

Legal Consciousness of the Leftover Woman: Law and *qing* in Chinese Family Relations

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Abstract

This paper analyses how the interaction of law and *qing* (情) shapes ordinary Chinese people's legal consciousness. Ordinary Chinese people rely on *qing*, or the normal feelings, or attitudes of the public, to judge whether a particular law is just and how they should react to the law. By investigating Chinese leftover women's legal consciousness regarding marriage and childbearing, this article has developed a theory to discuss Chinese people's different forms of legal consciousness either when the law is in opposition to *qing* or when it is in alliance with *qing*. I argue that these variations of legal consciousness result from the dynamic relationship between *qing* and different types and levels of legality, including state law.

Keywords: legal consciousness, leftover women, marriage, childbearing, family relations, filial piety

1. INTRODUCTION

Jing, a civil servant in Putian, is a slim woman with a shy smile. She is 27 years old and still single. Jing knew that people had started to refer to her as a leftover woman when she came back to her hometown, Putian, after she got her master's degree in a renowned university in the US. Two years ago, all this changed. At that time, Jing met and fell in love with Zhou, a promising surgeon who worked at the best public hospital in Putian. Zhou is, according to Jing, "a handsome and considerate young guy who always took good care of me."¹ A few months after they met, they both believed that they had found the one to spend the rest of their lives with. Zhou asked Jing to marry him, and they began to plan a life together. But the interaction of China's population policy and their parents' expectations had created a problem for them.

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1. Interview, Jing, Putian, Fujian Province, China, August 2016. The names given to people quoted in this paper are pseudonyms. The descriptions of all the interviewees cited can be found in the Appendix.

The one-child policy meant Jing's parents had no other child to care for them in their old age. As they relied totally on Jing, they insisted that she had to "stay at home"² in order to take care of them after marriage. Zhou's parents, on the other hand, hoped that they could have a woman married into their family to look after them together with their son. Both Jing and Zhou were caught in the demands of *qing*³ (情), which required them to place family obligations and filial piety above all else. Zhou and Jing tried to negotiate with their parents, but negotiations did not go well. China's marriage law seemed to offer another way out, as Jing and Zhou had the right to marry whomever they wanted, even without their parents' consent, and no one could coerce them. Yet Jing and Zhou never insisted on their legal rights or even mentioned them. To them, *qing* was far more powerful than law. For Jing to invoke the law against her parents was unthinkable. In the end, Jing had to break up with Zhou, the only man she ever loved. Jing did not regret making such a decision, although people around her started to call her leftover woman again. Jing says, "no matter how awesome the guy was, his refusal to take my parents' interests into consideration made me believe that he was not the one."⁴

To understand the legal consciousness of ordinary Chinese people and the interactions among individuals in Chinese society, it is not enough to consider their relationship to law alone, but also law's connection to *qing* in people's thoughts and actions. As a long-standing and supremely important concept in China, *qing* is loosely translated as a sense of humanity, human instinct, human nature, and human relations.⁵ In traditional Chinese legal culture, the concept of *qing* refers to human nature and the normal feelings or attitudes of the public in particular contexts and circumstances. For example, people's desire to enjoy a healthy and wealthy life together with their family members is considered the *qing* of ordinary people, because it is human nature to long for health, wealth, and the wellbeing of their loved ones.⁶ Chinese people believe that law should respect the desires and needs shared by ordinary people and that law should be consistent with *qing* (法合众人之情).⁷

Ordinary people in China typically look to *qing*, rather than state law, to distinguish right from wrong.⁸ Historically, Chinese jurisprudence emphasized that *qing*, *li* (理, reasonableness), and *fa* (法, law) should exist in unity, and that all three of these elements formed an indistinguishable whole.⁹ People are well advised that, when a conflict arises, the first thing to be considered is *qing*, and "only when all such avenues are exhausted does one turn to *li* If this too proves unavailing, one is then forced as a last resort to invoke *fa*."¹⁰ In other words, ordinary Chinese people's primary emphasis is on *qing* and only secondarily on *fa* and *li*. It is still widely believed that *qing* lays the foundation of the "real" law.¹¹

2. When the parents require a daughter to stay at home, they expect their daughter to stay close to their place and provide old-age support.

3. As explained below, *qing* in this article refers to the normal feelings or attitudes of the public in various contexts and circumstances.

4. Interview, Jing, *supra* note 1.

5. Cong (2016), p. 132.

6. Fan et al. (1992), pp. 22–3.

7. *Ibid.*, pp. 21–2.

8. *Ibid.*, p. 25.

9. *Ibid.*, pp. 26–7; Huang (2010), p. 188.

10. Peerenboom (1993), p. 268.

11. Fan, Zheng, and Zhan use "real" law to refer to the law that respects human nature and people's desires to protect the interests of themselves and their family members. A "real" law will not force ordinary people to do what they are

Thus, *qing* plays an important role in ordinary Chinese people's judgement of whether a particular law is just and whether one should invoke the law.

The influence of *qing*, however, has not been given sufficient weight in the existing literature on Chinese legal consciousness. The relationship between *qing* and legal consciousness has *not* been explored by scholars who touch upon Chinese legal consciousness.¹² Although legal scholars have discussed how *qing* affects legal services in rural China and how Taiwanese policemen invoke *qing* to justify their enforcement of the law, these scholars use *qing* narrowly as *renqing*, meaning relational and mutual obligations between non-family members.¹³ *Renqing*, as a norm of reciprocity between non-family members, involves "a giving and a receiving party such that the receiving party owes the giving party an obligation."¹⁴ In traditional legal culture, however, discussions of the relationship between *qing* and law generally understand *qing* more broadly as what the majority believe to be right or just in a particular situation.¹⁵ The cultural and social environment within which ordinary people live significantly affects their understandings of *qing*. The focus of *qing*, therefore, is whether a certain attitude or behaviour is morally acceptable to the public, rather than interpersonal relationships and reciprocal obligations. Building on this understanding of *qing*, this article highlights the importance of Chinese people's demand for *qing* and demonstrates the relationship between *qing* and legal consciousness by drawing on my interviews with leftover women.

