

USING MANY KNIVES

REGIONALISM AND THE CODIFICATION OF CHINA'S FAMILY PLANNING POLICY

Ben Kostrzewa

University of Washington, School of Law

Over the course of the past twenty years, China has carried out the largest population control policy in global history. Its current population now approximates 1.3 billion, constituting over twenty percent of the world's population. Without stringent population regulation, this number would undisputably be considerably larger. But while the central government has banned some of the more draconian policies in a bid to centralize family planning policy nationwide, the new codification process has had mixed success in limiting local cadres' abuses of power. This paper explores the diverging trends of regionalism and national codification in constituting national family planning policy.

Over the course of the past twenty years, China has carried out the largest population control policy in global history. China, the world's most populous country, has endeavored to slow down its population growth for the sake of a better economy and a better standard of living for its people. Human rights organizations have been appalled by reports of forced abortion and sterilization, the destruction of homes and infanticide. Other international organizations have described the policy as effective and necessary.

But the policy is still shrouded in mystery. The "one child policy" (as it is often described in the West) has not been one static document, and until recently was not even nationally codified. In fact, the policy has been a broad patchwork of vague policy directives that have left the particulars of enforcement to the local officials, further obfuscating the actual conditions of the policy. Over the past twenty years the policy itself has not only changed, but the methodology of enforcement has also varied depending on local cadres.

Unlike other policies around the world that are considered in violation of human rights, the rationale behind China's family planning policy can be understood independently of political ideology. China's current population is approximately 1.3 billion, constituting over twenty percent of the world's population. Undisputedly, without population regulation this number would be considerably larger. China's leaders firmly believe (as most economists do) that in order to make significant economic

advances, population growth must be held in check. It is the methodology of family planning that is controversial, not its rationale.

Family planning policy has evolved in the past few decades. The legislation of this policy has taken twenty years, from the first entry of family planning into the constitution in 1982 until the passing of national family planning legislation in 2002. This paper is an exploration of the divergent trends of regionalism and national codification. Currently, regional laws and policies for enforcement tailor the needs of the policy to the specific regions. Regions will be allowed special exceptions to the law depending on the population and geography. The central government has issued statements banning some of the more draconian policies such as the destruction of property and imprisonment of relatives. However, the Chinese Communist Party forces local cadres to resort to such enforcement measures through stringent quota and fertility rates. The new codification process could allow for a limitation of the local cadres' abuses of power, but only if the new legislation also promulgates the rule of law. While currently the legal reforms are limited to codifying the laws, continued progress towards the rule of law will allow for populations to have effective means of checking local cadres' power.

History and Development of Family Planning Law

The current family planning policy has its roots in the early 1970s. As the lawlessness of the Cultural Revolution subsided,

a strictly enforced two-child policy became national policy. The early slogan, “*wan, xi, shao*” detailed the fundamental planks of the campaign: late marriage and childbirth, children spaced by several years, and few children.^a In city areas the minimum age for women to marry was 25, whereas for men it was 28. However, in rural areas it was more relaxed, with the minimum age being 23 for women, and 25 for men.^b The gap for spacing children was between three and four years. The goal of this policy was to limit the population to 1.2 billion people in the year 2000. Eight forms of state intervention were used: free access to contraceptives, abortion, sterilization, enforcement of late marriage guidelines, material incentives and penalties to encourage compliance, mass mobilization campaign to encourage smaller families, the creation of family planning bureaucracy, and the inclusion of population targets into economic policy.^c

However, as the seventies came to a close, it became increasingly clear that this policy was not going to be sufficient, and that a more rigorous policy was necessary to achieve the desired demographic goals. In 1979 and 1980, the more aggressive “one child policy” came into effect. Beginning in 1980, rural couples, like urban couples, were not allowed to have more than one child. In 1982, family planning policy was written into the constitution, in Article 25: “The state promotes family planning so that population growth may fit the plans for economic and social development.” During this same time forced sterilizations and abortions became common practice. Women who had already had two children or more were often sterilized as a result of this policy.^d

This was in fact the high point of the “one child” policy. While it was still enforced in the cities, provinces were given more autonomy to create their own policies in the rural areas.^e The policy was met with such animosity from the peasantry that it became all but impossible to enforce. Reports of widespread resistance from

the peasantry quickly led to an adaptation of the policy.

