

BOOK REVIEW

Marriage Law and Policy in the Chinese People's Republic. M. J. MEIJER. Hong Kong University Press (distributed by Oxford University Press), Hong Kong, 1971. Pp. viii, 369. \$16.75.

So little information on the functioning of legal institutions in Communist China is available in any western language that any contribution to the knowledge accessible to non-Chinese speaking scholars is welcome. When that contribution is as well written and researched as M. J. Meijer's *Marriage Law and Policy in the Chinese People's Republic*, this welcome is multiplied. So far as I am aware, this is only the second full-length work dealing substantially with the marriage law of the People's Republic; the first, Dr. Vermier Y. Chiu's *Marriage Laws and Customs of China*,¹ was seriously flawed by its author's vehement, if understandable, dislike for all aspects of the Communist regime.

Of all the world's major legal systems, perhaps the most difficult for western jurists to understand has been that of China. Prior to the Nationalist revolution of 1911, the lack of formal reports of judicial decisions, the limited use of statutory materials, and the relative unimportance of the judiciary in the day-to-day functioning of the legal system combined to pose an almost insurmountable barrier to any scholar unable to make firsthand observations of the workings of Chinese society.

The reforms introduced by the Nationalist government are well documented, but that government controlled the bulk of the mainland for so short a time that the effectiveness of those reforms, particularly in the area of law, is difficult to determine. Contemporaneous reports suggest that many reforms were not put into effect outside of the major cities. With the establishment of the Communist government and closure of the mainland to western visitors by the "bamboo curtain," information about the functioning of the legal system once again became extremely difficult to obtain. Meijer's extensive use of Chinese language sources alleviates some of this difficulty, but, as he points out, the preliminary study he presents in his work may need correction when active investigation on the mainland resumes.

One of the foremost problems in studying the operation of any legal system having an ideological basis is that of distinguishing be-

¹ V. CHIU, *MARRIAGE LAWS AND CUSTOMS OF CHINA* (1966).

tween those matters of primarily ideological significance, and those of importance only to the system of private law underlying the organization of society. This problem is particularly acute in the Chinese context, since even those matters which on the surface appear to have no policy content do entail substantial ideological implications under certain circumstances. Interpretations of Marxist-Leninist-Maoist thought and techniques of dialectical argument are applied, by the Chinese, even to matters which, in the western world, would be considered axiomatic. Similarly, any examination of Chinese law in the present political context must take into account the concurrent goals of promoting the "revolutionary consciousness" of the people in general, and defeating the "feudal" or "bourgeois" thought that threatens the internalization of the Communist system's ideals.

It is in dealing with this area that Meijer is particularly strong. Discussing legislation on marriage prior to 1950 (the first section of his book), he admits that little is known concerning the actual functioning of the law. Thus he tends to treat the non-ideological aspects of the earlier statutes relatively lightly. His analysis of the implementation of the Marriage Law of 1950, however, shows an appreciation of the dichotomy suggested above. It is divided into two parts, the first dealing with the ultimate political significance of the new law, while the second analyzes the operation of that law as a system of interpersonal conflict resolution.

After a brief summary of the major elements of traditional family law under the Ch'ing ("Manchu") Dynasty and the reform movements during that dynasty and the successor Nationalist regime, Meijer turns to a historical survey of the development of marriage law under the Communists. To one unfamiliar with Communist ideology it may seem strange that the creation of a law of marriage was one of the earliest tasks undertaken by the Chinese Soviet. Yet Meijer quite clearly points out the enormous theoretical significance of this reform and the role it was expected to play in eliminating "feudal" customs and developing a revolutionary elite. Meijer implies that the example of the apparent success enjoyed by the Russian marriage reform movement in the early days of the revolution was not lost upon the Chinese Communist leadership. In any case, the influence of the May 4th movement, a reformist clique in the late Ch'ing and early Nationalist period which viewed family law reform as an essential element of modernization, assured that such reforms would be a pressing goal for any revolutionary government in China.

The military defeat suffered by the Communist government in Kiangsi at the hands of the Nationalist troops, leading to the "Long March" of 1934-35, in no way lessened this consciousness of the need for reform, and shortly after the establishment of the "Border Soviets," the governments of each of these areas promulgated sets of marriage rules. These rules later formed part of the basis for the Marriage Law of 1950. While neither they nor the later formal law contain the detailed prescriptions one might expect in a civil code, this lack was not, Meijer demonstrates, due to any absence of commitment to their direct enforcement. Rather, both the rules and the formal law were to be subject to interpretation by the individual judge in light of the needs of the region and the extent of its political development at any particular time. The comparisons Meijer makes among the marriage rules of the "Border Soviets," of the Nationalists, and of the Soviet Union, show very clearly their political significance.

The Marriage Law of 1950, still the governing statute in China, is one of the few pieces of Chinese legislation that has been made available in an official English translation.² Meijer reviews and analyzes its major substantive provisions, retranslating several portions of the law where the original translation is either unclear or misleading. In so doing, he shows clearly that while the language of the present law does not, to western eyes, appear to differ significantly from that of its predecessors, the basic philosophy underlying its enactment and the manner in which it was intended to be enforced make it a truly revolutionary document. Meijer also provides a guide to the manner in which the law was interpreted and reinterpreted to meet the exigencies of the continuing revolutionary changes which took place in China from 1951 to the "cultural revolution."

