The Regulatory Model of Abortion in China through a Feminist Lens*

Weiwei Cao
Hunan University, China

Abstract

A medical, surgical termination of pregnancy is the only means of avoiding an unplanned and unwanted birth when contraception fails. Access to safe and affordable abortion is therefore essential to satisfy women's rights to health and the exercise of control over life choices. Restrictive law is usually considered as the main cause of abortions performed in illegal and unhygienic clinics, which could be health- or life-threatening. Thus, many feminists argue that women's reproductive health and rights would be promoted by establishing a less restrictive regulatory model of abortion. By examining the Chinese abortion law, this paper aims to analyze whether it is liberal and if so, how it satisfies women's rights to health and reproductive self-determination. While the law looks unrestrictive, in reality it fails to serve this purpose and instead facilitates the state's manipulation of female fertility. Since the regulation of abortion in China is significantly determined by the state's policy-making in relation to population, an in-depth analysis of the connection between regulation and policy is given to indicate how the state imposes the burden of achieving its population goals on women. In addition, to further scrutinize how women's rights to health and reproductive decision-making are violated by the implementation of abortion law in practice, this paper offers a discussion on the Chinese-style practice of family planning. Finally, feasible proposals are made for reformulating the Chinese regulatory model, so it can protect women's health and reproductive rights from the state's coercive involvement and can promote women's access to adequate medical and state support. By providing a normative analysis of the Chinese abortion law, this paper also suggests that a woman-friendly law ought to move beyond a liberal form and to be brought into line with the principle of respect for women's rights to health and to reproductive decision-making.

Key words

Abortion law, the population policy, family planning, the state, medical control

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Introduction

Access to safe and legal abortion is essential to promoting women's right to health and also to the exercise of control over their life choices (Sclater, Ebtehaj, Jackson, & Richards, 2009). It is widely believed that this right is infringed by various legal limits on the provision of abortion, because restrictive law forces abortion-seeking women to resort to unsafe back-street services (Warriner, 2006). Therefore, many feminist scholars have argued for the liberalization of abortion and have considered this to be a success in terms of feminism or a sign of winning the struggle for a woman's right to choose (Eriksson, 2001; Cook & Dickens, 2003). This paper will provide a normative analysis of the Chinese model of abortion regulation and attempt to remind feminists to be aware that regulating abortion in a liberal form may not necessarily bring women the right to health and decision-making. As Raymond (1993) suggests, a law that superficially looks liberal may provide women with "a supposed liberty that requires women to give up more freedom and a right to privacy that is more accurately a right to private privilege for men (and some women)" (p. 77).

Abortion in Chinese is *rengong liuchan* and *rengong yinchan*, which literally mean artificial slipping delivery and artificial induced delivery respectively. The former process involves the use of abortion drugs and vacuum aspiration to end gestation within 13 weeks and the latter process means termination of middle-term (from 14 to 24 weeks) or late-term (more than 24 weeks) gestation by dilatation and evacuation (Lü & Gai, 2004). There are two types of termination offered by the abortion services in China: medical and surgical. Both can be performed in public institutions and in approved private medical institutions. The legislation on abortion in China, to a large degree, is determined by policy making that relates to the national population. Due to the implementation of birth-control policy, abortion has been liberalized since the beginning of the 1980s. China's population-control programs, particularly the one-child policy, are subject to strong criticisms from the outside world. These criticisms are mainly targeted at the violation of women's reproductive rights and the widespread use of sex-selective techniques against women (Aird, 1991; Greenhalgh, 2008; Mungello, 2008; Ebenstein, 2010). Compared with the controversial population-control

policy, the Chinese law of abortion has not received serious attention or many negative comments. On the contrary, it has been regarded by some Western legal scholars, such as Luk and Ridgon, as "one of the most liberal abortion laws in the world" (Luk, 1977, p. 389) because it does not have any penalties for "having or performing an abortion at any stage of pregnancy…" (Rigdon, 1996, p. 546). These arguments superficially look plausible for the following two reasons. First, the Chinese regulatory model does not restrict the time when abortion can be provided lawfully. In other words, women are allowed to abort at any stage of their pregnancies. Second, apart from sex selection, abortion, technically, can be performed on any other grounds, including medical reasons and a broad range of social reasons.