From that point forward, family planning policy ceased to be dictated by national legislation. Rather, the central government created the State Family Planning Commission and imposed official maximum levels of fertility.^f This shifted the focus from creating new family planning legislation to indirect regulation by the central authorities. It was set at 1.62 children for every woman in the 1980s (a number that remains largely unchanged today). While this is the national average, each province varies as their policy dictates. Highly industrialized areas on the coast may be as low as 1.3, while in areas with many minorities in which population planning is even more relaxed, it may be as high as 2.4.^g

As the “one child policy” was rolled back in the rural areas, the policy of “One-Son-Two-Child policy” prevailed in many regions. This policy allowed couples whose first child was a girl to try again for a boy, as long as they waited at least four years and the mother was at least 28 years old. Other policies put into effect included the provision that if the parents were both from single child homes, they would be allowed to have two children. Similar policies have been practiced ever since, to varying degrees of aggressiveness and effectiveness. Each province set its own policy, while the national office was simply there to coordinate efforts and set national goals.

These policies were further altered in a conference in Beijing in 1984.^h The Party Central Committee put forth a document entitled ‘Document No. 7’, which outlined reform of the “One Child Policy.” The document, while still requiring that the country meet the population growth limits, also stated that the policies should reflect reality and that they should not be too stringent. The document created a mass perception that population control was over and fertility rates immediately began to rise. As national policy planners saw a significant decrease in the number of

Year	IUD Insertions	IUD Removals	Vasectomies	Abortions	Tubal Ligations
1971	6,172,889	-----	1,223,480	1,744,644	3,910,110
1974	12,579,886	1,352,787	1,445,251	2,275,741	4,984,564
1977	12,974,313	1,941,880	2,616,876	2,776,448	5,229,569
1980	11,491,871	2,403,408	1,363,508	3,842,006	9,527,644
1983	17,755,736	5,323,354	4,359,261	16,398,378	14,371,843
1985	9,576,980	2,278,892	575,564	2,283,971	10,931,565

Source: Public Health Yearbook of China, 1986. Peoples, Health Publisher. Beijing, PRC. 1987.

abortions and tubal ligations being performed across the country, it became apparent that a new strengthening must occur. Local cadres were encouraged to enforce the pre-1984 rules and return to the same number of interventions.

During the time from 1971 to 1983, the use of birth control increased dramatically. They dropped in 1985 to reflect the relaxations occurring in family planning policy.

After the spike in fertility rates in 1985, state planners realized that the unpopular policy had to be enforced. However, they also realized the populace would not accept the policy without additional effort by the state. From 1985, the state sought to balance the forces of popular unrest with family planning goals. This population spike remains significant in contemporary government rationale: if the CCP relaxes the family planning code, then the population rises. The government is therefore wary of any relaxation of policy.

Contemporary Policy

During the 1990s, the State Family Planning Commission (SFPC) sought to continue the progress that was made in the 1980s. The major objectives were to: (1) cut the natural growth rate to less than ten per thousand by 2000 and (2) keep the total population under 1.23 billion by 1995 and under 1.3 billion by 2000.ⁱ The SFPC is not an enforcement body, nor does it create specific policies within the provinces. It allows local municipalities, villages, and provinces to create policy and punishment guidelines. While the SFPC ostensibly discourages coercive family planning operations, it also lacks motivation to crack down on local officials in violation of policy. In 1995, the SFPC issued its five year plan to achieve maximum efficiency. In order to achieve the goal of keeping the population below 1.3 billion in 2000, it listed seven measures that were to be followed. In a document outlining the goals of the SFPC, broad planning initiatives were offered that guaranteed the flexibility of the policy. These measures included:

1. Top government officials should be put in charge and held responsible for the whole endeavor of family planning work. The government at all levels is committed to fulfilling population plans in their respective areas.
2. Population and family planning should be incorporated into the overall planning of the national economic and

social development so that population growth will be made compatible with socio-economic development. While population growth should be put under strict control, population plans should be feasible and practical.

3. The current policies for family planning should be implemented in an all-encompassing way. Efforts should be made to ensure their stability and consistency and bring family planning into the realm of the legal system.

4. Family planning should serve and be subordinated to the central task of economic development. It should be integrated with the development of a socialist market economy and a socialist culture and ideology.

5. We should adhere to the principle of combining government guidance with people's voluntariness [sic] and implement the policy of "three priorities," namely giving priorities to information, education, and communication, to contraception and to regular services in family planning work....

6. Family planning should rely on the progress of science and technology. Efforts should be made to ensure better use of more advanced science and technology in family planning so as to help control the population size and improve the people's quality of life.

