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## **Straightjacket : same-sex orientation under Chinese family law - Marriage, Parenthood, Eldercare**

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Straightjacket:  
*Same-Sex Orientation under Chinese Family Law*  
*Marriage, Parenthood, Eldercare*



# Straightjacket:

*Same-Sex Orientation under Chinese Family Law  
Marriage, Parenthood, Eldercare*

PROEFSCHRIFT

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in 1990

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# Table of Contents

ACKNOWLEDGEMENTS	V
TABLE OF CONTENTS	VII
LIST OF FREQUENTLY USED ABBREVIATIONS	XI
LIST OF FREQUENTLY USED CHINESE TERMS	XIII
NOTE ON (THE ALWAYS INACCURATE) TERMINOLOGY	XV
1 INTRODUCTION	1
1.1 Straightjacket	1
1.2 A Pluralist Framework of Family Law	5
1.3 Legal Consciousness	10
1.4 Quilting Law and Stories: Sources and Methods	14
1.4.1 The Legal Research	15
1.4.2 The Fields	16
1.4.3 Sampling Respondents	18
1.4.4 Interviewing	19
1.4.5 Research Ethics	21
1.5 Thesis Overview	24
2 HOMOSEXUALITY, (DE)CRIMINALIZATION, AND FAMILY OUTLAW	27
2.1 The Criminality of Same-Sex Sexual Behaviors	28
2.2 Multiple Power Tactics in Contemporary Chinese Law on Homosexuality	34
2.2.1 Forbidding and Taming Same-Sex Sexual Behaviors	35
2.2.2 Prohibiting Homosexual Gatherings and Organizations	37
2.2.3 Censoring Homosexual Media Representation	38
2.2.4 Erasing Homosexual Trademarks	40
2.2.5 Neglecting Same-Sex Extra-Marital Relationships	44
2.3 Conclusion	47
3 SAME-SEX-ORIENTED RELATIONSHIPS IN AND OUTSIDE OF MARRIAGE	51
3.1 Law's Contribution to the Straightjacket of Marriage	52
3.1.1 A Warm-Keeping Jacket: Institutional Benefits of Marriage	53
3.1.2 An Uncomfortable Jacket: Law's De-Romanticizing of Marriage	55
3.1.3 A Gendered Jacket: Chinese Women and the 'New' Marriage Law	58

3.2	Unmarried Same-Sex-Oriented People Encountering Family Law	60
3.2.1	Coping with Marriage Pressure	60
3.2.2	Rituals and Property Arrangements	61
3.2.3	Property Disputes Between Same-Sex Couples	65
3.3	Same-Sex-Oriented People in Marriages	69
3.3.1	Tailoring Marriage via Cooperation	72
3.3.2	Making Mixed-Orientation Marriage Work	79
3.3.3	Mixed-Orientation Cooperative Marriage	82
3.4	Taking off the Marriage Straightjacket	84
3.4.1	Separation after Cooperation	85
3.4.2	Mixed-Orientation Divorces in Courts	87
3.5	Conclusion	91
4	BECOMING PARENTS IN AND OUTSIDE OF MARRIAGE	95
4.1	The Pressure to Have Children	96
4.2	Chinese Laws on Parenthood	99
4.2.1	Birth Permit	100
4.2.2	Parental Status	100
4.2.3	Guardianship	102
4.2.4	Adoption	102
4.2.5	Fostering	106
4.2.6	Assisted Reproductive Technology	107
4.2.7	Summary	108
4.3	Same-Sex-Oriented People Becoming Parents outside of Marriage	109
4.3.1	Becoming Lesbian Mothers via IUI or IVF-ET	109
4.3.2	Becoming Gay Fathers via Surrogacy	112
4.3.3	Guoji: Informal Intra-Family Adoption	114
4.3.4	Summary	117
4.4	Becoming Parents in a Mixed-Orientation Marriage	117
4.4.1	Custody Decisions in Mixed-Orientation Divorces	118
4.4.2	Experiencing 'Womb Fraud'	120
4.5	Becoming Parents in Cooperative Marriage	123
4.5.1	Legal Advantages and Disadvantages	123
4.5.2	Feminist Awareness in Cooperative Marriage	125
4.6	Conclusion	128
5	ELDERCARE BY AND FOR SAME-SEX-ORIENTED PEOPLE	133
5.1	Legally Sanctioned Ways of Getting Old in China	135
5.1.1	Elderly People's Freedom to Marry	136
5.1.2	Social and Commercial Insurance	137
5.1.3	Access to Medical Records	140
5.1.4	Medical Decisions in Emergency	141
5.1.5	Living Organ Transplantation	144
5.1.6	Succession	146

