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Jessica Bastone
SUNY Plattsburgh, j.l.bastone@me.com

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Law and Marriage

An Examination of the Transformation in the
People's Republic of China's Marriage Laws

Jessica Bastone
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“China...after Mao Zedong prevailed passed a series of laws that made women absolutely equal to men in the law,” enthused President Jimmy Carter on the March 28, 2014 episode of *Real Time with Bill Maher*.¹ One such law is the People’s Republic of China’s Marriage Law of 1950. Prior to 1950, parents arranged Chinese marriages.² Families used marriages to gain power, and did not usually take into account the feelings of the future bride and groom. In 1949, the Communists won the revolution and within the next year, everything about marriage changed in law. Since 1950, the law has been revised twice: once in 1980 and again in 2001. In the 1950, 1980, and 2001 Marriage Laws, the Chinese Communist Party (CCP) sought to legislate social change in the People’s Republic of China. Each law and subsequent revision pointed to a broader social problem as perceived by the CCP, and also created legal standards of equality between men and women. The CCP sought to revolutionize society as a whole with the 1950 law; the 1980 law focused on delaying marriage and population control; the 2001 law focused on domestic violence and divorce. However, memoirs, novels, fiction and films from the time periods suggest a more complex reality that showed the law working sometime whereas other times it did not. There are difficulties in examining these sources, for I am not fluent in Chinese. The laws that I am working with are translation, yet I have looked at numerous versions of the translations and there is minute differences (i.e. should instead of shall). The fiction sources offer insight into how authors viewed the subject matter.

Historiography

Historians ask numerous questions about these marriage laws. Did the laws further the status of women? How did the laws affect society? Why were the laws revised? What has the revisions done? There is not much debate on whether or not the marriage laws have affected

society. There seems to be a consensus that the laws did affect society positively, and that the laws played a role in ridding the country of certain practices. Historians argue that laws have had an impact on Chinese society overall, but debate on how and to what extent. With new information, such as divorce records made available with China opening its doors we as historians can make assertions that are more informed

With the new documents such as divorce records being made available from the PRC³, certain conclusions about the marriage laws have become clearer. One of the most essential books about the 1950 Marriage Law is *Women, the Family, and Peasant Revolution in China*, published in 1983 and written by Kay Ann Johnson. It was the first book that offered a detailed look at the 1950 marriage law and its effect on Chinese society. This book focused on how the law did not address many of the issues that surrounded women's oppression in marriage. One assertion that Johnson makes was that divorce "reach[ed] a peak in 1953 as a result of the campaign and the government's efforts"⁴ that focused on the Marriage Law. However, Neil Diamant, a respected scholar and professor, argues that this is simply untrue and he proves this through his own research that includes numerous maps, tables and figures detailing divorce rates in China. This is information that Johnson would not have had access to because of the time of her research.⁵ Diamant's specialty at Dickinson College is law and society. He argues in his article "Making Love 'Legible' in China: Politics and Society during the Enforcement of Civil Marriage Registration, 1950-66" that Maoist China anticipated large success with the Marriage Law in regards to registration, and there is archival evidence that supports resistance to such a proposition.⁶ His research emphasizes the difficulties that the society had in accepting the Marriage Law, and he backs up his argument with Chinese archival evidence that he cites profusely through his article.

There have been two major revisions to the Marriage Law, and historians have analyzed both of them. For example, Zhang Xuejun argues that the 2001 revision was necessary because the 1980 law did not encompass all the issues surrounding marriage and divorce, such as domestic violence, her article “Amendment of the Marriage Law in China,” published in 2002.⁷ Her article mainly focuses on why the 1980 law needed revision, and it offers concise valid argument. It is important to also look at recent analysis of the Marriage Law, and Andrew Kipnis offers this in “Marriage, Intimacy and Sex” of *Contemporary China: Society and Social Change* published in 2013. In it, he argues two critical things: that the Marriage Law clearly supports romance, and that sex has become a more discussed topic due to the laws that have allowed for freedom in marriage, and the rapid changes of China.⁸ These rapid changes have to do with the economic liberalization of China.⁹ This current analysis is crucial because it is made with the most information and was made after all the revisions. Few books solely focus on the Marriage Laws. In addition, most of the articles and books I have found emphasize on only one or two of the laws. There does not seem to be a conversation about all three laws and the changes over time. It is my goal to discuss all three of the laws. This paper aims to illuminate on the complexities of how the Chinese people in day-to-day life dealt and interacted with the laws.

1950 Law

Pre-People’s Republic of China

To understand the implications of the 1950 Marriage Law one must understand what marriage was like prior to its inception. Marriage in China was patrilineal, patrilocal and patriarchal. Patriarchy is a societal system where men have the dominant role in the society. It typically implies male superiority and fosters female subordination.¹⁰ China was also patrilineal,

meaning that the family line was passed down through sons, and daughters had no place in the family lineage. In addition the value of daughters was low due to the fact the society was patrilineal. This meant that daughters would leave the family and go to their husbands' family home, whereas sons would bring in wife and take care of their parents in old age. This society and its practices placed a low value on women, until they bore sons. Having a son was a "big happiness", but having a daughter was a "small happiness".¹¹ It is also important to note that China was Confucian for hundreds of years. Confucianism is a very complex ethical philosophy. Two imperative concepts in Confucianism are the five relationships and filial piety. The five relationships are "husband and wife, father and son (or parent and child), older sibling and younger sibling, ruler and minister, and friend and friend," with the first being superior and the last being equal.¹² Filial piety is the act of respecting your parents and ancestors.

Comprehending how women were treated in Confucian times is essential. It is necessary to comprehend because the CCP's creation of the marriage law led to social change. China has 5000 years of history, and it is imperative to understand what societal change meant in the Chinese context. Ban Zhao was a Confucian scholar, and was one of the most brilliant women of the first century. However, she started her article "Lessons for Women," with "I, the unworthy writer, am unsophisticated, unenlightened, and by nature unintelligent,"¹³ Women viewed themselves as subordinates to survive in the Chinese culture, or rather they had to view themselves this way. Ban Zhao goes on further to establish the rules women should follow. She states that baby girls should be placed below the bed and given a piece of broken pottery to play with to establish their sub-dominant position in society, and then she further goes on to establish that women should serve their husbands and their mother-in-laws.¹⁴ It will become clear later in subsection "The Law" how the CCP sought to correct the inequality between woman and man.

Inequality stemmed from numerous places in Chinese society and one in particular how marriage was carried out.

The practice of arranged marriage lasted for thousands of years in China. The ones who arranged this marriage was often parents. The future bride and groom did not have much or any say in the matter. Ba Jin's popularized semi-autobiographical 1931 novel *Family* communicates the difficulties that young people faced because of arranged marriages in the tumultuous 1920s China, and thus advocated for marriage reform. One particular tale in the novel is about the eldest brother Chueh-hsin, who was in love with his distant cousin Mei. However, due to a family squabble over Mahjong, Mei and Cheueh-hsin were not allowed to marry.¹⁵ This left Chueh-hsin to marry a nice woman Jui-chueh, but he was not in love with her. In Ba Jin's actual life his eldest brother who was the inspiration of Chueh-hsin was left in such a desperate place he killed himself.¹⁶ The lack of freedom in marriage left many people outraged. It took a revolution for this century old tradition to be addressed.

Due to the low status of women in China, women often searched for solace in their uterine family. The uterine family is the children that the mother birthed. A common adage about wives in parts of China that was still said throughout the 20th century was "a woman is like a horse bought; you can ride them or flog them as you like."¹⁷ Women were equated to property, and the only way to gain power was to have a son. Once a woman had a son, she found some power within her husband's family. This family bond with her children became quite important. Having been forced to leave their home village to marry someone they did not know was very strenuous on these wives. However, when they had a child of their own they gained respect, and someone to unconditionally love them. This uterine family is the only thing that gave them power and they would fight for it.¹⁸ When their son married, they gained the powerful status of

mother-in-law. This daughter-in-law threatens the mother-in-law's uterine family, and the mother-in-law often times will abuse the daughter-in-law, even though they themselves were abused. Women could not leave this situation either because divorce was virtually non-existent.¹⁹ It is quite apparent that prior to the revolution women had no rights, or power besides the control they gained inside the house. However, a man could easily take that power away through violence.

