

Legal Collusion: Legal Consciousness under China's One-Child Policy

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Why would one person facilitate a community member's evasion of the law, even when there is nothing tangible in it for themselves? In this article, I draw on stories in Chinese villages under the one-child policy to suggest that the lack of moral legitimacy in a particular law motivates people to help others overcome legal or policy restrictions, especially when there are existing connections and trust among them. It reveals the influential impact of law's moral legitimacy on people's responses to legal evasion and the relational nature of legal consciousness. An individual's existing connections with and trust in those who evade the law often reinforce the sense of obligation to take matters into one's own hands to help right the wrong that has been done to them. Nevertheless, the consequences of participating in such collusion may reshape expectations and obligations within the community, pushing law-evading citizens to minimize risks for those who are willing to facilitate their evasion of the law. The fluid nature of interpersonal relationships in Chinese society also means that when things go wrong, supportive members may in turn use their insider information against the law-evading citizen to seek revenge or teach them a lesson.

In 1989, Mingna, a six-year-old girl, never had a good night's sleep. Mingna's mother was pregnant again after having four daughters. Officials from the township often raided in the middle of the night to arrest women with extra-plan pregnancies and their family members due to their violation of the one-child policy. Determined to have a son, Mingna's family spent the nights here and there with relatives who were willing to have them for a night or two. Mingna felt safer in the daytime, as she believed village fellows would watch out for them. Sometimes, the village cadres notified the family in advance to allow them some time to run away.

"Village cadres and fellows are all our relatives to some extent. We all carry the same surname and interact with one another every day. People in this village were reluctant to report extra-plan pregnancies," said Mingna. She emphasized that collusion between her family and village fellows was crucial to her family's success in having her younger brother.

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INTRODUCTION

Mingna's experience was common in rural China. Similar stories of resistance and evasion appeared across the country between the late 1980s and early 2000s (Chen 2004; White 2006, 2010). How did ordinary people without much power or many resources manage to evade the family planning laws and policies again and again until they achieved their goals in an authoritarian regime that was committed to reducing births at all costs? As Mingna's story shows, the open secret of their success was their reliance on collaboration with people around them. Mingna's relatives and village fellows facilitated the family's evasion of the one-child policy by opening the door for her family to stay for a few nights or notifying her family when they saw township officials coming to the village.

Collaboration through silent acquiescence and offering help in small ways to facilitate legal evasion is widespread in our everyday lives. Under China's zero-COVID-19 policy, for example, Chinese citizens questioned the legitimacy of the excessive control mechanisms and were willing to forgive and even help their trusted friends and relatives to violate COVID-19 restrictions (Liu 2023a). In Vietnam, illegal house construction, i.e., building homes in land areas not officially designated for residential purposes, is a prevalent practice used by low-income residents and is widely tolerated and supported by local residents (Nguyen 2020). Similarly, in Taiwan, people tend to stay quiet about the illegal usage of space by small business owners who would otherwise find it difficult to survive, and local police officers are reluctant to ruin their business by imposing severe punishment according to the law (Martin 2007, 2019; Wang 2022). In Los Angeles, the only major American city where it remained illegal to sell food on the street until recently, thousands of people gathered in parking lots and sidewalks every day for street food prepared by undocumented and immigrant vendors, making street food an essential part of Los Angeles culture.¹ When the police raided, people sometimes helped street vendors run away (Mejia 2014).

Under what circumstances are people willing to remain silent or help those who are evading the law even if they do not financially benefit from the legal evasion? What are the factors that shape a person's willingness to facilitate some people's evasion of the law and not that of others? To answer these questions, I borrow the concept of "legal collusion" from Xin He's (2003, 2004, 2005) work to describe how people collaborate to overcome legal and policy restrictions. Drawing on stories under the one-child policy in China, I argue that the lack of moral legitimacy² in a particular law has the potential to motivate legal collusion, which is especially the case in a community within which members are expected to help one another. It motivates people to take matters into their own hands to facilitate another person's evasion of the law. Existing connections between the two parties within a community often further reinforce this sense of obligation.

1. While the Safe Sidewalk Vending Act, passed in 2018, has promised to decriminalize street vending and create a pathway to legal vending, state public health law made it almost impossible for most street food vendors to get permits until January 2023.

2. I use the term "moral legitimacy" to describe a particular piece of law's failure to gain support from ordinary citizens due to its conflict with established cultural norms. I will discuss this concept in detail in the literature review.

Based on my data on legal collusion under the one-child policy, I suggest that this sense of obligation is ever shifting in nature, depending on how the relationships between the two parties evolve. It is, therefore, always crucial for those who evade the law to constantly make efforts to create opportunities for community members to participate in legal collusion. However, legal collusion can sometimes be unpredictable. Despite the expectation for community members to support one another, the individual should also be wary of their community members, especially within certain communities where disputes, conflict, and envy are often inevitable.

Legal collusion under the one-child policy is a prime example to discuss the impacts of interpersonal relationships and the law's lack of moral legitimacy on legal consciousness. As "no one was left untouched by the policy" (White 2010, 175), the one-child policy created countless opportunities for people to get involved in legal collusion. In fact, virtually every Chinese citizen knows of someone who had evaded the policy. In general, they tend to agree that there is a lack of legitimacy in the one-child policy and that the implementation in the villages between the 1980s and early 2000s was brutal (White 2006). Nor do people agree with the Chinese state's use of the one-child policy to put the state and the family at odds with each other (Liao 2019, 685–89).

My study offers insights into how relational legal consciousness is formed and sustained within social groups by highlighting the fluid sense of obligation among group members. We will see from the stories of legal collusion under the one-child policy that people's responses to an individual's evasion of the law may differ depending on whether the individual has fulfilled their obligation as a member of the community or not. The same person who facilitates a group member's evasion of the illegitimate law can also take advantage of the law's illegitimacy to revenge the group member due to a change in their relationship.