5.1.7	Continued Tenancy	148
5.1.8	Summary	149
5.2	From Filial Piety to Non-Hetero-Familial Care	150
5.2.1	To Obey or to Care?	150
5.2.2	PFLAGs' Vision of Late Life	153
5.2.3	Imagining Non-Hetero-Familial Modes of Elderly Care	156
5.3	Same-Sex Cohabiting Elderly People	159
5.3.1	A Life-Long Companionship Without a Name	159
5.3.2	Male-Male Friendship/Kinship	168
5.3.3	Elderly Same-Sex-Oriented People in Marriage	171
5.3.4	Summary	173
5.4	Conclusion	173
6	LGBT ACTIVISTS ENGAGING THE LAW	177
6.1	Emerging Chinese LGBT Activism	178
6.2	The Stimuli for Chinese LGBT Legal Activism	180
6.3	LGBT Activists' Engagement with the Law	185
6.3.1	Connecting with Lawyers	185
6.3.2	Conducting Impact Litigation	187
6.3.3	Lobbying the Legislators	196
6.3.4	Applying for Open Government Information	201
6.3.5	Resorting to International Mechanisms	203
6.4	Conclusion	209
7	CONCLUSION	213
7.1	Straightjacket Revisited	213
7.2	A Pluralist Framework of Family Law	216
7.3	Dealing with Family Law on Different Paths	220
7.4	The Emotions of Law	224
7.5	Beyond-Marriage Approach of LGBT Legal Activism	226
	BIBLIOGRAPHY	231
	SUMMARY	251
	内容简介 (SUMMARY IN CHINESE)	253
	SAMENVATTING (SUMMARY IN DUTCH)	255
	INDEX FOR READERS OF DIFFERENT INTERESTS	257
	CURRICULUM VITAE	259



## List of Frequently Used Abbreviations

Abbreviations	Full Term in English	Full Term in Chinese
ART	Assisted Reproductive Technology	人工辅助生殖技术
CCMD-3	Chinese Classification of Mental Disorder, the 3 <sup>rd</sup> version	中国精神疾病分类与诊断标准第3版
CEDAW	Committee on the Elimination of Discrimination against Women	消除对妇女一切形式歧视公约
CPPCC	Chinese People's Political Consultative Committee	中国人民政治协商会议
ICCPR	International Covenant on Civil and Political Rights	公民及政治权利国际公约
IUI	Intrauterine Insemination	宫腔内人工受精
IVF-ET	In Vitro Fertilization and Embryo Transfer	体外受精胚胎植入
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex	男女同性恋、双性恋、跨性别、间性人
MSM	Men who Have Sex with Men	男男性行为者
NPC	National People's Congress	全国人民代表大会
OGI	Open Government Information	政府信息公开
PFLAG	Parent and Friends of Lesbians and Gays	同性恋亲友会
SARFT	State Administration of Press, Publication, Radio, Film and Television of the People's Republic of China	国家新闻出版广电总局
SOGIE	Sexual Orientation, Gender Identity and Gender Expression	性倾向、性别认同、性别表达
UNHRC	United Nations Human Rights Council	联合国人权理事会
UPR	Universal Periodical Review	普遍定期审议



## List of Frequently Used Chinese Terms

Pronunciation	Chinese Words	English Meaning
guanxi	关系	Social connection
guanxiren	关系人	Related person
gudu zhonglao	孤独终老	Aging and dying alone
guoji	过继	Intra-familial de facto adoption
hukou	户口	Household registration certificate
jiehun	结婚	To get married
lala	拉拉	Chinese vernacular of lesbian
louxian	露馅	To reveal a secret by accident
pian zigong	骗子宫	Womb fraud
pianhun	骗婚	Marriage fraud
shengzi	生子	To give birth
tongfu	同夫	The husband of a same-sex-oriented woman
tongqi	同妻	The wife of a same-sex-oriented man
tongzhi	同志	Comrade, Chinese vernacular of gay people
wubao hu	五保户	Recipient of 'five guarantees'
xiaoshun	孝顺	Filial piety
xinghun	形婚	Cooperative marriage
yanglao	养老	To live an old age
yizeng fuyang xieyi	遗赠扶养协议	Legacy-support agreement
zhexiu bu	遮羞布	Fig leaf, or a cloth to cover up something embarrassing
zhongguo tese	中国特色	Chinese characteristics
zhunsheng zheng	准生证	Family planning service certificate or the so-called 'birth permit'
zili gengsheng, jianku chuangye	自力更生、 艰苦创业	Self-reliance and hard work



## Note on (the Always Inaccurate) Terminology

...[Y]ou must say it; you use that language; you become dirtied by the language; you know you're lying; you know it's false, but you do use it. And you live with the consequences of this catachresis, this use of a term to describe something in a radically improper way... The assertion of identity can never become the end of politics itself.

