

Leftover Women's Choices in Marriage and Childbearing: Navigating through the Complexities of State Law, Social Attitudes, and Parental Expectations

by

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We acknowledge with respect the Lekwungen peoples on whose traditional territory the university stands and the Songhees, Esquimalt and WSÁNEĆ peoples whose historical relationships with the land continue to this day.

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Abstract

In recent years, unmarried women in China face great pressure to marry when they reach their late 20s and beyond. These women are referred to as leftover women, a terminology that plays into the notion that they fail to sell themselves in the marriage market at the best timing.

Based on interviews and focus groups with leftover women in China, this dissertation situates their choices in the complexities of social and legal orders in today's China to make sense of their decisions. Starting with a postcolonial critique of current literature on leftover women, this dissertation revisits leftover women's decisions and demonstrates how their choices are made after evaluating all the available options rather than decisions made out of false-consciousness. I discuss how societal and parental expectations interact with state law to affect leftover women's choices in marriage and childbearing. To understand how leftover women navigate through multiple levels of social ordering, I investigate the legal consciousness of these women when they judge which level(s) of social ordering they should follow. My analysis of leftover women's strategies in engaging with state law challenges the assumption that ordinary Chinese people's reluctance to use the formal legal system is a result of their lack of legal knowledge.

My interviewees' emphasis on family relations and public attitudes regarding marriage and childbearing complicates and contributes to feminist relational theory by questioning its strong attachment to autonomy. Building on postcolonial feminist legal thoughts, I advocate that feminist relational theorists need to distance themselves from autonomy in order to understand the choices made by women who prioritize familialism over individualism. To unsettle feminist relational theory's unconditional attachment to autonomy, I elaborate on leftover women's understandings of the relationship between the self and the family and other people in their social networks. This elaboration is achieved by investigating the impact of societal and parental expectations, as well as leftover women's participation in constructing the notions of filial piety and motherhood.

This dissertation offers a detailed discussion of leftover women's choices in marriage and childbearing by demonstrating their navigation through multiple levels of social ordering. It also provides a postcolonial analysis of the approach of "blaming culture," which has been used by many scholars who study leftover women, as well as other issues concerning marginalized populations in authoritarian states such as China. At the same time, this dissertation illustrates a way of analyzing women's choices without focusing on autonomy, which is of great importance for research on women whose culture prioritizes familialism over individualism. This dissertation also contributes to the areas of legal consciousness and legal pluralism by explaining ordinary people's reluctance to separate state law and non-state social ordering. This is a timely empirical study aiming to serve as a springboard to invite future research on law and emotions, and law and family relations, relationships and legal consciousness, and postcolonial analysis of the impact of patriarchal Confucian culture and Chinese legal culture in general.

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Dedication

For my parents, with whom this journey began;
and
for Qi, with whom I share the joy of all of my academic and life's adventures.

Chapter 1: Introduction

One early morning during the Chinese New Year in 2016, I received a phone call from my family. My parents were having dinner with the extended family members of my father's side, and they took turns to speak to me. Not surprisingly, quite a few relatives asked me to spend more time and energy looking for a suitable man to marry, as in their eyes, I am already a "leftover woman."¹ I could even hear my grandmother's voice in the background, saying that she was dying and asking me when I was going to bring someone back to show her.

"Leftover women (剩女)" is a term of recent origin in China that refers to women² who do not follow the practice of marrying before they reach their late 20s. It plays into the notion that these women fail to sell themselves in the marriage market at the best timing, and as a result, they are considered as "leftover" products that depreciate in value. Unsurprisingly, many of the women who fall into this category have received better education and are more focused on their careers than the older generation of women in China. In theory, their success in education and career development should have provided them with unprecedented opportunities to consider alternative family structures, such as

¹ In China, unmarried women over the age of 27 are often stigmatized as "leftover women." For more information about the definition of leftover women, see, for example, Sandy To, *China's leftover women: late marriage among professional women and its consequences*, (NY: Routledge, Taylor & Francis Group, 2015); Leta Hong Fincher, *Leftover women: the resurgence of gender inequality in China*, (London: Zed Books, 2014); Xuesong Zuo & Daoyu Xia, "Jiangou nvxing yu nvxing jiangou - jiangou zhuyi shiyu zhong 'shengnv' weiji yinfa de shehuixue sikao" (2008) 88 *Collection of Women's Studies* 11; Arienne Gaetano, "'Leftover Women': Postponing Marriage and Renegotiating Womanhood in Urban China" (2014) 4:2 *J Research in Gender Studies* 124.

² In this dissertation, I define "women" as inclusive of transgender women and gender non-binary folk. Although all women who participated in my research were assigned female at birth, it is my hope that my research can also have some implications for investigating the impact of state law and other forms of social ordering on transgender women.

remaining single or establishing women-led families. In practice, however, these women live under great pressure to marry and give birth.

Social scientists may find it interesting to investigate the root cause of this pressure to marry and how these women deal with the pressure. At the same time, feminist legal scholars may focus more on what state law can do to ensure leftover women's freedom in marriage and childbearing. As a law and society scholar, a feminist, and a social scientist at heart, I am interested in the impact of multiple levels of social ordering on leftover women's choices; and how leftover women themselves approach, use, think about, and participate in constructing legality in everyday life. This is the research question I am going to address in this dissertation. I see leftover women's lived experience as a way-in to study how state law and other levels of social ordering in China interact to shape people's choices in everyday lives. I choose to focus on leftover women because their choices are shaped simultaneously by state law, family relations, and social expectations, among other levels of social ordering. At a time when China is undergoing rapid economic and social transition, leftover women are navigating their way through the requirements of state law, social norms, and parental expectations. All these state law and non-state orders are constantly evolving; adapting to social changes but not necessarily reflecting individual needs. A better understanding of how state law interacts with other levels of social ordering in shaping leftover women's choices not only lays the foundation for future legal reforms concerning women's rights but also offers an insight into how state law really operates in women's daily lives.

This dissertation studies leftover women's navigation through the complexities of state law and multiple levels of social ordering in the process of making decisions in

marriage and childbearing, with the aim to make a broader contribution to the areas of feminist legal theory and law and society in general. Drawing on legal pluralism, feminist relational theory, postcolonial feminist theory, and critical literature on gender relations in China, I argue that by participating in the construction of legality through their everyday actions and practices, leftover women's decisions are choices made after evaluating all the available options rather than decisions made out of false-consciousness under an oppressive situation. Central to this argument is an emphasis on leaving it to leftover women themselves to define legality and essential values of human life. Through interviews and focus groups with leftover women, this dissertation takes issue with the dominant approach of blaming the so-called "traditional" Chinese culture for leftover women's pressure to marry; attracts attention to state law and non-state orders but emphasizes the interaction and inseparability of multiple levels of social ordering; challenges feminist legal theory's strong attachment to autonomy in studying women's choices; criticizes the assumption among some, if not most, Chinese legal scholars that ordinary people's³ reluctance to invoke state law results from their lack of legal awareness; and questions the popular approach of demanding rights from the state for those who do not agree with dominant social norms. By addressing all these questions together, this dissertation aims to facilitate a better understanding of leftover women's

³ The term "ordinary people" is used extensively in legal consciousness research. While Susan Silbey and Patricia Ewick use ordinary people to refer to people who have not had legal education or training, I take side with Rosie Harding that this designation is problematic because there are no studies that systematically compare the legal consciousness of lawyers and non-lawyers. See Patricia Ewick & Susan Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998); Rosie Harding, *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives* (Abingdon: Routledge, 2011) p. 34. In addition, even lawyers themselves may see things differently when they are not wearing the lawyer's hat. For this reason, I do not deliberately exclude the narratives of those who have legal education or training in the discussion of legal consciousness, although I make sure I mention their legal training whenever I include the narratives of lawyers.

choices in marriage and childbearing. More importantly, it ultimately uses leftover women's lived experience to offer insights into law and family relations, legal consciousness in Chinese society, and postcolonial analysis of feminist legal theory. Each chapter of this dissertation in this regard can also be read separately, as each of them tries to offer a different set of examples and addresses an issue at a time. I will provide a brief overview of each chapter at the end of this introductory chapter. Collectively, the chapters weave the impact of multiple levels of social ordering together to provide a comprehensive picture of leftover women's navigation through the complexities, intending to encourage scholars to revisit feminist legal theory from a postcolonial perspective.

After listing my research question, argument, and contribution, I will now turn to discuss what this dissertation is about for my potential readers. This dissertation is intended to contribute to a wide variety of ongoing conversations. It is aimed at the diverse group of my fellow feminists, law and society scholars, and many different people across disciplines who are interested in gender and China. It aims to engage policymakers, lawyers, judges, and activists who are fighting for women's rights and equality, especially those who focus on China. It is also intended to reach the general public, especially those interested in leftover women, marriage and childbearing, family relations, and how networks of relationships work in China. Generally speaking, this doctoral project mainly touches upon the following aspects.

It is about leftover women, broadly defined. The focus of this dissertation, however, is the process of "making" leftover women, rather than elite women's experience. Most existing studies on leftover women are conducted by scholars in the

area of sociology, with a focus on leftover women's lived experiences and the strategies they adopt to look for marriage partners.⁴ There are, however, disagreements in current literature about the criteria for defining leftover women in terms of their social status, intention to marry, and relationship status. According to Leta Hong Fincher, "the derogatory term 'leftover' woman or *shengnv* (剩女) is widely used to describe an urban, professional female in her late twenties or older who is still single."⁵ In general, scholars who conduct research on leftover women tend to agree with Fincher's argument that the official definition of "leftover women" was coined by the Chinese state in 2007 to push urban, professional women into marriage.⁶ Most scholars emphasize the following characteristics: well-educated, financially independent, urban, and remaining single by their late 20s.⁷ Xudong Fang, on the other hand, asserts that non-elite women should also be included in the category of leftover women because people have already been using the term "leftover women" widely to refer to women of different social status.⁸

⁴ To, *supra* note 1; Sandy To, "'My Mother Wants Me to *Jiaru-haomen* (Marry Into a Rich and Powerful Family)': Exploring the Pathways to 'Altruistic Individualism' in Chinese Professional Women's Filial Strategies of Marital Choice" (2015) 5:1 SAGE Open; Aiping Luo, Feng Wang & Yu Jiang, *Zhongguo Shengnv Diaocha* (Guangdong: Guangdong Renmin Chuban She, 2014); Haiping Wang & Douglas A Abbott, "Waiting for Mr. Right: The Meaning of Being a Single Educated Chinese Female Over 30 in Beijing and Guangzhou" (2013) 40 Women's Studies Intl Forum 222; Yingchun Ji, "Between Tradition and Modernity: 'Leftover' Women in Shanghai" (2015) 77:5 J of Marriage and Family 1057; Gaetano, *supra* note 1.

⁵ Fincher, *supra* note 1 at 2.

⁶ *Ibid* at 2–3.

⁷ Zuo & Xia, *supra* note 1; Luo, Wang & Jiang, *supra* note 4; To, *supra* note 1; Gaetano, *supra* note 1; To, *supra* note 4; Ji, *supra* note 4; Fincher, *supra* note 1; Yajun Zhang, "Woguo 'shengnv' wenti de shehuixue sikao" (2011) 96 J of Shandong Women's University 20.

⁸ Fang Xudong, "Shui" shi "Shengnv" (2016) 32:1 Lanzhou Wenli Xueyuan Xuebao 91.

Some scholars insist that only those who have desires to marry can be considered as leftover women,⁹ while some incorporate experiences of single women who are considering alternative relationship forms outside marriage, such as collective forms of support networks, non-sexual friendship networks, and cohabitation.¹⁰ Current studies on leftover women also define “single” differently: Sandy To and Yingchun Ji use the term “single” to refer to women who have never been married but may have boyfriends and were in a relationship at the time of the interviews.¹¹ Arianne Gaetano includes women who were divorced in her research.¹²

Instead of dividing women into different categories and judging whether a particular woman meets the criteria of the official definition of “leftover women,” I focus instead on how multiple levels of social ordering affect unmarried women’s choices in marriage and childbearing. To be specific, for a socio-legal study on leftover women’s choices in marriage and childbearing, whether a particular woman meets the criteria of professional, well-educated, urban, heterosexual, and over 27 years old is less important than whether this woman feels the pressure to marry due to stigmas attached to unmarried women and social and legal discrimination against them.

More importantly, my interviews and focus groups with 72 Chinese women show that people usually judge whether a woman is a leftover woman based on age, instead of

⁹ Youhua Chen & Cheng Lv, “Shengnv: yige jiangou shishi de wei mingti” (2011) *Xue Hai* 42; Songqing Zhou, “shengnv’ yu xingbie tongzhi” (2010) 5 *Zhongguo Qingnian Yanjiu* 14; Zhang, *supra* note 7.

¹⁰ Collective forms of support networks, or non-sexual friendship networks, are “self-chosen” families that provide support for single people in their old age, both physically and emotionally. Often, members of these support networks are bounded together by pure affinity and mutual consideration. To, *supra* note 1 at 153–60.

¹¹ To, *supra* note 1; Ji, *supra* note 4.

¹² Gaetano, *supra* note 1.

places of origin and achievement. My finding supports Fang's argument that the public has been using "leftover women" to refer to those who are not necessarily professional, urban, and financially independent.¹³ In short, as long as a woman has never been married, it is likely for her to be called "leftover woman" once she reaches the marriageable age, regardless of her sexual orientation, social and economic status, and whether she has the intention to marry.

As same-sex marriage has not been legalized in China, lesbians, and women who self-identify as asexual and as polyamorous are also subject to the pressure of remaining unmarried in Chinese society because of their lack of legal ability or intention to marry. As they are and will continue to be regarded as "abnormal" or "irresponsible" both legally and socially, it is necessary to include their experiences in this discussion. Likewise, experiences and voices of women who are currently in a relationship should not be ignored because under a legal system that considers the family as the basic unit of the society, being in a relationship cannot prevent a woman from the pressure to marry. For example, unmarried women in China hardly have the chance to have the enjoyment of giving birth, as childbearing is restricted within heterosexual marriage.

Divorced women, however, are different from the idea of "leftover women." Those who are referred to as leftover women are usually those who "fail" to follow the practice of marrying at an early age. In this sense, the pressure on leftover women to marry and have a child is different from the pressure on divorced women, as the latter are deemed to have had a successful experience in the past. I am not denying that there is also

¹³ Fang, *supra* note 8 at 92-3.

discrimination and social stigmas attached to divorced women, but it is crucial to distinguish leftover women from divorced women.¹⁴

In sum, as long as a particular woman has never been married and has reached the marriageable age, she falls into the category of leftover women because of the pressure resulting from plural levels of social ordering guiding the decisions and behaviour of unmarried women. The exclusive focus in current literature on professional women makes it difficult to apply those findings to “other” women, which include queer women with or without a same-sex partner, women who are not financially well-off, non-elite women, and rural women. More importantly, the focus on professional women reinforces the misunderstanding that only elite heterosexual women from urban China face the pressure to marry and have children at an early age. At a time when all these women are and will continue to be regarded as “abnormal” or “irresponsible” as long as they do not get married, adding “other” women’s experiences into the discussion will facilitate better understanding of the social and legal environment within which unmarried Chinese women make choices concerning marriage and childbearing. This dissertation, in this regard, contributes to the current discussion of leftover women by bringing in voices of women who have diverse backgrounds and sexualities and have otherwise been ignored.

My usage of the term “leftover women” does not eschew the fact that it attaches stigmas to unmarried women, nor does it promote the idea that all those women I talked

¹⁴ Lynette Chua, one of the organizers of the Young Scholars’ Workshop I attended in 2016 in Singapore, asked me about the differences between leftover women and divorced women. After hearing my explanation about the notion of leftover women, Chua joked, “if unmarried women are leftover products, then divorced women may be ‘returned’ products.” While it is merely a joke out of an informal conversation, Chua’s joke captures the main difference between the two: the label “leftover women” emphasizes that no one in the market has ever shown interests to these women; on the other hand, “divorced women” have been chosen before, meaning they were once desirable.

to should be referred to as leftover women. I am also aware of the fact that there are more than two genders in Chinese society, and thus, using the category of “women” may run the risk of marginalizing the voices of gender neutral and gender nonbinary folk who are also under pressure to marry. What motivates me to stick to the term “leftover women” is the fact that it conveys the prevalent belief among many ordinary people that unmarried women are incomplete, unfortunate, and miserable. My aim is to emphasize that these women have all currently or formerly been affected by multiple legal orders concerning marriage and childbearing in a social and legal environment that suppresses and discourages diverse choices in family formation.

It is about marriage, childbearing, and family relations in contemporary China.

My analysis of these issues is to show how social attitudes and parental expectations interact with state law to shape leftover women’s experience in everyday life, rather than linking discrimination against leftover women with so-called traditional notions of marriage, childbearing, and family relations. Current research on leftover women tends to focus on the negative impact of parents and potential male partners on leftover women’s choices in marriage and childbearing. It is argued that parents of leftover women constrain their daughters’ choices by exerting considerable control over their decisions.¹⁵ As Yingchun Ji writes, “arranged marriage may no longer be practiced, but parents’ traditional expectations are deeply influential and meaningful. Most of the women I interviewed shared their parents’ expectation of marriage as an ultimate goal...”¹⁶ Sandy

¹⁵ See, for example, Ji, *supra* note 4; To, *supra* note 4; To, *supra* note 1; Sandy To, “Understanding Sheng Nu (‘Leftover Women’): the Phenomenon of Late Marriage among Chinese Professional Women” (2013) 36:1 Symbolic Interaction 1.

¹⁶ Ji, *supra* note 4 at 1065.

To, the author of *China's Leftover Women: Late Marriage among Professional Women and its Consequences*, suggests that parents are constraining leftover women's marital choices out of their somewhat conservative, "traditional" and "backward" beliefs,¹⁷ or what To calls "intergenerational differences in values."¹⁸ To states that parents continue to exert considerable control over their daughters' marital choices in today's China because the majority of daughters take their parents' opinions and expectations into consideration in their marital endeavours.¹⁹ To finds that the majority of the parents are traditional: they preferred their daughters to get married instead of pursuing alternative relationship forms such as cohabitation or staying single; and they also expect their son-in-law to be the main breadwinner.²⁰ At the same time, To, as well as some other scholars, accuse Chinese men who harbour so-called feudal, outdated, and patriarchal gender roles of constraining leftover women's choices in marriage and childbearing.²¹

While I agree with Ji and To that parental expectations play an important role in imposing the pressure to marry on leftover women, I argue that we need to figure out how Chinese families function and how individual members of the family relate the self to the family before we blame the so-called traditional beliefs of parents for exerting control over their daughters' choices in family formation (see Chapter Four). Also, as people's perceptions of filial piety have shifted away from unconditional obedience, the relationships between parents and adult children are no longer mainly based on

¹⁷ To, *supra* note 1; To, *supra* note 4; To, *supra* note 15.

¹⁸ To, *supra* note 4 at 2.

¹⁹ To, *supra* note 4 at 18.

²⁰ *Ibid* at 13.

²¹ To, *supra* note 1; Ji, *supra* note 4; Fincher, *supra* note 1.

patriarchal and hierarchical norms. Likewise, it is problematic to attribute leftover women's difficulties in finding marital partners to the domination of men over women as a main characteristic of Confucianism without mentioning the internal complexity and historical changes of Chinese culture (see Chapter Two).

It is about legal consciousness and legal pluralism. My dissertation's focus on the process of "making" leftover women and its comprehensive analysis of state law, parental attitudes, and social expectations offer an opportunity to study legal consciousness and legal pluralism in Chinese society. This dissertation follows recent legal consciousness studies that take ordinary people's accounts of their everyday experiences as the starting point of thinking about law in everyday life and how that law works in society.²² As "everyday life constitutes law and is constituted by it,"²³ we cannot separate state law from everyday life and ignore the impact of other social norms. For this reason, throughout the dissertation, I discuss the interaction, interplay, and overlapping of state law and non-state orders with an aim to make sense of leftover women's choices. To understand leftover women's navigation through the complexities of social ordering, I investigate how leftover women participate in the construction of legality in the process of making decisions regarding marriage and childbearing (Chapter Five).

It is about revisiting feminist relational theory. My doctoral project, which began many years ago, would not have been possible without the emergence of feminist relational theory and the discussion among feminist relational theorists on autonomous

²² Harding, *supra* note 3, at 9.

²³ David Engel "Law in the Domains of Everyday Life: The Construction of Community and Difference," in Austin Sarat and Thomas Kearns edits, *Law in Everyday Life* (Michigan: University of Michigan Press 1993) 123 at 126.

motherhood and women's autonomy in choosing alternative family structures. This dissertation is a part of this ongoing conversation that is important in understanding women's choices in a relational way. My aim is to help advance the ongoing project of developing an alternative theoretical framework to discuss state law and women's rights. Through a critical analysis of feminist relational theory's strong attachment to autonomy from a postcolonial perspective, I argue that feminist scholars need to distance from autonomy in order to really understand choices made by women in societies where familialism trumps individualism.

It is about rethinking legal culture in Chinese society from a postcolonial perspective. Current literature on legal culture in Chinese society tends to suggest that the traditional dominant legal culture of avoiding or of being afraid to go to court to resolve disputes has played a significant role in discouraging ordinary people from using the formal legal system.²⁴ Some Chinese legal culture scholars and policymakers, therefore, contend that the solution is to promote the rule of law.²⁵ Following postcolonial literature's critique of the "rule of law" as an empire-building and Western hegemonic tool to cast other societies as backward and uncivilized,²⁶ I emphasize the value of seeing

²⁴ See for example, Qiang Qin, "Zhuanxing Zhongguo de Falv Yishi Bianqian"(2014) 147 *Heilongjiang Shehui Kexue* 89 at 95-7; Buyun Li & Shiping Liu, "Lun Fa yu Falv Yishi,"(2003) 4 *Faxue Yanjiu* at 74; Zhongming Xu, "Chuantong Zhongguo Xiangmin de Falv Yishi yu Susong Xintai—yi Yanyu wei Fanwei de Wenhua Shi Kaocha" (2006) 6 *Zhongguo Faxue* 66.

²⁵ See, for example, Liu Jinhai, "Xian Jieduan Nongmin Falv Yishi de Diaocha Yanjiu—jiyu 269 ge cun 3675 ge nongmin de wenjuan fenxi" (2015) 115 *Huazhong Nongye Daxue Xuebao (Shehui Kexue Ban)* at 68. For a detailed discussion on the relationship between the linear conception of legal consciousness and Chinese government's rule-of-law project, see, for example, Mary E Gallagher, "Mobilizing the Law in China: 'Informed Disenchantment' and the Development of Legal Consciousness" (2006) 40:4 *Law Soc Rev* 783. See also, Susan H Whiting, "Authoritarian 'Rule of Law' and Regime Legitimacy" (2017) 50:14 *Comparative Political Studies* 1907.

²⁶ See, for example, Ugo Mattei & Laura Nader, *Plunder: When the Rule of Law is Illegal* (Oxford: Blackwell Publishing, 2008); Nimer Sultany, "Review of Plunder: When the Rule of Law Is Illegal" (2009) 36:4 *J Law Soc* 599; Trevor Stack, "A Just Rule of Law" (2010) 18:3 *Social Anthropology* 346; W M Sin & Y W Chu,

qing, *li*, and *fa*²⁷ as an indistinguishable whole when ordinary people think of and engage with multiple levels of state law and non-state norms (Chapters Three and Five).

Theories and Methods

This dissertation is theoretically driven and empirically grounded. I seek to place both theories and empirical data on an equal plane. I draw upon the following four theories to examine how the interaction of state law and non-state orders affects leftover women's choices: legal pluralism, feminist relational theory, postcolonial feminist theory, and critical literature on gender relations in China, all of which are deployed throughout the dissertation.

Legal pluralism, which emphasizes the coexistence of state law and “a body of norms produced and enforced by non-state actors,”²⁸ helps me challenge the exclusive focus among many legal scholars and lawyers on state law in the discussion of women's rights. As David M Engel suggests, “[e]ven if one focuses on ‘official’ law, one still finds a significant dependence on unofficial or customary rule structures to determine norms of reasonableness or fairness.”²⁹ My observations of how state law really works in leftover women's lives reflect that non-state orders are of critical importance for understanding

“Whose rule of law? Rethinking (post-)colonial legal culture in Hong Kong” (1998) 7:2 Soc & Leg Studies 147.

²⁷ *Qing* is considered to be the law outside state law (法外之法), which refers to human nature and the normal feelings or attitudes of the general public in particular contexts and circumstances; *li*, or the law beyond state law (法上之法), refers to reasonableness, discursive reasoning, rational principle, or logical arguments; *fa*, or the law within state law (法中之法), is almost identical to official law or state law. For more information, see Chapter Three.

²⁸ Marc Hertogh, *What is Non-State Law? Mapping the Other Hemisphere of the Legal World*, (Rochester, NY: Social Science Research Network, 2007) at 4.

²⁹ David M Engel, “How Does Law Matter in the Constitution of Legal Consciousness?” in Bryant G Garth & Austin Sarat, eds, *How Does Law Matter* (Evanston: Northwestern University Press, 1998) 109 at 140.

how, when, and why state law operates to affect leftover women's choices. The works of legal pluralists, such as Sally Engle Merry, Boaventura de Sousa Santos, Keebet von Benda-Beckmann, Marc Hertogh, Roderick Macdonald, and Suli Zhu, lay the foundation to examine the interaction of state law and non-state orders in leftover women's everyday life. A brief overview of the theory of legal pluralism will be provided in Chapter Three.

Feminist relational theory challenges the Anglo-American conception of human beings as "essentially separate from one another,"³⁰ with an aim to develop an alternative conceptual framework of seeing the self and autonomy.³¹ Drawing on the relational thought of feminist legal scholars such as Jennifer Nedelsky, Susan Boyd, and Fiona Kelly, I carry on the ongoing conversation of developing an alternative way of making sense of women's choices, a way that consider choices within the context of social relationships and power relations (Chapter Four).

Postcolonial feminist theory provides me a theoretical tool to challenge current studies that blame traditional culture in Chinese society for leftover women's pressure to marry, a tool that helps support my argument that leftover women's decisions are choices made by themselves after evaluating multiple levels of social ordering (Chapter Two). Drawing upon the postcolonial thought of Farah Godrej, Maneesha Deckha, Leti Volpp, Uma Narayan, Wah-Shan Chou, and Chandra Mohanty, I argue that depicting leftover women as victims whose autonomy is marginalized by social, cultural, and legal

³⁰ Jennifer Nedelsky, *Law's relations: a relational theory of self, autonomy, and law* (New York: Oxford University Press, 2013) at 3.

³¹ Among the many relevant discussions of feminist relational theory are: Nedelsky, *supra* note 30; Catriona Mackenzie & Natalie Stoljar, eds, *Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford: Oxford University Press, 2000); Jennifer J Llewellyn & Jocelyn Grant Downie, eds, *Being relational: reflections on relational theory and health law*, Law and society series (Vancouver, BC; Toronto: UBC Press, 2012).

constraints leads us nowhere. A detailed analysis without seeing their decisions as made out of false-consciousness reveals how state law and non-state norms really work to shape leftover women's understandings of marriage and childbearing.

My postcolonial analysis throughout the dissertation would not be possible without the help of critical literature on gender relations in China. Instead of simply viewing Chinese women's experience and legal consciousness as a case or object to examine through Western theories or making Chinese texts or inquiries fit familiar inquiries of the West, this dissertation sees Chinese inquiries as sources of knowledge that can challenge the existing preoccupations and categories of the West. The works of Lisa Rofel, Elaine Jeffreys, Ellen Judd, Anqi Xu, and Harriet Evans, among others, offer insights into these sources of knowledge concerning gender issues and family relations in China both theoretically and empirically. Their works constantly remind me of the fluidity of culture and gender norms in China, as well as women's agency in constructing and shaping social norms.

These four theories also have a strong influence on my research methods. Inspired by postcolonial thought, I argue that the only way to get a real sense of what is happening for leftover women is to physically immerse in the environment where leftover women make choices and speak to them directly, an approach Farah Godrej refers to as "existential immersion."³² Godrej advocates for actual physical dislocation of the self from disciplinary home and residence or immersion in the field in order to understand the texts from the perspectives internal to the world that is investigated.³³ At the same time,

³² Farah Godrej, *Cosmopolitan Political Thought: Method, Practice, Discipline* (New York: Oxford University Press, 2011) at 59.

³³ *Ibid* at 19–20.

Godrej stresses the importance of self-reflexive awareness of the researcher's positionality and the acknowledgement of power relations in the field without expecting the researcher to be an authority of the experience or culture.³⁴ Self-dislocation is followed by self-relocation, a process in which the scholar interprets the data gathered from "the other shore"³⁵ and make these data comprehensible to Western audiences in order to challenge Westcentric preoccupation.³⁶ Godrej's work not only shapes the way I form my theoretical framework and ask questions aiming to destabilize Westcentric preoccupation, but her methodology of transcultural learning and borrowing also lays the foundation of the research methods of this dissertation.

I re-immersed myself in China, with a focus on my home province, Fujian, for four months to conduct interviews and focus groups with leftover women. I also observed and participated in ordinary people's daily conversations concerning marriage and childbearing. The recruitment of participants started before I physically re-immersed in China. I began by asking my friends, relatives, and colleagues in Fujian to recommend interview candidates. Most of them placed my recruitment advertisement on WeChat, China's most popular messaging and networking app that most people use for sharing information, photos and videos with friends.³⁷ The request for help was sent out on a Friday night, a time when people were more relaxed from work and had more time and

³⁴ *Ibid* at 62–63.

³⁵ I borrow the term "the other shore" from Roxanne Euben, who uses the term to emphasize the importance of linkage between travel and theory and suggests that "the acquisition of knowledge requires not detachment from the world but movement in and through it." Roxanne Leslie Euben, *Journeys to the Other Shore: Muslim and Western Travelers in Search of Knowledge* (Princeton: Princeton University Press, 2006) at 23.

³⁶ Godrej, *supra* note 32 at 18.

³⁷ Christian Montag et al. "The Multipurpose Application WeChat: A Review on Recent Research," (2018) 9 *Frontiers in Psychology* 2247.

energy to check their WeChat friends' posts and repost the advertisement. It turned out to be an effective approach to get started. In addition to the WeChat recruitment, I used snowball sampling to trace additional participants during my stay in the field.

Between July and November 2016, I conducted in-depth, open-ended interviews with 51 Chinese women and organized three focus groups with seven to ten women in each group. As Godrej advocates, scholars need to pay attention to power and hegemony internal to the construction of value within the tradition involved.³⁸ A broader understanding of unmarried women's choices in family formation can only be achieved by acknowledging the intersection of gender, class, and sexual orientation. My aim was to have the narratives of people of different social and economic status inform my analysis.

As a dissertation looking at the impact of multiple levels of social ordering on women's choices, recruiting women with diverse marital statuses, sexual identities, and financial statuses was necessary to understand the socio-legal and socio-political conditions in which social and legal forces function to affect unmarried women's choices. I also interviewed a few parents of leftover women, as well as a few staff members at residents' committees and hospitals whose jobs were related to reproductive issues or the implementation of the now two-child policy. Usually, I would allow some time for my interviewees to get to know me well before the interview started as a way to build up a rapport. Each interview took approximately one to two hours, but some interviews extended to three hours when the interviewees were eager to share more stories and opinions.

³⁸ Godrej, *supra* note 32 at 35.

As the process of self-dislocation requires dislocation of the self from disciplinary home, I am wary of the influence of current feminist legal discussions on women's choices in the West. When I spoke to my interviewees, I avoid focusing on agency, autonomy, or individual rights, all of which are considered to be central values in feminist legal scholarship in the West. Instead, I referred to critical literature on gender relations, family relations, and sexual identity in China to develop interview questions. I then revised my interview questions by incorporating the insights from leftover women after each interview.

While I was in the field, I always kept in mind the importance of self-reflexive awareness of positionality and power relations, which was the prerequisite to ensure a good reading of otherness.³⁹ The questions of how to represent the "other" and how to study otherness less problematically have been crucial topics in postcolonial feminist theory and critical feminist ethnography for a long time. Since the early 1980s, "third-world" feminists, such as Aihwa Ong, Gayatri Spivak, and Chandra Talpade Mohanty, have been challenging Western feminists' representation of third-world women.⁴⁰ Ong and Mohanty criticize Western feminists for representing third-world women as victims of their "barbaric" or "patriarchal" cultures and advocate for abandoning Western feminist understandings of development by allowing subaltern women to define their own goals for development.⁴¹ Spivak cautions us that Western researchers cannot give

³⁹ Godrej, *supra* note 32 at 165.

⁴⁰ Aihwa Ong, "Colonialism and Modernity: Feminist Re-Presentations of Women in Non-Western Societies" in Kum-Kum Bhavnani, ed, *Feminism and Race*, (New York: Oxford University Press, 2001) 108; Gayatri Spivak, "Can the Subaltern Speak?" in *Post-Colonial Studies Reader* (London ; New York: Routledge, 1995); Chandra Talpade Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses" (1988) 30 *Feminist Rev* 61.

⁴¹ Ong, *supra* note 40; Mohanty, *supra* note 40.

voice to subaltern others due to the fact that “in such an arrangement the subaltern’s voice will always already be co-opted and secondary.”⁴² The newer generation of anthropologists, however, are aware of the role subjectivity plays in constructing cultural accounts and the impact of power relations and positionality. They tend to be conscious of the fact that ethnographic truths are inherently partial, multiple, and somewhat fictitious. Thus, these anthropologists see themselves as “co-creators of meaning” instead of authoritative representatives who give voice or speak for those who are defined as unable to speak for themselves.⁴³

As a co-creator of meaning, I paid close attention to the hidden assumptions about how narrative accounts are constructed, read, and interpreted. I emphasize researcher reflexivity and reflexive member-checking in the process of interviews in order to establish credibility. Reflexivity is defined by feminist scholars as “the tendency of feminists to reflect on, examine critically, and explore analytically the nature of the research process.”⁴⁴ I also deployed the technique of reflexive member-checking, a process in which the researcher and her informants engage in constant backward and forward confirmation of the data, and in which the participants are provided with an opportunity to review the information and its interpretation.⁴⁵ During each interview, I

⁴² Richelle Schrock, “The Methodological Imperatives of Feminist Ethnography” (2013) 5 J Feminist Scholarship 48; Spivak, *supra* note 40.

⁴³ Godrej, *supra* note 32 at 62–63; James Clifford et al, eds, *Writing culture: the poetics and politics of ethnography*, 25th anniversary ed (Berkeley, Calif: University of California Press, 2010) at 599; Dvora Yanow & Peregrine Schwartz-Shea, eds, *Interpretation and method: empirical research methods and the interpretive turn* (Armonk, N.Y: M.E. Sharpe, 2006) at 103–108.

⁴⁴ Mary Margaret Fonow & Judith A Cook, “Feminist Methodology: New Applications in the Academy and Public Policy” (2005) 30:4 Signs 2211 at 2218.

⁴⁵ Jeasik Cho & Allen Trent, “Validity in qualitative research revisited” (2006) 6:3 Qualitative Research 319 at 332.

constantly checked my interpretation with my interviewee as long as it did not jeopardize the story-telling process.

My data analysis process started when I was in the field, although I did most of the transcriptions after I left the field. I jotted down some fieldwork notes during the interviews and focus groups, after which I compared them with my transcriptions. Through the analysis of leftover women's narratives, as well as the opinions and stories shared by parents and people whose work is related to reproductive issues, I came up with rich material for this dissertation.

As I will demonstrate in later chapters, this dissertation, which relies heavily on its empirical data, not only draws on but also contributes to the areas of legal pluralism, legal consciousness, feminist relational theory, critical analysis of gender and family relations in China, and law and society as a whole.

Looking Ahead

In the following chapters of this dissertation, I explicate the impact of the interaction of state law, social expectations, and parental attitudes on leftover women's marital choices; and how these women navigate through the complexities.

Chapter Two discusses why and how we should classify leftover women's decisions as choices. The chapter starts with a critical analysis of the existing literature on leftover women. I criticize the literature's focus on blaming the so-called "traditional" patriarchal culture in China for leftover women's pressure to marry. After that, I emphasize the need to provide a postcolonial feminist analysis of leftover women's decisions in order to understand their decisions as choices.

In Chapter Three, I offer a brief overview of the evolution of legal pluralism. I argue that the workings of state law can only be understood by taking into account the non-state orders that interact with it. By looking at the requirements of “*qing li fa*” concerning women’s marriage and childbearing, I use empirical data to explain how *qing li fa* operates in ordinary people’s daily lives, especially in non-dispute situations. The discussion provides important insights into the interaction of state law and non-state orders and the inseparability of them under some circumstances.

In Chapter Four, I build on the analysis in Chapters Two and Three to revisit feminist relational theory. I provide a critical analysis of feminist relational theory’s focus on autonomy, after which I turn to my data to demonstrate that leftover women do not necessarily see autonomy in marriage and childbearing as a positive value, nor do they attach great importance to autonomy when it comes to marital choices. Through a detailed discussion of the ways leftover women relate the self to others in their networks of relationships and the requirements of *zuoren*, face, and *guanxi*,⁴⁶ I explain leftover women’s reluctance to embrace autonomy in marriage and childbearing. This chapter advocates that feminist relational theorists need to distance themselves from autonomy in order to understand the choices made by women who prioritize familialism over individualism.

Chapter Five focuses on the legal consciousness of leftover women. By demonstrating how family relations and social attitudes shape the ways leftover women understand and engage with state law, I explain why some leftover women hold

⁴⁶ These are concepts relating to how an individual should interact with other people. I will discuss them in detail in Chapter Four.

indifferent attitudes toward what state law says about unmarried women. I argue that we should not translate leftover women's inattention or indifference to state law into their lack of legal knowledge. Bringing *qing* into the picture, this chapter illustrates how leftover women strategically navigate through different layers of normative orders to make choices.

In Chapter Six, I argue that leftover women's understandings of filial piety have been shifting away from the traditional norms of filial piety. My interviewees tend to emphasize emotional support and intergenerational intimacy, more so than financial support to parents. Unconditional obedience has been replaced by the notion of the exchange of love between the two generations and the expression of gratitude to parents for their support. At the same time, parents in both rural and urban China are more willing to support their adult children with housing and childcare than asking for financial support from their children. Chapter Six offers an example of how leftover women themselves are participating in defining and redefining culture.

Chapter Seven continues the discussion on legal pluralism and legal consciousness by focusing on unmarried women's rights to give birth outside marriage. This chapter reminds lawyers, activists, policymakers, and legal scholars of the need to pay attention to the interaction of state law and non-state orders when advocating for legal reforms. I criticize the approach of demanding rights from the state for single women to have access to assisted reproductive technologies. I am particularly concerned about the focus on the needs of unmarried women who are financially well-off. My data suggest that the discourse of *suzhi*, which is loosely translated into "quality," has played an influential role in dividing unmarried women into high-quality women who deserve to be single

mothers and low-quality women who need to be governed in terms of reproduction. As a result, this approach runs the risk of sacrificing low-quality women's interest for high-quality women's reproductive rights.

Chapter Eight offers concluding thoughts by reiterating the contributions of this dissertation and pointing out directions for future research.

Chapter 2: Classifying Leftover Women's Decisions as "Choices"

Existing studies, as I discuss below, insist that the media, the state, and society as a whole have been intimidating leftover women into marriage. Following this argument, leftover women are victims of the irrevocably misogynistic culture in an authoritative state. One may argue that leftover women do not really have a choice; instead, they are forced into marriage by the pressure imposed by these different forms of norms. In this chapter, I challenge this assumption and emphasize that we need to classify leftover women's decisions as "choices," rather than seeing their decisions as made out of false consciousness, or as decisions made because of the pressure stemming from purportedly "traditional" Chinese patriarchal culture and the state's reinforcement of it.

I argue that classifying leftover women's decisions as "choices" is critically important in understanding the question of why heterosexual marriage remains almost universal in today's China. I will start with a critical analysis of current literature on leftover women by analyzing the problematics of "blaming culture."⁴⁷ I refer to postcolonial feminist scholars' critique of the eternity of culture and argue that we need to understand culture in a broader way in order to study its influences on women's decisions. I am against seeing and presenting non-Western cultures as static and non-evolving, while depicting European culture as complex and dynamic; instead, I draw upon postcolonial feminist definition of culture as "a dynamic practice of making and remaking meanings that are provisional, shifting, and partial where participation in cultural acts and ongoing cultural

⁴⁷ I borrow the term "blaming culture" from Leti Volpp. See, Leti Volpp, "Blaming Culture for Bad Behavior" 12 (2000) Yale J Law Humanities 89.

acts and ongoing cultural contestation is something that all humans do.”⁴⁸ I will then explain why we need to see leftover women’s decisions as choices and thus decisions to respect and endorse. Postcolonial feminist analysis will be brought into the picture for the discussion throughout this chapter.

I. A Critique of Current Explanations of Leftover Women’s Decisions

Leta H. Fincher, the author of *Leftover Women: The Resurgence of Gender Inequality in China*, criticizes the state-sponsored media campaign for pushing urban, educated, single women in their late twenties into marriage by insulting them as “leftover or spoiled food.”⁴⁹ In Fincher’s view, the media campaign is part of a broad resurgence of gender inequality in Chinese society, where patriarchal norms are still deeply entrenched.⁵⁰ Fincher suggests that many leftover women “genuinely believe the destructive myths perpetuated by the state media,” and thus, they choose to act against their own interests in order to secure the opportunity to find a husband.⁵¹ At the same time, Fincher argues that the Chinese state uses its media to intimidate single women into marriage by spreading the idea that children born to women over 30-years-old may have a higher risk of health problems.⁵²

⁴⁸ Maneesha Deckha, “Is Culture Taboo - Feminism, Intersectionality, and Culture Talk in Law” (2004) 16 Can J Women Law 14 at 25.

⁴⁹ Fincher, *supra* note 1, at 1–4;14–43;. Fincher demonstrates how news articles published in various newspapers and the websites of the All-China Women’s Federation stigmatize leftover women.

⁵⁰ *Ibid* at 5.

⁵¹ As a study focusing on how Chinese women were shut out of the biggest accumulation of real-estate wealth in history, Fincher’s book investigates why so many women in China were willing to cede ownership of an enormously expensive home to their boyfriends or husbands. *Ibid* at 6.

⁵² *Ibid* at 8–9; 32–5. In order to support her claim, Fincher draws upon news articles, her online survey, as well as her interviews with 36 women and 24 men in Beijing and Xi’an. Fincher also refers to messages sent to

Indeed, popular culture has partaken in the construction of an oppressive social environment within which leftover women make choices. The role of popular culture in constructing normativity has caught the attention of legal scholars.⁵³ According to Rebecca Johnson, “it is useful to examine the ways that informal mechanisms of social control, such as popular culture, participate in the production and maintenance of certain versions of the family as normal or deviant.”⁵⁴ Building on the work of Johnson and others, Gillian Calder suggests that popular culture not only constructs and maintains social order but also bears the seeds of social transformation.⁵⁵ In this light, one cannot deny the powerful influence of popular culture on shaping ordinary people’s understandings of marriage and childbearing. My critique of Fincher’s approach is that her exclusive focus on the Chinese state’s media campaign underestimates the impact of other mechanisms of social control, including state law and other social norms. No one will deny that state law is a dominant system of discursive power. State law, as a system of organized power, authoritative, normative and coercive,⁵⁶ is powerful in constructing

her social media account by leftover women and her interviews to show the impact of the media’s stigmatization on leftover women’s marriage and childbearing: single women in their 20s express their frustrations regarding the pressure to have a child; women in her interviews are worried about passing their “best childbearing years” if they do not marry by their late 20s.

⁵³ See, for example, Gillian Calder, “Penguins and Polyamory: Using Law and Film to Explore the Essence of Marriage in Canadian Family Law” (2010) 21:1 Can J Women & the Law 55; Rebecca Johnson, “Judging Magic: Can You See the Sleight of Hand?” (2007) 105:6 Michigan Law Rev 1353; Orit Kamir, *Framed: women in law and film* (Durham: Duke University Press, 2006).

⁵⁴ Rebecca Johnson, “‘Leaving Normal’ Constructing the Family at the Movies and in Law” in Lori G Beaman, ed, *New Perspect Deviance Constr Deviance Everyday Life* (Scarborough, Ont: Prentice Hall Allyn and Bacon Canada, 2000) 163 at 164.

⁵⁵ Calder, *supra* note 53.

⁵⁶ According to Calder, although law sees itself more as a process for finding the truth, it is fundamentally a social medium that engages in telling stories about social life and the production of meaning. *Ibid* at 62.

and maintaining certain visions of “women” and “the family” as normal or deviant, especially in authoritative states.⁵⁷

Sandy To blames the patriarchal norms, especially the patriarchal ideology harboured by men, for leftover women’s difficulties in finding partners. To argues that the root cause of Chinese professional women’s leftover status lies in the patriarchal constraints in the marriage market: some professional women were rejected by men because of their high educational and professional accomplishments, while some were given marriage proposals under the condition that they had to give up their careers.⁵⁸ In To’s view, it is leftover women’s professional success that has posed the greatest obstacle in their marriage paths because leftover women’s strong economic accomplishments have put too much pressure on their male suitors and partners, who are expected to be the breadwinners.⁵⁹ To refers to the phrase of “men in charge of the outside, women in charge of the inside (男主外 · 女主内)” to attribute this discrimination against professional women to Chinese culture.⁶⁰

According to To, “in the pre-modern imperial era, Chinese women were not given any education at all, as their only objective in life was to be married and to produce offspring for their husband’s family following the patrilineal rule.”⁶¹ Reading such damaging misrepresentation, I feel the anger of Sophia H. Chen, a Chinese professor who

⁵⁷ While it is true that several feminist activists and lawyers in China have put forward a report on single women’s reproductive rights and lived experience and analyzed how China’s legal system denies single women’s reproductive rights, they do not explore the connection between leftover women’s choices to marry and the law’s denial of their reproductive rights.

⁵⁸ To, *supra* note 1 at 162.

⁵⁹ *Ibid* at 8, 35.

⁶⁰ *Ibid* at 50.

⁶¹ *Ibid*.

came from a family of the *literati* whose women have been educated for generations.⁶² Chen could not control her anger when she attended a lecture in New York where the missionary began the lecture by saying that the ignorant Chinese women's educational prospect was as completely in darkness as the big blackboard behind her.⁶³ Chen considered the remarks as "an insult to Chinese women, who have been poets, writers, and artists in their own right."⁶⁴ Although I understand that this kind of misinformation was widespread, I still feel To, as a sociologist whose research focuses on gender and family in China, should have been more critical about this kind of representation of Chinese women. One does not even need to refer to postcolonial literature or academic work to challenge To's assumption about women's education in the pre-modern imperial era. Taking a walk on campus, I saw the picture of Wang Zhenyi, a female scholar and scientist born in 1768 in China, hanging on the wall of the Department of Medical Science at the University of Victoria, with the description that she "wrote papers explaining trigonometry and the principles of multiplication and division; wrote political poetry about injustice."⁶⁵ The existing of a picture telling Wang's story as one of the greatest scholars in China not only debunks To's misrepresentation of women's education in the pre-modern imperial era but also shows the abundance of evidence of the success of these women in our daily lives.

⁶² Pui-lan Kwok, "Unbinding our Feet: Saving Brown Women and Feminist Religious Discourse" in Laura E Donaldson & Pui-lan Kwok, eds, *Postcolonialism, Feminism, Religious Discourse* (New York; London: Routledge, 2002) 62 at 63.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ For the picture and more information about Wang Zhenyi, see Rachel Ignatofsky, *Women in Science: 50 Fearless Pioneers Who Changed the World* (New York: Ten Speed Press, 2016) at 13–4.

I suspect that To may have selectively chosen to depict Chinese women in the pre-modern imperial era as ignorant to blame culture for leftover women's difficulties in finding marital partners. For example, To uses the example of footbinding as evidence of China's longstanding investment in marking the public roles of men and the private roles of women.⁶⁶ To writes,

Role segregation was clear-cut and incontestable, and there were many measures to ensure that women did not transgress their domestic boundaries, including most significantly, the painful practice of foot-binding from a very young age to keep women's feet small and deformed so as to discourage too much physical movement. Tiny and deformed feet were considered a most desirable marital criterion, as it served as concrete evidence that women's propriety had been kept throughout their marriages... The practice of foot-binding was precisely created to safeguard pre-modern women's physical boundaries. However, with the outlawing of this backward and inhumane practice in modern times, modern women were still expected to keep their own propriety by carrying themselves docilely and submissively. Women who failed to do so were branded as modern-day 'shrews' who were considered to be the least appealing of marriage partners.⁶⁷

By referring to the practice of footbinding, To links the discrimination against leftover women in the marriage market with traditional patriarchal ideology, a linkage I will argue against by drawing upon postcolonial feminist analysis later in this chapter.⁶⁸ As footbinding is often used as an example to criticize dominant Chinese traditional culture as "backward" and "barbaric,"⁶⁹ it seems to me that To deliberately mentions footbinding for the purpose of blaming culture. Even if To does not intentionally invoke colonialist scripts of footbinding, she still fails to think critically about the colonialist representation

⁶⁶ To, *supra* note 1 at 50.

⁶⁷ To, *supra* note 1 at 50.

⁶⁸ Kwok, *supra* note 62; Chandra Talpade Mohanty, "'Under Western Eyes' Revisited: Feminist Solidarity through Anticapitalist Struggles" (2003) 28:2 *Signs* 499.

⁶⁹ See, for example, Mary Daly, *Gyn/ecology: the metaethics of radical feminism* (Boston: Beacon Press, 1978).

of footbinding as a barbaric practice of oppressing Chinese women. In fact, it is easy to find discussion that challenges To's understanding of footbinding.⁷⁰

Pui-lan Kwok, for example, powerfully criticizes the representation of Chinese footbinding in western literature, with a focus on Mary Daly's influential book *Gyn/Ecology*.⁷¹ Kwok challenges the assumption that the "barbaric" practices of footbinding, polygamy, *sati*, and veiled women are symptoms of the inferiority of native cultures that need colonial or missionary intervention.⁷² In Kwok's view, Daly presents China as unchanging, timeless, abstract and monolithic, and depicts the practice of footbinding as an ancient custom that remained unchallenged over one thousand years until China was forced to change by the West.⁷³ Kwok argues against Daly's viewpoint that footbinding is an erotic desire of Chinese men; rather, Kwok historicizes the practice of footbinding and makes visible the ways Chinese women challenged it. According to Kwok, footbinding was a means to accentuate the contrast between genteel Chinese and their uncouth rivals in the North; the practice was more prevalent in the central and northern part of China and among women of the upper and middle classes. More importantly, people's attitudes toward footbinding changed, and the Manchu government even issued a fiat to ban it in 1662, although the fiat was unsuccessful.⁷⁴ To's usage of

⁷⁰ For example, Dorothy Ko's book, *Cinderella's Sisters: a Revisionist History of Footbinding*, suggests that conventional views of footbinding as patriarchal oppression often neglect its complex history and the incentives of the women involved. Ko debunks myths and misconceptions about its origins and development in her book. Dorothy Ko, *Cinderella's sisters: a revisionist history of footbinding* (University of California Press).

⁷¹ Kwok, *supra* note 62.

⁷² *Ibid* at 64.

⁷³ *Ibid* at 70–1.

⁷⁴ *Ibid* at 71–2.

footbinding to blame culture, therefore, falls into the colonialist stances that Chinese women are passive objects of male desire and oppression.

To suggests that “perhaps the most effective scheme would be to educate and encourage both single, highly educated women and men to ‘relax their traditional standards’ to accommodate more partner choice options and thereby increase their marriage chances.”⁷⁵ To indicates that the aim of her book is to identify patriarchal constraints and partner choice strategies of different types of leftover women in order to guide professional women to make relationship choices that most suit their needs.⁷⁶ The solution to resolve the partner choice dilemmas, according to To, is to fix both single women and men in China: relaxing men’s obsolete patriarchal standards and women’s traditional economic demands.⁷⁷

Fincher goes down a very similar path.⁷⁸ Fincher argues that China’s historical traditions have contributed to the low status of women, which makes it so difficult to eradicate gender inequality in today’s China.⁷⁹ According to Fincher, traditional values of parents, especially “the imperial tradition of patrilineal succession,” lead them to buy homes for sons and even nephews rather than for their own daughters.⁸⁰ She suggests that these parents “are reverting back to the practice from the Ming dynasty, when, in the absence of sons, daughters had less of a claim to property than nephews.”⁸¹ In Fincher’s

⁷⁵ Mohanty, *supra* note 68; Kwok, *supra* note 62 at 62.

⁷⁶ To, *supra* note 1 at 169.

⁷⁷ *Ibid* at 168.

⁷⁸ Fincher, *supra* note 1 at 116.

⁷⁹ *Ibid* at 108.

⁸⁰ *Ibid* at 109–12.

⁸¹ *Ibid* at 116.

view, “the centuries-old discriminatory social customs can persist in remarkable ways and reappear in the twenty-first century.”⁸² In so doing, Fincher depicts leftover women in China as victims of historical traditions and the Chinese state’s reinforcement of traditional patriarchal norms, or what she calls “the resurgence of gender inequality in China.”⁸³

It may likely be true that parents of sons invested more in housing than parents of daughters in China,⁸⁴ but Fincher’s assertion runs the risk of generalizing the situation and ignoring the variance of the attitudes of parents across different regions, classes, and ethnicity. One significant example is that urban parents who complied with the one-child policy might end up with only one daughter. Under this situation, parents tend to pass down their property to the only daughter. Vanessa Fong, who has studied family dynamics under the one-child policy, suggests that most people she knew in urban Dalian accepted that daughters could have the same rights and obligations as sons.⁸⁵ Fong mentions the example of parents who purchased an expensive apartment for their daughters when their daughter’s parents-in-law could not afford to buy a new home for them.⁸⁶ Fong quotes the mother’s narrative that “[w]e only have one child, so who else are we going to spend our money on if not her?”⁸⁷ To’s research also shows that in

⁸² *Ibid.*

⁸³ Although Fincher refers to the experience of some feminist activists in her concluding chapter as an example to show women’s resistance in the authoritarian state, she has not provided sufficient details on how ordinary leftover women fight back. *Ibid* at 165–94.

⁸⁴ Lisa Eklund, “Ffilial Daughter? Filial Son? How China’s Young Urban Elite Negotiate Intergenerational Obligations” (2018) 26:4 NORA - Nordic J Feminist & Gender Research 295.

⁸⁵ Vanessa L Fong, *Only hope: coming of age under China’s one-child policy* (Stanford: Stanford University Press, 2004) at 133.

⁸⁶ *Ibid* at 135.

⁸⁷ *Ibid.*

practice, it has become more common for parents of both sides to either subsidize or provide a marital home for the new couple, especially after the implementation of the former One-Child Policy.⁸⁸

Lisa Eklund's research shows that while parents of sons invested in housing for sons, parents of daughters tend to save for their future pension.⁸⁹ Building on Eklund's study, I assert that one explanation of the lower percentage of parents of daughters buying homes for their adult children is that parents of daughters are strategically preparing for their own old age support in a social environment where wives still have more difficulties than husbands to support their own parents financially. Once again, although this situation is proof that Chinese society is patriarchal, one cannot assume that parents refuse to buy homes for daughters because of their subscription to traditional patriarchal norms.

The work of Fincher and To focuses on blaming the patriarchal culture and the so-called resurgence of Confucian tradition through the state's media campaign. Their analytic approach of "blaming culture" and the state's media campaign creates a misleading explanation for leftover women's pressure to marry and their difficulties in finding partners. They assume culture to be "static and insular, a fixed property of groups rather than an entity constantly created through relationships."⁹⁰ Under such a paradigm, according to Leti Volpp, culture "becomes an essence that is transmitted in an unchanging form from one generation to the next."⁹¹ I support Volpp's argument that in order to understand culture in a sophisticated and accurate way, we need to recognize that

⁸⁸ To, *supra* note 1 at 68–9.

⁸⁹ Eklund, *supra* note 84 at 307.

⁹⁰ Volpp, *supra* note 47 at 94.

⁹¹ *Ibid.*

we are all agents who define our culture and identity instead of being marionettes positioned and directed by our culture.⁹²

Acknowledging that culture undergoes constant transformation,⁹³ I argue that one needs to pay more attention to how “tradition” has evolved and how the Chinese state plays a role in controlling the direction of the evolution. As one reads Fincher and To’s research, one would be led to believe that the root cause of leftover women’s pressure is the discrimination against elite women in the marriage market caused by the patriarchal gender norms embedded in Chinese cultures. I do not intend to deny that both the media campaign and some men’s attitudes toward marriage are highly patriarchal. My concern, however, is that it is problematic to assume that leftover women’s problems are fundamentally problems of traditional patriarchal cultural practices.⁹⁴ As Uma Narayan suggests, this assumption “obscures the degree to which many ‘Third-World women’s problems’ are rooted in ‘modernization’ and social change.”⁹⁵ According to Narayan, this “unproblematized” view of “tradition” not only results in a misleading picture of these “traditions” but also effaces the politics of tradition formation of these traditional practices.⁹⁶

Following Narayan’s critique, I argue that it is both unnecessary and problematic for Fincher and To to blame the purportedly traditional culture in China in order to make sense of leftover women’s choices. Their approach distracts people from seeing the real

⁹² *Ibid* at 98.

⁹³ *Ibid*.

⁹⁴ For a discussion on why this assumption is problematic, see, for example, Uma Narayan, *Dislocating cultures: identities, traditions, and Third-World feminism*, Thinking gender (New York: Routledge, 1997) at 59–60.

⁹⁵ *Ibid* at 60.

⁹⁶ *Ibid* at 60–1.

problems leftover women are confronting. They focus on a facile view of culture assuming that leftover women are operating under false consciousness. From a postcolonial feminist perspective, I suggest that there is no direct connection between the so-called traditional practices and leftover women's pressure to marry. The practice of footbinding and the imperial tradition of patrilineal succession are not relevant to leftover women's choices.

In fact, postcolonial feminist scholars, such as Chandra Mohanty, have been criticizing the work that falls into the analytic traps of constructing "third-world women" as a homogeneous "powerless" group of victims of particular cultural and socio-economic systems.⁹⁷ Mohanty refers to Valerie Amos and Pratibha Parmar's argument that "[f]eminist theories which examine our cultural practices as 'feudal residues' or label us 'traditional,' also portray us as politically immature women who need to be versed and schooled in the ethos of western feminism."⁹⁸ Fincher's and To's approach of blaming culture is, in the words of postcolonial feminist scholars, ahistorical and universalistic. And as a result, they are both "reinforc[ing] binary divisions between men and women" and robbing of leftover women's "historical and political agency."⁹⁹ Using footbinding as an example to provide explanations for women's subordination without specification in local cultural and historical contexts is not only analytically reductive but also of little help in facilitating a better understanding of leftover women's choices. As Leti Volpp argues, the assumption that non-Western people are governed by culture not only

⁹⁷ Mohanty, *supra* note 68.

⁹⁸ *Ibid* at 66.

⁹⁹ *Ibid* at 73–80.

indicates that these people have a limited capacity for agency, will, or rational thought, but it also leads us to neglect the power of “noncultural” forces in shaping reality.¹⁰⁰

While Fincher and To both see “tradition” as fixed and static, Yingchun Ji views “tradition” as a complex and subtle process of redefinition and renegotiation in a changing context rather than a fixed concept associated with oppression and patriarchy.¹⁰¹ One contribution of Ji’s article is that she acknowledges that China’s leftover women are “innovative actors,” who respond strategically to constraints and cultural disapprobation to “construct their blend of the modern and traditional in their daily lives.”¹⁰² However, I argue that Ji’s work also falls into the analytic trap of blaming culture.

In Ji’s view, leftover women adhered to patriarchal gender role division not because of “simple obedience to patriarchal tradition;”¹⁰³ rather, they are “strategically navigating China’s ever-shifting modern-traditional landscape, maintaining their modern side—individual identity and independence and compromising when necessary with tradition—yet partially subscribing to patriarchal norms.”¹⁰⁴ According to Ji, although leftover women are critical of patriarchal gender ideology in the public sphere, they tend to accept patriarchal gender roles within the family as long as these roles do not jeopardize their financial independence in the public sphere.¹⁰⁵ Ji suggests that we need to acknowledge that leftover women’s subscription to tradition is a way to help them “make sense of the

¹⁰⁰ Volpp, *supra* note 47 at 96–7.

¹⁰¹ Ji, *supra* note 4 at 1070–1.

¹⁰² *Ibid* at 1058.

¹⁰³ *Ibid* at 1070.

¹⁰⁴ *Ibid*.

¹⁰⁵ *Ibid* at 1070–1.

unfair world and their continued need to make sacrifices within it.”¹⁰⁶ In other words, Ji tries to argue that while leftover women attach great importance to families and are willing to accept traditional gender norms in the private sphere, their choice to adhere to familialism results from China’s rapid socio-economic changes rather than a belief in the patriarchal Confucian tradition.

While Ji views leftover women’s adherence to patriarchal tradition as “redefinition and renegotiation in a changing context,” her article still largely focuses on cultural constraints and disapprobation. Ji’s research mainly concentrates on how single women are “‘leftover’ by the resurgence of patriarchal tradition as the country modernized and shifted to the free market.”¹⁰⁷ Ji writes, “patriarchal Confucian tradition underwent a resurgence so that gender relations today are increasingly regulated by traditional social norms... Chinese women’s more egalitarian preferences in the interpersonal realm, regarding such issues as marriage and family, now butt up against their male counterparts’ preference for more traditional gender role ideology.”¹⁰⁸ Also, Ji attributes the relatively consistent trend of near-universal and early marriage in China to “the resurgence of the patriarchal Confucian tradition and the subsequent boosting of pro-family values, paired with institutional obstacles such as a weak social welfare system and the exclusive legitimacy of childbirth within marriage.”¹⁰⁹ In short, Ji links the difficulties for leftover women in finding a marital partner to the Chinese state’s

¹⁰⁶ *Ibid* at 1071.

¹⁰⁷ *Ibid*.

¹⁰⁸ Ji, *supra* note 4 at 1070, 1058, 1060.

¹⁰⁹ *Ibid*, at 1059.

promotion of patriarchal Confucian tradition and the rapid socioeconomic changes in China.

In my view, although Ji's work is one step further from the work of To and Fincher in terms of blaming traditions, her work still falls into the analytic traps Chandra Mohanty criticizes.¹¹⁰ Ji supports To's opinion and asserts that while Chinese women desire a more egalitarian interpersonal realm,¹¹¹ those so-called "feudal and outdated" Chinese men still adhere to more traditional gendered ideology.¹¹² Ji also adopts Fincher's assertion that there has been "a resurgence of patriarchal Confucian tradition in recent years,"¹¹³ a tradition that values women in terms of their roles as wives and mothers.¹¹⁴ Ji and her colleague, Wei-Jun Yeung, suggest that "[i]t is urgent for the public and policymakers to promote gender egalitarian ideology and respect women's choice in relation to marriage formation."¹¹⁵ By "traditional gender roles," Fincher, To, and Ji refer to the notion of "men are in charge of the outside world, while women are in charge of the household," a notion that all of them assert to be pervasive in contemporary China.¹¹⁶

In so doing, Fincher, To, and Ji depict Chinese men as somehow entirely insulated from tremendous changes in Chinese society. They suggest that while women's ideas evolve, men are "still thinking in the old ways." They see Chinese men as those who act in collusion with the Chinese state or act according to the traditional patriarchal culture to

¹¹⁰ Mohanty, *supra* note 40.

¹¹¹ Ji, *supra* note 4 at 1060.

¹¹² *Ibid* at 1060,1069.

¹¹³ *Ibid* at 1057.

¹¹⁴ *Ibid* at 1058.

¹¹⁵ Yingchun Ji & Wei-Jun Jean Yeung, "Heterogeneity in Contemporary Chinese Marriage" (2014) 35:12 *J Family Issues* 1662 at 1679.

¹¹⁶ Fincher, *supra* note 1 at 38; To, *supra* note 1 at 50–1; Ji, *supra* note 4 at 1068–70.

oppress women. Such simplistic formulations of “men exploit, women are exploited,” according to Mohanty, are both historically reductive and ineffectual in designing strategies to combat oppression.¹¹⁷ In fact, “all they do is reinforce binary divisions between men and women.”¹¹⁸ When it comes to leftover women’s pressure to marry, depicting men in China as oppressors would discourage them from aligning with feminist scholars and activists who promote gender equality.

I have to acknowledge that it is very likely that many men in China are thinking patriarchally because of the way they have been taught by popular culture and in Chinese society as a whole. However, the erasure of some men’s resistance to patriarchal culture by generalizing men and defining them as oppressors is troubling. As Joan Williams suggests, “[f]eminists need to acknowledge their alliances with men and identify their enemy as the current construction of gender and abuses of male power, not as men.”¹¹⁹ At the same time, I support Narayan’s argument that these political discourses “are always about the control of women but never *only* about the control of women.”¹²⁰ Thus, feminists also need to pay attention to how different groups of men are adversely affected by the state’s deployment of “national culture.” For example, the Chinese state’s efforts to reinforce patriarchal gender norms, including its promotion of marriage through its media campaign against single women, also play a role in controlling and marginalizing many groups of men, such as gay men who refuse heterosexual marriage.

¹¹⁷ Mohanty, *supra* note 40 at 73.

¹¹⁸ *Ibid.*

¹¹⁹ Joan Williams, *Unbending Gender: Why Family and Work Conflict and What to Do about It* (New York: Oxford University Press, 2001) at 262.

¹²⁰ Narayan, *supra* note 94 at 78.

The danger of blaming culture, as well as blaming the state's media campaign for reinforcing traditional culture, also lies in its ignorance of the fact that the Chinese state, as well as other nation-states, often creates or at least selectively interprets "culture" under the guise of "national identity," more so than simply reinforcing "culture." In fact, one important way for the party-state to create "culture" is through the usage of state law and policies, as "the law can assist in the processes of undermining or legitimating cultural forms."¹²¹ The Chinese state invokes "traditional" culture defined and selectively interpreted by the state to justify its law and policies. As Deckha suggests, "[b]y upholding the view of culture as a static construct imposed from the top down by cultural authorities and texts, law privileges the interpretations of cultural elites as 'authentic.'"¹²² Through these laws and policies, the Chinese state reinforces its version of culture. Essentializing culture in this way puts forward a purportedly ideal and imagined version of culture that would "encourage or even coerce people to behave in a certain way."¹²³

A typical example of this reinforcement of an essentialized version of culture is the Chinese state's legislating of filial piety in 2013. The traditional norms of filial piety require adult children to provide financial support and pay unconditional obedience and submission to parents.¹²⁴ Increasingly more people in today's China, however, tend to understand filial piety differently by emphasizing emotional support to parents and the values of communication.¹²⁵ Against this backdrop, the Chinese state has creatively

¹²¹ Deckha, *supra* note 48 at 26.

¹²² *Ibid* at 30.

¹²³ *Ibid* at 35.

¹²⁴ Yunxiang Yan, "Intergenerational Intimacy and Descending Familism in Rural North China" (2016) 118:2 *American Anthropologist* 244.

¹²⁵ *Ibid*.

combined ordinary people's desires for emotional intimacy between parents and adult children with the traditional norms of filial piety by legislating filial piety. By emphasizing both emotional support and unconditional obedience in the formal legal system, the state imposes all the responsibilities of maintaining good family relations on adult children.¹²⁶ At the same time, the state's legal system tries to use the "traditional" requirement of unconditional obedience to prevent adult children from refusing to take care of aging parents either financially or emotionally under the circumstance where parents are responsible for the breakdown of family relations.¹²⁷ By doing this, the party-state unloads the responsibility to take care of the older generation onto individual families.

State law, however, is by no means the only form of social ordering that takes part in shaping leftover women's beliefs and choices. Other forms of social ordering, such as *qing li*,¹²⁸ also play an influential role in affecting leftover women's choices. Both ordinary people and the state in today's China participate in constructing all these forms of social ordering. Before jumping to the conclusion that the leading factor is the traditional patriarchal culture in China, we need to think critically about the legal and political environment within which patriarchal gender norms are sustained. Through a detailed analysis of how leftover women themselves navigate through the complexity of multiple social ordering in the following chapters, I will demonstrate the impact of the

¹²⁶ For more information, see Qian Liu, "Spoiled Parents and Vulnerable Adult Children in China: *Qing* and Filial Piety under the Elderly Law," unpublished.

¹²⁷ *Ibid.*

¹²⁸ As discussed in Chapter One and will be discussed in detail in the following chapters, *qing* is considered to be human nature and the normal feelings or attitudes of the general public in a particular contexts and circumstances; *li* refers to reasonableness, discursive reasoning, rational principle, or logical arguments. See Randall P Peerenboom, *Law and Morality in Ancient China: The Silk Manuscripts of Huang-Lao* (New York: State University of New York Press, 1993) at 268.

interaction of state law, social expectations, and family relations on leftover women's choices in marriage and childbearing.

In sum, current research on leftover women's choices in marriage and childbearing reinforces the Western-centric belief that women in the Global South are merely victims of their own traditional patriarchal culture. I caution that if we are too focused on blaming culture, we will not only overlook the complex ways in which power actually functions but also miss the opportunity to make sense of leftover women's choices. As Mohanty advocates, it is necessary to "illustrate how the category of woman is constructed in a variety of political contexts that often exist simultaneously and overlaid on top of one another."¹²⁹ While it may be true that some levels of social ordering are based on and contribute to patriarchal gendered norms, blaming culture will lead us nowhere. Instead, we need to draw more attention to the reasons why a particular aspect of the so-called traditional culture is invoked to justify a particular social ordering. We also have to analyze who benefits from the selective interpretation of culture.