However, in reality, the implementation of the law suggests that such a liberal model does not represent the state's respect for women's right to health and to self-termination. In 2007, *Souyao*, a Chinese online news website, highlights the problem of selling abortion pills unlawfully in some shops on *Taobao*, which is the biggest Chinese one-stop online platform (Da, 2007). While knowing that it was illegal to buy abortion drugs without a physician's prescription and surveillance, many anonymous users comment that it was a more convenient and cost-effective choice compared with legal services. Apart from taking unreliable pills, a large number of women resort to surgical abortions in illegal and unreliable clinics every year. While annually there are 10 million abortions carried out in registered medical institutions in China, the number of unlawful abortions is estimated to be even larger (Shan & Qian, 2009). The back-street abortion market raises the following questions: under a liberal regulatory model, why are many women opting to seek unlawful and unreliable termination means? Is the law of abortion in China respectful of women's rights to health and to reproductive decision-making? And if not, why does law not grant women the right to decide whether to terminate or continue their pregnancy? By scrutinizing the regulatory model of abortion in China through a feminist lens, this paper first plans to resolve the specific questions posed above. A more general, but also more difficult, task undertaken in this paper is to argue that a woman-friendly regulatory model that is beyond the simple liberalization of abortion has to be formulated and brought into line with the principle of respect for women's rights to health and to self-

determination. The law's respect for these rights not only requires decriminalizing abortion; it also involves enhancing nondirective support from the medical profession and the state.

To achieve these two objectives, this paper will first investigate the regulation of abortion in law and the access barriers in practice. It will then examine how significantly this model is affected by the state's policy making in relation to the population and by the Chinese-style practice of family planning. Finally, this paper will suggest some feasible proposals for a woman-friendly reform of abortion law.

The Access Barriers against Women

The statutes in China with regard to abortion are not included in a specific code or act, but are mainly in the two pieces of national legislation called the Code on Maternal and Infant Health 1995 (the 1995 Code) and the Code on Population and Family Planning 2002 (the 2002 Code). In addition, access to abortion is normally regulated by these two codes together with the state's population policy.[1] Since 1979, the state has advocated a series of birth-control programs in order to reduce the national population (Winckler, 2002). As a consequence, abortion has been officially defined by the party state as *bujiu cuoshi* (literally, a remedial method), which means a backup measure adopted to make up for contraception failure. The implementation of the national birth-control policy had a significant effect on the enactment of the 1995 Code and the 2002 Code. While they state that citizens have the right (not) to reproduce, they also convey the message that family-planning measures, including abortion, should be adopted by married couples in order to fulfill the constitutional birth-control duty.[2]

The two codes do not set a time limit on when abortion can be performed lawfully. Furthermore, they do not restrict the statutory grounds

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[1] Domestic affairs concerning family-planning services and population were managed by the National Population and Family Planning Commission before March 2013, when the Ministry of Health merged with the National Population and Family Planning Commission and was renamed the National Health and Family Planning Commission (NHFPC).

[2] Article 49 of the Constitution states that married citizens of reproductive age shall obey the national birth-control policy.

on which abortion can be carried out, except when it is for nonmedical sex-selection. If women are clinically suitable for an abortion, they can request it at any registered public or private hospital, and their requests do not need to be approved by their doctors or sexual partners. Additionally, according to the 2002 Code, if married women of reproductive age seek to terminate their unplanned pregnancies, the state may provide family-planning funds.[3] Therefore, literally, the Chinese model of abortion law looks liberal. Nonetheless, to examine this model through a feminist lens, I plan to undertake the following three tasks: first, to investigate the barriers against women seeking to access abortion that might exist behind this liberal model; second, to deeply scrutinize the burdens on women of fulfilling the population policy; third, to analyze the Chinese-style practice of family planning. In the rest of this section, I will provide an in-depth analysis of the access barriers against women who need abortions. By doing so, I attempt to explore the underlying character behind the liberal regulatory model, which is disrespectful of women's rights to health and self-determination.

Medical Control over Women's Reproductive Decision-making

As has been discussed above, one of the reasons why the regulation of abortion in China superficially looks like an unrestrictive one is that the neither the 1995 Code nor the 2002 Code endorses doctors' discretion in abortion decisions. Chinese doctors in practice are also generally silent on the topic of abortion. A study on the opinions of Chinese doctors of gynecology and obstetrics on performing abortions conducted by Nie (2005) shows that almost all doctors surveyed did not have their own understanding of abortion, but simply accepted the official definition of abortion as a remedial birth-control measure. Furthermore, they believed that performing termination of unauthorized or unwanted pregnancies was to assist the state in the implementation of the birth-control policy and to help women in trouble. The role of doctors is therefore

