

# Research on the Identity of Socialist Core Values and Marriage and Family Legislation

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**Abstract:** As the latest regulation of marriage and family affairs, the judicial interpretation of the Marriage and Family Part of the Civil Code aims to strengthen the understanding and application of the specific systems of the Marriage and Family Part of the Civil Code, balance the basic interests of different subjects, sort out various emerging phenomena in dynamic marriage and family relations, and solve the dilemma of fairness in the measurement of heterogeneous interests. Therefore, the internal mechanism and value direction of marriage norms are particularly important. The core values of socialism embody the excellent qualities of China's traditional culture, and its main connotation is the guiding ideology of marriage and family legislation, and it is also the soul of trial rules. Whether the core socialist values and marriage and family legislation are the same is the basic theory and precondition of the above issues. In the paradigm of identity theory, the improvement of marriage and family legislative rules aimed at socialist core values is an important topic in legislation and justice.

**Keywords:** Marriage and family, Socialist core values, The principle of identity.

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## 1. Introduction

The implementation of the core values of socialism is not only the promotion of morality, but also the guiding ideology at the level of the rule of law. The Interpretation (I) of the Supreme People's Court on the Application of the Marriage and Family Part of the Civil Code of the People's Republic of China (hereinafter referred to as Interpretation (I) issued by the Supreme People's Court is the latest judicial interpretation of the Marriage and Family Part of the Civil Code, which embodies the marriage and family trial rules guided by the core socialist values such as civilization, harmony, freedom, equality, justice, honesty and friendliness, and contains profound ethical attributes and requirements for marriage and family. It is not only the upgrading and development of family civilization construction, but also an important embodiment of the people's growing yearning for a better life. It is also an inevitable requirement of the idea of socialist rule of law with Chinese characteristics. This paper takes the Interpretation (I) of the Marriage and Family Part of the Civil Code as an example, analyzes the status and role of socialist core values in marriage and family legislation, and explores the deep-seated reasons and concrete manifestations of the close connection between the two.

## 2. The Principle of Identity in Marriage and Family Legislation

The principle of identity was proposed by the Japanese scholar Masashi Chiba as a basic concept for the application of legal anthropology. Refers to the fundamental principles that permeate the essence of various legal cultures, revealing that even though a country's laws constantly change with the times, economy, and social conditions, the inherent legal culture still has continuity and inheritance. As the basic law of a country, the marriage and family law reflects the cultural characteristics and characteristics of a country. The Chinese nation not only has a long history of civilization, but also has formed a unique national legal culture, and has had a profound impact on the development of law in the

surrounding East Asia region, becoming a unique Chinese legal system. After modern times, the Chinese legal system gradually disintegrated, and China turned to transplant Western laws. In an era of rapid change, we must look back and examine the civilization, wisdom, and spiritual values of our nation in historical and realistic marriage and family life, and examine whether our marriage laws are consistent with the life principles that people have always embodied in marriage and family [1]. Marriage in the civilized sense has the following meanings: First, marriage has a natural nature. It is based on the union of a man and a woman, the objective laws of nature. Second, marriage has a common nature. It must be recognized by the formal form of society, thus creating a community of life different from the individual form. Third, marriage has a real ethical nature. The inherent and reasonable ethical rules are inherited and are important in maintaining the stability and order of the family and society. Fourth, marriage has a social nature. The family formed by marriage is the unit structure of society, performing and fulfilling various social functions and responsibilities.

Although the actual life mode, composition structure, and marriage legislation of marriage and family have changed in different periods, such as the formation of a small family model with couples and children born in wedlock as the mainstream, the transformation of the family property system from the traditional cohabitation system to the marital property system, and challenges to the internal, external, negative, and intergenerational property relationships of couples. However, the basic marriage function of marriage and the Chinese people's pursuit of life meaning embedded in marriage and family life have not changed. The traditional common, assistance, filial piety, mutual love and the new idea of equality between men and women are still core value contents that people respect, for which legislators should have enough respect. It is a country's marriage and family system that best reflects the inherent legal roots of its culture. The Judicial Interpretation of the Marriage and Family Title is another marriage code that reflects the intrinsic value of culture after the Marriage and Family Title of the Civil Code. The socialist core values coalesce the fine qualities of

China's traditional culture, and the connotation of socialist core values embedded in the legal system of marriage and family is the same embodiment of the continuity of a country's excellent culture.