I understand that it is unrealistic for a single researcher or a research team to identify all factors contributing to leftover women's pressure to marry and give birth. However, if feminist scholars from across disciplines investigate some contributing factors that fall into their areas of expertise and interest, we will end up with more resources to understand leftover women's choices better. This is also true for other studies on women's issues in China such as domestic violence, employment discrimination, and land rights of rural women.

¹²⁹ Mohanty, *supra* note 40 at 73.

II. The Need for a Postcolonial Feminist Analysis of the “Choice” of Leftover Women

Current research on leftover women mainly emphasizes the negative impact of the so-called traditional patriarchal culture in China. The consequences of harbouring this preconception are striking: it has left the impression that unlike women in many Western and Asian countries, single women in China have difficulties in choosing alternative family formation due to the constraint of their own culture.

From a postcolonial perspective, I emphasize the need to prioritize the views of leftover women themselves toward marriage, especially when they make their choices within an oppressive social environment. Maneesha Deckha refers to Uma Narayan’s work and suggests that “[t]he ability of individuals to make choices with less than ideal alternatives or educated minds and emotions themselves cannot negate those choices outright.”¹³⁰ One should not assume that leftover women who still desire a heterosexual marriage make their choices out of false consciousness resulting from a purportedly fixed patriarchal culture. Neither should feminist legal scholars ignore the fact that marriage holds value for many women. Deckha powerfully poses the question: “[s]hould we discourage women from getting married since we ‘know’ that there is a high likelihood they will harm themselves by taking on a double burden occasioned by primary caregiving responsibilities and further exposing themselves to the risk of domestic violence?”¹³¹ In Deckha’s view, even feminists would not legislate against these types of choices because we are aware of both the pleasures and pain marriage involves and the overwhelming desires of many women to participate in this highly normative

¹³⁰ Maneesha Deckha, “Pain as culture: A postcolonial feminist approach to S/M and women’s agency” (2011) 14:2 *Sexualities* 129 at 141.

¹³¹ *Ibid* at 137.

institution.¹³² Deckha emphasizes that when Western feminists are able to see the rationales for and complexity of women's decision-making in Western contexts but apply a different standard to non-Western women, the end result is that women's decisions are accepted as valid choices in the former context but not the latter.¹³³

To challenge the assumption that the difficulties faced by leftover women to stick to their preferences mainly come from the misogynistic "tradition" and "culture" in Chinese society, I will examine how leftover women evaluate the benefits and costs of available options in the following chapters. I will prove that these leftover women "are aware of their life circumstances and have made choices about what would be best for themselves and their families."¹³⁴

If leftover women do not necessarily believe in the so-called traditional culture, how could we explain the fact that marriage is still nearly universal and early in China?¹³⁵ Should we blame the Chinese state for pushing leftover women into marriage for its population goals? Or should we accuse parents and men who harbour so-called feudal and outdated gender norms of constraining leftover women's choices in marriage and childbearing? As I discussed above, all of these approaches are problematic. To facilitate a better understanding of leftover women's choices, one needs to let leftover women

¹³² *Ibid.*

¹³³ Deckha, *supra* note 130 at 132-4;141.

¹³⁴ Maneesha Deckha, "Situating Canada's Commercial Surrogacy Ban in a Transnational Context: A Postcolonial Feminist Call for Legalization and Public Funding" (2015) 61:1 McGill Law J 1 31 at 60.

¹³⁵ In a news article aiming to reflect the drop in marriage rate in China, Yuan Xin, a professor from Nankai University, suggests that "About 6 percent of women aged 30 and 34 in China were unmarried in 2015, a figure about ten times higher than what was recorded in 1990." Ziyang Chen, "Marriage rate in China hits lowest on record," China Daily (21 March 2019), online: <<https://www.chinadaily.com.cn/a/201903/21/WS5c92ee53a3104842260b1c11.html>>. Although the focus of the news article is on the declining marriage rate, in my view, it still demonstrates the fact that the vast majority of women between 30 and 34 (94%) have entered a heterosexual marriage.

themselves speak about their concerns and barriers when they make choices in marriage and childbearing.

I will provide a brief overview of the legal, social, and familial factors that shape leftover women's choices here to guide my readers through the discussion in the rest of this dissertation. When discussing the pressure to marry with leftover women in my interviews, the two most frequently identified forms of normative orders that are—or appear to be—playing a role in shaping their beliefs and choices are, in their own words, parental expectations and social pressure. When asked about the impact of state law on their choices in marriage and childbearing, leftover women explained why state law was not as relevant to and influential on their choices by showing me how they evade the law. I insist on incorporating state law into the discussion because leftover women are, in fact, engaging with state law when they make choices. It is the existence of state law's denial of same-sex marriage and single women's reproductive rights that makes it necessary for leftover women to work around it.¹³⁶ Also, state law has played a role in maintaining the Chinese state's paternalistic political culture by promoting conservative gender norms,¹³⁷ as well as through emphasizing adult children's unconditional submission and obedience to parents. At the same time, state law has been shaping other levels of social ordering.

The leftover women I interviewed deal with the interaction of these orders strategically in order to make choices that are among the best options available to them.

¹³⁶ For more information on the impact of state law on ordinary Chinese people's evasion of it and their invocation of non-state orders, see, for example, Suli Zhu, "Falv Guibi and Falv Duoyuan" (1993) 30:6 *Zhongwai Faxue* 14.

¹³⁷ As Di Wang and Sida Liu write, "[g]ender is a governing code that systemically shapes how people think and what people value. Gender norms can legitimize the evidential boundaries set by the Chinese state through maintaining its paternalistic political culture." Di Wang & Sida Liu, "Performing Artivism: Feminists, Lawyers, and Online Legal Mobilization in China," (2020) *Law & Social Inquiry* 1 at 11.

These three levels of social ordering, according to the narratives of my interviewees, are not simply reflections of the purportedly traditional patriarchal culture. Parental expectations are influential in guiding leftover women's choices in marriage and childbearing mainly because of intergenerational intimacy and the exchange of love between the two generations. It may seem on the surface that leftover women choose to take parental expectations into account out of the traditional requirements of filial piety. However, a close analysis of leftover women's narratives illustrates that they understand filial piety in a very different way from what the traditional norms of filial piety require: they hold critical views toward unconditional submission to parents and instead emphasize communication and love.

Social expectations are playing a role in shaping leftover women's ideas about marriage and childbearing in two ways: first, as the attitudes of the public, especially those of people around them, will have a direct impact on the face of leftover women themselves and their families, they refer to social expectations to ensure their choices would not harm their *guanxi* networks and those of the family. Second, leftover women need to look to dominant social norms concerning women, qualified mothers, and filial daughters and evaluate whether their choices would affect other aspects of their lives, such as career development.

Parental expectations and social expectations overlap to a large extent in that they both expect the individuals to marry and have children, which has been an important element of "Chineseness," or what Lisa Rofel calls "cultural citizenship."¹³⁸ The desire

¹³⁸ Lisa Rofel, *Desiring China: experiments in neoliberalism, sexuality, and public culture*, (Durham [NC]; London: Duke University Press, 2007) at 94–5. Rofel captures how gay men and lesbians envision the term "Chinese culture" in different ways. The leftover women I interviewed also participate in the construction of "culture," "Chineseness," and other relevant concepts, such as "filial piety" and "harmonious relationships."

for cultural belonging within “Chineseness” motivates citizens, including leftover women, to meet the following social expectations: first, one should be filial to parents and maintain a harmonious relationship with them; second, one needs to enter marriage and have children; third, one should be of high *suzhi*.¹³⁹

Although state law is not among the list of main sources of pressure identified by leftover women themselves, their narratives reflect that they are actively working around state law concerning family relations, marriage, and childbearing. Some of them develop various strategies to evade state law, while some others use the rubber stamp quality of state law to attain recognition of other social norms. For this reason, I emphasize the need to investigate how state law works with other levels of social ordering. This approach also attracts my attention to laws that seem irrelevant to leftover women’s choices on the surface, such as the Law of the People’s Republic of China on Protection of the Rights and Interests of the Elderly.¹⁴⁰

When a less-hierarchal notion of filial piety emerges, the Chinese state legislated filial piety to reinforce the traditional norms associated with filial piety. As Kendra Strauss and Feng Xu write,

*In a policy environment in which economic development has long been central and non-negotiable, social policy is generally a crisis management tool...The official Chinese understanding of senior care is based on Confucian family ethics, which presupposes that family members lead in senior care in a household setting, with care labor usually going unpaid.*¹⁴¹

¹³⁹ *Ibid*, at 58.

¹⁴⁰ Law on the People’s Republic of China on Protection of the Rights and Interests of the Elderly (2013), available online at <http://www.pkulaw.cn/fulltext_form.aspx?Gid=191980>, accessed on February 26, 2020.

¹⁴¹ Kendra Strauss & Feng Xu, “At the Intersection of Urban and Care Policy: The Invisibility of Eldercare Workers in the Global City” (2018) 44:7–8 *Critical Sociology* 1163 at 1165.

I argue that the state aims to use its law to unload the state's responsibility of taking care of the large aging population to individual families under the guise of cultural values. By incorporating emotional intimacy and unconditional obedience to parents into its formal legal system, the Chinese state imposes the burden of maintaining harmonious family relations exclusively on adult children. It discourages leftover women who hold different views of marriage and childbearing from sticking to their own desires, especially when their views are against those of their parents.

The example of how the Chinese state legislated filial piety shows how state law shapes and resides in social and parental expectations to govern leftover women's choices of marriage and childbearing. While it is true that there is not a single piece of official legislation or judicial precedent in China that punishes those who delay or forgo heterosexual marriage, there are a variety of state laws and policies with the potential to shape leftover women's choices. More importantly, as Calder reminds us, one needs to be aware that state law is also a powerful social medium in constructing and reinforcing normalcy and deviance.¹⁴² It is crucial for law and society scholars to examine how state law affects leftover women through its influences on social expectations and family relations.

To investigate the impact of state law on leftover women's choices, we have to look at how leftover women understand and engage with state law. My research shows that most leftover women are not typically critical of state law's denial of unmarried women's rights to give birth or choose same-sex marriage. The reasons are not only closely linked to the strong influences of social expectations of women's roles as mothers and daughters

¹⁴² Calder, *supra* note 53.

but also the belief that those who evade or break state law are not necessarily bad citizens as long as they can take responsibility.

I will detail how legal consciousness of the leftover women I interviewed is significantly shaped by *qing*, or what the majority believes to be just, right, and fair under a particular circumstance. By bringing *qing* into the picture, I will identify several characteristics of legal consciousness among leftover women I interviewed. It is worth noting that leftover women's indifferent attitudes toward what state law says about marriage, their emphasis on family relations, and their reliance on *qing* to engage with state law do not mean state law has little impact on leftover women's choices in marriage and childbearing. Rather, the legal consciousness of the leftover women I interviewed lends support to legal pluralists' recognition that the working of state law can only be understood by taking into account multiple levels of non-state social ordering that interact with it.

In summary, leftover women's choices in marriage and childbearing are more complicated than the assumptions embedded in current literature stating that they choose to marry merely because of the negative impact of the purportedly patriarchal culture in Chinese society and the Chinese state's reinforcement of it. Rather, the leftover women I interviewed evaluate possible options and choose what they believe would be for the best interest of themselves and their families. There are multiple layers of social ordering interacting to shape leftover women's beliefs in marriage, childbearing, and family relations. From a legal pluralist perspective, only when we analyze how leftover women navigate through the complexities of multiple levels of social orderings can we have a more comprehensive understanding of why leftover women still choose to enter

heterosexual marriage at a time when more and more women realize they may not benefit from marriage. By providing a detailed examination of leftover women's narratives, I will demonstrate what an analysis of leftover women's choices which does not focus on blaming culture looks like.

Conclusion

In this chapter, I have argued that it is essential to classify leftover women's decisions as choices and recognize that the root cause for most leftover women to choose heterosexual marriage is not what current literature describes as "a resurgence of patriarchal Confucian tradition"¹⁴³ or in Fincher's word, "a resurgence of belief in traditional gender roles."¹⁴⁴ I have emphasized the need to find another voice that is more true to the experiences of leftover women and better able to make sense of leftover women's choices. We should not depict leftover women as passive victims who choose to rush into marriage because they "genuinely believe the destructive myths perpetuated by the state media."¹⁴⁵ From a legal pluralist perspective, I have argued that feminists and law and society scholars should investigate how multiple layers of social ordering interact to affect leftover women's choices in marriage and childbearing. In the next chapter, I will offer a detailed discussion on legal pluralism and a prelude to a more in-depth discussion on the interaction of state law and non-state orders.

¹⁴³ Ji, *supra* note 4 at 1057.

¹⁴⁴ Fincher, *supra* note 1 at 38.

¹⁴⁵ As a study focusing on how Chinese women were shut out of the biggest accumulation of real-estate wealth in history, Fincher's book investigates why so many women in China were willing to cede ownership of an enormously expensive home to their boyfriends or husbands. The interest in her book, therefore, is mainly about economic interest. *Ibid* at 6.

Chapter 3: The Interaction of Multiple Levels of Social Ordering and Leftover Women's Choices

One may argue that the law has a very limited impact on leftover women's choices, especially when there is no state law prohibiting delaying or forgoing heterosexual marriage under the current Chinese legal system. We all know that leftover women would not get caught or get legal punishment if they choose to remain single. Thus, it may appear on the surface that a study on the impact of the law on leftover women's choices in marriage and childbearing is somewhat unnecessary. Nevertheless, no one would deny that in our everyday lives, there are multiple forms of normative social ordering simultaneously governing the way we think and behave. State law is by no means the only form of social ordering when it comes to marriage and childbearing. Most of us may also agree that official legal norms would remain dead letters without effect if they are contrary to prevailing customary or community norms.¹⁴⁶ Non-state orders are of critical importance for understanding how, when, and why state law operates, no matter whether one reserves the term "law" solely for state law.¹⁴⁷

This chapter aims to provide an overview and prelude to a more in-depth discussion on the interaction and inseparability of state law and non-state orders in subsequent chapters. I will start by offering a brief literature review on the theory of legal pluralism

¹⁴⁶ Brian Z Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global" (2008) 30 *Sydney Law Rev* 375 at 401.

¹⁴⁷ Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study" (1973) 7:4 *Law & Society Rev* 719; Simon Roberts, "Against Legal Pluralism: Some Reflections on the Contemporary Enlargement of the Legal Domain" (1998) 30:42 *The Journal of Legal Pluralism and Unofficial Law* 95; Brian Z Tamanaha, "The Folly of the 'Social Scientific' Concept of Legal Pluralism" (1993) 20:2 *J Law & Society* 192.

with a focus on the evolution of the field of legal pluralism, followed by an analysis of how Chinese law and society scholars understand legal pluralism and its application in China. I argue that *qing li fa* is among the most important local knowledge¹⁴⁸ that would make a significant contribution to understanding the relationship between state law and non-state orders. I aim to use leftover women's experience to provide an empirical example and offer some insights into how *qing li fa* shape ordinary people's beliefs and choices. I argue that the boundaries between *qing li* and *fa* are blurred and fluid, and they overlap to a large extent. The fluidity enables state law to affect leftover women's choices by shaping and reshaping parental and social expectations.

I. Legal Pluralism and the Relationships between State Law and Non-state Orders

Legal pluralism, a concept developed in legal anthropology and sociology to analyze overlapping normative orders within societies,¹⁴⁹ is generally defined as “a situation in which two or more legal systems coexist in the same social field.”¹⁵⁰ In this part, I start by discussing the evolution of the field of legal pluralism from an area of law that focused on the conflict between colonial and Indigenous legal orders to a field where law and society scholars examine how multiple levels of social ordering interact to shape ordinary people's behaviour. I will then investigate how local knowledge in China,

¹⁴⁸ I borrow the term “local knowledge” from Suli Zhu to refer to “indigenous legal resources,” or notions and norms that are influential in people's daily interaction. Suli Zhu, *Fazhi jiqi Bentu Ziyuan* (Beijing: Zhongguo Zhengfa Daxue Chubanshe, 1996) at 14.

¹⁴⁹ Ralf Michaels, “Global Legal Pluralism” (2009) 5:1 Annual Rev Law & Social Science 243 at 245.

¹⁵⁰ Sally Engle Merry, “Legal Pluralism” (1988) 22:5 Law Soc Rev 869 at 870.

especially *qing li fa*, complements current understanding of the interaction and inseparability of state law and non-state orders.

A. The Evolution of the Field of Legal Pluralism

The phenomenon of legal pluralism exists throughout history, although “legal pluralism” itself is a relatively new concept.¹⁵¹ Legal pluralists are fighting against legal centralism, an ideology that takes it for granted that state law is the only form of law. Law and society scholars from Max Weber through scholars like Boaventura de Sousa Santos, Franz von Benda-Beckmann and Keebet von Benda-Beckmann have discussed how state law functions to root out non-state law. Keebet von Benda-Beckmann and Bertram Turner reveal state law’s ambition to supplant other legal orderings by suggesting that “it is only with the emergence of states that law assumed its full role of maintaining order.”¹⁵² Legal pluralists tend to agree that all early empires, as well as modern governments, recognized the co-existence of plural legal orders and sought to eliminate non-state law to assert exclusive control over the legal practices of all citizens.¹⁵³

David Engel and Jaruwana Engel argue against the assumption among many lawyers that law’s jurisdiction is coterminous with geographic boundaries, regardless of the

¹⁵¹ Keebet von Benda-Beckmann & Bertram Turner, “Legal pluralism, social theory, and the state” (2018) 50:3 *The Journal of Legal Pluralism and Unofficial Law* 255 at 256. The concept of legal pluralism became popular in the 1970s and 1980s. Michaels, *supra* note 149 at 245.

¹⁵² von Benda-Beckmann & Turner, *supra* note 151 at 257.

¹⁵³ *Ibid.*, at 256; David M Engel & Jaruwana S Engel, *Tort, custom, and karma: globalization and legal consciousness in Thailand*, *Cultural lives of law* (Stanford: Stanford Law Books, 2010) at 52; Boaventura de Sousa Santos, *Toward a new common sense: law, science, and politics in the paradigmatic transition*, *After the law* (New York: Routledge, 1995).

diverse communities and cultures such boundaries might enclose.¹⁵⁴ Engel and Engel suggest that as state law never fully occupies the space over which it claims sovereignty, “state law must be understood in terms of its mutually dependent relationship with non-state legal orders.”¹⁵⁵ As Engel argues, law is not necessarily a projection of state power; rather, different groups have different kinds of law.¹⁵⁶ Moreover, according to Engel, “[e]ven if one focuses on ‘official’ law, one still finds a significant dependence on unofficial or customary rule structures to determine norms of reasonableness or fairness.”¹⁵⁷ The basis for Engel’s “law from below” approach could be found in Eugen Ehrlich’s notion of “living law.”¹⁵⁸

In the early twentieth century, Eugen Ehrlich, a legal scholar, argued that law was to be found in social practices, rather than reducible to official, formal law.¹⁵⁹ To Ehrlich, the great mass of law which originates with social institutions comes into being in the living present as the natural offspring of society itself; official law is only one form of law.¹⁶⁰ Ehrlich argues that “a plurality of human beings who, in relations with one another, recognize certain rules of conduct as binding, and generally at least, regulate their conduct according to them.”¹⁶¹ Ehrlich calls these rules “living law.” Unlike Roscoe Pound’s notions of “law in the books” and “law in action,” both of which refer solely to

¹⁵⁴ Engel & Engel, *supra* note 153 at 50–2.

¹⁵⁵ *Ibid* at 52.

¹⁵⁶ Engel, *supra* note 29 at 140.

¹⁵⁷ *Ibid*.

¹⁵⁸ Marc Hertogh, “A ‘European’ Conception of Legal Consciousness: Rediscovering Eugen Ehrlich” (2004) 31:4 J Law Soc 457 at 472.

¹⁵⁹ Eugen Ehrlich & Nathan Isaacs, “The Sociology of Law” (1922) 36:2 Harvard Law Rev 130.

¹⁶⁰ *Ibid* at 144.

¹⁶¹ Marc Hertogh cites Ehrlich to explain the notion of “living law.” Hertogh, *supra* note 158 at 473; Eugen Ehrlich, *Fundamental principles of the sociology of law*, European sociology (New York: Arno Press, 1975).

official law, Ehrlich's "living law" refers to non-state law.¹⁶² Ehrlich suggests that living law prevails under normal circumstances, rather than only in cases of dispute and conflict.¹⁶³ In the 1980s, some German and Dutch legal anthropologists supported Ehrlich's viewpoint and argued that "the significance of law derived from its use in the social, economic, and political life in general, and only secondarily from disputes."¹⁶⁴ During that time, scholars like Sally Engle Merry, John Griffiths, Franz von Benda-Beckmann, Keebet von Benda-Beckmann, de Sousa Santos, among others, challenged legal centralists' assumptions about the state's monopoly on law and pushed for an expansive use of the term law: they argued that law should refer "equally to a multiplicity of nonstate, normative orders—from the rules governing schools to trade associations to the family."¹⁶⁵ In sum, non-state law is equally important as official law to many legal anthropologists, sociologists, and theorists, whose observations of how the law really worked in real life motivated them to study "law" of different varieties.

After several decades of legal pluralism scholarship, Marc Hertogh diagnoses three main waves of attention for non-state law, which he refers to as "colonialism," "legal pluralism at home" and "globalization."¹⁶⁶ In the early twentieth century, social scientists were interested in how Indigenous peoples in colonized societies maintained social orders

¹⁶² For more discussion, see, for example, David Nelken, "Law in Action or Living Law - Back to the Beginning in Sociology of Law" (1984) 4 *Leg Studies* 157.

¹⁶³ Hertogh, *supra* note 158 at 473.

¹⁶⁴ von Benda-Beckmann & Turner, *supra* note 151 at 259. von Benda-Beckmann and Turner list Johan F. Holleman and Franz von. Benda-Beckmann as examples.

¹⁶⁵ Mitra Sharafi, "Justice in Many Rooms Since Galanter: De-Romanticizing Legal Pluralism Through the Cultural Defense" (2008) 71:2 *Law & Contemporary Problems* 139 at 141.

¹⁶⁶ Marc Hertogh, *What is Non-State Law? Mapping the Other Hemisphere of the Legal World*, SSRN Scholarly Paper ID 1008451 (Rochester, NY: Social Science Research Network, 2007).

without European law.¹⁶⁷ These scholars, mostly anthropologists, gradually found that colonized peoples had both Indigenous Law and European law.¹⁶⁸ Merry refers to the analysis of the intersections of Indigenous and European law as “classic legal pluralism.”¹⁶⁹ As the first wave of attention to non-state law, “colonialism” is closely associated with “classic legal pluralism.”¹⁷⁰

Beginning in the late 1970s, a new wave of attention for non-state law stemmed when law and society scholars started to be interested in applying the concept of legal pluralism in societies without colonial past, where the non-state forms of normative ordering are more difficult to see.¹⁷¹ Merry uses “new legal pluralism” or “legal pluralism at home” to describe the approach that applies the concept of legal pluralism to study non-colonized societies.¹⁷² The foundations of the “new legal pluralism” were laid out by Ehrlich and his study of the “living law.”¹⁷³ Hertogh concludes that this new wave focus mostly on the following two fields: (1) the diverse laws of subordinate groups in industrialized societies, such as immigrant groups, and religious, ethnic and cultural minorities; (2) unofficial forms of ordering located in social networks or institutions, such as local norms and rules of the business community.¹⁷⁴

¹⁶⁷ Merry, *supra* note 150 at 869.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid* at 872.

¹⁷⁰ Hertogh, *supra* note 166 at 4.

¹⁷¹ Merry, *supra* note 150 at 872–3.

¹⁷² *Ibid* at 874.

¹⁷³ *Ibid* at 873; Hertogh, *supra* note 166 at 8.

¹⁷⁴ Hertogh, *supra* note 166 at 9.

The third wave of attention to legal pluralism after “classic” and “legal pluralism at home,” according to Hertogh, is “globalization.”¹⁷⁵ As von Benda-Beckmann and Turner suggest, the rise in globalizing economies at the end of the twentieth century required reconsidering the concept of law, since the nation-state has ceased to be the main source of law.¹⁷⁶ Because of globalization, the center of lawmaking has shifted away from the state into the periphery of transnational actors.¹⁷⁷ Thus, nation states no longer represent the sole legitimate source of lawmaking in every single social and economic field.¹⁷⁸

Classic legal pluralism often lost sight of the state, as many authors interested in customary laws in this period showed “a remarkable lack of interest in the state.”¹⁷⁹ New legal pluralism paid more attention to the relationships between local normative orders and state law.¹⁸⁰ During the 1960s and 1970s, several legal pluralism scholars investigated state law’s power or its lack of power in shaping social orders.¹⁸¹ Research in the 1980s onwards has increasingly emphasized the interaction between state law and other normative orders.¹⁸² de Sousa Santos, for example, stresses the importance of understanding how different types of law interact with one another.¹⁸³ He argues that the legal character of social relations of law does not derive from one single form of law, or

¹⁷⁵ *Ibid* at 14.

¹⁷⁶ von Benda-Beckmann & Turner, *supra* note 151 at 265.

¹⁷⁷ Michaels, *supra* note 149 at 247.

¹⁷⁸ von Benda-Beckmann & Bertram Turner, *supra* note 151 at 265–6.

¹⁷⁹ *Ibid* at 258.

¹⁸⁰ *Ibid* at 259.

¹⁸¹ For more discussion, see Merry, *supra* note 150 at 879.

¹⁸² *Ibid* at 880.

¹⁸³ Santos, *supra* note 153 at 114. pp. 428-38.

state law, but rather from the different constellations among different forms of law.¹⁸⁴ In de Sousa Santos' viewpoint, sometimes different forms of legal orders are so deeply intertwined in our everyday lives that it may be difficult and even inadequate to distinguish them.¹⁸⁵

According to de Sousa Santos, "our legal life is constituted by an intersection of different legal orders, that is, by interlegality."¹⁸⁶ Interlegality, in his view, is a highly dynamic process "because the different legal spaces are non-synchronic, and thus result in uneven and unstable combinations of legal codes (codes in a semiotic sense)."¹⁸⁷ Compared to classic legal pluralism that stresses that legal systems operate in parallel, de Sousa Santos points to the continuous interaction between different legal orders. Building upon new legal pluralism, I examine how state law and non-state orders in China interact to affect leftover women's choices in marriage and childbearing. In other words, I see state law as one level of social ordering that participates in shaping leftover women's choices in a non-hierarchical way, rather than treating state law as the only or the most influential form of social ordering in ordinary people's daily lives.

Until the 21st Century, legal scholars generally agree that "we live in a world of multiple overlapping normative communities."¹⁸⁸ Nevertheless, one cannot deny that the concept of legal pluralism initially met with considerable resistance from lawyers and legal scholars, especially those who argued that non-state law is no law at all. These

¹⁸⁴ *Ibid* at 454.

¹⁸⁵ *Ibid* at 433.

¹⁸⁶ *Ibid* at 473.

¹⁸⁷ *Ibid*.

¹⁸⁸ Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law beyond Borders* (New York: Cambridge University Press, 2012) at 3.

opponents suggested that we should reserve the term law for state law.¹⁸⁹ For example, Sally Falk Moore writes, “there are occasions when, through recognizing the existence of and common character of binding rules at all levels, it may be of importance to distinguish the sources of the rules and the sources of effective inducement and coercion.”¹⁹⁰ Brian Tamanaha and Simon Roberts also share Falk Moore’s viewpoint,¹⁹¹ although Tamanaha made an about-face later on and argues instead that law is whatever people in the social group conventionally recognize and treat as law through their social practices.¹⁹²

Indeed, some scholars may still question whether non-state law should be called “law” or whether some other terminology would be preferable. For this reason, I avoid using either “law” or “legal order” in this dissertation to refer to non-state social ordering. My reluctance to use these terms stems from the fact that legal pluralists have not reached an agreement on the repeatedly asked question of “what is law.”

The question of nomenclature, however, is not central to my study. No matter what we call non-state orders, we would not deny that non-state orders are of critical importance for understanding how, when, and why state law operates—this is the question I aim to answer through my investigation of leftover women’s choices in marriage and childbearing. The reason I draw upon legal pluralism is not to argue that social expectations and parental attitudes are legal orders for leftover women when they make choices in marriage and childbearing. Rather, my aim is to remind my friends and

¹⁸⁹ Moore, *supra* note 147; Roberts, *supra* note 147; Tamanaha, *supra* note 147.

¹⁹⁰ Moore, *supra* note 147 at 745.

¹⁹¹ Tamanaha, *supra* note 147; Roberts, *supra* note 147; Merry, *supra* note 150.

¹⁹² Brian Z Tamanaha, “A Non-Essentialist Version of Legal Pluralism” (2000) 27:2 J Law & Society 296 at 316, 319.

colleagues in the area of legal studies of the fact that we live in a world where multiple levels of social ordering interact to shape the ways state law functions in people's everyday life. It may be common sense for non-legal scholars, but unfortunately, sometimes legal scholars tend to forget this common sense and focus exclusively on state law itself or on formal legal institutions. As a law and society scholar, I aim to use leftover women as an example; to invite legal scholars to look at how state law interacts with other social norms in non-hierarchical ways in ordinary people's everyday life and to encourage legal scholars to think critically about separating state law from other levels of social ordering in the discussion of legal reforms.

Following empirical researchers such as Ehrlich, de Sousa Santos, Engel, and the von Benda-Beckmanns, I am interested in how state law in China is operating in the lives of real people. My qualitative research on leftover women draws upon legal pluralism and recognizes the coexistence of plural social orders. More importantly, my research contributes to the area of legal pluralism by using leftover women's experience as an example to demonstrate how "local knowledge"¹⁹³ interacts with state law to shape ordinary people's choices and govern their behaviour.

B. Legal Pluralism and Local Knowledge in China

In the mid-1990s, Suli Zhu, a leading law and society scholar in China, posed this question: Does legal pluralism exist in China?¹⁹⁴ Zhu answered this question positively,

¹⁹³ Zhu, *supra* note 148 at 14.

¹⁹⁴ Zhu, *supra* note 136 at 17–8.

regardless of the fact that China does not have a colonial history that brought the imposition of a foreign legal order.¹⁹⁵ Zhu argues that the traditional legal system and culture, as well as the normative orders developed in people's interaction within such a cultural environment, contribute to the existence of legal pluralism in Chinese society.¹⁹⁶ Zhu suggests that, although some may argue that these normative orders are not "law," no one could deny that these beliefs and behaviours have a significant impact on how state law functions,¹⁹⁷ a viewpoint that is consistent with Engel's.¹⁹⁸ Zhu suggests that these norms, however, are not necessarily independent from state law's influences. When state law cannot directly affect society to achieve its control, state law would find a way to challenge non-state legal orders to shape ordinary people's legal consciousness.¹⁹⁹ According to Zhu, the following reasons contribute to legal pluralism in China: first, China's current legal system has been built on the legal concepts, terminology, and principles from foreign legal systems. Second, there are multiple forms of rules resulting from the traditional legal culture²⁰⁰ governing ordinary people's behaviour—for example, a vast majority of villages in China have their own rules.²⁰¹

¹⁹⁵ *Ibid* at 17–20.

¹⁹⁶ *Ibid* at at 18.

¹⁹⁷ *Ibid* at 18.

¹⁹⁸ Engel, *supra* note 29.

¹⁹⁹ Zhu, *supra* note 136 at 20.

²⁰⁰ Zhu, *supra* note 148 at 53. He emphasizes that "traditional legal culture" is not fixed and static by referring to the debates of the rule by ritual and the rule by law (礼法之争).

²⁰¹ *Ibid* at 53–4.

In *Fazhi Jiqi Bentu Ziyuan* (法治及其本土资源, Rule of Law and Its Local Resources),²⁰² Zhu advocates that legal scholars should adopt a different understanding of law, rather than seeing law as a tool for the state to control its citizens.²⁰³ Zhu suggests that the primary function of law is to maintain stable and predictable expectations for people's daily interaction and behaviour,²⁰⁴ a view that is similar to that of Roderick Macdonald's "everyday law."²⁰⁵ Law, in Macdonald's view, is "a framework of rules that facilitate human interaction by stabilizing our expectations of others, and theirs of us,"²⁰⁶ more than a set of recognizable concepts, institutions, and instrument. As Macdonald suggests, "the key contribution of law is its capacity to reflect and to state the values around which we seek to organize debate about the kinds of societies in which we want to live."²⁰⁷

Zhu argues that not only state law but also non-state orders can achieve this goal of facilitating people's interaction in their daily lives; moreover, even if state law does not exist in a society, there will always be some customs (习惯) governing people's behaviour.²⁰⁸ In Zhu's opinion, Chinese legal scholars need to be wary of the influence of Western-centrism on China's legal system, as it shifted our attention away from local

²⁰² I borrow the translation of Zhu's book from Teemu Ruskola, Stephanie Balme, and Michael W. Dowdle. Teemu Ruskola, *Legal Orientalism* (Harvard University Press, 2013) at 317; Stephanie Balme & Michael W. Dowdle, *Building Constitutionalism in China* (NY: Palgrave MacMillan, 2009) at 294.

²⁰³ Zhu, *supra* note 148 at 6–7.

²⁰⁴ *Ibid* at 7–10.

²⁰⁵ Roderick A Macdonald, *Lessons of everyday law* (Montreal: McGill-Queen's University Press, 2002).

²⁰⁶ *Ibid* at 8.

²⁰⁷ *Ibid*.

²⁰⁸ Zhu, *supra* note 148 at 8–9.

knowledge (本土资源) in Chinese society both in the past and at present.²⁰⁹ The inattention to local knowledge in legislation, according to Zhu, contributes to the failure of facilitating people's interactions, at least when the law first comes into force; and as a result, ordinary people may try to evade the law in order to avoid trouble.²¹⁰

Given the importance of local knowledge, Zhu encourages Chinese legal scholars to attach value to local knowledge in China, rather than simply applying Western legal theories to study China and its citizens.²¹¹ Twenty years after the publication of *Fazhi Jiqi Bentu Ziyuan*, Zhu once again reminds legal scholars in 2017 that China's current legal system needs to meet ordinary people's expectations—"those who construct social orders in Chinese society are ordinary people, rather than the legal profession."²¹² Depicting ordinary people as agents, Zhu stresses the importance of acknowledging the impact of non-state orders on China's formal legal system.²¹³

It is worth reiterating that Zhu does not see "local knowledge" or "traditional customs" as static and fixed. Instead, Zhu cautions that legal scholars need to focus on different forms of non-state law (各种非正式法律制度) in people's real lives, rather than merely looking for local knowledge in history.²¹⁴ Zhu writes, "existing unofficial orders developing on the ground are of great importance."²¹⁵

²⁰⁹ *Ibid* at 12–3.

²¹⁰ *Ibid*.

²¹¹ *Ibid*.

²¹² Suli Zhu, "Wenti Yishi: Shenme Wenti yiji Shui de Wenti?" (2017) 70:1 Wuhan University Journal (Social Science) 10 at 12.

²¹³ *Ibid*; Zhu, *supra* note 148.

²¹⁴ Zhu, *supra* note 148 at 14.

²¹⁵ *Ibid*.

Zhu's *Fazhi Jiqi Bentu Ziyuan* is influential in China's legal academia—the book laid the foundation for the development of the area of law and society in China since the mid-1990s.²¹⁶ Zhu's research has demonstrated the importance of non-state orders in affecting the way state law functions on the ground in Chinese society. Through insightful analysis of two popular films, *The Story of Qiuju*,²¹⁷ and *The Accused Uncle Shangang*,²¹⁸ as well as detailed discussion of China's legal system and legal reforms, Zhu's research enriches the area of legal pluralism by bringing in the experience of how ordinary people in China solve disputes without relying on state law.

While my research owes an enormous debt to Zhu, who is considered a forebear of Chinese socio-legal studies, I am wary of Zhu's overemphasis on incorporating local

²¹⁶ Bofeng Chen, "Faxue Yanjiu de Wenti Yishi yu Duoyuan Geju" (2017) 70:1 Wuhan University Journal (Social Science) 10 at 10. Benqian Sang, an influential Chinese law and society scholar, writes, "Zhu's theory of indigenous/local knowledge is the most insightful theory in the area of jurisprudence in China so far." Benqian Sang, "Fazhi jiqi Shehui Ziyuan--Jianping Suli 'Bentu Ziyuan' Shuo" (2006) 28:1 Xiandai Faxue 3 at 4.

²¹⁷ The film tells a story about a rural woman, Qiuju, who lives with her husband in a village in China, goes to courts for justice. The pregnant Qiuju is incensed because her husband has been kicked in the groin by the head of the small village they live in. Qiuju goes to ask the village head to apologize and explain his behavior. But the head refuses. Qiuju then goes to the local police to file a complaint, but the head still refused to apologize. Dissatisfied, Qiuju goes to the capital to find justice for her husband despite of her pregnancy. Qiuju hires a lawyer to file a new complaint. The court upholds the decision of the district official that the village head should pay 250 yuan to Qiuju and her husband. The decision disappoints Qiuju and she pursues another appeal. The officials visit the village, and Qiuju's husband is examined by local doctors. Time passes, winter arrives. Qiuju goes into labour. Qiuju's husband awakes the village head in the middle of the night to help take Qiuju to the hospital where she gives birth to a healthy baby boy. After four weeks, Qiuju and her husband hold a banquet for their new born and invite the village head to attend the celebration. Ironically, he is not able to come as he is being sent to jail to serve a 15-day sentence as the result of Qiuju's husband's medical exam having finally been revealed, showing that he suffered from a broken rib. Realizing this result is not what she wants, Qiuju tries to stop the police from taking the village head away, but this is in vain. In the last scene, Qiuju is standing there with her shocked facial expression. As Qiuju says in the film, she only wants a just solution for her husband. Even though she relies on the legal system for a solution, she really only wants an apology instead of sending the head to jail. For more information about the film, see, for example, Jerome A Cohen & Joan Lebold Cohen, "Did Qiu Ju Get Good Legal Advice?" in Corey K Creekmur & Mark Sidel, eds, *Cinema, Law, and the State in Asia* (New York: Palgrave Macmillan US, 2007) 161; Zhu, *supra* note 148 at 23-24.

²¹⁸ *The Accused Uncle Shangang* (被告山杠爷) features a case of whether an old village head should be held responsible for the death of a woman who commits suicide after being submitted to public humiliation by Shangang as punishment for her mistreatment of her mother-in-law. It is a film about how conflicts are resolved effectively in the village in a way that is against state law. For more information, see Zhu, *supra* note 148 at 24.

knowledge into state law. Zhu argues that the reason why China's current legal system cannot work effectively lies in the conflict between state law and folk law (民间法), or local knowledge. Thus, he emphasizes that through the incorporation of non-state orders into state law, local knowledge could serve the aim of building a better formal legal system.²¹⁹ I argue that it is not necessarily beneficial to ordinary people if the state keeps incorporating local knowledge into its legal system,²²⁰ especially when the state often strategically and selectively interprets and adopts local knowledge to achieve its political goals. One typical example is the state's legislating of filial piety: the state legislated filial piety for the purpose of unloading the Chinese state's responsibility of providing old-age support to individual families.²²¹

More importantly, legal scholars need to be wary of the romantic assumption that non-state law is less coercive and more egalitarian than state law. Reading Zhu's analysis of *The Story of Qiuju* and *The Accused Uncle Shangang*, one would soon notice his romantic assumptions about non-state law. For example, Zhu considers Uncle Shangang's violent, gendered, and highly patriarchal and paternalist approaches of governing his village fellows as effective in governing villagers. Indeed, Uncle Shangang's approach of governance is effective in that village fellows respect him and are willing to listen to him. As Shangang knows the rules and customs in the village well and has strategies to urge village fellows to follow these local practices, people rely on

²¹⁹ *Ibid* at 14–5.

²²⁰ In fact, in his book *Sending Law to the Countryside* (送法下乡) published in 2011, Zhu himself also briefly mentions that he is against the idea of legalizing customs because customs would lose flexibility once they are in the formal legal system. Suli Zhu, *Songfa Xiaxiang* (Beijing: Peking University Press, 2011) at 196.

²²¹ For more information, see Chapter Six of this dissertation.

him to maintain justice and fairness. For this reason, Zhu suggests that non-state orders are more effective than state law in Shangang's village. What Zhu fails to do is to criticize Shangang's usage of violence and his violation of the rights of some village fellows to achieve his goal of control, such as unlawful custody. Zhu's approach runs the risk of adhering to romantic assumptions about non-state orders in the process of investigating the dynamic relationship between state law and non-state orders.

Another concern of mine is Zhu's exclusive focus on how ordinary people resolve disputes.²²² While he acknowledges that law's primary function is to facilitate daily interactions, he has paid little attention to ordinary people's understandings and commitment to state law and non-state orders arising from everyday lives. This is a gap my dissertation aims to fill in. As ordinary people also constantly evaluate and judge whether they should refer to state law or other levels of social ordering to guide their behaviour in their daily lives, I argue that a detailed analysis of how ordinary people in China use *qing* (情), *li* (理), and *fa* (法) under non-dispute situations could facilitate a better understanding of the interaction of state law and non-state orders in Chinese society, as well as the inseparability of state law and non-state social ordering.

Those who are familiar with Chinese societies would not deny the importance of *qing* and *li* in maintaining stable and predictable expectations for people's daily interaction and behaviour.²²³ In the dominant Chinese legal culture, ordinary people's conception of

²²² Zhu, *supra* note 148; Zhu, *supra* note 220.

²²³ See, for example, Duan Lin, *Weibo Lun Zhongguo Chuantong Falv: Weibo Bijiao Shehuixue de Piduan* (Beijing: Zhongguo Zhengfa Daxue Chubanshe, 2014) at 57–93; Zhongxin Fan, Ding Zheng & Xuenong Zhan, *Qing, li, fa yu Zhongguoren: zhongguo chuantong falv wenhua tanwei*, (Beijing: Zhongguo renmin daxue, 1992); Bin Ling, "Falv yu Qing Li: Fazhi Jincheng de Qing Fa Maodun yu Lunli Xuanze" (2012) 24:1 *Zhongwai Faxue* 121; Xiaoxia Sun, "Zhongguo Chuantong Faguan de Shizhixing Siwei" (2005) 35:4 *Zhejiang Daxue Xuebao* (Renwen Shehui Kexue Ban) 5; Xiaodong Bai, "Hexie Sifa Zhong de Bentu Ziyuan

“law” is often more complicated than “state law.”²²⁴ As Fan et al. suggest, ordinary people in China understand “law” as a complex and diverse concept: when talking about the concept of “law,” the general public usually think of the following three levels: *qing* (人之常情), *li* (天理), and *fa* (律条). *Qing* is considered to be the law outside state law (法外之法), which refers to human nature and the normal feelings or attitudes of the general public in particular contexts and circumstances; *li*, or the law beyond state law (法上之法), refers to reasonableness, discursive reasoning, rational principle, or logical arguments;²²⁵ *fa*, or the law within state law (法中之法), is almost identical to official law or state law.²²⁶ According to Fan et al., state law occupied a secondary status in the eye of ordinary people in ancient China, as people considered it to be a complement to *qing* and *li*.²²⁷

Shuzo Shiga’s metaphor explains the relationship between *qing*, *li*, and *fa*: in the triad of *qing*, *li*, and *fa* in Qing Dynasty, laws occupy a relatively small place. Shiga likened *fa*, or state law to that of an iceberg in the ocean, while *qing* and *li* is considered to be the water in the ocean.²²⁸ In Shiga’s view, *qing li* is the foundation of *fa*, or state law; and therefore, state law should be consistent with *qing li*: if necessary, we need to adjust state

Jieli yu Zhuanhua--Yi Zhongguo Chuantong Sifa Huayu ‘Qing li’ de Xiandai Zaizhi Wei Hexin” (2001) 9 Fujian Luntan (Renwen Shehui Kexue Ban) 151.

²²⁴ Zhu, *supra* note 220 at 196.

²²⁵ Peerenboom, *supra* note 128 at 268.

²²⁶ Fan et al, *supra* note 223 at 8.

²²⁷ *Ibid.*

²²⁸ For example, both Duan Lin and Phillip C. Huang analyse Shiga’s metaphor to demonstrate the relationship of *qing*, *li*, *fa*. Lin, *supra* note 223 at 71-2; Philip C Huang, *Chinese Civil Justice, Past and Present* (Plymouth: Rowman & Littlefield, 2010) at 194.

law to meet the requirements of *qing li*.²²⁹ Despite the important role *qing* and *li* has played in shaping ordinary people's attitudes of and engagement with state law, empirical research is lacking in how ordinary people in today's China invoke *qing, li, fa* to guide their social interaction in their daily lives. Thus, law and society scholars need to pay more attention to the dynamic relationship between state law and *qing li* in ordinary people's daily lives. My discussion of leftover women's choices aims to enrich the discussion on the inseparable relationship between state law and non-state orders.

C. The Inseparability between State Law and Non-state Orders

One of the most influential theories on the inseparability between state law and non-state law in the area of legal pluralism so far is de Sousa Santos' interlegality.²³⁰ While some scholars question legal pluralists' failure in reaching an agreement on "what is law,"²³¹ de Sousa Santos is not troubled by this repeatedly asked question of legal pluralism. He avoids the total trivialization of law by focusing on six structural clusters of social relations among the great variety of legal orders circulating in society. He identifies six basic and relevant legal orders: domestic law (norms and dispute settlements resulting from social relations in the household), production law (the set of regulations and normative standards that rule the everyday life of wage labour relations, codes of conduct for employees and so on), exchange law (resulting from marketplace relations), community law (resulting from local culture and group identities), territorial law or state

²²⁹ Lin, *supra* note 223 at 74.

²³⁰ Santos, *supra* note 153.

²³¹ See, for example, Tamanaha, *supra* note 146.

law (“the law of the citizenplace and, in modern societies, it is central to most constellations of legalities”)²³², and systemic law (rules and standards in the interstate system).²³³ de Sousa Santos does not draw a clear line between these different levels of legal orders. In his view, sometimes these legal orders are so deeply intertwined in our everyday lives that it may be difficult and even inadequate to distinguish them.²³⁴

De Sousa Santos emphasizes the importance of understanding how different types of law interact with one another.²³⁵ He argues that the legal character of social relations of law does not derive from one single form of law, or state law, but rather from the different constellations among different forms of law.²³⁶ According to de Sousa Santos, “our legal life is constituted by an intersection of different legal orders, that is, by interlegality.”²³⁷ Interlegality, in his view, is a highly dynamic process “because the different legal spaces are non-synchronic, and thus result in uneven and unstable combinations of legal codes (codes in a semiotic sense).”²³⁸ Compared to classical definitions of legal pluralism stressing that legal systems operate in parallel, de Sousa Santos points to the continuous interaction between different legal orders. Interlegality has been used as a theoretical lens by scholars across the world to discuss the complex

²³² Santos, *supra* note 153 at 435.

²³³ *Ibid* at 428–55.

²³⁴ *Ibid* at 433.

²³⁵ *Ibid* at 114. pp. 428-38.

²³⁶ *Ibid* at 454.

²³⁷ *Ibid* at 473.

²³⁸ *Ibid*.

relationships between state law and transnational private law, as well as the interaction between state law and Indigenous laws.²³⁹

de Sousa Santos's approach, however, has been criticized for its inability to make room for social actors to define "law." As Brian Tamanaha puts it, "Santos's definition is functionalist in orientation, grounded in the idea that the function of law is to maintain the normative order of a group by enforcing norms and resolving disputes."²⁴⁰ Andre Hoekema suggests that the concept of interlegality gets its full flavour only if we adopt the so-called actor-oriented approach of perceiving legal pluralism and avoid any notion of structural determination.²⁴¹ Hoekema takes the study of interpenetrating legal orders a step further and defines interlegality as both a process and an outcome—it is "a process of adoption of elements of a dominant legal order, both national and international, and of the frames of meaning that constitute these orders, into the practices of a local legal order and/or the other way around; or as the outcome of such process, a hybrid new legal order."²⁴²

What Hoekema has stressed is that interlegality is a process which can come about both when state law recognizes local law and when state law ignores or even cracks down on it.²⁴³ According to Hoekema, instead of being the prisoners of their own supposedly

²³⁹ Robert Wai, "The Interlegality of Transnational Private Law" (2008) 71:3 *Law & Contemporary Problems* 107; André J Hoekema, "European Legal Encounters between Minority and Majority Cultures: Cases of Interlegality" (2005) 37:51 *J Legal Pluralism & Unofficial Law* 1; Craig Proulx, "Blending Justice: Interlegality and the Incorporation of Aboriginal Justice into the Formal Canadian Justice System" (2005) 37:51 *J Legal Pluralism & Unofficial Law* 79; Tom G Svensson, "Interlegality, a Process for Strengthening Indigenous Peoples' Autonomy: The Case of the Sámi in Norway" (2005) 37:51 *J Legal Pluralism & Unofficial Law* 51.

²⁴⁰ Tamanaha, *supra* note 192 at 302.

²⁴¹ Hoekema, *supra* note 239 at 11.

²⁴² *Ibid.*

²⁴³ *Ibid.*

integrated and homogeneous culture, individuals choose among legal orders selectively to promote their own interests.²⁴⁴ Indeed, it is true that people do not succumb completely to state law but usually resist the law either openly or in a hidden way when state law conflicts with a particular legal order they believe they should follow. Hoekema's actor-oriented approach relies on the fact that legal orders are not fixed but perpetually being negotiated by various actors. Both Tamanaha and Hoekema criticize de Sousa Santos' approach for predetermining the characteristics of law. Instead, they point to the need to rely on citizens or so-called legal subjects to identify law. They stress that it is social actors, rather than social scientists that are identifying and creating law.

Building on de Sousa Santos' interlegality and the critiques on its inability to make room for legal subjects to define law, I suggest that legal scholars and social scientists should not assume that ordinary people *choose between* state law and non-state orders to guide their behaviour in their daily lives. Neither should we impose the obligation of distinguishing state law from non-state orders on ordinary people. We need to acknowledge that most of the time, non-state orders live in state law and vice versa. Under some circumstances, ordinary people in China are not choosing between state law or non-state orders. Rather, they refer to ordinary people's understandings of justice, fairness, and humanity to guide their behaviour.

According to Fan et al., *qing*, *li*, and *fa*, exist in unity and form an indistinguishable whole—when ordinary people in China evaluate whether a particular person should be held responsible for her behaviour, they often consider *qing*, *li*, and *fa* all at once.²⁴⁵ Fan

²⁴⁴ *Ibid* at 3.

²⁴⁵ Fan et al., *supra* note 223 at 26.

et al. suggest that *fa* is the least important because people believe it is the last resort and is only needed when *qing* and *li* is unavailing.²⁴⁶ People often turn to *qing* and *li* first when making a judgement on whether a particular situation is fair and just, and they only invoke *fa* if *qing* and *li* have been exhausted.²⁴⁷ At the same time, people believe that *fa* or “law” has to abide by the *qing* of the people or that law must be grounded in *qing*. As a Chinese saying goes, “law is nothing but *qing* (法不外乎人情).”²⁴⁸ For this reason, Fan et al. argue that ordinary people in China find it difficult to understand litigious societies where people emphasize “the supremacy of law.”²⁴⁹ Fan et al. support this argument by referring to an article describing Taiwanese people’s expression of the U.S. as a country without *qing* and *li*.²⁵⁰

One may have noticed that ordinary people in Chinese societies often use the concepts of *qing* and *li* in unity. In fact, the boundary between *qing* and *li* is fuzzy and fluid. According to Sin Wai Man and Chu Yiu Wai, who write on the marginalization of *qing* in the rule of law, “the concept of reasonableness should ideally be an active signifier pointing toward *qing* and *li* in unity.”²⁵¹ Chou Wah-Shan suggests that integrating *qing* and *li* (合情合理) is a general cultural belief.²⁵² It is inaccurate to distinguish *qing* from *li*, and also difficult to separate *fa* from *qing* and *li*.

²⁴⁶ *Ibid.*, at 8, 26–27.

²⁴⁷ Peerenboom, *supra* note 128 at 268; Sin & Chu, *supra* note 26 at 152.

²⁴⁸ Sin & Chu, *supra* note 26 at 153.

²⁴⁹ Fan et al., *supra* note 223 at 27.

²⁵⁰ *Ibid.*

²⁵¹ Sin & Chu, *supra* note 26 at 153.

²⁵² Chou Wah-Shan, *Tongzhi: Politics of Same-sex Eroticism in Chinese Societies* (NY: Psychology Press, 2000) at 279.

One important feature of “*qing li fa*” is that it emphasizes harmonious social relations and the obligation of the individuals within these relations, more so than the rights of individual citizens.²⁵³ Shiga calls it a common-sense feeling of justice and fairness.²⁵⁴ Shiga argues that compared to people who grow up in Western societies, ordinary people in China care more about the whole network of social relations and attach more value to the reconstruction of social relations than seeking individual rights.²⁵⁵ Shiga’s analysis of “*qing li fa*” demonstrates how the ways ordinary people interact with each other affect their legal consciousness.

In present-day China, ordinary people still attach more value to *qing* and *li* than *fa*.²⁵⁶ The notions of “*he li he fa* (consistent with *li* and *fa*),” “*he qing he li he fa* (consistent with *qing li fa*),” are prevalent in people’s daily lives.²⁵⁷ According to Cunfu Huo, a leading scholar in the area of Chinese law and culture, “the prevalence of these notions indicates ordinary people’s reliance on *qing li* to understand state law.”²⁵⁸ Bin Ling argues that ordinary people tend to look to *qing li* to govern their own behaviour, more so than state law.²⁵⁹ Ling writes, “Everybody knows and should know that ‘*he qing he li* (consistent with *qing li*)’ is more crucial than ‘*he fa* (consistent with state law)’... ‘law is

²⁵³ Lin, *supra* note 223 at 66.

²⁵⁴ Shuzo Shiga, “Zhongguo Fa Wenhua de Kaocha--Yi Susong de Xingtai wei Sucai” in Yaxin Wang & Zhiping Liang, eds, *Mingqing Shiqi Minshi Shenpan Yu Minjian Qiyue*, 1st ed (Beijing: Falv Chubanshe, 1998) 1 at 13–4.

²⁵⁵ Duan Lin summarizes Shiga’s work in his book to explain the features of *qing* and *li*. Lin, *supra* note 223 at 67.

²⁵⁶ Bai, *supra* note 256 at 154.

²⁵⁷ Cunfu Huo, “Zhongguo Chuantong Fa Wenhua de Wenhua Xingzhuang yu Wenhua Zhuixun--Qing Li Fa de Fasheng, Fazhan jiqi Mingyun” (2001) 39:3 *Fazhi yu Shehui Fazhan* 1 at 1.

²⁵⁸ *Ibid.*

²⁵⁹ Ling, *supra* note 223 at 125.

nothing but *qing*' is still widely believed in Chinese society."²⁶⁰ *Qing li* also has a strong influence on state law in the legal profession in today's China.²⁶¹ For example, Xiaoxia Sun suggests that *qing li* has led many judges in China to prioritize distributive justice (satisfaction with the outcome) over procedural fairness (satisfaction with the fairness of the process).²⁶² Ling argues that *qing li* is deeply rooted in ordinary people's daily lives; as a result, when Americans are "taking rights seriously," legal scholars, lawyers, judges, and lawmakers in China need to take *qing li* seriously.²⁶³

The continuing impact of *qing li* both on ordinary people and the legal profession in China indicates that referring to *qing li* is an essential process for ordinary people to evaluate and make sense of state law. Ordinary people use *qing li* to judge whether state law would maintain the common-sense feeling of justice and fairness. If they believe state law is consistent with *qing li*, they will invoke state law to guide their behaviour. On the other hand, if they find out state law is against *qing li*, they would try to use *qing li* to justify their evasion or violation of state law.

In sum, ordinary people tend to use *qing li* to evaluate state law out of the belief that state law comes from the common-sense feeling of justice. As a result, when ordinary people refer to state law, it is likely that they are simultaneously following non-state orders. For most ordinary people in China, state law's consistency with *qing li* is the prerequisite for them to look to state law. In the remainder of this chapter, I will provide a brief overview of the requirements of *qing li fa* when it comes to leftover women's

²⁶⁰ *Ibid* at 125-6.

²⁶¹ Xigen Wang & Kangmin Wang, "Lun Qing Li Fa Guanxi de Lixing Dingwei" (2012) 20:2 *Henan Shehui Kexue* 28; Ling, *supra* note 223.

²⁶² Xiaoxia Sun, "Faguan Siwei Weishenme 'Qianggu Liuchuan'", *Zhongguo Shehui Daokan* (2005) 33.

²⁶³ Ling borrow the term "taking rights seriously" from Ronald Dworkin. Ling, *supra* note 259 at 133-5.

choices in marriage and childbearing. I categorize the requirements into three groups for analytical purposes: family relations, dominant social expectations of women, and the state's expectations. My aim is to use leftover women's experience as an example to facilitate a better understanding of how *qing li fa* works to shape ordinary people's legal consciousness.

II. Qing, Li, Fa, and Leftover Women's Choices

As the unity of *qing, li, fa* stresses harmonious social relations and the individual's obligation within these relations,²⁶⁴ the individual need to evaluate other people's expectations constantly based on the principle that "those who are close and those who are distant deserve different treatment (亲疏有别)." Ordinary people also have to work around state law if they do not agree with the law. This part aims to provide a brief overview of the requirements of "*qing li fa*" in terms of leftover women's choices in marriage and childbearing. I structure my discussion according to the following three aspects: family relations, social expectations, and state law. It is sometimes difficult to distinguish between the three as they overlap to a large extent. More often than not, *qing* and *li* associated with social and parental expectations are highly identical because what parents expect from their daughters are, at least to some extent, consistent with what the dominant social and cultural norms require leftover women to do. Likewise, the boundaries between state law and these levels of social ordering are sometimes too

²⁶⁴ Lin, *supra* note 223 at 66.

blurred to identify, especially when the state's expectations are in alliance with those of parents and other members in the society.

A. Qing, Li, Family Relations, and Parental Expectations

A state has its laws, and likewise, a family has its own rules (国有国法·家有家规).

— *A famous Chinese proverb*

The leftover women I interviewed often invoke concepts that are closely relevant to *li* and *qing* to emphasize the need to take parental expectations into consideration. Leftover women in my interviews often consider marrying and having children as a crucial part of filial piety²⁶⁵ and a way to repay their parents' care and support, a belief that has been discussed by Harriet Evans.²⁶⁶ They hold the view that being filial is “in line with the principles of heaven and earth (天经地义),”²⁶⁷ meaning that it is the requirement of *li* and *qing*. Hongyu, a 25-year-old single woman in Fuzhou, suggests that “parents gave us life and raised us up, so it is, of course, necessary and required by *li* (理所当然) for us to fulfill filial piety and think about their interests when we make marital choices.”²⁶⁸ In fact, many leftover women were surprised when I asked whether they think the

²⁶⁵ I will discuss leftover women's understandings of filial piety in details in Chapter Six: Filial Piety and the Changing *Qing*, in which I will show that they understand filial piety in a way that is somewhat different from the traditional notion of filial piety.

²⁶⁶ For more information, see the discussion in Chapter Six and Harriet Evans, *The subject of gender: daughters and mothers in urban China*, Asian voices (Lanham, MD: Rowman & Littlefield, 2008).

²⁶⁷ For example, interview, FangXin, Xiamen, Fujian Province, China, July 2016.

²⁶⁸ Interview, Bai Hongyu, Fuzhou, Fujian Province, China, September 2016. Hongyu is a 25-year-old single woman who comes from rural area near Fuzhou. She has a younger sister. Her parents still live in the village, while she comes to work in Fuzhou as an administrative assistant for the provincial government.

relationship with parents is important. Aiyin, a 30-year-old actuary in Xiamen, responded that “of course it is important! Isn’t it taken for granted and required by *li* (理所当然)? It is not necessary for you to ask this question.”²⁶⁹ When asked about the relationship between personal choices and parental expectations, leftover women usually referred to human nature and the normal feelings or attitudes of the general public, or *qing*, to explain why they make a particular choice under a certain situation.²⁷⁰

Throughout my interviews, it became clear that these women invoke *qing* and *li* to talk about their obligations to marry and give birth mainly out of the conventional belief that daughters should take account of parental expectations and interests. According to a study on Chinese families conducted by Anqi Xu and Yan Xia,

*It is the norm that parents take care of everything, from the cost of college education to the payment of housing after marriage. On the other end, children rely overly on their parents financially... Children take parents’ support for granted. In exchange, aging parents expect adult children to attend to their needs physically, financially and emotionally.*²⁷¹

In other words, mutual dependence between the two generations meets the requirements of *qing* and *li* in Chinese societies. The questions that arise include the following: What do parents expect from their daughters in terms of marriage and childbearing? What kind of parental interests do leftover women have to take into consideration? What do *qing*

²⁶⁹ Interview, Lin Aiyin, Xiamen, Fujian Province, China, August 2016. Lin Aiyin comes from an affluent family and lives with her parents in Xiamen. She is the only child of her family. She self-identifies as heterosexual.

²⁷⁰ For more information and examples, see Qian Liu, “Legal Consciousness of the Leftover Woman: Law and Qing in Chinese Family Relations” (2018) 5:1 *Asian J Law & Society* 7.

²⁷¹ Anqi Xu & Yan Xia, “The Changes in Mainland Chinese Families During the Social Transition: A Critical Analysis” (2014) 45:1 *J Comparative Family Studies* 31 at 40–41.

and *li* require from leftover women regarding filial piety when they make choices in marriage and childbearing?

While parental expectations vary from individual to individual, there are some common characteristics shared by most parents of leftover women I interviewed. First, most parents in China expect their daughters to get married before it is “too late.” The main concern of parents is usually that their daughter may suffer if she fails to follow the “timeline”²⁷² to complete the tasks of marriage and childbearing. They are afraid that once their daughter reaches the age of 30, she would have very limited opportunities to find a decent partner and have a family.²⁷³ When society and the media overemphasize the importance of marriage and imply that being single equates with being miserable,²⁷⁴ parents become very anxious if their daughters have fallen behind in the competition for suitable marital partners. It is suggested by quite a few leftover women that if society is

²⁷² Sandy To’s interviewee suggests that Chinese people have a timeline to complete their marriage and childbearing at a certain age. “It’s like you have to get married by 25, have children by 30, and he or she has to go to primary school when you’re 35.” To, *supra* note 1 at 25.

²⁷³ The age of 30 is widely considered a watershed for marriage. For example, Auntie Zhang, a woman who went to matchmaking corner a few times per week before her daughter found a suitable marital partner, suggests that her friends who are looking for potential partners at the matchmaking corner usually become very anxious when their daughters are approaching or turning 30, because they think nobody wants their daughter anymore after she turns 30. Interview, Auntie Zhang, a mother of a 29-year-old woman who is recently married, Fuzhou, Fujian Province, China. The names given to people quoted in this dissertation are pseudonyms.

²⁷⁴ Fincher’s research shows that educated women in China are constantly told by their families, friends, and the state media that “they will be lonely and miserable if they do not find a husband quickly.” Leta Hong Fincher, “China’s ‘leftover women’ choosing to stay single”, (2013), online: *CNN* <<https://www.cnn.com/2013/08/18/world/asia/on-china-single-women-leta-hong-fincher/index.html>>; Yuan Ren, a then 30-year-old single woman in China, wrote in an article published on *The Telegraph* that her auntie has started to warn her of the danger of being single when she was 25 by saying that “if you are a 30-year-old unmarried woman in China, life’s over. You’ll forever be a spinster.” Yuan Ren, “China’s ‘leftover women’: What it’s really like being unmarried at 30”, *The Telegraph* (11 April 2016), online: <<https://www.telegraph.co.uk/women/life/chinas-leftover-women-what-its-really-like-being-unmarried-at-30/>>.

more inclusive of the needs of women who have different opinions about marital timing, partners, and childbearing, parents may not be so anxious.²⁷⁵

Second, having a grandchild to support their daughter is often what parents in China consider necessary. As it is widely believed that babies born to women who have their first child at an older age are more likely to suffer from birth defects,²⁷⁶ parents start to be anxious when their daughter is approaching or has passed the so-called best childbearing years.²⁷⁷ Some parents are worried about their daughter's delay in childbearing out of the concern that they may not be able to help their daughter take care of the child when they are too old.²⁷⁸

Third, parents themselves face great pressure from society and other people around them. Parents may feel shame or have a sense of “losing face” when their daughters are leftover women— at least, they would feel disappointed when their friends are showing off their grandchildren and the marital partners of their daughters. One of my interviewees suggests that “having a daughter who is a leftover woman is similar to the scenario that the children of your friends all attend prestigious universities, and your

²⁷⁵ For example, Yue, a woman in Putian, says “people in the countryside have very strong connections between each other, and as a result, they often talk about my failure to marry in front of my parents. There is not much I can do about this.” Interview, Yue, Putian, Fujian Province, China, August 2016.

²⁷⁶ Fincher, *supra* note 274; Ren, *supra* note 274.

²⁷⁷ For example, Kelly Young's article in the South China Morning Post suggests that parents are worried about the lack of a safety net for single old people in China when their children get older. A mother at the matchmaking corner in Shanghai says, “my daughter is happy now. But what's going to happen to her in 30 years, when she becomes old like me?” Young points out that having kids is the safety net for most people in China. Kelly Yang, “The real issue for China's ‘leftover women’”, (9 March 2017), online: *South China Morning Post* <<http://www.scmp.com/comment/insight-opinion/article/2077402/real-issue-chinas-leftover-women>>. A leftover woman interviewed by Fincher said that “my father says that after age 30 I won't be able to have any children at all.” Fincher, *supra* note 1 at 34.

²⁷⁸ I will explain the phenomenon of relying on grandparents to take care of grandchildren in the following chapters. The older generation, as well as the younger generation, often assumes that it is the task of grandparents to provide childcare to their grandchildren, especially after retirement.

daughter does not even have a chance to go to college.”²⁷⁹ Several leftover women mention that some relatives would start gossiping about them after they turn 30 or even 25. A mother of a leftover woman in Fuzhou complains that her own mother has imposed too much pressure on her— “my mum always says she cannot sleep well because her granddaughter has not yet settled down and set up a family. Whenever I go travelling, she will call and blame me for taking time off from my main task, which is seeking a good man for my daughter.”²⁸⁰

These three forms of parental expectations and interests have served as the sources of pressure for most leftover women I interviewed to marry and give birth. While it is true that to some extent leftover women’s perceptions of filial piety are still inescapably patriarchal, their emphasis is usually on the exchange of love between two generations, gratitude and intergenerational reciprocity, and paying respect to parents.²⁸¹ This is a big shift away from the traditional notions of filial piety that require adult children to pay unconditional obedience and submission to the older generation. Many leftover women have tried to live up to parental expectations and often feel guilty when they notice their failure to fulfill parental expectations has resulted in parental disappointment or physical discomfort.²⁸² These three common characteristics shared by most parents have a close

²⁷⁹ Interview, Kang Ziyou, Fuzhou, Fujian Province, China, September 2016. Kang is a 30-year-old single woman who works for a think tank for the provincial government of Fujian.

²⁸⁰ Interview, Xiuzhu Zhang, Fuzhou, Fujian Province, China, September 2016. Aunty Zhang has been in the matchmaking corners in Fuzhou for more than three years, with the aim to find a suitable partner for her daughter.

²⁸¹ It is true that, some leftover women, although very few of them, hold different views toward filial piety. I will further illustrate leftover women’s perceptions of filial piety in Chapter Five, which focuses on parental expectations, filial duty, intergenerational relations, and autonomy.

²⁸² Among all kinds of parental physical discomfort, the lack of sleep, the appearance of grey hair, and the anxious facial expressions are the most frequently mentioned by my interviewees.

linkage with the expectations shared by the majority of the members in society, which I refer to as social expectations of women.

B. Qing, Li, and Social Expectations of Women

Among the various forms of virtuous conduct, filial piety comes first (百行孝为先).

— *A famous Chinese proverb*

A man should get married on coming of age, and so should a woman (男大当婚·女大当嫁).

— *A famous Chinese proverb*

If you don't study hard, you will end up as a low-quality, or di suzhi (低素质) person who works either on the farms or construction sites.

— *A story that has been told by many parents in China to urge their children to accumulate suzhi²⁸³*

There are, of course, multiple forms of social expectations affecting people simultaneously because each individual unavoidably belongs to several communities. Given the diverse backgrounds of leftover women in my data set, some women may prioritize some particular forms of social expectations over others. For example, when Putianese²⁸⁴ women without male siblings make choices in marriage and childbearing,

²⁸³ Although nobody has ever explained to me what *suzhi* exactly means, my parents, relatives, and teachers had tried very hard to convey the message that peasant migrants (*nongmin gong*) could not have a decent life because of their lack of *suzhi*. And thus, one should invest more time and energy in education in order to add value on oneself as a way to become a high-quality person. In this context, the discourse of *suzhi* is always deployed to describe the “uncivilized” or “backward” behaviours of rural migrants to exemplify *suzhi* in its apparent absence. On the contrary, it is also used to refer to the investment in the education of urban, middle-class children to make sure they become high-quality individuals in the future. See Ann Anagnost, “The Corporeal Politics of Quality (Suzhi)” (2004) 16:2 *Public Culture* 189 at 190.