— Butler Judith, 'Changing the Subject: Judith Butler's Politics of Radical Resignification' (2000) 20 *JAC: A Journal of Composition Theory* 4, 727-765, 743.

The above words eased my long-standing concern of being unable to name the people I encounter properly. Since imposition and inaccuracy is inevitable, we do not have to reject labeling and categorization altogether, as long as we keep them open. This note briefly explains how the terms *tongxinglian*, homosexuality, lesbian, gay, bisexual, LGBT, same-sex-oriented people, queer, *tongzhi* and *tongqi* are used in different contexts in this thesis. I italicize all Chinese words and phrases, to emphasize their historicity and dynamics. I use these Chinese terms also in plural for English grammatical consistency.

When '*tongxinglian*' appears in formal legislation, judgments or administrative documents as a descriptive term of homosexual behaviors,<sup>1</sup> I translate it into 'homosexuality'. Occasionally I also use 'homosexual(ity)' to make abstract analysis. However, I try to avoid directly imposing this term on individuals, because it used to have, and still has, a pathological connotation.<sup>2</sup>

The terms 'gay', 'lesbian', 'bisexuals', or the acronym lesbigay or LGB, owing to global LGB rights advocacy, seem less pathological and suggest a history of struggle and a sense of community. However, not every Chinese person who has same-sex attraction, behaviors or relationships would self-identify with these recently popularized terms, especially for those who are less exposed to the LGB subculture online or in metropolises. Therefore, I use 'lesbian', 'gay' and 'bisexual' to refer to those who call themselves as such, and 'same-sex-oriented people'<sup>3</sup> to include both self-identified lesbian, gay, bisexual and pansexual persons, and those who have no clear sexual identities. The using of the rather cumbersome 'same-sex-oriented people' also aims to emphasize the crucial but often neglected difference between

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1 See Chapter 2.

2 For an elaborated history of incomplete depathologization of homosexuality in China, see Wenqing Kang, 'Decriminalization and Depathologization of Homosexuality in China' in Timothy B Weston and Lionel M Jensen (eds) *China in and beyond the Headlines* (Rowman and Littlefield, Lanham) 231-248; Tze-Lan D Sang, *The Emerging Lesbian: Female Same-Sex Desire in Modern China* (University of Chicago Press, Chicago and London, 2003).

3 I prefer 'orientation' to 'attraction' because the former includes, but is not limited to sexual desire. For the elaboration of the word 'orientation', see Kees Waaldijk, 'The Right to Relate: A Lecture on the Importance of "Orientation" in Comparative Sexual Orientation Law' (2013) 24 *Duke Journal of Comparative and International Law* 1, 161-199.

same-sex marriage and gay marriage, and similarly, between different-sex marriage and heterosexual marriage.<sup>4</sup> Such conflation ignores the cultural-economic-political functions of the marriage institution beyond legitimizing heterosexual love and procreation, which this thesis will unpick carefully.

'Gay' is occasionally used as shorthand for both same-sex-oriented men and women in a less formal context, especially when juxtaposed with 'straight', a casual expression for 'heterosexual(ity)'. LGBT is used for expediency in the discussion of activism in Chapter 6, although it underrepresents the ever expanding 'alphabet soup' of sexual and gender identities. SOGIE (sexual orientation, gender identity and expression) will be used in accordance to the international human rights language in Chapter 6, but will appear less frequently in other chapters.

'Queer' denotes a radical stance against normativity, the aspiration of which goes beyond state recognition of rights and citizenship. Nonetheless, it is even more exotic than LGB for most ordinary Chinese people I met, and there is not an equivalent history of a 'reverse discourse'<sup>5</sup>. My use of 'queer' as an identity marker in this book is therefore prudent, only for those who call themselves as such. However, queer as an adjective or a verb enshrines the spirit of anti-normativity,<sup>6</sup> which should not be relinquished by non-Western scholars simply because the word has a Western 'origin'. Therefore, I do not shy away from using 'queer' or 'queering' when carrying out critical analysis.

