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

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Citation

Zhu, J. (2018, February 21). *Straightjacket : same-sex orientation under Chinese family law - Marriage, Parenthood, Eldercare*. Meijers-reeks. Retrieved from <https://hdl.handle.net/1887/61002>

Version: Not Applicable (or Unknown)

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Issue Date: 2018-02-21

‘Go home often, go home often, helping mom with the dishes, giving dad a back and shoulder massage...’ The song went viral after being performed at the 1999 National Spring Festival Gala, a Chinese arts extravaganza partly serving the purpose of state-party propaganda. Most Chinese people, young and old, urban and rural, could sing its chorus. In 2013, a provision to encourage ‘going home often’ was written into the revised Law for the Protection of the Rights and Interests of the Elderly,¹ which is commonly called ‘Eldercare Law’ or ‘Filial Piety Law’. On the same day when the law entered into force, a trial court in Jiangsu Province in eastern China ordered the daughter and son-in-law of a 77-year-old woman to visit their mother at least once every two months, and on at least two public holidays every year, as well as on at least one day during the Lunar New Year holiday.² The mother was entitled to ask that the court fine or even detain her daughter and son-in-law if they failed to visit.³

The ‘go-home-often’ provision is an acknowledgement that it takes far more than the basic provision of food and shelter to ensure an elder happiness and wellbeing. The legally-underpinned requirement for children to visit their parents shows that in addition to economic support, an equally, if not more, important part of the care for the elderly is company, physical assistance and the comfort of being part of a functioning family unit. Nevertheless, this Eldercare Law, which implies the global neo-liberal trend of the privatization of care,⁴ can hardly, of itself, alleviate the anxiety about ageing

1 Law of the People’s Republic of China on Protection of the Rights and Interests of the Elderly (2012 Revision), adopted 28 December 2012, effective 1 July 2013 (hereinafter ‘Law on Protection of the Elderly’).

2 ‘Visit Mom, Orders Court’, *Global Times*, 2 July 2013, at www.webcitation.org/6aXLRoSvj.

3 The original text of the judgment cannot be found online, but the court’s official website has issued a newsletter on this case. See ‘Court Orders Daughter to Go Home Often’, *China Court*, 29 July 2013, at www.webcitation.org/6aYDW1Bvn.

4 For the neo-liberal turn in the welfare system of some Western countries, see Anna Marie Smith, *Welfare Reform and Sexual Regulation* (Cambridge University Press, Cambridge, 2007); Debbie Laliberte-Rudman, ‘Risk, Retirement and the “Duty to Age Well”: Shaping Productive Aging Citizens in Canadian Newsprint Media’ in Jessica Polzer and Elaine Polzer (eds), *Neoliberal Governance and Health: Duties, Risks, and Vulnerabilities* (McGill-Queen’s Press, Montreal and Kingston, London, Chicago, 2016) 108-131. China’s socialist practices used to give people who live in the collective a sense of eldercare security. Elaboration of neo-liberal ideology after China’s Reform and Opening Up in 1979 can be found in Lisa Rofel, *Desiring China: Experiments in Neoliberalism, Sexuality, and Public Culture* (Duke University Press, Durham, 2007).

felt all over China, regardless of age and sexual orientation. It is projected that between 2015 and 2030, the share of China's population aged 60 years or over will rise from 15 per cent to 24 per cent, while local, provincial and national welfare budgets are unlikely to meet the growing needs.⁵

A host of factors contribute to the widespread anxiety about future security: Under the China's Family-Planning Policy before the reform in 2016,⁶ city dwellers can only have one child (unless they're rich enough to afford the large fine) to count on when they get old; consumer price inflation makes it difficult to save money; fierce competition in the job market means life-long employment is no longer guaranteed; the media's exaggerated depiction of the elderly as weak, dependent and lonely; stories about abuse in nursing homes – they all contribute to people's desire to avoid living their later years outside their own family. As the younger generation is facing enormous pressure to make ends meet themselves, the traditional idiom 'bring up sons for help in old age; and store up grains against famine'⁷ seems no longer a golden guarantee of a happy later life.

The previous two chapters have shown that having a different-sex marriage and having a biological child within marriage is a social and legal imperative, a straightjacket that simultaneously constrains and comforts. 'Ageing successfully'⁸, especially getting old with the care given by one's family members, is also an indispensable part of such a straightjacket. The cluster of Family Law on ageing and dying pivots around the 'hetero-familial good-life fantasy'⁹ is one of the major forces that push large numbers of people, whether gay or straight, young or old, to think, feel and live accordingly.

Before I undertook the fieldwork, I would not have imagined that most same-sex-oriented people are talking and worrying about ageing and eldercare (*yanglao*), much more than my heterosexual acquaintances. One explanation could be that heterosexual Chinese couples are so distracted by the endless series of tasks, big or small, in their industrial-production-line familial lives, that they have less time to worry about ageing. Same-sex-oriented people that do not live in this straightjacket, on the other hand, confront loneliness, illness and hopelessness more directly and more often. No wonder many of them have jokingly started to call themselves 'old *tongzhi/lala/gay*' by their mid-30s. If not heterosexually married, they do not

5 See *World Population Ageing*, 2015, Department of Economic and Social Affairs Population Division, United Nations, ST/ESA/SER.A/390, 27.

6 Section 4.1 has discussed more about the Family Planning Policies.

7 The Chinese words being '养儿防老, 积谷防饥'.

8 For critical analyses of the neo-liberal imperative to age well, see Morten Hillgaard Bulow and Marie-Louise Holm, 'Queering "Successful Ageing", Dementia and Alzheimers Research' (2016) June *Body and Society* 1-26; Debbie, 'Risk, Retirement and the "Duty to Age Well"' (2016).

9 The term is borrowed from Lauren Berlant, *Cruel Optimism* (Duke University Press, Durham and London, 2011) 11.

even qualify for the whole wedding-planning, car-purchasing, mortgage-paying diaper-changing, dramas-with-the-in-laws whirlwind of conventional family life. These 'sweet burdens' are also privileges that come with being 'normal' and that postpone one's old-age crisis.

Meanwhile, there seems a conflation in society whereby being gay equals being childless equals being unfilial to their folks equals being pathetic in old age. This stereotype is often internalized by same-sex-oriented people themselves. Their anxiety is thus two-fold: firstly, the pressure, moral and legal, of their duty to care for their ageing parents, if any; and secondly, their own fear of ageing and dying alone and uncared for. These two intertwined issues have been a constant and appalling threat of 'no future'¹⁰ for both same-sex-oriented people and their parents in China. Both these aspects warrant closer examination, as do the connections between them.

This chapter shows first how Family Law echoes the neo-liberal shift of responsibility for eldercare from the state to the family. It also highlights several laws that tacitly recognize non-marital relationships in certain scenarios with regard to medical care or dependent's rights (Section 5.1). In terms of same-sex-oriented people's care-giving obligations towards their parents, it discusses the democratization of intergenerational familial relationships in China, where filial piety is no longer a non-negotiable package of support and obedience (Section 5.2). It also presents three ethnographic stories of elderly same-sex-oriented people living in contemporary China, where counter-intuitively their legally unrecognized relationship forms do not always seem to obstruct their well-being (Section 5.3). The conclusion draws together the discussions on Family Law and legal consciousness about the heteronormative elder life as part of the straightjacket (Section 5.4).

5.1 LEGALLY SANCTIONED WAYS OF GETTING OLD IN CHINA

To be clear, later life is not substantially different from other life phases in terms of the legal issues one may encounter. Elderly people may cohabit, get married, get separated, have children by various means, arrange their property, deal with tax and insurance, etc., much like younger ones; and illness, disability and death happen to young people, too. Therefore, the issues discussed in this section are not specific to the elderly, but are probably encountered more often when one gets old. As the housing, financial and parenting legal issues have been addressed in the previous chapters, this section mainly discusses Chinese Family Law in relation to older people's

10 The future-oriented anxiety is discussed in Lee Edelman, *No Future: Queer Theory and the Death Drive* (Duke University Press, Durham and London, 2004).

freedom to marry or divorce, social and commercial insurance, medical care, death and inheritance. It examines the extent to which same-sex-oriented individuals and unmarried people in general, are or are not beneficiaries of these laws. In addition to the written rules (FL1, 2 and 3)¹¹, it also brings into light some FL4,¹² as well as the practices of some same-sex-oriented people who have utilized or avoided these rules to negotiate a more livable old age in China.

5.1.1 Elderly People's Freedom to Marry

In January 2013, two elderly men announced online their mutual love. One of them is a retired teacher, another a blue-collar worker. They published some high-profile posts and videos, condemning discrimination and advocating social acceptance for *tongzhi*. On their wedding day, however, the teacher's son intervened violently, upended the banquet tables, drove away all the guests and even beat up some of them. The online live broadcast was consequently interrupted.¹³

The 2001 Marriage Law explicitly stipulates the freedom to marry,¹⁴ and according to the Criminal Law, those who use force to interfere with others' freedom to marry may have committed a crime.¹⁵ The 'Elderly Care Law' also stipulates such freedom and makes clear that a change to an older person's marital status does not abrogate the duty of his or her supporters.¹⁶ However, it remains unclear whether the laws protect the freedom of elderly people to have a wedding with their same-sex partners.

Arguably, the freedom to marry entails the freedom to arrange one's private and family life according to one's own sexual, economical, intellectual or other preferences. It should also include the freedom to establish and develop one's intimate relationship that resonates with their choice of sexual

11 Family Law (FL1, 2, 3 and 4) has been discussed in Section 1.2. FL1 refers to the positive laws on narrowly-defined family-law issues such as marriage, parenthood and inheritance; FL2 covers laws that contain certain family-law aspects; FL3 include the positive laws that impact indirectly but structurally on family; and FL4 refers to informal norms that shape normative family life.

12 Ibid.

13 The accounts of the incidence and their statements can be found at their blog named 'the Love of Two Old Men', at www.webcitation.org/6l3HUOXms.

14 Article 3: 'Marriage upon arbitrary decision by any third party, mercenary marriage and any other acts of interference in the freedom of marriage shall be prohibited.'

15 Article 257 (1) of Criminal Law reads: 'those using force to interfere in others' freedom of marriage are to be sentenced to two years or fewer in prison or put under criminal detention.'

16 Law on Protection of the Elderly, Article 21: 'The freedom of marriage of the elderly shall be protected by law. Their children or other relatives shall not interfere in their divorce, remarriage and post-remarriage life. The supporters shall not be relieved of the duty to provide for the elderly because of any change in the marriage of the elderly.'

activity and sexual identity,¹⁷ to break up, to remain single, to get legally and/or ritually married, and to divorce. Moreover, neither same-sex sexual conduct nor cohabitation is prohibited in Chinese law.¹⁸ In this sense, the two old men should have the freedom not just to marry someone of different sex but also to love and live with a person of the same sex, and should be free from arbitrary interference by any person, including their family members. On the other hand, it can also be argued that ‘marriage’ in the Criminal Law should be systematically interpreted in accordance with the Marriage Law, which is strictly limited to a man and a woman. If same-sex marriage is not intelligible in Chinese criminal or civil law, then having a same-sex wedding can hardly be legally recognized as exercising the freedom to marry.

Suppose this couple sued the son, what would the court say? The judges might find themselves between the proverbial rock and a hard place: if they adopt a narrow interpretation of marriage, then the possibly criminal act of interfering violently with a wedding might be condoned (unless it is prosecuted as intentional injury); yet if the son is found guilty, then the court might be seen, inadvertently, to have given at least *some* legitimacy to same-sex relationships and *some* legal consequences to their marital rituals. There has not been any criminal lawsuit filed by an elderly same-sex-oriented parent against his or her child or relatives so far,¹⁹ probably due to the reluctance to go to a court against his or her own family member and of coming out in public.

5.1.2 Social and Commercial Insurance

By and large, the non-commercial social security system is not a guarantee for Chinese people’s financial and physical security: high inflation and the ageing population is likely to render the basic endowment pension inadequate;²⁰ unemployment insurance is only given to people who do not intentionally terminate the employment;²¹ the medical insurance only covers a limited range of medical expenses, and due to the shortage of public hospitals, it is not uncommon that people with lower income cannot afford proper treatment.

17 For a discussion on the choice to the right to choose sexual activity and sexual identity and the right to establish relationships and families in accordance with this choice, see Michele Grigolo, ‘Sexualities and the ECHR: Introducing the Universal Sexual Legal Subject’ (2003) 14 *European Journal of International Law* 1023-1044; 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.

18 See Chapter 2.

19 The crime of interfering by force with the freedom to marry can only be handled upon complaint, see Criminal Law, Article 257 (3).

20 Joe CB Leung, ‘Social security reforms in China: Issues and prospects.’ *International Journal of Social Welfare* 12 (2003) 2, 73-85, 95.

21 The Social Insurance Law of People’s Republic of China, adopted 28 October 2010, effective 1 July 2011, Article 45.

It is worth noting that social insurance in neoliberal China is highly individual-based. Unlike some Western countries, where the marital status may influence a spouse's benefits,²² social security payments in China are mainly determined by one's own work history and the premiums one has paid. Still, marriage plays an important role in redistribution of these benefits. According to the Marriage Law and its Second Judicial Interpretation, one spouse's endowment insurance should be deemed as the communal property of the couple.²³ Same-sex couples are not bound by this rule, which may disadvantage the dependent party in a long-term cohabiting relationship, since he or she is not legally entitled to share the pension of the more affluent one.

