

Marriage, Law, and Revolution: Divorce Law Practice in the Shaan-Gan-Ning Border Region

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婚姻、革命与法律—陕甘宁边区的离婚法实践

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Abstract

Based on the judicial archives of the Shaan-Gan-Ning Border Region, this article examines the Border Region's divorce law practice in the context of the Chinese Communist revolution. Despite the retreat of the Chinese Communist Party (CCP) from its radical approach to divorce during the Yan'an period, women were encouraged by various changes introduced by the revolution to exercise the right to divorce, and their failure or success in divorce litigation was closely associated with their respective positions or statuses as defined in connection with the revolution. On the other side, male peasants, the major social force of the revolution, experienced a downward movement in the marriage market, and their encounter with *gongjiaren* in divorce litigation revealed the gap between the ideal of marriage as anticipated by lawmakers and the marriage market in reality. To a large extent, this tension contributed to the development of a mediation-focused judicial system, which would deeply influence the civil justice system of the People's Republic of China.

Keywords

revolution, freedom of marriage, peasants, kangshu, gongjiaren, judicial system, mediation

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Author's Note: I thank Philip Huang and Kathryn Bernhardt for their valuable comments on an earlier draft of this article. Thanks also to the editors of *Rural China*, who helped make this article suitable for publication.

摘要

本文利用陕甘宁边区的司法档案，在中国共产党革命的背景下考察陕甘宁边区的离婚法实践。尽管边区的婚姻立法已从苏维埃时期完全支持离婚的激进立场撤退，但革命带来的各种现实变化，尤其是对个人身份的重塑，仍然激励妇女积极地行使离婚的权利，而她们在革命中所处的位置或身份对于她们在离婚诉讼中权利的实有重大关联。另一方面，作为革命主要社会力量的男性农民在婚姻市场上经历了下滑，他们和公家人在离婚诉讼中的对抗清楚地显示了立法者预期的婚姻理想和现实的婚姻市场之间的紧张关系。对此法官们创造性地摸索出一套以调解为主要手段的司法技术，对于中华人民共和国的民事法律制度有根本性的影响。

关键词

革命、婚姻自由、农民/抗属/公家人、司法制度/调解

In the night of February 12, 1943, when most people of a peasant family in Mizhi County were sleeping, their two daughters-in-law, Du Guirong and Cui Guiru, packed up, strangled the crowing rooster, jumped out the window and ran away. In March, Zhang Huaibao, the husband of Guirong, found that the two women had “joined the revolution” at a military factory in Suide County. Huaibao asked them to return home. Both women responded by filing for divorce. After obtaining a divorce, Guirong and Guiru got remarried respectively with two cadres from the military factory. For the next two years, Huaibao fought to defend his marriage, appealing from the Mizhi County judicial office to the superior court of the Shaan-Gan-Ning Border Region. In the end, an agreement was reached through court mediation in 1945, whereby Huaibao accepted 5 *shi* of rice as compensation from Guirong’s new husband (SGNA 1468).

In past scholarship, the CCP’s marriage law during the Yan’an period has long been overshadowed by its two more prominent counterparts, the 1931 marriage law of the Chinese Soviet Republic and the 1950 marriage law of the People’s Republic China. While the former marked a revolutionary milestone in the party’s marriage legislation, the latter, in conjunction with the land reform, launched a nationwide campaign against the traditional marriage and family system. In comparison, the marriage law of the Yan’an period has received much less scholarly attention.¹ A mainstream view of this period has been derived from Ding Ling’s work. In her influential essay titled “Thoughts on the International Women’s Day” (*Sanba jie you gan*), this renown feminist writer criticized male chauvinism within the party, and argued that the right

¹ It is only recently that scholars of mainland China have started research on the marriage law and judicial system during the Yan’an period. See Hou Xinyi, 2007; Wang Shirong, 2007; Hu Yongheng, 2011; and Liu Quan’e, 2012.

to divorce as granted by the marriage law mainly facilitated the divorcing of their “backward” wives by some male cadres. “Divorce is always attributed to the backwardness of female comrades. . . . [I] hear that there is still a debate on whether a divorce can be granted by *ex parte* application or by mutual consent of the parties. It appears that in most cases divorce is initiated by the male party” (Jiefang ribao, March 9, 1942).² Later feminist scholars, such as Kay Ann Johnson, confirmed Ding Ling’s observation from another perspective, contending that given the low priority accorded to gender equality in the CCP’s revolutionary agenda at the time and the deeply rooted patriarchal tradition in rural base areas, the legal principle of freedom of marriage largely remained on paper (Johnson, 1983: 66-67). In both accounts, the marriage law during the Yan’an period failed to serve the CCP lawmakers’ declared goal of liberating women from the oppression of the family, and women remained passive and benefited little from the legal right to divorce. When reading the archival records of the Shaan-Gan-Ning Border Region superior court, however, I came to wonder if there was another story to tell about divorce law practice in the Border Region: to what extent was the right to divorce actually exercised by women, and how? What judicial principles informed various types of divorce law suits? And how did divorce law practice relate to attitudes and actions not necessarily limited to the CCP’s policy concerns?

This article explores the Shaan-Gan-Ning Border Region’s divorce law practice in conjunction with the broader changes effected by the Chinese Communist Revolution, especially the reshaping of people’s statuses. I will tell the story from two perspectives. First, despite the CCP lawmakers’ restrictive attitude toward divorce, the social changes introduced by the revolution encouraged women to take advantage of the legal right to divorce. Their success or failure in divorce litigation, however, was closely associated with their respective statuses as defined in relation to the revolution. Among the Border Region’s women, those working directly for the revolutionary regime benefited most from the apparently universal principle of freedom of marriage. Second, the other part of my story is about how male peasants defended their marriage. Male peasants, though deemed a key component of the Chinese revolution, experienced a downward movement in the marriage market. The marriage battle of peasant husbands in court revealed the tension between the ideal of

² Perhaps from the same point of view, the majority of the members of the Central Women’s Association proposed to limit the right to *ex parte* divorce in drafting the 1950 Marriage Law of the People’s Republic of China. See Deng Yingchao, 1950 (1988); “Hunyin fa dansheng shimo,” 2010.

marriage as anticipated by the CCP lawmakers and a marriage market with expanded mobility in reality. In the end, the gap between the legal ideal and social reality was left to be reconciled in court mediation.

The sources for this article mainly come from the newly opened judicial archive of the Shaan-Gan-Ning Border Region superior court (hereinafter referred to as SGNA and cited by the file number).³ This archive consists of 1,733 files (mainly handwritten) from 1938 to 1949, and probably provides the most detailed evidence on the CCP's early legal system. Approximately 1,200 out of the 1,733 files are records of various criminal and civil cases. Since the archive has not been categorized and sorted, a file might include a number of cases, ranging from 10-plus pages to more than 100 pages. Case records usually document, in addition to complaints and judgments, the interviews with the parties and witnesses and the court's internal communications. Ethnographic evidence contained in these records makes it possible for us to go beyond a top-down perspective, and see the logic of judicial practice and ordinary people's attitudes and actions beneath official representations. The rest of the archive are records of judicial conferences, judicial work reports, statistics, directives and replies by the superior court to lower courts, etc. Among these data, the records of judicial conferences are particularly valuable. As the court's internal forum, the judicial conference did not serve any propaganda purpose, and hence the attendees tended to speak candidly and truthfully about the difficult problems they encountered in judicial practice. To certain extent, such records are telling about visions and experiences otherwise inaccessible to students of legal history.

Evolution of Marriage Legislation

Although this article focuses on legal practice, it is still necessary to provide a brief introduction to the Shaan-Gan-Ning Border Region's marriage legislation as a bottom line for discussing divorce law practice. From 1937 to 1949, the Border Region enacted three statutes and two special regulations on marriage: the 1939 Provisional Marriage Statute of the Shaan-Gan-Ning Border Region, and

³ The original and duplicate of this archive are respectively located in the Central Archives and the Shaanxi Provincial Archives, and I had access to the latter (catalog 15) during my two research trips to Xi'an. For some files (probably the majority), the number written on the cover page slightly differs from that on the first page within it. For example, the number for the case of Zhang Huaibao *v.* Du Guirong as indicated on the cover page is 1470, but 1468 on the first page within the file. The citations in this article follow the numbering on the files' first pages.

its two revised versions respectively in 1944 and 1946, the 1942 Specific Regulation on Strictly Prohibiting Marriage by Purchase-Sale, and the 1943 Regulation of the Shaan-Gan-Ning Border Region on Handling Divorce Cases Relating to Wives of Anti-Japanese Soldiers (SSDG 1:221-23, 8:94-96, 10:82-83, 6:295, and 7:35-36). These statutes and regulations were built upon earlier marriage legislation of the CCP during the Soviet period (1927-1936),⁴ especially the 1934 Marriage Law of the Chinese Soviet Republic, which was brought by the CCP's central leadership to North Shaanxi. However, there were substantial changes in regard to the approach to divorce, economic arrangements after divorce, treatment of traditional marriage practices, and protection of the marriages of soldiers ("military marriage").

As suggested by past scholarship, a prominent change in the Border Region's marriage law was a shift away from the approach of *ex parte* divorce in the earlier CCP laws. Under the 1934 marriage law, "Freedom of marriage is established. When one party, either the man or the woman, is determined to claim a divorce, divorce may take effect immediately" (Article 10). The Border Region's marriage law distinguished divorce by *ex parte* request from divorce by mutual consent. The latter was allowed, and the sole requirement was for the parties to register with the local district or municipal government to receive a divorce certificate, which was optional under the 1939 and 1944 statutes, and mandatory under the 1946 statute. The *ex parte* request, however, was required to be made on legal grounds and was up to judicial decree. The 1939 statute provided the following grounds for divorce: bigamy; emotional incompatibility (*ganqing buhe*) that makes living together intolerable; adultery; ill-treatment; malicious desertion; intent to frame the spouse; sexual incapacity; incurable loathsome disease; life or death being uncertain for one year, or for two years if in places where correspondence is difficult; and "other important reasons" (Article 11). The 1944 and 1946 statutes acknowledged these grounds, with two revisions: the waiting period was extended to three years when the party filing for divorce did so on the grounds that the life or death of the other party was uncertain; and an additional ground for divorce was added: "lack of a regular occupation by either party that adversely affects the other party's living" (Article 9 of both statutes).

⁴ In this period, the CCP issued a series of marriage laws and statutes in the areas under its control, including the 1930 Marriage Law of the Minxi Soviet, the 1931 Resolution on Marriage by the Second Worker-Peasant-Soldier Congress of the E-Yu-Wan Soviet, the 1931 Marriage Statute of Xianggan Province, the 1931 Marriage Law of the Northwest Jiangxi Soviet, the 1931 Marriage Law of the Xiang-E-Gan Soviet, the 1931 Marriage Statute of the Chinese Soviet Republic, and the 1934 Marriage Law of the Chinese Soviet Republic. See Zhang Xipo, 2004: 122-33.

