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ARD-8
Sun v. Wang: an Undivorce

25th May 1965

Mr. Richard H. Nolte
Institute of Current World Affairs
366 Madison Avenue
New York 17, N.Y.

Dear Mr. Nolte,

The District People's Court for the Ts'ai Shih K'ou (Vegetable Market) District of Peking occupies a modern two storey building separated by a high wall and a nice garden from the typical old "hut'ung" or lane in which it lies. Except for the rather larger new building next door, which houses the District People's Council, it is a typical Peking lane, with single storey houses hiding behind high grey walls, all neatly capped with tiles and occasionally surmounted by trees which suggest pleasant little courtyards and gardens. The only special feature of this part of the city is its large Hui, or Chinese Muslim, population; over many of the doors are Koranic inscriptions, and not far from the Court is the imposing Arabian Nights mass of the Peking Mosque and Islamic Seminary.

Driving past the gatehouse of the Court enclosure, under the careful scrutiny of a white-coated civil policeman, and watched by a small knot of people, I felt a sense of satisfaction, even triumph. During four weeks in China, as a tourist but with a strongly expressed interest in Chinese law, and despite the efforts which I was assured were made on my behalf by the China Travel Service to secure contacts for me with legal circles, I had thus far been unable to visit either courts or lawyers in any of the cities I had passed through. Then one afternoon towards the end of my stay in Peking my interpreter told me that we would be going that afternoon to meet the officials of the Ts'ai Shih K'ou District Court and to attend a session of the Court's Civil Division to hear a divorce case. With my visit the next day to the Maritime Arbitration Commission of the China Council for the Promotion of International Trade it promised to be the climax of a lawyer's visit to China.

A district people's court is, in a large city like Peking or Shanghai, the court of first instance; that is, the lowest court in the judicial hierarchy, equivalent to the county (hsien) people's court in the countryside. With the exception of certain special classes of criminal cases, and perhaps some civil actions involving corporations, the district court has general jurisdiction over all civil and criminal cases brought before it. It is headed by a president and one or more vice-presidents, who are largely administrators, but who (according to the Organic Law of the People's Courts of 1954) have the additional very important function of scrutinising the judgments and orders of the court for legal errors before they become effective. The permanent trained judges of such a court are assigned to two divisions, one civil and one criminal, each of which, in the Ts'ai Shih K'ou District People's Court, had separate offices and courtrooms. On the bench these judges are joined in what is called the "collegiate system" in the administration of justice by the people's assessors, two in number for each case, who are men and women elected from the local citizenry to serve for two years in something of the role of jurymen, though in view of their long tenure, during which they are paid for their work and given some judicial training, they become far more expert than jurymen in a common law country.

For civil cases there is one form of quasi-judicial body which ranks below the district court. This is the conciliation committee, formed of ordinary citizens and working under the guidance of the people's court, but not forming part of it. Such committees have only an optional jurisdiction, for although social pressure can be put on a party to make use of them, he cannot be compelled to do so; but by all accounts they play an important part in the settling of civil disputes.

At the door of the Ts'ai Shih K'ou Court we were greeted by Miss Ch'en, a youngish cadre engaged in the administrative work of the court. Like all the officials of the court whom I saw, Miss Ch'en was rather well dressed by Chinese standards, in a tailored trouser suit of blue gabardine, a white blouse and leather shoes, marks of status which one begins to notice immediately in China. Leading us across the corridor and upstairs, she ushered us into the reception room, a standard feature of all institutional buildings in China, where we were greeted by the president of the court, a middle-aged man with thinning hair, also in blue wool, and his vice-president, a handsome woman of about forty, wearing two shades of grey. We all sat down to tea. Arriving at three in the afternoon, we had little time for discussion before the case started at half-past three, but I was promised further time afterwards. In place of a general introductory talk about the court, the president gave me some background information about the case I was to hear.

The petitioner was a woman named Sun Lan-chou, a twentysix year old administrative cadre in a factory. I noticed (and it may throw some light on their relationship) that she took advantage of the express provision in the Marriage Law which allows a wife to continue to use her own name. Her husband, Wang Lan-kuai, 33, was a man of similar cultural (i.e. educational) level, but employed as an assistant in a shop.

I was told that they had married in 1957, on the basis of what the president called free love, that is, by mutual choice and not as part of an arrangement made by their parents. They had two children, a boy of six and a girl of two. They had been happy together for a while. The wife was considered to be progressive from an ideological standpoint, but her husband lagged behind. The chief ground for divorce given by the wife was, in fact, the husband's feudal ideology. He had accused, scolded and even beaten her. There had also been serious differences of opinion on family and money matters. The couple's colleagues in the factory and the shop had tried to bring about a settlement of their differences on more than one occasion, but there was always further trouble, and the wife had applied for a divorce.



The president and vice-president of the Ts'ai Shih K'ou District People's Court outside the courthouse.