LEGAL COLLUSION AND RELATIONAL LEGAL CONSCIOUSNESS

Despite the prevalence of legal collusion in everyday life, it has attracted little attention from law and society scholars, with the exception of Xin He's research on the collaboration between migrant workers and locals in Beijing. He's (2003, 2004, 2005) research demonstrates that when Beijing implemented a series of discriminatory regulations against migrants in business license applications, migrant entrepreneurs built a collaborative relationship with locals in order to operate their businesses "semi-illegally." They rented business licenses from locals or used locals as a cover to conduct business (He 2004, 2005). The key to legal collusion, according to He (2004, 104), is the collaborative relationships between migrants and locals, with both sides benefiting from the collaboration. He's research shows that in authoritarian regimes such as China, instrumental considerations and mutual interests are key factors that motivate people to collaborate with one another to evade the law.

While financial benefits are clearly one of the most common reasons for legal collusion, I cannot help but think of circumstances under which an individual facilitates other people's evasion of the law without asking anything in return. For example, under the one-child policy, village fellows notified Mingna's family without the intention to benefit from the process financially. In other words, the type of legal collusion described

by He is not the only type of collusion that exists, as collusion can also occur among people who do not necessarily stand to gain anything themselves or benefit from a quid pro quo with people who evade the law. To capture the differences between the type of legal collusion described by He and legal collusion that does not involve financial benefits, I divide legal collusion into two categories: thick legal collusion and thin legal collusion.

I use thick legal collusion to refer to the type of collaboration described by He (2004, 2005), namely collusion involving two parties who have entered an agreement to work together to evade the law for mutual benefit. In thick legal collusion, one party chooses another to facilitate legal evasion based on the latter's resources, power, information, social status, etc. This type of legal collusion is thick in that it is a deliberate, preplanned, and informed process of collaboration that requires the parties to have the intention to work together from the outset. In thin legal collusion, people support the evasion of law through silent acquiescence and offering help in small ways. They facilitate legal evasion without expecting to benefit from it financially. Thin legal collusion is often impulsive, spontaneous, and unplanned, and so does not require premeditated plans among the parties. This article focuses on thin legal collusion under the one-child policy because it enables us to rule out financial concerns and focus more on people's relational considerations when they evaluate whether they should facilitate other people's evasion of the law or not.

Existing law and society research in authoritarian contexts has offered some insights into the relationship between the law's lack of legitimacy and legal consciousness. These studies find that people in authoritarian regimes generally have less belief in state law's legitimacy and thereby often bypass, evade, and resist the law (He 2005; Erie 2012; Su 2018; Nguyen 2020; Liu 2023a). They focus on how the lack of moral appropriateness in the law decreases legal compliance. This focus distinguishes them from the line of literature spearheaded by Tom Tyler that uses the concept of legitimacy to emphasize the importance of procedure-oriented legality in legal compliance (Tyler 1990, 2006; Tyler and Huo 2002; Sunshine and Tyler 2003).³

In general, when the law is morally inappropriate and discriminates against a particular group of people, those who suffer from discriminatory treatment may consider the authorities and the law to be illegitimate and not worthy of respect (He 2005, 529). Tu Phuong Nguyen (2020, 187), for example, describes the law's failure in reflecting "widely held norms, values, and practices" as "the lack of moral legitimacy of state laws." In Nguyen's study, residents' engagement in the illegal construction of houses in Vietnam "reflects a shared communal understanding that their survival needs and their desire for stability should be met by the state due to the state's moral obligations and due to their own deservingness given their own hard work" (Nguyen 2020, 199). The lack of moral legitimacy of the legal system or a particular piece of law can lead to people's

3. Moral appropriateness of the law is not included in this line of literature. Tyler (2006, 390) distinguishes legitimacy from morality by stressing that the former is "a perceived obligation to societal authorities or to existing social arrangements," while the latter is "personal standards to which people attempt to align their behaviour." To Tyler (2006, 375, 390), morality is an internalized obligation to one's own sense of moral appropriateness, rather than to an authority; legitimacy, on the other hand, is "the belief that authorities, institutions, and social arrangements are appropriate, proper, and just."

distrust of the law and their manipulation of the law to benefit themselves (Nguyen 2020; Liu 2021).

The “shared communal understanding” described by Nguyen is also evident in the Chinese context: scholars use a variety of terms to refer to this shared understanding of justice and fairness, including beliefs of righteousness, perceived justice from below, morality and fairness, *qing* and *li*,⁴ and wider normative arguments (Thireau and Hua 2005; Gallagher 2006, 2017; He, Wang, and Su 2013; Gallagher and Yang 2017; Liu 2018, 2020; He and Feng 2021). These studies demonstrate that the “shared communal understanding” tends to shape people’s perceptions of and engagement with the law. Most of these studies focus on compliance with and mobilization of the law. This study expands the scope and emphasizes the relational nature of legal consciousness by exploring how the law’s lack of moral legitimacy and interpersonal relationships interact to shape an individual’s legal consciousness.

Law and society scholars use the concept of legal consciousness to refer to people’s opinions and attitudes toward the law, the ways in which they engage with or resist the law, and their perceptions of what the law should be (see, for example, Merry 1990; McCann 1994; Ewick and Silbey 1998; Nielsen 2000, 2004; Engel and Munger 2003; Hertogh 2004; Silbey 2005). The relational nature of legal consciousness has been emphasized in recent studies to call for more attention to the relational process of the formation of legal consciousness and the legal consciousness resulting from this relational process (Young 2014; Abrego 2019; Chua and Engel 2019, 2021; Wang 2022; Young and Chimowitz 2022; de Sa e Silva 2022; Liu 2023b). Relational legal consciousness is, according to Kathryn Young and Hannah Chimowitz (2022, 242), “an umbrella term referring to any way that Person A’s legal consciousness is shaped by their relationships to another person or group,” which might include group membership, family dynamics, culturally constructed beliefs, and so on. This concept helps make sense of how an individual acquires legal consciousness as a member of social networks and calls for more attention to the interaction of persons and situations when discussing the law’s influence on people’s behaviors (Nadler 2017; Abrego 2019).