The above changes, to certain extent, reflected the impact of Guomintang law on the Border Region under the United Front: the approach of distinguishing divorce by *ex parte* request from divorce by mutual consent was consistent with that of Guomintang Civil Code, and the aforementioned grounds for divorce also largely overlapped with those as specified under Article 1052 of the Civil Code.⁵ Yet, the concept of “emotional incompatibility” was created by the CCP. As Philip Huang noted, this concept emerged from the wish to replace the traditional Chinese concept of marriage as a family matter and the Guomintang concept of marriage as a contract, and it suggests a new concept of marriage based on love or affection. More important, since any judgment of the quality of a couple’s emotional relationship is inexact, this concept allowed the court considerable latitude to make decisions that best suited the circumstances of specific cases and the policy emphases of the moment (Huang, 2005: 151-203). As shown in later analysis in this article, when construing and applying “emotional incompatibility,” the court took into consideration the different statuses of parties to divorce litigation, leading to the differential application of the apparently universal marriage law. In addition, rather than enumerating the grounds for divorce in an exclusive way, the Border Region’s legislation allowed “other important reasons” besides those specified. Like the concept of emotional incompatibility, this all-inclusive expression functioned to increase the latitude for the court’s discretion in judicial practice.

In addition, the Border Region’s marriage law set forth a less favorable economic arrangement for women after divorce. The earlier CCP lawmakers recognized women’s weaker economic position in reality and intended to make divorce an economically practical choice for women, and hence rendered the economic arrangement after divorce very favorable to women. Under the 1934 marriage law, for example, if the marriage had lasted more than one year, the property gained by management in common was to be divided equally between the man and the woman after divorce, but the man was solely responsible for

⁵ The influence of Guomintang law on the law of various Communist base areas is discernible. For example, the Marriage Law of the Jin-Cha-Ji Border Area expressly declared that it was “based on the spirit” of the Civil Code (Meijer, 1971: 291). As special areas under the national government, the base areas nominally recognized Guomintang law. The need to borrow from Guomintang law was enhanced by other two facts: first, the base areas’ legal experts were often trained in Guomintang law; second, the base areas’ own legislation was very limited, insufficient to cover various issues that emerged from judicial practice. Accordingly, in judicial practice, the base areas’ own legislation would be given priority, but Guomintang law could be referred to where the base areas’ own legislation was silent.

the debts incurred during the marriage (Article 13). Also, if the woman could not support herself after divorce, the man was obliged to support her by tilling her land or by other means until she remarried (Article 15). In comparison, the 1939 statute set forth a maximum of three years for the man's support to the woman after divorce (Article 19), and provided that the woman should also be liable for the debts incurred during the time of marriage (Article 18). Later, the financial support issue was completely dropped from the 1944 and 1946 statutes.

Moreover, the Border Region's marriage law showed greater tolerance toward traditional marriage practices than its earlier counterparts. The earlier CCP lawmakers labeled the major traditional marriage patterns "feudal," e.g., marriage by parental arrangement, by purchase-sale, and by coercion, which accordingly should be "abolished." The abolishing of such marriage practices was supported by the approach of *ex parte* divorce and confiscation of betrothal gifts. While generally prohibiting these "unfree" marriage practices, the Border Region's law did not include them as legal grounds for divorce, nor were they void *ab initio*. In particular, the 1942 Specific Regulation on Prohibiting Marriage by Purchase-Sale made an obvious concession to marriage by purchase-sale: "With regard to the marriage custom of presenting betrothal gifts by the man to the woman, which appears apparently similar to marriage by purchase-sale . . . the court shall not establish a case unless requested by one party; if a case is established, the court should only examine whether the marriage in dispute is essentially flawed. Betrothal gifts per se, even of a large amount, do not invalidate a marriage, and may not be confiscated" (SSDG 6:295). In contrast to its stated goal of "strictly prohibiting marriage by purchase-sale," this regulation actually loosened the ban on this marriage practice. On one hand, it defined the presentation of betrothal gifts as a marriage custom that merely "resembled" marriage by purchase-sale. On the other hand, it prevented the court from initiating prosecution of marriage by purchase-sale, and cancelled the economic sanction on it. In a reply to lower courts, titled "Reply of the Superior court to the Inquiry by Chishui County on Whether to Confiscate the Bride Price in Marriage by Purchase-Sale," the superior court further explained, "To tighten the ban [on marriage by purchase-sale] will cause dissatisfaction with the government among ignorant people, and they will run away from the Border Region to areas controlled by our enemies for marriage by purchase-sale. . . . Regarding whether to confiscate betrothal gifts or not, [we] suggest the following two rules: 1) non-interference (*bu ganshe*) and 2) non-confiscation (*bu moshou*)" (SSDG 6:296-97).

Finally, the Border Region's marriage legislation granted stronger protection to military marriage. The 1934 marriage law already identified military marriage as a special category, to which the approach of *ex parte* divorce did not apply: wives of Red Army soldiers who wanted a divorce had to obtain the consent of their husbands. Alternatively, they might apply to the local government for divorce only if the husband had not returned home nor communicated for two years in areas where communication by letter is easy, or for four years in areas where communication by letter is not easy. The 1943 Regulation on Divorce Relating to Wives of Anti-Japanese Soldiers further tightened the restrictions on the divorce requests by military wives. In the first place, a military wife could apply for divorce only if she had not received information about her husband for five years or longer, and she also had to provide a written agreement to a divorce by her husband's family (Article 1). Here, the relatives of the absent husband served as his agent and spoke on his behalf. In other words, the above provisions on *ex parte* divorce did not apply to military wives at all, and in no event were they entitled to *ex parte* divorce. In addition, when a military wife applied for divorce, the court "must make every effort to dissuade her" (Article 2). Therefore, "mediation" became a mandatory proceeding in handling divorce cases involving military personnel. While incorporating such provisions, the 1944 marriage statute added a guiding principle: "as a rule, the spouse of an anti-Japanese soldier may not be granted a divorce during the Anti-Japanese War" (Article 11).

The above changes show that the CCP withdrew from its earlier radical position regarding divorce. The lawmakers referred *ex parte* applications for divorce to judicial decree, and the economic arrangement upon divorce and protection of military marriage limited the exercise of women's right to divorce. This does not necessarily mean that the Border Region's marriage law was conservative. In fact, it was far more liberal than its counterparts in many contemporary countries. Nevertheless, the evolution of the CCP's marriage legislations did reflect the party's then-current policy concern: since the first priority should be mobilizing peasants for national revolution, divorce was deemed a divisive factor that could alienate male peasants.

Divorce Suits in the Context of Revolution

If one looks merely at the written law and the party's policy concerns, one would tend to agree with Johnson that the principle of freedom of marriage had little real effect but simply remained on paper, and thus it was difficult to

obtain divorce in the Border Region. The judicial archive, however, shows a different picture. Divorce litigation might have occurred more frequently than one might expect. According to the statistics by the Shaan-Gan-Ning superior court, marriage cases, including divorce and dissolution of engagements, constituted one of the two largest categories of civil cases (the other being land cases) in the Border Region. Marriage cases accounted for 21 percent of the reported civil cases in 1940 (SGNA 156), and 28 percent from 1941 to 1942 (SGNA 193). The court did not routinely reject applications for divorce. In fact, a considerable portion of divorce requests were approved. According to a 1945 report, "Marriage Issues in the Border Region" (Bianqu de hunyin wenti, 1945), from January 1944 to June 1945 there were 209 divorce suits appealed to or reported to the superior court, and divorce was granted in 140 cases; and in the most densely populated sub-region of Suide, with a registered population of 556,913 in 1946 (Yanchi xian dangshi bangongshi, 1988: 313), there were 65 suits that ended in divorce in 1944 alone (Bianqu de hunyin wenti, 1945). In addition, very much unlike Ding Ling's account, the vast majority of divorce cases were initiated by women. Out of the above-mentioned 65 divorces granted in Suide, 62 were initiated by women. Evidence also comes from a report by Zichang County to the Department of Civil Affairs, which stated, "the number of divorce cases increases year by year, and ninety percent of these cases have been initiated by women" (Qin and Yue, 1997: 149). It rarely occurred in judicial practice that a male cadre raised an *ex parte* divorce request. As observed by Shi Wenxiu, a judge from Suide County, male cadres usually had resources to negotiate with their wives for a mutual consent divorce agreement, and hence seldom resort to judicial proceedings (SGNA 78).

It should be noted that the actual number of divorces might be significantly higher than the above figures. In the first place, the statistics did not include mutual consent divorces. As Kathryn Bernhardt observed, due to the liberal provisions on and low costs of mutual consent divorce, they comprised the overwhelming majority of divorces in Republican China, for instance, 70 percent of the reported divorces in Shanghai from August 1928 to August 1934 (Bernhardt, 1994: 193). Similarly, in the Beiyu district of the Jin-Cha-Ji Border Region under the CCP, mutual consent divorces registered with the government amounted to 268 in the first half of 1941, compared to 196 judicial divorces in the same period (Beijing zhengfa xueyuan, [1943] 1956: 110). Although there is insufficient data to accurately estimate the number of mutual consent divorces in the Shaan-Gan-Ning Border Region, it seems reasonable to infer that the mutual consent of the parties also served as a significant avenue for divorce there too. In addition, since there was no sound case reporting mechanism

between the lower organs with judicial functions and the superior court, the superior court's statistics did not cover all divorces by *ex parte* application or judicial divorces handled by lower organs. For example, there were neither special organs nor personnel for justice below the county level, and the district government concurrently exercised judicial power.⁶ In fact, being closest to local people, the district government played an important role in dispute resolution by conducting first instance trial and mediation as well as collecting evidence for cases brought to higher judicial organs. Yet, the district governments were not responsible for reporting cases to the superior court, and hence the divorce suits they handled, and were not appealed, would be absent from official data.

The superior court's statistics, though imprecise, still help illuminate the extent to which the right to divorce was actually exercised by people. But how to understand these statistics depends on one's perspective. In view of the Border Region's population, which ranged from 1.3 million to 2 million,⁷ divorce was certainly not commonplace. Yet, it seems fair to say that the Border Region saw a greater change in the incidence of divorce than many areas of Republican China. For example, in the Chinese-controlled sector of Shanghai, only 65 adjudicated divorce cases were reported from 1940 to 1941, which included both cases ending in divorce and those that did not (Bernhardt, 1994: 195). At the time, Shanghai was the most Westernized metropolis of Republican China, and the Chinese-controlled sector of Shanghai had a registered population of 1,479,726, comparable to the total population of the Shaan-Gan-Ning Border Region and significantly larger than that of Suide sub-region (Shanghai tongzhi, n.d.: 3:1, sec. 2). In rural areas far from Western influence, the change was more limited. For example, the Mantetsu data on three North China villages from 1920 to 1940 contained little evidence of change in divorce rates (Huang, 2001: 199).