The judge in this case was to be Mr. Li Ch'uan-yan, assisted by two people's assessors, Mrs. Ma Yu-shuan and Mr. Ma Mu-ts'uan. I asked whether it was these same officials who had conducted the pre-trial investigations, and was told that this was so. "The judge and assessors have been to the factory and to the shop in order, in accordance with the principles of Chairman Mao's thought, to get the full facts from the friends of the couple. This investigation forms the basis for the rest of our work." Although the whole case had been started by the petitioner's letter to the Court, which she had written herself without any legal advice, from then on there were no written pleadings furnished by the parties to define the issues in the case, and it was not even necessary to get a written statement of the husband's wish to defend the case, let alone his grounds for doing so. Instead, the issues were unearthed by the Court's own investigations. The first step had been to go meet the petitioner at her place of work to ask her more questions. "In some cases we also try to meet the defendant, but not always immediately."

The president laid emphasis on a policy which has been much in evidence in the Chinese press in recent months, and which was specifically endorsed in the Report on the Work of the Supreme People's Court presented to the First Session of the Third National People's Congress in December 1964, the policy of the court going to the people rather than the people having to go to the court. "We like to go to the petitioner rather than summon her for examinations, as it disturbs her working life less, and also gives us a better picture of her. It is important to see the parties in their own surroundings." I asked whether there had been any conciliation proceedings: "Frankly, petitioners often give up their cases as soon as we start our investigations, but in this case there was no possibility of conciliation, for although the husband does not deny the charges against him, and even speaks well of his wife, she insists on a divorce."

We went downstairs to the room where the court's civil division sits. The plain white room, with windows on two sides, was furnished with three tables forming an open horseshoe, and with two chairs for the parties, placed in the middle so that side by side they faced the judges. Over the judges' table, which faced the door, was a portrait of Chairman Mao. The tables were covered with very fresh white sheets secured by drawing pins, I suspect put there for my benefit. There were no distinctions in the chairs to be occupied by the various officials, but on the judges' table there were little white painted signs in front of each place: Secretary, People's Assessor, Judge, People's Assessor. A covered spittoon by the door completed the furniture.

As we entered, five people, four women and a man, who were sitting at one of the side tables rose to their feet. The president motioned to them to sit down, and told me that they were, like myself, members of the public who had come to hear the case. They were all dressed in their best, I think, but with one exception they seemed to take remarkably little interest in what went on.

I asked whether we ought to stand up when the members of the court came in, but was assured that it was quite unnecessary, as proceedings were most informal; and I was welcome to use a camera.

The secretary, a rather striking young woman of about twenty, came in next with some files, which she laid in front of the four places. Apart from the contents of these files the room was entirely innocent of books of any sort. A moment later the judge and the two assessors came in. The judge was a middle-aged man with a shrewd, mildly humorous face and a patient, persuasive speaking voice. One assessor, a slightly younger man who spoke very little throughout the hearing, the other a middle-aged woman who gave the impression of being rather a forceful character. The judge told the secretary to start the case, which she did by reading out the names of the parties, after which she left the room for a moment, returning a moment later followed by the parties and the court policeman, who after somewhat unnecessarily showing them where to sit withdrew.

Mrs. Sun, the petitioner, looked younger than twentysix, with a round, rather attractive face and an "approved" short haircut with one small tuft of hair gathered by a ribbon. In her coloured but faded cotton padded jacket and denim trousers she might have just come from work. Her husband was a very mild looking, lean-faced man, also dressed in blue cotton working clothes and canvas shoes. The president told me that he had a good record for work in his shop. Both of them looked very composed as they sat facing the judge, placed rather close together perhaps by design, and throughout the hearing neither showed any trace of nervousness in the presence of the court. Both of them spoke very fluently, and with a good deal of repetition. (Coming as they did from a village in Hopei their accent made them quite incomprehensible to me, and even my interpreter was in difficulties.) In general, I thought, both of them succeeded in looking very impassive, though the wife at times looked a bit doleful, and at one time even dabbed her eyes with a handkerchief.

Having asked them both their names and some details of their age, nationality (both were Hans) birthplace, schooling and work, the judge told them his name and the names of his colleagues, and assured them that they were entitled to have the composition of the court changed if they suspected any of the members of partiality. They were also told to air their views fully, and that they were entitled to call witnesses if they chose to. Each said they understood.

The wife began her tale, which I give, English corrected, as it was translated to me.

"I got married in February 1957. I had been introduced to my husband two years earlier. Two years after the wedding we moved to Peking. Only a few days after we arrived he beat me. He had hoped for a different kind of girl as his wife, one with the old mentality who would be a good servant for him and his mother. He beat me because I came home late after attending a mass meeting to welcome Chairman Frol Kozlov of the U.S.S.R. to Peking. He had cooked a meal for himself but when I came in he said, 'There is no food for you.' I cried and he beat me. I was a stranger in Peking and had not been able to find my way home. I felt very lonely with no relatives nearby.

"There were other times when he beat me. The most recent was at the last Spring Festival (i.e. in late January). My mother's younger brother and his wife came to Peking and stayed with us for a time while she consulted a doctor about a disease. I was going to take her to my sister's place on one of the festival days, but when I went to get the money from my purse my husband snatched it away, scolded me and beat me. There had been so many occasions like this that I made up my mind there and then to get a divorce. There were continued quarrels and blows."

"How many children do you have?" asked the judge.

"A boy of six and a girl of two. My boy has lived with my mother-in-law in the country for three years now."

"What about your parents?" asked the male assessor.

