the subsequent Enforcement Law of the Interpretation of the Judicial Yuan Interpretation No. 748 enacted by the Legislative Yuan came into effect on May 24, 2019, making it the first Chinese-speaking region to legalize same-sex marriage. Compared to Macau, although the mainland and Hong Kong have also not legalized same-sex marriage, Hong Kong protects the rights of same-sex couples in areas such as social welfare and immigration through judicial rulings, while the mainland gives a certain degree of tolerance to same-sex couples at the social level. Even though Macao, as the frontline of China's foreign exchanges, has demonstrated strong cultural inclusiveness and openness in many aspects, Macao has not made any changes to its legalization of same-sex marriages in terms of law and policy.

Article 1462 of the Macao Civil Code stipulates that marriage is a contract between a man and a woman who intend to establish a family in accordance with the full communal lifestyle provided for in this Code. At present, marriage is still defined as the union of one man and one

woman, thus hindering sexual minorities in the areas of inheritance, property distribution and adoption of children. The lagging legal policy not only restricts the realization of the rights of homosexuals in the field of family life, but also reflects some of the problems in the protection of human rights in Macao society. Therefore, the stagnation of the legalization of homosexuality in Macao has become an important topic of practical significance and academic research, as the restriction of the legalization of homosexuality continues to be highlighted.

1.2. Research Objectives

This paper analyzes the resistance to the legalization of same-sex marriage in Macao by revealing the loopholes in the legal system and the influence of traditional culture on gender concepts.

Firstly, on a practical level, this paper aims to explore the reasons why homosexuality has not been legalized in Macao. Currently, homosexuality is not explicitly prohibited in Macao, but there are loopholes in the design of the system in terms of property rights and adoption for homosexual couples. With the development of social pluralism, how to build a more diversified, inclusive and just law is not only related to the protection of the rights of specific groups, but also to the understanding and practice of "human rights" by the public in Macau.

However, at the theoretical level, compared to the large amount of academic research in China's mainland, Hong Kong and Taiwan, there are relatively few studies on sexual minorities in Macao, mostly focusing on the cultural and social level of analysis, with relatively insufficient in-depth exploration of the resistance to legislation at the legal level, and a lack of legal, institutional and political perspectives to explore the relevant issues. In this paper, we would like to discuss the resistance to the legalization of homosexuality in Macao from a legal perspective.

Finally, in the process of writing, we will compare the legislative process of same-sex marriage in Macao with that in Western countries and regions such as Taiwan and the United States, in order to compare the unique cultural context in which Macao is currently located, and to explore the gap between the traditional norms and the modern value system that exists in the design of its system.

1.3. Literature Review

The legalization of same-sex marriages, as an important human rights issue in many countries and regions around the world, has received extensive attention and consideration in recent years in academia, especially in the legal profession. Compared with East Asian countries and regions, since the concept of legalizing same-sex marriage first appeared in Western countries such as Europe and the United States, the concept has gained support and acceptance from a considerable number of people in the past two decades of rapid development of information technology such as the Internet. In the Netherlands, the United States and Canada, the legalization of same-sex marriage has been recognized through legislative or judicial means. However, it is worth noting that the process of legalizing same-sex marriage in Western countries is not simply a matter of making policy adjustments to compromise with minority groups in order to maintain social stability and achieve the results of social pluralism promised by politicians during election campaigns. In Western countries, the "right to equality" and "human

dignity" in their constitutions are regarded as inviolable fundamental rights, and these values are not only the core of the fundamental rights system, but also important principles indispensable to the protection of the rights of minorities(Ireland legalizes same-sex marriage by national referendum. (2015, May). JUR-IST. <http://jurist.org/paperchase/2015/05/ireland-legalizes-same-sex-marriage-by-national-referendum.php> .The issue of legalizing same-sex marriage is therefore not an optional configuration of rights, but rather an extension of the constitutional protection of the right to equality and the right to freedom of marriage. William Nichol Eskridge Jr. emphasizes marriage as a basic human right and believes that the right to same-sex marriage should be protected on the basis of the constitutional principles of equal protection and due process, and that the government should not restrict a person on the basis of sexual orientation(Legislative Assembly rejects same-sex union law. (2013, March 29). "Macao Daily News". http://www.macaodaily.com/html/2025-05/31/node_2.htm

