

MARRIAGE REFORM IN THE PEOPLE'S REPUBLIC OF CHINA *

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I. INTRODUCTION

Exactly seven months after Mao Tse-tung proclaimed the establishment of the People's Republic of China in October 1949, his new government promulgated the 1950 Marriage Law which radically changed the entire structure of the Chinese institution of marriage. A certain amount of "modernization" of the traditional marriage system had taken place in law, if not in practice—during the end of the nineteenth and the beginning of the twentieth centuries but, essentially, the institution of marriage in China remained the way it had been for hundreds, even thousands, of years.

Within the traditional Chinese marriage laws, reflected as late as those of the Ch'ing Dynasty, all marriages were arranged by the *paterfamilias* of the betrothed and included a payment to the family of the bride-to-be, known as the "bride price." There were many restrictions on marriage and divorce remained the unilateral right of the husband on many grounds, ranging from failure to give birth to a son to jealousy on the part of his wife. The oftentimes unfortunate plight of the traditional Chinese wife and her inferior status, inherent in these laws, are reflected in the old sayings of China:

Officials depend on seals; tigers depend on mountains; women depend on their husbands.¹

If I buy a horse, I can beat it; if I marry a wife, I can do as I like.²
A wife married is like a pony bought; I'll ride her and whip as I like.³

When you marry a chicken, stick with the chicken; when you marry a dog, stick with the dog.⁴

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¹ BELDEN, CHINA SHAKES THE WORLD 313 (1949).

² *Ibid.*

³ COMMITTEE OF CONCERNED ASIAN SCHOLARS, CHINA! INSIDE THE PEOPLE'S REPUBLIC 266 (1972).

⁴ YANG, CHINESE COMMUNIST SOCIETY: THE FAMILY AND THE VILLAGE 64 (1965).

By the beginning of the twentieth century, it was obvious that many of the rules of the traditional marriage system were outdated. Agitation for reform brought about the establishment of the Law Codification Commission to effect a complete change in the legal structure of China but, because of the internal political situation in China, no substantial changes in the institution of marriage took place prior to the collapse of the Ch'ing Dynasty. Following the Revolution of 1911, Yüan Shih-kai, the President of the new Republic and a member of the Law Codification Commission, continued the work of its predecessor. This resulted in the new Civil Code, promulgated between the Spring of 1929 and December 1930.

Under the marriage law included in this Civil Code were provisions for betrothal and marriage to be concluded by the parties "themselves" and of their own accord. The spouses retained ownership of his or her contributed property and divorce was possible by mutual consent. The new code also honored the principle of equality between the sexes which is evident in these changes: the *paterfamilias* no longer arranged the marriage, the traditional "bride price" was abolished, the woman was able to own and inherit property and she, as well as the husband, had the right to divorce. Despite these dramatic changes in the marriage laws, once again, internal political situation of China (the Japanese invasion, the Civil War with the Communists, etc.) hindered the implementation and enforcement of these new laws.

During this period of Chinese history, Mao Tse-tung's own ideology about marriage reform was gradually evolving. This ideology was influenced by Marxism and Leninism, ideologies which were beginning to take root among the Chinese intelligentsia in the second decade of the twentieth century. Inherent in Communist ideology is the goal of the abolition of private property and, concomitantly, universal human emancipation. The society, envisaged by Marx and the other Communists, would be free from exploitation—including that of woman by man. Since according to this ideology, "The modern individual family is based on the open or disguised domestic enslavement of the woman. . .,"⁵ changes were needed in the over-all family structure.

In addition to the obvious influence of Marxism and Leninism, the formulation of Mao Tse-tung's ideology took into consideration the particular conditions of China. The emancipation of women, dependent upon reform of the institution of marriage, had not only a theoretical basis but also an important economic one, namely that

⁵ ENGELS, THE ORIGIN OF THE FAMILY, PRIVATE PROPERTY, AND THE STATE 81 (1972).

Mao saw the need for the participation of the Chinese women in the economic development of China. In fact, Mao's dream for China depended on marriage reform: "Women comprise one half of the population. The economic status of working women and the fact of their being specially oppressed prove not only that women urgently need revolution but also that they are a decisive force in the success or failure of the revolution."⁶

The Chinese Communists' first experience with this ideology in action came in the so-called "liberated areas" of China. When the Soviet Republic of China was proclaimed in 1931 in Kiangsi, marriage reform was embodied in Article 11 of its Constitution:

The Chinese Soviet Government guarantees the emancipation of women; it recognizes the freedom of marriage, and puts into operation measures defending women, enabling them gradually to attain the material basis required for their emancipation from the slavery of domestic work, and for participation in the social, economic, and political life of the country.⁷

Shortly thereafter, on December 1, 1931, the Marriage Regulations were passed which were the implementation of this article. These regulations remained in force when the Chinese Communists first established their headquarters in Yen-an, in northwest China. Later, beginning in April 1939, marriage laws were promulgated on all of the Border Areas.

Although very different in their detailed provisions, all of the Border Area marriage regulations expressed the same general idea. They stressed the necessity for the consent of the marrying parties, they all contained the prohibition against interference by third parties in the conclusion of marriage, and insisted on the principle of monogamy. All of them required the registration of marriage as well as divorce. But the interesting characteristic of some of these regulations is that they veered in the direction of family law: they insisted on the equality of the husband and wife, a concept entirely absent in the text of the Kiangsi statutes. Unfortunately, there are few statistics to indicate how thoroughly these marriage laws were implemented in either Kiangsi or in the Border Areas.

The very first civil legislation enacted by the Central People's Government after the establishment of the People's Republic of China in 1949 was the 1950 Marriage Law, promulgated on May 1st of that year. This law, which contains only twenty-seven articles, is strikingly similar to the Kiangsi and the Border Area legislations

⁶ Quoted in Kwang, *Women's Liberation is a Component Part of the Proletarian Revolution*, 17 PEKING REV. 14 (1974).

⁷ Fu, *The New Marriage Law of People's China*, in 1 KIRBY (ED.), *CONTEMPORARY CHINA* 115 (1956).

described above. Although the Civil Code of the Nationalists appeared to anticipate the Marriage Law of 1950 on certain points, *e.g.*, upholding monogamy, property rights for women, etc., this new law was indeed "new." The most revolutionary features of this 1950 Marriage Law are the provisions for the registration of marriage, the chapter legislating the "Rights and Duties of Husband and Wife," and the liberal divorce provisions. And, unlike the Nationalist Civil Code, the provisions of the 1950 Marriage Law were vigorously implemented and enforced.

Given the revolutionary nature of the Marriage Law, it is not surprising that China underwent a period of tremendous social upheaval in the early 1950's. The masses of the Chinese people, even the women who had the most to gain from these changes, felt that the changes came too quickly. It was inevitable that the magnitude and swiftness of these changes had disruptive effects and often resulted in violent conflicts among the Chinese people. Consequently the policy was readjusted during the subsequent years into a somewhat slower pace of induced changes. Although the intensive campaign to implement the Marriage Law was officially abandoned in 1953, the law is in full effect in China today.

II. MARRIAGE LAWS IN "PRE-COMMUNIST" CHINA (1911-1949)

In order to discuss the marriage laws which were in effect following the 1911 Revolution, it is necessary to refer back to the laws of the Ch'ing Dynasty, since these laws were not completely revised until the promulgation of the Nationalist Civil Code of 1929. Thus, between 1911 and 1929, the marriage laws of the Ch'ing Dynasty, in various stages of revision, were still being applied in China.

The Marriage Laws of the Ch'ing Dynasty are included in the "Ta Ch'ing Lu Li" (Laws and Precedents of the Great Ch'ing), approximately fifty-seven pages out of forty-two volumes being devoted to the subject.⁸ The sources of the laws were the codes of the dynasties that preceded the Ch'ing. It is important to note that all the marriages that came under the purview of Ch'ing Law and custom were customary marriages and not legal ones; it was not until the 1950 Marriage Law of the People's Republic of China that the legal registration of marriage was required.

The following is a brief discussion of the rules relating to marriage during the Ch'ing Dynasty:

⁸ For translations, see BOULAIS, *MANUEL DU CODE CHINOIS* 253-310 (1966); and 1 PHILASTRE, *LE CODE ANNAMITE* 490-547 (1967). A free translation is also and included in CHIU, *MARRIAGE LAWS AND CUSTOMS OF CHINA* 78-100 (1966).

Betrothal – This was a condition precedent to marriage and without betrothal the marriage, however celebrated, was null and void. Betrothal must be evidenced by payment of money and/or by a formal contract of betrothal. All betrothals and marriages were controlled by the grandfather, grandmother, father or mother, who became master of matrimony. If they were deceased, the senior members of the family had control. Penalties were imposed if the conditions of betrothal were not met: *e.g.*, *paterfamilias* who forced marriage before the date set for it had matured, or who put it off when the date fixed for it had arrived, received fifty strokes of the cane.

Marriage – There were restrictions on marriage during mourning; on marriage if the parents were in prison; on marriage between persons of the same surname; on marriage between persons of senior and junior generations; on marriage with widows (wives or concubines) or relatives; on marriage of officials with women in the locality under their rule; on marriage with escaped women criminals; on marriage of monks and Taoist priest; and on marriage between free persons and slaves. There were also prohibitions against hiring out wives and daughters (*e.g.*, whoever hired out for money his wife or concubine to another man was liable to eighty strokes; whoever hired out his daughter was liable to sixty strokes); against the forcible seizure of wives and daughters of respectable families (*e.g.*, whoever used force or influence, and seized another man's wife, concubine, daughter or slave and then forcibly made her his wife or concubine was liable to the death penalty by strangulation); and against the treatment of wife and concubine contrary to their respective positions (*e.g.*, whoever degraded his wife to the position of a concubine was liable to one hundred strokes; whoever raised his concubine to the position of wife while the wife was alive was liable to ninety strokes).

Dissolution of Marriage – Dissolution of marriage was by death or divorce. Three kinds of divorce were recognized: repudiation, divorce on account of intolerable acts against the principles of conjugality, and divorce by mutual consent. Divorce was not a reciprocal right enjoyed by the husband and wife but a right conceded by the law exclusively to the husband on the following grounds, the so-called "seven ousts": (1) Failure to serve the husband's parents and disobedience to them; (2) Failure to give birth to a son; (3) Dissoluteness of manners; (4) Jealousy; (5) Malignant diseases; (6) Loquacity; and (7) Larceny. There were three reasons for non-divorce, the "three non-ousts": (1) If the wife had participated, in lieu of the husband, in the three-year mourning of either of her husband's parents; (2) If the husband's family was poor before

marriage but became rich after the marriage; and (3) If after the divorce the wife had no home to return to. If the wife was "guilty" of any of the "seven ous"ts, the husband was under a legal obligation to divorce her. If he failed to do so, he received eighty strokes. However, if the wife was protected by one of the "three non-outs" the husband was forbidden to divorce her on pain of receiving sixty strokes.

Many of the provisions of the Marriage Laws of the Ch'ing Dynasty were obviously outdated. By the turn of the century certain elite groups in China voiced their displeasure against the severity and obsolescence of these laws. Agitation for reform reached such proportions that the Law Codification Commission was established in 1902 to revise the Ch'ing Code.⁹ However, the Ch'ing Dynasty at the end of its reign felt too insecure to initiate any real changes. It failed in its appreciation of the political situation, it opposed change, it had the handicap of being of non-Han origin, and, when it was finally compelled to move in the direction of modernization, it responded only half-heartedly to the challenge.¹⁰ Thus no substantial changes occurred prior to the collapse of the Dynasty.

Following the Revolution of 1911, Yuan Shih-kai, the President of the new Republic and a member of the Law Codification Commission, established a new commission which continued the work of its predecessor. Work on codification continued through the turmoil of the warlord period but reached full fruition only after the establishment of the Nationalist Government in 1928. This resulted in the creation of a system of modern law codes, codes of procedures and a system of law courts. The Civil Code, promulgated between the Spring of 1929 and December 1930, laid the foundation for this system.¹¹

The provisions for family law contained in this Civil Code were in Books IV and V, entitled, respectively, "The Law of the Family" and "The Law of Succession."¹² These two statutes contained 258 articles divided into ten chapters. The Marriage Laws were found in the second chapter of the Book of Family Law under the following titles: I. Betrothal, II. Conclusion of Marriage, III. Matrimonial Property Regimes, and IV. Divorce.

⁹ Michael, *The Role of Law in Traditional, Nationalist and Communist China*, CHINA Q. 133 (1962).

¹⁰ MEIJER, *MARRIAGE LAW AND POLICY IN THE CHINESE PEOPLE'S REPUBLIC* 21 (1971).

¹¹ Michael, *op. cit.*, *supra*, note 9 at 133-134.

¹² For the complex text of Books IV and V of the CIVIL CODE, refer to 1 *Laws of the Republic of China* 300-360 (1961).

The main provisions of these marriage laws may be summarized as follows:¹³

Betrothal – It was stipulated that the parties should conclude the betrothal, or agreement to marry, “themselves,” and that the age of consent for the man should be seventeen and for the woman fifteen. Betrothal, however, was not a prerequisite for marriage and neither party could claim specific compliance of the agreement. Marriage presents were not necessary; if they were given, they were received as donations.

Marriage – Marriage was concluded by the parties of their own accord by means of an open ceremony in the presence of two or more witnesses. The minimum age for the parties was eighteen for the man and sixteen for the woman. Exogamy was still strictly maintained. (The Criminal Code of 1935 laid down that all marriages were to be strictly monogamous).

The wife cohabited with the husband and shared a common life with him, unless there were cogent reasons for not doing so, while in the management of ordinary household affairs each spouse acted as agent for the other. As regards matrimonial property, there was a number of possible arrangements. The statutory scheme provided for union of property, each spouse retaining the ownership of his and her contributed property, but with the man having the right of management and the right to the fruits of the woman's contributed property.

Divorce – Divorce by mutual consent was possible, the only required formality being a written document signed by two witnesses. The children were brought up by the father unless provided otherwise by agreement. The wife recovered her own property. Divorce by judicial decree after *ex parte* application was given on ten grounds: (1) bigamy; (2) adultery; (3) ill-treatment so as to render life together intolerable; (4) ill-treatment of the husband's parents by the wife, or of the wife by the parents-in-law, to such an extent that life together became intolerable; (5) continued desertion in bad faith; (6) attempt on the life of one of the spouses by the other; (7) malignant disease; (8) mental disease, serious and incurable, of the other spouse; (9) uncertainty for at least three years whether the other spouse was alive or dead; and (10) when the other spouse had been sentenced to imprisonment for not less than three years, or when sentence had been passed for an infamous crime. In the interest of the children the judge could appoint either the father or another person as guardian. The right to maintenance was rec-

¹³ MEIJER, *op. cit.*, *supra*, note 10 at 26-29.

ognized if one of the parties was in economic difficulties even where there was no fault on the other side.

Despite these new provisions, the changes brought about by the Civil Code were limited. In practice, the Code was simply a compilation of suggested guidelines and was rarely enforced.¹⁴ Most authorities on this period of Chinese history agree that the limitation of this law was the lack of active enforcement.¹⁵

The reasons for the serious difficulties in applying the Civil Code may be explained as follows:¹⁶

(1) The first was linguistic: there were many new expressions coined in the Code which were unfamiliar to Chinese readers.

(2) The conditions in China during this period with the Japanese invasion and the Civil War were not favorable to administering justice. Many ex-warlords turned governors administered their own justice and a sizeable part of the country was in Communist hands. The military often acted on its own, outside of the citizens' rights.

(3) There was no unified training of Chinese judges and lawyers and no unified techniques of interpretation and application of the Code. Moreover, the courts in the rural areas were not always up to standard.

(4) There was a lack of a general, well-developed doctrinal literature.

(5) There was a lack of a developed system of reporting and maintenance of authoritative law reports.

(6) The Chinese courts, with little experience with the Code, had to steer between the Scylla of blind mechanical application of the text of the law and the Charybdis of deciding each case *ex aequo et bono* with no real grounding of the result in the text.

(7) Much was left to traditional Chinese ideals and ethical custom: *e.g.*, Article 1, "In civil matters if there is no provision of law applicable to a case, the case shall be decided according to custom." In many cases the rules of the modern codes were not always accepted and the moral code of the past lingered on even in the cities.

¹⁴ Gales, *Marriage and the Family: Chinese Laws*, 6 J. FAMILY L. 39 (1969).

¹⁵ See YANG, *op. cit.*, *supra*, note 4 at 31; McAleavy, *Some Aspects of Marriage and Divorce in Communist China*, in ANDERSON (ED.), FAMILY LAW IN ASIA AND AFRICA 75 (1967); Gen, *The Marriage Law of New China*, 5 EASTERN WORLD 19 (1951); Michael, *op. cit.*, *supra*, note 9 at 134, among others.

¹⁶ Pound, *The Chinese Civil Code in Action*, 29 TUL. L. REV. 280-288 (1955).

In this period of political turmoil in China, it was impossible for the authorities to maintain the standards of the Code, particularly in the rural areas, and it was almost without influence on the mass of the population. In a letter to an advice column in a Shanghai monthly magazine, *West Wind*, there was an example of a man in Chengtu, reasonably intelligent and educated, who was totally unaware that in taking two wives he had committed any infringement of the law.¹⁷ His ignorance was shared by his family and friends. In the urban areas, such as Canton, it was estimated that even among lawyers before the Sino-Japanese War, at least one-third kept concubines.¹⁸

Another drawback to the implementation of the provisions of the Civil Code was public opinion and many people failed to take advantage of their rights for fear of recriminations from society. Escarra in *Le Droit Chinois* quotes one high Kuomintang official who remarked that his wife would never take advantage of the inheritance rights of the Code because it would be "contrary to the rites [Confusion etiquette] and I, as well as my wife, should have against me the unanimous disapproval of public opinion."¹⁹

This phenomenon was particularly evident as regards the divorce provisions. Throughout the Republican period, the ancient prejudice against exposing domestic quarrels to the public view induced many people, especially women, to go against their own inclinations and agree to divorce rather than contest their spouse's application in a court of law. There are numerous examples of unsentimental repudiations of spouses: for example, both Sun Yat-sen and Chiang Kai-shek prevailed on the rustic wives of their earlier days to make way for younger and more sophisticated women.²⁰ Although some women did take advantage of the divorce provisions, generally only a few society women benefited from these new provisions.

As will be seen later, the most important difference between the Civil Code of the Nationalists and the later Marriage Law of the Communists is not in their legal provisions but in the amount of effort taken to enforce it. The Nationalists took a major step to change the institution of marriage in China in formulating and promulgating the Civil Code but this was not followed-up with effective implementation and enforcement; thus the result was almost negligible.

¹⁷ McAleavy, *op. cit.*, *supra*, note 15 at 75.

¹⁸ Gen, *op. cit.*, *supra*, note 15 at 19.

¹⁹ Quoted in Lee, *Chinese Communist Law: Its Background and Development*, 60 MICH. L. REV. 466 (1962).

²⁰ McAleavy, *op. cit.*, *supra*, note 15 at 86.

III. THE THEORETICAL BASIS FOR CHINESE COMMUNIST IDEOLOGY OF SEXUAL EQUALITY AND MARRIAGE REFORM

Communism is the positive abolition of private property, of human self-alienation, and thus the real appropriation of human nature through and for man. It is, therefore, the return of man to himself as a social, i.e., really human, being, a complete and conscious return which assimilates all the wealth of previous development. Communism as fully developed naturalism is humanism and as fully developed humanism is naturalism. It is the definitive resolution of the antagonism between man and nature, and between man and man. It is the true solution of the conflict between existence and essence, between objectification and self-affirmation, between freedom and necessity, between individual and species. It is the solution of the riddle of history and knows itself to be this solution.²¹

Implicit in this definition of communism by Karl Marx is the assumption that there is a fundamental "contradiction within the very essence of things." These contradictions—or conflicts, antagonisms or struggles—propel history forward. For Marx, all nature, "from the smallest thing to the biggest, from a grain of sand to the sun . . . to man, is in . . . a ceaseless state of movement and change."²² Change is not mere growth but the emergence of new structures: it is the quantitative alteration of things which leads to something qualitatively new.²³

This dialectical development, in which each stage creates the "germs of its own destruction," can be delayed or accelerated but not prevented. History, according to Marx, must follow a necessary pattern that advances inevitably from phase to phase.

Within each phase of history, the character of each society is determined by the "mode of production" of that age, i.e., the way people satisfy their material needs. The "mode of production" in turn contains two components: the "productive forces" which include such things as available technology, skills, material resources, and sources of energy; and the "productive relations"—that is, the relationship between people engaged in producing material goods.

Within this theory of economic determinism, the key to the relations of production is the status of property or its ownership. As long as the means of production remains in the hands of a few, class struggle will continue inexorably until the contradiction is

²¹ Marx, *Early Writings*, quoted in AVINERI, *THE SOCIAL AND POLITICAL THOUGHT OF KARL MARX* 227-228 (1970).

²² Quoted in STUMPF, *SOCRATES TO SARTRE: A HISTORY OF PHILOSOPHY* 427 (1966).

²³ *Ibid.*

resolved. For this reason, and as stated in Marx's definition, the first goal of communism is the abolition of private property.

In order to abolish private property under capitalism—where the classes have been reduced to two basic ones, bourgeoisie and proletariat,—Marx believed that it was necessary to emancipate the workers. Their emancipation was not alone at stake because “the emancipation of the workers contains universal human emancipation—and it contains this, because the whole of human servitude is involved in the relations of the worker to production, and every relation of servitude is but a modification and consequence of this relation.”²⁴

Thus at the core of the abolition of private property is universal human emancipation. Marx believed that with the establishment of socialism the history of humanity would enter a new phase and, as earlier indicated, the era of classes would be at an end. This new society would be free from exploitation, the exploitation of one part of society by another. Man would freely join with others to better the lives of all men.²⁵

Included in the exploitation of one part of society by another is the exploitation of women. Engels had stated, “The first class antagonism which appears in history coincides with the development of the antagonism between man and woman in monogamian marriage, and the first class oppression with that of the female sex by the male.”²⁶ Thus, in Communist ideology, all women—whether they belonged to the exploiting or the exploited class—are oppressed by men in class society.