[3] Article 21 of the 2002 Code says that married couples of reproductive age shall have free access to family-planning services on the ground of fulfilling the national birth-control duty. Normally, the staff members in local family-planning centers will check whether the abortion ground is to fulfill unauthorized births before granting public funds for abortion.

constructed as being the state's agents, because their performance of abortion is subject to the population policy enacted by the state. Nevertheless, in the Maoist era (1949-1979) when a pronatalist policy was advocated, doctors were encouraged and even required to convince abortion-seeking women to continue their unwanted gestation even if it could endanger their health or lives. The shift from the pronatalist policy to that of birth control does not change doctors' role as the state's agents in providing abortion services. The situation in which law mutes doctors' voices is specifically designed by the state to implement the instruction to advocate its birth-control plans.

While many Western feminist scholars have strongly criticized doctors' exercising discretion as causing the medical manipulation of women's reproductive decision-making (Jackson, 2001, 2008; Lee, 2003; Sheldon, 2006, 2009), the role of doctors in China suggests that the absence of the medical profession's discretion does not mean that women's reproductive self-determination is free of medical restrictions. As Conrad (2004) has observed, the emergence of new engines of medicalization in the twenty-first century means that the imposition of medical control over women's decision-making is not only driven by doctors, but also by other elements, such as the state's intervention. The discussion offered below will indicate that under the Chinese regulatory model, medical control on abortion is not directly placed by the medical profession but by the state, with the purpose of utilizing it as a method of lowering the excessive population growth.

The 2002 Code states that abortion can only be lawfully performed by registered doctors of gynecology and obstetrics in public medical institutions or authorized private medical sector units. In accordance with Article 336 of the Criminal Law 1979, any person performing birth-control surgery without relevant certificates will be charged with the crime of *feifa jinxin jieyu shoushu zui* (literally, unlawfully performing birth-control surgery) and will be imprisoned for up to three years. Furthermore, the 2002 Code places restrictions on provision of abortions pills. The 2002 Code states that abortion pills shall be prescribed and used under the supervision of a registered or an associate registered physician in approved health-care institutions. This means that other medical professionals, such as nursing staff, are not allowed to perform surgical abortion or even to prescribe abortion pills.

However, the state's restriction of abortion to registered physicians turns a blind eye to the lack of physicians who are qualified to perform surgical abortion and to administer medical termination in many rural or undeveloped areas. According to the official statistics in the *China Health Care Year Book 2008*, there are only 128,378 registered doctors of gynecology and obstetrics in the mainland of China who are eligible to carry out termination of pregnancy, but 33,547,666 women between the ages of 15 and 50 who are potential abortion seekers (2009). Moreover, as a result of differential resource allocation, the demand for abortion services is far greater than the supply in some comparatively undeveloped areas. For example, the registered and associate registered doctors in the autonomous region of Tibet only account for 0.24% of the total number in mainland China compared to 7.6% in the province of Shangdong. The inequality is even greater between urban and rural areas (Shi, 1993). Rural medical institutions, especially those below the township level, such as village health-care centers, have a very limited number of registered and associate registered doctors. According to a survey conducted in 1993 by the China Development Observation, a governmental research institution, less than 5% of registered physicians are in the medical health centers below the country level. Due to the serious shortage of registered physicians, the law's restriction of prescription and performance of abortion to registered doctors can force women who need abortion to use illegal means that are likely to be unsafe. *Shangdong Commercial Daily* highlighted the problem that in many regions of China, abortion drugs are sold in unauthorized clinics and online shops, and even by individual dealers whose customers are mainly young, working-class women (Lü, 2009).

Women do not opt for illegal drugs if lawful services are readily affordable and accessible. Nowadays, both medical abortion and surgical termination of pregnancy have proved to be clinically safer than giving birth (Lee, 2007). To satisfy women's need for safe and timely termination services, rather than imposing medical control, the state should carry out a series of training programs aimed at promoting the expertise of nursing staff, such as village doctors,[4] in performing early surgical

[4] Village doctors were called *chijiao yisheng* (literally, barefoot doctors) before 1985. The title of barefoot doctors was created in 1968 in accordance with the Maoist government's policy

abortion and administering medical abortion. A long-term plan is to promote the availability of reproductive health-care services in those rural and undeveloped areas.

