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Propositions
relating to the dissertation

Straightjacket: Same-sex orientation under Chinese family law – Marriage, parenthood, eldercare

by Jingshu Zhu

1. The Chinese ideal family-life trajectory of entering into a different-sex marriage, giving birth and living one’s old age under the care of one’s offspring (jiehun shengzi yanglao) is a metaphorical ‘straightjacket’. It restrains numerous people regardless of sexual orientation in contemporary mainland China, while offering hard-to-resist warmth and decent cover.

2. In the absence of a same-sex marriage package, there are fruitful resources in existing Chinese law that can be used in favor of same-sex-oriented people, such as the ‘related person’ clause in the law on medical decision, and the broad interpretation of ‘family’ in some regional laws against domestic violence. Such a beyond-marriage approach will have a wider range of beneficiaries.

   See Section 7.5. See also Nancy D Polikoff, Beyond (Straight and Gay) Marriage: Valuing All Families under the Law (Beacon Press, Boston, 2008).

3. (Sexual) minorities often face a double bind: compulsory hiding and compulsory confessing. Coming out challenges the former yet may reinforce the latter. Visibility and secrecy are both valuable tactics and should not be antagonized in LGBT movements.

4. Large numbers of same-sex-oriented people have entered into different-sex marriage, with or without disclosing their sexual orientation. The conflicts in those relationships (epitomized in the tongqi phenomenon), together with the burgeoning LGBT activism, are pushing Chinese authorities and laws to see homosexuality and speak about it.

5. The pluralist framework of Family Law 1, 2, 3, 4 is particularly helpful in studies of sexual orientation law. It integrates the statutes and cases that directly address family issues, and the broader scope of laws that influence one’s family life, as well as unwritten social norms that shape people’s imagination of family.

6. The schemas provided by legal-consciousness scholarship, i.e., before, with and against the law, are helpful analytical tools to understanding ordinary (same-sex-oriented) people’s dynamic relations to law. Future research needs to pay more attention to law’s emotion-generating effects and the role of emotions in changing law.


7. China is not a ‘case study’ that simply serves to verify or falsify Western-originated gender/sexuality theories. Scholars working on non-Western realities should aim to theorize competing universalisms.

8. The disciplinary boundaries between law, anthropology, cultural studies, post-colonial scholarship and social movement studies hinder our understanding of sexual orientation as lived experience.

9. Meaningful relationships, in fieldwork and in private life, are often built on shared vulnerability and awkwardness.

10. When in doubt, go work out.