7. We should proceed from actual conditions and offer specific guidance that suits different localities. In our work, we should focus on the rural areas, especially in populous provinces and economically underdeveloped regions, while continuing to ensure the success of family planning in urban areas.^j

In looking at this document that outlines the tactics of the government, it is striking to see it is devoid of technicalities and specifics. It is for the most part devoid of any specific policies - in fact, there is an emphasis on pragmatism. As section 7 states, "We should proceed from actual conditions and offer specific guidance that suits different localities." By specifically tailoring the policy to the needs of certain regions, peasants benefit from the law. Before outlining these principles, the document states that they should work "by freeing ourselves from obsolete conventions" and "seek truth from facts". These pronouncements are similar to the 1984 conference and paraphrase similar jargon the economic reform

movement has been using since 1978. The SFPC has the intent of using a utilitarian policy to reach its goals, as has been emphasized in all of Chinese politics since liberalization in the late seventies.

Because the SFPC operates under broad policy conditions, this has led to a broad array of family planning initiatives. While emphasis in foreign media is placed on the more controversial measures, it is involved in many different aspects of population control and reproductive health. The SFPC divides its initiatives into six different areas: migrant workers, teenagers, family life, sexually transmitted diseases, gender equality, and reproductive health.^k These initiatives often have the broad support of international organizations and are frequently unrelated to the policies governing the quantity of children allowed.

Codification of National Policy

Passed in the standing committee of the National People's Congress in 2001, China's first National Family Planning Law took effect on September 2, 2002. This law, entitled "Population and Family Planning Law of the People's Republic of China," represents for the first time a codified national law concerning birth control. By having an explicit public policy, two functions of the law are fulfilled, satisfying both the state actor and the people. The law gives state intervention greater legitimacy in the eyes of the public and the international community because codification is an important first step in establishing the rule of law. Legislation results in a greater institutionalization of a policy, which could allow a greater respect for family planning (and therefore greater efficiency of enforcement). In the eyes of the citizens, codified legislation allows citizens to learn of the law and the limitations of state power. The new national legislation offers definitive rights under the law by outlining the limits of the local cadres' power:

Enacted to bring population into balance with social economic development, resources, and the environment: to promote family planning, to protect citizens' legitimate rights and interests, to enhance family happiness, and to contribute to the nation's prosperity and social progress.^l

This piece of legislation does not just concern birth control. It defines the mandate of the entire China family planning policy. In its 47 articles, it enumerates a wide variety of issues varying from responsibility of enforcement to social security matters. It begins

by outlining that while the SFPC has the ultimate authority in dealing with birth control, it is the responsibility of the government at a county level to be in charge of family planning programs and population programs (article 6).^m

The legislation states the State Council has the authority to "devise population development plans and incorporate them into the national economic and social development plans (article 9)," beginning from the county level shall devise population plans and be responsible for implementation (article 10).

The bill also outlines the way in which the public will be educated. By mandating pro bono public service messages, in-school education on sexual health and public education campaigns as well as other forms, the state intends to educate citizens in family planning law and citizens' responsibilities.

In terms of fertility regulations, the law is very specific that China's citizens have the right to reproduction and also the responsibility to follow state-regulated family planning (article 17). In article 18 it declares that the state will maintain its current policy of late marriage and childbearing, as well as one child per couple. It also allows for the specific exceptions to the one child policy made by each province, autonomous region, or municipality (Chongqing, Tianjin, Beijing, and Shanghai).

The law also states that primary emphasis will be placed on contraception (article 19). However, it lists a variety of incentive-based programs such as old-age insurance, basic medical insurance, welfare benefits, and childbearing insurance (article 24). It explains that women who marry late and have children later in life will have maternity leave and other "job-safety protections." It also specifically bans all use of ultrasound technology for non-medical purposes and all other forms of sex-selective pregnancy termination (article 35).

Probably the most important aspect of this new legislation is the last section, which concerns legal liability. Article 39 clearly enumerates illegitimate measures that may not be used by family planning officials:

1. Infringement on a citizen's personal rights, property rights, or other legitimate rights and interests
2. Abuse of power, dereliction of duty or graft
3. Seeking or accepting a bribe
4. Withholding, reducing, redirecting or embezzling family planning program funds or social compensation fees

5. Distorting, under-reporting, fabricating, modifying or refusing to report statistical data on population or family planning.

It goes on to state that family planning officials who violate the law will be rebuked and administrative penalties will be imposed on the agency and the individuals responsible (article 40).

