

'It's Not Just About the Divorce': Law, Politics, and Mediation in Communist China

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INTRODUCTION

Scholars have agreed on the incomplete implementation of the 1950 Marriage Law, especially its provisions against arranged marriage and for freedom of choice of marital partner, and provided social, structural, and political accounts explaining obstacles to free choice marriage. Based on discourse analysis of introductory letters submitted by grassroots officials—explaining specific marriage disputes—to a county court in Central China, we investigate the compromise outcome of reconciliation in matrimonial disputes, another provision emphasized in the 1950 Law. Grassroots officials were enforcers of the Law, but subscribed to the Chinese Communist style of mediation of civil disputes. This style focused on absolute criteria of right and wrong rather compromise, and therefore was detrimental to securing reconciliation. At the same time, the local officials' justification of judgment through politicized standards suggested that such officials had a growing awareness of national political agenda, which worked against their internalization of and support for a reforming, 'modernistic' Law and its revolutionary principles. Ultimately the Marriage Law was subverted by the traditional orientation of local state agents and, perhaps more paradoxically, by their compliance with Communist Party style of mediation and sensitivity towards national priorities.

Following many years of war and chaos, the Chinese Communist Party (CCP) established its government in October 1949. Seven months later, in May 1950, a New Marriage Law aiming at abolishing the 'feudal marriage system' was issued. As in other communist regimes,¹ this modernistic law that advocated the freedom of marriage and equal rights between men and women had important ideological value and material utility, as for example in the form of liberated female labor. However, the implementation of the

¹ Molyneux, M (1985) 'Family Reform in Socialist States: The Hidden Agenda' (21) *Feminist Review* 47; and Brunnbauer, U and Taylor, K (2004) 'Creating a "Socialist Way of Life." Family and Reproduction Policies in Bulgaria, 1944-1989' (19) *Continuity and Change* 283.

law was incomplete.² Scholars have noted various obstacles in the freedom of marriage and divorce, including social resistance even from women themselves,³ structural challenges when collectivization of production undermined families as a social unit,⁴ as well as political consideration for the stability of soldiers' families.⁵

In addition to these social, structural, and political constraints, local state agents, including village and town/commune leaders and county-level court officials, were socially conservative influences. The Central-South Democratic Women's Federation concluded in 1951 that 'cadres of the township and village levels' constituted the 'major obstruction to the thorough implementation of the Marriage Law'.⁶ Studies of earlier marriage rules of the 1940s in the Shaan-Gan-Ning border region also suggested that even court judges supported local customs and downplay the legal rules governing marriage.⁷

However, the same local state agents were also enforcers of the law. They implemented the national campaigns launched between 1950 and 1953,⁸ and were tasked with mediating couples disputes and granting divorce should mediation fail. According to the 1950 Marriage Law, 'in the event of either the husband or the wife insisting upon divorce, it may be granted only when mediation by the sub-district (*qu*) people's government and the sub-district judicial organ has failed to bring about a reconciliation' (Article 17, emphasis added). Indeed, scholars have noted that judicial mediation actively involved use of both coercion and material incentives to reach 'reconciliation'.⁹ However, judicial mediation took place only if mediation by grassroots-level governments had failed. Cases that failed to reach extrajudicial reconciliation were not isolated incidences. One county in our sample that we call Y County, for example, registered 466 marriages in 1951 and received 267 divorce requests. Among the divorce requests, 103 were filed with the county court after extrajudicial mediation had failed.¹⁰ Why did some attempts at extrajudicial mediation fail in the first place? What did these failed cases tell us about the implementation of the 1950 Marriage Law? This article attempts to address these questions.

Answers to the questions bring together two sets of literature, the first related to the building of the party-state, and the second to mediation during the Maoist era. As part of the party-state building efforts, grassroots officials were subject to ideological indoctrination and mass-movement rectification. After all, the CCP had recruited in the villages since the 1930s and well into the 1950s, and such recruits lacked the ideological commitment or even knowledge about Marxist theory or the organizational discipline of a

² Wolf, M (1984) 'Marriage, Family, and the State in Contemporary China' (57) *Pacific Affairs* 213; and Wolf, M (1985) *Revolution Postponed: Women in Contemporary China* (1st ed) Stanford University Press.

³ Johnson, KA (1983) *Women, the Family, and the Peasant Revolution in China* Chicago University Press at 123-127.

⁴ Ocko, JK (1991) 'Women, Property, and Law in the People's Republic of China.' in Watson, RS and Ebrey, PB (eds) (1991) *Marriage and Inequality in Chinese Society* University of California Press 186.

⁵ Johnson, KA (1983) *Women, the Family, and the Peasant Revolution in China* supra note 3.

⁶ Cong, Xiaoping (2016) *Marriage, Law and Gender in Revolutionary China, 1940-1960* Cambridge University Press.

⁷ *Ibid* at 137.

⁸ Chen, Hanfei. (2014) 'Faquan Shenti: 1950 Nian Hunyinfu De Biaoda yu Shijian' [Body Rights: The Expression and Practice of the Marriage Law Adopted in 1950] (5) *Fülü Yanjiu Luncong* [Collection of Women's Studies] at 63-70.

⁹ Huang, PCC (2005) 'Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'Mediation' in China' (31) *Modern China* 151.

¹⁰ In addition to the judicial divorce, couples may approach the civil administration to seek an administrative divorce, according to Article 17 of the Marriage Law, and Article 5 of the 1955 Marriage Registration Regulations.

Leninist party.¹¹ As a result, cadres at the county level and below were constantly subject to indoctrination, mass-line monitoring, and disciplinary sanction.¹² The result was a cadre corps sensitive to political guidelines.

Extrajudicial mediation for civil disputes has a long tradition in China.¹³ However, dispute mediation during the Maoist era differed from traditional China as the party-state actively injected its agents into private family matters, rather than leaving it to the family or unofficial mediators.¹⁴ Furthermore, instead of seeking compromise between parties involved and minimizing disruption in personal relations, the Communists had 'infused into mediation absolute criteria of right and wrong'.¹⁵ This had helped the Communists to reorder society and implement party policies through mediation.

