

Customary law under socialism: the Uyghur in Xinjiang

Research >
Central Asia

In socialist Xinjiang, many Uyghur customary practices were interfered with, forbidden or discouraged. These prohibitions politicised elements of customary practice and enhanced their legal character. Local custom, it is argued, most readily assumes the force of customary law when it can be mobilized to counter unpopular government campaigns or a codified legal system.

By Ildikó Bellér-Hann

I define local or customary law as a set of normative rules that lack codification, jurisdiction and organized executive force, is subject to change, and has fuzzy boundaries. Customary law cannot be separated from other normative frameworks such as ethics, morals and good manners, since it is 'concerned not only with what is permitted and prohibited, but also with the ethical world in which actions and relationships take place. It has a strong moral component that passes judgment on how people ought to behave. "Customary law" is very much a moral system' (Ambler 2001: 43). This broad definition is particularly useful in discussing aspects of social life among the sedentary Muslim population in Xinjiang, as indigenous discourse often views rights and obligations in religious and moral rather than legal categories.

Custom under socialism

Following the incorporation of Xinjiang into the People's Republic of China, Islamic courts were officially abolished. This ostensibly left Xinjiang's Muslims with a single, secular legal system. The previous 'non-interference policy' was abandoned, most notably during the Great Leap Forward and the Cultural Revolution. Although never explicitly recognized as a legal system, aspects of customary practice (*örp-adät*) came under repeated attack under socialism.

In official rhetoric and folklore publications, *örp-adät* is a sanitized concept referring to permitted elements of religion purged of 'feudal superstitions' – a loose bundle of social norms that define the Uyghur as a national minority. Officially promoted understandings of *örp-adät* and local usage do not, however, coincide.

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Permitted standards of *örp-adät* are enriched by values from Islamic law, at least among farmers in Southern Xinjiang. Its elements are perpetuated today as part of the 'custom bundle'. Insistence on women waiting three months between divorce and re-marriage is one example. Another is the awareness that the customary expectation of daughters to give up their claim on real estate from the paternal inheritance contradicts Islamic law.

When new regulations are introduced in areas of social behaviour previously under the control of custom, practices perceived as customary may be rendered illegal. The 1950 Marriage Law introduced a minimum age for marriage higher than that sanctioned by custom (Mackerras 1995). Compliance, however, can be achieved by lying about the age of



Young Uyghur woman with her newborn child, Kashgar region 1996.

the young couple at the time of registration. Endogamous tendencies in pre-socialist times included close kin and cousin marriages. Chinese authorities tried to curb the practice through vigorous campaigns, but the practice persists; the proximity of kinship between bride and bridegroom is simply denied when the marriage is registered.

During my fieldwork in 1995 and 1996 in Kucha and Kashgar oases, I noticed a discrepancy between legal systems in matters of inheritance. Collectivisation had altered previously dominant patriarchal practices. Although secular law granted equal status to women, it also abolished landed property. Houses, however, continued to remain private property and were transferred from father to son. In Deng Xiao Ping's era of reform, peasants were given rights to use, but not own, arable land. In the mid-1990s, some peasants started transferring land to their sons, tacitly treating it as their own property. So long as land use contracts between individuals and the state are renewed, this practice will likely continue. It illustrates the re-emergence of local customary law within the new secular legal framework.

Giving and receiving

Custom dictates that at the time of major religious holidays, married women receive gifts of clothing from their husbands; the husband's failure to comply may result in women initiating divorce proceedings (which are usually granted by the secular court). Women's claim to gifts is formulated as a 'right' (*hääq*). It would be mistaken to dismiss this claim as trivial; together with food and money, clothing has continued as one of the most important means of social exchange. It is used as payment for social services as well as for gifts given and received at all life cycle rituals. Giving, receiving and possessing such goods are also important markers of social standing and prestige.

The advent of the 'socialist market economy' has allowed for greater individual freedom; it also made space for the re-emergence of pre-socialist practices, and the value of gifts has increased significantly. In order to mask the ever-increasing gap between successful rural entrepreneurs and poor farmers, the government launches rigorous campaigns against such ritual displays of wealth. In this, the government is supported by Islamic religious institutions under its control. Women, however, continue to insist on the continuation of this customary practice, claiming emotional need and resorting to semi-secret measures to circumvent state intervention. Women thus simultaneously insist on their customary rights to receive and to give.

In pre-socialist times, women, in case of divorce, had the right to claim their dowry from their in-laws. They were also

entitled to claim property from the household in compensation for their invested labour. The longer a woman lived and worked in her husband's family, the more she could claim. This practice, defined as custom, has persisted to this day; it has such force that modern secular courts take account of it.

Childbirth

A married woman's claim to be allowed to visit her natal home 'once every eight days' is similarly defined as a 'right,' provided it is situated reasonably near her husband's residence, as is her right to return there to give birth to her first and second child. To do this for her third and fourth child, she is dependent on her husband's goodwill and approval. But on the first two occasions the husband risks communal disapproval if he objects. The principle of compulsory family planning contradicts both Islamic and customary ideas that see children as God's gift. To avoid or even subvert state policies, people may resort to customary practice.

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Before the introduction of compulsory family planning, husbands often objected to their wives making full use of their customary rights. Now, if children are born without authorities' permission, it is more likely that husbands will support the woman's right to give birth to her children in her natal home. It is particularly helpful if the house happens to be in a different administrative area. In such cases, both pregnancy and birth are more easily kept secret. Similarly, women's visiting rights may be exploited to the same end, especially during official inspections: pregnant women, breast-feeding mothers and babies can be kept out of sight. Informal adoption practised by families in pre-socialist times has likewise been affected by family planning. Unplanned children are registered under the name of a childless brother or sister. It remains to be seen if family planning policies will inadvertently encourage exogamous marriage tendencies.

The above examples demonstrate how state interference may inadvertently politicise certain elements of custom. One could argue that so long as customary law remains uncoded, it remains amenable to constant change, and that local custom most visibly emerges as local/customary law in confrontation with a codified legal system. ◀

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Marriage Registration, Chinese woodcut