Scholars of marriage law generally agree that it is in modernized urban areas, rather than traditional rural areas, that people are more willing and able to take advantage of new marriage legislation. Thus, how can we account for the effect of the CCP's marriage law in the Border Region or the willingness of

⁶ The 1942 Statute of the Shaan-Gan-Ning Border Region on Protecting Human and Property Rights provided that "for disputes among residents under its jurisdiction, the district government may conduct mediation with the consent of both parties" (Beijing zhengfa xueyuan, [1943] 1956: 48). In practice, however, the district government also adjudicated first instance cases.

⁷ The Border Region's population amounted to nearly two million in the late 1930s, and decreased with the reduction of its area. The registered population in 1941 and 1946 was 1,332,175 and 1,595,065 respectively (Yanchi xian dangshi bangongshi, 1988: 307-22).

people (women in particular) to use their divorce rights? An immediate answer is the costless and extremely simple judicial procedures of the Border Region. Guided by the concept of serving the people, the judicial organs charged no fees for litigation, allowed oral petitions, and on many occasions conducted on-site investigation to collect evidence rather than place the burden of proof on the parties.⁸ All this removed impediments to the poor, the illiterate, or people without legal knowledge from bringing a case before the court. Nevertheless, to fully understand the change in divorce law practice, one should not limit oneself to looking at law alone, but should also look at the social, cultural, and demographic changes brought by the Chinese Communist revolution.

Under the United Front, the CCP stopped radical socioeconomic programs such as land reform. However, the building of political, military, economic, and cultural organizations by the CCP still gave local people, especially women, an unprecedented experience with revolution. In the early 1930s, women in northern Shaanxi were generally illiterate and did not participate in production. Soon after the arrival of the CCP's central leadership, they were organized into women's associations, production units, and study groups. Just a few examples: in 1938, the women's association of the Border Region claimed a membership of 173,000 (Deng and Meng, [1938] 1985: 31), and female cadres at the regional, county, and district level totaled more than 6,400 (Shaanxi sheng funü lianhehui, [1939] 1985: 115). The number of women engaged in household production of cloth increased to 137,000 in 1944 (Li Weihai, [1944] 1988: 29), and over 5,000 women worked in government-owned factories in 1945, accounting for half of the Border Region's workers (Shaanxi sheng funü lianhehui, 1985: 12). In 1939, 15,000 women enrolled in various schools and study groups, and it was said that those knowing 200 characters accounted for 10 percent of the Border Region's female population (Shaanxi sheng funü lianhehui, [1939] 1985: 110-11). Through increased political, economic, and cultural participation, women not only improved their socioeconomic and familial status, but were inevitably exposed to new ideas and to the language of marriage law. As seen through the case records, words like "freedom of marriage,"

⁸ Regarding litigation fees, the 1942 Statute of the Shaan-Gan-Ning Border Region on Protecting Human and Property Rights specified that "judicial organs shall not charge any fees for litigation by the people" (Beijing zhengfa xueyuan, [1943] 1956: 48). Accepting oral petitions and conducting on-site investigation were the main characteristics of the so-called Ma Xiwu method of justice, a judicial pattern which originated in the Shaan-Gan-Ning Border Region and was made the model of the "people's justice system." See "Ma Xiwu tongzhi de shenpan fangshi," 1944; and Zhang Xipo, 1983: 41-54.

“free love,” and “emotional incompatibility” became part of their vocabulary and weapons in seeking a divorce.

The large number of immigrants drawn to the headquarters of Chinese Communist revolution also contributed to change in local marriage practice. In the first place, a substantial part of the immigrants were educated urban men. For example, an estimated 100,000 immigrants poured in from 1937 to 1940, perhaps half of whom were students, teachers, journalists, and other intellectuals (Schoppa, 2000: 96). The practice of free love and companionate marriage among these immigrants had a modeling effect on the local people. At the same time, immigration led to a demographic change. Demographic historians have pointed to the long-term imbalance in the sex ratio and the shortage of marriageable women in imperial China. No matter what the exact situation of northern Shaanxi was before the revolution, the pouring in of a large number of men to large extent caused or worsen gender imbalance in local society. In 1946, the Border Region's registered population consisted of 844,361 men and 750,704 women, with the sex ratio at 100:88.9. These figures did not include the personnel of the army, government organs, factories, and schools (Yanchi xian dangshi bangongshi, 1988: 315). One can safely infer that the gender imbalance was greater among the Border Region's total population. When the marriage law opened up a marriage market, this gender imbalance provided women and their natal family favorable opportunities to pursue upward mobility by marriage, and stimulated them to exercise the new right to divorce, sometimes in ways unexpected by the party.

Finally and particularly important to the analysis of this article, in the rural society of northern Shaanxi, which originally had relatively limited socioeconomic differentiation, new statuses were defined in relation to the revolution, e.g., *gongjiaren* and *kangshu*. Literally meaning “persons (*ren*) belonging to the public (*gong*) family (*jia*),” the term “*gongjiaren*” was used by local peasants, who referred to themselves as *shoukuren* (suffering persons), to describe those directly working for the revolutionary regime, such as party and government cadres, military personnel, and staff of the government-owned factories, stores, and schools. The identity, interests, and social networks of *gongjiaren* were no longer tightly tied with rural communities, but with the revolutionary regime. *Kangshu*, literally meaning “the dependants/subordinates (*shu*) of Anti-Japanese soldiers (*kang*),” referred to wives of military personnel. The term “*shu*” precisely described the position of these women in the revolution. They did not directly participate in the revolution as autonomous agents, but were linked to it through their marriage to revolutionary soldiers. The differences

between gongjiaren, kangshu, and ordinary peasants would profoundly impact the Border Region's divorce law practice.

Women in Divorce Litigation

Tani Barlow, in her genealogical analysis of the Chinese term *funü* (women), points out that in both imperial China and during the Chinese Communist revolution, “*funü*” was not an equivalent of “womanhood” in English, which signifies a universal category or status. In imperial China, *funü* referred to differentiated statuses as defined by kinship relations, such as wives, daughters and mothers; there was no abstract womanhood beyond kinship relations. During the Chinese Communist revolution, the term “*funü*” was inherited but transformed into a concept of statist political practice, referring to women who were mobilized by the CCP, shifted their loyalties from their families to the party, and worked for the revolutionary regime. *Funü* was a status to be earned during revolutionary political practice: “this subject existed inside a structured field of politics beyond the rural calendar of field work and beyond the village social relations. . . . A rudimentary bureaucracy concerned itself with her welfare and insured her freedom of marriage” (Barlow, 1991: 133-60). Although the Border Region's marriage law declared the principle of marriage freedom in a universal framework, individuals' statuses as reshaped and differentiated by the revolution were still introduced to divorce law practice in subtle ways.

Kangshu

As dependants of revolutionary soldiers, kangshu had limited access to divorce. The 1943 regulation formally transformed kangshu from a political identity into a legal status in the area of marriage law, and subjected women classified as kangshu to separate and more stringent requirements for divorce: such women could apply for divorce only if they had not received information about the husband for more than five years and had obtained the written agreement to divorce from the husband's family. In judicial practice, however, the special treatment of kangshu started earlier, and the already limited access to divorce by these women was further restricted.

A case that went through the Yan'an local court, the superior court, and the Shaan-Gan-Ning Border Region's adjudication committee illuminates judicial practice before the issuance of the 1943 regulation (SGNA 1334). In 1940, Zuo Run'er, a fifteen-year-old girl, was married to Wang Yinsuo by her

parents for a betrothal gift of 80 *fabi*, 8 *dou* of rice, and several bolts of cloth. She was unhappy with this marriage from the outset, and ran back to her natal family soon after the wedding. Several months later, when Yinsuo joined the army, Run'er applied to the Yan'an local court for divorce. The judge in charge certainly understood the special nature of cases involving military marriage. "Approving Zuo Run's request for divorce will have a negative impact on consolidation of the army (*gonggu budui*)," he acknowledged later in a letter to the superior court. However, under the then-effective 1939 marriage statute, Run'er had a strong case: her marriage fell into the prohibited category of marriage by parental arrangement and by purchase-sale; she was also below the marriageable age (eighteen years of age for women, Article 6). In addition, due to her age and physical condition, she considered sexual intercourse "unbearably painful," and she threatened to commit suicide if her divorce request was rejected. Although not indicated in the written judgment, the judge considered the threat of suicide an important factor. He stated in a report to the superior court, "If we deny her divorce request, Zuo Run'er will be forced to cohabit with Wang Yinsuo. If so, she is determined to hang herself. This really matters." After comprehensively considering all these factors, the court granted a divorce in February 1941, and at the same time imposed a five-month term of imprisonment and a three-month term respectively on the father and mother of Run'er for selling her into marriage.

At the moment Wang Yinsuo neither appealed nor took the divorce judgment seriously. In September 1942, he asked Run'er to "perform the duty of cohabitation." Run'er applied again to the Yan'an local court, and obtained an injunction that ordered Yinsuo not to badger her. In response, Yinsuo appealed to the superior court against the divorce judgment. He explained that the real reasons behind Run'er's divorce request were as followed: as an urban woman, she despised peasants and farming work; and more important, she opposed his decision to join the army. Yinsuo's claim was strongly supported by the army. In October 1942 when the appeal was being reviewed, his regimental commander and political commissar wrote three times to the superior court: "if one lose his wife due to joining in the revolution, the impact would be very bad" (*ruguo weile geming ba qizi dou gediao, zheyang shiyou yingxiang*). In addition to asking the court to overturn the divorce judgment, they suggested putting Run'er under detention if she refused to live with Yinsuo. Nevertheless, perhaps due to the same considerations that concerned the Yan'an local court, the superior court confirmed the judgment of first instance: "marriage should be based on the free will of the marrying parties." It also added a procedural ground for denying the appeal—according to the Guomindang's civil procedural law,

Yinsuo failed to bring the appeal within the statute of limitations, and the judgment of first instance had already taken effect. The case then moved up to the Shaan-Gan-Ning Border Region's adjudication committee.⁹

It should be noted that Zuo Run'er's success at the Yan'an local court and superior court probably was not typical of kangshu's experience. In most other cases, the court would simply deny the divorce requests by these women for the purpose of "consolidating the army." Yet, this case showed that when the written law had not yet introduced the concept of kangshu, some judges would apply the universal principle of freedom of marriage. Perhaps because of this very fact, Lin Boqu, the chairman of both the Border Region's government and adjudication committee, came to believe that Zuo Run'er's case could be used as a model. Lin overturned the previous judgments, and criticized Run'er for her "backward thinking" (*luohou sixiang*), which made her unwilling to marry a peasant or a soldier. "The latter [i.e., unwillingness to marry a soldier], in particular, should not occur among young women." In his eyes, the principle of freedom of marriage certainly did not apply to a woman's choice of divorce due to such backward thinking. He further stated that the appropriate position of kangshu should be within the family: "while men with strong bodies go to the battlefield, women who are physically weak should fulfill her responsibilities within the family." Consequently, "divorce requests by kangshu should definitely be denied," and "during the current transitional period, parental arrangements or failure to reach the marriageable age do not constitute sufficient grounds for divorce." This judgment was widely distributed to local governments and courts as educational materials (SGNA 193). One month later, the 1943 regulation was issued, officially turning kangshu into a legal concept.