The primary aim of this article is to investigate how law and *qing* interact in different ways to shape ordinary Chinese people's legal consciousness. In my research, I observed two broad categories of interaction between law and *qing*—namely, law in opposition to *qing* and law in alliance with *qing*. To be specific, I identify four forms of legal consciousness when state law is in opposition to *qing*: (1) avoidance of state law when it conflicts with *qing*, (2) invocation of *qing* to mitigate undesirable results of state law, (3) resistance of state law to protect *qing* and (4) dismissal of state law when breaking the law conforms to *qing*. On the other hand, when it is perceived that state law is—or should be—in alliance with *qing*, the legal consciousness that emerges from the interaction of *qing* and law may be of two kinds: (1) embrace of state law when it enforces *qing* and (2) perception of state law as too weak when it fails to transform "old" understandings of *qing*.

My theory of how the interaction of law and *qing* shapes ordinary Chinese people's legal consciousness in everyday life is based on my study of the legal consciousness of "leftover women." "Leftover women" is a term of recent origin that refers to Chinese women who fail to follow the practice of marrying at an early age. The state media, as well as the public, often regard these women as "leftover" products in the marriage market.¹⁶ I use this discriminatory

(F'note continued)

unwilling or unable to do. The "real" law is the primary norms ordinary people use to tell good from evil and to judge whether a person should take legal responsibility. Fan et al., *supra* note 6, pp. 22–3, 26.

12. Gallagher (2006); Gallagher & Yang (2017); Gallagher & Wang (2011); Boittin (2013); He (2016); He (2013); Michelson (2008); Michelson (2006); Michelson & Read (2011); Huang et al. (2014); O'Brien & Li (2006); Thireau & Hua (2005).

13. Li (2016) (mentioning that legal workers often prioritize *renqing* over short-term monetary interests); Martin (2007) (discussing the importance of the balance of reason, law, and sentiment in law enforcement in Taiwan).

14. Chan (2009), p. 729.

15. Fan et al., *supra* note 6.

16. To (2015); Fincher (2014).

term in this article to emphasize that the society has imposed a significant pressure on single women to marry. The data for this article were retrieved from an ethnographic study I conducted in China between July and November 2016. To investigate the impact of official and unofficial laws on leftover women's choices in marriage and childbearing, I conducted interviews and focus groups with 72 Chinese women, who are—or used to be—leftover women. While this article draws upon all these women's experience to discuss the social environment and legal framework within which leftover women form their legal consciousness, I mainly focus on seven Putianese women's narratives to analyze their legal consciousness in great detail as a way to elaborate how the interaction of law and *qing* affects ordinary people's legal consciousness.

In Putian, a third-tier city on the south-east coast of mainland China, parents usually expect their daughters to follow the custom of *lianggu*, a long-standing local custom that requires the husband and the wife to take care of parents, children, and ancestors on both sides of the lineage and not just on the husband's side. *Lianggu*, as a customary law, is influential in Putian, since the authority of *lianggu* resides in local people's common beliefs regarding filial piety and family relations. In this sense, *lianggu* is a custom that meets the requirements of *qing* in Putianese society. By showing how leftover women in Putian strategically engage with state law, customary law,¹⁷ family relationships, and their own desires when making choices in marriage and childbearing, this article demonstrates that the concept of *qing* helps explain what would otherwise appear to be people's "irrational" or "unreasonable" choices and behaviour.

This article also aims to contribute more broadly to theoretical understandings of legal consciousness in the field of law and society research as a whole. First, research on Chinese women's legal consciousness in terms of family formation shows how people in a Confucian society think and talk about the law when there is a gap between state law and customary law. While recent studies have demonstrated how Chinese people engage with the law directly through litigation, petitioning, or collective action to fight for their labour rights and the rights to withhold gain tax payments,¹⁸ this article offers insights into Chinese people's legal consciousness outside the official legal system. In other words, this article emphasizes why people choose *not* to mobilize the state law and how they act according to what they understand as a broader concept of law, which includes both official and unofficial norms and procedures. Second, this research contributes to discussions of how customary law and state law interact to shape ordinary people's legal consciousness.¹⁹ Third, the data presented here advance the understanding of ordinary people's legal consciousness in a country that is undergoing dramatic economic, cultural, and legal changes.

2. BEING LEFTOVER OR BEING A GOOD DAUGHTER: MARRIAGE AND CHILDBEARING AS A CHINESE DAUGHTER'S FILIAL DUTY

Leftover women face great pressure from their families, since parents in China have a significant influence on their children's marriage and childbearing.²⁰ My interviews reveal that being an unmarried Chinese woman in one's mid-20s and beyond is often regarded as a

17. Customary law in this article mainly refers to the cultural practice of *lianggu* and its requirements.

18. See e.g. Gallagher (2005); Gallagher, *supra* note 12; O'Brien & Li, *supra* note 12; Thireau & Hua, *supra* note 12.

19. See e.g. Engel (2016); Engel & Engel (2010); Young (2014).

20. To, *supra* note 16; Fincher, *supra* note 16; Gaetano (2014); Ji (2015); To (2013).

“problem” by the woman’s parents and relatives. To some leftover women, their motivations and pressures to marry come from their concern that a failure to find a partner may bring grief and shame to their parents. Quite a few parents in China consider it a crucial part of the parental duty to help their children get married. They become anxious if their children cannot find suitable partners. Many parents of leftover women feel a loss of face when their relatives, friends, and neighbours ask them whether and when their daughters are going to get married.

At the same time, my research shows that Chinese parents often emphasize the importance of carrying on the family line and enjoying family happiness together with their descendants. It is a filial duty for Chinese daughters to give birth to the next generation in order to bring their parent’s family happiness. Many unmarried women, however, are concerned that they may pass their best childbearing age if they cannot find a partner in the near future.²¹ China has prohibited births outside marriage for a long time. Under the official population policy, hospitals cannot offer assisted reproductive technologies to single women or unmarried couples.²² Although the shift to the two-child policy in 2015 granted married couples the right to have two children, it did not permit unmarried Chinese women to enjoy the right to be single mothers by choice. This means procreation is only allowed within heterosexual marriage, and leftover women can only do it through the black market²³ or by travelling abroad. Dong, a 27-year-old doctor who works at the Centre for Assisted Reproductive Technologies in Putian, confirms that marriage is a prerequisite to using the service of artificial insemination.²⁴ According to Dong, the hospital will check the woman’s marriage certificate and birth permit before providing medical treatment. Dong says, “It is the law, and the staff in my hospital need to follow the law strictly.”²⁵