The State's Control over Access to Financial Support

A 2003 WHO report suggests that worldwide around 53 million abortions are performed every year; about two out of five abortion procedures are unsafe and about 47,000 women die yearly from complications of unsafe abortions. It has been claimed by many researchers that restrictive abortion law is to blame for stimulating the market of back-street abortions. For example, Warriner (2006, p. 2) notes:

> Broadly speaking, where there is no legal restriction, abortion services are likely to be safe. In these settings, the abortion is performed in a regulated medical setting and the providers are properly trained. In contrast, where abortion laws are highly restrictive, women turn to clandestine providers with a high risk of incurring a serious or life-threatening complication.

However, the fact that the number of unreliable illegal abortions in China is estimated to be more than 10 million every year (Shan & Qian, 2009) suggests that the law, which looks less restrictive, is not necessarily more respectful of women's rights to health and to self-determination.

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that was targeted at quickly training paramedics to satisfy the growing need for health-care services in rural places. This title has two meanings: first, barefoot doctors only practice in villages; second, they generally graduate from secondary school education and accept medical training at approved medical institutions. In the Maoist era they effectively reduced costs and provided timely treatments in rural areas. Maternal health services, such as delivery, were mainly undertaken by barefoot doctors in villages and undeveloped rural areas (Zhang & Unshuld, 2008). The Chinese barefoot doctors' program is considered by the World Health Organization as a successful solution to the shortage of health care in developing countries (White, 1998). Nevertheless, the barefoot doctor regime was repealed in 1985. Consequently, the title "barefoot doctor" has been replaced by that of "village doctor". This change puts village doctors in an embarrassing situation. First, they are treated differently by the law to those "real" physicians who are registered by the NHFPC. Second, in villages and undeveloped rural areas where there is a lack of registered doctors, village doctors are not allowed to perform surgical abortions or to prescribe medical terminations.

As has been argued in the introduction of this paper, a woman-friendly model not only requires simply decriminalizing or liberalizing abortion but also involves the facilitation of adequate medical and state support. More specifically, the woman-friendly model ought to recognize that although law makes abortion available on request, financial difficulties can stop women, particularly those who are socioeconomically disadvantaged, from having safe and legal services. "Planned parenthood", where reproduction should be voluntary and children should be wanted, is advocated by most modern regimes. Therefore, the law should ensure that contraception and abortion are readily accessible, because these family-planning services are essential for women's exercise of control over their fertility. Restricting public funds for abortion means that access to decent termination services will finally turn to a privilege. In accordance with the 1995 Code and the 2002 Code, only unmarried couples of reproductive age are eligible for free family-planning services. This restriction ignores the reality that the existing national health-care insurance scheme in China only covers citizens who are employed or those who are able to afford health-care insurance. Against a background of the first post-Maoist government's moving away from central planning to a market economy at around the start of the 1980s, the provision of health-care services became more market-orientated (Yip & Hsiao, 2008). Compared with the Maoist plan-based provision of health-care services, the market-orientated one has to some extent enhanced people's control over their medical decision-making in at least two ways. First, the customer-based model of providing health-care services allows authorized private medical sector units to provide health-care services, so people's treatment choices are not restricted to those low-quality services provided in public hospitals. Second, it promotes competition between service providers and encourages them to improve their service quality. Nevertheless, the downside of commercialization is that access to health-care services, including abortion, has become heavily reliant on citizens' ability to pay since the start of the 1980s (Zheng & Hillier, 1995). As a result, those citizens who are not fully covered by medical insurance have to pay for their treatments out of their own pocket. Therefore, the rate of out-of-pocket payments increased quickly from 20% in 1978 to 70% in 2003.