"I have parents and a younger sister. He has parents too. The three of us live together - we put the child in a kindergarten in the daytime."

Woman assessor: "You must consider the question of the children very carefully. Have you done so?"

"Yes."

"And your parents - do they know?"

"Yes, I told them. They have no objections to what I am doing." (After a pause)
"You judicial workers have all been very kind, coming to the factory and to our house and looking after me, but I cannot change my mind."

Judge: "You want a divorce and he doesn't want one. What is the principal reason for your application?"

"I cannot work well, and there is no affection between us. This has come about by his beating me and scolding me. After I have borne his two children he still beats me and accuses me of being unfaithful, my feelings are hurt. I can't bear it any longer."

Judge: "Why does he beat you?"

"Once, when he was in the country for a while, one of my colleagues had a baby. I helped her to find a dry nurse, and finding that the baby had no new clothes I helped her to make some. These were good things that I did. I got home late to find him returned unexpectedly. He was sweeping the courtyard. He scolded me for neglecting the house, and he scolded the child, instead of being glad to see us after several months apart. I had bought him a new coat, but when I asked him to try it on he said he wouldn't wear anything bought by me, and he kicked me.

"Another time, I came back from work and he asked me to darn some of his socks. I had a lot to do, and I was going to a meeting later, but I finished one pair for him and said that I would do the other when I got back. He insisted that I should do the other immediately, and he wouldn't let me go to the meeting until I'd done it. Then I left for the meeting; when I got back we quarrelled again and he beat me.

"Once he sold a new bicycle soon after he had bought it. I asked him why he had done so and lost money, and whether he was trying to live as a capitalist buying and selling things. He said he just wanted to sell it, and then he started to beat me with a rolling-pin; but for the help of the neighbours he might have beaten me to death.

"Sometimes when the child makes a mess, he scolds me as though he has no responsibility for her at all. Yet if I criticize him he says, 'How dare you speak to me like that - I'll kill you!' Once, when I had bought cotton padded jackets for the children and myself, he objected to me buying the one for myself, though I needed it. We quarrelled again about that. He often finds fault with me like that, unnecessarily."

Judge: "You haven't got on at all well since 1957, according to what you say, yet you only made up your mind finally to divorce him this year after the incident at the Spring Festival?"

"Yes."

Judge (to the husband): "Now, what do you have to say to all this? What are your views?"

"Some of it is true, but not all of it."

"Tell us."

"I was married when I was twenty-two, in 1954. It wasn't a love match, but a feudal marriage arranged by our parents/¹ and I divorced two years later in 1956. I had known my present wife's elder brother when I was very young. Now I met him again and he introduced the two of us." (It was at this point that I thought the wife looked as though she might cry, but she didn't.) "This man urged us to marry. Her father thought she should marry, but not her mother. My parents didn't approve, for they were still opposed to the divorce. I told my mother that we would live in² the city after we married, not in the village./² After our marriage we were very affectionate and got on very well, for it was a free love match."

1. This kind of marriage was theoretically illegal after 1950.

2. Seemingly to avoid a scandal.

Judge: "You were a good couple?"

"When we first came to Peking I came on ahead and lived with my elder brother for a while, then she came and joined me. Once at that time I hit her because she upset a cooking-pot so that all the food was spoiled. I got angry and beat her."

"What about the bicycle?"

"I discussed it with her. I sold it to help my older brother with money - he was hard up. It wasn't as she said at all. She refused to sell it and complained. She is sometimes the one who scolds and accuses me. That bicycle affair took place in 1958, at the time she started work in the factory. Sometimes I beat her at that time because I suspected her of having a lover, but this was not justified. My colleagues at work criticized me over that, and I made a self-criticism for trying to run after shadows. Sometimes she worked hard and came home late, you see, that's why I suspected her. Later I found out she had been working late and was considered a good worker. It was wrong of me to beat her and I take the blame."

"Sometimes, though she was the one to start the quarrelling. Maybe she learned bad ways from me."



From left to right: Secretary, Assessor, Judge, Assessor, two members of the public.

Judge: "Tell us more about the bicycle."

"I wanted to sell the new one to buy two old ones, one for her and one for my brother. She wouldn't accept that, nor would she agree to walk to work or ride by bus and lend the bike to my brother."

At this point the judge asked about the incident at the Spring Festival, but he was so carried away by the matter of the bicycle that he continued to talk about it, while the wife made a note of something he had said.

"Later I bought a new bicycle again, a proper lady's model. I wanted to give it to her but my elder brother asked me to lend it to him, so I did, and we quarrelled again."

He began to criticize himself again at some length, while the vice-president leaned over to me and explained that all his self-criticisms in recent weeks had been quite an ideological step forward for him, according to the findings of the investigators, as previously he had not realized that he was at fault.

Husband: "Now for the Spring Festival."

Judge: "Tell us, did you beat her in front of the relatives?"

"When her uncle's wife was with us I sometimes bought good food specially for her; it's true I couldn't always find a nice word to say to her, but in my heart I really cared about her health."

Judge: "Tell us why you beat your wife."

"I didn't. I just gave her a push when she was standing on the steps. She tried to protect herself - and hit herself with her own fist."

Wife: "It wasn't like that at all."

