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Same-sex marriage in China? The strategic promulgation of a progressive policy and its impact on LGBT activism

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Abstract. Using the case of same-sex marriage in China, this article explores two fundamental questions: What motivates a non-democratic state to promulgate a progressive human rights policy? More importantly, when a non-democratic state adopts such policies, what is the impact on activism? I argue that same-sex marriage legislation could be used strategically to improve China's human rights reputation. While this would extend a pinnacle right to gays and lesbians, the benefits might not outweigh the costs: I show that when imposed from above, a same-sex marriage law would incur opportunity costs on activism; the passage of this progressive policy would eliminate an important issue around which the Lesbian, Gay, Bisexual and Trans-gender/-sexual (LGBT) community might develop. Moreover, even if such policy is promulgated, the right to marry will do little to challenge the larger social pressures that make life difficult for LGBT Chinese.

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Introduction

In 2003, amidst the push for same-sex marriage in many Western democracies, China, the world's most populous country – and presumably also home to the world's largest homosexual population – began its own flirtation with such a policy when Li Yinhe, a prominent sociologist, first submitted a proposal to legalise same-sex marriage at meetings of the National Committee of the Chinese People's Political Consultative Conference (CPPCC) and National People's Congress (NPC).[1] Although the effort failed to gain the necessary 30-member vote to move

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[1] *Xinhua* (16 March 2006).

forward, she was not deterred. Li's same-sex marriage proposal has become an annual event, a singular effort to bring about legislation that could give gays and lesbians equal rights under a regime that has long-professed its commitment to egalitarianism in theory but often falls short in practice.[2] Given growing support for same-sex marriage in other countries, as well as the tenacity of some activists like Li, what is the possibility of China promulgating a policy that would legalise same-sex marriage? What would the state to gain from doing so? And how would such a policy affect gay and lesbian citizens?

Although there is no large Lesbian, Gay, Bisexual and Transgender (LGBT) movement in China,[3] a recent case allows us to theorise about what effects might be felt in China if such a progressive policy were implemented. In the often divisive world of Chinese HIV/AIDS organisations, there has been much to fight over – resources and turf – and little to agree on. But in recent years, groups began to find common ground on a few issues. At a gathering in autumn 2007, several organisations began to coordinate efforts to oppose a government ban on HIV-positive individuals travelling into the country. Non-governmental organisation (NGO) leaders planned to present their argument at the annual meeting of the Global Fund (an inter-governmental organisation to combat HIV/AIDS, malaria, and tuberculosis), at which high-ranking Chinese government officials were expected to attend. But before they had time to present their case – and commencing an anticipated battle – the government announced, to great fanfare, that it would change the policy.[4] Future meetings to coordinate opposition were cancelled. There was a noticeable bitter-sweet reaction among the activists.[5] A key interest of the groups was met, but the government's abrupt reversal also created a significant opportunity cost: the chance for social organisations to coalesce was also gone.

China has no domestic campaigns to legalise same-sex marriage on the scale of those in the West. The nascent civil society sector representing the LGBT community has been most concerned with stopping the spread of HIV/AIDS; far less time is devoted to same-sex marriage. But despite the lack of a significant indigenous push for such a policy, legalised same-sex marriage is not improbable in China. In this article, I theorise that the impetus for such a policy is likely to come not from the grassroots but rather the political centre. Although this policy

[2] In this article I use the term 'Same-sex marriage' rather than 'Same-sex union' simply because LGBT activists in China overwhelmingly use the term *'tongxing hunyin [same-sex marriage]'*.

[3] Although some groups were LGBT in name, few were so in practice. The vast majority of informants for this research were leaders of organisations that represented self-identified gay men or lesbian women. For reasons I explore elsewhere (*Forging a Harmonious Middle Path: The Rise of Social Organizations and the Persistance of the Authoritarian State in China*, book manuscript, 2010), there is limited networking between groups; organisations representing gay men and lesbian women have, in recent years, grown apart. As for bisexuals, one activist noted that the number of bisexual men in China is probably far higher than in the West, due to the frequency of homosexual men who marry straight women to avoid social or family pressure. There are no known groups working exclusively for the interests of transsexual/gendered persons. However, a handful of gay men's groups have reached out to this community, particularly in China's southwestern Yunnan province. With these qualifications in mind, I use LGBT throughout this article as shorthand for the universe of these types of activists, social organisations, and citizens.

[4] Although the government stated its intentions in 2007, the ban was not officially reversed until April 2010.

[5] Participant observation, Kunming, China (11 November 2007).

would extend a significant right to gays and lesbians, the benefits might not outweigh the costs. As in the case of the travel ban reversal, a sudden policy change can have a potentially debilitating effect on a budding social movement.

I begin this article by explaining why the Chinese government might promulgate a same-sex marriage policy by examining the potential benefits it could provide the state. Borrowing from International Relations literature on the strategic use of norms, I argue that the key advantage of a same-sex marriage policy could be in using the progressive legislation to deflect criticism of China's human rights record. Next, I engage several counter-arguments, examining the potential costs of such a policy to the state. Because China lacks deeply rooted and institutionalised cultural injunctions against homosexuality, and since the public places decreasing value on marriage, the cultural costs of promulgating a same-sex marriage policy are relatively low. Political counter-arguments are also not entirely convincing: regime type is not necessarily an effective predictor of positive policies towards LGBT citizens in other political contexts. I also show that despite frequent criticism about its human rights record, China is not reluctant to engage in these debates, provided it has some latitude in defining and evaluating human rights practices.

In the second section, I explore several possible effects of this policy change. The most obvious benefit is that such legislation could help improve sexual health and decrease discrimination. Nonetheless, drawing on insights from social movement literatures and recent empirical examples, I argue that the legislation could carry heavy costs that would outweigh these benefits. First, when imposed from above, a same-sex marriage law would incur opportunity costs on activism; the passage of this progressive policy would eliminate an important issue around which the nascent LGBT community might rally, build a base, and further develop. In other words, an immediate victory for gay rights, without a significant struggle, might mean a long-term loss for China's fledgling civil society. Second, even if a same-sex marriage policy is promulgated, in part because of limited resonance of marriage in Chinese society, the right to marry among homosexual citizens will do little to challenge the larger social pressures that make life difficult for LGBT Chinese.

Same-sex marriage as a (strategic) human right

Same-sex marriage policies are often the culmination of significant pressure from the grassroots elsewhere.[6] But in China, a same-sex marriage law is unlikely to come about on account of domestic non-governmental pressure. Although Chinese LGBT activism has grown significantly in recent years – facilitated by Internet-based networking and increased political space granted to NGOs that address the HIV/AIDS crisis – organisations remain few in number and weak in capacity.[7]

[6] Kelly Kollman, 'Same-Sex Unions: The Globalization of an Idea', *International Studies Quarterly*, 51 (2007), pp. 329–57.

[7] Because few of these groups are legally registered, the exact number of gay and lesbian groups is impossible to ascertain. However, insiders believe China is home to roughly 200 groups that primarily work for the interests of gay men, and less than fifteen for lesbian women. This imbalance

Moreover, interest in securing marriage rights is relatively low among activists. To capture attitudes toward same-sex marriage, my nationwide survey[8] asked leaders from LGBT NGOs to rank six common issues addressed by their groups (same-sex marriage, HIV/AIDS, social pressure, family pressure, discrimination, and human rights) by *time spent*. Anticipating that a group might spend little time on an issue that they would prefer to address if given the choice, respondents were asked to then rank each issue by *interest*. The vast majority of respondents reported that among all the issues, they spent the least amount of time on same-sex marriage; it also ranked lowest in importance. Of the sixty respondents, same-sex marriage was never ranked first in time spent, and only 26 per cent placed it as second or third. Same-sex marriage was ranked as an issue of most interest by only nine per cent of survey respondents. The survey found no significant variation in time spent and interest. Same-sex marriage is simply not yet of great interest to LGBT leaders.