Although Marx considered relations between the sexes necessary and spontaneous, he also termed them “other-oriented,” *i.e.*, man's need for a partner in the sexual relationship makes his own satisfaction depend upon another person's satisfaction.²⁷ This relationship has to be reciprocal because if it were unilateral it ceases to be a relationship, degrading the other person to the status of a mere object, rather than a co-equal subject. And, in Marxist theory, it was the emergence of private ownership which contributed to the unilateral character of the relationship between the sexes. Accord-

²⁴ Marx, *Economic and Political Manuscripts of 1844*, quoted in RANDALL, JR., *The Career of Philosophy*, in 2 FROM GERMAN ENLIGHTENMENT TO THE AGE OF DARWIN 408 (1965).

²⁵ Marx, *The Communist Manifesto*, quoted in MENDEL (ED.), *ESSENTIAL WORKS OF MARXISM* 33 (1971). *The Communist Manifesto* states: “In place of the old bourgeois society, with its classes and class antagonisms, we shall have an association in which the free development of each is the condition for the free development of all.”

²⁶ Engels, *op. cit.*, *supra*, note 5 at 75.

²⁷ AVINERI, *op. cit.*, *supra*, note 21 at 89.

ing to Marx, the nineteenth century bourgeois world made even the limited reciprocity of family life impossible: "The bourgeois sees in his wife a mere instrument of production."²⁸

Since "the modern individual family is based on the open or disguised domestic enslavement of the woman . . .,"²⁹ the first step in the emancipation of the woman is a change in the family system. Indeed Marx had little respect for the traditional family structure which he dismissed as "bourgeois claptrap." He believed that the bourgeois family had been romanticized and that society should not be constructed on the model of the family. He envisioned the transformation of the whole social structure as the recognition by men of the universal dependence of man on man, thus making it a conscious principle of human conduct. This possibility was based, according to Marx, on the correct understanding and subsequent transformation of the system of production.³⁰

Changes in the family system which would ultimately emancipate women thus depended on changes in the economic structure and, specifically, on women's participation in economic life. In the words of Engels:

Here we see already that the emancipation of women and their equality with men are impossible and must remain so as long as women are excluded from socially productive work and restricted to housework, which is private. The emancipation of women becomes possible only when women are enabled to take part in production on a large, social scale, and when domestic duties require their attention only to a minor degree.³¹

This belief was reiterated by Lenin who felt that housework "crushes, strangles, stultifies and degrades women, chains them to the kitchen and to the nursery, and wastes their labor on barbarously unproductive, nerve-racking, stultifying and crushing drudgery."³² According to Lenin, in order to emancipate women from this "domestic slavery," it was necessary for the national economy to be socialized and for women to participate in common productive labor.³³ To this end, he envisioned the "setting up [of] model institutions, dining-rooms and nurseries, that will emancipate women from housework."³⁴

²⁸ Marx, *op. cit.*, *supra*, note 25, quoted in MENDEL, p. 30.

²⁹ ENGELS, *op. cit.*, *supra*, note 5 at 81.

³⁰ AVINERI, *op. cit.*, *supra*, note 21 at 91.

³¹ ENGELS, *op. cit.*, *supra*, note 5 at 152.

³² 13 UNION RESEARCH SERVICE 45 (1958), quoted in Dittmer, "The Chinese Marriage Law of 1950: A Study of Elite Control and Social Change" (Unpublished Master's thesis, The University of Chicago, 1967), p. 72.

³³ Quoted in Chen, *Women Take Part in Productive Labor*, 17 PEKING REV. 17 & 21 (1974).

³⁴ Quoted in Chao, *Safeguarding Women's Interests*, 17 PEKING REV. 15 (1974).

Thus, only when women are liberated from their role as domestic slaves and are no longer regarded as objects by men, can the fundamental antagonism between man and woman be resolved. This resolution is communism itself: "the definitive resolution of the antagonism between man and nature, and between man and man" and, it could be added, between man and woman.

These and other basic Marxist tenets were introduced in China during the New Culture and May Fourth Movements. Marxism was particularly attractive to the Chinese intelligentsia because it seemed to have succeeded in changing Russia, with the Bolsheviks' seizure of power in 1917.

The actual founding of the Chinese Communist Party took place in Shanghai in July 1921 at a meeting organized by Li Ta-chao and Ch'en Tu-hsiu. During this period of its organization, Chinese Communist ideology was strongly influenced by the leadership in Soviet Russia, to the extent that the first leaders of the Chinese Communist Party were convinced that the Chinese Revolution would follow the Russian "model."

It was not until later that Chinese Communist ideology developed its own individuality, a development often referred to as the "sinification" of Marxism-Leninism. This ideology developed out of the "concrete conditions" which existed in China in the late 1920's and was formulated mainly by Mao Tse-tung.

Given his leadership position in the Chinese Communist world, the ideology of Mao Tse-tung is, in a sense, "Chinese Communist ideology." In fact, at the present time, the total ideology of the Chinese Communist Party is officially described as "Marxism-Leninism and the Thought of Mao Tse-tung."³⁵ Thus, in any discussion of the Chinese Communist ideology of sexual equality and marriage reform, it is necessary to refer to the writings of Mao Tse-tung to discover the evolution of this ideology.

In his "Report on an Investigation of the Peasant Movement in Hunan," Mao Tse-tung states:

³⁵ SCHURMANN, "IDEOLOGY," *IDEOLOGY AND ORGANIZATION IN COMMUNIST CHINA* 23-24 (1968).

In the Party Rules adopted at the Seventh Party Congress (April-June 1945), the preamble states, "The Chinese Community Party takes the theories of Marxism-Leninism and the unified thought and practice of the Chinese Revolution, the thought of Mao Tse-tung, as the guideline for all of its actions." In contrast, the preamble of the Party Rules adopted at the Eight Party Congress (September 1956) states: "The Chinese Communist Party takes Marxism-Leninism as the guideline for all its action..." Since the latter part of the 1950's, the dualism originally stated in the 1945 Party Rules had been revived, but in strong form: "Marxism-Leninism and the thought of Mao Tse-tung." *Ibid.*, p. 21.

A man in China is usually subjected to the domination of three systems of authority: (1) the state system (political authority) ... (2) the clan system (clan authority) ... and (3) the supernatural system (religious authority) ... As for women, in addition to being dominated by these three systems of authority, they are also dominated by the men (authority of the husband). These four authorities—political, clan, religious and masculine—are the embodiment of the whole feudal-patriarchal system and ideology, and are the four thick ropes binding the Chinese people, particularly the peasants.³⁶

It is obvious from these statements that Mao Tse-tung considered women to be the most oppressed of the Chinese people; not only were they dominated by the three authorities which oppressed all Chinese, they suffered an additional domination, namely that of the male. This belief is reiterated in his other works, *e.g.*, "Under feudal domination, marriage is a barbaric and inhuman institution. The oppression and suffering borne by woman is far greater than that of man"³⁷ and "We are peasants . . . We are workers . . . We are students . . . We are women, we are sunk even deeper in a sea of bitterness . . ."³⁸ For a Chinese woman to be emancipated meant the breaking of the three "ropes" (political, clan and religious authorities) as well as the fourth "rope" (the authority of the husband).

In this context, and consistent with Marxist ideology,³⁹ the emancipation of the Chinese woman becomes an aspect of the class struggle for Mao. The theory of class struggle constitutes the essence of the Chinese Communist world outlook. Although the Chinese Communists have often departed radically from classic Marxist definitions of class, they have consistently regarded all conflict, whether internal or external to China, as of a class nature. Whether a "struggle" between poor and rich peasants in a village, or one between socialism and imperialism, any "struggle" is consistently defined as class conflict.⁴⁰

In this case—the emancipation of women—the struggle is against the authority of the husband as part of the "whole feudal-patriarchal system and ideology." The patriarchal family represented the mainstay of traditional Chinese society and was, in effect, a

³⁶ Mao Tse-tung, *Report on an Investigation of the Peasant Movement in Hunan*, in 1 SELECTED WORKS OF MAO TSE-TUNG 44 (1967).

³⁷ Mao Tse-tung, *Decree Regarding Marriage*, quoted in SCHRAM, THE POLITICAL THOUGHT OF MAO TSE-TUNG 228 (1963).

³⁸ Mao Tse-tung, *The Great Union of the Popular Masses*, quoted in SCHRAM, POLITICAL THOUGHT OF MAO TSE-TUNG 241 (Rev. ed., 1969).

³⁹ Mao dates his acceptance of Marxism to 1920, seven years before he wrote "Report on an Investigation of the Peasant Movement in Hunan": "By the summer of 1920 I had become, in theory and to some extent in action, a Marxist, and from that time on I considered myself a Marxist." SNOW, RED STAR OVER CHINA 155 (1968).

⁴⁰ SCHURMANN, *op. cit.*, *supra*, note 35 at 27.

feudal institution within a feudal society.⁴¹ For Mao it was thus imperative to transform the entire family system in order for China to evolve as a socialist society. And, as the long-range goal of the Chinese Communists—like all Communists—is that of achieving a classless society, the emancipation of women may be viewed as an aspect of the class struggle and as a decisive factor in determining the success or failure of the Chinese revolution.

The struggle of the Chinese women is thus directly related to their economic emancipation—which explains the importance which the Chinese Communists attached to this struggle. Not only do women have to be emancipated economically in order to succeed in their ideological emancipation, the economic participation of women is also essential to the development of China. This view is expressed in the passage from Mao Tse-tung quoted earlier: "Women comprise half of the population. The economic status of working women and the fact of their being specially oppressed prove not only that women urgently need revolution but also that they are a decisive force in the success or failure of the revolution."⁴²

The "whole feudal-patriarchal system and ideology" retards economic growth and marriage reform is thus an economic as well as a political necessity. In the words of Ch'en Shao-yu, drafter of the 1950 Marriage Law:

The marriage system is the basis of the social cell—the family institution. It seriously affects the development of the productive power of society. The breaking down of the old family basis, and the introduction of the new mode of life, are urgent and necessary 'especially to promote the growth of the productive power of society.'⁴³

It is evident that Mao Tse-tung recognized the economic imperatives for putting his ideology of sexual equality and marriage reform into practice. In one of his essays, Mao argues strongly in favor of making women available for productive labor: "China's women are a vast reserve of labor power. This reserve should be tapped and used in the struggle to build a mighty socialist country."⁴⁴

⁴¹ Niida has demonstrated a parallel development of serfdom with the strengthening of paternal power within the family, following Marx's dictum that the family "being related from the beginning to agricultural services contains in germ not only slavery (servitus) but also serfdom." The need for a son to obtain permission from his father to set up a separate household is, for instance, equated with the lack of freedom of residence of the tenant-serf. The control of the father and the husband over the family property, the whole status structure within the family, correspond to the control by the landlord over property and freedom of the tenant; the status relationship of the father and son corresponds in some respects to that of the landlord and tenants MEIJER, *op. cit.*, *supra*, note 10 at 36.

⁴² Quoted in Kwang, *op. cit.*, *supra*, note 6 at 14.

⁴³ Fu, *op. cit.*, *supra*, note 7 at 120.

⁴⁴ Mao Tse-tung, *China's Women are a Vast Reserve of Labor Power*, quoted in SCHRAM, *op. cit.*, *supra*, note 38 at 338-339.

Economic development in China, then primarily an agricultural country, meant agrarian reform, especially in the initial stages. In the passage from "Report of an Investigation of the Peasant Movement in Hunan," Mao Tse-tung for the first time establishes the relationship between the reform of production relations in the field of agriculture, and family reform.⁴⁵ This relationship between agrarian reform and marriage reform will be discussed in more detail later, but it is important at this point to show how this interreaction evolved in Chinese Communist ideology.

Mao, accepting the dichotomy of the Marxist view of society, expounded on the relationship between productive forces and production relations and between the base and the superstructure. In his work, "On Contradiction" (August 1937), Mao states:

True, the productive forces, practice and the economic base generally play the principal and decisive role; whoever denies this is not a materialist. But it must also be admitted that in certain conditions, such aspects as the relations of production, theory and the superstructure in turn manifest themselves in the principal and decisive role. When it is impossible for the productive force to develop without a change in the relations of production, then the change in the relations of production plays the principal and decisive role ... When the superstructure (politics, culture, etc.) obstructs the development of the economic base, political and cultural changes become principal and decisive. Are we going against materialism when we say this? No. The reason is that while we recognize that in the general development of history the material determines the mental and social being determines social consciousness, we also—and indeed must recognize the reaction of mental on material things, of social consciousness on social being and of the superstructure on the economic base.⁴⁶

In other words, in Mao's view, there is a constant mutual interreaction between the productive forces and the relations of production, and between the base and the superstructure. Growth in the productive forces induces a corresponding change in the relations of production. Accordingly, the establishment of new relations of production promotes a tremendous growth in the productive forces.⁴⁷ It is this constant mutual interreaction that propels society to move, develop and progress.

Given the dialectical relation between the base and the superstructure, the need for simultaneous change in both aspects of so-

⁴⁵ MEIJER, *op. cit.*, *supra*, note 10 at 37.

⁴⁶ Mao Tse-tung, *On Contradiction*, in 1 SELECTED WORKS OF MAO TSE-TUNG 336 (1967).

⁴⁷ Felisa Uy, "The Great Proletarian Cultural Revolution: A Study of the Socialist Development in China" Unpublished Master's thesis, The University of the Philippines, 1974), p. 9.

ciety becomes evident. Otherwise the active development of one and the slower development of the other will cause the latter to retard the growth of the former. Thus, in the case of agrarian reform and marriage reform, both had to occur simultaneously in order to propel, rather than retard, the outcome of the other.

This relationship is confirmed by Keith Buchanan in his evaluation of the economic development of China when he states that social change, and notably land reform, made possible the shaping of a new environment but, at the same time, the very process of re-modelling the environment itself stimulated further institutional change.⁴⁸ And in the words of a Chinese writer whom he quotes, "As men transformed nature their own way of thinking was transformed too."⁴⁹

In this way, land reform constituted one of the first stages in the transformation of China, both as a means of developing the country economically and as a means of destroying the "whole feudal-patriarchal system and ideology." The other stages through which China would progress will be discussed in Part VII. However, it is important to emphasize at this point that Mao Tse-tung, in keeping with the Marxist concept that "change is the condition of life," believed in the necessity of a continuing revolution. Based on this theory, China must go through the stages of development step by step and, regardless of its achievements, there will always be room for further changes.

In deciding what direction to take in the initial stages of the Chinese revolution, the leadership was faced with three options: It could follow the Western pattern of free-enterprise development, it could follow the Soviet model of development or, alternatively, it could pioneer a "Third Way," drawing on the experience of other countries but modifying these models in the light of the social and economic conditions specific to East Asia.⁵⁰ For obvious reasons, the option of the "Third Way" was chosen—what has been called the "Chinese Way" in the field of economic development.⁵¹ Thus, as in the realm of political ideology, a similar "sinification" of Marxism-Leninism took place in the economic realm. The Chinese Communists used the model based on the doctrine of Marxism-Leninism, *i.e.*, the mobilization of all energies and resources of the country to achieve a single goal—the wiping-out of poverty through the building of a socialist state.⁵² But, once again, this model was adapted to the "concrete conditions" of China.

⁴⁸ BUCHANAN, *THE TRANSFORMATION OF THE CHINESE EARTH* 124 (1970).

⁴⁹ Yang Min, *PEKING REV.* (1958), quoted in BUCHANAN, *op. cit.*, *supra*, note 48 at 124.

⁵⁰ BUCHANAN, *op. cit.*, *supra*, note 48 at 105.

⁵¹ Etienne, *La Voie Chinoise*, quoted in BUCHANAN, *op. cit.*, *supra*, note 48 at 107.

⁵² BUCHANAN, *op. cit.*, *supra*, note 48 at 108.

These conditions, including an agricultural economy and a peasant population, lead to one solution: agrarian reform. However, in keeping with the relationship between the reform of production relations in the field of agriculture and family reform, this was accompanied by the simultaneous introduction of marriage reform. It has been observed that whenever and wherever the Chinese Communists established themselves, they promulgated both a marriage law and a land reform law.⁵³ This happened in the Chinese Soviet Republic in 1931, in the Border Areas (but in a restricted way as will be discussed in Part IV) and after the establishment of the People's Republic. In fact, land reform provided the basis for the marriage law, because it gave the woman property rights to land. It therefore made it possible for her to divorce her husband without losing her economic independence. This was illustrated in *Fanshen*, in Chao Chen village in Shensi where many women said, "When I get my share I'll separate from my husband, then he won't be able to oppress me any more."⁵⁴ The ownership of land also gave the wife equality with her husband during marriage. The fact that even children were allotted land and that a wife at the time of divorce could take the children with her if she wished, provided her with a strong position *vis-a-vis* her husband. For all these reasons, land reform had a profound influence upon the legal relations within the family.

It is interesting to note, in this context, that the Land Reform Law was promulgated only one month after the Marriage Law, on June 2, 1950. The Marriage Law was actually banded together with the Land Law, as is expressed in a pamphlet which was issued together with the English translation of the Law:

As the agrarian reform sets free hundreds of millions landless and land-hungry peasants from oppression by the feudal landlords, so the Marriage Law marks the emancipation of the Chinese women from the feudal marriage system under which they were utterly bereft of any rights.⁵⁵

The Land Reform Law, aimed at the redistribution of land, had performed its function when the land had been redivided, by the middle of 1953. But the connection between agrarian reform and marriage reform continued, such as in the establishment of the communes in 1958. Each stage of agrarian policy had its repercussions in the interpretation of the Marriage Law.

⁵³ Meijer, "Marriage Law and Policy in the People's Republic of China" (unpublished manuscript), p. 1.

⁵⁴ HINTON, *FANSHEN: A DOCUMENTARY OF REVOLUTION IN A CHINESE VILLAGE* 397 (1966).

⁵⁵ Michael, *op. cit.*, *supra*, note 9 at 139.

These stages have not been as erratic as some Western writers would lead us to believe but have followed the step-by-step development in China's "continuing revolution." Moreover, as successful as has been the Chinese Communist ideology in changing the institution of marriage, this movement—in keeping with Mao's acceptance of "change as a condition of life"—is in the process of continual transformation.

This transformation will be analyzed in two parts: first, Part IV will illustrate the Chinese Communists' initial experience with its ideology of sexual equality and marriage reform in practice from the establishment of the Chinese Communist Party until 1949 and later, Parts VII and VIII will trace the repercussions of the 1950 Marriage Law—the embodiment of this ideology—on the status of women in Chinese society.

IV. THE PRACTICE OF CHINESE COMMUNIST IDEOLOGY OF SEXUAL EQUALITY AND MARRIAGE REFORM

The Chinese Communist Party was established in 1921. In its early years, the Chinese Communist Party was not an independent party but was working through the Kuomintang. This relationship between the Chinese Communist Party, under the influence of the Comintern, and the Kuomintang had developed gradually over the years 1921-1924. During the period of the first Chinese Communist Party-Kuomintang Alliance (1924-1927) the Communists were attempting to develop independent political power amongst students, workers and peasants—women as well as men. However, for the Chinese Communist Party and the Comintern which controlled its party line, this development had brought about many operational difficulties. The Communists not only found many of their policies reversed by the ruling Kuomintang but they also found themselves facing the danger of being completely overpowered by it. However, the events of the year 1927, *i.e.*, the anti-Communist attacks of Chiang Kai-shek, resolved the problem of the balance of power between the two parties. On August 1st an uprising of Communist troops at Nanchang began the open civil war between the two parties.

As a result, the Communists were driven underground in the cities or forced into the countryside of South China. Mao Tse-tung, with his decimated force of about 800 men, sought sanctuary in the Chingking mountains and established what was to be the first rural base area of the Chinese Communist Party.

The Communists finally acquired a base in Chingkangshan on the border of Kiangsi province, which enabled them to controlling several pockets in other surrounding provinces. Thus in 1931 the

Soviet Republic of China was established, referred to as a "democratic dictatorship of the proletariat and peasantry." This was the first time that Mao Tse-tung's ideas on agrarian reform and marriage reform could be put into action on a systematic basis. The constitution was proclaimed by Mao Tse-tung, Chairman of the Provisional Government, at the First All-China Congress of Soviets Juichin, November 7, 1931. His ideology of marriage reform was embodied in Article 11 of this Constitution:

The Chinese Soviet Government guarantees the emancipation of women; it recognizes the freedom of marriage, and puts into operation measures defending women, enabling them gradually to attain the material basis required for their emancipation from the slavery of domestic work, and for participation in the social, economic, and political life of the country.⁵⁶

Shortly thereafter, on December 1, 1931, the Marriage Regulations were passed by the Central Executive Committee. These Marriage Regulations were the implementation of Article 11 of the Constitution.

These Regulations had twenty-three articles (see Appendix I for complete text). The first articles were devoted to general principles. The next six dealt with the conditions for marriage. And the remainder regulated divorce and its consequences, except for the last three, which provided for the status of illegitimate children, the introduction of penal sanction for contraventions of the Regulations, and immediate enforcement of the Regulations.

Article I directly linked the principle of freedom of marriage with the "abolition of the feudal marriage system." Freedom of marriage was made a condition for a valid marriage (also Article 4) and was reinforced by the penal sanction against coercion (Article 22).

Article 2 prohibited polygamy, including concubinage as well as bigamy.

Article 3 contained the definition of the marriageable age, namely twenty for the man and eighteen for the woman.

Registration was stipulated as a condition for marriage (Article 8).

The complete freedom of divorce was pronounced in Article 9 without conditions, but also requiring registration (Article 10).

⁵⁶ Fu, *op. cit.*, *supra*, note 7 at 115.

Article 11 provided that after divorce the duty to raise the children was incumbent on the man, except in the case of infants (Article 12).

