

Re-examining the Impact of the 1950 Marriage Law: State Improvisation, Local Initiative and Rural Family Change

Neil J. Diamant

Many peasants misunderstand the Marriage Law. They blindly emphasize that the Marriage Law “liberated” them. This is the case for some women in particular, who have become very unconventional and dissolute in their sexual relations. They have several partners at once, and often switch among them, choosing whichever man appeals to them on that particular day. They also recklessly flirt with many men.¹

We [provincial authorities] demand the basic-level cadres desist from monitoring adultery and sex, forcing confessions, humiliating and tying people up, hanging, beating, and organizing struggle sessions [against women seeking divorce].²

This article examines the consequences of one of the most dramatic efforts ever by a state to change the “traditional” family into one more suited to the “modern world” and to a particular political ideology: the PRC’s Marriage Law (*hunyin fa*) of 1950. As evident in the above reports, the Marriage Law resulted in a number of unsettling and unanticipated changes for state and society alike. As much as the state sought to “liberate” women from the shackles of what it deemed “feudal oppression,” some officials were clearly dismayed and critical of the way some women took advantage of their new freedoms. Reports suggesting that the new liberties enshrined in the law resulted in a rash of libertine sexual behaviour among rural women (such as “serial flirting”), however, were not the only kind filed to higher-level authorities. As indicated in the second epigram, rural women seeking to divorce or marry someone of their own choosing might pay a high price for their actions; many were intimidated or beaten, and not a few were murdered during the course of the campaigns to implement the Marriage Law in 1950–51 and 1953. At issue is not so much the existence of mixed reactions to the law; this could hardly be expected to be otherwise given its scope, scale and complexity. Rather, of greater relevance are the questions these epigrams raise regarding state–family and gender relations. If women were in fact taking advantage of the state-promulgated Marriage Law to “flirt” and then criticized by this same state for such behaviour, should one emphasize the law’s emancipatory effects or state conservatism and lack of commitment to the changes it unleashed? Furthermore, how should the role of the state in enforcing the Marriage Law be conceptualized if one layer of it – “lower” level cadres – were apparently preoccupied with catching adulterers red-handed, while another – provincial officials – were perturbed by this phenomenon? Was the state representative of patriarchal authority or a force of change? Finally, evidence shows that

1. Yunnan Provincial Archives (YNA) 87–1–82 (1953), p. 47.

2. YNA 103–1–45 (1952), p. 149.

central authorities called off further campaigns to implement the Marriage Law after 1953. Does this suggest that they were never really serious about enforcing the law because they identified with the plight of rural men whose wives divorced them, or that they simply compromised to avoid further disorder?

Previous research on the Marriage Law and state–family relations in the PRC have rendered unequivocal judgements concerning the state’s intentions and modus operandi with regard to the enforcement of the Marriage Law, and the law’s impact on society over time. For the sake of simplicity, this is here called the “conservative betrayal” thesis. Reacting against state propaganda supposedly demonstrating that the state “liberated” women, scholars whose views have shaped what can be termed the “conventional wisdom” about it,³ have argued that the post-1949 Chinese state was never really serious about improving the lot of women. Once the state decided to backtrack from the mass campaigns to enforce the law its impact on society ceased. In addition, because of the resistance of local officials and male domination of property, the Marriage Law failed to render significant changes to rural family relations, succeeding only in the more cosmopolitan cities. State neglect, patriarchal attitudes and the lack of sustained, proactive enforcement allowed rural patriarchy to re-establish itself with vigour after the law’s demise in 1953. At least from a legal perspective, the state left women in the lurch.

Such views, while certainly not universal, are best reflected in the works of four American scholars, Kay Johnson’s *Women, the Family and Peasant Revolution in China* (1984), Margery Wolf’s *Revolution Postponed: Women in Contemporary China* (1985), Phyllis Andors’ *The Unfinished Revolution of Chinese Women* (1983) and Judith Stacey’s *Patriarchy and Social Revolution in China* (1985), although scholars working on state–family relations in rural China not focusing on women have largely agreed with their conclusions. How to explain the impact of these works (as opposed to different studies by C.K. Yang’s *The Family in the Communist Revolution* (1959), Marius Meijer’s *Marriage Law and Policy in the PRC* (1971) or Delia Davin’s *Women-work: Women and the Party in Revolutionary China* (1979) which reach different conclusions) is beyond the scope of this article, but it is worth pointing to three possible causes: these books addressed the concerns of feminist theory, were guaranteed a high profile by publication with prestigious presses, were all published in paperback, and, most importantly, were frequently assigned for classes whose subject matter covered “Chinese women,” “women and development” or “gender in China” – not a negligible market in the United States. In contrast, Meijer’s meticulous study of the Marriage Law and subsequent family policies was published by a smaller

3. Challenging “conventional wisdom” is always a difficult task given that it is rarely chronicled in same way as an argument associated with a particular individual. My argument that there is a conventional wisdom concerning the law is based on conversations with junior and senior faculty whose research had nothing to do with the Marriage Law, women or even rural society. Most mentioned the works to be discussed below.

press, was largely atheoretical and never came out in a paperback edition.⁴ It should also not be understood that these authors agree on all points; Wolf and Stacy, for instance, disagree on whether the CCP intentionally encouraged patriarchy,⁵ and Stacy and Johnson offer different interpretations of the initial radicalism of the Marriage Law campaign of 1950.⁶ Today, one is hard-pressed to find a reference to the 1950 Marriage Law that does not cite one or several of these works.⁷ Moreover, since their publication there has been virtually no new research on the impact of the law. During a period when not a few theses in the China field have come and gone, the conservative betrayal thesis concerning the impact of the Marriage Law has remained amazingly resilient.

Let us look at this thesis in greater detail, beginning with the primary cast of characters involved in the law's life and death. According to the conventional wisdom on the Marriage Law, its implementation was essentially a struggle between forces of progress against those of reaction. Representing the former were "marriage reformers," mainly urban-educated, cosmopolitan women who participated in the CCP's struggle for power ("Yanan feminists") and who later occupied key posts in the government, as well as urban intellectuals and workers.⁸ Lined up against the law were high-level male officials whose "cultural lens" was that of "patriarchy,"⁹ and "local cadres," presumably village and township officials. "Marriage reformers" were motivated to reform the family owing to their exposure to the liberal currents of the May Fourth Movement of 1919.¹⁰ High-level male officials, in contrast, were far more interested in ensuring stability and protecting the interests of their male peasant constituency than fighting for the rights enshrined in the law, which were widely thought of as benefiting women. Rural cadres, for their part, were almost uniformly opposed to the law because they feared losing "their" women to divorce, property that women might take with

4. See, for instance, Ann Anagnost's recommendations for books and articles for courses dealing with gender in China. Her list includes many of the "classics" on Chinese women by Andors, Croll, Diamond, Honig, Johnson, Stacey and Wolf, but does not mention books by Meijer or Yang. On the subject of "Women and Revolution," she writes that "since the 1970s, a number of studies have used documentary evidence to evaluate the degree to which the Chinese revolution has fulfilled what Western feminists had always assumed to be its radical promise to women. These studies all focus on the issue of how patriarchal structures have been reproduced and even strengthened under socialism." Oddly, Anagnost does not criticize these works for their Western bias, although they took as their starting point "what Western feminists had always assumed" about the revolution. See her "Transformation of gender in Modern China," in *Gender and Anthropology: Critical Reviews for Research and Teaching* (Washington, D.C.: American Anthropological Association, 1989), pp. 313–342.

5. Margery Wolf, *Revolution Postponed: Women in Contemporary China* (Stanford: Stanford University Press, 1985), p. 25.

6. Judith Stacey, *Patriarchy and Socialist Revolution in China* (Berkeley: University of California Press, 1983), p. 181.

7. See for instance, Ellen Judd's excellent study, *Gender and Power in Rural North China* (Stanford: Stanford University Press, 1994), pp. 167, 213; Christina Gilmartin, Gail Hershatter, Lisa Rofel and Tyrene White (eds.), *Engendering China: Women, Culture and the State* (Cambridge, MA: Harvard University Press, 1994), introduction.

8. Kay Anne Johnson, *Women, the Family, and Peasant Revolution in China* (Chicago: Chicago University Press, 1983), pp. 115–17, 122–23.