Unmarried women who are not employed or who are unable to af-

ford health-care insurance have to use their own savings to pay for legal abortion services provided in authorized hospitals or private medical sector units. In addition, when compared to married and middle-class women, teenagers, unmarried working-class women, and poor rural women are more vulnerable to unplanned gestation because of limited access to contraceptive information and services (Shan & Qian, 2009). The rate of unmarried young women who were not using contraception when accidental pregnancies occurred was found to be much higher than that of married women, and the rates of contraceptive failures and repeated abortions among unmarried young women are much higher than those of married women (Cheng et al., 2004). Given the steady increase in Chinese citizens' average age for first-time marriage, there is a growing need for termination services among unmarried women (Wei, 2008). Restricting abortion funds to married women increases oppression against unmarried women. In addition, as has been discussed earlier, women in some rural areas where qualified providers are not available have to travel to gain legal abortion services. However, the state's family-planning funding scheme does not cover travelling expenses for seeking legal termination services. This means that even married women from rural areas who cannot afford to travel for a legal service have to resort to unreliable abortions. In the case of *Mu*,[5] L lived in the village of Wuhua where the health center did not have registered doctors who were qualified to offer abortion services. In 2007, she became pregnant accidently, but could not afford to travel to an urban medical institution for an abortion. She was told by her sister-in-law that Mu, a village doctor, could help women solve this problem. Mu agreed to perform an abortion for L. Nevertheless, because Mu improperly gave lidocaine hydrochloride injections, L went into a coma and eventually died. Mu was therefore charged under Article 336 of the Criminal Law 1979 (amended in 1997) with the crime of *feifa jinxin jieyu shoushu zui* (literally, unlawfully performing birth-control surgery). Mu's defense was that she intended to help L just as she had helped her friends, and did not know that performing termination of their pregnancies was illegal; eventually she was convicted and given a fixed-term im-

[5] *The People's Procurator of Wuhua District v Mu* (2008) *wufaxingerchu*, no.79

prisonment of three years, with a fine of ¥10,000 (Chinese currency, equivalent to $1,600). When legal and safe termination of pregnancy is not affordable, the services provided by abortionists, like Mu, become the only choice left for the women whose pregnancies are unwanted or unauthorized. Given the limits over family-planning funding, the abortionist, Mu, is more like someone who tried to help the women in trouble rather than like someone who conducted a crime. The above analysis does not defend unlawful termination suppliers, but suggests that to stop illegal and unhygienic abortions, the state control over funded abortion services should be removed and financial support should be equally available to female citizens of reproductive age on request.

The Burden on Women of Achieving the State's Population Goals

The regulation of family-planning services in China is significantly determined by the state's policy making in relation to population. Distinct from the current model of abortion law, that law in the Maoist era was quite restrictive because a pronatalist policy was advocated. Due to tumultuous decades of famines and wars in the period from the late Qing dynasty to the nationalist era (between about 1900 and 1949), the Chinese population was small and the birth rate was relatively low in the early 1950s. After the communist takeover, "the nation celebrated large birth numbers as a sign of recovery" (Scharping, 2003, p. 24). Mao believed that the more people there were, the greater the energy for socialist revolution, so he put forward the slogan of "strength in numbers" and emphasized that a large population was a great advantage and essential to national economic development (Peng, 1997, p. 289).

To enable women to produce more children, they were discouraged and even prohibited by the Maoist state from accessing abortion and contraception. The Maoist government's advocacy for a large population was translated into the national population policy and the ban on abortion and contraception. Apart from restricting access to family-planning services, to encourage citizens to have larger families, the state awarded women who had more than 10 children the designation of "Glorious Mother" (Peng, 1997). A political document entitled "*Kongzhi Nüganbu Duotai Fangfa*" (literally, the measure of controlling female cadres' access to abortion) and enacted in 1950 stated that women should be pro-

hibited from terminating their pregnancies unless their lives were seriously threatened by continuance of gestation or unless they had a severe genetic mental disease. Moreover, to have an abortion women had to obtain their husband's written consent and their requests needed to be approved by their doctors. Women were left little say in their reproductive decisions because their procreative preferences were subject to the state's pronatalist goal.

Due to the restrictive access in the pronatalist era, women could be forced to continue their unwanted pregnancies to full term or to resort to illegal and unreliable termination means. According to a report in *People's Daily* published in 1956, to end unwanted pregnancies a large number of women had to adopt unsafe means, such as jumping from a height and taking poisonous herbs (Zhong, 1957). While there is no official figure that shows how many women died or were permanently injured because of using unsafe termination methods, maternal morbidity and mortality caused by adopting these measures were believed to be high, in accordance with a report issued by the Ministry of Health in 1956. It indicates that in the 1950s the use of unsafe means of terminating gestation was very common, particularly in rural areas where many women were injured or died from eating living tadpoles or river snails and taking an overdose of quinine in order to end their gestation (Peng, 1997). Clearly, in the pronatalist era, the state's ban on an abortion service infringed women's right to health and to self-determination.