Another practice critical to pre-revolution China was concubinage. Concubines were women who were taken into the husband's house almost like a second wife, but their purpose was for pleasure, whereas marriage was for power. These women could be brought into the house much like a marriage. However, their status was much lower than the wife was. The families viewed the concubine's children as part of their own. The author of the biography/auto biography *Wild Swans*, Jung Chang, explicates her grandmother's story who was a concubine to a warlord. Her grandmother ran away from the warlord because his wife intended to make her daughter her own, and "she had no rights...she would be at the mercy of the wife, who had the power of life and death over her".²⁰ It was quite evident that this was a societal issue, and the CCP would focus on this in marriage reform. This extreme hierarchy put concubines into lower status, but they could gain power by having a son just like the wife.

There were also restrictions on who could and could not marry. The culture did not allow widows and prostitutes to remarry or marry. Once a woman was married, she was to remain loyal to that family even if her husband passed. The woman could not remarry it was seen as entirely shameful. In addition, prostitutes were not allowed to marry. A vivid oral story explains the horrible life a young girl faced. Rather than being married off at a young age she was sold to her landlord who raped and abused her, and then she was sold again to a brothel.²¹ In that

brothel, she caught venereal diseases and became unmarriageable for both being a prostitute and have a STD. Women were viewed as a something rather than a someone, and they could be bought and sold. In fact, during floods in poor villages, men would go through the village and offer money for their daughter, and in numerous instances, brothels bought these young girls.²²

The Law

With the passing of the 1950 Marriage Law, marriage effectively changed forever. The CCP's goal with this law was nothing short of radically changing society: to make women equal to men in Chinese society. Mao took over China in 1949 from the Kuomintang (KMT), and within the first year he chose to enact a law that brought women's equality to the forefront of Chinese politics. There are eight chapters and twenty-seven articles to the 1950 Marriage Law. The chapters include: Chapter One: "General Principles," Chapter Two: "The Marriage Contract," Chapter Three: "Rights and Duties of Husband and Wife," Chapter Four: "Relations Between Parents and Children," Chapter Five: "Divorce," Chapter Six: "Maintenance and Education of Children After Divorce," Chapter Seven: "Property and Maintenance After Divorce," and Chapter Eight: "By-Laws."

The first chapter is entitled "General Principles." This part outlines the initial reason behind the law. The new communist government of China dismantled all things feudal or from the Confucian system.²³ The first article sets out to end the "feudal marriage system, which is based on the superiority of man over women..."²⁴ This very clearly attempted to counteract the patriarchal society that historically subjugated women. The idea also revolutionized Confucianism systems as well. Confucianism was the leading ideology for thousands of years that traditional Chinese culture was based on, and it "held that the male was superior and the women inferior"²⁵ This law immediately challenged the Confucian family system that had

subjugated women for so long.²⁶ The first article declared that marriage shall be of free choice and will promote equal rights between both sexes.²⁷ The second article focused on practices that the CCP wanted to outlaw. These now outlawed practices included “bigamy, concubinage, child betrothal, interference with the re-marriage of widows and the exaction of money or gifts.”²⁸ There are five thousand documented years to Chinese history, and these first two articles defied most of it.

Chapter Two outlines the marriage contract²⁹, and delineates who can and cannot marry. As mentioned previously, before 1950 either the parents or a matchmaker usually arranged marriage. Article 3 sets out to end arranged marriage and further the general principle of free choice by establishing that no third party can interfere, and that both parties must be completely willing to engage in the marriage contract. Another issue that pre-revolutionary China faced was that there were no age restrictions on marriage, and Article 4 addressed this issue by stating that men must be 20 years of age and women must be 18 years of age. The law flatly states one cannot marry their direct relative. It also has an interesting list of people who cannot marry, which includes people who are or have physical defects, sexually impotent, venereal disease, mental disorder, leprosy or any disease which the government deems makes one unfit for marriage. One of the more fascinating aspects of this article is that prostitutes and widows who historically could not marry were not on the list. In the oral story, “Her Past” the former prostitute delights in the fact she was able to marry a man for love.³⁰ She realized she would have never had this opportunity if it was not for the Communist government. Article 5 simply states how a couple applies and receives their marriage contract, which is through their sub-district or village.³¹

Chapter Three lay the framework for how a husband and wife shall act and it is titled “Rights and Duties of Husband and Wife.” Article 6 reinforced the groundbreaking notion that husband and wife “shall enjoy equal status in their home.”³² In a strongly patriarchal culture, this idea of equality between the sexes was monumental. The law then added an interesting sentiment, which was that “husband and wife are in duty bound to love, respect, assist and look after each other, to live in harmony...”³³ This statement is reminiscent of actual marriage vows, and this article puts into law that marriage is about love and devotion. Prior to this, marriage was about power and the parents’ wishes, whereas this law aims to change that.

Article 9 keeps with the theme of freedom establishing that the husband and wife will have the free choice in occupation, participation in work and social activities. Before the law only men owned the property, which often times included the wife. However, Article 10 established that men and women have an equal right in possessing and managing the family property, and again reaffirms that women are equal under law. Article 11 specifically states that the husband and wife both have a right to keep their name, thus meaning that the wife is not forced to change her name. Article 12 then affirms that women can inherit property.³⁴ This chapter is fascinating because it asserts the morals behind marriage and the equality within it that the law is attempting to set forth.³⁵ This chapter reiterates the equality that women have under law. There were other goals within the CCP as well.

Can the CCP truly legislate love? It is apparent that the CCP wanted the law to be more than a law, but a doctrine that emphasizes the values of Chinese society according to the PRC Government. After the of the law was promulgated there have been more discussion of love marriages being condoned and practiced in both fiction and non-fiction sources, however it does not seem to live up to the ideal that was set. A popular Chinese film known as *Huo Zhe* or *To*

Live focuses on one family through the rise of the CCP from the 1940s to the 1970s. It is important to note that this is fiction, but the story does offer insight into Chinese views. In the film, the husband and wife of the film are constantly bickering, and in fact seem to despise each other at some points, but throughout the film they do grow very fond of each other. They comforted each other during the struggles of the Cultural Revolution. This was not a free-choice marriage, but it did eventually develop into a marriage of love. Another part of the movie set during the 60s shows the quaint and ideal Communist marriage of a party cadre, and the family's mute daughter. The couple in the film is shy, but it is clear that their marriage is one of free-choice.³⁶

Carma Hinton's documentary *Small Happiness* offers a real world perspective, and focuses on women of all ages discuss their married life. It is clear that free choice is practiced, but parents definitely seem to have a say in the matter. In fact there is conversation that one particular father is stuck in feudal way and forced his child to get married.³⁷ Love does not seem to be the biggest concern for most of the women. However, a novel by Gu Hua, *A Small Town Hibiscus* shows the struggle of one couple during the Cultural Revolution.³⁸ This fictionalized account expresses how authors were dealing with the complexities of Chinese society in regards to marriage. The couple was labeled as one of the five black categories.³⁹ The novel dictates that this couple clearly was in love, for "it often amazed Hu Yuyin [the young woman] that she could endure on, and even fall in love with Qin Shutian."⁴⁰ However, the party cadres were against the marriage because their labels. It is evident that there were complexities in legislating love.

The next three chapters in the law are dedicated to divorce, Chapter Five focusing only on divorce. This chapter is by far the most verbose. It is very detailed, which was required because China has never truly had a statute on divorce, "while divorce was comparatively rare, a

husband did have the right to divorce his wife on a wide range of grounds ranging from failure to produce a son to quarrelsomeness and jealousy.”⁴¹ It is clear men had the advantage in this system, whereas if a woman wanted out of a divorce her only true option was suicide. Article 17 is several paragraphs detailing how one applies and receives a divorce. If there is an agreement between the husband and wife, they may apply for divorce. If only one party desires the divorce, reconciliation, or what we would consider counseling, is highly recommended if not demanded. If reconciliation fails, the court may proceed with a verdict.⁴² Reconciliation is always the first option according to this article. Article 18 is something I have not often seen in law, which makes it illegal for a husband to leave a pregnant wife, and he may only apply for divorce a year after the child is born. However, this law does not apply to women, and she may leave at any time.⁴³ Article 19 therein focuses on the illegality of divorce with soldiers without consent or proof that they were aware, for that was a major concern of the men serving that their wife would just leave them and they could do nothing.⁴⁴ The focus on divorce continues with the next chapter as well.

Chapter Seven: “Property and Maintenance After Divorce” is interesting because it has some different aspects. Article 23 states that all the property the wife owned prior to divorce shall remain hers.⁴⁵ Then Article 24 enforces that debt incurred jointly by the husband and wife will be paid by their property, and debt incurred separately will be paid separately.⁴⁶ The most unique article is article 25, which establishes that if one party falls on hard time it is the ex-partner’s responsibility to render assistance.⁴⁷ It is apparent that the CCP believed that both husband and wife had a duty to each other even after marriage. Marriage is very clearly a contract in China, and if you break the rules you should be held accountable for such actions.