9. Wolf, *Revolution Postponed*, p. 260.

10. Johnson, *Women, the Family, and Peasant Revolution*, p. 224.

them and their status in the village. Unable to block the Marriage Law's legislation and the campaigns designed to enforce it, they did their utmost to minimize its impact.¹¹ According to these works, they were successful. According to Wolf, the law was "ill-fated" and the conservatives "successful";¹² Johnson writes that "the Party ... quickly retreated in the face of the conflict and traditionalist resistance that arose" led by rural cadres who "could hardly be expected to jeopardize their most important working relationship in the village in order to push for reforms which the government itself was unwilling to support."¹³ Women who sought to divorce on the basis of the Marriage Law soon found that there was no state institution willing and able to help them: "the official to whom they must first apply was a local cadre and as such either a relative or friend of several generations to the husband's families [and] the mechanisms for getting around such a roadblock were usually too complex for illiterate, inexperienced women," Wolf argues.¹⁴ Likewise according to Judith Stacey, during the Marriage Law campaign "cadres sympathetic to the men handed down decisions that denied divorce to women, at times ordering them to be more enslaved to their marital homes than they had been before they petitioned for release."¹⁵ Neither could rural women expect much help from their own families since they "belonged" to their husbands' families after marriage. A strong connection to natal families, Wolf contends, exists almost exclusively in urban, not rural, families.¹⁶

High-level officials on the one hand and rural cadres on the other have thus been the primary suspects in the demise of the Marriage Law as a force of change. In these postmortem analyses, however, such officials are said to have had several accomplices. Among these, suspicion has fallen most heavily upon older women. These women, according to Johnson, "resisted the introduction of the new marriage and family practices." They viewed the restoration of central authority under the CCP, she argues, as an opportunity to "reknit secure family relationships" after years of hardship, war and insecurity, rather than as an opportunity to pursue, or at least support, change. Moreover, after enduring hard lives as young daughters-in-law in their husbands' families, older women were finally in a position of power and thus opposed a law that would give their subordinates more rights. Finally, Johnson builds upon Margery Wolf's earlier work claiming the existence of a "uterine family" consisting

11. *Ibid.* p. 222.

12. Wolf, *Revolution Postponed*, pp. 20, 25.

13. Johnson, *Women, the Family, and Peasant Revolution*, p. 222.

14. Wolf, *Revolution Postponed*, p. 164. According to Judith Stacey, during the Marriage Law campaign "cadres sympathetic to the men handed down decisions that denied divorce to women, at time ordering them to be more enslaved to their marital homes than they had been before they petitioned for release" (p. 181).

15. Stacey, *Patriarchy and Socialist Revolution*, p. 181.

16. Wolf, *Revolution Postponed*, pp. 1-2. Other scholars of women have made similar arguments. Susan Mann, for example, argues that, "Weak ritual ties with her natal family and the unacceptability of a return to her natal home forced the bride into near-complete dependency on her husband's family." See "Widows in the kinship, class, and community structures of Qing Dynasty China," *Journal of Asian Studies*, Vol. 46, No. 1 (February 1987), p. 44

of herself and her children (especially the son) to explain why older women opposed the law: “an arranged blind marriage and the traditional daughter-in-law’s lowly status helped protect the crucial mother–son bond from the potential threat of a strong husband–wife bond or a strong-willed daughter-in-law striving to establish her own independent uterine family ... The Marriage Law threatened not only patriarchal power, but, inadvertently, older women’s uterine families as well.”¹⁷ This constellation of forces – the “new democratic patriarchy” at the top, “traditionalist” rural officials below, together with conservative older women (and men) – was strong enough to defeat the reformists’ efforts.

In addition to this line-up of heroes and (mostly) villains, the works on the Marriage Law are also in basic agreement about its “timeline.” The overture to the 1950 law was heard and seen during earlier efforts to introduce changes to “traditional” family structure, when the CCP was located in its base areas in rural China. In the Jiangxi Soviet period and again during the Yanan period, the party used the Marriage Law to draw women into its ranks, only to rescind these rights as soon as it became apparent that their exercise threatened rural men, particularly Red Army recruits.¹⁸ In the PRC, the reformers’ first offensive was initiated in 1950, with the promulgation of the Marriage Law and its enforcement campaign. Equally important was its unfortunate timing: in 1950 most of rural China was in the process of land reform, which, according to Johnson, “hindered Marriage Law publicity and enforcement during the early months.”¹⁹ The Party, Wolf explains, could not give poor males more power and authority and persuade them to join the ranks of the CCP while at the same time “take away male authority over the other half of society ... the fact that women ‘owned’ land was rendered impotent by the fact that women themselves remained property of men who still could transfer them and their property with a fair amount of ease.”²⁰ An identical conclusion regarding the deleterious impact of land reform is reached by Judith Stacey: land reform policies “salvaged and buttressed the peasant family household under the authority of its patriarchal head as the basic unit of production.”²¹ Between 1951 and 1952, then, further implementation of the law was suspended. But by late 1952 and early 1953, they argue, land reform was basically completed, and this allowed progressives to mount a second offensive – a Marriage Law campaign that would last for a month. This campaign, Johnson argues, was “more extensive, more coordinated and better directed and better prepared for” than the first, with special “Thoroughly Implement the Marriage Law Committees” established outside regular Party channels. However, it was also more conservative: a central directive, “certain to have been noticed by cadres,” ordered that divorce should be considered only in the “small

17. Johnson, *Women, the Family, and Peasant Revolution*, p. 125. Wolf’s argument regarding the uterine family is in her *Women and the Family in Rural Taiwan* (Stanford: Stanford University Press, 1972).

18. Johnson, *Women, the Family, and Peasant Revolution*, p. 55–56.

19. *Ibid.* p. 115.

20. Wolf, *Revolution Postponed*, p. 19.

21. Stacey, *Patriarchy and Socialist Revolution*, p. 126.

minority” of cases.²² Nevertheless, divorce cases rose dramatically in 1953 thanks to the propaganda effort, but also exacted a high price. “The well-documented traditionalist resistance to change still very evident in rural areas,” Johnson concludes, “showed the futility of persisting with political agitation for family change.” The “political-legal apparatus” failed to “support and cultivate reform forces” and this convinced the leadership that further change would only come “with the gradual development of other socioeconomic changes.”²³ According to this literature, the 1953 Marriage Law campaign was the Party’s final effort to change the family through legal means. After 1953, it had no significant impact on rural Chinese society.

Other studies of rural life by scholars who have not specifically focused their research on the Marriage Law or women have largely shared the above underlying arguments and assumptions. In particular, all accepted the notion that proactive state intervention was indispensable to women’s empowerment vis-à-vis their communities, that once the state cancelled further implementation of the Marriage Law in 1953 it ceased to have any further impact, and (following this) that the state is capable of acting in a coherent, unified fashion: once the central authorities decided to reverse course or even issue some policy clarification this decision was effectively and uniformly enforced throughout the administrative hierarchy. For instance, William Parish and Martin Whyte write (in the late 1970s) that after the 1953 campaign, the CCP “placed marriage reform on a back burner.” This, in turn, resulted in the near absence of divorce, and family relations in rural areas were basically “stable”: “Individuals expect, as in the past, to stay married for life, and both the local kinship structures and government policy favor such stability.”²⁴ In other words, because divorce was pushed upon society by the state, once the state let the law slide it was no longer significant in the lives of rural Chinese. Historians Emily Honig and Gail Hershatter repeat Johnson’s argument: divorce, they argue, was “almost nonexistent” in rural areas after 1953 because the state ceased implementation of the Marriage Law.²⁵ The same argument has also been advanced by a prize-winning book on politics in a North China rural county over the course of 40 years. This book, despite its meticulously researched accounts of collectivization, the Great Leap and other rural policies, does not mention the Marriage Law or divorce after the early 1950s. After the 1950 campaign, it argues, “no practical challenge was mounted to the values, practices, and institutions of male supremacy,” a conclusion very similar to that of Kay Johnson.²⁶ Once again, the implicit assumption is

22. Johnson, *Women, the Family, and Socialist Revolution*, pp. 142, 145.

23. *Ibid.* pp. 147–48.

24. William L. Parish and Martin K. Whyte, *Village and Family in Contemporary China* (Chicago: University of Chicago Press, 1978), pp. 159, 192.

25. Emily Honig and Gail Hershatter, *Personal Voices: Chinese Women in the 1980s* (Stanford: Stanford University Press, 1988), p. 206

26. Edward Friedman, Paul Pickowicz, and Mark Selden, *Chinese Village, Socialist State* (New Haven: Yale University Press, 1991), pp. 122, 153, 179. Similar arguments have been made about south China. See Sulamith and Jack Potter, *China’s Peasants: The Anthropology of a Revolution* (Cambridge: Cambridge University Press, 1990), p. 263.

that without an active, top-down challenge, women were not in a position to confront the conservative forces arrayed against them in their villages, and hence divorce and other progressive social changes were non-existent. Overall, then, the law was doomed to failure by some combination of an indifferent or patriarchal state on the one hand, and a male-dominated social structure whose values the regime shared on the other.

This article seeks to adjust this judgement and challenge its underlying assumptions, particularly those concerning rural women's dependence on the state and lack of agency vis-à-vis their families and communities, the internal cohesiveness of the state, and the state's ability either firmly to control or to redirect change once having initiated it. It argues that the Marriage Law was not "ill-fated" in the early 1950s and that it continued to shape family, community and state-society relations throughout rural China in the latter part of the 1950s and into the 1960s, sometimes despite and sometimes because of "traditionalist resistance." The law continued to have impact because it generated changes that were not easily controlled once official policy was reversed, because women were active agents in shaping their own fate, because "the state" was far from cohesive and capable of working in lock-step to prevent challenges from below, and because rights and language once learned are not easily revoked. Nor were those accused with subverting the law's noble and progressive intentions as guilty as charged. Rural cadres, older men and women were not uniformly opposed to the law, and were often unable to mount successful collective action against women seeking to advance their rights and interests. In some cases, these low-level cadres initiated and facilitated divorce. High-level cadres, for their part, were often the most enthusiastic supporters of the law. Land reform, far from being an impediment to the enforcement of the law, shaped its outcome in important, although often unintended, ways. In a larger sense, this article aims to revise the conventional wisdom that rural family relations were "stable" prior to the reforms, and that patriarchy is an all-pervasive institution or ideology holding women down.