While important, domestic civil society actors do not always affect policy change alone. Transnational advocacy networks can be crucial for pressuring authoritarian governments to adopt policies and norms that they might otherwise be reluctant to.[9] Early studies of same-sex marriage have identified transnational activists, in concert with local players, as key for promoting the norm shift necessary to promulgate such policies.[10] In China, however, these networks are unlikely to have much impact on same-sex marriage, just as they have been somewhat ineffective on HIV/AIDS and environmental issues: international organisations have been reluctant to pressure the government;[11] international NGOs have usually maintained a non-antagonistic attitude toward the state to ensure that they can continue legally operating in the country; and domestic NGOs have found that working with international networks can damage their government relations, which are crucial for existence in the authoritarian polity.[12]

Despite a weak domestic civil society and unreliable international partners, same-sex marriage could still become a reality in China – if it comes from the top-down. (After all, in authoritarian polities, policymaking is rarely, if ever, an authentically bottom-up process.) But the state is unlikely to promulgate the policy

is best explained by the political and economic opportunities afforded to gay men due to HIV/AIDS; lesbian women are not identified as a high-risk group for HIV/AIDS and therefore have a more difficult time securing funding and government sponsors (Hildebrandt, *Forging*).

[8] The data presented in this article are derived from 25 in-depth anonymous interviews of gay and lesbian activists in China, conducted from June 2007 to April 2008, as well as a survey of nearly 50 LGBT social organisation leaders administered in March 2008. Data were collected as part of a larger project examining the relationship of Chinese social organisations and the state. Hildebrandt, *Forging*.

[9] Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders* (Ithaca: Cornell University Press, (1998).

[10] Kollman, 'Same-sex'.

[11] At a meeting of the Global Fund, the leader of a domestic NGO implored the Global Fund to pressure the government to include more truly independent NGOs in its HIV/AIDS work. The Chair of the Fund promptly replied that while he was sympathetic to the issue raised by the activist, because the Global Fund is 'country-led' and relies on a strong partnership with governments in the countries it operates, it will not pressure these governments to do one thing or another. He was emphatic in noting that the Fund must work within the framework of existing national laws and not oppose them (Participant observation, Kunming, China (11 November 2007).

[12] Timothy Hildebrandt and John A. Zinda, 'The False Promise of TNAs in China', working paper (University of Wisconsin-Madison, 2009); Fengshi Wu, 'Double-mobilization: Transnational Advocacy Networks for China's Environment and Public Health', unpublished dissertation (University of Maryland, 2005).

out of altruism or in response to outside pressure. More likely, it would be done for an instrumental purpose: publicly extending marriage rights to same-sex couples could help China shed its reputation as a violator of human rights, thereby increasing its international legitimacy and also consolidating its rule at home, a task that is increasingly important as China's economic growth has slowed.

International Relations scholars offer an instructive theoretical frame for this argument: non-democratic regimes often strategically use human rights norms to meet unrelated ends. In examining the ratification of human rights treaties, Hafner-Burton and Tsutsui argue that contrary to other claims,[13] governments might ratify human rights treaties as 'window dressing' with no real intention of abiding by them.[14] Subotic explains that such moves are intended to increase perceived legitimacy of a regime within the international community; these governments are 'instrumental norm adopters', who engage in 'role playing conformance' with their peers.[15] Instrumental norm adoption is not dependent upon domestic pressure. In fact, these treaties are often ratified in countries where there is little desire for normative change; instrumental norm adoption most commonly occurs where there is weak demand for the law and limited threat from political spoilers.[16]

In drawing on these theoretical insights, I am borrowing the general logic that authoritarian regimes can adopt progressive positions to increase their resiliency. There are some key differences between the empirical cases that provoked these insights in international relations and that of same-sex marriage in China. These scholars focus their attention on pre-existing international norms and usually apply the argument to the ratification of treaties. There is neither an explicit treaty about LGBT rights nor any formal norm on 'relationship recognition'.[17] Moreover, the link between human rights and same-sex marriage is not unambiguous. For example, both supporters and opponents of same-sex marriage have used the UN Human Rights Declaration to strengthen their respective positions. Opponents argue that the Declaration's discussion of the importance in protecting the family is a tacit insistence that family, traditionally conceived, should be preserved and not adulterated by 'revisions' like same-sex marriage.[18] Supporters, on the other hand, use the Declaration to argue that same-sex marriage is the kind of fundamental human right it was intended to protect. Arguments for 'equal marriage' are most often rooted in a moral compulsion to do what is right for all.[19]

[13] Thomas Risse, Stephen Roppe, and Kathryn Sikkink, *The Power of Human Rights* (New York: Cambridge University Press, (1999); Ellen L. Lutz and Kathryn Sikkink, 'International Human Rights Law and Practice in Latin America', *International Organization*, 54:3 (2000), pp. 633–59.

[14] Emilie M. Hafner-Burton and Kiyoteru Tsutsui, 'Human Rights in a Globalizing World: The Paradox of Empty Promises', *American Journal of Sociology*, 110:5 (2005), pp. 1373–411.

[15] Jelena Subotic, 'Domestic Use of International Norms: Alternative Mechanisms for Compliance', Presented at Annual APSA Meeting (2007), p. 16.

[16] Subotic, 'Domestic'.

[17] Kollman, 'Same-sex'.

[18] Scott T. FitzGibbon, 'The Formless City of Plato's Republic: How the Legal and Social Promotion of Divorce and Same-Sex Marriage Contravenes the Principles and Undermines the Projects of the Universal Declaration of Human Rights', *Issues in Legal Scholarship*, Article 5 (2005).

[19] Celia Kitzinger and Sue Wilkinson, 'Social Advocacy for Equal Marriage: The Politics of "Rights" and the Psychology of 'Mental Health', *Analyses of Social Issues and Public Policy*, 4:1 (2004), pp. 173–94. Arendt notes that 'even political rights, like the right to vote, and nearly all other rights enumerated in the Constitution, are secondary to the inalienable human rights to "life, liberty and the pursuit of happiness" proclaimed in the Declaration of Independence, and to this category the

In addition, the argument for instrumental implementation has yet to be supported in the few analyses of same-sex marriage laws. In a study of same-sex marriage policies in western Europe, Kollman finds no evidence that states implement these laws as a result of instrumentalism.[20] However, these cases were all in established democracies where social actors can play a key independent role in putting pressure on the state to meet their interests. State instrumentalism might not be as easily found in such contexts. In non-democratic states, on the other hand, instrumental policymaking is quite common and not just limited to human rights issues. For example, Massell shows how the Soviet Union quickly expanded women's rights throughout its central Asian territories in order to neutralise threats from traditional Muslim leaders.[21] Several scholars have made similar points with respect to environmentalism: Biehl suggests that the Nazi party embraced 'ecofascism' in using ecological concerns to justify ultra-right policies to 'cleanse' the homeland of outside 'intruders',[22] Forsyth argues that ecological principles – and those who fight for them – can be used to embolden political hegemons in Southeast Asia,[23] and Weinthal shows how newly independent states in Central Asia brokered environmental agreements to increase legitimacy for their *de facto* authoritarian regimes.[24] This general phenomenon is not necessarily limited to authoritarian regimes, either: Habermas cynically suggests that in the democratic, Western world, 'concern for human rights only concerns the attempt at opening new free markets'.[25]

Similarly rational arguments have been made to support same-sex marriage policies, with many focusing on economic justifications. Oswin contends that political costs and moral panics are increasingly outweighed by the economic benefits of being gay-friendly.[26] In an economic analysis of same-sex marriage, Muller argues that the costs of legalising same-sex marriage to the state, such as lost tax revenue from gay couples filing together rather than as individuals, are outweighed by the benefits: married couples are more economically productive than

right to home and marriage unquestionably belongs'. Hannah Arendt, 'Reflections on Little Rock: A reply to critics', *Dissent* (Spring, 1959), pp. 179–81. Thus, the broad category of human rights is strengthened, not weakened, by the inclusion of same-sex marriage. Claims about rights for gays and lesbians as a human right are explored in legal and gay identity scholarship. Kristen L. Walker, 'Capitalism, Gay Identity, and International Human Rights Law', *Australian Gay and Lesbian Law Journal*, 9 (2000), pp. 58–73; James Wilets, 'Conceptualizing Private Violence Against Sexual Minorities as Gendered Violence: An International and Comparative Law Perspective', *Albany Law Review*, 60 (1997), pp. 989–1050. In two landmark court cases in the US, the victorious sides used human rights rationales to successfully strike down the constitutionality of anti-sodomy laws nationwide (*Lawrence v. Texas* 2003) and legalise same-sex marriage in Massachusetts (*Goodridge v. Dept. of Public Health* 2003).