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4 Ning has discussed thoroughly this difference and argued that the challenging of the fact that only different-sex couples can get married should not be directed to 'gay rights and equality', but to the history and functions of marriage, as well as the issues of redistribution and individualization. See Yin-Bin Ning, 'Same-Sex Marriage Is Not Gay Marriage: Its Implication and Aftermath (同性婚姻不是同性恋婚姻：兼论传统与个人主义化)' (2017) 62 *Applied Ethics Review* 5-35.

5 Michel Foucault, *The History of Sexuality (Volume 1: An Introduction)* (Pantheon Books, New York, 1978) 101. For the different genealogies of queer and Chinese *kuer*, see Fran Martin, *Situating Sexualities: Queer Representation in Taiwanese Fiction, Film and Public Culture* (Hong Kong University Press 2003) 22-26.

6 For the anti-normative ethos of queer theory, see Dean Spade and Craig Willse, 'Norms and Normalization' (2015) *The Oxford Handbook of Feminist Theory* April, 1-15; Judith/Jack Halberstam, 'The Anti-Social Turn in Queer Studies' (2008) 5 *Graduate Journal of Social Science* 2, 140-156; For critiques of queer theory as being coopted in liberal discourses, see David M Halperin, 'The Normalization of Queer Theory' (2008) 45 *Journal of Homosexuality* 2-4, 339-343; David L Eng, *The Feeling of Kinship: Queer Liberalism and the Racialization of Intimacy* (Duke University Press, Durham, 2010).

'Tongzhi' or 'comrade' is often used in China-studies literature<sup>7</sup> in order to highlight the specificities of a less explicitly homophobic culture that is substantially different from Western modernity.<sup>8</sup> However, oftentimes the endeavor to search for 'difference' ends up essentializing both 'the Chinese' and 'the West'.<sup>9</sup> For the same reason stated above, I do not think *tongzhi* is necessarily more precise than lesbian, bearing in mind those who live without any of these identities. Therefore, I use *tongzhi* (and *nv tongzhi*, female homosexual) only when my respondents do so. A China-specific term (which is not to say other countries do not have the similar phenomenon) is '*tongqi*', meaning a woman who is married to a male *tongzhi*. Since it is highly contextual and involves specific socio-legal-emotional dynamics, I choose not to translate it.

Hopefully, in my writing, all these words could play against one another and illuminate the limitations of each other.<sup>10</sup> Read together, they enable us to catch a glimpse of the richness of the subjectivities and lived experiences that can never be fully captured. After all, 'difference is the name we can give to any identity'.<sup>11</sup>

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- 7 Rachel Leng, 'Chinese Comrade Literature, Queer Political Reality, and the Tongzhi Movement in Mainland China' (Undergraduate Honors Thesis, Sanford School of Public Policy, Duke University, 2012); Wah-Shan Chou, *Tongzhi: Politics of Same-Sex Eroticism in Chinese Societies* (Haworth Press, New York, 2000); Jing Wu Ma, 'From "Long Yang" and "Dui Shi" to Tongzhi: Homosexuality in China' (2008) 7 *Journal of Gay & Lesbian Psychotherapy* 12, 117-143.
  - 8 The discussion of cultural difference is evident in early *tongzhi* studies, see e.g., Wah-Shan Chou, *Post-Colonial Tongzhi* (Hong Kong Tongzhi Research Institute Publishing House, Hong Kong, 1997).
  - 9 Jeroen de Kloet, 'Gendering China Studies: Peripheral Perspectives, Central Questions' (2008) 22 *China Information* 2, 195-219; Nai-Fei Ding and Jen-Peng Liu, 'Reticent Poetics, Queer Politic (含蓄美学与酷儿攻略)' in Nai-Fei Ding, Jen-Peng Liu and Amie Parry (eds) *Penumbrae Query Shadow: Queer Reading Tactics* (Center for the Study of Sexualities, National Central University, 2007) 1-5.
  - 10 Lydia H Liu, Rebecca E Karl and Dorothy Ko, *The Birth of Chinese Feminism: Essential Texts in Transnational Theory* (Columbia University Press, New York, 2013) 12.
  - 11 Elizabeth Grosz, *Becoming Undone: Darwinian Reflections of Life, Politics and Art* (Duke University Press, Durham and London, 2011) 94.