It is clear the law is intentionally vague, which has several different consequences. While it allows for the various provinces and other local government bodies to create laws suitable for their own area, it also creates a policy which does not allow for a great degree of accountability. In areas such as article 23 which deals with incentives, it states: “the State shall, in accordance with regulations, recognize and reward couples who practice family planning.” By leaving it up to these regulations, which are far more difficult to find, the specific rewards become nebulous. Also, even when it does create specific policies, such as the old-age insurance and medical insurance, it does not state where funding will come from and what office is responsible for meting this funding out. Because it is up to the responsibility of the individual local offices, the coherency of the entire national structure is endangered.

In many nations around the world, the national legislation is often vague and it is left to the bureaucracy or local governments to create regulation to enforce the law. In China this is also the case. The difficulty lies in the fact that the national law was largely designed to solve problems at the local level. By creating a law attempting to define the role of the local cadres but leaving the specifics to those officials, the effectiveness of the legislation is jeopardized.

Regionalism

The state does have ways of overseeing the officials. In order to ensure that national policy goals are achieved, each province is held accountable for population goals. First started in the early 1990s, the responsibility system requires heads of both the party and the government in each province and municipality to be fully responsible for implementation of population policy. Each level must answer to the next, but is also responsible for the creation and development of effective family planning policy tailored to that particular area. Each level, therefore, has the autonomy to implement policies, but it is answerable to the next level should the policies be found to be ineffective.

As can be seen from the table below, at each level there is a member of government and a member of the party to oversee population policy. This is a product of the Leninist-party model of governance. By having a party member at each level as well as a governmental official (though this is can be the same person), the CCP is guaranteed party supervision over each area. This allows for increased centralization in policy. However, management of the system is not at the top of the structure. The national-level SFPC works with the provincial level government adapted to local conditions. It is at the county level at which many of the policies are formulated. The party members at each level serve to confirm that central policy directives are followed, communicate to Beijing the repercussions of the policies and make recommendations for improvements. Within this hierarchy there are 300,000 total workers, 200,000 of whom work at the township level or below.

In addition to these state workers, another 50,000,000

Administrative Level	Executive Branch	Party Unit	Health Unit	Family Planning Unit
<i>Nation</i>	State Council	Politburo	Ministry of Public Health	State Family Planning Committee
<i>Province/AR/City</i>	Provincial Government	Provincial Party Committee	Provincial Health Dept., Hospitals	Prov. Family Planning Committee
<i>County</i>	Country Government	County Party Committee	County Health Dept., Hospitals	County Family Planning Committee, Family Planning Service Station
<i>Town/Township</i>	Town Government	Township Party Committee	Town Health Central	Town Family Planning Committee, Family Planning Clinic
<i>Village</i>	Vil. Lead. Group	Village Party Branch	Coop. Medical Station	Family Planning Leading Group, Family Planning Post
<i>Group/Team/Unit</i>	Group Leader	Party Members	Part-time Health Aide	Part-time Family Planning Worker

Source: Xie, Zhenming. “Population Policy and The Family Planning Program,” in Peng and Guo eds., *The Changing Population of China* (Malden, MA: Blackwell, 2000), 56.

members of the China Family Planning Association assist the SFPC with the implementation of the policy. Working at 900,000 local branches, they are significant in their ability to report women in violation of the policy as well as to assist in pre-natal care and counseling.⁸ By diffusing authority to the provinces and counties, the central government is able to create laws specific to each region. Because responsibility for devising methods of reaching the fertility rates dictated by the state is left to local officials, the state is less able to intervene if problems occur in implementation. While the hierarchical system is in place, it remains difficult for the common Chinese citizen to address wrongdoing by a local cadre in larger offices.

Codification of Regional Policy

Over the past eight years, Provincial Party Congresses have passed legislation codifying the provincial policies governing family planning. There are many similarities between each piece of provincial legislature, but of greater import are the small differences in each province which allow for local conditions to affect policy. In taking a sampling of laws from four different provinces, Hebei, Fujian, Gansu, and Guizhou, it was found that it is considerably easier for rural residents to receive permission to have a second child. In fact, each divides its population according to its household registration (*hukou*), and its population laws are derived from these divisions. These provinces each allow, regardless of household registration, a second child if:

- The child has genetic defects that would prevent him/her from being a laborer
- The wife becomes pregnant after adopting legally
- Remarried couples with one party having a child from previous marriage but the other having none
- Rural couples with the husband married to a woman whose family has no son and with only one child
- Both parents are overseas Chinese or from Hong Kong, Taiwan, or Macao and have returned to China (although each province has different requirements)

The differences in the provincial legislation are more significant than the similarities.⁹ In Hebei, for example, there are 13 different provisions allowing for a second child including reasons such as: the parents are fishermen or miners, live in hilly regions, or if the husband's brothers are not fertile. In Fujian, provisions exist

for each minority within the region with the exception of the Zhuang people. The Zhuang people are not allowed an additional child unless they fell into a different exception, whereas the other minorities would be allowed to because of their ethnicity.