Judge: "Why did you 'push' her, as you call it?"

"I didn't beat her, really."

The vice-president explained that when the investigations had first started the wife's forehead and the bridge of her nose still showed bruises, so that it couldn't have been an accident - and in any case there were neighbours who had seen the "push".

Woman assessor: "We are all waiting to hear why you did it. Is it true that you told her that if she went to her sister's she could never come back to your home again?"

"Yes, and I took her purse, too. I was criticized for it that same day by the neighbours."

Woman assessor: "Why do you think she wants a divorce?"

"It's her sister who wants her to divorce me."

Judge: "Why can't you two get along?"

There was no answer. The judge spoke again after a pause:

"These quarrels and beatings, did they happen often, or just once or twice?"

"Often."

"And you sometimes used a stick?"

"Yes."

"Do you still doubt her faithfulness?"

"No, not now."

Woman assessor: "Beating and quarrelling is just not good enough, is it?"

"No, I have a rough character, and not enough patience. This kind of behaviour is not in accordance with the new morality. But many people have helped me to see my wrongs, and I have come to understand how family quarrels can have a bad effect on productivity."

Male assessor: "If you understand that you ought to mend your ways, then what is the cause of your beating your wife? People have often criticized you, and your wife gave you many chances to reform, for it was only very recently that she sought a divorce. Why did you go on beating her when you should have reformed?"

"I know its very bad, I am bitterly ashamed of it."

Woman assessor: "You can air your views freely here, so tell us why you do it?"

"I have firmly corrected my errors by criticism, and I must learn to be a morally upright man. We've been married nearly nine years. There was a basis of real love, and there are two children. She works well. These are the reasons why I hope that there is no divorce - I don't want one." (After a pause) "I think her character could do with some polishing too, though."

Male assessor: "You say you have helped and supported her; tell us what you mean."

"She helps me a lot, I must say that first. But sometimes I want to get her special food, or I try to please her in other ways, but she always refuses. I am insulted, for I do it out of good will. When I took time off work for political study to raise my cultural level, she supported me. She has a higher level of political consciousness than I do. I sometimes criticize myself in front of her."

Woman assessor: "The trouble with you is that you only criticize yourself, you don't change your ways. That's no good at all. Beating is against the law in our country -- you've no right at all to beat your wife."

"Yes, its largely my fault."

The judge then asked the wife to reply.

"Some of the things he says are quite untrue. He often returned late at night himself - well after midnight. It wasn't always me who was late, as he made it sound. I remember coming at eleven or so, but it was not me who came in at two and three in the morning." (Then, speaking directly to the husband) "I told you

why I returned so late that time our factory had an outing, but you wouldn't listen. When I talked to the men workers at my factory, none of them saw anything at all wrong in my behaviour.

"And that pushing story, that wasn't from your heart, was it?"

Judge: "Is that all?"

"Yes."

Judge: "He beat you more than once, a serious matter, certainly. But you were often impatient with him, weren't you?"

"Yes, I wasn't always very calm."

Judge: "You may have been concerned about the low level of his political consciousness, but you don't seem to have found the right way of approaching him to raise it, do you?"

"That's true."

Judge: "Tell us of your own shortcomings."

"I can say I haven't done enough as a good wife for my husband's welfare and life generally, not enough to help him with his problems."

Judge: "We think you two had a good basis of affection for your marriage. You both struggled against the feudal point of view of your relatives, and you loved one another. Gradually you both developed shortcomings, but (turning with a slightly sharper tone to the husband, who averted his eyes) the fault is very largely yours, for your ideology contains remnants of feudalism. Accusing, scolding, beating, kicking, taking a stick to your wife - these are great errors. Of course we all know that it happens that there are contradictions between husband and wife, for people don't always agree, but you must discuss them. You certainly can't compel your wife to agree with you. Your actions are against Article 7 of the Marriage Law: 'Husband and wife are companions living together and shall enjoy equal status in the home.' If you beat her you're not letting her be equal, are you? According to Article 8,

husband and wife are bound to love, respect, assist and look after each other; you say she helps you a lot, but you just beat her at your will, don't you? You are older than she is, aren't you? You should be the one to know better.

"Sometimes your wife takes part in social activities. You say you support her, but in fact you don't at all in this respect. Once you asked her to darn your socks instead of going to a meeting - do you regard that as her duty in life, to mend your socks?

"You don't suspect her of unfaithfulness now, though you used to, quite unjustifiably. She's a good wife in that way. You've no grounds for criticizing her, though she has plenty of reasons to complain of you. But you don't consider her views calmly, you just beat her. Sometimes you did things she didn't approve of, lending bicycles to people and so on. We think you should resolve your arguments and problems by a thorough discussion. You're in duty bound to discuss things with her, aren't you, not just to regard yourself as always in the right? We are living in a socialist country, you know. We live in a new society, so how can we beat people? Naturally she opposes your attitude. What would you think if she were to beat you? You say you oppose a divorce, while she insists on it, but that's not enough. You have to give it serious thought, and we hope you do so." (To the wife) "Of course you have good reason to seek a divorce, but your husband has criticized himself very thoroughly, and it must take time for the results to show. Sometimes you have tried to help him, but you don't seem to have the right approach. We hope you give it serious thought."