The last chapter in the 1950 Marriage Law is the “By-laws.” These bylaws simply state that those who violate the law will face criminal punishment, but does not specifically state the penalty.⁴⁸ It also allows for adjustment in minority areas.⁴⁹ The law was promulgated May 1, 1950 and effectively redefined marriage in the law. However, laws often represent the ideals of society, and not always followed immediately. It is pertinent to examine the effectiveness of the law as well as understand the complexities the law brought forward.

It does appear that the CCP tried to set an ideal set of values in this law. The autobiographical novel, a fictionalized account of real events, *The Dragon’s Village* follows the tale of Ling-ling who is a cadre that is educating on the land reform. Even though the marriage law is in effect during this time it is rarely mentioned. Rather the focus is on land reform. The most important thing about this novel is what it is missing, which is clear mention of the Marriage Law. Instead, in parts where it would have made sense for it to come up (i.e. dealing with widow who refused to talk to her and the treatment of the “broken shoe”⁵⁰) it was not mentioned. However, the novel clearly shows the subjugation of women, and the town’s resistance to change a law that supposedly made women equal was completely glossed over.⁵¹ This autobiography actually in effect shows why the Marriage Law was necessary. The “broken shoe” was treated horribly, and in reality, the decisions she made were often in self-preservation. In traditional China widows were supposed to be chaste and never marry again, but the Marriage Law outlawed interfering with the remarriage of widows because of the denigration these women faced. Was the Communist Party actually serious about enforcing this law?

In 1949 “Land Reform” was also promulgated, but in 1950 over 75% of the country had not carried it out. “Land Reform” and the Marriage Law complimented each other quite nicely, both attacking feudal and traditional systems.⁵² However, the Marriage Law was much more

controversial, and thus cadres would often focus on “Land Reform” while disregarding the Marriage Law. The Cadres were told specifically educate the people on both the law, but many did not adhere. In fact in 1951, fifteen cadres were tested in Shansi Province, and nine of them including the head of the women’s association, did not know what the Marriage Law was.⁵³ Overall, the law was ineffective in the rural areas for a multitude of reasons; one reason being that there was assumption that the main goal of the law was the liberation of women and this unnerved men, especially farmers.⁵⁴ In fact, “passage of the Marriage Law and attempts at implementation brought violence and chaos... [a] few women leaders...were [even] murdered by peasant men.”⁵⁵ There was a lot of chaos that did surround this law, and another case that stands out is in the People’s Daily, a newspaper. This story detailed how a brother interfered with his sister’s engagement by arranging another marriage. In response, the sister and her boyfriend committed suicide because they were so distraught.⁵⁶ Women themselves resisted the law because they felt like it attacked the only thing that they had their uterine families.⁵⁷ The uterine family historically gave women the only power they could possess in China. There was clear resistance to the law, both from the government officials (i.e. Cadres) and from the citizens.

However, the CCP focused on the Marriage law with a 1953 campaign, and since the “Land Reform” was implemented it was did not meet as much resistance. Magarey Wolf writes that the 1953 campaign was the “last full-scale effort made by the government to publicize”⁵⁸ the law. The effort was quite large, and Kay Ann Johnson asserts that “the focus of the rectifying cadre behavior, and then on propagandizing the marriage reform...”⁵⁹ Though Johnson did argue that this campaign led to the “highest amount” of divorces, that claim was proven false. This gives credence to the fact that the law was complex in reality. However, the campaign was directly focusing on the Marriage Law and was not competing with the “Land Reform” any

longer. Neil Diamant assesses that the campaign did meet local resistance and was short lived, yet the divorce continued to be granted meaning the law itself did not end.⁶⁰ It is clear that the CCP wanted to revolutionize traditional China that was based on the Confucian doctrine. The CCP actually conducted an anti-Confucian campaign in the 1970s. In this campaign, woman's groups promoted free choice marriage.⁶¹ There was a clear implication that Confucianism was a philosophy of hierarchy, and the Communists wanted to legislate equality.

The implementation of the law did have its failings, and the 1950 Marriage Law itself did not fully address all of the issues of feudal China in regards of marriage, such as the patrilineal society. Due to the fact that nothing was written against the patrilineal society in law, sons were still preferred. Women were then still denigrated and subjugated, and even though the law stated women and men were equal it did not hold true in reality. In addition to that, society still followed patrilineal elements meaning that if you only had a daughter once she was married off there was no one to take care of you in old age. However, the law did effectively end concubinage and child betrothal by the mid-1970s. The ideals were there, and this is monumental because often times laws dictate the society you envision. Nevertheless, there were issues that came from the Party itself. It is no secret that the PRC believes in censorship, so the official statement by the Party may not be the true feelings of the whole body. However, The Communist Party did seem to have high hopes for the law. The Central Committee of the CCP stated:

The correct carrying out of the Marriage Law will not only emancipate the masses of the Chinese People, especially the women, from the barbarous and backward marriage system of the past several thousand years, but can also establish a new relationship in the

home, a new social life and a new social morality, so as to promote the development of political, economic, cultural and military construction in New Democratic China.⁶²

However, even with the CCP believing in the law they did not transmit their hope and belief into Cadres who chose not to address the law. The law needed to have a successful implementation, and though it was clear that it did have an effect on society it was flawed. These flaws then led to the first revision of the law.

1980 Law

1980 was a monumental year for the PRC the Mao years were over, and now Deng Xiaoping was the leader. There were numerous failings with the 1950 Marriage Law, but it was evident that it still held true to the ideals and morals of Chinese society. Thus, in 1980 the Marriage Law was revised. The law did in fact focus on certain social issues, which were delaying marriage and population control. The revision also addressed issues of equality not found in the 1950 law, such as the patrilineal tradition.

One of the major changes was how the document was arranged. It now consisted of five chapters with 37 articles. In this section, we will go through the changes of law. It is important to note that there were minimal changes to the law such as organization, yet the 1980 law kept to the fundamentals of the 1950 law. However, the changes that were focused on the social problems the CCP were tackling at the time. The first chapter still consisted of the General Principles of the law. However, it started with a new first article stating, “This article is the fundamental code governing marriage, and family relations.”⁶³ It is clear the government intended for this law to instil values into the people.⁶⁴ The other chapters were split into: Chapter Two: “Marriage Contract”, Chapter Three: “Family Relations”, Chapter Four:

“Divorce”, and Chapter Five: “ By-laws.” In reality, the majority of the 1980 law offered the same message that was rearranged into different articles and chapters. A major change in the documents I examined is that instead of stating that marriage is about love, the wording is now about “freedom to engage in production, to work, to study, and to participate in social activities.”⁶⁵ While desire and freedom of choice is still largely promoted love is no longer legislated. There is no direct statement in the speech given about the changes at the Fifth National People’s Congress that was provided with my copy of the document. It is quite bizarre that such a radical change was not mentioned. It is clear that the time has changed, and the naiveté found in the ideals of the 1950 Marriage Law have been morphed into to focusing on other social problems. It may be related to the fact that the Mao years are over, and the PRC is in a very different place politically. Nevertheless, the years with Mao offered many issues for the people of the PRC. The government was dealing with numerous different social issues, yet it is important to note what they decided to focus on. The issue the CCP focused on shows what they found to be the societal issue in China at this time.

The now famous One-Child Policy was implemented in 1979 right before the first revision of the Marriage Law was promulgated.⁶⁶ . It was especially focused on during the 1980s. This policy was largely successful in urban centers, but was not as effective in rural areas where having a son is still vital as well as multiple children to work the farm.⁶⁷ It is common knowledge that the Chinese population is quite large. According to the CIA Factbook on China, the Population estimate for July 2014 is 1,355,692,576.⁶⁸ To put that in perspective the population of the U.S. according to the Census Bureau is 317,297,938.⁶⁹ China is over four times the population of the United States. That is an extremely large amount of people, and it offers a quite difficult obstacle for the government of the PRC. Regulating the population is of the

upmost importance because if the population continues to exponentially grow it will be almost impossible to effectively run the country. Population control became a huge issue. Carma Hinton's documentary elaborates on the effect of this policy in Longbow where residents converse about the topic. The sheer joy one woman exuded in explanation of her luck in having a son.⁷⁰ It was quite clear that having sons was still necessary. The 1980 marriage law did reiterate that the men and women were equal, yet it was clear in this village that men still had the upper hand and sons were preferred.⁷¹ In addition to the One Child Policy, there were other efforts to legislate population control into the revision of the Marriage Law, and one was legislating family planning.

