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The Origins of the Chinese Communist Party’s Early Marriage Laws

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The Origins of the Chinese Communist Party’s Early Marriage Laws

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by
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This thesis is in memory of my beloved grandparents, Fengying Wang and Wenbin Li, who both passed away during my time at Bard. They lived through the hardest years in Chinese history: The Sino-Japanese War, the Chinese Civil War, and the Cultural Revolution. This Marriage Law Project is in memory of their love and marriage that lasted over 60 years.

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Introduction

The so-called “First Chinese Marriage Law” was the first civil marriage law passed in the People's Republic of China on May 1, 1950, one year after the People’s Republic of China was founded. It was transformative because the Marriage Law was a radical change from existing patriarchal Chinese marriage traditions. It was also highly political because it reflected the Chinese Communist Party’s ideologies on class struggle, land reform, Marxism and Leninism. However, the 1950 Chinese Communist Party’s Marriage Law with its revision on family relations did not come about overnight, but through a long process drawing from various legal works and movements. According to Neil Jeffrey Diamant, in 1931, Marriage Regulations were promulgated in the party’s embattled “soviet” the rural province of Jiangxi. Article 1 provided a total condemnation of the traditional Chinese family; The 1934 Marriage Law was employed as a means to mobilize women to support the revolutionary cause. The idea of abolishing the traditional, patriarchal family system remained unchanged. It was not until 1949 when the Chinese Communist Party took control of the state that they started to implement a new vision of family structure and relationships.¹ Though I have a different opinion than Diamant about when the new vision of family structure started, I do believe that the 1950 New Marriage Law was indeed a combination of Jiangxi Soviet Marriage Regulations and experiences from China’s Border Areas. The 1950 Marriage Law, in theory, continued calling for the “abolishment” of the

traditional marriages, and promoted the idea of monogamy, love-based conjugal families, free choice, the willingness of both parties, and equal rights for both sexes.

As the 1950 Chinese Marriage Law was a milestone in China’s legal history, I was especially intrigued by the origin of this law and earlier marriage regulations. I was curious where the New Marriage Law derived from, and how its origin influenced the law. When I researched Chinese scholars’ works, I was very surprised to see that Chinese scholars had been arguing that the origin of the early Chinese Communist Party’s Laws was purely Soviet influenced. The 1921 Marriage Laws of Soviet Russia served a legal model, as the Chinese Marriage Laws were practically replicas of the Marriage Law of the U.S.S.R.

Chinese scholars tend to believe the Marxist theory was the foundation of the Chinese Marriage Laws. For instance, Hou Huanhuan, a Chinese scholar enumerates that the following books had a great influence on the liberation of Chinese women and marriage law. These books include, *German Ideology*, *Anti-Dühring*, and *The Origin of the Family, Private Property and the State*. She argues that Marxist Marriage was imbued with anti-feudalism, and anti-capitalism; which was echoed by the main points of the 1950 Chinese Marriage Law that enforced monogamy, equality between men and women, and the protection of women and children. She further presumed that the 1950 Chinese Marriage Law must have originated from the

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2 Hou, Huanhuan 侯欢欢，“马克思主义婚姻观对中国首部婚姻法对影响” 马克思主义婚姻观对中国首部婚姻法对影响 [The Influence from Marxist Values of Marriage to China’s First Marriage Law], Kaifeng Jiaoyu Xueyue Xuebao. 开封教育学院学报. Vol, 35, No.11, 2015, 246.

3 Ibid.
Marxist-Leninist theory and the Marriage Laws of the Soviet Russia.⁴

Similarly, in Li Xiuqing’s article “The Growth of New China’s Marriage Laws and the influence of the Soviet Model”, she claims that since the Marriage Laws of Soviet Russia had been promulgated much earlier, China must have borrowed heavily from them, to the point of translating the texts directly, and then applying them to the earlier Chinese Marriage Regulations.⁵ She further argues that due to the political chaos of Cultural Revolution which lasted more than ten years from the early 1960s to the late 1970s, the 1980 Chinese Marriage Law did not change much, but was still based on the Soviet experiences, except for China’s One-Child Policy.⁶ Only recently when China’s planned economy transitioned to a market economy, did ideas about family life change, becoming less tied to socialism.⁷

The legal historian Fang Yan also holds a similar opinion. In his article “Legislative Transplantation and Localization for Chinese Marriage Law in Modern Time”, he also argues that the Marriage Law was a replica of the 1921 Family Law of the U.S.S.R.⁸ Specifically, with the help of the Soviet Model, he claims that the legislation of China’s Marriage Law finally stepped into modernity.⁹ He further argued that, for a long time, China’s legislation held on to its Soviet influence. Not

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⁴ Ibid.
⁶ Ibid.
⁷ Ibid., 88.
⁹ Ibid., 5.
until 2001, 20 years after the Economic Reform, and after studying and imitating the family law of civil law countries, China started to develop its own civil legislation, and draw less and less from the Soviet Model.\textsuperscript{10}

It is true that Soviet Law and Marxist and Leninist theory has dominated Chinese legal work, especially the early Chinese marriage laws. For instance, 10 out of 23 articles from the 1931 Jiangxi Soviet Marriage Law paralleled the 1921 Marriage Laws of Soviet Russia. Both of them shared similar principles such as enforcing the principle of monogamy, forbidding polygamy and polyandry, contracting marriage with mutual consent, and prohibiting marriage between all relatives in direct line or of blood relationship. However, through my research, I have found that the origin of the Chinese Communist Party’s Marriage Laws has multiple influences that been neglected by most of the Chinese scholars. Such influences include the New Culture Movement, the early Chinese Nationalist Party’s law—the 1930 Civil Code of the Republic of China, Chinese revolutionary legacy, and China’s patriarchal tradition.

The Western scholar, Susan L. Glosser’s work, \textit{Chinese Visions of Family and State, 1915-1953} was the departure point for my research. Susan L. Glosser believes that the New Marriage Law mainly derives from, the New Culture Movement, also referred to as the May Fourth Movement, and the Chinese Nationalist Party, which is the Chinese Communist Party’s predecessor.\textsuperscript{11} She does not give any credits to Soviet influence. She believes the Chinese Communist Party’s New Marriage Law closely

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\item \textsuperscript{10} Ibid.,4.
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resembles the Chinese Nationalist Party’s 1931 Civil Code in both its particulars and objectivities. The two parties shared important similarities that both stemmed from the common roots in the May Fourth Movement. She compares the two marriage laws in several aspects and points out that both Communists and Nationalists had similar intentions and presented family reform as a necessary step in transforming China into a modern nation. She further specifies that both the New Marriage Law and the Nationalist Party’s Civil Code guaranteed the right to choose one’s spouse: they both prohibited individuals from marrying if they were afflicted with venereal disease, mental disease, leprosy, or some physical disorder that made them incapable of having sexual intercourse; both codes required parents support the welfare and education of their children; both established the minimum age for marriage; both explicitly recognized the equality between men and women. The biggest difference between the Chinese Nationalist Party and the Chinese Communist Party, is that the Chinese Communist Party fur thered their state-building agenda, and successfully transferred the power from the family to the state. Marriage no longer took place under the authority of parents. Instead, the state was the agency in charge of marriage and divorce. For example, as for the cases of divorce, the Nationalist Party’s Civil Code listed ten conditions under which either party might sue for divorce. The CCP, however did not define the grounds on which one party could sue for divorce, they demanded mediation by the People’s District Government. If mediation failed, the

\[\text{\underline{\text{\textsuperscript{12} Ibid.}}}\]
\[\text{\underline{\text{\textsuperscript{13} Ibid., 171.}}}\]
\[\text{\underline{\text{\textsuperscript{14} Ibid.}}}\]
\[\text{\underline{\text{\textsuperscript{15} Ibid., 172.}}}\]
local government would allow the plaintiff to take his or her case to the municipal court.16

My project echoes Glosser’s work in a certain way, but I also looked at the legal documents of U.S.S.R., in addition my project engages with contextual influence from different areas of China, and different moments in history. Carrying out my project, I started with the early Chinese Communist Party’s marriage regulations (1930-1950) as my main primary source. I compared the Chinese Communist Party’s regulations with the Chinese Nationalist Party’s 1930 Civil Code of the Republic of China, and with the much earlier legal document—the 1921 Marriage Laws of Soviet Russia. By comparing and contrasting the laws of the Communist Party to the laws of the Nationalist Party and the U.S.S.R., I was able to trace the origin of each article in the Communist Party’s law, and find changes over time. I further investigated my assumptions about the changes between marriage laws in connection with the historical context of China. M. J. Meijer’s book Marriage Law and Policy in the Chinese People’s Republic served as my guideline for this research.

In Chapter One, I analyze the first Communist Party’s 1931 Marriage Regulations of the Chinese Soviet Republic. The Chinese Soviet Republic, or the Jiangxi Soviet, was a self-governing region under the Chinese Communist Party’s control during the early 1930s. It was a social and economic laboratory for Chinese peasant-based socialism. In this section, I categorize the articles into different thematic fields: fighting against patriarchal marriage, women’s liberation, eugenics,

16 Ibid., 173
the legal age of marriage, and government intervention. In each section, I present Chinese patriarchal and intellectual tradition, explain the rationale behind certain policies, and further argue whether the law was a replica of the 1921 Marriage Law of the Soviet Union.

In Chapter Two, I discuss the 1934 Marriage Law of the Chinese Soviet Republic and the Marriage Laws of the Border Areas. The Chinese Civil War between the Communist Party and the Nationalist Party began in 1927. By 1934, the Chinese Communist Party had gone through severe military setbacks. They were forced out of Southeastern China by the Nationalist encirclement campaign, and started the Long March. The Communist Party finally arrived in the far northeastern province of Shānxī, and set up their base in Yan’an. The Border Areas later on expanded to the provinces of Gansu, Ningxia, Shānxī, Chaha’er, Hebei, Shandong, and Henan. Around the same period in time, from 1937 to 1945, the Second Sino-Japanese War was going on. Japan invaded China and ruled large cities like Shanghai and Nanjing, but they lacked sufficient manpower to control China’s vast countryside and the Border Areas. The Border Areas successfully waged several campaigns of guerrilla warfare against Japanese invaders. Similar with the first chapter, I separate the laws into different themes, and explain the themes that were the worthiest of examining. By reading this chapter, the readers will be able to understand the origins of each article, and how dynamics changed during the wartime period. This is a more complicated chapter that

17 CCP and CNP formed the United Front twice in Chinese history. The First United Front was formed in 1923 as an alliance to end warlordism in China, but it remained a short period of time. The Second United Front was formed in 1936 to prepare for the coming Sino-Japanese War.
encompasses many areas, and different government strategies.