As indicated above, eighteen out of the twenty-three articles dealt with the conditions for marriage and its dissolution. Nothing was said about the situation during marriage, *e.g.*, the rights and duties of the spouses, the regulation of matrimonial property, parental rights and duties or other situations during marriage which appeared in later Communist legislation. This was possibly because the new freedom of marriage and divorce was of the highest priority to the leadership and probably because they had very little experience with the concomitant issues that came with sexual equality. It has also been suggested that the Chinese Communists were reluctant at first to regulate these situations by law.⁵⁷

The Regulations were in force for two years and four months. They were abolished by the Marriage Law of the Chinese Soviet Republic of April 8, 1934 (see Appendix II for complete text). By that time the collapse of the Soviet Republic was a virtual certainty, there having been severe military setbacks. The promulgation of the new Marriage Law under these circumstances clearly demonstrates how important the subject was considered to be, if not for the present at least for the future.⁵⁸

The spirit of the new law did not strikingly differ from that of the Regulations; the first articles, the General Principles, were the same as those of the Regulations. The major differences in the new Marriage Law include the following provisions:

In Article 5 the prohibition against the marriage of consanguineous relatives was narrowed from the fifth generation to the third.

Article 9 was a new addition and contained the express recognition of *de facto* marriage: "In all cases of a man and a woman cohabitating, whether or not they have registered marriage, they shall be considered to have contracted marriage."

Another addition was Article 11 on the divorce of wives of Army personnel, freezing the matrimonial *status quo* of the military.

Fundamentally the principles of the Kiangsi legislation on marriage were identical with those underlying the legislation on the subject in the U.S.S.R. at that time. Marriage and divorce had been among the first institutions affected by the earliest Russian revolutionary decrees within the second month of the Soviet regime. The

⁵⁷ MEIJER, *op. cit.*, *supra*, note 10 at 52.

⁵⁸ *Ibid.*, p. 48.

meager provisions of these decrees were replaced in 1918 by a "Code of Laws Relating to Acts of Civil Status, Marriage, Family Guardianship." A new code was adopted on November 19, 1926, entitled the "Code of Laws of Marriage and Divorce, the Family and Guardianship."⁵⁹ Thus developments in the U.S.S.R. along this line had lasted fourteen years when the Regulations on Marriage of the Chinese Soviet Republic were promulgated; the Code had been in effect for five years. Given the strong Russian influence in China during this period, the similarities in the legislations are understandable.

In the "Code of Laws on Marriage and Divorce, the Family and Guardianship," Part I: "Marriage," and Part II: "Mutual Relations of Children and Parents . . ." are of particular importance for comparison with the Kiangsi laws, especially the following principles:

Chapter I required the registration of marriage.

Chapter II stipulated the conditions governing the registration of marriage, *i.e.*, "Mutual consent," marriageable age fixed at eighteen years and the restrictions (those already married, the "feeble-minded" or insane, relatives in the direct line of descent, etc.).

Chapter III, "Rights and Duties of Husband and Wife," included the provision on the choice of name (Article 7), freedom of the choice of occupation or profession (Article 9) and mutual agreement of spouses regarding the manner in which their joint household was conducted.

Chapter IV was entitled "Dissolution of Marriage" and under these provisions either spouse had complete freedom to discontinue marital life without stating the reason therefore. The divorce was recorded by the Civil Registry Office. Neither a statement for the reasons for such action nor any judicial proceedings were required.

All of these provisions, except for the "Rights and Duties of Husband and Wife," were echoed in the Kiangsi legislation. The probable reason for this omission has been stated above. The greatest difference between the Russian Code and the later Chinese Communist legislations is the latter's extreme terseness and consciousness: The U.S.S.R. Code contains 143 articles as against twenty-three in the 1931 Marriage Regulations and twenty-one in the Revised Marriage Law. It has been suggested that the Chinese law gave

⁵⁹ GSOVSKI, SOVIET CIVIL LAW: PRIVATE RIGHTS AND THEIR BACKGROUND UNDER THE SOVIET REGIME 111-113 (1948). For the complete text of this Code, see pp. 239-290.

only the bare essentials in order to regulate by administrative directives much of what in the U.S.S.R. was contained in the law itself.⁶⁰

The deepest repercussions of the policies implemented during the Kiangsi period came as a direct result of marriage legislation. In spite of the great discretion exercised by the Chinese Communist Party, information disseminated in contemporary documents indicates that the Marriage Regulations caused a certain confusion in the Soviet zone especially during the period which immediately followed their publication. There were deviations both to the left and to the right, *i.e.*, there was some moral corruption on the part of some cadres who interpreted freedom of marriage as sexual license;⁶¹ and in certain localities not only did the authorities refuse to grant divorces, they even put the couples requesting them in prison.⁶² The former deviations received more publicity which led to the commonly held belief that the Communists were sexually immoral.

Thus one of the most effective weapons used by the Kuomintang in its struggle against the Chinese Communist Party during the Kiangsi period was the allegation that the revolutionaries had completely destroyed morals, collectivized women and contributed to sexual chaos.⁶³ In 1934, among the forty-two anti-Communist slogans adopted by the nationalist authorities, five had to do with the theme of sexual morality. Thus, in the "white areas" of Kiangsi, wall posters appeared bearing the words, "The red bandits wish to destroy virtue: they practice free sex. They are savage beasts who abandon themselves to debauchery!" or, "If women wish to preserve their chastity and enjoy familial happiness: they must take up arms to exterminate the red bandits!"⁶⁴

These problems were candidly recognized by the Chinese Communists, especially the negative effects that these could have on the generally conservative peasants:

The realization of the policy of the Party and the Soviet Government in the matter of marriage problems must be guaranteed. In practice we must start from the premise that both parties, husband and wife, serve the cause of the revolution. Therefore we must not only refrain from imposing limitations on the freedom of marriage, since this would be contrary to Bolshevik principles, but we must

⁶⁰ MEIJER, *op. cit.*, *supra*, note 10 at 52.

⁶¹ *Ch'en Ch'eng Papers*, cited by MEIJER, *op. cit.*, *supra*, note 10 at 39.

⁶² "Report of the provincial soviet government of Kiangsi" (November 1932), cited by Hu, *The Sexual Revolution in the Kiangsi Soviet*, 59 CHINA Q. 484 (1974).

⁶³ Hu, *ibid.*, p. 477.

⁶⁴ "Report of the Association of the Masses of Kiangsi to Help in the Extermination of Bandits" (1934), microfilm belonging to Cornell University, pp. 41-42, quoted in Hu, *op. cit.*, *supra*, note 62 at 477.

resolutely oppose the idea of absolute freedom of marriage as it creates chaotic conditions in society and antagonizes the peasants and the Red Army. We must make it clear that the Central Committee never maintained absolute freedom of divorce either, because that would be an anarchistic practice...⁶⁵

The difficulty lay in finding reasonable limitations to freedom of marriage and divorce in the face of the obvious abuse that was made of it, while the doctrinaire objections against any imposition of limitations were still strong. Hence this curious struggle with the words "freedom" and "absolute freedom." The ways of solving "marriage problems" according to the "Plan for Work among the Women" were:

1. To guarantee freedom of marriage and divorce through the government.

2. The Soviet Government will handle all marriage problems through the law. Violators of the law will be punished according to the law.

3. However, it is not enough to solve these problems by means of the law only: we have to take recourse to propaganda and education. We must make the masses understand that the significance of liberation lies in the revolutionary war. The members of the Party and the Youth Organization must make this standpoint their own; they must become models for the masses and prevent and oppose anarchistic immoral behavior. This work of propaganda must be one of the most important tasks within as well as outside of the Party.

4. We must call on the masses to supervise and criticize the (morally) corrupt elements with a view to their eventual dismissal. Wherever allegations are made, the Party shall investigate the circumstances.

5. When we raise the level of politics and culture, we shall be able to prevent morally loose behavior. Particular attention must be paid to the wives of Red Army personnel; they must be encouraged to support the revolution and to sympathize with their husbands. Their morale must be raised and they must positively demonstrate revolutionary ardor. Such women should be absorbed into the entertainment units (for the army).

6. The custom of the foster daughter-in-law must be abolished by order of the Soviet Government. These girls ought to be liberated. We must make them join children's groups and the young Pioneers. Merely preventing parents from taking in foster daughters-in-law, as was done in Western Kiangsi, is not sufficient.

7. In particular in the village of Hunan there are many families of soldiers of the White Army. The women must be organized to write or to speak with their husbands and to induce them not to serve with the war-lords against the Red Army and to persuade

⁶⁵ *Ch'en Ch'eng Papers*, quoted in MEIJER, *op. cit.*, *supra*, note 10 at 39.

them to support the Soviet Government. We should also lead these women to participate in local revolutionary work and to attend the meetings of peasant women and women workers.⁶⁶

Despite these problems encountered in the field of marriage reform in Kiangsi, there is evidence that Mao Tse-tung was generally pleased with the progress that had been made. In the report which he presented to the Second National Soviet Congress, he declared that the system of marriage adopted by the Chinese Soviet Republic was "in conformity with human culture" and constituted one of the "great victories of the history of humanity."⁶⁷

Less than six months after the New Marriage Law was promulgated, the Chinese Communists were forced to leave their Kiangsi base. Chiang Kai-shek had mounted his five "extermination" campaigns against the Communists, hoping to annihilate them by a total encirclement and economic blockade. After a series of difficult campaigns the Government forces in 1934 captured the Kiangsi stronghold, forcing some one hundred thousand Communist army and government personnel to break through the Nationalist blockade and embark on their Long March. The Long March—which covered over five thousand miles on foot across eighteen mountain ranges and twenty-four rivers and took about a year to complete—was in fact a continuous campaign against the Government troops.

In October 1935 the Communists reached the area of Northern Shensi—or at least a small fraction of the original force did—and established themselves there. They made their headquarters in Yen-an, where, in the grottoes of the cliffs, some 20,000 people lived and many facilities were organized, *e.g.*, a military academy, hospitals and a college of art.

During the early years in the northwest, official policy on marriage showed no change from the days of the Kiangsi Soviet. The Soviet Marriage Law which was reprinted in Pao-an in 1936, remained in force.⁶⁸ The Communists' policies in effect during this so-called "Yenan Period" (1936-1945) were very much tempered by historical events, namely the threat of Japanese aggression. The Communists had earlier (1932) made a formal declaration of war against the Japanese but they were in no position to carry the declaration into effect. But once established in their northern base, and following the new Moscow line, they took recourse to a policy

⁶⁶ *Ibid.*, p. 39-40

⁶⁷ "Collection of Documents of the Second National Congress of the Delegates of the Chinese Soviet Republic," Juichin, March 1934, p. 97, *Ch'en Ch'eng Collection*, reel 16, quoted in Hu, *op. cit.*, *supra*, note 62 at 484.

⁶⁸ SNOW, *op. cit.*, *supra*, note 39 at 230, cited by Davin, *Women in the Liberated Areas*, p. 75.

of propaganda calculated to form a national front of unity against Japanese aggression.⁶⁹ The united front propaganda, including slogans such as "Chinese do not fight Chinese," appealed strongly not only to leftist nationalists but also to the troops from Manchuria sent to annihilate the Communists. After the Sian incident in December 1936 (during which Chiang Kai-shek was taken prisoner by his own generals and held under arrest), a truce was agreed with the Nationalist Government in 1937 whereby the Communist occupied area was to become an autonomous region, called the Border Area of Shensi, Kansu and Ninghsia.

During the war with Japan, which started on July 7, 1937, the Communist armies engaged in guerilla warfare and established several further revolutionary bases between and behind the Japanese lines. In these regions governments were organized on a united front basis under Communist control. Such areas were among others, the Border Area of Chin-Ch'a-Chi (parts of Shansi, Ch'ahar and Hopei) and Chin-Chi-Lu-Yu Border Area (parts of Shansi, Hopei, Shantung and Honan).⁷⁰

This period of the Japanese War—when the Communists worked together with the Nationalist Government—was a period of compromise. The Communists were willing to do so in order not to alienate themselves from the masses and to win over the intelligentsia. As part of the bargain, the Chinese Communist Party restricted its program of land reform. The party also revised its policy towards marriage, particularly with regard to the freedom of divorce, and the marriage ordinance was revised to accord with the Civil Law of the Republic of China.⁷¹ Thus, the Marriage Regulations that were promulgated in the various areas under Communist influence, around and within the areas occupied by the Japanese Army, show a certain restraint.

Another factor in this revision may have been that in the U.S.S.R. the attitude towards the family and its regulations had appreciably changed during this period and was not without influence in China. By the time the first legislation was promulgated in the Border Areas (April 1939), many changes occurred, *e.g.*, after 1936 a series of laws were enacted, attaching to divorce some inconveniences, such as making it more difficult and expensive.

In short, the stabilization of the family became the main theme of matrimonial policy, again, a theme borrowed from the U.S.S.R.,

⁶⁹ Brandt, *et al.*, *A Documentary History of Chinese Communism*, p. 239, (1952) cited by MEIJER, *op. cit.*, *supra*, note 10 at 30.

⁷⁰ MEIJER, *op. cit.*, *supra*, note 10 at 30.

⁷¹ Fu, *op. cit.*, *supra*, note 7 at 116.

and certain provisions in the Border Area legislations show strong evidence of the new Soviet influence.

The discussions of the Marriage Regulations in the Border Areas will be based on the following translated sources:⁷²

- I. Marriage Regulations of the Shensi, Kansu, Ninghsia Border Area, promulgated April 4, 1939 (Appendix III).
- II. Revised Provisional Marriage Regulations of the Shen-Kan-Ning Border Area, promulgated March 20, 1944 (Appendix IV).
- III. Marriage Regulations of the Border Area of Shansi, Ch'a-har and Hopei (Chin-Ch'a-Chi Border Area), passed January 21, 1943 and promulgated February 4, 1943 (Appendix V).
- IV. Revised Provisional Marriage Regulations of the Border Area of Shansi, Hopei, Shantung and Honan (Chin-Chi-Lu-Yu Border Area), promulgated January 5, 1942; revised and supplemented September 29, 1943 (Appendix VI).
- V. Detailed Provisions of the Enforcement of the Provisional Marriage Regulations of the Chin-Chi-Lu-Yu Border Area, enforced April 26, 1942 (Appendix VII).

Although very different in details, the regulations expressed the same general ideas. They stressed the necessity for free consent of the marrying parties, they all contained the prohibition against interference by third parties in the conclusion of marriage, and insisted on the principle of monogamy. A common feature of all these regulations is that the concept of feudalism is absent from the texts, as well as the terms "freedom of marriage" and "freedom of divorce." Some of these regulations devoted considerable attention to the institution of betrothal, and all of them required the registration of marriage as well as divorce. But the interesting characteristic of some of them is that they veer in the direction of family law: they insist on the equality of the husband and wife, a concept entirely absent in the texts of the Kiangsi statutes (see the discussion of Kiangsi legislation above).

Since these regulations have as many as twenty-five articles in each, it is not possible to analyze them in any detail. Some of the points of difference should be noted, however:

⁷² MEIJER, *op. cit.*, *supra*, note 10 at 87-102.

Marriage Regulations of the Shensi, Kansu, Ninghsia Border Area:

The conditions for divorce were stipulated.⁷³

Women took custody of children not yet five years of age after the divorce.

Revised Provisional Marriage Regulations of the Shen-Kan-Ning Border Area:

A man was not allowed to file a divorce petition if his wife is pregnant, not until one year after the birth of a child.

Custody of the children after divorce was given to the woman if they were under seven years of age.

Marriage Regulations of the Border Area of Shansi, Ch'ahar, and Hopei (Chin-Ch'a-Chi Border Area):

Betrothal was "not an indispensable procedure for marriage."

There should be no interference with the marriage of widows.

No divorce petition could be filed if the woman is pregnant or nursing. Such petition may only be filed three months after the birth of a child.

The custody of children after divorce was determined by agreement.

The marriage legislation in the Border Area, especially the divorce provisions, indicated a return to a more conservative policy. As shown above, this was partly a concession to the united front policy and partly a result of the influence of the new family policy in the U.S.S.R. However, it may also be attributed to the Communists' experience in Kiangsi where their too radical policy negatively affected their success in mobilizing the peasants. This possibility is more plausible given the fact that the peasants in the North were known to be more conservative than in the South, especially the women, and they would have undoubtedly been antagonized by the type of propaganda which became widespread in Kiangsi, namely that Communism meant immorality.

As in the case of the Communists' experience in Kiangsi, there are very few statistics to indicate how thoroughly these marriage laws were implemented in their respective areas. One document, "Marriage problems in new China," indicates that in the liberated

⁷³ Although the divorce provisions were restricted in order to compromise with the Nationalist Civil Code and the grounds for divorce were enumerated for the first time, it should be noted that in the Civil Code the grounds were exhaustive while in the Border Areas this was not the case, e.g., (ii) fundamental lack of harmony of sentiment and will between the parties, continued co-habitation impossible and (x) any other important reason.

areas between January and June 1948, 64 percent of all civil cases were petitions for divorce, of which the great majority were brought by women.⁷⁴ Yet the new ideas were still far from being generally accepted. The other side of the picture was brought out in figures collected by the Women's Federation, which showed that of 464 cases where a woman's death (including murders and suicides) had been investigated 40 percent had involved women who had wanted divorces but had been unable to get them.⁷⁵ (The resistance of the cadres, as well as the families of the women seeking divorce, to implementing the divorce provisions of the Communists' marriage laws will be discussed in the context of the repercussions of the later 1950 Marriage Law.)

It has been suggested that during this period a more careful handling of the divorce provisions became an economic necessity in the light of the fact that land reform was restricted with its negative effect on the economic status of women.⁷⁶ It has been discussed above how these two reforms, marriage reform and land reform, went hand-in-hand and it would have been extremely difficult for the Communist authorities to grant divorce in cases where the woman had no means of livelihood.

At the end of the Sino-Japanese War, the Chinese Communists opened negotiations with Chiang Kai-shek. In August 1945 agreement was reached between a delegation of the Chinese Communist Party and the Kuomintang Nationalists, in Chungking. As a result the Chinese Communist Party limited its program, including family issues, to those acceptable to the Kuomintang liberals. But the division between the two parties was too deep for conciliation; the truce was short-lived. In 1946 the Kuomintang armies launched another offensive against the Communist bases in the North. After Chiang Kai-shek's attack, the Chinese Communist Party adopted a more radical program of social reform. Agrarian policy underwent a more radical change than the policy toward marriage, however. It was felt that too sudden and strong a campaign for marriage reform would have alienated many peasants, including even many of the women themselves.

The last revolutionary civil war was short and decisive. By the end of 1948 the Kuomintang had been driven out of the Northeast and by the following spring the Communists "captured" an average of three cities a day. Thus the Communists succeeded in taking over the mainland and on October 1, 1949 Mao Tse-tung

⁷⁴ Davin, *op. cit.*, *supra*, note 68 at 86.

⁷⁵ *Ibid.*

⁷⁶ MEIJER, *op. cit.*, *supra*, note 10 at 67.

proclaimed in Peking the establishment of the People's Republic of China.

Once the Communists officially came into power, they continued their program for the emancipation of women. Their goals were outlined in their first charter, the Common Program, adopted September 29, 1949, by the First Chinese People's Consultative Conference:

The People's Republic of China shall abolish the feudal system which holds women in bondage. Women shall enjoy equal rights with men in political, economic, cultural, educational and social life. Freedom of marriage for both women and men shall be put into effect (Article 6).⁷⁷

When the Communist constitution replaced the Common Program as the basic law, the same principle was reaffirmed. The importance which the Communists attached to marriage reform is witnessed by the fact that the Marriage Law of the People's Republic of China was the first legislation enacted by the Central People's Government after the establishment of the Republic.

V. THE 1950 MARRIAGE LAW AND ITS IMPLICATIONS FOR CHANGE

One of the first legal acts taken after the establishment of the People's Republic of China in 1949 was the repeal of all of the Kuomintang laws and codes even before new ones had been enacted. The repeal of the Kuomintang book of six laws was effected in Article 5 of the February 1949 directive of the Central Committee of the Chinese Communist Party.⁷⁸

Ch'en Shao-yu, chairman of the Legal Committee, introduced the Marriage Law into the Central People's Government Committee on April 13, 1950 and the law was then promulgated by the latter on May 1st. According to Ch'en Shao-yu, the compilation of the law took about eighteen months, "with constant re-examination, discussion and revision." Most of the provisions were said to have been revised thirty to forty times, representing the integration of opinions of various circles, among them the All-China Democratic Women's Federation, the People's Supreme Court, and the Ministry of Justice. The influence of the Russian Code was admitted: "In addition, for the sake of learning from the experiences of Soviet Russia . . . , the latest editions of the *Soviet Law of Marriage, the Family, and Guardianship* were translated and published for refer-

⁷⁷ Fu, *op. cit.*, *supra*, note 7 at 117.

⁷⁸ Lee, *op. cit.*, *supra*, note 19 at 449.

ence.”⁷⁹ The influence of this Soviet marriage law will become apparent when we come to the discussion of the specific provisions of the Chinese Marriage Law of 1950.

The new Marriage Law has twenty-seven articles, divided into eight chapters:⁸⁰

- I. General Principles
- II. The Marriage Contract
- III. Rights and Duties of Husband and Wife
- IV. Relations Between Parents and Children
- V. Divorce
- VI. Maintenance and Education of Children After Divorce
- VII. Property and Maintenance after Divorce
- VIII. By-Laws

The first chapter, “General Provisions,” effects the abolition of the “feudal marriage system,” and introduces instead a “new democratic” marriage system of free will, equality, monogamy and the protection of the lawful interests of women and children.⁸¹ Article 2 proscribes the specific “feudal” acts of bigamy, concubinage, child betrothal, interference with the re-marriage of widows, and “the exaction of money and gifts in connection with marriage.”

Chapter II, “The Marriage Contract,” deals with the conditions for contracting marriage. Marriage is to be based entirely on the free consent of both parties acting neither with compulsion on either side nor interference by third persons.⁸² The marriage age is set at twenty for the man and eighteen for the woman.⁸³

The impediments to marriage include: family relationship by affinity and consanguinity, sexual impotency, venereal disease, mental disorder and leprosy,⁸⁴ and other diseases which render a person unfit for marriage.

This chapter also contains the article requiring the registration of marriage, in person, with the people’s government of the district or township in which the couple resides.⁸⁵

Chapter III, entitled “Rights and Duties of Husband and Wife,” describes the marital unit as “companions living together”⁸⁶ who are

⁷⁹ Fu, *op. cit.*, *supra*, note 7 at 119.