It may appear on the surface that leftover women’s pressures come from their parents and relatives, as well as their own concerns about losing the ability to give birth as they get older. In fact, however, the phenomenon of leftover women is a consequence of the interaction of multiple legal orders, including official and unofficial laws. I focus on Putianese leftover women’s experience to investigate how plural legal orders and *qing* work together to shape ordinary people’s legal consciousness. My findings show that, when Putianese leftover women make their choices in marriage and childbearing, they must deal strategically with official Chinese birth policies; the statutory requirements of filial responsibility; long-standing traditions concerning relations of husbands, wives, parents, and children; and the local custom of *lianggu*. When Putianese women navigate their way through these complexities, they participate in the construction of legality through their everyday actions and practices. As Michael McCann suggests, legal consciousness is “the ongoing, dynamic process of constructing one’s understanding of, and relationship to, the social world through use of legal conventions and discourses.”²⁶ The way leftover women relate to law—both official and customary law—reflects some common but important elements of the legal consciousness of ordinary Chinese people. Granted, Putianese leftover women’s legal

21. To, *supra* note 16; Fincher, *supra* note 16.

22. Liu (2016); Liu (2015).

23. The Chinese state’s denial of single women’s reproductive rights has given rise to a booming underground market that offers illegal reproductive services to help unmarried women conceive.

24. Interview, Dong, Putian, Fujian Province, China, August 2016.

25. *Ibid.*

26. McCann (1994), p. 7.

consciousness does in some respects reaffirm findings of earlier research on legal mobilization in China, particularly in the sense that individual rights are subordinated to the interests of the family.²⁷ More importantly, however, by focusing on the interaction of law and *qing* to study leftover women's legal consciousness, this article offers an additional insight into the reasons why people give the highest priority to the interests of their family. Although the discussion that follows focuses on a particular group of Chinese women who face legal and cultural barriers in the process of making choices in marriage and childbearing, my intention is to demonstrate a theory of legal consciousness that can be applied to the study of ordinary people's legal consciousness in almost every aspect of daily life in Confucian societies.

3. LEGAL CONSCIOUSNESS AND MULTIPLE LEGAL SYSTEMS: RELATIONSHIP BETWEEN STATE LAW AND CUSTOMARY LAW

3.1 *Defining Legal Consciousness*

Legal consciousness in this article refers to people's opinions and attitudes towards the law, the way they engage with the law in everyday life, their perceptions of what the law should be, and their understandings of other people's beliefs about the law. Although it is true that changes in state laws and policies have had a significant influence on Chinese people's choices in family structures in recent decades, an overemphasis by researchers on the impact of state law can divert attention from other social norms that play a crucially important role in shaping ideas and expectations of law. With a focus on women's choices in family formation, I emphasize the importance of viewing legal consciousness as it is constructed "from below" and not just the top-down construction of law by the state. As David Engel suggests, "even if one focuses on 'official' law, one still finds a significant dependence on unofficial or customary rule structures to determine norms of reasonableness or fairness."²⁸ While some scholars, focusing more narrowly on official law and formal legal institutions, maintain that state law matters a great deal in shaping legal consciousness,²⁹ others decentre state law and stress the importance of other social norms, values, and beliefs in constructing legal consciousness.³⁰ In this article, I will suggest that unofficial laws have a major impact on people's choices in family formation, and therefore it is not possible to understand people's legal consciousness concerning marriage and family arrangements without a more decentred examination of what people experience as law. Thus, I agree with Hertogh that the study of legal consciousness needs to take people's own ideas of law and justice into account.³¹

My decentred approach to the analysis of legal consciousness draws on theories of legal pluralism that depict ordinary people choosing among—and sometimes merging—multiple types of legality, some associated with the state and others deriving from custom, religion, or other non-state norms and practices.³² Boaventura De Sousa Santos emphasizes the

27. Diamant et al. (2005), p. 14.

28. Engel (1998), p. 140.

29. See e.g. Ewick & Silbey (1998); Sarat (1990); Sarat & Felstiner (1989); Merry (1990); Gallagher, *supra* note 12.

30. Engel, *supra* note 19; Engel & Engel, *supra* note 19; Engel (2005); Young, *supra* note 19; Marshall & Barclay (2003); Marshall (2003); Hoffmann (2003); Hull (2003); Harding (2011).

31. Hertogh (2004).

32. See e.g. Santos (1995); Engel, *supra* note 30; Engel & Engel, *supra* note 19; Merry (1988).

importance of understanding how different types of law interact with one another.³³ An exclusive focus on state law ignores the fact that people's legal consciousness is constituted by the intersection of different legal orders, or what Santos calls "interlegality."³⁴ Thus, in Putian, a state-law-first perspective cannot explain why some women actually view themselves as law-abiding citizens when they are breaking the state law. Only by analyzing the interaction of plural legal orders can we understand the different patterns of legal consciousness that I discovered in my fieldwork in Putian.

It might be argued that it is inappropriate to study Chinese legal consciousness in an article focusing on women's choices in family formation, since this is an area of social life where we should not expect to find much awareness of law at all. As Chou Wah-shan has observed, "attitudes and manners in interpersonal relationships are the hardest areas to reach with the law."³⁵ Chinese people believe that "even an upright official finds it hard to settle a family quarrel" (清官难断家务事) and that "family troubles are not a thing to be talked about in public" (家丑不可外扬). It is true, of course, that Putianese women are generally reluctant to invoke state law or consider the possibility of litigation against parents, relatives, friends, and neighbours who infringe on their choices in marriage and childbearing. Nevertheless, I contend that it is important to ask why these women refuse to mobilize the law and how they engage with non-state law outside the official justice system. The study of legal consciousness has been founded on the non-use of law as well as its formal mobilization,³⁶ and therefore the reluctance of Putianese women to invoke state law is an important phenomenon to be explained rather than simply dismissed as ignorance or low legal consciousness.³⁷

3.2 *The Interaction of State Law and Customary Law*

Putianese women's legal consciousness reflects an area of long-standing concern in Putianese society. The obligations of husbands and wives towards each other and towards their parents and children have been a subject of intense anxiety for many years, and that anxiety has become heightened as a result of changing laws and policies of the Chinese government. The law implementing the one-child policy controlled the number of children each family could have and, at the same time, prohibited sex-selective abortion. As a result, many Chinese families ended up with no male descendant after the strict implementation of the one-child policy since the 1980s. Since it is still widely believed that Chinese parents should rely on adult children, especially sons, to provide old-age support,³⁸ parents without a male descendant are concerned that they may have no one to take care of them when they are old.³⁹

Since lack of support for the old became an issue under the policy, the Chinese government enacted the Law of the People's Republic of China on Protection of the Rights and

33. Santos identifies six basic and relevant forms of law: domestic law, production law, exchange law, community law, territorial law or state law, and systemic law. Santos, *supra* note 32, pp. 428–38.