The heteronormative notion of family is embedded in many other rules on insurance. For instance, in the Social Insurance Law, the balance in the personal account of the basic endowment pension insurance can be inherited,²⁴ to which a same-sex partner may not have access without a bequest through a will or a legacy-support agreement.²⁵ Another example can be found in the Regulation on Work-Related Injury Insurance, where only 'close relatives' of the deceased employee may collect a contribution to funeral expenses and a lump-sum payment for a work-related death, and only 'relatives' to be supported by the deceased may be entitled to a monthly pension.²⁶ A bylaw has specified the scope of 'relatives', that is, 'the spouse, children, parents, paternal grandparents, maternal grandparents, grandchildren, and brothers and sisters of the deceased employees'.²⁷ That means one's same-sex dependent survivor is not able to claim any of above-mentioned payments.

Survivor's pension rights have been one of the most frequently litigated issues in the international courts. The United Nations Human Rights Committee (UN HRC) has ruled in two cases that the denial of the same-sex cohabiting partner's access to survivor's pension constitutes sexual-

22 In the United States, for instance, welfare recipients risk losing important benefits if they marry, suggesting that their caution around marriage is economically rational, see Carol Smart, 'Stories of Family Life: Cohabitation, Marriage and Social Change' (2000) 17 *Canadian Journal of Family Law* 20-53. For the laws in some European Countries, see Kees Waaldijk, *More or Less Together: Levels of Legal Consequences of Marriage, Cohabitation and Registered Partnership for Different-Sex and Same-Sex Partners. A Comparative Study of Nine European Countries (Documents de Travail n°125)* (Institut national d'études démographiques, Paris, 2005).

23 Marriage Law, Article 17; Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Marriage Law of the People's Republic of China (II), issued 4 December 2003, effective 1 April 2004, amended 20 February 2017, Article 11.

24 Ibid, Article 14.

25 See section 5.1.6 and accompanying text.

26 Regulation on Work-Related Injury Insurance (2010 Revision), Article 39.

27 Regulations on the Scope of the Relatives to Be Supported of the Employees Killed in Work-Related Accidents.

orientation discrimination.²⁸ In these cases, the Committee did not compare same-sex couples with different-sex married couples, but with different-sex partners outside marriage whose right to a survivor's pension is already protected by the national laws. Similar reasoning can be found in the decisions of European courts.²⁹ In the Chinese context, however, such comparison does not provide a strong argument. Since 1994, different-sex *de facto* marriage has no longer been legally recognized,³⁰ thus unmarried same-sex cohabiting partners are not likely to be judged to face discrimination if compared to their different-sex counterparts who are also excluded from survivor's pension.

Meanwhile, commercial insurance is no less strict. According to Chinese Insurance Law, same-sex partners are theoretically eligible for purchasing insurance for each other and becoming beneficiaries of the other's life and health insurance.³¹ In practice, however, insurance companies often do not allow non-family members to purchase personal insurance or to become the beneficiaries. I approached the customer service departments of two of China's largest insurance companies, both of which insisted that according to their own policies, one is only allowed to purchase personal insurance for one's next of kin, not for one's unmarried partner (whether same-sex or different-sex) or for a good friend, not even with written consent; the candidates for beneficiaries are limited likewise.

Nevertheless, there are ways to bypass such internal policies without contravening the law, according to one insurance company's customer service online. For instance, I was told that one may purchase personal insurance for oneself, and make the beneficiaries statutory successors. After the insurance contract enters into effect, one can make a will leaving the benefits to the testamentary successor, i.e., one's same-sex partner.³² However, such a pragmatic solution cannot prevent potential disputes between other statutory successors of the ill or the deceased (such as biological family members) and a same-sex partner. Alternatively, accord-

28 *Young v. Australia*, Communication No. 941/2000, CCPR/C/78/D/941/2000, 18 September 2003, para. 10.4; *X v Colombia*, Communication No. 1361/2005, CCPR/C/89/D/1361/2005, 14 May 2007, para. 7.2.

29 For an overview of the cases in European courts on non-marital relationships, see Kees Waaldijk, 'Great Diversity and Some Equality: Non-Marital Legal Family Formats for Same-Sex Couples in Europe' in Marjolein van den Brink, Susanne Burri and Jenny Goldschmidt (eds) *Equality and Human Rights: Nothing but Trouble?* (Utrecht University, Utrecht, 2015) 223-246.

30 See Chapter 3, footnote 61 and accompanying text.

31 'Personal insurance' in Chinese law is a rather broad concept, which include health insurance, accidental injury insurance, life insurance etc. See Insurance Law of the People's Republic of China (2009 Revision), adopted by Standing Committee of the National People's Congress on 28 February 2009, effective 1 October 2009, Articles 12 (3) and 95.

32 Online conversation with the customer service person, 25 July 2013. The name of the insurance company is intentionally anonymized.

ing to the companies' customer services, they have other financial products available whereby one can designate a non-relative as a beneficiary; a work-around often used by the rich and famous who have mistresses or children born out-of-wedlock.³³ This solution is nevertheless a high-risk high-yield financial instrument, which falls out of our discussion of life and health insurance.

Most of my respondents have not thought about the possibility of receiving a survivor's pension or purchasing commercial insurance for their same-sex partners at all, partly because they do not have faith in a long-term family-like relationship. The lack of recognition in law also makes many of them assume they are simply unprotected regarding social security. Therefore, they are also less aware of both the specific legal restrictions and possible leeway they have.

5.1.3 Access to Medical Records

Hospital seems to be one of the places where the discrimination against non-familial relationships is most salient. It is common to hear that that same-sex people are not eligible to obtain their partner's medical records; he or she could not sign the proxy consent form for medical emergencies, either. The different treatment hospitals accord to same-sex partners and different-sex spouses seems to have become one of the most empathetic arguments for same-sex marriage made by gay rights activists the world over, China included. This line of argument is often quite successful, partly because the anxiety of not being able to be taken care of when one gets old and ill strikes a profound chord with a large number of people, straight and gay alike, and thus generates sympathy.

Although same-sex partners do not enjoy all the rights different-sex married couples have where medical care is concerned, Chinese law is probably less oppressive than gay rights activists maintain in a number of hospital-related scenarios. According to the Provisions on the Administration of Medical Records in Medical Institutions, only the patient or his or her entrusted agent is entitled to review and copy the medical records.³⁴ The entrusted agent needs to provide valid proof of identity of the patient and the agent respectively, the legal proof of proxy relation, and the power of attorney.³⁵ The difference between the latter two is unclear. According

33 Ibid.

34 Provisions on the Administration of Medical Records in Medical Institutions, adopted by National Health and Family Planning Commission and State Administration of Traditional Chinese Medicine on 20 November 2013, effective 1 January 2014, Article 17. In Wen and Bin's situation, however, the 2002 version of this regulation should apply, Article 13 of which allows self, entrusted agents, close relatives and insurance companies to access the medical record. In either law, Bin has to prove himself a lawfully entrusted agent.

35 Ibid, Article 18.

to the General Principles of Civil Law, a valid power of attorney can be regarded as the proof of the proxy relation.³⁶ It is likely that, in practice, hospitals may put up barriers for friends or unmarried (same-sex) partners who want to review the medical records, by requiring marriage certificate or household registration certificate (*hukou*),³⁷ although it is not a formal requirement in law.

The experience of one male couple, Wen and Bin, illustrates the inconvenience resulting from this lack of legal clarity. In July 2013, Wen suffered a stroke and became hemiplegic. They had not previously established any formal power of attorney, and they did not think to do so at the hospital. It was at that moment that Bin started to realize how disadvantaged they were compared to different-sex married couples. When Bin asked the hospital to show him Wen's medical records, the doctor refused, insisting that only the next of kin had such rights. Bin told the doctor that he was Wen's lover, his family member, his only kin. Indeed, Wen's parents passed away a decade ago, while his siblings were estranged from him after he came out. Finally, the hospital decided to make it an exceptional case and allowed Bin access to the records, without asking him to provide any legal documentation.

The fact that the doctors and nurses made allowances for Wen and Bin suggests that, in reality, there is already some social recognition of same-sex partnerships, even if such an accommodation is against the law. When health or even survival is concerned, and when an individual's vulnerability is laid bare and experienced by those involved, the formal status of a relationship comes to matter less, and the substantial act of care, more. Still, having to resort to sentiment can create more uncertainty, and cannot alter the inferior legal status of same-sex relationships. In this sense, formal recognition is still a pressing need. The next scenario further illustrates this point.

5.1.4 Medical Decisions in Emergency

In addition to accessing one's partner's medical record, proxy medical consent in case of emergency is another issue that provokes tears and empathy. Again, Chinese law is not clear in terms of who is entitled to make such an important decision. According to the Administrative Regulation on Medical Institutions of 1994,

36 Article 65, General Principles of the Civil Law.

37 Largely based on locality and family background, the *hukou* system serves four main functions: to provide the government with a database of the population, to control the flow of rural-to-urban migration by restricting the change from rural *hukou* to urban *hukou* (or vice versa), to provide a basis for differential resources allocation and subsidization between urban and rural *hukou* holders and to help the police track down individuals and exercise other forms of social control, see Fei-Ling Wang, 'Renovating the great floodgate: The Reform of China's *Hukou* system', in Martin King Whyte (ed) *One Country, Two Societies: Rural-Urban Inequality in Contemporary China* (Harvard University Press, Cambridge, 2010) 335-364.

'When performing an operation, special examination or special treatment, medical institutions must get the patient's own consent, together with the agreement and signature of his or her family member or of a *related person* (*guanxi ren*); if the patient's opinion cannot be obtained, the institutions shall get the agreement and signature of his or her family member or a *related person* ...'³⁸

The Regulation does not define the term 'related person', nor does it say if a 'related person' includes closely connected roommates, unmarried partners, friends and so on. Arguably, this term can be understood as broadly as any person who is closely related to the patient, and who will take into account the patient's best interest. Moreover, we could interpret the law textually: as 'related person' is juxtaposed with 'family member', then the two terms implicitly indicate different categories. In fact, when no other family member is present, there have been cases where hospitals interpreted the term 'related' broadly so that it includes the patient's boyfriend.³⁹

A reference to comparative law indicates that it is not unrealistic to treat same-sex partners as qualified decision makers in emergencies, without having to first introduce a whole set of formal legal recognition of same-sex partnership. Taiwan, for example, has an official definition of a 'related person' in the event of surgery, which reads;

*'the patient's related person in principle refers to a person with an especially close relationship with the patient, such as cohabitants and close friends; or the obligor according to statutes or contracts, such as guardians, teachers, or firemen...'*⁴⁰

In another instance, the State of New Mexico in the United States has provided in 1978 a default setting for urgent decision making, if the patient is unable to make a decision and if a designee is absent. The possible surrogate decision-maker can be (in descending order of priority):

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- 38 See Administrative Regulation on Medical Institutions (医疗机构管理条例), issued by Ministry of Public Health on 26 February 1994, effective 1 September 1994, Article 33.
- 39 A case in 2007 concerning the medical decision by the long-term male partner of a pregnant woman indicates that unmarried partners can be deemed as a 'relative', (although the focus of this case was not whether he is the lawful person to make such decision, but his refusing to consent the surgery, which led to the death of the patient). For the details of and comments on the case, see Lixin Yang, 'Tort Liability for Medical Treatment Administration: What Law to Be Applied (医疗管理损害责任与法律适用)' (2012) 3 *Jurists* 30-35.
- 40 Guiding Principles on Obtaining Patients' Consent to Surgery and Anesthesia at Medical Institutions (医疗机构施行手术及麻醉告知暨取得病人同意指导原则), Notice No. 0930218149, Department of Health, issued and effective 22 October 2012.

'the spouse, an individual in a long-term relationship of indefinite duration with the patient in which the individual has demonstrated an *actual commitment* to the patient similar to the commitment of a spouse and in which the individual and the patient consider themselves to be responsible for each other's well-being, an adult child, a parent, an adult brother or sister and a grandparent.'⁴¹

A similar provision can be found in Norway's Patients' Rights Act, which defines the patient's next of kin as:

'the person whom the patient names as his or her kin or next of kin. If the patient is incapable of naming his or her next of kin, the next of kin shall be the person *who to the greatest extent has had lasting and continuous contact with the patient*....'⁴²

The rationale in the above laws is that substantive caring relationships, in emergency scenarios, should transcend the conventional definition of 'family' in law. This is also more consonant with the purpose and ethics of the surrogate medical decision system, namely, to make decisions as close as possible to the patient's own wish.⁴³

In practice, there have been no reports in China of same-sex partners invoking the 'related person' provision to claim the right to make a surrogate medical decision, and no activist has pushed the hospital or the judicial or legislative authorities to make clear the scope of what constitutes a 'related person'. Meanwhile, the reality appears more flexible than the law. A volunteer in a male-to-male sex worker NGO told me that he has several times in emergencies signed the medical consent form concerning HIV-positive male sex workers. In these urgent scenarios, contrary to what my legal training prepared me to expect, not only did the hospitals not bother asking him to show proof of next-of-kinship or power of attorney, but they actually urged him to sign the form for the patient. 'I took no time to think or hesitate at all. I felt huge responsibility the moment I signed it', he said. In two other similar situations, according to him, neither the patient in a coma nor the social workers signed the consent form, but the hospital carried out the surgery straightaway.

41 See *Uniform Health-Care Decisions Act*, NMSA 1978, New Mexico, the United States, Section 24-7A-5, Article B (2). Moreover, according to the Article C, if the family members are unavailable, 'an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values and who is reasonably available may act as surrogate', thereby covering more people outside the original or conjugal family of the patient. For more jurisdictions in the United States and some other countries that have similar rules, see Nancy D Polikoff, *Beyond (Straight and Gay) Marriage: Valuing All Families Under the Law* (Beacon Press, Boston, 2008) 110-123, 159-174.