As mentioned before, the 1943 regulation placed stringent restrictions on divorce requests by kangshu. However, meeting these requirements did not guarantee a divorce in judicial practice. The 1945 "Marriage Issues in the Border Region" reported on an investigation of 38 military wives in Qingjian County, and found that 15 had received no information from their husbands for more than nine years. Among them, only two women divorced and remarried; of the rest, six committed adultery, three conducted *zhaofu*, one committed suicide,

⁹ The Shaan-Gan-Ning Border Region's Adjudication Committee was established in 1942 and dissolved in 1944. As the third and highest level of the Border Region's judicial hierarchy, it was mainly responsible for issuing judicial interpretations, reviewing death penalty cases, hearing appeal cases from the superior court, as well as directly handling two categories of influential and difficult cases as it saw fit: administrative and marriage cases (SSDG 6.313).

and one became mentally ill.¹⁰ Although this report did not specify whether these 13 women had applied for divorce, one can assume that the majority of them hoped to end what was a marriage in name only. According to Xin Daming, a Qingjian County judge, the barrier that prevented these women from divorcing did not lie with their husbands' family, as people often assumed, but with the court (SGNA 85). In fact, some soldiers' families for practical reasons hoped that their kangshu daughters-in-law would get divorced: suffering from years of psychological and emotional hardship, some women became troublemakers or engaged in embarrassing or humiliating activities such as adultery.¹¹ Besides, marrying off these women could bring in some betrothal gifts, which were usually shared by the soldier's family and the woman's natal family. For the revolutionary regime, however, the priority was to maintain military marriages as well as the image of kangshu as devoted supporters of their revolutionary husbands. Consequently the revolutionary regime, though restricting the kangshu's right to divorce, adopted a tolerant attitude toward their unorthodox behavior.¹² In Qingjian County, for example, the government protected the right of an adulterous kangshu to remain in her husband's home. In that case, Old Liu, the family head and father of two soldiers, requested the district government to "send away" his two kangshu daughters-in-law, because they "ruined the family's reputation" by committing adultery. His request was denied. When one daughter-in-law gave birth to a child out of wedlock, Old Liu brought the request to the district government again. This time, he received a

¹⁰ *Zhaofu yangfu* was a local custom of northern Shaanxi. Literally meaning "marrying a second husband to support the original husband," it had one wife and two husbands live under the same roof. Historically, a main reason for this custom was impotency. Later, it became a choice for poor women when their husbands could not support the family due to illness or disability. The woman's marriage with the second husband was expected to have been approved by the first husband; the second husband was responsible for the expenses of the whole family; during the second marriage, the wife was not to cohabit with the first husband; the children born during the time of the second marriage belonged to the second husband. See Qin and Yue, 1997: 28-29. During the Yan'an period, this custom was borrowed and transformed into a temporary arrangement for kangshu. The second husband lived with the soldier's family and contributed to family income, but he was expected to leave upon the soldier's return.

¹¹ As depicted in "Marriage Issues in the Border Region," unable to obtain divorce, kangshu were "dissatisfied and extremely anxious," and some of them "found fault with everything," "quarreled endlessly," or "willfully committed adultery" (Bianqu de hunyin wenti, 1945).

¹² Xin Daming commented that the government "did not interfere with kangshu and seldom educated them. Adultery by kangshu was not prohibited," and "so [some] kangshu women openly acted as legitimate idlers within the family" (SGNA 85). Zhu Yin, a key member of the adjudication committee, also expressed a non-interference position regarding zhaofu by kangshu (SGNA 86).

warning, "You old rogue, how dare you make this up against our kangshu? Our kangshu never commit adultery!" (SGNA 85).

For a few kangshu women who managed to divorce and get remarried, their second marriage would face another challenge: what if their soldier-husbands returned and wanted them back? Although the marriage statutes were silent on this issue, the superior court stated in its 1944 work report, "if a kangshu got remarried without going through formalities, she shall be returned to her ex-husband with her second marriage annulled; otherwise, she may be allowed to stay with her current husband" (SGNA 193). Here, the superior court did not specify the formalities required, but it likely referred to the official procedures of divorce at the court and registration of the second marriage. In a 1943 case from Yanchuan County (SGNA 895), a soldier's family, after receiving no information from him for seven years, secretly married off his wife.¹³ Later, when a message came that the soldier was still alive, his brother applied to the court and successfully got the woman back. The court also confiscated the betrothal gift received by the soldier's family for marrying off the woman, and sentenced the second husband to a five-month labor penalty for purchasing a kangshu. As mentioned earlier, the 1942 regulation on marriage by purchase-sale was actually lenient toward betrothal gifts. This case, however, involved a military marriage, and special treatment would be of educational significance.

In some cases, the court went even further and ordered back kangshu women who had performed the official procedures of divorce and remarriage. This was the case with Zhang Guilan (SGNA 946). Guilan herself was unwilling to resume the first marriage—she got along well with her second husband, He Shiwen, and already had a child with him. To "protect the honor of Anti-Japanese soldiers," the court chose to "mediate" this case. Such mediation, of course, was unlike voluntary mediation based on mutual consent under modern Western law since it involved coercion by the court. In this case, the judge exerted pressure on Guilan and Shiwen by accusing them of adultery before getting married (the evidence was that Guilan made a pair of shoes for Shiwen prior to their wedding). Soon after her return to the soldier's family, Guilan tried to hang herself, but was found in time and saved. This tragedy made Shiwen decide to get her back by force. To this end, he went to consult with his uncle, He Lintu, a *xiuca* degree-holder under the old civil service examination system and then current representative on the Anshai County council. Lintu

¹³ Considering the difficulty kangshu had in obtaining a divorce from the court, when they remarried they often did not follow official procedures. But such remarriage was different from *zhaofu*, for *zhaofu* was intended as a temporary arrangement.

agreed to help. In his eyes, the nephew's request was not only reasonable but also complied with the principle of freedom of marriage. "I have studied the marriage law," he declared, "and there is no problem with freedom of marriage." In a night in December 1944, under Lintu's leadership, a group of twelve men from the He family marched to the soldier's family and dragged Guilan back. The court determined this was abduction for the purpose of marriage. All of the participants received punishment varying from one year's imprisonment to an admonition, and He Lintu was particularly reprimanded by the court for "taking advantage of his position as a representative and for his proficiency in law to bully" (*yi canyiyuan zige, yong jingtong luli zihao, ji yi weixie*).

Gongjiaren

In contrast to kangshu, who were deemed the dependants of their revolutionary husbands, the gongjiaren women joined the revolution in their own right, and were recognized as autonomous agents. As reflected in divorce law practice, they were entitled to exercise their independent will and the court often gave much weight to their wishes when it came to divorce. Two other factors also contributed to the advantageous position of these women in divorce litigation. First, unlike ordinary peasant women, gongjiaren women enjoyed income and welfare provided by the revolutionary regime, and this economic independence served as an important material condition for divorce.¹⁴ Second, since the government organs, factories, and schools were concentrated in cities and towns, gongjiaren women usually lived away from the rural community. In the case of disputes between a gongjiaren wife and a peasant husband, this geographic factor not only rendered the wife free from the pressure of the conservative rural community, but also gave her easy access to the urban-located court. As mentioned earlier, no court fee was charged under the Border Region's judicial system, but the time and travel expenses involved in litigation mattered. In long-lasting litigation, the husband could give up for this practical reason.

The court's liberal attitude toward divorce requests by women was clearest in cases where both parties were gongjiaren. To certain extent, the divorce between two gongjiaren on equal footing was expected to comply with the pro-

¹⁴ In his analysis of the correlation of land reform and the marriage law campaign in early 1950s, Meijer showed how the land titles distributed to women served as an important material condition for them to raise divorce requests (Meijer, 1971). The CCP did not conduct a thorough land reform in the Shaan-Gan-Ning Border Region, but still provided an important channel for women to become economically independent, i.e., working for the government.

gressive principle of freedom of marriage. In a 1942 case from Yan'an (SGNA 1340), both parties came from Sichuan to "join the revolution." They got married through "free love," and served as a security guard and nurse respectively. In May 1941, the wife, Dong Shaolin, gave birth to a child and asked the husband to buy some rice as nourishing food. But the husband, Wu Guojun, stole one *dou* of rice from the "public family," and was consequently removed from the position of squad leader. Shaolin was "extremely unhappy" about this, and had twice quarreled with Guojun. In August 1942, she applied for divorce on the grounds of emotional incompatibility, which was granted by the Yan'an local court and then affirmed by the superior court. In the judgment, the court expressly linked the parties' status with their free will in marriage choice: "marriage of a man and a woman shall be based on the principle of the free will of the parties. Both parties to this case serve the revolution, one as a revolutionary soldier, the other a revolutionary medical professional, and their marital relationship should be determined at their own discretion." Therefore, the court reasoned, "the appellee [Shaolin] applied for divorce and could not be dissuaded, which sufficiently proves the 'emotional rupture' (*ganqing polie*) between her and the appellant [Guojun], making living together impossible." As mentioned earlier, since any judgment of the quality of a couple's emotional relationship is inexact, the concept of emotional incompatibility allowed the court great latitude in making decisions based on the circumstances of specific cases. In this case, the judge gave much weight to Shaolin's will: her persistent request for divorce per se, as an expression of her free will, "sufficiently" proved emotional incompatibility between the couple and qualified her for divorce.

In another example involving a gongjiaren husband and wife (SGNA 775), the couple were originally local peasants, and got married by parental arrangement. When the wife, Liu Guihua, filed for divorce, the husband, Guo Youhai, "joined the Red Army, because wives of Red Army soldiers were not allowed to divorce." In May 1941, Youhai was working at the Central General Affairs Department, and Guihua became a nanny at a kindergarten in Yan'an. Guihua brought up the divorce issue again. What made the situation more complicated was that Guihua was actually in an adulterous relationship with one of Youhai's colleagues, Liu Baoting. During a fight in July, Youhai was severely injured by Guihua and Baoting, who were punished for adultery and injury by a six-month and a two-year labor sentence respectively. In March 1942, Guihua brought a divorce suit once again on the grounds of emotional incompatibility. She wrote to the superior court, "since my marriage problem has not been solved, I suffer every day, unable to make progress in work. The marriage problem has influenced my work. Please solve this problem as soon as

possible.” Despite the fault of adultery on Guihua’s part, the court still granted a divorce, contending that “the conjugal relationship is still not harmonious, which sufficiently proves the emotional rupture between the parties, making living together impossible.”