Family planning was a new addition to the 1980 Marriage Law. The addition is quite relevant to the issues China faced during the 1980s. In Article 2 the law dictates that "the marriage system is based on free choice of partners...family planning is practiced."⁷² Article 2 is found in the "General Principles" of the law, which means that it is seen as highly important. Family planning is also explicitly mentioned again in Chapter Three: "Family Relations." Article 12 asserts, "husband and wife are in duty bound to practice family planning."⁷³ Repetition in the law shows that it is of the upmost concern. "Family planning" is a vague term perhaps, yet it can be related to the "One Child Policy" as well as the use of birth control. China does in fact have a very liberal view of birth control. Wu Xinyu, the Vice-Chairman of the Commission for Legal Affairs of the Standing Committee of the National People's Congress, states in his article provided with the copy of the 1980 Law that "a programme for family planning should be formulated as soon as possible."⁷⁴ He asserts that this was a social problem the government intended to tackle, and the Marriage Law allowed them to further legislate the plan. There was a large conversation on family planning happening in the Chinese Government

that started during the late 1970s.⁷⁵ In addition to the Marriage Law additional policies, such as the constitution which stated “the state advocates and encourages family planning.”⁷⁶ Although there is no national law it is clear that family planning is vital to the CCP. Michael Palmer, a professor of law and barrister in London, emphasizes the 1980 Marriage Law family planning stipulation that, “of course, the authorities are attempting through effective planning and methods of birth control to reduce the number and regulate the timing of the children that a couple produces, thereby making reproduction increasingly a matter of rational social choice.”⁷⁷ It is clear that the government addition of family planning was related to attempting population control. Family planning was crucial in that without it there could be a very large problem in China. The Chinese government had elected the idea that the Marriage Law was a code that the people must follow, which asserts that being responsible is of the utmost importance. “Family planning” was a way to legislate responsibility. It was clear population control was a huge social problem, and the CCP sought to legislate ways of fixing profusely in the revision.

Another change that was an attempt to tackle population control was delaying marriage. In the Marriage Law of 1950, the age limit for women was 18 while men was 20. In the revision, the age of marriage was upped stating, “no marriage shall be contracted before the man has reached 22 years of age and the woman 20 years of age. Late marriage and late childbirth should be encouraged.”⁷⁸ Evidently, the CCP was a proponent of late marriage and this can be linked to the idea that later marriage is likely to produce less children. Thusly, again the idea of population control comes to the forefront. Though the age limit is 22 and 20 it is clear that the CCP did not want citizens to marry at that age. It was favorable to marry at a later age, and Wu Xinyu proclaims that the law states the minimum age and “it does not mean that [anyone] has to get married on reaching that age... [promoting late marriage] in the belief that this benefits the

state.”⁷⁹ Delayed marriage was a benefit because it was believed to help control the population. Certain areas of China would actually enforce higher age limits for marriage in hopes to control the population. One particular case set the minimum age limit to 28 for men and 25 for women.⁸⁰ In addition, “late marriage and late childbirth are critical elements in China’s efforts to control population growth.”⁸¹ Article 5 directly legislates a solution to the perceived social issue of the PRC, population control. With the encouragement by the state to marry late, it is clear that delayed marriage was preferred. Though this is not the only effort being put forth it is clear that during the 1980s this was a huge concern to the CCP.

The 1980 law also perpetuated ideals of equality. Not only did it keep to the sentiment of the 1950 law that established male and female equality, it also addressed the patrilocal customs that made it advantageous to have sons. The 1950 Marriage Law had no provision stating that daughters had to move in with their husbands, and because it did not address the issue, the patrilocal custom continued. This meant if a rural couple only had a daughter she would most likely leave them for her husband’s family home, thus leaving no one take care of her parents. However, the 1980 Marriage Law emphasizes that “the woman may become a member of the man’s family, or the man may become a member of the woman’s family, according to the agreed wishes of the two parties.”⁸² It attempts to assure that daughters are valuable, and can in fact offer stability to her parents in their old age.⁸³ Another message of equality that the 1980 Marriage Law discussed was the family name. Throughout Chinese history, a woman had no choice but to adopt her husband’s family name. However, Article 10 of Chapter Three: “Family Relations” explains that “husband and wife each has the right to use his or her family name.”⁸⁵ This deals with a system of oppression women often faced. The law alleviates and gives agency to women in allowing them their own separate identity in theory. In addition, article sixteen

offers the same right to children allowing them to choose their father or mother's family name. The law attempted to give women agency in marriage, and it was much more explicit in this law than in the 1950 Marriage Law. It is clear that 1980 law meant to focus on the issue of population control, yet it also would theoretically permit agency and equality for Chinese women.

However, novels, autobiographies and documentaries perpetuate the idea that the reality of the law in people's lives was complex. Something interesting about the Chun Sue, author of the autobiographical novel *Beijing Doll*, and Aisling Juanjuan Shen author of the memoir *A Tiger's Heart*, is that they both chose to change their names from their given name. It is evident through their tales that they did not just create a nom-de-plume, but rather took agency and chose names that suited them better. It may in fact have to do with the fact they had difficult upbringings. *Beijing Doll* deals more with relationships than actual marriage, but it is apparent throughout the novel related that even with such laws women were still in a lower status, like most countries equality needs more than just laws in China. The main character faced a lot of adversity for exuding agency in a sexual way, and she was in no way rewarded in the culture.⁸⁶ She faced some "dangerous characters" as she put it, and one man in particular harassed her constantly. She had to stand up to one man in particular who was quite nasty. Zhao Ping harassed her publicly, and constantly harassed her on the phone.⁸⁷ However, the main character in *Beijing Doll* is almost above the law in how she reacts in Chinese culture. Relationships and dating is what is perceived in western culture to come before marriage. However, in Chen Sue's novel it was clear that dating or sexual relationships were not really encouraged before marriage. Something noteworthy of *A Tiger's Heart* is the relationship of Juanjuan's parents. The marriage is clearly not one based on love or stability. The mother in fact regrets the husband

greatly, and has an affair rather than seeking a divorce that the Marriage Law clearly would have granted. Aisling expresses that her parents “slept on separate beds in separate rooms for the next ten years” after her mother engaged in the elaborate affair.⁸⁸ Juanjuan’s own relationships lead her down a dark path of scandalous sexual encounters with all types of men, including married men.⁸⁹ It is important to try to comprehend the day-to-day life of the Chinese, and documentaries offer a limited but important look into the reality.

Small Happiness was filmed after the promulgation of the 1980 Marriage Law, yet issues of equality, free choice in marriage, and population control were still prevalent. The notion of “small happiness” is that daughters are not celebrated as sons, and throughout the whole film it is clear sons are still preferred. In fact, an older gentleman states, “To give birth to a boy is considered a big happiness. To give birth to a girl is not exactly no happiness, but a small happiness.”⁹⁰ Even with the Marriage Law being in place for 35 years, and revised only five years ago it does not seem like the law has had a massive effect on the town of Longbow. A constant provision of the marriage law was that it outlawed the feudal practice of arranged marriage. Though arranged marriage as it was in the past does not seem to in effect, it would be foolish to believe that parents did not have a role in the marriage of their children. One engaged couple was interviewed, and they were quite awkward sitting far away from each other being quite shy. Shyness may have been common in the ages prior to the economic liberalization but Andrew Kipnis makes it clear that this trait is no longer as prevalent today.⁹¹ Then they admitted that they did not know each other really well, and that the only acceptable form of dating in this village was engagement. Even though the Marriage Law of 1980 explicitly stated that a husband could join his wife’s family, this particular town still was patrilocal. Thus, the desire for sons was strong, and couples would try multiple times to have a son. As stated before the one child

policy was not successful in the rural areas, yet having few children was highly encouraged.⁹² This documentary is a focus on one particular rural village, but it shows that there were major issues enforcing the law.

The Marriage Law of 1950 was not successful in effectively instituting the entirety of what it set out to do. In 1980, the CCP revised the 1950 Marriage Law keeping it mainly the same, but adding certain aspects to the law that directly related to a social issue that the CCP wanted to address. The 1980 law also did not directly legislate love like the 1950 law. The law seemed to be working in that divorce did occur, but marriages were still arranged. Concubinage was still eradicated as it had been with the 1950 law. The life of Chinese citizens was vastly different since the inception of the 1950 law, and there was not a campaign for the law.

2001 Marriage Law

The most recent revision took several years to come to fruition. It was originally brought to the National People's Congress in the mid-90s. The 2001 Marriage Law was also rearranged like the previous law. The law was now broken into six chapters, which were: Chapter One: "General Provisions," Chapter Two: "Marriage Contract," Chapter Three: "Family Relations," Chapter Four: "Divorce," Chapter Five: "Salvage Measures and Legal Liabilities," and Chapter Six: "Supplementary Provisions." Like the 1980 law, the CCP wanted to legislate social change. The changes made focused on ending domestic violence and keeping couples from divorcing.