42 The Act of 2 July 1999 No. 63 relating to Patients' Rights (the Patients' Rights Act), Norway, effect 1 January 2001, Section 1-3 (b), at www.webcitation.org/6s8IvVG19.

43 Polikoff calls this approach 'valuing all families': 'The most important element in implementing this approach is identifying the purpose of a law that now grants marriage unique legal consequences. By understanding a law's purpose, we can identify the relationships that would further that purpose without creating a special status for married couples', in Polikoff, *Beyond (Straight and Gay) Marriage* (2008) 5.

A lesbian activist respondent was also of the opinion that the account given by the gay rights campaign on medical decision-making in media was over-sensationalized, because she had successfully signed the paper for a colleague of hers, just by saying she was the patient's older sister:

'In practice, most of the time hospitals would not ask you to provide your *hukou* to see if you two really are sisters; moreover, if a sibling has migrated to another place together and changed her *hukou* certificate accordingly, then it would be almost impossible to prove the kinship in a short period of time. They can't have a DNA test on the spot, can they?'

Many same-sex-oriented people had considered straight-passing by acting as a sibling, too, as illustrated by their contributions at the workshops I organized or the meetings I participated in. However, one participant expressed a valid concern:

'It's one thing to lie and to sign the paper in an emergency, but it's another if the surgery fails and if his or her "real relatives" later show up and insist that you had no legal competence to make that decision and that you should face civil or even criminal liability.'

Indeed, when the law does not clearly grant surrogate decision-making rights to same-sex partners or dependents other than the next of kin, disputes are more likely to happen afterwards, although as yet there are no reported cases. Again, ambiguity in law brings more space for interpretation but concomitantly also uncertainty and troubles.

5.1.5 Living Organ Transplantation

Like the 'related person' provision, Article 10 of the Regulations on Human Organ Transplantation seems to have opened another door for close same-sex relationships. It provides,

'The recipient of a living organ shall be limited to the spouse, lineal relative by blood or collateral relative by blood up to the third degree of kinship of the living organ donor, or a person who is proved to have *developed a familial relationship* with the living organ donor for reasons such as *assistance and support*'.⁴⁴

'Familial relationship' here should be interpreted as more than marriage and biological kinship, because the words 'developed' and 'assistance and support' have suggested that kinship is not necessarily premised on conjugal or blood ties. It can be established and nurtured by daily interaction. The recognition that it is possible for someone to 'develop' a familial relationship with someone else could be particularly significant for same-sex partners wanting to claim rights for their chosen families.

44 Regulation on Human Organ Transplantation (人体器官移植条例), adopted 21 March 2007, effective 1 May 2007, Article 10. The original Chinese text of the last part of the provision is '有证据证明与活体器官捐献人存在因帮扶等形成亲情关系的人员'.

The Regulation does not make clear what counts as having ‘developed a familial relationship’, so the purpose of the law should be considered when we interpret it.⁴⁵ The primary purpose of restricting the scope of recipients of human organ transplantation is to prevent the commercial trade in organs and to encourage altruistic donation. If there is no evidence of a transactional trade, then ‘familial relationship’ should be interpreted in each individual context, for the best interest of organ recipients. Therefore, the law should not exclude those closely attached same-sex partners who care and support each other just as some married spouses or legal family members would. The Finnish Act on Medical Use of Human Organs and Tissues takes this approach, where the recipient of a living organ donation must be ‘a near relative’ or ‘other person close to’ the donors,⁴⁶ and the latter is thought to cover some same-sex (and different-sex) cohabiting couples.⁴⁷

Nevertheless, the interpretation of this provision in real-life cases can be controversial. In 2008, two unacquainted recipients in a same hospital happened to match with donors from each other’s families. The hospital’s medical ethics committee considered such a ‘cross donation’ to be legal and ethical, but did so without discussing whether these two families had, though an empathic understanding of their shared distress, ‘developed a familial relationship’ and from a desire to help reciprocally.⁴⁸ It reasoned only that ‘this case is not a commercial organ transaction, so the cross donation is not against the intention of the regulation’.⁴⁹

In 2009, however, the Ministry of Health issued detailed guidelines about the implementation of the Regulation on Human Organ Transplantation, where it strictly confined the scope of what is meant by ‘developed familial relationship’ to the relationship ‘between parents and adopted children, or between stepparents and stepchildren.’⁵⁰ That meant that same-sex couples would subsequently find it harder to insert themselves within this narrow definition, but there is still a chance that in practice the medical ethics committee may give an exception for altruistic donation between them.

45 See above, footnote 43.

46 See No. 101/2001 Act on the Medical Use of Human Organs and Tissues of Finland, issued 2001 February 2, effective 2001 September 1, Article 4 (1), at www.webcitation.org/6s4SgU8GI.

47 See Rainer Hultunen and Kees Waaldijk, ‘Major Legal Consequences of Marriage, Cohabitation and Registered Partnership for Different-Sex and Same-Sex Partners in Finland’, in Waaldijk, *More or Less Together* (2005) 87.

48 “The background and effects of the Ministry of Health’s decision on the legality of cross kidney donation” (卫生部认定交叉换肾合法的前前后后) *Legal Daily*, 2008 June 16, at www.webcitation.org/6qYwDXs78.

49 Ibid.

50 See Several Provisions of the Ministry of Health on Regulating Living Organ Transplantation (卫生部关于规范活体器官移植的若干规定), issued by Ministry of Health on 2009 December 28, effective 2009 December 28.

Regretfully, the Ministry of Health could have encouraged a case-by-case approach when interpreting the regulation, so as to strike a balance between the open-endedness of Article 10 and the need to prevent human organ transaction. Issuing guidelines to exclude opportunistic behavior among non-family members may serve the latter purpose, but the narrow definition of ‘developed familial relationship’ directly disadvantages all valuable relationships other than those found within the bounds of the formal heterosexual family unit.

5.1.6 Succession

Succession is another issue that is conventionally tied to biological and affinitive kinship. Chinese law identifies three distinct types of succession: 1) intestate or statutory succession (*fading jicheng*) is the default equal attribution of the inheritance, the beneficiaries of which include only a surviving spouse, children, parents, brothers and sisters, paternal grandparents and maternal grandparents; 2) testament (*yizhu jicheng*) is a will that specifies that one or more of the *statutory* beneficiaries should inherit one’s personal property in the personalized order and amount; and 3) a will to donate (*yizeng*) is for the benefit of the state or a collective, or of persons *other than* the statutory successors.⁵¹ It is also stipulated that any property left with neither an intestate successor nor a legatee would become the property of the state or a collective.⁵² In addition, people other than a successor who were largely responsible for supporting the deceased, or who had depended on the support of the deceased and can neither work nor have a source of income, may secure ‘an appropriate share’.⁵³ In practice, the term ‘non-legal successors’ is commonly understood to refer to a daughter- or son-in-law.⁵⁴ The legislative and judicial interpreters have not considered the situation of same-sex unmarried partners, close friends, or other caregivers or receivers yet, and there has not yet been any legal court case in this regard. Therefore, timely drafting a will is of greater importance for same-sex partners.

One of the best-known American movies amongst Chinese *tongzhi* communities is *If These Walls Could Talk 2*, in which an elderly lesbian woman is chased out of her deceased partner’s house by her partner’s children. This story, set in the United States, has considerable resonance among Chinese same-sex-oriented people, who worry that even if their partners leave a will to donate their properties to them, their statutory successors might still come forward and challenge it in court, in name of public order

51 Chinese Law of Succession, Article 10, emphasis added.

52 Ibid, Article 32.

53 Ibid, Article 14.

54 See e.g., *Li v. Tao and Tao*, Weihai Intermediate Court, Shandong, No. 316, 8 June 2015 (李某与陶某甲、陶某乙法定继承纠纷案, 山东省威海市中级人民法院 (2015) 威民一终字第316号).

and good mores (*gongxu liangsu*).⁵⁵ Their concern is not unfounded, because there has already been a controversial case 15 years ago concerning an inheritance dispute between the wife and the extra-marital female lover of a deceased man. In that case, the court disregarded his will that gave most of his property to the lover who was the primary caregiver in the last stage of his life. It instead chose to protect the solemnity of marriage and decided that the wife should inherit his property.⁵⁶ It is likely that Chinese courts would do the same today when dealing with a dispute between a straight spouse and a same-sex partner of a deceased person. In case of a remote relative versus a same-sex partner, priority may be given to either party with different justifications, depending on the discretion of the judges.

Theoretically, however, one other provision in the Law of Succession could be used to give priority to a (same-sex) partner over statutory successors. Article 31 provides:

A citizen may enter into a legacy-support agreement with a person who, in accordance with the agreement, assumes the duty to support the former in his or her lifetime and attends to his or her interment after death, in return for the right to a legacy.

The legacy-support agreement has an advantage: in the event that the agreement contradicts the testament or the intestacy rules, priority should be given to the agreement.⁵⁷ The rationale is, according to civil-law jurisprudence, that the act of caring has made the partner a creditor, and the creditor's right should precede the statutory or testamentary inheritance rights. In practice, I have not yet encountered any same-sex couples who were aware of this provision or had made use of it, nor has any contesting of the legality of such an agreement in court been reported.

55 Notice that in Chinese law, there is no mandatory proportion of legacy reserved for the spouse or minor child. It is only stipulated that 'reservation of a necessary portion of the property shall be made in a will for a successor who neither can work nor has a source of income', see Chinese Law of Succession, Article 19. What amounts to 'necessary' is unwritten, so theoretically a person can lawfully bequeath most, if not all, property to a non-relative, if his or her statutory successors can be self-sustaining.

56 In this renowned case, a man left his inheritance to his lover who took care of him before he died instead of his wife, but the court annulled the will, considering it as contravening public morality. See *Zhang Xueying v. Jiang Lunfang*, Luzhou Intermediate People's Court, Sichuan Province, 28 December 2001, No. 561 (张学英诉被告蒋伦芳遗赠纠纷民事判决书, 四川省泸州市纳溪区人民法院 (2001) 纳溪民初字第561号).

57 See Opinions of the Supreme People's Court on Several Issues concerning the Implementation of the Law of Succession of the People's Republic of China (最高人民法院关于贯彻执行《中华人民共和国继承法》若干问题的意见), issued and effective 11 September 1985, Article 5.

5.1.7 Continued Tenancy

The right of a surviving same-sex partner to continued tenancy is also a matter of concern. This issue has been adjudicated in some Western countries. In *Karner v. Austria*, for instance, the European Court of Human Rights found that the abstract aim of protecting the traditional family could not justify the exclusion of same-sex surviving partners from the right to succeed to a tenancy held by the deceased, and that such an exclusion is therefore a prohibited form of discrimination.⁵⁸ The same-sex partner of the deceased is likewise protected from eviction by the landlord in the United States, following the landmark *Braschi* case.⁵⁹

In comparison, the statutory rules on continued tenancy in Chinese law already seem to protect same-sex couples. According to Article 234 of the Contract Law,

‘Where the lessee is deceased during the term of a dwelling unit lease, *the person jointly living in the unit with the lessee* while the lessee is alive may continue leasing it on the terms of the original leasing contract.’⁶⁰

This provision does not require the cohabitants to be spouses or close relatives, nor does it oblige them to live together for a fixed period of time.⁶¹ There have been no reports or legal cases concerning the sudden loss of home by a different-sex or same-sex cohabiting partner of a deceased lessee in China. Whether same-sex partners face practical problems remains under-researched, yet this provision seems to be invocable to contest any discrimination on the landlord’s part.

Continued tenancy of public housing, where the specific bylaws may override Article 234 of the Contract Law, is nevertheless more problematic in some places. For instance, according to the bylaws of Shanghai’s department of housing management, if the original tenant dies, the cohabiting person who applies to continue the contract must have a local *hukou* (residence permit), otherwise the tenancy should be inherited by the spouse or

58 *Karner v. Austria*, Application No. 40016/98 para 41, Judgment, ECtHR (2003), para 41.

59 *Braschi v. Stahl Assocs. Co.*, New York Court of Appeals, United States, 543 N.E.2d 49, 53 (N.Y. 1989).

60 Contract Law of the People’s Republic of China, adopted 15 March 1999, effective 1 October 1999, Article 234, (emphasis added); the same content also appears in Article 12 of the Administrative Measures for Commodity House Leasing (商品房屋租赁管理办法), Order No.6 of Ministry of Housing and Urban-rural Construction, issued 1 December 2010, effective 1 February 2011.

61 Notice that in a 1995 regulation, which has been replaced by the Administrative Measures for Commodity House Leasing, it was required that the tenancy could be continued only when the cohabitants are ‘family members’ jointly living ‘for more than two years’. See Administrative Measures for House Leasing in Cities (城市房屋租赁管理办法), Order No.4 of Ministry of Construction, issued 9 May 1995, effective 1 June 1995, invalidated 1 February 2011. Before its repeal, this provision is in fact in conflict with the Contract Law of 1999. It is unclear which of the two laws was prioritized in practice.

next of kin of the deceased who are locals.⁶² As same-sex partners are not considered relatives, they cannot register as part of the same household. Obtaining Shanghai *hukou* via marriage, which is available for different-sex couples, is impossible for a same-sex partner or friend whose *hukou* is in another place. On the other hand, if the surviving same-sex partner does have a local *hukou*, he or she is able to continue the tenancy for public housing, at least in Shanghai. In general, however, the rules controlling residence and immigration draw on marriage and kinship laws to create different classes of citizen and kinship.