Considering the two sets of literature together, we can see that grassroots officials during the Maoist era were most likely to be attuned to the political guidelines of the national government and, in their mediation efforts, applied absolute standards of right and wrong. Based on archival research and discourse analysis, we show that such sensitivity towards political agenda and mediating through normative standards was important. However, in marriage dispute mediation, there existed two sets of tension, the tension between grassroots officials' traditional values regarding marriage and the modernistic and revolutionary agenda of the Marriage Law, and the tension between normative judgment and reconciliation. More specifically, we show that grassroots officials externalized private marital problems to the normative judgment of someone in the nuclear or extended family. While sometimes such judgments were based on traditional values, they were nevertheless forcefully elevated to political standards and often called for punishment. Such mediation practice with politicized criteria of right and wrong would certainly contribute to antagonism in a marriage instead of reconciliation. Ultimately, the purposes of the Marriage Law were undermined by the traditional thinking and practice of local state agents and more by their somewhat paradoxically compliance with the Communist style of mediation and sensitivity towards national priorities.

In the following sections, we first present the methodology and source of materials used in this study. Next, we contextualize the early implementation of the Marriage Law in Song County (now a county under the administration of the prefecture-level city of Yuncheng, in the southwest of Shanxi Province, China), and the role of grassroots officials. Despite their conservative orientations, these grassroots officials were the main force for the implementation of the Marriage Law, given the shortage of legal workers. The third section investigates whether the failure of extrajudicial mediation noted above reflected the dominance of traditional values held by grassroots officials. We show that there was a decreasing share of traditionalistic texts over time, but this declining presence of custom

¹¹ Esherrick, JW (1994) 'Deconstructing the Construction of the Party-State: Gulin County in the Shaan-Gan-Ning Border Region' (140) *The China Quarterly* 1052; Thaxton Jr., RA (2008) *Catastrophe and Contention in Rural China: Mao's Great Leap Forward Famine and the Origins of Righteous Resistance in Da Fo Village* Cambridge University Press; and Schurmann, F (1966) *Ideology and Organization in Communist China* University of California Press.

¹² Harding, H (1981) *Organizing China: The Problem of Bureaucracy 1949-1976* (1st ed) Stanford University Press.

¹³ Palmer, M (1987) 'The Revival of Mediation in the People's Republic of China: (1) Extra-Judicial Mediation.' in Butler WE (ed) (1987) *Yearbook on Socialist Legal Systems* 219-277.

¹⁴ Cohen, JA (1966) 'Chinese Mediation on the Eve of Modernization' (54) *California Law Review* 1201.

¹⁵ Lubman, S (1967) 'Mao and Mediation: Politics and Dispute Resolution in Communist China' (55) *California Law Review* 1284 at 1287.

in the writing did not amount to an internalization of legal or revolutionary principles. Rather, law was marginalized, a marriage dispute was reframed as the fault of one party in the marriage, and justification for punishment was packaged in political terms. The fourth section suggests that, when tradition was indeed present in written texts, marriage disputes were similarly externalized as the normative judgement of someone in the nuclear or extended family, and such judgement was argued through political rhetoric. We then present a conversation between a grassroots official and a judge to illustrate a dialogue that followed similar logical patterns: how a conflict in a marriage was reordered and became secondary to the politically 'deviant conduct' of a responsible party. The last section concludes our contribution.

METHODOLOGY

Although there were over 300 villages and a population of some 160,000, only one court existed in Song County, a typical county in China, an allocation based on the County's population density and economic structure.¹⁶ Our analysis is based on two sets of materials. The first is the archival documents of legal work review reports that recorded the implementation of the Marriage Law between 1950 and 1952 in two small counties that later were consolidated into Song County. We call them X County and Y County. These reports help establish the challenges faced by Song County at the initial stage of implementing the Marriage Law and the role of grassroots officials in legal practices.

The second set of materials is a sample of 94 divorce case files between 1950 and 1977 in Song County (see Table 1). We collected five percent of annual civil case files between 1949 and 1977, of which there is a total of 188 divorce cases.¹⁷ Within this set of materials, we primarily focus on 'letters of introduction' by grassroots officials from villages, towns/communes, and districts to court officials. After the grassroots officials had failed to mediate marital problems, these letters were sent in order to summarize the disputes and previous efforts of mediation, and sometimes to propose solutions. In our dataset, 94 of the 188 divorce cases included letters of introduction, explaining the case. Among the 94 court files, 31 letters of introduction simply stated the couples' names and that mediation had failed, without providing detailed description of their dispute or any proposed solution.

¹⁶ The Communist Party took over the county from the nationalist government in 1947. The population of the county increased from 160,000 to 220,000 between 1953 and 1962, according to two population censuses. The rural population accounted for about 95 percent of the County's population between 1950 and 1977. The only industry was one electric motor plant built in 1969. The number of natural villages increased from 322 in 1952 to 408 in 1989, according to the county gazette. The county underwent administrative restructuring in 1953 when it was consolidated from two separate counties. Two county courts were then reorganized into one. In 1958, the court was combined into the department of politics and law, and again separated as an independent court in 1961. Between 1966 and 1972, the court was reconstructed as 'proletarian dictatorship committee,' 'Chinese People's Liberation Army committee of police, procuracy, and court,' and 'revolutionary committee.' In 1973, a structurally independent court resumed judicial work, and has continued to function through to the present day.

¹⁷ Administrative restructuring led to some loss of court files. The jurisdiction of one area was separated from Song County between 1954 and 1958. Court files for 1959 and 1960 were missing because of another administrative restructuring.

Table 1: Distribution of cases by year (1950-1977)

	Year	Number of marriage-related cases collected	Number of cases with letters of introduction
1950-1957	1950	10	6
	1951	16	9
	1952	9	5
	1953	25	8
	1954	11	5
	1955	13	6
	1956	9	1
	1957	10	0
1958-1966	1958	3	0
	1961	5	4
	1962	8	5
	1963	8	7
	1964	8	5
	1965	4	2
	1966	4	2
1967-1977	1967	4	2
	1968	4	2
	1969	3	1
	1970	3	3
	1971	3	2
	1972	4	2
	1973	4	2
	1974	6	4
	1975	3	2
	1976	6	6
	1977	5	3
TOTAL		188	94

Our content analysis relies on a close reading of those remaining 63 files. Studies of political discourse suggest that authors bearing negative attitudes, such as racism, tend to strategically follow certain models to avoid being perceived as holding of negative attitudes.¹⁸ In the context of the Marriage Law and its implementation, traditional values would have been considered 'negative attitudes.' Did grassroots officially strive to distance themselves from traditional values? To answer this question, we coded the languages in letters of introduction into three categories, legal, traditional and political. 'Legal language' in this sense refers to any mentions of an abstract notion of law (*faliü*) or specific codes in the 1950 Marriage Law. 'Traditional language' refers to written expressions conforming to Confucian culture or morality. Texts are considered 'political' when they refer to the CCP,