In Chapter Three, I continue to use a similar approach as in the previous chapters to analyze the 1950 Chinese Communist Party’s Marriage Law. In 1949, after 30 years of war and chaos, the People’s Republic was founded. One year later, the Chinese Communist Party promulgated the Marriage Law of the People’s Republic of China, which was also called the First Marriage Law of New China. Since this law repeats many of the previous marriage regulations, I use a different approach in this chapter. I analyze the article one by one, and compared each article with the previous marriage laws. I further dig into the new law’s inheritance and changes from previous laws, and try to unpack its origin and the rationale behind it. Though the early Chinese Communist Party’s marriage laws that were imbued with Marxist-Leninist socialist ideology borrowed extensively from the Soviet Model, they also included multiple influences from various Chinese traditions, laws, and movements. The Chinese Communist Party struggled to implement these laws as they had to combat the ingrained Chinese patriarchal tradition during a time of war. As the early marriage laws were an important component of Chinese Communist Party’s state building project and modernization agenda, I hope that this study can be useful not just for scholars interested in the legal history of China, but also for those who are studying the modernization process of China in general.
Chapter 1: Analysis of 1931 Marriage Regulations of Chinese Soviet Republic

The 1931 Marriage Regulations of the Chinese Soviet Republic had great significance in China’s legal history. Many of the principles set by this law formed the basis for subsequent legislation on marriage and the family until the promulgation of the final law—the 1950 Marriage Law of the People’s Republic of China. Though many mainstream Chinese authors have argued that the Chinese Marriage Law generally took from the Family Law of the U.S.S.R as its only model because these two countries shared similar Communist ideology, I argue that regardless of certain parallels, the 1931 Marriage Regulations was not a replica. The 1931 Marriage Regulations was impacted by both the Chinese New Culture Movement and the Family Law of the U.S.S.R in 1921. The Chinese Communist Party believed, as part of the socialist theory they learned from the Soviet Union, that the 1931 Marriage Regulations would serve as an important tool in successfully transforming Chinese feudal society into a socialist society.  

Therefore, they believed the law was able to help eliminate the so-called opponents in the proletarian class and backward elements, change family structure by reforming the institution of marriage, and consolidate the production relations that the land reform was trying to alter. On the other hand, the law inherited the spirit of the New Culture Movement of the 1910s to the 1920s. The 1931 Marriage Regulations continued to fight against feudalism, liberate women, set

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19 Ibid.
up love-based conjugal marriage, and create equality for both men and women. With the influence of both the New Culture Movement and the Soviet Union, the Marriage Regulations of 1931 enlightened Chinese society and helped China break with its feudal past. The Marriage Regulations paved the way to a New China (新中国), and a more modern and open society. In this chapter, I will break the 1931 Marriage Regulations of the Chinese Soviet Republic into several thematic fields such as challenging patriarchal marriage, women’s liberation, eugenics, the legal age of marriage, and government intervention. The progressive ideas of free marriage choice, economic independence, women’s liberation, and eugenics in the Marriage Regulations derived from both Soviet influence and the New Culture Movement legacy.

**Challenging Patriarchal Marriage**

In the traditional marriage system, marriage was conducted under coercion and paternal arrangement, and men could easily manipulate the institution of marriage. In the late imperial era of China, the practices of marriage by purchase, the marriage of infants, and taking a foster daughter-in-law were prevalent. For the upper class in traditional China, a common method of expanding the family was for men to take concubines. They could take concubines whenever they or the family could financially afford to expand. Moreover, Confucianism, as one of the most influential philosophies in China also emphasized the significance of the patriarchy and obedience to the father which was used to solidify the existing social structure.
famous quote "There is government, when the prince is prince, and the minister is minister; when the father is father, and the son is son. (君君，臣臣，父父，子子) is a good example of this traditional thought. These practices and theories perpetuated the patriarchal society, kept in place the traditional family structure which was an inescapable shackle for Chinese women, and posed a serious problem for a progressive New China.

The 1931 Marriage Regulations of the Chinese Soviet Republic were greatly influenced by the New Culture Movement in the early 1920s. In the New Culture Movement, Chinese intellectual elites like Chen Duxiu, Li Dazhao and Hu Shi, many of who had been trained in Western and Japanese universities brought enlightenment to China. They revolted against Confucianism, feudal ideas and the patriarchal family structure. They accused the traditional patriarchal family of sacrificing China’s youth to filial obligation, teaching people dependency, and robbing young people of their creative energy. They argued that these negative influences caused China to live in the shadow of imperialism, suffer from being a semi-colonial and semi-feudal society, and prevented China from becoming a progressive nation. Lu Xun, one of the most influential modern Chinese writers, criticized Confucianism as a “flesh-devouring monster” (吃人的礼教). Tan Sitong also strongly condemned the hierarchical

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21 Glosser, 3.

principles of Confucianism. Liang Qichao believed that the reason why China was politically weak related to women’s subordinate status: they were not able to produce, but only to consume. These intellectuals passionately promoted the idea of the Western conjugal family (xiao jiating, literally “small family”), of free choice in marriage, of independence from the family, and women’s liberation. They believed only love-based conjugal marriage would encourage productivity, independence, and civic culture. Only when women were freed from various restrictions of the patriarchy, would they be able to fully develop their mind and body. Having good health and strong bodies, would allow them to bear healthy children. Having access to better education would also help women to have civic-minded children. In the New Culture Movement, women’s rights went hand in hand with the new family system—the love-based conjugal family. The goal of promoting women’s rights, unlike in the Western countries, was not a goal in itself, but was rather a pursuit in the struggle to save China, and create a modern state.

Also, as the Jiangxi Soviet was the first application of socialism in China in 1920s, the Marriage Regulations had much to do with Soviet influence and Communist ideology. In this area, the Chinese Communist Party held on to the Marxist doctrinal point of view of production relations, and tried hard to eliminate elements of feudalism in every possible way. The main solution was, first, redistribute land to change society’s relations of production; Second, reform marriage and the institution of marriage to change the family structure, which also included the

23 Glosser, 5.
24 Ibid., 3.
traditional relationships of parents and children, and husbands and wives. As the Chinese Communist Party radically challenged the family structure, they were able to forcefully change Chinese society, getting rid of the feudal elements. In the Marriage Regulations of the Chinese Soviet Republic, we can see the attack on feudal marriage was fierce and direct. Though the Marriage Regulations were a legal document, the articles seem to be a political battle cry, and a declaration of war on the traditional family structure.

Article 1 clearly identified that freedom was the principle behind allowing a man and woman to contract marriage, and enforcing the act of monogamy. Moreover, traditional marriage practices such as taking a “foster daughter-in-law”, arranged marriage by the third party, marriage contracted by purchase and sale were all abolished. Article 2 emphasized that monogamy was enforced and polygamy was forbidden.

Article 4 required that marriage must be under the consent of both parties, and prohibited interference with the freedom of marriage by a third party, principally the parents. This article was similar to Article 70 of the Family Law of the U.S.S.R. In the case of the U.S.S.R. however, they only regulated the consent of both parties,

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25 Meijer, 37.
27 Ibid.
28 Ibid.
but did not mention a third party. By comparing these two articles, we can see how
determined the Chinese Soviet Government was to fight against patriarchal authority,
and help young people to fight for their independence from the old joint family.

Article 9 granted individuals the freedom to seek divorce. This provision
regulated that marriage could be dissolved as long as both parties agreed on divorce.\(^{30}\)
It directly paralleled Article 87 of the Family Law of the U.S.S.R, that the mutual
consent of the husband of wife should be considered as ground for divorce.\(^{31}\) In
principle, the freedom of divorce in Ancient China already existed, for example,
women in the Tang Dynasty could seek divorce but there is not much evidence that it
was practiced. Article 9 about mutual consent of divorce obviously borrowed from the
Soviet law.

**Women’s Liberation**

As mentioned earlier, Chinese women in traditional Chinese society were
considered the property of the patrilineal family. They were usually bought at an early
age for a certain price, and such betrothal constrained them from having any choice in
marriage when they got older. Even if a woman’s husband died when she was young,
her in-laws still retained control over her. Confucian norms supported this oppressive
social structure on women in theory and in morality. Divorce was not a choice for
Chinese women, as the result of divorce might force women to leave her husband’s
clan and return to her natal family. However, as they had been bound to be faithful to

\(^{30}\) Meijer, 281.

\(^{31}\) *The Marriage Laws of Soviet Russia*, 42.
their husband, neither her natal family nor society would accept her. For women who became widows, they were forbidden to remarry, as the Chinese tradition claimed that a widow was supposed to remain faithful to her dead husband and his family. If she broke the rule and remarried, she would have no right to take family property or any claims to her children.\textsuperscript{32}

However, the Jiangxi Soviet Era became a turning point for Chinese women. In the early 1930’s, the outcome of the Civil War between the Chinese Nationalist Party and the Chinese Communist Party had yet to be decided. The Nationalist Party waged several sieges on the Jiangxi Soviet and the Communist Party. Under emergency conditions, the Chinese Communist Party intended to mobilize any human resources that they could. In particular, they fully recognized the importance of absorbing peasant women into the struggle for victory in the revolutionary movement.\textsuperscript{33} Why? The fact was that although peasant women did not have economic independence or ownership of any land, they actually occupied a decisive role among peasants and troops as in most cases, they had a great impact on men’s decision to join the army. For example, wherever women had not mobilized in support of the war effort, they often held back the males in their family from the army. At this point, if the Chinese Communist Party wanted to win the battle, they had to win over the women no matter what.

Having figured out that women played a key role to play in the revolution, the Chinese Communist party started to formulate various policies favorable to women.

\textsuperscript{32} Meijer, 14.

\textsuperscript{33} Ibid., 32.
Mao and the Chinese Communist Party generalized four fundamental authorities that hindered Chinese women from achieving liberation. They were: (1) the system of the state (political authority); (2) the system of the clan (clan authority); (3) the system of gods and spirits (theoretical authority); (4) patriarchy or masculine authority. The Party believed these four kinds of authority represented the whole ideology and institution of patriarchy and feudalism, that they were the four cords that bound the Chinese people. Therefore, the committee enumerated ways to mobilize women.

First and foremost, the Party decided to mobilize wives of poor peasants to “win in the victory of land reform”. They believed that by implementing land reform, women would be guaranteed equal rights to allotments. If the land reform went smoothly and women actively participated in the economy of the villages, they would be able to gain some degree of economic independence and ownership of land, which they never had before. With such an economic base, women would then be able to further gain their liberation.

Though land reform would be helpful, the other political principles that went hand in hand with land reform were imperative to the success of the Party. The Party needed further plans and laws to consolidate the freedom of women, and ensure that they had enough legal support. First and foremost, the Special Committee of the Government made detailed policies in their “Plan for Work among the Women” on

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35 Ibid.

36 Meijer, 38.
March 3, 1931. They firmly embedded their opposition to feudal relations, they supported the freedom of choice in marriage in the general policy of the plan, and tried to guarantee the acquisition of women’s civil rights. Secondly, they actively recruited peasant women for the Party. As peasant women were generally illiterate, the Party provided various educational classes to train them to become “leaders of the masses”, and made them the mainstay of their movement. As young women constituted fifty percent of the masses of the youth in China, they were asked to take on the responsibility of leading the peasant movements. As a result, in the cities, women were actively engaging in the struggle against imperialism. In the countryside, they participated in the struggle against gentry, landlords and local bullies.

Additionally, in November 7, 1931, the Party promulgated the Provisional Constitution of 1931 to further consolidate the liberation of women. At the First Congress of the Chinese Soviets which was held on November 7, 1931, the Chinese Communist Party had clear articles supporting women and granting them individual rights and freedom:

The purpose of the Soviet Government is to guarantee the fundamental liberation of women. Freedom of marriage is recognized and a measure for the protection of women will obtain the material basis to enable them to cast off the bonds of the family by gradual stages, and to participate in economic, political, and cultural life.

We can tell that the Chinese Communist Party’s attack on the traditional family structure and its restriction on women was fierce. By enabling women to “cast off the

37 Ibid.
38 Ibid., 39.
39 Ibid., 40.
bonds of the family”, they extensively helped women to attain economic independence, and to no longer rely on their husband, children, and the family clan. All these steps finally led to the promulgation of the 1931 Marriage Regulations which fundamentally and systematically changed women's social status, and protected their material interests.