In addition to exceptions to the one-child policy, the legislation passed by the provincial congresses allows each province to make laws governing other aspects of family planning. Fujian, Guizhou, Gansu, and Hebei all make provisions for spacing between births and exceptions if women are over the age of 30. Hebei's legislation includes clauses denying an additional birth to couples that either commit infanticide or sex-selective abortions in order to have a son.¹⁰

Provincial-level legislation provides for the specific laws and regulations governing family planning. While clearly each province looks to the national government for assistance in framing the targets for population and for the language of the law, the province still has a degree of autonomy to allow itself exceptions to the rule and is able to highlight elements of the law significant to the region. Since 1984, the national government has realized a "one size fits all" family planning policy is neither realistic nor effective.

The interests of both the state and the population are being met through an elastic policy. The policy allows for people to maintain economic stability through traditional means of reliance on offspring. In addition, the population also enjoys access to better health care and education through the state. Consequently, the state gains greater compliance with the law. Gaining compliance causes the state to achieve the results it desires with less costs of enforcement. However, the danger remains that the central government loses oversight of the transgressions of local cadres.

Enforcement

The vast majority of the criticism of Chinese family planning policy has not been a question of its necessity, but rather the severity of its enforcement. Enforcement of the family planning policy creates the most difficulty for the government. As was seen in the eighties, without stringent enforcement and disciplinary recourse the government cannot meet the population goals deemed necessary for a healthy society. However, the implementation of these severe policies causes a cacophony of domestic dissent and international criticism. In rural areas families often resist

the family planning policy with great vigor. As a result of this resistance, local governments have felt forced to implement coercive measures in order to achieve the ambitious goals set by the national government. Governmental denials notwithstanding, couples who violate the policy are often subject to the destruction of their homes, incarceration, and forced sterilization. These punishments are implemented at a local level. Local cadres, anxious to meet certain fertility rates, mete out punishments that have been declared illegal by the central government. Often central authorities turn a blind eye to these actions. Commonly used penalties include:

- o Ineligibility of the child for school or any form of government assistance
- o Forced abortion
- o Tubal ligation
- o Forced sterilization
- o Destruction of homes
- o Imprisonment of family members
- o Prison time
- o Loss of job

Human rights organizations, the American government, and some Chinese dissidents regularly criticize the policy for being too heavy-handed. The Chinese government denies these reports, claiming it has already enforced its own prohibitions on coercive policy. In 1995, the government released a set of regulations called the ‘Seven Disciplines’, outlining what a family planning official cannot do in order to fulfill policy objectives.

1. He/she cannot illegally detain, beat or humiliate people who do not obey regulations.
2. He/she is not allowed to destroy the property, crops, or houses of people in violation of regulations.
3. He/she is not allowed to impose any unreasonable fines and may not arbitrarily confiscate property.
4. He/she may not unjustifiably implicate relatives or neighbors.
5. He/she may not prevent legal childbearing in order to fulfill the population target.
6. He/she may not retaliate against persons who make a complaint or report.
7. He/she is not allowed to organize checkups for unmarried women.⁹

These policies were enacted in response to popular discontent with flagrant abuses of power. Of notable exception are abortion and sterilization. It is the policy of every province to forcibly sterilize violators of the policy and to require the abortion of “illegitimate” babies.

In spite of the recent codification of documents, the Leninist model and policy directives, local cadres still enforce family planning laws without enough national oversight. National laws include articles outlining punishment for egregious abuses of power, but the central government remains reluctant to enforce these laws out of fear of rising fertility rates. Occasions of officials tearing down houses as punishment for refusal to submit to family planning services are still being reported. In 1998, Gao Xiaoduan, a senior administrator in the family planning office in Fujian province, gave testimony to congress giving details of some of the tactics still employed by the family planning officials.¹ In her testimony, Ms. Gao gave accounts of women who had their homes destroyed and whose extended family was persecuted.