¹⁸ Van Dijk, TA (1990) 'Social Cognition and Discourse.' in Giles, H and Robinson, WP (eds) (1990) *Handbook of Language and Social Psychology*, John Wiley & Sons Ltd.163-183.

its political propaganda, or the national government's policy agenda at the time. More specifically, any use of legal terms, such as referring to 'emotional relationship'/'feelings' (*ganqing*),¹⁹ mentioning the word 'law' or specific articles of the Marriage Law, is coded as legal language. Any use of political reality terms (such as the 'new [socialist] society', 'feudal influences', 'revolution,' 'the masses,' 'productivity'²⁰) is coded as political language. Traditionalistic terms include gendered division of labor (e.g. wives failing to cook meals for their husbands), gendered depiction of women or familial obligations (e.g. wives were hostile to their mothers-in-law or wives should consider their obligations towards children before requesting a divorce), and direct use of the term 'morality' (e.g. 'consistent with morality,' *hehu qingli*). Through content analysis, we do observe a decline of traditionalist language over time, especially during the Cultural Revolution (1966-1976).

If grassroots officials did avoid using traditionalist language, then we might also ask if such avoidance suggests that these officials had internalized modernistic state agenda and revolutionary party principles? Studies of dissonant political discourse show that, when politicians talk about controversial issues, their speech texts often demonstrate contestation and contradiction between ideological and personal values on the one hand and social norms on the other.²¹ For the implementation of the Marriage Law, there was an inconsistency between traditional values that emphasized female obedience, harmony and familial obligations on the one hand and political and legal messages advocated by the CCP that recognized formal gender equality and the freedom of marriage. A proposed solution that originated in traditional values, for example, would be inconsistent logically with its legal and political justification despite the formal adoption of legal or political style of language. Through studies of logical inconsistency in these discourses, the discord between the speaker's own values and social norms and the ones they are expected to follow will be revealed. We conduct critical discourse analysis with a focus on three groups of text. The first group comprises those letters that used no obvious traditionalist terms. We find that the failed marriage mediation was often concluded with identification of a party to be held responsible, and proposals for their 'deviant conduct' were discussed in irrelevant political terms. The second group is those letters where traditionalistic language is present but intertwined with legal and political language. The analytical focus that we apply asks whether a similar kind of normative and political conclusion was reached when tradition was at play. The third group of texts comprises conversations between a court official and a grassroots authority, the only instance of a meeting in our sample that records communication between the two groups of law enforcer. Using discourse analysis, we follow the dialogic, back-and-forth interactive process to show how the normative and political conclusion became a consensus between the two types of state agents.

It is noteworthy that the audience of these letters of introduction was not 'society' as such but, rather, 'superiors' within the power hierarchy. Therefore, they could be viewed as written 'public transcripts' of interaction between subordinates and those who

¹⁹ 1939 Shaan-Gan-Ning Marriage Regulations of the CCP specified that an *ex parte* divorce would be granted if there was total incompatibility between the in emotional relations and intolerable cohabitation (*ganqing yizhi genben buhe, wufa jixu tongju*) (Article 11-2): see <http://www.people.com.cn/GB/99013/99041/100695/6181983.html>

²⁰ 'Productivity' we consider to be a 'political' term because it corresponded with the political agenda at the time of Great Leap Forward.

²¹ Moshe, M (2010) 'Dissonant Political Discourse' (9) *Journal of Language and Politics* 175.

dominate.²² We could expect, therefore, that tradition was more influential in extrajudicial mediation and less reflected in disputes managed with the aid of formal writing, and that normative legal judgment concluding a marriage dispute had less of a political cast in practice. However, the diverging outcome driven by the prevalence of tradition (that is, functioning to restrict divorce) and by the focus of a normative judgment (that is, functioning as an obstacle for reconciliation) would continue to create practical tension for grassroots officials and impede the implementation of the Marriage Law.

EARLY PROBLEM CONCLUDED

As with the national trend, there were major issues with the implementation of Marriage Law in Song County. Based on local review reports of law enforcement between 1950 and 1952, we identify the following problems. First, there was a shortage of legal workers. Second, grassroots officials were important obstacles in implementing the law, at least as seen from the standpoint of legal workers. These issues suggest that, even if judges were more loyal to the party-state official line and willing to investigate divorce cases in detail as some analysts contend,²³ they lacked the resources capacity to do so and had to rely on conservative grassroots officials to deal with family disputes.

There were limited legal workers in both places that in due course became Song county. There were only two cadres in the legal field (*sifa ganbu*) in Y County by June 1950 (Y-June 16 1950). Between January and November 1951, the county received 466 marriage registration and 267 divorce cases, among which 31 were 'mercenary marriage' cases (that is, buying and selling marriage), and 7 were cases of marriage related homicide (Y-1951 Report). According to County X government reports, the County's legal organ (*sifa jigou*) was established in July 1948, but with only one staff member. Between January and June 1949, any new staff left to join the Civil War. In November 1949, the staffing was one Vice-President of the Court (*fu yuanzhang*), one courtroom secretary (*shuji yuan*), two interns (*lianxisheng*), and two court policemen. In 1949, the county court processed a total of 160 civil cases, of which 128 were divorce cases (X-January 10 1950). The X Court report also confirmed the difficulties of relying on only the limited number court staff to implement the Law. According to the report, the problem of mercenary marriage was 'very serious' (*shen wei yanzhong*) in the county (X-Jan 10 1950). The dowry ranged between 10 shi (1 shi =67.5kg of grain, which roughly equals to the productivity of one mu or 0.17 acre) and 60 shi. The county court hoped that, the land reform would improve the 'consciousness' (*juewu*) of the masses and thereby helping the implementation of the Marriage Law.

Village cadres (*cun ganbu*) were similarly identified in both places as obstacles of implementing the Marriage Law. For example, Y county concluded in 1951 that village cadres were 'the most difficult barrier' (*zuida de guankou*) (Y-1951 Report). They continued to have 'feudal thinking' (*fengjian sixiang*) and interfered in the freedom of marriage, taking marriage (law) as a joke (*hunying shi xiaohua*) or considering marriage law as a divorce law and a law favoring women against men. In practice, they interfered in the freedom of marriage. They granted marriage certificates to mercenary marriages. They

²² Scott, JC (1990) *Domination and the Arts of Resistance: Hidden Transcripts* Yale University Press.