In the 1931 Marriage Regulations, many provisions were designed to give divorced women the opportunity to have an economically independent life after the divorce. Starting from Article 11, we see more and more policies in favor of women, whereas the Party imposed most of the responsibility on men. These regulations functioned as an effective instrument for freeing women from the tyranny of patriarchal society.

Article 11 and 12 regulated how both men and women should take care of their children after divorce. It was the man’s responsibility to raise the children after divorce unless both men and women wished to raise the children. In that case, women should be entrusted. In Article 12, small children who were being nursed shall during the period of their nursing be raised by the mother.41

Article 14 regulated that until a child reached sixteen years old, in cases where children reverted to the woman’s custody, the man should be responsible for two-thirds of living expenses.42 Again, this showed men’s obligation to take the most responsibility to raise children after divorce. The Party had clear intention to protect women from the financial burdens of single motherhood.

41 Meijer, 281.
42 Ibid., 282.
Article 15 showed a rare exception to man’s responsibility. It said that if the woman’s new husband was willing to take care of the children, the father might be discharged from his duty in regards to living expenses. However, this applied only if another man was ready to take the responsibility.

Article 16 stipulated that if a new husband had agreed to take care of the children, he must register this with the Xian or Municipal Soviet. Here the Administrative Bureau—Xian or Municipal Soviet functioned as a form of governmental intervention that could supervise the marriage and confirm that the new husband fulfilled his obligation to the family, and would give women enough support.

Articles 18, 19 and 20 regulated arrangements concerning the property of men and women after divorce. Article 18 stipulated that men in the case of divorce were required to provide support for his ex-wife such as a settlement of common debts incurred by both of them during the time of cohabitation or to provide land for his ex-wife until she married again. Article 19 required the man to sell part of house for the woman to live in, if after the divorce both of them were unwilling to leave the house. Article 20 regulated that after divorce, until the woman remarried, the man must support her or till the land for her. These three articles ordered men to support women, almost unconditionally. Though these articles may sound unreasonable in the current world, they actually made sense if we think about the history of China and the

43 Ibid.
44 Ibid.
45 Ibid.
46 Ibid.
47 Ibid.
Party’s motive: 1. Chinese women were long oppressed under patriarchal society for two thousand years; 2. The Chinese Communist Party needed to mobilize women in order to win the Civil War and the revolution. Because Chinese tradition had favored men’s rights, the new law had to be biased enough for women in order to rectify the gender inequality and preserve women’s rights.

Article 21 stipulated that the man should bear two-thirds of the living expenses of the illegitimate child.\textsuperscript{48} This was a very important provision. It abolished the distinction between legitimate and illegitimate children, even though the question as to whom they belonged was not solved. This provision showed an equalization of the positions of both illegitimate and legitimate children. However, according to Meijer, at this stage the matter was still approached in a very cautious way and the full meaning of the article had to be clarified in the corresponding article of the law of 1934\textsuperscript{49}.

Though these biased provisions had a rationale, we can still question them regardless of their historical background. For example, there were critiques that the law actually gave women the right to completely abandon their children leaving them solely in the care of the man. And the man might be forced to pay the debts, raise children and support the family so long as she did not marry anyone else. Meijer tried to answer this question, and concluded that this 1931 Marriage Regulations was as anti-family as the Family Code of the U.S.S.R.\textsuperscript{50} However, I do not agree with him.

\textsuperscript{48} Ibid.
\textsuperscript{49} Meijer, 37.
\textsuperscript{50} Ibid., 47.
on this specific question. Though the 1931 Marriage Law was dominated by socialist ideology and was influenced a lot by the Family law of the U.S.S.R., it was equally influenced by the idea of establishing love-based small, conjugal families which was also advocated by the Jiangxi Soviet. I believe Meijer underestimated the impact of New Culture Movement on the 1931 Marriage Law.

**Eugenics**

Articles 5, 6 and 7 all demonstrated the pursuance of a policy of eugenics in China during this period. Article 5 forbade the man and woman to marry a person of blood relationship within the fifth generation.\(^5\) Article 6 prohibited persons suffering from venereal disease, leprosy and similarly dangerous contagious diseases from marrying, unless it was considered permissible after medical examination.\(^6\) Article 7 stated that persons suffering from mental disease or paralysis were forbidden to marry.\(^7\)

According to Frank Dikotter, the ideas of eugenics in China dated back to the Qing Dynasty, and derived primarily from the influence of Japan and the West.\(^8\) As the revival of the nation became a major issue after the Chinese Nationalist Party came to power, party leaders believed that the improvement of environment and race

\(^{5}\) Ibid.  
\(^{6}\) Ibid.  
\(^{7}\) Ibid.  
were crucial because they would have a huge impact on future generations.\textsuperscript{55} In response to this, lots of public health campaigns, mass education programs, medical examinations of infants and children, and nation-wide health care services for pregnant women started taking place in China.\textsuperscript{56}

Eugenics also attracted great attention from Chinese intellectuals. In the 1890s, Yan Fu, the famous Chinese scholar and translator translated many important works to introduce Western social, economic and political ideas to China. He translated into Chinese one of the most far-reaching Western work—Thomas Henry Huxley’s \textit{On Evolution}, in which Huxley argues that human beings had to go through natural selection for survival.\textsuperscript{57} What's even more serious was that as China had already lagged behind Europe for more than 100 years, it seemed essential to them that they take up Eugenics to catch up.\textsuperscript{58} Yan Fu also saw through the situation of the poor reproduction in China. He referred to the poor social reproduction of the lower status as “Children who feed on coarse food and live in filthy places; they are not properly bred, growing up amid disease and distress; their body becomes weak and the mind turns muddled. When they grow up, lust appears but intelligence stays dormant.”\textsuperscript{59}

Yan also wrote, which was surprisingly similar to Articles 5, 6, and 7 in Marriage Regulations, “Actions should be taken to eliminate those with tuberculosis, syphilis, gonorrhea, mental illness, or who are habitual criminals, or who suffer from other

\textsuperscript{55} Ibid.
\textsuperscript{56} Ibid., 102.
\textsuperscript{58} Ibid., 344.
\textsuperscript{59} Ibid.
conditions harmful to society.\textsuperscript{60} Besides Yan Fu, in the early 1920s, the New Culture Revolution pioneers like Lu Xun, Yan Fu, Liang Qichao also strongly advocated for eugenics, believing eugenics would strengthen China.\textsuperscript{61} The New Culture Movement leader Cai Yuanpei envisioned the creation of a Foetal Education Institute (taijiaoyuan) in order to achieve a “racial improvement”.\textsuperscript{62} According to Dikotter, such an institute that was built in traditional architecture with a kind of Greek art, would hide the depraved products of modernity from pregnant women and allow them instead to admire paintings of healthy nude bodies.\textsuperscript{63} Liang Qichao also criticized that early marriage weakened the power and the strength of the race. He sharply claimed that early marriage was detrimental to descendants of the race if the parents married young, because they would not have enough education or economic resources to raise children.\textsuperscript{64} Additionally, early CCP leaders Chen Duxiu and Li Dazhao also argued for a “superior race theory” that aimed at following eugenics theory to limit part of the population and encourage an increase in the population of those who were superior.\textsuperscript{65} The views of these leaders demonstrated that the history of eugenic discourse influenced the Chinese Communist Party in formulating the Marriage Law. In the early 1930s, the Chinese Soviet Government made citizens and their quality of life their main focus.

It is noteworthy that in the late 1920s, the Soviet Union shared a common vision

\textsuperscript{60} Ibid.
\textsuperscript{61} Dikötter, 62.
\textsuperscript{62} Ibid., 103.
\textsuperscript{63} Ibid.
\textsuperscript{64} Sakamoto, 342.
\textsuperscript{65} Ibid., 343.
and had similar regulations about eugenics as the Chinese Soviet Government. Both
the Soviet Union and China intended to improve their citizens’ marriage quality and
the quality of next generation. Like Articles 4 and 5 of 1931 Marriage Regulations of
the Chinese Soviet Republic, the Family Law of the U.S.S.R also showed that the
Soviet Union cared about people’s health, and tried to guarantee citizens’ health by
preventing hereditary diseases from happening which resulted from consanguineous
marriage. For example, in Article 69 of the Family Law of the U.S.S.R, it said that
marriage was prohibited between all relatives in direct line, and between full or half
brothers and sisters. As for Article 7 about forbidding people to contract marriage if
any of them suffered from mental diseases, the Chinese Soviet Government was very
vague in describing the concept of “mental disease”. The Family Law of the
U.S.S.R, however, did a better job framing the same intention. In Article 78 of the
Family Law of the U.S.S.R, it said that “a marriage shall be considered void if
contracted by an insane person, or by a person incapable of acting with discernment
or understanding the significance of his or her acts.” According to Filip Bardziński,
from the Bolshevik revolution in 1917 until the early 1930s was the high point in the
era of Russian eugenics. Also, as observed by Krementsov, during the Bolshevik era,
the eugenic ideas of “bettering humankind” perfectly resonate with Bolsheviks’ early
visions of the country’s future. However, later on when Joseph Stalin started to

66 The Marriage Laws of Soviet Russia, 39.
67 Ibid.
68 Ibid., 41
69 Bardziński, Filip. “The Concept of the "New Soviet Man" As a Eugenic Project: Eugenics in
consolidate his power, the eugenic movement was forced to submit to Marxist-Leninist ideology. Though eugenics was denounced as a “bourgeois” and “fascist” doctrine, many Soviet eugenic movements still fought to preserve ‘positive’ Eugenics.\(^{70}\) But that is another different story.

**Legal Age of Marriage**

The 1931 Marriage Regulations required that the age of contracting marriage be 20 for men, and 18 for women. Compared with the Family law of the U.S.S.R and the Family Law of the Chinese National Government, the age limit in China was relatively high. Article 66 of the Family law of the U.S.S.R said that men could get married at 18 and women could get married at 16, which was the same age limit as the Family Law of the Chinese Nationalist Government.\(^{71}\) Why was the Chinese Communist Party’s case so different? I see three plausible explanations. One plausible explanation was that the state was concerned about the quality of the population, which was fundamentally a eugenics discourse. As mentioned earlier, they believed that early marriage would adversely affect young people because they did not have enough economic strength, knowledge and financial accumulation to raise children. In a nutshell, as Liang Qichao criticized, early marriage was seen as detrimental to the descendants of the race.\(^{72}\) Another plausible explanation, in my view, was Meijer’s point that under the patriarchal society, the mature age men were exposed much

\(^{70}\) Ibid.

\(^{71}\) The Marriage Laws of Soviet Russia, 38.

