Ke Li. *Marriage Unbound: State, Law, Power, and Inequality in Contemporary China.*

Socialist China and legal precedent have not always interfaced smoothly or effectively. In spite of systematic legal coding, government officials continue, whenever it suits their interest, to adopt extralegal criteria in implementing government policy. In their doing so, China has become an ad hoc principle society more than a country bound by the rule of law. While ad hoc case decision making remains the prevailing norm in the political and economic arenas, its use in civil law is more clouded. It is in the arena of civil law that Ke Li, in this superbly nuanced ethnographic and historically grounded investigation of Chinese divorce practices, unpacks the ways legal precepts, personal pragmatics, and long-standing gender norms interact to shape what is for most participants, the final outcome.

Ke Li’s research focuses on how women have fared in their pursuit of justice in the Chinese legal system. In two separate field research sessions (2006-2011 and 2017-2020) Li followed the divorce petitions of women from Sichuan (mostly from Weifeng county, near Chengdu) and a few men (who were more reluctant to talk with her) as they moved through the legal system. Adopting a mixed methods approach, she skillfully entered the participants’ lives which ultimately enabled her to observe their interaction with legal professionals and, at times, with an enraged spouse. Li supplements her astute observations with probing interviews, along with judicial statistics, government publications, and a copious reading of local and national news articles. She acknowledges her sample has more women than men, but she also sensitively tries to probe the husband’s position.

Her investigation finds conjugal grievances and gender inequalities are baked into early stages of the judicial process. Early in her investigation, she realizes that to fully understand the scope of the legal process, she must expand her investigation from only centering on court cases to a wider sociological framework which includes all the principal actors in the legal drama. These actors range from members of the local government, the legal profession, and the court system that ideally is responsible for protecting women’s interests. Ke Li is adamant that everyone involved in the legal process fails to guard women’s marital rights. She wants to understand why.

In China, a divorce is easy to obtain as long as both parties agree. The problem arises when one or both parties disagree. The judge’s administrative charge is to resolve cases quickly and to the satisfaction of both husband and wife. When participants resist and refuse to accept the judge’s suggestion to agree
to a mutually beneficial compromise, the judge shifts from the role of mediator to that of arbitrator who insists the participants concur with his or her “suggestions.” Ke Li found that to encourage a more rapid settlement, judges try to block women’s contestation action, which would result in a prolonged trial, in favor of a more “efficient” out-of-court mediated settlement. There are three ways a judge can restrain a marital dissolution: turning away petitioners through withdrawal of their petition to divorce, judicating against the divorce, and stalling marital dissolution by imposing a cooling off period which most women find brings them financial difficulty.

Because of the incentives to dispose of a case quickly, judges are less interested in a fair distribution of marital property or who even decisions regarding the matter of child custody. The legal system operates under an implicit code of “efficiency” and “rapid settlement” which rewards judges and lawyers who quickly expedite their case load and, thus, avoid prolonged legal entanglements. It is not clear if husbands are aware of these unvoiced procedure norms, or if they are only stubborn as a matter of personal principle, and thus reject compromise. What is clear is their refusal often results in their receiving the lion share of the marital property. In effect, instead of being penalized, their stubbornness is rewarded. It would be wrong, however, to infer that men are rewarded more than women arises entirely from a patriarchal bias which holds men are superior to women. Li grants this is a factor, but insists that who wins and who loses is also about social class, education level, and having the resources to resist the relentless application of bureaucratic rationality which rewards the quick disposal of civil cases.

Divorce proceedings were never intended to be this way. The amended 2001 marriage law introduced the concept of a no-fault divorce which was meant to result in a more equitable division of martial resources. The legal process which is supposed to be gender-neutral favors the financially powerful, that is men who have a higher or more reliable income, and who are able to hire the better lawyer to help with child custody placement. Li believes judges have internalized prevalent social norms, and thereby are unaware of their bias. In effect, they are clueless about how their “reasonable” judgments negatively impact women’s lives. Because they want to render a balanced decision which does not provoke an extreme reaction, especially from husbands who may engage in further domestic violence, judges insist wives compromise. Although domestic violence remains a serious issue in Chinese marriages, the courts are remarkably indifferent to what is assumed to be a normal part of marital life. Rarely do judges issue a personal safety order for victims of domestic violence, nor do husbands fear imprisonment. In the end, women “compromise” and walk away with little marital property, little or no child support, or any
payment for their substantial litigation fees, divorce charges, service tolls, or travel expenses.

Ke Li’s analysis is more than a superb ethnographic and historical account of changes in the Chinese court system and its effect on women. It is also a sustained effort to place the historical changes within an analytical framework that explores how cultural beliefs shape governmental policy and, thus, the resolution of a divorce case. Li is a new institutionalist who understands that culture matters, and as such state ideology and career pragmatics as well. Taken together these three factors shape the ways judges set their agendas which determine their deliberation and final judgment. In the process relatively poor rural women are unable to contest the judges’ insistence to agree to a rapid settlement. Although Li does not comment on this, her findings are less representative of China’s wealthier coastal cities where judges are less conventional and more open to listening to women’s appeals and protecting their interests. This is especially so when the women are college educated professionals with influential parents.

Li concludes her analysis with a teasing suggestion that the ongoing urbanization process and with it “forced land conversion” has spurred local governments to transfer ownership from rural collectives to the state’s more than 88 million rural residents. The transfer has resulted in significant payouts which make it advantageous for village women to ally with others who have similar interests in retaining land conversion benefits. She does not discuss why this new “resource of power” has enabled women who before had little choice but to follow judicial “suggestions,” now can gain access to significant compensatory payouts. Whatever the reason, this new resource combined with the state’s willingness to promote and support a more equitable distribution, has emboldened women to assist on arbitration rather than mediation as the preferred path to a divorce disillusionment. In this new state-engendered dispute resolution setting, Ke Li suggests, women may finally be able to receive a more equitable marital settlement.

William Jankowiak
University of Nevada, Las Vegas, Nevada, USA
jankbil@univ.nevada.edu