⁸⁰ See Appendix VIII for text.

⁸¹ Art. 1.

⁸² Art. 3.

⁸³ Art. 4.

⁸⁴ Art. 5.

⁸⁵ Art. 6.

⁸⁶ Art. 7.

"duty bound to love, respect, assist and look after each other, to live in harmony, to engage in productive work, to care for their children and to strive jointly for the welfare of the family and for the building up of the new society."⁸⁷ The other articles in the chapter stress further the equality of husband and wife: the same position in the household, equality in the choice of profession and participation in social activities,⁸⁸ equal rights of ownership and management of family property,⁸⁹ and the right to use his or her own family name.⁹⁰

The fourth chapter deals with the relationship between parents and children, the most revolutionary provision of which decree that illegitimate children shall enjoy the same rights as those born in wedlock.⁹¹ The mutual duty to support and assist each other is established between parents and children.⁹² It is also provided that no discrimination may be made between children of the present and those of a former marriage.⁹³

The rules of divorce are found in the fifth chapter. Divorce may be obtained by mutual consent or upon an *ex parte* application. The ramifications of both proceedings are discussed later. The consequence of divorce are contained in the sixth and seventh chapters entitled respectively "Maintenance and Education of the Children after Divorce" and "Property Maintenance after Divorce." Only one general rule is given as to who shall have the custody of the children, namely the mother in case of infants still being nursed.⁹⁴ In all other cases any arrangement may be made by the parents themselves. If the mother has custody, the father has to pay part or whole of the cost of maintaining and educating the child. With regards to the disposition of property after divorce, the property which the woman possessed prior to her marriage "returns to her."⁹⁵ As for indebtedness, only common debts are paid off out of the property jointly acquired during marriage.⁹⁶

The last chapter, the eighth, is devoted to additional articles. Article 26 makes it a criminal offense to violate the marriage law: "Persons violating this law will be punished in accordance with Law" and Article 27 enforces the law from the date of its promulgation. However, no mention was made publicly of what types of

⁸⁷ Art. 8.

⁸⁸ Art. 9.

⁸⁹ Art. 10.

⁹⁰ Art. 11.

⁹¹ Art. 15.

⁹² Art. 13.

⁹³ Art. 16.

⁹⁴ Art. 20.

⁹⁵ Art. 23.

⁹⁶ Art. 24.

punitive measures would be taken in case of violations, either in the Law itself or in succeeding directives. Only after successive corrective measures were passed in the course of the implementation drives of the new Marriage Law did it become clear what punishments were *not* to be administered and what behavior in connection with the Law was *not* permissible.⁹⁷

Before discussing some of the specific provisions of the 1950 Marriage Law, it is useful to refer back to the earlier legislation to trace its influence on this law. Although the Civil Code of the Nationalists appeared to anticipate the Marriage Law of 1950 on certain points, *e.g.*, upholding monogamy, property rights for women, etc. what is more striking are its similarities with the Kiangsi and the Border Area legislations which, as shown above, were in turn influenced by the Code of the U.S.S.R.

In comparing the Marriage Law with the *Soviet Law of Marriage, the Family, and Guardianship*, we can notice the following similarities:

Registration: provisions for the registration of marriage found in Articles 1 and 2 of the U.S.S.R. are similar to those of the Marriage Law (Article 6). However, *de facto* marriages are not mentioned in the Chinese Marriage Law.⁹⁸

Conditions for marriage: in the Marriage Law the prohibition against marriage between collaterals by blood is made dependent on local customs. The only straightforward prohibitions which bar marriages "between relatives in the direct line of descent . . . between brothers and sisters, whether of the full or the half blood" follow the pattern of the U.S.S.R. law (Article 6).

Rights and Duties of Husband and Wife: Chapter III of the Marriage Law has strikingly similar provisions to the U.S.S.R. Code.

Divorce: The provisions regarding divorce in the Marriage Law are almost identical with the U.S.S.R. Code.⁹⁹

⁹⁷ Dittmer, *op. cit.*, *supra*, note 32 at 59.

⁹⁸ It should be noted that the policy of the U.S.S.R. regarding *de facto* marriages changed since the 1926 Code. In the beginning of 1944 the U.S.S.R. adopted several laws and, although they were enacted at a time of war emergency, they remain an element of the Soviet legal system. One of these laws was that only a marriage registered with the Civil Registry Office has the legal effect of a marriage, thus eliminating *de facto* marriages after this time. Gsovski, *op. cit.*, *supra*, note 59 at 124-125.

⁹⁹ Another radical change since the 1926 Code concerned divorce: since 1944 divorce has been granted only by the courts and only for reasons which the court deems justifiable (not specified by statute). Divorce proceedings pass through two stages, each in a different court. The petition for divorce must be filed with the lower court, the people's court, by either spouse or both of them jointly. The petition must specify the reasons for which divorce is sought, as well as witnesses and other evidence of the facts alleged. *Ibid.*

Other characteristics and provisions of the Marriage Law can be traced to the legislation of Kiangsi and the Border Areas, *e.g.*, the terseness of the whole document and of the individual articles, the concentration on marriage as a bilateral contract between a man and a woman, the flexibility of divorce procedures, the equal treatment of legitimate and illegitimate children and the introduction of punitive measures. However, Chen Shao-yu, in his introduction to the Draft Law, hardly referred to this legislation. This may be attributed to two causes: (1) the concept of the family as a socialist cell, borrowed from the U.S.S.R. Code, is missing in the earlier Chinese legislation; and (2) the practical application of the earlier legislation had given rise to serious criticism of communist society¹⁰⁰ (see Part IV).

The most outstanding features of the 1950 Marriage Law are the provisions for the registration of marriage, the chapter legislating the "Rights and Duties of Husband and Wife" and the liberal divorce provisions. The second, which was fundamental in changing the status of women in Chinese society, will be discussed in more detail later, but mention should be made here of the specific registration and divorce provisions.

Under the requirement for the registration of all new marriages, couples intending to get married come before the Communist official in charge of marriage registration for the locality. This official must ascertain certain facts before the marriage can be considered, *e.g.*, he asks the couple whether the intended marriage is taking place with the consent of both parties; whether duress from any third party has been exerted, and whether polygamy or concubinage is involved. Only when these legal conditions are met and confirmed by an investigation is a marriage certificate issued and the couple considered legally married. In the cities, in addition to these pre-conditions, a medical examination is required.¹⁰¹

The Communist authorities laid great stress on registration as a means of enforcing the conditions of marriage:

The work of the registration of marriages is an important work to give shape to the present Marriage Law; the organ for the registration of marriage is one of the most important branches for the enforcement of the policy of marriage; the marriage problem will largely be solved via the organs for registration of marriage.¹⁰²

¹⁰⁰ MEIJER, *op. cit.*, *supra*, note 10 at 77.

¹⁰¹ YANG, *op. cit.*, *supra*, note 4 at 32. With the closing of all houses of prostitution after 1949, venereal disease in China has allegedly been eliminated and thus blood tests before marriage are not longer used. SIDEL, *WOMEN AND CHILD CARE IN CHINA: A FIRSTHAND REPORT* 51 (1972).

¹⁰² Quoted in Van der Valk, *The Registration of Marriage in Communist China*, 26 *MONUMENTA SERICA* 347 (1957).

The importance attached to the registration of marriage is due to the fact that these provisions tended to place marriage under the direct control of the Communist Party since the cadres in the Registries and the officers in Local People's Government offices are vested with full power to issue or withhold marriage certificates. In the words of the Civil Office of the Ministry of the Interior, "Thus the Government takes personal interests of those to be married into consideration, but also national, ethnic and social interests."¹⁰³

Although marriage registration is stipulated in the Marriage Law, the Communists issued supplementary Rules for Marriage Registration in 1955 to insure universal enforcement.¹⁰⁴ This legal document introduces two new features. The first is the addition of marriage registration as one of the functions of the large number of lower-level government agencies such as the neighborhood offices in the cities and the People's Committees of village districts and towns in the rural areas, thus vastly increasing the accessibility of the registration facilities to the common people. Secondly, the registering officials are required to explain to the registrants the provisions of the Marriage Law so as to acquaint them with their own legal rights and obligations before proceeding with interrogations and examination of the case for approval or disapproval of the registration. The measure has the merit of informing the common people of the contents of the new law as a vital step in its effective enforcement, which is in contrast to the conditions under the Nationalist government, when the majority of the population were ignorant of the existence of a new marriage law.¹⁰⁵

The same provisions for registration of marriage were applied in the case of a remarriage, *i.e.*, if both the husband and wife desire the resumption of marriage relations after divorce. However, the procedure for the issuance of divorce certificate is more complicated than for that of marriage or remarriage. Divorce by mutual consent is legally constituted by registration at the *ch'ü* office. The registrar verifies whether indeed both parties are intending to divorce of their own free will, whether appropriate arrangements have been made for the children and whether a proper settlement has been made between the spouses concerning the family property. If he is satisfied the registrar issues a certificate of divorce. The law does not require that the *ch'ü* official should in these cases attempt to reconcile the

¹⁰³ Civil Office of the Ministry of Interior, "How to Manage Marriage Registration Work Well" [sic] (1963), in 1 CHINESE SOCIOLOGY AND ANTHROPOLOGY 11 (1969).

¹⁰⁴ See Van der Valk, *op. cit.*, for complete translation of this document.

¹⁰⁵ YANG, *op. cit.*, *supra*, note 4 at 32-33.

parties; he is required to issue the certificate "without delay" (Article 17).¹⁰⁶

When only one party desires divorce, the procedure is different. To start with the parties have to be present at the *ch'u* office, where a first attempt is made to reconcile them. If this fails, the *ch'u* official must transfer the matter to the *hsien* or Municipal Court for adjudication. The Court once again starts conciliation, but if all attempts fail, this body gives the final verdict.¹⁰⁷ The process of reconciliation will be discussed in more detail later.

As all of these registration and divorce provisions had an enormous impact on the overall structure of Chinese society, it is important therefore to describe the changes implicit in the individual provisions of this law.

The first principle on which the Marriage Law is based is "the free choice of partners" and this is reiterated in Article 3: "Marriage is based upon the complete willingness of the two parties. Neither party shall use compulsion and no third party is allowed to interfere." This article contradicts the values that ran through the entire framework of the Chinese family, one of them being the inherent belief in the institution of arranged marriage. In the words of an old Chinese saying, marriage came by the "command of the parents and the unctuous words of the go-betweens."¹⁰⁸ In one stroke the old system based on parental authority in the choice of marriage partners was abolished. There followed a general breakdown in the traditional family which was based on the strict observance of hierarchy dominated by the eldest and by the male. Another consequence of this article was the decrease of intra-class marriages and subsequently there has been less class demarcation. Choice of marriage partners tends to be based on ideological compatibility rather than traditional similarities of family background.

The second principle on which the Marriage Law is based is monogamy which is spelled out in Article 2 in the provisions against bigamy and concubinage. (A concubine was an informal wife taken into the house with no formal wedding ceremony and thus with no ritualistic recognition or institutional guarantee for her security

¹⁰⁶ MEIJER, *op. cit.*, *supra*, note 10 at 74.

¹⁰⁷ *Ibid.*

¹⁰⁸ Chiu, *Marriage Laws of the Ch'ing Dynasty, the Republic of China and Communist China*, in 2 KIRBY (ED.), *CONTEMPORARY CHINA* 65 (1956-1957). See also *Book of Odes*, No. 158:

How does one make an axe handle?

Without an axe it can not be done?

How does one marry a wife?

Without a go-between it can not be done!

Quoted in VAN GULIK, *SEXUAL LIFE IN ANCIENT CHINA: A PRELIMINARY SURVEY OF CHINESE SEX AND SOCIETY FROM CA. 1500 B.C. TO 1644 A.D.* 19 (1961).

or the permanency of her position in the family.) This article destroyed the age-old custom of concubinage and finally brought to an end this class of women whose only claim to status within the family was when they produced a son and if the man's legal wife was unable to do so. More importantly, however, the prohibition against concubinage, an institution that was used to assure the birth of a son, drastically altered the ultimate end of the traditional marriage, namely the perpetuation of the patriarchal lineage. Even in today's China, the birth of a son is very often desired but, with the changes in the Marriage Law, the age-old character of the traditional family is undermined. No longer can a wife be denied by her husband just because she does not produce a son, nor can the husband acquire another woman for the sole purpose of begetting a son.

The other prohibition in Article 2 against child betrothal destroyed both early betrothals and the custom of "foster daughter-in-law." Prior to the 1950 Marriage Law it was common practice in China to betroth a female child at an early age, often at birth, to an equally young boy. In some parts of China the custom was to betroth children even before they were born or to arrange for a girl to marry a boy still unborn.¹⁰⁹ In some cases, when the girl's family was unable to provide her, she was transferred to the home of another family where she would live until her marriage, a practice known as "foster daughter-in-law," although in actual fact she was their daughter-in-law to be. At the time of the promulgation of the law any foster daughter-in-law who was not yet married was free to choose another husband or return to her own family if she so desired. However, if she was already married, she could remain married or, if she so desired, she could request a divorce which was processed according to the law.

Another prohibition included in Article 2 is against the interference in the remarriage of widows. In traditional China, if a man's wife died, it was considered normal for him to take another wife or a concubine, whichever he desired, but the widowed woman rarely remarried except when her husband's family could not support her. Her status was not necessarily inferior, especially if she had borne sons, but she was nonetheless considered the "property" of her husband's family. This prohibition against interference in the remarriage of widows thus reduces the in-laws' hold on the woman and she was free to leave her husband's family upon his death.

¹⁰⁹ There is a story related to this custom which tells of a young woman who demanded divorce from her "husband" who was so young that she carried him to Court in her arms. Quoted in MEIJER, *op. cit.*, *supra*, note 10 at 89.

The last prohibition in Article 2 against the exaction of money or gifts in connection with marriages brought an end to the tradition of selling daughters which was common, particularly among the poor peasants.

In the traditional marriage system it was expected that the daughter-in-law would serve and look after her in-laws, especially her husband's parents. Since the parents had usually paid for their daughter-in-law, they expected to have complete control and authority over her. The bride price not only reduced the status of women within the given family but also made women into objects which could be bought and sold at will. Thus, as in the case of the other prohibitions included in this article, this provision did away with the motion of the woman as "property" either of her own family or of her husband's.

Article 4 placed the marriage age for the man at twenty years and for the woman at eighteen years. This was only two years later than the Nationalist Civil Code but, because it was more uniformly enforced and also because of the prohibitions mentioned earlier regarding child betrothal, this gave greater freedom to young people. It also affected the relationship between the married son and the daughter-in-law with the parents and the family. First of all, the son is more economically independent at twenty and was thus less tied to his family. And, secondly, the more mature daughter-in-law cannot as easily be mistreated by her in-laws. Thus the traditional age-hierarchy is further weakened and the position of the mother-in-law, in particular, is reduced.

Article 6, the registration of marriage, is of utmost importance. Not only does it insure that the prohibitions mentioned above are upheld but it legalizes the institution of marriage, taking it out of the family context and putting it under the jurisdiction of the state. In keeping with Communist ideology, marriage and family life are no longer private affairs but public concerns which could be influenced, or perhaps even manipulated according to the persuasions of the Communist leadership.

Chapter III, "Rights and Duties of Husband and Wife," undoubtedly had the most effect on the overall structure of Chinese society. Article 7 stating that husband and wife are to enjoy "equal status in the home" completely destroyed the centuries-old tradition of the supremacy of men over women. Although there are still obvious discrepancies between the duties of husband and wife with the latter still being primarily responsible for the household chores, the mistreatment and abuse of women was brought to an end or at least minimized. This new equality of husband and wife also further

reduced the position of the mother-in-law since her daughter-in-law was no longer inferior to her and to her son.

Article 8 strengthens the effects of the requirement for the registration of marriage. It encourages the transfer of the institution of marriage and the family from the private to the public domain in stipulating that husband and wife are not only duty bound to "love, respect, assist and look after each other" but also to strive jointly for the building up of the new society. The goals of marriage are thus expanded to include not only the welfare of the family but also that of the state. In addition, the perpetuation of the patriarchal lineage is no longer the paramount and overriding purpose of marriage.

Articles 8 and 10 giving the woman the right of free choice of occupation and free participation in work or in social activities, and equal rights in the possession and management of family property respectively, is crucial in improving her status. Women are no longer forced to make their homes and their families the center of their universe. They are able to work, to become educated and to be involved in community activities. It must be emphasized here that the setting up of communal mess-halls, nurseries and other facilities which gave the women opportunities to engage in work outside the home, as well as the propagation of birth control measures, were essential conditions in aiding women and in reinforcing the principles founded in the Marriage Law. In addition, the woman for the first time was able to own, inherit and manage her own property which gave her a previously unknown freedom. She could no longer be controlled and dominated by her husband since she had economic independence.

The effect of having the right to use her own family name which was also provided for in this chapter has an important psychological value. It helps the woman retain her own identity. It also enables the woman to maintain her ties with her own family which was not possible in traditional China where the woman, once married, was often prohibited from returning even for visits to her own family. This article thus enhances the wife's position in the home since she, symbolically at least, retains her own identity and is not overshadowed by her husband's family.

Chapter IV, regarding the relations between parents and children, grants the mother greater authority in matters of child-rearing and discipline. It should be noted that parents continue to play the dominant role in early child-rearing and discipline. Even after children enter nurseries and schools, the vast majority live with their families, spend many of their free hours in family acti-

vities, and continue to receive substantial parental training and discipline.

Included in this chapter is the provision prohibiting infanticide. This provision was directed primarily for the protection of female babies since they were often considered an economic liability in traditional China and were done away with greater frequency than male babies. It is unlikely that this custom persisted with great frequency at the time of the drafting of the Marriage Law but it was obviously considered important enough to warrant mention in the law. It must be mentioned here that with the propagation of birth control and the legalization of abortion which made it necessary to bring unwanted children into the world, the inclusion of this prohibition is somewhat of an anachronism.

Chapters V, VI and VII deal with divorce, maintenance and education of children after divorce, and property and maintenance after divorce, respectively. In traditional China divorce was virtually unheard of and the woman who did seek a divorce was either severely mistreated by her husband and his family or was ostracized from the community if she returned to her parents' home. In addition, since she had no rights to take her children or belongings with her and since employment for women was rare especially in the rural areas, she would often be left destitute if she tried to break away from her husband's family. Moreover, given the traditional ban on the remarriage of women — widowed or divorced — she had no hope of finding another husband. The woman in traditional China had no recourse out of an unhappy marriage except suicide.

The "Divorce Law" changed all of these. Now the woman is free to seek divorce without fear of recriminations from her husband, his or her family, or the community. If she gets divorce, she has the chance to retain custody of her children (decided by mutual agreement or by the people's court) and is entitled to receive financial support from her former husband for their maintenance and education. Moreover, the wife retains such property as belonged to her prior to her marriage; the other property is allocated by agreement or by the people's court. If after her divorce, the wife has not remarried and has maintenance difficulties, her husband is duty-bound to assist her. It must have been assumed by the drafters of the Marriage Law that women in the early years after its promulgation would have difficulties in supporting themselves so in effect the law favored women. This is the only place in the Marriage Law where, in applying the general principle of "the protection of the lawful interests of women and children," there appears a manifest bias in favor of the woman.

This new freedom of marriage and divorce embodied in the 1950 Marriage Law also had repercussions on the Chinese family system. First, the husband-wife relationship has become the center of the new family, with the married son's parents occupying only a peripheral position. The generational hierarchy has thus been shattered. Second, the size of the family has also been diminished since many married couples now live on their own and tend to limit the number of their offspring. Third, as has been shown above, the solidarity of the family organization has been weakened given the new independence of the married children. Fourth, there was an break-down in the traditional kinship system since the perpetuation of the patriarchal lineage is no longer as important as it was in the past. And, finally, the welfare of the family has been subordinated to the welfare of the larger society. The family lost its traditional position as the core of the Chinese social system.

VI. IMPLEMENTATION OF THE 1950 MARRIAGE LAW (1950-1953)

Once the Marriage Law was promulgated, efforts were made to apply it as quickly as possible. Some members of the Chinese Communist Party had suggested that its implementation be postponed for a discussion period among the "masses" but Mao Tse-tung was adamant about its immediate application: "The Marriage Law . . . is only next in importance to the Great Fundamental Law [the Constitution] . . . after its promulgation it is right, without doubt, that the broad masses of the people should be roused to express their opinion through discussion. However, the idea of temporarily postponing its operation cannot be accepted."¹¹⁰

The proposal for immediate operation of the law was passed by the Assembly but, as it will be seen, its actual implementation was hindered by both the Chinese people and the Communist Party cadres themselves. However, despite these difficulties, there is no doubt that the Communist leadership was more successful in implementing the Marriage Law than the Nationalists had been with the Civil Code. The success of the Communists stem not only from the sincerity with which the leadership sought to transform their country but also from the various methods they employed, among them the communications network and the various drives or campaigns they undertook in the first years following the promulgation of the Marriage Law.

The communication system is directed by the Department of Propaganda of the Chinese Communist Party, directly under the Politburo of the Party's Central Committee. Their link with the

¹¹⁰ Fu, *op. cit.*, *supra*, note 7 at 121.

masses is through the *People's Daily* and other major newspapers, as well as the People's Broadcasting Station. In addition to newspapers and radio news, the types of publicity material employed in the Marriage Law drives included "pamphlets and pictorial illustrations, colored posters, cartoons, novels, plays, poems, and songs on the Marriage Law."¹¹¹ A simplified publication of the Marriage Law was released and became the "best-seller" in China for the year 1952, with a sale of eleven and a half million copies.¹¹²

Literature, the chief means of influencing people in the pre-Communist period, remained a major instrument of change under the Communists. More significantly the Communists astutely made greater use of folk literature and printed, illustrated materials simple enough for the common people to understand. Folk stories and folk ballads were turned out in large quantity for the "broad masses." "Newspapers-reading groups," where a literate leader reads to an illiterate group, was another means by which the Communists broadcast their message.¹¹³

Distinctly new and effective as an instrument of propaganda for the common people was the serial pictorial pamphlets in the style of the American comic books. Wide use was made of "blackboard newspapers" and "wall newspapers," which were bulletins written on blackboards and on papers posted on walls.¹¹⁴ This method was another cheap and effective means of utilizing the medium of the written language in propaganda to inform and persuade people to accept the Marriage Law.