The above two examples form an interesting contrast to Zuo Run’er’s case. The male parties in all these three cases were soldiers; what distinguished them were the women’s different statuses in connection with the revolutionary regime. Dong Shaolin and Liu Guihua were military wives, but they concurrently had another more important status, i.e., women joining the revolution as autonomous agents. For this reason, the court, on the grounds of emotional incompatibility, recognized and took into full consideration their decision to divorce. By contrast, Zuo Run’er, as a kangshu, was not allowed such a choice, or her choice for divorce simply proved her “backward thinking” rather than “emotional incompatibility.”

What if a gongjiaren woman wanted to divorce her peasant husband? Here, the situation was more complex. In a 1942 directive the Border Region government issued the following instruction: “In the future, women leaving home for public office should not be allowed to divorce or remarry immediately, so as to avoid bad influence among the mass” (SSDG 6:144). In 1944, the superior court reiterated this position in a more restrictive way, but added “however, it is also inappropriate for the male parties to force them back. . . . The husbands may not prevent these women from working” (SGNA 193). Here, the revolutionary regime had two different concerns: on the one hand, it did not welcome such divorces, which would alienate many peasant husbands and make it harder to get their cooperation in recruiting local women; on the other hand, it also wanted to retain the loyalty of women who devoted themselves to the revolution. On balance, the above instructions expressed a moderately negative attitude toward such divorces, and gongjiaren women were allowed to separate from their husbands and stay under the protection of the “public family.” In judicial practice, judges might also adopt a relatively liberal position on the divorce requests by gongjiaren women for practical reasons. For example, Gao Jixian, a judicial cadre from the Yan’an local court, frankly admitted the impact of different statuses of gongjiaren and peasants on their marriage. According to him, “when women join the factories and schools at Yan’an, they became refined, washing their face with soap. But their husbands are peasants and never wash their face. . . . One joins work (*canjia gongzuo*), and the other is a suffering peasant, making living together impossible” (SGNA 82). Shi Wenxiu, a judicial cadre from Suide, commented that there was actually no way to prevent gongjiaren women from eventually obtaining a divorce, but

long-term litigation would cause economic losses to their peasant husbands. "If the woman fails to obtain divorce this year," Shi pointed out, "she can wait until next year. . . . But if the male party gets bogged down in the town because of divorce litigation, his farm work will be affected" (SGNA 78).

As a result, divorce between gongjiaren women and their peasant husbands left a mixed record in judicial practice. There were examples that showed restrictions. For example, Li Zhiying, a worker in the 359th Brigade's Daguang Textile Factory, fought for divorce from 1940 to 1945, but did not succeed (SGNA 79). Dang Xiuying, a worker in the Northwest Cigarette Factory, was caught sleeping with a male worker, and was sent to the court for discipline. In the court hearing, she brought out her repeated failure in divorce litigation (SGNA 946). But more often, the case records showed evidence of expanded access to divorce by gongjiaren women.

In a case from Suide County (SGNA 778), Zhang Yizhai, a women's work director who left home to "join the revolution" in 1940, filed to dissolve her fifteen-year-long marriage in March 1941. The husband did not show up before the court because he "was not willing to divorce." A default judgment was made in favor of the wife, with a certificate of divorce sent to the husband. The husband appealed to the superior court in April 1942, when Yizhai was planning to remarry a cadre from the trading bureau at Yan'an. In the court hearing that followed, Yizhai simply told the judge that the couple "did not have much to talk with each other," which, in her eyes, proved emotional incompatibility. It is noted that after a three-month investigation, the court did not determine whether the couple was "emotional incompatible," but referred to the Guomindang civil law to deny the appeal on the grounds that it was not made within the statute of limitations. Obviously, the court used a procedural ground to package its liberal attitude toward the divorce request by a gongjiaren woman.

In another case, from Chishui County (SGNA 79), Bai Miaozhen, a town school teacher, also obtained a divorce on the grounds of "emotional incompatibility." Exceptional among northern Shaanxi women, Miaozhen was a high school graduate. The county government had hoped to hire her as a town school teacher. Originally, Miaozhen's husband worried that this job would likely affect their marriage, but he was convinced by the county government to let her "work for the revolution." Unfortunately, Miaozhen filed for divorce soon after she moved to the school. She contended "he is a peasant, which will adversely affect my prospects in the revolutionary team (*danwu wo de geming qiantu*). We are emotionally incompatible." The court did not grant divorce at the time, believing that such a divorce would likely undermine people's

confidence in the government. In the following months, the husband was busy running back and forth between the countryside and the town. He hoped to persuade Miaozhen to return home, or get the government's help to ensure that she did. When all these efforts turned out to be fruitless, the desperate husband decided to resort to force—he tied up Miaozhen, put her on horseback, and tried to bring her home. This audacious act put an end to the pending divorce litigation: it not only caused the husband to be detained for infringement of personal freedom, but also provided hard evidence for the “emotional incompatibility” claimed by the wife.

In fact, the “public family” became a visible avenue for some peasant women, especially after the failure of a petition for divorce, to seek divorce or at least temporarily escape from an unhappy marriage. In a 1946 case (SGNA 1068), Li Guihua, a peasant woman who got married at thirteen years of age, had applied for divorce six times with the local district and county governments. She failed to obtain a divorce, but the government's mediation and detainment (she was charged of adultery with his husband's nephew) also failed to make the conjugal relationship “harmonious.” In 1943 Guihua went to work at a kindergarten in Yan'an, and never returned to her husband's home thereafter. She filed once again for divorce with the Yan'an local court in 1946, when she was in a relationship with a cadre of the Northwest Bureau. In addition to claiming that the marriage had been arranged by her parents and that she was mistreated by her husband's family, Guihua explained her “emotional incompatibility” with her husband: “I belong to the public family, and he is just one of the ordinary people (*laobaixing*). There is a conflict of wills between us, and we cannot live together.” She further expressed her determination to escape from a traditional family and join the “public family”: “[I] had been oppressed by the family. Now that I participate in work, the public family is my family and my parents. I'll never go back.” The Yan'an local court granted a divorce on the grounds of “emotional rupture.” In June, the husband appealed to the superior court. Considering that it was in the farming busy season, the court postponed the trial, but Guihua and her new boyfriend soon got married. In the end, although this second marriage was annulled as bigamy, the court still confirmed the divorce that Guihua had so long fought for.

Women like Li Guihua were not exceptional. Shi Wenxiu, a judicial cadre from Suide, observed that “after their divorce requests are denied, those women would rather die than return [to their husbands' home]. While appealing, they stay in factories or serve as nannies. . . . In 1942, there were thirty or forty such women in Suide. . . . Most of the women suing for divorce took refuge in government agencies and factories as workers or nannies” (SGNA 78). For these

women, Guihua's analogy of "public family" to her natal family and parents was meaningful. In the sense of providing a refuge from their unhappy marriage, the "public family" for these gongjiaren women was parallel to the natal family for women in imperial China. More than that, however, the "public family" granted women a new status as well as a visible chance of eventually obtaining a divorce.

Peasant Women

In divorce litigation, the position of peasant women fell between kangshu and gongjiaren. Peasant women were most likely to win the sympathy of the court when they were subject to severe ill-treatment or failed to get minimum financial support from their husbands. However, they did not enjoy the same access to divorce as gongjiaren women. This was evident in the fact that many peasant women, after their frustrated effort of getting a divorce, ran away from the rural community and eventually obtained a divorce as gongjiaren.

In judicial practice, the way the court construed and applied the notion of emotional incompatibility clearly showed the restrictions on divorce peasant women faced. As discussed earlier, in the cases of some gongjiaren women, like Dong Shaolin and Zhang Yizhai, the decision to seek divorce per se was considered to have "sufficiently proved" emotional incompatibility. In contrast, few peasant women could actually use this ground, because the court required other, "hard facts" to prove emotional incompatibility. In the words of Chen Shouxue, a judicial cadre from Quzi County, "women applying for divorce all assert emotional incompatibility. This takes the written law literally. But if they fail to meet some other requirements, divorce will not be granted" (*Bianqu de hunyin wenti*, 1945). A claim of emotional incompatibility alone was often dismissed as an excuse to seek divorce because of material considerations. Zhang Shengcai, a judicial cadre from Yanchuan County, believed "some morally loose peasant women want to divorce because they admire merchants and gongjiaren for their good food and clothing. If there are no grounds for divorce, they will assert emotional incompatibility" (SGNA 81). Another judicial cadre (his name was missing from the judicial conference record) hinted that the provision on emotional incompatibility should not apply to "backward" peasant women at all: "the rural area is largely backward. Peasant women do not understand emotion, but are simply attracted to men who are rich or good looking" (SGNA 86).

In some difficult cases, the court used villagers' mass trials as a device to deter peasant women from seeking a divorce. In the name of "democratic

divorce" (*minzhu lihun*), the court could completely go beyond written law and accommodate the conservative influence of the rural community. As a result, the woman suing for divorce would be placed directly under the pressure of her husband's family and the whole community. There were rare examples of women obtaining a divorce through a mass trial. In Zichang County, a daughter-in-law of a Han family was abused by her husband and parents-in-law. When she filed for divorce, the district head referred her case to a village mass meeting, because he "thought there were already too many divorces" in his jurisdiction. Luckily, due to the Han family's notorious abusive conduct, the masses unanimously approved the divorce (SGNA 81). But in many other cases, one can imagine, a mass trial would not only thwart a women's effort to divorce, but could turn into a violent drama. That was the case with a woman surnamed Yuan, who was said to be a loose woman and stayed in her natal family home for most of the time after she got married. When she filed for divorce, her husband's grandmother opposed it and threatened to commit suicide. The district government decided to use a mass trial to solve this problem. At the trial, villagers shouted "Oppose divorce!" Frightened and insulted, Yuan jumped into a well. After being taken out of the water, she was still kicked by people almost to death (SGNA 82). In Suide, a teenager, who married a man twenty years her senior, was so terrified by the prospect of a mass trial called for her divorce petition that she threw herself into a river on the way to the meeting (SGNA 78). Although it is hard to estimate how frequently mass trials for divorce disputes were used, that they were used at all demonstrates the judiciary's narrow and unsympathetic position on divorce petitions by peasant women.

Compared to kangshu, however, peasant women had easier access to divorce. In particular, courts tended to support their petitions when they were subject to severe ill-treatment or failed to get minimum financial support from their husbands. Ill-treatment was a major ground for the court to grant divorce. Among the 65 divorces of Suide sub-region in 1944, 11 were based on this ground. In actual application, this mainly referred to severe physical abuse by the husband or in-laws. In a 1942 case (SGNA 1336), Ren Zulan, a woman who had already moved out of her husband's home, secretly returned home to take away her child and belongings. On the way back, she was caught and openly beaten by her husband. There was no medical examination record detailing her injuries, but many eyewitnesses testified that she was hit, with her "head broken and bleeding." As a result, the court immediately granted her a divorce and the guardianship of her child, and imposed on the husband a ten-day labor penalty. The husband appealed to the superior court, asserting that Zulan had committed adultery and moved to live with the adulterer before applying for

divorce. However, like the court of first instance, the superior court emphasized that the severe beating had made the marriage impossible to continue. As for the alleged adultery, the superior court simply denied considering it on a procedural ground that this issue was not raised in the trial of first instance.