The population policy in the post-Maoist era (1979 to the present) becomes Malthusian and sharply distinguishable from the Maoist one. Consequently, the ban on abortion access has been lifted since the late 1970s. The legalization of abortion was not carried out because of the state's desire to take women's rights more seriously but because of the crucial change in the state's policy making relating to population. This change was due to the fact that by about the late 1970s, after three decades of implementing the pronatalist policy, the state had achieved its population objective. The population had increased dramatically from 574 million in 1954 to 1.03 billion in 1982 (Bureau of Statistics, 1954, 1982). The excessive demographic growth resulted in the first post-Maoist government's fear that the state's economic production could not keep pace with and could even be damaged by the population growth. In 1981, Deng, the party leader of the first post-Maoist govern-

ment, announced that reducing the large population was as "must-do" task which had to be achieved by all means, including administrative and economic methods. One of these measures was carrying out the well-known one-child policy, which was claimed to be "the most rigorous, comprehensive, and ambitious birth program in the world" (Rigdon, 1996, p. 545). The one-child policy did not apply to all areas or all citizens, but is mainly applicable to the Han population who lived in urban areas. This was because, first, the urban Han population accounted for about 90% of the total population (Bureau of Statistics, 2005), so the imposition of the one-child policy on them should result in reaching the birth-control goal quickly. Second, the enforcement of this policy could be more effective among the urban population because the government set up more family-planning centers in cities, which were used to ensure that female citizens of reproductive age were under the government's surveillance (Sharping, 2003).

Furthermore, the strategies to enforce the one-child policy by successive post-Maoist governments before and after the 2000s were not identical. The governments after the 2000s adopted more incentive- orientated methods, while those in the 1980s and 1990s were mainly coercive and punishment-based. In the 1980s and 1990s, although the ban on abortion was lifted, the law did not stop some local family-planning centers from using abortion as a compulsory method of avoiding "unauthorized" births. While it is impossible to find out how many abortions per year in China were coercive in the 1980s and 1990s, the number is unlikely to be small, based on a report on abortion services in Guangdong province, which shows that in 1982, 80% of 624,000 abortions were carried out "by order" (Nie, 2005). While the post-Maoist abortion law, as mentioned earlier, does not impose a time limit, it does not endorse women's rights to self-determination but facilitates the state's utilization of abortion as a remedial method of reducing authorized births. The abortion law, along with the state's one-child policy, conveys a message to the public that terminations of pregnancies at any stages of gestation are identical and necessary if they are performed on the grounds of lowering the population growth.

The adoption of more incentive-orientated strategies to enforce the one-child policy since the 2000s is mainly due to the fact that the demographic growth has been effectively lowered. The census statistics re-

leased by the National Bureau of Statistics show that the annual rate of population growth was 2.1% from 1954 to 1982 and only 0.57% from 2000 to 2010. While the state has changed its punishment-based strategies to more incentive-orientated ones, it has not endowed women with any substantial right to decision-making in relation to abortion. In the 1980s and 1990s, a large number of women were forced to terminate their wanted pregnancies because the state was in urgent need of lowering the demographic growth. Although this need has been greatly satisfied since the start of the 2000s, women's health and lives are still endangered by the state's imposition of medical and financial control.

As Nira (1997) has clearly observed, generally there are three main principles adopted by various regimes to manage their population figures: "people as power," "eugenics," and "Malthusianism" (p. 35). In brief, when a state's population policy is based on the principle of "people as power," its government has a strong need for people for a wide range of nationalist purposes, civil and military; when a state advocates the eugenicist discourse, its government's concern is the "quality" of its population and it does not require more citizens but healthy citizens; when a state's population policy is Malthusian, its government tends to use various means to reduce both its national birth rate and population. From the era of advocating the "people as power" principle to that of implementing the Malthusian strategy, the state has been imposing the burden of achieving its population objectives on female citizens by controlling their access to family-planning services. Although the regulatory models of abortion in the Maoist and post-Maoist governments look sharply distinguishable from each other, they are similar in the way that they treat women's reproductive decision-making, namely that women's needs for health and self-determination are marginalized and the state's population goals are centralized. Thus, having a profound understanding of the state's policy making in relation to population is essential for forming a thorough insight into the Chinese regulation of abortion. Its nature is still restrictive although the form looks liberal, because it allows the state to make reproductive decisions for female citizens. To further scrutinize the harmful effects on women caused by this nature, the following section offers an in-depth analysis of the practice of family planning in China, which helps the reader better understand the infringement of women's health and reproductive rights under such a model.