5.1.8 Summary

Chinese law does protect elderly people in several aspects, including the freedom to marry, rights to social insurance, health-related rights and the rights of the surviving partner. For the unmarried, however, their dependents or care-giving partners are likely to be accorded fewer legal rights and benefits, including being the beneficiary of one's partner's life or health insurance, or accessing the partner's medical record. On the other hand, there are sporadic rights and benefits that implicitly protect subjects and relationships 'beyond marriage',⁶³ including the individual-based medical care system in China, the right of the 'related person' to make surrogate medical decisions in emergencies, the right to living organ donation between those who have 'developed a familial relationship', the right of non-relative caregivers to succession via legacy-support agreements, as well as the right to continued tenancy of non-relative cohabitants. These laws are not necessarily the results of an intentional de-centralization of marriage or of an intention to protect gay rights, but perhaps these inclusive terms are used simply because human relations are much more complicated than marriage and biological kinship, and thus some flexibility in law could better suit the reality.

In daily scenarios, however, Chinese same-sex-oriented people do not turn to laws for guidance on how to live or to plan for their old age. More often than not, just like most heterosexuals, they do not bother to check the law books before they think and act. However, insidious unfairness presents itself most obviously when people 'bump into it', as illustrated in the cases mentioned above. These legal rules do work latently to shape people's sense of old-age security, together with the cultural-political-legal environment that has led to care being increasingly privatized and filial piety being further promoted. As shown next, the highlighting of filial piety in law and party-state propaganda has stimulated same-sex-oriented people to forge new meanings to it.

62 See Shanghai Regulations on Residential Tenancy (上海市居住房屋租赁合同管理办), adopted 27 December 1999, revised 18 September 2010, Article 41.

63 See below, footnote 122 and accompanying text.

5.2 FROM FILIAL PIETY TO NON-HETERO-FAMILIAL CARE

Existing studies have demonstrated that the essential elements of filial piety in Chinese society include respect, obedience, and the obligation to provide for elderly parents.⁶⁴ In an ideal scenario, a happy old age should include economic security, solid support (both emotional and practical), physical adjacency with one's offspring, and pleasurable social life. For same-sex-oriented people, however, it is difficult to make their parents wholly happy unless they put on the straightjacket. For those who try to strike a balance between their filial duties and their intimate life, it is necessary to disassemble filial piety into distinct parts and reassemble them. Meanwhile, parents of openly lesbian or gay children are also adjusting their expectations of filial piety. All these changes are reshaping people's understanding of who should take care of the elderly and how.

5.2.1 To Obey or to Care?

With the growth of neo-liberalism and the accompanying encouragement of individual (sexual) desires in China,⁶⁵ many same-sex-oriented, especially LGB-self-identifying, people are now reluctant to simply obey their parents' wish for them to follow a 'smooth' path through life. They have tried to separate the two Chinese characters that are combined to mean filial piety, *xiao* (care) and *shun* (obedience), and insist being '*xiao er bu shun*' (caring but not obedient), namely, caring for the parents without being submissive to them. As Tata,⁶⁶ a lesbian who has written several popular articles and given workshops on coming out and intergenerational relationships, said,

'If filial piety harms the children, then it is sheer blind loyalty (*yu xiao*). I prefer *xiao er bu shun*, where the care for the elderly is not premised on the sacrifice of their offspring's integrity. We can always have our own ways of doing *xiao*, not necessarily by getting married and having kids as our parents designed for us. Only when we are mature and independent enough could filial piety become a free choice; otherwise it's simply out of moral pressure.'⁶⁷

She further explained,

'After I came out, my parents were so furious that they even claimed they would disown me. I would never leave my lover just in order to please them, but I still provide for them regardless of their attitudes, visit them regularly, and took care of my father when he was hospitalized. This is my way of practicing filial piety: coming out toughly and taking care softly.'⁶⁸

64 Judith Stacey, *Patriarchy and Socialist Revolution in China* (University of California Press, Berkeley, 1983); Lung-Kee Sun, 'Contemporary Chinese Culture: Structure and Emotionality' (1991) 26 *The Australian Journal of Chinese Affairs* 26, 1-41.

65 Rofel, *Desiring China* (2007) 143.

66 This is a name known in the LGBT self-help community in China.

67 Tata, story-sharing event at PFLAG, Guangzhou, 26 July 2014.

68 *Ibid.*

Like Tata, more and more same-sex-oriented young adults now embrace this liberalistic understanding of parental-child relationship, which is based on the modern assumptions that parents and adult children are equal individuals with the same rights as citizens, and that the former should not have the authority over the latter's choices of intimate life.⁶⁹ Although some authors point out the nuances in the ways of negotiation within Chinese families compared to the West,⁷⁰ a general trend of the democratization of parent-child relationship is increasingly noticeable in China today.

In other words, young people now seem to be more courageous and decisive to disobey, or at least bargain with, the submissive (*shun*) demand of filial piety. Then the most important element of *xiao* becomes elderly care, which includes economic, physical, mental and social dimensions all at once – an onerous task still. It can also involve enormous affective labor if the parents do not accept the children's coming-out and insist obedience instead. No wonder plenty of same-sex-oriented people remain skeptical and anxious even though activists like Tata try to convince them that they can be both gay and filial. After all, coming out needs courage, while being filial requires material resources, and those are oftentimes intertwined. To 'come out toughly and take care softly' as Tata did might be luxurious for a person in a harder living condition.

For many of those who fear that coming out would be hugely destructive of their harmonious family life,⁷¹ entering into a cooperative marriage is a more socially and economically affordable way to honor obligations of filial piety. By getting married, as their parents always wished, they show their belief in the unassailable importance of obedience or *shun* in a peaceful intergenerational relationship. By living a straight-looking life themselves, they also guarantee their parents an 'ordinary', peaceful life, saving their elders from being judged by their gossipy peers over their children's being single and childless. As cooperatively married couples often live far away from their parents, their *prima facie* obedience (such as occasional calls and visits) often outweighs the actual caring aspects of filial piety, to such an extent that it seems to be *shun er bu xiao*, obeying without caring, the opposite of Tata's deconstructed filial piety. Let us revisit the sample contract provided by Xiong's matchmaking group:

69 For the transformation of intra-family relationship in the Western contexts, see Anthony Giddens, *The Transformation of Intimacy: Sexuality, Love and Eroticism in Modern Societies* (Stanford University Press, Stanford, 1992) 42; Ulrich Beck, 'Democratization of the Family' (1997) 4 *Childhood* 2, 151-168.

70 See e.g., Xiaohui Zhong and Sik-ying Petula Ho, 'Negotiative Intimacy: Expectations of Family Relationship and Filial Piety among Only-Child Parents' (2014) 1 *Open Times* 155-175.

71 For more analysis of this concern, see Yip Lo Lucetta Kam, *Shanghai Lalas: Female Tongzhi Communities and Politics in Urban China* (Hong Kong University Press, Hong Kong, 2013) 76.

'During marriage, one party shall, under the principles of equality and free will, provide reasonable help to maintain the spousal relationship, for instance, visiting the other's parents regularly and participating in the other's family events... unless agreed otherwise, neither party is obliged to support the other's parents.'⁷²

Such an agreement is not invalid. In China, the daughter- or son-in-law is not obliged, under the Marriage Law and the Law on Succession, to be a career. It is only in the Elderly Protection Law that it's stipulated 'the spouses of the supporters shall *assist* them in fulfilling their obligations to provide for the elderly'.⁷³ The obligation to assist is more of a moral one, and there are very few cases where an elderly parent has invoked this provision against a daughter- or son-in-law.

In terms of social expectations, however, daughters- or sons-in-law should visit and give gifts or money to the elderly in holidays, festivals or on their birthdays. Some cooperatively married couples have their own ways of navigating filial obligations: as Fish, a lesbian respondent in Xi'an, said, she would reimburse her gay husband before or after he gave the gift money to her parents.⁷⁴ In this way, they manage to keep their financial independence while pleasing the elders.

Hence the duty to be obedient as a child (and child-in-law) is further broken down into two main aspects – providing gift money and paying visits on special occasions, both of which symbolize respect for generational hierarchy in an extended family, while also honoring the economic and emotional caring obligations. Notice that the 'superficial' aspects of visiting and money-giving in cooperative marriages are not uncommon in a 'normal' heterosexual marriage, where the in-laws do not necessarily have strong attachments but still carry out these socially-meaningful activities. This again demonstrates that filial piety is not always a spontaneous, altruistic human sentiment, but a repetitious 'doing' of kinship.⁷⁵

However, it is inaccurate to say that filial piety in cooperative marriage is simply 'fake' because there is no substantial caretaking. In fact, *xiao* and *shun*, obedience and care, are hardly separable in everyday life. In some cases, caring familial feelings can develop in the very repetition of 'acting the part of a responsible child or child-in-law'. As Fish recalls,

'Although I'll always return the large amount of gift money to my gay husband after he gives it to my mom, he insists on giving some practical small gifts to them as a way to express his gratitude for my cooperation and my parents' kindness. When the earthquake happened in 2008, I was on a business trip. He said his first reaction was to call his own

72 Sample Cooperative Marriage Contract, Article 7, text provided in Chinese. More discussion about the terms and conditions of this sample contract can be found in Section 3.3.1.

73 Law on Protection of the Elderly, Article 14 (3).

74 Interview with Fish, 6 May 2014.

75 David M Schneider, *A Critique of the Study of Kinship* (University of Michigan Press, Ann Arbor, 1984); Judith Butler, 'Is Kinship Always Already Heterosexual?' (2002) 13 *Differences* 14-44.

parents, and after they said they were fine, he immediately drove to my mother's and brought her to his place lest she should not dare to be alone. So, you can't say that we don't have any feelings of kinship (*qin qing*), although we don't love each other like other husbands and wives.'

The stories of Tata and Fish diverge enormously in terms of how an adult child should practice filial piety towards their parents, but a common implication is that the notion of filial piety is being deconstructed and reconstructed to customize it to individual needs and circumstances in contemporary China. When same-sex-oriented people do not get along with their parents (either because they are in the closet or their coming-out is not accepted), they may not be able to provide emotional intimacy or day-to-day practical care. In such cases, they tend to emphasize the monetary aspect of filial piety, as we saw in Tata's story. Or, like Fish and other cooperatively married couples, they downplay their sexuality and emphasize the importance of familial harmony, legal convenience and social decency. Interestingly, they both think the other life choice unimaginable and unfeasible for themselves. If taking a step back, however, we can see that it is the coexistence of such conflicting beliefs and practices that are together questioning the impossibility of the heteronormative old-age ideal.

Importantly, there is no monolithic model of 'Chinese parents', as if they are all passively waiting for both obedience and care. Their expectations of the path their children take and their own plans for elder life can vary considerably as well, as the following section shows.

5.2.2 PFLAGs' Vision of Late Life

In concert with the liberalistic understanding of filial piety, the non-profit organization PFLAG (Parents and Friends of Lesbians and Gays) China aspires to encourage Chinese parents to be less possessive or manipulative, and more 'democratic' (*kaiming*) with regard to their children's sexuality and life choices. One of their most important arguments is that truly loving parents would never selfishly prioritize their own face, while sacrificing their children's happiness. In particular, PFLAG parents are encouraged to be 'strong in their own hearts' (*neixin qiangda*)⁷⁶ and preferably financially self-sustaining, as opposed to simply hoping that their children will feed them as they get older.

Papa Lin was one of the very few PFLAG fathers I met in the course of my fieldwork in 2014, who was openly supportive of his gay son. I asked about his plans for later life. He did not express too many concerns, because he and his wife have some savings and do not have to rely on their son's financial support. Plus, 'my son has a very rich partner', he said proudly.

76 The individualistic rhetoric of gaining inner strength is also used by many openly gay people; See Chapter 3, footnote 84.

Each month, the 'son-in-law' provided his partner's parents with a large living allowance, which is probably one of the reasons why Papa Lin found it easier to accept his son's homosexuality than less affluent families might.

Nonetheless, Papa Lin was still facing enormous pressure from his own elderly parents. His son's grandparents were the only two people in the whole extended family who were excluded from the secret. Papa Lin had often encouraged them to move from their village to live in the apartment he had bought in town, but they cared more about their grandson than their own life quality. They insisted that the new apartment should be the honeymoon home for their grandson who might be married soon. They also worried it would be inconvenient if living with their son, daughter-in-law, grandson, future granddaughter-in-law, and perhaps great-grandchildren. Their concept of family rests deeply on the ideal of 'four generations living under the same roof' (*sishi tongtang*), which is nonetheless no longer the only path to happiness in the eyes of the younger generations.

The way Papa Lin dealt with the pressure to carry on the family line and to meet his elderly parents' expectation was to push his son to have a child, even though he accepts his son's sexuality. Without finding it contradictory, he insisted that this be his son's primary obligation:

'I don't care if he gets married with a woman or not, but since he and his partner are well off, he must do surrogacy. This is a must. Why? At least I need my life to be continued. I am the oldest son in my family, and he is the oldest grandson; we both have the responsibility to continue the family blood-line.

All he needs to do is to have a surrogated child. He does not even have to throw a wedding party in our hometown. We can just explain that he's already divorced. These days, getting divorced is a common-or-garden event anyway; who cares! Being childless? No-no. Having a child will make life much easier, both for me and for him.'