In the context of Chinese cultures and societies, the relational nature of legal consciousness has attracted some attention from recent studies on family relations and neighborhood dispute resolution (Wang 2019, 2022; Liu 2023b). Hsiao-Tan Wang (2019, 2022) introduces the Chinese cultural concept of *zijiren* to legal consciousness scholarship to discuss how the sense of belonging in the family and neighborhood shapes people’s decisions to invoke the language of the law or not when dealing with disputes within their families and communities. In Chinese, *ziji* means “self,” while *ren* can be translated as “person.” *Zijiren* is loosely translated as “one of us,” or “insider of the group.” The sense of being *zijiren*, according to Wang (2019, 771), is “a culturally

4. *Qing* is a complex concept that simultaneously refers to social connectedness, human emotion and feelings, and what the majority believes to be just and right (Liu 2018, 2020). *Li* is closely related to *qing* and can be loosely translated as the reason, reasonableness, rational principle, or logical arguments (He 2022). *Qing* and *li* are often used in unity as *qingli* to refer to what the majority of people consider to be just and fair. Indeed, integrating *qing* and *li* is a general cultural belief (Chou 2000, 279). Bin Ling (2012, 124–27), a renowned Chinese legal scholar, argues that *li* cannot be separated from *qing* because the former is embedded in and stems from the latter.

embedded emotional complex of belonging that refers to a psychological classification schema of one's level of relational inclusivity or exclusivity within a given group."

Family members are the core of *zijiren* because of their blood relationships and strong emotional connections (Yang 1999). Broadly speaking, in most rural villages in southern China, such as Mingna's, every village fellow enjoys the *zijiren* status and treatment as long as the person lives up to moral standards in the village. This is because village fellows generally carry the same family name and consider one another "relatives" within the village community (Wang 2013); in addition, village fellows interact with one another on a regular basis and tend to follow the same village rules, which leads to a sense of certainty and trust among them (Wang and Bu 2021). However, unlike family members, village fellows may lose their *zijiren* status if they fail to fulfill their obligations within the village community.

Central to the concept of *zijiren* is Chinese people's emphasis on differential treatment for those who are close and those who are distant (Lee 2015; Fei [1948] 1992). In Chinese societies, an individual tends to divide other people into the categories of *zijiren* and non-*zijiren* based on their relational closeness, after which the individual applies differential treatment between these two categories. When one uses *zijiren* to describe the relationship with another person, there is a tendency for the former to prioritize the interest of this person over that of non-*zijiren*. Nevertheless, the boundary between *zijiren* and non-*zijiren* is fluid for two reasons: first, it is all about who is relatively closer to the individual when compared to other people involved (Liu 2023b, 2023c). An individual's cousin is usually considered to be *zijiren* when compared to a stranger, but the cousin would be non-*zijiren* when compared to the individual's nuclear family. For Mingna's village fellows, neighbors would be non-*zijiren* when compared to her family members, but they could become *zijiren* of the pregnant woman in front of people from the township who were not connected to them.

Second, while family members are the core of *zijiren*, the fluid boundary between *zijiren* and non-*zijiren* allows non-family members to become *zijiren* by building trust and accumulating emotional connections (Liu 2023c; Yang 1999). When it comes to non-family members, whether an individual can be included in the category of *zijiren* depends on the *guanxi*, or social connections between the two parties. Yanjie Bian (2019, 3), the author of *Guanxi: How China Works*, defines *guanxi* as "a dyadic, particular, and sentimental tie that has the potential for facilitating the exchange of favors between the two parties connected by the tie." *Guanxi* differs from blood relationships in that *guanxi* requires careful preservation (Lee 2015). To maintain good *guanxi*, an individual must know the art of *guanxi* because success in maintaining and strengthening *guanxi* highly depends on the style of exchange of favors and the appropriateness of the performance (Smart 1993, 399). It lies in the skillful mobilization of moral and cultural imperatives (Smart 1993, 399).

To become one's *zijiren*, non-family members must rely on interaction in everyday life to maintain and enhance *guanxi* by gaining recognition and trust, as well as a shared sense of responsibility to care for one another (Yang 1999; Ke 2017). As a result, if a party's behavior has not lived up to the other party's expectation of *zijiren*'s responsibility, thereby weakening or damaging their *guanxi*, the latter may end up excluding the former from the *zijiren* category (Ke 2017).

The importance of *guanxi* in the formal legal system has been highlighted in existing sociolegal research on China's judicial decision making and case screening among legal workers in rural China (He and Ng 2017; K. Li 2016, 2022; L. Li 2018). However, we know little about the role of *guanxi* in shaping ordinary people's legal consciousness in everyday life, and the processes of relational formation of legal consciousness is a question that still awaits detailed analysis in law and society scholarship. Legal collusion in China is a prime example to investigate this relational process of formation because "collusion" always requires two or more parties to participate in the process. The *guanxi* between those who evade the law and those who facilitate the evasion is evident and relevant, especially when the latter is not a family member and has not asked for or expected any financial benefit from the process. Changes in *guanxi* with a particular individual may lead to vastly different responses to the individual's evasion of the law.

THE STUDY

The one-child policy was first implemented in 1979 in China to curb population growth (Greenhalgh 2008, 2018). Under the one-child policy, each couple in urban areas was allowed to have only one child, with very few exceptions, while, in rural areas and for ethnic minorities, a married couple had the opportunity to give birth to a second child if the first one was a girl or had disabilities (Wang et al. 2016, 930, 949; Cai and Feng 2021, 591; Johnson 2016, 2). The shift from the one-child policy to the universal two-child policy in late 2015 opened some space for Chinese people to criticize the former one-child policy and reflect on family memories related to the strict implementation of the brutal policy, a topic that was relatively sensitive before the shift.⁵ Data collection for this study was primarily conducted during the period of time when people in China were reflecting on their experiences under the one-child policy and the changes in their identities after the shift to the two-child policy.