In the Mainland, Hong Kong and Taiwan, scholars have mainly approached the study of same-sex marriage from the following two perspectives. The first is to find the theoretical basis for legalizing same-sex marriage from the perspective of the constitution and basic human rights. Among them, the principle of freedom of marriage in the Marriage Codification, as one of the important principles for the conclusion of marriage, emphasizes that a man and a woman should follow the principle of voluntariness in the process of marriage and be free from outside interference(Legislative Council receives more than 1,000 signatures against this legislation: Same-sex civil unions bill vetoed with only one vote in favor. (2013, March 29). "OCBC News". <http://www.vakiodaily.com/>. Wang Liren in "China's Attitude towards Same-Sex Marriage, Transgender Marriage, Internet Marriage, and De Facto Marriage" points out that China's attitude towards homosexuality is "not to encourage, not to prohibit, and not to intervene", but this stance does not solve the unequal status of same-sex couples in the law, so they should be protected according to the principle of equality(Macao authorities say same-sex marriage not yet legal, inappropriate to include domestic violence law. (2013, March 3). "Sohu News". <https://news.sohu.com/20130303/>. At the same time, Euna Lee also emphasizes that gay and lesbian marriages should be protected by law in order to achieve equality and justice(Rainbow Flash Mob at St. Paul's - 2013 International No More Homophobia D-ay. (2013, May 4). "Macao Rainbow". . Secondly, scholars from the perspective of the functionality of marriage and the development of historical changes, the current marriage law excludes same-sex unions due to heterocentrism. Among them, Li Xia in "On the Civil Law Status of Same-Sex Marriage" points out that the law's granting of the freedom of marriage only to heterosexual blues while restricting homosexuals is unequal, lacks justification, and will have a negative impact on society(Report on public opinion survey on the eve of the 10th anniversary of Macao's handover. (2009, December 16). "Macao Polytechnic University". <https://news.sina.com.cn/c/2009-12-16/035316778266s.shtml>.

The number of related papers on same-sex marriage in Macao is relatively small, and articles with relevant content mostly appear in cross-cutting areas such as gender studies and cultural identity. In the studies related to the legality of same-sex marriage from the perspective of the legal system, the subject of marriage is limited to a man and a woman simply from the literalness of the legal provisions, with

insufficient analysis from the political and cultural perspectives. From a comparative point of view, the Macao region is usually compared with Portugal, pointing out that although Macao has been colonized by Portugal for many years, with far-reaching cultural influences, it has not progressed with Portugal in terms of affirmative legislation, reflecting the invisibility factor between the legally established and the institutional renewal. There is a lack of relevant articles analyzing the resistance field to the legalization of same-sex marriage constructed by the internal structure and ideology of the Macao region.

Fewer studies have been conducted from a socio-cultural perspective, concluding that the marginalization of sexual minorities by Macau's conservative social structure has indirectly shaped the rejection of homosexuality. Meanwhile, the analysis of the political structure is even more scarce. Existing literature on Macau's political system mainly focuses on the characteristics of the executive-led system and the limitations of the electoral system, and seldom combines these structural characteristics with same-sex marriage.

Therefore, in summary, academic research on the legalization of same-sex marriage in Macao suffers from the following shortcomings: firstly, a lack of systematic attention, as the existing literature is only limited to the analysis of the civil law provisions in Macao, gender and other areas of analysis, and has not yet integrated the triple factors of system, culture and society; and secondly, a lack of analysis of the motives for legislation on the issue of sexual minorities based on the analysis of the current political structure of Macao. Therefore, this paper will explore the resistance to the legality of same-sex marriage in Macao from the triple perspectives of the legal system's exclusionary structure, cultural and religious constraints, and the social environment.

2. An Overview of The Introduction of Macau's Marriage System and The Issue of Homosexual Legitimacy

2.1. Criminal and Civil Status (Lack of Exploration on The Issues of Marriage for Same-Sex Couples and Adoption Rights for Homosexual Couples)

The Macao Criminal Code currently does not recognize homosexual acts as illegal and does not penalize same-sex conduct, a viewpoint position inherited from the Macao-Portuguese period when the Criminal Code was reformed to explicitly abolish the legal intervention and moral condemnation of homosexual acts in the previous period. However, the rights of same-sex couples are not fully guaranteed in civil law, such as marriage and family law, as they were in the reform of the Penal Code. The legal rights of same-sex couples are still in a weak position.

According to article 1462 of the Macao Civil Code, marriage is defined as "a contract between a man and a woman to establish a family in accordance with the full communal lifestyle provided for in this Code". This provision expressly excludes the legal possibility of same-sex marriage. Although article 1471 of the Civil Code, which states that "the relationship between two persons who voluntarily live in a situation similar to that of husband and wife is a de facto marriage", does not limit the gender of de facto marriages, it still does not recognize the legal status of same-sex couples similar to that of heterosexual couples in practice and in real

life. To date, there is no case or judgment in which the Macao courts have explicitly recognized de facto same-sex marriages.

With regard to the adoption system, the Macao Civil Code stipulates that the adopter must be at least 25 years of age, of good character and capable of raising a child. However, there is currently no explicit limitation on sexual orientation. However, in accordance with the above law, which stipulates that marriage must be a heterosexual family structure, in practice, the adoption agencies, such as the Adoption Social Welfare Bureau, will only accept applications for adoption from legally married couples. Up to now, there is no record of adoption by same-sex couples in all cases of adoption.

In terms of anti-discrimination laws, Macao's provisions are still limited and hardly cover issues related to same-sex couples. So far, the prohibition of discrimination on the basis of sexual orientation is only mentioned in the Law on Labor Relations, but not in the protection of rights such as education, health care, housing, etc. (Taiwan court rules same-sex couples from Taiwan and Macau can marry. (2021, May 6). "TDM". <https://www.tdm.com.mo/zh-hant/news-detail/563682>. For example, in areas such as social housing applications and spousal visas, same-sex couples are denied rights at the institutional level because their legal status is not recognized.