²³ Huang, PCC (2005) 'Divorce Law Practices and the Origins, Myths, and Realities of Judicial 'Mediation' in China' *supra* note 9.

held rigid prejudice against extramarital affairs. They mediated domestic conflicts without considering the importance of ‘feelings’ or ‘emotional relationship’ (*ganqing*). They attempted to block divorce appeals to protect poor peasants and hired laborer (*pinnong, gunong*) who could not afford to remarry. While without clearly identifying village officials as a key problem in implementing the law, the ‘typical’ cases listed by the X county court also revealed the conservative orientation and behavior held by village officials. Some village officials not only rejected a divorce request from a villager who had an affair with a woman he loved, but also tied him up to a tree and assaulted him (X-Jan 10, 1950).

By 1952, to eradicate cadres’ ‘remaining feudal thinking’ (*canyu de fengjian sixiang*) both counties began a campaign with intensive study sessions intended to educate grassroots officials about the Marriage Law (X-1952; Y-1952).

COMMUNIST MEDIATION AND THE ‘SILENCE’ OF TRADITION

Whereas village officials with traditional orientations were identified as obstacles in the early stage of implementing the Law, were their ‘feudal thoughts’ uprooted over time? In this section, we analyze the change in language choices in those letters of introduction that did not employ traditionalist languages. We show that, whereas tradition declined in these formal written communications, the logical inconsistency between their justification of summarized disputes and proposed solution continued to suggest their influence. Furthermore, failed mediations were attributed to the conduct of a guilty party in the marriage, whose ‘deviant conduct’ was framed in political terms.

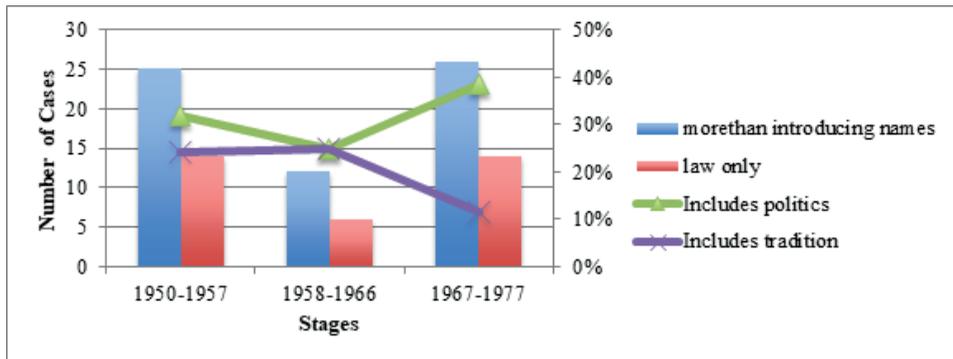
To contextualize the language choices and reflect the broader political changes, we separate the 1950-1977 period into three stages. The first was between 1949 and 1957, the phase of initial recovery and reconstruction of the national political and economic institutions. During this period of time, national campaigns propagating the Marriage Law were launched in 1951 and 1953 respectively. The second stage was between 1958 and 1966, a period of radicalization and politicization of economic development. The Great Leap Forward was a nation-wide campaign that called for radical industrialization and communization. The radical attempt towards a communist society was followed by the collapse of the economy and political conflicts within the national leadership. Various campaigns against corrupt, incompetent, and pessimistic party officials followed. Thirdly, the decade of 1967-1977 marked the peak of political movements and Cultural Revolution,²⁴ a period of prolonged political and social chaos with heightened class struggle.

Temporal variants existed in the language choices in letters of introduction explaining the matrimonial dispute. Our analysis (see Figure 1) suggests that first, letters with an exclusive use of legal language accounted for roughly half of the letters throughout the three stages. This may reflect that local cadres were well informed of the formal legal grounds for divorce in contested cases. But this may also be a result of local officials evading their responsibilities and turning over family matters to court officials. As some scholars have observed, inexperienced village officials who were unable to handle family

²⁴ The Cultural Revolution can itself be periodized two ways. The first is the three-year (1965-1968) intense period of political conflict amongst the national leadership. The second is dated through to 1976, the year of Mao Zedong’s death. Given time delay for national political campaigns to reach the lowest level of administration, we define the third stage in this article as 1967-1977.

matters and marriage problems often tried to transfer matrimonial disputes to court officials.²⁵ Indeed, among the 34 letters of introduction where exclusively legal language was deployed, only 12 proposed suggestions for handling the dispute, indicating perhaps that in the remaining 22 cases there was a lack of interest in being involved in constructing the outcome.

Figure 1: Language composition in letters of introduction for three stages



Second, the percentage of letters incorporating traditionalistic language declined sharply from roughly 24% to 12% of all substantive letters (i.e. letters that included more information than simply stating the couple's names). The share of letters adopting the language of more modern communist politics changed from 32% during the first stage, to 25% during the second stage, and back up to 38% during the Cultural Revolution. This, on the one hand, suggests an astute awareness of grassroots officials during the Cultural Revolution about their roles as agents of political movements instigated from above. On the other hand, the absence of traditionalist language choice does not necessarily reflect revolutionary social transformation by the late 1970s. After all, 12% of the letters still adopted clear traditionalist language.

We use discourse analysis to understand how grassroots officials described the failure of mediation and marriage dispute, when there was the 'silence' of tradition. Here we present three examples and suggest that, first, there was a pattern of externalizing a private marriage dispute as the result of an accused party causing negative social and political impact. The legal justification was marginalized in such logic. Second, different choices of political language were adopted in these letters, which reflected grassroots official's awareness of broader changing political movements. The first two examples were from a period of politicization of economic development (1958-1966). 'Productivity' (*shengchan*) was a national priority and a dominant political responsibility for grassroots cadres, and we observe references made to 'productivity' for justification of a proposal. The third example was from the period of the Cultural Revolution (1967-1977), and grassroots cadres actively used the language of 'class struggle.'

In 1961, a production team sent the following letter of introduction to the county court:

²⁵ Diamant, NJ (2000) 'Re-Examining the Impact of the 1950 Marriage Law: State Improvisation, Local Initiative and Rural Family Change' (161) *The China Quarterly* 171.