The Chinese-style Practice of Family Planning: A Duty-orientated Right

The idea of family planning was officially introduced into the Chinese political and the legal systems at the start of the post-Maoist era. The introduction of this idea to China was significantly affected by Malthusian demographic theory (Lee & Wang, 1999). To justify implementing the strict birth-control policy, the government advocated a Malthusian argument: economic production cannot keep pace with population growth without family planning. Therefore, as discussed in the last section, in the post-Maoist era reducing the national birth rate was treated as essential to the development of the state's economy and abortion was officially defined as a remedial method of practicing family planning. In 1980, the national birth-control policy was translated into national legislation: the Marriage Law 1980 (the Marriage Law), which states that a husband and his wife shall be under the obligation of obeying the policy of birth control. This obligation was quickly written into the Constitution, which states that while citizens of reproductive age have the right to reproduce or not to reproduce, they also have a duty to practice family planning. To understand the connection between the right (not) to reproduce and the requirement to fulfill the duty of birth control, the characteristics of Chinese *quan* (rights) thinking deserve a brief mention here. There are two characteristics of Chinese rights thinking which are different from those of human rights thinking in many other contexts. First, in China, citizens' *quan* is believed to inhere in citizenship rather than in humanity (Edwards, Henkin, & Nathan, 1986); in other words, citizens' exercise of rights is reliant on their fulfillment of relevant citizen obligations. Second, in the Chinese jurisdiction, citizens' rights are granted by the state (Peerenboom, 1993), so the content of citizens' rights can change depending on the state's needs. With these two characteristics in mind, it is not difficult to understand that accessing family-planning services in accordance with the Constitution and the Marriage Law is more like performing a duty than exercising a right. In other words, to gain the right to abortion (and reproduce), women must first obey the state's policy of reducing their fertility. In this way, the right to family planning in China is in fact duty-orientated. This is particularly true for women. While both husbands

and wives should take equal responsibility for the birth-control obligation, in accordance with the Constitution and the Marriage Law, the reality is that this duty is mainly undertaken by wives. Since the start of the 1980s, the state has imposed the duty to take up family planning mainly on wives, and most of the compulsory birth-control methods have also been targeted at them. According to a survey conducted by the NHFPC in 1995, in more than 80% of the families studied only wives undertook contraceptive responsibility. The contraceptive means that were mostly used among the families that already had one or two children were female sterilization and intra-uterine devices (IUD) (Peng, 1997).

Furthermore, in the Chinese family-planning context, normally wives rather than husbands are kept under surveillance conducted by the NHFPC in order to keep birth-control programs running smoothly. To enable women to effectively undertake birth-control duties, the NHFPC formed a vertical structure in 1981: downward from the NPFP to province, city, district (urban) or county (rural), street or township, and neighborhood and village family-planning centers. At the beginning of the 1990s, there were an estimated 300,000 family-planning officials and hundreds of thousands of part-time family-planning workers in villages who were called cadres (Hemminki, Wu, Cao, & Viisainen, 2005). Generally, from the onset of the program to the present, a high-level family-planning center, such as a typical city-based one, sets a target of reducing the birth rate to a certain point for those centers at lower levels, such as district family-planning centers. The target is usually set according to the number of married women of reproductive age in an area. If the family-planning centers at the lower levels meet the target, the cadres in that center can receive financial rewards. Family-planning centers at the grass roots level directly guide and supervise individual women's practice of controlling their birth rate. To meet the target and to avoid unauthorized births, the cadres in a local family-planning center can check and record detailed information about local married women of reproductive age, give birth permission to pregnant women if their pregnancy is authorized in accordance with the central government's population policy, and persuade or even force married women to use an IUD after giving birth to one or two children. By establishing family-planning centers at different levels, post-Maoist governments have

been able to monitor whether and how married women fulfill the duty of avoiding unauthorized births against the state's birth-control policy. Children who are born without birth permission will be treated differently from those who have been authorized. For example, they might not be able to be registered in the local household system or gain an ID card until their parents pay the fines (Hemminki, Wu, Cao, & Viisainen, 2005).

Additionally, the content of the duty-orientated right to family planning does not remain certain and stable, because it can be changed by the state. For example, to exercise this right, women have to bear and rear more children when the state is short of labor, but when it needs fewer consumers women are required to fulfill the duty of lowering their fertility. This uncertain and unstable right leaves adequate space for the state to exert its discretion over family-planning services. As discussed earlier, to what extent women can access abortion is not determined by their decision-making but by the state's policy goals. The state's entrenchment of control over abortion services puts women, particularly those who are socioeconomically disadvantaged, in a powerless position from which they are deprived of the capacity to manage their own reproductive biology and daily lives.