[20] Kollman, 'Same-sex', p. 332.

[21] Gregory J. Massell, 'Law as an Instrument of Revolutionary Change in a Traditional Milieu: the Case of Soviet Central Asia', *Law & Society Review*, 2:2 (1967), pp. 179–228.

[22] Janet Biehl, '"Ecology" and the Modernization of Fascism in the Germany Ultra-Right' in Janet Biehl and Peter Staudenmair (eds), *Ecofascism: Lessons from the German Experience* (San Francisco: AK Press, (1995).

[23] Tim Forsyth, 'Social Movements and Environmental Democratization in Thailand', in Shelia Jasanoff and Marybeth Long Martello (eds), *Earthly Politics: Local and Global in International Politics* (Cambridge: The MIT Press, 2004), pp. 195–216.

[24] Erika Weinthal, *State Making and Environmental Cooperation* (Cambridge: The MIT Press, (2002).

[25] Jurgen Habermas, *The Structural Transformation of the Public Sphere* (Cambridge: MIT Press, (1989), p. 33.

[26] Natalie Oswin, 'The End of Queer (As We Knew It): Globalization and the Making of a Gay-Friendly South Africa', *Gender, Place and Culture*, 14:1 (2007), pp. 93–110.

single people and with more married couples caring for each other in old age and illness, the state would spend less on social services.[27] An economic windfall might also result from more wedding ceremonies: legalised same-sex marriage in California, for instance, was estimated to inject over $370 million into the state's faltering economy.[28] Upon the passage of proposition eight in California, which rescinded the right for same-sex couples to marry, analysts observed that American states with legal same-sex marriage would enjoy the economic spoils from couples that might have otherwise married in California.[29] Economic arguments are tied to similar claims that same-sex marriage would improve public health. Marriage can afford stability, and improve physical and mental health of those who enter into them.[30] Monogamous 'pairing off' can diminish promiscuity, curtail the spread of venereal diseases, thereby cutting government health care costs.[31]

The political benefits of same-sex marriage outlined above are a necessary but not sufficient condition for policy promulgation. Before concluding that the benefits of same-sex marriage could compel the state to legalise it, potential costs must also be explored. Next, I explore three key counter-arguments to same-sex marriage in China: first, because of China's traditional culture the government is unlikely to sanction non-traditional familial arrangements; second, because China is an authoritarian state, it is unlikely to support a progressive policy like same-sex marriage; and third, the government does not want to engage in human rights discussions for fear that it might elicit even more criticism.

'China's cultural traditions get in the way'

Culture has been cited as a key explanatory variable in understanding same-sex marriage policy promulgation around the world. The strength or weakness of institutionalised religion, in particular, is a key predictor of same-sex marriage. Kollman finds that in secular societies of Western Europe, same-sex marriage is not seen as a cultural threat; where 'religiousity' is low, same-sex marriage can be more easily framed as a human rights issue and successfully implemented.[32] By extending these insights to China, which currently lacks the influential religious institutions that exist in other countries, same-sex marriage should hold promise; cultural costs, defined in this way, should not prove too high. However, China could still be properly characterised as traditional irrespective of its lack of religion.[33] Rather than dismiss this counter-argument so quickly, China's Confucian tradition can be examined as a proxy for religion.

[27] Christina Muller, 'An Economic Analysis of Same-Sex Marriage', unpublished thesis (Universidad Compultense Madrid, 2001), p. 34.
[28] Alana Semuels, 'Gay Marriage a Gift to California's Economy', *Los Angeles Times* (2 June 2008).
[29] *Reuters* (26 November 2008).
[30] Michael King and Annie Bartlett, 'What Same Sex Civil Partnerships May Mean for Health', *Journal of Epidemiology & Community Health*, 60:3 (2006), pp. 188–91.
[31] Muller, 'Economic', p. 36.
[32] Kollman, 'Same-sex', p. 351. Kollman uses a country's average annual church attendance as a measure of 'religiousity'.
[33] In recent years, China has seen an increase in the number of self-identified Buddhists in the country; we could, therefore, just as easily explore other Buddhist countries to examine the cultural impediments to same-sex marriage or homosexuality. However, the results would likely be the same for Thailand, one of the most Buddhist countries in south-east Asia, has one of the most dynamic gay communities on the continent.

According to this related counter-argument, China's Confucian roots, which emphasise traditional conceptions of family, are too deeply inculcated into society to approve of government-sanctioned same-sex marriage. To evaluate the veracity of this cultural argument, it is instructive to compare attitudes towards homosexuality in two other countries with Confucian backgrounds: Taiwan and Singapore share similar culture traditions, each boasting a large Chinese diaspora, but their policies towards homosexuality are vastly different. Whereas Singapore has strict laws against homosexuality, Taiwan is seen comparatively as an Asian gay Mecca; in 2007, the Mayor of Taipei publicly called homosexuality 'a natural phenomenon'.[34] While gays have not yet been extended full marriage rights, they are seen as an important interest group in Taiwanese politics, even attracting the attention of politicians before elections to secure votes. The country's LGBT movement is so vibrant that social organisations have pressured other countries to improve their gay rights record: activists recently protested against anti-gay laws in Nicaragua in front of the country's attaché in Taipei.[35]

Since Confucianism does not necessarily determine attitudes toward homosexuality, we could broaden the scope of inquiry to tradition, in general. In China, many traditional practices have been eroded as the result of economic development and sometimes by government design. D'Emilio has argued that capitalism, more generally, gives citizens the opportunity to no longer be tied to traditional expectations of procreation.[36] In China, economic growth in the coastal regions has led to increased individual mass migration from the hinterland, leaving families either temporarily, or permanently, transient and atomised. Moreover, through a strict family planning policy, Chinese families have been made artificially small and the distribution of sexes is now skewed towards males. When it comes to policies that conflict with traditional values in China, none of them would violate Confucian ideals of family more than the 'one-child policy'. Yet, in this case other government concerns overrode cultural injunctions.[37]

Although many Chinese cultural traditions have eroded over the last century, society will not necessarily be willing to accept a drastic modification to marriage. After all, even among some social liberals in the US, there is reluctance to accept same-sex marriage in name. However, in China, marriage is not as institutionalised and church-sanctioned as it is in the West and cultural injunctions against non-marriage are diminishing.[38] The state-run news agency published highlights from a Beijing Normal University survey of nearly two million citizens that found only three per cent of respondents were opposed to unmarried cohabitation; the vast majority of respondents reported that they would be willing or are already in such a living arrangement (51 per cent) or would not cohabitat without marrying

[34] *Voice of America* (27 September 2008).
[35] *Taipei Times* (14 September 2007).
[36] John D'Emilio, 'Capitalism and Gay Identity', in Snitow, Stansell & Thompson (eds), *Powers of Desire: The Politics of Sexuality* (New York: The Monthly Review Press, (1983).
[37] Throughout modern Chinese history, tradition has been dismantled to further state goals: Old Confucian traditions were attacked during the Great Proletarian Revolution in 1949 while other remnants where eradicated during subsequent volatile government-sponsored campaigns, such as the Anti-Rightist Campaign, Great Leap Forward and Cultural Revolution.
[38] For a far more detailed exploration of marriage law in China see Michael Palmer, 'The Re-Emergence of Family Law in Post-Mao China: Marriage, Divorce and Reproduction', *The China Quarterly*, 141 (1995), pp. 110–34.

but see no problem with others doing so (46 per cent).[39] China's divorce rate is also increasing. In 2007, the number of divorces grew 18.2 per cent to 1.4 million couples. The rise is attributed to the lack of stability of marriage due to increased migration and, perhaps more importantly, a 2003 policy that streamlined the process of divorce and dropped the fee to 10 yuan, less than two US dollars.[40] Palmer notes that marriage laws have been continually modified since the founding of the PRC in order to accommodate for reforms like the one-child policy.[41] That is to say, marriage has long been used by the state as an instrument for other purposes.