As with many revisionist accounts, this one is indebted to new source materials. Unlike previous accounts of the Marriage Law or other PRC family policies which have been based either on official sources, surveys or village studies, the sources that provide the evidential basis of this article are from hitherto closed archives. Together they encompass a wide range of geographical locations and communities – rural north China, rural counties near Shanghai, rural Jiangsu and several locations in Chuxiong prefecture in central Yunnan (a mixed Han, Yi area). Because these data are quite new, perhaps a brief statement of their advantages would be helpful. First, the documents were never intended to be seen by ordinary people, or by people from other government departments. Secondly, most reports did not undergo extensive editing. Because of this, I have not bothered confirming them with newspaper accounts, since the latter are usually heavily edited versions of the far more frank archival reports. In the files there were hundreds of hand-written documents

dealing with marriage, divorce, family disputes, mediation, suicide and other problems affecting the family.

The Law

Before looking at some of the consequences of the law, this section considers its original goals and intentions. Despite its title, the Marriage Law actually went far beyond matters relating exclusively to “marriage.” Not only did it deal with the way marriages were contracted or dissolved, it also put forth a decidedly modernist version of “proper” family structure, based largely on the ideals of individualism, monogamy and “free” choice in selecting marriage partners. It was hoped and expected that such a “liberalization” would eventually result in a more equitable system than the more constricted marriage market under the “feudal” system. The law did not admit to any redeeming qualities in the latter: arranged marriages were assumed to have been against the will of the individual. Nor did the law, in calling to “abolish” what it called an “arbitrary” system, admit to any sort of positive or necessary functions community oversight and arrangements might serve. Relations between generations also came under the law’s purview: children, parents and grandparents were called upon to be “harmonious” and to care for one another. Crucially, the law also broke new ground in the role of the state vis-à-vis the family. Although both Imperial and Republican states had extensive family laws,²⁷ it was only in Communist-controlled areas that prospective couples were ordered to register their marriages (or divorces) at a state institution, and which gave formerly informal legal procedures such as mediation a formal role in the state judicial structure. According to the law, couples were allowed to divorce only after undergoing mediation.

In its vision and rearticulation of state–family relations the Marriage Law of 1950 thus represented an important departure from previous patterns, although not unprecedented. The scope of enforcement was yet another change. Whereas some Imperial regimes promulgated new family laws and heard a wide range of cases, ordinary people still had to initiate legal proceedings. Scholars have differed about the extent of local initiative, but not about the essentially reactive role of the state. In contrast, the CCP demanded mass official and popular participation on a nation-wide scale. This requirement placed many officials in a difficult predicament. The Chinese legal tradition offered them very few specific guidelines for how to deal with problems that only recently were defined

27. There is now extensive literature on the relationship between state law and popular practice in the Qing (less so in the Republican period) thanks to the research of Philip C.C. Huang, Kathryn Bernhardt and their students at the University of California, Los Angeles. See Philip Huang, *Civil Justice in China: Representation and Practice in the Qing* (Stanford: Stanford University Press, 1996); Huang and Bernhardt (eds.), *Civil Law in Qing and Republican China* (Stanford: Stanford University Press, 1994) and Kathryn Bernhardt, “Women and the law: divorce in Republican China,” in the above volume.

as personal, family or community affairs. As one Women's Federation official in Shanghai complained:

There was a saying, "Even upright officials cannot adjudicate family affairs." Today, there are still those who regard marriage problems as "personal affairs." This viewpoint is mistaken. In the past, one man would have two or three women. They would quarrel all the time. The neighbours could not sleep, but no one would come by and ask. Even if someone told an official, he would say, "Aiya! Even upright officials cannot deal well with these matters," in order to dismiss the case in a perfunctory manner. This was because the official himself had three or four wives ... When people were finally motivated to tell him, he would say, "This is a personal matter. It's none of your business" ... Now we have to publicize the Marriage Law and have public trials to convince people that marriage problems are not just personal matters and everyone should care.²⁸

Complicating matters further was the widespread notion that the Marriage Law's primary goal was the liberation of women as a sex, rather than, say, poor women as a class. According to Mao, women's "oppression and suffering" was "far greater than that of men"²⁹ and the law was expected to give them the means to escape from their tragic circumstances, or at least loosen the bonds that held them in their families against their will. Male officials were expected to share this assumption. Furthermore, the assumption that women generally were the ones most in need of liberation blinded framers of the law from considering the possibility that *men* would want to take advantage of it.

Most of the scholarship on the impact of the Marriage Law, or, in a larger sense, the state's power over rural society, has reflected the law's assumptions about coercive power of "feudalism." "Feudal" cum patriarchal forces were most heavily concentrated in rural areas. Cities, by contrast, were more "modern." There was greater affinity between "modern" urban life and the modernist premises of the law. Rural communities, with their insularity, remoteness and male-domination, were an unlikely environment for the seeds of "modern" family change to sprout.³⁰

Given these assumptions it is not surprising to find that analyses of the 1950 Marriage Law have all pointed to its ineffectiveness in rural areas. But if this is case, how can one explain evidence of peasant women taking advantage of the law, not only when special campaigns were mounted but later on as well, when the state's legal attack was supposedly in full retreat?

Exactly Who is "The State"?

Given that the party-state was seen as the biggest hope for the liberation of Chinese women (owing to the power of "tradition") it is

28. Li Rong, "Hunyin shi bu shi 'geren sishi' " ("Are marriage problems personal and private matters?") *Xinwen ribao*, 23 November 1951.

29. See Mao's "Decree regarding marriage," in Stuart Schram (ed.), *The Political Thought of Mao Tse-tung* (New York: Praeger, 1969), p. 337.

30. Johnson, *Women, the Family, and Socialist Revolution*, p. 117.

perhaps not surprising that the state also became the primary suspect in the Marriage Law's demise as a force in rural society when evidence of continuity in marriage practices mounted, and divorce seemed to have disappeared. Given the state's central role, it is necessary to look at how it has been conceptualized in the most influential studies of the status of women in the PRC. In this scholarship, "the state," though never once actually defined, has two dimensions. First, and perhaps most importantly, it is *gendered*; its policies represent the interests of peasant men and soldiers. According to Judith Stacey, the long struggle for power in rural areas resulted in a leadership dominated by military men, and this "military fraternity ... helped shaped a new political culture dominated by new democratic patriarchs."³¹ Secondly, from a structural perspective, the party-state is *dual-tiered*, composed of the (mostly female) enlightened "reformers" and "new democratic patriarchs" above, and the (mostly male) conservative "local cadres" below. These were the cadres who, according to Wolf, were the "roadblock" that "illiterate, inexperienced women" could not circumvent to divorce and whose violent resistance to the law led "the Party" to backtrack on its promises.

Do these assumptions about the state hold water in light of new evidence on the Marriage Law? Was it the case that rural cadres were categorically opposed to this law and were able to prevent rural women from getting a divorce? Did the new democratic patriarchs oppose divorce on grounds of their identification with the plight of rural men as men or some other understanding of shared gendered interests? The answers to these questions all suggest that the conventional wisdom concerning the state's role in enforcing the Marriage Law needs to be modified.

First there is the argument that local or "rural" cadres were able to prevent divorce. The secondary literature on the law is quite clear on this point, emphasizing not only their opposition to central law but also their success in blocking it. Violent resistance led the leadership to conclude that the cost of social change simply outweighed the benefits to women. Admittedly, the reasons suggested in the literature make a good deal of sense. After all, why would village and township officials, some of whom were in kinship relations with village men, act on behalf of young women who were outsiders? Indeed, there is enough evidence to show that such officials were often unsympathetic to women. Certainly the evidence of violence and deaths resulting from the law attest to this resistance. In this respect, previous scholarship correctly identified a likely suspect in the law's premature demise. However, does it logically follow from this that these same officials are equivalent or coterminous with "the Party" in rural areas? What about officials *higher up* the rural administrative ladder? Those appointed to serve in district governments (*qu*) and county (*xian*) officials, for instance, while certainly male and "rural," had a very different relationship to peasant petitioners from their counterparts in villages and townships. In suburban areas there were even more political

31. Stacey, *Patriarchy and Socialist Revolution*, p. 155.

institutions with jurisdiction over marriage and family disputes. Women who worked in cities but still resided in the countryside could seek out urban district and municipal courts, in addition to those in their rural area. Michel Oksenberg,³² among others, wrote extensively about these layers well before the publication of the works of Johnson, Wolf, Andors and Stacey, but in these latter works the additional layers of the party-state are either ignored or simply assumed to have shared the same antagonistic relationship to divorce petitioners as their village and township colleagues. As a consequence, the Party's structure and motivations are overly simplified.