²⁸⁴ Putian is a city with influential patriarchal culture located on the south-east coast of mainland China.

they attach great value to *lianggu*, a local custom that requires the married couple to take care of parents, children, and ancestors on both sides and not just on the husband's side.²⁸⁵

Lianggu becomes extremely popular because of the difficulty caused by the interaction of China's former one-child policy; and the influential patriarchal thought that "a married out daughter is like spilled water (嫁出去的女儿·泼出去的水)," meaning that the wife who marries into the husband's family should not spend money and time on her own parents. When the one-child policy led to the lack of male descendants in some families, Putianese parents who do not have sons usually request the daughter to practice *lianggu* in order to provide them with old-age support. As most people in Putian consider it to be against *qing* (不近人情) for the daughters to ignore the need of the ageing parents who are worried about the insecurity of their future lives, these daughters often feel a strong obligation to follow this custom. As a result, these daughters have to screen out marital partners who are not willing to practice *lianggu*.²⁸⁶

Alternatively, leftover women in other areas of China may not have to prioritize *lianggu* but are subjected to other forms of social expectations. The difficulty in exploring all different forms of social expectations prompts me to focus on what resonates most among the leftover women in my interviews. My discussion will focus on leftover women's desires to embrace Chinese "cultural citizenship," or what Lisa Rofel

²⁸⁵ Liu, *supra* note 270.

²⁸⁶ For more information on *lianggu* and how this local custom affects leftover women's choices in marriage and childbearing, see *Ibid.*

calls “desires for cultural belonging within ‘Chineseness.’”²⁸⁷ Although leftover women do not use the term “Chinese cultural citizenship,” most of them emphasize the need to place themselves within Chinese culture and act in a way that is consistent with their cultural identity as Chinese.²⁸⁸ They evaluate available options concerning marriage and childbearing based on what they understand as culturally appropriate, or as in alliance with *qing* and *li* in the local culture in China.

Rofel uses “cultural citizenship” to convey novel processes of subjectification and new modes of inclusion and exclusion in contemporary Chinese society.²⁸⁹ Cultural citizenship, according to Rofel, is a process of self-making and being-made, of active modes of affinity as well as techniques of normalization.²⁹⁰ Rofel emphasizes that desires for cultural belonging within “Chineseness”²⁹¹ motivate citizens to compete for positions in new hierarchies of cultural competence.²⁹² She suggests that “struggles over cultural citizenship are contests over new schemes of hierarchical difference, over who represents the cultural competence to carry China into the future and to create wealth and power for

²⁸⁷ Rofel, *supra* note 138 at 28.

²⁸⁸ I have to acknowledge the dangers of considering “Western” and “Chinese” as stable categories and thus ignoring the fluidity, plurality, elasticity, and interpenetration within them. I still use “Chinese” and “Western” in this chapter because these terms help “articulate the logics of domination that follow these geographic axes” and reveal the way knowledge has been produced and transmitted. See Deckha, *supra* note 134 at 38; Godrej, *supra* note 32 at 13-5. Indeed, there is not a singular Chinese culture and that people may understand Chinese culture in different ways. Therefore, the terms such as “Chinese values,” “Chinese culture,” “Chineseness,” have no clear definition. The meaning of these terms, according to Liang Hongming, “depends on the relationship among such elements as time, place, self-identification, and categorizations made by other.” See Hongming Liang, “Book Review: The Living Tree: The Changing Meaning of Being Chinese Today” (1996) 55:1 *J Asian Studies* 156 at 157.

²⁸⁹ Rofel, *supra* note 138 at 95.

²⁹⁰ *Ibid* at 94–5.

²⁹¹ Rofel does not define what Chineseness might mean, and she leaves it to her interviewees to define. My understanding of her use of “Chineseness” is to describe people’s understanding of the meaning of being Chinese under a particular situation.

²⁹² Rofel, *supra* note 138 at 95.

the nation under neoliberal capitalism.”²⁹³ By using the terms “cultural citizenship” or “Chineseness,” Rofel highlights that citizenship, or belonging, is not only a political attribute but also a process in which culture becomes a relevant category of affinity.²⁹⁴

Rofel does not offer a singular definition of “Chinese culture”— in fact, she captures how gay men and lesbians envision the terms “Chinese culture” in different ways. In her discussion of the relationship between Chinese gay identities and cultural citizenship, Rofel focuses on the following three aspects to talk about Chinese gay men’s intense desires for cultural belonging, or cultural citizenship: family and kinship, appropriation of linguistic terminology concerning sexuality, and “quality (*suzhi*).”²⁹⁵

According to Rofel, “family is the metonym for belonging, not simply to the nation-state but to Chinese culture writ large. In China ongoing discursive productions of family are indispensable sites for establishing one’s humanness as well as one’s social subjectivity.”²⁹⁶ Gay men’s emphasis on family mainly focuses on the following two aspects: (1) the importance of maintaining harmonious relationships with parents; and (2) the necessity of marriage and descendants. The debate among gay men themselves on whether they should come out usually focuses on the question of whether coming out to parents is culturally appropriate in Chinese society,²⁹⁷ a question that has been discussed by several scholars in the area of homosexuality and China.²⁹⁸ It is, in the view of these

²⁹³ *Ibid.*

²⁹⁴ *Ibid* at 94.

²⁹⁵ The official discourse of *suzhi* helps create divisions among Chinese citizens based on urban/rural and class lines. I will explain the term *suzhi* in chapter seven.

²⁹⁶ Rofel, *supra* note 138 at 100.

²⁹⁷ For more information on the debate, see for example, *Ibid.*

²⁹⁸ See for example, Chou Wah-Shan, “Homosexuality and the Cultural Politics of Tongzhi in Chinese Societies” (2001) 40:3–4 *Journal of Homosexuality* 27; Chris K K Tan, “Go Home, Gay Boy! Or, Why Do

gay men, against Chinese culture to tell parents about one's sexuality because it would bring them grief and a sense of losing face.²⁹⁹ For example, Ah Zhang, a gay man who has given advice to many gay men and mediated their conflicts with parents, says, "in my experience, dealing with so many Chinese gays, it is wrong to tell your parents. This is not part of Chinese culture. We Chinese must look after our parents and not bring them so much grief... It is selfish to think only of yourself. Perhaps that kind of thing works elsewhere, but not here in China."³⁰⁰

Ah Zhang's narrative reveals the mainstream attitude toward the issue of coming out among gay men in China, which has also been discussed in detail in Chou's research on homosexuality and Chinese culture.³⁰¹ Chou argues against the idea of transplanting the modern Western discourse of rights to protect Chinese gay men and lesbians. In Chou's view, "as separated from the notion of *qing*, the Western discourse of rights is rather weak in negotiating and resolving interpersonal relationships in the familial context."³⁰² Chou emphasizes the importance of "familial-cultural identity" and advocates for using the strategy of "coming home" to replace the Western notion of "coming out."³⁰³ Gay men's refusal of the idea of confronting parents and their emphasis on harmony with one's family reflects the cultural belief that one should not bring grief or a sense of losing

Singaporean Gay Men Prefer to 'Go Home' and Not 'Come Out'?" (2011) 58:6-7 *Journal of Homosexuality* 865; Chou, *supra* note 252.

²⁹⁹ Rofel's interviewee, Rofel, *supra* note 138 at 98-102.

³⁰⁰ *Ibid* at 98.

³⁰¹ Chou, *supra* note 298; Chou, *supra* note 252.

³⁰² Chou, *supra* note 252 at 279.

³⁰³ Coming home, according to Chou, is "a negotiative process of bringing one's sexuality into the family-kin network, not by singling out same-sex eroticism as a site for conceptual discussion but by constructing a same-sex relationship in terms of family-kin categories." Chou, *supra* note 298 at 36.

face to parents. This belief is playing a significant role in shaping people's understanding of the relationship between filial piety and personal choices.

Gay men also express their emphasis on the family by stressing the need to marry and carry on the patrilineal family line, which is thought to be implicit cultural common sense in Chinese society.³⁰⁴ Rofel briefly mentions this point but does not offer detailed discussion. The prevalence of formality marriage, or *xinghun* (形婚), as well as the fact that 80% of China's gay population enters a marriage with heterosexual partners who are unaware of their sexuality, shows the importance attached to heterosexual marriage and the continuing of the family line in Chinese society.³⁰⁵

Existing research on gay and lesbian issues in China has found that the majority of Chinese gay and lesbians choose heterosexual marriage mainly "as a result of family expectation and social pressure to marry and have a family."³⁰⁶ In fact, gay men's emphasis on harmonious relationships with parents and the necessity to marry and have children is shared by the general public. Some scholars hold the view that gay men may feel more pressure to marry than lesbians, as sons are often expected to produce children in order to continue the family line.³⁰⁷ My interviews with queer women, however, also

³⁰⁴ Rofel, *supra* note 138 at 100.

³⁰⁵ *Xinghun* is a type of marriage between a gay man and a lesbian to cope with familial and societal pressure to marry. Min Liu defines *xinghun* as a marriage that a lesbian woman and a gay man legally register as wife and husband while both the woman and the man continue to have their own same-sex partners. Min Liu, "Two Gay Men Seeking Two Lesbians: An Analysis of Xinghun (Formality Marriage) Ads on China's Tianya.cn" (2013) 17:3 *Sexuality & Culture* 494 at 495; Shuzhen Huang and Daniel Brouwer see *xinghun* as a marriage arrangement between a gay man and a lesbian woman that permits queer subjects to stay within the family kinship system. They argue that *xinghun* is a performative and communicative practice or a "performative union" that requires episodic but felicitous performances of heteronormativity from queer subjects. Shuzhen Huang & Daniel Brouwer, "Negotiating Performances of 'Real' Marriage in Chinese Queer *Xinghun*," (2018) 41:2 *Women's Studies in Communication* 140 at 140, 141, 143.

³⁰⁶ Liu, *supra* note 305 at 498; Huang & Brouwer, *supra* note 305 at 147.

³⁰⁷ Deborah Davis & Sara Friedman, "Deinstitutionalizing Marriage and Sexuality," in Deborah Davis & Sara Friedman eds, *Wives, Husbands, and Lovers: Marriage and Sexuality in Hong Kong, Taiwan, and Urban*

show that lesbians in China face great difficulties in forgoing heterosexual marriage, mainly because of their filial duty and desires to make their parents happy and relieved. As Deborah Davis and Sara Friedman suggest, filial obligations and intergenerational reciprocity continue to be relevant to the institution of marriage in China.³⁰⁸ In her comments on China's younger generation's pressure to marry, Yinhe Li, a prominent sociologist in China, says, "the West emphasizes individualism, but family is the most important thing in China, so one has to get married... The concept of the family is like a religion... [The] family gives Chinese people meaning in life."³⁰⁹

The emphasis on family plays an important role in governing leftover women's thoughts and behaviour. The desires for harmonious family relationships with parents are no less intense among leftover women I interviewed. My interviewees generally express a strong desire for Chinese cultural citizenship or Chineseness by stressing the importance of maintaining harmonious family relations. For example, in the discussion of the conceptions of the self and autonomy, most women refuse to embrace the Western notion of autonomy; instead, they emphasize the need to prioritize filial piety and harmonious relationships with parents.³¹⁰ As the majority of the members of society highlight the importance of family relations and filial piety, it is against *qing* and *li* (不合情理) for daughters to sacrifice parental expectations and interests for personal choices.

China (Stanford: Stanford University Press, 2014) at 27; Rofel, *supra* note 138 at 97-8; Susanne YP Choi & Ming Luo, "Performative Family: Homosexuality, Marriage and Intergenerational Dynamics in China," (2016) 67:2 *The British Journal of Sociology* 260.

³⁰⁸ Davis & Friedman, *supra* note 307 at 27.

³⁰⁹ Kathy Gao, "Pressure is on young mainlanders to marry", (10 November 2014), online: *South China Morning Post* <<https://www.scmp.com/lifestyle/article/1636650/pressure-young-mainlanders-marry>>.

³¹⁰ I will discuss how leftover women's emphasis on family relations shapes the way they understand the self, autonomy, and choices in Chapter Five.

Given the importance attached to marriage and having children in Chinese society, delaying or forgoing marriage equates a failure to live up to what the mainstream culture in China expects women to do. As Evans's interviewee suggests, "if you don't marry, people think you have some problem[s]. It is really scary. If you don't marry it is really difficult to have a life. Lots of things. You might think it's okay, but other[s] would think it's a bit odd."³¹¹ In other words, it has long been a conventional practice that men and women who have reached marriageable age should get married and give birth, a practice that everyone is expected to obey in Chinese society. The failure to conform to this convention will not only affect the individual but also bring shame, grief, and disappointment to parents, which again conflicts with Chineseness because it would hurt the feelings of parents and the harmony of the family when parents themselves are also involved in the competition of normality.

Another form of social expectations that is influential in shaping leftover women's choices in marriage and childbearing is the discourse of *suzhi*. The term *suzhi* is a sweeping idea that is inclusive of education, civic values, global savvy, family environment, the way a person talks and behaves, etc.³¹² Rofel's anthropological research on gay men in Beijing shows that many gay men invoke the term *suzhi* to express their anxiety about or displeasure with male prostitution for men.³¹³ They usually use the term low-quality to castigate rural gay men, especially those who make their living through sex work.³¹⁴ According to Rofel, *suzhi* divides "Chinese gay men" and excludes those so-

³¹¹ Evans, *supra* note 266 at 171.

³¹² Susan Greenhalgh, *Cultivating Global Citizens: Population in the Rise of China* (Harvard University Press, 2010) at x; Rofel, *supra* note 138 at 104.

³¹³ Rofel, *supra* note 138 at 104.

³¹⁴ *Ibid* at 103–106.

called low-quality Chinese gay men from proper Chinese cultural citizenship.³¹⁵ In fact, the discourse of *suzhi* is pervasive in Chinese society, and it magnifies social differences and encourages Chinese citizens to compete and accumulate *suzhi* in order to have more value than others and therefore become more deserving of the rights of citizenship.³¹⁶

To leftover women, the discourse of *suzhi* is also about the division between women with different backgrounds and about exclusion and inclusion. Many leftover women I interviewed invoke the term *suzhi* to divide women into the categories of high-quality and low-quality citizens. Their expectations for themselves, as well as others, to accumulate *suzhi* in order to become high-quality citizens are playing a significant role in distinguishing those who fit to participate in self-governance and those who fit only to be governed.³¹⁷ In their view, it is in alliance with *qing* and *li* for the so-called high-quality women to deserve more rights to govern their own behaviour, while those who fall into the category of low-quality need more legal guidance and constraints.³¹⁸ They also deploy *suzhi* to distinguish single women who are qualified to become single mothers from those whose rights should be denied by the Chinese state.³¹⁹ In so doing, leftover women not only refer to *qing* and *li* concerning qualified mothers and high-quality citizens, but they also take part in the construction and reconstruction of social expectations to govern the behaviour of others.

³¹⁵ *Ibid* at 104. Rofel suggests that the category “Chinese gay” is also based on exclusions from its inception.

³¹⁶ Anagnost, *supra* note 283 at 194.

³¹⁷ David Bray, “Building ‘Community’: New Strategies of Governance in Urban China” in Elaine Jeffreys ed, *Chinas Governmentalities: Governing Change, Changing Government* (London ; New York: Routledge, 2009) at 100,102.

³¹⁸ I will discuss this viewpoint in details in the chapter on *suzhi* and unmarried women’s reproductive rights in chapter seven.

³¹⁹ Again, I will discuss how women judge whether a particular single woman is qualified to give birth on her own in chapter seven.

There are a variety of different forms of social expectations identified and followed by leftover women in China, among which the three forms of social expectations resulting from ordinary people's desire to embrace Chinese cultural citizenship are the most influential. As further demonstrated in the following chapters, these social expectations motivate leftover women to govern themselves in a way that meets the dominant social and cultural expectations or conventional practice in China one should: (1) be filial to parents and maintain a harmonious relationship with them; (2) get married and have children; (3) be of high *suzhi*. At the same time, leftover women participate in the construction of social expectations by defining and redefining the meanings of filial piety, qualified mothers, and high-quality and responsible citizens.

C. State Law (*fa*) and the Expectations of the State

*As in liberal multicultural societies, in socialist systems it is often the intimate lives of those on the margins, or those who threaten to undermine the majority from within, that face the denial of public recognition or the demand for change.*³²⁰

— Sara L. Friedman

Fa, or state law, is a powerful social medium in constructing and reinforcing normalcy and deviance when it comes to family structures and women's choices.³²¹ It may seem on the surface that there are no direct connections between state law and unmarried women's pressure to enter marriage because there is no law prohibiting delaying or forgoing heterosexual marriage under the current Chinese legal system, unless one wants to seek

³²⁰ Sara L. Friedman, "The Intimacy of State Power: Marriage, Liberation, and Socialist Subjects in Southeastern China" (2005) 32:2 *American Ethnologist* 312 at 323.

³²¹ For more discussion, see Calder, *supra* note 53.

same-sex marriage. Moreover, there are a variety of laws protecting women's marriage rights under China's current legal system. Article 5 of the Marriage Law of the People's Republic of China states that "[m]arriage must be based upon the complete willingness of both man and woman. Neither party may use compulsion on the other party, and no third party may interfere."³²² Likewise, Article 44 of the Law of People's Republic of China on the Protection of Women's Rights and Interest reiterates the state's protection of women's marriage rights.³²³

As for childbearing, state law prohibits individuals from violating women's reproductive rights. Article 51 of the Law on the Protection of Women's Rights and Interest stipulates that women have the right to give birth as long as it is not against relevant laws and policies; women also have the freedom to choose not to have children.³²⁴ The relevant laws and policies in Article 51 mainly refer to China's national population and family planning laws and regulations, which are more commonly known as the now-abandoned one-child policy or current two-child policy.³²⁵ The 2015 Law on Population and Family Planning, which marks the shift from the one-child policy to a universal two-child policy, has not explicitly denied unmarried women's reproductive

³²² "Law of the People's Republic of China on Population and Family Planning (2015Amendment)", online: <<http://www.lawinfochina.com/display.aspx?lib=law&id=20845&EncodingName=gb2312>>.

³²³ Article 44: "The state protects women's marriage right and prohibits the intervention of women's right to get married or get divorced." "Law of the People's Republic of China on the Protection of Women's Rights and Interests (2018 Amendment)", online: <<http://en.pkulaw.cn/display.aspx?cgid=f20e7cd055022d39bdfb&lib=law>>.

³²⁴ *Ibid.*

³²⁵ Article 18 of the *Law of the People's Republic of China on Population and Family Planning* that becomes effective on January 1, 2016 stipulates that "the state advocates that every married couple have two children and that more children may be allowed where the requirements specified by laws and regulations are met. *Supra* note 322. This new population policy, however, has not recognized unmarried women's reproductive rights. See, for example, Cherie Chan, "China's unmarried women struggle to overcome barriers to having babies", (23 November 2016), online: *DWCOM* <<http://www.dw.com/en/chinas-unmarried-women-struggle-to-overcome-barriers-to-having-babies/a-36488553>>.

rights. One can only read between the lines that the law has not granted unmarried women the right to give birth, as it uses “married couples” throughout the law whenever it grants rights to give birth or imposes legal obligations.³²⁶ Some readers may argue that Jilin province, as an exception, has legalized single women’s childbearing outside marriage under its family and population policies; and thus, at least unmarried women who live in Jilin are entitled to the right to become single mothers.³²⁷ A 2016 news article on the website of China News, however, suggests that single women’s application to assisted reproductive services have been rejected by hospitals in Jilin province.³²⁸

A range of regulations and policies put forward by governmental organs have imposed an extra burden on unmarried women’s reproduction, including Jilin province. These documents play an important role in ensuring that unmarried women cannot have access to assisted reproductive technologies in China. For example, *The Technical Norms of Assisted Reproductive Technologies* put forward by National Health Commission of the People’s Republic of China (then National Health and Family Planning Commission) stipulates that “medical staff members who provide assisted reproductive technologies should check and make copies of the couple’s IDs, marriage certificate, and other documents that prove the couple is eligible under the Law on Population and Family

³²⁶ *Supra* note 322.

³²⁷ According to Article 28 of the Population and Family Planning Regulation of Jilin Province, “Single women who have reached marriageable age but decided not to marry have the right to use assisted reproductive technologies to have one child. “The Population and Family Planning Regulation of Jilin Province,” 2016, available online: < http://www.changchun.gov.cn/zw/xxgk/gkzl/cczhengbao/2016n/d3qzb/dfg_1828/201702/t20170215_257681.html>

³²⁸ CCTV, “Danshen Nvxing Shengyuquan zhi Kun: Shiguan Shouyun Shang Hukou dou yao Yihun,” available online: < <http://news.cctv.com/2016/11/26/ARTIq4mhErnREfVgbZcDVj4C161126.shtml>>.

Planning to carry the baby.”³²⁹ Through the usage of these regulations and policies, the state not only constrains childbearing within marriage but also conveys the state’s expectation that marriage is the prerequisite of having children.

More importantly, the state’s denial of unmarried women’s right to have the enjoyment of reproduction mainly relies on the enforcement of relevant laws and policies at local levels. As Strauss and Xu suggest, “Chinese policy-making rests on a government-driven framework with multi-level implementation. Under the central one-party rule, Beijing issues policy documents as guidelines. It is up to the subnational governments to implement those policies.”³³⁰ The multilayered structure provides opportunities for officials at local levels to implement the laws and policies in a way that meets their interests.³³¹ For example, Article 5 of the Family Planning Law states that the State Council is in charge of the implementation of population and family planning at the national level; local levels of governments are responsible for the implementation of it.³³² Therefore, local governments may implement policy documents put forward at the top differently, and thus contributing to diverse methods of control over unmarried women’s reproductive right.

Another important feature of China’s legal system is the interdependency between political and legal institutions, which leads to the influential roles of moral and normative

³²⁹ “Technical Norms of Assisted Reproductive Technologies,” online:<
<http://www.nhfpc.gov.cn/qjjys/s3581/200805/f69a925d55b44be2a9b4ada7fcdec835.shtml>>. In other words, only married women who have a marriage certificate and other permits are eligible to use the technologies.

³³⁰ Strauss & Xu, *supra* note 141 at 1165.

³³¹ Kevin J O’Brien & Lianjiang Li, *Rightful resistance in rural China*, (New York: Cambridge University Press, 2006) at 51–2.

³³² *Supra* note 322.

standards and public opinions in governing ordinary people's everyday lives. As Juan Wang and Sida Liu suggest, the function of law in governing society has not been considered to be essential by the Chinese Communist Party.³³³ Instead, "morality and public opinion concurrently serve as two alternatives to law for the purpose of governance."³³⁴ As a result, the Chinese state not only conveys its expectations via legislation but also through other means of governance and control. Those other means include guiding opinions put forward by the Chinese state and authorized organs, propaganda, and unspoken rules resulting from the pressure imposed by the guiding opinions from officials at higher levels of the political system. All these means work together as a package and complement each other to ensure that the state achieves its goal. Thus, legal scholars should not investigate these means separately. Rather, we need to examine how different means interact with each other to urge or induce citizens to live up to the state's expectations. More importantly, it is crucial to investigate how the state justifies the legitimacy of state law through the invocation and reinterpretation of *qing li*.

The state's expectation of young people who have reached their marriageable age is pretty straightforward: to get married as soon as possible.³³⁵ Several studies have discussed the reasons why the Chinese state urges the younger generation to get married and give birth. One explanation is that the Chinese state is worried about the potential societal impact of the country's huge number of surplus men who have difficulties in

³³³ Juan Wang & Sida Liu "Ordering Power under the Party: A Relational Approach to Law and Politics in China," (2019) 6 *Asian Journal of Law and Society* 1 at 6.

³³⁴ *Ibid.*

³³⁵ As same-sex marriage has not been legalized in mainland China yet, what the state wants is, of course, heterosexual marriage.

finding marital partners.³³⁶ As Ellen Judd's ethnographic research in Chinese villages shows, young men in relatively poor communities in rural China confront a severe shortage of young women, and as a result, they seek wives from less affluent areas and sometimes choose widows and divorcees as marital partners.³³⁷ It has always been a concern of the government that leftover men will turn to antisocial behaviour and crime and thereby threaten social stability and security.³³⁸ The Chinese government and relevant studies tend to link marginalized single men to the spread of violent crimes, prostitution, sexually transmitted diseases and the trafficking of women.³³⁹ In so doing, the Chinese government manages to lead the general public to believe that leftover men are threatening the stability of Chinese society.³⁴⁰ It has reinforced the belief that it is consistent with *qing li* for the state to put forward laws and policies to solve this problem in order to maintain social stability.

In recent years, a range of official documents have been issued to attract attention from multiple levels of government and organizations to work together to deal with

³³⁶ According to the state-run media *The Beijing News*, "it is not leftover women, but leftover men that are China's real problem...leftover men are at the center of China's marriage crisis." The page is no longer available on the website of *The Beijing News*. It is, however, reposted by another state-run media The Xinhua Net, available at < http://www.xinhuanet.com/comments/2015-07/27/c_1116044841.htm >. Manya Koetse, "Not 'Leftover Women' but 'Leftover Men' Are China's Real Problem", (2015), online: <<https://www.whatsonweibo.com/not-leftover-women-but-leftover-men-are-chinas-real-problem/>>; Thérèse Hesketh, "Too many males in China: the causes and the consequences" (2009) 6:1 Significance 9; For more discussion on leftover men in China, see Kevin Lee, "China's Growing Problem Of Too Many Single Men", (2011), online: *Forbes* <<https://www.forbes.com/sites/china/2011/05/13/chinas-growing-problem-of-too-many-single-men/>>; Wanning Sun, "'My parents say hurry up and find a girl': China's millions of lonely 'leftover men'", *The Guardian* (28 September 2017), online: <<http://www.theguardian.com/inequality/2017/sep/28/my-parents-say-hurry-up-and-find-a-girl-chinas-millions-of-lonely-leftover-men>>.

³³⁷ Ellen Judd, "Family Strategies: Fluidities of Gender, Community and Mobility in Rural West China," (2010) 204 *The China Quarterly* 921 at 934-5.

³³⁸ Koetse, *supra* note 336.

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*

young people's "failure" to get married. According to *The Middle and Long-term Youth Development Plan (2016—2025)*, a document announced by the State Council of the People's Republic of China in 2017, it is one of the top priorities for organizations such as the Communist Youth League and All-China Women's Federation to help Chinese young people find marital partners.³⁴¹ After the announcement of this Plan, local governments all over China have come up with a series of policies and strategies to encourage young people to get married and arrange a variety of matchmaking activities to help create opportunities for young people to meet with each other.³⁴² By problematizing young people's delay in marriage, the Chinese state and its relevant organizations are reinforcing the belief that those who delay or forgo marriage are abnormal.

Another explanation for the state's anxiety is that China is experiencing the problem of a declining birth rate, and the state sees the low birth rate and marriage rate as a potential source of instability because it could turn into a labour shortage in the future and create difficulties in supporting the elderly population.³⁴³ According to an article published by *The New York Times* in 2018, the Chinese government, with deep concerns about its aging population, has begun to devise ways to simulate a baby boom, including tightening access to abortion or making it more difficult to get divorced.³⁴⁴ Similarly,

³⁴¹The Government of China, "The Middle- and Long-term Youth Development Plan (2016—2025)," Xinhua She (13 April 2017), online: <http://www.gov.cn/zhengce/2017-04/13/content_5185555.htm#1>.

³⁴² For example, Shanxi Province has earmarked an estimated 95 million yuan (CAD \$ 19.29 million) in cash incentives for newly married couples in an effort to help them start families of their own. The subsidies include wedding-related costs, honeymoon travel, home decorations, and even household appliances. "China's provinces offer to subsidize weddings to promote marriage," online: Global Times <<http://www.globaltimes.cn/content/1087488.shtml>>.

³⁴³ Didi Tang, "Don't wait for Mr Right, Chinese told", *The Times* (7 March 2018), online: <<https://www.thetimes.co.uk/article/dont-be-so-fussy-about-marriage-chinese-women-told-cp0z89gwh>>.

³⁴⁴ Steven Lee Myers & Olivia Mitchell Ryan, "Burying 'One Child' Limits, China Pushes Women to Have More Babies", (13 August 2018), online: New York Times <<https://www.nytimes.com/2018/08/11/world/asia/china-one-child-policy-birthrate.html>>.

existing research on leftover women implies that the Chinese government's promotion of the concept of "leftover women" is a strategy to increase both the quality and quantity of the population. Fincher maintains that the Chinese state's marriage promotion is related to its population planning goals, which emphasizes the need to upgrade population quality.³⁴⁵ According to Fincher, the Chinese state intimidates professional women into marriage because they are considered to be "high-quality" women who can "produce children with 'superior' genetic make-up and provide these children with the most nurturing environment possible."³⁴⁶ Fincher's view is shared by To, who also argues that the state intends to use highly educated women to give birth in order to raise the quality of the whole country's population.³⁴⁷

One may suggest that the Chinese state could fulfill its population goals by encouraging leftover women to give birth on their own, which is more straightforward than pushing them into marriage. The state, however, has been using the stigmas attached to unmarried mothers and the belief shared by many people that "a child needs two parents"³⁴⁸ to explain why the state should not encourage single women to give birth outside marriage. In 2017, several members of the National People's Congress proposed that the state should grant reproductive rights to single women.³⁴⁹ Once again, the Chinese state strategically referred to *qing li* to justify its denial of single women's reproductive rights. The National Health and Family Planning Commission of the

³⁴⁵ Fincher, *supra* note 1 at 28–35.

³⁴⁶ *Ibid* at 28–30.

³⁴⁷ To, *supra* note 1 at 2.

³⁴⁸ Fong, *supra* note 85 at 136–7.

³⁴⁹ Bin Wu, "Guojia Jisheng Wei Huiying Danshen Nvxing Dongluan", *Nanfang Doushi Bao* (25 February 2018), online: <http://epaper.oeeee.com/epaper/A/html/2018-02/25/content_11646.htm>.

People's Republic of China suggested that using state law to grant reproductive rights to unmarried women is at odds with China's traditional values and public orders and customs.³⁵⁰ The Commission also held that using state law to constrain unmarried women's access to assisted reproductive technologies reflects the state's intention to protect the interests of children.³⁵¹

On 14 May 2018, *Global Times*, an English-language daily newspaper under the auspices of the *People's Daily*, published an article titled "Giving reproductive rights to single women 'unlikely to happen in China in 3 to 5 years.'"³⁵² This article reiterates the Commission's 2017 reply that "granting reproductive rights to single women by law contradicts China's traditional values, public order and customs."³⁵³ The article suggests that China's current laws and regulations should not promote the use of the assisted reproductive technologies among single women and that legally allowing single women to have children will "lead to larger social and moral risks" and "challenge the traditional family pattern consisting of a man and a woman."³⁵⁴ It is clear that the state tries to justify its control over unmarried women's reproductive rights under the guise of traditional values, public orders and customs.

One cannot deny that more often than not, customs represent the requirements of *qing li* because they result from what the majority of members in society believe to be just, fair, and human. Nevertheless, one should not ignore that *qing li* is fluid and the

³⁵⁰ *Ibid.*

³⁵¹ *Ibid.*

³⁵² Ruohan Li, "Giving reproductive rights to single women 'unlikely to happen in China in 3 to 5 years,'" online: *Global Times* <<http://www.globaltimes.cn/content/1102218.shtml>>.

³⁵³ *Ibid.*

³⁵⁴ *Ibid.*

meanings of *qing li* change with social and cultural development. The fluid nature of *qing li* opens up some space for the state to shape and reshape ordinary people's understandings of *qing li*. By strategically interpreting traditional culture, public order, and customs, the state tries to impose its expectations concerning women's choices in marriage and childbearing on ordinary people.

In sum, when heterosexual marriage is still nearly universal in China,³⁵⁵ single women's decision to forgo marriage is likely to invite criticism and condemnation from people around them because marrying and having children is widely considered to be in alliance with *qing li*. At the same time, the state expresses and reinforces its expectations concerning leftover women's marriage and childbearing through state law (*fa*), policies, and propaganda campaigns. More importantly, the state has been trying to legitimize *fa* by interpreting and reinterpreting *qing li*.

Conclusion

In this chapter, I have offered a brief overview of the evolution of legal pluralism, after which I have discussed the existence of legal pluralism in China. I have discussed Zhu's overemphasis on the potential impact of local knowledge on China's formal legal system, his romantic assumptions about non-state law, and his focus on dispute resolution. I have

³⁵⁵ Despite the fact that an increasing number of people in China choose to get divorced or come out as gay and lesbians, marriage and parenthood are almost universal experiences for young adults in China. Choi and write, "in China marriage continues to be a nearly universal practice." Choi & Luo *supra* note 307 at 262; Deborah Davis documents that while it is true that individuals are more likely to divorce in China, high rates of marriage and remarriage indicate that marriage as an institution remains normatively robust. Davis supports this argument by referring to the fact that the percentage of men and women who have never married by their late thirties in China is extremely low, at less than 5 percent of the population in 2009. Deborah Davis, "Privatization of Marriage in Post-Socialist China," (2014) 40:6 *Modern China* 551 at 564. For more information, see for example, Shiga, *supra* note 254 at 13–4.

argued that how ordinary people use *qing li fa* to govern their everyday lives is one of the most significant forms of local knowledge that deserves more attention from legal pluralists. The relationship between *qing*, *li*, and *fa* provides important insights into the interaction of state law and non-state orders and the inseparability of them under some circumstance. I have also suggested that the fluid nature of *qing li* opens up some space for the state to shape and reshape ordinary people's understandings of *qing li*.

This chapter lays the foundation for further discussion on how *qing li fa* affect leftover women's choices in marriage and childbearing in the following chapters. I will continue the discussion on how *qing li fa* function to affect leftover women's perceptions of and engagement with state law; and demonstrate how leftover women strategically navigate through different layers of normative orders to make choices in marriage and childbearing.

Chapter 4: The Relational Self and Social Relations

Introduction

Meiyi was determined to delay her marriage until she reached her 30s. As a way to deal with the pressure imposed by her villagers who had been gossiping about her, she moved to a city nearby and worked in a factory there. In the beginning, Meiyi turned a blind eye to the gossip. But when she noticed that her parents suffered a lot from it, she changed her mind. Soon, she moved back to her village and married a local man at the age of 28 through matchmaking. Meiyi is happy with her marriage now: “I was pretty sure I would not get married before I turned 30. But when I met my husband and parents-in-law, I changed my mind. They are very easy-going, and I like this kind of family relations.”³⁵⁶

Meiyi considers marriage not first and foremost as a relationship between her and her husband, but as a relationship that encompasses filial piety and the harmony with both parents and parents-in-law. To understand Meiyi’s marital choice, a non-Western lens, which does not assume the unconditional linkage between marital choices and the central value of autonomy and individual rights, has to be brought into the picture. Following my discussion on the dynamic relations and interaction of state law and non-state orders in Chapter Three, this chapter provides more details on how *zuoren*, face, and *guanxi*, all of which are closely linked with *qing li*, play a significant role in shaping leftover women’s marital choices. This chapter will set the stage for future discussion on how leftover women understand and engage with state law (*fa*) concerning marriage and childbearing.

³⁵⁶ Interview, Meiyi, Hui’an, Fujian Province, China, September 2016. Meiyi works at a small company in Hui’an. Her family lives in a village near her husband’s village. She has a younger brother.

In the first part of this chapter, I provide a brief overview of feminist relational theory and discuss its focus on autonomy, after which I demonstrate how my interviewees understand autonomy and the self differently from the version of autonomy described by feminist relational theorists. I will argue that leftover women themselves do not necessarily see autonomy in marriage and childbearing as a positive value, nor do they attach great importance to autonomy when it comes to marital choices. I aim to develop an approach to understand leftover women's choices through examining feminist relational theory from a postcolonial lens.

In part two of this chapter, I offer a detailed analysis of *zuoren*, face, and *guanxi* in order to make sense of leftover women's perceptions of the self, autonomy, marriage, and parental expectations. I will discuss how *zuoren*, face, and *guanxi* work together in a complicated way to make marriage an unavoidable part of filial piety for leftover women. I contend that the interaction of *zuoren*, face, and *guanxi* demands leftover women and their parents to comply with dominant social expectations that are based on patriarchal notions of gender norms. As I will argue below, on the one hand, the ways leftover women relate the self to others in their networks of relationships have created a system of rules and punishment to govern their choices without relying on state law; while on the other hand, state law lies behind and has always been affecting personal relations and choices in important ways without being noticed.

In the third part, I emphasize the contributions of my analysis of leftover women's experience to feminist relational theory. First, I caution that feminist relational theorists need to be wary of the assumption that women in all societies understand autonomy in marriage and childbearing as one of the most important values. Second, while feminist

relational theorists see the self as discrete, although relational, I argue that the relational self in Chinese society is indiscrete and is determined by her social networks. I conclude that these two aspects deserve special attention from feminist scholars who are considering applying feminist relational theory to study China. My goal is to use leftover women as an example to show that whenever feminist scholars use relational theory to study women who are not immersed in cultures that emphasize individualism, there is a need to examine how people relate the self to others.

I. Rethinking Feminist Relational Theory's Attachment to Autonomy

With the aim to challenge the Anglo-American conception of human beings as “essentially separate from one another”³⁵⁷ and the notion of individual autonomy as “fundamentally individualistic and rationalistic,”³⁵⁸ feminist relational theorists have been advocating for an alternative conceptual framework of seeing the self and autonomy.³⁵⁹ Realizing that “law is a powerful means of structuring human relations”³⁶⁰ and that “prevailing Anglo-American conception of law and rights rests so heavily on underlying conceptions of self and autonomy,”³⁶¹ Jennifer Nedelsky, among other feminist legal scholars, challenges the faulty notions of autonomy with an aim to ensure that law can facilitate the relationships that foster autonomy.³⁶² Feminist relational

³⁵⁷ Nedelsky, *supra* note 30 at 3.

³⁵⁸ Mackenzie & Stoljar, *supra* note 31 at 3.

³⁵⁹ Among the many relevant discussions of feminist relational theory are: Nedelsky, *supra* note 30; Mackenzie & Stoljar, *supra* note 31; Llewellyn & Downie, *supra* note 31.

³⁶⁰ Nedelsky, *supra* note 30 at 4.

³⁶¹ *Ibid* at 5.

³⁶² *Ibid*.

theory, therefore, has a strong attachment to autonomy, although relational. Drawing upon my interviews with leftover women, I aim to challenge this overemphasis on autonomy among feminist relational theorists and argue instead that we need to distance “autonomy” in order to understand leftover women’s decisions in marriage and childbearing.

A. Feminist Relational Theory, Autonomy, and the Law

Feminist relational theorists recognize the inherently social nature of human beings and criticize the notion of individual autonomy for being fundamentally rationalistic.³⁶³ They put forward the umbrella term “relational autonomy” to challenge the traditional notion of autonomy. They suggest that persons are socially embedded and that identities are formed within the context of social relationships.³⁶⁴ Susan Boyd, a leading Canadian family law scholar, writes that “the concept of autonomy must be considered relationally within the context of power relations and ideologies that shape and constrain choices.”³⁶⁵ Boyd’s opinion reflects the aim of feminist relational theorists to reveal how unequal power relations and socio-economic structures inhibit women’s ability to make autonomous choices as individuals.

Jennifer Nedelsky, the author of *Law’s Relations: A Relational Theory of Self, Autonomy, and Law*, advocates for a relational habit of reflection. Nedelsky reveals the nature of people’s interactions with one another:

³⁶³ Mackenzie & Stoljar, *supra* note 31.

³⁶⁴ *Ibid* at 4.

³⁶⁵ Susan B Boyd, “Autonomy for mothers? Relational theory and parenting apart” (2010) 18:2 Fem Leg Stud 137 at 140.

*each individual is in basic ways constituted by networks of relationships of which they are a part—networks that range from intimate relations with parents, friends, or lovers to relations between student and teacher, welfare recipient and caseworker, citizen and state, to being participants in a global economy, migrants in a world of gross economic inequality, inhabitants of a world shaped by global warming.*³⁶⁶

In Nedelsky's viewpoint, if people start to think relationally and realize how both personal relationships and personal choices are inevitably shaped by wider relationships, they will notice how these relationships intersect with institutions, such as the family or the presence or absence of state-supported child care.³⁶⁷

As state law is an important source of norms that guide the way values are framed and given effect, Nedelsky asserts that it is crucial to investigate how state law participates in structuring relations and enhancing or undermining core values.³⁶⁸ Nedelsky's *Law's Relations* follows feminist relational theorists who consider challenging the individualist version of autonomy as the main goal. Nedelsky takes on autonomy to develop her relational approach.³⁶⁹ Although Nedelsky does not treat autonomy as "truly" the highest of human values, she asserts that autonomy is a powerful existing value that is widely shared.³⁷⁰ Nedelsky has given two reasons for her focus on autonomy: first, it is the individualism of the traditional conception of autonomy that makes it essential to develop a relational approach; second, autonomy is central to Anglo-American legal, political,

³⁶⁶ Nedelsky, *supra* note 30 at 19.

³⁶⁷ *Ibid* at 21.

³⁶⁸ Nedelsky, *supra* note 30 at 66–73.

³⁶⁹ Mackenzie & Stoljar, *supra* note 31 at 5–12; Boyd, *supra* note 365 at 139–40.

³⁷⁰ Nedelsky writes, "Autonomy seems to me an example of a widely shared value, though one that is given different weight and priority in different societies." Nedelsky, *supra* note 30 at 75.

and cultural thought.³⁷¹ Nedelsky cares about autonomy mainly because of the value of creative interaction.³⁷² Nedelsky argues that “human beings have the capacity to interact creatively with all the relationships that shape us—and thus to reshape, re-create, both the relationships and ourselves.”³⁷³ She uses “self-creation” to refer to human being’s ongoing capacity for creative interaction.³⁷⁴ According to Nedelsky, “relationships *cannot determine* who a person is or what she does or becomes. Otherwise, there would be no true autonomy.”³⁷⁵ By bringing creative interaction into the picture, Nedelsky stresses that the relational self is constituted rather than being determined by the complex web of relations.³⁷⁶

While Nedelsky has not taken up the cross-tradition conversation of relational thinking, she is aware of the limit of developing a relational theory from Anglo-American legal, political, and cultural contexts and intends to invite and facilitate these conversations. Nedelsky writes,

*I hope that the relational framework I present for Anglo-American law can serve as a kind of bridge of connection to other systems (of thought and law) that are based on, or have deeply integrated, a relational approach...traditions with long experience of conceptualizing and implementing autonomy in a relational way will have a lot to offer to the project of working through the puzzles of relational autonomy.*³⁷⁷

³⁷¹ *Ibid* at 41–5.

³⁷² *Ibid* at 46.

³⁷³ *Ibid* at 47.

³⁷⁴ *Ibid* at 167.

³⁷⁵ *Ibid* at 31.

³⁷⁶ *Ibid* at 49.

³⁷⁷ *Ibid* at 10.

I will now take up Nedelsky's invitation to complement feminist relational theory.

Drawing upon leftover women's narratives, I re-examine feminist relational theory's notion of autonomy.

Focusing almost exclusively on state law, Nedelsky also expects potential critiques from legal pluralists who argue that there are many sources of normative orders co-existing at the same time that ought to be understood as law.³⁷⁸ Nedelsky suggests that her relational approach has implications for non-state legal orders, although she has not fully engaged with the conversations of how state law intersects with other normative orders.³⁷⁹ I also address this question in this chapter and discuss how feminist relational theory and legal pluralism can work together to facilitate better understandings of women's choices.

B. The Perceptions of Autonomy among Leftover Women I interviewed

*It is difficult to talk about autonomy in marriage and childbearing without considering parents because familial happiness and a harmonious relationship with parents is a crucial part of my daily life.*³⁸⁰

—Interview, Aiyin, a 30-year-old actuary in Xiamen

*To me, making autonomous marital choices means looking for someone I truly love, regardless of whether being with this person will harm the interests of my parents. But I cannot be autonomous like this. I prioritize filial piety over autonomy because I cannot help but think about the interests of my parents whenever I am making decisions.*³⁸¹

³⁷⁸ *Ibid* at 73.

³⁷⁹ *Ibid*.

³⁸⁰ Interview, Aiyin, *supra* note 269.

³⁸¹ Interview, Xiwei, Fuzhou, Fujian Province, China, September 2016. Xiwei lives in Fuzhou, while her parents live in a small town in Putian. She has an older brother who has two sons. She lives in an apartment provided

—Interview, Xiwei, a 29-year-old single woman who works as a civil servant in Fuzhou

After graduating from a university in the UK with a master's degree, Weiwei came back to Xiamen to be with her parents and found a job at one of the top state-owned companies through the *guanxi* network of her parents. Weiwei and I met on a humid Friday evening in a Thai restaurant in the plaza owned by her company. We talked about the freedom of being far away from parents and relatives as the bonus of studying overseas. Weiwei expressed her desire to spend some more time abroad again, as “it is too complicated to maintain *guanxi* in such an oppressing environment in Chinese society.”³⁸² Living under great social pressure as a single woman, Weiwei is considering finding a partner and having a child in Xiamen. In our discussion on autonomy, Weiwei acknowledges that autonomy has positive values in theory, but her choice would be to prioritize parental expectations. She says,

*Autonomy is a dream, but the reality is that our parents are aging. So we cannot overemphasize autonomy when we make marital choices. I hope I am autonomous, but I am afraid there is not much time left for me to be filial. I do not really want to have a child because it takes so much time and energy. But I think eventually I will have a kid in order to make my parents happy and relieved. I mean, whenever I see them unhappy, I am unhappy. I hope I can have my own life, but they will worry about me if they don't think I have a decent life.*³⁸³

By describing autonomy as a dream, Weiwei tries to explain the difficulties of prioritizing autonomy in practice. Weiwei self-identifies as bisexual as she was in a

by her workplace and returns home to visit her parents and help take care of her brother's two boys quite often. She self-identifies as heterosexual.

³⁸² Interview, Weiwei, Xiamen, Fujian Province, China, July 2016. Weiwei lives in Xiamen, while her parents live in the other side of Fujian and come to visit her in Xiamen frequently. She is the only child of her family. She self-identifies as bisexual.

³⁸³ *Ibid.*

relationship with a same-sex partner when she was in the UK, but they broke up after they returned to China. “We thought we could be together forever, but when we came back home, we felt the pressure, lots of pressure.”³⁸⁴ Weiwei says she will never consider finding a same-sex partner again, at least not in China.³⁸⁵ The burden of maintaining *guanxi* in Chinese society and the responsibility of taking care of the feelings of her parents lead to her decision to live a “normal” life, meaning entering a heterosexual marriage and having children.

Aiyin has a similar family background to Weiwei. As the only child, Aiyin came back to Xiamen immediately after getting her master’s degree from a top university in Australia. Aiyin also found a job in a state-owned company through her parents’ *guanxi*. Similar to Weiwei, Aiyin attaches great importance to familial happiness and a harmonious relationship with parents. To her, maintaining good family relations is one of the most important values. Aiyin suggests that she always feels bad when she sees her father’s health condition is not very good:

*My father is kind of depressed recently. He keeps telling me that he will be happier if I can settle down and give him a grandchild. He enjoys spending time with kids. Whenever our relatives bring some kids around, he looks happy. I have been wondering whether my father’s depression really has something to do with my failure in bringing home a suitable partner and having a child.*³⁸⁶

Aiyin’s understandings of autonomy vary in different ages. To her, it is more difficult to be autonomous when one grows up and feels the need to take a lot of things into consideration: “When I was in college, I only cared about my feelings. Now I will think

³⁸⁴ *Ibid.*

³⁸⁵ *Ibid.*

³⁸⁶ Interview, Aiyin, *supra* note 269.

about many things, mostly family relations and harmony. To me, being autonomous means taking the whole network of people into consideration, rather than focusing on the self.”³⁸⁷ Although Aiyin insists that one should not rush into marriage for parents, she feels obligated to hurry up and settle down for the happiness and relief of her parents.³⁸⁸

Unlike Weiwei and Aiyin whose families have the resources to support them to study overseas and get them a decent job using *guanxi* network, Xiwei was born to a less affluent family in rural Fujian and got her job as a civil servant in Fuzhou after several rounds of competition. Xiwei has an older brother who runs a small business in her parents’ house. As the daughter of the family, she has less obligation than her brother to support their parents in the eyes of her parents and other village fellows. However, Xiwei cannot help but take the interests of her parents into account whenever she makes decisions. Being aware that her parents are expecting her to have a happy marriage, Xiwei is determined to live up to parental expectations as soon as possible. She attends all the match-making events arranged by her parents as a way to give them hope.

According to Xiwei,

*Autonomy does not necessarily carry positive meanings. It is at most neutral. I think we should neither following the instructions of parents unconditionally nor completely being ourselves. I am somewhere in the middle (折中). The society would not allow the individual to be too autonomous. Parents have pressure too. I guess most adult children still believe in the importance of being filial, such as one needs to live closer to parents.*³⁸⁹

³⁸⁷ *Ibid.*

³⁸⁸ *Ibid.*

³⁸⁹ Interview, Xiwei, Fuzhou, Fujian Province, China, September 2016.

Challenging the assumption that autonomy is a positive value, Xiwei prioritizes filial piety over autonomy in choosing marital partners and timing. To her, although one should not be controlled by one's parents, adult children have to prevent parents from pressure imposed by relatives and friends. She emphasizes the need to sacrifice the self:

*In Chinese society, our culture teaches us to sacrifice and bear with forbearance (隐忍), stressing that individuals are not independent of other people in society. For example, the Constitution of the Communist Party of China encourages us to sacrifice the self for the good of the public. Our social environment is against selfishness. If you don't get married, you are incomplete—it is like a process you have to go through. You need to enter a heterosexual marriage in order to fit in. Whenever we talk about the self, we think about forbearance and sacrificing for the family, the community, and the state. We cannot be as autonomous as those people in western countries where social welfare systems are better than ours, mainly because our ageing parents cannot rely on the government to take care of them. Also, our culture emphasizes filial piety and blames those who ignore the interest of parents. For example, our law says if a child commits a crime, parents do not have to report it. So once we take our culture into account, the most basic unit of the society is the family, rather than the individual. Whenever we see an individual, we unavoidably think of the family behind her.*³⁹⁰

Defining culture broadly, Xiwei considers prioritizing filial piety over autonomy as a sacrifice that one has to make, a sacrifice which shows one's willingness to fit in and become a responsible citizen and a filial daughter in Chinese society. Considering marriage as a task one has to fulfill, she justifies her viewpoint by referring to the teaching of Confucius and even the Constitution of the Communist Party of China. While Weiwei and Aiyin focus exclusively on the emotional wellbeing of their parents, Xiwei pays more attention to the financial needs of her parents because they do not have a pension. Xiwei insists that a suitable marital partner should at least ensure that her parents can also get some kind of support.³⁹¹ This difference between the narratives of

³⁹⁰ *Ibid.*

³⁹¹ *Ibid.*

my interviews, once again, reflects the importance of seeing “leftover women” as a process of making rather than a concept coined to refer to middle-class unmarried women.

Xiwei, Weiwei, and Aiyin’s narratives illustrate that when it comes to marriage and childbearing, the concept of “autonomy” is not necessarily welcome to leftover women. There is a lack of the habit of separating the self from the family. The idea that individuals should not prioritize autonomy in marital choices over family interests has clear resonance with the parents I interviewed. As a mother of a recently married 29-year-old woman, Junrong says,

The younger generation is generally selfish and self-central. They always do whatever they want, regardless of how their parents think about it. They are always thinking about themselves, and it hurts the feelings of parents. When daughters enjoy being single in their 30s or 40s, they are selfish. They should get married and let their parents feel relieved.³⁹²

Junrong expects the younger generation to always bear in mind the interests and feelings of parents when they make marital choices, instead of being too self-centred and only thinking about individual happiness.

The narrative of Shun, a 28-year-old woman who worked as a construction estimator in Putian, shares a lot in common with Xiwei’s opinion. She explains the reasons why separating the self from the family when making marital choices is not possible in Chinese society:

Autonomy is more about financial and intelligent independence. When it comes to marriage and childbearing, however, the family, rather than the individual, is the most basic unit. I do not really think we need to follow whatever our parents tell us,

³⁹² Interview, Junrong, Xiamen, Fujian Province, China, October 2016. Junrong’s only daughter is a court clerk in a local court in Xiamen. Her daughter got married recently and moved into the apartment of her husband’s parents and lives together with them. Junron prepares lunch for her daughter during weekdays, and they have lunch together at home during her daughter’s lunch break.

but the harmony of the family is more important than autonomy. To me, marriage is not only the union between the couple but also between two families (婚姻是两个家庭的结合). There is no point talking about autonomy when the young couple is so busy with work and still relies on the older generation to take care of our kids. I do not think we can handle everything if we move out of our parents' place, although I understand that my husband and I would have more autonomy living in our own apartment.³⁹³

Shun's story reflects the difficulties in having one's cake and eating it too: ensuring autonomy in marital choices and expecting the older generation to provide childcare.

When the nuclear family has such a close tie with the older generation, one cannot ignore the interests of parents when making decisions in marriage and childbearing. Showing her reliance on the older generation to take care of the child, Shun tries to explain that taking the interests of parents into consideration benefits leftover women themselves, a view that echoes in the narratives of other women. For example, Minxia, a 33-year-old married woman in Shanxia Village, says,

You may have your own thoughts, but you will have to prioritize the opinions of the older generation over your own. I have three sisters, and we are very traditional. We think about our parents a lot when we made marital choices. We try to make sure we live close to our parents after we get married. It is easier for us to visit our parents and help with each other. I mean, it is very difficult to travel for a long way, especially when you have kids. Now the four of us could go back to visit our parents together and spend some time with our parents. Also, our decisions to stay closer to our parents enable the four of us to live close to each other, so it is very convenient for us to catch up.³⁹⁴

Minxia uses the term "traditional" to describe the belief that parental interests come first.

As the four sisters benefit from their choices to stay close to their parents after marriage,

³⁹³ Interview, Shun, Putian, Fujian Province, China, September 2016. Shun is recently married. She is the elder daughter of a two-daughter family. She lives with her husband, son, and parents-in-law.

³⁹⁴ Interview, Minxia, Shanxia Village, Fujian Province, China, September 2016. Minxia is a stay-home mother with two daughters and one son. Her parents have five children, including four daughters and a son. She did not self-identify as a leftover woman. She is Meiyi's cousin, and she spoke to me when I interviewed Meiyi at Minxia's place.

Minxia is happy with her choice to follow her parents' expectations and stay close to them. In fact, as Judd discusses, staying close to natal kin by marrying to local neighbouring villages is an important family strategy in rural China as a way for elderly villagers to compensate for the lack or reduced number of son and benefit from the help of their married daughters.³⁹⁵

Karen, a 30-year-old single woman who works as an architect in Xiamen, seems to hold a somewhat different opinion from other women I interviewed. She insists that sometimes one needs to be selfish in order to have a more suitable marital partner:

*My parents are concerned that they may not be able to live until the day I get married because their health status is not very good. Whenever I hear them saying they are afraid they could not witness my wedding, I feel very sad. But I keep telling myself that I will have to be selfish and take more time to choose the right person. It is going to be me who lives together with my future husband. It is true that my parents suffer from gossip in our village, but I feel much better when I think of the fact that I provide much more material support to parents than any other daughter in my village. Also, I have a very decent job and salary, so village fellows dare not look down on our family too much.*³⁹⁶

Although Karen seems to emphasize autonomy in marital choices, her invocation of the word “selfish” to describe her decision to take more time in searching for her future husband also reflects the belief shared by other interviewees who think focusing on the interests of the individual over that of the family is against *qing*.

What makes Karen feel less guilty about her choice to be more autonomous, or in her own word “selfish,” is her capacity to gain face for the family by providing more material support to parents. If Karen does not have a decent income to support her parents in a way that village fellows admire, it is likely that she would not choose to be as “selfish” as

³⁹⁵ Judd, *supra* note 337 at 936

³⁹⁶ Interview, Karen, Xiamen, Fujian, China, August 2016.

she is now. Karen's story shows that the *guanxi* network often complicates women's marital choices by imposing an extra burden for one to justify her choice to be single, which makes it more difficult for women who do not have admirable achievements to remain single.

From the narratives of these leftover women, we have seen their reluctance to prioritize autonomy in marriage and childbearing over parental expectations and interests. To understand the differences between relational thinking of leftover women and feminist relational theorists, we need to discuss how leftover women interact with family members and other people in their social network; and how the networks of relationships generate a system of rules and punishment to shape leftover women's choices.

II. The System of Rules and Punishment Generated by Networks of Relationships

The predominant theme in my interviews with leftover women was parental expectations, and the connection between those expectations and the importance, broadly cast, of family relations and interpersonal relations in Chinese society. In this part, I draw upon current literature on *face*, *zuoren*, and *guanxi* to explain why parents care so much about how others think about their daughter's marital status and why leftover women are so concerned about the pressure imposed on their parents by others. More importantly, I try to demonstrate the differences in relational thinking between ordinary people in China and feminist relational theorists. I argue that the ways people in Chinese society relate the self to others in their networks of relationships have generated a system of rules and punishment that can function on its own to govern people's behaviour without relying on

state law. Paying attention to this non-state order offers opportunities to revisit and rethink the assumptions of feminist relational theory about the self, autonomy, and the impact of state law on constructing relations.

This part begins with a discussion on the structure of the networks of relationships in Chinese society to demonstrate how ordinary people understand the self and construct *guanxi* networks. Bringing in the concept of *zijiren*, or “insider,” I elaborate on the fuzzy distinction between “private” and “public” in Chinese society. Following my discussion on the structure of the networks of relationships, I draw upon leftover women’s narratives to show how their marital choices are shaped by their *guanxi* networks, which function as a system of rules and punishment to govern their behaviour in a powerful way. To demonstrate how the system imposes pressure on leftover women, I group their narratives into two themes, namely face and *zuoren*. Acknowledging that the requirements of face and *zuoren* overlap to a large extent and that the two are sometimes inseparable, my choice to divide the discussion into two sections is mostly for analytical purposes: I hope this arrangement makes it easier for my readers to understand how face and *zuoren* participate in the construction of the system of control that governs leftover women’s behaviour.

Referring to leftover women’s narratives on the fear of taking away the family’s face, or *mianzi*, by delaying marriage or choosing alternative family formation, I highlight the significant impact of *mianzi* on marital choices in a social environment within which normalcy and fitting in are of great importance. After that, I turn to discuss how the requirements of *zuoren* make it essential for leftover women to attend matchmaking events and take parental expectations into consideration. I will then conclude this part by

examining how the structure of *guanxi* enables face and *zuoren* to work together to impose pressure to marry on leftover women.

The discussion on the system of rules and punishment generated by networks of relationships is of great importance to the investigation of the questions that will be addressed in the following chapters: how do leftover women understand and engage with state law concerning marriage and childbearing? Why do leftover women in my interviews tend to believe that elite women are more deserving of reproductive rights? How do the changing meanings of filial piety, together with the state's legislating of filial piety, contribute to leftover women's pressure to marry? Thus, the analysis of these three concepts would lay the foundation for the discussion of how state law really works together with other levels of social ordering to shape leftover women's choices in marriage and childbearing.

A. The Structure of Networks of Relationships

Guanxi is loosely translated as the network of personal relationships or connections.³⁹⁷ I use the term *guanxi*³⁹⁸ to cover the entire social networks of personal relations described in the eminent sociologist Xiaotong Fei's "a differential mode of association (*chaxugeju* 差序格局)."³⁹⁹ As people in Chinese society tend to rely on each other to get things done,

³⁹⁷ Man Yee Karen Lee, "The role of law in Addressing the Good Samaritan's Dilemma: A Chinese Model?" (2015) 2 *Asian Journal of Law & Society* 55 at 66.

³⁹⁸ For more information on different definitions of *guanxi*, see, Qian Liu, "Relational Dignity, State Law, and Chinese Leftover Women's Choices in Marriage and Childbearing," forthcoming in the *Asian Journal of Law and Society*.

³⁹⁹ Xiaotong Fei, Gary G Hamilton & Cheng Wang, *From the soil, the foundations of Chinese society: a translation of Fei Xiaotong's Xiangtu Zhongguo, with an introduction and epilogue* (Berkeley: University of California Press, 1992).

maintaining good familial and interpersonal relations is not only a moral duty but also a strategy to survive in society. No one can deny that Chinese society has always been organized around *guanxi* networks, which have a significant impact on ordinary people's everyday lives in Chinese society.

To understand *guanxi*, one has to look at the pattern of the entire social structure in Chinese society, or what Fei refers to as “*chaxugeju*.”⁴⁰⁰ Fei suggests that the construction of Chinese social relations is based on social networks of personal relations with the self at the center of each net;⁴⁰¹ the network of relationship in Chinese society “is similar to the concentric circles formed when a stone is thrown into a lake,” and “each circle spreading out from the center becomes more distant and at the same time more insignificant.”⁴⁰² Everyone's concentric circle is interrelated with those of others. The interrelation, or *chaxugeju*, constructs Chinese social structure. Fei argues that *chaxugeju* means that ordinary people in China understand the self in a way that is different from their Western counterparts.⁴⁰³ Although I am aware of the danger of considering “Western” and “non-Western” as stable categories and thus ignoring the fluidity, plurality, elasticity, and interpenetration within them,⁴⁰⁴ I cannot deny that Fei's description of *chaxugeju* clearly demonstrates how the notion of the self in Chinese societies amounts to egocentrism instead of individualism.⁴⁰⁵ While individualism

⁴⁰⁰ *Ibid.*

⁴⁰¹ *Ibid.*

⁴⁰² *Ibid* at 63–5.

⁴⁰³ *Ibid.* See also, Yunxiang Yan, “Moral Hierarchy and Social Egoism in a Networked Society” (2015) 49 *Korean J Sociol* 39 at 43.

⁴⁰⁴ Postcolonial theorists have been discussing this question for a long time. See, for example, Godrej, *supra* note 32 at 13–15; Deckha, *supra* note 134 at 38.

⁴⁰⁵ Fei, Hamilton & Wang, *supra* note 399 at 67.

emphasizes that each individual has equal rights and that the rights of an individual are undeniable, egocentrism always stresses that the self is central. When people immersed in cultures that emphasize individualism tend to see people as individuals and have “one code of manners for all,” people who abide by *chaxugeju* treat others differently on the basis of “differentiation rather than homogeneity.”⁴⁰⁶ For this reason, Chinese society is neither individual-based nor society-based, but is instead relation-based.⁴⁰⁷

One of the most important features of *chaxugeju* is that the individual standing in the centre of one’s own network would apply the norms of social interactions and moral judgements differently to people standing in different circles;⁴⁰⁸ one decides how to treat a particular person based on the principle that “those who are close and those who are distant deserve different treatment” (亲疏有别). In other words, ordinary people in China “instinctively divide people into those with whom they already have a fixed relationship, a connection, what the Chinese call *guanxi*, and those they don't.”⁴⁰⁹ The principle of “differentiation rather than homogeneity” in Chinese society helps us understand leftover women’s emphasis on the relationship with parents, especially because family members generally rely heavily on each other in Chinese society.⁴¹⁰ Zhu Jiani, a 28-year-old single woman in Xiamen, says, “no matter how awesome a guy could be, he would not treat you better than your parents did.”⁴¹¹ The idea that “parents enjoy priority over potential

⁴⁰⁶ Lee, *supra* note 397 at 67.

⁴⁰⁷ *Ibid.*

⁴⁰⁸ *Ibid.*, at 67.

⁴⁰⁹ Fox Butterfield, *China: Alive in the Bitter Sea*, (New York: Bantam Books, 1983) at 74–5.

⁴¹⁰ For more information, see Xu & Xia, *supra* note 271.

⁴¹¹ Interview, Zhu Jiani, Xiamen, Fujian, China, August 2016. Zhu Jiani is an assistant at the Office of Urban Management in Xiamen. She is the only child of her family. She lives in Xiamen in her parents’ apartment. She self-identifies as heterosexual.

marital partners” resonates among many women I interviewed, especially those who have not married.⁴¹² *Chaxugeju* also enables us to understand Weiwei, Aiyin, and Xiwei’s emphasis on family relations and the happiness of parents when it comes to marital choices. It is not necessarily because parents have imposed more pressure than others on leftover women to marry. Instead, to a large extent, it is because leftover women themselves care more about the relations with parents than with other people.

It may be true that as soon as these leftover women get married and give birth, the husband and children may occupy the circle closest to the core, and parents would become less important than the husband and children. In the process of seeking marital partners, however, parents stand in the closest circle of their daughter’s network of relationships, while potential partners occupy a more distant and insignificant circle. In fact, the structure of networks of relationships is much more complicated than dividing people into family members and non-family members. The concept of *zijiren* (自己人, “one of us” or insiders) plays a significant role in deciding the influence of a particular relation.

In Chinese societies, everyone lives in a “magnetic field of human feelings (人情的磁力场)” in which people seek to take care of each other as long as they are considered

⁴¹² At a focus group, when asked what would you do if you found a partner you really like but your parents do not agree to have the person as your marital partner, Sixuan says, “if my parents are strongly against it, I will just give up. Of course, I love my parents more.” Her colleague, Xiaoyu, a 28-year-old single woman in Xiamen, adds that “There are other opportunities to meet other suitable marital partners, but we only have two parents. So, of course, parents are more important.” Focus group, Xiaoyu, Xiamen, Fujian Province, China, October 2017. Xiaoyu works as an assistant at the Office of Urban Management. She self-identifies as heterosexual. She is the only child of her family.

to be “insiders,” or *zijiren*.⁴¹³ *Ziji* (自己) literally means “self,” while *ren* (人) can be translated as “person.” Family members, or *zijaoren* (自家人), are the core of *zijiren* because family members in Chinese societies not only have blood relationships but also tend to have strong emotional connections and reciprocal relationships between family members.⁴¹⁴ When one uses the word *zijiren* to describe the relationship with another person, however, it does not necessarily mean that the person has to be a family member or a relative. Other people could become a particular individual’s *zijiren* by building trust and emotional connections, such as neighbours, friends, and colleagues.⁴¹⁵ As Hsiao-Tan Wang defines, *zijiren* is “a psychological classification schema of one’s level of relational inclusivity or exclusivity within a given group.”⁴¹⁶ Thus, the boundary between “insiders” and “outsiders” is fluid and blurred. Whether a particular individual fits into the category of *zijiren* highly depends on the individual’s position in the net of *chaxugeju*: if the person stands closer to the centre in the net than those who are more distant, this person is *zijiren* compared to others.⁴¹⁷

The fluidity between “insider” and “outsider” contributes to unclear personal boundaries in ordinary people’s interpersonal networks and thus leads to the lack of fertile soil for individualism to grow. Under this structure, *zijiren* becomes a unit with a fuzzy boundary, within which people are supposed to respect and offer help to each other.

⁴¹³ Longji Sun, *Zhongguo Wenhua de Shenceng Jiegou*, 3d ed (Beijing: Zhongxin Chubanshe, 2015) at 54.

⁴¹⁴ Yiyin Yang, “‘Zijiren’: Xinren Jiangou Guocheng de Ge an Yanjiu” (1999) 2 *She Hui Xue Yan Jiu* 38 at 50.

⁴¹⁵ Fang Ke, “Cunluo Shehui ‘Zijiren’ Jiufen de Tiaojie Luoji yu Songfa Xiaxiang de Kunjing” (2017) 30:4 *Wuhan Ligong Daxue Xuebao Shehui Kexue Ban* 142 at 143.

⁴¹⁶ Hsiao-Tan Wang, “Justice, Emotion, and Belonging: Legal Consciousness in a Taiwanese Family Conflict” (2019) 53:3 *Law & Society Rev* 764 at 771.

⁴¹⁷ Ke, *supra* note 415 at 142–4.

As a result, “[t]o be *zijiren* is a ubiquitous life goal in which great efforts are made to be identified by others as a person who deserves respect and acceptance, which are ambitions found in many other cultures that place a high value on affiliation or interpersonal relationships.”⁴¹⁸ To become *zijiren*, one has to gain social recognition, which is key in establishing and maintaining *guanxi* networks. As “individuals are defined according to the social recognition of their status roles and their assumption of appropriate responsibilities therein,”⁴¹⁹ the loss of social recognition is a threat to most people in China. Severe loss of face places the individual and her family in a despised and isolated position, which closes the opportunities for such individuals and their families to use social networks to obtain resources.⁴²⁰

B. Face, Mianzi and Lian

It is widely believed that face, as one of the keys in understanding China, is an inevitable aspect of interpersonal encounters, connections and relationships in people’s everyday lives in China.⁴²¹ People in China tend to attach great importance to having face, or in the word of Peter Buckley et al., “protect[ing] a person’s *mianzi* or dignity and prestige.”⁴²²

Mianzi and *lian* are the two words most commonly used in Chinese to refer to face.

⁴¹⁸ Wang, *supra* note 416 at 771.

⁴¹⁹ Elisabeth Engebretsen, “Under Pressure: Lesbian-Gay Contract Marriages and Their Patriarchal Bargains” in Gonçalo Santos & Stevan Harrell, eds, *Transforming Patriarchy Chinese Families in the Twenty-First Century* (Seattle and London: University of Washington Press, 2016) 163 at 165.