\(^{72}\) Sakamoto, 336.
longer to Communist propaganda, and less inclined to follow parents’ advice and make reasonable choices on their own.\textsuperscript{73} This explanation once again exhibited the Communist Party’s clear aim of fighting against patriarchal marriage, establishing the new vision of a small conjugal family, and minimizing the influence of the traditional joint family. The third explanation is less convincing but surprisingly enduring—that the state was concerned for the health of the newlyweds. However, just as Meijer argued, it was difficult to understand why the health of a Chinese boy would be more adversely affected by marriage at eighteen than his Soviet Russian brother.\textsuperscript{74}

**Government Intervention**

The Party’s discourse on government intervention sounds very different from their arguments about women’s rights and individual freedom. I believe the reason for such a difference is worth thinking about. By analyzing this difference, we see another very crucial side of the story—which was the politicization of Chinese Marriage in the early 1930s. In general, the Chinese Soviet Government realized that too much freedom in marriage was harmful. Instead, they believed there was supposed to be a proper and limited amount of freedom for men and women to marry or divorce so that both of the parties, husband and wife, could best serve the cause of the revolution. In particular, the Chinese Communist Party was concerned that the “absolute freedom” of marriage would antagonize the peasants and the Red Army, and

\textsuperscript{73} Meijer, 45.  
\textsuperscript{74} Ibid.
lead to anarchy. The Bolshevik vision perfectly parallels the Bolshevik vision of marriage. The Bolshevik vision stressed the idea of marriage as an instrument for revolution, and they believed that family would perish after Communism was fully set up. As for marriage, Bolshevik principles strongly opposed the idea of absolute freedom of marriage because it would create chaotic conditions in society. Eventually, the Chinese Soviet Government found a way to reconcile such conflicts—government intervention. They planned to have a strong governmental administration, either by the county (Xian) or Municipal Soviet, to be responsible for the registration of marriages and divorce. Furthermore, the administration and the Party should investigate the circumstances whenever they needed to.

We can see such government intervention in Article 8, 10, and 16. Article 8 regulated the procedure of contracting marriage: in order to contract marriage, men and women were required to approach the county (Xian) or Municipal Soviet to register the marriage. This article parallels Article 53 of the Family Law of the U.S.S.R which states that “marriage shall be registered at the local Bureau of Vital Statistics.

Similarly, Article 10 regulated when a man and woman sought divorce, they had to approach the county (Xian) or municipal soviet to complete the procedure. The Administrative Bureau was an important political tool for the Chinese Communist

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75 Ibid., 39.
76 Ibid., 38.
77 Ibid., 281.
78 The Marriage Laws of Soviet Russia, 38.
79 Meijer, 281.
Party to accomplish various aspects of management and control. This article parallels Article 92 of the Family Law of the U.S.S.R that said the chief of the Bureau of Vital Statistics, upon being satisfied that the petition for the dissolution of the marriage has actually been presented by both parties, shall make an entry recording the dissolution of the marriage, and shall deliver to the parties, at their request, a certificate of divorce.  

Article 16 in the 1931 Marriage Regulations required that if a new husband had agreed to take care of the children, he must register this with the Xian or Municipal Soviet.

By looking at these articles and searching for the intention behind them, we might come to wonder if the Chinese Soviet Government genuinely supported the freedom of marriage, and the liberation of women from patriarchal society for its own sake, or if they just wanted to win over more people for the revolution. This has been a very complicated question. Without analyzing thoroughly all their policies about land reform, marriage law and other policies, one would not get a clear answer.

**Conclusion**

The 1931 Marriage Regulations combined influences from both the Chinese New Culture Movement, and 1921 Family Law of the U.S.S.R. The progressive ideas of freedom in marriage choice, economic independence, women’s liberation, and eugenics dominated the law, broke Chinese tradition, and paved the way for the New China. However, as this law was the Chinese Communist Party’s first experiment in

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80 *The Marriage Laws of Soviet Russia*, 45.
81 Meijer, 282.
this legal area, it had many unresolved problems. For example, some believed the law granted too much freedom and rights on women and gave men too many responsibilities to take care of after divorce. In the 1931 law there were no specific circumstances that would be seen as grounds for a divorce. However, the problems were gradually solved as over time more marriage regulations were created and revised. In the next chapter we will see a more complex picture, with less radical regulations in the practices in the Border Areas.

Marriage Law of the Chinese Soviet Republic of 1934

By 1934, the Chinese Soviet Republic had gone through severe military setbacks and hardships. The Chinese Nationalist Party (Guomindang) deployed more than five hundred thousand troops and laid siege against the Chinese Soviet Republic five times. In 1934, the Chinese Communist Party were forced out of the Southeastern China by Nationalist encirclement campaign. They could not resist anymore, and started the Long March. They finally arrived in the far northeastern province of Gansu, and made their base in Yan’an where served as the headquarter until 1947.

Starting in 1935, the Party leaders were still fully convinced of the necessity of land reform and family reform. As for marriage regulations, they abolished the former marriage regulations, and made some changes to adapt to the new environment. Though the spirit of the new law did not differ much from the 1931 Marriage Regulations, the new law did have significant changes. In the first section, I will particularly talk about the Party’s permission of Common Law Marriage, their changing attitude towards women, and the rationale behind it. In the next section, I will talk about the laws of the Border Areas.

General Provisions

The General Provisions of the 1934 Marriage Regulations were almost the same as the former Regulations. The spirit of this version of the law was still fighting
against feudalism, liberating women, setting up love-based conjugal marriage, and creating equality for both men and women. Article one still included the principle of the freedom to contract marriage, and forbade marriage that was either contracted by purchase or sale, or arranged by a third party.\textsuperscript{82} Article 2 prohibited both polygamy and polyandry, which clearly revealed the Party’s determination of enforcing monogamy and eliminating any feudal practices.\textsuperscript{83}

**Common Law Marriage**

Though the General Principle stayed the same, there were some significant changes in the contents. Article 9 was a dramatic change and it was very complicated. It said that in all cases of a man and a woman cohabiting, whether or not they had registered marriage, they should be considered to have contracted marriage.\textsuperscript{84} This was the first time that the Party legitimized the cohabitation of men and women. More importantly, we should notice that the participation of the state, the Administrative Bureau (Xian or Municipal Soviet) and society was not necessary for a marriage to be recognized. Instead, the recognition could just be legalized by the will of the two parties through living together. And the registration under the 1931 Regulations, as Meijer put it, was not to be understood as having constitutive force anymore.\textsuperscript{85}

As was shown in Chapter 1, marriage in traditional China was arranged by the parents of the bride and groom. Before the Communist Era, in order to contract

\textsuperscript{82} Meijer, 283.
\textsuperscript{83} Ibid.
\textsuperscript{84} Ibid.
\textsuperscript{85} Ibid., 49.
marriage and gain public recognition, people usually held a big public ceremony, and invited friends and family to witness the big moment. No registration was needed under the Nationalist Party’s Civil Code. And the state would not interfere unless the marriage contravened the law. They neither interfered in the conclusion nor dissolution of the marriage. Contrary to the Nationalist Party, with the strong aim of government intervention, the Chinese Communist Party started to require marriage registration as a part of their main policy since 1931. This management and control permeated through people’s lives. Moreover, the Party explained at length why they would impose the duty to register. Chen Shaoyu, one the most important Soviet-trained leading lawmakers justified the Chinese Communist Party intervention. He argued the reason why the Nationalist Government and warlords had not interfered in marriage was because they were fundamentally an anti-people government and did not care about people’s concerns and problems; But the Communist Government could not ignore the great event of marriage which affected the health of the people, the happiness of the family, and the reconstruction of the state; Therefore, the People’s Government could not regard the problem of marriage as a private affair. Though the reason might sound political, the registration process in China actually successfully prevented feudal arranged marriages such as child marriage, bigamy, and concubinage. In a nutshell, registration at this point fulfilled the function of opposing the “feudal” marriage system.

86 Ibid., 178.
87 Ibid., 179.
88 Ibid., 184.
However, why did the Party start to allow Common Law Marriage even without registration in 1934? Meijer argues that the Chinese Family in many ways functioned like the church in Russia which worked as an authority that confined people. They thought if the parental arrangement of marriage were impedes, the old society would naturally fall apart.⁸⁹ Meijer believed Common Law Marriage was a tool for the Communist Party to continue to destroy coercive patriarchal power and rebuild Chinese society.⁹⁰ Nonetheless, I only agree with Meijer partially. During the 1930s, as a matter of fact, both customary marriage and registered marriage existed in China. More importantly, customary marriage, or the traditional marriage systems such as daughter in-law and arranged marriages dominated in many places like Jiangxi and Guangdong. By 1934, the Chinese Communist Party realized the limitations of their government, and were able to separate cultural recognition and state registration.

**The Changing Attitude towards Women**

By comparing the changes to marriage laws between 1934 and 1931, we will find that the 1934 Marriage Law at a certain point ended biases towards women. In this new law, the Party’s attitude towards women changed significantly. During this rough revolutionary era, in order to protect the Red Army’s interest, ease their worries about family issues, and give them peace of mind, the Marriage Law put members of the armed forces in a separate category. According to Article 11, wives of soldiers in the

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⁸⁹ Ibid., 185.
⁹⁰ Ibid.
Red Army had to obtain the consent of their husbands when they claimed a divorce.\textsuperscript{91}

In areas where communication by letter was accessible and two years have gone by since the husband last communicated by letter or returned home, the wife could approach the local government to request a divorce. In areas where communication by letter was difficult, four years were needed before the wife may approach the local government for a divorce.\textsuperscript{92}

What’s more, the 1934 Marriage Law retracted many freedoms that women had enjoyed under the 1931 Marriage Regulation, and imposed more duties on them. Specifically, in the 1934 Marriage Law Article 15 declared that only when the woman lacked the capacity to work, should the man assist her by supporting her and tilling land for her.\textsuperscript{93} However, if the man also lacked the capacity to work, there was no requirement for him to help her. The legal assumption then was that the woman took care of the children. This new article contradicted Article 16 of the 1931 Marriage Regulations declaring that a divorced woman did not have to raise children unless she wanted.\textsuperscript{94}

The reversal was so significant and so complicated that we have to understand why. One explanation that Meijer gives us was that after the land reform in the Jiangxi Soviet, women’s economic position had significantly improved and they were able to better take care of the children.\textsuperscript{95} However, another explanation sounds more

\textsuperscript{91} Ibid., 283.
\textsuperscript{92} Ibid.
\textsuperscript{93} Ibid., 284.
\textsuperscript{94} Ibid., 282.
\textsuperscript{95} Ibid., 49.
convincing: that at this moment, men were needed for warfare and could not be further burdened with raising children. Therefore, the Party prioritized the interest of the armed forces and the stability of their family. In a nutshell, the impulse for social equality got displaced because the government needed to mobilize men for revolution. We will talk about this more in the following section.

**Marriage Regulations in the Border Areas**

Marriage Laws in the Border Areas of China were the best preparations and experimentations for the 1950 Chinese Marriage Law, the first official Marriage Law after the founding of the People’s Republic of China. The Border Areas included the provinces of Shānxī-Gansu-Ningxia (Shan-Gan-Ning), Shānxī-Chaha’er-Hebei (Jin-Cha-Ji), and Shānxī-Hebei-Shandong-Henan (Jin-Ji-Lu-Yu).

Besides the Soviet influence, many articles in the Border Area Laws followed the Civil Code of the Republic of China very closely, while other articles created new regulations to adapt to different circumstances. Different local governments encountered different challenges and promulgated laws with various focuses, making the laws even more complicated. In this section, we will dig into this complexity, and try to unpack the reasons behind it.

**General Principles:**

The Marriage Regulations of all the Border Areas in China during the 1940s

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96 Ibid.
expressed similar general principles to the laws of 1934 and 1939. The Party insisted on monogamy and the necessity for both parties to enter into marriage of their own free will, and continued prohibiting the practices of taking a “foster daughter-in-law”, premature marriage, marriage by purchase and sale, bigamy, concubinage, and keeping slave girls. The Marriage Regulations in the Border Areas also stipulated that men and women were completely equal in social, political, and economic respects and with respect to their position within the family.⁹⁷

**Concubinage**

“Three slave girls and four concubines” (三妻四妾) was a right and custom of a special class of traditional Chinese society. Starting from the Jiangxi Soviet through 1950, the Chinese Communist Party attempted to enforce monogamy. The Border Areas of Shan-Gan-Ning, Jin-Cha-Ji, and Jin-Ji-Lu-Yu especially continued this attempt and had very strict rules against feudal behaviors like taking concubines, keeping slave girls and bigamy.

