FEMALE INFANTICIDE IN CHINA: AN EXAMINATION OF CULTURAL AND LEGAL NORMS

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I. INTRODUCTION

For the past ten years China has been carrying out an ambitious program to keep its population under 1.2 billion by the year 2,000 by limiting most couples to one child.[1] The program is historically one of the most extensive exercises of state control over fertility and is especially significant in a society where the state has traditionally intervened in family matters only rarely and with much reluctance. Not surprisingly, the policy has encountered great resistance, particularly from rural areas, where roughly eighty percent of China's population lives. Pronatal norms have been traditionally strong in the countryside, and these norms have been reinforced by the recent introduction of economic policies that tend to encourage large families.

Government policies have thus placed much of rural society in a dilemma. Couples may either reject the one-child limit and attempt to have more children, thereby increasing their net household income (but subjecting them to government sanctions); or they may obey the one-child limit and suffer the economic consequences of a smaller income. Couples whose one child turns out to be a girl are in an even more painful dilemma: cultural norms dictate that daughters marry out and transfer their emotional and economic

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1. The policy provides some exceptions to the one-child rule. Generally speaking, urban couples are strictly limited to one child, yet rural couples may have a second child under certain circumstances. These exceptions vary from province to province, but some of the common ones include: the first child has a physical disability; the father or mother is an only child; the father is an only son; the parents are farmers in a less fertile region; the father is a fisherman; some provinces allow second children if the first is a girl. For a thorough examination of the policy, see E. CROLL, D. DAVIN & P. KANE, CHINA'S ONE CHILD FAMILY POLICY (1985) [hereinafter CROLL, DAVIN & KANE].

loyalties to their husband's family. Since sons alone support their parents through old age, a couple with only a daughter is left with no source of future economic security. Rural China has no system of old age support, thus farming couples without sons are faced with the specter of destitution once they are too old to work the fields. Given these conditions, a number of rural couples have responded by exercising a form of gender selection by committing infanticide on their female neonates.

Infanticide, particularly female infanticide, was common in traditional China. Natural hardships such as famines, floods, widespread disease, and overpopulation often converged with cultural norms that favored sons and encouraged hard-pressed families to abandon or kill their infant daughters. But the practice diminished dramatically in recent decades, especially after the Communist Party came to power in 1949: the government's reforms in land and resource distribution, in medical care and other social services assured the populace an important level of security. The Party's early ideological programs also worked to discourage different forms of female discrimination. This current reemergence of female infanticide thus signals a significant break with the recent past.

The government's response to female infanticide has been marked by inconsistent swings in policy that belie a deep-seated ambivalence about the nature of the family and the government's view of its role in the family. Historically, although the central government in China was strong and willing to impose its power in most areas of society, it was particularly reluctant to intervene in family matters. Family clans were recognized by the state as legal entities and had their own clan codes that senior members could enforce, or request the state to enforce.[2] As recognized units, clans enjoyed a large degree of insulation from state intervention. The strength and autonomy of the family was reflected in laws that granted family seniors wide authority over juniors and even permitted family members to shield one another from state prosecution with impunity.

While these traditions may seem to stand in great contrast to the ideology of the current government, it must be recognized that in the past 40 years, the Chinese Communist Party has tolerated more tradition in the family context than it willingly acknowledges. And as the government's ideological focus has shifted in the past ten years from social utopian goals to more practical economic goals, its willingness to intervene to restructure family status relations has diminished.

This paper will attempt to analyze the cultural and legal norms behind the phenomenon of female infanticide that has emerged

2. These codes were often duplications or near parallels of the government's penal code.

since the early 1980's. It will examine the historical roots of infanticide, traditional legal responses, and the government's current attempts to discourage the practice through legal and extralegal means.

II. HISTORICAL CONTEXT

A. Overview of Female Infanticide in China

Scholars generally agree that infant abandonment and infanticide have always existed in China to some extent.[3] Classical texts

3. Leung, *L'Accueil des enfants abandonnés dans la Chine du Bas-Yangzi aux XVIIe et XVIIIe siècles*, 4 ETUDES CHINOISES 15, 16 (1985) [hereinafter Leung]; Lee, *Female Infanticide in China*, 8 HIST. REFLECTIONS 163 *passim* (1981) [hereinafter Lee]. It is important to note that the phenomenon of infanticide is by no means limited to Asia. As Williamson and others have stressed, infanticide has been the rule among societies of varied cultural sophistication throughout the world, including Western Europe. Williamson, *Infanticide: An Anthropological Analysis*, in M. KOHL, INFANTICIDE AND THE VALUE OF LIFE 61 (1978). Moreover, the recent incidence of postpartum psychosis infanticides (*see* Toufexis, *Why Mothers Kill Their Babies*, TIME, June 20, 1988), as well as a three-fold increase in infant abandonments in the U.S. in the past ten years (McMillan, *Abandoned Babies: Why the Surge?*, Los Angeles Times, Feb. 24, 1989, at 1, 3) demonstrate that the practice is not simply one of the past.

Infanticide by exposure of weak and deformed infants was common and accepted in ancient Greece and Rome, and in fact was required by law in Sparta (M. TOOLEY, ABORTION AND INFANTICIDE 316 (1983); O. WERNER, THE UNMARRIED MOTHER IN GERMAN LITERATURE 19 (1917)). To pre-Christian cultures in Western Europe, infant life did not hold the tremendous moral significance that Christianity was to attach to it in later years. While the pagans condemned abortion and infanticide, they nevertheless believed that they were trivial crimes. As Lecky noted:

> The death of an adult man who is struck down in the midst of his enterprise and his hopes, who is united by ties of love or friendship to multitudes around him, and whose departure causes a perturbation and a pang to the society in which he has moved, excites feelings very different from any produced by the painless extinction of a newborn infant, which, having scarcely touched the earth, has known none of its cares and very little of its love.

W. LECKY, THE HISTORY OF EUROPEAN MORALS, vol. 2, 22-23 (1911).

The Christian Church saw infanticide as a crime against God that doomed the child's soul to purgatory (TOOLEY, *supra*, 318-20; WERNER, *supra*, 21-22). The Church sought to wipe out the practice, and many European heads of state imposed harsh penalties on those who killed their infants, such as death by impalement or drowning (WERNER, 24-26; M. PIERS, INFANTICIDE 69 (1978)). Still, infanticide was widely practiced in Europe and was in fact purported to have been the most common crime in western Europe from the Middle Ages to the end of the 18th century (WERNER, 1). In addition to Werner and Piers, see O. HUFTON, THE POOR OF 18TH CENTURY FRANCE, 1750-1789 (1979) for an insightful analysis of infanticide within the larger context of demographic shifts. J. BOSWELL, THE KINDNESS OF STRANGERS (1988) provides a fascinating account of infant abandonment in Europe from late antiquity up to the Renaissance.

In recent years in the U.S., medical experts have been attributing many infanticides to the syndrome of postpartum psychosis, which is believed to be caused by the dramatic drop in estrogen that occurs in all women soon after birth. In one to three out of every 1,000 new mothers, this hormonal drop can trigger psychotic delusions and erratic, violent behavior. Recently a Southern California woman who killed her six-week-

from as far back as 2,000 B.C. recount tales of infant abandonment and unsuccessful attempts at infanticide. In *Notes to the Annals of the Warring States*, which recounts heroic tales of emperors, the Empress Keang Yuen exposed her newborn son because she thought that his miraculous conception and birth were "unlucky."[4] The legendary sage Emperor Shun survived repeated attempts by his parents to kill him as an infant, including escaping from fire, as well as from the depths of a well.[5] *The Book of Songs* also recounts similar cases of exposure of infants.[6]

References to direct infanticide can be found in later texts; writing in the third century B.C., the Legalist philosopher Han Fei noted:

> Moreover, parents' attitude to children is such that when they bear a son they congratulate each other, but when they bear a daughter they kill her. Both come from the parents' love, but they congratulate each other when it is a boy and kill it if it is a girl because they are considering their later convenience and calculating their long-term interests.[7]

Other evidence shows that the practice continued: Han dynasty (206 B.C. - 220 A.D.) cases include punishments for infanticidal parents.[8] Beginning in the 12th century, the government began to set up foundling homes for abandoned children, first in Fujian province, where female infanticide was particularly prevalent, and later in other central southern provinces.[9]

Parker noted that female infanticide was widely practiced in the provinces of Jiangxi and Fujian: outside the town of Fuzhou in Jiangxi there was a pool with a stone inscribed with the warning "Girls may not be drowned here."[10] According to Jacques Gernet,

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old son by running him over with her car was the first to successfully employ the postpartum psychosis defense when the presiding judge acquitted her by overturning the jury's guilty verdict. *See* Lichtblau, *A Long Road for Massip: Postpartum Psychosis: Recovery is Tortious*, Los Angeles Times, Feb. 3, 1989, (O.C. Ed.); Lichtlbau, *Psychiatric Exam for Mother Who Killed her Baby*, Los Angeles Times, Feb. 4, 1989; *see generally* Toufexis, *Why Mothers Kill Their Babies*, TIME, June 20, 1988.

4. H. WILKINSON, THE FAMILY IN CLASSICAL CHINA 63-69 (1926) [hereinafter WILKINSON].

5. *Id.* at 85-86.

6. A. WALEY, THE BOOK OF SONGS 291 (1954). As Wilkinson notes, many of these infants had abnormal features, such as double pupils, black bodies, overdeveloped jaws, or were excessively hairy. *See* WILKINSON, *supra* note 4, at 86, 90.

7. Lee, *supra* note 3, at 164 (quoting the HAN FEIZI XINBIAN CHUZI JICHENG 5 (Taipei 1972)).

8. T'UNG-TSU CH'U, LAW AND SOCIETY IN TRADITIONAL CHINA, 22-23 (1965) [hereinafter T'UNG-TSU CH'U].

9. The foundling homes subsequently declined and fell out of use, in part because local officials were only lukewarm in their support of them. But during the Qing dynasty (1644-1911) the government reestablished numerous foundling homes, so that by the end of the 18th century, they existed in all major cities (Leung, 16-18).