2.2. Government Attitude and Current Policy Status

The Macao government holds a conservative attitude towards the legalization of same-sex marriage, an attitude that is not only reflected at the legislative level, but also in policy implementation and social culture.

Legislator Ko Tin Chi proposed the "Same Sex Civil Union Bill"(The modern value of traditional filial piety culture. (2016, July 4). "Guangmi-ng Daily". http://www.xinhuanet.com/politics/2016-07/04/c_129112238.htm. in 2013, stating that the bill was to fill the gap in Macau's law where only opposite-sex couples can be united, and that if the bill was passed, Macau would become the first region in Asia to recognize same-sex marriages. However, the bill ended up with 17 votes against, 3 abstentions and one vote in favor (2025 briefing on the survival status of transgender communities in China's Mainland, Hong Kong, Macao and Taiwan. (2025, May 31). <https://docs.transchinese.org/>. Opponents argued that there was a significant gap between the bill and current social attitudes, and that Macau society had not yet formed a consensus on same-sex marriage, and faced a large social acceptance challenge to the policy, which would most likely lead to controversy over traditional family values and the established ethical order(Chen, J., Guo, P., & Xue, Q. (2020, July 15). Study on the formation mechanism of sex-related behaviors of Macao adolescents: Analysis of moderating effects based on sexual knowledge acquisition channels. "Youth Explorations".

Despite the slow progress in legalizing same-sex marriage in Macao, in terms of domestic violence legislation, the Macao government included same-sex couples in the protection of the Law on the Prevention and Control of Domestic Violence, which was amended in 2018. In the initial revision, the Macao government did not include same-sex couples in the legislative package, reasoning that there was no need to expand the scope of protection for the subject since same-sex marriage had not been legalized in the region. However, this move aroused the concern of civil society and social organizations. As a result, the Macao government finally compromised on the recommendation of the UN

Committee Against Torture (Catholic education core values: Cultivating youth in clean virtue and resistance to temptation. (2024, October 18). "Catholic Newspaper", "4209". . However, this also shows that the Macao government is still hesitant to amend this law, which is still based on the fact that "same-sex marriages are not legalized", taking into account the governance situation of the region.

Therefore, Macao is still facing various legal and policy challenges in legalizing same-sex marriage. Although some progress has been made, the implementation of this policy is a product of compromise between different parties and does not have a solid foundation. Therefore, to explore why the government has been slow in legislating on this issue, it is necessary to look at it from three perspectives: legal, cultural and political.

3. Legal Constraints

3.1. Definition of Marriage and Family Law in Macao Law

Book IV of the Macao Civil Code, on family law, is derived from the Family Law Book of the Portuguese Civil Code, which, at the institutional level, upholds the basic concept of Catholic family marriage, emphasizing that marriage is "a union of the natural order and the moral order". This tradition is more clearly reflected in Macao's legislation and has influenced the definition of the institution of marriage.

First of all, the Macao law defines the institution of marriage as both contractual and ethical. Article 1462 of the Macao Civil Code stipulates that marriage is a contract between a man and a woman who intend to establish a family in accordance with the full communal lifestyle provided for in this Code. This expression highlights two legal essentials of the marriage relationship. The first is that marriage must be established by law and produce legal effects; the second is that the two subjects specified in the article are, by default, a heterosexual union of a man and a woman, as has long been the case in practice and in the interpretation of the legislation.(Gao, T. (2013, March 22). Stands up for gays, introduces same-sex union bill. "Waou". <https://www.waou.com.mo/2013/03/22>. . This heterosexual union does not provide a clear legal basis for same-sex couples, and it excludes same-sex couples from the gender dimension at the institutional level. This kind of mandatory requirement on the gender of the subject of marriage has long been tacitly recognized as the only legal way for heterosexual marriages in legal practice and interpretation.

Secondly, from a systemic point of view, Article 1462 of the Macao Civil Code directly stipulates the concept of marriage, restricting the subject of marriage to a man and a woman, thus allowing for a systemic interpretation of Article 1462 to restrict the subject of marriage to a man and a woman, even if neutral terms such as both parties to the marriage, husband and wife, etc., which cannot be judged by the gender of the subject of the marriage, are used in the provisions relating to the establishment, nullity and annulment of the marriage, as well as rights and obligations of the husband and the wife. The two parties are a man and a woman. Therefore, under this general framework, the legal system of marriage is constructed in favor of the traditional family structure. Therefore, to summarize, Macao's family law currently protects the monogamous, heterosexual family model, which aims at procreation and succession, and obviously ignores new types of partnerships, such as same-sex marriages. This

definition of the traditional marriage and family system creates an inherent legal obstacle to the legality of same-sex marriages.