⁴²⁰ Lawrence Hsin Yang & Arthur Kleinman, “‘Face’ and the Embodiment of Stigma in China: The Cases of Schizophrenia and AIDS,” 67 (2008) *Social Science & Medicine* 398 at 404.

⁴²¹ Xiaoying Qi, “Face: A Chinese concept in a global sociology” (2011) 47:3 *Journal of Sociology* 279 at 281.

⁴²² Peter J Buckley, Jeremy Clegg & Hui Tan, “Cultural awareness in knowledge transfer to China—The role of *guanxi* and *mianzi*” (2006) 41:3 *J World Business* 275 at 276.

Hsien-Chin Hu makes a distinction between *mianzi* and *lian*: *mianzi* stands for “a reputation achieved through getting on in life, through success and ostentation. This is prestige that is accumulated by means of personal effort or clever maneuvering;” *lian*, is “the respect of the group for a man with a good moral reputation.”⁴²³ Hu emphasizes that *lian* is “both a social sanction for enforcing moral standards and an internalized sanction.”⁴²⁴ the loss of *lian* would make it impossible for the individual to “function properly within the community.”⁴²⁵ *Mianzi*, on the other hand, “is built up through initial high position, wealth, power, ability, through cleverly establishing social ties to a number of prominent people, as well as through avoidance of acts that would cause unfavourable comment.”⁴²⁶ Acknowledging that both *mianzi* and *lian* depend on interactions with others for their construction, Rofel also suggests that *mianzi* has a closer linkage with social status.⁴²⁷ In short, these scholars tend to consider *lian* as the moral face of an individual and use *mianzi* to refer to the social face of the individual.⁴²⁸

There is, however, a debate on the distinction between *lian* and *mianzi*. Some scholars argue against the simple dichotomy between *lian* as moral face and *mianzi* as social face. As David Yau-fai Ho argues, the meanings of *mianzi* and *lian* vary under different verbal context and “are not completely differentiated from each other in that the terms are interchangeable in some contexts.”⁴²⁹ Xiaoying Qi uses the example of a student who has

⁴²³ Hsien-Chin Hu, “The Chinese Concepts of ‘Face’” (1944) *American Anthropologist* 45 at 45.

⁴²⁴ *Ibid.*

⁴²⁵ *Ibid.*

⁴²⁶ Hu, *supra* note 423 at 61.

⁴²⁷ Rofel, *supra* note 138 at 102.

⁴²⁸ Qi, *supra* note 421 at 283.

⁴²⁹ David Yau-fai Ho, “On the Concept of Face” (1976) 81:4 *American J Sociology* 867 at 868.

failed a university entrance examination to explain the lack of a clear-cut distinction between *lian* and *mianzi*: although the student may feel she has lost *lian* (丢脸) or does not have *lian* to face those who have high expectations of her (没脸见人), this is not a situation of transgressing moral standards.⁴³⁰ Thus, the boundary between *mianzi* and *lian* is sometimes very blurred. Qi suggests that scholars could use *mianzi* to refer to face while acknowledging that face has both moral and social aspects.⁴³¹ In fact, defining *mianzi* as the recognition by others of an individual's social standing and position,⁴³² Buckley et al. use the word *mianzi* interchangeably with face, without mentioning the concept of *lian* in the article.

In my view, although the focus of *lian* and *mianzi* is slightly different, they are not completely differentiated from each other. In fact, as Ho argues, many people in China use them interchangeably in some contexts.⁴³³ Acknowledging that face has both moral and social aspects, I use face to refer to the combination of *mianzi* and *lian* for the reason that these two concepts interweave to a large extent to shape leftover women's understandings of marriage, childbearing, and filial piety. For many of the leftover women I interviewed, they are not only afraid that the refusal or failure to meet social expectations to marry and give birth at an early age will take away their *mianzi* and their family's *mianzi*; but they are also concerned that taking away family's *mianzi* equates

⁴³⁰ Qi, *supra* note 421 at 284.

⁴³¹ *Ibid* at 285.

⁴³² Buckley, Clegg & Tan, *supra* note 422 at 276.

⁴³³ Ho, *supra* note 429 at 868.

with a failure to fulfill their moral obligation to be filial to parents, a failure that would do harm to their moral reputation and lead to the loss of *lian*.

Like Meiyi, quite a few leftover women I interviewed are concerned that delaying or forgoing heterosexual marriage would bring a sense of losing face to parents. Shujing, a 34-year-old civil servant in Ningde who just got married recently, recalls her conflict with her mother before getting married,

My mum loved going dancing after dinner in our neighbourhood with other women of her age. But there was a period of time when she was quite depressed. One day, she returned home from dancing and told me that she was no longer going with the group because she felt a sense of losing face. My mum said those women were always talking about grandchildren and asking about whether and when I planned to get married. She kept telling them I was too picky and had difficulties choosing among those young men chasing after me. But deep down, she knew those women would not believe in what she said because I was already in my early 30s at that time. When she came back home, she felt mad because she lost face in front of the dancing group.⁴³⁴

The sense of losing face stopped Shujing's mother from going to dance with neighbours, which imposed pressure on Shujing to hurry up and find a partner to settle down. Shujing was not worried about remaining single at the age of 34, but she had been concerned about the feelings of her parents. She says, "I felt bad for seeing my parents suffering from the sense of losing face and the anxiety stemming from the complexity of my leftover status, the lack of a grandchild, and social pressure. I guess I rushed into marriage mainly because I cared about their feelings. It took me only one month to make the decision to marry my husband."⁴³⁵ The gossip of those women who went dancing

⁴³⁴ Interview, Shujing, Xiamen, Fujian Province, China, September 2016. Shujing and her husband live in her parents' house in Sanming, Fujian. She is the only child of her family. She self-identifies as a heterosexual woman.

⁴³⁵ *Ibid.*

with her mother might not directly affect Shujing's attitude toward marriage, but the impact of the gossip on her mother had a significant influence on her marital choice.

The concern of taking away the family's face also intimidates bisexual women and lesbians into heterosexual marriage. It is so influential that quite a few lesbians I interviewed have already chosen or are considering formality marriage (形婚). Wenwen, a 26-year-old woman in Xiamen who prefers a same-sex relationship, chose to marry a man for the sake of her parents. Wenwen says,

*I have fulfilled my filial piety by making a marital choice that is consistent with my parents' will—I got married without letting my husband know that I might prefer to be in a same-sex relationship. My parents would feel bad if I was not able to even get married. I plan to divorce sooner or later. I am sure my parents want other people to know that their daughter is as normal as anybody else. Otherwise, they may lose face and feel ashamed when the children of their friends and relatives are all married, and I remained leftover. I felt I should fulfill their desires to see me getting married. I mean, getting married would not kill me (结一下婚又不会死). As the only child of my family, I felt the obligation to make sacrifices for my family. I cannot focus only on my own interests. That is too selfish. I need to care about how other people think about our family.*⁴³⁶

Wenwen's concern about taking away the family's face thus motivated her to enter a heterosexual marriage. To her, getting married is a sacrifice she made for her parents: to save their face and protect them from gossip. Being honest to herself and her husband is secondary to the happiness and *mianzi* of her parents, who are forced into the competition of normalcy because of heteronormativity.

Wenwen's story is not an exception. In fact, it is common for lesbians and gay men in China to marry heterosexual partners without disclosing their own sexual orientation in

⁴³⁶ Interview, Wenwen, Xiamen, Fujian Province, China, October 2016. Wenwen is married to a heterosexual man and lives with him in Xiamen. Her parents live in Fuzhou, a city that is about 300km from Xiamen. She is the only child of her family. She self-identifies as bisexual but has a strong preference for same-sex partners.

order to maintain their family's *mianzi*.⁴³⁷ Rofel finds that gay men shy away from telling their parents about their sexual orientation because they are afraid that “they will take away their family's *mianzi*.”⁴³⁸ Engebretsen's research on lesbian-gay marriage also shows that a family's reputation relies on individual family members confirming to social duties.⁴³⁹

The fear of taking away their family's face has been powerfully shaping leftover women's choices in a way that conforms to dominant social roles and expectations, and in so doing preventing them from choosing alternative family structures, such as being single, being in a same-sex relationship, etc. Leftover women who do not agree with dominant social roles and expectations have to deal with the conflict between forgoing or delaying heterosexual marriage and maintaining family reputation and *guanxi*. Those who fail to live up to dominant social roles and expectations are considered “not knowing how to behave as a person (不会做人).”

C. *Zuoren*, or “Behaving as a Person”

Zuoren can be loosely translated as “becom[ing]/be[ing] a person,”⁴⁴⁰ or “behaving as a person.”⁴⁴¹ In China, *zuoren* means more than being born as a human being. It has been a popular complaint among people in China that “it is easy to be alive, but it is difficult to

⁴³⁷ Qingxiu Bu, “The Good Samaritan in the Chinese Society: Morality vis-à-vis Law” (2017) 38:2 *Liverpool Law Rev* 135 at 141.

⁴³⁸ Rofel, *supra* note 138 at 101.

⁴³⁹ Engebretsen, *supra* note 419 at 168.

⁴⁴⁰ Xing Ke, *Succession and the Transfer of Social Capital in Chinese Family Businesses: Understanding Guanxi as a Resource – Cases, Examples and Firm Owners in Their Own Words* (V&R Unipress, 2018) at 178.

⁴⁴¹ Fei Wu, *Suicide and Justice: A Chinese Perspective* (Florence: Routledge, 2009) at 21–2.

be a person (为人容易做人难).”⁴⁴² The difficulties of *zuoren* come from the following aspects: first, different types of interpersonal relations request different treatment, which makes it complicated to deal with all kinds of interpersonal relations appropriately and please everyone; second, interpersonal relations, or *guanxi*, are not only based on affection and gratitude but also on “justice,” meaning that interpersonal relations are supposed to be reciprocal.⁴⁴³

Zuoren requires ordinary people to do what one is supposed to do in an appropriate way in order to become a good person or a decent and respectable person.⁴⁴⁴ Fei Wu, the author of *Suicide and Justice: A Chinese Perspective*, argues that *zuoren* implies that “one is not born a full person, and that everyone has to make themselves into a worthy human being.”⁴⁴⁵ In general, *zuoren* does not expect one to be a sage; instead, it requires one to be a person that follows the most basic social norms when they interact with people around them, which include but are not limited to being filial to parents, caring for children, being loyal to spouses, and being honest to siblings, friends, neighbours and colleagues.⁴⁴⁶

While it seems all societies require citizens to be good persons, what makes *zuoren* culturally specific is its emphasis on familial and interpersonal relationships. *Zuoren* demands the skills to maintain good connections and relationships with other people in

⁴⁴² Shenbai Liao, “Women *zuoren* de *guannian*,” 182 (2004) Beijing Shifan Daxue Xuebao (Shehui Kexue Ban) 76 at 80.

⁴⁴³ Although interpersonal relations are different from exchange relationships in the market place, those who receive help and support are expected to fulfill their duty to repay when necessary. It is unjust if one refuses to offer or fails to offer enough support to those who helped them in the past. *Ibid.*

⁴⁴⁴ *Ibid* at 78-9; Wu, *supra* note 441 at 22.

⁴⁴⁵ Wu, *supra* note 441 at 22.

⁴⁴⁶ Liao, *supra* note 79-80.

society.⁴⁴⁷ According to Kwang-Kuo Hwang, the key of *zuoren* lies in the person's skills to deal with interpersonal relations,⁴⁴⁸ which requires one to fit in and live "normal" lives because conforming to social norms is the prerequisite to generate and maintain respectable social status.⁴⁴⁹ As Wu suggests, sociologically, only a married and normal person is qualified to be a full person.⁴⁵⁰ Wu writes,

*Without interacting with other people in proper ways, one cannot be worthy, respected and generous. Hence "behaving as a person" is also about interacting with other people. An unmarried person is not supposed to be a full person, because he or she has not experienced that interpersonal relationship that is necessary for full personhood. In local society, marriage is a sociological sign for one's personhood, because only a married person will have his or her own family and live his or her own family life.*⁴⁵¹

In other words, *zuoren* would require an individual to be or become the person who fits in with the social environment of the place she lives.

When getting married and having children equates to normalcy in Chinese society, remaining single at a marriageable age is considered a problem. As *zijiren* are supposed to help each other, it is appropriate for *zijiren* to ask about leftover women's marital status and even arrange match-making events as a way to help them "solve the problem" and become a full person. Refusing to appreciate the help or discuss this kind of personal plan with *zijiren* is against the requirements of *zuoren*.

The fluid boundary between "insiders" and "outsiders" leads to the fuzzy distinction between "private" and "public," and thus leftover women's marital status often becomes

⁴⁴⁷ Guangguo Huang, *Rujia Guanxi Zhuyi: Zhexue Fansi Lilun Jiangou*, (Taipei: Xinli Chuban She, 2009) at 257.

⁴⁴⁸ *Ibid* at 257.

⁴⁴⁹ Engebretsen, *supra* note 419 at 173.

⁴⁵⁰ Wu, *supra* note 441 at 24-5.

⁴⁵¹ *Ibid* at 23.

a part of the daily conversations of people around them. To be specific, one's relatives, colleagues, and friends are *zijiren* compared to people with whom the individual has not established *guanxi* because they stand closer to the centre of the individual's network of social connections. It is, therefore, consistent with *qing* for these *zijiren* to touch upon the somewhat "private" conversation about marital choices, especially when introducing marital partners to unmarried youngsters is considered a good deed that will accumulate good karma in China.⁴⁵²

Under this situation, leftover women are supposed to respect the good intention of those who offer help in order to maintain good *guanxi*. For example, Yang Yan, a 27-year-old single woman, is surrounded by colleagues, especially supervisors, who keep arranging matchmaking events or introducing potential partners to her. Yang Yan considers meeting with the potential partners and attending matchmaking events arranged by colleagues as some kind of tasks that she has to complete (*完成任务*): "I don't like

⁴⁵² According to an article published by New Weekly (新周刊) in 2018, people in China born with the nature to help introduce marital partners to those who are single and believe that if the two individuals eventually decide to get married, those who help with the matchmaking will accumulate a significant amount of good karma. For more information, see An Laoban, Mei Ge Zhongguo Ren Xinli, Dou Zhuzhe Ge Meipo, Xin Zhoukan, online: <http://www.sohu.com/a/250693946_100024718>. Some may argue that people no longer have this belief in today's China. The emerging of matchmaking volunteering organizations across China in recent years suggests the opposite. For example, Sanjiangyuan, an organization based in Zhejiang Province, has more than 60 volunteers. This organization has hosted more than 300 matchmaking events within four years. For more information on Sanjiangyuan, see Zhongguo Wenming Wang, "Ningbo Shi Sanjiangyuan Gongyi Hongniang Wang," online: http://www.wenming.cn/specials/zyfw/4g100/zjzyfwxm/201512/t20151204_2999792.shtml. Founded in April 2019, Luweimei, another organization in Zhejiang, also has attracted more than 60 volunteers who are interested in "solving the problems" for those who are still single or divorced. See, http://news.taizhou.com.cn/2019-04/18/content_6197061.htm. In Hunan Province, the Online Youth Service Centre also organized matchmaking events every month to create opportunities for singletons to meet with suitable marital partners. The volunteers organized events during their days off in order to "make a bit contribution to the youngsters and society as a whole." See for example, <http://news.xtol.cn/2019/0226/5243313.shtml>. In Shandong, a 27-year-old man voluntarily set up an online forum and a singletons' club, with the aim to help those who are looking for potential marital partners. More than 50 married couples met through his help. For more information, see Zejun Zhao, "Linyi: 90 hou Xiaohuo Yiwu zuo 'Hong Niang' Chenggong Qianxian 50 Yu Dui," *Yimeng Wanbao*, (13 September 2018), online: http://sd.ifeng.com/a/20180913/6879068_0.shtml.

attending matchmaking events, but I have to go if it is arranged by my supervisors or colleagues. It hurts their feelings if I don't go. I am also concerned that they will think I am too picky if I refuse to meet the potential partner."⁴⁵³ To Yang Yan, turning down the offer to attend matchmaking events would leave an impression to her colleagues that she is not very good at *zuoren* (不会做人), which is going to hurt her *guanxi* network.

Tiantian, a 28-year-old primary school teacher who self-identifies as bisexual, holds the same view with Yang Yan. According to Tiantian, "it is very difficult to say no to matchmaking events arranged by friends and colleagues, so I will go if I cannot find a good excuse to refuse. Otherwise, they will think I do not appreciate their help and good intention (不领情)."⁴⁵⁴ To both Tiantian and Yang Yan, accepting her colleagues and friends' matchmaking invitations is to fulfill the requirements of *zuoren* in order to maintain good *guanxi*.

Likewise, if a leftover woman refuses to attend a matchmaking event arranged by friends of her parents, the leftover woman and her parents would be criticized as "don't know how to be a person." Xiaoya and Yanhui told me in a group interview that attending matchmaking events arranged by the friends of parents is mainly to maintain *guanxi* by giving face to parents and those who arrange the events: "attending matchmaking events is just a waste of time. But we have to go because otherwise our parents will lose face and suffer from gossip. We don't want our parents to lose face.

⁴⁵³ Interview, Yang Yan, Putian, Fujian Province, China, August 2016. Yang Yan is a 27-year-old medical laboratory scientist at a public hospital in Putian. She is the younger daughter of her family.

⁴⁵⁴ Interview, Tiantian, Xiamen, Fujian Province, China, July 2016. Tiantian is a bisexual woman who has been in a relationship with a same-sex partner for seven years. Tiantian lives on her own in Xiamen, although her parents and younger brother also live in Xiamen.

Those who arrange the events will also blame us for not giving them face if we refuse to go.”⁴⁵⁵ In this situation, the good intentions of *zijiren* become a burden for women who are considering delaying or forgoing heterosexual marriage.

One cannot deny that some *zijiren* really try to offer help, but it is also true that some so-called *zijiren* simply use leftover women’s marital status as a topic of conversation. Some leftover women think that many so-called *zijiren* do not really care about them. Yue Shan, a 29-year-old single woman who works as an architect in Xiamen, suggests that “asking when and whether you are going to marry is like asking how are you, and they are simply looking for a conversation starter.”⁴⁵⁶ While some women have adopted relatively more positive attitudes and strategies to deal with help and inquiries from people around them,⁴⁵⁷ most leftover women I interviewed still feel uncomfortable and pressured because of the need to appreciate the help and inquiries from *zijiren*.

The discussion of *zuoren* in this section aims to explain how the criteria of *zuoren* govern leftover women’s behaviour. Jun Yi, a Chinese professor who conducts research on law and society, writes, “people in China have a very strong sense of community. Thus, an individual often attaches great importance to how people in the community think about her. If people believe she is very good at *zuoren*, she has face, or *mianzi*. If

⁴⁵⁵ Interview, Xiaoya, Putian, Fujian Province, China, August 2016. Xiaoya is a 27-year-old single woman who lives alone during weekdays and stays with her parents during the weekend in Putian. She is the only child of her family. She self-identifies as a heterosexual woman. Xiaoya works as a civil servant in Putian. Interview, Yanhui, Putian, Fujian Province, China, August 2016. Yanhui is a 25-year-old single woman who lives with her parents and a younger brother. Yanhui self-identifies as a heterosexual woman. She works as a doctor in a hospital in Putian.

⁴⁵⁶ Interview, Yue Shan, Xiamen, Fujian Province, China, August 2016. Yue Shan lives with her mother in Xiamen after her parents divorced. She is the only child of the family. She self-identifies as heterosexual.

⁴⁵⁷ For example, Tiantian usually uses self-deprecation to stop *zijiren* from pushing her during the conversation. Tiantian says, “whenever I go back to my hometown, my relatives will ask why I don’t have a boyfriend. I always say I cannot find one because I am not good enough. My relatives will then compliment me on my appearance.” Interview, Tiantian, Xiamen, Fujian Province, China, July 2016.

one has no *mianzi*, she cannot have good *guanxi* with people in her social network.”⁴⁵⁸

The importance of *guanxi* in Chinese societies makes it essential for leftover women to consider other people’s expectations as a way to maintain interpersonal relations appropriately, rather than just being oneself. The criteria of *zuoren* help us understand why leftover women need to pay attention to how others believe they should behave: one needs to be a relational self that adjusts one’s choices and behaviour constantly as a way to meet the expectations of others.

D. Networks of Relationships as an Informal System of Social Control

Zuoren requires leftover women to make parents relieved and avoid bringing them the sense of losing face; it also expects leftover women to deal with interpersonal relationships appropriately and skillfully in order to gain face and maintain *guanxi*. It demands leftover women to comply with dominant social expectations of women, which are often based on patriarchal notions of gender norms. The consequences of refusing or failing to meet the social expectations are unbearable because it would jeopardize social recognition and the whole *guanxi* network. As Lawrence Hsin Yang and Arthur Kleinman suggest, “the core ‘credential’ that allows individuals membership into *guanxi* (or social capital) networks in China is cultivation and maintenance of moral face (*lian*). Once *guanxi* is established, the amount of social face (*mianzi*) one possesses then determines the total network resources that can be mobilized.”⁴⁵⁹ Thus, leftover women

⁴⁵⁸ Jun Yi, “*Mianzi yu Jiufen Jiejue—ji yu Fashehuixue de Fenxi*,” (2011) 4 *Xibei Minzu Daxue Xuebao* (Zhexue Shehui Kexue Ban) 72 at 73.

⁴⁵⁹ Yang & Kleinman, *supra* note 420 at 401.

who refuse to comply with basic social norms concerning marriage and childbearing run the risk of losing social recognition and endangering the established *guanxi* networks.

It may be true that some parents of leftover women would hold different views toward their daughter's marriage, especially when parents themselves do not agree with patriarchal notions of gender norms.⁴⁶⁰ The pressure to fit in, however, often overrides the critical perspectives of marriage among those parents. I argue that the structure of relationships in Chinese society generates a system of rules and punishment that shapes leftover women's choices.

The consequences of refusing to comply with social norms are indeed unthinkable, as it may lead to the breakdown of networks of relationships. Nevertheless, the fear of the unbearable consequences is not the main reason for leftover women to abide by dominant social expectations concerning marriage. Instead, they do so out of their internalization of the belief that they need to meet the criteria of *zuoren*: in order to be qualified as a human with dignity and maintain good *guanxi* networks, leftover women have to be relational selves who deal with the expectations of others and respond to people's inquiries regarding marital status and their matchmaking arrangements strategically.

Adopting a legal pluralism lens to see this system of rules and punishment as a form of social ordering helps us understand how state law operates in leftover women's daily lives: when the rules of punishment generated by the networks of relationships are effective, there is no need for the Chinese state to put forward a law directly targeting unmarried women to push them into marriage. Instead, it may be more effective for the

⁴⁶⁰ Kang Jinwang, the father of Kang Ziyou, admits that if he doesn't need to care about how other people think about his daughter and his family, he would prefer Kang Ziyou to remain single and stay with him forever. Interview, Kang Jinwang, Fuzhou, Fujian Province, China, September 2016.

state to focus on how to make use of this non-state order to govern its citizens. Thus, law and society scholars need to look more broadly on laws and policies that have a potential impact on unmarried women's choices. For example, a change in the Elderly Law imposing more responsibility on adult children to take account of parental expectations and happiness may affect women's marital choices, because it shapes ordinary people's expectations of familial relations. Attending to how networks of relationships govern ordinary people's behaviour also enables us to see the difficulties of relying on state law or positive legal changes alone to prevent discrimination against unmarried women.

My acknowledgement of the importance and influence of the networks of relationships does not translate into the assumption that this system of rules and punishment is necessarily better than state law. Cautioning law and society scholars against the romantic assumption of non-state orders, I argue that subordinating one's desires for face and *guanxi* of her family reinforces oppressive and heteronormative social expectations and thereby jeopardizing the interest of those who do not agree with dominant social norms. More importantly, at a time when the Chinese state has been encouraging its citizens to conform to these expectations through its media, laws and policies, and propaganda, special attention is needed on how the Chinese state benefits from its citizens' compliance with the expectations of the majority of people in one's network of relationships.

In sum, as leftover women grow up believing in the importance of maintaining *guanxi* and saving face as the requirements of *zuoren*, these requirements become influential rules in their daily lives. It is difficult for these women to avoid the influences of others, especially those who are *zijiren*. The analysis of how ordinary people in China

understand the relations between the self and people in their networks of relationships helps explain why most, if not all, leftover women I interviewed are reluctant to prioritize autonomy over the values attached to family interests and *guanxi*. Leftover women's reluctance to embrace autonomy in marriage and their emphasis on other values prompt me to rethink feminist relational theory's strong attachment to autonomy.

III. Potential Contributions to Feminist Relational Theory

Feminist relational theorists take it for granted that the notion of autonomy is vital to understand oppression, subjection, and agency.⁴⁶¹ Feminist preoccupation with autonomy, however, would lead to the misunderstanding of leftover women's choices to prioritize other values over autonomy. From the perspective of feminist relational theory, it seems leftover women's choices in marriage and childbearing are constrained by their family relations, as well as interpersonal relationships. Given that quite a few women in my interview set translate the emphasis on marital autonomy into being immature, self-central and unreliable, one may argue that their understandings of the self and autonomy are a kind of false consciousness resulting from patriarchal and oppressive social norms. To me, this viewpoint reflects a Western-centric assumption that autonomy is an undifferentiated concept and an absolute value.

It is undeniable that some social norms related to marriage and childbearing in Chinese society—as in many other societies in the Global North—are patriarchal and oppressive in nature. However, what if, rather than desiring autonomy in marital timing

⁴⁶¹ Mackenzie & Stoljar, *supra* note 31 at 3.

as integral to personhood fully defined, some women believe that family interests trump narrowly defined individual self-interest in certain contexts? As Aat Vervoorn cautions, “[i]f ourselves value autonomy and treasure the ability to control our own affairs, there is no need to assume that others conceptualize freedom in exactly the same way in order to ascribe similar attitudes to them.”⁴⁶² In the context of leftover women’s marital choices in China, these women’s different understandings of the relationship between the self and other people brings into question the centrality of autonomy to the concept of full personhood.

The narratives of leftover women have reflected that their refusal to prioritize autonomy does not necessarily result from unconditional submission to patriarchal and oppressive social norms. Instead of seeing leftover women’s unwillingness to embrace autonomy in marriage and childbearing as decisions made out of false consciousness, we need to acknowledge that leftover women’s decisions to prioritize family interests over autonomy in marriage and childbearing are “choices” made by themselves to meet the requirements of *zuoren*, *guanxi* and face. When we investigate leftover women’s choices contextually through the lens of their experiences and practices in particular contexts, we begin to understand why they attach greater importance to parental expectations than autonomy in marriage. More importantly, we may need to shift away from feminist relational theory’s focus on autonomy and ask leftover women themselves what they consider to be most valuable as a way to incorporate their narratives as a source of knowledge. The narratives of leftover women have the potential to challenge the

⁴⁶² Aat Emile Vervoorn, *Re Orient: change in Asian societies*, 2nd ed (Melbourne ; Oxford: Oxford University Press, 2002) at 120.

traditional notion of individualist autonomy and offer inspirations to the relational version of autonomy. The analysis of leftover women's narratives may provide a different kind of solution to the notion of autonomy: it suggests that in certain contexts, autonomy is not necessarily considered to be central pillars of human life when it comes to marriage and childbearing.⁴⁶³

The first contribution of my analysis of leftover women's narratives to relational theory, therefore, is to caution that feminists need to be wary of the assumption that women in all societies understand autonomy in marriage and childbearing as one of the most important values in our daily lives. I advocate that feminist scholars should pay more attention to the differences in the understandings of autonomy in different social contexts. Although I focus on women's choices in marriage and childbearing, I am confident that the findings can travel to the discussions of autonomy in other aspects of people's daily lives. In fact, studies in the area of bioethics have provided evidence to support my argument regarding the different understandings of autonomy across culture.⁴⁶⁴

⁴⁶³ Godrej also offers an example to see the notion of autonomy differently when it comes to veiling. According to Godrej, while colonial discourse often sees all veiled women as oppressed, domesticated and rendered invisible, Muslim women who choose voluntary veiling often claim it as a mark of resistance, agency and empowerment. Godrej writes, "Many Muslim women believe, then, that the veil is a way to secure a kind of personal space, confidence and self-esteem in a world that objectifies women by allowing them control over the visibility of their own bodies in the public sphere." Godrej, *supra* note 32 at 133–138.

⁴⁶⁴ Once again, I will have to acknowledge that there is not such a thing as "Western" or "East Asian," but I still use the terminology for the purpose of analyzing the differences in the understandings of autonomy in different contexts. Ruiping Fan, "Self-Determination vs. Family-Determination: Two Incommensurable Principles of Autonomy" (1997) 11:3 *Bioethics* 309; Lawrence Y Y Yung, "The East Asian Family-Oriented Principle and the Concept of Autonomy" in Ruiping Fan, ed, *Family-Oriented Informed Consent East Asian and American Perspectives*, Philosophy and Medicine (Cham: Springer International Publishing, 2015) 107; Michael Cheng-tek Tai & Chung Seng Lin, "Developing a culturally relevant bioethics for Asian people" (2001) 27:1 *J Medical Ethics* 51; Fabrizio Turollo, "Relational Autonomy and Multiculturalism" (2010) 19:4 *Cambridge Quarterly of Healthcare Ethics* 542.

Ruiping Fan, for example, labels the Western principle of autonomy as a self-determination-oriented principle, while he uses family-determination-orientation to refer to the East Asian Principle of autonomy.⁴⁶⁵ According to Fan, “[w]hile in the West a competent patient generally has the final word regarding the medical decisions, in East Asia both the patient and family members must reach an agreement before a clinical decision can be made.”⁴⁶⁶ Fan suggests that the Western principle of autonomy advocates a subjective conception of the good, while the East Asian principle of autonomy emphasizes an objective conception of the good. In other words, the criteria of good decisions are different under the two principles: under the Western principle of autonomy, a good decision should satisfy “an individual’s prudent desires, preferences and expectations, no matter whether or not they are in conformity with a set of impersonal values objectively defined;”⁴⁶⁷ under the East Asian principle of autonomy, on the other hand, “every agent should be able to make his or her decisions and actions harmoniously in cooperation with other relevant persons...No harmoniously made decisions and actions should be subjected to controlling constraints by others.”⁴⁶⁸ In short, the most important value underlying the East Asian principle of autonomy is “harmonious dependence,”⁴⁶⁹ rather than encouraging the individual to be a decision-maker.⁴⁷⁰

⁴⁶⁵ Fan, *supra* note 464.

⁴⁶⁶ *Ibid* at 316.

⁴⁶⁷ *Ibid* at 314–15.

⁴⁶⁸ *Ibid* at 316.

⁴⁶⁹ *Ibid* at 318.

⁴⁷⁰ *Ibid* at 314.

Building on Fan's research, Fabrizio Turoldo provides two examples to demonstrate that individual autonomy does not play a central role in some societies, such as Japan and China.⁴⁷¹ In his research on bioethics and relational autonomy, Turoldo suggests that the patient's autonomy is not considered the supreme value in Japan;⁴⁷² and thus, the concept of autonomy in Japanese culture should be defined as "family autonomy."⁴⁷³ Turoldo argues that people in China attach more importance to the individuals' responsibility toward families and respect for parents than individual rights, autonomy, and self-determination.⁴⁷⁴ Turoldo powerfully asserts that when talking about relational autonomy in China and Japan, "the stress is more often on relation than on autonomy."⁴⁷⁵ At the same time, Turoldo cautions that we should not jump to the conclusion that the principle of individual autonomy is not acceptable in Japan and China.⁴⁷⁶ According to Turoldo, although collective identity is sometimes supportive, it could also be oppressive in that individuals may be pushed to accept group choices that are contrary to their will and beliefs.⁴⁷⁷

Focusing on bioethics, both Fan and Turoldo's studies give insights into the understandings of autonomy in East Asia. Given the fact that "the word 'autonomy' itself carries a strong sense of individualism" or "self-determination,"⁴⁷⁸ Fan is aware that some may argue that Chinese bioethics scholars should establish a principle that has

⁴⁷¹ Turoldo, *supra* note 464.

⁴⁷² *Ibid* at 545.

⁴⁷³ *Ibid* at 546.

⁴⁷⁴ *Ibid* at 547.

⁴⁷⁵ *Ibid* at 545.

⁴⁷⁶ *Ibid*.

⁴⁷⁷ *Ibid*.

⁴⁷⁸ Fan, *supra* note 464 at 321.

nothing to do with the Western concept of autonomy.⁴⁷⁹ Fan, however, insists on using “autonomy,” although in a different sense, because the concept of autonomy has been taken as an important notion in bioethics in East Asian countries.⁴⁸⁰ Turolto addresses this question directly by suggesting that the limits of multiculturalism have made it essential to rely on “autonomy” to discuss clinical decisions.⁴⁸¹

Both Fan and Turolto’s studies support my argument that autonomy is not necessarily considered to be the top value in some social contexts. More importantly, their insistence on using “autonomy” prompts me to reconsider the concept of autonomy when it comes to women’s choices in marriage and childbearing. In fact, autonomy is not a value that leftover women I interviewed will think of when asked about their choices in marriage and childbearing. As the narratives above show, my interviewees often link the concept of autonomy with being too selfish, self-centred, immoral, and immature. Unlike Fan’s finding that autonomy has been taken as an important notion in bioethics in East Asian countries, leftover women I interviewed neither emphasize autonomy nor hold a positive attitude towards it. Thus, we should not impose the concept of autonomy on leftover women and still use “autonomy” to discuss their choices.

While I share the same concern with Turolto that collective cultural environments could push the individual to accept their group’s choices that are contrary to their own will and beliefs, I am confident that a critical analysis from a postcolonial perspective could help address the problem. When we discuss leftover women’s choices in marriage and childbearing, we need to consider the impact of their choices on other aspects of their

⁴⁷⁹ *Ibid.*

⁴⁸⁰ *Ibid* at 322.

⁴⁸¹ Turolto, *supra* note 464 at 547.

lives, such as *guanxi* networks and family interests. Focusing on autonomy in marriage and childbearing, although from a relational perspective, runs the risk of misinterpreting the connection between the self and her social networks. Therefore, I argue that feminist scholars need to shift away from the strong attachment to autonomy in order to understand leftover women's choices.

The second contribution I aim to make to feminist relational theory is to challenge its assumption that the relational self is never determined by her networks of relations. Nedelsky argues that a central part of what she means by a human self is a self with a capacity for creative interaction,⁴⁸² a capacity that allows the self to “interact creatively with all the relationships that shape us—and thus to reshape, re-create, both the relationships and ourselves.”⁴⁸³ In Nedelsky's view, the relational self is constituted by her complex web of relations,⁴⁸⁴ but relationships *cannot determine* who a person is or what she does or becomes.⁴⁸⁵ Turoldo shares Nedelsky's emphasis on creative interaction to define relational autonomy and maintains that individuals have the right to choose relations, rather than being determined by the complex web of relations.⁴⁸⁶

Unlike feminist relational theorists who see the self as discrete, although relational, I argue that the relational self in Chinese society is indiscrete and is determined by her social networks. As Hexin Hu suggests,

⁴⁸² Nedelsky, *supra* note 30 at 170.

⁴⁸³ *Ibid* at 47.

⁴⁸⁴ *Ibid*.

⁴⁸⁵ *Ibid* at 31.

⁴⁸⁶ Turoldo, *supra* note 464. Turoldo's main argument, based on my understanding, is: while clinicians and bioethics scholars should consider relations as a means of self-realization and respect one's right to entrust one's life to other people and to renounce autonomy in the name of other important values, it is also necessary to ensure that the “relations are autonomously chosen.”

*In traditional Chinese ethics, a person is relation-based. This means that it is the ethical relations that make a person what he is. The essence of person lies in how that person can group with other persons... A real man is a man who lives in the context of these ethical relations and a genuine man is a man who follows these moral principles.*⁴⁸⁷

The self in Chinese societies generally cannot be separated from her social networks, or *guanxi*, because “individuals are defined according to the social recognition of their status roles and their assumption of appropriate responsibilities therein.”⁴⁸⁸ The individual’s identity is based on the fulfillment of her obligations within her family, community, and society in collective cultures. As Fan writes, “[a]ccording to Confucianism, it is the arrangement of Heaven (*tian*) that every individual is born to a family, possessing special relations to other family members and living one’s life inseparably from the family.”⁴⁸⁹ In other words, one’s networks of familial and social relations determine who the person is.

While feminist relational theorists in the West have suggested that “each individual is in basic ways constituted by networks of relationships of which they are a part,”⁴⁹⁰ the networks of relationships they look at do not function in the same way as *guanxi* networks in Chinese society. It is somewhat problematic to see leftover women’s compliance with the requirements of maintaining good familial relations and social relations as a choice, given how influential these relationships are in their daily lives. While feminist relational theorists have touched upon the impact of interpersonal

⁴⁸⁷ Hexin Hu, “On Relational Paradigm in Bioethics” in Julia Po-wah, ed, *Cross-Cultural Perspectives on the (Im)possibility of Global Bioethics* (Norwell: Springer Science & Business Media, 2002) 89 at 98.

⁴⁸⁸ Engebretsen, *supra* note 419 at 165.

⁴⁸⁹ Nedelsky, *supra* note 30 at 317.

⁴⁹⁰ *Ibid* at 20.

relationships, family relations, and other power relations on women's choices, they do not talk about the importance of relations to such a magnificent scale.

In conclusion, my analysis of leftover women's choices in marriage and childbearing aims to contribute to the development of feminist relational theory by cautioning that autonomy is not necessarily among the most important values in some social contexts, especially when people are not used to individualism. As leftover women I interviewed neither consider autonomy to be a central value nor do they always attach positive values to autonomy in marriage and childbearing, feminist scholars may need to shift away from the strong attachment to autonomy in order to understand leftover women's choices. While feminist relational theorists assert that relations do not determine the self, I have argued that the self in Chinese society is inseparable from her social networks, which not only constitutes but also determines who she is.

Conclusion

It is now easier for us to understand Meiyi's decision to quit her job in the big city in order to go back to her village and get married before she turns 30. Instead of jumping to the conclusion that Meiyi makes her decision out of false consciousness or because of the oppressive relationship with her parents, I have suggested that we need to pay attention to the importance Meiyi attaches to familial and social relations in a legal context. I demonstrate how leftover women I interviewed see autonomy in a way that is different from the conception of relational autonomy put forward by feminist relational theorists. I have discussed how the three culturally significant concepts *zuoren*, face, and *guanxi* have played an important role in shaping leftover women's choices around heterosexual

marriage, after which I argue that leftover women's perceptions of the self, autonomy, and relations have the potential to contribute to feminist relational theory. This chapter also lays the foundation for the discussion in the following chapters on how leftover women understand and engage with state law, how social expectations and filial piety shape their choices in marriage and childbearing, and how to understand leftover women's decisions as choices.

With a better understanding of how leftover women interact with other people in their networks of social relations, we can avoid jumping to the conclusion that leftover women rush into marriage out of false consciousness. While it is true that they make their choices within an oppressive and patriarchal environment, we need to acknowledge that leftover women have evaluated all the available options based on what they believe to be of great importance. Instead of assuming that autonomy in marriage and childbearing is a powerful existing value that is widely shared, we have to leave it to leftover women themselves to decide what the highest values are for them when it comes to decision-making in marriage and childbearing. By throwing "autonomy" out of the window, this postcolonial approach makes it possible for leftover women to prioritize other values that are of great importance to them. It is my hope that this approach will serve as a springboard for future research on women's choices in other cultural contexts.

In the next chapter, I will continue using a postcolonial lens to discuss the impact of multiple levels of social ordering, with a focus on how *qing li* affects leftover women's understanding of and engagement with state law (*fa*).

Chapter 5: The Lived Experience of Leftover Women's Engagement with State Law on Marriage and Childbearing

Reading about leftover women in the media, one can find a remarkable number of news articles criticizing the Chinese government for pushing single women into marriage.⁴⁹¹

Some Chinese feminists argue that the root of the problem lies in the government's lack of concern for women's rights.⁴⁹² A news article on leftover women in *The Diplomat*, the premier international current-affairs magazine for the Asia-Pacific region, states that “[f]ace[d] with the various ways the gender imbalance continues to affect marriage and family structures in China, perhaps a true sense of empowerment comes from both men and women willing to demand their rights.”⁴⁹³ Chinese legal scholars based in mainland China who conduct research on legal culture, however, generally agree that legal culture in traditional China (中国传统法律文化)⁴⁹⁴ has discouraged people in China from invoking the legal language of rights.⁴⁹⁵ In order to examine the relationship between state law and leftover women's choices, this chapter elaborates on how leftover women in

⁴⁹¹ See, for example, Mary Kay Magistad, “The over-27s China calls ‘leftover women’”, *BBC News* (21 February 2013), online: <<http://www.bbc.com/news/magazine-21320560>>; Vicky Ge Huang, The, “‘Bare Branches’ and ‘Leftover Women’: Love and Marriage in Modern China”, online: *The Diplomat* <<https://thediplomat.com/2016/03/bare-branches-and-leftover-women-love-and-marriage-in-modern-china/>>; Didi Kirsten Tatlow, “Q & A: Leta Hong Fincher on ‘Leftover Women’”, (14 May 2014), online: *Sinosphere Blog* <<https://sinosphere.blogs.nytimes.com/2014/05/14/q-a-leta-hong-fincher-on-leftover-women/>>; Pip Usher, “Unmarried and Over 27? In China, That Makes You a ‘Leftover Woman’”, (4 October 2016), online: *Vogue* <<https://www.vogue.com/article/sheng-nu-leftover-women-sk-ii-viral-video>>.

⁴⁹² Huang, *supra* note 491.

⁴⁹³ *Ibid.*

⁴⁹⁴ I have to acknowledge that it is difficult to define what is legal culture in traditional China, or what these scholars refer to as traditional Chinese legal culture. However, I decide to stick to the expression for the purpose of illustrating the viewpoints of these scholars.

⁴⁹⁵ See for example, Qin, *supra* note 24 at 95-7. For another example, see Buyun Li & Shiping Liu, “*Lun Fa yu Falv Yishi*,”(2003) 4 Faxue Yanjiu at 74.

my interviews think of and engage with state law concerning marriage and childbearing in the process of making choices in family formation.

I start by defining legal consciousness and reviewing current literature on legal consciousness in China. As existing literature has paid little attention to legal consciousness of ordinary people in China under non-dispute situations, I aim to fill in this gap by focusing on how leftover women understand and engage with state law in their daily lives. I argue that the linkage between state law and leftover women's choices is not direct and straightforward; rather, leftover women's understandings of and engagement with state law have been significantly shaped by *qing*, or what the majority believes to be just, right, and fair under a particular circumstance.

I. Two Schools of Legal Consciousness Research in the Chinese Context

Legal consciousness is a vibrant research field attracting growing numbers of scholars worldwide.⁴⁹⁶ Law and society scholars have been exploring people's thoughts and actions, perceptions of behaviour, and ideologies and practices in situations where the law could play a role.⁴⁹⁷ While scholars do not share a single definition of legal consciousness, the concept generally refers to “the ongoing, dynamic process of constructing one's understanding of, and relationship to, the social world through use of

⁴⁹⁶ Lynette J Chua & David M Engel, “Legal Consciousness Reconsidered” (2019) 15 Annual Review of Law & Social Science 335 at 335.

⁴⁹⁷ Lynette J Chua & David M Engel, “Legal Consciousness in Asia—Editors' Note to Special Issue” (2018) 5:1 Asian J Law & Society 1 at 1.

legal conventions and discourses.”⁴⁹⁸ Lynette Chua and David Engel define legal consciousness as “the ways in which people experience, understand, and act in relation to law.”⁴⁹⁹ They emphasize that legal consciousness “comprises both cognition and behaviour, both the ideologies and the practices of people as they navigate their way through situations in which law could play a role. Legal consciousness does not simply refer to legal awareness, nor is it meant to measure knowledge—or ignorance—of the law.”⁵⁰⁰ Chua and Engel’s definition of legal consciousness not only includes legal awareness and legal knowledge, but it also emphasizes the need to take account of how people understand and engage with the law.

Legal pluralists may point out that the scope of legal consciousness depends on how we define law. Indeed, some scholars, focusing more narrowly on official law and formal legal institutions, maintain that state law matters a great deal in shaping people’s legal consciousness.⁵⁰¹ Other scholars stress the importance of other social norms, values, and beliefs in constructing legal consciousness.⁵⁰² In this chapter, I underscore the need to

⁴⁹⁸ Michael W McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (University of Chicago Press, 1994) at 7.

⁴⁹⁹ Chua & Engel, *supra* note 496 at I.2.

⁵⁰⁰ *Ibid.*

⁵⁰¹ Ewick & Silbey, *supra* note 3; Austin Sarat & William Felstiner, “Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer’s Office,” (1989) 98 *The Yale Law Journal* 1663; Austin Sarat, “The Law Is All Over: Power, Resistance and the Legal Consciousness of the Welfare Poor,” (1990) 2 *Yale Journal of Law & the Humanities* 343; Gallagher, *supra* note 25.

⁵⁰² David M. Engel, “Globalization and the Decline of Legal Consciousness: Torts, Ghosts, and Karma in Thailand,” (2005) 30 *Law & Social Inquiry* 469; David M. Engel, “Blood Curse and Belonging in Thailand: Law, Buddhism, and Legal Consciousness,” (2016) 3 *Asian Journal of Law and Society* 71; Engel, *supra* note 29; Kathryn Young, “Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight,” (2014) 48 *Law & Society Rev* 499; Anna-Maria Marshall, “Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment,” (2003) 28 *Law & Social Inquiry* 659; Anna-Maria Marshall & Scott Barclay, “In Their Own Words: How Ordinary People Construct the Legal World,” (2003) 28 *Law & Social Inquiry* 617; Elizabeth Hoffmann, “Legal Consciousness and Dispute Resolution: Different Disputing Behavior at Two Similar Taxicab Companies,” (2003) 28 *Law & Social Inquiry* 691; Kathleen Hull, “The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage,” (2003) 28 *Law & Social Inquiry* 629; Harding, *supra* note 3.

view legal consciousness as it is constructed from below rather than a top-down construction of law by the state, because state law often relies on unofficial or customary rule structures to function.⁵⁰³ I use legal consciousness to refer to ordinary people's⁵⁰⁴ perceptions of what the law should be, their opinions and attitudes towards the law, the way they engage with the law in everyday life, and their understandings of other people's beliefs about the law.⁵⁰⁵ I will now turn to the differing ways in which legal consciousness scholars who study China have framed their explorations of legal consciousness issues in the Chinese contexts. The first school of legal consciousness scholars focus on legal awareness and legal knowledge among ordinary people, while the second school of scholars adopt a broader conception of legal consciousness to include how ordinary people understand and engage with state law and what they understand to be the law.

A. State-Constructed Legal Consciousness

As an important part of the construction of authoritarian “rule of law” and “rule by law,”⁵⁰⁶ the Chinese state put forward an ambitious state project of “promoting legal

⁵⁰³ Engel, *supra* note 29 at 140.

⁵⁰⁴ For more information on the definition of “ordinary people” in the area of legal consciousness, see *supra* note 3.

⁵⁰⁵ Kathryn Young uses second-order legal consciousness to describe a person's beliefs about the legal consciousness of any individual besides herself, or any group whether or not she is part of it. Young, *supra* note 502.

⁵⁰⁶ Susan Whiting uses both “rule of law” and “rule by law” in her article in the discussion of the relationship between legal construction and regime legitimation. Whiting, *supra* note 25. For more information on the differences between “rule of law” and “rule by law,” see for example, Yuanyuan Shen, “Conceptions and Receptions of Legality: Understanding the Complexity of Law Reform in Modern China” in Karen G Turner & James V Feinerman, eds, *Limits Rule Law China* (Seattle: University of Washington Press, 2015) 20.

consciousness (法律意识)” to popularize state law since the late 1980s.⁵⁰⁷ The state’s effort to improve legal consciousness of ordinary Chinese people “is highlighted by the adoption in 1999 of a constitutional amendment announcing that ‘The People’s Republic of China exercises the rule of law, building a socialist country governed according to law.’”⁵⁰⁸ According to Susan Whiting, China’s promotion of legal consciousness is a state project aiming to reach every Chinese citizen.⁵⁰⁹ Whiting argues that the state’s project of legal construction not only powerfully shapes ordinary rural citizens’ legal consciousness but also enhances regime legitimacy.⁵¹⁰

The works of the first school of legal consciousness scholars who study China have a strong attachment to the Chinese government’s project of legal construction, which assumes that the development of the Chinese legal system will raise ordinary Chinese people’s legal consciousness.⁵¹¹ These scholars focus on the changes brought by the state’s project of legal construction, with the aim to put forward suggestions on how to improve ordinary people’s legal consciousness.

There are a remarkable number of journal articles and newspaper articles on legal consciousness in the Chinese context,⁵¹² most of which define legal consciousness as legal knowledge or legal awareness. These articles almost focus exclusively on how to improve the legal consciousness of college students, migrant workers, peasants, and

⁵⁰⁷ Whiting, *supra* note 25.

⁵⁰⁸ *Ibid* at 1908.

⁵⁰⁹ *Ibid* at 1911.

⁵¹⁰ *Ibid* at 1909, 1924.

⁵¹¹ For a detailed discussion on the relationship between the linear conception of legal consciousness and Chinese government’s rule-of-law project, see, for example, Gallagher, *supra* note 25.

⁵¹² There are more than one thousand articles with the title of “legal consciousness” on the National Social Sciences Database of China.

ordinary people in general. The assumption underlying these articles is that the Chinese state's "rule of law" project is essential in raising legal consciousness because of the lack of legal knowledge among ordinary people. For example, most researchers who touch upon the legal consciousness of college and university students suggest that these students have very limited legal knowledge, which contributes to their violation of state law, including serious crimes; and thus, the Chinese state's promotion of legal consciousness and its construction of the "rule of law" project is of great importance in improving the legal consciousness of these students.⁵¹³ Likewise, a recent literature review on existing studies on legal consciousness in rural China shows that scholars generally hold that rural residents have relatively low legal awareness.⁵¹⁴ In short, the majority of existing studies on legal consciousness in China, especially those published in Chinese, emphasizes the need to raise legal consciousness because of the lack of legal knowledge among ordinary people. This emphasis is consistent with the Chinese government's understanding of legal consciousness and its pedagogical role to its people.

In 2000, the National People's Congress posted an article on the definition of legal consciousness on its website.⁵¹⁵ According to the National People's Congress, "legal consciousness refers to people's perceptions of law and legal issues. It includes people's understandings, feelings, evaluation of law and relevant theoretical viewpoints. People's

⁵¹³ Yuanbo Zhang et al., "Daxuesheng Falv Yishi Xianzhuang Diaocha ji Duice Fenxi" (2015) 32 *Zhongguo Shichang*, available online: Zhongguo Shehui Kexue Wang <http://www.cssn.cn/jyx/jyx_gdjyx/201511/t20151113_2590743.shtml>; Hou Jihu, "Daxuesheng Falv Yishi de Xianzhuang Fenxi Jiqi Yangcheng Jizhi Tanta" (2015) 252 *Heilongjiang Gaojiao Yanjiu* 121 at 121-3.

⁵¹⁴ Liu, *supra* note 25 at 68.

⁵¹⁵ National People's Congress, "Shenme shi Falv Yishi? Zenyang Xingcheng Falv Yishi?" (17 December 2000) online: National People's Congress <<http://www.npc.gov.cn/npc/c2311/200012/d3a79676216348cc8c431b32087c566d.shtml>>.

legal consciousness needs to be cultivated, because it cannot form on its own (法律意识

不能够自发形成·需要进行有目的的培养).”⁵¹⁶ The article turns to put forward three

suggestions on how to cultivate legal consciousness:

*first, we need to promote the rule of law (大力弘扬法治思想) and create a social environment that helps the formation of legal consciousness; second, we need to strengthen the legal system (大力加强法制建设) and ensure that laws are put in place, observed, and strictly enforced and that anyone who violates the law is held to account (有法可依·有法必依·执法必严·违法必究); and in so doing, establishing the authority of law (树立法律权威); third, we need to further publicize and popularize the law and legal knowledge (开展法律宣传·普及法律知识). In addition, we need to train more legal elites and conduct legal research in order to develop good theories for legal construction.*⁵¹⁷

The National People’s Congress translates legal consciousness into legal awareness and legal knowledge and focuses on cultivating legal consciousness by promoting the rule of law. The state assumes that people cannot form legal consciousness without the help of the state. It reflects that the National People’s Congress has no intention to encourage people to think critically about the current legal system and what the law should be.

The official understanding of legal consciousness has not changed much after the National People’s Congress defined it in 2000. In 2018, the People’s Daily published an article entitled “Keep Strengthening Legal Consciousness,”⁵¹⁸ written by Daoqian Liu, a professor at the National Police University of China. According to Liu, “people are not born with legal consciousness; thus, China’s schools and universities should emphasize

⁵¹⁶ *Ibid.*

⁵¹⁷ *Ibid.*

⁵¹⁸ Daoqian Liu, “Buduan Zhengqiang Falv Yishi,” (26 March 2018) online: People’s Daily <<https://www.chinacourt.org/article/detail/2018/03/id/3248044.shtml>>.

legal education in order to cultivate legal consciousness.”⁵¹⁹ In Liu’s opinion, only if all citizens learn about the law and comply with it can the law on the book really makes a difference.⁵²⁰ Liu emphasizes the need to equip ordinary people with more legal knowledge so that they can comply with the law on the book.

Qiang Qin suggests that the development of legal consciousness among ordinary people in China has gone through three steps: the first step was the establishment of legal consciousness through a range of propagation of legal knowledge by the Chinese state in the early to mid-1980s; second, in the 1990s, ordinary Chinese people began to have a greater demand for law and use the law to protect their interests, rather than merely obeying the law; third, since the twenty-first century, ordinary people have started to pay attention to the legality and reasonableness of state law.⁵²¹ While Qin suggests that China’s legal consciousness is currently at a stage where ordinary people have begun to think critically about state law, the Chinese state still focuses more on legal education and discourages critiques of state law. Likewise, existing studies published in Chinese on legal consciousness generally concentrate on the improvement of legal awareness and legal knowledge among ordinary people. In my view, interpreting legal consciousness in this way will lead to a serious misunderstanding of how ordinary people in China understand and engage with state law.

Mary E Gallagher captures the tendency for scholars in China to equate legal knowledge/awareness and ordinary people’s willingness to use the courts with legal

⁵¹⁹ *Ibid.*

⁵²⁰ *Ibid.*

⁵²¹ Qin, *supra* note 24 at 91-5.

consciousness.⁵²² She refers to it as “the linear (low to high) conception of legal consciousness.”⁵²³ Unlike most scholars who emphasize the connection between the rule of law and legal consciousness, Gallagher refuses to translate legal consciousness into ordinary people’s propensity to sue. By studying the legal consciousness of 50 legal aid plaintiffs in Shanghai’s legal aid centre for employment law, Gallagher argues that “legal consciousness can go in a number of directions even in a situation where state-led rule-of-law campaigns and a rapidly developing market economy increasingly push citizens toward law and legal remedies for their problems.”⁵²⁴ To criticize the linear conception of legal consciousness in the Global South, Gallagher refers to Engel’s research on how the process of globalization discourages ordinary Thai people from invoking state law when they are injured.⁵²⁵

In his article on the impact of globalization on ordinary people’s legal consciousness in Thailand, Engel challenges the assumption that globalization would lead ordinary Thai people to embrace liberal legalism and conceptualize their grievances in terms of rights.⁵²⁶ Engel found that victims of traffic-related injuries are less likely to invoke state law in post-globalization Thailand; instead, they are “more inclined to rely on a new form of religious discourse in which Buddhist precepts justify the injured person’s decision to refrain from the pursuit of compensation.”⁵²⁷ The reason, according to Engel, is that the effects of globalization have guided injury victims away from the local systems of social

⁵²² Gallagher, *supra* note 25 at 784.

⁵²³ *Ibid.*

⁵²⁴ *Ibid* at 811.

⁵²⁵ *Ibid.*

⁵²⁶ Engel, *supra* note 502.

⁵²⁷ *Ibid.*

control and toward a quest for selflessness, nonaggression, and forgiveness under Buddhism's general precepts.⁵²⁸

Drawing upon Engel's work, Gallagher emphasizes that the linear conception of legal consciousness misrepresents ordinary people's experience of engaging with state law in the Global South.⁵²⁹ Gallagher argues that the process of legal mobilization often has diverse and contradictory effects on ordinary people in China.⁵³⁰ While the Chinese state's propagation of legal knowledge has encouraged ordinary people to accumulate legal knowledge, it produces contradictory outcomes as people's actual dispute experience leads them away from the legal system.⁵³¹ To be specific, before ordinary people used the legal system, they believed the formal legal system would grant them justice and fairness; their engagement with the legal system in the process of resolving employment disputes, however, brought negative perceptions of the legal system's effectiveness and fairness.⁵³² Ethan Michelson and Benjamin Read's research supports Gallagher's finding by showing that on the one hand, ordinary people in China tend to have a very favourable attitude toward official justice because so few people have experienced it; the users of the legal system, on the other hand, usually have a much more

⁵²⁸ *Ibid* at 511.

⁵²⁹ Gallagher, *supra* note 25 at 811.

⁵³⁰ *Ibid* at 785; Mary Gallagher & Yujeong Yang, "Getting Schooled: Legal Mobilization as an Educative Process" (2017) 42:1 *Law & Social Inquiry* 163 at 171.

⁵³¹ Gallagher & Yang, *supra* note 530.

⁵³² Mary Gallagher & Yuhua Wang, "Users and Non-users: Legal Experience and Its Effect on Legal Consciousness" in Margaret Woo & Mary Gallagher, eds, *Chinese Justice: Civil Dispute Resolution in Contemporary China* (Cambridge [UK]; New York: Cambridge University Press, 2011) 204 at 204.

negative attitude toward the legal system.⁵³³ As a result, growth in the population of users could compromise popular support for and confidence in the formal legal system.⁵³⁴

In a recent article, Gallagher and Yujeong Yang suggest that while the Chinese state's propagation of legal knowledge pushes people toward the legal system, it also breeds disdain for the law in practice.⁵³⁵ According to Gallagher and Yang, although the state's promotion of legal knowledge attracts more people to use the law, the legal system often fails to convince the citizens of law's efficacy; and as a result, prior dispute experience reduces the citizens' propensity to use the legal system to resolve conflicts and even contributes to a lack of faith in the official channels.⁵³⁶

The works of Gallagher, Yang, and Michelson and Read all challenge the argument held by some Chinese scholars that the low legal consciousness or the lack of legal knowledge among ordinary people in China results from the traditional dominant legal culture,⁵³⁷ an argument I will further discuss below. My aim is to complement their critiques by adding in a postcolonial analysis of the linear conception of legal consciousness and emphasizing the need to acknowledge ordinary people's agency in evaluating state law and choosing between different social norms.

⁵³³ Ethan Michelson & Benjamin L Read, "Public Attitudes toward Official Justice in Beijing and Rural China" in Margaret Woo & Mary Gallagher, eds, *Chinese Justice Civil Dispute Resolution Contemporary China* (Cambridge [UK] ; New York: Cambridge University Press, 2011) 169 at 171, 194-5.

⁵³⁴ *Ibid.*

⁵³⁵ Gallagher & Yang, *supra* note 530.

⁵³⁶ *Ibid* at 166.

⁵³⁷ See for example, Qin, *supra* note 24 at 95-7. For another example, see Li & Liu, *supra* note 495 at 74.

Scholars in the area of legal culture suggest that traditional dominant legal culture of *yansong* (厌讼), or *jusong*(惧讼) has been influential for thousands of years.⁵³⁸ *Yansong* means avoiding going to the court to resolve disputes, while *jusong* translates into being afraid of going to the court.⁵³⁹ Qinhua He, a leading scholar in the area of Chinese legal history, asserts that for more than 2,000 years, the authoritative regimes in China have imposed various kinds of burdens on ordinary people who consider invoking the formal legal system.⁵⁴⁰ In addition, the importance of *guanxi* and face⁵⁴¹ also contributes to ordinary people's reluctance to invoke state law against their acquaintance.⁵⁴² Thus, *jusong* may be a more appropriate term than *yansong* to describe the attitudes of ordinary people in China toward the formal legal system.⁵⁴³

Based on the *yansong* or *jusong* feature of the traditional dominant legal culture, scholars who adopt the linear conception of legal consciousness tend to consider legal culture as a barrier for appropriation of state law in China.⁵⁴⁴ Feng Xue suggests that traditional legal culture and thoughts (中国传统法律思想文化) have imposed a negative impact on ordinary people's legal consciousness, as it emphasizes that state law is a tool

⁵³⁸ Qinhua He, "Fansong yu Yansong de Lishi Kaocha—guanyu Zhongxi Falv Chuantong de yidian Sikao," (1993) 49:3 Falv Kexue 10; Xu, *supra* note 24.

⁵³⁹ Xu, *supra* note 24.

⁵⁴⁰ He, *supra* note 538.

⁵⁴¹ For more discussion on *guanxi* and face, see chapter four.

⁵⁴² Yi Jun, "Mianzi yu Jiufen Jiujie—jiyu Fashehuixue de Fenxi," (2011) 4 Xibei Minzu Daxue Xuebao 72; He, *supra* note 423.

⁵⁴³ Xu, *supra* note 24 at 80.

⁵⁴⁴ Qin, *supra* note 24 at 91; Feng Xue, "Lun Yifa Zhiguo Zhanlve Xia Gongmin Renquan Baohu Falv Yishi de Peiyu" (2017) 7 Guangzhou Daxue Xuebao (Shehui Kexue Ban) 19 at 22.

for people who are in power to oppress commoners.⁵⁴⁵ Similarly, Qin suggests that the Chinese tradition of the “rule of men (人治)”⁵⁴⁶ has led to ordinary people’s refusal to believe in state law and contributed to their reluctance to invoke the law.⁵⁴⁷ In Qin’s view, the legal culture of *yansong* leads to ordinary people’s reliance on the “rule of men” and a lack of the “rule of law” tradition in Chinese society.⁵⁴⁸

Following the assumption that China’s legal culture has been slowing down the process of improving legal consciousness of ordinary people, one may come to the conclusion that the legal culture of *yansong* is to blame for leftover women’s lack of legal knowledge and interests in invoking state law and advocating for legal reforms. It is, however, problematic to see culture as fixed and intact,⁵⁴⁹ and thereby depicting ordinary people as victims of the so-called “backward” culture that needs to be challenged by the “rule of law.” As postcolonial theorists argue, law, which “develop[ed] conceptually as the antithesis of culture,” has been used to reinforce European hegemonies and the dichotomous concept of culture.⁵⁵⁰ In other words, the social constructions of both law and culture distinguished the West from the so-called lawless non-Western societies,

⁵⁴⁵ Xue, *supra* note 544 at 22.

⁵⁴⁶ Although scholars have not reached an agreement on what the rule of law means, it is generally believed that the rule of law means “not the rule of men.” Historically, Chinese legal institutions have been built on the ideological premise of rule of men (that is, men of either Confucian or socialist virtue.) Teemu Ruskola, “Law without Law, or is Chinese Law an Oxymoron Symposium: Rule of Law in China” (2002) 11 *William Mary Bill Rights J* 655 at 656.

⁵⁴⁷ Qin, *supra* note 24, at 91, 95-6

⁵⁴⁸ *Ibid* at 91.

⁵⁴⁹ See, for example, Deckha, *supra* note 48; Maneesha Deckha, “Gender, Difference, and Anti-Essentialism: Towards a Feminist Response to Cultural Claims in Law” in Avigail I Eisenberg, ed, *Diversity and Equality :The Chang Framework of Freedom in Canada* (Vancouver: UBC Press, 2006) 114.

⁵⁵⁰ Rosemary J Coombe, *Contingent Articulations: A Critical Cultural Studies of Law*, in Austin Sarat & Thomas Kearns ed, *Law in the Domains of Culture* (Ann Arbor: University of Michigan Press) at 21–3; Deckha, *supra* note 48 at 25–6.

which are believed to be governed by cultures associated with myths, traditions, and customs.⁵⁵¹ Law and society scholars who study China need to be wary of “blaming culture for bad behaviour.”⁵⁵² I argue that the linear conception of legal consciousness at least has two problems.

First, it is problematic to assume that ordinary people in China have lower legal consciousness compared to people in so-called litigious societies such as the United States.⁵⁵³ Drawing upon postcolonial theory, I am against the idea of advocating for “improving” legal consciousness through the rule of law project, or in other words, blaming legal culture or its lack of the rule of law for the so-called “low legal consciousness” of ordinary people in China. This approach falls into the trap of Western-centrism, although it is also a position taken by the Chinese state and elite scholars to enhance regime legitimacy.⁵⁵⁴

As Teemu Ruskola suggests, China is banished to indefinite legal alterity because of the prevalent belief all over the world that the “rule of law” means “not the rule of men,” and that the “rule of law” is the only possible correct form of government.⁵⁵⁵ In fact, postcolonial literature has long been critical of the “rule of law” as an empire-building

⁵⁵¹ Deckha, *supra* note 48 at 25–6.

⁵⁵² I borrow this term from Leti Volpp to criticize those who “assume culture to be static and insular, a fixed property of groups rather than an entity constantly created through relationships.” Volpp challenges the assumptions that “the behavior of devalued and less powerful groups is somehow more culturally determined—that they behave in certain ways and make particular choices because they follow cultural dictates;” and that white Americans are “people without culture,” whose behavior are not associated with culture. Deckha, *supra* note 48; Deckha, *supra* note 549.

⁵⁵³ For more information on the myth of the litigious society, see David M Engel, *The myth of the litigious society: why we don't sue*, Chicago series in law and society (Chicago: The University of Chicago Press, 2016).

⁵⁵⁴ Whiting, *supra* note 25 at 1909.

⁵⁵⁵ Ruskola, *supra* note 546.

tool and Western hegemonic tool to cast other societies as backward and uncivilized.⁵⁵⁶

Nimer Sultany writes, “The West is associated with the rule of law, while the underdeveloped and primitive others are associated with the lack of the rule of law or, more precisely, lack of Western notions of legality.”⁵⁵⁷ In the same vein, Sin Wai Man and Chu Yiu Wai assert that the rule of law is culture-biased⁵⁵⁸ and that the failure to challenge the “neutrality” of the rule of law equates conceding to a more subtle form of colonialism—legal colonialism.⁵⁵⁹ The linear conception of legal consciousness would further contribute to the radical normative contrast between the rule of law and the rule of men.⁵⁶⁰

The second problem of the linear conception of legal consciousness is its ignorance of the fact that state law is not the only possible means to resolve disputes—there are a variety of other social norms, values, and beliefs participating in shaping ordinary people’s legal consciousness. Translating ordinary people’s reluctance to invoke state law into low legal consciousness ignores that sometimes ordinary people refuse to invoke state law because of the conflict between state law and what they experience as “law.” Marc Hertogh stresses that it is not only important to understand legal consciousness as “how people experience (official) law” but also necessary to pay attention to “what

⁵⁵⁶ See, for example, Mattei & Nader, *supra* note 26; Nimer Sultany, “Review of Plunder: When the Rule of Law Is Illegal” (2009) 36:4 J Law & Society 599; Trevor Stack, “A Just Rule of Law?” (2010) 18:3 Social Anthropology 346; Sin & Chu, *supra* note 26.

⁵⁵⁷ Sultany, *supra* note 556 at 600.

⁵⁵⁸ Sin & Chu, *supra* note 26 at 148.

⁵⁵⁹ *Ibid.*

⁵⁶⁰ According to Ruskola, “the idea that the rule of law means precisely not the rule of men is so fundamental that the two terms are best understood as forming a singular expression— ‘rule if law, and not of men’—even when the clarifying phrase ‘and not of men’ is not tagged to the end.” Ruskola, *supra* note 546 at 659.

people experience as ‘law.’”⁵⁶¹ Law and society research has convincingly demonstrated that virtually every society is legally plural and that “every functioning subgroup in a society has its own legal system which is necessarily different in some respects from those of the other subgroups.”⁵⁶² As Hertogh suggests, “law is not necessarily an instrument of state power and its connection with the state is ‘a problem to be studied rather than a fact to be assumed.’”⁵⁶³ Writing widely on how the local customary law in Thailand plays a significant role in shaping ordinary people’s legal consciousness,⁵⁶⁴ Engel suggests, “even if one focuses on ‘official law,’ one still finds a significant dependence on unofficial or customary rule structures to determine norms of reasonableness or fairness.”⁵⁶⁵ Similarly, in her study of legal consciousness in the Hawaiian Cockfight, Kathryn Young puts forward the concept of second-order legal consciousness to emphasize that a person’s belief about a particular law or set of laws is influenced by the legal consciousness of other people.⁵⁶⁶ Simply put, what these scholars have been advocating is a view on legal consciousness “from below,”⁵⁶⁷ which is against translating legal consciousness into legal awareness and legal knowledge.

⁵⁶¹ Hertogh, *supra* note 158.

⁵⁶² Sally Engle Merry refers to Leopold Pospisil’s book “The Anthropology of Law: A Comparative Theory of Law,” Merry, *supra* note 150 at 870.

⁵⁶³ Hertogh, *supra* note 158, at 472.

⁵⁶⁴ Engel & Engel, *supra* note 153; Engel, *supra* note 502; David M Engel, “Rights as Wrongs: Legality and Sacrality in Thailand” (2015) 39:1 *Asian Studies Review* 38.