10. E. PARKER, CHINESE FAMILY LAW 95 [hereinafter PARKER].

people in Fujian limited family size by practicing a custom called "cleaning the infant," where unwanted newborns were drowned in a dish of water shortly after birth.[11] Accounts of infanticide can be found in popular Chinese literature, where the practice was sometimes depicted as an ordinary event. In short stories in the collection of the 17th century literatus Feng Menglong, Buddhist nuns and widows drown their illegitimate infants with little apparent remorse.[12]

During the 19th century, missionaries and western businessmen reported that in the city of Beijing the police sent carts around in the early morning to pick up the bodies of infants who had been left out during the night. They were then brought to a large pit outside the city walls for common burial. Missionaries apparently came to this area to either baptize the dead or rescue those still alive.[13]

Female children who did not fall victim to infanticide immediately after birth sometimes suffered an indirect form, through neglect and malnutrition. Girls often were allocated less food and medical care, and consequently suffered a disproportionate degree of malnutrition and sickness.[14] Statistics from Beijing in 1917 indicate that the mortality rate for females in the first year of life was 30% higher than that of males. Moreover, the mortality rate for girls between 1-5 years old was 152 per 1,000 and only 122 per 1,000 for boys.[15] In his research covering the period 1895-1946 in the village of Lungtu, Burton Pasternak found that daughters born late in a sequence of girls had significantly higher rates of mortality than did boys.[16] Other data show that between 1851-1948 the mortality rate for males was two and one-half percent, whereas that of females was five percent.[17]

B. Reasons for Female Infanticide in Traditional China

In traditional China, economic conditions converged with strong cultural norms to discourage parents from keeping infant daughters in times of hardship.

Most scholars have agreed that poverty was a primary cause

11. J. GERNET, DAILY LIFE IN CHINA ON THE EVE OF THE MONGOL INVASION, 1250-1276, 148-49 (1962).

12. Feng Menglong, *Kuang Taishou Duan Si Hai'er* [*Prefect Kuang Resolves the Case of the Murdered Child*], 35 JING SHI TONG YAN [ORDINARY TALES TO FRIGHTEN THE WORLD], 539 (1980) (H.K. Zhonghua Shuju ed.).

13. Barrow, 3 THE CHINESE REPOSITORY 416 (1835); Ripa, 17 CHINESE REPOSITORY 387 (1848).

14. CROLL, DAVIN & KANE, *supra* note 1, at 11.

15. *Id.*

16. B. PASTERNAK, GUESTS IN THE DRAGON 155 (1983).

17. L. EASTMAN, FAMILY, FIELDS, AND ANCESTORS 21 (1988).

behind female infanticide in traditional China.[18] When the Chinese sociologist Fei Xiaotong did field work in a village in Zhejiang province in 1936, his calculations revealed that the low levels of rice production available from land directly influenced the number of children families had: the usual solution was infanticide or abortion. Moreover, sex ratio statistics for that village were unusually low for girls in the zero to five age group. There were only 100 girls for every 135 boys.[19] Sex ratio statistics from later sources indicated a dramatically skewed trend in certain provinces, many of them noted for their poverty, including: Zhili (the Beijing area), Shandong, Shenxi, Jiangsu, Zhejiang, Anhui, Guangxi, Yunnan and Sichuan.[20]

In economic terms, females were seen as "temporary" children who required a far greater investment of scarce resources than they would ever be able to return to their parents. In rural society the gender distinction was crucial: like boys, girls needed care and nourishment throughout early childhood, but unlike boys, they could not perform the heavy labor required in most agricultural work. If parents wished to prepare their daughter for a "good" marriage, they were obliged to have her feet bound, which further undercut her labor capacities. When she married, parents were required by etiquette to give respectable dowries, and later, gifts to her children. Moreover, the daughter's marriage "out" signified a crucial break with her natal parents: she now owed superior filial duties to her parents-in-law; except in extraordinary circumstances, she could not care for her natal parents in their old age.[21]

Similarly, the important socio-cultural commodities of honor and status could only be achieved by men. Like economic successes, status benefits accrued patrilineally, so that parents derived significant advantage from their sons' achievements. Women were barred from the civil service and artistic and mercantile professions. Sometimes even the rich were reluctant to bring up daughters because they could "never be raised to any important posts in the household."[22]

Gender was also crucial to the system of ancestor worship, a pervasive institution of enormous importance in traditional society. The system of ancestor worship served to endow people with cultural and spiritual identity by connecting them in significant ways

18. Lee, *supra* note 3, at 169; WILKINSON, *supra* note 4, at 87; EASTMAN, *supra* note 17, at 21.

19. FEI XIAOTONG, CHINESE VILLAGE CLOSE-UP 29 (reprinted 1983).

20. HO PING-TI, STUDIES ON THE POPULATION OF CHINA 58-59 (1959).

21. A. FIELD, A CORNER OF CATHAY 72 (1894). EASTMAN, *supra* note 17, at 20-21, 24; FEI, *supra* note 19, at 29.

22. 17 CHINESE REPOSITORY 11-16 (1848).

with the past and future.[23] Ties of kinship that linked individuals were patrilineal and continuity could only be maintained through sons. Only sons were allowed to carry out ritual sacrifices to ancestors. Thus, if a couple failed to produce a son, its crucial links to the past and future were broken. This trans-generational connection between men has been illustrated by Shuzo Shiga in the following terms: father and sons were referred to as one body (*yi ti*) and one breath (*yi qi*) where *qi* signifies the male reproductive function; ". . .every man's life is nothing other than an extension of the breath he received from his father."[24]

Since these economic and social norms severely proscribed the potential benefits that female children could offer to their natal parents, daughters became liabilities.

C. The Insufficiency of Cultural/Legal Alternatives to Major Marriage

The virilocal or "major" marriage form has dominated traditional Chinese culture up through the present. This system mandates that a bride leave her natal family to move in with her husband, his parents, and possibly paternal grandparents. The young couple thus becomes a permanent part of a trans-generational household that shares resources and responsibilities. The new daughter-in-law transfers both her labor and reproductive capacities to her new household and filial attention to her in-laws. In practical economic terms, women were of greatest value to their in-law's household. Natal parents accrued little immediate or long-term economic benefit from raising their daughters to marriageable age.

Two alternative forms of marriage tending to encourage parents to keep their infant girls were: (1) the "minor" marriage form, which involved keeping the daughter for a few years and then marrying her off as a foster daughter-in-law (*tongyangxi*), and (2) the *tongyangxu* form, which involved keeping the daughter and later adopting a son-in-law as her husband (uxorilocal marriage).[25]

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23. Sinologist Lucien Pye has said this about the phenomenon:

> The central place of ancestor worship and the compulsive desire for sons are both only surface manifestations of the deeper Chinese belief in the significance of their own beings as part of immemorial history. The individual is subconsciously aware of a unique link with the past, and thus his very existence becomes the basis for an essentially mystical view of his unshakable roots in history.

L. PYE, THE SPIRIT OF CHINESE POLITICS 55-56 (1970).

24. D. BUXBAUM, CHINESE FAMILY LAW AND SOCIAL CHANGE IN HISTORICAL AND COMPARATIVE PERSPECTIVE 122-23 (1978) [hereinafter BUXBAUM].

25. *See* A. WOLF & C. HUANG, MARRIAGE AND ADOPTION IN CHINA, 1854-1945 (1980) [hereinafter WOLF & HUANG] at 1-11, 84, 233, 329-39; BUXBAUM, *supra* note 24, at 241-43.

The "minor" marriage form was widely practiced in Southeastern China, especially in the provinces of Jiangsu, Zhejiang, Fujian, Jiangxi and Guangdong.[26] This form required a daughter's natal parents to make only a few year's investment in the cost of her upbringing, some of which they could recoup as a bride price. Her adoptive parents were obliged to raise her, but were better able to instill bonds of obedience and affection and more importantly, were assured that their son would have a bride to marry when he came of age. Because of a variety of factors including female infanticide, high mortality rates for girls, and the practice of selling girls as servants or prostitutes, historically, there were frequent shortages of women in rural China. In an ever-competitive market for wives, the minor marriage offered families an economical assurance that their line would continue.[27]

But there were disadvantages to the system: the adopted daughter was particularly vulnerable — unlike daughters-in-law in major marriages, the *tongyangxi* could not appeal to her natal parents if she were being mistreated by her adoptive parents;[28] moreover, Wolf's research has shown that the incest taboo and subsequent psychological consequences made this type of marriage less successful.[29] In addition, the minor form was regarded as socially inferior to major marriage: families who could afford the major form enjoyed greater status.[30]

And finally and most importantly, depending on the local custom, *tongyangxi* could only be sold once they had reached a minimum age; in some places it was a year, in others, five or six years old. In their research at Ten Mile Inn in Northern China, Isabel and David Crook found that some couples were too poor even to support daughters for this length of time.[31] Thus, although the minor marriage did provide a legitimate means of distributing females to those who had a long-term self-interest in providing for them, the form was far from ideal. It could offer little relief for the truly hard-pressed natal parents. Parents who *could* afford one new mouth to feed might still be inclined to commit infanticide on a daughter because even though she could later be sold as a *tongyangxi* (and thus recoup her keep for her parents), she would have nevertheless consumed the care and nourishment that could have gone towards a more viable long-term investment: a son.

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26. *See* WOLF & HUANG, *supra* note 25, at 84, 233, 329-30; BUXBAUM, *supra* note 24, at 241-43.

27. WOLF & HUANG, *supra* note 25, at 1-11, 140-41.

28. *Id.* at 335-36.

29. *Id.* at 143.

30. *Id.* at 1-3.