One of the main additions to the 2001 Marriage Law was the clauses outlawing domestic violence. Article Three of Chapter One: "General Principles" dictates that "family violence shall be prohibited. Maltreatment and desertion of one family member by another shall be prohibited."⁹³ The language on domestic violence continues in Chapter Five: "Salvage Measure

and Legal Liabilities.” In Article 43 it states that if “a person indulges in family violence or maltreats a family member, the victim shall have the right to advance a request,” with this request the victim can seek help from either the village committee or public security organ, and if they advance the request the public security will impose administrative penalty.⁹⁴ Article 45 also comments on family violence stating, “if it constitutes a crime, [the act] shall be investigated for criminal responsibility in accordance with the law.”⁹⁵ Article 46 states that if family violence leads to divorce, the victim may seek compensation. Domestic violence is prevalent in China, and it may relate to the view of women.⁹⁶ There seems to be a disconnect in at least rural areas of what domestic violence is, for when local residents of town on the outskirts of Beijing were asked about domestic violence they exclaimed, “‘we have no domestic Violence.’ But when ...asked whether people beat their wives, the answer was: ‘Of course some people beat their wives...’”⁹⁷ Women have equality in the law, but it does not always constitute equality in reality. If it is acceptable for men to beat their wives there is a dangerous disconnect that places women in subdominant position. This hinders equality greatly. Nevertheless, with domestic violence being an issue it is important to guarantee a stable and clear divorce process.

Divorce has been an issue in China. The 2001 Marriage law “created a system of compensation for losses due to divorce...”⁹⁸ In addition to adding very specific language about rights to property rights. Adding such a provision leads to the assertion that divorce was widespread, and it was there was in 2008 there was 1 divorce case for every 5 marriage while 30 years earlier there was 1 divorce for every 20 marriages.⁹⁹ The revisions also focused on trying to keep couples together. The 2001 law put a focus on monogamy, since extra-marital affairs seemed common. Article 4 insists, “husband and wife shall be loyal to each other and respect each other...and maintain the marriage and family relationship characterized by equality,

harmony and civility.”¹⁰⁰ The CCP wanted to address the issue of divorce by legislating respect. However, the language about love was not put back into the law. The law also decreed, “it is illegal to have extra-marital relationships’ . . . with the intention of promoting a civilized and healthy way of life”¹⁰¹. In addition articles: 12, 13, 17, 18 and 19 detail further than the previous laws the rights to property. Article 39 details that if the husband and wife cannot agree to the “disposition of their jointly possessed property . . . the People’s Court shall . . . make a judgment.”¹⁰² Article 40 details compensation for care of the elderly and children if one party was more involved than the other was. Article 41 dictates that “debts incurred jointly by the husband and wife shall be paid off jointly by them.”¹⁰³ This particular section on divorce focused on economic issues that occurred between parties. The cause for such a change suggest that divorce is a social issue in China, and that there needed to be more direct legislation in the case of divorce. The addition of language on domestic violence addition asserts women equality under the law. Women prior to this addition had no protection from domestic violence. In fact, police forces would often not get involved feeling that the matter was private matter.¹⁰⁴ Protecting women from violence in this way would give women more agency. In my limited examination of novels, autobiographies, and films there seemed to be a common theme in the recently published about the prevalence of affairs as well.

In a *Tiger’s Heart*, we see the prevalence of affairs. The memoir follows the life of Juanjuan who left her small town for a big city, and faced relentless obstacles in trying to succeed in China. The memoir also details affairs that occurred. There were two major affairs mentioned in the memoir. The first being Juanjuan’s mother’s affair, the second being her relationship with married man. The book does take place prior to the 2001 law being legislated. Nevertheless, offers a unique insight into the motivations of the CCP. An emotional tale that

Jiejie (Juanjuan's nickname) tells is the one in where she aborted a married man's child. She was so heartbroken by the fact that she had to do this. The marriage law does have a provision for children born out of wedlock, yet with the man already being married it was a very precarious situation. The majority of this memoir takes place during the 90's, and though women should be equal according to the law especially in marriage it does not appear to be so. The men in this book treat Jiejie absolutely terrible, and the only way for her to reach any kind of success is to engage in some low activities, like sleeping with her boss. The marriage between Jiejie parents seems to be in shambles, yet they do not seek a divorce. Instead, the father sulks in misery as the wife has an affair with a wealthy man named Honor. However, Honor abandons Jiejie's mother when she gets older. Both Jiejie and her mother are in difficult situations, and though the marriage law in theory could have given those rights and equality it did nothing of the sort.

The 2007 documentary *Love and Sex in China* offers a selective insight on the feelings of the Chinese people through roaming the streets, talking with citizens, meeting experts and trying to comprehend modern society. One common statement made about marriage was that it was now all about money and not love. The documentary furthermore showed that many husbands could not verbalize what love was. Marriage has also become commoditized. The documentary showed 100s of couples lining up for marriage photos, even though their wedding date is either far or away or passed. One bride described her wedding banquet lasting from 7am to 9am because another couple booked the room afterwards. Elaborate celebrations were once highly discouraged, and now they were common. The documentary presented the argument that marriage had little to do with love, but rather other material things. One particular couple stood out. It was an older couple that married in 1956, and though a matchmaker set them up, they grew to love each other very deeply. Another husband that was interviewed focused on

harmony. He professed that marriage should bring harmony to the country. In fact when asked about his own marriage he stated, "We come from the Chinese tradition, so both of us follow the tradition. we have been married, and loved each other in harmony up to now..." when asked what he hoped he wanted for his son when he became a husband he stated "I hope he will contribute to the harmony of his country, and that he'll build a harmonious family. So we'll have a big harmonious country."¹⁰⁵ There is also a focus on sex in the film, and the people who choose to engage in the act or don't. Andrew Kipnis writes that high visibility of sexual services or rather prostitution contributes to the discussion of sexuality. However, he asserts that with the economic liberalization since the 1980s that couples are more openly being affectionate towards each other, and the documentary highlights his assertion through numerous scenes of young romantic couples.¹⁰⁶ The marriage law appears to be in favor of romantic marriages, yet there seems to be a more prevalence of marrying for material gain than for love.

Young and Restless in China is a documentary that focused on the Chinese youth and their hardships. The film shows in great detail how difficult China can be, yet it also highlights on the success of young people. The documentary started in 2004. This film really touches upon the class differences. The upper class individuals shown were successful businessmen. These men are either single, separated or divorced and have a lot of agency. This film also highlights the importance of money in regards to marriage, and that that money is more important than love in a marriage.

The documentary focuses on a young migrant worker, Wei Zhanyan, discussed her engagement. She was hundreds of miles away from her village when her family called saying the local matchmaker wanted her to meet a young man, so she went back and met him and instantly they became engaged. It was 2004 when this marriage was arranged, a practice even

Zhanyan called feudal. This practice was something the Marriage Law set to abolish, yet fifty years later it is still happening. The most difficult part for Wei is that she will have to leave her job and freedom. She expressed that this engagement was very fast, and she was struggling in processing what she was going to lose. Zhanyan stated in 2006 when going home to get married, “I don’t want to go home. I am afraid of marriage. I don’t want to go back to those old traditions.”¹⁰⁷ The marriage law’s ideal was to give women equal rights and free choice in marriage, but it clear that Zhanyan feels at this point in the documentary that she has no agency or choice in this marriage. When her father was interviewed in 2006 he explains that all marriages in the village are arranged, and once they are arranged one cannot back out it. This goes completely against the marriage law. Though the opinion of the couple is asked, it is clear that the way arranged marriage works in Zhanyan village did not meet the ideals of the marriage law. Zhanyan explicitly states that she does not want to get married, but since she agreed to the marriage if she went back on her word it would cause irrevocable damage to her reputation, and more importantly her family’s reputation. Zhanyan’s brother insists that she really has no other options, and that finding your dream match is fanciful and unrealistic. The views of this village are considered feudal. This is a problem that the CCP addressed in every form of the marriage law, yet over fifty years after the inception of the law free-choice marriage is a large issue for rural lower class citizens. However, after much deliberation Zhanyan did cancel her engagement. Nevertheless, it is clear that most rural girls would not exert their agency like Zhanyan. She also does find a new boyfriend of her own choosing throughout the process of the filming, and she seems much happier and content with him than her ex. Before, her ex-fiancé did not even think about her happiness or his own.