The expression “slave girls” first occurred in the Chinese Marriage Laws of the Jin-Cha-Ji Border Area in 1943. Unlike the common connotation of “slave girls”, according to Meijer the term here was used to refer to the practice of selling girls on a long term contract for domestic help.⁹⁸ These Chinese girls’ fate was entirely dependent on the morality of the family who bought them. Sometimes they had a bearable master who would consider them to be a member of the family with limited

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⁹⁷ Ibid., 285.  
⁹⁸ Ibid., 57.
rights and sought a marriage partner for them. But more often, as the contracts were not legally valid, these young girls were not only taken advantage of, but were sexually abused.\textsuperscript{99}

The Chinese Communist Party cooperated with the Nationalist Party on the battle against feudalism in the efforts to better enforce monogamy. They both acknowledged that bigamy, concubinage, and adultery were not only feudal behaviors, but also criminal offences.\textsuperscript{100} However, there were critiques that this step was a huge jump both in Chinese culture and in law. When people saw the Party categorizing concubinage, a traditionally permissible act as a criminal offense, they read it as a disparagement of the traditional marriage system. As a consequence, many young revolutionary cadres took advantage of it and disregarded their previous wives and claimed these were women “who smelled of the countryside”. These critiques brought trouble to the understanding of Common Law Marriage.\textsuperscript{101}

However, we still need to acknowledge the advantages of this move and give credit to it. Just as we talked about in the last chapter, abolishing polygamy, bigamy, marriage by purchase and sale, and other feudal acts positively and fundamentally liberated women from coercion and the patriarchal society. Article 2 prescribed that a concubine taken before the Provisional Marriage Regulations could demand immediate separation and living expenses from the other party.\textsuperscript{102} Article 3 stipulated that a slave girl could also demand immediate separation from her master and her

\textsuperscript{99} Ibid.
\textsuperscript{100} Ibid., 92.
\textsuperscript{101} Ibid., 94.
\textsuperscript{102} Ibid., 290.
master could not demand the return of the price he had paid for her.\textsuperscript{103} The provisions of the Enforcement of the Provisional Marriage Regulations of the Jin-Ji-Lu-Yu Border Area in particular demonstrated the Party’s support for women and these regulations were indeed furnished prompt and effective legal support for women.

**Betrothal**

Betrothal acted as a mutual engagement and promise for a future marriage. It was an important social institution in China, and it embodied Chinese traditional culture and custom (li, or 礼 in Chinese Character). Before the Communist society in China, betrothal had been a prerequisite for marriages. As a ritual of marriage, the groom’s family handed over marriage presents at the time of betrothal. These presents were considered as some compensation to the woman’s family for their providing her with a trousseau.\textsuperscript{104} According to Meijer, they consisted of clothing, money, and articles for daily use.\textsuperscript{105}

When we study the laws about betrothal in the Border Areas, we find that they followed the Civil Code of the Republic of China very closely. It does make sense that these provisions originated from the 1930 Civil Code, as betrothal was a Chinese traditional custom. Both of the two laws had the same age limits—women had to be 15 and men had to be 17 before they could become betrothed. The Border Areas’ articles about betrothal paralleled Article 973 of the 1930 Civil Code of

\textsuperscript{103} Ibid.
\textsuperscript{104} Ibid., 171.
\textsuperscript{105} Ibid.
Nationalist Government; both stipulated the free will of the parties as a condition for betrothal or marriage. The only difference, according to Meijer, was that in the Chinese Communist Border Areas, betrothal presents were forbidden, and the administrative process of registration was necessary.\(^{106}\) But in the Republic of China, the betrothal tradition was more ingrained, and the Nationalist Party did not try to break it. They did not require registration either. This contrast highlights the difference in ideology between the Chinese Communist Party and the Nationalist Party, in which the Chinese Communist Party leaned towards to Communist values and socialist ideology, and the Chinese Nationalist Party stayed more traditional.

We can also find similarities between betrothal and marriage. Both marriage and betrothal in the Marriage Law required the parties to contract marriage on their free will. As for either contraction or dissolution, both were required to register within the government of Qu or higher. When dissolution was requested for contract with a member of the armed forces in the Sino-Japanese War, the opinion and consent of this member of the armed forces had to be obtained. However, there was also a striking difference between the regulations for betrothal and marriage. For instance, unlike marriage, if one person concluded a betrothal with another person while married, it did not constitute bigamy.\(^{107}\) But one could request marriage’s dissolution because of it.

Regardless of the significance of betrothal, it was rarely mentioned in the early Communist marriage regulations. References to betrothal were absent in the Marriage

\(^{106}\) Ibid., 159.

\(^{107}\) Ibid., 160.
Regulations of the Soviet Republic of 1931 and 1934, in the Shan-Gan-Ning Border Area, and in the Jin-Cha-Ji Area. It was not until 1943 that they started to systematically talk about it in the Jin-Ji-Lu-Yu Border Area. In the 1950 First Chinese Marriage Law, however, the lawmakers ignored betrothal again, returning to the pattern of the Jiangxi Legislation. Why did such a dismissal and ambiguity in marriage regulations happened?

One reason why policies about betrothal were relatively loose and not included much in the law, Meijer argues, was that betrothal as a custom in China did not have to be strictly registered with a government agency. Betrothal was neither a condition for marriage, nor did it have any binding force.\textsuperscript{108} If both parties wanted a betrothal, they could have one, usually with a public ceremony and several witnesses. As for dissolving the betrothal, the process was also relatively easy: it could be carried out just by mutual agreement. Where there was no mutual agreement, the court usually distinguished between betrothals entered into freely by both parties, and betrothals arranged by their parents.\textsuperscript{109} If it was the former case, according to Meijer, the case would be mediated under the supervision of the court.\textsuperscript{110} If it was the latter case, the court required the party who dissolved the agreement to place an advertisement in the newspaper in order to keep the procedure looking clean.\textsuperscript{111} Reasons for dissolution, just like divorce, could be of many kinds, for example, incurable diseases, lack of harmony, and different educational levels.

\textsuperscript{108} Ibid.
\textsuperscript{109} Ibid., 159.
\textsuperscript{110} Ibid.
\textsuperscript{111} Ibid.
However, being a Chinese traditional custom does not fundamentally justify the dismissal of betrothal in the law. As we talked about in the last chapter, one important aspect of the New Culture Movement was to eradicate as many traditional and patriarchal practices as possible. In the early Marriage Regulations in the Jiangxi Soviet, the Chinese Communist Party absorbed the spirit of the New Culture Movement and pushed hard to eliminate traditional patriarchal thoughts. In the case of betrothal, the Chinese Communist Party prohibited presents and material remuneration first in the Jin-Ji-Lu-Yu Border area due to so much evidence of the “feudal marriage system”.\textsuperscript{112} They believed in the Marxist view of Chinese society, such betrothal transactions assured that the woman would later bear a man’s children and work for his family. Betrothal was intrinsically a business transaction of purchase and sale, a feudal act that was harmful for women’s liberation and the democratic New China.\textsuperscript{113} Furthermore, most of the young girls who were betrothed were actually the so-called “foster daughters-in-law” and slave girls. Additionally, as a minor point, because the heads of the two households decided on the amount of the presents, the presents actually symbolized the authority of the head of the family. Finally, according to Meijer, betrothal tended to facilitate unregistered marriage.\textsuperscript{114}

But the Chinese Communist Party did not prohibit betrothal just because it included feudal remnants. Instead, the Party had a certain mild attitude to betrothal because they realized that the offering of presents was an ingrained custom in China

\textsuperscript{112} Ibid.
\textsuperscript{113} Ibid.
\textsuperscript{114} Ibid.
and it would be very hard to prohibit it in the existing circumstances. Betrothal would be especially difficult to outlaw in the countryside, where many people continued to live according to traditional customs. Therefore, the Party made a compromise to have betrothal legal, but prohibited commercial transactions. The Party claimed in Article 5 of the 1943 Jin-Ji-Lu-Yu Border Area Marriage law that when arranging a betrothal, neither party was allowed to extract money or demand other material remuneration. The Party had an even milder attitude to betrothal in the 1950s that only prohibited presents as a condition of marriage. However, such an expedient measure and ambiguity actually put betrothal in a grey area of the law and created many social problems. In reality, people had a new relationship though they were betrothed to someone else. One could even marry another person who was betrothed to someone else without getting into trouble with the law. Though these kinds of actions were highly unethical, they still remained in the safe zone of the law. Given the historical background, many young people not only remained in the safe zone, they even justified and dignified such actions as manifestation of an anti-feudal viewpoint, which was very problematic. The struggle between custom and law for lawmakers was very tough.

**Children Born Out of Wedlock**

The laws about children’s rights got more and more developed as time went on.

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115 Ibid., 172.  
116 Ibid., 295.  
117 Ibid., 172.
Starting with the 1934 Marriage Law of the Chinese Soviet Republic and the Border Areas, the issue of children born out of wedlock, or illegitimate children started to be addressed. In the 1934 Marriage Law of the Chinese Soviet Republic, the Party for the first time had regulations about illegitimate children. They suggested that those illegitimate children should enjoy the same rights as legitimate children by the Marriage Law. Later on in most of the Border Areas, the protection of illegitimate children continued to be a significant part of the Marriage Laws. The protection of illegitimate children should not be seen as a protection for children, but also for Chinese women who bore lots of burden under the pressures of traditional Chinese culture.

In the Shan-Gan-Ning Border Area, the Chinese Communist Party developed very concrete articles to support illegitimate children. Rather than just saying they grant illegitimate children the same rights as legitimate children, which meant that illegitimate children should have the right to be brought up and educated and the right to inherit from both parents, the Party also strictly demanded the father to acknowledge his illegitimate child. For example, in Article 16 of the 1939 Shan-Gan-Ning Marriage Regulations, the Party required the natural father to acknowledge his children as if they had been born in wedlock. Later on in 1944, when the Party revised the marriage regulations, they had an even more specific and rigorous stipulation: they required the local government to compel the father to pay

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118 Ibid., 286.
for the education and living expenses of the child if needed.\textsuperscript{119} Such forceful
government intervention would be a strong weapon in pushing the father to be
supportive for the illegitimate child and the mother. But the question of which family
the illegitimate child belongs to was still probably to be decided by the mother and
father.