As it turns out, rural Chinese women quickly became aware of the importance of higher-level authorities, despite their alleged illiteracy and inexperience. Many encountered violent resistance at the hands of village and township officials, as rightly noted in the secondary literature, but many were actually *sent* to court and districts by these same cadres. To see how this might happen, several important features of the party-state in rural areas should be kept in mind. First, prior to the Communist Revolution many village officials were poor, young and uneducated, and achieved a measure of political status largely owing to their participation in land reform and other political movements.³³ Secondly, prior to 1949, many disputes in villages were handled by people with "face" or "social capital," and these, in turn, were positively associated with age, education or wealth, of which many post-revolutionary village officials had little.³⁴ Thirdly, Chinese legal tradition long recognized the complexity in mediating marriage disputes, as seen most clearly in the saying "Even upright officials have a hard time adjudicating family affairs" (*qingguan nanduan jiawu shi*). How would such officials react to women demanding their rights to divorce? According the secondary literature, they stifled it. New sources, however, demonstrate that their methods were far more variegated. In the Shanghai and Beijing suburbs, for example, county-level organizations frequently complained that when dealing with marriage disputes and divorce village and township cadres were "afraid of hassle" (*pa mafan*), "have no confidence," "see abuse and run away" and "encounter a concrete problem and can't get a single word out of their mouths."³⁵ These sort of reactions seem quite reasonable. After all, they were suddenly faced with mediating family or marital disputes of their neighbours or relatives without any sort of training beforehand.

32. See, for instance, Michel Oksenberg, "Local leaders in rural China, 1962–1965: individual attributes, bureaucratic positions and political recruitment," in A. Doak Barnett (ed.), *Chinese Communist Politics in Action* (Seattle: University of Washington Press, 1969), pp. 155–215.

33. In the Shanghai suburbs, for example, 388 out of 505 (76%) Party secretaries in 1952 only had a primary school education. *Shanghai xianzhi* (*Shanghai County Gazetteer*) (Shanghai: Shanghai renmin chubanshe, 1993), pp. 254–56. In villages the level was probably lower. Many gazetteers do not include data on age. Oksenberg estimates that the average age of village officials between 1955 and 1957 was 26. See, "Local leaders," p. 181.

34. See Pransanjit Duara, *Culture, Power and the State: Rural North China, 1900–1942* (Stanford: Stanford University Press, 1988), ch. 6.

35. Tong County Archives (TCA) 1–2–31, p. 5; TCA 7–1–3, p. 128; Shanghai Municipal Archives (SMA) A71–2–1859, p. 43; SMA C32–1–4, p. 76; SMA A71–2–1864, p. 6; Qingpu County Archives (QPA) 11–2–1, p. 81.

When local officials nevertheless attempted to mediate divorce cases, however, they were frequently unable to decide an issue to the satisfaction of all parties. This is not surprising given that they had to mediate disputes among the very same people they lived amongst, unlike, say, a family court judge in the United States who has no interaction with couples before or after the case is heard. In the secondary literature, this aspect of the environment is played down because scholars have assumed that village males share the same interests and values, and that these are antagonistic to women. As it turned out, however, male mediators might easily come into conflict with other men, and this could work to the benefit of women. In Sanguan village in Qingpu, for instance, an inexperienced mediator botched a reconciliation session and was then cursed by the male disputant: "You people who have now become mediators. Damn you! May your generation be cut off with you! You're breaking up couples!"³⁶ In a township in Yunnan, two male mediators vividly captured their dilemma: "Mediating is like whipping a mule. You whip the mule and it farts, stinking you up. You try to mediate and everyone will be angry with you." Another complained: "When you mediate a marriage dispute both sides threaten you, and each other, with murder or suicide. How can we possibly find a solution?" Unable to reconcile disputing parties, mediators adopted the pragmatic strategy of sending cases to courts and letting them deal with the *mafan*. For their part, courts were not pleased by this, and complained that mediators were sending cases their way, "as soon as there's a conflict in the village."³⁷

But what made local officials even less central to marriage disputes resulting from the Marriage Law was the contempt and distrust with which women seeking divorce viewed the young and culturally "faceless" rural officials. In contrast to Wolf who in *Revolution Postponed* portrays peasant women as hapless victims of a patriarchal structure that denied them the resources for self-empowerment, archival reports emphasize the opposite: young women's agency, grit and determination to get what they want, even if the costs were high. A report from Yunnan noted that "women are not willing to go to village or township officials for mediation, and are not willing to accept village mediation at all." Instead, many went directly to the district government or to courts, a move that irked village officials. In Yunnan, court and Women's Federation reports complained that "women go rushing off to court, travelling for days, just because of a trivial dispute"³⁸ or "go to the district and look for the district chief," thinking that he is the only one who will solve their problem. If he could not be found, they would return. "Because they have a marriage problem," the report noted, "women run off to the district and township governments. At a minimum, they have to go twice and at most, ten times, only then will their problem be solved."³⁹ But not all cases

36. QPA 11-2-1, p. 81.

37. Chuxiong Prefectural Archives (CXA) 11-4-14B-1, p. 141; CXA 11-4-14B-1, p. 126.

38. CXA 11-11-14B-1, pp. 104-105.

39. QPA 48-2-31, p.84. QPA 48-2-56, pp. 113, 115.

involved women going from villages to district government compounds to courts. Because peasant women actually had time on their hands during the agricultural off-season, some just waited in government offices until judges heard their case. In Qingpu near Shanghai, officials at the court and district levels complained that peasants seeking divorce would constantly “quarrel with each other and with cadres and women’s representatives sometimes from morning until the offices closed at 5.00 p.m.” In exasperation, they called upon local cadres to encourage divorce petitioners to have “civilized divorces” (*wenming lihun*): “they shouldn’t get into such heated arguments at government offices.”⁴⁰

Because village and township officials were frequently unwilling or incapable of handling marriage problems, and women often refused to listen to their opinion, courts and districts soon found themselves inundated with lawsuits. In Yunnan, reports from Chuxiong prefecture indicated an increase from 517 divorce cases in 1950 to 6,600 cases in 1953, the overwhelming majority of them handled in districts and courts, a 12-fold rise. It was in district governments and courts that many divorces were granted, often at an extremely high rate, sometimes in 100 per cent of cases in Yunnan and over 95 per cent of cases in a county near Shanghai. This led Women’s Federation officials in Shanghai, hardly an organization with strong male sympathies, to complain that it was too easy to divorce in the countryside, and that as a result poor men were suffering.⁴¹ But not only courts were said to have made it too easy to divorce. Other reports suggest that even township and village officials might support women’s divorce claims. In a case in Jiangsu, for instance, a Women’s Federation report complained that township officials over-compensated women in property settlements because they awarded them three years of alimony payments, even though the husbands were too poor to afford this. According to the Federation, township officials believed that this decision was necessary to “protect women’s rights.”⁴² And in a village in Kunshan county, Jiangsu, officials told a man who was reluctant to divorce that he should agree to it because “the regulation of the new Marriage Law is to take appropriate measures to care for the woman” (*shidang zhaogu nifang*).⁴³

Still, despite evidence of cases in which village and township were sympathetic to women, the more common pattern appears to have been appeal to high-level state institutions to counter local resistance or obstructionism. In this sense, local resistance had the boomerang effect of pushing women towards more powerful state officials, who were more willing to follow the law (or what they understood to be its spirit) than local custom. This dynamic led to a substantial number of jurisdictional

40. SMA A71-2-1859, p. 96.

41. On the 100% divorce approval rate see CXA 4-4-A1, p. 38. On the 12-fold increase see CXA 16-3-A1, p. 184. Chongming county court granted divorces in 96% of cases. For Chongming see *Chongming xianzhi* (*Chongming County Gazetteer*) (Shanghai: Shanghai renmin chubanshe, 1989), p. 219; SMA C32-2-5, p. 5.

42. SMA C31-2-60, p. 7.

43. QPA 48-2-31, p. 93.

disputes over marriage and divorce issues in rural China, with village cadres struggling to hold onto “their” women, and district and courts, whose connection to individual villagers was more tenuous, more eager to implement state law, even as it may have irked them as men to see women seeking divorce pounding on their gates.⁴⁴

The party-state was a complex organization in rural China. Village, township, district and court officials acted upon a variety of motives, not only in the interests of common gender or the perpetuation of patriarchy. Some village officials might try to prevent women seeking divorce from leaving the village, while others actually wanted them to leave to spare themselves the hassle; some supported the law just because it was promulgated by the same Party that gave them status.⁴⁵ For their part, it appears that court and district officials in rural areas were often more interested in enforcing the law than assisting men. It was this multi-layered and multi-motivational nature of the state that allowed room for women to divorce: if they were refused a hearing at the village or township, they could, and did, go elsewhere.