The second section of Meijer's book deals with the implementation of the Marriage Law of 1950 in the People's Republic. Drawing largely upon cases and statistics reported in local and national Chinese newspapers, Meijer demonstrates the manner in which the new law was employed to raise the revolutionary consciousness of the cadres and the population as a whole, and to educate the general populace in some of the basic principles espoused by the new regime. While the analysis of the law itself is quite acute, it is regrettable that the author does not give greater emphasis to the role of the judicial system in its enforcement, except by implication. Some degree of attention is paid to the use of conciliation, both at the cadre and at the judicial level, but the rela-

² G. SHUDIAN, *THE MARRIAGE LAW OF THE PEOPLE'S REPUBLIC OF CHINA* (1952).

tive lack of information on judicial enforcement of the law makes it difficult to evaluate the statistics presented or to determine the manner in which the courts have operated when interpreting the law.

While the cited sources do provide a good basis for analysis of the law, serious questions may be raised as to how typical the reported cases are of the ordinary marriage and divorce situation. Meijer observes, quite accurately, that the published cases are selected for their value in educating the people; but the necessary implication to be drawn from this fact—that the cases are atypical—is not clearly expressed. Thus, the reality of the family situation as it actually is in China is not clearly differentiated from the ideal political patterns.

One of the principal political functions of the new law was the improvement of the traditionally low status of women in China. This was accomplished in various ways, ranging from the creation of an interest in the wife in the property of her husband, to the promulgation of relatively easy divorce laws for women who were parties to "feudal" marriages. A large portion of the reported cases deal with attempts by family members to maintain the traditional control of the husband and the husband's family over the wife, especially in widowhood. Special attention is given to the duty of the "politically advanced" husband to educate his wife in the proper role of women under the new regime. Additionally, the law points out some of the apparent contradictions between the agrarian reform movement and the goal of providing the wife with property rights in the marriage and the problems that arose in enforcing these often contradictory goals.

The third part of the study deals with the resolution of "contradictions among the people," or, in western terminology, the substantive law and procedural aspects of the marriage law system. Although any dispute in a Communist society has a potential political element, the majority of cases can be resolved with only passing references to the ideological basis for the decision. Thus a substantial body of law is developed to aid in the interpretation of particular factual situations in addition to that which is used for the solution of political problems. This section includes a review of the rules of substantive law that have been developed in the area of marriage law, and by quotation of newspaper and magazine reports, provides examples of the manner in which such disputes are resolved both within the court system and by the application of extra-legal influences (especially those of political and community organizations).

There is little in the substantive law which will come as a surprise to those who have read the previous sections or are familiar with the

pattern of law reform in the developing states of Africa and the Middle East. The elimination of dowry and marriage gifts, the prohibition of polygamy and other provisions that are typical of the Chinese law, are quite similar to the rules which have been adopted in such nations in order to speed the growth of modernization. The treatment of a few institutions which are peculiar to China such as the "foster daughter-in-law" are of interest, but the results achieved seem predictable.

Despite the expectable pattern of law reform as shown in this section of the book, it is the material here that most readers will find to be of the greatest interest. The summary of the substantive law is clear, and the ideological bases for the principles espoused are explained clearly. This section will be of special importance to those who see China as providing a model for development for Asia and Africa, as it clearly points out the economic goals of each rule of law as well as the political purpose which it was expected to serve. The intended economic effect is often quite independent of the political function, although each, of course, is directed to the promotion of the ideals of the state.

In addition to the textual materials already described, this volume is made more useful by the provision of extensive appendices, including translations of the principal marriage legislation of the "Chinese Soviet," the "Border Soviets," and the People's Republic, as well as a number of other important documents related to the marriage law. The author also provides an extensive index and glossary of Chinese terms and a bibliography of Chinese, Japanese, and western language sources that were employed in the study. Regrettably, the bibliography is not annotated and many of the western language sources are now out of print, but those that are available will provide the interested reader with a good introduction to the ideas that are discussed in the book. This will be especially important for the reader who is making his first acquaintance with the problems of Chinese family law in this volume, as many of the traditional institutions described are unique to China, and the brief explanation of their content in the introductory chapter of the book may not be sufficient to clarify the nature of the problems which they posed to the Communist government.³

Even without this information, however, the volume will provide substantial insights into the working of the Chinese Communist legal system. Although relatively little direct reference is made to the formal operations of the judicial system, a great deal of information can be

³ For a clear exposition of the structure of the traditional Chinese family, see J. LEVY, *THE FAMILY REVOLUTION IN MODERN CHINA* (1964).

gleaned from reading between the lines about the manner in which the courts and the political bureaucracy interact in the application of both law and doctrine in particular cases.

In summary, the book provides a fine introduction to the study of law and policy-making in one Communist State and will provide those interested in China with a good basis on which to develop more intensive studies. The need for a volume that will provide a comprehensive explanation of the legal process in the People's Republic, however, still remains.

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