I believe the protection of children in the Chinese Marriage Law originated
mostly from the Family Code of the U.S.S.R. Article 16 in the 1939 Shan-Gan-Ning
Marriage Regulations that guaranteed the rights of children born out of wedlock paralleled Article 133 in the Family Rights Chapter of the 1921 Marriage Regulations of Soviet Russia. Article 133 clearly indicated that children descending from parents who were not married had equal rights with those descending from parents living in registered marriage.\textsuperscript{120} Apparently, Article 6 and 133 were stating the same thing. More surprisingly, in the 1921 Marriage Regulations of Soviet Russia, they already had extremely substantial articles and chapters in favor of children’s rights. For example, chapter three in the Soviet Law was about property rights and the obligations of children and parents. In this chapter, Article 162 required that both parents have the duty of maintaining children.\textsuperscript{121} Moreover, this article meticulously regulated that the sum of the maintenance contributed by each parent should not be less than one half of the minimum living allowance fixed for a child in the given locality. Article 165 stipulated the rights of children to receive maintenance from their

\textsuperscript{119} Ibid., 288.
\textsuperscript{120} The Marriage Laws of Soviet Russia, 55.
\textsuperscript{121} Ibid., 61.
parents when the marriage was declared void or was dissolved either by the death of one of them or by divorce. Article 166 guaranteed the maintenance and upbringing of the children after their parents divorced. In case parents had no agreement to benefit the children, the children should have the right to claim the maintenance they were entitled to by law. From the article above we can conclude that by the 1940s, the Border Areas of China were still in the early stages of making laws in favor of children’s rights that were influenced by the Soviet Union. As time went on, we see a clearer imprint of the Soviet influence in the 1950 Chinese Marriage Law and an improvement of Chinese Marriage Law. In the next chapter, I will also further explain why I believe the influence was mainly from the Soviet Union, but not the Chinese Nationalist Party.

**Divorce in the Border Areas**

The Chinese Communist Party made some significant changes to divorce laws compared with the Jiangxi Soviet. However, the principle of “freedom”, and a lack of grounds for divorce gave rise to too much freedom to marry and divorce as one pleased. The social problems and a lack of focus among people were extremely detrimental for China during the war. Therefore, the Party took several approaches and enacted innovative reforms in the Border Area.

**Grounds of Divorce**

In the Border Areas, articles on divorce seemed to follow the Civil Code of the

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122 Ibid.
123 Ibid., 62.
Republic of China very closely. This was a radical break with the provisions of the Jiangxi Soviet Era, and such a difference marked a turning point in the Chinese Communist Party’s policy. We should consider the reason to be not only a matter of united front tactics, but also a response to the wartime reality.

As we discussed in the last chapter, the Chinese Communist Party realized that in the Jiangxi Soviet there were almost no grounds for divorce. In both the 1931 and 1934 Marriage Regulations in Jiangxi, divorce could be obtained if either party wanted it. In a word, too much freedom was given for marriage and divorce, and both marriage and divorce were extremely easy to obtain. For instance, a large amount of women sought divorce while men were actively fighting on the front lines. In order to solve such problems that had emerged in the Jiangxi Soviet and consolidate existing marriages, the Party turned from focus on the Soviet Law Model that they used in the Jiangxi Soviet, to the Civil Code of the Nationalist Party which had substantial regulations on the ground for divorce. Starting in 1939, the Chinese Communist Party started to expand the grounds for divorce. First of all, they changed the condition of divorce: both of the parties had to consent, rather than just one of them. In the Shan-Gan-Ning and Jin-Ji-Lu-Yu Areas, the grounds became very specific. These provisions paralleled Article 1052 in the Civil Law of the Republic of China. They included bigamy, lack of harmony of sentiment, adultery, cruelty to one party by the other, desertion in bad faith, impotence, malignant disease, uncertainty for a period of one year (or two years where communication by letter is impossible) whether the
party is still living.\textsuperscript{124} In general, the Party tried to use specific conditions to constrain women’s requests for divorce and protect men in the Red Army who were fighting on the frontlines.

**Divorce during Women’s Pregnancy**

The Party had a very innovative act that protected women who were pregnant. This act had never existed in either the Soviet Law, or the Civil Law of the Nationalist Party around the same time. More importantly, this act, known for its strong support for women still lasts today. In the Border Areas, this provision was very pervasive. It occurred in all of the areas except the first Regulations in the Gan-Gan-Ning Area which in 1944 also got revised. The Party prohibited a man from seeking divorce while the woman was pregnant or nursing a child; if there were grounds for divorce, such a petition might only be filed one year after the birth of the child.\textsuperscript{125} Meijer adds that these provisions did not apply in cases where the woman had collaborated with the enemy or committed adultery. There was also some variation in the duration of the waiting period in the Jin-Cha-Ji Border Area: the Party shortened the duration from 1 year down to 3 months after the woman gave birth.\textsuperscript{126}

**Divorce of Army Personnel**

Just like the 1934 Jiangxi Soviet Marriage Regulations, the Border Areas carried on the tradition of protecting the army’s interests, easing their worry about family issues, and not allowing their spouses to seek divorce at the time of crisis. Such


\textsuperscript{125} Meijer, 288.

\textsuperscript{126} Ibid.
provisions were enforced in all of the Border Areas. For example, in the Jin-Ji-Lu-Yu Area, the Party prohibited a woman from seeking a divorce from a spouse who was actively fighting in the Sino-Japanese War, unless it had been uncertain for four years whether the spouse was still living.\(^\text{127}\) There was also a slight difference in the Shan-Gan-Ning Area where the women had to wait not four, but five years before being allowed to apply for divorce. At this point, as men were needed for warfare, the Party again prioritized its political goals over social equality and women’s rights, which contradicted the initial intention to protect women’s rights and liberate them.

**Maintenance after Divorce**

As for the financial arrangements after divorce, the Party developed more specific laws in the Border Areas compared with those in the Jiangxi Soviet. The laws stated that when the small children were below four (in the Jin-Ji-Lu-Yu Area) or five years old (in the Shan-Gan-Ning Area), they should be given over to the care of the mother. Such regulations stipulated the specific age to replace the vague expression of “small children” in the previous Jiangxi Soviet Regulation, and in a large extent erased conflicts between the two parties resulting from the ambiguity. Besides this specification, we can also find a certain inheritance from the 1934 Marriage Law that continued to play out and serve its purpose in the Border Areas: both the 1934 Marriage Law and the Border Area Regulations retracted the freedom that women had enjoyed and imposed more inescapable duties on them. For instance, the law

\(^{127}\) Ibid., 295.
stipulated if the father was not capable of bringing up the children and had no means to pay their living expenses after divorce, the mother had to take the responsibility.\textsuperscript{128} What’s more, in the Jin-Ji-Lu-Yu Area, the law even required the man to pay the expenses if after the divorce the woman had no occupation or property, and could not support herself. So in some circumstances, the woman might receive no living expenses, no land, and no support after the divorce if both parties were in poverty.

**Joint Responsibilities and Language**

The 1943 Jin-Cha-Ji Marriage Regulations were very distinctive. For the first time the law started to stress the joint responsibilities between men and women. Articles 11 and 12 stipulated that the husband and wife were bound to live together, and both spouses were jointly responsible for the living expenses and management of the household.\textsuperscript{129} Though at this point we could not tell why this dramatic change happened, we will unpack the rationale behind it in the next chapter, as the 1950 Marriage Regulations borrowed extensively from the 1943 Jin-Cha-Ji Marriage Regulation.

**Conclusion**

The 1934 Jiangxi Soviet Marriage Regulation and the Border Areas’ Marriage Laws were influenced by both the Family Code of the U.S.S.R., and the Chinese Nationalist Party’s Civil Code. Moreover, the Border Areas’ Marriage Laws also

\textsuperscript{128} Ibid.
\textsuperscript{129} Ibid., 291.
included many innovative provisions to adapt to the wartime situation. Meijer argues that the Chinese Marriage Law had only the bare essentials and administrative directives of the Family Law of the U.S.S.R. He further adds that the Russian approach was intellectual in the legal form, but the Chinese law appealed to emotions and political feeling.\footnote{Ibid., 52.} However, I do not agree with him on these points. Though the Chinese Marriage Law at this point was relatively simple compared with both the Family Law of the U.S.S.R. and the Civil Code of the Nationalist Party, the Chinese Communist Party was also actively and constantly updating the laws as their situation changed. In both the 1934 and the Border Areas’ laws, we can always find innovative articles to support women who were pregnant. During wartime, the Party prioritized the military personnel's’ interests and gave them peace of mind. The Party expanded the grounds for divorce when they realized the social problems created by an easily accessible divorce process. They started to think about illegitimate children’s rights, and promulgated laws in almost all of the Communist areas; they were also struggling to balance between traditional culture and law, and the Common Law Marriage was a great example of the challenge. Though the Party had many pitfalls and lacked experience in making new laws, they tried very hard to balance China’s distinctive situation and traditions with socialist values. Though there were obvious weaknesses and pitfalls in the early marriage regulations, we should give the Party some credit for their effort to improve the legal system during the intense wartime period.
Chapter 3: Analysis of the Marriage Law of the People’s Republic of China

After 30 years of war and chaos, the People’s Republic was founded in 1949. One year later, after revising 41 drafts of the Marriage Law, the Chinese Communist Party promulgated the Marriage Law of the People’s Republic of China, which was also called the First Marriage Law of the New China. According to Deng Yingchao, the Chinese legislators spent one and a half years working on the law, researching and collecting marriage data thoroughly in both urban and rural areas of China.\textsuperscript{131} The 1950 Marriage Law continued to be a total rejection of the old system and it included eight explicit chapters: General principles, Contracting Marriage, Rights and Duties of Husband and Wife, Relations between Parents and Children, Divorce, Maintenance and Education of Children after Divorce, Property and Maintenance after Divorce, and By-laws.\textsuperscript{132} In this chapter, we will continue to compare this New Marriage Law with the previous Jiangxi Soviet Marriage Regulations and the Border Areas’ laws, dig into the new law’s inheritance and change, and try to better understand the origin and the rationale behind it. In this chapter, I will explain the articles one by one.

The 1943 Jin-Cha-Ji Border Area’s Marriage Regulation as a Predecessor

Before starting to analyze this chapter, I want to point out that many distinctive principles and expression that seemed to be new in the New Marriage Law were


\textsuperscript{132} Meijer, 300.
actually innovations of the 1943 Jin-Cha-Ji Border Areas’ Marriage Regulations. However, such significant overlapping has been largely ignored by historians. For instance, it was the Jin-Cha-Ji Border Area’s Marriage Regulation that first included the chapter “Rights and Duties of Husband and Wife”. This chapter obligated husband and wife to live together and demanded that both parties share the responsibility for the living expenses and management of the household.\textsuperscript{133} The New Marriage Law borrowed the idea and the exact chapter. However, it expanded and deepened this section by stipulating both parties’ equal rights to choose occupation, to use his or her own family name, and to inherit each other’s property.\textsuperscript{134} The Jin-Cha-Ji Border Area’s Marriage Law was also the first marriage law that provided widows with the freedom to remarry and prioritized the interest of the child when the judicial body ordered a divorce.\textsuperscript{135} I will demonstrate the detailed parallels through an analysis of the New Marriage Law in this chapter.