The woman assessor then addressed the wife: "Sometimes you lost your temper with him. I gather you are a good worker. You can deal with the problems of your factory well enough, yet you can't deal with your own problems. We hope you give this some serious thought, for you shouldn't only think about his faults; he has his merits too, doesn't he? It's true he wasn't cured just by making his self-criticisms, but it takes time to reform. As we see it, the situation isn't all that bad. He didn't beat you all that often, did he?"

(To the husband) "Feudal remnants in your mentality, that's your trouble. Your self-criticism is not good enough, it's a case of words without deeds. You couldn't persuade your colleagues at work to your way of thinking by beating them, could you? Why pick on your wife? We hope you polish your character by reading the right books, then you will find a better way of expressing your views than physical violence."

At this point there was a hurried conference between the judge and the assessors. Then the judge asked the husband what he had to say about the future.

"I pledge myself never to beat her again. I will correct my attitude. If I beat her again, I ought to be punished by the state as a criminal."

"What guarantee can you give?"

"If we disagree and can't discuss things calmly, we can get our comrades on both sides to help us sort things out."

The judge now spoke to the wife: "Do you still insist on a divorce? What's your opinion about your husband's pledge? Can you wait for him to reform, and see how he behaves for a while? See if he turns over a new leaf? There is a good basis to your marriage, you know. Of course if he goes on beating you and behaving badly you would be able to petition again for a divorce. But we feel that you two could live in peace and improve your relationship."

The wife at this point consulted some notes that she had clearly prepared before coming to court.

"I understand what you say. A lot of people have helped us as you have. He said then that he would never beat me again, but he did, and I feel that this verbal pledge is not enough. I have a responsibility to help him, I know, and I am willing to do so, but I have some conditions to ask, and unless he accepts them I must have a divorce. (Reading)

First, you must not beat me; you must destroy those remnants of feudal thinking in your ideology. Second, you are to have the same responsibility for the children as me. I know you work hard, but so do I, and we should share the task of looking after the children, according to who

has the time. Third, we must pool our income and discuss together how to spend the money. We must discuss all important decisions fully. Fourth, we must both equally take care of our parents. Fifth, you must support my social activities, not discourage them. You are a hard worker, but you don't even understand the cause you are working for. I hope that you read some political books and raise your level of political consciousness, it may help you to correct your errors."

The judge repeated the five conditions to the husband and asked him whether he would accept them, while the wife dabbed her eyes a little with her handkerchief.

"Yes I agree."

Judge: "Then we will wait and see how you carry them out."

Wife: "If he beats me again I shall come back to court at the end of the month."

Woman assessor: "Yes, you can do that."

The judge addressed the husband gravely: "You are making a solemn undertaking in court. It's not to be taken lightly, do you understand? Beating is not allowed in our new society, you must clearly realise that. (To the wife) You of course have the right to petition the court again if it is necessary. We hope you both make an effort to see each other's merits as well as shortcomings. He works well, that's his great merit. With mutual help you can improve his faults. After eight years you should know each other well enough. Remember, mutual respect, and mutual help. Do you now withdraw the petition? You can come back in a month's time if he beats you again."

The wife agreed to withdraw, upon which the husband, with some excitement, said to her, "You look down on me because I am a shop assistant, don't you?"

Wife: "No, I wouldn't look down on your work even if you were only a lavatory cleaner. I only look down on your bad character."

Woman assessor, (speaking to the husband):
"You say you can have mutual respect. That's a good thing - does it mean that we will have deeds and not just words this time?"

"Yes, I will study Chairman Mao's works hard."

"You should catch up with your wife. She not only works well, she studies hard and does the housework. You must raise your political level. She said nothing about looking down on your work, did she? I hope that you are both resolved to establish a democratic and united family."

At this point the wife said that she had something else to say.

"First, I have never looked down on his work."

"Oh yes, she did."

Woman assessor: "In our new society we enjoy an equal division of labour. She doesn't look down on your work, so there is no reason why you should not work as well as before, but you must correct your feudal thinking as soon as possible."

Wife: "Also, when my colleagues made a good analysis of his faults, he said that they only supported me because they worked in the same factory, and not because he was in the wrong. I want to make it clear that this is untrue."

The husband made some denial. The judge said to him: "Other people - your neighbours and colleagues - are naturally concerned about both of you, out of their goodwill. Their advice may be harsh to the ear, but you must take it. Your critics are your good friends, don't regard them as hostile just because they support your wife."

He asked the wife if there was anything else she wished to say.

"No."

"The petitioner has withdrawn her case. We have assisted in the reconciliation of the dispute on the following terms." (He repeated the five conditions) "We trust you will honour your pledges on these five points. You have both been helped by many people, including legal workers. Now, both of you must sign the record of the case."

After they had signed the record which the Secretary had been assiduously keeping, they were told they could leave. Both looked glum as they left the room. A moment later the members of the court followed.

The hearing had taken longer than I had hoped, and there was not much time for me to ask questions. While fresh tea was being made the president asked me what I thought of their way of dealing with the case. I replied that it struck me as being very informal, not merely in the obvious sense that there was none of the ceremony with which the proceedings of courts in most countries are conducted, but also in the sense that the procedure appeared to be very loose and flexible. I said that it nonetheless seemed to me a sensible way of dealing with such a case, and I asked whether they thought the wife had expected such a result, as she had seemed so determined to have her divorce at first.