A few months after the shift to the universal two-child policy, I went to Fujian Province to conduct in-depth interviews and focus groups and immersed myself in everyday conversations about the significant change. Fujian stood out as an ideal research site because it was notorious for preferences for sons, prevalent patriarchal norms, and the resulting unbalanced sex ratio at birth. While recent studies have demonstrated an emerging pattern of rural couples' preferences for daughters (Johnson 2016; Shi 2017), many people in rural areas and small towns of Fujian were still under pressure to have sons to gain reputation in their kinship networks and local communities.

Despite the relaxation of the one-child policy, the Human Research Ethics Board at my institution back then was concerned about the potential for getting Chinese citizens in trouble if I indicated in my recruitment materials that I would like to speak to them directly about their evasion of the one-child policy. In response to this concern, I avoided framing my research as a project focusing on legal evasion, nor did I reach out

5. In May 2021, China announced the three-child policy to allow couples to have up to three children to boost the birth rate. However, data collection for this research was primarily conducted in 2016.

to people who broke the law under the strict implementation of the one-child policy. I also found it difficult to recruit people who had experience facilitating legal evasion: helping their village fellows, friends, and relatives through silent acquiescence was too common for most people to consider their experiences unique enough to contribute to my study. In light of these constraints, I decided to investigate legal collusion under my larger research project on law and intergenerational relationships in China. Fortunately, it was often the case that conversations on family relations shifted naturally to the impact of the one-child policy, given the influential role of the policy in shaping family relations and identities. I would then follow up with questions to encourage my research participants to share stories of legal collusion they had heard.

It turned out that for many of those who grew up in rural Fujian during the 1980s and 1990s, their childhoods were filled with fear of being caught and locked up, being separated from their parents, missing meals when they escaped home with their parents to avoid attention, and seeing their homes being damaged by people sent from the township. They had heard their parents and other village fellows explaining what happened and complaining about the one-child policy again and again. All the explanations and complaints from those who evaded the law informed their understanding of legal collusion during the dark time period. Their narratives might not necessarily fully capture the experiences of those who were directly involved in legal collusion, but their interpretation of other people's experiences reflected their own understandings of when and why legal collusion occurred under the one-child policy. In addition, given the prevalence of resistance to the one-child policy in Chinese villages, I ended up having a few research participants with direct experience evading the law themselves.

In total, I conducted in-depth interviews and focus groups in urban and rural Fujian with sixty-three women, all of whom were born under the strict implementation of the one-child policy and witnessed the shift to the two-child policy during the years when they would have to make decisions regarding their own childbearing. As being born under the one-child policy was an important part of their identity, they were interested in sharing the stories they heard or experienced. To cross-examine the narratives of those who were born and raised under the one-child policy, I included six women of their parents' generation who gave birth between the late 1980s and mid-1990s. After gaining an idea of strategies of resistance from my interviews with these two groups, I interviewed five individuals who oversaw the implementation of the population control laws and policies, with three of them working in their own villages. Most of the interviews and all the focus groups with the younger generation of women born under the one-child policy were conducted in Mandarin Chinese, while the majority of interviews with the older generation and those who were involved in the implantation of the population policies were conducted in Hokkien, a local dialect in southern Fujian.

LEGAL COLLUSION UNDER THE ONE-CHILD POLICY

Under what circumstances did legal collusion occur under the one-child policy? How did people increase the chance of legal collusion by creating opportunities for village fellows to remain silent or offer support in small ways? Stories from rural villages

in Fujian during the strict implementation of the one-child policy point to two organically linked and inseparable factors that make legal collusion possible: a piece or set of laws and policies without moral legitimacy; and a *zijiren* relationship that implies the responsibility to care for one another. Nevertheless, insights and information shared among *zijiren* could also be used against community members, especially when social relationships became attenuated or when legal evasion appeared excessive. This vulnerable and uncertain nature of legal collusion pushed those who evaded the law to be extremely cautious, despite the obligation among *zijiren* to support one another within the village community.

THE SENSE OF OBLIGATION AMONG ZIJIREN AND THE ONE-CHILD POLICY'S LACK OF MORAL LEGITIMACY

It was a hot and humid afternoon in September 2016, nine months after the universal two-child policy came into effect to replace the one-child policy in China. I went to a fishing village in southern Fujian. After a bumpy ride on a scooter, I finally arrived at Mingna's house. Inside the house, three children were taking a nap on the mats laying on the floor at the corner of the living room. Our conversation naturally started with the children.

"Are they all yours?" I asked.

"Yes, my son, the youngest of them, is only three years old. As village fellows often look down on families without sons, we must try our best until we have a boy," said Mingna. Soon I learned that Mingna's experience resembled her mother's, who gave birth to four daughters and only stopped once she had a son during the years of the strictest implementation of the one-child policy. Mingna explained, "There are many families with three children just like mine—two daughters and a son who is the youngest of the three. Some families have more daughters if their third one is a girl."

I asked Mingna how it was possible for so many families to ignore the one-child policy and have more children than allowed. Mingna emphasized that given the severe consequences of having no sons to continue the family line, people shared a common understanding that they should not ruin their village fellows' plan to have a son. The traditional emphasis on having a son to carry on the family line was deeply entrenched in rural Fujian, and families without sons often suffered from disdain and marginalization. She said, "People in this village all understand the tremendous pressure imposed on the couple by the in-laws and other village fellows who look down on families without male descendants. Some village fellows will even say it in your face and urge you to hurry up and have another try to secure a son." After all, sons had the moral obligation to ensure the perpetuation of the family line so that ancestor worship could continue in perpetuity (see also Hu and Tian 2018).