If this was the situation for rural officials, what might be said about their alleged accomplices at the top, the “new democratic patriarchy”? According to Stacey, these officials were not only conservative in their views towards the family but also sexually puritanical: “The Chinese Communists of the revolutionary period consistently demanded that sexuality be confined to marriage and never allowed to interfere with a person’s broader social responsibilities.”⁴⁶ Archival evidence, however, suggests that state officials should be looked at not only as the representatives of an overarching ideology but also as flesh and blood human beings whose desires and interests may only be tangentially related to abstract ideas. Many of the high-ranking officials in the capital were young peasant men when they joined the communist revolution, and had had their marriages arranged by their parents. Rising through the ranks during the war in the hinterland, many came to see cities as a welcome destination, and the cities’ women as the spoil to which they were now entitled. As such, these new “patriarchs” were very supportive of the Marriage Law because it allowed them to divorce their peasant wives and marry younger, and to them more beautiful, urban ones. As one report from Beijing put it

Cadres who come into the city want to divorce their village wives, even though they have feelings for one another. They see them as clumsy and awkward, and without culture. They see young, beautiful, cultured and brightly coloured city women and want to marry them. They then request divorces from their wives.⁴⁷

Witnessing such divorces among high-status males, Women’s Federation officials offered conflicting views about their motives. One noted that veteran cadres are “politically progressive,” and as a result “look down

44. See for example CXA 4-4-A1, pp. 39-40.

45. SMA A71-2-1863, p. 10.

46. Stacey, *Patriarchy and Socialist Revolution*, p. 186.

47. Beijing Municipal Archives (BMA) 84-3-21, p. 29.

upon their wives in the village, and because of this seek divorce,” but others complained that such cadres are “Marxist-Leninist in their work, but feudal in their own relationships.”⁴⁸ In an internally circulated report, however, the chief judge of the Dongcheng District Court, Shi Lei, offered few paeans to their revolutionary credentials. Cadres who abandoned their rural wives and had affairs with urban women were criticized for “capitalist and corrupt thinking.”⁴⁹ Cadres may have understood that the Party wanted to confine sexuality to marriage, but it is not at all clear that this policy shaped the behaviour of officials. In many cases, cadres’ desire to use their power to acquire beauty prevented many from acting upon Party demands. Court and Women’s Federation reports complained that the newly arrived cadres married dancing girls, female hoodlums, secretaries, staff, typists, students, nurses and even people with serious “political problems,” so long as they were good-looking.⁵⁰

Usually, these marriages were approved within their unit. On occasion, however, higher-up Party officials tried to prevent marriage alliance between “good” class cadres in their units and “bad” class but beautiful prostitutes, dancers and the like. The Women’s Federation found that if Party branches did not agree to a divorce claim, male cadres would then “threaten their unit by saying they’ll leave the Party, send someone else to do their job, or commit suicide.”⁵¹ Other cadres said, “I’d rather have a wife than Party discipline,” and “Marxism-Leninism cannot control people’s private lives; the Party cannot interfere with marriage freedom.”⁵² This, of course, was an ironic statement given that it was the Party which granted “marriage freedom” in the first place.

Is there evidence, then, that this new patriarchy opposed the Marriage Law because it awarded women excessive freedom? Not a great deal, because the freedoms in the Marriage Law were guaranteed to them as well. Were then these officials being completely hypocritical in their implementation of the Marriage Law in that they took advantage of its freedoms but were far less inclined to give rural women the same freedoms? Evidence for this might be said to be the conclusion of the 1953 Marriage Law campaign after it engendered local resistance, and the state’s failure to mount another one. This evidence, however, should be weighed together with another feature of campaigns: most of them, not only the Marriage Law, are short-lived, so the end of the Marriage Law campaign does not necessarily signify the end of the law. The latter argument is a potentially far more powerful one: if there is evidence that Beijing officials continued to divorce after the Marriage Law campaign was over (and there is⁵³) while divorce was stifled in rural areas owing either to land reform or to rural officials’ concerns about maintaining the family line and property, the conclusion could be that the arguments in

48. BMA 84-3-21, p. 29.

49. Dongcheng District Archives (DCA) 1-1-194, p. 11.

50. DCA 1-1-194, p. 11-13.

51. BMA 84-3-21, p. 29.

52. DCA 1-1-194, p. 13.

53. See BMA 84-3-27, p. 7 (1955).

the secondary literature are essentially right. This, in essence, has been the nub of the Marriage Law “timeline” in the secondary literature, and of the argument that the law died because of property issues and the state’s failure to mount another large-scale campaign after 1953. If there is substantial evidence that changes in property arrangements (land reform) contributed to family change and that the law continued to shape rural family relations after 1953, in addition to the evidence already presented regarding the multi-motivational and composite nature of the state, there would be a strong case for the need to readjust the judgement regarding the law’s impact.

Dissecting the Marriage Law Timeline

Land reform. According to the secondary literature on the Marriage Law, land reform “hindered” its implementation. Land reform was also responsible for pitting young men, who wanted land, against the law, which promised women emancipation from their families. What sort of assumptions lie underneath these arguments? First, that political campaigns are “temporally disjointed” and that the state or party can turn them off as easily as it can turn them on. It is this assumption that produced the timeline according which the law was “activated” in 1950, “stopped” in 1951–52, “reactivated” in 1953 and then halted again indefinitely. The second assumption is that rural women depended on proactive central state efforts (that is, a campaign) to liberate themselves. Only under this sort of assumption was it possible to argue that the demise of the Marriage Law campaigns was the equivalent to the end of women’s liberation via legal means. Does the evidence support this? Are campaigns over when the Party declares them over, or do they leave residues after the mobilization stage is over?

As noted earlier, in its attempt to “abolish” the feudal marriage system, the CCP implicitly included in the Marriage Law not only a simplified conception of which sex exploits and oppresses the other but also how power is arranged in generational terms. This second simplification argued that an important way in which the old oppress the young is by denying them their quest for “free choice” marriages. In the Marriage Law itself, however, older Chinese were never specifically targeted as perpetrators of this oppression. The law targeted the “feudal marriage system” generally, but left open the question of agency: if the system was so oppressive, exactly who was doing the oppressing? The law was silent on this question. As a result, local officials, many of them inexperienced at handling family issues, were forced to improvise to protect women’s rights. It was during these improvisations that the language and methods from land reform seeped into the Marriage Law. The improvisations also led to a rather large disjuncture between what was legislated and proclaimed in Beijing and what happened on the ground, and opened spaces for rural family change long after the early 1950s campaigns were over.

Nowhere were these improvisations more necessary than in areas that came under CCP control relatively late: south, south-west and many areas

of central China. These areas were forced to keep pace with the dramatic changes occurring in older liberated areas: executions of counter-revolutionaries, and campaigns against secret societies, Party corruption, opium trafficking, land reform and the Marriage Law were all squeezed into a narrow time frame.⁵⁴ This impatience resulted in many campaigns overlapping or coming right on the heels of one another. The Marriage Law and land reform also overlapped in the wording of the law – in Yunnan many cadres called the Marriage Law (*hunyin fa*) campaign a Marriage Reform (*hunyin gaige*) campaign.⁵⁵ After all, if land relations could be speedily reformed through land reform, why not marriage relations as well? One Marriage Law instructor was thus forced to tell local cadres: “Implementing the Marriage Law can’t be done in one or two days. It’s not like land reform and land reform investigation (*tugai fucha*) that have a deadline. Marriage reform is slow (*man mande*).”⁵⁶ This linguistic and conceptual merger led both local cadres and ordinary villagers to interpret the Marriage Law campaign as a political movement fundamentally similar to land reform, but rather than focus on landlords as the oppressors in the “feudal” land system, it would target the older generation as those who should be accountable. As one official in the Shanghai suburbs argued, “during land reform we reformed land; in the Marriage Law we should reform grandparents.”⁵⁷ And in a village in the Beijing suburbs, village officials proclaimed, “in this movement grandfathers have turned into landlords!”⁵⁸

In the early phases of the Marriage Law campaign, local cadres, far from forming a wall of resistance to the law, acted upon their interpretation of it as a struggle against older people. In Tong county in north China, for instance, the Party executed an old woman for having driven her daughter-in-law to suicide. After witnessing this, some young women exclaimed, “we’ve been liberated! In the past we were abused by in-laws and grandparents; now, we should get back at them a bit!”⁵⁹ In Yunnan, old women who “spoke bitterness” about how they were treated by landlords during land reform very soon found themselves confronted by their own daughters-in-law, who, encouraged by the call to “speak bitterness” about the “old society” during land reform, began to do the same about their oppression in the Marriage Law campaign. As a report commented, “as soon as middle-aged women accuse the landlord of crimes, young women, as well as some young men, begin accusing their parents and grandparents. We encounter this problem very frequently.” These women, the report complained, “do not see class oppression, only their in-laws and husbands.”⁶⁰ In the Shanghai suburbs, there were a

54. In Qingpu, for example, the campaigns to suppress opium trafficking and the Three Antis (targeting Party corruption) happened within a month of each other in 1951.