The president said that the judge, in the course of his thorough investigations, had heard from some of the wife's colleagues that she would be prepared to withdraw the petition if the husband made a really solemn pledge. "She never told us this, but, while we thought she might possibly insist on a divorce, we thought that she would probably agree to a reconciliation. This is the kind of result that we tend to encourage, but of course it must depend on the husband's attitude. This was a case, though, where even in the light of the husband's sincere promise to reform we would still have given the divorce if she had insisted, for he was badly at fault. Our policy depends on the nature of each case. When the dispute is not serious we persuade the parties together, but sometimes when the dispute is serious, or even against the law, we don't press them at all."

I asked what he meant by "against the law" - was he referring to cases where there was a criminal act of some kind?

"No, I am now talking in terms of what is contrary to the Marriage Law. An example of something against the law would^{be} the sexual impotence of one party, if it was supported by medical evidence./¹"

I said that I understood that when both parties agreed, a divorce by mutual consent could be obtained in China; on what grounds could the Court dissolve a marriage when only one party wanted the dissolution?

"One example would be where a husband has a feudal outlook, and ill-treats his wife. If he can't be persuaded to reform by education, then we would give a divorce decree on the ground of protecting the rights of women."

I asked what the position would be in the case of a woman who beat and scolded her husband.

"In Chinese society," the president said, "it is the women who are usually oppressed, so that such cases are extremely rare; however, if we had such a case, if the moral basis of the marriage was lost, and the parties couldn't live together, we would grant a divorce."

I said: "In Western legal systems, there are certain definite and limited grounds on which divorce petitions must be based, such as cruelty, adultery, desertion for a certain length of time, insanity of one party subsequent to the marriage, and so forth. I notice that there are no such grounds listed in the Marriage Law, but perhaps you can tell me whether there are definite grounds for divorce in this country?" I had to repeat the question with further explanation before the president replied.

"We consider all those categories that you mentioned are included in the reasons for which we give divorces. In addition, by our law when one side is guilty of a crime and goes to prison, the other side has grounds for divorce. Also, if one side fails to work, following a capitalist way of life, then the other party may get a divorce.

1. Section 5 of the Marriage Law, 1950, provides: "It is prohibited for a man or woman to marry in the following circumstances: (2) Where one party, on account of physical disability, is sexually impotent."

I asked whether there were ever nullity suits in China. Asked what I meant by this, I gave as examples cases where there had been inadequate formalities in the celebration of the marriage, cases of impotence discovered after marriage and preventing consummation, and cases of bigamy. The president only took up the last. There had been cases of bigamy before Liberation, and in the days immediately after Liberation, but it never happened now-days, at any rate in his district. What had happened before was that people moved from the countryside into the cities and married there without revealing that they had left wives behind in their villages. I said that this was exactly the kind of thing I had in mind; what did they do in such cases?

"This was the way things happened before the Marriage Law. After the Marriage Law was passed, we dealt with such cases as crimes."

"And is the second marriage automatically void?"

"If it happened we would, in principle treat the second marriage as illegal, or void."

The vice-president joined in: "That is the principle, but it does not always apply in all cases; it must depend on the particular facts, and particularly on the question of children. If there were children by the second wife but not by the first, for example, then we would dissolve the first marriage, not the second."

I said that I had noticed a lot of Muslims living in Ts'ai Shih K'ou District. They had their own marriage laws and customs, I supposed. I asked whether there were ever cases of intermarriage with non-Muslims, and if so how the conflicts of the marriage laws and customs were handled. The president replied that such a case had not yet arisen in the district, but the vice-president told me that she knew that such conflicts of law and custom did sometimes arise; the solution of them would always depend on the facts./¹

1. A recently published book, "Questions and Answers on Marriage Law", which reflects the practice of the courts in Anhwei Province, suggests that the marriage should be governed by the custom of the group with which it is most closely connected.

The president told me that after a decree of divorce is given the judges always discuss the case again with a view to the parties changing their minds. Sometimes when a decree is to be pronounced, judgment is reserved for a while. The object of this, again, is to promote the possibility of a reconciliation. After divorce the parties are always encouraged to remarry. "Also, we try to get the parties to reach an agreement about the children and about the property - we are reluctant to have to give a decision on such questions, though we do so if necessary."

I asked whether there was a bias in favour of giving the custody of children to their mother.

"Not necessarily. It depends on the age of the children, of course. In a case like the one you have just heard, when the husband's parents have been looking after one child for a long time, custody might well be given to the father. Older children are sometimes asked to make a choice, for it is their interest that we regard as supreme. As far as the property is concerned, it is usually possible to make a compromise."

I asked about the formalities. Where there is a divorce by consent, both parties sign an agreement, and after the consent of the parties has been verified, a certificate is issued. (I was left in some doubt whether it was issued by the local People's Government, which issues marriage certificates, or by the Court.) In other cases certificates are also given. The contents of any agreements about the children or the property are also recorded in the certificates, but if agreement is impossible they are the subject of special court orders. When there is a reconciliation, a certificate of remarriage has to be given.

