

## *Judicial Governance of “Fake Divorce” with Chinese Characteristics: Practical Rationality of the Chinese Courts in the Transitional Period*

Lidong Cai and Yingcheng Qi

### **Abstract**

“Fake divorce” is a phenomenon unique to China that reflects the difficulty of harmonizing the social governance model under traditional familism (家戶主義 *jiahuzhuyi*) with the trend toward individualization during Chinese society’s transition from a planned to a market economy. That difficulty and the absence of regulatory rules leave room for the Chinese courts to innovatively interpret prevailing laws/regulations and create judicial rules by exercising their own discretion. By analyzing the role the courts have played in adjudicating fake-divorce-related disputes as well as the relationship between the judicial system and overall political system, this article reveals their role in modernizing Chinese society during the transition period. It argues that although judicial power remains embedded in the sociopolitical system, the courts are to a certain extent softening the contradiction between rigid policies and practical realities through the innovative exercise of judicial rationality. In sum, the general approach adopted by the Chinese courts in dealing with fake divorce disputes represents a rational choice based on the exercise of limited judicial resources and measures rather than a mechanical application of laws or rigid implementation of government policies and goals.

---

**Lidong Cai** is a Professor, Yangtze River Scholar, Dean of the Law School, and Director of the Judicial Data Application Research Center in Jilin University, China. Correspondence should be sent to [caild@jlu.edu.cn](mailto:caild@jlu.edu.cn).

**Yingcheng Qi** is a PhD candidate in the Law School of Jilin University.