31. I. & D. CROOK, REVOLUTION IN A CHINESE VILLAGE, TEN MILE INN 11, 166 (1959).

The other alternative type of marriage tending to mitigate against female infanticide was the uxorilocal form: parents would adopt their daughter's husband and the younger couple would live with the young woman's parents and support them in their old age. The adopted son would usually take the family's name and be accorded the rights of a successor.[32] Uxorilocal marriages were usually made to either continue a family line (where a couple had a daughter and no sons) or to add to the family's labor force.[33] The exact incidence of uxorilocal marriages in traditional China is unknown, though some studies show that the form was fairly common in many villages comprising the Yangzi Delta region.[34]

Yet, as with the minor marriage, this form had its defects: some areas had a high incidence of litigation regarding the adopted son's rights and duties; and some community customs strictly forbade the form because it violated virilocal (major) norms.[35] Men who married in this way were almost always too poor to marry in the major form and had no hope of inheriting property from their natal parents. Moreover, because the uxorilocal form ran so counter to the virilocal system of kinship, it was often viewed as inferior.[36]

The uxorilocal form thus had only limited success because it conflicted with cultural norms that mandated perpetuation of the family through the male line. And perpetuation through the male bloodline[37] was a crucial part of ancestor worship: only sons and blood male relatives could carry out ancestral sacrifices. In fact the central purpose of marriage was to perpetuate the family *in order to* carry out sacrificial rites to ancestors,[38] who in many respects took precedence over the living.[39] Thus, according to predominant norms, the adopted son-in-law, who was seen to have abandoned his natal parents and ancestors, would also be barred from leading sacrificial rites to honor his wife's paternal ancestors.

Thus, while these two alternative marriage forms served to dis-

32. WOLF & HUANG, *supra* note 25, at 12-13.

33. *Id.* at 216.

34. *Id.* at 333-37.

35. *Id.* at 216-17.

36. *Id.* at 96 and 101.

37. The primacy of the male bloodline is also evidenced by the fact that sonless couples normally would adopt a male from the husband's clan, rather than a stranger. If a man died without an heir, his clan would assign him a male member of the clan as heir. *See* T'UNG-TSU CH'U, *supra* note 8, at 37.

38. A couple was not considered formally married until they had worshiped the husband's ancestors. *Id.* at 91, 102.

39. Many early 20th century Chinese intellectuals and writers criticized this custom of putting ancestors' interests before those of the living. Most notably the 1931 novel FAMILY by Ba Jin recounts the death of a pregnant daughter-in-law who is driven out of the family home because the senior relatives' fear that her presence may "upset" the soul of the clan's recently-deceased patriarch. BA JIN, SELECTED WORKS (1988).

courage female infanticide, they could do so only on a very limited basis. For the impoverished couple, keeping a daughter to marry off early in the minor form entailed economic hardship. And adopting a son-in-law ran so counter to traditions of ancestor worship and patrilineage that it was hardly a viable option.

D. Infanticide and Religious Factors

While conditions of poverty and cultural norms favoring sons converged to bring about female infanticide, one might expect that religious beliefs would discourage the practice. Chinese religious views on the subject of infanticide are sketchy at best. Although abortion and infanticide are among the sins discussed in certain folk Buddhist texts of the 19th and 20th centuries,[40] one can only speculate as to the degree of seriousness of the sin and how widely the belief was shared. Moreover, although on a fundamental level Buddhism prohibited the killing of any living thing, Buddhist doctrine underwent a series of mutations and interpretations throughout Chinese history. Buddhism could in fact be seen to encourage the practice. The Italian Jesuit Matteo Ricci, who lived in China during the 16th century, was convinced that the Chinese belief in the transmigration of souls in fact *promoted* the practice of infanticide: poor parents hoped that by killing their child, they could thereby release it to be born into a richer family.[41]

Even if Buddhist values militated against female infanticide, Confucian values may well have superseded them. Confucian ideology was firmly rooted in patrilineal coherence and ancestor worship through the male bloodline: survival of a family or clan was contingent on the production of male heirs. As Eberhard has noted, norms in traditional China had positions within a larger hierarchy, and if two norms conflicted, "everyone would know what to do."[42] Where the dilemma put the life of a burdensome female neonate against the possible survival of an entire family line, Confucian values would most certainly prevail.

Moreover, children were perceived as part of, or physical extensions of their parents, not as discrete entities with independent souls or rights,[43] thus a parent's authority was virtually unlimited.

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40. W. EBERHARD, GUILT AND SIN IN TRADITIONAL CHINA 64 (1967).

41. J. SPENCE, THE MEMORY PALACE OF MATTEO RICCI 251 (1985).

42. EBERHARD, *supra* note 40, at 121.

43. Recall Shuzo Shiga's analysis of the "one body. . .one breath" linkage between generations, *supra* note 24 and accompanying text. Parker has noted that the term for "a [human] life" literally means "a length, or span of life," PARKER, *supra* note 10, at 102. Confucian norms held that children owed their physical integrity to their parents and that any self-inflicted injury was in fact a crime against one's parents, e.g. criminals who were sentenced to corporal punishment were rebuked by sentencing magistrates for bringing such injury upon "the flesh and bones" of their *parents* (*see* biography of Wang

Parents could sell their children with impunity, injure, or even kill disobedient children without incurring criminal liability.[44] The neonate in particular seems to have possessed an even further diminished degree of "personhood." As discussed *infra*, some scholars have speculated that full personhood came sometime later after birth, perhaps at the three-month naming ritual.[45]

E. Traditional Legal Sanctions

If religious beliefs failed to act as a check against female infanticide, then what of legal sanctions? To examine this part of the problem, it may be useful to first look at the traditional role of law in matters relating to the family.

Traditional Chinese law underwent a gradual process of "Confucianization" from the time of the Han Dynasty (206 B.C.-A.D. 220) up through the Tang (608-906). This "Confucianization" meant that customary morality (*li*) was incorporated into the legal Code,[46] and thereby legitimized.[47] Thus, Confucian principles, especially in the case of family relations, form the doctrinal source of much law in traditional China. One of the important features of this doctrine is the paramount importance of status relations: the law prescribes numerous particularistic prohibitions and sanctions depending on one's status. The Code recognizes complex intra-family distinctions based on sex, seniority, and degree of kinship. This was achieved in part by applying the system of the "five degrees of mourning" (*wu fu*) to the law. Simply put, the type of mourning garb and the period of mourning varies depending on the mourner's relationship to the deceased. One would mourn longest for a close senior relative and shortest for a distant junior. The relations are thus not reciprocal: they are based on a hierarchy where seniors

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Huizu in XIAOSHAN ZHIGAO [DRAFT GAZETEER OF THE XIAOSHAN DISTRICT] (1935)).

44. PARKER, *supra* note 10, at 96; also *see infra* notes 60-63 and accompanying text.

45. *See* WILKINSON, *supra* note 4, at 63-69; *see also* Lee, *supra* note 3. Note that birth regulations published in 1987 for areas in Guangzhou stipulated that parents would be fined 300 *yuan* for illegal newborns that subsequently died before the end of their third month — if such infants died *after* that point, parents would be fined the full amount, 2-3,000 *yuan*, depending on whether it was a second or third birth. *Guangzhoushi Tianhequ Dongfuqu Gongsuo Guanyu Jihua Shengyu de Ruogan Guiding [A Series of Provisions from the Birth Control Regulations for the Tinahe Dongfu Areas of Guangzhou Municipality]* 50 ZHONGGUO ZHI QUN [CHINA SPRING] 79 (Aug. 1987).

46. The Penal Code evolved from Li Kui's CANON OF LAWS of about 400 B.C. and underwent numerous revisions over the various dynasties, as statutes and substatutes were added and deleted. *See* D. BODDE & C. MORRIS, LAW IN IMPERIAL CHINA 52-63 (1973) [hereinafter BODDE & MORRIS] for a full description of the Code's evolution. For the purposes of this paper, I will refer to the Penal code as "the Code."

47. BODDE & MORRIS, *supra* note 46, at 29.

and men always maintain superiority over juniors and women.[48]

Thus, the Code prescribed harsher punishment for a son who beats his father (decapitation, regardless of whether injury had occurred), than for the father who beats his son (no penalty unless the son dies), or for a wife who strikes her husband (100 blows of the heavy bamboo). A husband would receive no punishment for striking his wife unless serious injury developed and she personally filed suit — in which case he could be subject to 80 blows of the heavy bamboo.[49]

As the Code evolved throughout the various dynasties, provisions relating to parental authority over children became more "Confucianized" as parents were allowed increasingly more power. Extant records indicate that infanticide committed by parents was viewed as homicide during the Qin dynasty (221-207 B.C.).[50] During the Han dynasty (202 B.C.-220 A.D.) parents who committed infanticide were punished as they would be for ordinary homicide, and some even received the death penalty.[51] During the Southern Song dynasty, a provision was promulgated in 1133 prescribing two years prison for parents who abandoned their children, and three years for those who committed infanticide.[52] By the Yuan Dynasty (1279-1368) the law prescribed confiscation of one-half of the guilty parents' property.[53] Yet by the Qing (1644-1911) dynasty, the Code had no specific provision of punishment for parents who practiced infanticide.[54] Despite the existence of these provisions, available case compilations offer little evidence that the law was enforced. Aside from cases noted in the *Hou Han Shu* covering the period of 25 A.D.-220 A.D., other texts make no mention of actual liability imposed on parents for infanticide.

Nevertheless, the *Conspectus of Penal Cases* [*Xing An Hui-lan*] from the Qing dynasty contains a number of cases that apply the Code provisions to parents who are convicted of killing their *non-infant* children. By examining these examples we may be able to draw conclusions regarding the scope of a parent's legal authority over his children.

In an 1810 case, a father premeditated the murder of his son, because of the son's objections to an illicit affair the father was car-

48. *Id.* at 33-36.

49. *Id.* at 37.