Emphasizing male responsibility, Papa Lin also complained,

'I really want to say bad words to some PFLAG moms who say they don't care if they have grandchildren or not, as long as their children are happy. I was really pissed off at their attitude. I bet few people will agree with these moms; it's impossible not to expect to have your own grandchild. They just cannot understand the pressure men have!'

Papa Lin's words may partly explain why the open PFLAG mothers far outnumber their male counterparts.⁷⁷ Mothers, at least those who have become leading PFLAG activists, seem to accept their children's unmarried and childless life more easily than their husbands do, probably because they do not experience the same patriarchal pressure to continue the family line. Also, once they accept their children's homosexuality, their conception of their own happy old age becomes less obsessively dependent on having obedient children who can give them grandchildren. As a result, many of them started enjoying the role of 'cool mother' (*chao ma*): cultivating new

77 Another possible reason is the gendered retirement ages, see Chapter 1, footnote 36.

hobbies such as drawing, baking or dancing, travelling alone or as a group to other provinces in China while undertaking PFLAG advocacy on the way, and even hanging out in local gay and lesbian bars and clubs. They are also more outspoken about sex than their peers. Mama Romance⁷⁸, for instance, an activist who has a gay son, has also been active in a number of *tongqi* groups online, encouraging those wives to pursue sexual pleasure with heterosexual men who appreciate their bodies more, other than mourning for their sexually unsatisfied marriage with a same-sex-oriented husband.⁷⁹ Mama Jasmine⁸⁰ runs a sex toy shop with her lesbian daughter. As time passes, more and more open-minded fathers are coming forward as well.⁸¹

The national and local PFLAG groups, both online and offline, have given those moms and dads an important sense of belonging, which effectively re-focuses them away from the social expectation for them to become grandparents. Social events within PFLAG communities also work to make them worry less about the lonely life without grandchildren they may have imagined. Some PFLAG members have come up with the idea of a special rainbow nursing home for PFLAGs. Presumably heterosexual, such parents may not necessarily confront homophobia directly in a 'straight' nursing home, but they do not want to face the possibility of their fellow residents making pejorative judgments about their children. Also, because many PFLAG parents have developed certain kinship feelings towards their 'brothers and sisters' through their story sharing, day-to-day online group chatting, regular meetings and travelling around, they find it more comfortable to stay with one another than to spend their old age with strangers with whom they have no common topics.

Admittedly, the PFLAG activists cannot represent all parents of open or closeted lesbian and gay children in China. In fact, many of them are relatively privileged in terms of their education level, urban upbringing, stable income and the ability to access LGBT-positive information online. Moreover, the mutual support and encouragement of PFLAG communities around China gives them an easier starting point from which to unlearn their conventional understanding of filial piety than many other middle-aged parents have. Their chances to talk to young LGBT activists in and outside China also help them to become less patronizing and more carefree. Not all parents have these resources indeed. However, the shifting mentality of these few parents and their efforts in advocacy at least hint at a changing notion of eldercare that no longer depends solely on one's offspring. As we will see next, such changes are more obvious in same-sex-oriented people's own imagination of eldercare.

78 She uses this nickname in several online and offline public occasions and I do not further anonymize her.

79 Participant observation in a *tongqi* group on 7 July 2014.

80 Ibid.

81 See e.g., the documentary *Papa Weifeng*, directed by Fan Popo, at www.webcitation.org/6nvZqY8pz.

5.2.3 Imagining Non-Hetero-Familial Modes of Elderly Care

As many same-sex-oriented people have experienced the unwanted pressure of filial obedience, they are more likely to think that their children, if they have any, should not be subjected to them. They also tend to believe that one should not have children simply to feel more secure in old age. On the one hand, such belief provokes more anxiety about ageing and dying alone, but on the other hand, it also encourages them to imagine an alternative old age outside the straightjacket of marriage, parenthood and intra-familial eldercare.

Ah-Shan⁸² is an amiable, energetic *tongzhi*-identifying activist based in Guangzhou. He had just passed retirement age (60 for male, 55 for female) when I met him in 2014, and he joyfully showed me the city's free public transport card for the elderly. Ah-Shan remained unmarried his entire life. He never told his family his sexual orientation but, in the years before his parents passed away, only took his partners back home to have dinner with them – a typical 'coming home' scenario.⁸³ Like many Chinese gay men who are 'well identified but not coming out'⁸⁴, Ah-Shan believes his parents might have tacitly accepted his sexual orientation and lifestyle.

In a gathering organized by an NGO called the Gay-Straight Alliance, some young men asked Ah-Shan for advice about how same-sex-oriented people should plan for their old age. His answer reflects the pressure to be individually, financially responsible in an economically neo-liberal China:

'In my opinion, it is pointless to plan your late life too early – how can we predict the rapid changes of life and society? Financial security is necessary, though. I did not have much saved in the 90s, but from then on, I started to pay basic social endowment insurance premiums and medical insurance, which is helpful now. However, I regret that I didn't purchase any commercial insurance, since the basic one is far from enough to make your ends meet considering inflation these days. I highly recommend young *tongzhi* buy commercial insurance, and learn about personal banking.'

82 Ah-Shan is an activist in Guangzhou, and this is the nickname well-known in the community.

83 The strategy of 'coming home' instead of coming out has been discussed in Wah-Shan Chou, *Tongzhi: Politics of Same-Sex Eroticism in Chinese Societies* (Haworth Press, New York, 2000). However, Chou's theorization has the danger of essentializing Chinese culture and underestimating the silent form of homophobia. For different opinions, see de Kloet Jeroen, 'Gendering China Studies: Peripheral Perspectives, Central Questions' (2008) 22 *China Information* 2, 195-219; Wang Yiran, 'The Coming Out Choices and Experiences of Young Beijing LaLas (Lesbians)' (Degree Thesis of Master of Philosophy at Beijing Normal University, 2012; Nai-Fei Ding and Jen-Peng Liu, 'Reticent Poetics, Queer Politics 含蓄美學與酷兒政略' 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.

84 See Qingfeng Wang, 'Well-Identified but Not Coming out: Contemporary Gay Minority Investigation' (2011) 28 *China Agricultural University Journal of Social Science* 142-153.

When asked how he would meet the needs of daily care and emotional support when he got even older, Ah-Shan came up with a number of ideas, which supplemented the individualistic approach:

'For me, living with a bunch of gay friends is quite a good idea. I don't want to go to a nursing home that mostly accommodates straight people, since I would feel bored, and I might have some unpleasant encounters if I came out there.

There are government-subsidized "rainbow nursing homes" abroad. If it's hard to obtain subsidy from the government, we may also persuade pink-economy investors to build commercial rainbow nursing homes.'

Ah-Shan realizes full well the socio-economic privileges behind the idea of rainbow nursing homes. He expressed concerns that such places may only help rich, openly gay elders. One could imagine that a less well-off, closeted elderly person, imaginably, would not dare ask their children to send them to a 'gay' place, which is tantamount to coming out and could conceivably bring troubles and shame to their family. Likewise, a lesbian activist Yushi, who had also thought of establishing a rainbow nursing home a decade ago, explained that what stops her from doing so was not the lack of financial or human resources. Laws and policies are not unfavorable, either, because in some cities the governments even offer tax-breaks and subsidies to encourage private nursing homes. Instead, said Yushi, the main problem is that there is not currently sufficient demand:

'Most elderly *tongzhi* have been married and have their own offspring to take care of them. Perhaps only when those who were born after the 1970s and came out after the 1990s get old will the needs of *tongzhi* to age in a friendly mutual-help community with professional care become more salient.'⁸⁵

Therefore, it seems that a commercial or non-profit rainbow nursing home may not be very realistic in the near future. Ah-Shan envisaged some other less straightforward approaches:

'We could, for instance, start an NGO, recruiting young gay volunteers to regularly visit and care for senior citizens at the latter's own places. However, I can imagine it would be difficult to manage the human resources if all the jobs are unpaid.

Alternatively, some old gay friends of mine have already tried to establish a reciprocal relationship with some young gay men (*huhui yanglao*). In this model, the elderly owns or rents an apartment. Then he sublets a room to a young man. The rent can be waived, on condition that the youngster could spend some time to keep the elder person company, and help to call the hospital in case of emergency.'

85 A follow-up interview on 08 October 2016.

The rationale of the ‘reciprocal elderly care’ is similar to that of the legacy-support agreement as discussed in Section 5.1.6. Unlike a detailed legacy-support contract, the arrangement Ah-Shan mentioned is less formal, and does not involve serious consideration of death and wills, which may look less awkward in everyday life. Such reciprocity, however, rests on mutual trust rather than legal restriction, and might be fragile in the event of conflicts.

Ah-Shan also points out that for elder people who are relatively healthy and able to take care of themselves, what they need most is not a nursing home or a caretaker, but simply a place to gather, a sense of belonging. He explained,

‘We don’t need a high-profile elderly LGBT center like the one in Los Angeles, which is unrealistic, but we can definitely rent an apartment and make it a mahjong room, or a place to play chess or card games (*qipai shi*), so that our fellow *tongzhi* can meet up once in a while, without having to come out to their children. We could also make full use of this place when we don’t need it, for instance, by renting it to younger *tongzhi* groups for their meetups or workshops.’

The downplaying of sexual orientation in the above scenario is best understood not as a shameful denial of one’s own homosexuality, but a practical tactic of living well by keeping a low profile. Without making the gathering point flamboyantly ‘gay’, this idea may better serve married same-sex-oriented elderly people who are either closeted or who do not self-identify as LGBT or queer. The significance of being able to gather like this should not be underestimated, since the coming together of a group of people with similar experiences and expectations, no matter how obscure it may look, can help build a solid foundation for other legal-political claims.⁸⁶ Such daily-life tactics, together with more outspoken gay-visibility activism, are both crucial for the wellbeing of the marginalized.

All of Ah-Shan’s proposals go beyond the filial practices of obeying and providing. They highlight, to various degrees, the importance of finding ‘comrades’ who can share with and care for each other, either in a small household or in a larger community. Such longing for collective care is also seen among PFLAG parents as outlined above. More importantly, as the state cuts social welfare, and as younger generations are not always economically or physically able to take care of their parents and grandparents, exploring new modes of eldercare is not only a gay issue, but a pressing need for straight people of all ages as well, in China and elsewhere. In this sense, same-sex-oriented people’s imagination and practices are helping to address the anxieties faced by the wider population.

86 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.

5.3 SAME-SEX COHABITING ELDERLY PEOPLE

Due to their invisibility, I do not have a large sample of same-sex-oriented elders. Such invisibility partly leads to the pessimism among some young people: if there are so few elderly LGBTs showing up in our communities, then they must be either hiding in different-sex marriages or living pathetically alone. The lack of role models for a livable elder life conversely pushes many hopeless young people to put on the straightjacket, hoping to have a social and economic safeguard. As a lesbian bar owner mourns, 'even some alleged stone butches who never took off their pants in front of their girlfriends ended up getting married, having children and disappearing from the scene in their 30s!'⁸⁷

Therefore, it is both academically and politically important to present some stories of how elderly same-sex-oriented people actually live their life in China, and what social and legal conditions contribute to their difficulties and sometimes, counter-intuitively, easiness. To be clear, the following three highly contextual cases I will show are by no means representative or copyable. However, what I hope to illustrate with the details in these stories is that invisibility does not necessarily suggest oppression only, and more importantly, that despite the difficulties, some livable and even enjoyable spaces do exist outside of the marriage-parenthood-eldercare straightjacket in contemporary rural and urban China.

5.3.1 A Life-Long Companionship Without a Name

My encounter with Lao Feng and Lao Yang⁸⁸ was so littered with coincidences that they often say it was all down to karma. I set out to meet the two old women as part of an 'Oral History of Elderly *Lala*' project that had been initiated by a lesbian group in Chengdu. A self-identified butch lesbian, Hua, got in touch with the organizer Yushi to say that she knew two elderly '*lalas*' in her village, and would love to introduce me to them and to volunteer as our interpreter.

After tens of hours on the train and bus, I finally got to the small town where Hua and I had agreed to meet. Hua was 35 years old, with short hair and sportswear. It was more of a typical defeminized manufacturing worker's look than that of a fashionable butch. While walking to the village, Hua told me that she had been behaved like a boy since she was little. After graduation from high school, she became a migrant worker in Shanghai. It was while living in the metropolis that she learned to use the Internet, and discovered the lesbian world. She quickly embraced the 'L words' and found her sense of belonging in online and offline lesbian communities. It suddenly occurred to her that there were two elderly women living together

87 I appreciate Qi Yu who thought through this point with me.

88 Their parenting experiences are described in Section 4.3.3.

in her village, both unmarried. They were farmers, but they also had a small cabinet selling snacks, cigarettes and beers to the neighboring farmers. Although she had not spent much talking with them, Hua was pretty sure that they were lesbians, just like her.

When she went home during that New Year's holiday, she bought a box of cigarettes, and in name of 'borrowing a lighter', she started to chat with them, and gradually they got to know one another. Almost every year, Hua would come back and buy some meat for them or give them money as a living allowance, just as a daughter would do. It was not just that she felt sympathy for the two, who were getting old but still living in very hard conditions, but deep down this life-long couple always gave her a dose of courage and confidence every time she felt hopeless on her road less traveled. However, she never came out to them, nor did she ask explicitly about their relationships.