In addition to the conflict between the one-child policy and local people's emphasis on having male descendants to carry on the family line, Mingna said the brutal implementation of the one-child policy in her village also stirred up support for those who had to evade the law. Village fellows shared memories of the days when population control officials from the township raided the village to arrest women for forced abortion and destroy roofs, windows, and fences. Mingna pointed to the damaged

roof of her neighbor's house: "That house was damaged by those people from the township. They knocked down some parts of the roof and the windows to let people know that they were serious about the implementation of the policy. There are many houses like this in our village."⁶ For Mingna, the scariest part was the raids organized by the township. Many families in Mingna's village had been targets of the raids that pushed the whole family to run away and hide in the bush, up the hills, or even in the graveyard. To Mingna, the prevalence of legal collusion in her village was a result of people's strong disapproval of the law *per se* and the brutal approaches adopted by township officials.

In a village approximately 130 kilometers away from Mingna's, my interview with Yajing, the oldest daughter of a family with two daughters and one son in Lai Village, confirmed Mingna's viewpoint. Yajing believed that her family managed to have a male descendant after two daughters due to silent acquiescence and support offered by their village fellows who were sympathetic to families affected by the inhumane one-child policy. Yajing said,

Even when the one-child policy was implemented strictly, village heads would do their best to wait until the family had a son before sending the wife for forced tubal ligation. Village fellows would also remain silent as a way to show support. Everybody knew that the couple must feel so sad to not have a son, and thus, people were generally reluctant to report those families to the township. There was a family in my village that had seven daughters, and the village let them continue until they had a son.⁷

As the one-child policy stood in the way of some village fellows having a son, people generally understood the pain of those who evaded the law and chose to remain silent. When the one-child policy made it impossible for some families to fulfill their obligation to carry on the family line, village cadres and fellows would imagine themselves in the shoes of those unfortunate couples and tolerate their evasion of the law until they achieved their goals. Yajing explained, "Village cadres were all from the same village and were *zijiren* after all. They knew that they had to be reasonable and kind to village fellows."⁸

From Mingna's memories of the days she was running away with her parents and her own experience having three children to Yajing's family story of being surrounded by sympathetic village fellows, we see two key factors contributing to the prevalence of legal collusion under the one-child policy: the sense of *zijiren* and the law's lack of moral legitimacy, both of which are important to our discussion of relational legal consciousness and are essential to legal collusion.

The confidence of families like Mingna's and Yajing's in evading the law stemmed from the belief that village fellows as *zijiren* would be willing to help them keep the secret. Compared to people from the township who came to raid the village and arrest pregnant women, members of the village had the obligation to prioritize the interest of

6. Interview, Mingna, September 2016.

7. Interview, Yajing, July 2016.

8. Interview, Yajing, July 2016.

their village fellows. When Mingna said that village fellows all “carry the same surname and interact with one another every day,” she was trying to emphasize the existing established *guanxi* among village fellows. Yajing referred to people in her village as *zijiren* to stress the need to be “reasonable and kind” to one another. Their understanding of the risk of evading the law was based on their established *guanxi* with people in the village and the sense of obligation among *zijiren* to take care of one another.

Nevertheless, we should never assume that people in the village would tolerate everything their village fellows did under all circumstances merely because of the established *guanxi*. When I asked Mingna whether she had ever heard of female infanticide during the strict implementation of the one-child policy, she was shocked by the question. Mingna said, “It is fine if a person sent the girl for adoption. But I think if someone killed his own daughter, the village would not tolerate having him in the village. He would probably be buried in gossip and condemnation.” What Mingna suggested was that the person would lose his status as *zijiren* of his village fellows if he were involved in anything that was against the moral standards in the village. In other words, paying no respect to moral standards within the village could lead to the loss of status as *zijiren* and the *guanxi* associated with the status.

Another important determining factor pointed out by Mingna and Yajing, which is related to moral standards within the community, is the law’s lack of moral legitimacy. To a large extent, village fellows were motivated to participate in legal collusion because of their strong disapproval of the law *per se* and the brutal implementation of the law on the ground.⁹ When the law was in the way of a couple fulfilling their family obligations, most village fellows were willing to cover for them. As Mingna explained, one’s failure in having a son led not only to disappointment within the family but also to gossip in the village. At the same time, there was immediate danger for the family and the woman once they got caught by the township. The unbearable consequences, such as forced abortions, significantly discouraged village fellows from reporting the evasion to the township.

These stories have captured the relational nature of legal consciousness: individuals who evaded the law could expect some sort of protection from their community members, as people within the village community had the obligation as *zijiren* to support one another when necessary. The lack of moral legitimacy in the one-child policy and its implementation on the ground laid the foundation for people to help right the wrong that had been done to their community members by the law. Those who disagreed with the one-child policy took matters into their own hands to protect people in their village community who had to evade the policy. The sense of obligation to support *zijiren* within the village, the conflict between the one-child policy and the importance of families carrying on the family line in rural China, and the brutal implementation of the policy in the villages all contributed to the prevalence of “extra-plan” childbearing in rural areas in China.

9. To be fair, the one-child policy was not entirely against the interest of every family member throughout history. As Renita Wong (1997) powerfully argues, one of the purposes of the one-child policy, according to the Chinese state, was to liberate women from the private realm of the family. Thus, we cannot assume that all wives were necessarily on the same page with their in-laws and husband. The problem, however, was that rural women continued to live under enormous pressure to bear a son.

THE ART OF LEGAL COLLUSION: CREATING OPPORTUNITIES FOR KINDHEARTED VILLAGE FELLOWS TO REMAIN SILENT

In both rural and urban China, every married woman of childbearing age (between fifteen and forty-nine years old) who had already reached the limit of the number of children allowed was asked to go for an ultrasound examination every three months. The examinations, or the so-called double checks, were organized to check whether those women were pregnant and whether their intrauterine devices were in place. In rural areas, making sure all married women of childbearing age participated in the double checks was one of the main tasks of those who were hired from their villages to help with the enforcement of the one-child policy.