The interview was all too short. After ranging briefly over some other legal topics, it had to come to an end, leaving many of the questions which rose to mind unanswered. As I was about to go, the vice-president returned to an earlier point. Though the procedure was informal, she said, the court had taken the case very seriously. Its attitude was one of concern. She seemed anxious to make this clear to me, and also to stress the point that the court had not decided beforehand how the case would turn out.

I agreed and said that I had realised that the case had been given serious consideration, as certainly appeared to be the case.

The president then said that the procedure was informal because in China they wanted the courts to be real People's Courts, where people would not be overawed or afraid to speak out. I replied that in several Western countries, including my own, there was a growing feeling that, in family cases at any rate, there was much to be said for informal court procedure. Both politely nodded.

Late for my next appointment, it was pleasant to be able to say that I had been detained in court, for the simple fact of watching a Chinese court at work, after wondering for two years what they were like, was very gratifying. However, having quoted the proceedings at some length - as close to verbatim as a sometimes halting translation would allow - I am still far from clear as to the exact function of such a hearing in the Chinese judicial system, and as to how far it meets the expectations of the parties and of the community as a whole.

The question may be approached by way of the Communist characterization of civil justice as a projection of the Maoist theory of contradictions, as well as by the policy outlined to me by the president of the court. The official line on civil litigation is neatly summed up in the latest statement of judicial policy, the Report on the Work of the Supreme People's Court, presented to the First Session of the Third National People's Congress in December 1964 (at present only available in abbreviated form):

"The majority of civil suits are contradictions among the people, but some of them also harbour contradictions between the enemy and ourselves. The judges must have a steadfast class standpoint and a clear and definite class viewpoint, and adopt the method of class analysis to distinguish the nature of a problem. It is wrong to hold that the class struggle viewpoint does not pertain to civil suits."

In this case both parties were good workers, who in their working life expressed a healthy working-class standpoint. At the same time it was apparently quite clear to the court that the husband's views on his own role in marriage were quite erroneous from a class standpoint; they were, in short, feudal. The case seems, therefore, to be one in which the nature of the contradiction was itself not too clearly defined - it was a "mixed" one, harbouring a contradiction "between the enemy and ourselves," and it may be for this reason that the result could not be regarded as a foregone conclusion.

This class analysis of the contradiction contained in the case (is it a decision of fact or of law?), which is clearly basic to the conduct and outcome of the whole proceedings, had clearly been made during the preliminary investigations, for even before the hearing it was established, at any rate for the purposes of the introduction given to me, that the root cause of the whole trouble was the feudal remnant in the husband's thinking. And, as the president said, "This investigation forms the basis for the whole of our work." Most of the facts had also clearly been established in the preliminary investigation, though this would probably be less surprising to lawyers from a civilian legal system in the West than to those from Anglo-Saxon legal systems. There were only three contested facts at the hearing - whether or not the husband had deliberately struck his wife at the Spring Festival, the nature of the argument over the bicycle, and the husband's final accusation, which seemingly took the court by surprise, that the wife looked down on him because of his job, together with her singularly indiscreet reply. Of these the first was clearly decided in the wife's favour, but it only thereby added to an already weighty list of offences. The second was subsumed, I think, under the judge's remark that there would always be contradictions between married couples; either the court thought the subject matter insignificant, or else a question which contained no class contradiction, and thus which made no difference to their assessment.

The third allegation was potentially the most important of the three, for it might have upset the balance of the class analysis already arrived at, however slightly, if it had been clearly shown that the wife was so politically backward as to look down on humbler forms of work than her own (as she appeared to do in fact). The court almost ignored the husband's charge, as far as I could gather, then quietly decided by inference in the wife's favour after her denial. I noticed that this point was only raised by the husband when he was already "home" - when he had already won the case in the sense that the wife had made her formal withdrawal of the petition.

It is true that if witnesses had been called, and for the first time cross-examined by the other party, fresh nuances in the established facts might have emerged. But it seems plain that one of the main functions of the trial in a Western court, the conclusive determination of the facts, has been largely superseded by the preliminary investigations on the spot in China. What is one left with? Accepting for a moment the vice-president's assurance that the court did not know in advance how the case would turn out, then the most important function of the court hearing is to hammer out the final solution to the dispute. While

the bench would doubtless predetermine the broad lines within which a settlement would be acceptable from the point of view of law or policy, it does seem as though the parties, like the wife in this case, have some room for manoeuvre, accepting or rejecting a settlement, making conditions, and so forth. It seems from what I was told that the wife, had she been determined to insist on her strict rights (the words "strict rights" should be used with caution, for although they were outlined to me, I am not convinced that she could herself have known exactly what her rights were adjudged to be, without access to the dossiers of the court; they certainly appear in no statutes or regulations) and perhaps face a measure of public disapproval, she could have had her divorce.