34. Santos (1987), p. 298.

35. Chou (2000), p. 279.

36. Engel, *supra* note 19; Engel & Engel, *supra* note 19; Ewick & Silbey, *supra* note 29; Greenhouse (1986); Greenhouse (1988); Merry, *supra* note 29; Yngvesson (1988); Yngvesson (1993); Hertogh, *supra* note 31; Haltom & McCann (2004); Gilliom (2001); Young, *supra* note 19.

37. Gallagher, *supra* note 12, p. 811.

38. Pei & Pillai (1999).

39. Interview, Jing, *supra* note 1; interview, Tian, Fuzhou, Fujian Province, China, September 2016; interview, Yue, Putian, Fujian Province, China, August 2016; interview, Shun, Putian, Fujian Province, China, August 2016.

Interests of the Elderly,⁴⁰ stipulating that grown-up children, both daughters and sons, should be filial to their parents by visiting them regularly and supporting them financially.⁴¹ This law, however, has had a very limited impact in changing Putianese people's cultural beliefs that, legal requirements notwithstanding, parents ordinarily cannot rely on a married-out daughter for eldercare. This is because Putianese wives who do not choose *lianggu* are supposed to prioritize the interests of their husbands' families and provide old-age support to their husbands' parents rather than their own parents, and the children of the married couple will carry on the husband's family name.

In fact, the most popular option for Putianese parents to secure their old-age support is to require at least one of their daughters to practise *lianggu* instead of turning to the state law for help. The custom of *lianggu* has enjoyed a long history in Putian, but it became extremely popular only in recent years.⁴² Because the cultural belief that "a married out daughter is like spilled water" (嫁出去的女兒, 潑出去的水) is still influential in Putian, *lianggu* offers the wife's parents a sense of security, since it explicitly requires that both their daughter and their son-in-law must take care of them when they are old. Under *lianggu*, the married couple supports all parents and ensures that the next generation will carry on the family names of both sides as a way to continue both family lines. Additionally, the couple is responsible for ancestor worship of both families, which includes visiting ancestors' graves on Tomb-Sweeping Day and on the anniversary of the death.⁴³

While *lianggu* is attractive to wives' families, parents of the husbands often try to avoid following this practice because of the patriarchal belief that it signifies a failure to have a woman married into the man's family. Men who have good family backgrounds often refuse to practise *lianggu*.⁴⁴ Thus, Putianese women's choices in marital partners are constrained both by their parents' expectation for them to "stay at home" and by their potential partners' resistance to following *lianggu*. Jing says that her parents' insistence on *lianggu* makes it almost impossible to find a partner who has both a decent job and a good family background.⁴⁵ Shun, a 28-year-old construction estimator, says there are many Putianese women who became leftover women because of their families' insistence on *lianggu*. According to Shun, most of these leftover women spent many years in a relationship, hoping their parents would give up or their boyfriends would eventually agree. In the end, these women had to end the relationship when both sides were unwilling to compromise.⁴⁶

It is true that Chinese parents before the 1920s often arranged marriage for their offspring, and marriage was a family choice rather than a personal one. At that time, love referred to the notion of "favour and gratitude between husband and wife."⁴⁷ Personal romantic love and

40. En.pkulaw.cn (2015).

41. In 2013, the Chinese government enacted this law to compel adult children to visit their ageing parents and send them greetings. Although the law does not stipulate the punishments for adult children who neglect their parents, it has made filial duty a legal obligation. See Wong (2013).

42. In fact, there is a trend for people all over China to follow a similar practice, although it is not labelled *lianggu* outside Putian.

43. These arrangements are the subject of explicit negotiation, and the two families involved often reach a detailed agreement on how to practise *lianggu* before the young couple gets married.

44. Interview, Jing, *supra* note 1; interview, Lu, Fuzhou, Fujian Province, China, September 2016.

45. Interview, Jing, *supra* note 1.

46. Interview, Shun, *supra* note 39.

47. Pan (2006), p. 32.

pleasure between two individuals were secondary to the survival and prosperity of their families.⁴⁸ The 1950 Marriage Law, however, outlawed arranged marriage and promoted free-choice monogamous marriage.⁴⁹ The 1980 Marriage Law, moreover, replaced traditional notions of love with romantic love by stipulating that divorce should be granted if mutual affection between husband and wife no longer existed. The introduction and enforcement of the one-child policy further emphasized romantic love by challenging the traditional equation of sex with procreation and promoting the notion of “sex for pleasure.”⁵⁰ Therefore, Chinese marriage law has a long history of prohibiting parents’ interference in their children’s freedom of marriage and granting young men and women the right to marry whomever they please.

While Putianese daughters have the right to refuse their parents’ requirement of *lianggu* and marry their boyfriends without their parents’ consent, it remains a question why they do not consider it an option to invoke state law—either discursively or through formal legal procedures—to solve their problems. In fact, Putianese women themselves often support the practice of *lianggu*, since they believe that *qing* requires a person to take care of one’s parents in their old age.⁵¹ In other words, they are willing to be guided by the customary law of *lianggu*, because following the custom of *lianggu* is what an ordinary Putianese people should choose to do under this circumstance.

In sum, Putianese women’s legal consciousness is shaped by plural legal orders dealing with family relations and obligations—including state law, patriarchal customs, “modern” ideas about equal rights and responsibilities, and the unique customary option of *lianggu*. In the next section, I will explain how Putianese women rely on *qing* to guide their choices as they navigate their way among different legal orders.