On the days when double checks were conducted in the village, women had to go to line up for the examinations. Skipping the double checks came with consequences. According to Guoxiang, a family planning administrator in Lin Village, there was a fine of approximately 500 yuan imposed on those who did not show up for double checks. If one was caught pregnant during the double checks, those who were in charge would then “persuade” the pregnant woman to “voluntarily” go for an abortion. “It was free. The township would arrange a car to drive the woman to the hospital,” said Guoxiang. If the woman insisted on keeping the fetus after being found out in double checks, things could be quite extreme during the time when abortion of unauthorized pregnancies and forced sterilization were mandatory.¹⁰

To enforce an ambitious but brutal policy throughout the country, the Chinese state introduced various enforcement measures and imposed punishment not only on individuals who had “illegal” children but also on family members, village heads, and leaders and colleagues at the individual’s work units for their failure in preventing the violation of the one-child policy (White 2010; Shi 2017). A couple’s evasion of the law, if discovered by the township, would lead to the deduction of performance points of the village and village cadres. In Chenzui Village in Hebei Province, for example, all households in the village would lose the one-child policy allowance for the year if a couple was found evading the law (People’s Daily 2008). To make things more complicated, provincial and municipal governments across China used financial incentives to encourage community policing regarding illegal pregnancy. For example, Zhangzhou, a city in Fujian Province, announced in 2013 that RMB 10,000 (approximately USD 1,400) would be offered to those who reported a wealthy family’s violation of the one-child policy (Beijing Morning Post 2013).

The rationale behind collective responsibility and financial incentives is rooted in China’s long tradition of relying on community members to police one another. The Chinese state holds the community and the household responsible for the wrongdoing of its members. Examples are abundant in history and our daily lives, from the practice of “guilt by association” (连坐) in the dynastic past (O’Brien and Deng 2017, 181) to local residential community policing during the COVID-19 pandemic (Xu and Liu 2021; Liu 2023a; Fu 2023). Everyone in the community is encouraged to take a closer interest in the behavior of their neighbors and ensure that their members keep peace and obey the law.

10. Interview, Guoxiang, October 2016.

To those who risked having extra-plan children, the importance of legal collusion could not be overstated, especially during the strict implementation of the one-child policy in the 1990s. The importance of legal collusion in ensuring the successful delivery of the “illegal” child prompted the couple and their family members to try their best to create opportunities for others to facilitate the evasion without being negatively affected. Strategies included but were not limited to hiding a child, submitting fake documents, and going through a false divorce.

Some parents sent one of their children, usually the second daughter of the family, away to stay with relatives in other villages to pretend that they had not reached the number of children they were allowed to have. Siyan, the second daughter born to a rural family in Putian, was sent to her grandparents when she was two years old. At that time, her parents were determined to have a son. Siyan said, “My parents sent me away to show the township officials that they only had one daughter at home and were eligible to give it another try.”¹¹ Compared to those families who stayed together, Siyan’s parents made it easier for their village head and village fellows to cover for them by sending their second daughter away. Siyan’s neighbors and village fellows knew about the whole story, but they never reported the family to the township. Silent acquiescence was key to her family’s success in securing a son to continue the family line. As Xinxiang Chen’s (2004, 97) study of the implementation of the one-child policy in a small village in Henan Province suggests, village fellows understood that they could not reveal the secret and ruin other people’s plan to have a son. When asked by the township officials, village fellows and cadres could pretend that they knew nothing about the family’s second daughter.

Another strategy that was widely used was to leave the village and find ways to obtain proof of “double checks” to be sent home every three months. Stories of pregnant women and their families on the run were abundant across China. As White’s (2010, 180) research suggests, those who were determined to have one more child often joined the “guerilla birth corps” by finding work outside their villages as temporary migrant workers in urban China. In response to the imposition of this inhumane policy and the strict implementation on the ground, several couples in Mingna’s village fled the village when the wives were pregnant. They left their home villages to avoid detection and at the same time aim to create space for legal collusion without bringing trouble to village fellows.

Mingna and her cousin, Lingling, told me that once those couples were away from their village, they arranged fake documents to be sent back to the village head. Mingna mentioned that a few couples who were expecting their extra-plan children used connections with hospitals to get doctor’s notes stating that they passed the double checks and then mailed them to the village head. Lingling heard that some others collaborated with village heads of their temporary residence to fake double-check documentation to be submitted to their home village.¹² With the fake documents, village heads and cadres back home could at least have some evidence to prove to the township that they had done their job.

11. Interview, Siyan, September 2016.

12. Interview, Lingling and Mingna, September 2016.

In recent years, another strategy that relied heavily on silent acquiescence was increasingly popular in rural China—getting a false divorce to avoid the surveillance of routine medical examinations. As divorced women were considered “single” and thus not required to undergo double checks, getting a divorce became a solution. Many couples went through the process of divorce by registering it officially with the local administrative office. These legally divorced couples remained under the same roof and most of them chose to remarry immediately after they managed to have a son when they had to register their newborns.

A factor contributing to the pervasiveness of getting false divorces is the much easier access to divorce since 2003. In the old days, couples had to provide an introduction letter from the villagers’ community to apply for divorce in the Civil Affairs Administration (Michelson 2022, 19). As White (2006, 197) notes, “[c]ouples ineligible to have another child bribed or colluded with local officials to obtain a quick divorce decree . . . given the lengthy process usually required to obtain a divorce in China, the strategy could work only with the assistance of sympathetic or greedy officials.” Since the implementation of the 2003 Marriage Registration Regulations, divorce is readily accessible outside the court system if both sides consent and can agree on all terms (Michelson 2022, 19). As a result, more and more village fellows chose to seize the opportunity to evade the birth policy by turning to false divorces. Mingna said, “You will be surprised by the number of divorced women in this village. Getting a divorce is not a big deal these days. When the couple next door went to the Civil Affairs Bureau to remarry, they were shocked by how many couples were doing the same thing.”