⁵⁶⁵ Engel, *supra* note 29 at 140.

⁵⁶⁶ Young, *supra* note 502.

⁵⁶⁷ Engel, *supra* note 29 at 141.

B. Legal Consciousness from below in the Chinese Context

Unlike scholars who translate legal consciousness into knowledge and awareness of state law, some studies on legal consciousness in China adopt the legal consciousness “from below” approach to explain why some people choose to avoid the formal legal system or use the law creatively. Kevin O’Brien and Lianjiang Li demonstrate how villagers strategically cite laws, policies, regulations, and other officially promoted values to challenge all kinds of cadre malfeasance outside the formal legal system. Rightful resisters seek—rather than avoid—the attention of elites in an invariably noisy, public and open approach.⁵⁶⁸ Rightful resisters in O’Brien and Li’s research usually combine legal tactics with political pressure to impose pressure on those in power who have failed to deliver rights to these resisters.⁵⁶⁹ They engage in deliberately disruptive but not quite unlawful collective action to attract the attention of officials responsible for preserving social stability.⁵⁷⁰ O’Brien and Li argue that rightful resistance strengthens authoritarian rule because it serves as a way for villagers to attack abusive cadres with rights claims.⁵⁷¹ However, O’Brien and Li fail to explain why these people choose disruptive actions rather than using the formal legal system.⁵⁷²

One explanation can be found in Xin He, Lungang Wang, and Yang Su’s work on why most migrant workers in China who have little experience with the formal legal

⁵⁶⁸ O’Brien & Li, *supra* note 331.

⁵⁶⁹ *Ibid* at 1–2.

⁵⁷⁰ *Ibid* at 5.

⁵⁷¹ *Ibid* at 14.

⁵⁷² According to O’Brien and Li, “rightful resisters often engage in deliberately disruptive but not quite unlawful collective action.” The purpose of these resisters is to attract the attention of officials responsible for preserving order and administering justice. *Ibid* at 4–5.

system decide to never use the legal system.⁵⁷³ He et al.'s research shows that migrant workers' versions of justice differ from, or fail to meet the demand of, state law.⁵⁷⁴ For example, migrant workers hold a steadfast view that one should get paid for one's work, no matter whether there are written employment contracts.⁵⁷⁵ He et al. refer to Michelson and Read's work to suggest that one significant conflict between migrant workers' perception of justice and that of the formal legal system stems from the cultural belief that distributive justice (satisfaction with the outcome) is far more important than procedural fairness (satisfaction with the fairness of the process).⁵⁷⁶ These migrant workers' understandings of justice have been reinforced by the effectiveness of disruptive tactics,⁵⁷⁷ as local governments are quite responsive to such disruptive actions for the sake of maintaining social stability.⁵⁷⁸

Legal consciousness of both migrant workers in He et al.'s study and O'Brien and Li's research bears some resemblance to that of aggrieved workers who turn to the Letters and Visits Offices (*xinfang ke* 信访科) in Isabelle Thireau and Linshan Hua's work.⁵⁷⁹ The existence of the Letters and Visits Offices, an administrative organ that

⁵⁷³ Xin He, Lungang Wang & Yang Su, "Above the Roof, Beneath the Law: Perceived Justice behind Disruptive Tactics of Migrant Wage Claimants in China" (2013) 47:4 Law & Soc Rev 703.

⁵⁷⁴ *Ibid* at 729.

⁵⁷⁵ *Ibid*.

⁵⁷⁶ *Ibid* at 729; Michelson & Read, *supra* note 533 at 197.

⁵⁷⁷ He et al. use disruptive tactics to refer to "actions in contrast to actions through the officially sanctioned channels." Examples under this category include but are not limited to: threatening to commit public suicide, throwing themselves off a building in full public attention. He, Wang & Su, *supra* note 573 at 704.

⁵⁷⁸ *Ibid* at 724–25.

⁵⁷⁹ Isabelle Thireau & Linshan Hua, "One Law, Two Interpretations: mobilizing the Labor Law in Arbitration Committees and in Letters and Visits Offices" in *Engaging the Law in China: State, Society, and Possibilities for Justice* (Stanford: Stanford University Press, 2005) 84. The Letters and Visits Offices are often established under specialized departments or more general organs such as the Party or People's congresses. For more information on how the letters and visits operate, see, for example, Carl Minzner, "*Xinfang*: An

handle people's complaints,⁵⁸⁰ reflects the gap between what ordinary people believe to be just and what the formal legal system can offer. The operation of the Letters and Visits Offices shares some similarities with the appeals system of capital cases in the Qing dynasty—the complaints rest on the belief that “rulers and ruled share the same understanding of right and wrong, of just and unjust.”⁵⁸¹ In China, the Letters and Visits Offices is one of the most important channels for complaints to have their voices heard by state authorities.⁵⁸²

Thireau and Hua analyze how aggrieved workers express a sense of injustice and justify their complaints in the letters to the Letters and Visits Offices by referring to state law.⁵⁸³ The way the aggrieved workers use the law, however, does not focus on legal arguments.⁵⁸⁴ In most cases, according to Thireau and Hua, state law is used in a rhetorical fashion, and the law is even reinterpreted and assigned a new and broader content.⁵⁸⁵ These aggrieved workers mobilize the law in their letters mainly to provide a legitimate and shared language to express their own criteria of (in)justice.⁵⁸⁶ It is less about whether given situations or actions are illegal but more about whether they are unacceptable and inhuman. Therefore, these workers usually invoke different kinds of

Alternative to Formal Chinese Legal Institutions” (2006) 42 *Stan.J. Int'l L.* 103; Thireau & Hua, *ibid.* at 87-8.

⁵⁸⁰ Thireau & Hua, *supra* note 579 at 85.

⁵⁸¹ *Ibid* at 88; Minzner, *supra* note 579 at 114.

⁵⁸² Ethan Michelson, “Justice from above or below? Popular Strategies for Resolving Grievances in Rural China” (2008) 193 *The China Quarterly* 43 at 49.

⁵⁸³ Thireau & Hua, *supra* note 579 at 87-8. The Letters and Visits Offices are often established under specialized departments or more general organs such as the Party or People's congresses. For more information on how the letters and visits operate, see, for example, Minzner, *supra* note 581.

⁵⁸⁴ Thireau & Hua, *supra* note 583 at 97-9.

⁵⁸⁵ *Ibid* at 98-9.

⁵⁸⁶ *Ibid* at 99-100.

norms, principles, and rules to characterize their situations as unjust.⁵⁸⁷ Thireau and Hua's research reflects the need to explore what ordinary people understand to be law and how they participate in the construction of legality through their everyday actions.

The aforementioned studies facilitate the understanding of the legal consciousness of ordinary people who have suffered and are suffering from unequal treatment or unacceptable situations. Existing literature demonstrates the following features of legal consciousness among ordinary people in contemporary China: first, when the law is used outside formal legal channels, the focus is usually not the law itself or the legal argument. Instead, the law tends to be used in a rhetorical fashion in order to justify their demands, attract the government's attention, or urge the government to take action. Their strategic use of the law reflects that it is common for ordinary people in China to use politics, such as "stability politics" or "harmonious society," to justify their demands. Second, those who have previous experience in engaging with the courts often have a negative attitude toward the effectiveness and fairness of the legal system in solving their problems.

Third, many ordinary people in China tend to prioritize distributive justice over procedural fairness. As Michelson and Read suggest, these people have a low tolerance for outcomes against them, even if these outcomes are achieved through fair procedures.⁵⁸⁸ I agree with Michelson and Read that ordinary people in China usually attach more importance to distributive justice than procedural fairness. Nevertheless, I suggest that ordinary people are willing to tolerate a particular outcome that goes against them if they believe they are responsible for the wrongdoing. As I will demonstrate,

⁵⁸⁷ *Ibid* at 98.

⁵⁸⁸ Michelson & Read, *supra* note 533 at 197.

whether they would tolerate a particular outcome depends on whether it accords with what they believe to be acceptable, just, reasonable, and human.

The above literature on aggrieved ordinary people's legal consciousness shows how people use state law either in or outside the formal legal system to obtain redress when a dispute arises.⁵⁸⁹ Existing literature has offered valuable insights into why ordinary people who suffer from unequal treatment choose to turn or not to the formal legal system to resolve disputes. These studies have found that ordinary people in China prefer to seek redress or justice outside the formal legal system when their perceptions of justice differ from the demands of state law.

The question of how ordinary people in China understand and engage with state law when they are not in the process of seeking redress and resisting unjust treatment is crucial but understudied in the area of legal consciousness.⁵⁹⁰ The remainder of this chapter will draw upon the narratives of leftover women with an aim to fill this gap.

⁵⁸⁹ It is, however, necessary to emphasize that ordinary Chinese people's view of the law differs dramatically in different situations and from individuals to individuals. This is especially the case when the formal legal system is dauntingly inaccessible for people who have disadvantaged status in the society. Therefore, whether the research outcome of these studies can travel to people who have different background is a question to be discussed in future law and society studies, especially those studies touch upon intersectional issues.

⁵⁹⁰ The only two articles I came across are Lillian Hsiao-Ling Su's article on the legal consciousness of those who sell counterfeit commodities in Shanghai and Margaret L. Boittin's work on the legal consciousness of sex workers in China, both of which offer some insights on how ordinary people think about and engage with state law in their daily lives. Su's and Boittin's studies share several similarities: first, both discuss the legal consciousness of those who engage in illegal activities in China, namely counterfeit business and prostitution; second, both Su and Boittin pay attention to the intersectional issues in shaping ordinary Chinese people's legal consciousness—while Su focuses on the impact of class on the legal consciousness of those who sell counterfeit products, Boittin emphasizes that different facets of marginalization are important to consider when discussing how the powerless relate to state law. Similar to aggrieved people in the studies discussed above, sex workers in Boittin's research emphasize the importance of "humanity" and the fact that they deserve fair and reasonable treatment as human beings. Another major similarity between the legal consciousness of sex workers and other aggrieved peoples is that they both invoke the language they learned from state stability politics to justify their behaviour. Sex workers adopt the concept of "harmonious society" to describe their contributions to maintaining harmonious families through "harmonizing people's sex lives." These common features of legal consciousness indicate the need to incorporate ordinary people's perceptions of "humanity" in future studies of legal consciousness in China. Su's research calls attention to the role of class in the shaping of ordinary people's legal consciousness. Those who sell counterfeit commodities in the two markets where Su conducted her fieldwork have two distinct forms of legal consciousness—the less

I scrutinize leftover women's perceptions of and engagement with state law from the following aspects: first, through the analysis of some of my interviewees' reaction to the question "have you ever heard of any laws that are unfair to leftover women," I discuss how social attitudes and unspoken rules (潜规则) contribute to some leftover women's indifferent attitudes toward state law. Second, I discuss how leftover women who self-identify as lesbian or bisexual in my interviews think about the legalization of same-sex marriage, with the purpose to examine their attitudes toward legal changes concerning facilitative law, meaning "law that functions not by imposing obligations but by providing individuals with facilities for realizing their wishes through conferring legal powers on them, such as the powers to construct marriage, wills, contracts, companies, trusts, and so forth."⁵⁹¹ Third, I examine leftover women's opinions toward ordinary people's evasion and violation of China's population policy, with the aim to facilitate a better understanding of how leftover women think of the relationship between justice and the requirements of imperative or coercive state law.

My analysis of leftover women's legal consciousness does not pretend to provide a comprehensive illustration of how ordinary people understand and engage with state law under non-dispute situations but rather aims to explain why leftover women in my interviews hold a somewhat indifferent view toward state law concerning marriage and

wealthier small business owners "experience state law as a tool of oppression in the hands of the state that thwarts their livelihood" and resist state law by blatantly exhibiting and selling counterfeit goods; on the other hand, wealthy and well-connected entrepreneurs share the legal consciousness of evasion, meaning that these business owners use tactics to cover up their illicit activities with the aim to circumvent IP regulation rather than oppose it. Lillian Hsiao-Ling Su, "Resistance, Evasion, and Inequality: Legal Consciousness of Intellectual Property Laws in Two Chinese Markets" (2017) *Asian J Law & Society* 1; Margaret L Boittin, "New Perspectives from the Oldest Profession: Abuse and the Legal Consciousness of Sex Workers in China" (2013) 47:2 *Law & Society Rev* 245.

⁵⁹¹ Merry, *supra* note 150 at 885.

childbearing. The discussion of leftover women's legal consciousness in this chapter provides the details necessary to understand the impact of the interaction of state and non-state legal orders in the following chapters. It is also hoped that the discussion of leftover women's legal consciousness would act as a springboard to launch other studies on ordinary Chinese people's legal consciousness in their everyday lives, and thereby contributing to the areas of Asian law and society, legal consciousness, and legal culture more broadly.

II. Legal Consciousness of the Leftover Woman: State Law's Control of Marriage and Reproductive Rights

The studies on the legal consciousness of migrant workers and villagers have reflected the discrepancy between ordinary Chinese people's beliefs of justice and the legal version of it; and how this discrepancy contributes to their refusal to use the courts. For example, migrant workers in He et al.'s research believe the formal legal system has a version of justice that is different both from their own and the majority's perceptions of it; therefore, they choose to obtain redress via rightful resistance, such as street protests or a public display of suicide attempts, rather than going to the court.⁵⁹² Likewise, the workers in Thireau and Hua's research turn to the Letters and Visits Offices to express labour grievances because they believe that those who are in charge or in power will understand their perceptions of justice. They are confident that there are shared beliefs among members of society on what is just, reasonable, acceptable, human, and fair.⁵⁹³ The

⁵⁹² He, Wang & Su, *supra* note 573.

⁵⁹³ Thireau & Hua, *supra* note 583 at 88,98.

shared beliefs are closely relevant to the concept of *qing*, or what the majority believes to be right or just in a particular situation.⁵⁹⁴

My earlier work on law and *qing* in Chinese family relations has examined how state law and *qing* interact in different ways to shape leftover women's legal consciousness in their everyday lives.⁵⁹⁵ In that article, I argue that leftover women in Putian⁵⁹⁶ first look to *qing*, rather than state law, to form their own ideas of justice and fairness concerning marriage and childbearing.⁵⁹⁷ With a focus on how *qing* affects the way leftover women in Putian think about and engage with state law concerning marriage and childbearing, I observed two broad categories of interaction between state law and *qing*—namely, state law in opposition to *qing* and state law in alliance with *qing*. To be specific, I identify four forms of legal consciousness when state law is in opposition to *qing*: (i) avoidance of state law when it conflicts with *qing*; (ii) invocation of *qing* to mitigate undesirable results of state law; (iii) resistance of state law to protect *qing*; (iv) dismissal of state law when breaking the law conforms to *qing*. When it is perceived that state law is—or should be—in alliance with *qing*, the legal consciousness that emerges from the interaction of *qing* and law may be of two kinds: (i) embrace of state law when it enforces *qing*, and (ii) perception of state law as too weak when it fails to transform “old” understandings of *qing*.⁵⁹⁸

⁵⁹⁴ Fan, Zheng & Zhan, *supra* note 223.

⁵⁹⁵ Liu, *supra* note 270.

⁵⁹⁶ Putian is a third-tier city on the southeast coast of mainland China. Putian is a city with influential patriarchal culture.

⁵⁹⁷ Liu, *supra* note 270 at 16.

⁵⁹⁸ *Ibid* at 9.

Building upon the law and *qing* article, I demonstrate in this chapter how leftover women in my interviews rely on *qing* to justify their dismissal of state law concerning marriage, their lack of interest in the legalization of same-sex marriage, and their support to those who evaded or violated China's population policies. I try to show how the legal consciousness of the leftover women in my interviews challenges the assumption that "state law is the only real law" among scholars who adopt the linear conception of legal consciousness.⁵⁹⁹ I first discuss the impact of social attitudes and unspoken rules on leftover women's choices in marriage and childbearing. Then I examine how family relations and parental expectations affect queer leftover women's choices. After demonstrating how social and parental expectations partake in shaping the legal consciousness of leftover women I interviewed, I discuss how my interviewees judge who is qualified to evade or break state law. Through demonstrating the narratives and experience of those leftover women who emphasize the impact of social and parental expectations and those who mainly refer to either one or both social and parental expectations to guide their choices and behaviour, I stress the need to pay attention to multiple levels of social ordering to understand legal consciousness of leftover women and their choices in marriage and childbearing.

A. "If social attitudes cannot be challenged, the existence of state law will be superficial only."

⁵⁹⁹ From the perspective of legal pluralism, if we define law as the normative order within social groups, state law is only one layer among other legal orders that coexist in a nonhierarchical way. See, for example, Young, *supra* note 502 at 520.

The narratives in this section demonstrate the reasons why my interviewees generally do not have much interest in learning about state law and advocating for legal changes to empower leftover women. I will discuss how social attitudes and family relations are sometimes so influential that they dilute the impact of state law. In the first half of this section, I analyze the answers given by some leftover women when asked: “have you ever heard of any laws that are unfair to leftover women.” In the second half, I turn to the discussion of queer leftover women’s attitudes toward the legalization of same-sex marriage. This section aims to demonstrate that leftover women I interviewed generally do not believe in state law’s capacity to ensure their freedom in making alternative choices in marriage and childbearing.

a) The Ineffectiveness of State Law

I cannot think of anything that state law has done to protect the rights of single women. The whole legal system is unfair to women. But to be honest, I do not believe we can rely on state law to improve the social status of leftover women in China. I guess what matters most is the social attitudes toward women. If social attitudes cannot be challenged, the existence of state law will be superficial only. I hope people will change their minds and embrace more inclusive attitudes toward leftover women eventually, but I am afraid it would take a very long time.⁶⁰⁰

—interview, Lai Xiaoyang, a 28-year-old married woman in Dehua

I have not paid much attention to what state law says about women’s rights in marriage and childbearing. Villagers do not care too much about state law when it comes to marriage and childbearing. For example, everybody knows a marriage certificate can prove you are legally married. People in the village, however, will not acknowledge the marriage unless the couple holds a wedding banquet and

⁶⁰⁰ Interview, Xiaoyang, Quanzhou, Fujian province, China, July 2016. Xiaoyang self-identifies as heterosexual. She lives with her husband, son, and parents-in-law in Quanzhou. Xiaoyang has a law degree and is working for the local court in Dehua, Quanzhou.

*invites them to come and celebrate. Only after the banquet will villagers consider you to be a couple.*⁶⁰¹

—interview, Xu Meiyi, a 30-year-old recently married woman in Hui'an

State law's ineffectiveness in challenging social attitudes toward marriage and childbearing discourages my interviewees from believing in state law's role in empowering leftover women. For example, in her response to the question "have you ever heard of any laws that are unfair to leftover women," Xiaoyang stresses that positive legal changes cannot ensure a higher social status for leftover women as long as people's attitudes remain unchallenged.⁶⁰² In her view, "if social attitudes are in conflict with what state law says about women's rights, it would be extremely difficult for the law to empower women."⁶⁰³

Although one may think Xiaoyang is too pessimistic about what state law can do to challenge ordinary people's attitudes, Meiyi's narrative provides an example to support Xiaoyang's viewpoint. Meiyi justifies her disregard for state law concerning marriage and childbearing using the example of a marriage recognized by state law but not by villagers. China historically recognized *de facto* marriage.⁶⁰⁴ In fact, the first Marriage Law of the People's Republic of China was not enacted until 1950.⁶⁰⁵ The 2001 Marriage Law of the People's Republic of China stipulates that "the couple desiring marriage

⁶⁰¹ Interview, Xu Meiyi, Hui'an, Fujian Province, China, September 2016. Meiyi works at a small company in Hui'an. Her family lives in a village near her husband's village. She has a younger brother.

⁶⁰² Interview, Xiaoyang, *supra* note 600.

⁶⁰³ *Ibid.*

⁶⁰⁴ Annie Y Wang, "Unmarried Cohabitation: What Can We Learn From a Comparison Between the United States and China?" (2007) 41:1 Family Law Quarterly 197 at 200.

⁶⁰⁵ See, for example, Neil J Diamant, *Revolutionizing the Family: Politics, Love and Divorce in Urban and Rural China, 1949-1968* (Berkeley: University of California Press, 2000); Wang, *supra* note 604.

should register in person at the marriage registration office... In the absence of the marriage registration, the couple should go through the legal process subsequently.”⁶⁰⁶ If the couple has not gone through the legal process of marriage registration, they do not enjoy the same rights as those who are legally married.⁶⁰⁷ The Marriage Law, however, has not managed to challenge the attitudes toward marriage among many rural residents since its enactment in 2001. Existing research on unmarried cohabitation in China shows that people in rural China commonly emphasize the customary wedding ceremony and do not attach as much importance to formal marriage registration.⁶⁰⁸

In Meiyi’s village, for example, the local custom of holding a wedding banquet to announce a marriage is still more influential than going through the legal procedure of marriage. Villagers care more about local culture and practices than the law imposed by the state from above. For people who live in villages where this kind of belief prevails, holding a wedding banquet is a must, while getting the certificate from the state for legal recognition is not mandatory. Many couples go through the legal process a few years after throwing a wedding banquet, especially when they gave birth before they reached the marriageable age.⁶⁰⁹

⁶⁰⁶ For more information, see, The Central People’s Government of the People’s Republic of China, “*Shenme shi Shishi Hunyin*,” (13 June 2005), online: The Central People’s Government of the People’s Republic of China < http://www.gov.cn/banshi/2005-06/13/content_6147.htm >.

⁶⁰⁷ For more information, see Wang, *supra* note 604 at 201–3.

⁶⁰⁸ *Ibid* at 200–201.

⁶⁰⁹ Bai Hongyu, a 25-year-old single woman who comes from another village that is at the other side of Fujian Province, says that “I have many friends who gave birth before they reached the marriageable age. Villagers and the cadres in the village just do not care at all. What makes villagers recognize your marriage is the wedding banquet rather than going through the legal procedure to sign the piece of paper. People can sign that thing a few years after the wedding.” Interview, Bai Hongyu, Fuzhou, Fujian Province, China, September 2016.

The failure of state law in challenging the attitudes of villagers concerning marriage makes Meiyi believe that it is more important to abide by the local customs to avoid reproach than learning about state law.⁶¹⁰ According to Meiyi, “what women in the village are most afraid of is the gossip from village fellows (闲话). When we do not follow the local custom or live up to the expectations of village fellows, we suffer a lot from the gossip.”⁶¹¹ Meiyi finds it difficult to remain single and refuse to have children when most people in the village consider women who do not have a marriage and a child after 30 to be abnormal.⁶¹²

From Xiaoyang and Meiyi’s narratives, we can see that social attitudes are significantly affecting the operation of state law concerning marriage and childbearing in China.⁶¹³ These women’s lack of enthusiasm to learn about state law concerning marriage and childbearing partly results from their belief that state law could not make a difference in empowering leftover women’s choices in marriage unless most members of the society agree with and act in alignment with what state law tries to promote. To Meiyi, for example, her dismissal of what state law says about marriage and childbearing comes from the attitudes of the villagers. She has clearly expressed that the failure to follow these local customs and practices would lead to unbearable consequences and

⁶¹⁰ Interview, Meiyi, Hui’an, Fujian Province, China, September 2016.

⁶¹¹ *Ibid.*

⁶¹² *Ibid.*

⁶¹³ The never-ending question of whether laws change or simply reflect social attitudes has attracted the attention from scholars across many disciplines. For more discussion on this question, see, for example, Kenworthy Bilz & Janice Nadler, “Law, Moral Attitudes, and Behavioral Change” in Eyal Zamir & Doron Teichman, eds, *Oxford Handbook of Behavioral Economics and the Law* (Oxford University Press, 2014); Andreas Kotsadam & Niklas Jakobsson, “Do laws affect attitudes? An assessment of the Norwegian prostitution law using longitudinal data,” (2011) 31:2 *International Rev of Law and Economics* 103; Cevat G. Aksoy et al, “Do laws shape attitudes? Evidence from same-sex relationship recognition policies in Europe,” (2020) 124 *European Economic Rev* 1.

significantly affect her life.⁶¹⁴ In fact, it is the immediate consequence of failing to follow local customs and practices that force Meiyi to pay more attention to them than state law.

Likewise, my discussion with other leftover women on various aspects of marriage and childbearing reflects their view that state law is ineffective in protecting women from discriminatory attitudes and norms. In answering the question “have you ever heard of any laws that are unfair to leftover women,” some leftover women mention that although there is not a law stipulating that it is illegal to remain single, negative social attitudes toward leftover women leave little room for single women to choose non-dominant family formation, meaning refusing entering heterosexual marriage and having children.⁶¹⁵ Several leftover women use the example of discrimination in the workplace to suggest that state law is pretty weak in preventing the rights of women because of the existence of unspoken rules. Xiaomiao, a 28-year-old single woman who has experience in assisting the hiring committee of civil servants in Fuzhou, says

*We all know state law prohibits discrimination against women in the hiring process. It is, however, often the case that the head of the department that is hiring will tell the full searching committee that they would prefer male candidates before the video recorder is switched on. There are always many strategies to evade the law and achieve the goal. So I think even if state law explicitly stipulates what should be done to protect the interest of single women, it would not be effective.*⁶¹⁶

Chunyan Zheng et al.’s interviews with court leaders in China reflect that male preference in recruitment is prevalent in the hiring of civil servants, such as judges. As

⁶¹⁴ Interview, Xu Meiyi, Hui’an, Fujian Province, China, September 2016.

⁶¹⁵ For example, Deng Xiaomiao, a 28-year-old single woman who works as a civil servant in Fuzhou, is afraid that people will question whether she has some problems either mentally or physically if she is still single in her 30s. Interview, Deng Xiaomiao, Fuzhou, Fujian Province, China, September 2016. Xiaomiao has a younger brother who is now doing his undergraduate. Her parents live in Ningde, while Xiaomiao lives in a rented apartment in Fuzhou. Although Xiaomiao is afraid of being in relationship with men, she self-identifies as heterosexual.

⁶¹⁶ *Ibid.*

a female court leader in Zheng et al.'s research says, "My personal preference is to get men. From the employer's perspective, women have more problems, such as the problem of childbearing, etc."⁶¹⁷ Zheng et al. suggest that the concern for women's childbearing obligation among court recruiters was particularly strong because most of the candidates who meet the requirement of holding a master's degrees are in their mid-20s, meaning that they are approaching the childbearing age.⁶¹⁸ Male preference in recruitment across the courts reflects the ineffectiveness of state law in maintaining gender equality in the hiring process.

Ziyou, a 30-year-old researcher who works for a research institute in Fuzhou, maintains that "technically, China has established a relatively good legal framework on paper to protect women. But in practice, state law has not been effective in promoting gender equality."⁶¹⁹ Ziyou notes that it is easier for those who have a "complete family" to get a promotion because most people in China tend to believe that those who are married and have children are more reliable.⁶²⁰ In Ziyou's view, unspoken rules, such as men should be prioritized and unmarried women should be avoided in the process of hiring, are playing a more influential role in discriminating against single women.⁶²¹ By pointing out the ineffectiveness of state law in preventing gender inequality in the job market and workplace, Xiaomian and Ziyou, together with

⁶¹⁷ Chunyan Zheng, Jiahui Ai & Sida Liu, "The Elastic Ceiling: Gender and Professional Career in Chinese Courts," (2017) 51:1 Law & Society Review 168 at 177.

⁶¹⁸ *Ibid.*, at 178.

⁶¹⁹ Interview, Xiaomiao, Fuzhou, Fujian Province, China, September 2016.

⁶²⁰ Interview, Ziyou, Fuzhou, Fujian Province, China, September 2016. Kang Ziyou is a single woman who lives with her parents in Fuzhou. She is the only child of her family. She self-identifies as heterosexual. Ziyou has a Ph.D. in law and does research on family and gender issues at a research institute in Fuzhou, Fujian.

⁶²¹ *Ibid.*

some other leftover women, try to justify their indifferent attitudes toward state law concerning single women's interest by referring to how state law fails to deal with employment discrimination against women.

Indeed, several laws have stipulated that women should enjoy equal treatment with men in the job market and workplace. For example, the Law on the Protection of Women's Rights and Interests was the first law in China that stipulated equal employment opportunities between men and women. Article 23 of the Law provides that work units should not refuse to employ women or raise the employment standards for women; the labour contracts and service agreements provided by the work units should not contain clauses that restrict marriage and childbearing.⁶²² Article 25 emphasizes that work units should treat women and men equally when it comes to promotions.⁶²³ At the same time, Article 27 prohibits the work units from reducing the salaries of women or dismissing them because they are married, pregnant, or on maternity leave.⁶²⁴

Apart from the Law on the Protection of Women's Rights and Interests, there are several laws against employment discrimination under China's legal system, such as

⁶²² "Protection of Women's Rights and Interests Law of the People's Republic of China (Chinese and English Text) Congressional-Executive Commission on China", (1 December 2005), online: <<https://www.cecc.gov/resources/legal-provisions/protection-of-womens-rights-and-interests-law-of-the-peoples-republic-of>>.

⁶²³ *Ibid.*

⁶²⁴ *Ibid.*

Constitutional Law,⁶²⁵ Labour Law,⁶²⁶ and Employment Promotion Law.⁶²⁷ However, some scholars argue that these laws exist in name only (形同虚设): state laws are not playing a significant role in protecting women's employment rights due to the absence of the clarification on the legal consequences of employment discrimination for work units and the lack of specification of concepts such as "discrimination" and "equal pay for equal work."⁶²⁸

In fact, unspoken rules often trump state law and impose barriers for unmarried women both in the process of seeking jobs and getting a promotion. An article published on *People's Daily Online* in 2013 suggests that it is an unspoken rule in the job market that "women who have already had children enjoy priority over those who just got married, and married women are more likely to get the position than unmarried women."⁶²⁹ This unspoken rule is based on the following assumptions: first, unmarried women are not as mature and reliable as those who are married, especially those who have children; second, hiring a woman without kids usually means the employer needs to pay for her maternity leave in the near future.⁶³⁰ Thus, priority

⁶²⁵ National People's Congress, "Constitution of the People's Republic of China (2018 Amendment)", (3 November 2018), Pkulaw, online: <<http://en.pkulaw.cn/display.aspx?id=436178e5d0b17482bdfb&lib=law&SearchKeyword=&SearchCKeyword=%cf%dc%b7%a8>>.

⁶²⁶ Standing Committee of the National People's Congress, "Labor Law of the People's Republic of China (2018 Amendment)", (29 December 2018), Pkulaw, online: <<http://www.lawinfochina.com/display.aspx?id=b9c8a3fb471ff7e9bdfb&lib=law>>.

⁶²⁷ Standing Committee of the National People's Congress, "Employment Promotion Law of the People's Republic of China", pkulaw, online: <<http://en.pkulaw.cn/display.aspx?cgid=96793&lib=law>>.

⁶²⁸ Yue Jiang & Youyi Wang, "Guoji Gongyue Shiye xia Woguo Nvxing Zhigong Laodongquan de Baozhang," (2015) 2 *Tianjin Shifan Daxue Xuebao (Shehui Kexue Ban)* 55; Jing Lu & Yulong Lu, "Jiuye Qishi de Falv Wenti Yanjiu," *Zhongguo Faxue Wang*, online <<http://www.iolaw.org.cn/showNews.aspx?id=47643>>.

⁶²⁹ Workers' Daily, "Nvxing Qiuzhi Jiuye 'Qianguize': Yiyu sheng Yihun Yihun sheng Danshen" People.cn, online:< <http://edu.people.com.cn/n/2013/0513/c1053-21457628.html>>.

⁶³⁰ *Ibid.*

usually goes to married women who do not want to have more children in the future. The situation has become more difficult for unmarried women after the shift from the former one-child policy to the two-child policy, a shift that would further exacerbate gender discrimination in the job market.⁶³¹

When asked “have you ever heard of any laws that are unfair to leftover women,” Hu Lei, a 30-year-old architect in Xiamen, answered,

State law prohibits discrimination against women in the process of hiring and promotion, but it does not work. I have a colleague who went on maternity leave for nine months when she was working for her former firm. When she came back to work, her employer told her that they no longer held the position for her. In theory, state law has granted her the right to sue the company, but the reality is that no one dares to take legal proceedings against the employer. In such a small industry in Xiamen, other companies will not hire her if they know she has taken her former employer to court.⁶³²

By sharing the story in which state law is weak in protecting her friend, Hu Lei tries to show that invoking state law against employers may sometimes come with unbearable consequences. The fact that state law has not managed to protect her friend reinforces Hu Lei’s belief that when there are more influential and immediate non-state norms in place, state law may not be helpful in ensuring the interest of women.

Yuanru, a 27-year-old single woman who works as a civil servant in Fuzhou, answered the question of “have you ever heard of any laws that are unfair to leftover women” first by saying that she could not think of any laws and policies against single women, after which she immediately suggested that it is prevalent unspoken rules in society that impose pressure on leftover women. According to Yuanru, “single women

⁶³¹ Yue Qian & Yongai Jin, “Women’s Fertility Autonomy in Urban China: The Role of Couple Dynamics Under the Universal Two-Child Policy” (2018) 50:3 Chinese Sociological Review 275.

⁶³² Interview, Hu Lei, Xiamen, Fujian Province, China, August 2016. Hu Lei has an older sister. She is married and currently has a baby girl. She lives with her husband and daughter in Xiamen. Her parents-in-law come to Xiamen from a city nearby to help her take care of the baby girl.

in their late 20s and beyond dare not quit their jobs. It is extremely difficult for them to find work because gender discrimination is everywhere in the hiring process.”⁶³³

Yuanru intended to emphasize that unspoken rules are extremely powerful in affecting leftover women’s lives, regardless of whether state law discriminates against unmarried women.

As single women suffer from discrimination to a larger extent than women who have already had children in the process of looking for work, many single women believe it is better to get married and have a child as soon as possible in order to have more opportunities afterward.⁶³⁴ Several newspaper articles have featured leftover women’s lack of interest in invoking state law to fight for equal treatment: most women who suffer from employment discrimination because of childbearing choose to remain silent.⁶³⁵

Simply put, in the views of the aforementioned interviewees, social attitudes and unspoken rules backed by dominant social attitudes are more influential than state law in affecting women’s choices in marriage and childbearing. The ineffectiveness of state law in challenging social attitudes concerning marriage and its inability to protect women’s interest in the workplace serve as two examples to show why some leftover women are

⁶³³ Interview, Yuanru, Fuzhou, Fujian Province, China, September 2016. Yuanru lives with her parents in Fuzhou. Yuanru self-identifies as heterosexual. She is the only child of her family.

⁶³⁴ China Youth Daily, “Qiuzhi ‘Qiba’ Xianxiang Danshen Weisha Ping buguo ‘Youwade’?” (14 January 2016) People.cn, online: < <http://edu.people.com.cn/n1/2016/0114/c1053-28051933.html>>.

⁶³⁵ An article published on *Beijing Evening News*, “many women believe that they will not invoke the law against their employers even if they suffer from employment discrimination because of maternity leave. They think being a fighter for rights (维权斗士) not only takes a lot of time and energy but also makes it extremely difficult to be accepted into other work units.” *Beijing Evening News*, online: http://www.bjd.com.cn/zc/shq/201712/20/t20171220_11077113.html>; in the interview with People’s Daily, a married woman in Fuzhou says “I was fired after I got pregnant. I was thinking about fighting for my right by bringing my former employer to court, but I did not think I had the time and energy. With that time and energy, I can either find a company that is willing to hire me, or just stay at home to expect my baby.” China Youth Daily, *supra* note 634.

reluctant to attach great importance to what state law says about leftover women's marriage and childbearing. A few leftover women identified some laws and policies that are unfair to unmarried women, such as state law's denial of single women's right to freeze eggs,⁶³⁶ and the difficulties for single women to adopt children under the current legal system.⁶³⁷ Nevertheless, they do not necessarily believe in the power of legal changes in empowering women. In most cases, while they acknowledge the existence of discriminatory laws against unmarried women, they are not keen on challenging these laws.

The strong influence of social attitudes and unspoken rules on leftover women's choices has made them among the most influential norms unmarried women need to respect and follow. As a result, my interviewees tend to show little interest in learning about existing state law concerning marriage and childbearing, let alone advocating for legal changes. The next section will further explain leftover women's lack of interest in advocating for law reforms to protect unmarried women's rights by drawing upon the narratives of leftover women who self-identify as lesbians and bisexuals. The reason I choose to focus on their narratives is that their rights to marry and have children are

⁶³⁶ Interview, Sanxian, Dehua, Quanzhou City, Fujian Province, China, July 2016. Sanxian is a civil servant who works at her hometown Dehua. She has an elderly sister and a younger brother. She is recently engaged, but she still lives with her parents. She self-identifies as heterosexual. Interview, Yingzi, Fuzhou, Fujian Province, China, September 2016. Yingzi lives with her parents in their apartment in Fuzhou. She is the only child of her family. She self-identifies as a heterosexual woman. Liu Jing, Dehua, Quanzhou City, Fujian Province, China, July 2016. Liu Jing is a 26-year-old single woman who works as a civil servant in Dehua County. She is the only child of her family. She self-identifies as heterosexual. Liu Jing currently lives with her parents in their apartment in Dehua.

⁶³⁷ Interview, Fangxin, Xiamen, Fujian, China, July 2016. Fangxin is a 30-year-old woman who got married recently after being under the pressure to marry from her parents for several years. She works as a civil servant in Xiamen, while her parents and husband live in Zhangzhou, a city that is about 60km from Xiamen. She is the only child of her family, and her parents just bought an apartment for her in Xiamen. She self-identifies as heterosexual, although she does not think it is necessary to get married and have a child.

significantly affected by state law because of the denial of same-sex marriage and unmarried women's reproductive rights under China's current legal system.

b) Family Relations and Legal Changes

*Some leftover women refuse heterosexual marriage because they are lesbians. The legalization of same-sex marriage is, of course, important to gay and lesbians in China. However, gay and lesbians care less about what state law says about same-sex marriage than whether their parents accept their sexual identities. I mean, sometimes they will still worry about some legal issues, such as their same-sex partner's right to sign the medical consent form. But there are many other ways to solve the problem. What we Chinese care most is always the "family," or whether parents can still accept us as their children if they knew we were gay or lesbians.*⁶³⁸

—interview, Xu Jian, the project organizer of PFLAG China

In addition to dominant social attitudes and unspoken rules, some leftover women consider the attitudes of parents to be influential in affecting the effective implementation of state law. Xu Jian's emphasis on family relations and the attitudes of parents elaborates on how family relations may limit the impact of positive legal changes concerning the protection of the interest of leftover women who self-identify as queer women. At a time when same-sex marriage is not legally acknowledged in China, some may assume that advocating for the legalization of same-sex marriage is an important task for activists and NGOs working for LGBT people.⁶³⁹ They may also assume that

⁶³⁸ Interview, Xu Jian, Guangzhou, Guangdong Province, China, October 2016. Xu Jian is a 28-year-old single woman in Guangzhou. She self-identifies as a lesbian and works full time for PFLAG China. She is the only child of her family.

⁶³⁹ Christian Shepherd, "Chinese activists renew push for same-sex marriage in their thousands", (12 September 2018), *Reuters*: <<https://www.reuters.com/article/china-lgbt-lawmaking-idUSL3N1VY4YB>>; Jiayang Fan, "Sun Wenlin and Hu Mingliang Want to Get Married", (2 September 2016), *The New Yorker*: <<https://www.newyorker.com/news/daily-comment/sun-wenlin-and-hu-mingliang-want-to-get-married>>.

what leftover women who self-identify as lesbians are in urgent need is a law that acknowledges same-sex marriage.⁶⁴⁰

Timothy Hildebrandt's article on same-sex marriage and LGBT activism in China has pointed in the opposite direction. According to Hildebrandt, LGBT activists' interest in securing marriage rights is relatively low in China—the vast majority of respondents to Hildebrandt's nationwide survey ranked advocating for the legalization of same-sex marriage lowest in importance.⁶⁴¹ While Hildebrandt has not listed the reasons behind the lack of interest, the narratives of the LGBT activists in his research have indicated some concerns among LGBT communities of advocating for the legalization of same-sex marriage: first, Hildebrandt mentions that the vast majority of the activists he interviewed, most of whom are the only child of the family, highlighted the familial and social pressure to produce grandchildren for their parents.⁶⁴² Second, some of Hildebrandt's interviewees are also concerned that they may lose their jobs if they take advantage of legalized same-sex marriage.⁶⁴³ Third, Hildebrandt found that “activists are not entirely convinced that they could pursue a marriage certificate from local officials even if it is passed by the central government. Regardless of the fact that there might not

⁶⁴⁰ I have no intention to suggest that LGBT activists' effort in promoting marriage equality is not important or unnecessary. I admire feminist activists who adopt a range of strategies to create space for LGBT folk and attract attention from the public on the rights of LGBT folk. For more information on how feminist and queer activists in China challenge gender norms and heteronormativity, see for example, Wang & Liu, *supra* note 137 at 10-13.

⁶⁴¹ Timothy Hildebrandt, “Same-sex marriage in China? The strategic promulgation of a progressive policy and its impact on LGBT activism” (2011) 37:3 *Rev of International Studies* 1313 at 1316.

⁶⁴² *Ibid* at 1332.

⁶⁴³ *Ibid* at 1332.

be an institutionalised resistance to homosexuality, a same-sex marriage law would be hard to enforce at all levels.”⁶⁴⁴

Hildebrandt has recorded two main categories of attitudes toward same-sex marriage among LGBT activists in China: on the one hand, some support same-sex marriage because they believe it will bring the community much needed social stability; on the other hand, some others believe same-sex marriage would do little to improve the lives of LGBT Chinese if the overall social environment remains unchanged.⁶⁴⁵ The legal consciousness of Hildebrandt’s interviewees is in alignment with that of leftover women who show indifferent attitudes toward relevant state law.

My interviews with leftover women who self-identify as queer support Hildebrandt’s finding that there is a lack of interest in advocating for same-sex marriage among LGBT activists. Drawing upon these interviews, I will now turn to the reasons of the lack of interest among lesbians in general to explain why legalizing same-sex marriage is not among the priorities of queer activism. By asking leftover women who self-identify as bisexual and lesbians about their attitudes towards the legalization of same-sex marriage, I found that the lack of interest among my interviewees on the legalization of same-sex marriage mainly results from their emphasis on family relations, especially the need to maintain good relationship with parents who expect them to enter a heterosexual marriage and have children. Xu Jian’s narrative, for example, reflects this widely-shared belief among some other queer women in my interviews.

⁶⁴⁴ *Ibid* at 1328.

⁶⁴⁵ *Ibid* at 1330.

Xu Jian has been working for years with PFLAG China, an NGO formed by LGBT people and their parents to support identity-forming and the coming out process of LGBT people in China. Xu Jian and her colleagues rarely use the language of rights to advocate for equal rights for LGBT people. Instead, they concentrate their work on helping LGBT young adults come out to parents in a more harmonious way that causes less harm to family relations. They focus on familial relations because young LGBT people in China are eager for advice on how to deal with the conflict between coming out and being filial. Deng Fei, the volunteer coordinator of PFLAG China, says,

While our organization shows our support to other NGOs and individuals who work hard to advocate for equal rights for LGBT people, we never participate in advocating for legal reforms personally. State law is not the primary barrier in front of LGBT people in China. We focus on what we believe to be more important—we provide support to adult children who are considering coming out to their parents. We encourage coming out to parents in a non-confrontational way, or harmonious way, and try to facilitate effective conversations between parents and LGBT adult children.⁶⁴⁶

According to Xu Jian and Deng Fei, the attitudes of parents are the key concerns of many LGBTQ young adults in China, more so than state law. Adult children who turn to PFLAG China for help generally think a harmonious relationship with parents is a must. They seek help from PFLAG China out of concern about the unexpected consequences of coming out to parents.

⁶⁴⁶ Interview, Deng Fei, Guangzhou, Guangdong Province, China, October 2016. Deng Fei self-identifies as a lesbian. She lives with her same-sex partner in Guangzhou. She left her parents and siblings in rural area of Guangxi for work in Guangzhou. Xu Jian recommended Deng Fei to me for the reason that she works closely with volunteers, including LGBT adult children and parents whose children self-identify as gay men or lesbians.

Most leftover women who self-identify as lesbians or queer women in my interviews, indeed, are not interested in advocating for the legalization of same-sex marriage.⁶⁴⁷ They are concerned about the potential impact of entering into a same-sex marriage on family relations. Most, if not all, lesbians and bisexual women I interviewed admitted that they would not rush into same-sex marriage even if the Chinese state legalized it, mainly because it is not necessary to hurt parents by coming out for same-sex marriage.⁶⁴⁸ Wenwen, a 26-year-old nurse in Xiamen, says, “I don't really care about whether same-sex marriage will be legalized. The marriage certificate is merely a piece of paper. But my strong desire to live up to parental expectations really matters to me as a daughter and as a person.”⁶⁴⁹ After lighting another cigarette, Wenwen continues, “I cannot be too selfish and only care about myself.”⁶⁵⁰ Wenwen believes that the legalization of same-sex marriage would not change her choice to marry a man and cover up her sexual identity.⁶⁵¹ Wenwen’s view is shared by many non-heterosexual women in my interviews, most of whom stress the difficulties for the older generation to understand the so-called

⁶⁴⁷ In fact, the lack of interest in same-sex marriage has been identified by existing studies in the area of homosexuality in China. Rofel, *supra* note 138; Chou, *supra* note 298; Chou, *supra* note 252; Hildebrandt, *supra* note 641.

⁶⁴⁸ It is a fact that there are many activists in China who fight diligently for the legalization of same-sex marriage. See, for example, Shepherd, *supra* note 639. I have no intention to deny that their efforts are important to LGBTQ community in China, but rather my purpose is to stress that lesbians who are not interested in the legalization of same-sex marriage, such as most queer women in my interviews, are more concerned about the attitudes of parents.

⁶⁴⁹ Interview, Wenwen, Xiamen, Fujian Province, China, October 2016. Wenwen is married to a heterosexual man and lives with him in Xiamen. Her parents live in Fuzhou, a city that is about 300km from Xiamen. She is the only child of her family. She self-identifies as bisexual but has a strong preference for same-sex partners when asked about her sexual orientation. However, during the interview, she indicates that she would get a divorce immediately after she finds a girl she loves.

⁶⁵⁰ *Ibid.*

⁶⁵¹ *Ibid.*

“abnormal”⁶⁵² sexual identities and the immorality of hurting parents by coming out to them for same-sex marriage.

Jiayan, a bisexual woman who married a man in Shanghai, says, “my father is in his 50s. It is unthinkable for me to come out to him. He could not understand what happens and would not accept my idea of marrying a woman. I guess he would try to manipulate the situation by threatening to commit suicide.”⁶⁵³ Hongtian, a 25-year-old single woman who used to have girlfriends but believed she is now “normal,”⁶⁵⁴ admits that

If I live overseas where people are more open-minded and have a more inclusive attitude toward homosexuality, I will think about having a family with a same-sex partner. But in China, especially in the same province with my parents, I will definitely choose heterosexual marriage for the sake of my parents. Even if state law recognizes same-sex marriage, I will not choose to enter a same-sex marriage. It will make my parents feel sad and harm my relationship with them. I think now I grew up, and I will have to take more responsibilities and be filial. Last year, I told my ex-girlfriend that we need to go back to “normal” and just keep each other deeply in our hearts.⁶⁵⁵

Hongtian tries to suggest that whether state law legalizes same-sex marriage or not is not going to affect her choice to enter a heterosexual marriage.

Wenwen, Jiayan, Hongtian, and other lesbians who are not keen on advocating for the legalization of same-sex marriage do not deny that the state’s recognition of same-sex marriage would be a positive change for LGBT people. We cannot assume that they do not desire a law that recognizes same-sex marriage as equal as marriages of

⁶⁵² It is interesting that when I asked about the sexual orientation of my interviewees, those who do not self-identify as queer women will usually use the word “normal (正常)” instead of “heterosexual (同性恋).”

⁶⁵³ Interview, Jiayan, Xiamen, Fujian Province, China, October 2016. Jiayan works as an administrative staff member at an university in Shanghai. She is the only child of her family. She is 30-year-old. Jiayan lives with her husband in Shanghai. Both her parents and parents-in-law are in Shanghai as well.

⁶⁵⁴ Hongtian uses the word “normal” to suggest that she is heterosexual now.

⁶⁵⁵ Interview, Hongtian, Fuzhou, Fujian Province, China, September 2016. Hongtian is the only child of her family. She works for a leading real estate development company in Fuzhou. She self-identifies as bi-sexual on the condition that the social environment is inclusive.

opposite-sex couples. Wenwen, for example, says, “although I do not care about the legalization of same-sex marriage, it is, of course, better if the state recognizes same-sex marriage. I mean, if our parents refuse to accept our sexual orientation, we can show them that state law has recognized same-sex marriage.”⁶⁵⁶ However, they are concerned that they might not benefit from the positive outcome of legal reforms unless parents’ attitudes and expectations change accordingly. A sudden change in state law would not solve the urgent problem they are facing—namely, coming out to parents is likely to hurt the feelings of parents and affect their relationship with them.⁶⁵⁷

The narratives of Xu Jian, Deng Fei, Wenwen, Jiayan, and Hongtian show that parental attitudes toward the sexual orientation of their children are playing a significant role in governing queer women’s behaviour and shaping their choices in marriage. Xu Jian and Deng Fei tend to encourage lesbians to spend time and energy maintaining a harmonious relationship with parents in the process of coming out, rather than adopting a confrontational way of resistance to fight for the right to marry. Wenwen, Jiayan, and Hongtian, on the other hand, are among lesbians who prefer to stay in the closet to ensure the happiness and relief of their parents. Parents’ attitudes toward their sexual orientation have become a more immediate concern for them than whether state law allows same-sex marriage or not.

⁶⁵⁶ Interview, Wenwen, Xiamen, Fujian Province, China, October 2016.

⁶⁵⁷ See, for example, Rofel, *supra* note 138 at 97–8; Clarissa Sebag-Montefiore, “Not My (Only) Kid”, (18 September 2012), *Latitude*, online: <<https://latitude.blogs.nytimes.com/2012/09/18/how-chinas-one-child-policy-hurts-gays/>>.

As the family is perceived to be the most basic and profound social institution, and filial piety enjoys great importance in China, it is against *qing* for lesbians to deploy a confrontational approach and emphasize individualism by entering into a same-sex marriage without the consent of parents.⁶⁵⁸ According to Chou, “in a society where filial piety is given the utmost importance in defining a person, hurting one’s parents can be the most terrible thing for a *tongzhi* to experience.”⁶⁵⁹ Chou also maintains that “[t]he problem for parents is not only accepting that their child is a *tongzhi*, but the shame of losing face for having a deviant child who does not get married.”⁶⁶⁰ While Chou has not used the term *qing*, his usage of the word “deviant” indicates that being a *tongzhi* and refusing heterosexual marriage is against what the majority of people in society believe to be right or just.

Indeed, although research has shown that those who oppose gay rights in China have greatly decreased in number,⁶⁶¹ most Chinese families are still reluctant to accept homosexuality.⁶⁶² In my interviews with leftover women, those who do not self-identify as queer tend to use the term “normal (正常)” to indicate they are heterosexual. According to a study conducted by Peking University’s Sociology

⁶⁵⁸ For more discussion, see, for example, Chou, *supra* note 252; Rofel, *supra* note 138.

⁶⁵⁹ Chou, *supra* note 252 at 34. *Tongzhi* is sometimes interchangeable with gay and lesbians. The adoption of the term “*tongzhi*,” however, signifies an endeavor to integrate the sexual into the social and cultural. *Ibid.*, at 28.

⁶⁶⁰ *Ibid.*

⁶⁶¹ A study conducted by Suiming Pan, a professor at Renmin University of China, shows that in response to the question “some people say that homosexuals should be completely equal to other people. What do you think?,” 28.3 percent disagree, while 26.5 refuse to comment on this question. Suiming Pan, “Gay or Nay: China’s Changing Attitudes Toward Homosexuality”, (9 December 2017), online: *Sixth Tone* <<http://www.sixthtone.com/news/1001348/gay-or-nay-chinas-changing-attitudes-toward-homosexuality>>.

⁶⁶² J.P. By “Chinese attitudes towards gay rights”, (5 June 2017), *The Economist*, online: <<https://www.economist.com/the-economist-explains/2017/06/05/chinese-attitudes-towards-gay-rights>>.

Department on behalf of the UN Development Programme, 58% of respondents (both homosexual and heterosexual) agreed with the statement that gays are rejected by their families—a higher level of rejection than at work or school.⁶⁶³ The study also found that fewer than 15% of homosexuals would come out to their families.⁶⁶⁴ As *qing* requires adult children to attach great values to filial piety and emphasize the importance of carrying on the family's good reputation and lineage,⁶⁶⁵ it is difficult for queer leftover women to come out to parents for same-sex marriage.

It is true that some other lesbians and bisexual women in my interviews have other kinds of concerns about coming out or choosing same-sex marriage. For example, Yuqi, a 30-year-old single woman who self-identifies as bisexual, asserts that “it is too difficult to be a lesbian in China. You cannot express your feelings in public, such as holding hands. I am tired of hiding. I am sick of pretending it is a ‘he’ rather than a ‘she’ when I talked about what I did with my partner.”⁶⁶⁶ According to Yuqi, choosing a same-sex partner not only hurt the feelings of parents, but it also invites extra burdens for the same-sex couple.⁶⁶⁷ Nevertheless, the attitudes of parents and the relationship with them are among the top concerns of every lesbian and bisexual woman in my interviews.

⁶⁶³ *Ibid.*

⁶⁶⁴ *Ibid.*

⁶⁶⁵ *Ibid.*

⁶⁶⁶ Interview, Yuqi, Xiamen, Fujian, September 2016. Yuqi is the only child of her family. She follows her heart to become a barista after graduation out of her love for coffee. She is now an expert in the area who coffee shop owners turn to for advice when they are thinking about developing their business. She lives with her parents in her grandparents' apartment.

⁶⁶⁷ *Ibid.*

By referring to the discussion on the legalization of same-sex marriage, my purpose is to analyze why lesbians I interviewed are not keen on advocating for the right to choose non-dominant family structures. Similar to those leftover women who believe changing social attitudes is more important than having the law on the book,⁶⁶⁸ lesbians in my interviews are generally not interested in demanding the right to marry same-sex partners from the state's legal system. Instead of believing blindly in the power of state law to guarantee a promising future for LGBT people, my interviewees point out a more immediate concern among many lesbians in China—the attitudes of parents. Their reluctance to focus their time and energy on advocating for a legal change for same-sex marriage results mainly from the belief that positive changes in state law may not have a significant impact on their daily lives, especially when it is difficult for parents to accept their children as lesbians.⁶⁶⁹

c) Summary

In this part, I emphasize the importance of social attitudes in shaping leftover women's beliefs in what state law could do to protect women's rights in marriage and childbearing. While some of my interviewees use the example of acknowledgement of marriage in the village to demonstrate how local customs trump state law, some others link their lack of interest in state law with the law's ineffectiveness in preventing employment discrimination. Likewise, some queer women look to the importance of family relations in Chinese society to explain their lack of confidence in relying on

⁶⁶⁸ See also, Hildebrandt, *supra* note 641.

⁶⁶⁹ For information on parents' attitudes toward same-sex marriage, see, for example, Sebag-Montefiore, *supra* note 657.

state law for freedom to choose same-sex marriage. These examples cannot be translated into a lack of legal awareness or legal knowledge. Rather, I argue that their emphasis on social attitudes and parental expectations reflect their deep understandings of how state law operates in everyday life; and how state law interacts with other levels of social ordering to affect ordinary people's choices.

Social attitudes, to a large extent, reflect *qing*, or what the majority believes to be right or just in a particular situation.⁶⁷⁰ The ineffectiveness of state law in changing villagers' understandings of valid marriage lies in the fact that *qing* requires the couples to invite village fellows to witness the process of getting married.⁶⁷¹ According to a village head in Hunan province, for example, "from the perspective of *qing* and *li*, holding a wedding banquet is an obligation that the new couples need to fulfill."⁶⁷² What makes it necessary for leftover women to comply with local customs and practices is the requirement of *qing* and the unthinkable consequences of failing to meet the requirement. Queer women's lack of interest in advocating for the legalization of same-sex marriage also has a close linkage with the requirements of *qing*, as it is against *qing* to ignore parental expectations and prioritize individual desires over family interest.

Unspoken rules function in a slightly different way. While local customs and practices rely on *qing* to govern ordinary people's behaviour, unspoken rules often reflect the common attitudes of those who are in power. In other words, what makes

⁶⁷⁰ Fan, Zheng & Zhan, *supra* note 223.

⁶⁷¹ CCTV International, "Zhang Fuyou de Hunshi, (24 Feb 2004), CCTV.com, online : <<http://www.cctv.com/program/jjyf/20040224/101303.shtml>>.

⁶⁷² *Ibid.*

unspoken rules prevail in the workplace is not what the majority of people believe to be just and fair, but what most of those in power understand to be common and reasonable under a particular situation. It is, however, often the case that ordinary people may find it reasonable for those in power to make a particular decision when there are no better options. For example, Yingzi, a 29-year-old single woman who works as an English teacher at a university in Fuzhou, says,

*The head of the university is so worried about having no one to teach when most of our teaching staff members are young women at my age. When women reach their late 20s and beyond, most of them are going to get married and give birth. So it is likely that many staff members are on maternity leave at the same time. It is understandable that the head would prefer male candidates in the hiring process.*⁶⁷³

While Yingzi does not agree with the unspoken rules, she thinks it is reasonable for employers to follow the unspoken rules. Ziyou points out that it is consistent with *qing* for the owners or leaders of the work units to try to make sure the process of hiring and promoting is for the best interest of the company or department.⁶⁷⁴ According to Ziyou, “if the state does not provide extra funding to encourage work units to hire single women and pay for the cost incurred by maternity leave, the employment situation for leftover women is not going to improve.”⁶⁷⁵ Yingzi and Ziyou’s narratives show that employment discrimination against single women is not considered to be completely in opposition to *qing*, even in the views of leftover women themselves. To some extent, some leftover women even support the business owners and leaders at the work units.

⁶⁷³ Interview, Yingzi, Fuzhou, Fujian Province, China, September 2016. Yingzi lives with her parents in their apartment in Fuzhou. She is the only child of her family. She self-identifies as a heterosexual woman.

⁶⁷⁴ Interview, Kang Ziyou, Fuzhou, Fujian Province, China, September 2016.

⁶⁷⁵ *Ibid.*

In conclusion, leftover women's narratives point to the belief that "if social attitudes cannot be challenged, the existence of state law will be superficial only." When social and parental attitudes remain unchallenged, these women would need to follow multiple levels of social ordering that guide their marital choices, although they do not pay much attention to state law. In the next section, I will focus on how leftover women understand state law concerning childbearing.

B. Money, Qing, Responsibility, and the Evasion of State Law

In this section, I focus on the legal consciousness of leftover women when the law is used by the state as a method of social control. Michael Palmer, a law professor who does research on Chinese marriage and the law, maintains that in dominant traditional Chinese legal values, state law is not facilitative and "rights-creating" but, rather, is primarily a matter of social control.⁶⁷⁶ China's coercive population policies serve as a good example to discuss leftover women's attitudes toward state law's role in social control. As it is against state law to give birth outside marriage, some unmarried women travel to other countries to conceive or freeze their eggs.⁶⁷⁷ Some others chose or plan to turn to underground companies for surrogacy services either in or outside China.⁶⁷⁸ Some

⁶⁷⁶ Michael Palmer, "The Re-emergence of Family Law in Post-Mao China: Marriage, Divorce and Reproduction" (1995) 191 *The China Quarterly* 110 at 128.

⁶⁷⁷ See, for example, BBC News "Single Chinese women want to freeze their eggs and enjoy life", (2 August 2017) BBC News, online: <<http://www.bbc.com/news/world-asia-china-40183587>>.

⁶⁷⁸ My interviews reflect that many gay couples and even lesbians are considering surrogacy. Interview, Deng Fei, Guangzhou, Guangdong Province, China, October 2016; interview, Zonglan, telephone interview, November 2016; interview, Yimeng, Fuzhou, Fujian Province, China, September 2016. Some single women who are afraid of the process of giving birth are also considering surrogacy. Interview, Aiyin, Xiamen, Fujian Province, China, August 2016. Some couples would also choose surrogacy in order to have two babies at

lesbians chose to cooperate with gay men to give birth by pretending to be heterosexual couples and going through the legal process of getting married.⁶⁷⁹ These women, who are not eligible under the law to give birth on their own, evaded or plan to evade state law to achieve their goals. Many unmarried women do not consider state law to be among the most significant barriers for them to give birth, and quite a few single women use the examples of how married couples evade the population policies to suggest that “you don't have to care about the law if you can take responsibility.”

My interviews and focus groups with leftover women found that “taking responsibility” is usually closely linked to the following three aspects: first, whether people can afford the financial penalty of violating the law and other costs; second, whether the evasion or violation is consistent with the majority's perception of justice, fairness, and humanity; and third, whether the person can make sure that her behaviour would not bring trouble to other people.

a) Money and the Evasion and Violation of the Law

Although surrogacy is illegal in China, there are still many couples seeking surrogacy services with the purpose of having twins, especially before the shift to the universal two-child policy. It costs around five hundred thousand (approximately C\$100,000) to have one baby, and another five hundred thousand for twins. The cost, however, does not stop people from doing it—rich couples are willing to pay in order to choose the number and sex of their babies. I think the

once before the shift to the universal two-child policy. Focus group, Kailin, Xiamen, Fujian province, China, October 2016.

⁶⁷⁹ Interview, Deng Fei, Guangzhou, Guangdong Province, China, October 2016; interview, Chen Yan, Xiamen, Fujian Province, China, July 2016; interview, Xiaoning, Fuzhou, Fujian Province, China, September 2016.

*most important thing is to be affluent. We can have as many children as we want as long as we have enough money.*⁶⁸⁰

—focus group, Kailin, a 28-year-old married woman who is a civil servant

By pointing out that many people turned to the black-market surrogacy services for twins as a way to evade the one-child policy,⁶⁸¹ Kailin stresses the importance of money in deciding whether a particular person is qualified to break the law. Indeed, surrogacy is considered to be a “luxury consumption” that only the affluent can afford in China. A news report on the *South China Morning Post* suggests that at AA69, one of the first surrogacy businesses in mainland China, people are charged 650,000 yuan (approximately C\$128,725) to 1,300,000 yuan (C\$257,450) for each baby.⁶⁸² Based in Shanghai, AA69 has branches all over China, including Guangzhou, Wuhan, Beijing, and Shandong.⁶⁸³ According to *China Newsweek*, AA69 had “produced” more than 10,000 babies since its launch in 2004.⁶⁸⁴ Wang Feng, an owner of a fertility clinic in Wuhan, Hubei province, estimates that the number of surrogacy operations nationwide

⁶⁸⁰ Focus group, Kailin, Xiamen, Fujian Province, China, October 2016. Kailin lives with her husband and son in Zhangzhou, a city near Xiamen. She works as a civil servant. She self-identifies as heterosexual. Kailin is the only child of her family.

⁶⁸¹ It is worth pointing out that according to the universal two-child policy had actually given a boost to the surrogacy industry because some couples are afraid that they may be too old to give birth to the second child on their own. Wang Junping, “It is annoying that I am not capable to give birth to the second baby (*Sheng bu Chu Erhai Zhen Fanna*)”, (2017), online: *People’s Daily* <<http://society.people.com.cn/n1/2017/0203/c1008-29054868.html>>.

⁶⁸² Alice Yan, “Official ban is no brake on China’s surrogacy sector”, (17 February 2017), online: *South China Morning Post* <<http://www.scmp.com/news/china/society/article/2071548/official-ban-no-brake-chinas-surrogacy-sector>>.

⁶⁸³ Shan Wang, “*Zigong Chuzhu: Yinmi de Daiyun Wangguo* (Renting Womb: a Secret Surrogacy Kingdom),” (16 February 2017), online: *Zhongguo Xinwen Zhoukan* <<http://www.inewsweek.cn/news/cover/502.html>>.

⁶⁸⁴ *Ibid.*

could exceed 20,000 per year.⁶⁸⁵ This number does not include those who travel abroad for surrogacy and other forms of “cross-border reproductive care.”⁶⁸⁶

In fact, a significant number of Chinese couples travel overseas to seek surrogacy services because of infertility or China’s population policies.⁶⁸⁷ Joanne Zhou from the Fertility Center of Las Vegas suggests that there are approximately 1,000 Chinese couples seeking surrogacy services in the United States annually.⁶⁸⁸ Before the shift to the two-child policy, those who could conceive on their own considered turning to surrogacy overseas to avoid the consequences of violating the population policies.⁶⁸⁹ For example, government officials and employees of state-owned enterprises would face disciplinary action or even get fired if a second child were reported.⁶⁹⁰ Although seeking surrogacy overseas violates China’s population policies, in practice, the Chinese government has little way to enforce it.⁶⁹¹ Parents who prefer their newborns to have citizenship from a country with a better social welfare system, such as the United States, do not have to pay the fine associated with the population policy

⁶⁸⁵ Menglu Sheng, Congzhi Zhang & Rongde Li, “Chinese Couples Desperate for Children Turn to Illegal Surrogacy”, (30 May 2017) Caixin Global, online: <<https://www.caixinglobal.com/2017-05-30/101095787.html>>.

⁶⁸⁶ The international media tend to use “fertility tourism,” “IVF tourism,” “reproductive tourism” or “birth tourism” to refer to the phenomenon of single women and couples in China traveling to other countries in order to have babies. The term “tourism,” according to Deckha, “risks painting those who travel as pleasure- or leisure-seekers rather than patients in need.” Thus, I borrow the term “cross-border reproductive care” from Deckha to signal that single women and those who want more than two babies in China travel overseas because of the fact that China restricts their access to treatment. Deckha, *supra* note 134 at 39.

⁶⁸⁷ Alexandra Harney, “Wealthy Chinese seek U.S. surrogates for second child, green card”, *Reuters* (22 September 2013), *Reuters*, online: <<https://www.reuters.com/article/us-china-surrogates-idUSBRE98L0JD20130922>>.

⁶⁸⁸ *Ibid.*

⁶⁸⁹ *Ibid.*

⁶⁹⁰ *Ibid.*

⁶⁹¹ *Ibid.*

because there is not a process of claiming Chinese citizenship involved.⁶⁹² Also, it is not difficult for parents to claim Chinese citizenship for their children who were born overseas, as the Nationality Law of the People's Republic of China acknowledges that those who born to parents with Chinese citizenship overseas shall have Chinese nationality.⁶⁹³

The fact that “many people are seeking surrogacy services” reinforces Kailin's belief that illegal surrogacy is a good strategy to evade the population policies. In her view, seeking surrogacy is the privilege of wealthy people. As Kailin emphasizes, it is money that matters, rather than the law regarding how many children a couple can have or whether one could seek surrogacy.⁶⁹⁴ The enjoyment of having more than one child and the freedom to turn to surrogacy or other cross-border reproductive care becomes goods that people can purchase as long as they can afford it.

Some other interviewees share Kailin's belief that the major barrier for people to have more children or give birth outside marriage is the lack of money rather than the population policies. Xiaoning, a 25-year-old lesbian who is seeking gay men to enter into formality marriage,⁶⁹⁵ suggests that if she could afford the fine resulting from

⁶⁹² *Ibid*; Fazhi Zhoumo, "Zhongguo Furen Xuanze Fumei Daiyun duo Kanzhong Meiguo Guoji Beihou Liyi" (23 October 2013), *Sina News*, online.< <http://news.sina.com.cn/c/sd/2013-10-23/101428509477.shtml>>

⁶⁹³ National People's Congress, "Nationality Law of the People's Republic of China", (9 October 1980) pkulaw, online: <<http://en.pkulaw.cn/display.aspx?id=b2cecafd3bc71cabdfb&lib=law>>.

⁶⁹⁴ Interview, Kailin, *supra* note 680.

⁶⁹⁵ Liu, *supra* note 305.

childbearing outside marriage, she would not have to consider cooperating with gay men to have a baby.⁶⁹⁶

Xiaoning's cousin, Yimeng, points out that there is always a way to evade the law, especially in rural areas. Yimeng's concern is the cost of cross-border reproductive services: "there are many couples from my village travelling to the U.S. to have children in order to avoid the birth policies. I have thought about this, but it costs at least 300,000 yuan (approximately CAD 58,233) to give birth in the U.S."⁶⁹⁷ Both Xiaoning and Yimeng understand China's population policies as laws that can be evaded or violated as long as they have money.

Some women are more straightforward about the relationship between money and the evasion of the population policies. Yanning, a 28-year-old single woman in Xiamen, says that "I will consider having two or three children if I have enough money to support them. The law allows me to have two children, but I can give birth to the third one overseas or just pay the fine. I don't care about the law as long as I have enough money to pay the fine and support my children."⁶⁹⁸ Yue Shan, a 29-year-old single woman in Xiamen, also believes that "all you need to do after breaking the law is to pay the fine."⁶⁹⁹ Even those who have received formal legal training hold a very similar view

⁶⁹⁶ Interview, Xiaoning, Fuzhou, Fujian, China, September 2016. Xiaoning is a lesbian who lives with her same-sex partner in Fuzhou. She has a brother who lives with her parents in rural Fujian. She is doing a sales job for an insurance company in Fuzhou.

⁶⁹⁷ Interview, Zhang Yimeng, 20s, Fuzhou, Fujian, China, September 2016. Yimeng does not offer details about herself, as she believes she is just there to keep Xiaoning company, rather than participating in the interview.