55. CXA 16-3-A1, pp. 18-20; CXA 16-15-B1, p. 137.

56. CXA 16-15-B1, p. 138.

57. SMA A71-2-1859, p. 84.

58. BMA 84-1-32, p. 41.

59. TCA 7-1-4, pp. 108-109.

60. CXA 4-1-A1, p. 27.

substantial number of suicides of older men who were either verbally or physically attacked by their own family members or received harsh warnings from local officials that they were in danger if they did not change their attitude and behaviour towards their family.⁶¹

Such accusations often led older folks to panic. Having only recently witnessed their generational cohorts executed, older peasants could not but wonder whether such fate would befall them as well. In one community in north China, for instance, seven older women witnessed CCP organizers mobilizing young women and heard them air their family grievances. Together, the seven formed a pact according to which, “if one has to confess they will all go on stage to confess together; if one is sent to detention, they’ll all go to prison together.”⁶² Younger men panicked as well. In Yunnan, rumours spread that the International Women’s Day Holiday (8 March) would be used to “kill, arrest and monitor men.” Fearing persecution, they wandered around villages crying, and refused to participate in meetings.⁶³

Confronted with struggle sessions, imprisonment and possible execution, elderly peasants frequently, but reluctantly, adopted a passive approach to their children’s marital affairs at the same time that young women asserted their new rights to “freedom” by heading off to courts. In Tong county near Beijing, for example, an old woman complained: “Now it’s ‘marriage freedom’ [so] if my son marries a ‘broken shoe’ (*poxie*), there’s nothing I can do about it. What’s the point of caring whether she gives him face and is pretty? Now the government is promoting this idea [of marriage freedom], so I have no choice [but to accept it.]”⁶⁴ The county Marriage Law Committee confirmed this account by noting that “some old people now no longer dare try to control their children’s marital affairs. As a result, some youth get married while still under age, and mistakenly emphasize that this is their right of ‘marriage freedom’.”⁶⁵

Given the temporal confluence of land reform and the Marriage Law in many areas of rural China it was thus almost assured that both the language and the methods used during the former would migrate towards and influence the latter. In Yunnan, this method of policy implementation was even given an “ism”: *jingyanzhuyi*, or “experience-ism.”⁶⁶ Land reform’s influence, however, was not confined to the selection of targets and methods of struggle: its language also shaped, in unanticipated ways, marriage choices. According to popular understanding, the Communist Party in the early 1950s was essentially about “distribution” – taking things away from the rich and giving them to the poor. So during the Marriage Law the Party would “distribute” or “allocate” that other scarce resource that many poor male peasants lacked: women. In a town in

61. SMA A71–2–1861.

62. BMA 84–1–32, p. 41.

63. CXA 4–2–A1, p. 80.

64. TCA 1–2–31, p. 14.

65. TCA 1–2–31, p. 10.

66. Yunnan wenshi ziliao weiyuanhui (Yunnan Province Historical Materials Committee), *Yunnan minzu gongzuo huiyilu*, Vol. 1 (Kunming: Yunnan renmin chubanshe, 1993), p. 209

Yangsi district near Shanghai, for instance, a middle-aged man proposed that, “those who can’t afford wives should be assigned one during the Marriage Law campaign”;⁶⁷ a “bare stick” (bachelor) resident of nearby Dachang town proposed, “in this movement we should have the wives of executed counter-revolutionaries (all of whom had bad class status) assigned to the bare sticks,” and in Pengpu *xiang* someone suggested, “we should have all women under 25 who aren’t married registered and assigned.”⁶⁸ In Tong country one older woman remarked: “You young people have nothing to worry about now. The government will give you wives.”⁶⁹ But how would such distribution take place, and who should be allocated to whom? Here again, analogies from land reform shaped marriage considerations. For some peasants, for example, land reform’s language of “equalization” (*ping*) was more important than its language of class conflict and Marxist notions of exploitation. During a Marriage Law “question and answer” session in Pinghe county, Fujian province, a peasant asked, “how should we get married now?” The local cadre replied, “the Marriage Law will even things up (*la ping le*): the good will marry the good,⁷⁰ the bad the bad, cripples will marry cripples and the blind the blind.”

This evidence drawn from several areas of China is sufficient to modify several important arguments in much of the literature on the Marriage Law. First, although it is likely that land reform prevented state officials from devoting more attention to the Marriage Law, it does not necessarily follow that this was a bad thing for women. After all, officials who barely had time to read the articles of these laws and had difficulty understanding them had to compensate for their inadequacies through improvisation. These improvisations opened the door to the importation of the more radical language and methods of land reform. Secondly, it is also clear that neither local cadres nor older women were uniformly opposed to the Marriage Law, or even if they opposed divorce in theory were able to mount collective action against it in practice. Local officials were too immersed in land reform tactics to ally themselves with older women, who, after all, were the most visible representatives of the “feudalism” against which they thought they had to struggle. For their part, older women and men were often too terrified of the Party to challenge the exercise of younger people’s newfound freedoms. Party reports noted a dramatic increase in divorces during the same years that land reform was implemented, arguing that land reform radicalized women, terrified men and cadres alike and, crucially, granted them land.⁷¹

The law in the 1950s. The above descriptions of how the Marriage Law was implemented are from the years 1950–53, a period when the Com-

67. SMA A71–2–1859, p. 143.

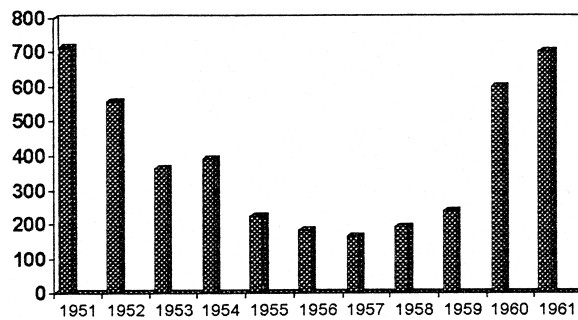
68. *Ibid.* p. 55.

69. *Ibid.* p. 6.

70. SMA E81–2–117, p. 90.

71. See, for instance, QPA 48–1–13, pp. 101–102; QPA 58–2–51.

Figure 1: Registered Divorces in Songjiang County, 1951–1961



Source:

Songjiang County Archives, 8-1-32, p. 32.

munists mounted two nation-wide campaigns. In the literature, this was the period recognized as the apex of the CCP's concern for women. As much as the judgement regarding the impact of the Marriage Law has been negative, even the harshest critics of the PRC's policies towards women have acknowledged that some effort was made to improve their lives. But what of the period after 1953? The conventional wisdom on the Marriage Law suggests that the party-state was able to retract the new rights by not actively enforcing them, and that after the end of the campaign the Marriage Law ceased to shape marriage and family dynamics.

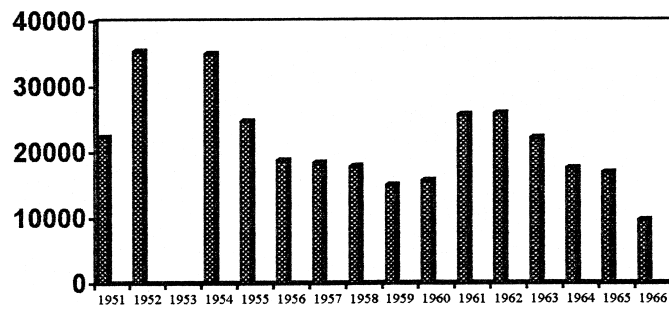
Evidence from several areas of north China in the 1950s shows that it would be wrong to use 1953 as the date of the Marriage Law's demise as a resource for change. Peasants continued to divorce after the end of Marriage Law campaigns in 1953, continued to invoke the law's language of freedom, and continued to use it to gain leverage against husbands and families; archival evidence from Songjiang county near Shanghai shows that there were as many divorce cases in the early 1960s as in 1953, even though the state did not make a special effort to enforce the law between 1953 and 1962.⁷² Lufeng county in Yunnan experienced a similar trend: the county court received 1,174 divorce petitions in 1953 and 1,126 in 1962. By the mid-1950s and early 1960s, many parents reconciled themselves to the fact that they could no longer wield the sort of authority they had prior to the Communist Revolution, and that divorce was now a part of life with which they had to come to terms. As one rural mother commented in 1955, "no one now dares to intervene in other people's freedom to divorce; it's just that it will be embarrassing if our children divorce many times."⁷³ Figures 1 and 2 shows the general divorce trend in rural areas from 1950 to 1966.

An investigation of the marriage situation in Wuxiang county in Shanxi

72. Songjiang County Archives 8-1-32, p. 32.

73. YNA 89-1-55, p. 37.

Figure 2: Divorces in Shandong Province, 1951–1966

*Notes:*

The numbers do not differentiate between rural and urban areas. Since Shandong is primarily a rural province it can be assumed that the divorce trend largely reflects changes occurring in rural areas. Data missing for 1953.

Source:

Zhongguo renkou—Shandong fenge (China's Population—Shandong) (Beijing: Zhongguo tongji jingji chubanshe, 1990).

province in north China reveals the extent to which rights guaranteed by the Marriage Law, together with other policies, strengthened the hand of women in rural families, even after the earlier campaigns.⁷⁴ Such a county is extremely important from a methodological perspective, since it is in such areas that the authors of *Chinese Village, Socialist State* found evidence of a state suffused with patriarchal values and norms. Like the county studied by Friedman, Selden and Pickowitz, Wuxiang county was classified by the Communists as an “old liberated area.” The first Marriage Law was implemented in the region in 1947, and mutual aid teams organized in 1948. As a result of these changes, the report found, almost as many women as men participated in agricultural labour, brides rode on trucks instead of traditional “bridal sedans” to marriage ceremonies, domestic violence was reportedly less frequent, and “free marriages” more common. Still, “traditional” attitudes persisted: women wanted to rely on men to provide the bulk of the household income, and men continued to believe that women worked best at home.⁷⁵

The most dramatic changes were not in views towards the sexual division of labour or notions of “gender equality,” but rather, in how the Marriage Law, and its divorce clause in particular, shaped power relations in the family. Peasant women, in the late 1940s and again in the early and mid-1950s when the Marriage Law was implemented yet again, were tenacious in using its provisions to raise their status in the family, but, at

74. Given that this report was written by officials in Beijing and is critical of collectivization (and the Marriage Law), it is tempting to suggest that it was intended to criticize proponents of rapid collectivization. Unfortunately, I do not know the politics leading to its compilation and publication.