50. The unauthorized killing of a child was punished by tattooing and submitting the guilty parent(s) to hard labor. However, the killing of deformed infants was not considered a crime. A. HULSEWE, REMNANTS OF CH'IN LAW 139 (1985)

51. HOU HAN SHU 67, 34b-35a, 77, 16a, *cited in* T'UNG-TSU CH'U, at 22-23.

52. Sogabe Shizuo, *Ni Nu Kao* [*On the Drowning of Girl Infants*] WEN XING, vol. X-1, 52-57 (1962).

53. YUAN SHI [HISTORY OF THE YUAN DYNASTY] vol. 103, sec. 2640 (Zhonghua Shuju ed.).

54. Leung, *supra* note 3, at 26.

rying on. The father was subsequently convicted and sentenced to 60 blows of the heavy bamboo and one year of penal servitude. It is interesting to note by comparison that his accomplice, an individual unrelated to the family, received the harsher sentence of 100 blows of the heavy bamboo and life exile, even though the accomplice did not premeditate or carry out the crime.[55]

In another case in 1826, a father strangled his blind son to death because of poverty. The Board of Punishments noted that "It was Wang's own poverty that caused him to dislike his son for his blindness and uselessness." In addition to killing his son, Wang also tried to impute the crime to a local creditor and even tried to extort money from the man with no success. Interestingly, the Board of Punishments discusses the false imputation and attempted extortion more than it does the son's murder, and subsequently remands the case for determination of Wang's intent to extort — if it occurred before he killed his son, his sentence would be harsher, military exile. If no such intent existed, then he would be subject only to two and one-half years of penal servitude.[56]

Though most statutes imposed some, if only token punishment on fathers who killed their children, one statute provided that parents would incur no penalty at all if the killing occurred subsequent to an assault or revilement on the part of the child.[57] In another 1826 case that applies this statute, a father broke up an affray between his two sons and tied up the instigating son. When this son reviled his father, he proceeded to bury him alive with the help of the other son. The Board of Punishments found that by the time the father had killed his son, the son had already committed a capital crime (reviling a parent). The father's criminal liability was thereby reduced to zero, and as a result, he received no penalty at all.[58] The Board went on to clarify that the statute regarding "intentional killing of a child" applied only if the child had not assaulted or reviled his parent; in *that* type of case, the father would receive 100 blows of the heavy bamboo.[59]

By the time of the Qing dynasty (1644-1911), parents were also allowed to kill children who otherwise behaved immorally. One son was bound and clubbed to death by his father, who subsequently went unpunished because the son had been a chronic thief.[60] An immoral daughter whose behavior brought shame on her ancestors could also be killed by her parents with impunity, as illustrated by

55. BODDE & MORRIS, *supra* note 46, at 317.
56. *Id.* at 347.
57. *Id.* at 389.
58. *Id.* at 390.
59. *Id.*
60. TUNG-TSE CH'U, *supra* note 8, at 25.

three cases where fathers went unpunished.[61]

These cases apply the only statutes in the Qing Code that dealt specifically with the killing of a child by a blood parent: (1) 100 blows of the heavy bamboo for the "unreasonable" beating to death of a disobedient child, and 60 blows and one year of penal servitude for doing so when the child is not disobedient. (2) Acquittal for the parent when the child's death had resulted from a "reasonable" beating of a disobedient child.[62] In contrast to these provisions for blood-parents, individuals unrelated to the family who premeditatedly murdered children were subject to immediate decapitation.[63]

These cases clearly show that parents enjoyed wide bounds of authority over their children. Thus, if penalties for a parent killing his grown children were as mild as the cases indicate, it is difficult to imagine harsher sanctions for the killing of a newborn, since newborns were generally perceived as having some diminished degree of personhood. There is scant evidence clarifying the legal status of the neonate in traditional China. Feticide was not regarded as a crime and abortions were common and apparently easy to obtain. China's earliest medical texts contain prescriptions for abortificants; and at least in the 19th century, advertisements for abortion were widely posted in most towns.[64] Moreover, there is no indication that birth itself conferred new status on the infant. Wilkinson has noted that the naming ceremony, which occurs at the age of three months, might be the child's first entry into legal status. Children dying prematurely merited only curtailed burial and mourning rites, and one source has suggested that no rites at all were held for children under three months.[65] The naming ceremony was a solemn acceptance of the child as a member of the family, and the significance of the ceremony could well ensure his survival: once past this critical stage, the neonate might likely be kept by the parents.[66]

Despite the dearth of actual reported legal cases of infanticide, there was a significant amount of legal discourse on the subject from the 13th through the 19th centuries, as scholar-officials and even emperors lamented the existence of the practice.[67]

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61. *Id.*

62. BODDE & MORRIS, *supra* note 46, at 394.

63. *See* case where an unrelated adult premeditated and carried out the murder of a four-year-old child in order to get revenge on the child's parents. *Id.* at 313-15.

64. *See* CROLL, DAVIN & KANE, *supra* note 1; PARKER, *supra* note 10, at 96.

65. *See* WILKINSON, *supra* note 4, at 91 (citing Pierre Hoàng).

66. It is perhaps significant that birth control guidelines published in 1987 for areas surrounding the southern city of Guangzhou provide differing fines for illegal births that survive past the three-month mark. For infants who die *after* three months, parents must pay 2,000 to 3,000 *yuan*, whereas illegal infants dying *before* the three months only require a 300 *yuan* fine. *See supra* note 45 and accompanying text.

67. Leung, *supra* note 3, *passim*.

In the mid-13th century, a local official in Fuzhou named Huang Zhen lambasted his locale's foundling homes as being absurdly underfunded, and called for direct state allocations to families for each new child instead.[68] Hai Rui, a sub-prefect in Zhejiang province in the mid-16th century, called on officials to enforce the law more strictly, even while admitting with resignation that little could be done to genuinely stop the practice.[69]

Emperors also participated in the discourse by issuing edicts and decrees. At the request of his Censorate, Emperor Shunzhi prohibited female infanticide in 1659. In 1673 Emperor Kangxi declared the abandonment of infants illegal and called on the Minister of Finance to propose means to support abandoned children. But neither of these exhortations had any significant impact, since they contained no specific provisions for either punishment or financial aid to poor families.[70] But the next emperor, Yongzheng, took a more active stance in 1724, by allocating specific funds for foundling homes and by sending orders to governors and governors-general throughout the provinces to solicit charity locally for such homes.[71]

In 1838 the Lieutenant Governor Ke of Guangdong province issued a proclamation against infanticide addressed to the people of Guangzhou. In it he warned that those who killed children would be subject to the "retribution of heaven." He instructed that local authorities investigate and punish the practice and that citizens report the crime to local magistrates.[72] Literati drafted essays condemning the practice and apparently had some effect in decreasing the incidence of female infanticide.[73] One such article was published in 1848 by the retired official Gui Zhongfu of Hunan province. In it he admonished both rich and poor who killed their girl babies. In an apparent endorsement for abandonment, he recommended that illegitimate children should be left out on roads with their birthdates written on a slip of paper, to be picked up by childless passers-by.[74]

In 1885 the Financial Commissioner of Hubei province issued a special edict deploring the "barbarism" of female infanticide, and implored those unable to care for their newborns to turn them over to foundling homes. Alluding to popular beliefs at the time, he warned that girls once drowned would continue to be born as girls and that a mother who resorted to female infanticide would not be

68. *Id.* at 18.
69. *Id.* at 25-27.
70. *Id.*
71. *Id.*
72. 7 CHINESE REPOSITORY 54-55 (1838).
73. 12 CHINESE REPOSITORY 546 (1843).
74. 16 CHINESE REPOSITORY 11-16. (1848).

rewarded with sons later. He too called on local officials to prosecute the guilty.[75]

In 1889 Governor Bian of Fujian province issued a strong prohibition: he expressly noted that parents who intentionally killed their newborns were guilty of murder and should be sentenced according to statute (for the offense of a parent killing a child) to 60 blows of the hard bamboo and one year of penal exile. He lamented that female infanticide was particularly widespread in Fujian and that officials, soldiers, and citizens would henceforth be expected to report instances of the practice for prosecution by authorities.[76] Yet in spite of these proclamations, there is no evidence that they were implemented by criminal prosecution.

This body of discourse is interesting because it shows that a sector of the elite in traditional Chinese society viewed infanticide as a crime, yet they were nevertheless unwilling or unable to implement measures to stop the practice. The most likely means that the government could have introduced to stop female infanticide would have been in the form of economic aid to poor families, more funding for foundling homes, or harsher enforced penalties for guilty parents. As noted above, the government did allocate some funding for poor families and foundling homes, yet throughout most of the dynasties, the amounts were minimal. Like many traditional states, China took a laissez-faire attitude toward economic conditions and their subsequent effects on family norms. As noted above,[77] the state traditionally and increasingly conceded wide authority to families and clans to manage their own affairs, free from state intervention. This broad authority, in conjunction with Confucian norms that favored seniors over juniors and men over women, thus served to inhibit government officials from implementing measures to stop female infanticide.

III. RECENT INCIDENCE OF FEMALE INFANTICIDE IN CHINA AND LEGAL RESPONSES

A. The Vicissitudes of the One-Child Policy

Since the one-child policy's inception in 1979, both the central and provincial government authorities in China have taken a variety of ambivalent and contradictory stands on the issue of birth control and parental gender selection through infanticide. The government has seen its intervention to control population growth as imperative to China's economic stability, but it has wavered as to how much or what form that intervention should take. Similarly, it

75. S. COUVREUR, *Contre l'Infanticide dans la province de Hou pe*, CHOIX DE DOCUMENTS, 62-67 (Imprimerie de la Mission Catholique) (1894).

76. *Id.* at 68.

77. *See supra* notes 2 and 54 and accompanying text.

has identified female infanticide as an evil that must be wiped out, yet it has tried to do so without jeopardizing either the rural economic system or the population control program. Not surprisingly, this ill-matched set of goals has often worked at cross-purposes, and China's evolving policies in these areas have appeared schizophrenic, as government leaders have attempted to juggle competing interests.

Many trace the recent incidence of female infanticide directly to the implementation of the one-child policy for population control.[78] The one-child policy is part of a Family Planning Law that was drafted in 1979 and slated to be presented to the Fifth National People's Congress in 1980. But because of a lack of consensus on some of its provisions, it was never formally enacted or published. Currently, there is no uniform national law controlling the number of children that families may have; rather, the one-child policy is the central theme to a series of guidelines that the central government has been communicating to provinces and municipalities since 1979.[79] Based on those guidelines together with population quotas set up by the central government, municipalities and provinces in turn have drafted and published their own sets of rules and regulations.[80] But the one-child policy encountered fierce resistance from its inception; and in response, the central government has significantly revised its guidelines during the ten years of its implementation.