4. HOW THE TENSION BETWEEN LAW AND *QING* SHAPES THE LEGAL CONSCIOUSNESS OF LEFTOVER WOMEN

Given that Chinese legal culture and philosophy consider *qing* a primary element that people should take into account when they are trying to settle a dispute or solve a problem, it is not surprising that people rely on *qing* to judge whether a particular law is just and how they should react to the law. The influences of *qing* on ordinary people’s legal consciousness can be found almost everywhere in people’s daily lives. For example, people’s emphasis on *qing* contributes to a belief among Chinese people that substantive justice is much more important than procedural fairness.⁵² In this part, I will argue that the interaction of law and *qing* plays a crucial role in the construction of legal consciousness among Putianese women. These women rely on *qing* to find a way to accommodate their desires, beliefs, and ideas about

48. Jeffreys (2006), p. 26; Brownell & Wasserstrom (2002), p. 32.

49. Jeffreys, *supra* note 48, pp. 5–6; Woo (2006), p. 65.

50. Pan, *supra* note 47, pp. 28–9.

51. Interview, Jing, *supra* note 1; interview, Shun, *supra* note 39; interview, Tian, *supra* note 39; interview, Lu, *supra* note 44; interview, Yue, *supra* note 39; interview, Zeng, Putian, Fujian Province, China, August 2016.

52. Ethan Michelson and Benjamin L. Read’s research on Chinese people’s attitudes towards official justice and Xin He’s research on debt collection in China both reveal that ordinary Chinese people are reluctant to tolerate outcomes that go against them, even if these outcomes were reached through fair legal procedures. This finding directly contradicts Tom Tyler’s studies of procedural fairness, in which Tyler finds that people in the US accept judgments they dislike as long as they are satisfied that the procedure was fair. Michelson & Read, *supra* note 12; He (2011); Tyler (1990).

justice in light of the plural forms of legality they recognize in the society in which they live. In the discussion that follows, I will demonstrate how different forms of legal consciousness emerge from two broad categories of interaction between law and *qing*.

4.1 *Law in Opposition to Qing*

In this section, I use Putianese leftover women's legal consciousness as an example to show how people engage with state laws that are considered contrary to *qing*. My findings show that, when people believe state law is in opposition to *qing*, they hold negative attitudes towards state law and choose to avoid, resist, and dismiss state law, and they invoke *qing* to mitigate the consequences when the law has already caused undesirable results.

4.1.1 *Avoidance of State Law when it Conflicts with Qing*

While some Putianese women mention that they felt anguished both physically and emotionally when their parents forced them to break up with boyfriends who refused to practise *lianggu*,⁵³ they never think of deploying state law to protect their rights, nor are they eager to advocate for a legal reform to ensure Putianese women's freedom of marriage. None of my interviewees chose to exercise their legal right to marry in order to stop their parents from forcing them to leave their boyfriends. Likewise, nobody sued their parents for interfering in their marriage, nor do they consider their parents' actions to be domestic abuse or violence. Quite the opposite: the women I interviewed repeatedly invoked the concepts of love, duty, reciprocity, traditional virtue, family harmony, and filial piety. All these concepts are considered significant components of *qing* with respect to family relations between daughters and parents. Putianese women's emphasis on these concepts reflects the fact that they prioritize the relationship with their parents over freedom of marriage. Jing believes that, no matter how much pressure her parents impose on her to practise *lianggu*, they are still the ones who care most about her and offer her unconditional love.⁵⁴ Zeng, a 25-year-old orthopaedist, states that parents, rather than husbands or boyfriends, are the only persons a woman can totally trust and rely on.⁵⁵

"We take it for granted that it is the duty of daughters who do not have male siblings to practice *lianggu*. Very few women choose to challenge their parents."⁵⁶ This is a version of the most common answer I got when I asked whether they have ever thought of turning down their parents' requests for practising *lianggu*. Shun contends that it is better to "stay at home" in order to take care of her parents, as being filial to one's parents is a traditional virtue in Chinese society.⁵⁷ This is especially the case in a city with influential patriarchal culture, such as Putian. If a woman marries into a Putianese man's family without choosing *lianggu*, she is not supposed to spend money on her own parents. Otherwise, her parents-in-law and husband will be very upset.⁵⁸ Tian, a 30-year-old engineer who strongly supports *lianggu*, says that a traditional Putianese family will not allow their daughter-in-law to participate in

53. Interview, Mei, Putian, Fujian Province, China, August 2016; interview, Shun, *supra* note 39.

54. Interview, Jing, *supra* note 1.

55. Interview, Zeng, *supra* note 51.

56. Interview, Shun, *supra* note 39.

57. *Ibid.*

58. Interview, Zeng, *supra* note 51; interview, Jing, *supra* note 1; interview, Tian, *supra* note 39.

the ancestor worship of her birth family.⁵⁹ Therefore, the requirements of being a Putianese wife in a traditional Putianese family make it extremely important for parents who do not have sons to have at least a daughter to practise *lianggu*. For these parents, their daughter's refusal to practise *lianggu* would mean the possibility of having no one to support or take care of them when they are in their old age. Even worse, it is likely that no one will visit their grave to sweep away the dirt after their death.⁶⁰

As supporting one's parents in old age or being a filial daughter is considered a requirement of *qing*, my interviewees believe that the custom of *lianggu* is what they should respect and follow. They perceive a conflict between a woman's right to choose her own marital partners and the need to protect the interests of her parents. Although the marriage law emphasizes freedom to choose one's partner and prohibits coercion by a third party, my interviewees hold that it is undesirable to invoke the law against their parents to assert this right. It is true that Chinese society still considers being leftover in the marriage market a mark of shame for both the woman and her family, but leftover women's insistence on *lianggu* shows that being leftover is more acceptable to them than acting against *qing* to fight for their rights. Putianese women's refusal to use the right against their parents illustrates the first form of legal consciousness I identify from the interaction between *qing* and law—that is, “avoidance of state law when it conflicts with *qing*.” When ordinary Putianese people believe that parents cannot rely on a married-out daughter and that an only daughter or the oldest daughter should therefore stay at home to take care of her parents, a Putianese daughter who refuses to practise *lianggu* will be criticized by her relatives, neighbours, and friends for failing to meet the demand of *qing*. Because *qing* plays such a crucial role as Putianese women decide which legal order should take priority, *lianggu* emerges as more influential than marriage law in governing their behaviour.