Communist scripts for stage plays were based on the experience of the common people and many of them dealt with specific points of the New Marriage Law. (Some of these plays will be discussed later.) The Communists also attempted to reduce the influence of the traditional operas and, as it will be seen later, they introduced new "revolutionary" operas which portrayed their ideals.

The Communists also made use of an extensive organizational system involving the young and the women—the traditionally oppressed groups in pre-Communist China—together with other organizations with huge and politically progressive membership, such as the Chinese Communist Party, the labor unions and the armed forces. Members of all such organizations were required to participate in organized sessions to "study" the Marriage Law.¹¹⁵

¹¹¹ New China News Agency, February 21, quoted in Dittmer, *op. cit.*, *supra*, note 32 at 100-101.

¹¹² BARNETT, *COMMUNIST CHINA: THE EARLY YEARS 1945-1955* (1964), quoted in Dittmer, *op. cit.*, *supra*, note 32 at 101.

¹¹³ YANG, *op. cit.*, *supra*, note 4 at 200.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*, pp. 201-202.

Then there was what was called the "propaganda network," organized by volunteers (generally members of the Communist Party or the New Democratic Youth League) to publicize all official policies and ideas, including the Marriage Law, to co-workers in offices, shops, factories, urban neighborhoods, and villages. It was officially claimed that there were in excess of five million of these volunteers in 1952.¹¹⁶

Another totally new propaganda device was the "exhibition of marriage problems." Such exhibitions, first organized in large number from 1951 to 1953, displayed pictures and drawings to dramatize the "unreasonableness" and tragedies of the old institutions of family and marriage. In contrast these shows depicted the happiness brought to couples married in accordance with the Marriage Law. Trained guides talked to the crowds as they filed past the exhibits, and they gave counsel to individuals privately in a separate room.¹¹⁷

Lastly, the Communists showed effective skill in their methods of inducing social change. The efficacy of these methods is indicated in the term "setting the masses in motion." It involved focusing public attention on a clear objective, and in employing group pressure to induce reluctant individuals to come around to the desired goal. This was done through the process of mass meetings which is the "cornerstone" of the Communist mass propaganda technique.¹¹⁸

Most of these propaganda activities took place between 1950 and 1953 during the course of the various "drives" intended to implement the Marriage Law. The first drive was initiated with the official proclamation of the law in May 1950 and the second drive followed in March 1953. Each drive lasted about three to six months, with three distinct phases: (1) the first, the "great fanfare" phase introduced the positive themes such as illustrative statistics showing how many people were taking advantage of the Marriage Law and giving "shining" examples of individuals whose lives were remarkably improved by the operation of the law; (2) in the second, the "brakes" were applied and the negative themes were presented, such as remonstrative editorials, distressing statistics and bad examples; and (3) the third, was the "agonizing reappraisal" phase in which there was extensive investigation and evaluation of the results.¹¹⁹

The first phase of the first drive (May 1950–December 1951) stressed the mobilization of the communications media. According to the Orders of the Military Government Council of the Greater Administrative Area of Central and South China:

¹¹⁶ *Ibid.*, p. 202.

¹¹⁷ *Ibid.*, p. 203.

¹¹⁸ *Ibid.*, p. 204.

¹¹⁹ Dittmer, *op. cit.*, *supra*, note 32 at 125.

... The cadres should be organized into study groups to make them "understand the spiritual essence of the Marriage Law and particularly its political significance for the extinction of the survivals of the feudal forces and the establishment of a new democratic society." The administration should apply every means at its disposal to combine the propagation of the Marriage Law with other works and movements, and should conduct propaganda until every household and every person understood the Marriage Law and the feudal thoughts lingering in the minds of the masses were extinguished. This should be considered a "central task"...¹²⁰

In the second phase, there was a general lull in publicity. The first inkling that all was not well came at the end of 1950 when letters to the press appeared exposing instances of violations and abuses of the law by the cadres.

The crisis came at the end of September 1951, during the third phase, when the Government Administration Council of the Central Government launched an investigation into the implementation of the Marriage Law. The investigation was organized under the leadership of Shih Liang, the female Minister of Justice. From all over the country reports came in about interference with the freedom of marriage, the non-committal attitude of the cadres towards maltreatment of women and children (or even protection of persons guilty of such acts) and a general refusal to safeguard the woman.¹²¹

The following examples of such abuses were given in a commentary in the *People's Daily* (October 7, 1951):

Some cadres were said to have shut the Marriage Law in the drawer and never to have looked at it; others were afraid that the law would create "great disorder in the world." A Chekiang cadre was credited with the utterance: "Every one who tries to apply that law here will have his legs broken." Since the cadres did not dare to propagate the Law, the people "out of ignorance" called it a "women's law" or a "divorce law." When there was a public meeting, they kept their women folk at home for fear that they would be "mobilized into divorce." The cadres still entertained thoughts of "big-manism" when they adjudicated divorce cases, and the people considered divorce as "a special way of losing both their land and their wives"...¹²²

The Government Administration Council ordered the investigation of all such reported cases and demanded that the cadres found guilty be duly punished. The first task in this direction was the supervision of the cadres and their way of handling cases. The

¹²⁰ The Yangtze Daily, August 30, 1951, quoted in MEIJER, *op. cit.*, *supra*, note 10 at 121.

¹²¹ MEIJER, *op. cit.*, *supra*, note 10 at 123.

¹²² *People's Daily*, October 7, 1951, quoted in MEIJER, *op. cit.*, *supra*, note 10 at 125.

Council's directive sparked a host of other directives, including a communication by the Democratic Women's Association, an order by the Ministry of the Interior and a directive by the Supreme Court.¹²³

All of these were efforts to implement the Marriage Law in earnest. However, other conditions were not favorable to the faster and more thorough realization of the principles underlying this law. The years 1950-1951 were just too full of tensions and accelerated changes and upheavals to allow people to concentrate on the full implications of the Marriage Law. The year 1951 saw the Movement for the Suppression of Counter-revolutionaries, Three and Five Anti Movements, the Democratic Reform Movement and the Movement for the Aid to Korea and the Resistance against America. It was therefore understandable that public attention was diverted from the Marriage Law after September 1951 and the movement took on a passive aspect as a "peaceful movement."¹²⁴

The investigation teams ordered by the Government Administration Council's directive had worked from October to December 1951 collecting information and later submitted their reports. The results of these reports were combined into a single report which was published by the *People's Daily* in the middle of 1952. Madame Shih Liang, the Minister of Justice, said that they had gained wide experience in public trials, discussion meetings, complaint ("speak-bitterness") meetings, visits to families, and the conclusion of improved patriotic compacts. The teams distinguished three kinds of areas: satisfactory ones ("still in the minority"), mediocre ones, and bad ones. Those in the first category were found mostly in the old "liberated areas" where, the report said, the women could "participate positively in activities in the political, social and cultural fields and consequently accelerate the development of national construction." In the bad and mediocre areas, which comprised the majority, maltreatment of women was still frequent. In those areas, there was the persistence of "feudal thought" and, therefore, failure of the Marriage Law to "reach the countryside."¹²⁵

It is interesting to note at this point how the resistance to the implementation of the Marriage Law by the Communist cadres was overcome and how they attempted to wipe out the remnants of "feudal thought." The following is a report in the *Fukien Daily* (January 9, 1953):

¹²³ MEIJER, *op. cit.*, *supra*, note 10 at 123-124.

¹²⁴ *Ibid.*, p. 313; Dittmer, *op. cit.*, *supra*, note 32 at 141.

¹²⁵ MEIJER, *op. cit.*, *supra*, note 10 at 127.

After the Fukien People's Court began revolutionary reconstruction in October, 1952, an experimental point in Min Ch'ing Country was organized to implement the Marriage Law. The work team under the direction of the CCP Committee of Min Ch'ing spread knowledge of the Marriage Law and accelerated an early completion of the fall harvest within twenty days.

...To meet these [the cadres] objections, the work team first studied with the country level committee... They then convened an enlarged meeting of the cadres of six districts and repeatedly explained both the basic spirit of the Marriage Law and even wrote a report on the connection of the Marriage Law work with the work of gathering the harvest. Such study finally "broke through" the cadres' thinking and overcame their deepest concerns that implementation of the marriage work was contradictory to harvest work.

...Sixteen work groups were organized, comprised of country, district and village cadres. Expanded cadre meetings discussed the thorough implementation of the Marriage Law in the villages. Finally, cadres and activists convened an old people's meetings, a women's meeting, youth meeting, and meeting of the peasants' association in the village. The work group participated in harvest work while they propagandized the Marriage Law and activated the masses. The peasants discussed the Marriage Law in their work groups during rest periods at least twice...

Once the masses were mobilized we began to evaluate concrete family conditions, a good way to clarify the implications of the Marriage Law. We spoke of five kinds of families—model households, ordinary households, households with marital discord, acutely inharmonious households, and those in which there was mistreatment of a criminal nature. We evaluated these families according to the spirit of the Marriage Law. In every village we convened a movement to evaluate the masses' own families. After evaluation we held a village meeting and organized "speak bitterness," developed the struggle further and thoroughly aroused the masses' activism against the feudal marriage system.

We praised the model husbands and wives and model households, and then called meetings to democratize the inharmonious households. Then the work groups held mediation committee meetings, and the Women's Association set up a temporary court to handle each article of the Marriage Law. Many activist elements appeared in the course of the movement, and all were brought into the leadership structure of mediation and the Women's Association.¹²⁶

The second drive to implement the Marriage Law (February 1953–May 1953) was launched by a directive of the Government Administration Council concerning the Thorough Enforcement of the Marriage Law, dated February 1, 1953 and signed by Chou En-lai.¹²⁷ The directive instituted the greatest movement ever held on this

¹²⁶ Salaff & Merkle, *Women and Revolution: The Lessons of the Soviet Union and China*, in YOUNG (Ed.), *WOMEN IN CHINA: STUDIES IN SOCIAL CHANGE AND FEMINISM* 166-168 (1973).

¹²⁷ For the complete text of this directive, see MEIJER, Appendix IX, pp. 303-306.

subject. It was evident to the leadership that a new approach was needed if anything was to be accomplished, a milder one but more thorough, with the emphasis placed on methods of attitude change, or "thought struggle." It was decided that the methods of class struggle followed in the land reform campaign could not be followed in the case of marriage reform but that painstaking and patient education would be the best remedy.¹²⁸

In a supplementary directive (February 19, 1953), Chou En-lai introduced certain restrictions on divorce: "only in the very small number of cases where nuptial relations have deteriorated to the stage that they can no longer be continued, may divorces be permitted, and then only after serious efforts at mediation and persuasion in order to win popular sympathy from the masses."¹²⁹

In the first phase of this second drive, the Government Administration Council selected March 1953, since Women's Day falls in this month, to wage a special campaign for the readjustment of family reform and for the detection and punishment of offending officials. The objectives were "universal propaganda" of the Marriage Law, serious investigation of the conditions relating to its enforcement and extollment "with great fanfare" of model personages. This schedule was disrupted by the death of Stalin (March 5th) when the Marriage Law publicity campaign was postponed. In lieu of the national campaign, local campaigns were conducted during March and April.¹³⁰

In the second phase, there was a tendency among the populace to lose interest in the Marriage Law. The subdued directives had an anaesthetic effect on the zeal of both the cadres and the masses. Several reports appeared which attempted to summarize the effects of the campaign. From these reports, it can be shown that Peking condemned the local cadres for having quietly dropped the entire campaign while attributing their non-action to the Government's instruction on moderation.¹³¹ This was followed up, in the third phase, by another investigation into the conditions of the implementation of the Marriage Law.

The Central Committee of the movement reported in November 1953 that they found that in 15 percent of the territory the Movement was a complete success: cadres were intelligent and applied the law and 80-90 percent of the people had received education. In 60 percent of the territory, the results were average: 60-70 percent

¹²⁸ MEIJER, *op. cit.*, *supra*, note 10 at 130.

¹²⁹ Quoted in Dittmer, *op. cit.*, *supra*, note 32 at 145.

¹³⁰ Dittmer, *op. cit.*, *supra*, note 32 at 147-148.

¹³¹ People's Daily, May 30, 1953, quoted in Dittmer, *op. cit.*, *supra*, note 32 at 149.

of the people had been reached, the quality of the cadres was mediocre, and many people still distrusted the Marriage Law. In 25 percent of the territory the situation was reported to be bad, notwithstanding the constantly repeated contention that there was only "an extremely small minority" of people who committed homicide and ill-treatment of women within the country, this 25 percent still seemed to have produced such feudal villains in considerable quantities.¹³²

The aftermath of this report was the decision and recommendation that continued efforts to implement the Marriage Law be taken in the course of "regular work" and not in separate massive drives. Thus the drives which focused on the Marriage Law were abandoned and the movement to implement this Law officially ended with the onset of the First Five-Year Plan of 1953-1957.

VII. REPERCUSSIONS OF THE 1950 MARRIAGE LAW (1950-1953)

The Marriage Law of the People's Republic of China had been promulgated on May 1, 1950; two months later on June 30th the Agrarian Reform Law came into effect. As indicated in Part III, the simultaneous implementation of these two laws had a tremendous impact on Chinese society. The Agrarian Reform Law which provided for "land to the tillers" was a fundamental reform that spelled the socio-economic transformation of the whole country. Even before the formal enactment of this law, land was already distributed among the poor peasant in the "liberated areas" but the momentum of the land re-distribution was accelerated after 1949 and involved all parts of China. In this re-distribution program which took three years to complete, women received equal allocations of land with men.

In the early years after the promulgation of the Marriage Law, the most dramatic changes occurred not in the institution of marriage itself but in the larger society. The very fact that for the first time women were gainfully employed in large numbers outside the home had the most far-reaching effects by creating conditions that were favorable for the implementation of the various provisions of the Marriage Law. During the years 1950 to 1953, the effects of the economic and political changes were not necessarily positive as far as human and inter-personal relationships were concerned. In fact, the country underwent a period of tremendous upheavals that initially triggered a great deal of conflicts. But this stage can be considered in the long run as essential in initiating the gradual breakdown of the "whole feudal-patriarchal system and ideology" that the vast majority of Chinese inherited from the past.

¹³² MEIJER, *op. cit.*, *supra*, note 10 at 132.

One of the most obvious indications of this period of social upheaval was the dramatic increase in the number of divorces which led the Marriage Law to be popularly referred to as the "Divorce Law." It is not the intention of this study to present a large number of statistics the reliability of which may be put to question. It is sufficient to cite just a few of the figures released by the Chinese Communists to indicate what was considered a "rash of divorces."

The Minister of Justice of the Communist Central Government, Shih Liang, reviewed the situation seventeen months after the promulgation of the Marriage Law:

Statistics from different localities show that after the promulgation of the Marriage Law the number of matrimonial suits received by judicial organs of different levels increased appreciably. In twenty-one large and medium-size cities, including Peking, the number of matrimonial suits received was 9,300 for the months from January to April 1950, and it was 17,763 for the months from May to August of the same year. In other words, there was an increase of 91 percent in the four months following the promulgation of the Marriage Law in comparison with the preceding four months. In ten county-seat towns in Hopei, P'ingyuan, and other provinces the number of matrimonial suits received was 986 for the months from January to April 1950, and it was 1,982 for the months from May to August of the same year. The increase has been 101 percent. In Hopei Province the average number of matrimonial suits dealt with by each people's court was 13.7 for February of 1951, and it was 23.9 for July of the same year, showing a considerable increase.¹³³

The figures given by the Chinese Communists in 1952 listed 186,000 divorces for 1950, 409,000 for 1951, and 396,000 for the first half of 1952.¹³⁴

During this period, marriage cases made up the bulk of the civil cases handled in Communist China, sometimes as high as 90 percent of all cases as occurred from January to the end of August 1952 in Laipin, Kwangsi Province.¹³⁵ Leng Shao-chuan, in his survey of the judicial system, concluded that ". . . while civil cases in general and property disputes in particular have shown a steady decrease in China, marital discord has remained to be the single most important cause of 'internal conflicts among the Chinese people.'"¹³⁶ He presented figures from the *People's Daily* and other major newspapers to support this trend.

¹³³ Shih Liang, "Seriously and Thoroughly Enforce the Marriage Law," *People's Daily*, October 13, 1951, p. 3, quoted in YANG, *op. cit.*, *supra*, note 4 at 69.

¹³⁴ *People's Daily*, March 20, 1953, cited in Michael, *op. cit.*, *supra*, note 9 at 141.

¹³⁵ Cited by YANG, *op. cit.*, *supra*, note 4 at 70.

¹³⁶ SHAO-CHUAN, *JUSTICE IN COMMUNIST CHINA: A SURVEY OF THE JUDICIAL SYSTEM OF THE CHINESE PEOPLE'S REPUBLIC* 171 (1967).

These official reports regarding divorce rates in Communist China in the early 1950's give little indication as to the causes, duration of marriage, age composition and sex of the party initiating the proceedings. However, Yang quotes statistics which indicate that there was an almost overwhelming proportion of divorce suits brought by women as compared to those brought by men, especially in the rural communities, where conservatism was strong and the suffering of women under the traditional institution had been deep.¹³⁷ According to Ch'en Shao-yu, who led the drafting of the Marriage Law, "about 50 percent of them [parties involved in divorce suits] were between the ages of twenty-five and forty-five, about 40 percent youths under twenty-five and about 10 percent were very young people married before their maturity and old couples."¹³⁸ Teng Ying-ch'ao, wife of Premier Chou En-lai and a leading figure in the Democratic Women's League which was vitally involved in the drafting and enforcement of the Marriage Law, surveyed the statistical information possessed by the government on marital conditions and stated that "the vast majority of those demanding divorces were young and middle-aged laboring people."¹³⁹

In a report from the People's Court in Canton for their 319 divorce cases between May 1, 1950 and February 23, 1951, the following causes were given for filing for divorce: (1) dictated marriage, (2) polygamy, (3) mistreatment, (4) abandonment [majority of cases brought by women], (5) disharmony, (6) extramarital love affairs, (7) physiological defects, (8) spouse leading a decadent and corrupt life [including refusal to labor and unwillingness to stand poverty], and (9) uncertainty of spouse being alive or dead.¹⁴⁰

Not all the divorce suits filed actually terminated in divorce because of the restraining effects of the provisions for reconciliation which were included in the Marriage Law. Reconciliation is a fundamental part of Mao Tse-tung Thought, *i.e.*, that "disputes among the people" ought to be resolved, whenever possible, by "democratic methods, methods of discussion, of criticism, of persuasion and education, not by coercive, oppressive methods."¹⁴¹

¹³⁷ YANG, *op. cit.*, *supra*, note 4 at 71.

¹³⁸ Ch'en Shao-yu, Report on the Process and Reasons in the Drafting of the Marriage Law in the People's Republic of China, p. 74 quoted in YANG, *op. cit.*, *supra*, note 4 at 71.

¹³⁹ Teng Ying-Ch'ao, "A Report of the Marriage Law of the People's Republic of China," 7-8 (1951), quoted in YANG, *op. cit.*, *supra*, note 4 at 71-72.

¹⁴⁰ Quoted in YANG, *op. cit.*, *supra*, note 4 at 72.

¹⁴¹ Cohen, *Chinese Mediation on the Eve of Modernization*, in BUXBAUM (Ed.), *TRADITIONAL AND MODERN LEGAL INSTITUTIONS IN ASIA AND AFRICA* 54-55 (1967).

As was noted in the earlier comparison of the Soviet and Chinese divorce proceedings, both countries require that the courts exhaust all attempts to effect reconciliation before granting a divorce. However, according to most legal sources, the Chinese observed this legal provision more conscientiously and thereby achieved a higher percentage of reconciliations than Soviet courts.¹⁴² Leng quotes official statistics to indicate the prevalent use of conciliation in Chinese civil procedures. For example, in Honan province during 1959 some 85.2 percent of the civil cases were settled by conciliation and only 14.8 percent by decisions rendered.¹⁴³

Felix Greene in his *The Wall Has Two Sides: A Portrait of China Today* gives an interesting account of a divorce trial in Shanghai in 1960. During this trial, the judge managed to effect a reconciliation between the two parties on the condition that the husband would improve his future behavior without fail.¹⁴⁴ There is also a report in the *People's Daily* (September 19, 1961) of a woman assessor in a Peking municipality who had assisted the people's court on many occasions to mediate successfully intra-family disputes, the most notable one being a divorce case in which after two visits with the couple she was able to convince them to drop the suit and reunite to form a "new democratic and harmonious family."¹⁴⁵

Nonetheless there were many instances when local cadres abused their powers or acted irresponsibly in implementing the Marriage Law, especially the divorce provisions. While some local cadres and propagandists actively encouraged divorces, some refused to implement this part of the Marriage Law or even actively resisted from taking any action on demands for divorce.¹⁴⁶ Among the reasons for the cadres' resistance included the fear that the propaganda for the Marriage Law would "interfere with the masses' productive work." Some cadres still harbored a large residue of traditional values which made them believe that divorce was intrinsically "bad." There was also the general feeling that the Law, in helping women, discriminated against men.¹⁴⁷

This latter reason was the principal objection to divorce on the part of the husbands in that divorce meant that they would lose power over their wives. It also meant a diminution of their prestige in the

¹⁴² For example, Cohen, *op. cit.*, *supra*, note 141 at 57, and Juviler, *Marriage and Divorce*, 8 SURVEY; A JOURNAL OF SOVIET AND EAST EUROPEAN STUDIES 107 (1963).

¹⁴³ SHAO-CHUAN, *op. cit.*, *supra*, note 136 at 173.

¹⁴⁴ GREENE, "A Divorce Trial", in *THE WALL HAS TWO SIDES: A PORTRAIT OF CHINA TODAY* 190-200 (1963).

¹⁴⁵ Quoted in SHAO-CHUAN, *op. cit.*, *supra*, note 136 at 174.