The different population control regulations of provinces and municipalities are all packaged with incentives and sanctions to promote compliance. Incentives have included cash bonuses that could range up to a year's salary, longer maternity leave, as well as welfare benefits for the only child: free medical care, grain rations, free child care and kindergarten facilities.[81] Sanctions for supernumerary children could include fines or wage cuts in a couple's income that might range from a month's to a year's income or more, withdrawal of grain allowance, a deduction in land allocated for the household to farm, or for housing.[82]

One of the major contradictions that the policy first encountered in the countryside was that it worked at cross purposes with

78. *See* CROLL, DAVIN & KANE, *supra* note 1, at 62; S. Potter, Birth Planning in Rural China: a Cultural Account, Michigan State University Working Paper #103, 17 (Nov. 1985) [hereinafter Potter]; H.Y. Tien, Redirection of the Chinese Family: Ramifications of Minimal Reproduction, Working Paper #67, 8 (Oct. 1984); Chinese sources include the Nanfang Ribao [Southern Daily], Feb. 12, 1983; Yangcheng Evening News, Mar. 13, 1983; the People's Daily, Apr. 7, 1983.

79. CROLL, DAVIN & KANE, *supra* note 1, at 27, 37.

80. *Id.* at 48; Mann, *China Tightening Rural Population Control*, Los Angeles Times, Sept. 27, 1986.

81. CROLL, DAVIN & KANE, *supra* note 1, at 48-49.

82. *Id.* at 50-51.

China's newly-instituted rural responsibility system: since families were now rewarded according to what they could produce from their household plots, the more hands they had to work the land, the greater their income. Thus, the desire for more children, especially sons (who are perceived to have greater capacity for the heavy labor demanded by most agricultural work in China) intensified.[83] By adjusting incentives and penalties economically, the state hoped to offset the economic benefits that would otherwise come with supernumerary children.[84]

Yet local officials encountered a series of problems in implementing the economic sanctions and incentives that often tended to cancel their effectiveness. Some areas had difficulty raising the funds necessary to pay for the incentives; paid maternity leave was meaningless once women were working with their families and not as part of a collective;[85] in many areas peasants were enjoying such economic success that the fines for supernumerary children were insufficient to deter them.[86]

Available evidence shows that during its initial year or two, the implementation of the one-child policy with economic sanctions and incentives met with relatively little success in the countryside. Then beginning in 1981, many local officials began stiffening the sanctions applied to couples with supernumerary children. This phase of the one-child policy has been referred to by some as the "high tide" period of enforcement, where sanctions ranged from extremely stiff financial fines, to appropriation of homes, to forced abortions.[87]

This tightening of enforcement seems to have been particularly felt in provinces with high population growth rates, such as Guangdong and Sichuan. In one rural village in Guangdong, abortions were mandated beginning in 1981 for pregnant women who already had two children, including one son. If a woman refused, various local leaders would visit her to persuade her to do so. This persuasion process would be coupled with fines if the woman proved recalcitrant;[88] Wan Zhangwen, the vice-chairman of the Family Planning Commission in Sichuan province acknowledged in 1986 that those who refused to abort were "threatened with stiff

83. *Id.* at 59.

84. *Id.* at 48.

85. *Id.* at 59-60.

86. Ye Yangzong, *Dangdai Nongmin Shengyu Guannian Chutan [A Preliminary Examination of Peasant Concepts Regarding Birth Control]* 4 RENKOU YANJIU [POPULATION RESEARCH] 28, 31 (1988).

87. *See* S. Potter, *supra* note 78, at 13-23; *Who Lost China: China's One-Child Family Policy has Become More Lenient*, 225 SCIENTIFIC AMERICAN 54D (Nov. 1986); Weisskopf, *Abortion Policy Tears at China's Society*, Wash. Post, Jan. 7, 1985, at A-10.

88. Potter, *supra* note 78, at 13-15.

sanctions."[89] Another report indicates a harsher form of coercion, where pregnant women were rounded up and taken by truckloads to abortion clinics in the spring of 1981.[90] Some local officials ordered that the homes of recalcitrant couples be boarded up or torn down, and in some cases, they extended similar sanctions to the patrilineal relatives of such individuals.[91]

The stiffening of enforcement measures served to raise the stakes, as rural couples reacted to the state's intervention with extreme attempts to circumvent the policy: women pregnant with supernumerary children would sometimes leave their homes to hide out with relatives in other areas; others who had been fitted with IUDs had them surreptitiously removed by quack doctors; and for those who were determined that at least one of their legal births be a boy, the practice of female infanticide became a final option.

The first indication that female infanticide was being practiced came from the Chinese press in late 1982. Major newspapers began publishing accounts of parents killing their girl infants and toddlers, as well as reports of wife abuse for women who had given birth to daughters. The reports were in exposé form and tended to focus attention primarily on the individual culprits (usually fathers). Soon, official bodies began to speak out in the media: women's organizations sponsored activities to expose and stamp out the practice. Even then-Premier Zhao Ziyang warned against female infanticide in his address to the National People's Congress in December of 1982: "The whole of society should resolutely condemn the criminal activities of female infanticide and maltreatment of the mothers, and the judicial departments should resolutely punish the offenders according to law."[92]

Sex ratio statistics showed that the practice was having a significant impact in many areas. Average statistics per thousand put the ratio for 1981 at 108.5:100 (male to female births).[93] Whereas, the internationally-accepted norm that western demographers have

89. W. Hatch, *Abortion, Infanticide, Coerced Contraception Now or Starvation Later?*, Seattle Times, Jan. 12, 1986, at A16.

90. U.S. journalist Michael Weisskopf reported eyewitness accounts of "abortion posses" in Guangdong province that scoured the countryside for expectant mothers, whom they proceeded to truss and handcuff for delivery to rural clinics. He further reported that in 50 days, 19,000 abortions were performed in the county of Dongguan. Weisskopf, *Abortion*, *supra* note 87, at A-10.

91. *See* Weisskopf, *Abortion*, *supra* note 87, at A-20; and Potter, *supra* note 78, at 15-17. In one test case in Zengbu brigade in 1981, a couple who refused to undergo an abortion were told that the husband's brothers would have to share the punishment by having their homes boarded and sealed. Finally, they were warned that the farmland which had been distributed to them would be taken back, leaving them no means with which to make a living. Potter at 15-17.

92. *Zhao Ziyang Reports on Five-Year Plan to N.P.C.* (news release of Xinhua News Agency, Dec. 13, 1982).

93. CROLL, DAVIN & KANE, *supra* note 1, at 62.

calculated is 106:100. These figures represent a significant change over the figures of two earlier censuses: 105:100 for 1953, and 104:100 for 1964.[94] Western analysts asserted that the 1981 ratio figures indicated that approximately 230,000 female babies had been "lost" that year.[95] Reporting that some areas had disproportions between boys and girls of 5:1, the People's Daily noted that the major reason for the skew was "man-made: the drowning and abandonment of baby girls."[96] This degree of extreme disproportion was more likely to occur in economically backward areas, such as Anhui province, or areas of unusually high birth rates in general, such as Guangdong.[97] Indeed, results from the 1982 census show a sex ratio of 110.5:100 for Guangdong, and 112.5:100 for Anhui — far beyond the natural norm.

Stillborns or infant deaths within three days after birth are not taken into account in birth registration,[98] thus the statistics indicate that a significant number of females missing from the ratio were either stillborn or died within three days of birth. It is also possible that a limited number of newborn girls go unregistered, so that parents may try for a boy "legally" next time, or, if the girl is supernumerary, so they will not be sanctioned by the authorities. Yet a peasant couple would have difficulty avoiding registration: communities are dense even in the countryside, and people are well aware of each other's activities.[99] Rural officials charged with maintaining birth quotas would also report peasant attempts to circumvent registration; thus unregistered females could only account for a fraction of those who should have been born.

B. Criminal Sanctions for Female Infanticide

When then-Premier Zhao Ziyang termed the practice of infanticide "criminal" in 1982, many believed that China would apply criminal sanctions against those responsible, and in a number of cases, the culpable were indeed punished. One father who

94. M. WU, L. COPPER & G. CHANG, HUMAN RIGHTS IN THE PRC 261 (1988).

95. Report from Reuters, Int'l News, Nov. 1, 1985.

96. Renmin Ribao [People's Daily], Apr. 7, 1983, at 4.

97. *See* CROLL, DAVIN & KANE, *supra* note 1 at 62-63; Potter, *supra* note 78, at 17. Croll also notes that Anhui province has a long history of infanticide, which can be seen in the number of unmarried men over the age of 40. CROLL, WOMEN & RURAL DEVELOPMENT IN CHINA 133 (1985) [hereinafter CROLL, WOMEN & RURAL].

98. CROLL, WOMEN & RURAL, *supra* note 97, at 133.

99. Rural families who feel they have sacrificed by limiting their own births are especially keen to see that the policy is enforced uniformly, thus a couple who attempts to keep a child unregistered may well be subject to censure by the community. Likewise, local officials who seek to make special exceptions for themselves, their families and friends, would also be subject to this pressure. Such officials would be successful only to the extent that they were able to somehow appease a significant sector of the community. *See* Potter, *supra* note 78, *passim*.

smothered his two-year-old daughter was sentenced to 13 years in prison,[100] another received 15 years for killing his four-year old daughter.[101] One father and maternal uncle of a newborn girl received sentences of four and three years respectively.[102] Another father in Jiangxi drowned his fourth baby daughter in a bucket, and was jailed along with his sister-in-law for three and four years, respectively.[103]

In April of 1983, Kang Keqing, the head of the All-China Women's Association assured the public that the Party and the government had dealt with such cases sternly;[104] moreover, in the summer of that year, the Higher People's Court directed the lower courts to protect the rights of women and children and "sternly punish" those who harmed them.[105] Yet the bulk of reports tended to show that in fact very few parents were being held criminally liable. Local officials were either unable or unwilling to enforce sanctions against infanticide.[106]

The sheer numbers involved could well make detection of the guilty difficult: a newspaper in Guangdong province reported that in one area, hundreds of female infants were being killed per county;[107] one reader from a commune in Jiangsu province noted that abandoned girl babies were increasing in her district: they were left in fields, under bridges, in public toilets.[108] Moreover, the circumstances surrounding birth do not work in favor of detection: many rural births are in the home, assisted by family members. If a couple has decided in advance not to keep the child if it is a girl, they will often place a pot of water nearby, and after delivery, drown the infant and later report it as a stillbirth.[109]

Yet in spite of the apparent difficulty in detecting female infan-

100. Report from Reuters, N. Eur. Serv., Jan. 12, 1983.

101. Report from Reuters, N. Eur. Serv., Feb. 5, 1983.

102. *Jiangxi Province Sentences Killers of Infant*, (Xinhua News Agency, Apr. 7, 1983).