4.1.2 Invoking Qing to Mitigate Undesirable Results of State Law

State law is not completely irrelevant in shaping Putianese people's legal consciousness. For example, state law has a significant impact on people's understandings of local custom in the interaction of *lianggu* with China's population policy—a form of state law that changed people's family structures substantially in recent decades. China's birth policy has experienced three important turning points in recent history: the implementation of the one-child policy, the relaxation of the one-child policy, and the shift from the one-child policy to the two-child policy. The one-child policy was first implemented in 1979 in China to curb population growth. Each couple in urban areas was allowed to have only one child with very few exceptions, while, in rural areas, a married couple had the opportunity to give birth to a second child if the first one was a girl. In 2009, all provinces in China allowed couples to have two children if both parents did not have siblings and, in late 2013, the policy was further relaxed in many provinces to allow families to have two children if one of the parents was an only child. The two-child policy replaced the one-child policy in late 2015. In effect since 1 January 2016, the two-child policy allows all married Chinese couples to have two children.

59. According to Tian, the wife should follow her husband to visit his ancestors' graves on the Tomb-Sweeping Day, but she cannot visit her own grandparents' even if it is nearby. Interview, Tian, *supra* note 39.

60. *Ibid.*

Born and raised under the strict one-child policy, all my interviewees in Putian started their descriptions of the local custom of *lianggu* by pointing out the impact of the one-child policy on ordinary Putianese people's family structures and attitudes towards marriage. The legal framework is so influential that all women I interviewed in Putian maintain that there is a close linkage between China's population policy and their choices in marriage and child-bearing. The most significant influence of China's population policy, according to these women, is that it has made *lianggu* a popular practice in Putian. In her interview, Lu, a 29-year-old civil servant, told me that, after the implementation of the one-child policy, many families in urban areas of Putian ended up having a single daughter, while many families in rural areas had two daughters. The lack of a son made it necessary to have a daughter to practise *lianggu* in order to take care of the old and carry on the family name and property.⁶¹

At the same time, matrilocal marriages—which were customarily practised under some circumstances—are also being replaced by *lianggu*, because China's one-child policy made it almost impossible for the husbands' families to accept them. As Lu explains:

Putianese parents without male descendants used to ask at least one of their daughters to choose a matrilocal marriage. As a result of the one-child policy, many Putianese men in our generation do not have male siblings. If the only son of the family agrees to marry into the wife's family, the man's birth family will have no sons to rely on because the married-out son is not supposed to take care of his birth family anymore. The man's parents usually do not allow their son to marry into the wife's family. Thus, parents of Putianese women need to compromise on this and ask their daughters to choose *lianggu* instead.⁶²

In this case, China's population policy contributes to the prevalence of *lianggu* by transforming ordinary people's family structures, familial relationships, and understandings of the local custom of *lianggu*. At the same time, following the custom of *lianggu* represents Putianese daughters and their parents' strategy to mitigate one of the most unfortunate consequences of the one-child policy, namely having no male descendants to support the older generation. As the one-child policy ignores *qing*, Putianese daughters and their parents must invoke *qing* themselves to deal with the undesirable outcomes caused by this form of state law.

In order to mitigate this negative result of the one-child policy, Putianese daughters choose their partners strategically. Being the eldest daughter of her family, Tian stated that she would ask the man at the very beginning of their relationship whether he could accept *lianggu*, because she would not want to waste her time on those who could not. For Tian and some other leftover women in Putian, being leftover in the marriage market is more acceptable than being a daughter who turns down her parents' requests to provide old-age support. Tian takes it for granted that it is her responsibility to practise *lianggu* in order to secure the interests of her parents and make them happy. According to Tian, choosing *lianggu* is almost the best thing she can think of to show how grateful she is to her parents.⁶³ In fact, virtually all of my interviewees tended to show sympathy for their parents who were deprived of the chance to have a male descendant because of the one-child policy. Their willingness to follow the practice of *lianggu* offers their parents a sense of security regarding their eldercare. Therefore, choosing *lianggu* illustrates a form of legal consciousness in which *qing* directly redresses negative social outcomes arising from state law.

61. Interview, Lu, *supra* note 44.

62. *Ibid.*

63. Interview, Tian, *supra* note 39.

4.1.3 *Resistance of State Law to Protect Qing*

China's one-child policy makes it difficult for parents to continue their family lines if they do not have male descendants. *Lianggu* improves the situation by requiring a couple to carry on the family line of both sides. In order to achieve this end, it is ideal for each married couple to have at least two children.⁶⁴ In most cases, Putianese women who choose *lianggu* will give birth to two children, regardless of whether it is legal or not. Shun is an interviewee who did this. She told me that she was determined to have two children even before the law allowed her to do so. According to Shun:

I am going to give birth to the second child as soon as possible because the second one will carry on my family name. I do not think the shift to a two-child policy makes any difference to me regarding how many children I will have. Since I had chosen *lianggu*, my parents and my parents-in law had reached an agreement that we would have two children when we got married. And this was before the shift to the two-child policy. I understood I would be charged the social upbringing fee, but I thought it was ok. I would pay the fine for violation of the one-child policy. I did not even care how much I would pay because I knew I would still choose to give birth to the second one. I deliberately chose to work in a private company because my boss would not need to take responsibility if I had the second child. If I had a government-related job, my supervisor and other colleagues might be criticized and punished for their failure to prevent me from bearing the second child. I did not want to become a trouble-maker in my workplace. After the shift to the two-child policy, I left the private company, and now I work for the government instead.⁶⁵

Shun does not view herself as a victim of the one-child policy, nor does she feel guilty about planning to violate the population policy. Instead, she identifies herself as a law-abiding citizen and a good worker.⁶⁶ Before the shift to the universal two-child policy, choosing to work for private companies or finding a non-permanent job in order to have two children was a popular strategy for Putianese women who wished to follow *lianggu* and fulfil their filial duty by passing down their family names. Some women chose to quit their government job shortly before they gave birth to the second child. The legal consciousness of Shun and other women who strategically engaged with the law to have more children exemplifies yet another form of legal consciousness: resistance of the law to protect *qing*.

One important feature of this third form of legal consciousness is that people are quite willing to accept responsibility for the consequences of violating the state law. These women emphasize that taking responsibility for one's own actions is required of any good citizen. Nonetheless, *qing* justifies their violation of law from two aspects. First, as the population policy has not taken account of *qing*, ordinary people prioritize local custom over state law to guide their behaviour. Second, since being responsible for one's own actions is a vital requirement of *qing*, people do not try to escape punishment for their direct resistance of state law. *Qing* explains how Putianese women can reconcile their lawbreaking behaviour and their perceptions of themselves as law-abiding citizens. In this sense, a focus on the role of *qing* clarifies the legal consciousness of women by highlighting not only their reluctance to use the law, but also their direct resistance to it.