In 2001, Harry Wu of the Laogai Research Foundation testified before Congress on the immense pressure the central government exerts over local officials to maintain low fertility rates. He asserted that due to this pressure, local officials resort to often barbaric practices:

Cadres at all levels are duty bound, authorized, and determined to make it impossible for population growth to surpass fixed quotas during their time period. If they fail to do so, they will lose their promotions and lose their job and also face punishment. This is the principal reason why Communist cadres at all levels resort to desperate, barbaric practices of forcing artificial abortion and sterilizations and killing infants. Such a practice relates directly to the security of their jobs.⁵

The central government’s message to local officials is divergent from its practices. In order for the government’s family planning campaign to gain greater legitimacy, bans on certain forms of punishment, as defined in the legislation, must be enforced.

Effects of Codification

If local officials are not incentivized to follow the ‘seven disciplines’ policy directive or national legislation, the effect these new national

laws will have on local conditions will be minimal. Rather than creating a legitimate tool that enhances the effectiveness of family planning policy, these new national laws will be viewed as simply more government propaganda. If, however, the government commits to their enforcement and punishes local cadres that step outside their bounds, the law could institutionalize the policy and enhance its effectiveness. Furthermore, the law could become a significant channel for dissent to be voiced against abuses of local officials. The central government, aware of the problems of corrupt local officials, has been willing to create means to combat local corruption, thus garnering support from the populace. However, the government is equally wary of a ballooning population if the family planning policy is loosened. Currently, the greatest effect of the existence of public laws regulating family planning policy is the education of the public on their rights. In addition to teaching the importance of family planning for the nation, the SFPC provides information to the Chinese population concerning a wide variety of contraceptives, reproductive health, STD's, and other less controversial areas of family planning. In addition, the SFPC also publishes the national and provincial legislation for public consumption. This allows the population to educate themselves on the laws regulating their behavior and also the actions permissible by local officials. Rather than having a complicated patchwork of laws, citizens are able to learn their rights under the law. By having greater knowledge of the law, families may be more inclined to simply follow the law rather than risk punishment. If the rule of law is implemented effectively, the effects of the new legislation will be far greater. A family planning official who violates the law could be punished or tried in court. However, this can only occur if the government is genuine in its interest in establishing the rule of law, not just codification.

China's legal reform is by no means limited to just family planning policy. Criminal code, labor laws, environmental regulations, investment law, and the civil code have gained clarity and strength in the last twenty years. In areas such as labor disputes, workers have had modest success at using lawsuits to address wrongdoings by companies. China's judicial system itself is more diverse and effective. Currently there are over 120,000 lawyers in China in 9,000 law firms, representing a growing number of people who use Chinese law every day.^t However, the establishment of the rule of law in China's family planning policy

is still in its infancy. The family planning legislation has only been in effect for eight months. The success of this legislation is still very much in doubt and depends heavily on government motivation to continue significant legal reform beyond mere codification.

Overall Effectiveness

The policy is considered a successful campaign by the State Family Planning Commission. The plan for the 1990s was to keep the average national birth rate at approximately 12.5 per thousand and to maintain the population at below 1.2 billion.^u While the policy did not successfully keep the population below this level in 2000, it did significantly decrease the fertility of the nation. From 1990 to 1998, fertility rates dropped from 2.18 to 1.82.^v The crude birth rate decreased from 2.58 percent to 1.06 percent, while the total fertility rate dropped from 5.81 percent to 2.00 percent from the early eighties to the mid-nineties.^w

However, the policy has left China with several different demographic disparities. The overall male-female ratio has changed drastically, creating a wide variety of social problems. Official estimates quote approximately 106 males for every 100 females; which is roughly the natural difference. However, independent sources believe the disparity is considerably larger. Studies found that from 1981 the ratio increased from 108.5 to 111.3 in 1989, and then to 117 males for every 100 females in the year 2000. In combination with the current unemployment rates in rural areas, this means nearly twenty percent of males will be unable to find a bride or a job. Some experts worry these unwed, unemployed male youth will become a cause of social disruption and upheaval.

There are other explanations for the missing female infants. In addition to traditional beliefs that boys are superior to females (*zhong nan qing nu*), it is also likely that a large percent of these baby girls are not being reported to officials. It is relatively common for women to hide their births by becoming pregnant at the beginning of fall, when bulky clothing is worn, and then having the child born clandestinely in the spring.