103. Report from Reuters, N. Eur. Serv., Mar. 14, 1983.

104. *All China Women's Federation Standing Committee Meets* (Xinhua News Agency, Apr. 17, 1983).

105. Wren, *Chinese Break up Abduction Ring*, N.Y. Times, July 28, 1983.

106. Article 15 of China's Marriage Law expressly forbids infanticide: "Infanticide by drowning and other acts causing serious harm to infants are prohibited," but states no specific term of punishment. In the context of female infanticide, officials have only cited article 15 as the relevant statute (as opposed to provisions in the criminal code against homicide), which further indicates that infanticide is seen as being distinct. THE MARRIAGE LAW OF THE PEOPLE'S REPUBLIC OF CHINA, 10 (Foreign Languages Press 1982).

107. Christian Science Monitor, Apr. 11, 1983.

108. Christian Science Monitor, Apr. 11, 1983.

109. Oka, *Battling Bias Against Girls*, Christian Science Monitor, Apr. 11, 1983. Historically, drowning is by far the most common form of infanticide (as practiced by parents or other relatives) in China; in fact, the term for infanticide *ni ying* means literally "to drown [the] infant."

ticide, family planning cadres have had significant and sometimes notorious success in controlling *birth rates*. Birth control and pregnancy are monitored on an individual basis; approvals for birth are issued, sanctions for supernumerary children are regularly enforced, and abortion and sterilization mandated. If these local bodies are thus able to successfully monitor fertility, they should also be able to detect patterns of female "stillbirths" as pretextual infanticides.

One reason for their apparent failure to do so is that some local officials are simply unwilling to enforce the law against infanticides. The All-China Women's Federation head Kang Keqing noted in September of 1983, that women would have to unite to lobby for the investigation and prosecution of problems endangering them and their children,[110] thus suggesting that local and national enforcement bodies were insufficient. Other reports have noted that officials are reluctant to prosecute. Li Menglin, the vice-chief of the All-China Women's Federation of Anhui province (a province historically noted for its high incidence of female infanticide) stated that despite the fact that many drownings and abandonments had been reported in that province in 1983, none of the findings were pursued by law enforcement authorities.[111]

In the southern port of Zhanjiang, deputy family planning director Wang Lianzhang noted that 12 baby girls had been killed and 17 abandoned in that city in 1982, but that all of the parents had merely been criticized. He stated that the cases were "difficult to investigate," and authorities had "failed to find convincing evidence."[112]

Local officials may well be unwilling to prosecute female infanticide because they sympathize with the culprits and fail to see the practice as a serious crime. One report lamented this phenomenon: "What is more surprising is that some cadres in the countryside even support and sympathize with such criminal acts, saying that 'people naturally want a boy, not a girl, since they are told that they may only have one child.' "[113]

Nor is it surprising that rural officials would tolerate the exercise of the traditional cultural norm of male preference, so long as it functions to reinforce rural economic development.[114] Given these

110. Report from Xinhua News Agency, Sept. 2, 1983.

111. Weisskopf, *China's Birth Control Policy Drives Some to Kill Baby Girls*, Wash. Post, Jan. 8, 1985, at A-10, col. 2.

112. *Id.*

113. Oka, *Battling Bias Against Girls*, *supra* note 109.

114. Since China's shift from collectivized farming to the individual family "responsibility system" in the late 1970's, agricultural output has risen dramatically. With the focus of production concentrated on the family unit, the desire for sons has intensified. The son's labor capacity ensures that a family's existing well-being and the traditional norm of sons supporting their parents in their old age guarantees their future survival. Thus, having at least one son is as much an economic necessity as it is a cultural one.

conditions, local officials could well believe that imposing criminal sanctions on parents would be inappropriate: unlike the sanctions applied to violators of the one-child regulations (fines, withdrawn social benefits, coerced abortions), prosecution of female infanticide would involve criminal liability and penal servitude. In the Chinese context, this result is not only harsh but disruptive to the stability of the rural economy and social order.[115]

Finally and most importantly, cadres have no incentive to stop female infanticide, because they earn bonuses for maintaining low birth rates and can be penalized for excessive births.[116] If such intervention would either disrupt or conflict with other government policies (e.g., population control and the rural responsibility system), then an official would be unlikely to intervene unless given clear and vigorous orders to do so by the central government.

C. Central Government Response to Female Infanticide

The central government however has instead maintained a high degree of ambivalence towards the phenomenon of female infanticide. Female infanticide is to a great extent the inevitable by-product of two fundamental policies: the rural responsibility system and the program of population control. Because the government has been reluctant to sacrifice gains made in either of these two areas, its attempts to wipe out infanticide have appeared contradictory and half-hearted.

The government's first response was the anti-female infanticide media campaign that lasted from late 1982 until the summer of 1983. Chinese leaders have often sought to alter societal conduct through educational campaigns, rather than through legal sanctions, especially when seeking to alter family norms.[117] Although these campaigns may include examples of individuals who incur

115. Confucian tradition accords greater value to the life of a senior adult as opposed to a junior (child); other traditional corollary norms that allow parents broad authority over their children and that value sons over daughters converge with the rural economic structure and government population limits to lead many to tolerate female infanticide. Given these conditions, female infanticide is probably perceived as less disruptive to the rural social order than criminally punishing guilty parents, who are responding in a traditional fashion to forces that leave them few viable options.

116. S. Mosher, *In Human Rights, China Remains in the Maoist Era*, Asian Studies Center Backgrounder 30, Heritage Foundation Reports, June 19, 1985.

117. Traditional Confucian principles hold that human nature is basically good and that except in extreme cases, people should be taught moral integrity through education and example, instead of through punishment. Examples of modern educational campaigns in the family context include: the post-Liberation "swallowing bitterness" campaign for women (CROLL, WOMEN & RURAL, *supra* note 97, at 10-11); the various movements surrounding the Marriage Law of 1950 which attempted to expose and combat the gender and age inequities of Confucian norms (C. LEMIEUX, LA CHINE: UNE HISTOIRE DE FAMILLE 65 (1984) [hereinafter LEMIEUX]); the educational campaign that accompanied the Great Leap Forward in the late 1950's (CROLL, DAVIN &

some form of punishment for their immoral behavior, such exposure is often primarily didactic: people should learn from these examples and modify their behavior accordingly.[118] But this does not mean that the punishment inflicted on the publicized examples will be applied universally.

In keeping with this didactic form, the anti-female infanticide campaign highlighted numerous cases of parents who were convicted and sentenced to prison terms.[119] The drive also publicized personal accounts of women who had been abused, divorced, or abandoned for bearing daughters; stories of female toddlers who were maimed by their fathers; reports of black marketeering in baby boys. Editorials harshly condemned both female infanticide and the corollary phenomena such as wife abuse, and pleaded with readers to desist from and condemn such practices.

The female infanticide campaign ended abruptly in the summer of 1983, soon after Western media had picked up the stories of infanticide, provoking strong criticism abroad against China's population program. In September of 1983, Kang Keqing of the All-China Women's Federation announced that the country would be launching a nationwide law publicity month during the upcoming winter or spring to focus attention on the rights of women and children.[120] But the campaign never materialized; instead, other campaigns occupied the political and social agenda for the ensuing months.[121]

Instead, the central government shifted its approach and sought to control the incidence of female infanticide by relaxing its one-child policy to allow more people to have second children. It issued an important circular in 1984 (Circular No. 7) which prohibited local officials from using coercive means to achieve birth targets.[122] Reports from Shanghai, Hunan, and other areas indicated that guidelines for birth control had been loosened.[123] In

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KANE, *supra* note 1, at 49-50); the "Pi-Lin, Pi-Kong" [Criticize Lin Biao and Confucius] campaign of 1973 (CROLL, WOMEN & RURAL, *supra* note 97, at 51-53).

118. A common Chinese expression embodies this phenomenon: *Sha ji xia hou* [*Kill the chicken to frighten the monkey*], the notion being that an effective means of gaining broad social control is to inflict punishment selectively on a few examples; the mere *threat* of punishment is sufficient.

119. *See supra* notes 100-104 and accompanying text.

120. *Rights and Interests of Women and Children Should Be Protected, Says Women Leader*, (Xinhua News Agency, Sept. 1, 1983).

121. Most notably, the Anti-[Western] Spiritual Pollution campaign that began in late 1983; the Party Rectification campaign; the Anti-crime campaign, wherein hundreds were executed for crimes including murder, rape, kidnapping, larceny and theft, but apparently none for infanticide.

122. Ye Yangzong, *Dangdai Nongmin*, *supra* note 86, at 28, 31.

123. In March of 1985 Li Jieping, the head of the Shanghai Planning Office noted that 20% more couples in rural areas surrounding Shanghai would be allowed second children under liberalized guidelines. Reuters News Agency, Mar. 3, 1985.