Of course it should not be forgotten that her willingness to compromise, if not actually known for certain to the court, was at least the subject of a hot tip, and this may have influenced the timing of the hearing, for the case had been started, I assume, soon after the Spring Festival at the end of last January. Moreover it is legitimate to infer, both from the constant reiteration by members of the court of the fact that the marriage had a good basis as a love match, and from the policy of the Marriage Law, that the court would have gone to some lengths to prevent a total breakdown and divorce, particularly in view of the husband's earlier divorce from a wife forced on him under the old dispensation of arranged marriages, the very evil which the Marriage Law sought to cure. There was no indication of what pressure the wife might have had to contend with had she stood out for divorce to the end; there might, for example, have been an adjournment for further consideration in private, as there was in the case reported by Felix Greene in The Wall Has Two Sides (1962). At any rate, I feel that I might have been even later for my dinner engagement.

It occurred to me, too, that there may be more importance attached to the form which the final negotiation takes (assuming that there is a settlement) than the informality of the procedure suggests. There was no judgment in this case in the Western sense, nor would one have been necessary in the West in view of the settlement. But one aspect of the function of a judgment was fulfilled by the whole hearing as it was meticulously recorded by the secretary and signed by the two parties. Instead of a careful rehearsal of the facts and the allegations of the parties by the Judge, the very words of the two were recorded, together with their attitudes to each other and to the court - always more important, I suspect, to a Chinese court than any legal arguments that they or their counsel might produce - and crystallized for the record. The comments of the court, and even the parties' own expressions

of their case, were formulated in such a way as to make the whole record an object lesson in the application of the Marriage Law - the class nature of the husband's brutality and its ill effects on the wife's work (agreed by both sides) on the negative side, and the early bonds of affection and thus the democratic basis of the marriage, the husband's self-criticism, and the wife's duty to help him on the positive side. The judge and assessors were able to give the husband, and, to a far lesser extent, the wife, a formal dressing down which expressed the official view of the case and related it to the new morality - a judicial function which is fast disappearing from the divorce courts of the West. The hearing thus stamps the whole dispute and its solution with a correct analysis, expressing the attitude of society, which may have practical as well as symbolic use both immediately and in the future.

Put into ideologically correct form, the solution of the case must, according to Communist reasoning, be acceptable to the parties, provided they have attained a certain level of political consciousness, for they do not have to rationalize the outcome; it is reason itself by definition. Moreover, at the meetings for discussion and criticism with neighbours and colleagues, no doubt the real battlegrounds in such a case, the court proceedings, the way in the case appears in the record, probably have added significance. I think it may be assumed that such meetings, possibly attended by the judicial cadres, would continue to discuss the couple's marriage after the conciliation, and that if there were a further petition by the wife such discussions would be intensified. At such meetings the court's analysis would carry great weight, foreclosing most of the arguments available to the parties and thus increasing the social pressure on them.

The parties' tactics during the hearing make good sense in this light. The wife apparently thought it well worth going through the various preliminaries to a divorce action ("Frankly," as the president had said, "plaintiffs often give up their cases after we start our investigations") in order to get her husband to subscribe in open court to her five conditions, with full judicial approval. She also clearly knew the value of getting the right analysis of his behaviour on the record - and after several pre-trial interviews and discussions with her colleagues she would have needed no coaching. One interesting feature of her opening was her allegation - disregarded entirely by the court, and thus presumably rejected - that her husband had hoped for a different kind of wife, one who would be a good servant to him and his mother; one wonders whether this was just to add weight to the charge of feudal thinking, or whether the wife meant to imply that the marriage was not, even at the beginning, such a fine democratic one as the court kept saying it was.

The husband, of course, in the nature of things, was in a tactically inferior position, but he no doubt made the best of his case by relating in some detail the "free" circumstances of the marriage, as well as by making a full self-criticism in front of his wife and the court, with the strong implication, accepted by the court, that she should help to re-educate him. This would probably act as a very powerful appeal indeed to her sense of shame, which was no doubt in conflict with her sense of grievance. For him, too, the indignity of the court hearing was preferable to the humiliation and discomfort of an agreed divorce. It is interesting that he avoided saying anything that could have put his wife seriously in the wrong until after the outcome of the case was clear, when he mentioned her looking down on his job. Presumably his best interest, at least as he saw it, lay in taking the blame himself. It would be interesting to know whether that final exchange was recorded by the secretary.

I do not intend by this analysis of the parties' tactics to discount the importance of their emotional engagement in the dispute, however well they concealed their feelings from a foreign observer. When one takes into account their fluency, and their previous experience at the discussions and judicial investigations which precede the hearing, not to mention the modern Chinese habit of regular political discussion and mutual self-criticism, to assume this awareness of tactics is not farfetched. No wonder they needed no advocates to argue their case.

Whether the expectations of the man in the hut'ung regarding the law are satisfied by these mutual recriminations and conciliations is hard to say. If one makes a wide and correspondingly weak generalization from both the old morality and the new regarding the undesirability of divorce, not forgetting that traditional love of mediation and compromise to which those who write about Chinese law have so often to appeal, then the result of such a case as the one which I attended is probably thought by most people to be satisfactory. Having read some of the official policy pronouncements on divorce, as well as one or two accounts of other cases given by foreign visitors to China, I was not at all surprised at the outcome of my "divorce" case. As for the couple themselves, their expectations may well have been very different from those of the public as a whole; how far this, or any other court could solve their problems, they alone know.

Yours sincerely,


Anthony R. Duke