⁶⁹⁸ Interview, Yanning, Xiamen, Fujian Province, China, August 2016. Yanning is a 28-year-old single woman who runs her own small business in Xiamen. As the only child of her family, she lives with her parents in their apartment. She self-identifies as heterosexual.

⁶⁹⁹ Interview, Yue Shan, Xiamen, Fujian Province, China, August 2016. Yue Shan is an architect in Xiamen. She lives with her mother in Xiamen after her parents divorced. She is the only child of the family. She self-identifies as heterosexual. Similarly, Yangfeng, says, "evading the birth policy is nothing. At the worst, we

with ordinary people who emphasize economic capital. Zeng Xin, a 29-year-old legal adviser who has an LL.M. degree and is currently working at a public hospital in Xiamen, tells other women in the focus group that “you can go overseas for the third baby or for assisted reproductive technologies if you can afford it. It is, indeed, against state law to have the third one or even check the sex of the baby in China. But if you have money, you can think about going to Thailand to implant the embryo that fits your expectation or giving birth to the third child there.”⁷⁰⁰ It is clear that these women rank economic capital as the most significant factor in the discussion of who is qualified to evade or resist the law.⁷⁰¹

In sum, economic capital is one of the most significant factors that my interviewees look at to evaluate whether a particular person is qualified to evade or resist China’s birth policies. While a few leftover women did mention the power of *guanxi* in evading the law, they usually emphasized that it is difficult to use *guanxi* to achieve the goal nowadays.⁷⁰² My interviewees’ emphasis on economic capital, however, does not mean that they believe wealthy people are qualified to evade or break the law and do whatever

will need to pay the fine.” Interview, Yangfeng, Interview, Yanfeng, Dehua, Fujian Province, China, July 2016.

⁷⁰⁰ Focus group, Zeng Xin, Xiamen, Fujian Province, China, October 2016. Zeng Xin is a single woman. She lives with her parents and her younger brother in their parents’ apartment in Xiamen. She self-identifies as a heterosexual woman.

⁷⁰¹ It is interesting that social capital, or social connection, is relatively less mentioned by my interviewees in the discussion of China’s population policies. Those who mentioned the idea of social capital or *guanxi* are not convinced that it is more important than money. Interview, Shujing, Xiamen, Fujian Province, China, September 2016; Focus group, Zeng Xin, *supra* note 700; focus group, Changying, Xiamen, Fujian Province, China, October 2016. Shujing is a 34-year-old recently married woman who works as a civil servant in Ningde, Fujian Province. Changying is a 28-year-old unmarried woman who runs a small business in Xiamen.

⁷⁰² Several leftover women believe that doctors today are more reluctant to violate the population policies to help people who they are connected with, unless they are very close to each other. Interview, Shujing, Xiamen, Fujian Province, China, September 2016; Focus group, Zeng Xin, *supra* note 700; focus group, Changying, *supra* note 701.

they want. It is worth reiterating that the prerequisite for these women to support the evasion and resistance of the law is that the law involved is against *qing*.

b) Qing and Responsibility

*Before the shift to the universal two-child policy, it was an obligation for government-related work units to ask their female staff to undergo an ultrasound scan to see whether they were pregnant every few months. The work units then were required to submit a report on whether their employees had complied with the population policy every six months. My supervisor, Lin, had quit her job before she gave birth to her second child in her 40s. She did this to avoid bringing trouble to our centre and colleagues. I think Lin is qualified to violate the law because she took responsibility for her action, and she has found a better job after she left our centre.*⁷⁰³

—interview, Dong, a 27-year-old doctor who works at the Center for Assisted Reproductive Technologies in Putian

*There are so many divorced women in my village. They divorced in order to avoid undergoing the ultrasound scan required by the local government every three months to check whether they are pregnant. In fact, they still live with their husbands. My neighbours got divorced before they had their third child. They had two daughters, but they really wanted a son. As soon as their son was born, they remarried. Many people in my village use this tactic. I mean, they learn from each other, especially the strategies that work. Everybody knows what is going on, but the local cadres here are reluctant to punish those who use this trick.*⁷⁰⁴

—interview, Minxia, a 33-year-old married woman in a village of Hui'an

Many people around me had managed to have two children when they were not allowed under the former one-child policy. I mean, policies from above will always be countered by strategies on the ground (上有政策·下有对策). I have heard of

⁷⁰³ Interview, Dong, Putian, Fujian Province, China, August 2016. Dong is recently married, but she still lives with her parents because her husband is doing his Ph.D. in Xiamen. She self-identifies as heterosexual.

⁷⁰⁴ Interview, Minxia, Hui'an, Quanzhou, Fujian Province, China, September 2016. Minxia is a 34-year-old married woman with three children. She lives in rural area of Quanzhou with her three kids, while her husband goes out to look for work.

*all kinds of strategies to evade the population policies. I am always confident that I can find a way to have as many children as I want.*⁷⁰⁵

—interview, Lili, a 29-year-old single woman who works for a Science and Technology Company in Xiamen

Lili and Minxia's narratives indicate the importance of the majority's attitudes toward the evasion and resistance of a particular law. If the implementation of a particular law is consistent with the majority's understandings of justice, fairness, and humanity, the majority would voluntarily use the law to govern their behaviour.⁷⁰⁶ For example, when answering the aforementioned question "have you ever heard of any laws that are unfair to leftover women," Tiantian, a 28-year-old primary school teacher, says that "I don't care about it. I think it is enough to know it is illegal to kill people and deliberately set fire to someone's house."⁷⁰⁷ On the other hand, if the majority believes a particular state law is against *qing*, they tend to avoid, dismiss, or resist state law.⁷⁰⁸ As the majority of people in China think that having more than one child is in alliance with *qing*,⁷⁰⁹ they do not consider those who evade or break the law to be irresponsible citizens, as long as they can take responsibility for their own behaviour. More importantly, people who adopt strategies to evade the law are not only supported by others but also set examples for others to follow.

⁷⁰⁵ Interview, Lili, Xiamen, Fujian Province, China, July 2016. Lili self-identifies as heterosexual. She lives in Xiamen alone, while her parents are in Quanzhou. She has an older sister and a younger brother.

⁷⁰⁶ Xibing Zhu, *Forced Attack or Outflanking Tactics?: Sociological Research on Family Childbearing Behavior with Breaching the One-Child Policy in China* (American Academic Press, 2017) at 172.

⁷⁰⁷ Interview, Tiantian, Xiamen, Fujian Province, China, July 2016. Tiantian is a bisexual woman who has been in relationship with a same-sex partner for seven years. Tiantian lives on her own in Xiamen, although her parents and younger brother also live in Xiamen.

⁷⁰⁸ Liu, *supra* note 270.

⁷⁰⁹ Zhu, *supra* note 706 at 173.

As Lili's narrative shows, it is normal for people to adopt strategies to counter state law imposed on them, and she is confident that she will also manage to evade the law if necessary.⁷¹⁰ This viewpoint is shared by some other leftover women I interviewed. Yangfeng, a 24-year-old single woman who is a retail assistant in Dehua, also suggests that "it is common for people to evade or resist the birth policies to have more than one child. There are so many ways to evade the population policies."⁷¹¹ The ways commonly identified by leftover women in my interviews include registering the "illegal" child under the household of their relatives, travelling to or hiding in other places to give birth, and getting a divorce. These strategies, together with other tactics used by people around my interviewees, assure some leftover women that they can evade or break the birth policies to achieve the goals of childbearing.

Minxia's experience provides more details on how people around her evade the population policies⁷¹² and how other people react to the evasion. As a way to implement the population policies, married women of childbearing age (between 15 to 49 years old) are requested by family planning staff members to go to conduct an ultrasound examination to check whether they are pregnant and whether their intrauterine devices

⁷¹⁰ Interview, Lili, Xiamen, Fujian Province, China, July 2016.

⁷¹¹ Interview, Yanfeng, Dehua, Fujian Province, China, July 2016. Yanfeng has two younger sisters, and the three sisters live with her parents. She self-identifies as heterosexual.

⁷¹² While we tend to use the population policies to refer to the former one-child policy and the now two-child policy, it is worth noting that they are backed by state law, such as the Law of the People's Republic of China on Population and Family Planning. The relationship between law and policy in China makes it difficult for ordinary people to distinguish policies from state law. In fact, state policies and the policies put forward by the CCP have a significant impact and usually serve as the foundation of state law. In other words, legislators need to make the law based on the policies under most circumstances. See, Zhenping Wang, *Renda Changyong Yuhui Shiyi (An interpretation of commonly used terminology by the National People's Congress)*, Hebei Chuban Chuanmei Jituan 2010.

are in place every three months, or what is called “double checks (双查).”⁷¹³ Divorced women, on the other hand, are not required to undergo examinations of this kind. Thus, some rural couples in Minxia’s village choose to get divorced in order to avoid being required to undergo ultrasounds during the wives’ pregnancy. Minxia and her villagers know exactly what is going on with these divorced villagers, but they understand their needs and desires. Thus, they tend to turn a blind eye to the evasion of the birth policies and even learn from the successful experience of those who manage to have more children than allowed.

Minxia and Lili’s legal consciousness echoes Kathryn Young’s research outcome of legal consciousness in the Hawaiian Cockfight.⁷¹⁴ As Young argues, “[a] person’s beliefs about, and attitude toward, a particular law or set of laws is influenced not only by his own experience, but by his understanding of others’ experiences with, and beliefs about, the law.”⁷¹⁵ Young uses the term “second-order legal consciousness” to describe a person’s belief about other people’s legal consciousness to stress that a person’s legal consciousness is shaped by this person’s beliefs about other people’s beliefs.⁷¹⁶ By bringing second-order legal consciousness into the discussion, Young manages to show that state law is only one layer of social ordering relevant to the construction of legal consciousness. I argue that second-order legal consciousness has been playing a

⁷¹³ Although the so-called “double checks” has not been stipulated as a legal obligation of married women in the Law of the People’s Republic of China on Population and Family Planning, it is a practice for local governments to ensure every married women of childbearing age to go through “double checks” every three months. Interview, Lizhu, Houtang Village, Xiamen, Fujian, China, October 2016. See also, Zhu, *supra* note 706 at 62.

⁷¹⁴ Young, *supra* note 502

⁷¹⁵ *Ibid* at 500.

⁷¹⁶ *Ibid* at 502.

significant role in guiding the behaviour of ordinary people in China because they usually prioritize *qing* over state law. For leftover women who refer to *qing* to judge how one should react to state law, they care most about how the majority understands fairness, justice, and humanity under a particular situation.

There is, however, an important factor deciding whether a particular person is qualified to evade or break the law—if the legal consequences involved might affect the interest of others, the person is expected to take full responsibility for her own behaviour and make sure others would not suffer because of her choice. Dong uses Lin’s story to show that the capability to avoid bringing trouble to other people is crucial in judging whether a person is qualified to ignore, or even break, state law. Under the population policies, Chinese independent non-profit institutions, such as hospitals, universities, and research institutes, have an obligation to supervise their employees to ensure they obey the population policies.⁷¹⁷ If a work unit fails to ensure its employees abide by the population policies, the leaders of the work unit, as well as the work unit itself, may be disqualified from receiving some awards and prizes.⁷¹⁸ According to Dong, Lin quit her job to protect her centre and colleagues from being criticized and punished for their

⁷¹⁷ Article 12 of the Law of the People’s Republic of China on Population and Family Planning stipulates that “villagers’ committees and urban residents’ committees shall be responsible for the implementation of the population policies. Government departments, armies, public organizations, enterprises, and institutions shall be responsible for the implementation of the population policies within the work unit.” See, “Law of the People’s Republic of China on Population and Family Planning, (1 September 2002), Standing Committee of National People’s Congress, online: <<http://www.lawinfochina.com/display.aspx?lib=law&id=2209&CGid=>>. For example, according to an agreement between the Family Planning Department of Southern Medical University and all other departments at the University, if the staff members of a work unit break the population policy, the head of the work unit will need to face punishment. Jisheng Ban, “Nanfang Yike Daxue Jihua Shengyu Mubiao Guanli Zerenshu,” Family Planning of Southern Medical University (30 December 2012), available online: <<http://portal.smu.edu.cn/jsb/info/1004/1017.htm>>.

⁷¹⁸ See, for example, Article 50 of the Regulation of Fujian Province on Population and Family Planning, available online: <http://tjq.fuzhou.gov.cn/xjwz/zwfw/kstd/fn/zcfg/201804/t20180409_2177506.htm> ; Gallagher, *supra* note 25.

failure to stop her.⁷¹⁹ By emphasizing that Lin took responsibility for her actions and managed to find a better job after she quit, Dong tries to justify Lin's choice of breaking the population policies. It is reasonable to assume that if Lin's violation of state law brought unfavourable consequences to her workplace and colleagues, Dong might have a very different attitude toward Lin's violation of the law for a child.

My interviewees have stressed the importance of economic capital, *qing*, and the need to ensure the legal consequence caused by the individual would not affect others. I will reiterate that while each leftover woman I interviewed might have focused on one of the three aspects in the discussion, the ideal situation for an individual to be qualified to evade or violate the law is when all these three requirements are met.

Conclusion

This chapter aims to prompt law and society scholars to pay more attention to legal consciousness in China under non-dispute situations. The main contribution of this chapter is to demonstrate that social attitudes and family relations play a significant role in shaping the legal consciousness of leftover women in my interviews. This finding helps explain why some leftover women hold indifferent attitudes toward what state law says about unmarried women. Leftover women's indifferent attitude toward state law does not translate into the unimportance of state law in shaping leftover women's choices in marriage and childbearing. In fact, it is state law's denial of childbearing outside

⁷¹⁹ Interview, Dong, *supra* note 703.

marriage that pushes some leftover women to consider working around or evading state law.⁷²⁰

I have stressed that it is problematic to blame legal culture for leftover women's lack of interest in learning more about state law or advocating for legal changes to empower women; also, we should not translate it into "low legal consciousness" or "a lack of legal knowledge." Rather, law and society scholars need to look at multiple levels of social ordering in shaping leftover women's legal consciousness. By bringing *qing* into the picture, I have shown how leftover women strategically navigate through different layers of normative orders to make choices.

In addition, this chapter tries to facilitate a better understanding of legal consciousness in China. By examining leftover women's perceptions of the legal process and local customs of entering marriage, I have provided some insights into how ordinary people in China understand facilitative law. The examination of leftover women's narratives of employment discrimination shows that state law's ineffectiveness in dealing with one issue would discourage its citizens from believing in the power of state law in other relevant aspects of their lives. Through exploring queer leftover women's perceptions of the legalization of same-sex marriage, I demonstrate how the emphasis on family relations may discourage ordinary people from demanding rights from the state.

I then shift from facilitative and rights-creating state law to coercive state law by examining leftover women's perceptions of China's population policies. I demonstrate that economic capital is the most significant factor in deciding who is qualified to evade

⁷²⁰ For more information on the impact of state law on ordinary Chinese people's evasion of it and their invocation of non-state orders, see, for example, Zhu, *supra* note 136.

or resist the population policies that are against *qing*. To be qualified to break China's birth policies under the requirement of *qing*, one is also expected to take responsibility for all the legal consequences resulting from the violation of the law.

Chapter 6: Filial Piety and the Changing *Qing Li*

Xiaomiao, a 29-year-old civil servant in Fuzhou, is a slim woman with big eyes.

Xiaomiao does not think she is ready for a relationship, let alone finding a marital partner whom she does not know very well and spending the rest of her life with him. She refuses to change her lifestyle and prefers to be single, and ideally, a single mother by choice.

Xiaomiao tells me that “I don't think I can be together with a man. It is too scary. My relative has a friend who really liked me, and his father offered to buy me a house and a car if I agreed to marry the son, but I would rather take public transportation. I have never been in a relationship.”⁷²¹

Xiaomiao stops for a few seconds before she becomes pessimistic about her future.

Xiaomiao is worried about the difficulty of living on her own in the next few decades in China:

If you remain single when you reach your 30s, your colleagues and relatives are going to gossip about you. There is a saying that “when a woman is in her 20s, she is like a flower; but if she is in her 30s, she is like leftover fibre from homemade soy milk (女人二十一枝花 · 女人三十豆腐渣).” I am fine with being leftover fibre. But I am afraid that I may change my mind next year when I reach 30. Maybe I will marry whomever I meet at that time in order to have a child and make my parents happy and relieved. My parents are always concerned that I don't have a high income, and I will need a man to take care of me. I think I will eventually get married to reduce their anxiety. I mean, if I get a promotion and a better salary, my parents will not have to worry that much about me. When their friends and relatives ask about my marital status, my parents can tell them, “our daughter has taken very good care of herself and has a very promising career, so she doesn't really need a man.” I totally understand that my parents are worried about the miserable life a single woman would have. I will get married to fulfill their

⁷²¹ Interview, Deng Xiaomiao, Fuzhou, Fujian Province, China, September 2016. Xiaomiao leaves her hometown, Ningde, an area that produces mushroom, tea, and large quantities of fruits, to work in the capital city of Fujian Province. Xiaomiao has a younger brother who is now doing his undergraduate. Her parents live in Ningde, while Xiaomiao lives in a rented apartment in Fuzhou. Her parents plan to buy her an apartment in Fuzhou soon. Although Xiaomiao is afraid of being in a relationship with men, she self-identifies as heterosexual.

*expectations and keep them from being anxious...I am grateful for all the support from my parents, and I am letting them control my life. Yes, I really have this kind of belief.*⁷²²

There is a shy smile on Xiaomiao's face when she says she really believes her parents should control her life. She explains that she attaches great importance to filial piety, and her most important identity is being the daughter of her parents: "if I get married, I am doing it for the happiness of my parents, and of course, for a baby. But I don't care too much about who my marital partner is going to be. That is why the opinions of my parents on marital partners are very important to me. I do it for them."⁷²³ Although her idea of marrying for the interest of parents is somewhat common in my interviews with leftover women, I still feel confused about her view that parents should control her marriage. Xiaomiao's positive personality makes it difficult for me to believe that she will passively let her parents decide her life.

Xiaomiao's emphasis on filial piety in the process of making marital choices⁷²⁴ and childbearing reflects how leftover women understand filial piety and why filial piety has still been playing such an important role in shaping leftover women's beliefs and choices. In this chapter, I will demonstrate that my interviewees' perceptions of filial piety have been shifting away from the traditional norms of filial piety, which require unconditional obedience and submission to parents. Instead, the leftover women I interviewed tend to emphasize emotional support and intergenerational intimacy, more so than financial

⁷²² *Ibid.*

⁷²³ *Ibid.*

⁷²⁴ I would like to reiterate that as same-sex marriage has not been legalized in China, marriage in this chapter refers merely to heterosexual marriage.

support to parents. In fact, it is a tendency for them to provide emotional support to their parents in return for the older generation's financial support and help with housing and childcare.

In the remainder of this chapter, I will first offer a brief overview of the transformation of the meanings and practices of filial piety in Chinese society, after which I will demonstrate how leftover women in my interviews understand filial piety. The purpose of this chapter is to challenge the assumptions among some scholars that leftover women fulfill filial piety out of oppressive patriarchal culture in China, with the aim to question the argument that it is culture to blame for leftover women's suffering (see chapter two); and to demonstrate how the changes in people's understanding of filial piety may—if not have already—lead to legal changes regarding filial piety and the Chinese state's promotion of marriage through other means such as the media campaign. It may appear on the surface that leftover women's understandings of filial piety have little to do with how state law operates to govern their choices in marriage and childbearing. This chapter plans to invite further discussions on the complicated relationship between state law and filial piety.

Filial piety is powerful in pushing adult children to listen to their parents, which makes it convenient for the state to shape the younger generation's choices without relying on its legal system. According to the traditional norms of filial piety, which I will explain in part one, adult children should pay unconditional submission and obedience to parents. Nevertheless, the meanings of filial piety are shifting and evolving all the time to adapt to social changes. In part two, we will see that my interviews indicate a shift away from the traditional notions of filial piety. My interviewees participated in the

construction of new meanings of filial piety based on exchange of love and intergenerational intimacy, which may challenge the ways the Chinese state benefit from people's compliance with traditional norms of filial piety. The shift away from traditional notions of filial piety, however, does not necessarily lead to less pressure to marry for leftover women. In the concluding part of this chapter, I will discuss how the way leftover women understand filial piety would impose more pressure on them to marry and give birth than the requirements of traditional norms of filial piety.

I. Filial Piety as the Core Value and the Law

According to a well-known Chinese proverb, “among the various forms of virtuous conduct, filial piety comes first (百行孝为先).”⁷²⁵ In imperial China, filial piety (孝) was a central value of family life and a lynchpin for the entire social order. The Chinese character for filial piety, *xiao* (孝), is composed of two characters: the character *lao* (老, the elder) on the top and *zi* (子, the son) at the bottom. As Charlotte Ikels suggests, “this ideograph communicates multiple messages of which the officially preferred one is that the old are supported by the young (er generation).”⁷²⁶ It was an obligation for children to respect their parents unconditionally and prioritize parental needs, wishes, and old-age support over their own interests.⁷²⁷ Before the end of the Chinese imperial system in

⁷²⁵ In Confucius's view, filial piety is the key to other virtues developed later in life. Confucius, *Analects: With Selections from Traditional Commentaries*, translated by Edward Slingerland (Hackett Publishing, 2003) at 238.

⁷²⁶ Charlotte Ikels, ed, *Filial piety: practice and discourse in contemporary East Asia* (Stanford, Calif: Stanford University Press, 2004) at 3.

⁷²⁷ *Ibid* at 106.

1911, the Chinese state had promoted the Confucian doctrine of filial piety, aided by stories compiled by Confucian scholars, among which the *Twenty-four Filial Exemplars* (二十四孝) put forward by Guo Jujing during the Yuan dynasty was one of the most popular.⁷²⁸ There are three important aspects of traditional norms of filial piety: (1) financial support and care by adult children for elderly parents; (2) unconditional obedience and respect to the senior generation; (3) the continuation of the family lineage through reproduction and the provision of ritual services to ancestors.⁷²⁹

Unsurprisingly, all of the filial children's 24 stories in Guo's book were sons.⁷³⁰ Indeed, under the Confucian norm and practice of filial piety, support and care of the aging parents were the responsibility of sons.⁷³¹ Available ethnographic evidence from nineteenth- and early-twentieth-century Chinese communities shows that it was often the case for ageing parents to live with their married sons. The sons, daughters-in-law, and grandchildren took care of the older generation. Daughters would fulfill the same obligation before marriage, but they would turn to support their husbands' parents once they got married.⁷³² As married daughters were not expected to provide their parents with

⁷²⁸ Zhanlian Feng, "Filial Piety and Old-age Support in China: Tradition, Continuity, and Change" in Xiaowei Zang & Lucy Xia Zhao, eds, *Handbook of the Family and Marriage in China* (Cheltenham & Northampton: Edward Elgar Publishing, 2017) 266 at 267.

⁷²⁹ *Ibid.*

⁷³⁰ For more information on the Twenty-four Filial Exemplars, see <http://pages.ucsd.edu/~dkjordan/chin/shiaw/FilialExemplarsEnglish.pdf>.

⁷³¹ Feng, *supra* note 728 at 267.

⁷³² Ikels, *supra* note 726 at 106.

old-age support, people believed that “a married out daughter is like spilled water (嫁出去的女儿泼出去的水).”⁷³³

The meanings of filial piety are subject to the ever-changing social environment within which people understand and practice it. The New Culture Movement in the late 1910s,⁷³⁴ the Cultural Revolution,⁷³⁵ the strict enforcement of the one-child policy from 1979 to 2015,⁷³⁶ and the process of modernization, urbanization and rural-urban migration in Chinese society⁷³⁷ all contribute to the constant evolution of the definition of

⁷³³ Ju-Ping Lin & Chin-Chun Yi, “Filial norms and intergenerational support to aging parents in China and Taiwan” 20 *International J of Social Welfare* 109 at 111. Weiguo Zhang, “‘A Married out Daughter Is like Spilt Water’? Women’s Increasing Contacts and Enhanced Ties with Their Natal Families in Post-Reform Rural North China” (2009) 35:3 *Modern China* 256.

⁷³⁴ Dating from roughly 1915 to 1923, many radicals took part in the New Culture Movement, which is also known as the May Fourth Movement and called for the creation of a new Chinese culture based on western standards. These New Culture Movement radicals seized upon family reform as the key to unlocking the potential of China’s youth and rebuilding the shattered nation. These radicals “accused the traditional patriarchal family of sacrificing China’s youth on the altar of filial obligation, teaching them dependency, slavishness, and insularity, and robbing them of their creative energy...they advocated the Western conjugal family ideal (*xiao jiating*, literally ‘small family’), an ideal that promoted free marriage choice, companionate marriage, and economic and emotional independence from the family (*da jiazhu*, literally the ‘large family’).” Susan L Glosser, *Chinese visions of family and state, 1915-1953* (Berkeley: University of California Press, 2003) at 3.

⁷³⁵ During the Cultural Revolution, young people were encouraged to report on parents who might then be accused of counter-revolutionary activity. Ironically, research has found that although the traditional notion of filial piety lost its ideological and institutional ground when Confucian ideology was attacked during the Mao era, family obligation itself was left intact. It is found that between 1949 and the late 1970s, Chinese parents in rural areas believed that their children were their most reliable source of support for their elderly lives. In fact, corruption and the difficulties in everyday life during the Maoist era forced people to rely on family members to survive. Francine M Deutsch, “How Parents Influence the Life Plans of Graduating Chinese University Students” (2004) 35:3 *J of Comparative Family Studies* 393 at 396. Xiaoying Qi, “Filial Obligation in Contemporary China: Evolution of the Culture-System” (2015) 45:1 *J for the Theory of Social Behaviour* 141 at 146. Susanne Yuk-Ping Choi & Yinni Peng, *Masculine Compromise: Migration, Family, and Gender in China* (Berkeley: University of California Press, 2016) at 129.

⁷³⁶ Deutsch, for example, suggests that “The only children seemed to feel especially responsible for their parents’ happiness because of their singleton status.” Francine M Deutsch, “Filial Piety, Patrilineality, and China’s One-Child Policy” (2006) 27:3 *J Family Issues* 366.

⁷³⁷ For more information, see, for example, Elisabeth Croll, “The Intergenerational Contract in the Changing Asian Family” (2006) 34:4 *Oxford Development Studies* 473; Chau-Kiu Cheung & Alex Yui-Huen Kwan, “The Erosion of Filial Piety by Modernisation in Chinese Cities” (2009) 29:2 *Ageing & Society* 179.

filial piety. Both the older and younger generations in China have reconsidered filial piety and understand it differently from what the traditional norms require.

Recent studies have identified two main changes in people's understandings of filial piety: (1) the shift away from unconditional obedience; and (2) the expectations for daughters to fulfill filial piety. Increasingly, people's perceptions of filial piety have focused more on filial care out of love for parents, rather than on the traditional emphasis on unconditional submission and obedience to parents. A 2018 study on older Chinese people's interpretation of filial piety shows that elderly parents in China hold less authoritative but more reciprocal stances toward filial piety in today's China.⁷³⁸ Similarly, Peng Du's research suggests that although the younger generations in today's China still favour the idea of filial piety, they tend to be critical of the traditional norms of filial piety, or Guo Jujing's 24 classic models of filial piety.⁷³⁹ While Guo emphasized the need for sons to sacrifice themselves to take care of their parents, the younger generation has started to criticize this one-sided view of filial piety for its ignorance of the roles and responsibilities of parents.⁷⁴⁰ According to Du, the younger generation stresses mutual respect and also expects the older generation to give them a hand whenever necessary; at the same time, although they still believe they should take care of

⁷³⁸ Yuan Yuan Fu, Yuebin Xu & Ernest Wing Tak Chui, "Development and Validation of a Filial Piety Scale for Chinese Elders in Contemporary China" (2020) 90:2 *International J of Aging & Human Development* 176.

⁷³⁹ For more information on the Twenty-four Filial Exemplars, see <http://pages.ucsd.edu/~dkjordan/chin/shiaw/FilialExemplarsEnglish.pdf>.

⁷⁴⁰ Peng Du, "Intergenerational solidarity and old-age support for the social inclusion of elders in Mainland China: the changing roles of family and government" (2013) 33:1 *Ageing & Society* 44 at 57.

their ageing parents, they call for the Chinese state to provide social security system and other kinds of financial support to help them fulfill their filial piety.⁷⁴¹

After the implementation of the former one-child policy, one significant change is that filial duty has been extended to daughters in contemporary Chinese society.⁷⁴² As a result of China's one-child policy, many Chinese families ended up having no sons. These parents may have had to rely on their only daughter for elderly support.⁷⁴³ Weiguo Zhang suggests that the one-child policy has had the unintended consequence of strengthening relations between married daughters and their birth parents.⁷⁴⁴ Zhang argues that young married women in today's China have increased autonomy, and therefore, they can use this autonomy to strengthen ties with their natal families to improve their social and economic situation; also, strengthen ties with natal families may invite increasing responsibility to take care of their birth parents.⁷⁴⁵ Some Chinese scholars found that in urban China, married daughters, especially those who live with parents, provide more financial support to parents than married sons do.⁷⁴⁶

The Chinese state also expects daughters to take up the filial responsibility traditionally required of sons.⁷⁴⁷ During the Chinese New Year Season in 1999, the song *Visit Your Parents Often* was introduced in the nationally broadcast Chinese New Year's

⁷⁴¹ *Ibid* at 57–8.

⁷⁴² Fu et al, *supra* note 738.

⁷⁴³ Liu, *supra* note 270.

⁷⁴⁴ Zhang, *supra* note 733.

⁷⁴⁵ *Ibid* at 258.

⁷⁴⁶ Yu Xie & Haiyan Zhu, "Do Sons or Daughters Give More Money to Parents in Urban China?" (2009) 71:1 *J of Marriage & Families* 174 at 174.

⁷⁴⁷ Edward Wong, "A Chinese Virtue Is Now the Law", (3 July 2013), *NY Times*, online: <<http://cn.nytimes.com/china/20130703/c03parents/en-us/>>.

Gala to encourage young people to bring their spouses and children to visit their parents often. According to Vanessa Fong, “the song implied that its exhortation for adult children to visit their parents applied equally to daughters and sons.”⁷⁴⁸

At the same time, the Chinese state legislated filial piety and invoked relevant laws and policies to require adult daughters to provide financial and emotional support together with sons. In May 2013, the Chinese state legislated filial piety by making it a legal obligation for adult children to provide emotional support to elderly parents who reach the age of 60 under the Elderly Law.⁷⁴⁹ Right after the Elderly Law came into effect on 1st July 2013, the first court decision of its kind in China was made on the same day to require a daughter to pay regular visits to her mother, who was 77-years-old at that time.⁷⁵⁰ Following this first court decision, local courts across China have given similar decisions based on the Elderly Law. For example, the first court decision made in Beijing also ordered two daughters to visit their elderly father and share the obligation to support him financially with their brothers.⁷⁵¹ Thus, adult daughters in China can no longer use

⁷⁴⁸ Fong, *supra* note 85 at 134.

⁷⁴⁹ “Law of the People’s Republic of China on the Protection of the Rights and Interests of the Elderly (2015Amendment)”, (24 April 2015), Standing Committee of the National People’s Congress, online: <<http://en.pkulaw.cn/display.aspx?cgid=252608&lib=law>>.

⁷⁵⁰ Josh Chin, “China Filial Piety Law Draws First Blood”, (2 July 2013), online: *WSJ* <<https://blogs.wsj.com/chinarealtime/2013/07/02/chinas-new-filial-piety-law-draws-first-blood/>>.

⁷⁵¹ Yin is an elderly man and a father of six. He moved to Beijing to join his adult children in 1994. In 2013, Yin sued his two daughters and requested them to visit him once a week and provide financial support together with his sons. Based on the Law on the Protection of the Rights and Interests of the Elderly enacted in 2013, the People’s Court of Changping decided that Yin’s two daughters should visit Yin once a month and share the obligation to support Yin financially together with four other adult children of Yin. The judge told *Beijing Morning Post* that if the two daughters have not fulfilled their legal obligation, Yin could apply for administrative enforcement. According to the judge, the court could impose a fine or punishment of detention if the two daughters refuse to fulfill their duty under this circumstance. For more information on this case, see, for example, Xin He, “Beijing Shoupan Zinv Chang Huijia Kankan, Ju bu Zhixing Huo Bei Juliu”, (21 December 2013), *Beijing Morning Post*, online: <http://www.ce.cn/xwzx/xinwen/jsyw/201312/21/t20131221_1968666.shtml>.

the metaphor of “spilled water” as an excuse to refuse to take care of ageing parents physically and emotionally.

The Elderly Law was passed at a time when the process of modernization and urbanization in China posed a threat to the fulfillment of filial piety among young people, especially those who have moved away from their ageing parents or who are busy with work.⁷⁵² As many young people have left their rural homes to work in urban areas, elderly parents are left behind in an empty-nested household, within which they are not taken care of by their adult children who seek work away from home.⁷⁵³ These elderly parents are referred to as empty-nested elderly (空巢老人). The lack of time, energy, and money to visit and support the elderly is a particular problem for those who are the only child of their family. Some of my interviewees refer to this problem as “*xin you yu er li bu zu* (心有余而力不足),” meaning that one’s ability falls short of one’s ambition: while adult children are willing to fulfill their filial piety, some find it difficult to pay regular visits⁷⁵⁴ to their parents and take care of them both financially and emotionally.⁷⁵⁵

The year before the announcement of the Elderly Law, the All-Women’s Federation of China, together with China’s National Bureau of Senior Affairs, put forward the New Twenty-four Filial Exemplars in 2012, urging adult children to pay regular visits to

⁷⁵² Wong, *supra* note 747.

⁷⁵³ Choi & Peng, *supra* note 735 at 127.

⁷⁵⁴ To be sure, people understand “regular visits” differently. Even the Elderly Law has not specified what “regular visits” mean. The lawmakers deliberately left the space for judges to decide on a case-by-case basis. For more information, see Chuangui Fan, “Wudu ‘Chang Huijia Kankan’ Yanmo Lifa Zhenshi Jiazhi,” (4 July 2013), *Fazhil Daily*, online:

<https://www.chinacourt.org/article/detail/2013/07/id/1021445.shtml>

⁷⁵⁵ For more information on the difficulties for adult children to pay regular visits to parents, see, for example, Shan Guo, “Zinv Weishenme Buyuan ‘Chang Huijia Kankan?’” (20 July 2013), *Nanfang Daily*, online: <<http://jingji.cntv.cn/2013/07/20/ARTI1374278199770824.shtml>>.

parents, spend holidays with parents as often as possible, offer regular financial support, teach parents how to use the Internet, and even help parents to realize their dreams, etc.⁷⁵⁶ The new version aims to encourage more adult children to keep their parents happy in their golden years.⁷⁵⁷ The New Twenty-four Exemplars conveys the Chinese state's expectations of adult children to take care of ageing parents, both financially and emotionally.

It may appear on the surface that the Chinese state tries to define filial piety in a way that emphasizes emotional support. Case decisions made based on the Elderly Law in the past few years and the media coverage of these cases, however, have revealed that what the Chinese state aims to achieve is to romanticize intergenerational ties and emphasize support from family members to the older generation.⁷⁵⁸ The state's legislating of filial piety and its promotion of the New Twenty-four Filial Exemplars reflect its effort to guide the ways ordinary people understand filial piety. To a large extent, the state imposes the burden of maintaining harmonious family relations exclusively on adult children.⁷⁵⁹ While it seems legislating filial piety has little to do with the state's promotion of marriage, the state's emphasis on adult children's unconditional obligation to maintain harmonious family relations makes it legal for parents to interfere in adult children's choices in marriage and childbearing. In other words, by legislating filial piety, the Chinese state managed to impose the legal obligation of providing emotional support

⁷⁵⁶ For a full list of the new exemplars, see, "A Modern Take on Filial Piety - All China Women's Federation", online: <<http://www.womenofchina.cn/womenofchina/html1/features/family/14/4544-1.htm>>.

⁷⁵⁷ Andrew Jacobs & Adam Century, "As China Ages, Beijing Turns to Morality Tales to Spur Filial Devotion", (8 September 2012), New York Times, online: <<https://cn.nytimes.com/china/20120908/c08parents/en-us/>>.

⁷⁵⁸ For more information, see Liu, *supra* note 126.

⁷⁵⁹ *Ibid.*

on adult children through making unconditional submission and obedience a legal duty for them. The Elderly Law's emphasis is not on the exchange of love between the two generations, but rather on forcing the younger generation to be unconditional forgiving and caring to their parents.

Despite the fact that Chinese society has been undergoing dramatic social, cultural, and economic changes, filial piety still serves as the guiding principle of relations between parents and adult children.⁷⁶⁰ Several studies have supported Chung-fang Yang's argument that although the hierarchical nature of parental authority has been challenged in China, fulfilling parents' wishes and supporting them is still a strong value.⁷⁶¹ Francine Deutsch's investigation of parental influence on the life plans of Chinese university students found that collective family values survive despite modernization.⁷⁶² Harriet Evans argues that far from diminishing under market reform, a powerful sense of filial responsibility to parents ran through the narratives of many of her interviewees across their differences of age and generation.⁷⁶³ In short, there is a consensus among scholars that the emphasis of filial piety continues to be a dominant characteristic of family relationships between parents and adult children.

As filial piety remains the core value of the Chinese family system,⁷⁶⁴ it plays a significant role in shaping people's choices in life-changing events such as marriage,

⁷⁶⁰ See, for example, Stevi Jackson & Jieyu Liu, "The social context of ageing and intergenerational relationships in Chinese families" (2017) 4:1 *J of Chinese Sociology* 2 at 2.

⁷⁶¹ Chung-fang Yang, "Familism and development: An examination of the role of family in contemporary China mainland, Hong Kong and Taiwan" in Durganand Sinha & Henry Kao eds, *Social Values and Development: Asian Perspectives* (Thousand Oaks: Sage Publications, 1988) 93.

⁷⁶² Deutsch, *supra* note 735.

⁷⁶³ Evans, *supra* note 266 at 169.

⁷⁶⁴ Xie & Zhu, *supra* note 746 at 174.

childbearing, education, and career development.⁷⁶⁵ As one student in Fengshu Liu's study on intergenerational relationships says, "I will not consider it (filial duty) a burden because that is what I *should* do. I will not desert my parents even if this means I will have to give up some career prospects for myself."⁷⁶⁶ Another interviewee of Liu emphasized that her future husband should have good material standards and substantial income in order to help provide better support to her parents.⁷⁶⁷ Liu suggests that the student has this practical consideration in order to make her filial obligations easier to satisfy.⁷⁶⁸

My interviews with leftover women also reflect a strong linkage between filial piety and choices in marriage and childbearing. In what follows, I will discuss how leftover women in my interviews understand filial piety as a level of social ordering and how their understandings of it affect the way they make choices in marriage and childbearing.

II. The Understandings of Filial Piety among Leftover Women

It is a tendency for recent research on filial piety to go beyond the common practice of confining the discussion of filial piety to caring for family elders and include the examination of the emotional aspects.⁷⁶⁹ The relationship between filial piety and

⁷⁶⁵ See, for example, Evans, *supra* note 266; Fengshu Liu, "Negotiating the filial self: Young-adult only-children and intergenerational relationships in China" (2008) 16:4 *Young* 409.

⁷⁶⁶ Liu, *supra* note 765 at 420.

⁷⁶⁷ *Ibid.*

⁷⁶⁸ *Ibid.*

⁷⁶⁹ See, for example, Kuang-Hui Yeh et al, "Filial piety in contemporary Chinese societies: A comparative study of Taiwan, Hong Kong, and China" (2013) 28:3 *International Sociology* 277; Eadaoin K P Hui et al, "Explaining Chinese students' academic motivation: filial piety and self-determination" (2011) 31:3

women's choices in marriage and childbearing, however, has attracted little attention from scholars, with the exception of Evans's 2008 research on the relationships between mothers and daughters and To's 2015 research on leftover women's strategies to balance their own choices with fulfilling filial obligations.⁷⁷⁰

Evans found that unmarried urban women in China often emphasize the need to show their gratitude to mothers by living up to their parents' desires that they marry appropriately and have children. The focus of Evans' research is on how a mother's self-sacrifice for their children motivates daughters to consider marrying and having children.⁷⁷¹ Evans has suggested that for the younger generation of daughters in her interviews, having a child is a way to respond to their mothers' desires to repay the mothers' sacrifice and hardship.⁷⁷² Evans has also documented that daughters in her research understand marriage as a relationship associated with the notion of family and responsibilities to parents.⁷⁷³

Evans supports Vanessa Fong's finding that the power of guilt motivates filial piety.⁷⁷⁴ The guilt mainly comes from parents' sacrifice for children and the suffering and hardship parents have experienced. In her study of filial duty and parental investment, Fong has shown that many parents she interviewed believed "they were suffering so that

Educational Psychology 377; Liu, *supra* note 765; Jie Xu, "Filial piety and intergenerational communication in China" (2012) 18:1 J of International Communication 33.

⁷⁷⁰ Evans, *supra* note 266; To, *supra* note 4.

⁷⁷¹ Evans, *supra* note 266 at 188–93.

⁷⁷² Evans suggests that although the younger women in her research did not know much about how their parents suffered during the Cultural Revolution, "a perception of parental suffering and hardship heightened their gratitude for the energy, hard work, and emotional and material resources their parents invested in their education." *Ibid* at 188-190.

⁷⁷³ *Ibid* at 179–184.

⁷⁷⁴ *Ibid*; Fong, *supra* note 85 at 143.

their children would have a better life.” According to Fong, many low-income parents sacrifice themselves to pay for their children’s needs by skimping on their own food, healthcare, and clothing, as well as doing exhausting work to support their children. Thus, children tend to feel guilty due to their strong sense of filial obligation to repay their parents. Evans agrees with Fong that parental suffering and hardship appears as a source of encouragement and inspiration and motivates daughters to “give something back” to parents. The “something,” according to Evans, was often associated with having a child as a way to respond to the mother’s desires.⁷⁷⁵

To’s research focuses on how leftover women balance their marital choices with their filial obligations. Without explicitly explaining how leftover women define filial obligations, To suggests that intergenerational relations in China have shifted from familialism to individualism because of the influence of the May Fourth Movement, the New Marriage Law of 1950,⁷⁷⁶ and other relevant policies.⁷⁷⁷ In her view, parents tend to intervene too much in their children’s lifestyle choices and deprive them of any autonomy in their own personal lives.⁷⁷⁸ To refers to Shannon May’s research in a poor Northeastern Chinese village and suggests that it often leads to devastating results when parents seek to control their daughters’ marital choices.⁷⁷⁹ Thus, To concludes that leftover women adopt various filial strategies to “find the most satisfactory balance

⁷⁷⁵ Evans, *supra* note 266 at 188–190.

⁷⁷⁶ To, *supra* note 4 at 2. The 1950 Marriage Law officially abolished arranged marriages and granted all individuals the right to choose their own marital partners.

⁷⁷⁷ *Ibid.*

⁷⁷⁸ *Ibid* at 3.

⁷⁷⁹ *Ibid.*

between asserting one's own choices and fulfilling filial obligations."⁷⁸⁰ To's approach blames leftover women's parents for constraining leftover women's autonomy because of the intergenerational differences in values. In my view, To fails to capture the fact that sometimes leftover women themselves are the ones who decide to prioritize family interests over individual autonomy.⁷⁸¹

My research adds to this pre-existing literature by investigating how leftover women in China participate in constructing the meanings of filial piety and how they understand their filial obligations in a way that is different from the traditional norms of filial piety and the notion of filial piety that China's formal legal system has been promoting. In this part, I will demonstrate the following three characteristics of the perceptions of filial piety among my interviewees: (1) they tend to challenge the traditional norms of filial piety that require adult children to pay unconditional obedience to parents; some interviewees even question the need to repay parents for bringing up the adult children; (2) my interviewees stress the importance of communication and emotional intimacy between the two generations; and (3) while traditional norms of filial piety emphasize financial and material support, more and more parents in today's China are willing to provide financial support and childcare in return for adult children's emotional support and the flourishing of the whole family.

A. Relinquishing Unconditional Obedience and Submission

⁷⁸⁰ *Ibid* at 2.

⁷⁸¹ For more information on how leftover women understand the self and the relationship between the self and the family, see Chapter Five of this dissertation.

I always believe being filial to parents is “in line with the principles of heaven and earth(天经地义).” My parents are very supportive. They spend so much time and energy bringing me up. Of course, I will have to treat them very well and take good care of them when they are old. It is a mutual way of expressing love for each other. If parents do not treat their children well and even abuse them, I do not think the children need to be filial to parents. An adult child does not need to be filial to abusive parents, no matter what traditional norms of filial piety require.⁷⁸²

—Interview, Fangxin, a 30-year-old married woman in Xiamen

I have always been questioning why the younger generation should show respect to the older generation and follow what they tell us to do. They are not always right about everything. I am against the idea that a child should show blind obedience to parents. I guess filial piety is more about filial respect instead of filial obedience. The older generation deserves respect not because of their age but because of their behaviour.⁷⁸³

—Interview, Sanxian, a 28-year-old who was recently engaged in Dehua County

Filial piety is not about filial obedience. An adult child should know how to judge whether her parents love her or they just want to control her in the name of love. Being filial means that when a child feels the love from her parents, she practices filial piety out of unconditional love for her parents, and this has nothing to do with moral obligations.⁷⁸⁴

—Interview, Hexu, a 38-year-old lesbian in Guangzhou

Fangxin, Sanxian, and Hexu interpret filial duty in a very different way from the traditional definition of filial piety that emphasizes patriarchal and hierarchical relationships between parents and children. Their understandings of filial piety represent

⁷⁸² Interview, FangXin, Xiamen, Fujian Province, China, July 2016. Fangxin is a 30-year-old woman who got married recently after being under pressure to marry from her parents for several years. She works as a civil servant in Xiamen, while her parents and husband live in Zhangzhou, a city that is about 60km from Xiamen. She is the only child of her family, and her parents just bought an apartment for her in Xiamen. She self-identifies as heterosexual, although she does not think it is necessary to get married and have a child.

⁷⁸³ Interview, Sanxian, Dehua County, Fujian Province, China, July 2016. Sanxian is a civil servant who works in her hometown of Dehua. She has an elderly sister and a younger brother. She is recently engaged, but she still lives with her parents. She self-identifies as heterosexual.

⁷⁸⁴ Interview, Hexu, Guangzhou, Guangdong Province, China, October 2016. Hexu is a 38-year-old woman who lives with her same-sex partner in Guangzhou. She has been in a relationship with her partner for nine years. She is an English teacher by day and a very active volunteer for an NGO aiming to empower gay and lesbian adult children in Guangzhou. She is the only child of her family. She self-identifies as bisexual.

the common perception of filial piety among my interviewees: it is an exchange of love between two generations, and the continuity of the exchange highly depends on how parents have treated their daughters.⁷⁸⁵ They no longer consider unconditional obedience as a requirement of being filial and even stress the importance of being caring and supportive but not obedient (孝而不顺). Yan Yunxiang's research on elderly support in rural China suggests that intergenerational reciprocity, which requires a consistent exchange of love, has replaced unconditional filial piety, especially among the younger generation.⁷⁸⁶ Younger villagers in Yan's interviews also hold the view that if the parents do not treat them well, they can reduce the scope and amount of generosity to their parents.⁷⁸⁷ Yan argues that the absence of obedience has played an important role in redefining filial piety.⁷⁸⁸

Yan suggests that the dear and close relations between parents and adult children in current Chinese society means that it no longer requires unconditional obedience to the senior generation.⁷⁸⁹ Instead, family resources tend to flow downward, and the focus has shifted from the ancestors to the younger generations, or what Vanessa Fong calls "the only hope."⁷⁹⁰ This is partly, if not mainly, because the strict implementation of the one-

⁷⁸⁵ For example, Hongtian, a 26-year-old single woman who works for a leading real estate development company in Fuzhou, suggests that "parents have provided me with a very good environment to grow up, and I am grateful for their support. I work super hard because I hope I could help them live a better life in the future." Interview, Hongtian, Fuzhou, Fujian Province, China, September 2016. Hongtian is the only child of her family. She self-identifies as bisexual.

⁷⁸⁶ Yunxiang Yan, *Private life under socialism: love, intimacy, and family change in a Chinese village, 1949-1999* (2003) at 177-78.

⁷⁸⁷ *Ibid* at 178.

⁷⁸⁸ Yan, *supra* note 124 at 245.

⁷⁸⁹ *Ibid*.

⁷⁹⁰ Yan, *supra* note 124; Fong, *supra* note 85.

child policy made the only child in the family occupy the central position in the hearts and minds of parents and even grandparents.⁷⁹¹ Deutsch suggests that the child-centred approach may have led to closer emotional ties between parents and children than the traditional norm of filial piety required.⁷⁹² According to Deutsch, “the only children seemed to feel especially responsible for their parents’ happiness because of their singleton status.”⁷⁹³ In other words, the younger generation’s strong sense of filial piety comes from a closer emotional tie with parents and the support they received from parents, rather than stemming from the belief of traditional norms of filial piety.

Fangxin’s strong motivation to treat her parents very well and take good care of them mainly results from the unconditional support of her parents. Her sense of filial obligation is a response to the kindness she has received as a daughter. As Fangxin’s narrative shows, fulfilling filial piety is a process of repaying the support a child receives from her parents, rather than following what traditional norms of filial piety require. Similarly, Sanxian and Hexu are both against the idea of blind obedience to parents. Sanxian stresses the importance of evaluating the behaviour and thoughts of the older generation in order to decide whether it is necessary to show respect to them or follow their instructions. Hexu emphasizes the need to distinguish between the love of parents and parents’ intention to control the younger generation in the name of love. Fangxin, Sanxian, and Hexu try to suggest that whether parents deserve filial respect and love or not depends on how they treat their children. Their dismissal of unconditional obedience

⁷⁹¹ Esther C L Goh, *China’s one-child policy and multiple caregiving: raising little suns in Xiamen*, Routledge contemporary China series 71 (London ; New York: Routledge, 2011).

⁷⁹² Deutsch, *supra* note 736 at 382.

⁷⁹³ *Ibid* at 366.

and submission to parents signals a significant change in the norms of filial piety. Closer emotional ties between parents and children have posed a threat to the traditional norms of filial piety that emphasize the patriarchal relations between the younger and older generations.

Some interviewees are one step further and question the view that adult children need to repay the support they have received from their parents. Liu Jing, a 26-year-old single woman who works as a civil servant in Dehua County, is critical of the idea of showing gratitude to parents as a way to fulfill filial piety. She believes that it is not necessary for adult children to overemphasize the need to pay back to parents because “the younger generation also has brought much happiness to parents, and thus, adult children do not owe their parents much.”⁷⁹⁴ Liu Jing justifies her opinion by saying that “being parents is voluntary. It is not the children who force their parents to give birth to them.”⁷⁹⁵ Kang Jinwang, a father of a 30-year-old single woman in Fuzhou, uses the metaphor of keeping pets to describe an alternative understanding of relationships between parents and children:

Parents are happy to see their children grow up, which brings them a sense of achievement. When children reach 18 years old and become adults, maybe parents should not take it for granted that children should be filial to them. I mean, parents have already benefited from the process of raising up the children. I have heard a story, and I think it kind of makes sense: a father blames his son for not being filial to him and regrets that he has sacrificed so much for the son. The son responds, “you choose to be a parent out of your own desire. I spend almost 20 years keeping you company, and I think I may deserve some kind of mental damage compensation

⁷⁹⁴ Interview, Liu Jing, Dehua County, Fujian Province, China, July 2016. Liu Jing currently lives with her parents. She self-identifies as heterosexual.

⁷⁹⁵ *Ibid.*

because I did not really want to be born in the first place.” I kind of understand why the son thinks that way.⁷⁹⁶

Although it is true that both Kang Jinwang and Liu Jing understand the relationship between parents and adult children somewhat differently from most people, their opinions represent a tendency to question the prevalent belief that adult children should be filial to parents in return for what parents have done to raise them. By emphasizing that being parents is a voluntary choice, they disagree with the predominant view that filial piety is based on gratitude and reciprocity.

The above narratives of my interviewees deviate from the traditional norms of filial piety (*xiaoshun*), which commands the younger generation to be respectful (*xiao*) and obedient (*shun*) to parents and other elderly members in the family.⁷⁹⁷ The changes in people’s perceptions of filial piety also shape the requirements of *qing* and *li* concerning filial piety. While *qing* and *li* associated with traditional norms of filial piety require the younger generation to show unconditional obedience and submission to parents, it is no longer the case at a time when people try to abandon the patriarchal hierarchy among family members. Although the majority of people in my interviews may still find it a bit difficult to agree with Liu Jing and Kang Jinwang, they may not argue against the opinion that unconditional obedience and submission to parents is no longer central to filial piety. As the narratives of Fangxin, Sanxian, and Hexu suggest, it is in opposition with *qing* and *li* to refuse to take good care of parents if children have received love and support from

⁷⁹⁶ Interview, Kang Jinwang, Fuzhou, Fujian Province, China, September 2016. Kang Jinwang is a manager of a state-owned company in Fuzhou. He has a daughter who works at a research institute in Fuzhou.

⁷⁹⁷ Kwong-Liem Karl Kwan, “Counseling Chinese peoples: Perspectives of filial piety” (2000) 7:1 Asian J of Counselling 23 at 23.

their families; instead, it is not against *qing* and *li* to ignore the needs of parents if they are abusive to their children.

The relinquishment of unconditional obedience and submission among leftover women in my interviews, as well as the interviewees of Yan's and Deutsch's research, provides evidence to challenge both traditional norms of filial piety and the notion of filial piety in China's formal legal system. While judges in China have been invoking the law to force adult children to pay regular visits to parents and provide financial support to parents, it is likely that some people do not agree with the law's assumption that adult children should be filial to parents no matter what their parents have done. As Sanxian suggests, "our respect to the elderly parents should not come from the fact that they are in their old age; instead, whether the elderly deserves respect from the younger generation depends on their behaviour: if they take advantage of their seniority in order to oppress the younger generation, we do not have to respect them."⁷⁹⁸

In sum, my interviewees have been questioning unconditional obedience and submission to the older generation, and some of them even challenge Evans' finding that filial piety is based on gratitude and reciprocity. The shift away from unconditional obedience and parental authority has paved the way for an equal relationship between the two generations.

B. The Emphasis on Emotional Support and Intergenerational Intimacy

When my daughter was young, I realized I need to be friends with her. I don't enjoy hierarchical relationships with her. I hope I know everything about my daughter,

⁷⁹⁸ Interview, Meng Sanxian, Dehua County, Fujian Province, China, July 2016.

and I hope she will tell me everything about her. "Telling parents everything(无话不谈)" is a way of being filial. Chinese conventional concept of filial piety has not given sufficient weight to emotional intimacy.⁷⁹⁹

—Interview, Zonglan, an influential parent volunteer at PFLAG China

My way of fulfilling filial duty is to buy whatever I think my parents will need and post to them frequently. When they receive a package, they receive not only gifts but also their daughter's love and care. In addition to that, I often give them a call, and we talk about everything. My parents always call me when they need someone to make a decision for them or simply to share some concerns. I think it is important to let them know they have someone to rely on.⁸⁰⁰

—Interview, Karen, a 30-year-old single woman in Xiamen

Everybody has a different definition of filial piety. My parents may believe filial piety means adult children need to follow what parents plan for them, such as marrying appropriately with the person they like and getting a decent job. To me, filial piety means you need to spend time with your parents and take care of them when you feel something is wrong. When they are older, you need to help them broaden their horizons by travelling with them on holidays and teaching them how to use new technologies to catch up with society. These are my ways to express love. I believe parents and adult children should have an equal relationship with each other. The nature of filial piety is love.⁸⁰¹

—Interview, Siyin, a 26-year-old single woman in Xiamen

What we need is emotional support. We don't need material support from your generation. What makes me happy are the small details (diandian didi 点点滴滴) and surprises, such as receiving flowers on Mother's Day.⁸⁰²

⁷⁹⁹ Interview, Zonglan, telephone interview, November 2016. Zonglan is the mother of a 28-year-old lesbian who is working at the same NGO as Hexu. Zonglan is a very active volunteer for the Chongqing branch of the NGO as well. She lives in Chongqing, while her only child works in Guangzhou. In fact, it was Zonglan who introduced the NGO to her daughter before her daughter became a full-time staff at the organization.

⁸⁰⁰ Interview, Karen, Xiamen, Fujian Province, China, August 2016. Karen left her hometown Ningde for her education and career as an architect in Xiamen. Her parents live with her brother in the rural area in Ningde. She self-identifies as heterosexual.

⁸⁰¹ Interview, Siyin, Xiamen, Fujian Province, China, July 2016. Siyin works in the industry of art designs in Xiamen, while her parents live in Nanping, a city about 400 km away from Xiamen. As she is the only child of her family, her parents expect her to go back to Nanping and settle down there. She self-identifies as heterosexual.

⁸⁰² Interview, Ahong, Xiamen, Fujian Province, China, October 2016. Ahong is recently retired after working in a factory in Xiamen for a few decades. She is the mother of a divorced woman who has a son attending elementary school. Ahong has been taking care of her grandson for a few years. Ahong

—Interview, Ahong, the mother of a 32-year-old divorced woman in Xiamen

The narratives above demonstrate what emotional support means to parents and leftover women in China. Unlike parent-child relationships in traditional patriarchal families,⁸⁰³ the younger generations born and raised under the one-child policy generally enjoy a less hierarchal relationship with their parents. Research has shown that after the enforcement of the one-child policy, family relationships were no longer based on parental authority, but rather on the nurturing of the only child of the family.⁸⁰⁴ Esther Goh's research shows that parents no longer adhered to the idea that children should obey and not talk back when being disciplined.⁸⁰⁵ Goh's argument is supported by Zonglan and Ahong's narratives, which show that intergenerational intimacy has replaced patriarchy-based relationships and becomes the focus of filial piety in their families. According to Goh, parents with only one child consider having a child as a major life aspiration, and many of them saw the child as the only hope in life.⁸⁰⁶ Goh asserts that "this child-centred orientation calls for family members, including grandparents, to channel and pool resources so as to ensure that only-children receive the best possible care."⁸⁰⁷ Thus, the best interest of the younger generation has replaced parental authority and becomes the focus for most parents.

kindly invited me to use her small apartment for my interview with several mothers of leftover women. She made tea for us and sometimes shared some thoughts.

⁸⁰³ For more information about Chinese traditional patriarchal families, see Glosser, *supra* note 734.

⁸⁰⁴ Goh, *supra* note 791 at 5; Xiao-Tian Feng, Dudley L Poston & Xiao-Tao Wang, "China's One-child Policy and the Changing Family" (2014) 45:1 J of Comparative Family Studies 17 at 21.

⁸⁰⁵ Goh, *supra* note 791 at 5.

⁸⁰⁶ *Ibid.*

⁸⁰⁷ *Ibid.*

Some parents in China, such as Zonglan, desire to understand how their children think and are willing to “talk about everything” with them. They do not force adult children to follow their instructions. Instead, they describe the parent-children relationship as “friendship,” which highlights an equal status and trust between each other and communicative intimacy. What is strikingly different from the old days is that these parents emphasize a “two-way exchange of thoughts and feelings between the senior and junior generations.”⁸⁰⁸ This two-way communication differs from traditional norms that require the junior generation to listen to and obey the instructions of the seniors,⁸⁰⁹ and instead, it emphasizes the importance of communicating with each other in an equal way.

Ahong uses the example of receiving flowers on Mother’s Day to suggest that what she desires most are the “small details and surprises” that touch her heart. Similar to the gifts provided by the younger generation to the old in Yan’s research, daughters’ attention to “small details” is a way of expressing emotional intimacy.⁸¹⁰ For Karen, sending gifts home means more than material support, as it is a powerful way to show her care and love for parents. Like Karen, many leftover women in my interviews express their love and emotional care through small details, which include but are not limited to buying some good food, dietary supplement, and small appliances for parents.⁸¹¹

⁸⁰⁸ Feng, et al, *supra* note 804 at 21.

⁸⁰⁹ Under the traditional norms of filial piety, the younger generation was forbidden to talk, much less argue, with their parents. Yan, *supra* note 124 at 250.

⁸¹⁰ *Ibid* at 251.

⁸¹¹ For example, Pingping, a high school teacher in Dehua County, believes that filial piety means thinking of parents in the daily life: “if I see something delicious, I will buy some and take it home to share with my parents;” Interview, Pingping, Dehua, Fujian Province, China, July 2016. Pingping is a 28-year-old married woman with a daughter. She was pregnant with her son at the time of the interview. She self-identifies as heterosexual.

Some leftover women insist that adult children should spend time with their parents as a way to provide emotional support.⁸¹² In Siyin's opinion, filial piety means expressing love for parents through going travelling with them and teaching them how to use smartphones and new apps in order to help them gain more confidence by catching up with the rapid changes in society.⁸¹³

Siyin's perception of the nature of filial piety, however, is somewhat different from either the traditional norms of filial piety or the new version of it under China's current legal system. While China's formal legal system emphasizes both emotional support and unconditional obedience to parents, Siyin believes that filial piety does not require her to follow what her parents have planned for her: "if being filial means moving back to my hometown and getting a stable but boring job they have found for me, then I am sorry I don't think I can do that. I will follow my way of being filial."⁸¹⁴ For Siyin, emotional support does not equate with being obedient or following what parents define to be filial. Rather, adult children have various ways of providing emotional support to elderly parents.

Evans' 2008 study on the relationship between filial piety and women's choices in marriage and childbearing confirms Deborah Davis's argument that when it comes to the definition of filial obligation, people in rural China tend to emphasize the material and financial aspects of intergenerational arrangement, while people in urban China focus

⁸¹² For example, Yanning suggests that her parents usually do not ask for much, and they will be happy if she could go back and have dinner with them more often. Yanning says, "my father is a very filial son. He always goes for a walk with my grandmother. I think it is what 'spending time with parents' means." Interview, Yanning, Xiamen, Fujian Province, China, August 2016. Yanning is a 28-year-old single woman who is running a family business in Xiamen. She is the only child of her family. She lives with her parents. Yanning self-identifies as heterosexual.

⁸¹³ Interview, Siyin, Xiamen, Fujian Province, China, July 2016.

⁸¹⁴ *Ibid.*

more on “emotional recognition of the sacrifices parents made on their children’s behalf.”⁸¹⁵ My interviews with leftover women, however, indicate that the relationship between emotional recognition of parental sacrifices and material and financial support to parents is more complicated than Evans and Davis illustrated.

For example, Xiaoyang, whose people are rural residents, has set a goal for herself: improving the living condition of her parents and offering them the opportunity to enjoy life when they are old. Xiaoyang’s parents do not have a pension and medical coverage because they are rural residents. They are still working in the kitchen of a local restaurant to make ends meet. Xiaoyang says, “the working condition is too harsh for my parents because they are getting older. I feel bad about the hardship they have to go through, especially when they sacrifice a lot for us in order to bring us up.”⁸¹⁶ Xiaoyang’s desire to provide material and financial support to her parents is also in line with Evans’s and Fong’s findings that parents’ sacrifice for children and the suffering and hardship parents have experienced motivate adult children’s filial behaviour.⁸¹⁷ Xiaoyang’s narrative shows that it is inappropriate and sometimes impossible to distinguish emotional recognition of parental sacrifices from material and financial support.

⁸¹⁵ Evans, *supra* note 266 at 173. Deborah Davis, *Long lives: Chinese Elderly and the Communist Revolution*, (Cambridge, Mass: Harvard University Press, 1983).

⁸¹⁶ Interview, Xiaoyang, Quanzhou, Fujian Province, China, July 2016. Xiaoyang self-identifies as heterosexual. She lives with her husband, son, and parents-in-law in Quanzhou. Her mum sometimes comes over to help with taking care of her son. Xiaoyang has a younger brother and an older sister.

⁸¹⁷ Evans, *supra* note 266 at 176; Fong, *supra* note 85 at 143. According to Fong, many low-income parents sacrifice themselves to pay for their children’s needs by skimping on their own food, healthcare, and clothing, as well as doing exhausting work to support their children. Thus, children tend to feel guilty and a strong sense of filial obligation to repay their parents. Evans agrees with Fong that parental suffering and hardship appears as a source of encouragement and inspiration and motivate daughters to “give something back” to parents.

It is true that my interviewees who grew up in rural areas are more likely to mention the need to provide parents with financial support, no matter whether they have male siblings or not. Nevertheless, we cannot translate this into the lack of emotional support. Their emphasis on financial support is closely related to the fact that parents in rural areas usually do not have enough old-age pension and medical insurance, a result of China's institutionalized urban-rural divide and unequal distribution of resources.⁸¹⁸ In my view, their motivations to provide material and financial support to parents have a close linkage with intergenerational intimacy.

In sum, the child-centred orientation in Chinese families has diluted patriarchy-based relationships between the two generations and made room for emotional intimacy. Instead of demanding unconditional obedience from the younger generation, the older generation tends to stress the importance of communicating with adult children in a less hierarchical way and developing an emotional attachment. Parents in my interviews have expressed strong desires for emotional support when they define filial piety. At the same time, the younger generation in my interviews, both from urban and rural areas, emphasize the importance of providing emotional support to parents through spending time with them, communicating with them, and buying them food and gifts.

⁸¹⁸ Various social groups, including rural residents, urban non-employed residents, and urban employees, have different pension benefits in China, which results in the stratification of social welfare. Tao Liu & Li Sun, "Pension Reform in China" (2016) 28:1 *J of Aging & Social Policy* 15 at 16. Although the Chinese state has implemented a pension system for the rural population since 2010, the resources for rural pension is still very limited compared to that of urban retirees. See for example, Hong Zhang, "Recalibrating filial piety: Realigning the state, family, and market interests in China," in Gonçalo Santos & Stevan Harrell, eds, *Transforming Patriarchy Chinese Families in the Twenty-First Century* (Seattle and London: University of Washington Press, 2016) 234 at 234-7.

C. The Decline in Parental Expectations of Material Support Provided by Adult Children and the Increase in Adult Children's Dependence on Parents

I think parents cannot ask for too much from their only child. We will be satisfied as long as our child often think of us and come to visit us. Honestly, our generation, in general, does not expect any financial support from our only child. It is not simply because singletons are spoiled and selfish. More importantly, they do not have the money and resources to support us. For example, my daughter has a very decent job as a court clerk, and she earns 6,000 to 7,000 RMB (C\$1,153 to C\$1,345) per month. Her husband has a similar income. But an apartment in Xiamen usually costs around five million (approximately C\$ 1,000,000). It is not possible for the younger generation to buy a condo without parental support. Our generation is willing to help our singletons to purchase homes because we don't want our only child to suffer.⁸¹⁹

—Interview, Junrong, the mother of a married 29-year-old woman

My parents never ask me to support them financially. It is me who always ask for help from them. There is nothing I can do for them financially because my income can barely cover my own living expenses. For example, I was thinking about purchasing an apartment in Xiamen last year, but my parents did not have enough money for the down payment. So my father borrowed some money from the bank to speculate on the stock market. We were lucky, and he earned the down payment for my apartment.⁸²⁰

—Interview, Fangxin, a 30-year-old married woman in Xiamen

My parents keep asking me to give them a grandchild when they are young and healthy enough to take care of the child. They ask me to give birth and leave the task of childcare to them so that I can focus on my career development.⁸²¹

⁸¹⁹ Interview, Junrong, Xiamen, Fujian Province, China, October 2016. Junrong is recently retired after working in a state-owned factory for several decades in Xiamen. She lives very close to her only daughter and takes care of her granddaughter during the day. She also cooks lunch for her daughter and son-in-law during weekdays.

⁸²⁰ Interview, Fangxin, Xiamen, Fujian Province, China, July 2016.

⁸²¹ Interview, Yuqi, Xiamen, Fujian Province, China, September 2016. Yuqi is the only child of her family. Her grandfather was one of the most affluent businessmen in Xiamen before he passed away several years ago. She follows her heart to become a barista after graduation out of her love for coffee. She is now an expert in the area who coffee shop owners turn to for advice when they are thinking about developing their business. She lives with her parents in her grandparents' apartment.

—Interview, Yuqi, a 30-year-old single woman in Xiamen

While the traditional norms of filial piety require adult children to provide financial support to the elderly, many parents, both in urban and rural China, no longer expect their children to provide financial support. A recent study on intergenerational communication shows that the endorsement of filial values is only correlated with providing emotional support and not significantly associated with providing financial assistance and practical assistance with daily routines.⁸²² It has become difficult for adult children in China to provide financial support to their parents, especially when housing becomes unaffordable for the younger generation in urban areas. Many parents who only have one child not only try to avoid imposing too much burden on their adult children, but they are also willing to help their adult children by providing them with different forms of support.

In fact, recent research shows that parents have become an important source of financial support for many adult children in urban China. Yu Xie and Haiyan Zhu's study suggests that a large number of adult children in urban China receive financial support from their parents rather than supporting their parents financially.⁸²³ According to Xie and Zhu, "the real significance of monetary support to elderly parents in urban China is symbolic rather than financial, as elderly parents no longer count on their adult children to help meet their basic living needs."⁸²⁴ Xie and Zhu find that elderly parents consider what they call "symbolic transfer" to be a way for their adult children to express their

⁸²² Xu & Xia, *supra* note 271 at 41.

⁸²³ Xie & Zhu, *supra* note 746 at 175.