Failure on the part of the husband to provide minimum financial support might also lead to a divorce. Of the 65 divorces of Suide sub-region in 1944, 5 were related to this situation. In a case from Yan'an County (SGNA 1643), Gao Huakui, a poor widow, married Liu Michang in January 1948. It seemed that this marriage was mainly based on material considerations from the outset. When the husband failed to give the wife's natal family 2 *dou* of millet as he had promised before marrying, Huakui got together with her late husband's family to fight with Michang twice. Frightened, Michang ran to live with his uncle, and then left for another county as a seasonal laborer in April 1948. Thereafter, Huakui made a living by begging, and encountered Sun Lishan. "Since Sun had no wife, and she was so hungry, they came to live together." In January 1949, Michang returned and applied to Yan'an County to get his wife back, but Huakui responded by filing for divorce. The court understood the marriage choices poor women had to make in order simply to survive, and immediately granted a divorce. As for Huakui's cohabitation with Lishan before the divorce, the court simply issued a criticism.

Without question, the court still had great latitude in handling divorce petitions based on the above grounds. To win a case, women often needed to make sure their own conduct and motivations were beyond reproach. In a 1946 case (SGNA 1643), Gao Guihua was beaten nearly twenty times by her husband and parents-in-law within half a year before she brought a divorce suit, but the in-laws attributed this to her own morally loose behavior. The court of first instance granted a divorce, which, however, was overturned by the superior court due to Guihua's own "inappropriate behavior." Thereafter Guihua ran away from her husband's home. Similarly, if a woman sought divorce in order to improve her material life, she would likely face moral condemnation and lose her case. In a 1943 case (SGNA 842), the court even prevented a mutual consent divorce due to the material considerations involved. Having an opium-smoker father and marrying into a poor peasant family, the woman, Chen Yu, wanted to divorce and remarry a more financially solvent husband. A small merchant, Li Shugui, acted as the middle man, arranging her meeting with a prospective husband. Here, the archival record detailed Yu's monetary motive for divorce: "In the first meeting, Chen Yu disliked his [the prospective husband's] clothing and turned him down; the second time, he wore a set of new, borrowed clothes, and she then agreed to marry him." Shugui also persuaded

the family of Yu's husband to consent to a divorce in exchange of some money from the would-be husband. "The world has changed, and divorce is possible now. . . . She [Yu] did not get along with you and planned to divorce. Why not let her go now that this opportunity has arisen? Otherwise, you will lose both the person and money." In this way, Yu and her husband registered their divorce with the district government, and she remarried after a couple of days. Later, when a relative of Yu's ex-husband brought a suit against this divorce, the county court revoked the divorce certificate and ordered Chen to return to her ex-husband. From a legal point of view, Yu's divorce and remarriage complied with the law, and the relative of her ex-husband did not even have standing to bring a suit against this. Nevertheless, the court did not support women like Yu who pursued material interests by taking advantage of freedom of marriage, which went against both traditional ethics and the new social order. The revolution and tradition coincided on this issue.

As Gao Jixian, a judicial cadre from the Yan'an local court, observed, even though peasant women welcomed and intended to exercise the legal right to divorce, the "door [for them to divorce] only opened slightly" (*men kai de tai xiao*) in judicial practice (SGNA 82). Some women chose to run away from the rural community and continued fighting for divorce as a *gongjiaren*. Others turned to extreme acts: from January 1944 to June 1945, the Border Region had 202 cases involving death, 106 of which were murders or suicides arising in connection with failed divorce petitions (Bianqu de hunyin wenti, 1945).

Peasant Husbands in Divorce Litigation

As Neil Diamant observed, arranged marriages, though resulting in many unhappy relationships, had the benefit of making sure that poor men had a reasonable chance of securing a spouse. But when the marriage law opened up the marriage market and women took advantage of their new opportunities to pursue a greater degree of upward mobility than was possible under the old system, poorer men were placed in a precarious position (Diamant, 2001: 184). Peasants, though deemed participants in and allies of the revolution either in the CCP's long-term political program or its specific policies during the Yan'an period, still heavily relied on traditional marriage customs and ethics. Now peasant husbands in the Border Region were facing an open marriage market with a sex ratio in favor of women. But a more serious challenge was posed by male *gongjiaren* who rose up during the revolution and became a desirable target for women in the marriage market. Little surprise, then, that

the male parties in divorce suites were mainly peasants. Of 33 divorced husbands from Suide sub-region in 1944 whose profiles are available, 25 were poor peasants, 5 middle peasants, 1 rich peasant, and 2 workers (Bianqu de hunyin wenti, 1945).

Nevertheless, peasant husbands in a disadvantageous position were not completely passive. As shown in the judicial archive, some of them were capable of effectively using political and legal strategies and public opinion to defend their marriage. Before the court, peasant husbands used the term *tiaobo*, literally meaning “instigating” or “sowing discord,” to describe the threats to their marriage and to defend against their wives’ divorce petitions. *Tiaobo* revealed a deep tension between the ideal of marriage in the eyes of the CCP lawmakers and the reality of the marriage market. The difference between these two was left to be reconciled in court mediation by the arrangement of *peimi*, literally “payment of rice as compensation.”

Tiaobo and Peimi

In 1942, Lu Wanfu, a peasant from Yanchuan County, submitted a petition to the superior court, accusing his mother-in-law and a local cadre of *tiaobo*-ing his wife to divorce. Wanfu married Ma Cunhua in 1940, and according to him, the conjugal relationship had been “extremely harmonious” and “received many compliments.” In July 1942, Cunhua visited her natal family, where her mother *tiaobo*-ed her to divorce, with the intent of selling her for “a huge amount of money.” The prospective remarriage partner was Zhang Hongyong, the local district head. It seemed that Cunhua herself consented to the plan of divorce and remarriage, as Wanfu stated that “despite our harmonious relationship, my wife was simply an ignorant peasant woman having no thoughts, and she changed her mind greatly due to their *tiaobo*.” Thereafter, Hongyong wrote a letter on July 3 to inform Wanfu that Cunhua had decided to divorce him, and mailed a certificate of divorce to him on July 14. In consideration of Hongyong’s influence in Yanchuan County, Wanfu brought suit in the superior court (SGNA 779).

The outcome of this case is unknown, for it was remanded by the superior court. Nevertheless, the petition per se neatly outlined the basic constituents of a divorce by *tiaobo*: the husband usually claimed that the conjugal relationship had been very good, but the wife was an “ignorant” woman incapable of independent marital choice and was *tiaobo*-ed by a third party to file for divorce; the typical instigators included members of the wife’s natal family who intended to resell her for the bride price and a male *gongjiaren* who intended to take her as

his own wife. The interests of in-laws revolved around the increased material considerations in marriage. Due to the relatively narrow economic and social differentiation in northern Shaanxi, bride price did not play a prominent role in traditional local marriage practices.¹⁵ However, the newly created right of freedom of marriage in combination with a sex ratio in favor of women in the local marriage market, stimulated some women and their natal families to seek relationships based on material interests. Ironically, despite the legal prohibition, marriage by purchase-sale became the “dominant” form of marriage in the Border Region, and “the bride price was going up. It was 12 to 16 *shi* of rice (exclusive of bolts of cloth) in Suide sub-region, 200,000 *fabi* (with the highest being 1,500,000 *fabi*) in Longdong sub-region, 1,000,000 *bianbi* (with the highest being 860 silver yuan coins) in Yanshu sub-region.”¹⁶ The typical remarriage partners, however, were not the rich in the traditional sense, but male *gongjiaren*. They constituted the new elite created by the revolution, and combined political, social, and economic advantages over peasants. As expressed in a folk song “young girls are in love with *gongjiaren*” (Yue and Qin, 1997: 143-44), they became desirable marriage partners for women.

Nowhere did the marriage law mention *tiaobo*, but it was indeed reflected as the judiciary’s anxiety, even in an amplified form. At the Border Region’s judicial conference in 1945, *tiaobo* became a central issue of discussion:

Women applying for divorce are all *tiaobo*-ed by others to do so, for their parents want to sell them more than once. Previously, they were betrothed for 50 or 60 silver yuan coins, but now the bride price has risen to 1 or 2 million yuan. (Li Fuyuan, SGNA 83)

Didn’t women’s natal family make money from their divorce? Divorced women are all resold by their natal families, and they still have no free choice after divorce. (Shi Wenxiu, SGNA 78).

¹⁵ Qin Yan and Yue Long commented that property did not play a prominent role in the local marriage practices of northern Shaanxi since ancient times, and it was not until the end of Qing and the early Republic that marriage by purchase-sale began to increase. See Qin and Yue, 1997: 27-28. Shi Wenxiu, a judge from Suide county, also observed, “the current situation is different from that of the civil war period [i.e., the Soviet period]. During the civil war period, there was no marriage by purchase-sale, and it was easy for poor people [i.e., poor men] to get married” (SGNA 79).

¹⁶ *Fabi* and *bianbi* were currencies issued respectively by the Guomintang government and the Border Region government. Due to the severe inflation at the time, it is hard to accurately estimate the value of the bride prices mentioned here. However, the following example shows that marriage by purchase-sale did constitute a heavy burden for peasants: in Quzi county, Tian Junsha, a rich peasant, paid a bride price of 1,900,000 *bianbi*. In addition to raking together their cash, the Tian family had to sell 4 donkeys, 38 goats, 2 bulls, and 20 *mu* of land as well as borrow from their relatives.

In handling marriage cases, the worst thing is divorce *tiaobo*-ed by cadres. . . . Ordinary people dare not *tiaobo*; the majority of instigators are cadres from the party and government organs or the army. These cadres managed to meet with women in various ways and marry them through coercion. (Zhou Ming, SGNA 75).

In most cases, women applying for divorce aim at better food and clothing. They are all remarried to the staff of state-owned stores. [In choosing remarriage partners] such women consider neither age nor personality. [This kind of marriage] essentially violates the principle of freedom of marriage, which is also most strongly opposed by the masses. (Ma Yaode, SGNA 75)

Eighty to ninety percent of the divorced women in *Suide* have remarried *gongjiaren*. (Shi Wenxiu, SGNA 78)

The judiciary's anxiety stemmed from two sources. First, the CCP's marriage law envisioned the ideal type of marriage to be one based on affection, and freedom of marriage simply served as a means of achieving this goal. In reality, however, women or a third party, e.g., the in-laws, could take advantage of the freedom of marriage and divorce to pursue material interests. For judges, such "formal" freedom not only went against traditional ethics, but also contradicted the spirit of freedom of marriage. In judge Ma Yaode's words as cited above, it "essentially violated the principle of freedom of marriage" (SGNA 75). Second, divorce by *tiaobo* set *gongjiaren* as the typical instigators against peasant husbands as the victims. This not only harmed the interests of individual peasant husbands, but could, if not carefully handled, offend the sense of justice of the peasantry as a whole, and thus undermine the foundation of the revolutionary regime.