¹⁴⁶ Whyte, *The Family*, in OKSENBERG (ED.), *CHINA'S DEVELOPMENTAL EXPERIENCE* 180 (1973).

¹⁴⁷ DITTNER, *op. cit.*, *supra*, note 32 at 137.

community because of the traditional stigma attached to divorce. In addition, it entailed a sizeable financial loss for the man. This was brought about because, first, in many cases the husband, prior to 1950, had "paid" for his wife, either in terms of outright purchase or in terms of betrothal and wedding presents to her family. Secondly, the wife provided invaluable domestic help in her in-laws' household so that loss of her labor would have to be replaced. Lastly, and most importantly, as a consequence of the Land Reform the wife was able to keep all property allocated to her, thus reducing the husband's own assets. Given the fact that most cadres at this time were men, it could be expected that they sided with the husbands in the controversies involving husbands and wives.

The cadres engaged in all sorts of subterfuges in order not to enforce the divorce provisions of the Marriage Law, among them were: outright refusal to accept divorce cases on trumped-up procedural grounds; charging excessive fees for registration; and ignoring the persistent adherence to old customs.¹⁴⁸ There were also official reports of "forced reconciliation" and open suppression against women initiating divorce proceedings. Many were imprisoned and subjected to "reform by education," among other punishments. As a result, there was an alarming number of women forced into suicide and scores of young women who sought divorce were murdered. According to Chou En-lai, in the first half year after the promulgation of the Marriage Law in the Central South Area of China alone, over ten thousand women committed suicide or met violent deaths in a year, with similar numbers in other administrative regions. The annual rate for the whole country was given as seventy to eighty thousand.¹⁴⁹ Most of the victims were under twenty-five years of age and some were found to have been horribly tortured by family members, often with the complicity of local cadres, for having sought a divorce. The following case is typical of these abuses:

From Hantan *hsein* in Hopei, there came the report of a couple Liu Yu-ching and his wife Ki Kuei-chu who were on very bad terms with each other. Li had unsuccessfully attempted suicide. In June 1950, she visited the home of her parents and took the opportunity to apply to the court for a divorce. On hearing of this, the husband took her home, applying force. She attempted to run away and was tortured to death by her husband. The latter was given only eight years by the court.¹⁵⁰

¹⁴⁸ *Ibid.*

¹⁴⁹ Cited by Fu, *op. cit.*, *supra*, note 7 at 134 and Michael, *op. cit.*, *supra*, note 9 at 141, among others.

¹⁵⁰ Min Kang-hou, *Judicial Cadres Must Correctly and Promptly Dispose of Cases Involving Marriage Disputes*, WOMEN OF NEW CHINA, October, 1951, quoted in Dittmer, *op. cit.*, *supra*, note 32 at 136.

It has been observed that the fluctuations in the number of violent deaths (suicides and murders) of women corresponded with the phases of the implementation drives of the Marriage Law. For example, during Phase I, when great pressure was exerted on the cadres, suicides tended to decline and divorces to rise, as women availed themselves of their new rights; during Phases II and III, and especially after the drives, as pressure relaxed, the above "deviations" set in.¹⁵¹

The alarming number of suicides and murders among the women who sought divorce during the initial stages of the implementation drives of the Marriage Law were among the negative repercussions mentioned above. On the other hand, there were thousands of divorces which occurred during this three-year period, of them many must have ended "happily", i.e., the traditionally oppressed woman beginning a new life on her own or, in many cases, probably remarried under better circumstances.

In addition to divorce, the Marriage Law brought about many other social changes. Many of these have been discussed. What deserves further discussion is the prohibition against arranged marriages since this brought about an entirely new concept of mate-selection. The tradition of arranged marriages was so deeply ingrained in the Chinese people that changes in this area had to come very slowly. For example, according to the New China News Agency (February 7, 1958), eight years after the promulgation of the Marriage Law, more than 90 percent of the village marriages were still being arranged by the parents.¹⁵² This trend was confirmed by the editors of *Women of China*:

Most young people still rely very much on the advice and counsel of parents, relatives and friends. In this early period of freedom in marriage, few young men and women are completely prepared for it.¹⁵³

One of the chief reasons given why young people still relied on parental advice and counsel in the choice of a mate was that during this period of transition from arranged to free-choice marriage, there were extremely limited opportunities for meeting and courting the opposite sex:

Many rural young men cannot find mates and many young women are obsessed with marriage and love problems. This problem

¹⁵¹ Dittmer, *op. cit.*, *supra*, note 32 at 166.

¹⁵² Quoted in Peter S.H. Tang, *Communist China Today*, 2 DOMESTIC AND FOREIGN POLICIES 396 (1961).

¹⁵³ Quoted in Lucy Jen Huang, *Some Changing Patterns in the Communist Chinese Family*, 23 MARRIAGE AND FAMILY LIVING 138 (May 1961).

has affected production and the progress of the youth in the countryside in varying degrees.¹⁵⁴

The contradictory situation wherein free choice in marriage was urged on the young people but opportunities for getting to know potential spouses remained limited brought about a modified form of arranged marriages. Marriage arrangers continued to exist, either in the form of local figures who customarily made introductions, or marriages were arranged through the mediation of parents, relatives and friends. In some localities officials recognized the need to provide the youth with help in finding mates. Officials, in an effort to take business away from traditional marriage arrangers, encouraged cadres of the local production unit, the women's associations, and the Communist Youth League to arrange meetings between youths from other units.¹⁵⁵

Many authorities reproved this practice out of their new-found concern for the stability of marriage: "Because they have not an adequate understanding of each other before they marry, their married life is liable to be marred by disputes."¹⁵⁶

Nonetheless, despite these concerns, there were strong indications of relinquishing many practices associated with traditionally arranged marriages. Moreover, because of the third-party introductions and increased male-female contacts in work situations, there was an increase in inter-class marriage. The new emphasis was on compatibility of political ideology rather than on traditional similarities such as education and occupation. The three criteria for mate-selection given in the *Fukien Daily* (November 2, 1950) included "Love of country, love for (political) learning, and love of work."¹⁵⁷ Testimonials showed considerable success in marital life and mutual adjustment especially when both were "good" socialist comrades. This new phenomenon of inter-class marriage thus represented a shift from family-dominated to Party-dominated mate-selection.¹⁵⁸

The fact that these new marriages were dominated by the Party is illustrated in the negative role that the political authorities could play in marriage decisions. Party and Youth League members were expected to report their developing romantic interests to these or-

¹⁵⁴ People's Daily, November 15, 1956, quoted in Dittmer, *op. cit.*, *supra*, note 32 at 207.

¹⁵⁵ Whyte, *op. cit.*, *supra*, note 146 at 178.

¹⁵⁶ Chen Wu, "A Word to the Judicial Personnel Who Deal with the Marriage Disputes of the Masses," People's Daily, January 14, 1957, quoted in Dittmer, *op. cit.*, *supra*, note 32 at 207.

¹⁵⁷ Quoted in Dittmer, *op. cit.*, *supra*, note 32 at 220.

¹⁵⁸ Huang, *Attitude of Communist Chinese Toward Inter-Class Marriage*, 24 MARRIAGE AND FAMILY LIVING 392 (1962).

ganizations. If they wanted to marry someone from former wealthy classes or someone with a questionable personal history, they would be strongly discouraged, although not absolutely forbidden, from doing so.¹⁵⁹ This type of party "interference" into the private life of individuals would be in keeping with the ideology of the Chinese Communists regarding the submersion of the individual in the collectively and the supremacy of the Party over private marriage and family relationships.

Many of the social problems directly or indirectly related to the implementation of the new Marriage Law were reflected in the literature of this period. In fact, the Chinese Communist used literature as a means of propagandizing the new law. Literature became an important method of disseminating information as well as persuasive tool since "the Communist stories, in the main, attempt to translate official ideology into fiction, and in so doing, they reveal patterns of response that arise as consequences of policy."¹⁶⁰

Thus the literature of the early 1950's dealt extensively with problems relating to marriage, *e.g.*, arranged marriages, husband/wife and mother-in-law/daughter-in-law relations. The three one-act plays included in *The Women's Representative* were examples of this trend and illustrate how the Communists made use of literature for propagandizing official policy.

One of the plays, "Chao Hsiao-Lan,"¹⁶¹ takes place in the Spring of 1950, shortly after the Marriage Law was promulgated. The protagonist Chao Hsiao-Lan, aged 19, is the leader of the women's group in the mutual-aid farming team and wants to get married to Chou Yung-Kang. Her father, Old Chao, wants to arrange a marriage in the traditional manner and hires a matchmaker. He is also unsympathetic to the plight of his older daughter, aged 21, who is unhappily married. Chou Yung-Kang talks to the chairman of the village council about his plans to marry Chao Hsiao-Lan and is told that the council will stand by him. Thus, when the father makes arrangements for Chao Hsiao-Lan's wedding, she goes off to register her marriage with Chou Yung-Kang. It turns out that the man who was chosen by the matchmaker for her to marry also "rebels" and refuses to be married against his will. In the end, Chao Hsiao-Lan and Chou Yung-Kang succeed in registering their marriage and the older sister is divorced.

¹⁵⁹ Whyte, *op. cit.*, *supra*, note 146 at 178-179.

¹⁶⁰ Chin, *Family Relations in Modern Chinese Fiction*, in FREEMAN (Ed.), *FAMILY AND KINSHIP IN CHINESE SOCIETY* 119 (1970).

¹⁶¹ Chin Chien, "Chao Hsiao-Lan," *THE WOMEN'S REPRESENTATIVES* 5-43 (1956).

In all three of these plays, there is a "happy" ending. The couples are reconciled and, except for the older sister in "Choa Hsian-Lan" who is divorced, the institution of marriage is upheld. The emphasis is placed on the family in these and other literary works of this period:

Even in the early years, when divorce was encouraged and the oppressed wife and daughter-in-law urged to "speak bitterness," the integrity of the nuclear family was assumed and upheld. Members of a family in fiction often begin on different sides of the political fence (especially during the land reform and collectivization drives), but for the most part of the stories lead to the "thought conversion" of the backward member—unless an entire family is beyond redemption. It is a rare story that breaks up the immediate family because one member turns out to be "an enemy of the people."¹⁶²

The literature of the early 1950's thus upholds two fundamental concepts in Chinese Communist ideology, namely the concept of the family as a socialist cell and the concept of reconciliation of "disputes among the people." Many writers have accused the Chinese Communists of being "anti-family" but the overwhelming evidence is that they value and uphold the family. There is no doubt that these years, 1950-1953, caused a tremendous amount of familial disruptions as well as conflicts but these were inevitable in the process of instigating new patterns of life into Chinese society.

VII. CONCLUSION

The intensive campaign to implement the Marriage Law was officially abandoned in 1953. However, the 1950 Marriage Law still remains in effect today and has not been revised since its promulgation over twenty-five years ago. It was shown in the last chapter how this law greatly affected the people of China during the first few years after its promulgation. As a result of the upheavals which took place in those years, 1950-1953, the leadership modified its policy and a somewhat slower pace of induced changes was put into effect.

For the subsequent decade, following the onset of the first Five-Year Plan of 1953-1957, emphasis was placed on the struggle of the Chinese people to improve productive conditions. In the sphere of agriculture, the Plan's objectives was to raise production by 25 percent and to develop cooperation as a new stage of agrarian reform. Peasants were encouraged to form mutual aid teams and cooperatives, initially into small and then larger groups. The Plan also intended to establish the necessary foundations of modern industry

¹⁶² Chin, *op. cit.*, *supra*, note 160 at 105.

in China. More than half of the existing enterprises were brought under state management.

The authorities were very much aware that since the intention of the First Five-Year Plan was to improve productive conditions, the disruptions similar to those which had occurred during the 1950-1953 period to be avoided. This was emphasized in the Government Administration Council's Directive Concerning the Thorough Enforcement of the Marriage Law (February 1, 1953), "[the death of women] is not only an offense against the equality of the rights of women and their freedom of marriage, but it also affects solidarity among the people, and it badly affects national production and construction and the whole social order."¹⁶³

As explained, the leadership had decided during the second drive to implement the Marriage Law (February 1953-May 1953) that a more moderate approach was needed. In line with this approach, family harmony and reconciliation was stressed, and divorce was granted only in extreme cases. This new policy did not take the form of new legal obstacles to divorce (as in the Stalinist divorce freeze in the Soviet Union in the 1930's) but of active dissuasion. Registration officials, mediation committees, and local courts pressed for reconciliation to prevent rash divorces and generally allowed divorce only as a final resort.¹⁶⁴ The number of divorce cases reached a high of 1.1 million in 1953, and then began a decline to 510,000 in 1956, the last year for which there are figures.¹⁶⁵

The Second Five-Year Plan (1958-1962) envisaged not only a systematic and gradual industrial expansion but a "Great Leap Forward." This was to be accomplished by means of a policy of "walking on two legs," a development technique which included the parallel development of rural-based commune industry and urban-based modern industry and, within urban centers, the parallel development of small labor intensive industry and large-scale capital intensive industry.¹⁶⁶

By March 1957 some 97 percent of China's rural population had been organized in 752,000 agricultural producer cooperatives, of which 668,000 were of the higher (and larger) type and 84,000 of the lower category. The higher cooperatives at that time averaged something over 170 households each, against fifty-four for the lower cooperatives.¹⁶⁷ Under the second Five-Year Plan, these agricultural producer cooperatives were amalgamated to form new multi-purpose

¹⁶³ Quoted in MEIJER, *op. cit.*, *supra*, note 10 at 303.

¹⁶⁴ Whyte, *op. cit.*, *supra*, note 146 at 180.

¹⁶⁵ *Ibid.*

¹⁶⁶ BUCHANAN, *op. cit.*, *supra*, note 48 at 247.

¹⁶⁷ DONNITHORNE, CHINA'S ECONOMIC SYSTEM 43 (1967).

units, the people's communes. These communes were to be multi-purpose units for management of agricultural, industrial, commercial, cultural and military affairs.

By 1959, however, the "unwisdom" of some of the policies of the Great Leap Forward had begun to be realized—such as the over-centralized campaigns on agricultural techniques.¹⁶⁸ Mistakes aggravated the difficulties caused by bad weather and poor harvests in 1959-1961. (In the northern regions one of the most serious droughts in recent history occurred for several seasons running, while in the south floods ruined the spring sowings and whole provinces lay under water.) During this period of crisis, a fundamental switch was made in economic policy. Agriculture replaced industry as the first priority. Investment was cut and industrial production fell steeply. Industrial workers were laid off and, with other urban residents, ordered to the countryside to boost the labor force on the land.

As a consequence the structure of the communes underwent great changes, the village and smaller groupings came back into their own. In other ways, too, traditional patterns and methods reasserted themselves.

The policies pursued during the Great Leap Forward had been formulated by the Chinese Communist Party under the guidance of Mao Tse-tung. However, they were openly criticized by some members of the Chinese Communist leadership, resulting in a major shift of policies in subsequent years.

In 1959 P'eng Teh-huai, then Minister of Defense, had attacked the "general line of the socialist period," labelling the Great Leap Forward "feverish" and the communes "pre-mature." Although the dissenting Party members were removed from office, the intellectual community came to their defense and continued to attack these policies.¹⁶⁹

Then in January 1962, Liu Shao-ch'i, at that time Chairman of the People's Republic of China,¹⁷⁰ first attacked the policies of Mao at an Enlarged Central Committee work conference. He was reported to have said that the general line was "put forward blindly"

¹⁶⁸ *Ibid.*, p. 18.

¹⁶⁹ Felisa Uy, *op. cit.*, *supra*, note 47 at 24-25.

¹⁷⁰ Liu Shao-ch'i had become the Chairman of the Standing Committee of the National People's Congress in 1954. The Eighth National Congress (September 1956) had made Liu senior Vice-chairman among the Chinese Communist Party Central Committee's four vice-chairman. Following the acceptance of Mao's relinquishment of his government responsibilities at the Sixth Plenum of the Central Committee in 1958 to devote more time to Party theoretical work. Liu was officially elected as Chairman of the People's Republic of China in April 1959. Stuart Schram, *Mao Tse-tung and Liu Shao-ch'i 1939-1969*, *ASIAN STUDIES* 252-293 (April 1972), cited by Uy, *op. cit.*, *supra*, note 47 at 23.

and that the Great Leap Forward was "brought in a rush causing disproportions in the economy." He maintained that the difficulties encountered following the Great Leap Forward were "30 percent the fault of nature and 70 percent the fault of man." In addition, Liu felt that the communes were "set up too early" and that if they had not been established things might be in better shape.¹⁷¹

As a result, Liu Shao-ch'i instituted major changes in economic policies. But to Chairman Mao, Liu's policies not only constituted a reversal from his whole approach to China's economic development but interpreted them to be an attempt to dismantle China's socialist economy.¹⁷² These shifts in economic policies involved at the same time a change in family policy concerning women.

The literature after 1962 reflected the new policies towards the family. New emphasis was placed on the solidarity of the nuclear family, the renewal of wider kinship ties and a respect for elders in general and the father in particular.¹⁷³ These shifts of emphases caused a revival of traditional themes in Chinese literature, such as relations between the daughter-in-law and her mother-in-law.

As a result of this return to traditional patterns within Chinese society, there was a revival of feudalistic rural customs. For example, in one brigade in Fukien province eighteen girls with an average age of fourteen were sold into marriage.¹⁷⁴ The morale and quality of local cadres deteriorated so greatly that they often permitted the open re-emergence of money marriages. One report revealed that in an enlarged three-level cadres' meeting of a given country, the cadres admitted that during the first two lean years of 1960-1961 "there was a basic failure on our part to oppose such things as money marriage, trafficking in people, and using women for gains."¹⁷⁵

In 1962 Mao Tse-tung launched the nation-wide Socialist Education campaign intended to rectify the shortcomings of the basic-level cadres and to strengthen the mass line in rural work.¹⁷⁶ It was obvious that the revival of feudalistic practices had affected many districts, and as late as 1966 the national women's and youth magazines were exhorting young rural women to resist the money marriages their parents had attempted to arrange for them.¹⁷⁷ From the

¹⁷¹ "Selected Edition," p. 28, quoted by Uy, *op. cit.*, *supra*, note 47 at 26-27.

¹⁷² Uy, *op. cit.*, *supra*, note 47 at 28.

¹⁷³ Chin, *op. cit.*, *supra*, note 160 at 103.

¹⁷⁴ CHEN (ED), *RURAL PEOPLE'S COMMUNES IN LIEN-CHIANG* 203 (1969), cited by Whyte, *op. cit.*, *supra*, note 146 at 177.

¹⁷⁵ BAUN & TEIWES (EDS.), *SSU-CH'ING: THE SOCIALIST EDUCATION MOVEMENT OF 1962-1966*, 56 (1968), quoted in Chan, *Rural Chinese Women and the Socialist Revolution: An Inquiry into the Economics of Sexism*, 4 J. CONTEMPORARY ASIA 205 (1974).

¹⁷⁶ Uy, *op. cit.*, *supra*, note 47 at 28.

¹⁷⁷ Chan, *op. cit.*, *supra*, note 175 at 205.

titles and tone of the articles in these mass publications, especially *China Youth* and *Women of China*, it was evident that in some areas not much progress had been made to revolutionize the marriage practices. Thus, sixteen years after the promulgation of the Marriage Law, there were still articles such as Chang Chi's "Doing Away with Betrothal Money"¹⁷⁸ and Liu Kuei-hua's "Marriage by Purchase Really Harms People."¹⁷⁹ Numerous essays also were published during this period such as Yang Lu's "The Correct Handling of Love, Marriage and Family Problems" which included topics such as "What Kind of Partner Should One Look For?", "What Should One Pay Attention to When He Falls in Love?", and "What Should One Do About Family-Arranged Marriages?"¹⁸⁰

It is not surprising, given the "backsliding" which occurred during the years following the Great Leap Forward, that drastic measures were taken to remedy the situation. The solution took the form of the Great Proletarian Cultural Revolution. It was launched by Mao Tse-tung in order to eliminate the "four olds": old ideas, old habits, old customs, and old culture. The Great Proletarian Cultural Revolution was thus an intensive campaign involving no less than the organizational re-structuring and ideological mobilization of the entire nation in all levels and sectors.

In order to destroy these "remnant forces," and also to mobilize the maximum number of workers, slogans such as "oppose early marriage and advocate late marriage" were advanced. "Destroy the old and establish the new" was also applied to wedding customs. Revolutionary couples contrary to old practices refused to accept gifts (other than the "little red book") or to hold a wedding feast. Articles in the mass publication reflected this trend, e.g., Lu Chi'i Ho, "If You Don't Want Betrothal Gifts, Your Thought is Red..."¹⁸¹ Instead, revolutionary couples turned their weddings into political rallies.

In a further attempt to politicize the family, campaigns were waged to urge people to hold weekly family repudiation forums in which families could engage in self-criticism. This was seen as a means of eliminating "paternal authority" and the traditional view

¹⁷⁸ Chang Chi, "Changing Undesirable Wedding Customs and Practices: Doing Away with Betrothal Money," *China Youth* (January 16, 1966), in *Selections from China Mainland Magazines*, March 14, 1966, pp. 1-2.

¹⁷⁹ Kuei-hua, *Marriage by Purchase Really Harms People*, *WOMEN OF CHINA* No. 2 (February 1, 1966), p. 29, cited in 1 *CHINESE SOCIOLOGY AND ANTHROPOLOGY* 58-60 (1968).

¹⁸⁰ Yang Lu, *The Correct Handling of Love, Marriage, and Family Problems*, (1964), in 1 *CHINESE SOCIOLOGY AND ANTHROPOLOGY* 7-79 (1969).