Years previously Hua had bought the two an old cellphone, so she was able to tell them a week beforehand that she and a friend of hers would be coming to visit. When we arrived, I saw Lao Feng leaning against the doorframe, a cigarette in her hand, smiling at us and warmly inviting me in. It was not very common to see Chinese women (except for the youngsters) smoking, let alone an older lady. Their bungalow consisted of one bedroom, one dining room and a kitchen. Their toilet was a simple pit next to the farm. The cabinet from which they used to sell things was now empty and dusty, while the giant poster of Mao Tse-Tung was still red and shiny. As a gesture of hospitality, they insisted Hua and I sleep on their only bed, while they temporarily squeezed onto a stone counter during the nights we stayed.

After the first dinner, I began to introduce myself properly. I tried to explain in the plainest possible language about the oral history project. I simply said that I would like to know 'the stories of elderly people living together like you two'. They nodded their heads, but I could not tell if they really understood what it was about. During previous oral-history interviews with elderly *lalas*, when interviewers explained to those urban elderly self-identified *lalas* that there were many sisters like them, they would often feel so relieved they would start to weep. However, when I showed Lao Feng and Lao Yang a video clip about a meetup of elderly *lalas* from all over China, they neither reacted nor commented. I wondered whether they actually grasped the meaning of the video or the concept of homosexuality/lesbianism at all.

I felt hesitant to impose any label on them, lest it makes them uncomfortable or overwhelmed with a display of knowledge of a world beyond their experience. Hence, I simply said that I was interested in knowing more about their past. I also told them that I might share their stories with people who are interested, but would never reveal their real names or where they lived. They said they were fine. As I explained, the atmosphere became a bit stiff. I abandoned the idea of getting them to sign a consent form for the project, because I did not find it more ethical to introduce them to an

unfamiliar academic/activist culture and then waive my ongoing responsibilities by getting their signature on a document whose implications they might not fully understand. After all, the fundamental research ethics of 'doing no harm to your respondents' extends far beyond one single moment of consent.

Sitting next to them, I could not help but wonder: Why did neither of them decide to marry? Did they experience pressure to marry from their families, friends and neighbors? Did they find the socialist regime (1949-1979) repressive? How did they see their relationship? I did not ask them abruptly. Lao Feng lit a cigarette, and the memories, like the smoke, started to fill the room.

When they were younger, the two ladies were far less anxious about their future than is my generation. This is both due to their personalities and the political-economic environment. Lao Feng was classified as a 'poor peasant (*pin nong*)' because she lost both of her parents in her teens, had no land, and was unmarried. Being a poor peasant was politically and even economically advantageous in socialist China: she was given opportunities to work for the Party division of the production team in her town. She was in charge of allocating grain coupons, teaching at primary schools, mediating in spousal disputes and so on. As Feng reminisced she brought the world of her youth delightfully back to life:

'I got paid here and there, bit by bit. I liked it very much. Those jobs allowed me to go to many villages. No one restricted me, and I did not have much responsibility or many things to worry about. My friends were everywhere, and I often visited them and crashed at their places if we stayed up too late playing cards.'

She met Lao Yang when she was doing the Party's propaganda work in the latter's village. She was 26 and Lao Yang, 24. Four years later, Lao Yang suggested Feng move to her place to help her with farming and raising silkworms. Yang did not say she would pay Feng, but only promised to provide her food and accommodation. 'I agreed, and since then forty-five years has passed; sometimes I still feel it's like a dream,' said Feng.

Unlike later generations, they did not have 'nagging parents' to push them to get married to a man, which is again historically specific. In socialist China, young women were supposedly liberated from feudal norms, encouraged to be 'iron girls' as competent as men, whether on the farm or in the factory, and given a degree of freedom to marry and divorce.⁸⁹ Feng recalled that unmarried women were often commended for making a contribution to production, rather than dismissed and despised as 'left-overs', a pejorative and stigmatizing term often used now.

89 See e.g., Wang Zheng, "'State Feminism'?: Gender and Socialist State Formation in Maoist China' (2005) 31 *Feminist Studies* 519-551; Neil J Diamant, 'Re-Examining the Impact of the 1950 Marriage Law: State Improvisation, Local Initiative and Rural Family Change' (2000) 161 *The China Quarterly* 171-198.

After the Reform and Opening-up process that began in 1979, farmland usage rights were privatized, and Lao Yang got her share. Since then, the two of them have been farming the land in front of their current cottage. When Feng moved in with Yang, the latter's mother did not object because she simply saw Feng as a friend and a helper. Yang's younger brothers all respect Lao Feng and call her 'big sister'. She has often played the role of a rational mediator or sometimes even the decision-maker at Yang's family meetings.

The two women managed to fulfill their filial duty of caregiving. When Yang's mother was too old to live alone, she went to live with her sons for some time, but eventually she decided to live with her daughter. Feng said proudly:

'Why? This old lady was hardly able to get along with her daughters-in-law. She also disliked being disturbed by her naughty grandchildren. So, certainly, she enjoyed more staying here with us. Much freer! No in-laws, no kids. She knew the villagers dropping by, and they could kill time together.

People often say, "you're doing much better than a daughter-in-law!" That's true, ha-ha. I chatted with her patiently, and I also helped her with bathing. People spoke highly of me. If I were not here, she may not have stayed with Yang, who is rather short-tempered, for almost ten years. She died here peacefully when she was ninety-three.'

Importantly, in Feng's narrative, no one – whether Yang's mother, the villagers, Yang or herself – saw her as a kind of in-law. Perhaps in their perception, her relationship with Yang was simply neither a marriage nor anything resembling it. It is the namelessness of these three women's cohabitation that made it livable for them and acceptable for others. Meanwhile, the absence of any formal or informal in-law status does not preclude their sense of kinship. By saying that Feng is not per se a daughter-in-law, but rather 'doing much better than' one, the villagers effectively acknowledge her contribution as a care giver, which could be seen as an informal recognition of this unusual family.

As Feng and Yang entered their sixties in the 2000s, they became entitled to certain welfare provisions for rural elders. Feng is a recipient of 'five guarantees' (*wubao hu*),⁹⁰ since she is old, having no source of income, and no statutory obligors to provide for her.⁹¹ In contrast, a different-sex elderly married couple in rural areas, no matter how difficult their circumstances, cannot enjoy the same level of welfare benefits. The absence of legal recognition of their cohabiting relationship means that, in the eyes of the law, Feng is a poor old 'single' woman. In other words, the unintelligibility, in legal

90 See Regulations on the Work of Providing Five Guarantees (2006) adopted 11 January 2006, effective 1 March 2006. Article 2: 'The term "providing five guarantees in rural areas" in these Regulations means providing villagers with care and material support in their daily lives in terms of food, clothing, housing, medical care and burial expenses in accordance with the provisions of these Regulations.'

91 *Ibid*, Article 6.

terms, of their same-sex cohabitation actually played an unintended role in qualifying Feng for the 'five guarantees', which, in their village, amounts to a pension of around 1000 RMB per year. It is a very small amount for urbanites, less even than the minimum monthly wage, but for her, 'the allowance is more than enough for me to smoke a bit. I'm quite happy with that.'

Lao Yang, on the other hand, cannot enjoy five guarantees because she has an adoptive daughter and is considered to have stable income from the farm, the land usage rights to which are registered under her name. She is covered by the basic social endowment insurance for rural dwellers.⁹² She told me that the age on her identity card is ten years older than she actually is. She went to correct it, but the government official suggested that she not rectify this mistake, so that she could receive slightly more insurance by virtue of being someone who is 'over eighty years old'. What the official did was subtle but significant. Perhaps out of sympathy, he or she covered up for Lao Yang. This suggests that the legal consciousness of the enforcers of law can be as nuanced as that of lay people. In this scenario, this official both obeyed the law (with regard to the amount of the insurance paid to the elderly of different ages) and resisted it (by not correcting Yang's age).

Lao Yang also told me that she could obtain an extra allowance of 200 RMB before the end of each year, but she could not remember under what provision the money is given. Moreover, a few years ago, a salesman persuaded Lao Yang to buy commercial health insurance. She spent a large proportion of her savings on the premium, and she has received an insurance payment of 750 RMB every month since 2012. Despite receiving their various benefits, Feng and Yang's lives are far from affluent. Although Lao Feng said she felt satisfied with the money they have, she also explained the difficulties they face;

'We have to be thrifty; otherwise we cannot afford the seeds, fertilizer and pesticide for the next year. As we become older, we have to hire some young men to help us on busy days, and that cost 200 RMB per day. Sometimes Lao Yang begrudges paying the money and insists working by herself, but constant overwork has compromised her health, and the medication becomes another major expense.'

Although their life may seem terribly Spartan to the urbane and relatively privileged queer clientele of lesbian and gay night clubs in the big cities, Feng and Yang did not complain too much about their economic situation, which reminded me that my spontaneous feelings of sympathy was already colored by class. Their satisfaction with their status quo came mainly from their enjoying a peaceful life of cohabitation. As Lao Feng said,

'We never had serious quarrels money-wise. I used to sell cigarettes and beers to neighboring villagers, and I gave all the money I got to Lao Yang. I never thought of keeping some for myself. She treats me well in return; she buys clothes for me, and she always gives me more meat while she just eats more rice.'

92 Articles 20 and 21 of the Social Insurance Law.

Life in this village should not however be romanticized. When I offered to take a picture of them together so that they could hang it in their living room by way of decoration, they firmly rejected the idea. They simply said the neighbors would mock them, without explaining why, which might be a subtle indication that they had always understood the 'abnormality' of two women cohabitating and so all concerned try to navigate it by not overtly acknowledging it, let alone flaunting it. Although the villagers never made judgments in front of them, Lao Feng told me, on another occasion, that she knew some people might point fingers, but she simply didn't want to react. The resemblance to a wedding photo of a picture of the two of them together hanging in their living room might be seen as a provocation, and at least a break of a tacit mutual pact of 'don't ask don't tell' with their neighbors.

While turning down my offer, they both asked me to take nice individual photos of them, to serve in the future as portraits for their funerals. Feeling sad about their inevitable demise, I did not immediately respond to their request. They, on the contrary, took death as something they had long been ready for. They laughed and pointed at the roof, showing me two big sacks hanging from it. They told me that these were the cerements and other funeral items they had already prepared for themselves.

The material and mental preparation for death nevertheless does not address or diminish their concerns about their years before they die. The night before I left, Lao Feng smoked heavily, and gave voice to her worries:

'As we are getting older, more problems arise. To be honest, I do have some worries. I don't have any relatives or offspring, while her health is worse than mine. If she got seriously ill, I would have so many difficulties... Had I died first, she would have her adoptive daughter and her farmland; but if she went before me, I would be doomed. No one is left in my family, and my small cottage in my hometown collapsed decades ago. No one will take care of my aftermath when I die. What should I do? ...'

I remembered Lao Yang told me that she secretly saved ten thousand RMB for Feng and hid it somewhere. Since she did not want Lao Feng to know, I did not mention it. Lao Feng went on, 'I have often considered hanging myself, but on second thoughts, this does her no good. So, I still hope she is healthier than me, and then I'm happy. This is my only hope.'

Late in 2016, while I was writing this thesis, Lao Yang became seriously ill. Although her medical expenses are partly covered by her social and commercial insurance, they still found it too expensive to stay in the hospital. Moreover, when Lao Yang was hospitalized in town, they were both uncomfortable. Although her adoptive daughter visited Lao Yang every day, she felt lonely and depressed, and became much more irritable. Lao Feng, on the other hand, was too old to travel from the village to the town to take care of her. She also found it hard living on her own – collecting firewood and cooking, all by herself, was hard work. She couldn't sleep and sighed all the time, frequently expressing suicidal thoughts during our calls.

A week later, Lao Yang ask to be treated at home. Although her condition had better be monitored in hospital, both of them felt much better after they reunited.

What made it difficult for Lao Feng to stay in hospital during this episode was not the law's failure to recognize same-sex partnership, but intersectional difficulties arising from her age, health and lack of wealth, which can equally affect any lower-class, straight, elderly spouse as well. Likewise, when Feng thought about suicide, it was not predominantly the lack of gay rights or the 'reticent homophobia'⁹³ in their village that made her feel so desperate, though it is possible that those mattered to some extent. Her major problem is rather the fear that she might face death alone, without sufficient financial resources, either from state welfare or from her savings, and without a companion who can both help with the housework and give her emotional support. This prospect, of an uncertain and precarious life, is also what younger same-sex-oriented people fear most.

As we got closer, Feng and Yang often expressed directly their love for me, although they never used the word 'love' to describe their feelings towards each other. I was wondering: how do the two define their relationship? Partnership? Sisterhood? Companionship? To my surprise, they used a political term in Mao's time. 'We have a self-reliant relationship', said Lao Yang, which is not even grammatically correct.⁹⁴ 'Self-Reliance and Hard Work'⁹⁵ was a crucial slogan used by the Chinese Communist Party from the 1950s to the early 1970s, when Western countries refused to recognize the legitimacy of its rule and blocked economic and political relations with China. This was not just a party-political slogan, but became a moral imperative for the wider population. Those who relied on themselves instead of complaining about Chinese society, be it farmer or worker, were the objects of praise. This public virtue, with its political origins, in effect justified Yang and Feng's decision to cohabit and remain unmarried, just like Feng's having 'poor peasant' status made her a proud farmer and also lent them some economic benefits. Here we can see comrades' love was not just parodied in today's gay/*tongzhi* communities, but was embodied far more literally throughout the two's self-reliant and hardworking lives together.

Hua wasn't satisfied with the unromantic term 'self-reliance'. She was still eager to extract the answer she was hoping for. When Lao Feng was cooking in the kitchen, she asked Lao Yang what kind of sentiments (*ganqing*) she thought they had.