⁸²⁴ *Ibid* at 183.

filial piety.⁸²⁵ Some parents in Xie and Zhu's study save the money given by their adult children and eventually transfer it back to their children.⁸²⁶

Instead of relying on adult children to provide financial support, most parents in urban China are willing to help their children financially to better their living conditions. Junrong and Fangxin both mention the fact that it is almost impossible for adult children in Xiamen to purchase an apartment without the help of parents. A recent research report shows that two-thirds of Chinese homebuyers aged between 22 and 29 rely on parents' financial support to buy their homes.⁸²⁷ Bingqin Li and Hyun Bang Shin's study on intergenerational housing support between retired old parents and their children in urban China finds that adult children rarely purchase homes for their parents or offer financial support; quite the opposite, their parents often offer housing and financial support.⁸²⁸ Their research shows that "the majority of families are engaged in an exchange relationship, in which parents typically offer material support in return for care and/or emotional support."⁸²⁹ As Li and Shin's sample is restricted to retired people, their study has mainly focused on parents whose children were born before the introduction of the one-child policy in 1979.⁸³⁰ Li and Shin suggest that the proportion of children depending

⁸²⁵ *Ibid* at 184.

⁸²⁶ *Ibid*.

⁸²⁷ Jiajia Li, "Yanjiu Baogao Cheng Zhongguo 'Qianxi Yidai' Qingxiang Yongyou Fangchan Zai Yazhou Jushou", (9 November 2016), online: *China News Service* <<http://www.chinanews.com/house/2016/11-09/8058156.shtml>>.

⁸²⁸ Bingqin Li & Hyun Bang Shin, "Intergenerational Housing Support Between Retired Old Parents and their Children in Urban China" (2013) 50:16 *Urban Studies* 3225 at 3231.

⁸²⁹ *Ibid* at 3237.

⁸³⁰ *Ibid* at 3238.

on parents will be increasing in the future as long as housing affordability problems continue.⁸³¹

It may be true that the older generation in rural areas is less financially better off, and thus they are not able to provide financial support to their adult children who have settled down in urban areas. Increasingly more parents in rural areas, however, are planning to depend on themselves for their future old-age support by participating in the rural social pension system or purchasing commercial insurance.⁸³² Lirong Shi's study in Northeast China shows that many rural young and middle-aged couples have bought commercial insurance as a way to prepare for self-support in old age.⁸³³ Some couples in Shi's study adopted a notion of self-reliance (靠自己) and work hard to have extra money saved for old age, while some others embraced the idea of two-hand preparation (两手准备) to prepare for self-support in case that their children would not be reliable.⁸³⁴

Another significant aspect of adult children's dependence on parents is childcare. In the focus groups I organized in Xiamen, most women agreed that it is not possible for them to keep their jobs without having grandparents taking care of their children. According to Shulei, a consultant whose son is attending kindergarten, "if parents cannot help me with childcare, either me or my husband should consider quitting the job. And this will also cause a financial crisis. I am glad that my parents-in-law not only serve as

⁸³¹ *Ibid.*

⁸³² Zhang, *supra* note 816 at 243; Lihong Shi, "Preparing for an 'Insured' Old Age: Insurance Purchase and Self-Support in Old Age in Rural China" (2018) 33:2 J Cross-Cultural Gerontology 183.

⁸³³ Shi, *supra* note 832.

⁸³⁴ *Ibid* at 188.

the primary caregivers of my son but also provide us with an apartment.”⁸³⁵ Likewise, Yiyue, a 29-year-old lawyer with a two-year-old son, suggests that “women in contemporary China cannot focus exclusively on family stuff and children. We have to work hard to catch up with others. Also, women have already realized that we need to spend some time on entertainment, such as watching TV shows and travelling. That’s why we are in desperate need of our parents’ help.”⁸³⁶ Many adult children like Shulei and Yiyue cannot imagine a life without the support from parents on childcare. As a result, the older generation has to sacrifice their time and energy for the interest of the younger generation and the flourishing of the whole family.

Goh’s qualitative research on caregiving by grandparents in Xiamen and Fei Nian Chen et al.’s study on grandparents’ childcare in China also support my interviewees’ opinion that it is necessary for the younger generation to rely on grandparents to provide childcare.⁸³⁷ Goh’s research shows that grandparents are an integral part of the process of raising grandchildren and of other aspects of family life in Xiamen, China.⁸³⁸ Chen et al. also suggest that it is an increasingly common practice for grandparents to play a major role in taking care of their grandchildren in both rural and urban China.⁸³⁹ Both studies

⁸³⁵ Focus group, Shulei, Xiamen, Fujian Province, China, October 2016. Shulei is the only child of her family. She grew up in a single parent family with her mum. She works in Xiamen after graduating from Xiamen University, while her mother stays in her hometown in Hunan Province.

⁸³⁶ Focus group, Yiyue, Xiamen, Fujian Province, China, October 2016. Yiyue is the only child of her family. She lives with her husband and son in Xiamen. Her parents and parents-in-law also live in Xiamen. They take turns to help take care of Yiyue’s son when she is at work.

⁸³⁷ Goh, *supra* note 791; Esther C L Goh, “Grandparents as childcare providers: An in-depth analysis of the case of Xiamen, China” (2009) 23:1 J of Aging Studies 60; Feinian Chen, Guangya Liu & Christine A Mair, “Intergenerational Ties in Context: Grandparents Caring for Grandchildren in China” (2011) 90:2 Social Forces 571.

⁸³⁸ Goh, *supra* note 791; Goh, *supra* note 837. Xiamen is a sub-provincial coastal city situated in southeastern China.

⁸³⁹ Chen, Liu & Mair, *supra* note 837 at 578.

indicate that relying on grandparents to provide childcare is a key family adaptive strategy to maximize the well-being of the whole extended family.⁸⁴⁰ Indeed, there is an intense conflict between maternal work and childcare in China, as work arrangements are often not flexible and working part-time is generally impossible for mothers who want a balance between work and childcare demands.⁸⁴¹ By providing childcare to grandchildren, grandparents help ensure the career development of the daughters or daughters-in-law who become mothers.⁸⁴²

The difficulties for the younger generation in balancing work and childcare demands explain why the older generation often feel a great sense of obligation to take care of their grandchildren.⁸⁴³ Some parents ask their daughters to get married and give birth as soon as possible, either because they are afraid that they will not be able to help take care of their grandchildren when they are too old or because they believe caring for grandchildren is an important thing to do after retirement.⁸⁴⁴ In addition, another reason for parents to be willing to help their daughters with childcare is the concern about their daughters' relationship with mothers-in-law, a relationship that would negatively affect the happiness of the young couple.

In my interviews with eight parents, seven of them mention that they were afraid that it would be difficult for their daughters to live with their mothers-in-law; therefore, they

⁸⁴⁰ Goh, *supra* note 791 at 65–66; Chen, Liu & Mair, *supra* note 837 at 575.

⁸⁴¹ Goh, *supra* note 791 at 65; Chen, Liu & Mair, *supra* note 837 at 578.

⁸⁴² Chen, Liu & Mair, *supra* note 837 at 575.

⁸⁴³ Goh, *supra* note 791 at 66.

⁸⁴⁴ Goh's research shows that the older generation often feels a great sense of obligation to help their adult children with childcare. Some interviewees in Goh's research suggest that caring for grandchildren was the best thing they believed they could do after retirement. Goh, *supra* note 837 at 65–6.

are willing to help their own daughters with childcare.⁸⁴⁵ Zhuzhu, Ahong, Meizhen, Meihua all point out that mothers-in-law are often difficult to communicate, unless the mother-in-law is a very reasonable person who act according to *qing* and *li* (通情达).⁸⁴⁶

For example, Ahong says,

*I can speak from my own experience. My daughter got divorced mainly because of her unreasonable mother-in-law. Most mothers-in-law are not very reasonable persons when it comes to family disputes. Of course, they usually take sides with their own sons. Usually the two generations may have different opinions about how to take care of the little child. When my daughter did not agree with the way her mother-in-law educated or cared for the child, they could not communicate very well. I think this is a very common problem for many families. I mean, if the mother-in-law complains about the daughter-in-law's attitude to the son, it is highly likely that the couple would quarrel. That was what happened to my daughter before. I think one main reason for mothers to be willing to take care of their daughters' children is to protect their daughters.*⁸⁴⁷

Ahong's view has strong echoes in the narratives with other parents, as well as those of leftover women themselves.

I am not denying that given the patriarchal tradition in China, it is often the case that paternal grandparents are responsible for taking care of grandchildren, rather than

⁸⁴⁵ The only parent who did not mention the difficulties of having mothers-in-law as the main caregiver is Zonglan. Zonglan is aware of the fact that her daughter is a lesbian, and thus, she may not have to deal with the problems related to the relationships between her daughter and the mother-in-law. The other seven parents, Kang Jinwang, Zhang Xiuzhu, Junrong, Zhuzhu, Ahong, Meizhen, Meihua, assume that their daughters will enter heterosexual marriages. Interviews with Kang Jinwang and Zhang Xiuzhu, Fuzhou, Fujian Province, China, September 2016. Kang Jinwang is a father of a 30-year-old single woman in Fuzhou. His daughter works for a research institute in Fuzhou. Zhang Xiuzhu is a mother of a 29-year-old woman who is recently married in Fuzhou. Her daughter works for a publisher in Fuzhou. Interview with Junrong; interviews, Zhuzhu, Ahong, Meizhen, and Meihua, Xiamen, Fujian Province, China, October 2016. Zhuzhu is the mother of a 27-year-old single woman in Xiamen. She is recently retired after working in a state-owned factory for several decades. Zhuzhu lives with her husband and daughter in a small apartment in Xiamen. Meizhen works for Xiamen Airport as an administrative assistant. She has a daughter who is now 26 years old. Her daughter is single and lives with Meizhen and her husband. Meihua is the mother of a 29-year-old daughter who is single. Meihua used to work as a manager in a state-owned company before she decided to quit her job and start her own business. She is currently retired. She lives with her husband in Xiamen, while her daughter is studying overseas.

⁸⁴⁶ Interviews with Zhuzhu, Ahong, Meizhen, and Meihua, Xiamen, Fujian Province, China, October 2016.

⁸⁴⁷ Interview with Ahong, Xiamen, Fujian Province, China, October 2016.

maternal grandparents.⁸⁴⁸ It is also true that some women in my interviews believe that the young couple must be the main caregivers and spend more time with their own children.⁸⁴⁹ Both Goh's and Chen et al.'s studies, however, show that it is also common for maternal grandparents to help their daughters and sons-in-law to take care of their children.⁸⁵⁰ Similarly, most leftover women in my interviews prefer having maternal grandparents over having paternal grandparents helping with childcare. Some daughters feel more comfortable living with their own parents,⁸⁵¹ while some others point out that it is easier to negotiate with maternal parents about how to educate and treat the children.⁸⁵² Some daughters prefer to have their parents staying with them because they are emotionally dependent on their parents, a phenomenon that has been documented by Goh.⁸⁵³ The emotional intimacy with parents and the concern about the difficulties of

⁸⁴⁸ Chen, Liu & Mair, *supra* note 837 at 579. The authors refer to a China Health and Nutrition Survey to show that from 1991 to 2004, the number of children taken care by paternal grandparents is three times more than those by maternal grandparents.

⁸⁴⁹ For example, Siyin, an independent designer in Xiamen, suggests that she would like to find some work that allows her to work at home before the child turns five. In her opinion, it is irresponsible to ask either the older generation or nannies to be the main caregivers. Interview, Siyin, Xiamen, Fujian Province, China, July 2016.

⁸⁵⁰ Goh, *supra* note 791; Goh, *supra* note 837; Chen, Liu & Mair, *supra* note 837.

⁸⁵¹ See, for example, focus group, Xiaoping, Xiamen, Fujian Province, China, October 2016. Xiaoping says, "I am lucky that it is my mum who is taking care of my two daughters, as I cannot imagine how difficult it is to deal with my mother-in-law, especially when we have different opinions about how to educate the next generation. Xiaoping runs a beauty salon in Xiamen. She has two daughters, both of whom live with Xiaoping's parents. She lives in the same neighbourhood with her parents.

⁸⁵² For example, Yuanru says, "I hope it would be my mum who helps me take care of my child in the future. It is difficult to communicate with mother-in-law." Interview, Yuanru, Fuzhou, Fujian Province, China, September 2016; Yuanru is a 27-year-old single woman who works as a civil servant in Fuzhou. As the only child of her family, she lives with her parents in their apartment. Kang Ziyou says, "you can point it out if your mum is doing the wrong thing in the process of educating your child, but you cannot say it directly to your mother-in-law. Your mother is *zijiren*, so you can say whatever you want." Interview, Kang Ziyou, Fuzhou, Fujian Province, China, October 2016; Kang Ziyou works for a research institution in Fuzhou. She is a 30-year-old single woman who lives with her parents.

⁸⁵³ Interview, Zhang Junya, Fuzhou, Fujian Province, China, September 2016; See also, Goh, *supra* note 117 at 62.

communicating with mothers-in-law helps explain why most daughters in my interviews prefer to rely on their own parents to provide childcare.

Gonçalo Santos' research on grandparent babysitting in rural South China has come to a very different conclusion on why grandparents provide childcare. Santos tries to reveal the exploitive nature of grandparent babysitting by suggesting that adult children's strong and increasing reliance on grandparents "shows important continuities with earlier gendered practices of multiple parenting and caregiving built around the joint family."⁸⁵⁴ According to Santos, while childcare used to be the task of women, it has become the responsibility of old grandparents in contemporary China. Santos suggests that by the end of the Maoist period, the work of childcare remained "in hands of a female-centered intergenerational parenting body supervised by the child's mother under the authoritative guidance of her mother-in-law."⁸⁵⁵ Labour migration from rural to urban areas, however, makes it possible for the younger generations to assert their economic superiority and position of power in relation to the senior generations.⁸⁵⁶ As a result, the senior generation has to take over the more "feminine" work of everyday care for the whole family, while the younger generation redefines their parenting duties primarily in terms of the "masculine" work of travelling to urban areas to earn income.⁸⁵⁷ Santos argues that

⁸⁵⁴ Gonçalo Santos, "Multiple Mothering and Labor Migration in Rural South China" in Gonçalo Santos & Stevan Harrell, eds, *Transforming Patriarchy Chinese Families in the Twenty-First Century* (Seattle and London: University of Washington Press, 2016) 91 at 93.

⁸⁵⁵ *Ibid* at 94.

⁸⁵⁶ *Ibid* at 95.

⁸⁵⁷ *Ibid* at 95, 106.

labour migration has led to a breaking down of the patriarchal hierarchy and the decline of the authority of the older generation in rural China.⁸⁵⁸

It may be true that for those parents who used to reside in rural areas, adult children who move to the urban area for work are likely to enjoy economic superiority, which puts the parents in a disadvantaged situation that requires them to be responsible for the “feminine” work of everyday care. Santos’ focus on rural parents makes it difficult to apply the research outcome to the situations of parents in urban areas, especially those who support their adult children financially and provide childcare to grandchildren at the same time.

To have a better understanding of grandparents’ choice to provide childcare, we need to pay more attention to how Chinese families function. It is common for Chinese nuclear families to have support from their extended families, as the whole family often sticks together to deal with challenges in daily lives. Most grandparents in both urban and rural China are willing to shoulder the responsibility of childcare for the best interests of the whole family. For example, although some of the elderly in Santos’ study have realized that grandparenting could be an exploitative relationship, they uphold the idea that they should support their adult children until they can give no more.⁸⁵⁹ As the narratives of my interviewees show, many parents who do not rely on adult children to provide financial support are also willing to help the younger generation to take care of the little ones in order to leave their children more time and energy to be busy with work.

⁸⁵⁸ *Ibid* at 102–6. For more information on grandparenting and its impact, see, for example, Goh, *supra* note 791. See, also, Chen, Liu & Mair, *supra* note 837.

⁸⁵⁹ Santos, *supra* note 854 at 104.

Yuqi's parents, for example, have been subsidizing Yuqi by providing her food, accommodation, and money. According to Yuqi, "I don't have to worry too much about supporting my parents financially. They have pensions and my grandparents have passed down a significant amount of money for us. Money is never our concern."⁸⁶⁰ Despite the fact that Yuqi is somewhat dependent on her parents financially, her parents also plan to help with childcare and urge Yuqi to have a child as soon as possible at a time when she does not even have a boyfriend. Their aim is by no means offering to provide childcare in exchange for Yuqi's financial support to them. In the view of Yuqi's parents, they are too young to stay at home and do nothing after retirement, a view that is shared by many people who retire at a young age. They would like to have a grandchild to keep them busy, through which they could continue to contribute to the whole family.⁸⁶¹

Under laws enacted in 1978, men retire at 60, while women retire at 55 if they are civil servants or 50 if they are blue-collar workers.⁸⁶² China has been considering raising the retirement age for both men and women gradually to 65 by 2045, but most parents of leftover women have already retired. With much time and energy after retirement, they could offer to help their children take care of the next generation. Thus, grandparenting is not necessarily correlated to economic superiority of adult children who need childcare, especially in urban areas where most urban residents are covered under a pension system that provides a sense of financial security to the elderly.⁸⁶³

⁸⁶⁰ Interview, Yuqi, Xiamen, Fujian Province, China, September 2016.

⁸⁶¹ *Ibid.*

⁸⁶² There are some exceptions for people with a certain standing in the hierarchy. For more information, see Weihua Chen, "Time for a Change to One-size-fits-all Retirement Policy," (11 March 2017), China Daily, online:< http://www.chinadaily.com.cn/opinion/2017-03/11/content_28517346.htm>.

⁸⁶³ Xie & Zhu, *supra* note 746 at 175.

To sum up, adult children in urban areas are increasingly dependent on the older generation for the support in housing and childcare, while parents in both urban and rural areas no longer take it for granted that adult children should provide financial support to their elderly parents. Housing support and grandparenting are two examples to show how parents and adult children in urban areas of Fujian province have challenged the traditional norms of filial piety that require adult children to support their parents rather than the other way around.

Conclusion

This chapter has illustrated that the meanings of filial piety are not fixed and static but subject to social and economic changes. It has also demonstrated how more and more daughters in today's China are expected to fulfill filial piety that used to belong to sons. By investigating how leftover women I interviewed understand filial piety in general, this chapter offers a detailed explanation of why these women feel the obligation to live up to parental expectations in marriage and childbearing. If leftover women's perceptions of filial piety were consistent with traditional norms of filial piety, their motivations to marry and give birth might come from unconditional obedience and submission to parents and the respect to parental authority. The narratives of my interviewees have ruled out this potential explanation for leftover women's pressure to marry and get married.

The discussion of leftover women's understanding of filial piety has reflected the following three aspects of changes: first, leftover women and most parents in my

interviews have been challenging the traditional norms of filial piety that require unconditional obedience and submission to parents. Second, leftover women in my interviews tend to prioritize intergenerational intimacy and emotional support over obedience and financial support to parents. Thus, unconditional obedience has been replaced by the notion of the exchange of love between the two generations and the expression of gratitude to parents for their support. Third, parents in both urban and rural China have realized that it is unrealistic to rely on their adult children for old age support because of the dramatic economic and social changes China is undergoing. Instead, increasingly more parents tend to help adult children with housing, childcare, and other tasks brought by the rapid changes in this transitional society.

As discussed in earlier chapters, most leftover women in my interviews refuse to understand the self separately from the family, and they tend to view marrying and childbearing as an important part of their filial piety. Since emotional support and intergenerational intimacy have replaced material support as the main requirement of filial piety, living up to parental expectations of marriage and childbearing becomes a major responsibility for filial daughters to fulfill, more so than material support. In fact, it is a tendency for parents to provide financial support and childcare to the younger generation in return for emotional intimacy. The increase in adult children's dependence on parents for support in housing and childcare further contributes to the accumulation of the sense of responsibility among the younger generation to meet the expectations of the parents in order to make them happy and relieved. In short, as emotional care and support has started to enjoy priority over financial support and unconditional obedience between the two generations, daughters in today's China have to pay more attention to the

emotional needs of their parents. Therefore, parental attitudes and expectations have a significant role in shaping their daughters' choices in marriage and childbearing. The importance of emotional support is further stressed in China's legal system through legislating filial piety to make it a legal obligation for adult children to show unconditional submission and obedience to parents.

My discussion of leftover women's perceptions of filial piety has not only supported Evans and Fong's findings but also facilitates better understanding of the linkage between filial piety and daughters' pressure to marry and have children. I have suggested that the child-centred orientation and adult children's reliance on parental support, such as housing and childcare, have motivated many adult children to attach more importance to living up to parental expectations. I add that in addition to the power of guilt, adult children are motivated by the constant exchange of love and support between family members to marry and have children.

The marital status of the daughter has a significant impact on family dignity, *mianzi* of the parents and the self, the network of interpersonal relations of the whole family, as well as the well-being of parents. The strong desires of leftover women in my interviews to provide emotional support and develop intergenerational intimacy motivate them to try their best to meet the expectations of their parents and make them happy. Their pressure to marry and give birth, therefore, has a close linkage with their desires to express love and care to parents. Take Xiaomiao as an example, although she does not want to enter a heterosexual marriage, she still believes she would eventually get married for the happiness and relief of her parents. While she does not really care about the stigmas attached to unmarried women in Chinese society, she could not bear the consequences of

disappointing her parents and bringing shame to them. Her willingness to meet the expectations of parents does not result from unconditional obedience to parents or her surrender to parental authority. Rather, it is her desire to repay her parents for all their support and her love for them that reinforces her belief that she should get married and have a child in the future. To Xiaomiao, getting married is a filial task she has to fulfill. Under this situation, the Chinese state's media campaign against leftover women and its promotion of marriage benefit from leftover women's desire to meet the older generation's expectation to see their adult children marry and have kids as soon as possible.

In conclusion, this chapter has challenged the assumptions among To and other scholars that parents are constraining their daughters' marital choices due to intergenerational differences in values; and that filial piety has a negative impact on leftover women's marital choices because of its patriarchal nature.⁸⁶⁴ By demonstrating that leftover women's understandings of filial piety have shifted away from the traditional norms of filial piety, I have discussed the linkage between leftover women's willingness to fulfill filial piety and their choices in marriage and childbearing. This chapter focuses on how parental expectations play a significant role in affecting leftover women's choices, which aims to invite further discussion on how the Chinese state uses its legal system and media campaign to make use of family ties between the two generations. In the next chapter, I will continue the discussion by looking at leftover women's reproductive rights, with a focus on how social expectations of qualified mothers shape their decisions concerning childbearing.

⁸⁶⁴ To, *supra* note 4; To, *supra* note 1; Fincher, *supra* note 1.

Chapter 7: Legal Restrictions, Feminist Resistance, and Being Unmarried Mothers in China

It is a humid Saturday morning in Fuzhou.⁸⁶⁵ At around 8:30 am, parents start to gather at the Magpie Bridge,⁸⁶⁶ a matchmaking corner in Mountain Yu. Parents are very busy looking at the information written on pieces of red or green paper hanging on long strings and taking notes. They walk around and exchange basic information about their children to see whether they could find potential candidates who meet their standards. The standards are based on age, height, place of origin, income, job, education, family background, and whether one has a car and marital housing in Fuzhou.

Aunty Zhang comes to the Magpie Bridge every Saturday and Sunday. She has been in the matchmaking corner for more than three years and has come to know most of the parents who gather there as well. Aunty Zhang found a suitable partner for her daughter in Mountain Yu half a year ago. She still comes to Mountain Yu to help other parents in their search for potential marital partners for their children. Aunty Zhang attributes her anxiety to her daughter's difficulty in finding a "high-quality" man:

My daughter has a good family background and a very decent job. But the lack of high-quality men in Fuzhou made it extremely difficult for her to meet a person who was suitable for her. I devoted all my time and energy helping my only child to find one. If she could not find a partner and did not have a child, who was going to provide old-age support to her? A mother here in this matchmaking corner is very open-minded. She asks her daughter just to find someone to get married in order to

⁸⁶⁵ Fuzhou is the capital city of Fujian province, which is located on the southeast coast of mainland China.

⁸⁶⁶ It is a Chinese legend that a flock of magpies formed a bridge over the Milky Way to enable two lovers, Aquila and Lyra, to meet once a year. Nowadays, building the Magpie Bridge means creating opportunities for young men and women to meet and fall in love with each other.

*have a child. She is willing to take care of the child if her daughter decides to get divorced and seeks someone she genuinely loves.*⁸⁶⁷

Although the reasons for parents to be anxious about their daughters' marital status differ from individual to individual, the stories of Aunty Zhang and her open-minded friend represent a prevalent source of parental anxiety. They are concerned that their daughters may miss their best childbearing years and end up having no child in the future. These parents may not believe a marriage will last forever, but they think having grandchildren to provide old age support for their children is essential. In a recent op-ed published in *South China Morning Post* about Shanghai's marriage market, a mother tearfully told the author her fear that if her daughter did not have a child to rely upon in her old age, nobody would "make her soup when she's sick," and even worse, nobody would "even know when she's sick."⁸⁶⁸ The uncertainty and insecurity of elderly support motivates many parents to help daughters look for marital partners, especially when their daughters become leftover women.

Some feminist activists have started a campaign to raise awareness of single women's reproductive rights and demand that the Chinese state grant unmarried women the right to give birth outside of marriage.⁸⁶⁹ Their primary focus for change remains the state. In this chapter, I argue that focusing on state law and demanding rights from the state alone cannot achieve the goal of protecting unmarried women's reproductive interests.

⁸⁶⁷ Interview, Zhang Xiuzhu, mother of a 29-year-old woman who is recently married, Fuzhou, Fujian Province, China, September 2016.

⁸⁶⁸ Yang, *supra* note 277.

⁸⁶⁹ Single Women and Lesbian Couple's Reproductive Rights Working Group of China, *Single Women's Reproductive Rights - A Research Report on Policy and Lived Experience*, (2016) Online. Available: <<https://pan.baidu.com/s/1jIO7KRO#list/path=%2F>> (accessed 24 November 2017); Jinghua Qian, *Gay Mom Asks China's Congress to Allow IVF for Unmarried Women*, (19 January 2017), Sixth Tone, online: <<http://www.sixthtone.com/news/1843/gay-mom-asks-chinas-congress-to-allow-ivf-for-unmarried-women>>.

Although it may be true that advocating for women's interests under the rubric of rights will help raise awareness of single women's reproductive rights, an overemphasis on the impact of state law ignores the fact that state law must rely on other social orders to function.

I will start by providing a critical analysis of how scholars blame the Chinese state for using its population policies to push women into marriage; and how some feminist activists and lawyers advocate for legal reforms to protect single women's reproductive rights. I will explain why the approach of blaming the Chinese state and demanding rights would put the interests of some leftover women at risk by reinforcing social injustice and inequality. Drawing upon legal pluralism and the data obtained from my fieldwork, I stress that the political discourse of *suzhi* (素质), or quality, has been very influential in shaping the way ordinary people in China judge whether state law should grant unmarried women reproductive rights and whether a particular unmarried woman deserves the right to become a mother. I argue that even if the Chinese formal legal system grants single women reproductive rights, unmarried women who are considered to be of low quality would not be able to have the enjoyment of reproduction because of the influence of the *suzhi* discourse in ordinary people's everyday conversations.

I. Blaming the State and Demanding Rights: Voices from Scholars and Feminist Activists

In recent years, several feminist scholars and activists whose work focuses on gender and China have been criticizing the Chinese state for significantly magnifying the pressure on leftover women to marry. Fincher argues that the Chinese state has taken a leading role in launching the media campaign of "leftover women" to stop single women from

delaying marriage. Fincher condemns the All-China Women's Federation for intimidating single women into marriage through its complicity with the media at different levels to reinforce a traditional understanding of marriage, family, and gender roles.⁸⁷⁰ According to Fincher, the state media, together with the All-China Women's Federation, have used news reports, columns, cartoons, television shows, and even nationwide surveys to stigmatize educated single women since 2007.⁸⁷¹

Fincher argues that the mass media campaign is designed to promote marriage in order to maintain social stability and upgrade "population quality."⁸⁷² According to Fincher, the media campaign aims to pressure leftover women to marry in order to tame "restless" men for the sake of social stability.⁸⁷³ Indeed, there has long been a general stereotype that "a man with no wife, family, or property to discipline him" may endanger the social and moral order.⁸⁷⁴ Fincher's argument is based on the fact that the shortage of marriageable women has become a social problem due to China's imbalanced sex ratio at birth after the strict implementation of the one-child policy.⁸⁷⁵ Luo et al.'s research also illustrates how the All-China Women's Federation strengthens the Chinese government's stereotype surrounding single women, seeing unmarried female individuals as threats to social stability.⁸⁷⁶ At the same time, Fincher blames the Chinese government for shifting

⁸⁷⁰ Fincher, *supra* note 1 at 2-5;42.

⁸⁷¹ *Ibid* at 15.

⁸⁷² *Ibid* at 28.

⁸⁷³ *Ibid* at 22-3.

⁸⁷⁴ Matthew Sommer, "Dangerous Males, Vulnerable Males, and Polluted Males: The Regulation of Masculinity in Qing Dynasty Law" in *Chinese Femininities, Chinese Masculinities: a Reader* (Berkeley and Los Angeles: University of California Press, 2002) 67 at 69.

⁸⁷⁵ For example, the gender ratio at birth is 115.88 boys born to every 100 girls in 2014. See Ping Lin "Chinese Men Outnumber Women by 33 Million After Decades of Gender Bias," (22 January 2015) Radio Free Asia, online: < <http://www.rfa.org/english/news/china/gender-01222015125826.html> >.

⁸⁷⁶ Luo et al, *supra* note 4.

the burden of upgrading population quality to leftover women.⁸⁷⁷ She condemns the government for considering these urban, well-educated, professional women to be ideal “machines” to produce genetically-superior children.⁸⁷⁸

While scholars conducting research on leftover women focus exclusively on heterosexual elite women, some feminist activists and lawyers use a more inclusive term, “single women,” to refer to unmarried heterosexual women and lesbians.⁸⁷⁹ In November 2016, three Chinese NGOs involved in LGBT and gender issues released a report titled “Single Women’s Reproductive Rights – A Research Report on Policy and Lived Experience.”⁸⁸⁰ The Report provides an analysis of discrimination against unmarried women’s enjoyment of reproductive rights and advocates for legal reforms to protect single women’s reproductive rights. These feminist activists and lawyers assert that there is a close linkage between single mothers’ miserable experiences and state law’s restrictions on childbearing outside marriage.

The Report criticizes official law for putting in place barriers to single women’s reproductive rights, with a focus on how the law denies single women access to assisted reproductive technologies (hereafter ARTs).⁸⁸¹ The authors of the Report argue that the law’s denial of single women’s reproductive rights is a shocking human rights violation because people are born with the right to give birth. They contend that it is unjust for China’s population policy to only acknowledge childbearing within marriage between

⁸⁷⁷ It is worth pointing out that the concept of leftover women in Fincher’s work exclusively refers to unmarried elite women.

⁸⁷⁸ Fincher, *supra* note 1 at 30.

⁸⁷⁹ Single Women and Lesbian Couple’s Reproductive Rights Working Group of China, *supra* note 869.

⁸⁸⁰ *Ibid.*

⁸⁸¹ *Ibid.*

men and women and punish those who exercise their reproductive rights in a different way.⁸⁸²

In the Report, these feminist activists and lawyers highlight the huge disparity between what is promised in law on the books and what unmarried women experience in reality. They attribute the gap between rights promised and rights delivered to the conflict between official laws at the national level and administrative and local rules issued either by National Health and the Family Planning Commission or by provincial governments and local people's congresses.⁸⁸³ They blame provincial laws and policies for punishing childbearing outside marriage and criticize administrative laws and regulations for denying unmarried women access to ARTs.⁸⁸⁴ They conclude the Report by putting forward some suggestions on legal reforms, which focus on rewriting state law to stop the punishment of extramarital childbearing and advocating for unmarried women's reproductive rights, especially their access to ARTs.⁸⁸⁵

⁸⁸² *Ibid.*

⁸⁸³ According to the Report, unmarried women's reproductive rights are protected by the *Law of the People's Republic of China on the Protection of Women's Rights and Interest* and the *Law of the People's Republic of China on Population and Family Planning*. The former stipulates that women have the right to choose whether to give birth or not, as long as it is in accordance with relevant regulations of the state, while the latter states that citizens have the right to give birth as long as they fulfill their obligations stipulated by relevant laws and policies on family planning. "Law of the People's Republic of China on the Protection of Women's Rights and Interests (2005 Amendment)," *supra* note 323. "Law of the People's Republic of China on Population and Family Planning," *supra* note 322.

⁸⁸⁴ According to the Report, the most significant ones are the *Administrative Measures for Assisted Reproductive Technologies*, the *Technical Norms of Assisted Reproductive Technologies*, the *Ethics Principles of Assisted Reproductive Technology and Human Sperm Bank*.

⁸⁸⁵ The Report puts forward the following suggestions: first, China's current legal system should stop mentioning that "each couple is encouraged to have two children", and the law should explicitly acknowledge that every individual is granted to the enjoyment of reproductive rights, regardless of their gender, sexual orientation, etc.; second, the government should grant unmarried women the access to ARTs by deleting the stipulation that "medical staff must strictly implement the national population and family planning laws and regulations, and shall not assist any single women nor couples with human assisted reproductive technologies in a way that is not inconsistent with national population and family planning regulations"; third, single women's rights to use the services of human sperm bank should be explicitly granted in legal documents such as *The Ethics Principles of Assisted Reproductive Technology and Human Sperm Bank*; fourth, the government should stop imposing social upbringing fee on citizens.

As part of this feminist movement of seeking recognition for single women's reproductive rights, some feminist activists, with a few notable lesbians taking the lead, petitioned China's National People's Congress and the National Committee of the Chinese People's Political Consultative Conference for a change in the law to allow unmarried women to give birth and offer ARTs to single women.⁸⁸⁶ In this movement, feminist activists and lawyers have deployed the approach of demanding legal changes to grant unmarried women reproductive rights by attributing unmarried women's miserable experience of childbearing to the law's denial of unmarried women's access to ARTs and the imposition of financial punishment on birth outside marriage.

Compared to the discussion of unmarried women's childbearing in existing literature on leftover women, it seems the Report is more inclusive due to its incorporation of the experience of lesbians. In my view, however, the voices of low-income or non-elite women are still missing in this Report. By focusing on the experience of women who travel overseas for the service of ARTs and who have a good financial status to support children on their own, these feminist activists and lawyers have unconsciously reinforced the belief that childbearing is a privilege of women who can afford to pay for the ARTs and raise children on their own. The Report fails to mention those more accessible means of conception that have been widely used by unmarried women, which include at-home self-insemination with the sperm of known donors, insemination by natural means with the purpose of becoming single mothers, and having children with gay couples or gay friends. In so doing, this Report not only turns a blind eye to the needs of women who are

⁸⁸⁶ See, for example, Qian, *supra* note 869.

less financially secure but also emphasizes through its omissions the stigmas attached to childbearing via home insemination or biological means by single women.

More importantly, attributing unmarried women's difficulties in childbearing to state law's prohibition of childbearing outside marriage obscures the impact of other levels of social ordering, and consequently misrepresents state law as the principal barrier for unmarried women to become mothers. State law's restriction of childbearing within marriage, according to my data, is by no means the main concern of leftover women. Most women in my interviews who are considering becoming single mothers offered that their choices are significantly affected by the discourse of *suzhi*.

In the balance of this chapter, I will discuss how *suzhi* affects the manner in which people judge whether a single woman can be qualified as a mother and in so doing impacting unmarried women's decisions in childbearing. I demonstrate how the Chinese state's construction and reinforcement of the *suzhi* discourse shapes ordinary people's attitudes toward women with different backgrounds. Using the impact of Chinese state's *suzhi* discourse on leftover women's reproductive rights as an example, this chapter aims to attract the attention of law and society scholars to the relationship between political concepts, social expectations, and ordinary people's fulfillment of rights in China.

II. The Interaction of *Suzhi* Discourse and State Law

China has long prohibited births outside marriage. Under China's population policy, hospitals and the staff cannot offer assisted reproductive technologies to single women or

unmarried couples.⁸⁸⁷ Thus, procreation is only allowed within heterosexual marriage. It may appear on the surface that state law's prohibition of single women's reproductive rights equally applies to every unmarried woman, regardless of their financial status, class, and sexual identities. The official discourse of *suzhi* and its influential role in guiding ordinary people to divide citizens into those with and without high *suzhi*, however, makes it easier for some women to have the enjoyment of reproduction, while it creates extra burdens for others to prove they could be qualified as mothers.

A. The Discourse of Quality (*suzhi*)

During the 1980s, the Chinese government believed China's population was "too large, too rapidly growing, too rural, too ill-educated, and too uneven in age structure."⁸⁸⁸ The term *suzhi* was officially designated as a political keyword to attribute China's failure to catch up with First World Countries to the low quality of its population, especially the quality of rural people.⁸⁸⁹ The solution, according to the Chinese government, was to produce and foster superior children who would grow into a high-quality labour force.⁸⁹⁰ To ensure the "quality" of the coming generations, the Chinese government put forward the eugenics campaign, or *yousheng youyu* (优生优育), which emphasized the improvement of the genetic makeup, health, and education of the children to meet the

⁸⁸⁷ For more information, see Qian Liu "Single Women's Frozen Eggs Threaten Chinese Communist Party's 'Harmonious Society' Project?," (2015) Blogging for Equality, online:< <http://www.bloggingforequality.ca/2015/08/qian-liu-single-womens-frozen-eggs.html> > (accessed December 14, 2016).

⁸⁸⁸ Greenhalgh, *supra* note 312 at 17.

⁸⁸⁹ Hairong Yan, "Suzhi as a New Human Value: Neoliberal Governance of Labor Migration," in *New Masters, New Servants: Migration, Development, and Women Workers in China*, (Durham and London: Duke University Press, 2008) 111 at 116.

⁸⁹⁰ Greenhalgh, *supra* note 312 at 20.

nation's needs.⁸⁹¹ The responsibility of nurturing high-quality children mainly fell on the shoulder of mothers. It was believed that a good mother should sacrifice her own interests for her children and “follow the prescriptions of the latest science in conceiving, giving birth to, and rearing a high-quality child.”⁸⁹²

By the early 1990s, the lack of *suzhi* among Chinese citizens had become “a general explanation for everything that held the Chinese nation back from achieving its rightful place in the world.”⁸⁹³ The *suzhi* discourse is based on the assumption that the population in the Global North has higher *suzhi* than that of the Global South,⁸⁹⁴ and that people with higher *suzhi* will contribute more to the development of the country than those who are perceived to be low-quality. *Suzhi* has also appeared in the discourses of “social distinction and the discursive production of middle classness.”⁸⁹⁵ The term *suzhi* is a sweeping idea that is relevant to education, civic values, global savvy, family environment, the way a person talks and behaves, etc.⁸⁹⁶ The improvement of individuals' *suzhi* is, in the eyes of both the Chinese state and its citizens, the foundation of social stability and national strength in present-day China.⁸⁹⁷ *Suzhi* propaganda encourages rural people to be conscious of their lack of *suzhi*.⁸⁹⁸ By portraying peasant

⁸⁹¹ *Ibid* at 58.

⁸⁹² *Ibid* at 59.

⁸⁹³ Anagnost, *supra* note 283 at 190.

⁸⁹⁴ Yan, *supra* note 889 at 116.

⁸⁹⁵ Anagnost, *supra* note 283 at 190.

⁸⁹⁶ Greenhalgh, *supra* note 312 at x; Rofel, *supra* note 138 at 104.

⁸⁹⁷ Feng Xu, “Governing China's Peasant Migrants: Building XiaoKang Socialism and Harmonious Society” in Elaine Jeffreys, ed, *China's Governmentalities: Governing Change, Changing Government*, London and (New York: Routledge, 2009) 38; Bray, *supra* note 317.

⁸⁹⁸ Yan, *supra* note 889 at 129.

migrants as low-quality people who need to build more *suzhi* into their bodies,⁸⁹⁹ the discourse of *suzhi* acts as a tool for the Chinese state to justify the necessity of governing China's peasant migrants for the sake of social stability.⁹⁰⁰ At the same time, there are ongoing campaigns of "community building" (*shequ jianshe*, 社区建设) that aim to raise the overall *suzhi* of urban residents, which divide urban residents into those of high "quality" who are fit to participate in self-governance of the community and those of low "quality" who are fit only to be governed.⁹⁰¹

Suzhi has been ubiquitous in people's everyday conversation.⁹⁰² Both elites and non-elites in today's China have accepted the validity of the discourse of *suzhi*, although there is no consensus as to who would be regarded as typical of high *suzhi*.⁹⁰³ More importantly, policy documents, government speeches, media reports and academic articles not only reinforce the division created by *suzhi* but also make *suzhi* one of the most important criteria to judge a particular person. As people's daily conversation and day-to-day interaction has absorbed the official discourse of *suzhi*, it becomes an indispensable part of social attitudes guiding people's behaviour and their perceptions of that of others. Influenced by the official discourse of *suzhi*, ordinary people attach great importance to "quality," which creates divisions among Chinese citizens based on

⁸⁹⁹ Anagnost, *supra* note 283 at 193.

⁹⁰⁰ Xu, *supra* note 897; Bray, *supra* note 317; Yan, *supra* note 889; Anagnost, *ibid*; Hairong Yan, "Neoliberal Governmentality and Neohumanism: Organizing *Suzhi*/Value Flow through Labor Recruitment Networks" 2003:18 *Cultural Anthropology* 493 at 493.

⁹⁰¹ Bray, *supra* note 317 at 100, 102. "Community building," according to David Bray, is a limited form of self-governance in which "the community is expected to manage its own affairs within the operational parameters established by government authorities."

⁹⁰² Yan, *supra* note 889 at 114.

⁹⁰³ Delia Lin, *Civilising Citizens in Post-Mao China: Understanding the Rhetoric of Suzhi*, Routledge Contemporary China Series 169 (Abingdon, Oxon ; New York, NY: Routledge 2017) at 3.

urban/rural and class lines. For example, gay men in Rofel's research on desires for cultural belonging within "Chineseness" usually invoke *suzhi* to express their anxiety about or displeasure with male prostitution for men. They often use "low-quality" to castigate rural gay men, especially those who make their living through sex work. Thus, *suzhi* helps to exclude so-called low-quality gay men from proper Chinese cultural citizenship.⁹⁰⁴

Both the Chinese government and ordinary people deploy the discourse of *suzhi* to divide people into the categories of high-quality and low-quality citizens. On the one hand, people use low-quality to describe the "uncivilized" or "backward" behaviours of people from rural areas; and on the other hand, high-quality is used to refer to elite and middle classness, or to emphasize the investment in education to accumulate *suzhi* and ensure self-development and class mobility.⁹⁰⁵ Ordinary people's emphasis on *suzhi* usually comes from the anxiety of falling behind in the increasingly competitive social environment in today's China.⁹⁰⁶ Despite the Chinese state's avowed goal of raising the quality of the people as a whole (提高全民素质), the fact is still that ordinary people need to compete with each other fiercely for limited resources to avoid being culled (淘汰).⁹⁰⁷ The fear of being culled can be found under all sorts of situations that may begin as early as preschool.⁹⁰⁸ Almost every Chinese parent is familiar with the idea of "don't

⁹⁰⁴ Rofel, *supra* note 138 at 104.

⁹⁰⁵ Anagnost, *supra* note 283 at 190; Yan, *supra* note 889 at 129.

⁹⁰⁶ Andrew Kipnis, "Suzhi: A Keyword Approach," (2006):310 *The China Quarterly* 186.

⁹⁰⁷ Anagnost, *supra* note 283 at 203–4.

⁹⁰⁸ *Ibid* at 204.

let your child lose at the starting line (别让孩子输在起跑线上),” which emphasizes the importance of “best” education in the first six years of children’s lives in ensuring future success.⁹⁰⁹

Rather than encouraging ordinary people to think critically about the uneven distribution of educational resources, or the exclusive urban education system, the *suzhi* discourse leads people to believe that it is the individual’s responsibility to improve her own *suzhi*. As Delia Lin suggests, ordinary people use “high quality” to express their approval and respect for other people, whereas they use “low quality” to show disparagement or disapproval of others.⁹¹⁰ In other words, the discourse of *suzhi* magnifies social differences by derogating rural migrant workers and encouraging people to compete and accumulate *suzhi* in order to have “more value than others and therefore [become] more deserving of the rights of citizenship.”⁹¹¹ While I am against the idea of dividing people into the two categories and I am wary of the discrimination against the so-called “low quality” citizens, I use this term for analytical purposes.

During my fieldwork in China, I frequently encountered the discourse of *suzhi* because many interviewees used *suzhi* to discuss whether a particular woman deserves the right to remain single or become a single mother. Although my interviewees do not necessarily know that the discourse of *suzhi* first appeared during the 1980s in the context of eugenics to promote healthy birthing and child rearing and to discourage rural people

⁹⁰⁹ China Daily, “The Question of Early Education,” (27 May 2011) China Daily, online: <http://usa.chinadaily.com.cn/epaper/2011-05/27/content_12591614.htm>

⁹¹⁰ Lin, *supra* note 903 at 2.

⁹¹¹ Anagnost, *supra* note 283 at 194.

from giving birth to too many children,⁹¹² they automatically invoked *suzhi* or *suzhi*-relevant discourse in the discussion. The discourse of *suzhi* has played a major role in guiding people to divide themselves and others into the categories of high-quality unmarried women who deserve to be single mothers and low-quality unmarried women who need to be governed in terms of reproduction. As a result, people tend to attribute low-quality women's failures to be qualified as responsible single mothers to their lacking in *suzhi*. I argue that the state's emphasis on the responsibilities of mothers in ensuring the success of the child has also contributed to the belief among my interviewees that only those who are well-prepared mentally and financially deserve to become mothers.

To be specific, the infiltration of the political discourse of *suzhi* into ordinary people's everyday lives has given rise to a common belief among my interviewees: state law should treat its citizens differently based on their *suzhi*. My interviewees suggest that state law should govern "low-quality" unmarried women's childbearing as a way to protect them and maintain social stability; and on the other hand, state law should acknowledge "high-quality" single women's desire to have children and support their reproduction. This is because "high-quality" women are believed to be more reliable and mature in making decisions on their own and be responsible for their choices and behaviour, while "low-quality" women are considered to be the opposite.

Before I turn to the analysis of leftover women's narratives of *suzhi* and reproductive rights, I would like to challenge the dichotomy of "high-quality" and "low-quality" women, although this dichotomy keeps popping up in the narratives of leftover women in

⁹¹² Yan, *supra* note 889 at 114.

my interviews. There is not a clear boundary between “high-quality” and “low-quality” women, as *suzhi* is “a flexible concept capable of expressing both inter- and intra-group evaluations.”⁹¹³ In other words, whether a particular woman is of high-quality depends on how the person who is making the judgement thinks and what criteria the person uses.

a) The Law Should Govern Low-quality Unmarried Women

*Paying a visit to any hospital’s Obstetrics and Gynecology Department will help you understand why unmarried women’s childbearing should not be legalized. There are too many unmarried women conducting abortion in my hospital every day, and the situation would get worse if the law allowed birth outside marriage. This is because it would convey a message to the public that unprotected pre-marital sexual relationship is normal. Many girls and unmarried women who are not very well-educated do not know how to protect themselves, and unfortunately, there are many irresponsible men out there. For example, some men would abandon their girlfriends after the unwanted children were born. It is necessary for state laws and policies to constrain childbearing within marriage as a way to protect women.*⁹¹⁴

—Interview, Yan Hui, a single woman in Putian

*The legalisation of childbearing outside marriage is harmful to women, especially at a time when the discussion of sexual issues is still considered taboo. Most people do not receive enough sex education to protect themselves.*⁹¹⁵

—Interview, Hu Lei, a recently-married woman in Xiamen

*It is dangerous to legalize unmarried women’s reproduction all at once since there is a huge gap between urban and rural women regarding *suzhi*. There are far too many unmarried rural mothers who have only received very limited education, and the legalization of childbearing outside marriage will further encourage these low-quality rural women to give birth without considering whether they can support their children.*⁹¹⁶

⁹¹³ Lorin G. Yochim, *Navigating the Aspirational City: Urban Educational Culture and the Revolutionary Path to Socialism with Chinese Characteristics* (Boston: BRILL, 2018) at 96.

⁹¹⁴ Interview, Yan Hui, 25-year-old, single, Putian, Fujian Province, China, September 2016.

⁹¹⁵ Interview, Hu Lei, *supra* note 632.

⁹¹⁶ Interview, Zhang Junya, 29-year-old, married, Fuzhou, Fujian Province, China, September 2016. Zhang Junya is the daughter of Aunty Zhang.

—Interview, Zhang Junya, an unmarried woman in Fuzhou

*Some low-quality women even give birth in order to sell their children for money.*⁹¹⁷

—Interview, Lai Xiaoyang, a married woman in Dehua County

*The charge of a fine for the violation of the one-child policy for birth outside marriage is actually a very effective approach to sound an alarm bell for those low-quality unmarried rural women who have a sexual relationship but never consider being responsible for the children and the society. The state should let every low-quality woman know that there is a punishment for giving birth outside marriage so as to prevent them from giving birth without thinking about the consequences.*⁹¹⁸

—Interview, Tian Keke, a 26-year-old single woman in Xiamen

The Report put forward by feminist activists and lawyers shows that 86.9% of their online participants hold the view that single women's childbearing is acceptable, with 58.9% of them choosing the option of "highly agree" and 27.90% choosing "agree" in the online survey of "People's Attitudes towards Single Women's Childbearing."⁹¹⁹ While it might be true that attitudes towards divorced women and single mothers are becoming increasingly inclusive, my data reflects a strong resistance among leftover women themselves to the legalization of childbearing outside marriage. My interviewees' narratives point in a very different direction from that of feminist activists and lawyers. My interviewees are not keen on advocating for a legal reform to grant leftover women reproductive rights. Rather, most of them argue that the law should prevent single women from being taken advantage of by irresponsible men who dump their girlfriends when

⁹¹⁷ Interview, Lai Xiaoyang, 28-year-old, married, Dehua County, Quanzhou, Fujian Province, China, July 2016.

⁹¹⁸ Interview, Tian Keke, 26-year-old, single, Xiamen, Fujian Province, China, July 2016.

⁹¹⁹ Single Women and Lesbian Couple's Reproductive Rights Working Group of China, *supra* note 869 at 9.

they find them pregnant. In their view, men should be responsible for the “consequences” of sexual relationships, which in this case may be the birth of a child. My interviewees expect state law to help ensure that men will fulfill their obligations as fathers.

The fact that my interviewees portray single mothers as victims of premarital sexual relationships shows that single mothers in China are still stigmatized as immature, irresponsible, and lacking in the ability to control their own bodies. By referring to the discourse of *suzhi*, my interviewees are against the idea of allowing “low-quality” women to decide whether they would like to have children. The reason, based on the narratives above, is that these women do not have the *suzhi* to protect themselves or be responsible for their choice to give birth outside marriage. They believe it is necessary for state law to impose restrictions on “low-quality” or rural single women’s reproduction for the sake of these women, and society as a whole.

Under the belief that “the law should treat its citizens differently based on their *suzhi*,” my interviewees tend to suggest that “law should govern low-quality unmarried women.” As single mothers suffer from the stigmas that they are too immature and irresponsible to protect themselves from men who are not serious about the relationship, they often fall into the category of low-quality women in the eyes of ordinary people in China. Thus, it is not surprising for my interviewees to assert that state law’s prohibition of birth outside marriage would protect “low-quality” women by preventing them from suffering from their immature decisions in childbearing. This belief contributes to the legitimacy of the Chinese government in governing those deemed to be of low quality based on their class and social and financial status.

In this circumstance, even if state law grants unmarried women reproductive rights, it is difficult for so-called low-quality unmarried women to actually have the enjoyment of childbearing due to the great pressure they face from people who do not think them qualified for single motherhood. I argue that most unmarried women, especially those who are deemed to be of low quality, will not benefit from feminist activists' advocacy for unmarried women's reproductive rights. In my view, the Report's exclusive focus on "high-quality" women not only runs the risk of having the interests of "low-quality" women "determined by a set of assumptions or by dominant community figures who speak on their behalf"⁹²⁰ but also masks the fact that "low-quality" women have an extra burden to prove that they can be qualified as responsible mothers and that their families do not need the involvement of their children's genetic fathers.

This belief also accounts for the lack of "low-quality" women's narratives in the Report. The Report's overemphasis on access to ARTs and its stigmatization of other accessible approaches of insemination implies that being single mothers by choice is the privilege of "high-quality" women. By focusing on advocacy for unmarried women's "right" to have access to ARTs, the Report magnifies the impact of state law and exaggerates single women's demand for artificial reproductive services. Using "high-quality" women to represent all single women who are considering childbearing, feminist activists put the interests of "low-quality" women at risk. The Report ignores the advantages of more accessible approaches used by lesbians and single mothers to conceive, such as at-home self-insemination with the sperm of known donors or having

⁹²⁰ Angela Campbell, "Wives' Tales: Reflecting on Research in Bountiful," (2008) 23:1-2 *Canadian Journal of Law and Society* 23 at 125.

babies together with gay men. Moreover, the Report emphasizes the danger of looking for sperm donors online, lesbians' failures in finding reliable sperm donors, and the difficulties of cooperating with gay men to have children.⁹²¹ I understand that their aim of emphasizing and even magnifying the risk of these methods is to stress the need to grant unmarried women access to ARTs. I am not denying that there are some risks for unmarried women to conduct home insemination or cooperate with gay men to give birth. Yet, I argue that there are many approaches to reduce the risk. For example, having a test for HIV and other sexually transmitted diseases prior to insemination can alleviate the risks to a large extent.⁹²²

Attaching stigma to these more accessible approaches of insemination that are being used by so-called low-quality women may invite trouble not only for these women but also for lesbians and unmarried women in general. It is reasonable to suspect that after the legalization of unmarried women's reproductive rights, the Chinese government would start to target unmarried women who use at-home self-insemination with sperm from known donors and force them to turn to medical assistance.⁹²³ If home insemination was outlawed in China, the interests of unmarried women who wish to avoid the medicalization of the conception process would be negatively affected. In her research on

⁹²¹ Single Women and Lesbian Couple's Reproductive Rights Working Group of China, *supra* note 869 at 62-63;73.

⁹²² Fiona Kelly, "Alternative Conception: The Legality of Home Insemination under Canada's Assisted Human Reproduction Act" (2010) 26 *Canadian Journal of Family Law* 159.

⁹²³ In Canada, for example, the Assisted Human Reproduction Act (AHRA) failed to address home insemination. According to Kelly, the AHRA lists a number of illegal activities, and it could be argued that self-insemination is caught within these provisions. Feminist scholar Fiona Kelly cautions that if the AHRA imposed penalties on home insemination, lesbians and single women would take additional health risks out of the fear of being caught. Kelly advocates that the practice should be explicitly legal in Canada and the law should treat home and clinical insemination identically for the purpose of legal parentage law. Kelly, *ibid.*, p. 77.

the legality of home insemination under Canada's *Assisted Human Reproduction Act*, Fiona Kelly argues that insemination in a clinical environment often fails to be responsive to the needs of lesbians and single women.⁹²⁴ According to Kelly's research, not all fertility clinics are respectful of lesbians' and single women's choices to have children: some lesbian non-biological mothers are excluded by fertility clinics, while single women are often questioned by the staff about their ability to care for a child.⁹²⁵

At a time when it is widely believed that law should govern low-quality unmarried women, these women may feel uncomfortable going to fertility clinics because the staff would question their ability to raise a child, or even blame them for being immature and selfish. Thus, the prohibition of home insemination would put "low-quality" women in a vulnerable position, as they would not only lack the financial resources to have access to ARTs but would also suffer from discrimination during clinical insemination even if they had money for ARTs. For this reason, I am wary of the approach of condemning the state and state law for unmarried women's suffering and demanding rights from the state. I argue that this approach ensures the interests of women who desire to use ARTs at the cost of "low-quality" women and those who wish to avoid the medicalization of the conception process.

b) The Law Should Acknowledge "High-quality" Unmarried Women's Desire

Marriage and having children should not be linked together. Some friends of mine are considering becoming single mothers without marriage. Many high-quality women choose to forgo marriage because of the lack of high-quality men in current

⁹²⁴ Kelly, *supra* note 922.

⁹²⁵ *Ibid* at 159.

*society. If women can live a better life without having a male partner, why should they choose to be with a man? State law should not deny these women's rights to have children. It is their choice.*⁹²⁶

—Interview, Fangxin, a 30-year-old civil servant in Xiamen

*State law should not only respect high-quality women's choice to become single mothers but also need to provide more support to their childbearing. It is difficult for them to balance their work and family responsibilities when they have a professional job. Taking care of a child and working full time is exhausting.*⁹²⁷

—Interview, Hu Lei, a 30-year-old architect in Xiamen

While there are many concerns among my interviewees about allowing “low-quality” women to become single mothers, Fangxin and Hu Lei suggest that as long as a “high-quality” woman can be a responsible single mother, the law should leave her to make her own decision and support her when it is necessary. The belief that “high-quality citizens deserve more rights,” or “‘high-quality’ women are more deserving of the rights of citizenship,” is so influential that my interviewees, including those who do not self-identify as “high-quality” women, generally agree that what is in urgent need for women who desire to be single mothers is to improve their financial status, social status, and accumulate *suzhi*.

In short, my interviewees believe state laws and policies should govern “low-quality” women and deny unmarried women’s reproductive rights, while “high-quality” women deserve different treatment and should have the right to decide whether they would like to become single mothers. My interviewees implicitly or explicitly express the notion that a universal legalization of birth outside marriage would pose a threat to social stability because “low-quality” women are more likely to choose to give birth outside marriage

⁹²⁶ Interview, Fangxin, 30-year-old, married, Xiamen, Fujian Province, China, July 2016.

⁹²⁷ Interview, Hu Lei, *supra* note 632.

without considering the consequences of their behaviour. The lack of representation of “low-quality” women and the stigma attached to accessible means of conception in the Report also reflect the reluctance of those who drafted it to include “low-quality” women in the discussion of single women’s reproductive rights.

In sum, state law and policies concerning *suzhi* has significantly shaped the way people understand and engage with the law. When this belief is influential in Chinese society, it is difficult for anyone to demand rights from the state to achieve a desirable outcome.

B. The Impact of *Suzhi* in Everyday Life

The lack of so-called “high-quality” men in Fuzhou pushed Auntie Zhang and her friends to gather at the Magpie Bridge. When Auntie Zhang was looking for a potential partner for her daughter, she kept looking at the information of men’s income, job, education, family background, and financial status, all of which helped her to evaluate whether a man was of high quality. Auntie Zhang’s story shows that *suzhi* is pervasive in ordinary people’s everyday life and has a significant impact on their choices, although some people may not be conscious of its influence.

When scholars, as well as some feminist activists and lawyers, blame the Chinese state and its laws and policies for prohibiting birth outside marriage, they all use “high-quality” women to represent unmarried Chinese women. Thus, legal reforms resulting from their research and advocacy would not necessarily benefit “low-quality” women. Fincher refers to Ellen Judd, Harriet Evans, and Susan Greenhalgh’s work on *suzhi* and eugenics to support her argument that “the very people the Chinese government would

like to see having babies are highly educated urban women, who would be able to produce children with ‘superior’ genetic make-up, and provide these children with the most nurturing environment possible.”⁹²⁸ While Fincher focuses on how *suzhi* and eugenics motivates the Chinese state to push its “high-quality” women to get married, she has not paid much attention to the interest of “low-quality” women because of her exclusive focus on elite women in her discussion. I highlight the importance of examining how the discourse of *suzhi* shapes the way ordinary people in China judge whether state law’s prohibition of birth outside marriage is just and whether a particular woman deserves the right to give birth outside marriage.

Although I agree with the Report that unmarried women deserve the right to become single mothers by choice, I have argued that the approach of demanding rights from the Chinese state would put the interests of “low-quality” women at risk. Without giving sufficient weight to the fact that the official discourse of *suzhi* has become pervasive in people’s daily lives, the Report ignores the impact of the interaction of state law and social attitudes on unmarried women’s choices in becoming single mothers. As *suzhi* is one of the most influential criteria used by ordinary people to distinguish between those who deserve autonomy and those who only deserve to be governed, the Report’s overemphasis on the desires of “high-quality” women will further reinforce the prevalent belief that only “high-quality” unmarried women deserve the right to become single mothers.

The impact of the discourse of *suzhi* is influential in Chinese society, and it is not limited to the discussion of who deserves the right to give birth. In fact, it plays a

⁹²⁸ Fincher, *supra* note 1 at 29–30.

significant role in masking social inequality and injustice by blaming those who are deemed of low quality. For example, it is common for urban residents and the Chinese media to take sides with local government officials and blame “low-quality” migrant workers for posing a potential threat to social order in the form of increased rates in crime.⁹²⁹ These migrant workers are often referred to as the floating population (*liudong renkou* 流动人口), peasant workers (*mingong* 民工), and blind drifters (*mangliu* 盲流), all of which emphasize the “low-quality” of migrant workers and the need for the Chinese state to govern migrant workers.⁹³⁰ The discourse of *suzhi* motivates ordinary people to prioritize devoting energy to improving the self in order to have more autonomy over advocating for legal changes to ensure equal rights and identical legal treatment.

One salient feature is that while ordinary people believe those of low quality need to be governed by the state, it does not translate into a hostile attitude toward “low-quality” citizens. Rather, most of them are well-intentioned: they hope state law would help protect those “low-quality” citizens. As Yan Hui suggests, the law should constrain childbearing within marriage as a way to protect those low-quality women who do not know how to protect themselves.⁹³¹ A public outrage over Beijing migrant workers or the low-end population (*低端人口*)⁹³² evictions is an ideal example to demonstrate that

⁹²⁹ Xu, *supra* note 897 at 42; Feng Xu, *Women Migrant Workers in China's Economic Reform*, (London: Palgrave Macmillan 2000) at 117–25.

⁹³⁰ Xu, *supra* note 897 at 42–3.

⁹³¹ Interview, Yan Hui, 25-year-old, single, Putian, Fujian Province, China, September 2016.

⁹³² The censors have now banned that word from social media and elsewhere.

ordinary people do not side with the state to use the law to suppress these so-called “low-quality” citizens.⁹³³

Conclusion

In this chapter, I have used the example of unmarried Chinese women’s reproductive rights to evaluate a prevalent approach used by many scholars and activists: blaming official law and demanding rights from the Chinese state. While some scholars and feminist activists blame the Chinese state for using official laws and policies to deny unmarried women’s reproductive rights and push leftover women into marriage, I question their exclusive focus on state law. I have illustrated how ordinary people’s understandings of state law concerning childbearing are shaped by the discourse of *suzhi* and how it affects unmarried women’s choices in childbearing. By demonstrating the fact that “low-quality” women are excluded from the discussion of granting unmarried women reproductive rights, I have argued that the lack of attention to the impact of the *suzhi* discourse may put the interests of those who are deemed to be of low quality at risk. A critical analysis of the commonly known but rarely discussed discrimination created by the discourse of *suzhi* will help us understand the attitudes of ordinary people in China

⁹³³In November 2017, tens of thousands of migrant workers who were referred to by the state as the low-end population were forced out of their dwellings into the streets in the freezing cold of the Beijing winter with little to no notice. Ordinary citizens were no less angry than migrant workers. Many people declared their anger on the Internet, sharing photos and videos of migrant workers thrown out of their homes. Hundreds of volunteers rallied to support the homeless migrant workers by providing food, temporary shelters, and other services. For more information, see Simon Dneyer and Luna Lin, “Mass Evictions in Freezing Beijing Winter Sparks Public Outrage but Little Official Remorse,” *The Washington Post*, online: <https://www.washingtonpost.com/news/worldviews/wp/2017/11/27/forced-evictions-in-freezing-beijing-winter-sparks-public-outrage-but-little-official-remorse/?utm_term=.efd7cfd583a2>

toward women's rights, gender issues, and the protection of rights of any marginalized communities.

Chapter 8: Concluding Thoughts and Contributions to Scholarship

When I was in my mid-20s, I lived in my hometown, Xiamen, a relatively developed coastal city in Southeast China. At that time, I was surrounded by friends, relatives, and colleagues who kept asking a series of questions about my marital status and potential marital partners. They often tried to lecture me to find a boyfriend immediately. The lectures were often a reflection of the belief that “being single contravenes the laws of nature, civilization and science, and is basically an ‘anti-revolutionary’ crime that harms the well-being of ‘one’s parents, grandparents, Chinese society, the Chinese Communist Party and the Chinese nation!’”⁹³⁴ The pressure to confront this “Chinese-style forced marriage (中国式逼婚)”⁹³⁵ had intimidated many friends and colleagues of mine into marriage before they reached the age of 30 and left many more living under great pressure. It prompted me to think about what legal scholars could do to improve the situation for single women in China. I understood that state law might not be the main source of pressure to marry, but I was confident that state law participated in imposing barriers for leftover women to choose alternative family formations.

Reading existing literature on leftover women, I noticed that sociologists tend to blame China’s patriarchal culture and its “traditional” gender norms for leftover women’s pressure to marry and their difficulties in finding marital partners. Although one cannot deny the patriarchal nature of the cultural environment in Chinese society, depicting

⁹³⁴ Elaine Jeffreys & Haiqing Yu, *Sex in China*, China today series (Malden, MA: Polity Press, 2015) at 16-7.

⁹³⁵ According to Jeffreys and Yu’s description of the “Chinese-style forced marriage,” if the relatives find out that the woman still does not have a boyfriend, they would try to lecture the woman to find one immediately. *Ibid* at 16.

leftover women as victims of the so-called traditional culture leads us nowhere. From a postcolonial perspective, I was determined to offer a detailed discussion on leftover women's choices that situated these choices in the complexities of social and legal orders in today's China. In my view, at a time when China's legal system denies single women's rights to enter same-sex marriage and their rights to give birth outside marriage, legal barriers are too important to be ignored in the discussion on leftover women's pressure to marry. A postcolonial critique of current literature on leftover women and an emphasis on the need to revisit leftover women's choices have been provided in *Chapter Two:*

Classifying Leftover Women's Decisions as "Choices."

At the outset of my research, I focused my discussion on how law and society scholars could improve state law to create a better legal environment for single women to have autonomy in choosing alternative family formations, such as becoming a single mother by choice and entering same-sex marriage. Inspired by the works of feminist legal scholars, such as Susan Boyd and Fiona Kelly, I started to question China's legal system for its barriers for single women to choose alternative family structures. I went back to China to conduct interviews with leftover women in 2016 with an aim to identify the primary legal barriers and provide suggestions for future legal reform.

My data, however, pointed in a different direction. Leftover women's emphasis on family relations and public attitudes challenged feminist relational theory's strong attachment to autonomy. I realized that if we focused on autonomy, although relational, we would misunderstand leftover women's choices because of our ignorance of values that leftover women prioritize, such as harmonious family relations and other values concerning *zuoren*, face and *guanxi*. In *Chapter Four: The Relational Self and Social*

Relations, I referred to leftover women's narratives to emphasize the need to rethink feminist relational theory's attachment to autonomy. I have argued that the ways leftover women interact with family members and other people in their social networks are of great importance in understanding the differences between relational thinking of leftover women and feminist relational theorists.

The influential role of non-state orders led me to investigate how multiple levels of state law and non-state orders interact to affect leftover women's choices in marriage and childbearing; and how state law really operates in their everyday life. I examined leftover women's legal consciousness as a way to look into how they understand and engage with state law. Talking to leftover women, I realized that focusing exclusively on state law itself was problematic, as state law worked with other levels of social control to affect leftover women's choices in marriage and childbearing. I found that leftover women themselves do not care much about rights on the book, as they have developed a variety of strategies to evade state law. Instead of complaining about state law's discrimination against unmarried women, leftover women I interviewed were indifferent to women's rights on the book and were reluctant to spend time and effort advocating for legal changes. I investigated why these women did not care much about state law.

The research outcome of the investigation of leftover women's legal consciousness was reflected mainly in *Chapter Three: The Interaction of Multiple Levels of Social Ordering and Leftover Women's Choices* and *Chapter Five: The Lived Experience of Leftover Women's Engagement with State Law on Marriage and Childbearing*. In Chapter Three, I have analyzed how legal pluralism can facilitate a better understanding of leftover women's choices when they navigate through multiple levels of social control.

I have also discussed the importance of *qing li fa* in shaping leftover women's choices, as well as the potential contribution of the analysis of *qing li fa* to the area of legal pluralism as a whole. Chapter Five continues the conversation by offering examples of leftover women's reliance on *qing* to judge which level(s) of social ordering they should follow and questions the assumption that ordinary people's reluctance to use the formal legal system is a result of their lack of legal knowledge.

Chapter Six: Filial Piety and the Changing Qing Li uses the changing definitions of filial piety to emphasize the need to pay attention to the fluid nature of *qing li* and culture in Chinese society. The changing notion of filial piety serves as an example to show that leftover women are not merely following the requirements of the so-called traditional culture. Rather, they participate in shaping and reshaping *qing li* concerning central values of human life. Leftover women's definition and redefinition of filial piety support the argument among many postcolonial theorists that culture is an entity constantly created through relationships rather than a fixed property of groups.⁹³⁶ The differences between the notion of filial piety in China's current legal system and leftover women's understandings of filial piety also reveal how the Chinese state interprets "cultural values" strategically in its legislation to impose a dominant definition of a particular aspect of culture in order to control its citizens.