Finally, the exclusion of same-sex couples from the civil law of Macao in terms of gender is not only derived from the text, but also from the deep-rooted legal culture. This institutional arrangement reflects the conservative understanding of the concept of marriage and family in Macao's legal culture. The understanding of the family in the Macao legal system is directly related to the Portuguese colonial rule, as the Portuguese Civil Code inherited by Macao did not recognize same-sex relationships at the legal level. This legal model continues to permeate the current legal system of Macao, so that even though Macao has formally dissociated itself from Portugal, the inertia of the legal thinking at the substantive level remains conservative. At the same time, even though Portugal legalized same-sex marriages in 2010, Macau, as a former Portuguese colony, is lagging behind in terms of updating its legal system, which, as a Special Administrative Region (SAR), enjoys independent legislative power. The revision of Portuguese laws does not automatically extend to Macau, which has to decide on its own whether and how to revise the relevant laws according to the local social situation and legislative procedures. The reform of the law still leaves a legal vacuum on same-sex relationships. This reflects the path dependency within the legal culture.

This structure of thinking is not only embodied in the plain language of the law, but also in the interpretive habits of judges, the logic of defense of lawyers and legal education. For example, judges usually adopt the rules of textual interpretation, systematic interpretation or historical interpretation, avoiding purposive interpretation, thus reinforcing the traditional normative logic system, which indirectly consolidates ordinary people's view of same-sex relationships as "unconventional", making it difficult for institutional reform to break with tradition at the level of legal definition.

3.2. Structural Obstacles and Deadlocks in the Legislative Process

1. Restrictions on the right to introduce bills under the executive-led system

The current legislative system of Macao is centered on the executive-led approach. Article 75 of the Basic Law of Macao clearly stipulates that: Members of the Legislative Assembly of Macao shall propose bills in accordance with the provisions of this Law and legal procedures. Motions which do not relate to public revenue and expenditure, political structure or the operation of the government may be introduced individually or jointly by members of the Legislative Assembly. For motions relating to government policies, the written consent of the Chief Executive shall be required before they are moved. The design of this system formally preserves Members' right to introduce bills, but in practice, the written consent of the Chief Executive constitutes a restriction on the power to do so, rendering the legislative power characterized by a high degree of dependence on the executive power.

Under this system, the leading role of legislators in the creation of bills has been significantly curtailed, and they are more likely to assume the right to scrutinize and vote on bills than to act as active promoters of legislation. Especially when it comes to social and ethical issues, such as the legalization

of same-sex marriages, even if legislators intend to introduce bills, they have to face the pressure of the executive-led government. This makes it difficult for many controversial and socially progressive issues to enter the formal legislative process.

The Current Situation and Causes of Legislative Deadlock

In 2013, for example, Mr. Ko Tin-che's bill to legalize same-sex marriage was immediately voted down in the Legislative Council, and no related bill has been introduced since then. This incident not only reflects the limited subjective initiative of individual legislators, but also reveals the conservatism and rigidity of Macau's current legislative mechanism in dealing with controversial social issues. This has led to the indefinite postponement of issues involving institutional reform.

Taking the United States as an example, the legalization of same-sex marriage is not only a legal battle, but also a constitutional practice; the 1969 Stonewall Riots in the United States is regarded as the starting point of the gay rights movement in the United States, which loosened the notion of sexual orientation in American society. The real institutional turning point for the legalization of same-sex marriage in the United States came with several important cases in this century. One of the most landmark cases was *Lawrence v. Texas* in 2003, in which the U.S. Supreme Court ruled, by a 6-3 vote, that Texas' law banning homosexuals from engaging in same-sex sexual behavior in private places was unconstitutional. This decision overturned the 1986 *Bowers v. Hardwick* decision, in which the Court held that sexual relations between adults in private spaces fall within the scope of the right to privacy, denied the legitimacy of government interference in the public's personal lives, and held that all state statutes penalizing same-sex sexual conduct are unconstitutional as contrary to "due process of law." (Grestman, E. (2004). "Same-sex marriage and the constitution". Cambridge University Press. In 2013, *United States v. Windsor* ruled that "marriage is limited to the union of one man and one woman" under Section 3 of the Defense of Marriage Act was unconstitutional as a violation of the "due process principle" of the Fifth Amendment to the Constitution. "The case, which required federal recognition of same-sex marriages for the first time, provided the constitutional basis for state legislation (Huang, C., Yu, H., Zhang, Y., & Yin, Y. (2022, May 25). Analysis of the demand for sexual support services of college students studying in Macao SAR. "Chinese Sexual Science". The ultimate decisive case in the legalization of same-sex marriage in the United States was *Obergefell v. Hodges*, in which the Supreme Court held that the freedom to marry is a fundamental right, and that the denial of same-sex marriage violates the Fourteenth Amendment, which established the legality of same-sex marriages from a constitutional standpoint (Huang, M. (2015). A constitutional analysis of the same-sex marriage decision: Interpreting the majority opinion in "Obergefell". "China Law Review", "4"(4).