'What kind of sentiments?' Lao Yang seemed not to understand the question. Hua changed a word, connection or relationship (*guanxi*), and Yang said, 'Nothing, like... just funny (*haowan*).'

93 Ding and Liu, 'Reticent Poetics, Queer Politics' (2007).

94 In Chinese they said '我们是自力更生的关系'.

95 The slogan in Chinese is '自力更生、艰苦创业'.

Hua asked further, naughtily and tentatively, 'Just funny? Don't you think this is love?' Yang acted like a mother pretending to get angry to her child, beat Hua slightly and muttered, 'Love? Hell no love.'
 Hua insisted, 'Haven't you given her any commitment or something?'
 'No commitment whatsoever.'
 'Have you sworn as sisters then?' Hua might be thinking of the 'self-combing women', a form of female love and sociality in late Qing Dynasty.⁹⁶
 'No, we never mentioned that.'
 'Doesn't Aunt Feng want you to give her a proper title?' Hua seduced her to say words like girlfriend, wife or at least something more intimate.
 Lao Yang disappointed her again, 'A title? What about "food and drinks covered"?'

Another day, we asked the same question to Aunt Feng in the kitchen. She said naturally, 'living companion'.⁹⁷ Hua asked if she felt they were like husband and wife, she burst into laughter, as if this was a ridiculous joke. Later I explained to both of them, 'In the country where I live now, two women can really get married!' Again, both of them laughed and refused to believe the clearly deluded words coming from my mouth. Lao Feng said, 'How can such a weird thing happen!' Lao Yang agreed, 'How's that possible? You must be kidding us!'

Hua tried to poke into how they slept, and Feng said easily, 'On the same bed.' Hua asked her if they touched each other, and she said no. When the same question was put to Lao Yang while she was working on the farm, she was quite clear; 'We sleep separately.' Feeling that she risked offending them, Hua stopped raising questions about sexuality, and suspected this might be taboo. She expressed her frustration when two of us went for a walk around the farm:

I feel I should say sorry to you. I shouldn't have brought you to such a remote village when it turns out they are not *lalas* like I thought! Am I wasting your time? I apologize if you didn't get any useful data.'

I told Hua that she was worrying unnecessarily. When older people use terms like 'self-reliance' rather than dipping into the lexicon beloved of academics and activists, it mattered not whether it be love, cohabitation, partnership, friendship, sisterhood, kinship, or chosen family. I simply could not be more overwhelmed by their everyday wisdom, as well as how the oft-assumed anti-sex political situation of Mao's time enabled them to survive. Even today, I still do not know the 'truth' about their sexual preferences or how they sleep, and I have no interest in probing further into it.

96 For Chinese 'self-combing women' (*zishu nv*) who avowed spinsterhood in Qing Dynasty, see Saskia E Wieringa, *The Admonishment of Vegetarian Great Aunt: Reflections on Sexual and Gender Multiplicity and Culture* (Inaugural Lecture at Amsterdam Institute for Social Science Research (AISSR) 2007); Tze-Lan D Sang, *The Emerging Lesbian: Female Same-Sex Desire in Modern China* (University of Chicago Press, Chicago and London, 2003) 17.

97 In Chinese she said '生活上的伴'.

Leaving the question perpetually a myth is my way, and their own, to counter the voyeuristic gaze.

Interestingly, looking back this experience, I set out to find and interview 'rural elderly *lalas*', but now I feel reluctant to call them *lalas* or lesbians at all, as such terms are far too arbitrary an epistemic imposition. Lao Feng and Lao Yang are both lesbians and non-lesbians in different senses. When I shared their story with friends from different walks of life, their reactions cast further light on the complexity. One experienced, middle-aged lesbian activist said quite confidently;

'Surely they are *lalas*; they must be too shy to tell you about the sex part! They are not married, one of them looks butch and the other femme, and they don't want to take photos together ... See, so many hints!'

In contrast, a transgender activist suggested I should not call them *lalas* if they did not self-identify as such. I agreed. But she continued,

'If I were you, I would leave this story out from my thesis altogether. Without knowing if they had had sex, you lost the most crucial part of their sexual orientation. It is indeed a fascinating story, but it's an irrelevant one, if you're writing about *tongxinglian*.'

Is sex really the 'most crucial part'? Is lesbianism somehow only validated and sanctified by a physical and publicly attested sexual act? Should I probe further before I write anything about their old age? I notice a confessional imperative of which Foucault has reminded us. It is such essentialization and centralization of sexual activities that first constructed the homosexual as a discrete entity for the purposes of social control.⁹⁸ Conversely, the two women's' non-identity, invisibility and ambiguous expressions are precisely what kept them from stigmatization and regulation. The perpetually unknown a/sexual relationship between them also exposes, defies and mocks the society's obsessive curiosity about 'abnormal' sexualities.⁹⁹ Moreover, as shown above, whether they are lesbians or not, the multifaceted experiences in their life – as rural, lower-class, female-bodied, unmarried, elderly persons in poor health who have gone through pre-socialist till post-socialist historical phases – remain, and should not be sidelined by their sleeping arrangements.

I have visited Feng and Yang several times during and after my fieldwork. Since my return to the Netherlands, the three of us still keep in touch by phone almost every Sunday. Lao Yang said I call them more often than her adoptive daughter does. Sometimes they call me 'buddy (*huoji*)', sometimes they say I'm just like a daughter, and at other times they treat me like

98 See Michel Foucault, *The History of Sexuality (Volume 1: An Introduction)* (Pantheon Books, New York, 1978) 43.

99 For a discussion of how homophobia is not only about erasing homosexuality, but also knowing more, see Eve Kosofsky Sedgwick, *Epistemology of the Closet* (University of California Press, Berkeley and Los Angeles, 1990) 70.

a granddaughter. As our unnamable friendship-kinship deepens, unexpectedly, they two even started to poke into my relationship status, just like my own grandparents do. I used to tell them vaguely that I envied their lifestyle and might want to live with a woman, too. To my surprise, they objected seriously, and tried to dissuade me from going down the 'wrong' path. Without suggesting that they regretted their own choices, they stressed the difficulties of living an unconventional life. Later, when I mentioned that I had a male partner, they were sincerely happy, and encouraged me to get married soon. And after I separated from him, they scolded me gently for being too picky and for not wanting to settle down.

Their strong desire that I follow a 'straight' life path should not be simply understood as internalized homophobia. Antonia Chao has argued, in her trilogy about elderly butches in Taiwan, that many unmarried butch lesbians ultimately face a host of inconveniences, not mainly because of their deviant sexuality or unusual gender temperament, but of their non-normative lifestyle, and their 'incorrect' citizenship outside heteroreproductive families.¹⁰⁰ Chao's observation echoes the two women's worries about my unstable future, which is not always centered around my partner's sex. Here, homophobia is a less defining concern than the diaspora status one is given outside of an economically and morally safe haven.

For all these years, the two ladies and I have never overtly discussed homosexuality or same-sex love. Even today, I still have not told them in detail about my research project. I have been constantly surfing the ambiguities between us, without assuming that their vague words here and there must be hinting on some 'deeper' truth about their sexualities.¹⁰¹ This is an instance where informed consent as required by academic ethics does not sit easily with the subjectivities and relationships whose existence rely on a certain level of silence and ambiguity.

5.3.2 Male-Male Friendship/Kinship

I did not encounter cohabiting elderly male couples in rural areas in my fieldwork, but only a few elderly *tongzhi*-identifying men in some cities. I met Lao Wang through an HIV/AIDS-education volunteers' group. He was a man in his sixties. Having felt confused about his sexuality, he did not dare to explore any sort of same-sex relationship until he was 47. Before that, he had only secretly experienced casual sex in cruising parks and public

100 Antonia Chao, 'Death Rituals, Kinship Ethics and Queer Friendship: Elderly Lesbian Tomboys in Taiwan' (2008) 6 *Router: A Journal of Cultural Studies* 153-194; 'Moving House: The Relational-Materialistic Aspect of Queer Cultural Citizenship' (2002) 57 *Taiwan: A Radical Quarterly in Social Studies* 41-85; ' (In)Calculable Intimacies: Moving House Thrice Visited' (2010) 80 *Taiwan: A Radical Quarterly in Social Studies* 3-56.

101 For a critique of the obsession with 'depth', see Rey Chow, 'The Force of Surfaces: Defiance in Zhang Yimou's Films' in Rey Chow (ed) *Primitive Passions: Visuality, Sexuality, Ethnography and Contemporary Chinese Cinema* (Columbia University Press, New York, 1995) 142-172.

toilets outside marriage. Once his son had grown up, he got divorced and started to look for a committed same-sex life partner, but he soon found it was difficult to keep monogamous in a 'world of friends'. In his early sixties he met his current 'friend', a young man who is *lianlao* (literally, elder-desiring), or to use the slang, an 'archaeologist'. *Lianlao* groups belong to an even more invisible subculture compared to 'respectable' gay couples of similar ages. Wang talked about the open and caring 'friendship' between them:

'We promised not to get involved in one another's sex lives. We agreed to be mutually understanding, tolerant and open. We've been together for more than three years, and whenever we found someone attractive, we'd go dating, as long as we're honest about where we are. Our 'red line' is having safe sex. We agreed that in case either of us gets infected with any STD, we should tell the other. A month ago, I met a young man online, and our relationship developed like burning fire. As promised, he does respect the other friends of mine.

I believe we can form a family of "one father and two sons". We'll see. Of course, there are many destabilizing factors; their marital pressure or our small fights, but I said, "I will try my best to treat you both well, and you should see each other as brothers". They both like old men, so they won't fall in love with each other. They may get jealous, but they haven't had any disagreements as far as I know. I still live with my first "son", and the other one often comes over to have dinner with us. I hope they take care of each other like family, especially after I die.'

Looking back, Wang told me proudly that his biggest success in life was holding onto his sexual desire, while still maintaining his responsibilities to his conventional nuclear family, at least before he divorced. Unlike the married gay men depicted in the mainstream media, he did not express any sense of guilt, nor did he find his same-sex desire and different-sex marriage incompatible. In Wang's mind, different-sex marriage still provides a guarantee of social status and care in old age, as Lao Yang and Lao Feng tried to convince me:

'Now that my cohabiting "son" is twenty-eight, I often try to persuade him to get married. He said, "No, I want to live with you forever". I understand his wish and stop pushing him, but deep down I still hope that he marries a nice girl. I don't want him to get old alone.'

The fact that he has multiple lovers does not diminish Wang's longing for legal recognition of same-sex marriage, something he believes would reduce homophobia in society. One year later, in a follow-up interview, I asked whether he thought his current relationship status would be incompatible with same-sex marriage should that be possible the future, but which would probably be limited to two people only. He replied in writing,

'Well, to me, a monogamous same-sex marriage is simply a romantic fantasy. The Internet makes it almost impossible for *tongzhi* to maintain one-on-one relationships – at least I find it difficult to say no to someone I really like. If marriage were open to same-sex couples, I think I could only follow the mainstream and practice monogamy. Even though this is at odds with my ideal of having a *lianlao tongzhi* family with two or more "sons", I still have to obey the law.

Currently I have four “sons” in stable relationships with me, and I’m cohabiting with one of them. As usual, I ask them to treat each other like brothers, and they do. I just cannot resist their eyes that sincerely long for paternal and passionate love. They care about me, which I find really moving...’

He kept repeating how well he and all his lovers get along, without acknowledging that the way he actually lives his life contradicts, or at least questions, his claim to be law-abiding in the imaged scenario of a monogamous same-sex marriage. Perhaps he did not see it as the contradiction I did. Perhaps his desire to comply with the expectations of ‘the mainstream’ and ‘the law’ can well coexist with his actual practice of having multiple ‘sons’, just as he managed both his former different-sex marriage and his same-sex desire.

Legally speaking, however, if there were same-sex marriage in China, he might face problems. Some of his ‘sons’, the youngsters he loves, are over the age of sexual consent (14 years old) yet below the age at which one can legally marry (22 years old for men). Or, he might find himself committing bigamy, or could be at fault in a divorce case as a result of his extra-marital affairs. Property arrangements involving different lovers should he divorce or die might also be complicated. Therefore, he might not escape the shadow of law, even if he does not bother thinking about it as a lawyer would. Similarly, when asked if he had ever had any legal problems, Lao Wang said he almost never thought of the unequal rights between different-sex and same-sex couples in adoption, social security, or inheritance before I brought them up to him – such issues seem not to be a day-to-day concern of his. His primary practical concern now is whether he can get by on his pension and savings, and other putative legal rights seem rather abstract in comparison.

Of course, the fact that Wang already has a biological child who is legally obliged to take care of him may function as an important safety net for his current carefree lifestyle. His story might be very different if he had no offspring. Moreover, in Wang’s account, his ex-wife’s perspective is missing. I could not speculate about her life conditions and feelings, but a feminist query is necessary: To what extent is the courage to divorce and embrace multiple (sexual) partners gendered? Could his ex-wife gratify her own desires through online dating as conveniently as can Wang? Another point to note; there is an absence of comparable narratives from Wang’s female equivalents. I could not find any ‘archaeologist lesbians’ – no such term exists – and I only met a few young lesbians who are willing to openly declare that they have multiple lovers. Are they just fewer in number or is the erotic space for women narrower? Such questions are beyond the scope of this book, but it should be a caveat for researchers to remain alert to gender differences in old age.