June of 1984 Shen Guoxiang, an official from the China State Planning Commission announced that peasants in Guangdong province could have a second child if the first were a girl.[124] A year later, Shen again announced that central government authorities had decided to relax the one-child limit in rural areas "in order to make our policies more rational and acceptable to our people."[125] The central government would continue to fix quotas for the number of births allowed for each of China's 29 provinces and regions, but these bodies would be able to relax their regulations within those quotas.[126]

Evidence up through 1986 continued to show that the government had in fact made a policy decision to loosen population control in order to discourage the practice of female infanticide. In November of 1986, Susan Greenlaugh of the Population Council was reported as saying that China's population policy had been moderating since 1984 due to popular resistance. A limited survey of Chinese localities showed a decrease in the number of abortions between 1984 and 1985.[127] Moreover, statistics released by the State Statistical Bureau showed that there had been a significant increase in population growth over previous years: a 1.3% increase for 1986 as compared with an average of 1.2% for the years 1980-85.[128] The birth rate also jumped from 11.23 per 1,000 in 1985 to 14.8 per 1,000 in 1986, exceeding the government's estimate.

Yet the government's birth control policy again changed dramatically later in 1986, when in response to these increases, it launched a new effort to tighten rural population growth. A series of newspaper articles and circulars expressed fears that family planning regulations were being applied too loosely and that rural cadres had relaxed regulations too far.[129] A report from the U.S.-based Chinese language magazine *China Spring* noted that coerced abortions, sterilization, and extreme fines were the rule, but gave no spe-

124. Clift, *China Relaxing One Child Family Policy*, (Reuters News Agency, June 24, 1984).

125. Mann, *China Eases Rule Limiting Rural Couples to One Child*, Los Angeles Times, May 12, 1985.

126. Some speculated that many areas would still be able to meet their quotas because economic policies would encourage peasant migration to urban areas. *Id.*

127. *Who Lost China*, *supra* note 87.

128. Ban, *China's Baby Boomers Spawn a New Boom*, Christian Science Monitor, Feb. 18, 1987, at 8.

129. Mann, *China Tightening Rural Population Control Program*, Los Angeles Times, Sept. 27, 1986, at 14. An article in RENKOU YANJIU [POPULATION RESEARCH] also mentions Circular No. 13 issued in 1986, calling on renewed efforts to uphold the one-child policy and to allow second births only in situations where couples faced "real difficulty." *Jiaqiang Jihua Shengyu Jiceng Guanli, Jinyibu Yange Kongzhi Renkou Zengzhang [Strengthen the Fundamental Level of Birth Control Management in Order to Further Control Population Growth]*, 1 RENKOU YANJIU [POPULATION RESEARCH] 51 (1988).

cific figures or locations.[130]

Regulations for some provinces tightened restrictions and fines. Another *China Spring* report in 1987 excerpted birth control regulations for rural areas outside the city of Guangzhou, in southern Guangdong province. Its provisions allowed for second births, but only according to strict conditions; moreover, the regulations also seemed to envisage some degree of tolerance for female infanticide. The regulations noted that rural women could have second births if undertaken at least four years after their first birth, conditioned on prior approval and agreement to have IUDs inserted within four months of their second birth: if they subsequently refused the IUDs, they would be required to undergo tubal ligation. Moreover, women who refused to have IUDs inserted after their first births would be fined 20 *yuan* per month until they agreed to do so. Couples who persisted in giving birth to a second or third child illegally would have their government-allotted land confiscated and their social benefits cut off. They could recover allocated land and benefits only four years after either spouse in the couple underwent sterilization. Fines would also apply to illegal second and third births, 2,000 and 3,000 *yuan* respectively; but these could be reduced by 50 to 80% if they agreed to undergo sterilization.

Perhaps the most interesting provision is Section 7, which imposes a fine of 300 *yuan* on illegal births where the infant dies within three months.[131] Thus, parents could conceivably kill an illegal infant daughter in order to try again later for a son, and pay only a fraction of the fine. As one township director noted, "No one wants to pay a fine for a girl."[132]

Other reports show that during the past few years, many local leaders have succeeded in tightening compliance by instituting a system of contracts, whereby local cadres make agreements with the local leadership to limit the population of their given sector to a specific number. Cadres are subsequently given cash awards for their success or docked a pre-determined percentage of their wages (or even fired in some cases) for failure to meet a target range. In one jurisdiction, after implementation of the system, 99.15% of the population target was met, as opposed to 82% in the previous year.[133] This kind of system has great potential for achieving target

130. Bao Fu, *Zhongguo Dalu de Qingpo Duotai he Niying* [*Forced Induced Abortions and Infanticide in the Chinese Mainland*], 37 ZHONGGUO ZHI QUN [CHINA SPRING] 42 (July 1986).

131. *See A Series of Provisions*, *supra* note 45, at 79.

132. Weisskopf, *China's Birth Control Policy*, *supra* note 111, at A-10.

133. *Ba Jingzheng Jizhi Yinru Jihua Shengyu Guanli Tixi* [Introducing Competitive Mechanisms into the System of Birth Control Management], 3 RENKOU YANJIU [POPULATION RESEARCH] 51-52, (1988). The municipal government of Dingzhou noted that over 33% of the population in its jurisdiction had contracted such birth plans. *See*

numbers, yet it also sets the stage for tremendous abuse: the concentration of power together with the high stakes rewards and sanctions for local cadres may well lead many of them to use any coercive means at their disposal to get the desired result.

The government has also tightened control on ethnic minorities, who, prior to 1988, were free to have as many children as they wished.[134] In the northwestern province of Xinjiang, minorities of Turkish descent in urban areas now are limited to two children, and rural families are limited to three or four in exceptional cases.[135] And in January of 1988, the government announced new regulations for five provinces (Zhejiang, Guangdong, Fujian, Qinghai, and Yunnan) to enforce stricter rules among self-employed persons and laborers who had recently moved to those areas.[136]

Strict government control of births appears to have continued up through late 1989. In addition to infanticide, infant abandonment has again become a common phenomenon, at least in Southern China. A survey conducted in 1989 by various government organizations in Guangdong province showed that hundreds of infants and toddlers had been abandoned in a sample area of the province from 1987 to 1989. Based on this sample, one analyst projected that actual infant abandonments for the entire province of Guangdong probably reached 10,000 per year for this period.[137] The report noted that 90% of those abandoned were female, and 22.6% were deformed or handicapped. The infants were left in front of residences and public security offices, in train stations and hospitals, and in fields. When feasible, public security officials attempted to return infants to their parents; otherwise, they were turned over to the ever more crowded Social Welfare Institute. As in the cases of infanticide, officials were reluctant to apply sanctions to the abandoning parents — in some cases local cadres in fact assisted such abandoning parents, by shielding them from other (provincial or municipal) government officials who were attempting to

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also Jiaqiang Jihua Shengyu Jiceng Guanli, Jinyibu Yange Kongzhi Renkou Zengzhang, supra note 129, at 51-52.

134. Until recently, the government had exempted ethnic minorities from population controls as part of a greater minority policy to inhibit the decline (in growth rate) of these groups. This concession in population control for ethnic minorities actually impacted little on the overall growth rate of the nation and stood in contrast to other government policies that deprived minorities economically vis-à-vis the majority *Hans*. Most notably, land reclamation and allocation by the government has resulted in increasingly greater numbers of minorities being moved to more mountainous, less arable farming areas.

135. Roche, *Chinese Moslems Told Not to Oppose New Family Planning Rules*, (news release of Reuters News Agency, June 18, 1988).

136. Holley, *China Offers New Drive to Prevent Unapproved Births*, Los Angeles Times, Feb. 16, 1988.

137. Bu Xiaoyong, *Guangdong Meinian Yiwan Qiying* [*Ten Thousand Abandoned Infants per Year in Guangdong Province*], DONGXIANG 20 (Dec. 1989).

trace the parents.[138]

D. State-Sanctioned Infanticide

There is some evidence that in certain limited areas the Chinese government itself has sanctioned and even ordered doctors to perform infanticide on unauthorized infants during or immediately after delivery. It is important to note that these reports are scattered, uncorroborated, and sometimes published by media that maintain a staunch anti-[mainland] China political agenda; while they bear important anecdotal significance, it is unlikely that such phenomena are the product of government policy. In one *China Spring* article, the Chinese doctor Bao Fu said in 1986 that women admitted to hospital delivery wards in China were required to present birth authorization cards. If they failed to do so, the delivering doctor had to ensure that the newborn did not survive. He explained that infants were either smothered, drowned, injected with formaldehyde or with alcohol, and subsequently reported as "stillbirths." If doctors refused to cooperate with its policy, they could be demoted, or dismissed. He described an incident in the southwestern city of Kunming, where the father of one such "stillbirth" murdered the doctor he thought was responsible. Fearful of similar reprisals, the hospital staff subsequently refrained from performing infanticide for several months.[139]

Another doctor in Shanghai told a visitor in 1984 that she and other doctors in that city were required to either terminate all illegal (supernumerary) births or risk losing their jobs.[140] According to U.S. journalist Michael Weisskopf, reports of the same phenomenon have come from Inner Mongolia, Xinjiang province, and the city of Guangzhou.[141] Although there are no indications of the numbers involved, one doctor from Hohhot, Inner Mongolia said that hundreds of infants were killed in his hospital every year, usually by injecting formaldehyde in the cranium as the fetus emerges from the mother's cervix. "If you kill the baby while it's still partly in the womb, it's considered an abortion, if you do it after birth, it's murder," he said.[142] There was no indication that this distinction was enforced in any of the reports, but the article by Bao Fu indicated that doctors had been moving away from post-birth infanticide methods, such as suffocation and drowning, to other techniques that would terminate the infant's life just *prior* to birth

138. Penal Code provision 183 requires up to five years imprisonment for extreme neglect of children. *Id.*

139. Bao Fu, *Zhongguo Dalu*, *supra* note 130, at 42-44.

140. Ao Shuang, *Dalu Jiezhi Shengyu Qiwen* [*Unbelievable Stories About Birth Control in the Mainland*], 80 ZHENG MING 37 (June 1984).

141. Weisskopf, *Abortion*, *supra* note 87, at A20.

142. *Id.*

(injection of formaldehyde or alcohol into the infant's cranium), thus suggesting that the distinction has some importance.