Another relationship that developed through the course of the film was that of Zhang Yao, a medical resident, and a medical student. He proposed to her at a common place they went to, and it was clear that he was in love with her. There are many complexities in marriage in China because the ways these relationships are formed vary greatly depending on where you are. It can be determined many rural areas have issues with arranged marriages, and many scholars have pointed this out both “Small Happiness” and “Young and the Restless in China” highlight this issue with documentary footage of the experience of Chinese people. Kay Ann Johnson noted this back in the 80s when examining the effect of the 1950 Marriage Law, and she concluded it was much more difficult to enforce the law in rural areas.¹⁰⁸ It is evident that it is still hard to enforce the law in rural areas.¹⁰⁹ The documentary follows only a handful of Chinese people, but it tries to claim that these people can help represent China. If that is true then there is definitely an issue with the law, for this documentary highlights that there are still places where it is not being followed. In the documentary Zhanyan explained her decision was not common, which can mean that other young Chinese rural women may be coerced or duty bound to marry someone they do not want to. This goes against one of the core tenants of the Marriage Law, and shows that the reality is much more complex and law cannot completely dictate change. However, sometimes looking into what constitutes popular culture can offer some understanding.

Chinese Marriage in Popular Culture Today

Pop culture can give insight to the minds of the people. In regards to film, if a movie does particularly well in theaters it often times has something that the audience can resonate with. The three films examined in regards to marriage in China are popular Chinese films

starring a very successful and beloved Chinese actress Fay Bai Baihe. Then short flash fiction stories will be examined. It is the hope that this limited pop culture source base can give insights into the complexities of the enacted law, and it is also the hope that the sources show the necessity of the law. It is important to note again that this is a very limited view of films and stories from modern China, and in no way does this source list represent all of China.

A popular Chinese film would be the 2013 tragic love story *The Stolen Years*. The film follows the story of He Mann, who has amnesia. Mann has lost memory of the last five years of her life. These last five years includes her divorce. The movie follows the rekindling of her romance with her ex-husband, Yu, who she cheated on with her psychiatrist. However, tragedy strikes in the form of a blood clot that causes Alzheimer's. She then chooses to remove the clot causing paralysis from the neck down. It is here where Mann's legs are to be amputated, which leads her to beg Yu to pull the plug. Yu eventually agrees after Mann attempts suicide. The divorce aspect is fleshed out in the film through flashbacks. The film shows that the couple grew apart after Mann received a promotion. Yu then proceeded to become jealous, and made Mann suspect an affair. However, Mann had the affair. By the time they divorced it was clear there was a lot of animosity between them. The divorce proceeding are brisk. Yu refused to sell the house and thusly paid Mann half of the price in cash. The film also focuses on the idea that love will concur all, and has an underlying message that couples should try to reconcile their differences before divorcing. The marriage law clearly is in favor of reconciliation between couples. Yu and Mann met through work, and fell in love. Their marriage was not arranged, and this also follows the ideals of the marriage law.¹¹⁰ The movie shows a fiction version of day-to-day life, and this movie was quite successful. The success may have something to do with the

fact people can relate to this. It shows a couple that regretted their divorce, and focuses on how there are complexities that the law does not prepare for.

Love is Not Blind or *33 Days After Break Up* is a popular Chinese film that came out in time for singles day (11/11/11) which is a day were single young people in China celebrate by throwing parties and such.¹¹¹ The film made 56 million dollars, earing several times the amount of its budget of 1.4 million. The film detailed the break-up of Xianxian a wedding planner. The film centers around how Xianxian dealt with her breakup, and receiving help from her caustic and pessimistic co-worker. The film was overflowing with scenes on relationships, weddings, and the love life of the Chinese. The film does not specifically mention the marriage law, yet the way success of the movie can allude to the reliability to Chinese people. This is not a film movie about the ideals of love, but rather focuses on the issues and the grittiness that can come along with romance. The film starts out with how break-ups can happen, unexpectedly, civilly, violently or out of unfaithfulness. Xianxian's and her fiancé Lu Ran were together for 7 years, and she found out rather dramatically that he was cheating on her with her best friend for six months. One of the most interesting things about this film is it shows different types of couples. One engaged couple showed a bride with extravagant taste going all out on her wedding. The couple was not even in love. The future husband exclaimed that he believed love would fade, but the woman he was with would not and that it would not matter then. This point of view brings me back to the 1950 law where love was legislated, yet if this point of view was common it would make sense for such ideals to be taken out of the law. Not every couple in the film held this view though.

There were also other examples of marriages in the film. Another couple that was shown was an elderly couple who chose to renew their vows. The wife details that she discovered while

in the hospital about to give birth to their son that her husband cheated on her. She gave her husband the option of leaving, but did not divorce him herself. The interesting part is that in the end they seemed to be a very much in love couple. It appears that in some Chinese relationships love is not be something one has when you first marry, but something you attain over years of being together. The movie also clearly dictates the importance of getting married. Xianxian being asked constantly if she was married, or when she will be getting married. There was one other thing that was quite fascinating, and that was the preference for sons. The marriage law clearly states in all revisions that boys and girls are equal, but the preference for sons still persists. This film offered an interesting look into marriage in China today. The movie highlighted the convolutions that came with marriage today, and highlights that there is no perfect ideal.

The last popular Chinese film I examined was *The Wedding Invitation*. The film follows a complex story of love. Qiaoqiao refuse to marry and breaks up with Li Xing, her boyfriend of several years claiming it is because he does not have a house, a steady job or enough money to buy her a designer dress. Li Xing and Qiaoqiao then sign a contract agreeing to marry in five years' time if neither of them are in a relationship. The film fast-forwards to show that Li Xing is getting married to his boss' daughter. The film then shows the pressure that is put onto young people to get married. In addition, the film does stress the importance of material wealth in marriage. There are two major twists in the film. The first is that Li Xing was not truly getting married, but put on an elaborate rouse to force Qiaoqiao to come back. The second more dramatic twist is that the reason Qiaoqiao broke up with Li in the first place was that she had cancer, which has returned in terminal form in the present day. However, Qiaoqiao and Li Xing do end up marrying. The film focuses on how love is more important than material things, yet

Qiaoqiao and Li Xing are never without the material wealth. This film exemplifies the ideals of the 1950 Marriage law because of loving relationship that the couple has.¹¹²

Flash fiction is short stories. The stories examined are found in *The Peal Jacket and Other Stories: Flash Fiction from Contemporary China*. These stories are written by Chinese people, and represent their interpretations of Chinese people and culture. The stories differ greatly, and offer an interesting insight into relationships and marriage. The stories are at most three pages long. The four stories chosen are found in “Family” section of the book. They show how the authors interpretations showed that the reality of marriage, and offered something that often differed from what the CCP desired to legislate with the Marriage Law.

The first flash fiction is “Façade” by Shen Hong. It was published 1994. This short story details the affair a wife is having when her husband goes on business trips. Her lover is wealthy and she I pondering all the romantic moments she will have while her husband is away. While packing up her husband’s clothes she overhears her husband on the phone stating ‘I’ve already told her the business trip will take about a week...don’t worry, she won’t suspect anything...’¹¹³ The marriage between this husband and wife was quite obviously failed, but rather than divorce or confront each other about it they both sought solace from another. This story points out the social problem of extra-marital affairs. Such a tale like this implies that cheating was a common thing. The CCP sought wanted to address this issue by stating it was against the value system outlined in the 2001 Marriage Law. The law also tried to protect the victim in the affair (i.e. the one who was cheated on), yet in this fictional case both parties were at fault. It also shows that this author believes this was something that was common in China. The reality of the law emphasizes loyalty, yet this couple symbolizes the opposite. This flash fiction explicates on a broken marriage, but the other stories offer a much happier message.

“Straw Ring” is a flash fiction written by Jinguang. This is the story of high school sweethearts Minzi and Erniu. This is a longer piece spanning three and ¼ pages. The couple is quite poor, and since Minzi could not afford a ring he made one out of straw. Minzi then promised to one day put a real ring on Erniu’s finger, but time got away from them. Minzi then exclaimed his disappointment in not giving Erniu a proper ring. However, Erniu expresses she already has one and presents the straw ring from a decade ago stating, “a ring is only a token. Straw ring or gold ring, it won’t make any difference if you wear it in your heart. This ring is from you [Minzi] I’ve always worn it in my heart. It’s more precious than gold.”¹¹⁴ This kind of romance was developed in a free-choice marriage, and one that exudes loyalty. This story collaborates with the CCP’s ideals and morals surrounding romance. It is in these stories that one find the ideal the people of the PRC hold, and not only the CCP. This story’s ideals fit with the ideals of the CCP. Sometimes fiction sources do show that the ideals of the law were achievable, yet it is necessary to understand that this is a story that represents one author’s fictionalized account.