Chief Justice Kennedy wrote: "They demand the same equal dignity as heterosexuals. It is the Constitution that gives them that right." (*Lawrence v. Texas*, 593 U.S. 558 (2003). Justia. <https://supreme.justia.com/case-s/federal/us/539/558/>. " It can be seen that behind the legalization of same-sex in the United States, there is a strong support from the constitutional safeguard mechanism, as well as an internal openness of the legal system, which is able to respond to the needs of the society and update the relevant policies in a timely manner.

In contrast, Macau's institutional environment appears to

be both conservative and rigid. Due to the fact that controversial legal changes are highly dependent on the will of the Chief Executive, as well as the lack of attention to marginalized groups in Macao's legal studies, it is difficult for the issue of same-sex marriage to enter into the formal legislative process in Macao, resulting in a "freeze" at the institutional level.

3.3. Lack of Judicial Remedies and Lack of Administrative Support

Macao has also found it difficult to break through the institutional deadlock in terms of constitutional framework and judicial practice. In addition to the lack of clear provisions on same-sex marriage at the legislative level, the structural limitations of the judicial and administrative systems are also an important reason for the difficulty in recognizing the relevant rights. The current system lacks an effective judicial review mechanism and means of rights relief, making it difficult for same-sex couples to fight for equal marriage and family rights through legal channels.

1. Lack of judicial review mechanism and conservative interpretation methods

The operation of Macao's judicial power is highly dependent on statutory law, and the absence of the Constitutional Court and the judicial review system makes it difficult to safeguard the rights guaranteed in the Basic Law by the infringement of the law.

The current legal system of Macao is centered on the Basic Law of the Macao Special Administrative Region of the People's Republic of China (BL), which is the basis of the current constitutional law of Macao (Li, E. (2013). On the protection of homosexuals' right to marriage. "Beijing Normal University Law". Although Article 85 of the Basic Law stipulates that the courts of Macao shall exercise judicial power independently, the competence of the courts of Macao is mainly limited to the application of written laws, and in the course of adjudicating individual cases, even in the event of a conflict between the law and the principles of the Basic Law, they are unable to safeguard the exercise of the rights by means of a judicial review, and there is a lack of an effective mechanism of judicial review (Li, X. (2013, May 28). On the civil law status of same-sex marriage. Therefore, under the current system, it is difficult for individuals or social organizations to bring cases to court on the grounds of "infringement of rights under the Basic Law" or "unconstitutionality of laws". This institutional framework makes it difficult for same-sex marriages to break through the "judicial review" in Macao. For instance, if same-sex couples seek judicial review on the grounds that the exclusion of same-sex individuals from marriage under Article 1462 of the Macao Civil Code violates the principle of "equality before the law" under Article 25 of the Basic Law, there is no such review procedure at present, and there is no "abstract review" or "case-by-case review" in the Macao SAR, nor is there any such procedure in the Macao SAR. At the same time, in the Macao SAR, there is no similar "abstract review" or "individual review" for relief, therefore, when faced with individual cases, it is often emphasized that there is no authority to "create new laws", thus making it impossible to break through the current regulation.

In addition, the Macao courts usually adopt textual and systematic interpretations in handling civil cases. Therefore, the definition of marriage in Article 1462 of the Macao Civil Code, which limits the subject matter to persons of opposite

sex, is to a certain extent interpreted in a conservative manner. Despite the fact that Article 25 of the Basic Law stipulates the principle of equality of all persons, in practice, the courts usually adopt a textual and systemic approach rather than a purposive approach to same-sex marriages, thus reinforcing in their judgments the recognition of the traditional structure of heterosexual marriages. While this method of interpretation helps to maintain the stability and predictability of the law, it can lead to the rigidity of the system when it comes to social change issues such as same-sex marriage.

In contrast, the Interpretation No. 748 of the Judicial Yuan of Taiwan declared the restrictions on same-sex marriages in the current Civil Code unconstitutional on the basis of the constitutional rights to equality and freedom of marriage, and demanded that the law be amended within two years, or else same-sex couples could register for marriage directly. This kind of judicial intervention can lead to social reform through the interpretation of the Constitution, but it cannot be realized in Macao because the current system has neither a constitutional interpretation mechanism nor judicial review, which makes it impossible for the judicial power to promote institutional innovation, and makes it difficult to make a breakthrough for the equal rights demand of same-sex marriages in the judicial channel.

2. Negative response at the administrative level and lack of supporting system

The Macao government's attitude towards same-sex couples is relatively conservative, and lacks channels and mechanisms to respond to the demands of society. In administrative practice, it has also failed to establish a supporting system to provide protection for same-sex couples, such as providing services in the forms of public healthcare, visas for same-sex couples, and housing benefits, which are generally provided in the form of "legal marriages", "immediate family members", and "family members of the same sex". For example, in terms of public healthcare, visas for same-sex couples and housing benefits, services are generally provided in the form of "legal marriage" or "immediate family members", which excludes same-sex couples.

Taking the application for social housing as an example, the Macao Housing Bureau stipulates that family housing must be composed of legally married spouses; on the issue of applying for the right of abode in Macao for same-sex couples, the Public Security Police Bureau stated that there are same-sex couples who wish to apply for the right of abode in Macao, but none of them has been approved (Ma, P. "A constitutional study of homosexuality". Law Press. .