Having explored attitudes toward marriage in general, I now examine positions on homosexuality. While homosexuality has not entered the realm of 'normalcy' in Asia, the establishment of gay rights, including marriage, is not unforeseeable from a cultural perspective. Altman argues that the destruction of old practices increases public acceptance of homosexuality. In other Asian polities, traditional means of regulating sexuality have declined alongside the collapse of arranged marriages in the region.[42] In China, employment opportunities in large cities have given those who might feel uncomfortable in the traditional world where they grew up (for example, smaller cities and rural areas) a way out. While anti-gay discrimination still exists, there is no strong injunction against homosexuality similar to that in more religious societies. In fact, homosexuality has been sporadically tolerated throughout China,[43] and there is evidence of same-sex marriages among women in Southern China in the nineteenth century.[44]

On the whole, homosexuality is not actively suppressed or persecuted in China. It is more accurately characterised as 'obscured'.[45] Gay and lesbian activists speak of three dominant attitudes towards homosexuality: *ignorance* (the most prevalent attitude, particularly in countryside, where homosexuals are often assumed to not exist in China), *ambivalence* (more common in cities where citizens know that homosexuals exist but do not pay much attention to them, expressing neither support nor condemnation), and *support* (the rarest attitude, but growing among young Chinese in the most developed cities in China).

Li Yinhe, the sociologist leading the charge for a same-sex marriage law in China, recently conducted a telephone survey of 400 people in large and small cities throughout China.[46] The survey revealed conflicting attitudes towards gays and lesbians. While only 7.5 per cent of respondents reported that they knew a homosexual, twenty per cent of respondents saw nothing wrong with homosexuality, 40 per cent found it completely wrong, and 30 per cent were somewhere in between. Sixty per cent of respondents said that they would be friends with a

[39] *Xinhua* (5 September 2007).
[40] Ibid. (25 January 2008).
[41] Palmer, 'Re-Emergence'.
[42] Dennis Altman, 'Sexuality and Globalization', *Sexuality Research & Social Policy*, 1:1 (2004), pp. 63–8.
[43] M. P. Lau and M. L. Ng, 'Homosexuality in Chinese Culture', *Culture, Medicine & Psychiatry*, 13 (1989), pp. 465–88.
[44] Nancy D. Polikoff, 'We Will Get What We Ask For: Why Legalizing Gay and Lesbian Marriage Will Not "Dismantle the Legal Structure of Gender in Every Marriage"', *Virginia Law Review*, 79 (1993), pp. 1535–50.
[45] K. Zhang and E. J. Beck, 'Changing Sexual Attitutes and Behaviour in China', AIDS Care, 11:5 (1999), pp. 581–9.
[46] {http://blog.sina.com/cn/s/blog_473d533601009vfr.html} accessed 10 July 2008.

homosexual, whereas 30 said they would not. When asked a hypothetical question about a family member 'coming out' as gay, 10 per cent said they would totally accept them, the same proportion that reported they would totally reject them, while the vast majority fell in the 'tolerate' but 'hope they change' camp.[47] Asked about same-sex marriage, 70 per cent of respondents were against it, whereas 30 per cent were for it. But on other human rights, respondents were far more supportive of LGBT citizens. Ninety per cent believed they should have equal employment rights and the vast majority (80 per cent) think they are 'equal humans'. These results have led Li to conclude that the situation for homosexual men and women in China is not as gloomy as some would assume.[48]

Because opposite-sex marriage holds little resonance within society, same-sex marriage might not be seen as a large cultural threat. Moreover, since it would affect so few people, this policy would be even less threatening. When groups are seen as attempting to change the lives of individuals rather than society at large, there is reason to expect less hostility toward them than those groups trying to affect much broader change.[49] A prominent gay leader reported that when gays and lesbians talk about human rights the government does not see it as sensitive because the population is perceived to be so small in China.[50] Moreover, the effect of this group mobilisation is not as intimidating to the government. It is for this reason that gay and lesbian organisations, and activists like Li Yinhe, can lobby for same-sex marriage openly with little or no government interference.

'The regime is too closed'

The brief comparison of Taiwan and Singapore above showed that cultural similarities do not alone explain a country's policies toward homosexuality. Another obvious difference between the two countries might have more explanatory power: regime type. Perhaps Singapore has a more discriminatory policy toward homosexuality because the state is authoritarian.[51] Taiwan, on the other hand, is a fledging democracy and therefore might be more open to broader

[47] Attitudes among younger Chinese are arguably more progressive than the general public. Studies conducted in other Asian countries that share cultural traditions support this assumption: in a 2007 study of 300 junior- and high-school students in Vietnam, 80 per cent of respondents said they did not believe homosexuality was 'bad'; only two per cent reported that they viewed homosexuals with 'contempt' (HCMC University of Pedagogy).

[48] The prevalence of 'tolerance' or 'ambivalence' toward homosexuals (and widespread acceptance of co-habitation) might be representative of a traditionally more fluid spectrum of socially acceptable behaviour (for example, see Brett Hinsch, *Passions of the Cut Sleeve: The male homosexual tradition in China* (Berkeley: University of California Press, (1992) or, contemporarily, more open attitudes on sexual behaviour. Both of these should be distinguished from homosexuality as a 'social identity' which, excepting the small openly gay population in China, has not yet developed in China as it has in the West. This lack of a widely respected gay social identity might also help explain why there has been no large domestic push for same-sex marriage or other gay-related rights. At the same time, it should not serve as a significant barrier in the way of a government-led move toward such a policy. I am grateful to an anonymous reviewer for making this point.

[49] Mayer N. Zald and Robert Ash, 'Social Movement Organizations: Growth, Decay and Change', *Social Forces*, 44:3 (1966), pp. 327–41.

[50] LGBT activist interview, Kunming, China (13 August 2007).

[51] An additional explanation for this variation might be due to colonial legacies. Anti-gay legislations can be traced back to the period of colonisation of the city-state by the British; as explained in

understandings of rights, which could translate into a more progressive policy towards LGBT citizens. An examination of the two countries' polity scores emphasises the difference in regime type:[52] since 2005, Taiwan has boasted a 10 polity score, whereas Singapore has remained at −2 since independence in 1959. Improvement in human rights is usually attributed to the democratic nature of a country and the amount of international NGOs that its citizens participate in.[53] Human rights in general, and same-sex marriage in particular, are less likely in non-democratic countries: the selective exclusion of marriage rights has been used as a tool of oppression by authoritarian regimes such as apartheid South Africa and Nazi Germany.[54] Indicative of a regime type bias, studies of same-sex marriage have focused primarily on democratic polities; a dominant assumption is that in authoritarian contexts, same-sex marriage does not stand much of a chance.