**General Principles**

The General Principles in this new version of law did not change much compared to the Border Area’s Marriage Regulations. The Chinese Communist Party still aimed at fighting against patriarchal marriages by enforcing the love-based conjugal family, which had been the principle throughout the Jiangxi Soviet Period and Border Area. The first article abolished the feudal marriage system, and introduced the

\textsuperscript{133} Ibid., 292.
\textsuperscript{134} Ibid., 300.
\textsuperscript{135} Ibid., 292.
new-democratic marriage system that was based on monogamy, equal rights for both sexes, and the protection of women and children.\textsuperscript{136} The idea of love-based conjugal families can be traced back to influences from the New Culture Movement, and the idea of granting equal rights for both sexes was an important part of the Family Law of the U.S.S.R. Protection for women and children was also included in the General Principles. But we should notice similar articles had occurred before. Article 19 in the 1943 Jin-Cha-Ji Marriage Regulation claimed “the judicial body would be in the interest of the children”\textsuperscript{137}. Article 2 in this new law condemned “feudal acts” such as bigamy, concubinage, child betrothal and the exaction of gifts in connection with marriages, as well as promoted the remarriage of widows.\textsuperscript{138} The language of this article was very concise and explicit. Though the article did not contain an exhaustive list of feudal acts such as taking foster daughter-in-law, keeping slave girls and renting wives that had been mentioned in previous regulations, they were all implied by the expression of “child betrothal and the exaction of money and gifts in connection with marriages”. Furthermore, the advocacy for the remarriage of widows that had first occurred in Article 10 of 1943 Jin-Cha-Ji Border Area was mentioned here again in the General Principle of the New Marriage Law.\textsuperscript{139}

\textbf{Contracting Marriage}

The contracting of marriage was similar with the Jiangxi Soviet Marriage

\textsuperscript{136} Ibid., 300.
\textsuperscript{137} Ibid., 292.
\textsuperscript{138} Ibid., 300.
\textsuperscript{139} Ibid., 292.
Regulations and the ones in the Border Areas, except for the act that marriage registration became more prominent. Article 3 continued to require the willingness of both parties to contract a marriage, and said no third party should intervene.\textsuperscript{140} Article 4 kept the legal age of marriage the same, with men at 20 and women at 18.\textsuperscript{141} Article 5 listed the impediments to marriage due to their eugenics policy. It followed the pattern of Article 69 of the 1921 Family Law of the U.S.S.R. that prohibited consanguine marriage between all relatives in the direct line, including full or half brothers and sisters.\textsuperscript{142} The law also continued to demand people not to get married if one party was suffering from venereal disease, mental disorder, leprosy or any other disease.\textsuperscript{143} Article 6 continued to require citizens to register their marriage with the People’s Government.\textsuperscript{144} However, as the Party required registration in all cases of marriage, this made it unlike the Common Law Marriage in the Border Areas. From here we can also tell that after the Wartime Period, the Chinese Communist Party started to centralize its powers and control more aspects of people’s lives, as they were no longer burdened by war. One example of the systematic control over citizens and their personal lives was the Hukou System (Household Registration), which was promulgated in 1958 to control the movement of people between urban and rural areas. In general, the law said a worker seeking to move from the country to urban areas to take up work there should apply through the relevant bureaucracies. The

\begin{flushright}
\textsuperscript{140} Ibid., 300. \\
\textsuperscript{141} Ibid. \\
\textsuperscript{142} The Marriage Laws of Soviet Russia, 39. \\
\textsuperscript{143} Meijer, 300. \\
\textsuperscript{144} Ibid.
\end{flushright}
Hukou System allows the government to tightly control and regulate the rural-to-urban migration, and the overall population. According to Solinger, the Hukou System not only controls where the person could live, but also social rank, wage, welfare, food relations, and housing.145 Another example was the establishment of the work unit system (单位). In this system, marriage was a complicated process of application, investigation, obtaining permission and registration.146 The New Marriage Law was another important mechanism for the government to build state authority.

The New Marriage Law was an important mechanism for the government to build state authority. In the propaganda pamphlet Li Fengjin: How the New Marriage Law Helped Chinese Women Stand Up, we can see that the Chinese Communist Party tried to have social benefits such as teamwork and productivity fit into a nation building context. In the pamphlet, the country girl Li Fengjin who had an unhappy arranged marriage eventually achieved her liberation under the protection of the New Marriage Law. She and her new husband Gu Shuijin became political activists who embraced the Law and the Communist Party. With the help of the New Marriage Law and the People’s Government of Wu County, they were no longer bothered by the oppressive Chinese traditional marriage. We see that an ideal happy conjugal relationship was portrayed in the Li Fengjin pamphlet by making them appear free, happy, and

145 Solinger, Dorothy (1991) China's Transients and the State: A Form of Civil Society, Hong Kong: Hong Kong Institute of Asia-Pacific Studies, the Chinese University of Hong Kong, 8.
working together hard to farm together. Gu said “We should return the government’s benevolence with enthusiastic production and support for the front line”, and Li also commented “We are grateful to the Communist Party and to Chairman Mao.”147 From here we can also find that the PRC formula emphasized a lot on social contribution. As Glosser summarized, “happily married couples not only produced more vehicles, corn or what have you for the state, but they also made their happier families. The cooperative efforts that followed a thoughtful free marriage resulted in the increased prosperity of the family and days passed in happiness.”148

**Rights and Duties of Husband and Wife**

The chapter of “Rights and Duties of Husband and Wife” was relatively new. The principle of equality between men and women was one of the main themes of this new chapter. This chapter was an expanded version of the 1943 Jin-Cha-Ji Border Area’s Marriage Law. The law appeared to regulate more shared rights between husband and wife. However, in reality, it was more beneficial to women than to men as it granted them more down-to-earth rights and equality. Additionally, it is from this chapter that we can tell the Chinese Communist Party’s new connotation of family—family was not only the love-based conjugal family that they had advocated


in the Jiangxi Soviet and the Border Areas, it was also a unit, and a socialist cell that linked marriage, family and socialist society like the U.S.S.R. had done years ago.\footnote{Meijer, 73.}

Article 10 of the new law paralleled the law of 1943 Jin-Cha-Ji Border Area demanded husband and wife to have equal rights in the possession and management of family property.\footnote{Ibid., 301.} It suggested that the property that a couple acquired in their marriage became the families’ common property.\footnote{Ibid., 73.} This equalization of property could also be found in Article 12 which granted both husband and wife the right to inherit each other’s property.\footnote{Ibid., 301.} Article 7 required that, as companions living together, a husband and wife should enjoy equal positions at home.\footnote{Ibid., 300.} The term “companions” suggested the solidarity between comrades in arms.\footnote{Ibid., 72.} Article 8 stipulated that husband and wife were bound to love, respect and look after each other, to live in harmony, to engage in productive work, to care for children and to strive jointly for the welfare of the family and for the building up of the new society.\footnote{Ibid., 301.} This article was very special in three ways. First, love was given an ideological basis. According to Xu, “support” did not only mean in a material sense, but also in a moral and ideological sense. The duties of spouses towards one another were parts of their broader social duties as good citizens of the new community.\footnote{Xu, 200.} Second, the legislator’s expression was very slogan-like. Such expressions had never occurred in
the past marriage regulations, but have been prevalent in Chinese official documents today. The Chinese Communist Party articulated the socialist discourse very clearly that the marriage law did not only regulate the relations between husband and wife, but it functioned as a tool to regulate the whole society.

Article 9, 11, and 12 further demonstrated the detailed equalities between husband and wife. Article 9 regulated the equality in the choice of profession and participation in work and social activities. This article officially broke the division of labor between men and women. In traditional China, women were supposed to work in private spaces while men worked in public spaces. Neiren (内人), which translates as “my humble wife”, is actually literally the Chinese character “inside person”, or the person who is supposed to stay inside the house. Article 11 granted women the right to use their own family name. This was contrary to the Nationalist Party’s Law which in Article 1000 said women should prefix their names with that of their husbands. Using the husband’s family name compensates the husband’s lineage, but using women’s own family name strongly shows their individuality and independence. Allowing women to use their own family name was significant, as it allowed women to pursue “autonomous personhood”, or individualistic emancipation, which Chen Duxiu advocated for in the New Culture Movement. In the book Women in the Chinese Enlightenment, Wang Zheng described that during the New Culture Movement, Chen Duxiu had called on young men and women to discard the

157 Meijer, 301.
Confucian and patriarchal mentality, and establish independent personhood.\(^{159}\) In the book, he kept memoirs of a number of strong independent women who refused to get married and wanted to retain their individual personhood in the early 1900s. Chen Yongsheng, a pioneer educator and one of the women who were in the memoirs recounted:

I decided not to get married due to two reasons; one is I wanted devote myself to physical education because a strong nation depends on a strong race, and we should improve women’s health. Another reason is that women’s life was too hard, and they had no status. I saw many women had many children, but their men were absent from home, fooling around with other. Women could not get a divorce, and they suffered like a widow, but with a husband!\(^{160}\)

But we should also be clear not many women were like Chen, who embraced celibacy and autonomous personhood. Most of Chinese women during the Republican Era and early Communist Era still lived under a patriarchal society and relied on the men in the family. The famous Chinese saying “if a women married a chicken, she has to follow the chicken; if she married a dog, she has to follow the dog” (嫁鸡随鸡，嫁狗随狗) was a clear demonstration on the lack of individual personhood.\(^{161}\) Article 9, 10, and 11 in the New Marriage Law were very progressive and transformative. They allowed women to use their own family names, broke the Confucian and patriarchal value, and fully demonstrated the Chinese Communist Party’s support of marital equality for women. This action would increase women’s consciousness of their own


\(^{160}\) Ibid., 262.

\(^{161}\) Ibid.
The Chinese Communist Party created a chapter to systematically stipulate the relationship between parents and their children. In order to do this, they borrowed from the model of the Chinese Nationalist Party who, in their 1930 Civil Code of the Republic of China, had a chapter called “parents and children” which talked about parent’s and children’s rights. Moreover, the Chinese Communist Party's chapter also borrowed extensively from Border Areas Law that systematically protected children born out of wedlock.

Compared with the 1930 Civil Code of the Republic of China, the new regulations concerning parents and children were more liberal and progressive. The 1930 Civil Code was greatly influenced by the Confucian value of obedience which said the son should be obedient to his father and women be obedient to their husbands. In Article 1085 of the Civil Code, it stipulated that parents might, within the limit of necessity, inflict punishment upon their children. In contrast to this article, Article 13 in the new law emphasized the duty of mutual respect and assistance between parents and children. It demanded that parents rear and educate children, and said that children should support and assist their parents. To be more specific, they clarified that such provision should also be applicable foster-parents and foster-children. They

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162 Meijer, 301.
164 Meijer, 301.
also continued to prohibit things that had been made illegal in the Border Areas, such as infanticide by drowning and similar criminal acts.\textsuperscript{165} Furthermore, the new law was more considerate in regards to the relations between parents and children. Compared to Article 1087 of the Nationalist Party’s Civil Code that stated children had the right to inherit their parents’ property, the new law insisted that both the child and parents should have the right to inherit one another’s property\textsuperscript{166}.

Moreover, inherited from the regulations of the Border Areas, Article 15 continued to declare the rights of children born out of wedlock. Also, it clearly stated that no person should be allowed to harm or discriminate against them, which was a common phenomenon in Chinese traditional society.\textsuperscript{167} Article 16 added that no discrimination should be made between children of the current and those of a former marriage.\textsuperscript{168}

\textbf{Divorce}

This chapter is a mixture of the Jiangxi Soviet and Border Areas’ legislation with new ideas regarding more government mediation. Article 17 continued to require mutual consent as a basis of seeking divorce. If both husband and wife desired to divorce, they had to register with the District People’s Government, which would provide divorce certificates.\textsuperscript{169} If only one party insisted on divorce, however, the

\begin{footnotesize}
\begin{enumerate}
\item[Ibid.]
\item[Ibid.]
\item[Ibid.]
\item[Ibid.]
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\item[Ibid.]
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\end{footnotesize}
procedure got more complicated. The district people’s government would intervene and try to effect reconciliation. If the mediation failed again, the people’s government could not prevent the parties from appealing to the municipal court. The municipal court would again try their best to reconcile between the two parties. The law was new in the way it provided government mediation and reconciliation, as the Chinese Communist Party did not see divorce as a solely privately concern. The judiciary possessed a more inclusive power to implement policies. Lastly, Article 17 also provided an opportunity for people to repair the marriage after divorce. It said that if the husband and wife desired the resumption of marital relations, they should apply to the district people’s government for a registration of marriage, and the government should accept such registration and issue certificates of remarriage.\textsuperscript{170} Compared with previous regulations, this article was more considerate in that it recognized the possible situation of desiring remarriage.