[Madam] Zhang from this production team and this production brigade lacks freedom in her marriage. Her husband, named Deng,²⁶ has a family background of rich middle peasant. His thinking is backward, not progressive (*sixiang luohou bu qianjin*). He intervened when Zhang joined the Youth League.²⁷ His thoughts and activities are incompatible with activists. He picked up fights every day at home. Productivity severely lagged behind (*shengchan ji buhao*). [We have] tried mediation, but in vain. The production brigade's suggestion is to grant divorce (Case#1961-121-0183).²⁸

The letter began with a diagnostic statement, incorporating legalistic language: Zhang had no 'freedom' in her marriage. Whereas information extracted from the letter implied that the couple kept fighting, the therapeutic advice for divorce did not directly follow the legal base of broken 'emotional relationship.' Rather, the letter ended with comments on the guilty party, Deng's poor 'productivity.' After the opening statement, the issue of the divorce was no longer about the freedom of marriage, but about protecting the political activism of the wife and preventing decreases in productivity. To begin with, Deng had a poor class background (i.e. rich-middle peasant)²⁹ and 'backward' political consciousness, which was 'incompatible' with his wife's social status and political consciousness. Perhaps even worse, Deng's behavior had ultimately resulted in a loss of productivity. Overall, the letter was composed of an aggregation of three inconsistent diagnostic logics: the legal base in terms of the wife's lack of freedom, the incompatible levels of political activism between the couple, and the husband's harm to productivity.

In 1964, a production brigade sent the following letter:

Wang is a member of this production team in our production brigade. Ever since he came back from [...] he did not show any remorse, nor was he committed to participating in production (*anxin canjia shengchen*). Rather, he kept saying that he was reasonable. He made obscene utterances (*shuoxie xialihua*) to commune members and engaged in obscene acts (*zuoxie xialiushi*) (such as he must marry Ge and what he did in Ge's backyard). He told our youth that what he did was common. It did not matter. There were many similar cases in the court. He even gave examples to the youth in our production brigade [...] such behavior by Wang is so detestable (*duome de kewu*), and has a very harmful impact on the youth and the members of our production brigade. It was not helpful for agricultural production. In order to safeguard the harvest this year and the safety of people's lives (*renmin shenghuo anquan*), members of the production brigade would like for the government to handle the dispute according to the law (Case#1964-104-0889).

²⁶ We use *pseudonym* throughout the paper. 'This' will replace the name of a particular production team, brigade, or commune.

²⁷ The Communist Youth League was a youth movement that prepared revolutionary youth between 14 and 28 years to join the Communist Party later on.

²⁸ The reference follows the format of case year-file number-recorded image number.

²⁹ Within the new pyramid of class category in rural areas of the Communist China, rich-middle peasants and middle peasants were below poor peasants, even though they were not treated as class enemies as landlord (Unger, J (1984) 'The class system in rural China: a case study' in Watson, JL (ed) *Class and social stratification in Post-Revolution China* Cambridge University Press 121.

This letter barely served as an 'introduction' to a matrimonial dispute. Chen—Wang's wife—was not mentioned at all. Rather, the communication was centered on Wang's behavior and its impact. In fact, the underlying message was about the worrisome and corrupt influence Wang had on local youth. Despite the absence of direct language referring to traditional values, characterizing Wang's behavior as 'obscene' and 'detestable' suggests a traditionalistic and moralising value judgment of his extramarital affairs and his boasting. The true standards of judgment based on morality, however, were not followed through in this letter. In fact, the communication began by pointing out Wang's own lack of commitment to productivity and ended with a warning of his behavior harming people's lives and jeopardizing the harvest. In other words, while the letter depicted that the divorce not as a private matter but one concerning public morale, it nevertheless stressed the potential repercussion on 'productivity,' the then priority of the national agenda. The only textual reference to the law, 'handle the dispute according to law' at the end of the letter, appeared to be an afterthought.

The third letter came from a production brigade in 1970,

[Madam] Mei is a member of this production team in our production brigade. Because of emotional conflict with her husband Xiao, she had requested divorce a number of times. She just returned home from your office [i.e. the court] a few days ago. Last night, Xiao again fought with Mei's father, injuring his legs and his back, and [Mei's father] fell on the floor. Despite members of our production team went to intervene, Xiao failed to listen. When a designated production brigade member went to handle the situation, Xiao argued nonsensically and refused to admit his mistakes. Commune members have complaints [about him]. In order to ensure the personal safety of our poor lower-middle class peasants (*pin xia zhong nong*), [we] propose to educate Xiao, a child of rich-peasants (*fu nong*) who persists in his counter-revolutionary position (*jianchi fandong lichang*). Please investigate and handle the matter. Long Live Chair Mao! (Case#1970-57-0101)

In addition to 'emotional conflict,' the legal basis for divorce under the 1950 Marriage Law, the letter listed the following misdeeds by Xiao: he beat up his father-in-law and showed no obedience to the production team or the brigade. Whereas the former could have directly contributed to the 'emotional conflict' of the couple, the latter was not obviously relevant for the marriage dispute. Perhaps, the disobedience was the fundamental complaints from the production brigade about the husband. But the letter nevertheless highlighted two different arguments to support their proposal for divorce: first, 'commune members have complaints,' and secondly the need to protect and punish based on class categories. As such, the marriage conflict was no longer about emotional disaccord or even disrespect to authority, but elevated to the political significance of its impact on the masses, and of the class struggle between 'poor lower-middle' class and 'rich peasant' class.

COMMUNIST MEDIATION AND THE ACCOMMODATION OF TRADITION

If the absence of tradition had magnified the Communist mediation focus of absolute criteria of right and wrong in marriage dispute, would its presence have countered such active state interests judgment? If traditional attitudes and practices compelled grassroots

officials to block divorce, how did they propose reconciliation without resorting to traditionalist justifications? In this section, we provide three examples to illustrate the interactions among tradition, law, and politics. In a manner similar to those letters without traditionalistic rhetoric, the following divorce cases were presented in an approach of identifying and punishing someone responsible, and the justification for apportioning blame continued to be framed in political terms.