In addition, the MSAR Government has rarely studied the issue of sexual minorities in its public policies, and this negative attitude at the administrative level further hinders the realization of the rights of same-sex couples in the extension of the marriage and family regime.

Therefore, Macao's rejection of same-sex marriage at the level of the legal system is reflected in the legislative, judicial and administrative aspects. On the one hand, the high degree of administrativeization of the legislative power makes the promotion of same-sex marriage lack the possibility of institutional realization; on the other hand, the conservative method of judicial interpretation and legal culture reinforces the traditional concept of marriage, further hindering the expansion of social rights.

4. The Deep-Seated Resistance of Cultural and Religious Concepts

As the crossroads of Chinese and Western cultures, the plight of the same-sex marriage system in Macao is by no means solely due to the gaps in the legal provisions. From the perspective of sociology of law, the failure of same-sex marriage to be legalized in Macao has two important constraints in the cultural field: first, the traditional Confucian culture from China; and second, the rejection of same-sex by the Western Catholic culture.

4.1. Influence of Traditional Chinese Culture on Family Gender

The traditional Chinese Confucian culture has a profound influence on the construction of Macao's marriage legal system. In marriage law, marriage is not only a simple civil contract, but also has a social function related to the continuation of a family. The Confucian culture of the Three Principles and the Five Constants, and the idea of filial piety and the importance of having no offspring not only delineate the legal boundaries under the marriage system, but also shape the individual's perception of gender roles.

This concept of marriage, which is centered on procreation and family inheritance, is deeply embedded in the legal system of marriage in Macao. Even though people are currently pursuing the freedom of marriage, the functional nature of marriage in traditional culture with regard to the transmission of offspring has become an obstacle to allowing same-sex marriages at present. In the legislative process, same-sex marriage is difficult to be recognized in the legal discourse, influencing the legislative tendency of policy makers.

Chinese people often say that unfiliality is not as important as having no offspring. Marriage is not only a private relationship, but also concerns the continuation of the family and the inheritance of the bloodline. The transmission of heirs is seen as part of filial piety, so any union that cannot produce offspring is often seen as improper (*Obergefell v. Hodges*, 576 U.S. 644 (2015). Justia. <https://supreme.justia.com/cases/federal/us/576/644/>. Same-sex marriages do not have the function of procreation in terms of physiological structure, so they are excluded from orthodox marriages in traditional concepts.

4.2. Conservative Social Atmosphere

Although Macao is economically developed and culturally relatively open, due to its small size and small population, it is a typical "society of acquaintances". At present, the family-based social network of acquaintances, the extensive penetration of religious organizations, and the dominance of the middle class all contribute to a conservative social climate, which rejects same-sex rights claims.

At the level of legal education and dissemination of public knowledge, there are obvious deficiencies in sex education in Macao. According to the report above, it is shown that the sexual knowledge of Macao's youth is relatively lacking, and that sexual attitudes, as a mediating variable between the amount of sexual knowledge and sexual behavior, are affected by the channels through which the knowledge is acquired. Compared to the Internet, which is a way to learn about sexuality on one's own, learning about sexuality through school or family channels may result in a "knowledge-doing-discrepancy" situation. This shows that the current sex

education is not effective in guiding the behavior of young people. Meanwhile, for the university student group in Macau, a report in 2021 pointed out that 74.44% of the students believed that the SAR and schools should provide sex education, but the current sex education programs and resources are insufficient (Qiao, X. On the relationship between the Constitution and the Basic Law. "Chinese and Foreign Law Review". d).

According to the 2020 survey, 56% of Macau residents do not support the legalization of same-sex marriage, while only 26% of the respondents support it, and most of the supporters are young people (Teng, Y. Political participation of Macau residents and its improvement path. This shows that the attitudes of different age groups are polarized, and also reflects the conservative atmosphere of the mainstream society.

As public opinion is closely related to legislative decision-making, the government often adopts a cautious or even evasive legislative strategy on the issue of same-sex marriage in order to maintain socio-political stability, reflecting the "non-neutrality" of the legal system under the constraints of public opinion. When it comes to same-sex marriage, the government also adopts a negative response to maintain the status quo.

4.3. Influence of the Catholic Church

According to Article 2357 of the Catechism of the Catholic Church, same-sex sexual behavior is considered to be a violation of natural law and is not morally justified. Even though Pope Francis has repeatedly emphasized in public his respect for homosexuals and called for non-discrimination against this group, allowing priests to bless same-sex couples, he still maintains the orthodox position that marriage is the union of one man and one woman. At present, the Catholic population in Macau is about 20,000, and there are 26 Catholic schools out of 77 schools and universities (United States v. Windsor, 570 U.S. 744 (2013). Justia. <https://supreme.justia.com/cases/federal/us/570/744/>, with the number of students attending church schools accounting for about 40% of the total number of students attending schools in Macau. Through its curriculum, religious education has strengthened the acceptance of heterosexuality among students at the educational level, excluding the rights of sexual minorities from marriage laws, and gradually influencing the mentality of the population in the region.