To reconcile these conflicts, the court created *peimi*, an arrangement whereby the female party was to compensate the male party upon divorce. This arrangement was widely used in judicial practice. For instance, of the 140 divorces granted in the Border Region from January 1944 to June 1945, 73 involved women who gave compensation to their husbands (*Bianqu de hunyin wenti*, 1945).

The logic of *peimi* forms an interesting contrast to the official representation of the marriage law. The marriage law denied the existence of economic interests in marital relationships. To facilitate free choice in marriage, the law provided for divorced women a favorable property arrangement and continuing support from the husbands. *Peimi*, on the other hand, reflected the realistic logic of the marriage market. It admitted the existence of marriage by purchase-sale, and therefore compensated the divorced husband for the bride price he had paid (though not the full amount). It also assumed that the divorced woman could better her economic circumstances through

remarriage. In many cases, the remarriage partner already appeared in the course of divorce proceedings, and concluded, on behalf of the woman, the peimi agreement with the divorced husband.

Generally speaking, peimi was not based on legal fault. It reflected the court's effort to reconcile the complicated conflicts in divorce litigation, and served as a remedy for male peasants undergoing a downward movement in the marriage market. However, since peimi departed from what was represented in marriage law, courts could hardly make such an arrangement via a written judgment, but instead had to push the parties to reach a "voluntary" agreement via mediation.

A Peasant Husband Battles to Save His Marriage

Let's resume the story at the very beginning of this article, in which Zhang Huaibao, a stubborn young peasant, engaged in a two-year battle to defend his marriage (SGNA 1468). With its 135-page record, this case is an extraordinary sample that fully displays the complex relationships and conflicts in divorce law practice, especially the confrontation between the peasant husband and gongjiaren as well as the court's effort to mediate.

In March 1943, when Huaibao found Du Guirong at a military factory, the latter filed for divorce on the grounds of ill-treatment by the Zhang family and emotional incompatibility. Since Guirong failed to provide any specific evidence for ill-treatment, the Mizhi judicial office found that she "did not meet the requirements for divorce," and instead directed that the couple "become harmonious" through mediation and go home together. In July 1943, soon after her return to the Zhang family, Guirong decided to visit her natal family, and she was caught by Huaibao on the way. A quarrel ensued, and Guirong rolled down a hillside and was slightly injured. Thereafter, she once again filed for divorce with the Mizhi judicial office, asserting that Huaibao had pushed her down the hill. "[Huaibao] intended to frame me up," she contended. "I apply to terminate the conjugal relationship to save my life." Huaibao, on the other hand, claimed that Du intentionally rolled down the hill so as to fabricate an excuse for divorce. Since there was no eyewitness, the court summoned the local district head. The district head tended to support Guirong's testimony, and suggested that "it's better to grant a divorce, so as to avoid any death." As a result, the court delivered a judgment for divorce. Huaibao immediately appealed to the Suide branch of the superior court. Although having some doubts about the cause of Guirong's injuries, the court realized that this very incident clearly showed her determination to divorce, and hence it affirmed

the first instance judgment: "There is a fundamental conflict of wills between the two parties . . . making living together intolerable."

In November 1943, Huaibao went a step further and appealed to the superior court. In addition to complaining that the courts of first and second instance failed to conduct an "investigation" of the cause of Guirong's injuries, Huaibao contended that Guirong was *tiaobo*-ed by *gongjiaren* to run away from the Zhang family: in late January, a staff member of the military factory dropped by and had a talk with Guirong; on February 9, a district cadre and a political instructor of the military factory came to the village and gave Guirong a pass to Suide; then, "the two women of our family were induced to runaway on February 12, along with another five or six women." The reason Guirong filed for divorce, Huaibao believed, was that she disdained poor peasants and wanted to marry a *gongjiaren* so she could enjoy a better material life. "She despised me, a suffering person," Zhang declared. "She hated living in poverty . . . the factory provided better food." He also speculated that Guirong had already found a prospective husband in the factory.

Despite repeated summons from the court, Guirong did not show up. In fact, she was preparing to wed Qin Zhengyu, a director of the military factory. In their joint application to the *zuzhi* (the "organization," i.e., the party) for approval of their marriage, the would-be-couple expressly linked their marital choice with the revolution. Guirong's divorce of Huaibao exemplified women's emancipation: "my relationship with him [Huaibao] was not good, mainly due to the abuse, beatings, and various other [forms of] oppression. I wanted to get rid of the patriarchal oppression." And her remarriage with Qin fit in well with the needs of the revolution: "I want to move forward with the revolution forever. Director Qin came to the factory for meetings and conversations frequently, and he was helpful to me. Also, he is a veteran of the revolution. To continuously receive his guidance, I want to marry him." Zhengyu, on the other hand, stated that to serve the revolution, he already broken up with two girlfriends, one being the daughter of a GMD party member and the other being a special agent. Now, Guirong, who came from a poor peasant family to pursue the revolution (*zhuiqiu geming*), seemed an ideal match for him. This application was approved by the *zuzhi* in October 1943.

The different accounts by Huaibao, Guirong, and Zhengyu reflected the clash of interests between the peasant husband and *gongjiaren*. On balance, the court decided to mediate this case by *peimi*. After inquiring about Huaibao's expenditures related to his marriage with Guirong, the court proposed that Huaibao be compensated with 5 *shi* of rice. Huaibao insisted on getting his wife back in the beginning, but was persuaded by the court to accept *peimi*.

However, when the Suide court, on behalf of the superior court, proposed this peimi plan to the would-be husband, it was turned down. Zhengyu explained that he was a devoted gongjiaren, having no personal property. During negotiations, the court reduced the amount of compensation to 2 *shi* of rice, which Zhengyu still rejected. Dissatisfied with Zhengyu's tough position, the Suide court reported to the superior court that the mediation had failed, and suggested that the case be handled by adjudication—if Guirong did not have sufficient grounds for divorce, the previous divorce judgment should be overturned. At the same time, the court instructed Guirong not to get remarried until the end of the appeal process. Nonetheless, she and Zhengyu got married several days later. Perhaps to avoid interference by the court, they did not register their marriage.

As far as Huaibao was concerned, Guirong's quick remarriage confirmed his suspicion that she had been tiaobo-ed and that the instigator was Zhengyu, who refused to make any compensation to him. Meanwhile, he found out that Cui Guiru, the wife of his brother, also divorced and remarried a cadre from the military factory. Huaibao became infuriated, and he decided not to consider any compromise (i.e., peimi) but instead to pursue the litigation to the end. For this purpose, he broke with his mother and brothers who asked him to give up, and hired a litigation master. Guided by the litigation master, Huaibao submitted a petition to the Border Region's adjudication committee, accusing Zhengyu of abducting his wife. The adjudication committee realized that this case involved complex and sensitive relationships of "army-people (*junmin*), army-government (*junzheng*), and government-people (*zhengmin*)," and ordered the superior court to handle it in an appropriate and timely manner.

In May 1944, the superior court resumed mediation. In the interview, judges used skills typical of later Maoist judges, resorting to law, material incentives, and common sense: "Let us show you the marriage statute. . . . The first article sets forth the principle of freedom of marriage"; "We can ask her [Guirong] to give you some money, and you may get another wife"; "You have been engaged in litigation so long, how could we make your anger melt away? . . . If she did something wrong to you, we can ask her to make an apology. . . . It's hard to force her to live with you, since she is so determined [to get divorced]."

Huaibao's resistance strategies are also noteworthy. In the first place, he emphasized the gongjiaren was guilty of tiaobo: "Why did the factory entice her away, and why did she marry a factory cadre? . . . Does the person marrying her have no fault? Is it right for him to do so?" He also complained that the court failed to treat gongjiaren and peasants in a fair and evenhanded way: "If I were a gongjiaren, I could have got my wife back. In 1935 many people

left home to join the revolution, and their wives got remarried thereafter. Now that the husbands come back, the wives are to be returned even if they already have children [during the second marriage].” In the end, the difficulty a male peasant faced in getting married—“ask her to find a wife for me, and I’ll let her go. Otherwise, I can never get remarried for rest of entire life”—won the judges’ sympathy.

Since this second round of mediation also failed, the superior court’s judges went to the village of the Zhang family for an on-site investigation in September 1944. In addition to clarifying relevant facts, the court intended to collect the masses’ opinions on this case. They found that the villagers generally sympathized with the Zhang family: “They actually treated her [Guirong] very well. . . . She used to sleep late in the morning. Zhang Huaibao prepared washing water for her, and her mother-in-law cooked her breakfast. But she would not eat if the food was not tasty.” This testimony was confirmed by Guirong’s own mother: “They didn’t beat or abuse her . . . but the Zhang family’s food was not good.” When asked whether Guirong was tiaobo-ed by cadres to leave the Zhang family, most villagers were reluctant to answer directly: “I dare not say it! Isn’t it clear to you?” or “Women dare not leave home in the night, and they don’t know the road [to the factory]”; but a few said straightforwardly that the district cadre introduced Guirong to the military factory because he had an affair with her and planned to marry her himself. In the end, the villagers also commented that Guirong wanted a divorce because she “disdains suffering persons” and “the masses are generally dissatisfied with this.”

Based on the above findings, the superior court delivered a case analysis report in November 1944. On one hand, Du Guirong falsely accused the Zhang family of mistreatment, and there was also insufficient evidence against Zhang Huaibao regarding her injury. Therefore, she did not meet the requirements for divorce. The courts of first and second instance failed to conduct an investigation, and the divorce judgment was not based on the facts. On the other hand, however, Du Guirong had no affection for Zhang Huaibao, and she already got remarried and was pregnant. On balance, the court decided to give Du Guirong a reprimand and order her to pay 5 *shi* of rice and Zhang Huaibao’s travel expenses. If she disobeyed, the court would overturn the previous divorce judgment.

Following this decision, the superior court wrote to Qin Zhengyu’s commander, requiring the army’s assistance with mediation, because the masses generally opposed the divorce, and a divorce judgment would harm the “junmin/junzheng/zhengmin” relationship. In the meantime, the court got into contact with the Zhang family and asked them to persuade Huaibao to accept

the court's decision. Thanks to all these efforts, a mediation agreement on divorce and *peimi* was finally reached in February 1945.