Lao Wang’s non-monogamous same-sex relationships provide a vivid example of Foucauldian ‘friendship as a way of life’, which can be, but is not necessarily, based on gay sex.¹⁰² Similarly, the above-mentioned older

102 Michel Foucault, ‘Friendship as a Way of Life’ in Paul Rabinow (ed) *The Essential Works of Foucault 1954-1984 Volume 1* (The New Press, New York, 1997) 135-140, 136.

couple Wen and Bin¹⁰³ also openly accept each other's casual or regular (sexual) partners. However, I am hesitant to romanticize it with the term 'polyamory', a buzzword that is increasingly used in Western societies and even in urban China, not just because of the specific cultural-material conditions of its origination and popularization.¹⁰⁴ In Wen and Bin's case, for instance, as Wen is hemiplegic and stayed in a nursing home in northern China, while Bin is working in a construction site in the south to provide for Wen's monthly care-taking fees, they are only able to see each other once or twice a year. They talked about their current relationship not in terms of consensual non-monogamy. Rather, Bin told me that they simply could not help but tacitly accept each other's sexual encounters, which is the only way to sustain their long-distance relationship while meeting their respective needs for sexual satisfaction and intimacy. The same applies to Lao Wang's case, where tomorrow might be hard both for him, an old man outside the life trajectory of a respectable elder, and for his young partners, who still face pressures to maintain conventional marriages and have children. For them, it might be more practical to 'live in the moment' with people they like than to plan for a monogamous and decent future.

5.3.3 Elderly Same-Sex-Oriented People in Marriage

Unfortunately, I cannot offer the stories of many same-sex-oriented respondents who have remained married. I did interview an elderly, self-identified *lala* who was both married and kept a secret, life-long same-sex lover. However, she later told me that she was no longer identified as a *lala*, and so asked me not to use her story in the oral-history project or in my thesis. I am thus prevented from explaining in detail why she changed her mind. What I can share is my observation that this label first came to her mind from a TV show. While it helped her find a lesbian community and feel less lonely, it also produced some turbulence in her family life. *Lala*, for her, is an identity and a subculture too costly to insist on.

Likewise, the rejection of clear identification with the notion of being 'born-this-way' and 'immutably gay' is evident in the lived experience of elderly same-sex-oriented men. According to one of my respondent, Lao Zhang, a man in his sixties, many of his peers had been married long before they were aware of the word 'gay' or 'homosexual', let alone this new and controversial phenomenon of 'marriage fraud' and *tongqi*. Back then, one's different-sex marriage and inexplicit homoerotic life seemed more compatible than it is today, although when before getting married he felt somehow ambivalent as well, Lao Zhang acknowledged. He told me that when he

103 See Section 5.1.3.

104 Elizabeth F Emens, 'Compulsory Monogamy and Polyamorous Existence' in Martha Albertson Fineman, Jack E Jackson and Adam P Romero (eds) *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations* (Ashgate, Burlington, 2009) 179-198.

was young, he had had '40 to 50 percent of feelings' towards his wife, and he indulged his 'hobby' of 'having a little fun' with men in the bath house.

Unlike younger, married gay men these days who tend to deny their sexual preference when their wives question their heterosexuality, or feel guilty, ashamed and apologetic when they get caught, Lao Zhang had quite a different attitude:

'Three years ago, my wife confronted me, "do you like men?" I admitted generously, "yes, but so? Am I disqualified to get married then? Experts say ten million men who like men are married to women. Have you seen millions of divorces? We have our children and grandchildren; we have enough pension for our late life; and I care about our family, which you always know. What else do you worry about?"

Lao Zhang's interpretation of the statistics of *tongqis* is the opposite of the media's, the latter painting it as a massive and terrible problem. The experts' claim that there are millions of mixed-orientation marriages instead gives him a sense of legitimacy. We should not simply see this as a clever excuse, namely that the law cannot be enforced when everyone is an offender. Rather, it helps us understand better the historicity of gay and *tongqi* identities and that of the construction of mixed-orientation marriages as a tragedy. 'I didn't think about it much, but followed suit and got married', Lao Zhang said, recalling his life at the collective work unit in socialist China that substantially restricted individuals' mobility and privacy.¹⁰⁵

Zhang said his wife's attitude gradually changed following his admission:

'Later she thought things through. Now that I'm volunteering for an HIV/AIDS hotline every Wednesday night, she even cooks for me earlier and reminds me not to be late. She's really nice and industrious (*xianhui*), for which I'm grateful. Sometimes I bring my wife to the volunteers' meet-up as well, so do my old fellows. Our wives go hiking with us on some weekends, too. It's like a big family.'

I did not have a chance to speak with their 'big family' during my short stay in their city. I did not manage to interview his wife, either, who may have suppressed resentment, hurt or unhappiness in order to be a 'nice and industrious' woman. She may, just like average wives in China, have much fewer opportunities and less moral leeway for extra-marital sex than the men do. Also, her choice to stay married may well be because elderly women's living conditions are likely to be worse outside marriage.¹⁰⁶

105 For a discussion of how the work unit in socialist China partly replaces family authority and serves as an institution of social control, see Naughton Barry, 'Danwei: The Economic Foundation of a Unique Institution' in Xiaobo Lu and Elizabeth Perry (eds) *Danwei: The Changing Chinese Workplace in Historical and Comparative Perspective* (M.E. Sharpe, Armonk, 1998) 169-171; Pan Suiming, 'Transformations in the Primary Life Cycle: The Origins and Nature of China's Sexual Revolution' in Elaine Jeffreys (ed) *Sex and Sexuality in China* (Routledge, London and New York, 2006) 21-42.

106 See Chapters 3 and 4. See also, Zhu, 'Unqueer Kinship?' (2017).

However, I still presented the partial story of Lao Zhang, hoping it to be a starting point for us to see mixed-orientation marriages through other lenses than ‘marriage fraud’.

5.3.4 Summary

When put together, the disparate stories in this section has partly explained why elderly LGBT people are so invisible in China. It is not necessarily because what is oft-assumed to be a ‘conservative’ society pushes them into marriage and deters them from coming out. Rather, it might be because they do not identify as such, or do not consider their sexuality to be the single most important dark truth in their life with which they have to struggle. Their detachment from contemporary LGBT identity politics, whether intentional or not, might be evidence of homophobic silencing, but it can also make their respective lives more tolerable, sustainable and sometimes even enjoyable. In particular, the ‘self-reliance’ of the two ladies, the ‘one-father-multiple-sons’ relationships of Lao Wang, as well as the ‘big family’ of Lao Zhang, are all creative names they give to their non-normative practices, which fall outside the current discourse on LGBT rights. Although such stories do not entirely overlap with the experiences of a younger generation, they give an insight into the complex circumstances of people’s intimate and social lives. They can hopefully broaden the way we think about eldercare beyond the ‘straight’ lifestyle, and help us worry less about ‘no country for old men’¹⁰⁷.

5.4 CONCLUSION

This chapter shows the push-and-pull forces between the straightjacket of a marriage-parenthood-eldercare life trajectory (*jiehun-shengzi-yanglao*) and the various ways of living otherwise. Many of the laws that govern old age do not directly discriminate against non-heterosexuals, but rather draw an arbitrary line between marriage and non-marriage. As shown in Section 5.1, Family Law 1, 2 and 3 grant most privileges to married couples and the kinship arising therefrom, in terms of pension, insurance, medical care, inheritance and so on. That explains why the straightjacket of an ‘ordinary’ elder life is warm and protective, despite its tightness. FL4 norms are also salient here, such as the cultural imperative to ‘go home often’, the proverb ‘bring up sons for help in old age, and store up grains against famine’, and the bundling of care and submission in the conventional understanding of ‘filial piety’.

107 This term comes from the title of a 2005 novel by a U.S. author Cormac McCarthy, which was adapted into the 2007 film of the same name. In Chinese, the film was translated into ‘*Lao Wu Suo Yi*’, meaning having no one to depend on when one gets old.

Meanwhile, fissures do exist. The same written laws in many aspects turn out to be lenient and flexible. For instance, the elderly can make a legal argument that their freedom to marry should not be interfered by their children, although its validity may be contested as there is no lawful same-sex marriage;¹⁰⁸ there are some roundabout ways to become the beneficiary of the personal life and health commercial insurance of one's same-sex partner;¹⁰⁹ in practice, accessing the same-sex partner's medical record in hospital may be permitted;¹¹⁰ the right to make surrogate medical decision in an emergency may also be granted to a non-family 'related person';¹¹¹ if a donor has a 'developed family relationship' with the patient, living organ donation may be allowed between non-family members;¹¹² a legacy-support agreement can override statutory or testamentary succession;¹¹³ and continued tenancy is guaranteed to any cohabitant of a deceased person regardless of kinship status.¹¹⁴

The flexibility in these laws implies that unlike the enormous pressure upon young people to get married and to have children, the marital-familial norms seem to bind less tightly on how people actually live their later years. This is probably because, unlike the more clear-cut boundaries between married and unmarried people, and those with and without children, the line between the old and the young is always vague. Everyone is inevitably ageing and may become hospitalized even before getting old. In Fineman's words, vulnerability and dependency are universal.¹¹⁵ Therefore, there seem to be fewer moral judgments passed on the vulnerable and the dependent, especially due to the inevitability of ageing, than on the unmarried and the childless, as the latter are often seen as choices rather than biology. However, when the statuses of the unmarried, childless, same-sex-oriented and elderly intersect, the law does not always prioritize the protection of the elderly over the social control of the 'abnormal'.

Despite the ageing anxiety, few of my respondents have made legal plans for their old age to alleviate the pressure, probably because the legal certainty of the contracts could not dispel their pessimism about the illegitimacy and precariousness of their same-sex relationships. Also, making legal arrangements in a non-familial often requires extra money and effort, so the 'why-bother' legal consciousness of many same-sex-oriented people also exposes the way the law and regulations inconvenience and degrade them.

108 See Section 5.1.1.

109 See Section 5.1.2.

110 See Section 5.1.3.

111 See Section 5.1.4.

112 See Section 5.1.5.

113 See Section 5.1.6.

114 See Section 5.1.7.

115 Fineman Martha Albertson, "'Elderly' As Vulnerable: Rethinking the Nature of Individual and Societal Responsibility" (2012) 20 *Elder Law Journal* 101-142, 116.

Eldercare is an interactive activity involving both giving and taking. In addition to the fear of their own ageing, the young mid-aged same-sex-oriented people have to negotiate their filial obligations towards their ageing parents. They tend to break down filial piety into obedience, economic support, physical care and emotional sustenance, and then decide where to put their emphasis.¹¹⁶ Some open-minded parents of same-sex-oriented children, especially PFLAG members, have to some extent absolved their children of the requirement to be obedient.¹¹⁷ Both groups have lowered their expectations of offspring-supported care in old age, while collective or intergenerational caretaking is increasingly salient, and will possibly grow fast.¹¹⁸

On the other hand, the ethnography of the older people in this chapter have shown that even though ageing is inevitable and often unpleasant, the ways one can negotiate it always go beyond convention. Interestingly, contrary to same-sex-oriented youngsters' anxiety about ageing, those who are already in their later years seem to be more carefree – let us recall Lao Yang and Lao Feng's laughter when they talked about their funeral portraits;¹¹⁹ Lao Wang's joy when talking about his 'friends/sons';¹²⁰ and Lao Zhang's contentment in having both a considerate wife and a group to belong to.¹²¹ Their sense of ease might in part be due to their personalities, but we should not forget that their specific political and cultural environments sometimes provide them with several unintended conveniences: borrowing the socialist discourse of 'self-reliance', female same-sex cohabitation in the countryside was not seriously problematized; the intergenerational father-and-son-like relationships between several men is likely to fall out of the moral surveillance by the heteronormative surroundings; and unromantic, pragmatic attitudes towards different-sex marriage among older same-sex-oriented people have also largely prevented their identity crisis.

Of course, the global nature of the gay rights discourse and the encouragement towards realizing one's 'true sexual self' are hardly reversible, making it more difficult for LGBT-identified people of younger generations to trivialize their sexuality or get married without a sense of guilt as an earlier generation did. Such intergenerational differences deserve more attention in both academia and amongst activists. One implication that runs through all three sections in this chapter is a potential legal-advocacy approach that goes beyond gay rights, and instead focuses on interdepen-

116 See Section 5.2.1.

117 See Section 5.2.2.

118 See Section 5.2.3.

119 See Section 5.3.1.

120 See Section 5.3.2.

121 See Section 5.3.3.

dency and vulnerability.¹²² For instance, there can be a term-by-term examination of whether marriage or kinship is an arbitrary dividing line when deciding survivors' pension, access to medical record, surrogate medical decision rights in emergency or the beneficiaries of life insurance. The unlinking of heteronormative marriage and those legal rights will serve the cause of justice for unmarried and/or childless straight people as well. This beyond-marriage approach will be further concluded in the last chapter.¹²³

In this chapter, none of my respondents fought against the law face to face; their stories are more akin to what Harding describes as the kind of 'resistance that seeks to challenge the everyday assumptions about family, relationships and sexuality'.¹²⁴ In the next chapter, the obedience to, use of and the various forms of resistance against Family Law will be discussed further, from a separate but related perspective: legal activism.

122 The beyond-marriage line of thinking can be found in Fineman, "'Elderly" As Vulnerable' (2012); Polikoff, *Beyond (Straight and Gay) Marriage* (2008); Michael Warner, 'Beyond Gay Marriage' in Wendy Brown and Janet E Halley (eds) *Left Legalism/ Left Critique* (Duke University Press, Durham and London, 2002) 259-289.

123 See Section 7.5.

124 Rosie Harding, *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives* (Routledge, Oxon and New York, 2011) 180.