In addition cases of the impact of religious education on gender and marriage views can be found in neighboring regions. For example, the Catholic education system in Hong Kong emphasizes in its curricula and value guidance that "sex is a service to love and life", and that marriage should be oriented towards conjugal love between a man and a woman, reflecting the Church's attitude towards heterosexual marriages.

(U.S. Consulate General in Hong Kong and Macau. (2023, May 15). "Macau international religious freedom report 2022". Office of International Religious Freedom. For example, the Catholic education system in Hong Kong emphasizes in its curriculum and values guide that "sex is at the service of love and life" and that the marriage relationship should be oriented towards the love of one man and one woman as husband and wife.

In Taiwan, religious groups such as the True Love Alliance have consistently opposed the content of "gay education" under gender equality education, believing that it would

impact traditional concepts of marriage and family. This shows that the religious education sector is resistant to the rights of sexual minorities (Wang, C. (2021). The judicial review system of Macao courts as a guarantee of individual freedom and its implications for comparison with Hong Kong's judicial review system. "Macao Law Journal", "2").

Therefore, in this context, the concept of education that excludes same-sex marriage will make students exclude the knowledge of sexual minorities from the mainstream. This ideological infiltration not only indirectly affects the public acceptance of relevant issues, but also creates cultural barriers on issues such as same-sex marriage.

5. Constraints of Insufficient Social Dynamics

Macao's lag in the issue of sexual minority rights is constrained by the legal system and political landscape on the one hand, and deeply influenced by the social environment and public awareness on the other. Therefore, the following two points constitute important factors hindering the legalization of same-sex marriage.

5.1. Low Political Participation and Obstructed Conveyance of Public Opinion

1. Executive-led system weakens the transmission of public opinion

Macao has an executive-led system, where the Chief Executive is elected by a highly restricted Election Committee, whose members are mostly pro-central government officials, industrialists and businessmen, and members of professional organizations, and which lacks broad representativeness. In addition, the Macao Legislative Assembly is still clearly executive-led in its institutional design. According to Article 68 of the Macao Basic Law, the Legislative Assembly shall be composed of 14 members directly elected, 12 members indirectly elected, and 7 members appointed by the Chief Executive, with less than 50% of the members being directly elected, and the arrangement of such a mixed mode of representation will lead to a high degree of concentration of power in the executive branch in the constitutional structure, making it difficult for the public to voice their demands to the higher level through normal political procedures. It is difficult for civil demands to be expressed to the higher echelons through normal political procedures (Wang, J. (2007). On the principle of freedom of marriage in marriage law. "Entrepreneurs' World", "4").

What is more noteworthy is that Article 50 of the Macao Basic Law stipulates the powers and functions of the Chief Executive, who has absolute control over the determination of some members of the Legislative Assembly, which enables the executive authorities to have a certain degree of discourse power in the legislative structure. This institutional arrangement allows the executive power not only to dominate the adoption and implementation of policies, but also to influence the boundaries of whether or not issues can be discussed.

Moreover, Macao's administrative decision-making tends to maintain stability, avoiding controversial political and social issues, especially reforms involving ethics. Such a mode of prioritizing stability inhibits the promotion of the legalization of same-sex marriage. Even if Members of the Legislative Council put forward relevant initiatives, it is often difficult for them to enter the stage of substantive discussion

due to institutional support.

The lack of an executive-led mechanism for the "return of public opinion" has led to a gap between the decision-makers and the grassroots in society regarding the rights of sexual minorities.

2. Economic dependence creates political apathy

The high dependence of Macau's economy on the gaming and tourism industry has weakened the public's willingness to participate in politics at an objective level, while increasing the level of security and economic development of the population. Citizens will gradually tend to regard politics as a professional matter rather than a civic responsibility. According to a poll conducted by the Macao Polytechnic Institute in 2009, only 45.66% of the residents believe that the right to vote is adequately protected, and 26.13% recognize the fairness of society, which reflects the people's alienation from politics (Wang, L. "China's attitude toward same-sex marriage, transgender marriage, internet marriage, and de facto marriage". Even though the turnout rate for the 2024 Macau Legislative Assembly election has risen to 59.9%, the issue focuses on economic distribution rather than guaranteeing equal rights (Wu, Z. An analysis of the constitutional model of the Basic Law of the Macao Special Administrative Region. "Politics and Law".

In addition, the economic development brought about by the gaming industry has made Macau residents more concerned about economic income and employment stability rather than the fight for public policies. The social structure of Macau is more "depoliticized" than that of RTHK, and there is a lack of reflection on affirmative action issues. Against this background, the legalization of same-sex marriages is not perceived as being directly related to the interests of the general public, and it is difficult to stimulate people's thinking on this issue. This social apathy further weakens the external driving force of the legislature.

5.2. Lack of Media Agenda Setting and Public Discussion

In modern society, the media not only assume the function of information transmission, but also influence the general direction of public opinion. On the issue of legalization of same-sex marriage, the extent of media communication determines the depth and breadth of public understanding of the issue. However, the local media's attention to same-sex marriage has been at a low level for a long time, which affects the dissemination of this issue.