Village fellows and cadres could easily discover that the divorce was for the purpose of evading the law when the couple remained under the same roof. While it was legal in a narrow sense for divorced women not to participate in double checks, they were still in a vulnerable situation. If someone reported them to the authority, there would be unthinkable consequences and endless trouble. For instance, *People’s Daily* and *China Youth Net* featured a story of a couple being pushed by their work units to conduct an abortion when the wife was five months pregnant after their false divorce was discovered by the local authority (Liu 2014). Fortunately, the majority of people in the villages remained silent about false divorces next door. Mingna said, “Everybody knows what is going on with the divorced couples who stay in the same household, but we don’t report to the authority. We all know that having a son means a lot to a family in this village. It would be miserable if the family ended up with no sons.” To a large extent, it was the approval, sympathy, and implicit understanding among village fellows that made it possible for the divorced couples to successfully have an “illegal” son.

When the authoritarian regime imposed collective responsibility and offered financial incentives to encourage village fellows to police one another under the one-child policy, it added another level of complexity on top of the already complicated relationships among members in the village community. Those who evaded the law would have to know the art of increasing the chance of legal collusion by creating opportunities for their village fellows to participate in legal collusion without being negatively affected. For example, when Siyan’s mother was expecting the extra-plan child, Siyan’s neighbors would be expected to remain silent due to the fact that they were *zijiren*. This expectation was, at least to some extent, interrupted by the imposition

of collective responsibility and financial incentives. Thus, Siyan's family had to try their best to minimize negative impacts on whoever remained silent for them in the village, leading to the family's decision to "hide" the second daughter to make it easier for people to pretend they knew nothing. In so doing, Siyan's family shouldered the responsibility even if the plan was extremely difficult for all family members. After more than two decades, Siyan still suffered from a sense of uncertainty resulting from her experience of being "abandoned" by her parents, which she believed had led to her lack of secure feelings in romantic relationships.

THE FLUID BOUNDARY OF ZIJIREN UNDER LEGAL COLLUSION

Despite the assumption that people from the same village naturally had the obligation to protect those with whom they had closer connections rather than helping township officials, people's expectations and understanding of each other's responsibility had been reshaped by the one-child policy's emphasis on community policing. People who evaded the law must know how much trouble they could bring to other community members. Their failure in taking up responsibility and repaying other people's support could lead to resentment, disdain, and even the breakdown of *guanxi* in the village. At the same time, while many people selflessly offered help without asking for anything in return, it did not mean that all village fellows would be happy to always remain silent about everybody's evasion of the law.

The existence of the one-child policy had been changing the dynamics of *guanxi* in village societies and shaping the sense of obligation among village fellows. The very fact that village cadres would be negatively affected if the couple refused to pay the fine and go through all relevant processes gave rise to a strong sense of obligation among village fellows to protect their village cadres who remained silent. People in the villages I visited tended to believe that once the couple achieved their goal of having a son, they should pay the fine as soon as possible to avoid bringing trouble to village cadres.

Yajing, the second daughter of the family whose village head allowed her parents to evade the law until Yajing's brother was born, emphasized, "Once the family managed to have a son, they must go through the process and pay for the fine right away. There was no question about this. Neither should the family try to evade the one-child policy again. The village cadres were firm about this when my parents finally had my brother, and we understood the situation."¹³ In other words, once a couple managed to have a son, village cadres had little obligation to facilitate her parents' evasion of the one-child policy again, despite being *zijiren* within the community.

Some people even supported the compulsory means of confiscating personal income through the court system and limited their recreational travels when those who evaded the law had the money yet refused to pay the fine. In a group interview in Lin Village, Xiaosun, a thirty-one-year-old woman, shared with the group that the bank accounts of those who refused to pay the fine in a nearby town had been frozen, with some of them being prohibited from taking flights and staying in four-star hotels. Xiaosun, who was supportive of this approach, said, "If they have the money to travel

13. Interview, Yajing, July 2016.

for recreational purposes, it means they have the money to pay the fine, especially when the township allows installment payment. They are wealthy enough to have a luxurious lifestyle but don't want to take responsibility. Of course, it makes sense to force them to pay."¹⁴ Embedded in Xiaosun's support was her emphasis on the couple's obligation to shoulder their responsibility and avoid bringing trouble to other people. Xiaosun seemed to be more sympathetic to village cadres than those who could afford to but refused to pay.

If Yajing's parents failed to pay the fine when they could afford it, village fellows like Xiaosun would look down on Yajing's family and accuse them of being selfish and unappreciative. This negative impact on their *guanxi* with village fellows was unthinkable in a village where people had to rely on one another to get through the tasks of everyday life. Yajing's parents paid the fine after having a son not because they believed in the legitimacy of the one-child policy; rather, they were willing to pay it right away because they appreciated village cadres who were reasonable and kind during the process of legal evasion. They also cared about the *guanxi* with other village fellows who would otherwise gossip about the family's lack of sense of responsibility.

The narratives of Yajing and Xiaosun demonstrate the complexities of *guanxi* and legal consciousness within a community: village cadres, who could potentially be held responsible for the evasion of the law in the village, were also *zijiren* to most people in the community as long as the village cadres were reasonable and kind. For example, Yajing's village head was not only *zijiren* to Yajing's family but also to other village fellows. Those who were "wealthy enough to have a luxurious lifestyle but don't want to take responsibility" may fall outside the category of *zijiren* when village fellows like Xiaosun compare them with kindhearted village cadres. This fluid boundary between *zijiren* and non-*zijiren* and its impact on people's understanding of a particular group member's legal evasion illustrate the highly relational nature of legal consciousness.

My interview with Quanshui, a family planning administrator born and raised in Cai Village, captured the resentment and disappointment of those who offered help but received little protection. As a member of Cai Village, Quanshui was willing to help minimize the consequences for his village fellows and wink at fake documents and divorce. His silent acquiescence led to a large number of extra-plan births in his village. While most people in the village spoke highly of Quanshui and appreciated his kindness, quite a few people took advantage of Quanshui's soft approach and never bothered to pay the fine after they managed to have a son. It reflected badly on Quanshui and his village.

In the middle of the interview, Quanshui took out a printed official document to show me how the township took off his performance points and deducted allowance for the village. It was clear that Quanshui consistently had the worst performance record among all family planning administrators, and Cai Village ranked lowest among all villages in the region. Even after the shift to the two-child policy, Quanshui was still on his motorbike chasing after his village fellows for the fine resulting from the violation of the one-child policy. His family members kept reminding him that he should not be too

14. Interview, Xiaosun, October 2016.

“sincere and kindhearted” when village fellows did not fulfill their duty to protect him from trouble.