¹⁸¹ Lu Ch'i Ho, *If You Don't Want Betrothal Gifts, Your Thought is Red. A Happy Life Depends on Labor*, *WOMEN OF CHINA* No. 2 (February 1, 1966), p. 28, in 1 *CHINESE SOCIOLOGY AND ANTHROPOLOGY* 61-64 (1968).

that "what the husband says goes."¹⁸² Women were also encouraged to use Mao's works to criticize domineering family members, such as parents, parents-in-law or husbands; and to persist until they had removed exploitation and prejudice. Articles in the press included the statements which encouraged the women to criticize family members in study sessions:

Over thousands of years our family relations have been that son obeys what his father says and wife obeys what her husband says. Now we must rebel against this idea... We should make a complete change in this... It should no longer be a matter of who is supposed to speak and who is supposed to obey in a family, but a matter of whose words are in line with Mao Tse-tung's thoughts...¹⁸³

Many changes occurred during the Cultural Revolution as a result of the leadership's revival of the policies initiated during the Great Leap Forward. The radical ideology of the Cultural Revolution gave new impetus to the political, economic and social changes. This period brought about a fundamental change in attitude, in some cases as a result of massive "rehabilitation" programs for the die-hards.

The Ninth Party Congress, held in April 1969, signaled the end of the Cultural Revolution. The ultraleftist rhetoric was toned down considerably, especially on domestic issues. In the wake of the Cultural Revolution, visitors to China in the 1970's noted many changes in the institution of marriage. The most obvious is in the age of the couple getting married. Although the marriage law permits marriage by women at eighteen and men at twenty, in recent years official propaganda has encouraged even later marriages, generally about twenty-five for females and thirty for males. Considerations of population limitation, health, and educational and occupation commitments all seem to contribute to the trend of delayed marriage.¹⁸⁴ There is evidence that the family has been definitely retained as an essential social institution and that family bonds, for both social and economic reasons, were being encouraged by the state. Family life appeared to be relatively intimate. Divorce actions continued to be filed but the state appeared to be making efforts in such cases to effect reconciliations wherever possible.

The momentum for social, political, and economic reforms revitalized by the Great Proletarian Cultural Revolution has generated in the 1970's yet another movement called the Anti-Confucious Campaign. In this most recent nation-wide campaign, no less than Con-

¹⁸² 58 UNION RESEARCH SERVICE No. 19 (March 6, 1970), p. 267, quoted in Leader, *The Emancipation of Chinese Women*, 26 WORLD POLITICS 55-79 (1973).

¹⁸³ SALAFF & MERKLE, *op. cit.*, *supra*, note 126 at 171-172.

¹⁸⁴ Whyte, *op. cit.*, *supra*, note 146 at 177.

fucius (the most influential Chinese philosopher in their five thousand years of civilization), is the target of attack. The campaign denounces such Confucian teachings as elitism, hierarchical social structure based on wealth and privilege and the traditional confucian attitudes about the inferiority of women.

It has been twenty-five years since the 1950 Marriage Law of the People's Republic of China was promulgated and implemented. In that quarter of a century, fundamental changes have occurred within the institution of marriage and, consequently, throughout the entire fabric of Chinese society. The need for change from the antiquated, traditional Chinese marriage laws was obvious from the end of the nineteenth century onwards but most of the well-meaning reforms initiated in the subsequent fifty years had little or no impact on the institution. It took a major revolution, namely the Communist one, to shatter the deeply entrenched attitudes and customs surrounding marriage.

It is to their credit that the Communists were able to reform the institution of marriage within such a short span of time. As explained, marriage reform—and inherent in this, women's emancipation—was part and parcel of the over-all socio-political liberation of the people. The emancipation of women was a vital concern of the Chinese Communist Party not only because women were needed to support and carry out the Revolution but more importantly, the Revolution entailed as one of its crucial programs, the abolition of the male-dominated and anti-women institutions of traditional China. Viewed in this light, marriage reform was always an integral part of the transformation of China, reinforced by the almost simultaneous promulgation of the Land Reform Program.

The changes brought about by the 1950 Marriage Law have indeed been far-reaching. The traditional "feudal marriage system" has been replaced by a "new democratic" marriage system. Under this new and strictly monogamous system, freedom of marriage is proclaimed and divorce allowed. In addition to the changes which this produced (breakdown of the traditional, extended family; shattering of the generational hierarchy; weakening of the solidarity of the family organization; destruction of the traditional kinship and patrilineage systems; and undermining the age-old supremacy of the male over the female), the traditional authority and responsibilities of the family have been taken over by various agencies of the state.

Despite these changes which have occurred throughout the fabric of society, to the Chinese Communist Party leadership, and especially

to Chairman Mao, the present situation leaves much to be desired. In no uncertain terms Chairman Mao expressed concern over the pace, manner and direction of the Chinese revolution which to him has yet to achieve its ultimate goal of the "dictatorship of the proletariat." This apprehension on the part of Chairman Mao over the future of the Chinese Revolution which bewilders many Western sinologists does not by any means manifest lack of self-confidence nor does this betray a sense of insecurity on the part of the Chinese. Rather, more than the Chinese refusal to rest on their past laurels, this apprehension stems from the theory of "continuing revolution" inherent in Chinese Communist ideology. According to them, the ultimate goals of the Revolution have yet to be reached which includes, among others, the fight for complete marriage reform.

After twenty-five years of intensive campaign from the first drive to implement the Marriage Law in May 1950 up to the present attack against Confucius, efforts are still being made by the Chinese Communist leadership to revolutionize the institution of marriage. The laws governing the institution have been completely revamped but, until all remnants of the so-called "feudal-patriarchal" ideology have been destroyed, the battle will not be considered won.

APPENDIX I

MARRIAGE REGULATIONS OF THE CHINESE SOVIET
REPUBLIC OF 1st DECEMBER 1931**Chapter I: General Principles*

Article 1. The principle of freedom of marriage between man and woman is established and the entire feudal system of marriage arranged by persons other than the parties themselves, forced upon the parties and contracted by purchase and sale is abolished. The practice of taking a 'foster daughter-in-law' is forbidden.

Article 2. Monogamy is enforced: polygamy is forbidden.

Chapter II: Contracting Marriage

Article 3. The contracting age for marriage is fully twenty years for men and fully eighteen years for women.

Article 4. For a man and a woman to contract marriage, the consent of both parties is necessary. Coercion exercised by either party or by a third person is not permitted.

Article 5. For a man and a woman to marry a person of blood relationship within the fifth generation is forbidden.

Article 6. Persons suffering from venereal disease, leprosy, tuberculosis, and suchlike dangerous contagious diseases are forbidden to marry, unless it is considered permissible after medical examination.

Article 7. Persons suffering from mental disease or paralysis are forbidden to marry.

Article 8. To contract marriage the man and the woman are required to approach together the *hsiang* or municipal soviet to register the marriage and receive a marriage certificate. Marriage presents, whether in money or goods, and dowries are abolished.

Chapter III: Divorce

Article 9. Freedom of divorce is established. Whenever both the man and the woman agree to divorce, the divorce shall have imme-

* MEIJER, MARRIAGE LAW AND POLICY IN THE CHINESE PEOPLE'S REPUBLIC 281-282 (1971).

mediate effect. When one party, either the man or the woman, is determined to claim a divorce it shall have immediate effect.

Article 10. When a man and a woman divorce, they are required to register the divorce with the *hsiang* or municipal soviet.

Chapter IV: Care and Custody of Children after Divorce

Article 11. The man is to raise the children born before the divorce. If both man and the woman wish to raise the children, they shall be entrusted to the woman.

Article 12. Small children who are being nursed shall during the period of their nursing be raised by the woman.

Article 13. If a child has received land, the land goes with the child.

Article 14. When the children have reverted to the woman's custody, the man shall be responsible for two-thirds of their living expenses until they are sixteen years of age. Payment shall be either in money or by way of tilling the land the children have received [at land reform].

Article 15. In the case of the woman marrying again and her new husband being willing to care for the children [of her earlier marriage], the father may be discharged of his duty to provide for their living expenses.

Article 16. A new husband who has agreed to care for [his wife's] children [by an earlier marriage] must register this matter with the *hsiang* or municipal soviet. After registration he shall be responsible for caring for the children until they reach adulthood. He shall not relinquish his duties [before that time] nor maltreat the children.

Chapter V: Arrangements Concerning the Property of the Man and the Woman After Divorce

Article 17. The man and the woman shall each dispose of the land and property which they individually had acquired and settle the debts they had incurred individually. If the marriage has lasted one full year the increase property gained by management of the man and the woman in common shall be divided equally between them; if there are children it shall be divided equally *per capita*.

Article 18. The man shall be responsible for the settlement of common debts incurred by the man and the woman during the time of cohabitation.

Article 19. If after divorce both the man and the woman are unwilling to leave the house they inhabit, the man shall sell part of his house to the woman to live in.

Article 20. After divorce, until the woman marries again, the man must support her or till the land for her.

*Chapter VI: Care of Children Born
Before Registration of Marriage*

Article 21. The man shall bear two-thirds of the living expenses of children born before registration of his marriage, if it is clearly proved that the children are his. The Articles 11-15 of Chapter IV shall be applicable.

Chapter VII: Additional Provisions

Article 22. Whosoever contravenes this law shall be duly punished according to the criminal law.

Article 23. These Regulations will be enforced as from the day of promulgation.

APPENDIX II

MARRIAGE LAW OF THE CHINESE SOVIET
REPUBLIC OF 8th APRIL 1934**Chapter I: General Provisions*

Article 1. The principle of freedom of marriage between man and woman is firmly established and the entire system of marriage arranged by persons other than the parties themselves, forced upon the parties, or contracted by purchase and sale, is abolished. The practice of taking a 'foster daughter-in-law' is forbidden.

Article 2. Monogamy is enforced: polygamy and polyandry are forbidden.

Chapter II: Contracting Marriage

Article 3. The contracting age for marriage is fully twenty years for man and fully eighteen years for woman.

Article 4. For a man and a woman to contract marriage, the consent of both parties is necessary. Coercion exercised by either party or by a third person is not permitted.

Article 5. To contract marriage with a person of blood relationship within three generations is forbidden.

Article 6. Persons suffering from venereal disease, leprosy, tuberculosis, and suchlike dangerous contagious diseases, are forbidden to marry, unless it is considered permissible after medical examination.

Article 7. Persons suffering from mental disease or paralysis are forbidden to marry.

Article 8. To contract marriage a man and a woman are required to register the marriage with the soviet of the *hsiang* or municipal *ch'ü* together and receive a marriage certificate. Marriage presents, whether in money or goods, and dowries are abolished.

Article 9. In all cases of a man and a woman cohabiting, whether or not they have registered marriage, they shall be considered to have contracted marriage.

* MEIJER, MARRIAGE LAW AND POLICY IN THE CHINESE PEOPLE'S REPUBLIC 283-284 (1971).

Chapter III: Divorce

Article 10. Freedom of divorce is established. When one party, either the man or the woman, is determined to claim a divorce, divorce may immediately be effected.

Article 11. Wives of soldiers of the Red Army when claiming a divorce must obtain the consent of their husbands, but in areas where communication by letter is easy and where the husband has not returned home nor communicated by letter for two years, the wife may approach the local government and request registration of the divorce. In areas where communication by letter is difficult, and four years have elapsed since the husband last communicated by letter or since he last returned home, the wife may approach the local government and request registration of the divorce.

Article 12. When a man and a woman divorce they must register the divorce with the soviet of the *hsiang* and the municipal *ch'ü*.

Chapter IV: Arrangements Concerning the Property of the Man and the Woman After Divorce

Article 13. After divorce the land and property originally owned by the man and the woman and the debts originally incurred by them shall be disposed of by themselves. If the marriage has lasted one full year the increase of property gained by management in common will be divided equally between the man and the woman. If there are children it shall be divided equally *per capita*. To settle common debts incurred by the man and the woman, during the time of cohabitation shall be the responsibility of the man.

Article 14. When after divorce the woman removes to a village in another *hsiang* she shall receive land in accordance with the rate of allocation prevailing in that *hsiang*. If in the new village there is no more land to be allocated, the woman shall retain the land she originally owned. The way of disposing of that land, whether by renting it out, selling, or exchanging it with another person, shall be freely decided by the woman herself. The above-mentioned provisions on the distribution of land and disposal thereof shall be applicable in full to the children [of the marriage] if it has been decided that such children shall revert to the mother's custody and they accompany the mother on her removal.

Article 15. If after divorce the woman lacks the capacity to perform work and has no definite occupation and therefore cannot support herself, the man, unless she has married again, shall assist her by tilling her land or by otherwise supporting her. But if the man himself lacks the capacity to do manual work or does not have a

definite occupation and cannot support himself, this provision does not apply.

Chapter V: Arrangements for Children after Divorce

Article 16. Children born and conceived of the marriage before divorce shall revert to the woman's custody. If the woman does not wish to take custody of them, they shall revert to the man's custody, but the wishes of an elder child shall be respected.

Article 17. The man shall bear two-thirds of the living expenses of each child reverting to the woman's custody until he or she attains the age of sixteen. Payment shall be either in money or by way of tilling the land distributed among the children.

Article 18. Should the woman marry again and the new husband wishes to care for the children, the father may be exempted from further bearing the responsibility for supporting the children as provided in the last preceding article. A new husband who has agreed to care for the children must register this matter with the soviet of the *hsiang* or municipal *ch'ü*. On registration he must accept responsibility for caring for them until they reach adulthood. He shall not relinquish his duties [before that time] nor maltreat the children.

Chapter VI: Children Born Out of Wedlock

Article 19. Children born out of wedlock shall enjoy all the rights granted to legitimate children by this Marriage Law. To maltreat or abandon such children is forbidden.

Chapter VII: Additional Provisions

Article 20. Whosoever contravenes this law shall be duly punished according to the criminal law.

Article 21: This law shall be enforced as from the day of its promulgation.

APPENDIX III

**MARRIAGE REGULATIONS OF THE SHENSI, KANSU, NINGHSIA
BORDER AREA, PROMULGATED 4th APRIL 1939****Chapter I: General Provisions*

Article 1. These regulations have been drawn up fundamentally in the spirit of democracy and take account of the circumstances prevailing in the Border Area of Shensi, Kansu, and Ninghsia.

Article 2. Marriage of a man and a woman is based on the principle of the free will of the parties.

Article 3. Monogamy is enforced; concubinage is forbidden.

Article 4. Marriages arranged by other people, contracted under coercion, and marriage contracted by way of purchase and sale are forbidden, as is the practice of taking a 'foster daughter-in-law' or a 'foster son-in-law.'

Chapter II: Contracting Marriage

Article 5. For a man and a woman to contract marriage, the wish of the parties themselves to do so is necessary and there shall be two persons to witness the marriage.

Article 6. The contracting age for marriage is fully twenty years for the man and fully eighteen years for the woman.

Article 7. When contracting marriage the man and the woman shall request the government of the *hsiang* or the municipality to register the marriage and to issue a marriage certificate.

Article 8. Marriage is forbidden if one party is: (1) a linear relative by blood of the other; (2) suffering from venereal disease, leprosy, mental disease, paralysis or suchlike incurable disease as is attested by a physician.

Article 9. While one of the parties has a spouse and is not divorced, he or she shall not contract marriage for a second time.

Chapter III: Divorce

Article 10. When both the man and the woman wish to divorce they shall request the local *hsiang* or municipal government to register their divorce and issue a divorce certificate.

* MEIJER, MARRIAGE LAW AND POLICY IN THE CHINESE PEOPLE'S REPUBLIC 285-287 (1971).

Article 11. When either on the man's or the woman's side any of the following circumstances exists, the other party may apply to the government for divorce: (i) bigamy; (ii) fundamental lack of harmony of sentiment and will between the parties, continued cohabitation being impossible; (iii) adultery; (iv) cruelty to one party by the other; (v) desertion in bad faith by one of the parties; (vi) intent of one party to injure the other; (vii) impotence; (viii) malignant disease; (ix) uncertainty for a period of one year (in areas where communication by letter is impossible, this period shall be two years) whether the other party is still living; (x) any other important reason.

Article 12. When either the man or the woman requests divorce on any of the grounds provided in article 11, the *hsiang* or municipal government will after verification of his or her statements allow a divorce; the other party shall be notified, and if the other party after having received the communication does not contest the facts as stated, a divorce certificate shall be issued. If the other party contests the statements, his or her arguments shall be examined by the court, which shall decide whether or not divorce is to be allowed.

Chapter IV: Marriage, Children and Property Relationships

Article 13. Children born before their parents are divorced and not yet five years of age shall be cared for by the woman. The wishes of children who have reached five years of age—to be cared for by their father or their mother—shall be respected. Neither the father nor the mother shall coerce the children.

Article 14. If the woman before her remarriage has not the capacity to support herself the living expenses of the children who have reverted to her care shall continue to be borne by the man until the children have reached the age of sixteen years.

Article 15. When a woman marries again, her new husband will be responsible for the expense of caring for and educating the children she has brought with her.

Article 16. When children are born out of wedlock and the natural mother furnishes proof of the identity of the natural father, the natural father shall be compelled to acknowledge his children as if they had been born in wedlock.

Article 17. Children born out of wedlock shall enjoy all rights contained in these provisions and shall not be abandoned.

Article 18. Property owned by the woman and the man and debts incurred by them prior to marriage shall be administered by them-

selves. When after marriage the man and the woman have managed their affairs in common, the property obtained and the debts incurred shall be administered by both of them jointly.

Article 19. If after divorce and before her remarriage, the woman has no occupation or property and lacks the capacity to perform work and to support herself, the man shall assist her until she marries again; but this period shall be limited to three years.

Article 20. Whosoever contravenes these regulations shall be accused by the persons affected before the court or he shall be publicly accused by the procuratorial organs and be dealt with as the law may require.

Chapter V: Additional Provisions

Article 21. The right of interpretation of these regulations is with the Government of the Border Area; the right of amendment is with the Consultative Council of the Border Area.

Article 22. The Border Area Government shall promulgate these regulations after they have been passed by the Border Area Consultative Council.

APPENDIX IV

**REVISED PROVISIONAL MARRIAGE REGULATIONS
OF THE SHEN-KAN-NING BORDER AREA,
PROMULGATED 20th MARCH 1944***

Article 1: Marriage is based on the principle of the free will of the man and the woman.

Article 2. Monogamy is enforced; polygamy and polyandry are forbidden.

Article 3. In the case of marriage contracted by members of national minorities, while the principles of these Regulations shall be observed, their customary laws shall [also] be respected.

Article 4. When a man and a woman contract marriage, they shall request registration of the marriage from the local government of the *hsiang* (or the municipality) and receive a marriage certificate.

Article 5. Marriage is forbidden under the following circumstances: (i) when one of the parties is suffering from venereal or any other incurable malignant disease; (ii) in the case of forcible abduction.

Article 6. When a man and a woman have been betrothed and either of the parties before marriage is contracted does not agree to marry, that party may approach the government with a request that the betrothal contract be dissolved, whereupon each party shall return whatever betrothal presents he or she has received from the other.

Article 7. When a man and a woman divorce of their own free will, they shall request registration of the divorce from the local government of the *hsiang* (or municipality) and receive a divorce certificate.

Article 8. When either on the man's or the woman's side any of the following circumstances exists, the other party may approach the government and request divorce: (i) bigamy; (ii) adultery; (iii) intent of one party to injure the other; (iv) incurable, virulent disease or impotence as certified by a physician; (v) desertion in bad faith of the other party; (vi) ill-treatment of one party by the other; (vii) fundamental lack of harmony of sentiment and will between the parties, continued cohabitation being impossible; (viii) a lapse of three years of uncertainty whether the other party is

* MELJER, MARRIAGE LAW AND POLICY IN THE CHINESE PEOPLE'S REPUBLIC 288-289 (1971).

still living; (ix) lack of regular occupation by either the man or the woman, despite cautioning, the other party's standard of living being adversely affected as a result; (x) any other important reason for divorce.

Article 9. During the pregnancy of the woman, the man is not allowed to file a petition for divorce. If conditions for divorce are met, such a petition may only be filed one year after the woman has given birth to the child. (Cases where both parties agree to divorce do not come within the provisions of this article.)

Article 10. The spouse of a member of the army engaged in the war of resistance against the Japanese shall in principle not be granted a divorce for the duration of the war of resistance. Before a woman may request the local government for divorce, a period of at least five years since she last received any communication from her husband is required to have elapsed. When the local government receives such a petition it shall examine the circumstances stated therein are true, before granting a divorce. But if it is established that the husband of this army man's dependent is deceased, or has deserted, gone over to the enemy, or married another person, this article shall not apply. When a member of the army engaged in the war of resistance who had entered into a contract of betrothal with a woman but for three years has had no correspondence with her, or though he has corresponded, the woman has passed the legal marriageable age by five years and still cannot marry, the woman may request the local government to dissolve the betrothal contract.

Article 11. Children born before divorce of the parents and under the age of seven years shall be cared for by the woman. The wishes of children over the age of seven to be in the custody of their father or their mother shall be respected. The parents shall not coerce the children, but relations between parent and child shall be taken into account.

Article 12. When the woman is divorced, and has not married again, and has no means to support herself, the living expenses and education of the children entrusted to her care shall continue to be borne by the man. When the woman has married again, the education and living expenses of these children shall be borne by her new husband. If the children wish to be in the custody of their father, the father shall accept them.

Article 13. Children born out of wedlock have the same rights as children born in wedlock; they shall not be discriminated against. If the mother has proved the identity of the father, the government shall compel the father to pay for the education and living expenses of the child.

Article 14. In matters pertaining to the contracting of marriage or divorce, whosoever contravenes these Regulations shall be accused by the party affected and the accusation shall be verified by the local judicial body which shall decide whether the accusation is sustained or rejected. If the case comes within the category of criminal affairs, it shall be adjudicated according to the criminal law.

Article 15. These regulations are promulgated and enforced by the Border Area Government, which has right of interpretation. After promulgation the Marriage Regulations of the Border Area of Shensi, Kansu and Ninghsia promulgated on 4 April 1939, shall immediately be abrogated.

APPENDIX V

**MARRIAGE REGULATIONS OF THE BORDER AREA
OF SHANSI, CH'AHAR, AND HOPEI
(CHIN-CH'A-CHI BORDER AREA)***

Passed by the first session of the Consultative Assembly of the Chin-Ch'a-Chi Border Area on 21 January 1943, and promulgated by the Administrative Council of the Chin-Ch'a-Chi Border Area on 4 February 1943.

Chapter I: General Provisions

Article 1. These regulations are based on the spirit of the legislation in the Book of Family of the Civil Law of the Republic of China, and are adapted to the circumstances prevailing in the Border Area.