The issue of underreporting female births also poses a significant risk. Unregistered children, male or female, find it more difficult to receive government benefits such as cooking oil or dairy products. While for middle and upper-class Chinese this is less of an issue, for poorer Chinese families it creates a great strain when attempting to raise a child. Children considered

“blacklisted” inevitably have great difficulties attending schools, finding employment, getting marriage licenses, and accessing most other government resources.

However, this answer is also incomplete. New ultrasound technology has come to the countryside of China, leading to sex-selective abortions. Concerns of maintaining the family line and other traditional customs cause males to still be favored. Sex selective-abortions are a nationally recognized problem and strictly banned, but remain a viable option for those desperate for a male child and able to bribe a local doctor. In Guangzhou, authorities have taken steps to strip doctors of their medical license if they perform a non-medically related ultrasound more than once.^x The previous tactic of female infanticide is now being replaced with sex selective abortions as the popular means of preventing unwanted female infants.

Another side effect is the aging of the population. It is estimated that by 2050 more than 400 million Chinese will be over the age of 60, representing more than a quarter of all Chinese.^y Not only does this create a considerable burden for medical services, but it also could place additional pressure on families to have more than one child. An adequate social security system is not in place in China, so most elderly couples rely on their children to support them in retirement. However, because of new medical technology as well as other factors, seniors now live longer. As a result of the family planning policy, senior citizens will not have the amount of children or grandchildren to support them, it will place additional economic pressure on the younger generations. Unlike previous eras, the younger generation will consist of only one couple to support two sets of parents. Current high rates of unemployment in the countryside only increase the pressure to have additional children in order to be supported in their old age. Social Security should be offered in conjunction with the family planning policy in order to alleviate this pressure.

Policy Recommendations

The Chinese government can increase the legitimacy and efficiency of the family planning policy through a variety of short term and long term changes. In order to prevent constant rebellion and subversion of the family planning policies, the government must continue to garner greater support from the populace. Continued education by the government and international organizations on

reproductive health issues along with the Chinese law will create an environment of self-regulation by the citizenry. A population well-informed about prophylactic use, women’s health, and other reproductive health issues will cause drastic reductions in state-intervention. Reproductive education in conjunction with access to social security benefits, pensions, inexpensive medical care, and other benefits directed towards senior citizens will diffuse the dependency seniors have on their younger generations, thus decreasing the need for many children. Continued economic development in the countryside will also have long term family planning benefits.

National legislation is an important first step in addressing the problems facing family planning policy in China. The central government must force local officials to abide by national standards of policy implementation in order to effectively meet the needs of its citizenry. The limitations of punishment as articulated in the ‘Seven Disciplines’ policy memo and in the regional legislation are an important step in centralizing the management of local abuses of power. While tailoring the needs of the policy to individual regions is pragmatic, failing to oversee local officials is dangerous.

Regulation of the local cadres must also come from the judicial system. An effective family planning law appeals court must be instituted, either through the judicial system or through an independent board dedicated to family planning cases. The appeals system must have the ability to both prevent state family planning injunctions and offer modes of redress for citizens who have suffered abuses by the system. The ability to appeal local cadres’ decisions to a higher level in government or through the judiciary system will provide an important check on government power.

Conclusion

During the agrarian revolutions of the Maoist era, there was a saying in China: “*Yi dao qie*”, or “one knife cuts all”. The slogan explained that one method of farming could be used all throughout China. The result was that farmers used tactics unsuitable to the local environment, causing massive crop failure and starvation. When China first began its family planning policy, it too tried to use one knife, but quickly found it was unable to effectively implement such a system. Instead, over the course of the past twenty years, it developed a system that allows for local regions to create policies

that are regionally appropriate. However, regionalism has also led to a decrease in government oversight. The new national legislation is an important step towards oversight of local cadres by the central government and by the citizenry of the region.

Aside from the new legislation, additional voluntary measures are being adopted. Starting in 1994, the SFPC began implementing more non-coercive population control measures. International organizations, such as the United Nations Family Planning Association, have been successful in lowering fertility rates without the use of coercion. Organizations such as these should be encouraged to continue to offer reproductive health education and teach the Chinese their rights under Chinese law.