E. Conclusions

Since the late 1970's the government has expressed a strong interest in controlling the number of births and the conditions surrounding new births. China's current population of 1.1 billion would expand to unmanageable proportions if not controlled, severely straining limited resources and social services.[143] Since 1949, the government has made significant progress in improving the quality of life: starvation and widespread disease have been virtually eliminated, and universal health care and education are the norm. In order to maintain and improve the quality of life, the government has identified strict birth control as imperative. One county birth control leader in Guangdong province summed up the urgency of population control as follows: "If we don't stop the population from growing, there will be what we call a human explosion calamity. People will be reduced to eating people. There will be no land and no houses."[144]

Moreover, the government recognizes that limiting population growth is impossible if fertility decisions are left to the individual. Particularly in the countryside, couples have a strong interest in having large families to ensure greater productivity and financial security. The abstract and long-term threat of a swelling population is an insufficient disincentive for peasants who can see the immediate benefits of having more children. When these opposing state and private interests have collided, the government has attempted to control the conflict by imposing economic incentives and sanctions. Economic sanctions proved to be an inadequate deterrent to population growth though, as peasants have been willing to forfeit significant sums to have more children. Consequently, the government has had to intervene more directly, by mandating abortion, sterilization, and sometimes perhaps, infanticide.

The severity of this state intervention shows starkly that the government sees its interest in ensuring the long-term welfare of its populace as superior to both the interests of parents in having supernumerary children, as well as to the interests of the unauthor-

143. *Tian Jiyun Attends Birth Control Meeting*, China Daily Jan. 1989, at 13.

144. Potter, *supra* note 78, at 13. The specter of people "eating people" is a hyperbolic image that crops up in Chinese literature and the popular media, made famous by the writer Lu Xun's 1918 short story *Diary of a Madman*. While Lu Xun's theme had more to do with the moral bankruptcy of traditional Chinese society, the term "eating people" as used in contemporary Chinese media usually refers to the inhumane and chaotic state of affairs that would ensue if conditions and resources were to become too tight. The starvation and hardship that China endured during the first half of the 20th century is still very much a part of the collective memory.

ized fetuses and neonates themselves. This suggests that the state at least, sees fetal and infant life in contextual terms. Potter has noted, "the idea of an unborn life in and of itself, without regard to its social significance, is alien and irrelevant in Chinese social thinking," but when "appropriately and legitimately conceived, [it] should be protected. It is only if the couple violates the legal restrictions on the numbers of births that the child can be allowed to die."[145]

The phenomenon of female infanticide practiced by parents shows that they too see the value of infant life as conditioned on its social implications; yet here, the condition is not whether the child is authorized by the state, but rather, whether it is male or female. When women in Dongguan County, Guangdong province were persuaded by local officials into undergoing abortions in the early 1980's, their reactions varied dramatically depending on the gender of the child: they were extremely upset if it were a boy, but not so if it were a girl.[146]

Thus, the state has been willing to terminate fetal life if it is unauthorized and thus in conflict with its goal of population control. Yet when the infant is an *authorized* but unwanted (by her parents) female, the state has maintained (at least rhetorically) that she deserves full protection.[147]

The government has sought to change this cultural norm of female infanticide perhaps not so much because it views the extermination of infant life as an evil per se, but rather because the practice runs counter to other values that have been a traditional part of the Communist Party's progressive ideological agenda, namely, equality between the sexes and equality and autonomy of individuals within the family context.[148]

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145. Potter, *supra* note 78, at 6, 17. The Chinese are hardly unique in viewing unborn life in contextual terms. Western cultures generally attach differing degrees of significance to the fetus depending on a variety of factors: its stage of development; the age, health, economic or marital status of its parents; the conditions of its conception (whether consensual or through rape or incest); whether it possesses physical or mental defects.

146. Potter, *supra* note 78, at 17.

147. *See* Zhao Ziyang's speech, *supra* note 92 and accompanying text; *see also*, Potter, *supra* note 78, at 18.

148. Female infanticide is part of an entire Confucian tradition of male supremacy that the Communist Party has intermittently tried to dismantle since the Party's inception. In fact, the Party gained much of its early support from women and young people who suffered under the old system (LEMIEUX, *supra* note 117, at 56); the party has continued to derive ideological legitimacy from its efforts to promote equality between the sexes. Much of the anti-infanticide literature has focused on the harsh implications of the practice for women: stories have described wife abuse, husbands murdering or divorcing their wives for bearing daughters, in-laws pushing daughters-in-law to suicide, women having emotional breakdowns or committing suicide after their husbands have killed their daughters, women being kidnapped for sale as brides, etc.

The practice of female infanticide also threatens the future viability of marriage and family: dramatically skewed sex ratios mean that a large group of men will be doomed to bachelorhood in future years. Media exposure of female infanticide has highlighted this aspect of the problem, hoping to appeal to the culture's deep sense of familialism. Yet China has often known periods where poorer men were unable to afford to marry and reproduce. Historically, the practice of female infanticide and the sale of women as prostitutes and slaves made fewer women available as wives. Many areas of relative poverty have long experienced this effect of skewed sex ratios; the province of Anhui, where female infanticide has been widespread, has long been noted for its large numbers of older bachelors.

Skewed sex ratios do translate to a greater demand for women, and the impact has been evidenced by the fact that women in rural areas are marrying at an earlier age, and more women and fewer men are seeking divorces in recent years.[149] Yet it is doubtful that the demand will make daughters more desirable than sons if couples are still limited to one child. Although a couple may recoup a substantial bride price for their daughter upon marriage, that amount still does not approach the value of an old age support system, which is what a son can offer.

While the government has taken a strong rhetorical stand against female infanticide, its instrumental attempts to change the norm have been less than vigorous. It has opted for education over prosecution, limited population policy readjustments, as well as the following measures: the promotion of uxorilocal marriages, laws providing for equal inheritance among the sexes, and equal affirmative legal duties on the part of both men and women to support their parents in old age. Nevertheless, existing norms still appear intransigent to these measures. Up through early 1990 reports of female infanticide have continued to come out of China; in the southern province of Guangxi, the male-female birth ratio was 121:100. One government official warned that men might outnumber women by 40 million in 20 years.[150]

The government could undertake more serious measures, but only at the expense of other priorities. In the hierarchy of policy goals, it has identified the rural responsibility system as its jewel in the crown of breakthrough economic reforms. Because the shift to family-based farming has had such an immediate and dramatically

149. *1984-86 Nian Woguo Renkou Hunyin Zhuangkuang Qianxi [A Brief Analysis of the State of Marriage in our Country]*, 4 RENKOU YANJIU [POPULATION RESEARCH] 32 (1988).

150. *Surge in Girl Baby-Killing*, Chicago Tribune, Feb. 22, 1990, at 19. An earlier report noted that female infanticide was common even though the one-child rule was being regularly flouted in the countryside. *China Warned of Threat from Infanticide*, Daily Telegraph, Sept. 8, 1989, at 12.

positive effect on agricultural output, the government has been reluctant to interpose measures that would substantially thwart that output. Instead, it has shown a certain willingness to tolerate the reemergence of norms that have traditionally propelled family-based economic success (such as arranged marriages, bride prices, early marriages, male-preference), even though they may be in direct contradiction with the Party's own stated ideological principles.

Likewise, the policy of population control currently has top priority as a crucial assurance that economic gains and social services not be undercut by a swelling population. And although the state has relaxed birth control regulations somewhat, they still remain much too strict for most peasants' expressed wishes.[151]

In his article on state abortion and infanticide, Bao Fu reported that China's senior leader Deng Xiaoping gave the green light in 1981 to local government bodies to implement population regulations, regardless of their severity, conveying the message, "So long as you bring the population down, I don't care how you do it."[152]

Thus, it would seem China has determined that at least for now, economic prosperity and stability are the important priorities that will have to take precedence over any policy of government intervention to redress inequities in the family context. The authorities perhaps believe that their population control policy is intrusive enough and that any further intervention to control parental gender selection through infanticide would evoke popular resistance. Such a tack could also jeopardize the success of the rural economic policies and social stability.

China's leaders have traditionally been wary of intervening in family matters. Since coming to power, the Communist Party has been more ambitious in its intervention, yet it has nearly always encountered fierce reactions when it attempted to impose new, non-traditional norms on the family.[153] The Marriage Law of 1950, with its provision of free choice, met with much hostility in the countryside: unilateral divorces, forced remarriages, public critiques of wife-abusers and suicides resulted from the leadership's at-

151. In a population survey published in RENKOU YANJIU [POPULATION RESEARCH], 81.5% of peasant couples said they wanted two to three children; 45.4% said they wanted three or more; and only 3.7% said they were satisfied with one child or less. All those who wanted children wanted at least one son. Ye Yangzong, *Dangdai, supra* note 86, at 29.

152. Bao Fu, *Zhongguo Dalu, supra* note 130, at 37. This remark attributed to Deng was supposedly communicated through then-Chairman of the State Population Council, Chen Muhua.

153. M. Palmer, *The People's Republic of China: Some General Observations on Family Law*, J. FAM. L. 41, 43 (1986).

tempts to redress the inequities of existing norms. Reaction was so intense that the government postponed implementing the law until 1952.[154] The government's uneven success in shaping family norms has also worked to reinforce its traditional reluctance to intervene in family matters.

Family reform has often taken a back seat to economic reform when economic needs appear pressing. The social gains made by women in the Great Leap Forward were shelved and remained so long after the leadership had addressed the period's urgent economic consequences.[155] Similarly, family reform is wholly dependent on a larger political and ideological agenda. China's current leaders have repudiated many of the ambitious social and political ideals that characterized the society under Mao Zedong, and they have instead focused their energies on more practical but narrow economic goals, holding that material progress will lead the way for greater social progress. Certainly, the more that China's leaders see themselves as pragmatic engineers of successful economic policy, and less as utopian architects of a greater social policy, measures to redress the inequities of traditional family norms will surface only to the extent that they further greater economic goals.

154. *See* CROLL, WOMEN & RURAL, *supra* note 97, at 60; LEMIEUX, *supra* note 117, at 65.

155. Although the Great Leap Forward was an economic debacle, it put millions of women to work and resulted in the collectivization of education and childcare. *See* LEMIEUX, *supra* note 117, at 69.