Mo Xiaomi’s “Marriage Certificate” details a short story of a couple seeking divorce. However, their house burnt down, and with it their marriage certificate burned as well. To apply for divorce one must present their certificate. The registrar would not budge on the matter, so the couple gathered people who could verify the fact that they were married. It took several months to prove to the registrar that they were married. Nevertheless, when they were finally granted the ability to divorce they hesitated, for numerous people proved they were a couple “why didn’t they try again to prove that to themselves?”¹¹⁵ Every form of the marriage law encourages reconciliation before divorce. The CCP believed that most divorces did not have to

be that way, and that it was the duty of the couple to try. The couple in the story realized before it was too late that they just needed to work out their issues to save their marriage.

The last flash-fiction to be examined is Zhao Wenhui's "Soy Sauce." This story detailed the loving yet difficult relationship of college classmates. They struggled to support their son, but cared for him very dearly. The title of this story comes from the importance of soy sauce. When the couple's son was young they would send him away to get soy sauce so they could spend time together, and one time he spilt it everywhere. When the husband asked for a divorce the son intervened, and the wife sent the son away to get soy sauce so he would leave them alone. That comment made the husband realize all the times he cared for his wife and he burned the divorce papers.¹¹⁶ This story also reiterates the idea that there needs to be attempts at reconciliation because often times the couple were together for a reason. It is apparent that this story is trying to remind its readers that love does in fact come from somewhere. The couple needed to realize why they were together, and when they understood they no longer wanted to leave each other.

Conclusion

The CCP believed in the necessity of the Marriage Law. With this law they sought to legislate not only social change, but a value system. This code was revised slightly in each revision. The 1950 Marriage Law fit with revolutionary China in that it attacked feudal traditions, and attempted to transform marriage and society. The law outlined ideals of equality between men and women in China. The 1980 law focused on delaying marriage and population control, and was a part of a directive on controlling the population. The 1980 law also addressed issues such as the patrilocal society, which would make daughters just as valuable as sons in

theory. The 2001 law focused on domestic violence issues, the problem of affairs in marriages, and outlined more direct divorce aspects. Though the CCP enacted the Marriage Law it did not necessarily mean that the law was followed exactly. Upon review of other sources such as documentaries, flash fiction, memoirs, films and novels there were complexities in following the law. Society did in fact seem to adhere to the ideals set in law sometimes, but it cannot be known if this is directly resulted from the law or not.

The laws offered an insight into the beliefs of the government of the PRC. These sources offered a look into what the CCP deemed to be the societal issue. However, the novels, memoirs, autobiographies, film, and other fiction sources show that in day to day life there were complexities in the legislating the law. Law represents the ideals of society, or what society aims for its country to be. The fictional sources and non-fiction sources dictate what life represented for people living the reality, and it showed that the law was effective in some instances while it failed in others.

The Marriage Law did change Chinese society. It gave people the ability to divorce, and the right to choose one's partner. Concubines were outlawed, and have since the practice has never resurfaced. However, it also gave the women legal and equal rights. However, knowledge of the law did not spread right away in the 1950s, and the law met heavy resistance especially from men who would in theory be losing their superiority. Even though the law was not always followed it also showed what the CCP thought the ideals and morals should be regarding marriage. A main ideal was that women deserved equality, and that was a huge shift from patriarchal traditional Confucian Chinese society. The laws continued to grant women rights. Women are not completely equal with men today in China, but to be fair women in the United

States are in the same situation. However, protection under the law from domestic violence took a huge step for a more equal playing field.

The Marriage Law in no way addressed every issue in China regarding women or marriage. In 1950 there was no language on the patrilocal customs, which made sons still desired. The CCP then added additional language about such clauses. Nevertheless, sons are still favored over daughters in China, even with explicit legal language stating a daughter can inherit property and bring a husband into the home. There is also the issue that rural areas are still practicing old traditions, and even though the CCP is attempting to change culture the law does not seem to completely reach all areas of country. It is clear the law addressed more issues and effectively changed social problems in urban areas superiorly. The urban areas have reaped the benefits of the Marriage Law since its inception.

The continual revision of the law shows that the Marriage Law is important. The CCP believes that this law is integral, or they would have scraped it all together with completely new information. Instead the bulk of the law remained, with additions of new social problems being addressed. This law is necessary for numerous reasons. One of clearest reasons is China's old system of law favored only men, and this law aimed to create equality.

Law dictates what citizens should do, and though the Marriage Law legislated ideals, it could not necessarily enforce those ideals. If women and men are to be equal in reality in China, then it is apparent that society needs to change. Women and men are only guaranteed equality in the law, not reality. Sons are still seen as superior, and in many ways are still a "big happiness." Daughters need to be valued by society. The Marriage Law did transform society, but the ideals put forth in the law are still in many parts of China the ideal.

So with all this information about marriage the question must be asked what is marriage really about in China? It is clear that the CCP tried to legislate love, harmony and loyalty as the tenants of marriage. However, the Chinese people insist that today marriage is more about money. I am not sure what the correct answer is. However, I am positive that this law will be in Chinese law books for many years to come, and might even be revised once again to include another social issue.

¹ *Real Time with Bill Maher*, “Interview with President Jimmy Carter,” aired March 28, 2014 (LA: HBO, 2014) accessed <http://www.youtube.com/watch?v=73xU-zYpvzU>.

² Patricia Ebrey Buckley, *The Inner Quarters: Marriage and the Lives of Chinese Women in the Sung Period* (Berkeley: University of California Press, 1993) 8.

³ There has been more access to Chinese records as of late. Such documents that have been made available would be more details on divorce rates. *LOOK AT DIAMANT ARGUMENT*

⁴ Kay Ann Johnson, *Women, the Family, and the Peasant Revolution in China* (Chicago: University of Chicago Press, 1983)147.

⁵ Neil Diamant, conversation via phone, conducted on March 6, 2014; Neil Diamant, *Revolutionizing the Family: Politics, Live, and Divorce in Urban and Rural China, 1949-1968* (Berkeley: University of California Press, 2000) 229.

⁶ Neil Diamant, *Revolutionizing the Family Politics, Love, and Divorce in Urban and Rural China, 1949-1968* (Berkeley: University of California Press, 2000).

⁷ Zhang Xuejun, “Amendment of the Marriage Law in China,” *International Journal of Law, Policy and the Family* 16 (2002) 400.

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- ⁸ Tamara Jacka, Andrew B. Kipnis and Sally Sargeson, "Marriage, Intimacy and Sex," in *Contemporary China: Society and Social Change* (Cambridge: Cambridge University Press, 2013) 50.
- ⁹ Ibid, 50.
- ¹⁰ Veronica Beechy, "On Patriarchy," *Feminist Review* 3 (1979), 66.
- ¹¹ *Small Happiness: Women of a Chinese Village*, directed by Carma Hinton and Richard Gordon (Ronin Films, 1984) VHS.
- ¹² Fred Dallmayr, "Confucianism and the Public Sphere: Five Relationships Plus One?" *Dao: A Journal of Comparative Philosophy* 2.2 (2003) 201.
- ¹³ Ban Zhao, "Lessons for Women: Instructions in Seven Chapters for a Woman's Ordinary Way of Life in the First Century A.D." in *Pan Chao: Foremost Woman Scholar of China*, ed. Nancy Swann (Ann Arbor: University of Michigan, 2001) 83.
- ¹⁴ Ibid.
- ¹⁵ Ba Jin, *Family* (Love Grove: Waveland Press, 1972) 37.
- ¹⁶ Women In East Asian History Class taught by Jeff Hornibrook notes from February 2012; *Ba Jin*, article provided by The College of Wooster, accessed March, 20, 2014 via http://www3.wooster.edu/chinese/chinese/courses/chinese_youth/writers_directors/ba_jin.gb.htm
- ¹⁷ Johnson, *Women, the Family...* 12.
- ¹⁸ Johnson, *Women, the Family...* 13.
- ¹⁹ *ibid*, 13.
- ²⁰ Jung Chang, *Wild Swans: Three Daughters of China* (New York: Touchstone Book, 1991) 39.

²¹ “Her Past” in *Chinese Lives: An Oral History of Contemporary China* by Zhang Xinxin and Sang Ye, (New York: Pantheon Books, 1987), 32.

²² Gail Hershatter, “Prostitution and the Market in Women,” in *Marriage and Inequality in Chinese Society*, ed. Rubie S. Watson and Patricia Buckley Ebrey (Berkeley: University of California Press, 1991) 266.

²³ William Hinton, *Fanshen: A Documentary of Revolution in a Chinese Village* (New York: Monthly Review Press) 132.