75. QPA 48–2–59 (1955), p. 78.

the same time, were just as interested in using the law in their quest for upward mobility and material possessions. In one mutual aid team, investigators found, five out of nine households experienced instances in which “the wife refused to work, but the husband did not dare say anything to her.”⁷⁶

In some cases, the right to divorce emboldened peasant women to demand radical changes in the domestic division of labour. Usually, men worked in the fields while their wives remained at home. When the men came home they expected a meal to be ready. Some women, however, found this arrangement unsatisfactory. Village women, the report complained, “loaf around at home and don’t cook” but instead demand that their husbands “cook and serve them.” When husbands “tried to reason with them,” the women reportedly “threatened to divorce” (*yao nao lihun*). Marital relations in the township were called “unstable” (*quefa gonggu*) and so-called “rash divorces” – usually initiated by women – were said to be “relatively common.” In one village, 25 per cent of all married couples under the age of 25 were either divorced or in the process of divorce, within a 16-month period.⁷⁷ According to the report, young men’s “three fears” were not finding a spouse because women “set their sights too high”; finding someone, but not being able to afford her; and after finally being able to afford a wife, losing her to divorce. The report concluded they were “especially” afraid of the third possibility.⁷⁸

Older men and women were opposed to unstable relationships among their children, particularly after having paid in money or goods to secure the marriage of their sons. With collectivization of agriculture in the mid-1950s, however, parents lost their rights to bequest land to their children, and hence a major source of power and influence over their decisions. Moreover, collectivization often involved mass mobilization for various public work projects, and this increased the burden on individual households, often pitting young against old. A report in a legal journal on civil disputes in Hebei, for instance, found that collectivization reduced the number of land disputes but increased the number of cases involving children neglecting their parents. Some children either believed that the state would take care of their parents through welfare programmes, or calculated that there would be few costs in neglecting parents because “they can’t inherit the land anyway.”⁷⁹

By the late 1950s, there were signs that the impact of the Marriage Law and collectivization brought about enough instances of abuse and neglect of elders to warrant special investigations.⁸⁰ In 1958, for example, an

76. *Ibid.*

77. *Ibid.* pp. 78–79.

78. *Ibid.* p. 81.

79. Li Yangxi and Tian Ye. “Hebei sheng nongcun minshi jiu fen de diaocha” (“An investigation of rural civil disputes in Hebei provinces”), *Zhengfa yanjiu (Legal Research)* Vol. 4 (March 1957), p. 33.

80. Information on exactly how common this was is not available at the moment. However, I would suggest that the existence of special reports on the subject (which requires investigation and the allocation of scarce state resources) attests to a growing problem in the countryside.

Investigation Yuan (*jiancha yuan*) in Yunnan reported an alarming rise in the number of criminal cases involving the abuse, poisoning, murder and abandonment of parents “since the high tide of collectivization.” The bureau’s initial probe concluded that

Most abuse cases are the result of children hating that their parents are old and cannot work. Usually the son and daughter-in-law collaborate. In other cases, the daughter-in-law initiates the beating and the son joins in, *fearing that if he goes against her, she’ll petition for divorce*. For instance, the wife of one Xiao Yuxian hates that her mother-in-law is poor and dependent on her work. Because of this, Yuxian’s wife refuses to feed her. She threatens her husband and mother-in-law by saying that she will return to her natal home and divorce in order to get what she wants.⁸¹

Reports that reached the archives indicate that long after the land reform and Marriage Law campaigns were officially over there were daughters-in-law who intimidated officials, husbands and their in-laws, calling them “landlords” or “oppressors of the young” if they opposed their divorce.⁸² The state’s explanation of these young adults’ unfilial behaviour was remarkable in its admission of past and present error. During the early 1950s’ Marriage Law campaigns, Party officials confessed, “we attacked the ‘feudalism of old people’ abuse, etc., without any mention of the need to ‘respect and support the elderly.’ As a result, bourgeois selfishness took root.” The state also attributed abuse to men’s fear of losing their wives in a divorce and post-collectivization property arrangements, both of which led men to collaborate with their wives against their parents. Neighbours and relatives did not intervene because they “have become used to the young no longer caring for the old.”⁸³

Given this evidence, it can be argued that reasonable doubt also exists regarding some of the other parts of the conservative betrayal thesis. Not only are there reasons to doubt the culpability of the primary suspects – high-level and local cadres – but also both the culpability of their accomplices and the alleged timeline. Older women were probably opposed to the law, as much of the secondary literature has proposed, but this opposition often did not translate into action. Nor does evidence show that their attempts to ally themselves with local officials were successful. In scores of hand-written reports in county archives, there are only a few cases where a divorce was successfully prevented through such an alliance. There were cases in which officials and parents managed to drag a woman home, but several months later she had left again and divorced elsewhere. Moreover, it is also clear that the Marriage Law did not end in 1953, even though the campaign did. Only by looking at the law as a resource independent of the immediate context of the campaign can the persistence of divorce throughout the mid and late 1950s be explained. It should also be noted that this finding is not entirely new: legal journals and judges’ memoirs from the 1950s – some of which were available in research libraries when the classics on state-family relations

81. CXA 16–65-B1 (September 1958), p. 171. Emphasis mine.

82. *Ibid.* p. 172.

83. *Ibid.*

were researched – contained numerous reports complaining about “rash divorces” and the like.⁸⁴ Had they been used, such sources would have contributed to a far more nuanced depiction of the law’s impact.

Civil–Military Relations

In the China field, civil–military relations are usually conceptualized as the interactions between the civil and military leaderships.⁸⁵ This section considers the relationship between ordinary PLA soldiers and their wives and local cadres on what is often called the “home front.” Article 19 of the Marriage Law required that wives obtain the approval of their soldier-husbands before filing for divorce. This article was aimed at preventing the widespread abandonment of soldiers on active duty by wives, who might remain alone in their villages for years. The prospect of widespread military divorces led the Party towards a more conservative stance, shifting from allowing divorce if one party is “determined” in the early 1930s to requiring state mediation in the late 1930s and 1940s. Examining the interaction between the state, PLA soldiers and their wives in the post-1949 period can serve as an excellent test of the Marriage Law’s impact on rural society. The fact that PLA ranks were staffed primarily by peasants to whom the CCP supposedly owed allegiance should have made the state extremely protective of PLA marriages. Once the CCP took over state power, became involved in foreign conflicts and mobilized troops nation-wide, it should have had even greater incentive to continue the conservative stance from the pre-1949 period. From most perspectives, this makes sense: why would a state, controlled by men and concerned about security, knowingly choose to sacrifice the interests of its soldiers for the sake of women’s rights?

The key words here are “state” and “knowingly.” As during the implementation of the Marriage Law in the early 1950s, the state, even during the height of its power over society, was far from able to act in accordance to its “objective” interests, either security-related or gender-based. The party-state edifice was ridden with cracks and (loop)holes, and these gave women the space to continue to exercise their rights. The result was a dramatic deterioration in military–civil relations, as young

84. See, for instance, Anhui sheng gaoji renmin fayuan (Anhui Province Supreme Court) (ed.), *Shenpan jishi (A Chronicle of Judgements)* (Anhui renmin chubanshe, 1959); Fei Yuke, “Luetan chuli nongcun diqu hunyin wenti de tihui” (“A brief discussion of how marriage problems in rural areas are handled”), *Zhengfa xuexi (Legal Studies)*, Vol. 5–6 (1958), pp. 56–58; Zhou Gu, “Lun hunyin fa banbu hou jinian lai chuli lihun anjian de yuanzi” (“Principles for how divorce cases should be handled several years after the promulgation of the Marriage Law”), *Zhengfa yanjiu*, Vol. 5 (1956), pp. 42–45.

85. The literature on the PLA is vast, making full citation impossible. Representative works of this perspective are Ellis Joffe, *Party and Army: Professionalism and Political Control in the Chinese Officer Corps* (Cambridge, MA: East Asian Research Center, Harvard University, 1965); Harlan Jencks, *From Muskets to Missiles: Politics and Professionalism in the Chinese Army, 1945–1981* (Boulder: Westview, 1982); Harry Harding, “The role of the military in Chinese politics,” in Victor Falkenheim (ed.), *Citizens and Groups in Contemporary China* (Ann Arbor: Center for Chinese Studies, University of Michigan, 1987), pp. 213–256.

women used clauses in the Marriage Law to marry village politicians or better-off men.

Worldwide, of course, it is not uncommon for war to produce tensions that might result in divorce. Among PLA soldiers, few had relationships based on the ideals of love and extended periods of courtship envisaged by the Marriage Law. A 1957 court report in Yunnan found that in the divorce cases involving PLA soldiers, all the marriages were arranged.⁸⁶ In addition to weak marriage ties, the long separation of PLA soldiers from their families placed the families in difficult financial straits. The departure of mobilized soldiers from villages was not alleviated by measures that made their families less dependent on them.⁸⁷ Because of this, PLA family members were highly dependent on local officials, who had access to and control over scarce resources such as good job assignments, welfare allowances, and grain and meat supplies.