First of all, from the organizational point of view, the media in Macao is small and concentrated. Mainstream media are smaller in scale and number than those in Hong Kong and Taiwan, and they are mostly dependent on the government or specific capital forces, and their reports are mostly aimed at maintaining social stability, and their dissemination of content is mostly based on trivial matters that are not important in the region. This preference makes it difficult for controversial issues that challenge mainstream values to gain space and coverage. In contrast, RTHK's media coverage of same-sex marriage is more in-depth and diverse. For example, in 2021, when Leong Chin Fai from Macau and Ding Zeyin from Taiwan, the first cross-border same-sex marriages registered in Taiwan, won a lawsuit, several Taiwanese media outlets reported on the case. However, as far as we can find, only the Macau Radio and Television Corporation Limited (RTM) reported the case, and the content was much less than that reported by the Taiwan media (Xue, N. (2000). A comparative

study of the marriage systems of Macao and the mainland. "China Law Yearbook", "1".

Secondly, in terms of the agenda of media coverage, the issue of same-sex marriage is often regarded as unimportant and difficult to be prioritized in news reports, and the media usually do not take the initiative to intervene in the coverage of this area, which makes it difficult for the issue of same-sex marriage to attract the attention of the legislature and its response. Meanwhile, since the riots in Hong Kong, the censorship of online communities in Hong Kong and Macau has been tightened, and although there have been sporadic expressions on websites such as Facebook and Ins, they have not resulted in social events with a spreading effect.

To summarize, the social impetus of Macau on the issue of same-sex marriage has been constrained by a number of factors. On the one hand, political participation has failed to inspire people to participate in political activities, and on the other hand, the media has failed to fulfill its function of promoting public issues, and the public opinion environment has shown a low concern for the legalization of same-sex marriage.

5.3. Low Level of Organization and Lack of Resources of the Local Gay Community in Macao

In Macao, the degree of organization of the homosexual community is low, with a limited number of related civic groups, a small scale, limited public influence, and most importantly, a chronic lack of funding. This reality largely restricts the demand for sexual minorities' rights.

One of the more active local gay and lesbian organizations is "Macao Rainbow", which was officially registered in 2013. However, public awareness of this organization is low. Up to now, there are no large-scale activities such as formal same-sex affirmative action marches in Macao, and its initiatives are mostly online initiatives and flash mobs, with limited scale and participation (Yu, Q. Exposing the true face of gender equality education in Taiwan. "Neighborhoods of the Kingdom of God", "25".

In terms of access to resources, the group lacks stable financial support and relies mainly on small donations and support from other international organizations. In addition, the organization submitted reports to the United Nations Human Rights Organization (UNHRO) in 2015 and 2020, calling for its attention to the system of discrimination protection for same-sex couples in Macao. However, its influence is constrained by the combination of the organization's influence and the media's low dissemination efforts.

Therefore, Macao's homosexual community is still in a multiple structural disadvantage of insufficient organizational mobilization, limited resource dispatch, and weak institutional participation. The lack of sufficient social forces to promote and institutional consultation channels for their rights demands has largely constrained the possibility of affirmative action issues, including same-sex marriage, to enter the policy agenda.

6. Conclusion

The obstacle to the legalization of same-sex marriage in Macao is not only the explicit exclusion of the law, but also the interaction among the triple factors of law, culture and politics. In this triple interaction, the conservatism of the law

is endorsed by the conservative mainstream culture of Macao; the traditional gender concepts in the culture are institutionalized by the law; and at the same time, the avoidance of social issues by the political structure further blocks the possibility of institutional reform.

At the legal level, the inability of same-sex marriage to be legally accepted is due to the fact that the legal culture is deeply embedded in the traditional Confucian ethical order, and is not entirely devoid of technical legislative design. The limitation of marriage to a man and a woman in the Civil Code reflects the continuation of the traditional family structure, which is the institutional expression of a cultural position.

At the cultural level, culture influences the formulation and direction of the legal system. In Macao society, Catholic and Confucian cultures interact with each other. Although Catholicism emphasizes fraternity and human rights, the conservative stance of theology towards homosexuality is highly compatible with traditional Confucian ethics. This cultural conservatism directly affects the acceptance of the law in Macao society, limiting public support for the legalization of same-sex marriage.

At the political level, negative political response is a key point in maintaining the status quo. Macao's political system is predominantly executive-led, with limited channels for society to participate in politics, making it difficult for sexual minorities to express their demands through formal political mechanisms. At the same time, the Macao government adopts an evasive attitude when dealing with same-sex issues. This political non-involvement consolidates legal exclusion while fostering cultural prejudice.

Therefore, the legal and institutional obstacles, cultural barriers and political neglect in the process of legalizing same-sex marriage in Macao reflect the interplay of "political, institutional and cultural" factors that affect the legalization of same-sex marriage in Macao, rather than the dominance of a single factor.

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