Continuing the Border Areas’ regulation, in order to protect women who were pregnant, Article 18 prohibited a man to apply for divorce while his wife was pregnant or nursing a child. The waiting period remained one year after the child’s birth.\textsuperscript{171} Article 19 also maintained the Border Areas’ laws regarding divorce with military personnel even though Sino-Japanese War had ended.\textsuperscript{172} One explanation for such continuity was that the Korean War was going on at the time.\textsuperscript{173} The provision

\textsuperscript{170} Ibid.
\textsuperscript{171} Ibid.
\textsuperscript{172} Ibid.
\textsuperscript{173} “Guanyu chuli zai chaoxian zhanzheng zhong beifu huo shizong zhi geming junren hunyin anjian de lianhe tongbao” 关于处理在朝鲜战争中被俘或失踪之革命军人婚姻案件的联合通报
stipulated if the member of revolutionary army was on active service, his spouse could not petition for divorce unless she got the consent from him. If for two years the wife had not been in correspondence with her soldier husband, she was allowed to apply for divorce.\textsuperscript{174} This protocol regarding divorces with army personnel has continued to last until today.

It also noteworthy that compared with the Border Areas’ law which had substantial conditions for divorce, the New Marriage Law did not mention any grounds for divorce. According to Xu, the Chinese Communist Party had been struggling with the issue of whether or not to have conditions for divorce for a long time. Eventually they decided not to include the conditions because it might be a hindrance for women who sought divorce.\textsuperscript{175} Another explanation was that the medication prescribed by the People’s District Government could contest divorces. In general, the 1950 law allowed for the possibility of divorce only if mediation failed; even then, the court could reject a divorce suit.\textsuperscript{176}

**Financial Arrangements after Divorce**

This chapter concerning the maintenance and education of children after divorce was also derived from the regulations in the Jiangxi Soviet and Border Areas. The

\textsuperscript{174} Meijer, 302.
\textsuperscript{175} Xu, 203.
general rule explicitly stated that the father and mother would still be responsible for supporting and educating their children even after divorce. Article 20 allowed the mother to have custody of a baby still being breast-fed and after the weaning of the child, both parties could decide over the guardianship. The Party changed women’s custody of a baby from “before reaching four or five years old” to “before the weaning”, which was more specific. Another important aspect in this chapter was that as the Sino-Japanese War had already ended in 1949, there was not much law in favor of men that allowed them to get out of paying maintenance. Clearly, mobilizing men for revolution was not the object but rather the rebuilding of women’s rights. Therefore, similar to the 1931 Jiangxi Soviet Marriage Law, Article 21 imposed the responsibility on the father to pay part or the whole cost of maintenance and education without considering their financial situation. But what is noteworthy is that the mandatory regulation about men bearing two-thirds of the living expenses was gone. Instead, the law granted responsibility to the court and said that if both parties failed to reach an agreement, the people’s court should render a decision. Finally, Article 22 specified that if the woman remarried, the former husband still remained financially responsible for the children, but the new husband could in part shoulder the burden.

Property and Maintenance after Divorce

177 Meijer, 302.
178 Meijer, 282.
179 Meijer, 302.
Property-related issues became a separate chapter in the 1950 Marriage Law. The law built on the previous marriage regulations and more systematically explained how both parties should deal with their individual and common property. Article 23 regulated that after divorce, the property which a woman had possessed prior to her marriage still belonged to her.\(^{180}\) The law said that other family property should be divided by agreement, and that the court should guide the state of the family property if the parties failed to make an agreement.\(^{181}\) Moreover, the law said the court should act in the interest of the wife and children due to the principle of “benefiting the development of production.”\(^{182}\) The law further stipulated that debts incurred jointly by husband and wife during their marriage should be paid out of the property jointly acquired by them during this period. It said that debts incurred separately by the husband or wife should be paid off by the party responsible.\(^{183}\) Lastly, if one party had not remarried and had maintenance difficulties, the other party was required to render assistance.\(^{184}\)

**Conclusion**

The 1950 Marriage Law of the People’s Republic of China did not come to be overnight, but through a long process, drawing from various legal works and movements. We can see that each and every law and regulation from the early 1930s

\(^{180}\) Meijer, 302.
\(^{181}\) Ibid.
\(^{182}\) Ibid.
\(^{183}\) Ibid.
\(^{184}\) Ibid.
to the late 1940s impacted the New Marriage Law. Unlike what Susan L. Glosser argued that the Chinese Marriage Law mainly borrowed from the Nationalist Party, by analyzing the Law from article to article, we find that the New Marriage Law closely resembles the previous marriage regulations in the Jiangxi Soviet and incorporates experiences gained in the Border Areas. The New Marriage Law continued to fight against patriarchal marriage, enforced the love-based conjugal family and more importantly, gave women legal equality with men in many aspects. Theoretically, the New Culture Movement and the Soviet Family Law had a greater impact on the New Marriage Law than the Civil Code of the Republic of China.

There were major changes in the New Marriage Law: women’s rights shifted back to become the main focus once again, and the socialist discourse which once dominated the Jiangxi Soviet laws, also dominated the New Marriage Law. In this Law the social requirements and family needs, the personal and the public, the individual and the collective were all gathered under the roof of the ‘big family’ that belonged to the socialist society.\footnote{Xu, 200.} For example, Article 8 stipulated that husband and wife were bound to love, respect and look after each other, to live in harmony, to engage in productive work, to care for children, and to strive jointly for the welfare of the family and for the building up of the new society.\footnote{Meijer, 301.} We can see that the Chinese Communist Party imposed duties on citizens, not only to have a happy conjugal family, but also be dedicated to nation building and modernization of China.

In addition, as the Wartime Period was over, the Chinese Communist Party...
started to centralize its power and take control of more aspects of the peoples’ lives. The New Marriage Law became an effective mechanism for the Party to increase state power, strengthen its nation building efforts, and encourage production and teamwork.

In the Li Fengjin Pamphlet, an ideal happy conjugal relationship was portrayed by making the couple appear to be free, happy, and hardworking, depicting them working together on a farm. The Party also required registration in all cases of marriage, including Common Law Marriage which had been an exception in the Border Areas. Moreover, the Hukou System that aimed to control the movement of people between urban and rural areas and the establishment of a work unit where workers were bound for life were further examples of state control.

Unlike the Chinese scholars who only acknowledged the origin of the early Chinese Communist Party’s Laws to be Soviet influenced, I believe that the early Chinese Communist Party’s marriage laws had multiple influences from the New Culture Movement, the 1930 Civil Code of the Republic of China, Chinese revolutionary legacy, China’s patriarchal tradition, and China’s distinctive wartime historical context. Although the Chinese marriage laws resembled the 1921 Family Law of U.S.S.R and the 1930 Civil Code of the Chinese Nationalist Party, they were not replicas of either law. In fact, as the Chinese Communist Party’s situation continued to change, they were actively and constantly updating the marriage laws. For example, in both marriage regulations of the 1934 Jiangxi Soviet and the Border Areas there were innovative and distinctive articles to support pregnant women. During times of war, the Party prioritized the military personnel’s involvement in the
war effort and gave them peace of mind so they would not have to worry about family issues. During the early 1940s, the Party started to seriously consider minority group rights, such as rights for illegitimate children and widows. The lawmakers sought to balance traditional Chinese ideas and Marxist values with the wartime situation in creating appropriate marriage laws. However, often times they could not find a balance between these ideologies because tradition and old time morality were on the opposite side of the progressive agendas in the laws. This is why the early Chinese marriage laws became one of the most important, but radical legal works in Chinese history.
Appendix A: Marriage Regulations of the Chinese Soviet Republic\textsuperscript{187} (Promulgated 1st December 1931)

\textit{Chapter One. General Provisions}

Article 1. The principle of freedom of marriage between man and woman is 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.

\textit{Chapter Two. 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 \textit{hsiang} or municipal soviet to register the marriage and receive a marriage certificate. Marriage presents, whether in money or goods, and dowries are abolished.

\textit{Chapter Three. Divorce}

Article 9. Freedom of divorce is established. Whenever both the man and the woman agree to divorce, the divorce shall have immediate 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 Four. Care and Custody of Children after Divorce

Article 11. The man is to raise the children born before the divorce. If both the
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 Five. 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 of 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 Six. 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 Four shall be applicable.

Chapter Seven. 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 B: Marriage Law of the Chinese Soviet Republic

(Promulgated 8th April 1934)

Chapter One. 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 Two. 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. 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.

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Chapter Three. 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 affected.

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 Four. 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 Five. 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 will 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 Six. 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 Seven. 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 promulgation.
Appendix C: Marriage Regulations of the Shaanxi, Gansu, Ningxia Border Area\textsuperscript{189}

(Promulgated 4th April 1939)

\textit{Chapter One. 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 Shaanxi, Gansu, and Ningxia.

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’.

\textit{Chapter Two. 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 \textit{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.

\textsuperscript{189} Originally collected in \textit{Genjudi fazhi wenxian xuanbian}, vol.4, 804-806. Translated in Meijer, 285-287.
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 Three. 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.

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 Four. 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 themselves. 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 publicity accused by the procuratorial organs and be dealt with as the law may require.

Chapter Five. 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 D: Revised Provisional Marriage Regulations of the Shaanxi, Gansu, Ningxia Border Area\textsuperscript{190}

(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

\textsuperscript{190} Originally collected in \textit{Genjudi fazhi wenxian xuanbian}, vol.4, 808-810. Translated in Meijer, 288-289.
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 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 whether 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 Shaanxi, Gansu and Ningxia promulgated on 4 April 1939 shall immediately be abrogated.
Appendix E: Marriage Regulations of the Shanxi, Ch’ahar, and Hebei Border Area

Passed by the first session of the Consultative Assembly of the Jin-Cha-Ji Border Area on 21 January 1943, and promulgated by the Administrative council of the Jin-Cha-Ji Border Area on 4 February 1943.

**Chapter One. 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 mirage by means of which one wife has more than one husband, are forbidden.

**Chapter Two. 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 by blood or marriage; (ii) collateral relatives by blood within the eighth degree; but this provision does not

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apply to biao 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 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 Three. 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 Four. 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 offence; (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 that 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 Five. 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 Jin-Cha-Ji Border Area promulgated 7th July 1941 shall at the same time be abolished.
Appendix F: The Marriage Law of the People’s Republic of China

(Promulgated 1\textsuperscript{st} May 1950)

\textit{Chapter I. General Provisions}

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 remarriage of widows, and the exaction of money or gifts in connection with marriages, are prohibited.

\textit{Chapter II. The Marriage Contract}

Article 3. Marriage is based upon the complete willingness of the two parties. Neither party shall use compulsion nor is no third party 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.

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

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they reside. If the proposed marriage is found to be in conformity with the provisions of the 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 is 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 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 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 certificate without delay.

When one party insists on divorce, the district people’s government may try to effect reconciliation. If such mediation fails, it should, without delay, refer the case to the county or municipal people’s court. In dealing with a divorce case, the county or municipal people’s court

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 remarriage. The district people’s government should accept such a registration and issue certificates of remarriage.

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 a 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 remarries 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 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 remarried 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 the 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.
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