The CCP's refusal to enforce bans on abuse of enforcement and their inability to hold local cadres accountable leads to the conclusion that family planning problems in China are systemic. The evolution of secretive policy directives to codified, public law will allow for greater accountability of local officials. While the system does not conform with American values, the Chinese argument that stringent family planning policy is a necessary evil should not be discounted. Chinese officials view their work as important not only for China, but also for the world. Yet the reports of abuses cannot be ignored. The legal reforms that could allow those who have suffered violations of the Chinese law to seek redress in China's courts should be encouraged by the international community. Though the new laws do not conform with international family planning standards, they offer the hope of greater transparency and regulation of local cadres. While China's family planning program may be a "necessary evil," it can be made less evil than it currently is. Advances in the rule of law, including but not limited to family planning, will have a great effect on Chinese society and governance. Modicums of appeal and dissent within the governmental system will help alleviate resentment towards the current political system and the Chinese Communist Party. The rule of law is a significant tool the Party can utilize to internally combat corruption and abuse of power. If, however, the new legislation and the judicial system continue to be seen as mere tools of the government to oppress the people, resentment and anger towards the CCP will crescendo, with dangerous and potentially destabilizing consequences.

Endnotes

- a J. Banister, *China's Changing Population* (Stanford: Stanford University Press, 1987).
- b I. Attane, "China's Family Planning Policy: An Overview of its Past and Future," *Studies in Family Planning*, vol. 33, no. 1 (2002), 1-21.
- c Tyrene White, "Domination, Resistance, and Accommodation in China's One-child Campaign," in Elizabeth J. Perry and Mark Selden ed., *Chinese Society: Change, Conflict and Resistance* (New York: Routledge Press, 2000), 102-119.
- d Tyrene White, "Two Kinds of Production: The Evolution of China's Family Planning Policy in the 1980s," *Population and Development Review*, vol. 20, Supplement: The New Politics of Population: Conflict and Consensus in Family Planning (1994), 137-158.
- e G. Merli and A. Rafery, "Are Births Underreported in Rural China? Manipulation of Statistical Records in Response to China's Population Policies," *Demography*, vol. 37, no. 1 (2000), 109-126.
- f In March of 2003, the State Family Planning Commission became the State Population and Family Planning Commission, or the SPFPC.
- g Attane, 2.
- h John Aird, *Slaughter of The Innocents* (Washington, DC: The AEI Press, 1990), 35.
- i "The National Family Planning Program of China 1995-2000," <http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record015.htm>.
- j Ibid.
- k State Family Planning Website. <<http://www.npfpc.gov.cn>>.
- l Population and Family Planning Law of the People's Republic of China. Passed by the Standing Committee of the 9th National People's Congress. December 29th, 2001.
- m Please see Appendix A for the complete text of the legislation, available online at <<http://sjeaa.stanford.edu>>.
- n Xizhe Peng & Zhigang Guo eds., *The Changing Population of China* (Malden, MA: Blackwell Publishers, 2000).
- o Please see Appendices B-E for the complete text of the law from each of these provinces, available online at <<http://sjeaa.stanford.edu>>. The data is also accessible at <http://www.unescap.org/esid/psis/population/database/poplaws/law_china/chtitle.htm>
- p Regulations on Family Planning of Hebei Province. Revised at the 28th session of the standing committee of the 8th People's Congress of Hebei. September 3rd, 1997. Amendment 18.
- q Notification on Adhering Firmly to Seven Disciplines in the Enforcement of Family Planning Laws and Regulations. Document no. 138. Policy and Legislation Dept. State Family Planning Commission. July 1st, 1995.
- r Congressional Hearing before the Subcommittee on International Operations and Human Rights, Committee on International Relations. House of Representatives. *Forced Abortion and Sterilization in China: The View From The Inside*. 105th Congress. June 10th, 1998.
- s Congressional Hearing before the Committee on International Relations House of Representatives. House of Representatives. *Coercive Population Control in China: New Evidence of Forced Abortion and Forced Sterilization*. 107th Congress. October, 17, 2001
- t Carla McGiffert, "Bottom Up Legal Reform," *The Chinese Business Review*, May/June 2002.
- u Peiyun Peng, "The Population of China: Problems and Strategy," *China Population Today* (1994), 4.
- v Attane, 11
- w Xinwu Yao and Hua Yin, *Basic Data of China's Population* (Beijing: China Population Publishing House, 1994).
- x Guangdong Public Health Bureau, "Prenatal Sex Identification for Non-Medical Purposes is Strictly Prohibited in Guangzhou," <<http://www.npfpc.gov.cn/en/localnews20011207-1.htm>>.
- y "China's Aging Population Growing Fast," *People's Daily*, August 15, 2002.