²⁴ *Marriage Law of the People’s Republic of China*, (Beijing: Foreign Languages Press, 1950) 1-2.

²⁵ Beverley Cooper, “Mao ‘v’ Confucius” *Labour History: Women at Work* 29 (1975) 134.

²⁶ *Ibid*, 135

²⁷ *Marriage Law of 1950*, 2.

²⁸ *Marriage Law of 1950*, 2.

²⁹ The marriage contract is the terms by law that the couple must follow. The officiating contract allows the couple to marry.

³⁰ “Her Past,” 37.

³¹ *Ibid*, 3-4.

³² *Ibid*, 4.

³³ *Ibid*, 4.

³⁴ *Ibid*, 5.

³⁵ Another large part of the marriage law, which is not the focus of this paper is the welfare of children. Articles 13 to 16 fall into Chapter Four: “Relations Between Parents and Children.” A few important notes about this chapter is that it outlaws infanticide and promotes strong family

bonds, while also declaring that children born out of wedlock shall not be maltreated, and that step-children will not be discriminated against.

³⁶ *To Live*, directed by Yimou Zhang (MGM World Films, 1994).

³⁷ *Small Happiness*, directed by Carma Hinton and Richard Gordon (Ronin Films, 1984).

³⁸ The Cultural Revolution started in 1966, and literally tried revolutionize Chinese Culture.

³⁹ The five black categories were landlords, rich farmers, anti-revolutionaries, bad elements, and capitalists.

⁴⁰ Gu Hua, *A Small Town Called Hibiscus* (Beijing: Panda Books, 1983) 183.

⁴¹ Beverley Hooper, 135.

⁴² *Marriage Law of 1950*, 6-7.

⁴³ *Ibid*, 7-8.

⁴⁴ The law in its entirety did have a focus on maintaining the well-being of children. Article 20 enforced that even after divorce parents had a duty to care for their children, and children had an obligation to their parents as well. Article 21 concentrates on custody and child support, and article twenty-two emphasizes on re-marriage of the woman.

⁴⁵ *Marriage Law of 1950*, 10-11.

⁴⁶ *Ibid*, 11.

⁴⁷ *Ibid*, 11.

⁴⁸ *Ibid*, 12.

⁴⁹ *Ibid*, 12.

⁵⁰ A “broken shoe” is a derogatory term used for women who have not been chaste. It implies that she will bend to fit any man.

⁵¹ Yuan-Tsung Chen, *The Dragon’s Village* (New York: Penguin Books, 1980).

⁵² Johnson, 101.

⁵³ Ibid, 105.

⁵⁴ Neil Diamant, "Re-Examining the Impact of the 1950 Marriage Law: State Improvisation, Local Initiative and Rural Family Change," *The China Quarterly* 161(2000) 179.

⁵⁵ Joyce Jennings Walstedt, "Reform of Women's Roles and Family Structures in the Recent History of China," *Journal of Marriage and Family* 46 (1978) 387.

⁵⁶ John W. Engel, "Marriage in the People's Republic of China: Analysis of a New Law" *Journal of Marriage and Family* 46 (1984), 957.

⁵⁷ Johnson, *Women, the Family...* 124.

⁵⁸ Margery Wolf, *Revolution Postponed: Women in Contemporary China* (Stanford: Stanford University Press, 1985) 145.

⁵⁹ Johnson, *Women, the Family...* 141.

⁶⁰ Diamant, "Re-Examining the Impact..." 185.

⁶¹ Johnson, *Women, the Family...* 201.

⁶² Teng Ying-Chao, "On the Marriage Law of the People's Republic of China," in *The Marriage Law of the People's Republic of China* (Beijing: Foreign Languages Press, 1950) 41.

⁶³ *The Marriage Law of the People's Republic of China*, (Beijing: Foreign Languages Press, 1982) 5.

⁶⁴ Wu Xinyu, "Explanations on the Marriage Law (Revised Draft) and the Nationality Law (Draft) of the People's Republic of China," speech given at the Third Session of the Fifth National Congress on September 2, 1980 in *The Marriage Law of the People's Republic of China*, (Beijing: Foreign Languages Press, 1982) n.p.

⁶⁵ *Marriage Law of 1980*, 8.

⁶⁶ National Center for Biotechnology, “China’s one child family policy” accessed March 30, 2014 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1116810/>

⁶⁷ Ibid.

⁶⁸ Central Intelligence Agency, “The World Factbook: China,” accessed March 30, 2014 <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html>

⁶⁹ United States Department of Commerce, “Census Bureau Projects U.S. Population of 317.3 Million on New Year's Day” accessed March 30, 2014, <http://www.census.gov/newsroom/releases/archives/population/cb13-tps112.html>

⁷⁰ *Small Happiness*.

⁷¹ Ibid.

⁷² *Marriage Law of 1980*, 5.

⁷³ Ibid, 8.

⁷⁴ Wu Xinyu, “Explanations on the Marriage Law...,” 26.

⁷⁵ Michael Palmer “The Re-Emergence of Family Law in Post-Mao China: Marriage, Divorce and Reproduction” *The China Quarterly* 141, Special Issue: China's Legal Reforms (1995)

⁷⁶ Palmer, 125.

⁷⁷ Palmer, 114.

⁷⁸ *Marriage Law of 1980*, 6.

⁷⁹ Wu Xinyu, 26.

⁸⁰ Engel, “Marriage in the People’s Republic of China...,” 958.

⁸¹ Engel, 958.

⁸² *Marriage Law of 1980*, 7.

⁸³ Engel, 960.

⁸⁴ This furthermore addresses one of the issues Kay Ann Johnson noted, that the 1950 Marriage Law did not tackle the inherit traditions, such as a patrilocal society, but the 1980 Marriage Law explicitly mentioned it.

⁸⁵ *Marriage Law of 1980*, 8.

⁸⁶ Chen Sue, *Beijing Doll* (London: Abacus, 2004) 77.

⁸⁷ *Beijing Doll*, 101.

⁸⁸ Aisling Juanjuan Shen, *A Tiger's Heart: the Story of a Modern Chinese Woman* (New York: Soho, 2009), 25.

⁸⁹ *A Tiger's Heart*.

⁹⁰ *Small Happiness*.

⁹¹ Kipnis, 55.

⁹² *Small Happiness*.

⁹³ *Marriage Law of the People's Republic of China* (1980) 1.

⁹⁴ *Ibid*, 7.

⁹⁵ *Ibid*, 7.

⁹⁶ Chen Minxia, "The Marriage Law and the Rights of Chinese Women in Marriage and Family" in *Holding Up Half the Sky* (New York: Feminist Press, 2004) 163.

⁹⁷ *Ibid*, 163.

⁹⁸ Cheng Minxia, 159.

⁹⁹ Deborah Davis, "Who Gets the House? Renegotiating Property Rights in Post-Socialist Urban China,"

Modern China, Vol. 36, No. 5 (September 2010) 463.

¹⁰⁰ *Marriage Law of 2001*, 1.

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- ¹⁰¹ Zhang Xuejun, 404.
- ¹⁰² *Marriage Law of 2001*, 6.
- ¹⁰³ *Ibid*, 7.
- ¹⁰⁴ Mingxia, 163.
- ¹⁰⁵ *Love and Sex in China*, directed by Annemarie Gallone (First Hand Films, 2007).
- ¹⁰⁶ Kipnis, 48-50.
- ¹⁰⁷ *Young and Restless in China*, directed by Sue Williams (Zeitgeist Films, 2008).
- ¹⁰⁸ Johnson.
- ¹⁰⁹ *Young and Restless in China*.
- ¹¹⁰ *The Stolen Years* directed by Barbara Wong (Beijing: Serenity, 2013)
- ¹¹¹ *Love is Not Blind*.
- ¹¹² *A Wedding Invitation*.
- ¹¹³ Shen Hong, "Façade," in *The Pearl Jacket and Other Stories: Flash Fiction from Contemporary China* (Berkley: Stonebridge Press, 2008) 74.
- ¹¹⁴ Jinguang, "Straw Ring," *The Pearl Jacket and Other Stories: Flash Fiction from Contemporary China* (Berkley: Stonebridge Press, 2008) 83.
- ¹¹⁵ Mo Xiaomi, "Marriage Certificate," *The Pearl Jacket and Other Stories: Flash Fiction from Contemporary China* (Berkley: Stonebridge Press, 2008) 85.
- ¹¹⁶ Zhao Wenhui, "Soy Sauce," *The Pearl Jacket and Other Stories: Flash Fiction from Contemporary China* (Berkley: Stonebridge Press, 2008) 88-90.

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