64. Some people may choose to give the only child two family names if they do not have two children. In most cases, however, this will not satisfy the wife's parents.

65. Interview, Shun, *supra* note 39.

66. *Ibid.*

4.1.4 Dismissal of State Law when Breaking the Law Conforms to *qing*

Shun illustrates another form of legal consciousness by focusing on the limited efficacy of official efforts to enforce the law that prohibits childbearing out of wedlock. While China's current population policy encourages each married couple to have two children, relevant laws and policies still deny leftover women's reproductive rights and constrain childbearing within marriage. In rural China, however, villagers consider a couple as married once they invite their relatives and friends to a wedding banquet. Thus, it is not unusual for the couple to live together after the wedding banquet and have babies without going through the legal process of getting married.⁶⁷ Shun argues that law's restrictions have only a limited impact on childbearing out of wedlock, and therefore she concludes that obedience to the law is unimportant when the majority do not think breaking it is against *qing*. She says:

Quite a few couples in Putian have already had a child or even several children before they are legally married. Many friends of mine did not go through the legal process of marriage when they gave birth, and the local cadres did not mind as long as they were engaged or had a wedding banquet in the village.⁶⁸

In Shun's opinion, the state law is not effective, as many people manage to give birth outside marriage without being punished. Indeed, in most cases, local cadres are themselves members of the village society, and they share a similar understanding of *qing* with villagers. Village cadres are reluctant to report those who break the law if the actions of these villagers are compatible with *qing*.

Thus, the legal consciousness of Shun, her friends, and the village cadres reflects the old saying that "law should not, and could not penalise the majority" (法不责众). This saying means that, if the majority breaks a particular law out of the belief that doing so conforms to the requirements of *qing*, then *qing* should prevail and the law should not punish them. As long as many people participate in the practice, the majority has justice on its side.⁶⁹ The main feature of this form of legal consciousness is that, when state law is against *qing*, ordinary people's beliefs about what the law should be are more influential than state law itself in shaping people's legal consciousness.

To summarize, these four forms of legal consciousness illustrate that, when people hold negative attitudes towards state law, they tend to use *qing* rather than the law to guide their behaviour—and they believe *qing* can fix the undesirable consequences of the state law.

4.2 Law in Alliance with *qing*

In a society that is undergoing dramatic economic, cultural, and legal changes, it is not surprising for *qing* to differ from what it used to be. The fact that people believe law is secondary to *qing* does not necessarily mean that people do not expect the law to reinforce *qing* or promote new understandings of *qing* as conditions change. Putianese women's legal consciousness shows that, when law is—or could become—congruous with *qing*, people anticipate that law should play a more important role in enforcing *qing* or transforming old understandings of *qing* to help it catch up with social changes.

67. Interview, Tian, *supra* note 39; interview, Shun, *supra* note 39.

68. Interview, Shun, *supra* note 39.

69. Hsing (2010), p. 130.

4.2.1 *Embrace of State Law when it Enforces Qing*

Although Putianese people consider it normal for a couple to give birth without going through the legal process of getting married, people still attach a stigma to single mothers and assume that women who give birth out of wedlock are immature, irresponsible, and lacking in the ability to control their own bodies. Even some leftover women themselves share this belief, which serves as the principal barrier to their childbearing in Chinese society. It is predictable that people may develop a more inclusive attitude in the future towards mothers who are single by choice. At this moment, however, childbearing out of wedlock goes against Putianese people's understandings of *qing*, as the majority still believes it is immoral for a single woman to become a mother.

Dong contends that the law's prohibition of childbearing out of wedlock is a way to protect single women.⁷⁰ According to Dong, many women went to the hospital to give birth to a second child because the first one was taken away by their ex-friends. She is afraid that, if the law allows births outside marriage, there will be more women suffering from this kind of experience.⁷¹ As leftover women, Zeng and Jing both agree that the state restricted childbearing under law to married women in order to protect single women. Zeng suggests that, if the law allowed single women to give birth, it would increase the likelihood that irresponsible men will insist on having unprotected sex and will refuse to marry the women after their children are born.⁷² Jing maintains that the time is not ripe for legalizing unmarried women's reproductive rights, because being single mothers by choice is not congruous with the majority's current understandings of family and motherhood.⁷³

Dong, Zeng, and Jing demonstrate a distinctive form of legal consciousness with regard to official Chinese population policy prohibiting childbearing out of wedlock: embrace of the law when it enforces *qing*. These women believe that, if a single woman becomes a mother, she will have to suffer from abandonment or discrimination, and thus state law should protect them by constraining childbearing within marriage. Indeed, my interviewees fail to acknowledge that women have the right to choose any kind of family structure, including a single-parent family. Their legal consciousness, however, reflects a prevalent belief among ordinary people that state law should protect its citizens by punishing those who act against *qing*. One important feature of this form of legal consciousness is that state law has been considered a source of support for *qing* and not in opposition to it.

4.2.2 *Perception of State Law as Too Weak when it Fails to Transform "Old" Understandings of Qing*

A final form of legal consciousness is evident among interviewees who view law as potentially useful in promoting new understandings of *qing*. Unfortunately, in their view, state law falls short of achieving the desirable transformation of social and cultural norms regarding

70. When asked whether there are unmarried women visiting the centre for assisted reproductive services, Dong says that it is against the laws for the centre to assist them. The laws Dong refers to are the population policy, the Administrative Measures for Human Assisted Reproductive Technology, and the Ethical Principles for Human Assisted Reproductive Technology and Sperm Bank. The laws emphasize that single women are not eligible to have access to the assisted reproductive technology.