Conclusion and Suggestions

The discussion provided in this paper suggested that the argument that the Chinese regulation of abortion is the most liberal regime should be carefully investigated through a feminist lens. Specifically, the feminist analytical approach was applied in this paper to examine three points: first, the access barriers against women who need abortion, second, the effects on women produced by the state's policy making in relation to population, and third, the Chinese-style practice of family planning. By doing so, this paper argued that the regulatory model of abortion ought to move beyond a liberal form and to be brought into line with the principle of respect for women's rights to health and to reproductive decision-making. Furthermore, by scrutinizing the Chinese abortion law, this paper also attempted to remind feminists to be wary of the fact that the law in an unrestrictive form could endorse values or ideas that are in fact antithetical to women's interests.

First, in the Chinese family-planning context, the model of abortion regulation is significantly reliant on the state's policy making in relation to population figures. Women therefore have to subject their decision-making to the state's demographic objectives. Currently, the state's imposition of comparatively fewer limits on abortion is due to the desire to facilitate its use of abortion as a backup method of avoiding "unauthorized" births. The Chinese-style practice of family-planning means that access to abortion could be a compulsory duty for women if they cannot afford fines for having authorized births. This not only causes gender inequality for women, but also produces social class injustice for women from socioeconomically disadvantaged backgrounds. While law in the Chinese family-planning context allows women who want to end their pregnancies to do so, it may also force those women who desire to continue wanted pregnancies to abort.

To reduce the state's control over abortion services, I suggest that the national legislation on abortion should be completely independent from the state's policy making in relation to population. To do so, first, the state should enact new legislation to regulate abortion rather than including the regulation of abortion in the Code on Population and Family Planning 2002. Second, the law ought to ensure that doctors must obtain women's informed consent for termination of their pregnancies. Meanwhile, the state should adopt more incentive-based and softer approaches to carrying out its population policy, such as increasing allowances for small families and promoting contraceptives. Third, due to the control over access to public funding for abortion, unmarried women who cannot afford legal services are left no choice but to obtain clandestine and unsafe procedures. As access to decent termination services is essential to protecting women's rights to health and citizens' marital status does not make their right to health less important, the state should ensure that financial support is equally available to married and unmarried women. Fourth, the state imposes medical limits through constructing the role of doctors as the state's agents or the gatekeepers of abortion services. This makes access to abortion unnecessarily complicated and difficult. To treat women's reproductive health and rights more seriously, the state ought to remove the legal restriction of abortion to registered doctors only and to promote the provision of abortion services in undeveloped areas where medical re-

sources are limited. More importantly, the state should enhance the availability of adequate medical support. To do so, it can legislate to ensure that performance of abortion is only subject to women's informed consent. Moreover, the law should clearly define the obligations of medical professionals in carrying out abortion services, for instance, the duty to provide accurate and nondirective information and competent advice.

While making these proposals for law reform, I emphasize that feminists should not overestimate the usefulness of replacing "old" and "bad" laws with "new" and "good" ones in establishing an ideal regulatory system that automatically satisfies women's needs for reproductive health and decision-making. Feminists should beware of the "siren call of law" (Smart, 1989, p. 160), which is defined by Smart as being a problem in that although feminists try to be critical of existing regulations, they can also be seduced by law and attempt to use new or more laws to improve old laws. The usefulness of any legal reform may be limited because "once enacted, legislation is in the hands of individuals and agencies far removed from the values and politics of the women's movement" (Smart, 1989, p. 164). This is also the main reason why laws concerning reproduction that appear to be gender-neutral often disappoint women's hopes in practice. However, investigating law and making reform proposals should not only be targeted at perfect law. Since law is also a system of knowledge as well as a system of rules, challenging law can formulate and disqualify certain truths and discourses that are in fact opposite to women's welfare. This paper served this purpose by attempting to shape alternative understandings and visions of how abortion ought to be regulated and what kind of regulatory model can be truly regarded as liberal.

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Biographical Note: **Weiwei Cao** received her first degree in law from Hunan University in the People's Republic of China, LL.M and Ph. D. in Law from the law school of Keele University in England. She joined Hunan University in 2012 and is an associate professor in the school of law. She is the book author of Regulating Reproductive Autonomy: English and Chinese Models of Abortion Law. She has served as the Director of the Bio-medical Law and Ethics Centre at Hunan University. Her research areas are the legal regulation of reproduction, comparative law of reproduction, feminist legal studies, health care law and bioethics. E-mail: weiweicao@hotmail.co.uk