However, variation in regime type might not predict policies towards homosexuals as well as we might assume. Over the last decade, Asia's largest democracy, India, has maintained a solid 9 on the polity scale, but draconian anti-homosexual laws remain on the books.[55] Nepal, India's neighbor to the north, only recently rid itself of the monarchy in favour of a federal republic currently ruled by Maoists. Unlike the more stable democratic state to its south, the country has adopted progressive human rights including pro-gay policies. In December 2007, the Nepalese Supreme Court scrapped anti-gay legislation and called for new laws that would protect all citizens irrespective of sexual orientation and gender identity. In November 2008, the court asked the parliament to introduce a same-sex partnership or marriage policy.[56]

Challenging both regime type and culture/tradition arguments, gay-friendly legislation and same-sex marriage policies are not beyond the pale even in more religious contexts with strong cultural injunctions against homosexuality. In Cuba, for example, three conditions exist that suggest the state should be hostile to progressive LGBT policies: it is culturally conservative (with strong taboos against homosexuality), religiously conservative (boasting a long history of Catholicism), and politically closed (with a polity score of −7). Despite these apparent impediments, the national government has made surprising moves to protect the rights of LGBT citizens. The daughter of the country's new president, Raul Castro, is leading the charge for wide-reaching LGBT-rights legislation that includes same-sex unions.[57] This stands in stark contrast to Cuba's antagonist, the US,

footnote 55, other colonies in the region share similarly worded (and numbered) laws the forbid homosexual sex.

[52] Monty S. Marshall and Keith Jaggers, 'Polity IV Country Reports', *Polity IV Project* (2009).

[53] Eric Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?', *Journal of Conflict Resolution*, 49:6 (2005), pp. 925–53.

[54] Sue Wilkinson and Celia Kitzinger, 'In Support of Equal Marriage: Why Civil Partnership is Not Enough', *The Psychology of Women Section Review*, 8:1 (2006), pp. 54–7.

[55] Sheena Asthana and Robert Oostvogels, 'The Social Construction of Male "Homosexuality" in India: Implications for HIV Transmission and Prevention', *Social Science and Medicine*, 25 (2001), pp. 707–21. India's penal code 377 outlawed any 'carnal intercourse' including homosexuality. The code's origins predate independence in 1947; perhaps not surprisingly, another former British colony, Singapore, shares a similar penal code – and number: 377A – that forbids same-sex intercourse.

[56] A. Narayanan, 'Nepal's Supreme Court OKs Same-Sex Marraige', *Pew Forum on Religion and Public Life* (21 November 2008). Available at: {http://pewforum.org/news/rss.php?NewsID=17001}.

[57] BBC (27 March 2008). Although same-sex marriage is mentioned as a possible result of revisiting policies, there has not been an insistence on such 'marriage legislation' for fear that it might slow or kill the legislation altogether.

which despite a perfect 10 polity score has only a handful of state-level policies allowing same-sex marriage. A greater number of states have moved in the opposite direction to preserve 'traditional' opposite-sex marriage and proactively ban same-sex marriage. At the national level there has been no serious effort to promulgate a same-sex marriage or civil union policy; the focus remains on ensuring that same-sex marriage does not exist (for example, Defense of Marriage Act).

'The government does not want to talk about human rights'

A final counter-argument to the proposition of same-sex marriage in China is that given the country's widely-criticised human rights record, the state would avoid rather than engage discussions about such issues. Indeed, talking about human rights in China can evoke a strong government reaction. For example, HIV/AIDS and gay and lesbian activists in China are reluctant to frame their work in human rights terms for fear of government reprisals. However, despite the government's public claim that criticism of its human rights record violates domestic sovereignty,[58] the regime recognises the saliency of human rights in the eyes of the international community and cares enough to respond to critics. Contrary to received wisdom, authoritarian states might not care less about international legitimacy than democracies.[59] In fact, the Chinese government has used human rights to meliorate its image. On gender equality, the government has been quick to note that 'women's liberation' came to China 20 years before the US.[60] In the past, the state countered human rights criticisms by insisting that *real* human rights are those that a socialist state provides: guarantees of a job, home, and health care.[61] But after economic reforms which eliminated many social service provisions, this argument has become harder to make. Moreover, with information from the outside world easier to access and more difficult to control, citizens are more likely to hear criticisms. Therefore, the state might have to try even harder to address its human rights problem.

Indicative of this concern is the government's attempts to cover-up actions that might tarnish its image: crackdowns on activists during the 2008 Olympics were widely seen as an attempt to avoid embarrassment on the international stage; and there is wide speculation that reporting on its Africa policy led to the closing down of the country's most well-respected NGO research centre. The government is increasingly answering criticisms rather than shying away from them. And while the state does not always respond directly to its critics, many of its policy pronouncements are clearly intended for its most vocal critics. Without mentioning criticisms of the country's high number of executions, the government noted a drop in death penalties as a sign of the state's movement to show 'more mercy than

[58] Qi Zhou, 'Conflicts over Human Rights between China and the US', *Human Rights Quarterly*, 27 (2005), pp. 105–24.
[59] Contrary to Subotic, 'Domestic'.
[60] Kay Ann Johnson, *Women, the Family, and Peasant Revolution in China* (Chicago: University of Chicago Press, (1985).
[61] Randall P. Peerenboom, 'What's Wrong with Chinese Rights: Toward a Theory of Rights with Chinese Characteristics', *Harvard Human Rights Journal* (1993), pp. 29–57.

punishment'.[62] Beijing has also engaged criticisms of continued financial ties with the Sudanese government despite humanitarian crises in Darfur. Government officials frequently argue that Chinese inaction on reports of genocide is indistinguishable from the US government's apathy.[63] Beijing has also noted that because of its continued presence in Sudan, it can play a 'unique role' in resolving the situation; it highlights remarks by the UN Under-Secretary for Peacekeeping praising China for this 'important role'.[64]

Although Chinese officials implored that politics be 'left out' of the 2008 summer Olympic Games in Beijing, news releases during the competition addressed the human rights issue: without any details or explanation, the government insisted that human rights have not only been protected in the run-up to the Games, but actually improved upon.[65] The government declared that human rights had become a 'core concept' of the Communist Party of China in March 2004 when the constitution was revised to 'respect and protect' human rights and then two years later when human rights made an appearance in the 11th five-year-plan. The Chinese government also trumpets its participation in and adherence to international human rights agreements, noting its 'early signing' onto the UN High Commission on Human Rights in 2005.[66] More recently, President Hu Jintao declared that human rights were instrumental in achieving his highly vaunted (but still ill-defined) goals of achieving 'scientific development' and a 'harmonious society'.[67]

China has also been increasingly willing to debate, rather than just ignore, its most vocal – and powerful – human rights critics. One common government tactic is to accuse its critics of hypocrisy. As noted at the beginning of this article, in November 2007, China reversed its long-standing policy of requiring international visitors to reveal their HIV status, and reserving the right to prohibit infected individuals from entering the country. The government announced this policy change at a public meeting of one of the world's largest organisation to fight the disease, the Global Fund. In conversations following this decision, local officials from China's Centre for Disease Control gleefully noted that the US maintained a similar policy. Thus, on this human rights issue, they argued, China was a step ahead of the US.[68]

Although China was removed from the US State Department's list of *worst* human rights offenders in March 2008, Washington's annual report on human rights practices in China concluded that the human rights situation was still poor, noting a litany of abuses: lack of civil liberties, coercive birth limitation policies, torture, etc.[69] The Chinese government was unmoved by either its upgraded status or the concerns expressed. Instead of simply condemning the report, Beijing

[62] *Xinhua* (7 September 2007).
[63] Ibid. (12 September 2007).
[64] Ibid. (15 February 2008).
[65] Ibid. (19 October 2007).
[66] Ibid. (23 November 2007).
[67] Ibid. (1 January 2008).
[68] Government official interview, Kunming, China (11 November 2007). In October 2009, the US government finally repealed its 22-year ban on the travel of HIV-positive individuals into the country, approximately two years after the Chinese government announced its policy change.
[69] US Department of State, 'Country Reports on Human Rights Practices: China' (11 March 2008). Available at: {http://www.state.gov/g/drl/rls/hrrpt/2007/100518.htm}.

engaged the critiques by issuing its own report on the *American* human rights record, a tactic used every year since 1999. While suggesting the US spend more time focusing on its own problems, the foreign ministry also issued at least 13 separate press releases on 12 March on what it deems American human rights abuses: the large number of gun-related deaths, domestic spying, difficulties of unionising, homelessness, hunger, lack of universal healthcare, military and civilian deaths in Iraq, prison abuse, racial discrimination, and even the prohibitively expensive nature of running for public office.[70]

Coincidentally, this report was issued three days before the outbreak of protests in Lhasa and other ethnically Tibetan areas of western China. Criticisms from international human rights activists of the Chinese government's subsequent crackdown elicited a public relations offensive with the regime boasting of the human rights *triumphs* of its half-century presence in Tibet. In the days and weeks after protests began, Beijing issued numerous press releases that cited double-digit growth in net income of Tibetan farmers,[71] investments to protect Tibetan culture heritage,[72] ecological conservation efforts,[73] and major infrastructure projects.[74] On 18 March, at the peak of international attention to the protests and government crackdown, Premier Wen Jiabao announced that China would ratify the UN Convention on Civil and Political Rights.[75] Like the numerous press releases lauding China's Tibet policy, the announcement made no mention of the protests and growing criticism.