Chapter Seven: Legal Restrictions, Feminist Resistance, and Being Unmarried Mothers in China illustrates how state law interacts with social expectations of qualified mothers to affect leftover women's choices by focusing on unmarried women's reproductive rights. In Chapter Seven, I have criticized the approach of demanding rights

⁹³⁶ Volpp, *supra* note 47 at 94.

from the Chinese state to grant unmarried women access to assisted reproductive technologies. My concern is that by attaching stigmas to childbearing via home insemination and natural means, the approach runs the risk of sacrificing the interest of single women who cannot afford the assisted reproductive services and those who prefer not to go through the process. The aim is to caution that when feminist activists and scholars in China demand rights from the state or fight for gender equality through advocacy for legal changes, we need to evaluate the potential consequences of legal reforms on the more marginalized population.

Reading through these chapters, my readers who are interested in the topic of “leftover women” will have a better understanding of leftover women’s choices in marriage and childbearing by looking at how they navigate through multiple levels of social ordering. It is far more complicated than what existing literature on leftover women has suggested. Those who have an interest in marriage, childbearing, and family relations in contemporary China will see how parental expectations and support still play a role in shaping adult children’s choices in marriage and childbearing. At the same time, as both generations understand filial piety differently from the traditional notions of it, they have attached more value to emotional attachment than unconditional obedience to parents. These chapters provide a postcolonial analysis of current literature’s approach of “blaming culture” and leave it to leftover women themselves to define central values of human life. In so doing, these chapters illustrate a way of analyzing women’s choices in a relational way without focusing on autonomy. This is important for future research on women whose culture prioritizes familialism over individualism. The voice of leftover women also enriches existing literature of postcolonial feminist theory, given that current

literature has rarely touched upon the experience of women in China. Legal pluralism and legal consciousness scholars will understand ordinary people's reluctance to separate state law and non-state orders and their reliance on the majority of people's perceptions of just, human, and fair to construct and evaluate legality.

In sum, this dissertation does not aim to “fix” China's formal legal system or social and cultural environment to save leftover women. The task of improving legal, cultural, and social environment to save leftover women is not what a doctoral dissertation can achieve. Unlike most law dissertations that end with a model statute or recommendation to judges, lawmakers, and policymakers, this dissertation supports the general belief among legal pluralists that people in the legal profession should not overestimate the power of state law to accomplish social change.⁹³⁷ I follow the research tradition known as “legal consciousness of ordinary people”⁹³⁸ or “everyday law”⁹³⁹ to emphasize the importance of studying the law's significance in the lives of ordinary people. From a postcolonial feminist lens, I argue that only when leftover women's knowledge is valued, can we understand their decisions. This dissertation demonstrates how leftover women themselves are actively participating in the construction of legality concerning family formation. They define and redefine the identity of the daughter, woman, mother, and cultural citizen of the Chinese state in the process of making choices in marriage and childbearing. I hope that this dissertation will be a springboard to invite future research

⁹³⁷ See, for example, Engel, *supra* note 553 at 191.

⁹³⁸ Engel, *supra* note 502 at 508; Engel & Engel, *supra* note 153; Sally Engle Merry, *Getting justice and getting even: legal consciousness among working-class Americans*, Language and legal discourse (Chicago, IL ; London: University of Chicago Press, 1990); Ewick & Silbey, *supra* note 3; Sarat, *supra* note 501; Barbara Yngvesson, *Virtuous citizens, disruptive subjects: order and complaint in a New England court* (Routledge, 1993).

⁹³⁹ Macdonald, *supra* note 205.

on law, emotions, and family relations, relationships and legal consciousness, and postcolonial analysis of the impact of patriarchal Confucian culture and Chinese legal culture in general.

This dissertation, however, is not without limitations. It clearly presents only the perspective of women, especially the narratives of leftover women in Fujian province. Because of the nature of qualitative research, I have no intention to suggest that the findings of my research represent the experience of leftover women all over China. Neither can I generalize my findings on legal consciousness to the general population in China, as the views of the law among people from different social and economic backgrounds differ remarkably.⁹⁴⁰ I also have to admit that the legal consciousness of ordinary people is not static and fixed, and thus, law and policy reform could possibly lead to changes in leftover women's legal consciousness.

Despite these limitations, I am confident that my analysis of leftover women's choices has laid the foundation for the discussion of issues that need urgent attention from law and society scholars and feminist theorists. Through demonstrating how state law interacts with non-state orders to affect ordinary people's understandings of family relations, this dissertation aims to contribute to research on issues and legal reforms related to China's population challenges, protection of women's rights in China, and sexual orientation and the law in Chinese societies. I propose the following issues for future investigation: 1) How do China's changing population policies and the relevant state propaganda affect women's understanding and engagement with labour law, as well as family and marriage law? How do the changes shape both the younger and older

⁹⁴⁰ He et al, *supra* note 573 at 730.

generations' perceptions of adult children's legal obligations to take care of the elderly?

2) How do state laws and policies shape people's expectations of what grandparents should sacrifice for their adult children and grandchildren? How does adult children's reliance on parents for daily support constrain the older generation from enjoying the rights entitled to them after retirement? If providing childcare has become a burden that grandparents can barely bear and has a negative impact on their health status, how should we understand their choices to sacrifice for the family? 3) How do we understand the choices of leftover men? How do they think of and engage with state law's denial of unmarried individual's reproductive rights?

In addition, by bringing *qing* into the picture, this dissertation advocates for future research on the importance of *qing* in shaping ordinary people's legal consciousness in Chinese societies. Given the influential role of *qing* in guiding ordinary people's behaviour, the impact of *qing* on people's perceptions of state law in China deserves more attention from legal scholars. More importantly, future research on law and *qing* will contribute to the growing body of literature regarding relationality and legal consciousness.⁹⁴¹

Last but not least, research on leftover women's choices in marriage and childbearing should be an ongoing conversation as long as women in China are still living under great pressure to marry and give birth. It is a long journey. It is my hope that by providing a detailed analysis of leftover women's navigation through the complexities, this dissertation can offer some thoughts for lawyers, policymakers, activists who are working to improve the social and legal environment within which leftover women make choices.

⁹⁴¹ See, for example, Wang, *supra* note 416; Engel, *supra* note 502.

Bibliography

Interviews and Focus Groups

- Interview, Ahong, Xiamen, Fujian Province, China, October 2016.
- Interview, Aiyin, Xiamen, Fujian Province, China, August 2016.
- Interview, Bai Hongyu, Fuzhou, Fujian Province, China, September 2016.
- Interview, Chen Yan, Xiamen, Fujian Province, China, July 2016.
- Interview, Deng Fei, Guangzhou, Guangdong Province, China, October 2016.
- Interview, Deng Xiaomiao, Fuzhou, Fujian Province, China, September 2016.
- Interview, Dong, Putian, Fujian Province, China, August 2016.
- Interview, Fangxin, Xiamen, Fujian, China, July 2016.
- Interview, Hexu, Guangzhou, Guangdong Province, China, October 2016.
- Interview, Hongtian, Fuzhou, Fujian Province, China, September 2016.
- Interview, Hu Lei, Xiamen, Fujian Province, China, August 2016.
- Interview, Jiayan, Xiamen, Fujian Province, China, October 2016.
- Interview, Junrong, Xiamen, Fujian Province, China, October 2016.
- Interview, Kang Jinwang, Fuzhou, Fujian Province, China, September 2016.
- Interview, Kang Ziyou, Fuzhou, Fujian Province, China, October 2016.
- Interview, Kang Ziyou, Fuzhou, Fujian Province, China, September 2016.
- Interview, Karen, Xiamen, Fujian Province, China, August 2016.
- Interview, Lai Xiaoyang, Quanzhou, Fujian Province, China, July 2016.
- Interview, Lili, Xiamen, Fujian Province, China, July 2016.
- Interview, Lin Aiyin, Xiamen, Fujian Province, China, August 2016.
- Interview, Liu Jing, Dehua, Quanzhou, Fujian Province, China, July 2016.
- Interview, Lizhu, Houtang Village, Xiamen, Fujian, China, October 2016.
- Interview, Meihua, Xiamen, Fujian, China, October 2016.
- Interview, Meiyi, Hui'an, Fujian Province, China, September 2016.
- Interview, Meizhen, Xiamen, Fujian, China, October 2016.
- Interview, Minxia, Hui'an, Quanzhou, Fujian Province, China, September 2016.
- Interview, Pingping, Dehua, Fujian Province, China, July 2016.
- Interview, Sanxian, Dehua, Quanzhou City, Fujian Province, China, July 2016.
- Interview, Shujing, Xiamen, Fujian Province, China, September 2016.
- Interview, Shun, Putian, Fujian Province, China, September 2016.
- Interview, Siyin, Xiamen, Fujian Province, China, July 2016.
- Interview, Tian Keke, 26-year-old, Xiamen, Fujian Province, China, July 2016.
- Interview, Tiantian, Xiamen, Fujian Province, China, July 2016.
- Interview, Weiwei, Xiamen, Fujian Province, China, July 2016.
- Interview, Wenwen, Xiamen, Fujian Province, China, October 2016.
- Interview, Xiaoning, Fuzhou, Fujian Province, China, September 2016.
- Interview, Xiaoya, Putian, Fujian Province, China, August 2016.
- Interview, Xiaoyang, Quanzhou, Fujian Province, China, July 2016.
- Interview, Xiuzhu Zhang, Fuzhou, Fujian Province, China, September 2016.
- Interview, Xiwei, Fuzhou, Fujian Province, China, September 2016.
- Interview, Xu Jian, Guangzhou, Guangdong Province, China, October 2016.
- Interview, Yanfeng, Dehua, Fujian Province, China, July 2016.

Interview, Yang Yan, Putian, Fujian Province, China, August 2016.
 Interview, Yanhui, Putian, Fujian Province, China, August 2016.
 Interview, Yanning, Xiamen, Fujian Province, China, August 2016.
 Interview, Yimeng, Fuzhou, Fujian Province, China, September 2016.
 Interview, Yingzi, Fuzhou, Fujian Province, China, September 2016.
 Interview, Yuanru, Fuzhou, Fujian Province, China, September 2016.
 Interview, Yue Shan, Xiamen, Fujian Province, China, August 2016.
 Interview, Yue, Putian, Fujian Province, China, August 2016.
 Interview, Yuqi, Xiamen, Fujian Province, China, September 2016.
 Interview, Zhang Junya, Fuzhou, Fujian Province, China, September 2016
 Interview, Zhang Xiuzhu, Fuzhou, Fujian Province, China, September 2016.
 Interview, Zhu Jiani, Xiamen, Fujian, China, August 2016.
 Interview, Zhuzhu, Xiamen, Fujian, China, October 2016.
 Interview, Zonglan, telephone interview, November 2016.
 Interviews with Kang Jinwang and Zhang Xiuzhu, Fuzhou, Fujian Province, China,
 September 2016.

Focus group, Changying, Xiamen, Fujian Province, China, October 2016
 Focus group, Kailin, Xiamen, Fujian Province, China, October 2016.
 Focus group, Shulei, Xiamen, Fujian Province, China, October 2016.
 Focus group, Xiaoping, Xiamen, Fujian Province, China, October 2016.
 Focus group, Xiaoyu, Xiamen, Fujian Province, China, October 2016.
 Focus group, Yiyue, Xiamen, Fujian Province, China, October 2016.
 Focus group, Zeng Xin, Xiamen, Fujian Province, China, October 2016.

Legislation

“Law of the People’s Republic of China on Population and Family Planning,” (1
 September 2002), Standing Committee of National People’s Congress, online:
<http://www.lawinfochina.com/display.aspx?lib=law&id=2209&CGid=>>.
 “Law of the People’s Republic of China on Population and Family Planning
 (2015Amendment),” online:
<http://www.lawinfochina.com/display.aspx?lib=law&id=20845&EncodingName=gb2312>>.
 “Law of the People’s Republic of China on the Protection of the Rights and Interests of
 the Elderly (2015Amendment),” (24 April 2015), Standing Committee of the
 National People's Congress, online:
<http://en.pkulaw.cn/display.aspx?cgid=252608&lib=law>>.
 “Law of the People’s Republic of China on the Protection of Women’s Rights and
 Interests (2018 Amendment),” online:
<http://en.pkulaw.cn/display.aspx?cgid=f20e7cd055022d39bdfb&lib=law>>.
 “Law on the People’s Republic of China on Protection of the Rights and Interests of the
 Elderly (2013),” available online at
http://www.pkulaw.cn/fulltext_form.aspx?Gid=191980>, accessed on Febuary 26,
 2020.

- “Protection of Women’s Rights and Interests Law of the People’s Republic of China (Chinese and English Text),” (1 December 2005), online: *Congressional-Executive Commission on China* <<https://www.cecc.gov/resources/legal-provisions/protection-of-womens-rights-and-interests-law-of-the-peoples-republic-of>>.
- National People’s Congress, “Constitution of the People’s Republic of China (2018 Amendment),” (3 November 2018), Pkulaw, online: <<http://en.pkulaw.cn/display.aspx?id=436178e5d0b17482bdfb&lib=law&SearchKeyword=&SearchCKeyword=%cf%dc%b7%a8>>.
- National People’s Congress, “Nationality Law of the People’s Republic of China”, (9 October 1980) pkulaw, online: <<http://en.pkulaw.cn/display.aspx?id=b2cecafd3bc71cabdfb&lib=law>>.
- Standing Committee of the National People’s Congress, “Employment Promotion Law of the People’s Republic of China”, pkulaw, online: <<http://en.pkulaw.cn/display.aspx?cgid=96793&lib=law>>.
- Standing Committee of the National People’s Congress, “Labor Law of the People’s Republic of China (2018 Amendment),” (29 December 2018), Pkulaw, online: <<http://www.lawinfochina.com/display.aspx?id=b9c8a3fb471ff7e9bdfb&lib=law>>.
- “Technical Norms of Assisted Reproductive Technologies,” online:<<http://www.nhfpc.gov.cn/qjjys/s3581/200805/f69a925d55b44be2a9b4ada7fcdec835.shtml>>.
- “The Population and Family Planning Regulation of Jilin Province,” 2016, available online: <http://www.changchun.gov.cn/zw/xxgk/gkzl/cczhengbao/2016n/d3qzb/dffg_1828/201702/t20170215_257681.html>

Secondary Sources: Monographs (in English)

- Balme, Stephanie & Michael W Dowdle, *Building Constitutionalism in China* (NY: Palgrave MacMillan, 2009).
- Berman, Paul Schiff, *Global Legal Pluralism: A Jurisprudence of Law beyond Borders* (New York: Cambridge University Press, 2012).
- Butterfield, Fox, *China: Alive in the Bitter Sea*, (New York: Bantam Books, 1983)
- Choi, Susanne Y & Yinni Peng, *Masculine Compromise: Migration, Family, and Gender in China* (Berkeley: University of California Press, 2016).
- Chou, Wah-Shan, *Tongzhi: Politics of Same-sex Eroticism in Chinese Societies* (NY: Psychology Press, 2000).
- Daly, Mary, *Gyn/ecology: the metaethics of radical feminism* (Boston: Beacon Press, 1978).
- Davis, Deborah, *Long lives: Chinese Elderly and the Communist Revolution*, (Cambridge, Mass: Harvard University Press, 1983).

- de Sousa Santos, Boaventura, *Toward a new common sense: law, science, and politics in the paradigmatic transition*, After the law (New York: Routledge, 1995).
- Diamant, Neil J, *Revolutionizing the Family: Politics, Love and Divorce in Urban and Rural China, 1949-1968* (Berkeley: University of California Press, 2000)
- Ehrlich, Eugen, *Fundamental principles of the sociology of law*, European sociology (New York: Arno Press, 1975).
- Engel, David M & Jaruwat S Engel, *Tort, custom, and karma: globalization and legal consciousness in Thailand*, Cultural lives of law (Stanford: Stanford Law Books, 2010).
- Engel, David M, *The myth of the litigious society: why we don't sue*, Chicago series in law and society (Chicago: The University of Chicago Press, 2016).
- Euben, Roxanne L, *Journeys to the Other Shore: Muslim and Western Travelers in Search of Knowledge* (Princeton: Princeton University Press, 2006).
- Evans, Harriet, *The subject of gender: daughters and mothers in urban China*, Asian voices (Lanham, MD: Rowman & Littlefield, 2008).
- Ewick, Patricia & Susan Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998).
- Fei, Xiaotong, Gary G Hamilton & Cheng Wang, *From the soil, the foundations of Chinese society: a translation of Fei Xiaotong's Xiangtu Zhongguo, with an introduction and epilogue* (Berkeley: University of California Press, 1992).
- Fincher, Leta Hong, *Leftover women: the resurgence of gender inequality in China*, (London: Zed Books, 2014).
- Fong, Vanessa L, *Only hope: coming of age under China's one-child policy* (Stanford: Stanford University Press, 2004).
- Godrej, Farah, *Cosmopolitan Political Thought: Method, Practice, Discipline* (New York: Oxford University Press, 2011).
- Goh, Esther C L *China's one-child policy and multiple caregiving: raising little suns in Xiamen*, Routledge contemporary China series 71 (London ; New York: Routledge, 2011).
- Greenhalgh, Susan, *Cultivating Global Citizens: Population in the Rise of China* (Harvard University Press, 2010).
- Harding, Rosie, *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives* (Abingdon: Routledge, 2011)
- Hertogh, Marc, *What is Non-State Law? Mapping the Other Hemisphere of the Legal World*, (Rochester, NY: Social Science Research Network, 2007).
- Huang, Philip C, *Chinese Civil Justice, Past and Present* (Plymouth: Rowman & Littlefield, 2010).
- Jeffreys, Elaine & Haiqing Yu, *Sex in China*, China today series (Malden, MA: Polity Press, 2015).
- Kamir, Orit, *Framed: women in law and film* (Durham: Duke University Press, 2006).
- Ke, Xing, *Succession and the Transfer of Social Capital in Chinese Family Businesses : Understanding Guanxi as a Resource – Cases, Examples and Firm Owners in Their Own Words* (V&R Unipress, 2018).
- Ko, Dorothy, *Cinderella's sisters: a revisionist history of footbinding* (University of California Press).

- Lin, Delia, *Civilising Citizens in Post-Mao China: Understanding the Rhetoric of Suzhi*, Routledge Contemporary China Series 169 (Abingdon, Oxon ; New York, NY: Routledge 2017).
- Macdonald, Roderick, *A Lessons of everyday law* (Montreal: McGill-Queen's University Press, 2002).
- Mattei, Ugo & Laura Nader, *Plunder: When the Rule of Law is Illegal* (Oxford: Blackwell Publishing, 2008)
- McCann, Michael, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (University of Chicago Press, 1994).
- Merry, Sally Engle, *Getting justice and getting even: legal consciousness among working-class Americans*, Language and legal discourse (Chicago, IL ; London: University of Chicago Press, 1990).
- Narayan, Uma, *Dislocating cultures: identities, traditions, and Third-World feminism*, Thinking gender (New York: Routledge, 1997).
- Nedelsky, Jennifer, *Law's relations: a relational theory of self, autonomy, and law* (New York: Oxford University Press, 2013).
- O'Brien, Kevin & Lianjiang Li, *Rightful resistance in rural China*, (New York: Cambridge University Press, 2006).
- Peerenboom, Randall P, *Law and Morality in Ancient China: The Silk Manuscripts of Huang-Lao* (New York: State University of New York Press, 1993).
- Rofel, Lisa, *Desiring China: experiments in neoliberalism, sexuality, and public culture*, (Durham [NC] ; London: Duke University Press, 2007).
- Ruskola, Teemu, *Legal Orientalism* (Harvard University Press, 2013).
- To, Sandy, *China's leftover women: late marriage among professional women and its consequences*, (NY: Routledge, Taylor & Francis Group, 2015).
- Vervoorn, Aat, *Re Orient: change in Asian societies*, 2nd ed (Melbourne ; Oxford: Oxford University Press, 2002).
- Williams, Joan, *Unbending Gender: Why Family and Work Conflict and What to Do about It* (New York: Oxford University Press, 2001)
- Wu, Fei, *Suicide and Justice: A Chinese Perspective* (Florence: Routledge, 2009).
- Xu, Feng, *Women Migrant Workers in China's Economic Reform*, (London: Palgrave Macmillan 2000)
- Yan, Yunxiang, *Private life under socialism: love, intimacy, and family change in a Chinese village, 1949-1999* (2003).
- Yngvesson, Barbara, *Virtuous citizens, disruptive subjects: order and complaint in a New England court* (Routledge, 1993).
- Yochim, Lorin G. *Navigating the Aspirational City: Urban Educational Culture and the Revolutionary Path to Socialism with Chinese Characteristics* (Boston: BRILL, 2018).
- Zhu, Xibing, *Forced Attack or Outflanking Tactics?: Sociological Research on Family Childbearing Behavior with Breaching the One-Child Policy in China* (American Academic Press, 2017)

Secondary Sources: Monographs (in Chinese)

- Fan, Zhongxin, Ding Zheng & Xuenong Zhan, *Qing, li, fa yu Zhongguoren: zhongguo chuantong falv wenhua tanwei*, (Beijing: Zhongguo renmin daxue, 1992).
- Glosser, Susan L *Chinese visions of family and state, 1915-1953* (Berkeley: University of California Press, 2003)
- Huang, Guangguo, *Rujia Guanxi Zhuyi: Zhexue Fansi Lilun Jiangou*, (Taipei: Xinli Chuban She, 2009)
- Lin, Duan, *Weibo Lun Zhongguo Chuantong Falv: Weibo Bijiao Shehuixue de Piduan* (Beijing: Zhongguo Zhengfa Daxue Chubanshe, 2014)
- Luo, Aiping, Feng Wang & Yu Jiang, *Zhongguo Shengnv Diaocha* (Guangdong: Guangdong Renmin Chuban She, 2014);
- Sun, Longji, *Zhongguo Wenhua de Shenceng Jiegou*, 3d ed (Beijing: Zhongxin Chubanshe, 2015)
- Wang, Zhenping, *Renda Changyong Yuhui Shiyi (An interpretation of commonly used terminology by the National People's Congress)*, Hebei Chuban Chuanmei Jituan 2010.
- Zhu, Suli, *Fazhi jiqi Bentu Ziyuan* (Beijing: Zhongguo Zhengfa Daxue Chubanshe, 1996)
- Zhu, Suli, *Songfa Xiaxiang* (Beijing: Peking University Press, 2011)

Secondary Sources: Works in Edited Volumes

- Bilz, Kenworthy & Janice Nadler, "Law, Moral Attitudes, and Behavioral Change" in Eyal Zamir & Doron Teichman, eds, *Oxford Handbook of Behavioral Economics and the Law* (Oxford University Press, 2014).
- Bray, David, "Building 'Community': New Strategies of Governance in Urban China" in Elaine Jeffreys ed, *Chinas Governmetalities: Governing Change, Changing Government* (London ; New York: Routledge, 2009).
- Campbell, Angela, "Wives' Tales: Reflecting on Research in Bountiful," (2008) 23:1-2 *Canadian Journal of Law and Society* 23.
- Clifford, James et al, eds, *Writing culture: the poetics and politics of ethnography*, 25th anniversary edition (Berkeley, Calif: University of California Press, 2010)
- Cohen, Jerome A & Joan Lebold Cohen, "Did Qiu Ju Get Good Legal Advice?" in Corey K Creekmur & Mark Sidel, eds, *Cinema, Law, and the State in Asia* (New York: Palgrave Macmillan US, 2007).
- Coombe, Rosemary J, *Contingent Articulations: A Critical Cultural Studies of Law*, in Austin Sarat & Thomas Kearns ed, *Law in the Domains of Culture* (Ann Arbor: University of Michigan Press) 21.
- Davis, Deborah & Sara Friedman, "Deinstitutionalizing Marriage and Sexuality," in Deborah Davis & Sara Friedman eds, *Wives, Husbands, and Lovers: Marriage and Sexuality in Hong Kong, Taiwan, and Urban China* (Stanford: Stanford University Press, 2014).
- Deckha, Maneesha, "Gender, Difference, and Anti-Essentialism: Towards a Feminist Response to Cultural Claims in Law" in Avigail I Eisenberg, ed, *Diversity and Equality :The Chang Framework of Freedom in Canada* (Vancouver: UBC Press, 2006) 114

- Engebretsen, Elisabeth “Under Pressure: Lesbian-Gay Contract Marriages and Their Patriarchal Bargains” in Gonçalo Santos & Stevan Harrell, eds, *Transforming Patriarchy Chinese Families in the Twenty-First Century* (Seattle and London: University of Washington Press, 2016) 163.
- Engel, David M, “Law in the Domains of Everyday Life: The Construction of Community and Difference,” in Austin Sarat and Thomas Kearns edits, *Law in Everyday Life* (Michigan: University of Michigan Press 1993) 123
- Engel, David M, “How Does Law Matter in the Constitution of Legal Consciousness?” in Bryant G Garth & Austin Sarat, eds, *How Does Law Matter* (Evanston: Northwestern University Press, 1998) 109
- Feng, Zhanlian, “Filial Piety and Old-age Support in China: Tradition, Continuity, and Change” in Xiaowei Zang & Lucy Xia Zhao, eds, *Handbook of the Family and Marriage in China* (Cheltenham & Northampton: Edward Elgar Publishing, 2017) 266.
- Fiona, Kelly, “Alternative Conception: The Legality of Home Insemination under Canada’s Assisted Human Reproduction Act” (2010) 26 *Canadian Journal of Family Law* 159.
- Gallagher, Mary & Yuhua Wang, “Users and Non-users: Legal Experience and Its Effect on Legal Consciousness” in Margaret Woo & Mary Gallagher, eds, *Chinese Justice: Civil Dispute Resolution in Contemporary China* (Cambridge [UK] ; New York: Cambridge University Press, 2011) 204.
- Hu, Hexin, “On Relational Paradigm in Bioethics” in Julia Po-wah, ed, *Cross-Cultural Perspectives on the (Im)possibility of Global Bioethics* (Norwell: Springer Science & Business Media, 2002) 89.
- Hui, Eadaoin K P et al, “Explaining Chinese students’ academic motivation: filial piety and self-determination” (2011) 31:3 *Educational Psychology* 377.
- Ikels, Charlotte, ed, *Filial piety: practice and discourse in contemporary East Asia* (Stanford, Calif: Stanford University Press, 2004)
- Kwok, Pui-lan “Unbinding our Feet: Saving Brown Women and Feminist Religious Discourse” in Laura E Donaldson & Pui-lan Kwok, eds, *Postcolonialism, Feminism, Religious Discourse* (New York; London: Routledge, 2002) 62
- Liu, Fengshu “Negotiating the filial self: Young–adult only–children and intergenerational relationships in China” (2008) 16:4 *Young* 409.
- Llewellyn, Jennifer J, & Jocelyn Grant Downie, eds, *Being relational: reflections on relational theory and health law*, Law and society series (Vancouver, BC ; Toronto: UBC Press, 2012)
- Mackenzie, Catriona & Natalie Stoljar, eds, *Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford: Oxford University Press, 2000);
- Michelson, Ethan & Benjamin L Read, “Public Attitudes toward Official Justice in Beijing and Rural China” in Margaret Woo & Mary Gallagher, eds, *Chinese Justice Civil Dispute Resolution Contemporary China* (Cambridge [UK] ; New York: Cambridge University Press, 2011) 169.
- Ong, Aihwa, “Colonialism and Modernity: Feminist Re-Presentations of Women in Non-Western Societies” in Kum-Kum Bhavnani, ed, *Feminism and Race*, (New York: Oxford University Press, 2001) 108.

- Santos, Gonçalo, "Multiple Mothering and Labor Migration in Rural South China" in Gonçalo Santos & Stevan Harrell, eds, *Transforming Patriarchy Chinese Families in the Twenty-First Century* (Seattle and London: University of Washington Press, 2016) 91
- Shen, Yuanyuan, "Conceptions and Receptions of Legality: Understanding the Complexity of Law Reform in Modern China" in Karen G Turner & James V Feinerman, eds, *Limits Rule Law China* (Seattle: University of Washington Press, 2015) 20.
- Shiga, Shuzo, "Zhongguo Fa Wenhua de Kaocha--Yi Susong de Xingtai wei Sucai" in Yaxin Wang & Zhiping Liang, eds, *Mingqing Shiqi Minshi Shenpan Yu Minjian Qiyue*, 1st ed (Beijing: Falv Chubanshe, 1998) 1.
- Sommer, Matthew, "Dangerous Males, Vulnerable Males, and Polluted Males: The Regulation of Masculinity in Qing Dynasty Law" in *Chinese Femininities, Chinese Masculinities: a Reader* (Berkeley and Los Angeles: University of California Press, 2002) 67.
- Spivak, Gayatri, "Can the Subaltern Speak?" in *Post-Colonial Studies Reader* (London ; New York: Routledge, 1995).
- Thireau, Isabelle & Linshan Hua, "One Law, Two Interpretations: mobilizing the Labor Law in Arbitration Committees and in Letters and Visits Offices" in *Engaging the Law in China: State, Society, and Possibilities for Justice* (Stanford: Stanford University Press, 2005) 84.
- Xu, Feng "Governing China's Peasant Migrants: Building XiaoKang Socialism and Harmonious Society" in Elaine Jeffreys, ed, *China's Governmentalities: Governing Change, Changing Government*, London and (New York: Routledge, 2009) 38.
- Xu, Jie, "Filial piety and intergenerational communication in China" (2012) 18:1 J of International Communication 33.
- Yan, Hairong, "Suzhi as a New Human Value: Neoliberal Governance of Labor Migration," in *New Masters, New Servants: Migration, Development, and Women Workers in China*, (Durham and London: Duke University Press, 2008) 111
- Yang, Chung-fang "Familism and development: An examination of the role of family in contemporary China mainland, Hong Kong and Taiwan" in Durganand Sinha & Henry Kao eds, *Social Values and Development: Asian Perspectives* (Thousand Oaks: Sage Publications, 1988) 93.
- Yanow, Dvora & Peregrine Schwartz-Shea, eds, *Interpretation and method: empirical research methods and the interpretive turn* (Armonk, N.Y: M.E. Sharpe, 2006)
- Yeh, Kuang-Hui et al, "Filial piety in contemporary Chinese societies: A comparative study of Taiwan, Hong Kong, and China" (2013) 28:3 International Sociology 277.
- Yung, Lawrence, "The East Asian Family-Oriented Principle and the Concept of Autonomy" in Ruiping Fan, ed, *Family-Oriented Informed Consent East Asian and American Perspectives*, Philosophy and Medicine (Cham: Springer International Publishing, 2015) 107.
- Zhang, Hong, "Recalibrating filial piety: Realigning the state, family, and market interests in China," in Gonçalo Santos & Stevan Harrell, eds, *Transforming*

Patriarchy Chinese Families in the Twenty-First Century (Seattle and London: University of Washington Press, 2016) 234.

Secondary Sources: Periodicals (in English)

- Aksoy, Cevat G. et al, “Do laws shape attitudes? Evidence from same-sex relationship recognition policies in Europe,” (2020) 124 *European Economic Rev* 1.
- Anagnost, Ann, “The Corporeal Politics of Quality (Suzhi)” (2004) 16:2 *Public Culture* 189.
- Boittin, Margaret L, “New Perspectives from the Oldest Profession: Abuse and the Legal Consciousness of Sex Workers in China” (2013) 47:2 *Law & Society Rev* 245.
- Boyd, Susan B “Autonomy for mothers? Relational theory and parenting apart” (2010) 18:2 *Feminist Legal Studies* 137.
- Bu, Qingxiu, “The Good Samaritan in the Chinese Society: Morality vis-à-vis Law” (2017) 38:2 *Liverpool Law Rev* 135.
- Buckley, Peter, J Jeremy Clegg & Hui Tan, “Cultural awareness in knowledge transfer to China—The role of *guanxi* and *mianzi*” (2006) 41:3 *J World Business* 275.
- Calder, Gillian, “Penguins and Polyamory: Using Law and Film to Explore the Essence of Marriage in Canadian Family Law” (2010) 21:1 *Can J Women & the Law* 55.
- Chen, Feinian, Guangya Liu & Christine A Mair, “Intergenerational Ties in Context: Grandparents Caring for Grandchildren in China” (2011) 90:2 *Social Forces* 571.
- Cheung, Chau-Kiu & Alex Yui-Huen Kwan, “The Erosion of Filial Piety by Modernisation in Chinese Cities” (2009) 29:2 *Ageing & Society* 179.
- Cho, Jeasik & Allen Trent, “Validity in qualitative research revisited” (2006) 6:3 *Qualitative Research* 319.
- Choi Susanne Y & Ming Luo, “Performative Family: Homosexuality, Marriage and Intergenerational Dynamics in China,” (2016) 67:2 *The British Journal of Sociology* 260.
- Chou, Wah-Shan, “Homosexuality and the Cultural Politics of Tongzhi in Chinese Societies” (2001) 40:3–4 *Journal of Homosexuality* 27.
- Chua, Lynette J & David M Engel, “Legal Consciousness in Asia—Editors’ Note to Special Issue” (2018) 5:1 *Asian J Law & Society* 1 at 1.
- Chua, Lynette J & David M Engel, “Legal Consciousness Reconsidered” (2019) 15 *Annual Review of Law & Social Science* 335 at 335.
- Croll, Elisabeth, “The Intergenerational Contract in the Changing Asian Family” (2006) 34:4 *Oxford Development Studies* 473.
- Davis, Deborah, “Privatization of Marriage in Post-Socialist China,” (2014) 40:6 *Modern China* 551.
- Deckha, Maneesha “Situating Canada’s Commercial Surrogacy Ban in a Transnational Context: A Postcolonial Feminist Call for Legalization and Public Funding” (2015) 61:1 *McGill Law J* 1 31.

- Deckha, Maneesha, "Is Culture Taboo - Feminism, Intersectionality, and Culture Talk in Law" (2004) 16 *Can J Women Law* 14
- Deckha, Maneesha, "Pain as culture: A postcolonial feminist approach to S/M and women's agency" (2011) 14:2 *Sexualities* 129.
- Deutsch, Francine M "Filial Piety, Patrilineality, and China's One-Child Policy" (2006) 27:3 *J Family Issues* 366.
- Du, Peng, "Intergenerational solidarity and old-age support for the social inclusion of elders in Mainland China: the changing roles of family and government" (2013) 33:1 *Ageing & Society* 44 at 57.
- Eklund, Lisa "Filial Daughter? Filial Son? How China's Young Urban Elite Negotiate Intergenerational Obligations" (2018) 26:4 *NORA - Nordic J Feminist & Gender Research* 295.
- Engel, David M. "Blood Curse and Belonging in Thailand: Law, Buddhism, and Legal Consciousness," (2016) 3 *Asian Journal of Law and Society* 71;
- Engel, David M. "Globalization and the Decline of Legal Consciousness: Torts, Ghosts, and Karma in Thailand," (2005) 30 *Law & Social Inquiry* 469;
- Fan, Ruiping, "Self-Determination vs. Family-Determination: Two Incommensurable Principles of Autonomy" (1997) 11:3 *Bioethics* 309.
- Feng, Xiao-Tian, Dudley L Poston & Xiao-Tao Wang, "China's One-child Policy and the Changing Family" (2014) 45:1 *J of Comparative Family Studies* 17
- Fonow, Mary M & Judith A Cook, "Feminist Methodology: New Applications in the Academy and Public Policy" (2005) 30:4 *Signs* 2211
- Friedman, Sara L, "The Intimacy of State Power: Marriage, Liberation, and Socialist Subjects in Southeastern China" (2005) 32:2 *American Ethnologist* 312
- Fu, Yuanyuan, Yuebin Xu & Ernest Wing Tak Chui, "Development and Validation of a Filial Piety Scale for Chinese Elders in Contemporary China" (2020) 90:2 *International J of Aging & Human Development* 176.
- Gaetano, Arianne, "'Leftover Women': Postponing Marriage and Renegotiating Womanhood in Urban China" (2014) 4:2 *J Research in Gender Studies* 124.
- Gallagher, Mary E "Mobilizing the Law in China: 'Informed Disenchantment' and the Development of Legal Consciousness" (2006) 40:4 *Law Soc Rev* 783.
- Gallagher, Mary E & Yujeong Yang, "Getting Schooled: Legal Mobilization as an Educative Process" (2017) 42:1 *Law & Social Inquiry* 163.
- Goh, Esther C L "Grandparents as childcare providers: An in-depth analysis of the case of Xiamen, China" (2009) 23:1 *J of Aging Studies* 60.
- He, Xin, Lungang Wang & Yang Su, "Above the Roof, Beneath the Law: Perceived Justice behind Disruptive Tactics of Migrant Wage Claimants in China" (2013) 47:4 *Law & Soc Rev* 703.
- Hertogh, Marc, "A 'European' Conception of Legal Consciousness: Rediscovering Eugen Ehrlich" (2004) 31:4 *J Law Soc* 457.
- Hesketh, Thérèse, "Too many males in China: the causes and the consequences" (2009) 6:1 *Significance* 9
- Hildebrandt, Timothy, "Same-sex marriage in China? The strategic promulgation of a progressive policy and its impact on LGBT activism" (2011) 37:3 *Rev of International Studies* 1313.
- Ho, David Y, "On the Concept of Face" (1976) 81:4 *American J Sociology* 867.

- Hoekema, André J, "European Legal Encounters between Minority and Majority Cultures: Cases of Interlegality" (2005) 37:51 *J Legal Pluralism & Unofficial Law* 1.
- Hoffmann, Elizabeth, "Legal Consciousness and Dispute Resolution: Different Disputing Behavior at Two Similar Taxicab Companies," (2003) 28 *Law & Social Inquiry* 691;
- Hu, Hsien-Chin, "The Chinese Concepts of 'Face'" (1944) *American Anthropologist* 45.
- Huang, Shuzhen & Daniel Brouwer, "Negotiating Performances of 'Real' Marriage in Chinese Queer *Xinghun*," (2018) 41:2 *Women's Studies in Communication* 140 at 147.
- Hull, Kathleen, "The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage," (2003) 28 *Law & Social Inquiry* 629;
- Jackson, Stevi & Jieyu Liu, "The social context of ageing and intergenerational relationships in Chinese families" (2017) 4:1 *J of Chinese Sociology* 2
- Ji, Yingchun & Wei-Jun Jean Yeung, "Heterogeneity in Contemporary Chinese Marriage" (2014) 35:12 *J Family Issues* 1662.
- Ji, Yingchun, "Between Tradition and Modernity: 'Leftover' Women in Shanghai" (2015) 77:5 *J of Marriage and Family* 1057
- Johnson, Rebecca, "Judging Magic: Can You See the Sleight of Hand?" (2007) 105:6 *Michigan Law Rev* 1353
- Judd, Ellen "Family Strategies: Fluidities of Gender, Community and Mobility in Rural West China," (2010) *The China Quarterly* 921.
- Kipnis, Andrew, "Suzhi: A Keyword Approach," (2006):310 *The China Quarterly* 186
- Kotsadam, Andreas & Niklas Jakobsson, "Do laws affect attitudes? An assessment of the Norwegian prostitution law using longitudinal data," (2011) 31:2 *International Rev of Law and Economics* 103.
- Kwan, Kwong-Liem K, "Counseling Chinese peoples: Perspectives of filial piety" (2000) 7:1 *Asian J of Counselling* 23
- Lee, Karen M "The role of law in Addressing the Good Samaritan's Dilemma: A Chinese Model?" (2015) 2 *Asian Journal of Law & Society* 55.
- Li, Bingqin & Hyun Bang Shin, "Intergenerational Housing Support Between Retired Old Parents and their Children in Urban China" (2013) 50:16 *Urban Studies* 3225.
- Liang, Hongming, "Book Review: The Living Tree: The Changing Meaning of Being Chinese Today" (1996) 55:1 *J Asian Studies* 156
- Lin, Ju-Ping & Chin-Chun Yi, "Filial norms and intergenerational support to aging parents in China and Taiwan" 20 *International J of Social Welfare* 109
- Liu, Min, "Two Gay Men Seeking Two Lesbians: An Analysis of *Xinghun* (Formality Marriage) Ads on China's Tianya.cn" (2013) 17:3 *Sexuality & Culture* 494
- Liu, Qian, "Legal Consciousness of the Leftover Woman: Law and Qing in Chinese Family Relations" (2018) 5:1 *Asian J Law & Society* 7
- Liu, Qian, "Relational Dignity, State Law, and Chinese Leftover Women's Choices in Marriage and Childbearing," forthcoming in the *Asian Journal of Law and Society*.
- Marshall, Anna-Maria, "Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment," (2003) 28 *Law & Social Inquiry* 659;
- Marshall, Anna-Maria, & Scott Barclay, "In Their Own Words: How Ordinary People Construct the Legal World," (2003) 28 *Law & Social Inquiry* 617;

- Merry, Sally Engle "Legal Pluralism" (1988) 22:5 Law Soc Rev 869.
- Michaels, Ralf, "Global Legal Pluralism" (2009) 5:1 Annual Rev Law & Social Science 243.
- Michelson, Ethan, "Justice from above or below? Popular Strategies for Resolving Grievances in Rural China" (2008) 193 The China Quarterly 43;
- Minzner, Carl, "*Xinfang*: An Alternative to Formal Chinese Legal Institutions" (2006) 42 Stan.J. Int'l L. 103;
- Mohanty, Chandra Talpade "'Under Western Eyes' Revisited: Feminist Solidarity through Anticapitalist Struggles" (2003) 28:2 Signs 499
- Mohanty, Chandra Talpade "Under Western Eyes: Feminist Scholarship and Colonial Discourses" (1988) 30 Feminist Review 61
- Montag, Christian et al. "The Multipurpose Application WeChat: A Review on Recent Research," (2018) 9 Frontiers in Psychology 2247
- Moore, Sally Falk, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study" (1973) 7:4 Law & Society Rev 719.
- Nelken, David, "Law in Action or Living Law - Back to the Beginning in Sociology of Law" (1984) 4 Leg Studies 157.
- Palmer, Michael, "The Re-emergence of Family Law in Post-Mao China: Marriage, Divorce and Reproduction" (1995) 191 The China Quarterly 110.
- Proulx, Craig, "Blending Justice: Interlegality and the Incorporation of Aboriginal Justice into the Formal Canadian Justice System" (2005) 37:51 J Legal Pluralism & Unofficial Law 79.
- Qi, Xiaoying, "Face: A Chinese concept in a global sociology" (2011) 47:3 Journal of Sociology 279.
- Qi, Xiaoying, "Filial Obligation in Contemporary China: Evolution of the Culture-System" (2015) 45:1 J for the Theory of Social Behaviour 141.
- Qian, Yue & Yongai Jin, "Women's Fertility Autonomy in Urban China: The Role of Couple Dynamics Under the Universal Two-Child Policy" (2018) 50:3 Chinese Sociological Review 275.
- Roberts, Simon, "Against Legal Pluralism: Some Reflections on the Contemporary Enlargement of the Legal Domain" (1998) 30:42 The Journal of Legal Pluralism and Unofficial Law 95.
- Ruskola, Teemu, "Law without Law, or is Chinese Law an Oxymoron Symposium: Rule of Law in China" (2002) 11 William Mary Bill Rights J 655.
- Sarat, Austin "The Law Is All Over: Power, Resistance and the Legal Consciousness of the Welfare Poor," (1990) 2 Yale Journal of Law & the Humanities 343;
- Sarat, Austin & William Felstiner, "Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office," (1989) 98 The Yale Law Journal 1663;
- Schrock, Richelle, "The Methodological Imperatives of Feminist Ethnography" (2013) 5 J Feminist Scholarship 48.
- Sharafi, Mitra, "Justice in Many Rooms Since Galanter: De-Romanticizing Legal Pluralism Through the Cultural Defense" (2008) 71:2 Law & Contemporary Problems 139.
- Shi, Lihong, "Preparing for an 'Insured' Old Age: Insurance Purchase and Self-Support in Old Age in Rural China" (2018) 33:2 J Cross-Cultural Gerontology 183.

- Sin, Wai-Man & Yiu-Wai Chu “Whose rule of law? Rethinking (post-)colonial legal culture in Hong Kong” (1998) 7:2 Soc & Leg Studies 147.
- Stack, Trevor, “A Just Rule of Law?” (2010) 18:3 Social Anthropology 346;
- Strauss, Kendra & Feng Xu, “At the Intersection of Urban and Care Policy: The Invisibility of Eldercare Workers in the Global City” (2018) 44:7–8 Critical Sociology 1163.
- Su, Lillian H, “Resistance, Evasion, and Inequality: Legal Consciousness of Intellectual Property Laws in Two Chinese Markets” (2017) Asian J Law & Society 1.
- Sultany, Nimer “Review of Plunder: When the Rule of Law Is Illegal” (2009) 36:4 J Law Soc 599.
- Sultany, Nimer, “Review of Plunder: When the Rule of Law Is Illegal” (2009) 36:4 J Law & Society 599.
- Svensson, Tom G “Interlegality, a Process for Strengthening Indigenous Peoples’ Autonomy: The Case of the Sámi in Norway” (2005) 37:51 J Legal Pluralism & Unofficial Law 51.
- Tai, Michael C & Chung Seng Lin, “Developing a culturally relevant bioethics for Asian people” (2001) 27:1 J Medical Ethics 51;
- Tamanaha, Brian Z, “A Non-Essentialist Version of Legal Pluralism” (2000) 27:2 J Law & Society 296.
- Tamanaha, Brian Z, “The Folly of the ‘Social Scientific’ Concept of Legal Pluralism” (1993) 20:2 J Law & Society 192.
- Tamanaha, Brian Z, “Understanding Legal Pluralism: Past to Present, Local to Global” (2008) 30 Sydney Law Rev 375.
- Tan, Chris K “Go Home, Gay Boy! Or, Why Do Singaporean Gay Men Prefer to ‘Go Home’ and Not ‘Come Out?’” (2011) 58:6–7 Journal of Homosexuality 865.
- To, Sandy, “‘My Mother Wants Me to *Jiaru-haomen* (Marry Into a Rich and Powerful Family)!’: Exploring the Pathways to ‘Altruistic Individualism’ in Chinese Professional Women’s Filial Strategies of Marital Choice” (2015) 5:1 SAGE Open.
- To, Sandy, “Understanding Sheng Nu (‘Leftover Women’): the Phenomenon of Late Marriage among Chinese Professional Women” (2013) 36:1 Symbolic Interaction 1.
- Turoldo, Fabrizio, “Relational Autonomy and Multiculturalism” (2010) 19:4 Cambridge Quarterly of Healthcare Ethics 542.
- Volpp, Leti, “Blaming Culture for Bad Behavior” 12 (2000) Yale J Law Humanities 89.
- von Benda-Beckmann, Keebet & Bertram Turner, “Legal pluralism, social theory, and the state” (2018) 50:3 The Journal of Legal Pluralism and Unofficial Law 255 at 256.
- Wai, Robert, “The Interlegality of Transnational Private Law” (2008) 71:3 Law & Contemporary Problems 107.
- Wang, Annie Y, “Unmarried Cohabitation: What Can We Learn From a Comparison Between the United States and China?” (2007) 41:1 Family Law Quarterly 197.
- Wang, Di & Sida Liu, “Performing Artivism: Feminists, Lawyers, and Online Legal Mobilization in China,” (2020) Law & Social Inquiry 1

- Wang, Haiping & Douglas A Abbott, "Waiting for Mr. Right: The Meaning of Being a Single Educated Chinese Female Over 30 in Beijing and Guangzhou" (2013) 40 *Women's Studies Intl Forum* 222.
- Wang, Hsiao-Tan, "Justice, Emotion, and Belonging: Legal Consciousness in a Taiwanese Family Conflict" (2019) 53:3 *Law & Society Rev* 764
- Wang, Juan & Sida Liu "Ordering Power under the Party: A Relational Approach to Law and Politics in China," (2019) 6 *Asian Journal of Law and Society* 1.
- Whiting, Susan H, "Authoritarian 'Rule of Law' and Regime Legitimacy" (2017) 50:14 *Comparative Political Studies* 1907.
- Xie, Yu & Haiyan Zhu, "Do Sons or Daughters Give More Money to Parents in Urban China?" (2009) 71:1 *J of Marriage & Families* 174
- Xu, Anqi & Yan Xia, "The Changes in Mainland Chinese Families During the Social Transition: A Critical Analysis" (2014) 45:1 *J Comparative Family Studies* 31.
- Yan, Hairong, "Neoliberal Governmentality and Neohumanism: Organizing *Suzhi*/Value Flow through Labor Recruitment Networks" 2003:18 *Cultural Anthropology* 493.
- Yan, Yunxiang, "Intergenerational Intimacy and Descending Familism in Rural North China" (2016) 118:2 *American Anthropologist* 244.
- Yan, Yunxiang, "Moral Hierarchy and Social Egoism in a Networked Society" (2015) 49 *Korean J Sociol* 39
- Yang, Lawrence H & Kleinman, Arthur, "'Face' and the Embodiment of Stigma in China: The Cases of Schizophrenia and AIDS," 67 (2008) *Social Science & Medicine* 398.
- Young, Kathryn, "Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight," (2014) 48 *Law & Society Rev* 499.
- Zhang, Weiguo, "'A Married out Daughter Is like Spilt Water'? Women's Increasing Contacts and Enhanced Ties with Their Natal Families in Post-Reform Rural North China" (2009) 35:3 *Modern China* 256.
- Zheng, Chunyan, Jiahui Ai & Sida Liu, "The Elastic Ceiling: Gender and Professional Career in Chinese Courts," (2017) 51:1 *Law & Society Review* 168.

Secondary Sources: Periodicals (in Chinese)

- Bai, Xiaodong, "Hexie Sifa Zhong de Bentu Ziyuan Jieli yu Zhuanhua--Yi Zhongguo Chuantong Sifa Huayu 'Qing li' de Xiandai Zaizhi Wei Hexin" (2001) 9 *Fujian Luntan (Renwen Shehui Kexue Ban)* 151.
- Chen, Bofeng, "Faxue Yanjiu de Wenti Yishi yu Duoyuan Geju" (2017) 70:1 *Wuhan University Journal (Social Science)* 10.
- Chen, Youhua & Cheng Lv, "Shengnv: yige jiangou shishi de wei mingti" (2011) *Xue Hai* 42.
- He, Qinhu, "Fansong yu Yansong de Lishi Kaocha—guanyu Zhongxi Falv Chuantong de yidian Sikao," (1993) 49:3 *Falv Kexue* 10;
- Hou, Jihu, "*Daxuesheng Falv Yishi de Xianzhuang Fenxi Jiqi Yangcheng Jizhi Tanta*" (2015) 252 *Heilongjiang Gaojiao Yanjiu* 121.
- Huo, Cunfu, "Zhongguo Chuantong Fa Wenhua de Wenhua Xingzhuang yu Wenhua Zhuixun--Qing Li Fa de Fasheng, Fazhan jiqi Mingyun" (2001) 39:3 *Fazhi yu Shehui Fazhan* 1.

- Jiang, Yue & Youyi Wang, “Guoji Gongyue Shiye xia Woguo Nvxing Zhigong Laodongquan de Baozhang,” (2015) 2 *Tianjin Shifan Daxue Xuebao (Shehui Kexue Ban)* 55.
- Ke, Fang, “Cunluo Shehui ‘Zijiren’ Jiufen de Tiaojie Luoji yu Songfa Xiaxiang de Kunjing” (2017) 30:4 *Wuhan Ligong Daxue Xuebao Shehui Kexue Ban* 142.
- Li, Buyun & Shiping Liu, “*Lun Fa yu Falv Yishi*,”(2003) 4 *Faxue Yanjiu* 70.
- Liao, Shenbai, “Women zuoren de guannian,” 182 (2004) *Beijing Shifan Daxue Xuebao (Shehui Kexue Ban)* 76.
- Ling, Bin, “Falv yu Qing Li: Fazhi Jincheng de Qing Fa Maodun yu Lunli Xuanze” (2012) 24:1 *Zhongwai Faxue* 121.
- Liu, Jinhai, “Xian Jieduan Nongmin Falv Yishi de Diaocha Yanjiu—jiyu 269 ge cun 3675 ge nongmin de wenjuan fenxi” (2015) 115 *Huazhong Nongye Daxue Xuebao (Shehui Kexue Ban)*.
- Liu, Tao & Li Sun, “Pension Reform in China” (2016) 28:1 *J of Aging & Social Policy* 15.
- Qin, Qiang, “*Zhuanxing Zhongguo de Falv Yishi Bianqian*”(2014) 147 *Heilongjiang Shehui Kexue* 89.
- Sang, Benqian, “Fazhi jiqi Shehui Ziyuan--Jianping Suli ‘Bentu Ziyuan’ Shuo” (2006) 28:1 *Xiandai Faxue* 3.
- Sun, Xiaoxia, “Faguan Siwei Weishenme ‘Qianggu Liuchuan’”, *Zhongguo Shehui Daokan* (2005) 33.
- Sun, Xiaoxia, “Zhongguo Chuantong Faguan de Shizhixing Siwei” (2005) 35:4 *Zhejiang Daxue Xuebao (Renwen Shehui Kexue Ban)* 5.
- Wang, Xigen & Kangmin Wang, “Lun Qing Li Fa Guanxi de Lixing Dingwei” (2012) 20:2 *Henan Shehui Kexue* 28.
- Xu, Zhongming, “*Chuantong Zhongguo Xiangmin de Falv Yishi yu Susong Xintai—yi Yanyu wei Fanwei de Wenhua Shi Kaocha*” (2006) 6 *Zhongguo Faxue* 66.
- Xudong, Fang, “*Shui*” *shi “Shengnv”*(2016) 32:1 *Lanzhou Wenli Xueyuan Xuebao* 91.
- Xue, Feng, “Lun Yifa Zhiguo Zhanlve Xia Gongmin Renquan Baohu Falv Yishi de Peiyu” (2017) 7 *Guangzhou Daxue Xuebao (Shehui Kexue Ban)* 19.
- Yang, Yiyin, “‘Zijiren’: Xinren Jiangou Guocheng de Ge an Yanjiu” (1999) 2 *She Hui Xue Yan Jiu* 38.
- Yi, Jun, “*Mianzi yu Jiufen Jiejue—ji yu Fashehuixue de Fenxi*,” (2011) 4 *Xibei Minzu Daxue Xuebao (Zhexue Shehui Kexue Ban)* 72.
- Zhang, Yajun, “Woguo ‘shengnv’ wenti de shehuixue sikao” (2011) 96 *J of Shandong Women's University* 20.
- Zhou, Songqing, “‘shengnv’ yu xingbie tongzhi” (2010) 5 *Zhongguo Qingnian Yanjiu* 14
- Zhu, Suli, “Falv Guibi and Falv Duoyuan” (1993) 30:6 *Zhongwai Faxue* 14.
- Zhu, Suli, “Wenti Yishi: Shenme Wenti yiji Shui de Wenti?” (2017) 70:1 *Wuhan University Journal (Social Science)* 10.
- Zuo, Xuesong & Daoyu Xia, “Jiangou nvxing yu nvxing jiangou - jiangou zhuyi shiyu zhong ‘shengnv’ weiji yinfu de shehuixue sikao” (2008) 88 *Collection of Women's Studies* 11.

Secondary Sources: News Media in English

- The Government of China, “The Middle- and Long-term Youth Development Plan (2016—2025),” Xinhua She (13 April 2017), online: <http://www.gov.cn/zhengce/2017-04/13/content_5185555.htm#1>.
- Chen, Ziyang, “Marriage rate in China hits lowest on record”, China Daily (21 March 2019), online: <<https://www.chinadaily.com.cn/a/201903/21/WS5c92ee53a3104842260b1c11.html>>.
- Magistad, Mary Kay, “The over-27s China calls ‘leftover women’”, *BBC News* (21 February 2013), online: <<http://www.bbc.com/news/magazine-21320560>>.
- Huang, Vicky G, “‘Bare Branches’ and ‘Leftover Women’: Love and Marriage in Modern China”, online: *The Diplomat* <<https://thediplomat.com/2016/03/bare-branches-and-leftover-women-love-and-marriage-in-modern-china/>>.
- Tatlow, Didi Kirsten, “Q & A: Leta Hong Fincher on ‘Leftover Women’”, (14 May 2014), online: *Sinosphere Blog* <<https://sinosphere.blogs.nytimes.com/2014/05/14/q-a-leta-hong-fischer-on-leftover-women/>>.
- Usher, Pip, “Unmarried and Over 27? In China, That Makes You a ‘Leftover Woman’”, (4 October 2016), online: *Vogue* <<https://www.vogue.com/article/sheng-nu-leftover-women-sk-ii-viral-video>>.
- Wu, Zhesi, “Nvxing Qiuzhi Jiuye ‘Qianguize’: Yiyu sheng Yihun Yihun sheng Danshen,” (13 May 2013), online: People.cn < <http://edu.people.com.cn/n/2013/0513/c1053-21457628.html>>.
- Fincher, Leta Hong, “China’s ‘leftover women’ choosing to stay single”, (21 August 2013), online: *CNN* < <https://www.cnn.com/2013/08/18/world/asia/on-china-single-women-leta-hong-fischer/index.html>>.
- Ren, Yuan, “China’s ‘leftover women’: What it’s really like being unmarried at 30,” (11 April 2016), online: *The Telegraph* <<https://www.telegraph.co.uk/women/life/chinas-leftover-women-what-its-really-like-being-unmarried-at-30/>>
- Wong, Edward, “A Chinese Virtue Is Now the Law,” (3 July 2013), online: *NY Times*, <<http://cn.nytimes.com/china/20130703/c03parents/en-us/>>.
- Yang, Kelly, “The real issue for China’s ‘leftover women’”, (9 March 2017), online: *South China Morning Post* < <http://www.scmp.com/comment/insight-opinion/article/2077402/real-issue-chinas-leftover-women>>.
- Gao, Kathy, “Pressure is on young mainlanders to marry”, (10 November 2014), online: *South China Morning Post* < <https://www.scmp.com/lifestyle/article/1636650/pressure-young-mainlanders-marry>>.
- Chan, Cherie, “China’s unmarried women struggle to overcome barriers to having babies”, (23 November 2016), online: *DWCOM* <<http://www.dw.com/en/chinas-unmarried-women-struggle-to-overcome-barriers-to-having-babies/a-36488553>>.
- Koetse, Manya, “Not ‘Leftover Women’ but ‘Leftover Men’ Are China’s Real Problem,” (29 July 2015), online: <<https://www.whatsonweibo.com/not-leftover-women-but-leftover-men-are-chinas-real-problem/>>;

- Lee, Kevin, “China’s Growing Problem Of Too Many Single Men”, (13 May 2011), online: *Forbes* <<https://www.forbes.com/sites/china/2011/05/13/chinas-growing-problem-of-too-many-single-men/>>;
- Sun, Wanning, “‘My parents say hurry up and find a girl’: China’s millions of lonely ‘leftover men’”, (28 September 2017), online: *The Guardian* <<http://www.theguardian.com/inequality/2017/sep/28/my-parents-say-hurry-up-and-find-a-girl-chinas-millions-of-lonely-leftover-men>>.
- “China’s provinces offer to subsidize weddings to promote marriage,” (31 January 2018), online: *Global Times* <<http://www.globaltimes.cn/content/1087488.shtml>>.
- China Daily, “The Question of Early Education,” (27 May 2011), online: *China Daily* <http://usa.chinadaily.com.cn/epaper/2011-05/27/content_12591614.htm>
- Tang, Didi, “Don’t wait for Mr Right, Chinese told”, (7 March 2018), online: *The Times* <<https://www.thetimes.co.uk/article/dont-be-so-fussy-about-marriage-chinese-women-told-cp0z89gwh>>.
- Myers, Steven Lee & Olivia Mitchell Ryan, “Burying ‘One Child’ Limits, China Pushes Women to Have More Babies,” (13 August 2018), online: *New York Times* <<https://www.nytimes.com/2018/08/11/world/asia/china-one-child-policy-birthrate.html>>.
- Li, Ruohan, “Giving reproductive rights to single women ‘unlikely to happen in China in 3 to 5 years,’” online: *Global Times* <<http://www.globaltimes.cn/content/1102218.shtml>>.
- Shepherd, Christian, “Chinese activists renew push for same-sex marriage in their thousands”, (12 September 2018), online: *Reuters*: <<https://www.reuters.com/article/china-lgbt-lawmaking-idUSL3N1VY4YB>>;
- Fan, Jiayang, “Sun Wenlin and Hu Mingliang Want to Get Married”, (2 September 2016), online: *The New Yorker* <<https://www.newyorker.com/news/daily-comment/sun-wenlin-and-hu-mingliang-want-to-get-married>>.
- Li, Jiajia, “Yanjiu Baogao Cheng Zhongguo ‘Qianxi Yidai’ Qingxiang Yongyou Fangchan Zai Yazhou Jushou,” (9 November 2016), online: *China News Service* <<http://www.chinanews.com/house/2016/11-09/8058156.shtml>>.
- Jacobs, Andrew & Adam Century, “As China Ages, Beijing Turns to Morality Tales to Spur Filial Devotion”, (8 September 2012), online: *New York Times*, <<https://cn.nytimes.com/china/20120908/c08parents/en-us/>>.
- Chin, Josh, “China Filial Piety Law Draws First Blood”, (2 July 2013), online: *WSJ* <<https://blogs.wsj.com/chinarealtime/2013/07/02/chinas-new-filial-piety-law-draws-first-blood/>>.
- Fan, Chuangui, “Wudu ‘Chang Huijia Kankan’ Yanmo Lifa Zhenshi Jiazhi,” (4 July 2013), online: *Fazhi Daily* <<https://www.chinacourt.org/article/detail/2013/07/id/1021445.shtml>>.
- BBC News, “Single Chinese women want to freeze their eggs and enjoy life”, (2 August 2017) online: *BBC News* <<http://www.bbc.com/news/world-asia-china-40183587>>.

Yan, Alice, “Official ban is no brake on China’s surrogacy sector”, (17 February 2017), online: *South China Morning Post* <<http://www.scmp.com/news/china/society/article/2071548/official-ban-no-brake-chinas-surrogacy-sector>>.

Dneyer, Simon and Luna Lin , “Mass Evictions in Freezing Beijing Winter Sparks Public Outrage but Little Official Remorse,” (27 November 2017), online: *The Washington Post* <https://www.washingtonpost.com/news/worldviews/wp/2017/11/27/forced-evictions-in-freezing-beijing-winter-sparks-public-outrage-but-little-official-remorse/?utm_term=.efd7cfd583a2>.

Secondary Sources: News Media in Chinese

Wu, Bin, “Guojia Jisheng Wei Huiying Danshen Nvxing Dongluan”, *Nanfang Doushi Bao* (25 February 2018), online: *Nanfang Dushi Bao* <http://epaper.oooo.com/epaper/A/html/2018-02/25/content_11646.htm>.

Zhao, Zejun, “Linyi: 90 hou Xiaohuo Yiwu zuo ‘Hong Niang’ Chenggong Qianxian 50 Yu Dui,” (13 September 2018) , online: *Yimeng Wanbao*, http://sd.ifeng.com/a/20180913/6879068_0.shtml.

An, Laoban, “Mei Ge Zhongguo Ren Xinli, Dou Zhuzhe Ge Meipo,” (29 August 2018), online: *Xin Zhoukan* <http://www.sohu.com/a/250693946_100024718>.

Liu, Daoqian, “Buduan Zhengqiang Falv Yishi,” (26 March 2018) online: *People’s Daily* < <https://www.chinacourt.org/article/detail/2018/03/id/3248044.shtml>>.

China Youth Daily, “Qiuzhi ‘Qiba’ Xianxiang Danshen Weisha Ping buguo ‘Youwade’?” (14 January 2016) online: *People.cn*, <<http://edu.people.com.cn/n1/2016/0114/c1053-28051933.html>>.

Wang, Junping, “Sheng bu Chu Erhai Zhen Fanna”, (3 February 2017), online: *People’s Daily* < <http://society.people.com.cn/n1/2017/0203/c1008-29054868.html>>.

Wang, Shan, “Zigong Chuzhu: Yinmi de Daiyun Wangguo,” (16 February 2017), online: *Zhongguo Xinwen Zhoukan* <<http://www.inewsweek.cn/news/cover/502.html>>.

Sheng, Menglu, Congzhi Zhang & Rongde Li, “Chinese Couples Desperate for Children Turn to Illegal Surrogacy”, (30 May 2017), online: *Caixin Global* <<https://www.caixinglobal.com/2017-05-30/101095787.html>>.

Harney, Alexandra, “Wealthy Chinese seek U.S. surrogates for second child, green card”, *Reuters* (22 September 2013), online: *Reuters*

<<https://www.reuters.com/article/us-china-surrogates-idUSBRE98L0JD20130922>>.

Fazhi Zhoumo, "Zhongguo Furen Xuanze Fumei Daiyun duo Kanzhong Meiguo Guoji Beihou Liyi" (23 October 2013), *Sina News*, online.<
<http://news.sina.com.cn/c/sd/2013-10-23/101428509477.shtml>>

He, Xin, "Beijing Shoupan Zinv Chang Huijia Kankan, Ju bu Zhixing Huo Bei Juliu", (21 December 2013), online: *Beijing Morning Post*,
http://www.ce.cn/xwzx/xinwen/jsyw/201312/21/t20131221_1968666.shtml

Guo, Shan, "Zinv Weishenme Buyuan 'Chang Huijia Kankan?'" (20 July 2013), *Nanfang Daily*, online: <<http://jingji.cntv.cn/2013/07/20/ARTI1374278199770824.shtml>>.

Other Sources

Ignotofsky, Rachel, *Women in Science: 50 Fearless Pioneers Who Changed the World* (New York: Ten Speed Press, 2016).

Liu, Qian, "Spoiled Parents and Vulnerable Adult Children in China: *Qing* and Filial Piety under the Elderly Law," unpublished.

Hertogh, Marc, *What is Non-State Law? Mapping the Other Hemisphere of the Legal World*, SSRN Scholarly Paper ID 1008451 (Rochester, NY: Social Science Research Network, 2007).

CCTV, "Danshen Nvxing Shengyuquan zhi Kun: Shiguan Shouyun Shang Hukou dou yao Yihun," online: CCTV <
<http://news.cctv.com/2016/11/26/ARTIq4mhErnREfVgbZcDVj4C161126.shtml>>

Yuanbo Zhang et al., "Daxuesheng Falv Yishi Xianzhuang Diaocha ji Duice Fenxi" (2015) 32 *Zhongguo Shichang*, online: Zhongguo Shehui Kexue Wang <
http://www.cssn.cn/jyx/jyx_gdjyx/201511/t20151113_2590743.shtml>;

National People's Congress, "Shenme shi Falv Yishi? Zenyang Xingcheng Falv Yishi?" (17 December 2000) online: National People's Congress <
<http://www.npc.gov.cn/npc/c2311/200012/d3a79676216348cc8c431b32087c566d.shtml>>.

The Central People's Government of the People's Republic of China, "Shenme shi Shishi Hunyin," (13 June 2005), online: The Central People's Government of the People's Republic of China <
http://www.gov.cn/banshi/2005-06/13/content_6147.htm>.

- Sebag-Montefiore, Clarissa, “Not My (Only) Kid”, (18 September 2012), online: *Latitude* <<https://latitude.blogs.nytimes.com/2012/09/18/how-chinas-one-child-policy-hurts-gays/>>.
- Pan, Suiming, “Gay or Nay: China’s Changing Attitudes Toward Homosexuality”, (9 December 2017), online: *Sixth Tone* <<http://www.sixthtone.com/news/1001348/gay-or-nay-chinas-changing-attitudes-toward-homosexuality>>.
- J.P. By “Chinese attitudes towards gay rights”, (6 June 2017), online: *The Economist* <<https://www.economist.com/the-economist-explains/2017/06/05/chinese-attitudes-towards-gay-rights>>.
- CCTV International, “Zhang Fuyou de Hunshi, (24 Feb 2004), online : CCTV.com <<http://www.cctv.com/program/jjyf/20040224/101303.shtml>>.
- Jishengban, “Nanfang Yike Daxue Jihua Shengyu Mubiao Guanli Zerenshu,” (30 December 2012), online: Family Planning of Southern Medical University <<http://portal.smu.edu.cn/jsb/info/1004/1017.htm>>.
- Qian, Jinghua, *Gay Mom Asks China’s Congress to Allow IVF for Unmarried Women*, (19 January 2017), online: *Sixth Tone* <<http://www.sixthtone.com/news/1843/gay-mom-asks-chinas-congress-to-allow-ivf-for-unmarried-women>>.
- Single Women and Lesbian Couple’s Reproductive Rights Working Group of China, *Single Women’s Reproductive Rights - A Research Report on Policy and Lived Experience*, (2016) online: <<https://pan.baidu.com/s/1jIO7KRO#list/path=%2F>> (accessed 24 November 2017);
- Lin, Ping, “Chinese Men Outnumber Women by 33 Million After Decades of Gender Bias,” (22 January 2015), online: *Radio Free Asia* <<http://www.rfa.org/english/news/china/gender-01222015125826.html> >.
- Liu, Qian, “Single Women’s Frozen Eggs Threaten Chinese Communist Party’s ‘Harmonious Society’ Project?,” (2015) online: *Blogging for Equality* <<http://www.bloggingforequality.ca/2015/08/qian-liu-single-womens-frozen-eggs.html> >.