71. Interview, Dong, *supra* note 24.

72. Interview, Zeng, *supra* note 51.

73. Interview, Jing, *supra* note 1.

leftover women. For example, Yue, a 27-year-old medical laboratory scientist, was the only Putianese woman in this study to suggest that single women should be granted reproductive rights.⁷⁴ According to Yue, some women desire for valid reasons to become single mothers by choice, but the current social environment makes it difficult to do so. She herself would probably not choose to be a single mother, even if it were legalized, because it might endanger her relationship with her father, a traditional Putianese man, who firmly believes that it is immoral to give birth outside marriage. Yue argues that law's refusal to legalize single women's reproduction reinforces the widespread belief that becoming a single mother by choice is morally unacceptable.⁷⁵

In Yue's view, the law is rather weak in protecting single mothers from the pressure imposed by family members as well as by society in general, as many people do not consider leftover women's reproduction as consistent with *qing*. But Yue views people's understandings of *qing* as malleable—they may change at different times and under different situations. Yue believes that state law needs to shoulder the responsibility of helping to challenge social discrimination against single mothers. This distinctive form of legal consciousness, therefore, perceives the law as too weak, when it could potentially be more useful to help transform *qing*. People such as Yue may adopt this form of legal consciousness when local customs and other social norms are not inclusive enough to accommodate the needs of people who disagree with the dominant understandings of *qing*. They may then look to state law to transform *qing* to ensure social justice—but the inability of law to achieve this goal generally leaves them disappointed and even disillusioned.

To summarize, by exploring the legal consciousness of ordinary Putianese women born and raised under the one-child policy, I have detected two broad ways in which the interaction of law and *qing* relates to Chinese people's thoughts and actions. I argue that these variations of legal consciousness result from the dynamic relationship between *qing* and legal orders—both state and non-state. Ordinary Chinese people invoke *qing* to form their own ideas of justice and fairness and decide whether they should prioritize a particular legal order over others. If people consider a particular legal order as conflicting with *qing*, they choose to avoid or resist it. At the same time, they may turn to other legal orders that meet the demands of *qing*. When the outcomes of state law endanger their interests, people may deploy *qing* to confront the problems arising from state law. When the majority considers breaking a certain official law is consistent with *qing*, people will dismiss state law and view those who violate it as law-abiding citizens. On the other hand, when state law supports and reinforces *qing*, people embrace it and expect it to protect the citizens. As the meanings of *qing* are subject to the ever-changing social environment within which people form their understandings of it, people expect that state law should play a positive role in transforming *qing* in order to create harmony, respect, and justice in society.

5. CONCLUSION

In this article, I have analyzed how law and *qing* interact in different ways to shape ordinary Chinese people's legal consciousness. I have illustrated the interaction of law and *qing* by

74. Interview, Yue, *supra* note 39.

75. *Ibid.*

examining the legal consciousness of Putianese leftover women concerning their choices in marriage and childbearing. Leftover women in Chinese society suffer both from people's discrimination for remaining single and from state law's restrictions on her reproductive rights. The legal consciousness of Putianese leftover women is shaped not only by state law, but also by other types of legal orders working together to constrain and enable their behaviour. The women rely primarily on *qing* as they navigate their way among these different legal orders. A close look at their legal consciousness reveals that the interaction of law and *qing* has a powerful impact on how ordinary Chinese people think about the law, what they consider as the law, and how they engage with different legal orders.

In Chinese society, one can observe countless other examples of the various forms of legal consciousness identified in this article. For instance, even an unlicensed street vendor in China may experience all these six forms of legal consciousness on a daily basis. Many unlicensed street vendors sell their goods in residential areas in China, since they believe—and most ordinary Chinese people would agree with them—that breaking the law under these circumstances is not against *qing*. People usually avoid the law and choose not to call the police to report these vendors, since it would conflict with *qing* if they were to make it difficult for these poor people to make a living. Some people even resist the law in order to protect *qing* by helping the vendors protect their goods and property in police raids. When the vendors and other people see police using violence during law enforcement, they embrace the law by reminding the police of the law prohibiting police brutality. When violent law enforcement occurs, ordinary citizens are often disappointed that the law is too weak to promote *qing* by transforming the officers' arrogant assumption that they are superior to ordinary citizens. As this example illustrates, we can see that ordinary Chinese people's legal consciousness is significantly influenced by the relationship between law and *qing* in almost every aspect of their daily life.

In short, although this article focuses on Putianese women's legal consciousness, it provides a theory to facilitate better understandings of ordinary Chinese people's legal consciousness by bringing *qing* into the picture. This theory helps to explain ordinary Chinese people's legal consciousness either when the law is in opposition to *qing* or when it is in alliance with *qing*. As ordinary Chinese people generally look first to *qing* rather than state law when they try to achieve justice in almost every aspect of life, this theory can be applied to future studies in Chinese society and should not be confined to research involving interpersonal relationships in a familial context. Legal consciousness research in China could benefit from a more extensive consideration of *qing* as a concept that mediates between the demands of state law and the multiple forms of non-state legality that still influence the daily lives of Chinese citizens.

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APPENDIX: INTERVIEWEES CITED IN THE ARTICLE (ALL NAMES ARE PSEUDONYMS)

Name	Age	Job title	Relationship status	Other information	Date of interview
Dong	27	Doctor	Married	Dong is the only child of her family. Dong's husband left Putian for his PhD in a nearby city, and she stays at home with her parents in Putian	10 August 2016
Jing	27	Civil servant	Single	Jing is the only child of her family. Her parents used to insist on matrilocal marriages, but they agreed to change to <i>lianggu</i> after they realized that it was extremely difficult to find a decent man who was willing to marry into the wife's family. Jing believes she would not be a leftover woman if she did not need to follow <i>lianggu</i>	11 August 2016
Lu	29	Civil servant	Single	Lu has an older brother and, thus, her parents do not force her to practise <i>lianggu</i> . Lu still prefers to find a man who is willing to follow <i>lianggu</i> . Her parents have been worried about her being leftover for many years, but she refuses to rush into marriage before she finds a suitable partner	22 July 2016; 11 September 2016
Mei	28	Accountant	Married	Mei has a younger brother and an older sister. Her parents insist that she should practise <i>lianggu</i> , as they think Mei is the most reliable child	11 August 2016
Shun	28	Construction estimator	Married	Shun is the elder daughter of a two-daughter family, and she takes it for granted that the elder child should be responsible for the parents' eldercare	10 August 2016
Tian	30	Engineer	Married	Tian is the elder daughter of a two-daughter family, so she insisted on <i>lianggu</i> even when she had been considered leftover for years. Tian tried to persuade her younger sister to practise <i>lianggu</i> as well	11 September 2016
Yue	27	Medical laboratory scientist	Single	Yue is the younger daughter of her family. Her elder sister has already chosen <i>lianggu</i>	10 August 2016
Zeng	25	Orthopaedist	Single	Zeng has a brother, but her parents still require her to follow <i>lianggu</i> . They believe <i>lianggu</i> ensures the equal status between husband and wife	11 August 2016