Zhang Huaibao's marriage battle ended up in a divorce. The responses from relevant parties to this particular case, however, are of general significance. From the established facts, Huaibao had no legal fault, but the counterpart was definitely at fault: Du Guirong not only made a false accusation, but also got remarried before the divorce judgment took effect. In addition, she secretly left home without consulting with her husband (though with the alleged intention of joining the revolution), which did not comply with the CCP's policy and would adversely affect the relationship between peasant families and the revolutionary regime. For most part, however, the court ruled in her favor, though it showed sympathy for Huaibao and gave some consideration to his interests via *peimi*. Similarly, the district government and the army gave their support to Du Guirong, either for her runaway plan or divorce request. Even Huaibao's own family members did not side with him in the battle: his mother opposed filing a lawsuit; his brother, who was also divorced by a runaway wife, remained silent; eventually, it was a relative of the Zhang family that talked Huaibao into accepting the mediation agreement.

Beneath these attitudes and actions, one can discern a common view or judgment on the confrontation between a peasant husband and *gongjiaren* in marriage disputes. This view might be derived from (and hence reflected) people's understanding of the new sociopolitical and economic structure as well as the new status hierarchy in the making. However, this does not mean that Huaibao simply engaged in a hopeless and meaningless battle. On the contrary, his resistance corresponded to a key issue that troubled the judiciary, i.e., the conflict between the principle of freedom of marriage and the interests of male peasants. From the court's response to Huaibao, we can clearly see the origin and prototype of a mediation-oriented civil justice system, which would dominate in China for the next half century.

Conclusion

The judicial archives are certainly limited, or at least they are insufficient to provide a full picture of the marriage and divorce practices in the Border Region. Yet, the judicial archives document the active roles played by ordinary people, which would otherwise have disappeared in the unprecedented institutional transformation of modern China.

The story of divorce law practice in the Shaan-Gan-Ning Border Region departs from the official representation of the CCP's marriage law on one hand, and feminist critiques by Ding Ling and Kay Ann Johnson on the other. It can be understood, above all, in connection with the social changes brought by the Chinese revolution.

The Chinese revolution not only swept away the old class system, but also redefined and differentiated people's statuses according to their political choices. Although the CCP's marriage law declared the principle of freedom of marriage in a universal framework, kangshu, gongjiaren, and peasant women had different access to divorce in judicial practice. A gongjiaren woman, by joining the revolution in her own capacity, was deemed to have symbolically obtained an independent will. Before the court, then, her choice of divorce would be recognized and taken into full consideration. If a peasant woman filed for divorce, however, her conduct and motives for divorce were often subject to strict examination. Partly this can be attributed to the assumption that to certain extent, a woman who had not joined the revolution still remained in the subordinate position as defined by traditional kinship relations, and was incapable of making an independent marital choice. As for kangshu, since they were, by definition, the dependants of revolutionary soldiers, they were actually required to relinquish the right to divorce.

The rise of gongjiaren also placed male peasants in a disadvantageous position in the marriage market. Marriage battles by peasant husbands like Zhang Huaibao revealed the conflict between the legal principle of freedom of marriage and the interests of male peasants. It was to reconcile this conflict that the judiciary frequently resorted to mediation. In this sense, divorce law practice in the Shaan-Gan-Ning Border Region anticipated a mediation-focused judicial system, which would have long-lasting influence on the civil justice system of the People's Republic of China.

References

- Barlow, Tani (1991) "Theorizing woman: funü, guojia, jiating [Chinese women, Chinese state, Chinese family]." *Genders* 10,1: 133-60.
- Beijing zhengfa xueyuan [ed.] ([1943] 1956) "Jinchaji bianqu xingzheng weiyuanhui gongzuo baogao (jielu)" (Work report of the administrative council of the Jin-Cha-Ji Border Region [excerpt]). Pp. 104-16 in *Zhonghua renmin gongheguo shenpanfa cankao ziliao huibian*, v. 1 (Collection of reference documents on the trial laws of the People's Republic of China). Beijing: Beijing zhengfa xueyuan chubanshe.
- Bernhardt, Kathryn (1994) "Women and the law: divorce in the republican period." Pp. 187-214 in Kathryn Bernhardt and Philip C. C. Huang (eds.), *Civil Law in Qing and Republic China*. Stanford, CA: Stanford Univ. Press.

- Bianqu de hunyin wenti [Marriage issues in the Border Region] (1945) Shaanxi sheng dang'an guan, catalog 4.1, file 65.
- Deng Yingchao ([1950] 1988) "Guanyu Zhonghua renmin gongheguo hunyinfa de baogao" (Report on the Marriage Law of the People's Republic of China). In Caichang, Deng Yingchao, Kangkeqing funü jiefang wenti wenxuan (Select works of Caichang, Deng Yingchao, and Kangkeqing on women's emancipation). Beijing: Renmin chubanshe. www.wsic.ac.cn/internalwomenmovementliterature/12095.htm
- Deng Yingchao and Meng Qingshu ([1938] 1985) "Guanyu Shaanganning bianqu funü yundong gaikuan de baogao" (Report on the women's movement in the Shaan-Gan-Ning Border Region). Pp. 29-37 in Shaanxi sheng funü lianhehui (Shaanxi Provincial Women's Association) (ed.), Shaanganning bianqu funü yundong wenxian ziliao (Documents on the women's movement in the Shaan-Gan-Ning Border Region). Xi'an: Shaanxi sheng funü lianhehui.
- Diamant, Neil (2001) "The anatomy of rural family revolution: state, law, and the family in rural China, 1949-1966." Pp. 103-41 in Perry Keller (ed.), *Chinese Law and Legal Theory*. Aldershot, UK: Ashgate/Dartmouth.
- Ding Ling (1942) "Sanbajie you gan" (Thoughts on the international women's day). *Jiefang ribao*, Mar. 9.
- Hou Xinyi (2007) *Cong sifa weimin da renmin sifa: Shaanganning bianqu dazhonghua sifa zhidu yanjiu* (From justice for the people to people's justice: a study of the judicial system of the Shaan-Gan-Ning Border Region). Beijing: Zhongguo zhengfa daxue chubanshe.
- Hu Yongheng (2011) "Shaanganning bianqu de lihunfa shijian" (Divorce law practice in the Shaan-Gan-Ning Border Region). *Shixue jikan* 1: 49-55.
- Huang, Philip C. C. (2001) *Code, Custom, and Legal Practice in China*, Stanford, CA: Stanford Univ. Press.
- (2005) "Divorce law practices and the origins, myths, and realities of judicial 'mediation' in China." *Modern China* 31, 2: 151-203.
- "Hunyin fa dansheng shimo" [On enactment of the Marriage Law] (2010) *Nanjing ribao*, Aug. 9.
- Li Weihan ([1944] 1988) "Shaanganning bianqu jianshe jianshu" (Brief introduction to the construction of the Shaan-Gan-Ning Border Region). Pp. 23-32 in *Yanchi xian dangshi bangongshi*, 1988.
- Liu Quan'e (2012) "Shaanganning bianqu sifa gaige yu 'zhengfa chuantong' de xingcheng" (Judicial reform in the Shaan-Gan-Ning Border Region and the making of the "politics-law" tradition). Ph.D. diss., Jilin Univ.
- "Ma Xiwu tongzhi de shenpan fangshi" [Comrade Ma Xiwu's method of justice] (1944) *Jiefang ribao*, Mar. 13.
- Meijer, M. J. (1971) *Marriage Law and Policy in the Chinese People's Republic*. Hong Kong: Hong Kong Univ. Press.
- Johnson, Kay Ann (1983) *Women, the Family and Peasant Revolution in China*. Chicago: Univ. of Chicago Press.
- Qin Yang and Yue Long (1997) *Zhouchu fengbi: Shaanbei funü de hunyin yu shengyu* (Walking out of isolation: marriage and child-bearing of women in northern Shaanxi). Xi'an: Shaanxi renmin chubanshe.
- Schoppa, Keith (2000) *The Columbia Guide to Modern Chinese History*. New York: Columbia Univ. Press.
- SGNA: Shaanganning bianqu gaodeng fayuan sifa dang'an (Judicial archive of the Superior Court of the Shaan-Gan-Ning Border Region). Shaanxisheng dang'an guan (Shaanxi provincial archives), Catalog 15.
- Shaanxi sheng funü lianhehui [Shaanxi Provincial Women's Association] [ed.] ([1939] 1985) "Shaanganning bianqu tufeimengjin de nüzi jiaoyu" (The rapid development of women's

- education in the Shaan-Gan-Ning Border Region). Pp. 107-16 in Shaanganning bianqu funü yundong wenxian ziliao xubian (xuji) (Selected documents on the women's movement in Shaan-Gan-Ning Border Region [continuation]). Xi'an: Shaanxi sheng funü lianhehui.
- (1985) "Shaanganning bianqu de nügong 1937-1949" (Women workers in the Shaan-Gan-Ning Border Region, 1937-1949). Pp. 12-18 in Shaanganning bianqu funü yundong wenxian ziliao (Selected documents on the women's movement in the Shaan-Gan-Ning Border Region). Xi'an: Shaanxi sheng funü lianhehui.
- Shanghai tongzhi [General gazetteer of Shanghai] (n.d.) www.shtong.gov.cn/node2/node2247/index.html.
- SSDG: Shaanxi sheng dang'an guan and Shaanxi sheng shehui kexue yuan [eds.] (1986) Shaanganning bianqu zhengfu wenjian xanbian (Select documents of the Shaan-Gan-Ning Border Region government). Vols. 1-14. Beijing: Dang'an chubanshe.
- Wang Shirong (2007) "Shaanganning bianqu gaodeng fayuan tuixing hunyin ziyou yuanze de shijian yu jingyan" (Practice and experience of the Shaan-Gan-Ning Superior Court with enforcing the principle of freedom of marriage). *Zhongguo faxue* 2: 96-107.
- Yanchi xian dangshi bangongshi [Party History Office of Yanchi County] [ed.] (1988) Shaanganning bianqu gaishu (Introduction to the Shaan-Gan-Ning Border Region). Yinchuan: Ningxia renmin chubanshe.
- Zhang Xipo (1983) *Ma Xiwu shenpan fangshi* (Ma Xiwu's method of justice). Beijing: Falü chubanshe.
- (2004) *Zhongguo hunyin lifa shi* (History of marriage legislation in China). Beijing: Renmin chubanshe.

Character List

bu ganshe	不干涉
canjia gongzuo	参加工作
danwu wo de geming qiantu	耽误我的革命前途
ganqing buhe	感情不和
ganqing polie	感情破裂
gonggu budui	巩固部队
gongjiaren	公家人
junmin, junzheng, zhengmin guanxi	军民、军政、政民关系
kangshu	抗属
laobaixing	老百姓
luohou sixiang	落后思想
men kai de tai xiao	门开得太小
minzhu lihun	民主离婚
peimi	赔米
ruguo weile geming ba qizi dou gediao,	如果为了革命把妻子都革掉，
zheyang shiyou yingxiang	这样实有影响
shoukuren	受苦人
tiaobo	挑拨
yi canyiyuan zige, yong jingtong	以参议员资格，用精通律例自豪，
luli zihao, ji yi weixie	籍以威胁
zhaofu yangfu	招夫养夫
zuzhi	组织