In 1963, the county bureau of civil affairs sent the following letter:

Lu from this village this commune requested divorce from Tian. But because Tian disagrees, we mediated a number of times. But it has been in vain. Based on our investigation, the couple's relationship was not bad. It was mainly because the woman's mother was wicked, often stirring up conflict between the couple (*jingchang tiaobo lijian*). According to the man, the woman's mother had done something illegal such as stealing [...] and [...] [Because the man knows about the situation,] so the mother holds a grudge against [him] and provoked the woman to divorce the man. But the man disagrees. Therefore, we submit this case to you for a ruling (Case #1963-103-0531)

In this letter, languages of tradition were used side by side with legal ones, and the divorce case was reframed as the wife's disruptive mother and her crime. The legal base for divorce, 'emotional conflict,' was presented as unfounded. In fact, the couple's fights did not mean that their 'emotional relations' were broken, but that the wife's mother was the problem. The mother had committed crime and was channeling her fear and anger towards the man through separating the couple. The blame in this divorce case, therefore, fell onto the wicked mother. Such attack on the traditional mother-centered uterine family, instead of the patrilineal one resonates with existing studies.³⁰

In 1976, a commune revolutionary committee (*renmin gongshe geming weiyuanhui*) sent the following letter to the county court:

Liu from this production brigade came to commune and requested to divorce her husband Pei. Based on our investigation, this woman is over 40 years old and had been married to a few places (*qianhou jia guo jichu*). In each place (i.e. marriage), she would pick up fights shortly after with all sorts of excuses; excuses like the man was not nice. But that was not the truth. The truth was that she did not want to settle down (*buyao zaijia guo guangjing*). The masses have complaints about this (*qunzhong yilun fenfen*), and nobody wants to mediate between the two people. The conflict was always handed over [to the production brigade]. The woman would calm down for two days (*anxin liangtian*) after we mediated numerous times, but then would relapse again (*jiubing fufa*). There is an old saying: the more a woman is married the more courage she has and the more a man is married the less courage he has (*niuren yue jia dan yueda, nanren yue qu dan yuexiao*). After discussing with [members of] the production brigade, [we propose that] first, she should stay in this marriage. We cannot let her divorce and get married again. Second, she could get a divorce, but she needs to return all properties to the man first. This woman's thoughts are too

³⁰ Johnson, KA (1983) *Women, the Family, and the Peasant Revolution in China* supra note 3.

bad (*sixiang tai huai*). She gets bored easily and always wants something new (*xixin yanjiu*). This is the situation (Case #1976-32-1135).

In this letter, traditional values intertwined with politics, and the divorce case was framed as a case of a corrupt woman. We do not know the state of the 'emotional relations' between the couple. The information provided in the letter was centered on an 'uncommitted' woman, Madam Liu. She had a pattern of getting married, complaining about it, and then leaving the marriage. Such 'sickness' had broader social repercussion: 'the masses have complaints about this.' Whereas the judgement was made on moral grounds, the letter did not directly refer to the woman as 'bad.' Rather, it was that her 'thinking' was bad. The ultimate and implicit motivation underpinning this divorce case was to punish the woman in one of the two ways: no divorce or take her property from her. In other words, precisely because she wanted a divorce, an appropriate punishment would be to not grant her wish. Alternatively, if she was to be granted the divorce, she needed to be deprived of her properties so she would not be emboldened by the divorce. Clearly, the divorce was not about the relationship between a man and a woman in the minds of grassroots officials. Rather, it was about punishing a woman characterized as bad. To buttress such an approach, 'the masses' or *qunzhong*, a political concept, was introduced to show the broader sociopolitical impact.

In 1963, a village head sent the following letter:

About the family dispute between Fang, Lu, Zhang [Fang's father] and Fei [Fang's mother] and [we] report the situation and our proposal as follows [...]. After discussion among cadres and investigation with the masses, the truth is this: Comrade Lu is good with labor and work (*laodong gongzuo dou hao*), [he] has consistently followed the Party's policies (*ting dang de hua*). [He] actively participates in [agricultural] production and work. As shown on the work attendance sheets, he has never been absent. He immerses himself with commune members (*yu sheyuan haineng dacheng yipian*). Cadres are satisfied [with his work performance], and the production brigade also likes this member. Comrade Fang was also not bad, but she was sold to Lu when she was little. She has no vision. She cannot handle her own marriage problems correctly. Her appeal for divorce is not her own intention, but under the pressure of her mother's feudal influence (*fengjian shili*). She fought a lot last year when divorce [appeal was requested]. Overall, the relationship between Fang and Lu was not bad. They could surely continue their marriage (*wanquan nenggou guoxiaqu*). Comrade Zhang is an obedient peasant. [His problem] is that he was afraid of his wife, and follows the woman's order. He could not make decisions independently or express his own opinion. Fei is a woman troublemaker (*nu guanggui*). She often wants good food but is quite lazy at work. She gambles, stirs up trouble, ignores the proper job (*buwu zhengye*), and other bad attitudes (*huai zuofeng*). Her gambling problem from last year has not been addressed [...]. Our suggestions and requests: (1) a divorce should absolutely not be granted. The two people do not meet the condition for divorce. (2) The woman should be educated politically and seriously criticized. (3) [...] We could set her as a negative example in 'Four Cleanups' meetings (*siqing*) to educate the 'masses' (*qunzhong*). (4) We request to severely punish Fei. (5) Only by doing so could we ensure the enthusiasm of production' (*laodong jijixing*) (case #1963-103-0532-0533).

In this case, the marriage dispute was explicitly presented as a family dispute with interests and possible ramifications beyond the couple's immediate matrimonial relationship concerns. Languages of law, politics, and tradition were intricately intertwined. The marriage dispute was not a result of 'emotional conflict' between the couple, but a battle between the wife's 'feudal' mother and a good worker and commune member. First, the comparison between the couple's personalities and contributions to productivity implied that the 'right' decision was to prioritize the husband's wishes and therefore to not grant a divorce. The husband, who opposed the divorce, was contributing to the Socialist construction and generally popular within the commune, whereas the wife, who was not a star worker like her husband, was seen as having been distracted from her work and marriage alike by her mother. Second, the wife and her father were portrayed as somewhat incompetent and pitiful characters. Fang was sold by her parents when she was little. Her father, Zhang, was afraid of his own wife. Neither Fang nor her father had vision or determination in their lives. However, being weak in front of her mother and requesting to divorce her good husband put Fang in a more negative light, and so she should be educated through a political movement. The 'four Cleanups' Campaign (i.e., cleanup of accounts, granaries, properties, and work points) that began in 1963 as part of the Socialist Education movements, however, had nothing to do with family matters. Village officials nevertheless connected the national agenda with the marriage dispute. Finally, the mother was presented as a 'criminal' who attempted to sabotage a good worker's marriage. As such, she should be severely punished. Moreover, all these suggestions were justified by the political language of the time, namely, the national interest in productivity.