The Chinese government's message to its domestic and foreign critics is clear: we will happily talk about human rights, but only on our own terms. China has used human rights language so often that everything – and thus, nothing – is a 'human rights issue'. In redefining human rights, the government has employed a strategy common in recent history. It has re-imagined concepts like democracy (for example, heralding its adoption of democratic elections in the Party and local government officials) and co-opted issues like environmentalism (for example, securing the 2008 Olympics under a banner of 'green games').

Its engagement of the human rights issue suggests that the Chinese government does, in fact, care about its international image. But Beijing is also strategic in maintaining and improving upon it. Same-sex marriage makes for an ideal issue for the government to use strategically because there is, in fact, very little domestic pressure for such a law; it carries with it minimal cultural and political costs; and is one of the few gestures that China's loudest human rights critics are slow to make themselves. At first glance, promulgation of a same-sex marriage law from above is a win-win for the state and social actors. The government would gain a rare opportunity to increase its human rights bona fides and LGBT citizens would obtain a key civil right.

[70] Cuba has previously taken a similar route. From his hospital bed in 2007, Fidel Castro took the time to criticise the West, and US in particular, for its inadequate attention to climate change. *Associated Press* (9 September 2007).
[71] *Xinhua* (18 March 2008).
[72] Ibid. (26 March 2008).
[73] Ibid. (28 March 2008).
[74] Ibid. (1 April 2008).
[75] Ibid. (18 March 2008).

Same-sex marriage as a costly benefit to society

To be sure, international norms can mean different things to different domestic actors.[76] Policies developed at an international, or even national level, and then implemented at a local level do not affect people similarly. The problem with most arguments of instrumental norm adoption – including that which I posit in this article – is that there is typically inadequate examination of the effect that norm or policy adoption might have on members of society, especially those at which it is explicitly targeted.[77] Having argued that the political and cultural environment would not be overly hostile to same-sex marriage and that the government might perceive benefits from promulgating it, I now explore the effect of a same-sex marriage policy in China, drawing particular attention to the benefits and costs to LGBT citizens and activists.

Because same-sex marriage is still new, empirical evidence about its impact on societies is limited and inconclusive. However, based on interviews of activists in China and previous studies conducted elsewhere, I theorise three potential outcomes of a same-sex marriage law in China (stark and overdrawn as they may be): first, it will be implemented and have a positive impact on the lives of LGBT citizens; second, it will be promulgated by the centre, but not implemented at the local level, providing no real gain for the LGBT community; or third, it will be implemented, but have a net-negative impact on LGBT citizens and activists.

If the state promulgates a same-sex marriage policy, even out of instrumental motivations, the literature on the strategic use of human rights norms gives reason to be hopeful that this will have a net-positive effect in China. Hafner-Burton and Tsutsui argue that, while the legitimisation of human rights initially can lead to an increase in human rights abuses, it will embolden global civil society to improve the government's human rights record. Having been granted new legitimacy, local activists will mobilise around treaties and pressure for the improvement of human rights.[78] Subotic argues that domestic actors (for example, government officials) can sometimes be expected to comply with international norms due to motivation by local issues that are different from, if not completely contrary to the intent and spirit of the norm. She suggests that norms dealing with social order – including sexual equality – are more commonly 'substantively resisted but instrumentally complied with' than more narrow issues because they are harder to actually implement on a broad level.[79]

From a civil rights perspective, same-sex marriage policies are generally seen as a 'good thing'.[80] In China, such a policy could send a clear message on the legal status of homosexuals to government officials and the general public. Although homosexuality is not illegal in China,[81] activists continue to report cases of

[76] David Strang, and John W. Meyer, 'Institutional Conditions for Diffusion', *Theory and Society*, 22:4 (1993), pp. 487–511.
[77] A possible exception in the literature is Subotic, who argues that the strategic use of norms serves to de-legitimise it, dulling what was once a 'sharp instrument' (2007).
[78] Hafner-Burton and Tsutsui, 'Human'.
[79] Subotic, 'Domestic'.
[80] See, for example, Jonthan Rauch, *Gay Marriage: Why it is Good for Gays, Good for Straights, and Good for America* (New York: Macmillan, (2004).
[81] Although nearly all interviewees cited 1997 as the year the government 'legalized homosexuality' this is a simplistic and somewhat misleading characterisation of the state's policy. Homosexuality has

discrimination in the private and public sector. Members of the LGBT community see themselves and their sexuality as occupying a 'legal gray area'. In interviews, activists agreed that a policy legalising same-sex marriage would serve as the most unambiguous statement of homosexuals rights by China's political centre to date. Some are hopeful that same-sex marriage could discourage anonymous sex and decrease the spread of HIV/AIDS, as well as put an end to 'sham marriages' (closeted gay men or women marrying straight partners unaware of their true sexuality) and the physical and emotional abuse that can come with them.[82]

Alternatively, same-sex marriage may have no discernible impact at all. Neumayer argues that in non-democratic polities with weak civil society, human rights treaties have little effect.[83] But a scenario where the policy would have little effect might have less to do with a small civil society sector and more to do with the decentralised nature of policy implementation in China. The top-down nature of policy-making means that the role of social actors – like LGBT activists – is considerably marginalised. It can also mean that when the state is resolved to promulgate a policy, it can do so quickly; one LGBT leader, optimistic about the prospects of same-sex marriage, made a similar point.[84] However, interests at the local level often interfere with the implementation of well-meaning central government policies.[85] Activists are not entirely convinced that they could pursue a marriage certificate from local officials even if it is passed by the central government. Regardless of the fact that there might not be an institutionalised resistance to homosexuality, a same-sex marriage law would be hard to enforce at all levels.[86]

Finally, same-sex marriage could, paradoxically, have a net-negative impact on the lives of gay and lesbian citizens and LGBT activism. To the extent that civil society is discussed in the strategic norm adoption literature, human rights treaties are generally assumed to help create a stronger civil society, if not immediately then in the long-run. While Hafner-Burton and Tsutsui believe instrumental norm adoption might embolden civil society, I argue that it could dishearten it. It is not

never been explicitly illegal since the founding of the People's Republic of China in 1949. In 1957, the Supreme Court ruled that consensual sex between same-gender adults was not criminal. B. C. Zhang and Q. S. Chu, 'MSM and HIV/AIDS in China', *Cell Research*, 15:11–12 (2005), pp. 858–64. However, homosexual men were still arrested by local police under Article 106 of the Chinese Criminal Code that prohibited general 'hooliganism' (Fangfu Ruan, *Sex in China: Studies in Sexology in Chinese Culture* (New York: Plenum, (1991). The Ministry of Public Safety made some efforts to protect the rights of gay men and women by reiterating the 1957 ruling in 1993 but it was not until 1997 that 'hooliganism' was deleted from the criminal code. Therefore, this date has become widely used as a proxy for the 'legalization' of homosexuality in China.