Article 2. When a man and a woman marry it is necessary that they act on their own initiative and of their own free will; no person shall exercise coercion. Marriage of infants, the practice of taking a 'foster daughter-in-law,' premature marriage, and marriage by purchase and sale are forbidden.

Article 3. Monogamy is strictly enforced. Bigamy, concubinage, keeping slave girls and such devices of polygamy, and all kinds of marriage by means of which one wife has more than one husband, are forbidden.

Chapter II: Contracting Marriage

Article 4. A man who has not attained the age of twenty, and a woman who has not attained the age of eighteen years, shall not contract marriage.

Article 5. A marriage to be contracted requires a public ceremony and two witnesses. The parties shall approach the marriage office of the public authority in the village where they reside or the *hsien* or municipal government to register the marriage and receive a marriage certificate.

Article 6. Betrothal is not an indispensable procedure for marriage.

Article 7. Persons having the following family relationships to one another are not allowed to contract marriage: (i) linear relatives

* MEIJER, MARRIAGE LAW AND POLICY IN THE CHINESE PEOPLE'S REPUBLIC 291-293 (1971).

by blood or marriage; (ii) collateral relatives by blood within the eighth degree; but this provision does not apply to *piao* cousins; (iii) collateral relatives by marriage within the fifth degree who are not of the same rank.

Article 8. No marriage is permitted in any of the following circumstances; viz. when either party is suffering from: (i) mental disease or any other grave incurable disease; (ii) venereal or any other malignant disease; (iii) impotence due to physical defect.

Article 9. When a divorce is pronounced by judicial decision as a result of the adultery of one party, or when punishment has been inflicted on him (her) by sentence of the court on that account, the said party shall not be allowed to contract marriage with the partner in adultery.

Article 10. No person shall interfere with the marriage of a widow.

Chapter III: Rights and Duties of Husband and Wife

Article 11. Husband and wife are duty bound to live together, but if there is a legitimate reason why they are unable to do so this provision shall not apply.

Article 12. Both spouses are jointly responsible for the living expenses and management of the household.

Chapter IV: Divorce

Article 13. When both husband and wife are willing parties to a divorce, they shall approach the local *hsien* (or municipal) judicial body and request registration of the divorce, the signature of two or more witnesses being required.

Article 14. When fundamental lack of harmony of sentiment and will between husband and wife exists to such an extent that cohabitation is intolerable, either party may approach the judicial body and request a divorce.

Article 15. When either on the man's side or the woman's side any of the following circumstances exists, the other party may approach the judicial body to request a divorce: (i) treason; (ii) bigamy; (iii) adultery; (iv) continual ill-treatment, oppression, or desertion in bad faith; (v) sentence of imprisonment for three or more years for committing a specific criminal offense; (vi) uncertainty for more than three years whether the other party is still living; (vii) intent of one party to injure the other; (viii) any of the circumstances in any of the paragraphs of Article 8.

Article 16. Spouses of military personnel on active service in the war against Japan shall not request divorce, unless it has been uncertain for a period of more than four years whether the spouse is still living.

Article 17. While the woman is pregnant or nursing a child, the man shall not file a petition for divorce. If there are grounds for divorce, such a petition may only be filed three full months after the birth of the child. However, in any of the circumstances mentioned in Article 15, subsections i, ii, iii, iv, and vii, this provision does not apply.

Article 18. When both husband and wife wish to divorce, they shall determine by agreement at the time of divorce who is to be responsible for education and custody of the children. However, notwithstanding the terms of any such agreement, if the wife is in financial difficulties, the husband is nevertheless obliged to provide all or part of the expenses of caring for and educating the children, for as long as the wife has not married another person.

Article 19. When a judicial decision has ordered a divorce, the judicial body may in the interest of the children, and at its discretion appoint one of the parties to be responsible for their custody and education.

Article 20. Should the wife, through a judicial decision ordering divorce, and through no fault of her own, come into financial difficulties, the husband, even should these difficulties arise through no fault of his, is nevertheless obliged to provide in part or in full for her living expenses; but if he is not able to do so, this provision shall not apply.

Article 21. When husband and wife divorce, each shall recover the property he or she originally owned.

Chapter V: Additional Provisions

Article 22. Except for the provisions specifically contained in these regulations, the provisions of the Book of Family of the Civil Code concerning marriage shall also be applied.

Article 23. These regulations shall be enforced as from the day of their promulgation. The Marriage Regulations of the Chin-Ch'a-Chi Border Area promulgated 7th July 1941 shall at the same time be abolished.

APPENDIX VI

**REVISED PROVISIONAL MARRIAGE REGULATIONS OF THE
BORDER AREA OF SHANSI, HOPEI, SHANTUNG AND
HONAN (CHIN-CHI-LU-YU BORDER AREA)***

Promulgated 5 January 1942; Revised and Supplemented 29 September 1943.

Chapter I: General Provisions

Article 1. These regulations are established on the basis of the principles of equality, freedom of choice, and monogamy.

Article 2. Bigamy, premature marriage, concubinage, keeping of slave girls and 'foster daughters-in-law', marriage by purchase or sale, renting of wives, and keeping a wife in common by more than one person, are prohibited.

Chapter II: Betrothal

Article 3. For a man and a woman to become betrothed they are required to act of their own free will; no person shall exercise coercion.

Article 4. If the man has not attained the full age of seventeen, and the woman the full age of fifteen years, they shall not be betrothed.

Article 5. When arranging betrothal neither party is allowed to exact money or demand other material remuneration.

Article 6. For a betrothal to be valid, the man and the woman must register it with the government of *ch'ü* or higher level. In the case of contravention of the last three preceding articles, no registration is allowed.

Chapter III: Dissolution of the Betrothal Contract

Article 7. When a man and a woman are betrothed, and either party does not wish to continue the betrothal contract nor to marry, he or she shall in all cases request dissolution of the betrothal contract. But when dissolution is asked in respect of a betrothal contract with

* MEIJER, MARRIAGE LAW AND POLICY IN THE CHINESE PEOPLE'S REPUBLIC 295-297 (1971).

a member of the armed forces on active service in the war of resistance, the consent of this member of the armed forces must necessarily be obtained. If there has been no correspondence between the betrothed for two or more years, this provision does not apply. When the member of the armed forces has corresponded, but for many years has been unable to return home to marry his betrothed, and the woman's age is over twenty years, she may request that the betrothal contract be dissolved; but if at the time of the enforcement of this revised procedure the woman had already reached the age of twenty years, she shall postpone the request for another year.

Article 8. For the dissolution of the betrothal contract the parties are required to approach the government of the *ch'ü* or higher level and orally request that the matter be put on record.

Article 9. After a betrothal contract entered into prior to the enforcement of this article has been dissolved, each party is obliged to return in total the goods and money received from the other. If the goods and money cannot be returned at one time, an agreement must be drawn up for compensation by installment. If in fact the party is not able to pay compensation and the other party is not in poor circumstances, this article does not apply.

Chapter IV: Contracting Marriage

Article 10. To contract a marriage requires both parties, the man and the woman, to act of their own free will. No other party shall exercise coercion.

Article 11. Before a man has attained the full age of eighteen years and the woman sixteen, they are not allowed to contract marriage.

Article 12. To contract a marriage requires registration of the marriage with the government of the *ch'ü* or higher level and a marriage certificate.

Article 13. Marriage between linear relatives by blood, linear relatives by marriage, and collateral relatives by blood within the eight degree is forbidden.

Article 14. Persons suffering from a mental disease (such as idiocy or insanity), venereal disease, or any other malignant hereditary disease, are not allowed to marry.

Article 15. A widow has the freedom to marry again or not, no person shall interfere or exact property from her on account of her marriage. On remarriage she may take her personal property with her.

Chapter V: Divorce

Article 16. When relations between a man and a woman have deteriorated to such an extent that cohabitation becomes impossible, either of the parties may request a divorce.

Article 17. When either on the man's or the woman's side any of the following circumstances exists, the other party may request a divorce: (i) betrothal to or marriage with another person before divorce; (ii) ill-treatment, oppression, or desertion in bad faith of the other party; (iii) ill-treatment of the wife by the linear relatives of the husband to the extent that living together becomes impossible; (iv) uncertainty for more than three or more years whether the other party is still living; (v) the holding of office as a collaborator; (vi) opium-taking or addition to other vices; (vii) impotence.

Article 18. The wife (or husband) of a member of the armed forces on active service in the war of resistance is not allowed a divorce without the consent of her husband (wife), unless it has been clearly established that he (or she) is dead. When for four years or more no communication has been received, she (or he) may marry again. If the wife (or husband) has not received communication for four or more years before the enforcement of this article, she (or he) may marry again if during one year after the enforcement of this article no communication has been received.

Article 19. For a divorce to be valid a request must be made to the government of the *ch'ü* or higher level which on verifying [the facts] as stated will issue the required divorce certificate.

Article 20. Should the woman after divorce have no occupation nor property and lack the capacity to do manual work to support herself, she shall receive an adequate degree of support from the man until she marries again. But in any of the cases mentioned under the paragraphs vi-vii of Article 17, the preceding section of this Article shall not apply. If the man has no means whatever to pay these expenses, this provision does not apply.

Chapter VI: Children

Article 21. Children born to the man and the woman before divorce and not yet four years old at the time the divorce takes place, shall be cared for by the woman. Children of four years [and older] shall be cared for by the man. If any other agreement has been reached on this matter that agreement shall be followed. However, if the woman before marrying again has no means of support, the man shall pay for the living expenses of the children until her remarriage.

Article 22. The responsibility of caring for the children a woman brings with her when she marries again shall be borne jointly by the woman and her new husband.

Article 23. To kill or injure children born out of wedlock is forbidden. The natural father of such a child, when the mother has identified him and furnished proof in support, shall be responsible for taking the child into his house. The child shall have the same position as a child born in wedlock.

Chapter VII: Additional Provisions

Article 24. The right of interpretation of these regulations lies with the Government of the Chin-Chi-Lu-Yü Border Area; the right of amendment lies with the Provisional Consultative Council of the Chin-Chi-Lu-Yü Border Area.

Article 25. When these regulations have been passed by the Provisional Consultative Council of the Chin-Chi-Lu-Yü Border Area, they shall be promulgated and enforced by the Government of the Chin-Chi-Lu-Yü Border Area.

APPENDIX VII

**DETAILED PROVISIONS ON THE ENFORCEMENT OF THE
PROVISIONAL MARRIAGE REGULATIONS OF THE
CHIN-CHI-LU-YU BORDER AREA***

Enforced 26 April 1942.

Article 1. When prior to the enforcement of the Provisional Marriage Regulations a case concerning marriage has been brought before the court by either the man or the woman, the Provisional Marriage Regulations of the Border Area, as well as these Detailed Provisions shall be applied.

Article 2. A concubine taken before the enforcement of the Provisional Marriage Regulations may demand immediate separation and living expenses from the other party. In case of dispute over the amount the judicial body shall decide at its discretion.

Article 3. A slave girl taken before the enforcement of the Provisional Marriage Regulations may demand immediate separation from her master and the master shall not demand the return of the price he paid for her.

Article 4. A 'foster daughter-in-law' taken into the house before the enforcement of the Provisional Marriage Regulations shall not be ill-treated and shall not marry before she has attained the legal marriageable age. If of her own free will she chooses another spouse, she may request the immediate dissolution of the betrothal contract, [in which case] the man shall not demand the return of marriage presents nor money, nor shall he demand the return of payments made for any of the woman's living expenses during the time she was cared for in his house.

Article 5. Marriage contracted for the purpose of continuing the line of succession of two branches of a clan shall be adjudged bigamy. The wife last married under such circumstances before the enforcement of the Provisional Marriage Regulations of this Border Area may demand immediate divorce and proper support.

Article 6. Should a woman, after betrothal contract is dissolved at her own request, contract another betrothal or marriage again under circumstances of purchase and sale, any person may make a deposi-

* MEIJER, MARRIAGE LAW AND POLICY IN THE CHINESE PEOPLE'S REPUBLIC 298-299 (1971).

tion to the authorities and the law shall be applied with the utmost rigour.

Article 7. The [list of] relatives who may not marry each other is interpreted as follows: (i) linear relatives by blood; parents and children, grandparents and grandchildren, great-grandparents and great-grandchildren, etc.; (ii) linear relatives by marriage; parents and daughters-in-law or sons-in-law, etc; (iii) collateral relatives by blood within the eight degree.

a. of the same rank: brothers and sisters, paternal cousins once removed, paternal cousins twice removed; but *piao* cousins are expected;

b. of different rank: maternal and paternal uncles or aunts and their nieces or nephews, etc.

Article 8. When after divorce both husband and wife regretting to divorce wish to live together again, they shall be allowed to do so, but they must register the fact with the government of the *ch'u* or higher level.

Article 9. The man shall not divorce his wife if she is pregnant or nursing a child. If the legal conditions for divorce are in fact met, he may file a petition for divorce one year after the birth of the child.

Article 10. Impotence if curable is not a ground for divorce.

Article 11. If either party has been disabled on active service in the war of resistance, the other party may not on account of the other party's disability file a petition for divorce. However, if the sexual organs are injured and impotence ensues, this provision does not apply.

Article 12. Mental illness medically attested to be curable is not a ground for divorce.

Article 13. When a man and woman divorce, each party shall recover his or her private property, but neither party may claim compensation for expenditure in the course of their cohabitation.

Article 14. When after divorce, besides matters concerning education and care of the children as determined by law or agreement, there is dispute between the parents concerning the children, the following provisions shall apply: (i) if the man is not competent to educate and care for those of the children above four years of age, they shall revert to the mother's custody. If the woman is not competent to care for and educate the children under four years of

age, they shall revert to the father's custody; (ii) if both parties claim custody of the children or if both refuse, custody shall be awarded to the side where conditions are more suitable.

Article 15. When both parties agree to divorce, it is necessary that the man and the woman approach the government of the *ch'ü* or higher level in person to register the divorce and to receive a divorce certificate. Disputes arising out of divorce shall be adjudicated by the judicial bodies.

Article 16. Betrothal, marriage and divorce shall require a registration fee of two yüan.

Article 17. If there are cases where these regulations are not applicable, they shall be amended immediately by the Government of the Border Area.

Article 18. These Detailed Provisions are enforced as from the day of the enforcement of Provisional Marriage Regulations.

APPENDIX VIII

THE MARRIAGE LAW OF THE PEOPLE'S
REPUBLIC OF CHINA **Chapter I: General Principles*

Article 1. The feudal marriage system based on arbitrary and compulsory arrangements and the supremacy of man over woman, and in disregard of the interests of the children, is abolished.

The New-Democratic marriage system, which is based on the free choice of partners, on monogamy, on equal rights for both sexes, and on the protection of the lawful interests of women and children, is put into effect.

Article 2. Bigamy, concubinage, child betrothal, interference in the re-marriage of widows, and the exaction of money or gifts in connection with marriages, are prohibited.

Chapter II: The Marriage Contract

Article 3. Marriage is based upon the complete willingness of the two parties. Neither party shall use compulsion and no third party is allowed to interfere.

Article 4. A marriage can be contracted only after the man has reached twenty years of age and the woman eighteen years of age.

Article 5. No man or woman is allowed to marry in any of the following instances:

a) Where the man and woman are lineal relatives by blood or where the man and woman are brother and sister born of the same parents or where the man and woman are half-brother and half-sister. The question of prohibiting marriage between collateral relatives by blood (up to the fifth degree of relationship) is determined by custom.

b) Where one party, because of certain physical defects, is sexually impotent.

c) Where one party is suffering from venereal disease, mental disorder, leprosy or any other disease which is regarded by medical science as rendering a person unfit for marriage.

* THE MARRIAGE LAW OF THE PEOPLE'S REPUBLIC OF CHINA 1-10 (3rd ed., 1973).

Article 6. In order to contract a marriage, both the man and the woman should register in person with the people's government of the district or township in which they reside. If the proposed marriage is found to be in conformity with the provisions of this Law, the local people's government should, without delay, issue marriage certificates.

If the proposed marriage is not found to be in conformity with the provisions of this law, registration should not be granted.

Chapter III: Rights and Duties of Husband and Wife

Article 7. Husband and wife are companions living together and enjoy equal status in the home.

Article 8. Husband and wife are in duty bound to love, respect, assist and look after each other, to live in harmony, to engage in productive work, to care for their children and to strive jointly for the welfare of the family and for the building up of the new society.

Article 9. Both husband and wife have the right to free choice of occupation and free participation in work or in social activities.

Article 10. Husband and wife have equal rights in the possession and management of family property.

Article 11. Husband and wife have the right to use his or her own family name.

Article 12. Husband and wife have the right to inherit each other's property.

Chapter IV: Relations Between Parents and Children

Article 13. Parents have the duty to rear and to educate their children; the children have the duty to support and to assist their parents. Neither the parents nor the children shall maltreat or desert one another.

The foregoing provision also applies to foster-parents and foster-children.

Infanticide by drowning and similar criminal acts are strictly prohibited.

Article 14. Parents and children have the right to inherit one another's property.

Article 15. Children born out of wedlock enjoy the same rights as children born in lawful wedlock. No person is allowed to harm them or discriminate against them.

Where the paternity of a child born out of wedlock is legally established by the mother of the child or by other witnesses or material evidence, the identified father must bear the whole or part of the cost of maintenance and education of the child until the age of eighteen.

With the consent of the mother, the natural father may have custody of the child.

With regard to the maintenance of a child born out of wedlock, if its mother marries, the provisions of Article 22 apply.

Article 16. Neither husband nor wife may maltreat or discriminate against children born of a previous marriage by either party and in that party's custody.

Chapter V: Divorce

Article 17. Divorce is granted when husband and wife both desire it. In the event of either the husband or the wife alone insisting upon divorce, it may be granted only when mediation by the district people's government and the judicial organ has failed to bring about a reconciliation.

In cases where divorce is desired by both husband and wife, both parties should register with the district people's government in order to obtain divorce certificates. The district people's government, after establishing that divorce is desired by both parties and that appropriate measures have been taken for the care of children and property, should issue the divorce certificates without delay.

When one party insists on divorce, the district people's government may try to effect a reconciliation. If such mediation fails, it should, without delay, refer the case to the county or municipal people's court for decision. The district people's government should not attempt to prevent or to obstruct either party from appealing to the county or municipal people's court. In dealing with a divorce case, the county or municipal people's court should, in the first instance, try to bring about a reconciliation between the parties. In case such mediation fails, the court should render a decision without delay.

After divorce, if both husband and wife desire the resumption of marriage relations, they should apply to the district people's government for a registration of re-marriage. The district people's government should accept such a registration and issue certificates of re-marriage.

Article 18. The husband is not allowed to apply for a divorce when his wife is pregnant, and may apply for divorce only one year after

the birth of the child. In the case of a woman applying for divorce, this restriction does not apply.

Article 19. In the case of a member of the revolutionary army on active service who maintains correspondence with his or her family, that army member's consent must be obtained before his or her spouse can apply for divorce.

Divorce may be granted to the spouse of a member of the revolutionary army who does not correspond with his or her family for a period of two years subsequent to the date of the promulgation of this Law. Divorce may also be granted to the spouse of a member of the revolutionary army, who had not maintained correspondence with his or her family for over two years prior to the promulgation of this Law, and who fails to correspond with his or her family for a further period of one year subsequent to the promulgation of the present Law.

Chapter VI: Maintenance and Education of Children After Divorce

Article 20. The blood ties between parents and children are not ended by the divorce of the parents. No matter whether the father or the mother has the custody of the children, they remain the children of both parties.

After divorce, both parents continue to have the duty to support and educate their children.

After divorce, the guiding principle is to allow the mother to have the custody of a breast-fed infant. After the weaning of the child, if a dispute arises between the two parties over the guardianship and an agreement cannot be reached, the people's court should render a decision in accordance with the interests of the child.

Article 21. If, after divorce, the mother is given custody of a child, the father is responsible for the whole or part of the necessary cost of the maintenance and education of the child. Both parties should reach an agreement regarding the amount and the duration of such maintenance and education. Lacking such an agreement, the people's court should render a decision.

Payment may be made in cash, in kind or by tilling land allocated to the child.

An agreement reached between parents or a decision rendered by the people's court in connection with the maintenance and education of a child does not obstruct the child from requesting either

parent to increase the amount decided upon by agreement or by judicial decision.

Article 22. In the case where a divorced woman re-marries and her husband is willing to pay the whole or part of the cost of maintaining and educating the child or children by her former husband, the father of the child or children is entitled to have such cost of maintenance and education reduced or to be exempted from bearing such cost in accordance with the circumstances.

Chapter VII: Property and Maintenance After Divorce

Article 23. In the case of divorce, the wife retains such property as belonged to her prior to her marriage. The disposal of other family property is subject to agreement between the two parties. In cases where agreement cannot be reached, the people's court should render a decision after taking into consideration the actual state of the family property, the interests of the wife and the child or children, and the principle of benefiting the development of production.

In cases where the property allocated to the wife and her child or children is sufficient for the maintenance and education of the child or children, the husband may be exempted from bearing further maintenance and education costs.

Article 24. In case of divorce, debts incurred jointly by husband and wife during the period of their married life should be paid out of the property jointly acquired by them during this period. In cases where no such property has been acquired or in cases where such property is insufficient to pay off such debts, the husband is held responsible for paying them. Debts incurred separately by the husband or wife should be paid off by the party responsible.

Article 25. After divorce, if one party has not re-married and has maintenance difficulties, the other party should render assistance. Both parties should work out an agreement with regard to the method and duration of such assistance; in case an agreement cannot be reached, the people's court should render a decision.

Chapter VIII: By-Laws

Article 26. Persons violating this Law will be punished in accordance with law. In cases where interference with the freedom of marriage has caused death or injury to one or both parties, persons guilty of such interference will bear responsibility for the crime before the law.

Article 27. This Law comes into force from the date of its promulgation.

In regions inhabited by minority nationalities in compact communities, the people's government (or the Military and Administrative Committee) of the Greater Administrative Area or the provincial people's government may enact certain modifications or supplementary articles in conformity with actual conditions prevailing among minority nationalities in regard to marriage. But such measures must be submitted to the Government Administration Council for ratification before enforcement.