A CONVERSATION

In this section, by analyzing the only meeting memo we have obtained between grassroots authorities and court officials, we show how a dialogic, back-and-forth interactive process legitimized the externalization and politicization of private marriage disputes. The conversation followed a similar pattern of making absolute and political judgement of right and wrong, turning a private marriage dispute into a battle against political enemies.

In one of the previous examples given above (Case#1970-57), the court conducted investigations into the couple's dispute. As a result of that investigation, a meeting between Judge Wu and Chairman Shang of the production team took place in April 1971 (Case#1970-57-0107-0110).

Judge: About the issue between Mei and Xiao, what do you think?

Shang: Ok. I will talk about their case. It's not just about the divorce. Xiao has political problems and should be arrested.

1. He stole a bike.
2. His father, brother and uncle 'wear hats.'³¹ His background is rich peasant.
3. He shouted anti-revolutionary slogans, and some saw him burning Chairman Mao's images.

³¹ 'Wear hats' during the Cultural Revolution meant that somebody was negatively labeled as one of the five black categories, landlords, rich farmers, counter-revolutionaries, bad-influencers, and rightists.

4. He also sabotaged production. He stole electric wire.
5. He twice attempted to attack people with a knife.

Chairman Shang advocated his suggestion for divorce by first separating the issue of divorce from the husband's criminal and political problems. He emphasized the husband's personal attributes, combining both illegal and politically anti-revolutionary behavior. Even the political problems of the husband's family, including his father, brother, and uncle, were listed as evidence against him. This choice of narrative first portrayed the man as an individual deserving punishing instead of the husband in a marriage dispute.

About Mei and Xiao's relationship, the three people in Mei's family (Mei's parents and Mei) are very obedient and honest (*laoshi*). They were all [...] but Xiao beats up all three of them, not in public but at home. One time, Mei ran to the team office in the middle of the night to look for us, without wearing any shoes. Her father was beaten on the ground, not being able to get up. This woman was afraid of Xiao. She didn't dare to run on the street, afraid of being seen by Xiao and getting beaten again. About divorce, sometimes Mei was determined; sometimes she was not. One [reason] was that she was afraid of being beaten by Xiao. Another reason was that she was afraid that Xiao would sell her house and her child for money.

After setting the tone about a criminal and anti-revolutionary man who needed to be disciplined, Chair Shang moved on to the marriage dispute. There was domestic violence and abuse against the wife. However, Chair Shang first emphasized that all three members of the wife's family, her parents and her, were good people. This language choice, in contrast with the introduction of the husband's family members as 'hat wearers' expanded the marriage dispute to a conflict between a 'good' family and a 'bad' family. Furthermore, by referring Mei as 'obedient and honest', Chairman Shang resorted to traditional moral standards for couple's disputes: domestic violence was unjustifiable when the wife was obedient and honest.

Judge: Madam Mei came [to us] a number of times. She also met with me. She also went to my home to see me. She looked honest. She came for a divorce. Didn't mention all these [things] you just said. But we have investigated some of the issues you mentioned. Two [of our people] went down to [the village] to investigate a while ago. You may know [about it.] [...] The information they gathered was not entirely the same [as reported by you] [...] It was not what you said that Xiao beat up Mei's father, but he was beaten up by Mei's father. He also didn't manage to steal the electric cords. Xiao said he thought about using knives, but did not. He only thought about it. He did not act on it. So there was no punishment. If he really sabotaged production and stole electric wiring, and he in fact attempted to kill people with a knife, [plus] he is a rich-peasant; we can certainly handle him (*nong ta*).

Based on Judge Wu's response we detect that, first, Judge Wu was eager to show his personal involvement in the case. The 'mass line' policy of the Maoist era in China asked state officials to be close to the people and to consult the masses. While his subordinate, Chairman Shang presented the case as one of a marriage dispute where the husband was to blame; Judge Wu interpreted the message in terms of who was a better cadre in responding to the problem, especially in terms of following party

guidelines. After all, when the wife had turned to village officials in the middle of the night, she did so bare-footed, which indicated an intimate relationship between the masses and village officials. In response, Judge Wu immediately reacted by suggesting that the wife also went to see him a number of times and went to his home too.

Second, Judge Wu was uncomfortable with Chair Shang's language choices which had the effect of criminalizing the husband legally and politically first, and then showing off Shang's close relationship with 'the masses.' For Judge Wu, all the evidence gathered by chairman Shang implied that Judge Wu was not politically active or informed, the foremost standard to evaluate a party official at the time. He disputed first by citing the silence from the wife who did not inform him of the political allegations. He then applied legal distinction between 'intent' and 'act' to discredit chairman Shang's accusation against the husband.

Third, despite his disagreement, Judge Wu had to conclude his response on the political correctness initiated by Chairman Shang. Judge Wu explicitly agreed that, given the husband's class background, he should be punished if he had undermined production and attempted criminal conduct:

Shang: we have reservations about the last investigation. The investigators did not establish good contact with us [...] A few members of their production team (i.e. the production team to which Xiao belongs) were being contacted [ahead of time]. They were Xiao's buddies. Those politically 'backward' people (*luohou ceng*) were Xiao's protection circle. They were afraid of being investigated if Xiao got arrested.

While formally submitting to the authority of Judge Wu, Chairman Shang relied on political discourse to negotiate further. By characterizing these witnesses as politically 'backward' people, Chairman Shang implied that the court's investigation was biased. This naming clearly worked.

Judge Wu: You can investigate further; take a look. Let's take a look together. This is no longer just about divorce. Let's find out about Xiao's case. If it were true, let's handle him. If [the allegations were] not true, let's move on to the divorce case.

Chair Shang: let's take a look together. Overall, we feel that there is a gap [between what we know and] what was reported [by your team]. Perhaps our opinion was not correct.

Judge Wu: [This case involves] poor lower-middle peasants. We shall care for them. What's your opinion? How shall we proceed?

While acknowledging that his opinion about the husband may not be correct, Chairman Shang was able to convince Judge Wu and to shift the divorce case to an investigation about the husband. Both agreed that the wife was a member of the 'poor middle-class' peasantry and should be protected, and that the husband belonged to 'rich peasant' class category and could be punished for his criminal and anti-revolutionary behavior. Judge Wu even asked team leader Shang to take the lead in future investigations, and Shang later promised to work together with the court's team and to find out the truth.