Reports from the 1950s and 1960s attest to the tensions and temptations of PLA families in their communities. During 1955, the Lufeng county court in Yunnan handled 12 cases of violations of the Marriage Law's Article 19. Of these, eight were reported to have been perpetrated by pre-1949 village elites and "local hoodlums," and the other four by "basic-level cadres, especially village cadres and militia heads who used their position as an excuse to conduct night-time investigations and have sex with soldier's wives."⁸⁸ A report in Jiangxi found that, in one military prefecture (*zhuanqu*) alone, there were over 1,100 cases of violation of military marriages, including 330 that resulted in pregnancy. Among the perpetrators were 23 county and district cadres and 149 township and village cadres; others were ordinary peasants and militiamen.⁸⁹

To justify their violation of Article 19, some PLA wives invoked the Marriage Law's Article 1, which granted them "marriage freedom." In Chuxiong, for instance, a wife named Wang Gongmei petitioned the county court demanding "marriage freedom" because "her parents arranged the marriage." This marriage was not formally registered; the couple married the traditional way, by having a feast. The court sent the case to the district government, which "rashly" granted her a divorce without even bothering to contact her husband, as required by law. The district reasoned: "Having a feast doesn't mean you're married; to marry you have to go through formal procedures. The marriage was thus invalid in the first place."⁹⁰

Reports indicated that soldiers discovered their wives' affairs in one of two ways. In some cases, village and township cadres having affairs with PLA wives tried to instigate divorce themselves by writing to the soldiers informing them of their wives' adultery.⁹¹ In other instances, soldiers who returned home on furlough found their spouses in bed with cadres or

86. CXA 16-27-A1, p. 30.

87. CXA 16-13-B1, p. 64.

88. CXA 16-12-B1, pp. 58-59.

89. CXA 11-77-14B-1, p. 22.

90. CXA 16-13-B1, p. 64.

91. Jiangsu Provincial Archives 35, p. 31.

heard community gossip about them. Furious soldiers stormed off to courts and district governments for revenge. The road to court, however, was full of obstacles. In Shimen county in Hunan a soldier returned home to discover that his wife had been “seduced” by the township chief. The distraught soldier ran to court to file an accusation, but was reportedly waylaid by “leading district cadres, who with the local militia, pummelled him, and locked him away.”⁹²

Even when soldiers filed charges, results were usually disappointing. Officials often denigrated the political significance of sex. According to one report, some cadres “openly say, ‘it’s no big deal when a soldier’s wife gets pregnant and has a kid’.”⁹³ In Hubei, for instance, a soldier discovered that his wife was having an affair with a village cadre. He went to the district government to file an accusation. Unmoved, district cadres told him, “This is a social problem left over from the old society. We don’t have the authority to deal with it.” The soldier then telephoned the county court, which also saw no ground for legal action: “Your wife is having an affair because you’ve been away for so long. All we can do is tell the district government to educate him. We can’t prosecute a peasant because of something like this.”⁹⁴

Unable to get revenge at district governments or courts, some soldiers simply filed for divorce, or wrote letters home ridiculing and insulting their wives, which prompted them to seek divorce.⁹⁵ A more serious consequence, however, was the substantial number of suicides among soldiers resulting from their spouses’ affairs. In 1956, the Bureau of Civil Affairs reported that in Chuxiong there were 693 suicide cases among demobilized soldiers, with 47 per cent resulting from wives’ adultery or rape. In other cases, soldiers who received letters informing them of unpunished rape and affairs went AWOL to return home to reclaim their wives.⁹⁶ It affected recruitment campaigns and army morale. In the mid-1950s, and until well into the 1960s, court investigations found that many young peasant men were discouraged from joining the military after witnessing divorces, affairs and rapes of wives of soldiers.⁹⁷ In Jinshan county near Shanghai, for example, an investigation revealed that between January and October 1963, 15 out of 24 defendants in PLA marriage cases were cadres; of these, over one-half were CCP members in production teams and brigades or members of the Communist Youth League who “used their position to attract PLA wives.”⁹⁸ In Songjiang county, also close to Shanghai, the Women’s Federation found that “the great majority” of perpetrators in PLA marriage cases were local cadres. “When soldiers hear their wives are sleeping around,” the Federation found, “they request leave to return home in order to settle accounts.

92. CXA 11-77-14B-1, p. 23.

93. *Ibid.*

94. *Ibid.*

95. Jiangsu Provincial Archives 35, p. 31; CXA 16-13-B1, p. 61.

96. CXA 11-77-14B-1, p. 23.

97. CXA 11-87-14B-1, p. 272.

98. SMA C31-2-979, p. 88.

Others are completely depressed, while some want to leave the military altogether.” During a recruitment drive in 1964, military recruiters tried to assuage young men’s fears of losing their wives or fiancées by having them give them a “guarantee” of chastity. This failed because the men “did not trust the women to keep their promises.”⁹⁹

Conclusion

This article has challenged the arguments and assumptions of conventional wisdom on the Marriage Law.¹⁰⁰ First, and most important, it is clear that the Marriage Law’s impact did not end in 1953 when the Party decided to stop the campaign. Moreover, it is also clear that “the Party” – if thought of as a monolithic organization – was never united in its opposition to the law. It is true, as the secondary literature rightly points out, that there were cases of violent resistance to the law and not a few deaths resulting from this, but because “the Party” comprised many institutions who sometimes co-operated and sometimes worked at cross purposes, women could break through the first barriers. The notion that the Party completely abandoned women after 1953 in the interests of production, therefore, needs to be revised. Secondly, it is also clear that the main suspects in the early demise of the law should be exonerated of many charges, since their intentions – reactionary as they may have been – often did not translate into action. High-level male officials seem to have been too enthralled with the beauty of urban women and set on divorcing their rural wives to be particularly concerned with the plight of rural men; rural cadres were too immersed in land reform and collectivization to present a united front against young women resisting the “feudal” order; older women were often helpless to prevent their daughters-in-law from getting a divorce because of political movements that targeted them as perpetrators of oppression and injustice. Credit should also be given to young women whose agency and resourcefulness in using “political language” to protect or advance their interests made the law a force in rural society even when the Party was not actively enforcing it. In the case of PLA soldiers, evidence shows that they were often victims of the law rather than victimizers of women. This raises the question: if “patriarchy” was the “primary lens” through which the Chinese leadership viewed its role vis-à-vis women’s status, as Margery Wolf suggests, why would such a state forsake the interests of male soldiers who not only served on its behalf but were also a critical constituency? Answering this question will be difficult so long as it is not admitted that the state (or, in this case, men who control the state) have many, sometimes conflicting, motivations through which they view society. Thirdly, it is also clear that land reform, far from being a hindrance to the implementation of the Marriage Law, was one of its central

99. SMA C31–2–984, p. 92.

100. See my *Revolutionizing the Family: Politics, Love, and Divorce in Urban and Rural China, 1949–1968* (Berkeley: University of California Press, 2000).

features. This was the case both in its early phases when both officials and peasants understood the law by importing land reform discourse and methods, and in the mid and late 1950s when young women called their in-laws “landlords” while demanding to exercise their rights as enshrined in the Marriage Law. Finally, there is enough evidence to question the characterization of rural family life in the 1950s and 1960s as “stable.” Divorce was not a right only “in theory,” and the social structure did not necessarily prevent it, as Potter and Potter argue.¹⁰¹

How the Marriage Law and other CCP policies towards the family are ultimately evaluated will largely depend on how individual readers view the benefits and costs of arranged marriages and divorce. The Marriage Law was unequivocal on this point: arranged marriages should be abolished since they necessarily limit individual freedom and are a manifestation of oppression. Much of the secondary literature on the law has shared this assessment. When evidence showed that divorce was nearly absent in rural society after 1953, the CCP could be accused of either abandoning women or never taking women’s liberation seriously in the first place. My evidence, however, suggests an altogether different assessment of the law’s impact and its benefactors and victims, with high-level officials and young women in the former category and older Chinese, poor men and soldiers in the latter. The question is, however, do these findings suggest that the more gloomy assessments of the regime’s original intentions should be reversed? Does evidence of divorce throughout the 1950s and pre-Cultural Revolution 1960s suggest that the regime took the predicament of women seriously? Not necessarily. The Marriage Law rarely affected villages unmediated by other factors, and when the law was enforced, the results were quite often completely unintended. The metaphor of billiards could be used to illustrate the way policy was implemented in the Marriage Law. In billiards, players aim the cue ball at the numbered balls, which scatter, some falling into the pockets, while others end up randomly on the board. For the player, the end result was partially successful, even if the balls that ended up in the pockets were not the ones originally intended. After the first shot, the situation is far more complex since the balls are scattered randomly. For the rest of the game, the player plays “catch-up” to the situation created by the very first ball. I believe that this metaphor goes far in explaining the outcome of the Marriage Law: once the law was in place, predicting how officials and social groups would react and how the law could become a resource in everyday life was hard. The only remedy would have been a great deal more patience and level-headedness in policy implementation, virtues with which revolutionaries are not particularly blessed.

101. *China’s Peasants*, p. 263.