[82] LGBT activist interviews: Kunming, China (13 August 2007); Chengdu, China (14 November 2007); Chengdu, China (15 November 2007); Beijing, China (17 December 2007). One well-connected gay activist suggests that a gay marriage law could be legally required to help curb the spread of HIV/AIDS, noting that gay men who marry women and continue to have gay sex is the main reason that AIDS will continue to spread in China. An article published by the state-run news agency cited one of the most prominent Chinese academics on homosexuality and HIV/AIDS making the same argument. *Xinhua* (20 March 2009).

[83] Nuemayer, 'Do International'.

[84] LGBT activist interview, Chengdu, China (14 November 2007).

[85] Hildebrandt, *Forging*. As an example, in interviews several activists noted that the central government promulgated a law to prohibit employment discrimination against people with Hepatitis B but infected individuals continue to be fired when their status becomes known to their employers.

[86] Interview with LGBT activists: Beijing, China (11 October 2007); Chengdu, China (15 November 2007); Kunming, China (27 November 2007); Kunming, China (29 November 2007).

just that the norm will have no salience when civil society is weak, as Neumayer argues. Rather, the promulgation of a same-sex marriage policy might actually further weaken civil society because laws imposed from above carry heavy opportunity costs for activists. Social movement literatures are particularly helpful in making this point and filling the gap in the strategic norm adoption literature.

Early social movement scholars distinguished these groups from bureaucracies by noting that their lifespan was not finite. Once society or policy begins to reflect the goals of the organisation, the purpose of the organisation ceases to exist.[87] In his seminal piece on the struggle for civil rights in the US, Chong explained that the movement collapsed largely because it did too well.[88] When goals are achieved, social movement actors must complete the difficult task of creating new and attractive goals to sustain the movement. Without doing so, the movement will end. Some have argued that, in being very responsive, governments can effectively (and not always purposely) co-opt social movements. This reasoning was behind a controversial article that declared the end of environmentalism in the US.[89] A similar argument is made about environmental movements in Britain and Germany. Once these governments adopted the movement ideals, their power dissipated. Some activists even declared the fight for the environment won and called for an end to the organisations.[90]

Tarrow defines social movements as 'sustained challenges to powerholders in the name of a disadvantaged population living under the jurisdiction or influence of those powerholders'.[91] What happens when the powerholders move to diminish this disadvantage? Gamson offers a useful framework to understand this phenomenon. He categorises social movement success as both acceptance (measured by media standing) and new advantages (understood as new benefits defined by the movement).[92] A *full response* occurs when both are achieved, a *collapse* when neither are gained, *co-optation* when groups receive acceptance but no advantages, and *pre-emption* when the new advantages are extended but no acceptance. The imposition of a progressive law from above, like same-sex marriage, might be best characterised as a case of pre-emption: social actors are granted the benefits of a policy without being mobilised or accepted as a group.

One of the most prominent LGBT activists in China opined that since homosexuality was legal in China, same-sex marriage was the only remaining issue around which groups might come together and form a national rather than just a localised movement.[93] It has the potential to serve as a key rallying point for groups to increase their ranks, and sustain themselves beyond the time when HIV/AIDS becomes more generalised or less problematic (as it has been in the US) and groups move on to other issues. A same-sex marriage law in China, imposed

[87] Zald and Ash, 'social'.
[88] Dennis Chong, *Collective Action and the Civil Rights Movement* (Chicago: University of Chicago Press, (1991).
[89] Michael Shellenberger and Ted Nordhaus, 'The Death of Environmentalism', *Grist Magazine* (13 January 2005).
[90] Marcel Wissenburg and Yoram Levy (eds), *Liberal Democracy and Environmentalism: The End of Environmentalism?* (New York: Routledge, (2004).
[91] Sidney Tarrow, 'Social Movements in Contentious Politics: A Review Article', *American Political Science Review*, 90 (1996), p. 874.
[92] William Gamson, 'Social Movements and Cultural Change', in Giugni, McAdam, Tilly (eds), *From Contention to Democracy* (New York: Rowan & Littlefield, (1998).
[93] LGBT activist interview, Hong Kong, China (15 October 2007).

by the state, would eliminate a major issue around which the nascent LGBT civil society sector could coalesce, as in the case of HIV/AIDS activism and the travel ban noted at the beginning of this article.

To support the argument that same-sex marriage is an issue around which activists could (or would) unite, I now re-examine attitudes towards the policy among gays and lesbians. As noted above, a nationwide survey of LGBT activists shows that same-sex marriage is low on their list of priorities. Although most civil society groups are not engaged in any significant same-sex marriage activities, they do have opinions on it; due in part to their high use of Internet for organising and information collection, LBGT activists are well aware of the same-sex marriage work of NGOs in other polities. Among activists, attitudes towards same-sex marriage generally fall into two categories: those who support a policy because they believe it will bring the community much needed social stability and those who believe that with no change in the overall social environment, same-sex marriage would do little to improve the lives of LGBT Chinese.

While pro-same-sex marriage activities at the grassroots level are rare, they do exist. To coincide with the NPC and CPCC, a group of gay and lesbian groups in major Chinese cities launched a signature campaign to support the efforts of Li Yinhe.[94] On 14 February 2008, a group of LGBT activists from Beijing joined together for their second annual Valentine's Day same-sex marriage event. During the event, activists characterised marriage as a 'human right', pointing out that other countries have already extended the right to gays and lesbians and optimistically suggested that China could be next. The nearly 30 activists, primarily lesbian women, handed out roses to pedestrians on a busy Beijing street.[95] Each flower was wrapped with a flyer asking recipients to support same-sex marriage and listing countries that already have similar policies.[96] In 2009, the group's Valentine's Day activities went one step further: several same-sex couples gathered on a busy pedestrian mall in Beijing to hold mock weddings. The event drew many onlookers but no negative response from other pedestrians or nearby police who kept a watchful eye on the activities.[97]

Although this recent activity represents more prominent displays of advocacy, these lesbian activists, like most other NGOs in China, have moderated their tactics given the closed political environment. Indeed, these activities are quite tame in comparison to those employed by groups like ACTUP in more open polities

[94] LGBT activist interview, Beijing, China (17 December 2007).

[95] Although the number of gay men NGOs far outstrips lesbian organisations, the latter have devoted considerably more attention to issues like human rights, discrimination, and same-sex marriage than the former. This variation is primarily due to differences in organisation funding. Gay groups enjoy far more funding than lesbian groups, but these monies are almost all intended to support HIV/AIDS-related activities. So while lesbian groups are not flush with cash, they are freer to work on a larger portfolio of issues, including same-sex marriage (Hildebrandt, *Forging*).

[96] Participant observation, Beijing, China (14 February, 2008). Pedestrian reactions provide more support to arguments above about culture: the worst reaction was when a pedestrian returned the rose after being told why they were given out, while most graciously accepted the rose and listened politely (support or ambivalence), while one retiree was curious, having never heard of homosexuality (ignorance).

[97] This most recent gathering attracted a significant amount of international media attention. These accounts treated the situation with awe, expressed surprise that it was not shuttered by the government, and suggested that the LGBT community was launching a broad-based campaign for same-sex marriage. Based upon my extensive interaction with members of the community, I disagree with this last suggestion.

such as the US.[98] Even more importantly, to the extent that these activities are addressing the general public or policy-makers, they focus on marriage, not sexuality. Because the former does not hold much resonance in society anyway, it is decidedly easier to address than the latter.