In this conversation, the couple's dispute was clearly marginalized. Law was never mentioned when discussing the topic of marriage or divorce. The legal codes were only

part of the conversation when the judge intended to discredit the village official. Rather, the conversation was centered on the problems of the husband, who was politically disadvantaged. During the process of reaching a consensus about the husband being the guilty party, the discussion appeared to be an exercise in comparing who was closer to and cared more about the poor peasants—was it the grassroots official or was it the judge? As such, the political rhetoric of 'justice' served as the ultimate platform on which negotiation took place and a private marriage dispute was thus turned into a political struggle against the enemy.

CONCLUSION

Whether grassroots officials aimed at reaching reconciliation because of their compliance to national policies or to traditional values, we would expect divorce requests be 'resolved' early on. However, extrajudicial mediation did fail sometimes. Why? What did grassroots officials as mediators see as the reasons behind such failure? How did extrajudicial mediation affect implementation of the 1950 Marriage Law?

Through discourse analysis, we suggest the following. First, on the surface, tradition was replaced by political awareness over time, and especially during the Cultural Revolution. However, traditional values continued to exert an influence as depicted in diagnostic discourse adopted in the texts. Second, with or without the manifest influence of tradition, the processes of Communist mediation—with an evaluative focus of absolute criteria of right and wrong—appeared to dominate in the extrajudicial mediation of marriage disputes. Third, the official standards of right and wrong and the ultimate justification for punishing the guilty party in a marriage dispute were political. In the end, grassroots authorities repackaged customs, marginalized the law, and reordered contentious issues in a private marriage dispute as a political battle between that which was 'right' and that which was 'wrong'.

Therefore, in addition to the social, structural and political obstacles to the freedom of marriage, the 1950 Marriage Law was also subverted in other ways. Reconciliation, desired by the procedural emphasis on mediation in the 1950 Marriage Law, was in fact difficult to achieve, not only because of conservative social orientation of grassroots officials, but more importantly because of these local agents' compliance with the very evaluative Maoist mediation style and sensitivity to national agenda. Thus, political languages and approaches of mediation legitimized by the new regime compromised the legal reforms that the same regime had itself launched.

GLOSSARY OF CHINESE TERMS

Romanization (Hanyu Pinyin)	Chinese Characters	English Translation
<i>anxin canjia shengchen</i>	安心参加生产	committed to participating in <i>production</i>
<i>anxin liangtian</i>	安心两天	calm down for two days
<i>buwu zhengye</i>	不务正业	ignore the proper job
<i>buyao zaijia guo guangjing</i>	不要在家过光景	does not want to settle down

<i>canyu de fengjian sixiang</i>	残余的封建思想	remaining feudal thinking
<i>cun ganbu</i>	村干部	village cadres
<i>duome de kewu</i>	多么地可恶	so detestable
<i>fali</i>	法律	law
<i>fengjian shili</i>	封建势力	feudal influence
<i>fengjian sixiang</i>	封建思想	feudal thinking
<i>fu nong</i>	富农	rich-peasants
<i>fu yuanzhang</i>	副院长	Vice President of the Court
<i>ganqing</i>	感情	emotional relationship, feelings
<i>ganqing yizhi genben buhe, wufa jixu tongju</i>	感情意志根本不合 无法继续同居	there was total incompatibil- ity in emotional relations and intolerable cohabitation
<i>hehu qingli</i>	合乎情理	consistent with morality
<i>huai zuofeng</i>	坏作风	bad attitudes
<i>hunyin shi xiaohua</i>	婚姻是笑话	treating marriage [law] as a joke
<i>jianchi fandong lichang</i>	坚持反动立场	persists in counter- revolutionary position
<i>jingchang tiaobo lijian</i>	经常挑拨离间	often stirring up conflict between the couple
<i>jiubing fufa</i>	旧病复发	relapse again
<i>juewu</i>	觉悟	consciousness
<i>laodong gongzuo dou hao</i>	劳动工作都好	good at labour and work
<i>laodong jixing</i>	劳动积极性	enthusiasm for production
<i>laoshi</i>	老实	obedient and honest
<i>lianxisheng</i>	练习生	intern
<i>luohou ceng</i>	落后层	politically “backward”
<i>nong ta</i>	弄他	to handle him
<i>nü guanggui</i>	女光鬼	woman troublemaker
<i>nüren yue jia dan yueda,</i>	女人越嫁胆越大	the more a woman is married
<i>nanren yue qu dan yuexiao</i>	男人越娶胆越小	the more courage she has, and the more a man is married the less courage he has
<i>pinnong, gunong</i>	贫农、雇农	poor peasants and hired laborer
<i>pin xia zhong nong</i>	贫下中农	poor lower-middle class peasants
<i>qianhou jia guo jichu</i>	前后嫁过几	had been married in a few places
<i>qu</i>	区	sub-district
<i>qunzhong</i>	群众	the masses
<i>qunzhong yilun fenfen</i>	群众议论纷纷	the masses have complaints
<i>renmin gongshe geming</i>	人民公社革委会	commune revolutionary committee
<i>weiyuanhui</i>		
<i>renmin shenghuo anquan</i>	人民生活安全	safety of people's lives
<i>shen wei yanzhong</i>	甚为严重	very serious

<i>shengchan</i>	生产	productivity
<i>shengchan ji buhao</i>	生产极不好	productivity severely lagged behind
<i>shi</i>	石	67.5kg
<i>shuji yuan</i>	书记员	courtroom secretary
<i>shuoxie xialiuhua</i>	说些下流话	obscene utterances
<i>sifa ganbu</i>	司法干部	judicial cadre
<i>sifa jigou</i>	司法机构	legal organ
<i>siqing huiyi</i>	四清会议	'Four Cleanups' meetings
<i>sixiang luohou bu qianjin</i>	思想落后不前进	thinking is backward, not progressive
<i>sixiang tai huai</i>	思想太坏	thoughts are too bad
<i>ting dang de hua</i>	听党的话	followed the Party's policies
<i>wanquan nenggou guoxiaqu</i>	完全能够过下去	surely continue their
<i>marriage</i>		
<i>xixin yanjiu</i>	喜新厌旧	want something new all the time
<i>yu sheyuan haineng</i>	与社员还能打成一片	'immersed' with [other]
<i>dacheng yipian</i>		commune members
<i>zuida de guankou</i>	最大的关口	the most difficult barrier
<i>zuoxie xialiushi</i>	做些下流事	engaged in obscene acts