These stories reveal a great deal about the relational nature of legal consciousness and the uncertainty of legal collusion within a village society in an authoritarian regime. To a large extent, people in Cai Village were “spoiled” by Quanshui because they knew that it was unlikely for a soft-spoken person like Quanshui to use violence against them if they failed to fulfill their obligations after legal collusion. If Quanshui were as tough as the village head in Yajing’s village or more ambitious about his career, his village fellows could have had vastly different responses to the one-child policy. What happened in Mingna’s village back in the early 1990s is a prime example to further explain this point. At that time, a woman from Mingna’s village got a promotion to the provincial level to oversee the implementation of the one-child policy. In order to prove herself in front of her leaders, she was extremely harsh to Mingna’s village and other nearby villages because she knew the area very well as an insider and had the knowledge to detect the evasion of the law and legal collusion.

Likewise, easy access to information about one’s unplanned pregnancy in the village had provided a weapon for village fellows to seek revenge, teach somebody a lesson, or even just threaten their “enemies.” After all, Chinese villages are not utopias: within the village community, there are disputes, conflict, envy, and ongoing competition among village fellows. It is inevitable for some families to be attacked by those who are ill intentioned, regardless of the expectations for village fellows to treat one another as *zijiren*.

In a focus group with those who were born and raised under the strict implementation of the one-child policy, a woman who called herself Lucky Cloud shared her family’s experience of being reported to the authorities when her mother was carrying her as an extra-plan pregnancy. Her mother was on the run for a long time when pregnant with Lucky Cloud. The couple left their village and opened a small bottle depot in a city nearby to make a living. A family planning administrator from the city soon found out and convinced her mother that returning to her village was a better option. When Lucky Cloud’s mother arrived at the trailhead to her husband’s village, she heard from village fellows that her own father was ill and decided to visit her own parents in another village first. Soon after her arrival at her parents’ house, Lucky Cloud’s grandparents from her father’s side phoned to tell her not to return home because cadres from the township were already in the village looking for her.

“Someone in the village must have reported us to the township about my mum’s return. Luckily, my grandparents found out and stopped my mum from coming home. I almost had no chance to come to this world. Being arrested in those days meant a forced abortion,” said Lucky Cloud. I had a sense that she must have picked the word “lucky” in her pseudonym because of this incident. Until now, Lucky Cloud’s family had no idea who reported them to the township. The family suspected that the informant could be someone in the village who was greedy and wanted that dirty money as a reward for reporting an extra-plan pregnancy, or perhaps it was because some village fellows were jealous of her family’s success in the small bottle depot. Lucky Cloud’s story cautions against romanticizing interpersonal relationships in village societies and stresses the fluid boundary between *zijiren* and non-*zijiren*. To be specific, even if village fellows were generally considered *zijiren* when compared to people from the township,

information shared within a trusted community could also be used against community members once a particular individual no longer considered another person *zijiren* for whatever reason.

CONCLUSION

Stories of legal collusion under the one-child policy have demonstrated how relational legal consciousness is formed and sustained within social groups, even to the point where people are willing to facilitate others' evasion of the law. In general, people are prepared to take matters into their own hands to help their group members when the law is illegitimate. Legal collusion will most likely take place when two inseparable factors are both present: the law's lack of moral legitimacy; and a *zijiren* relationship between the colluding parties. The two factors are inextricably connected, and missing either of the two will significantly reduce the chance for legal collusion. In other words, an illegitimate law alone will not necessarily result in collusion when there are no *zijiren* relationships involved; and the existence of *zijiren* relationships alone does not guarantee legal collusion.

At the same time, while those who evade the law can expect a certain level of protection from group members because of existing connections with them and the law's lack of moral legitimacy, they should never take kindness and support for granted. This is especially the case when the imposition of collective responsibility and financial incentives has the potential to unsettle preexisting expectations among community members. Those who evade the law have the responsibility to create opportunities for legal collusion by providing seemingly convincing evidence and absorbing the negative impacts themselves.

Things become more complicated when there are more than two parties involved. For example, village fellows were simultaneously *zijiren* to the couple who evaded the law and the village cadre born and raised in the same village. A balance had to be reached when a particular *zijiren*'s evasion of the law had a negative impact on another *zijiren*. This complexity reminds law and society scholars of the need to look beyond the relationship between the parties directly involved in legal collusion and pay close attention to other people who may be affected directly or indirectly.

It is generally safe for an individual to assume some level of protection from *zijiren* when the individual puts in the effort to minimize the negative impact on other community members who help with the evasion of the illegitimate law. But things did not always work out as expected. After all, envy, disputes, and conflicts are inevitable in close communities such as small villages in rural Fujian. Community members can in turn use the insider information to report those who evade the law as a way to seek revenge, teach somebody a lesson, or even just for personal interests such as monetary rewards and promotions. Thus, people who evade a particular piece of morally illegitimate law should stay alert and try their best to avoid attention from community members.

This study uses stories under the one-child policy to discuss the factors that contribute to legal collusion, the importance of taking responsibility and creating opportunities for other community members to participate in legal collusion, and the

uncertainty of legal collusion due to the fluid nature of interpersonal relationships. The findings of the analysis of thin legal collusion in this article have broader implications within and outside Chinese societies. The article offers a theoretical framework to discuss the reasons behind people's tolerance and facilitation of other people's evasion of the law in different cultural contexts. While *zìjīren* and *guanxi* are indeed concepts unique to Chinese societies and cannot be applied directly to study groups of non-Chinese people, it is reasonable to assume that interpersonal relationships within a real or imagined group and attitudes toward the law's moral legitimacy inevitably affect people's legal consciousness in other cultural contexts. It is not a matter of whether these two factors shape legal collusion or not, but rather a matter of degree.

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