Even in liberal democracies, evidence suggests that the implementation of same-sex marriage laws could contribute to the end (or weakening) of the broader movement for gay rights. In Autumn 2006, the Czech Republic adopted a new policy that, while stopping short of calling it marriage, offered registered partnerships for same-sex couples, alongside many of the rights and privileges extended to heterosexual couples through state-sanctioned marriage. The leader of the Gay Initiative group that pushed for the policy over nearly 17 years relished the victory; although he acknowledged that not all of the group's goals were accomplished, its overall priorities had been achieved. Thus, just months later the group shut its doors. The leader explained that the new policy signalled 'the logical conclusion of [its] activities'.[99] Similarly, in February 2008, the Religious Coalition for the Freedom to Marry in Massachusetts ceased its operations even while acknowledging that significant barriers to gays and lesbians remained. Although other groups remain in operation, the conclusion of activities upon meeting movement goals suggests that the growth of civil society can be stunted in light of a great success. Such effects are even more important in non-democratic polities were civil society tends to be weak and social group power limited.[100]

But will same-sex marriage necessarily mean an early end for LGBT activism in China? By giving the LGBT community an inch, what is to say they will not take a mile? While this is a reasonable expectation, it is important to note that same-sex marriage represents the very pinnacle of rights for most LGBT activists. In the cases noted above, when groups felt as though they have little more to do, they simply disbanded. Thus, although marriage rights might be the first significant win, it is not just an inch, but very much a mile. The implication for China – or any authoritarian context for that matter – is that if the state wishes to keep LGBT groups from further growing and empowering civil society, it could extend limited rights to appease the community, provoking current groups to fold and future groups little reason to emerge at all.

An obvious and important question could still be posed: So what? If a same-sex marriage law is promulgated in China and these groups achieve a pinnacle right, why is a sustained LGBT movement engaged in public discourse and contestation necessary anyway? First, the loss of any social movement is a loss for civil society at large, as it can diminish the prospects of democratisation. Second, by implementing a law from above, society can lose the opportunity for important conversations about homosexuality and the development of new norms. This could allow the state to pre-empt conversations about discrimination, family pressure,

[98] Josh Gamson, 'Silence, Death, and the Invisible Enemy: AIDS Activism and Social Movement "Newness"', *Social Problems*, 36:4 (1989), pp. 351–64.

[99] 'New Era for Gay Rights Movement', *The Prague Post* (10 January 2007).

[100] Recent events in the US raise an intriguing counter-factual. What happens when rights are not given, or given but then rescinded? If the passage of Proposition 8 in California is any indication, the loss of rights can lead to greater mobilisation that existed even before the right was extended. In response to the referendum's success, new groups have emerged and there has been a re-doubling of efforts. Thus, when rights must be fought hard for, activism will increase; in a place where civil society is still fledgeling, like China, this fight for rights is necessary for it to become stronger.

and procreation, issues that are of greater concern to LGBT citizens than marriage.[101]

To fully understand the impact of a same-sex policy in China, we must also explore the cultural relevance of it. Legal state marriage may not solve more vexing problems like family and social pressure; it might even exacerbate them. The vast majority of the activists I interviewed highlighted the strength of family and social pressure on gays and lesbians to produce grandchildren. Under the one-child policy, gay and lesbian children are the only option for parents to have grandchildren.[102] A same-sex marriage policy might not relieve this particular social pressure. In fact, many informants fear that it would cause more tension between parents and their children.[103] One activist suggested that because laws are not easily implemented at a local level, and due to lingering attitudes against gays, it is entirely possible that if someone takes advantage of legalised same-sex marriage they could lose their jobs. Pressures are so great, even most LGBT activists do not foresee taking advantage of a same-sex marriage law.

Finally, the effect of same-sex marriage on the lives of LGBT Chinese might also be blunted by the fact that marriage in general is not as culturally-weighty an issue as in other countries. In fact, I argued above that this policy would be possible in China largely *because* marriage lacks cultural resonance. This might also mean that the struggle for and achievement of same-sex marriage rights in China could carry with it far less meaning than that in Western countries.

Thus, contrary to the claim made at the end of this article's first section, same-sex marriage in China might not be a win-win proposition. The policy would more effectively address the government's reputational concerns than improve the lives of LGBT citizens. This discussion points to a clear limitation to the power of such legislation and highlights the difference between instituting same-sex marriage and actually challenging issues of sexuality. In essence, promulgation of a same-sex marriage law from above would amount to skipping over an important normalisation process. It could rob society of the opportunity for confrontation, contestation, and internalisation of more fundamental issues of sexuality.[104] Only

[101] Along similar lines, advocating for and achieving particular rights rather than general human rights might also degrade the virtue of the entire right. Dousinzas argues that individual passage of certain rights lends itself to a phenomenon that 'the more rights I have, the smaller my protection from harms'. Costas Dousinzas, 'The End(s) of Human Rights', *Melbourne University Law Review*, 26 (2002), p. 445. Proposed legislation in Hong Kong to end discrimination against homosexuals was derided by critics along similar lines. They argued that the law would threaten rights of free expression, penalising people for disagreeing with homosexuality, undercutting civil liberties. *The Standard* (23 May 2005).

[102] No interviewee entertained the idea of having children with their same-sex partners; they are doubtful that they could pursue this option legally.

[103] Aside from affecting individuals, it could also cause anger with the state for passing both a law that prohibited them from having an 'heir and a spare', and a law that essentially validated their child's homosexuality, thereby leaving them without any grandchildren.

[104] At the state level, confrontations with sexuality have occurred in other contexts; it can even be used for political purposes. Irr notes that 'homosexuality was not generated entirely from within the same-sex community' but the result of an 'array of political and policing strategies' (Caren Irr, 'Queer Borders: Figures from the 1930s for US-Canadian Relations', *American Quarterly*, 49:3 (1997), p. 525), while Altman foresees the possibility that many countries will build a nationalist version of homosexuality in Asia. Dennis Altman, 'Rupture or Continuity? The Internationalization of Gay Identities', *Social Text*, 14:3 (1996), pp. 77–94. In China, Cui has noted that sexuality has become a dominant narrative of nation building. Shuqin Cui, *Women Through the Lens: Gender and Nation in a Century of Chinese Cinema* (Honolulu: University of Hawaii Press, 2003). Oswin argues

through this process is it likely that notions of family might be transformed, social pressure on LGBT citizens diminished, and broader conceptions of sexuality internalised.

Conclusion

As I showed in this article, domestic pressures for same-sex marriage are largely non-existent in China. LGBT activists have not yet mobilised around this issue. Instead, they are more concerned with pressing short-term concerns: from health matters (for example, preventing HIV/AIDS) to the social concerns (for example, creating new forums for homosexuals to meet and interact). Even if the demand for gay rights increased, the state would have little reason to actually capitulate to such calls for equality because those voices are weak. But this assumes that a state's implementation of this kind of domestic policy would only come in response to the desires of its citizenry.

The state might find other reasons to promulgate a same-sex marriage policy. I have suggested that the Chinese government could take advantage of a largely ambivalent attitude toward homosexuality and legalise same sex marriage in order to rebuke foreign criticism of its human rights record. By extending gays and lesbians the right to marry their same-sex partners, China could place a prominent feather in its otherwise empty human rights cap. Finally, I made an important qualification that a policy change such as this has recursive effects on future political organising. Though seemingly progressive, this law could circumscribe the development of gay and lesbian mobilisation in China. Moreover, by instituting the law from above, society will lose the opportunity to confront issues of sexuality and while same-sex marriage might exist on the books, lingering family and social pressures towards gays and lesbians will remain.

This article also offers an important contribution to our understanding of how progressive policies, like the development of same-sex marriage, might emerge in non-democracies. Human rights issues are traditionally viewed in a linear, teleological way; the improvement of human rights is usually predicated on democracy, and assumes a natural hierarchial progression of one right to another. This might be a more effective way of guaranteeing that rights are upheld, but is not how rights are always granted. Moreover, norms and laws should not be conflated. In the case of same-sex marriage, there is no norm emerging, in China. Skipping past norms by implementing a law from above does not always improve the lives of those presumed to be beneficiaries. In advocating for marriage rights in the US, activists believe that because it is a vaunted institution, gaining the right is all the more meaningful; but if the institution does not carry such resonance, the meaning of the right – and the implications of receiving it – is minimal as well.

that the push for inserting sexual orientation into South Africa's post-apartheid constitution was done so by new minorities in the government who feared a general backlash on all non-majorities; it was also a key part of the country's effort to create its image as a champion for human rights, not a violator of them (Oswin, 'End').