### **2.1. Identity of value concepts**

"Interpretation (I)" embodies the political position of taking the people as the center, promotes the core socialist values, promotes the construction of family civilization, and adheres to the combination of the principles of ruling the country by law and ruling the country by virtue, which meets the requirements of socialist rule of law construction with Chinese characteristics. Article 1,043 of the Marriage and Family Part of the Civil Code incorporates the content of socialist core values into the law on marriage and family relations, as the guiding principle provisions of family trials and the value objectives of the law. Article 4 of the Interpretation (I) is even more illustrative of this issue.

### **2.2. Consistency of legislative requirements**

According to the specific legislative requirements of the Legislative Law of the People's Republic of China on judicial interpretation, namely, judicial interpretation should be targeted to specific legal provisions and should be consistent with the purpose, value and principles of the relevant legislation.

### **2.3. Uniformity of system integration**

"Interpretation (I)" includes more than 200 provisions. There are 11 judicial interpretations of the original marriage law. In order to cooperate with the implementation of China's Civil Code and coordinate the unification of legal application, interpretation (I) The relevant judicial interpretations of the original marriage law have been systematically integrated in accordance with the style of the Civil Code's Marriage and Family Code after being repealed, cleared, simply modified, retained for application, and reasonably added.

### **2.4. Tightness of normative cohesion**

In the legal relationship of marriage and family, especially when it comes to dispute resolution, family law, as a substantive law, is inevitably closely related to procedural laws such as civil litigation. However, procedural and specific operational norms related to marriage should not be included in the marriage and family code of the Civil Code. Therefore, "Interpretation (I)" is empowered as a multi comprehensive family trial rule to connect the substantive and procedural norms of marriage and family. For example, Article 7 serves as a specific operational provision: "Men and women who have not registered their marriages in accordance with Article 1049 of the Civil Code and live together in the name of husband and wife should be treated differently if they file a lawsuit to request a divorce." and Article 17 on the issue of requesting confirmation of marriage invalidity, and Article 19 on the issue of limitation of action are all related to procedural provisions.

## **3. The Inner Fusion of Socialist Core Values and "Interpretation (I)"**

Self-cultivation, unity of family, governance of the country, and peace in the world" is the crystallization of the wisdom of ancient sages who stood up and acted and governed the country, and China's civil law and legislation took family

harmony and social stability as the basic starting point, and this idea has been integrated in the process. It is reflected in the spirit of legislation, legislative principles and institutional rules to follow the content of socialist core values and the spirit of modern rule of law. The principles of public order and good customs such as the rule of law, freedom, equality, loyalty, justice, and ethical care and the concept of rule of law are the implementation and observance of the core socialist values, have far-reaching significance for cultivating civilized family style and realizing the development of social civilization, and are the inherent requirements for social harmony and stability, national prosperity and development, and national progress. Interpretation (I) is also the essential requirement of upholding the core socialist values and transforming them into legal content centered on rights and obligations, forming the basic principles and specific trial rules of specific family law. It embodies the new era of "respecting the law with respect to etiquette, and governing jointly with morality and law. It is a model for integrating socialist core values into the construction of socialist rule of law with Chinese characteristics.". This is reflected in the following aspects:

### **3.1. The value orientation of safeguarding individual freedom and equality**

Realizing the comprehensive and free development of human beings is the ultimate goal of social governance, and it is also the starting point and end point of marriage and family relations. Only marriage based on personal freedom and equality is the essence of modern civilized marriage. "Interpretation (I)" includes six chapters and 91 articles, all of which embody the equality of men and women, the equality of legal status between parents and children, children born in wedlock, children born out of wedlock, and close relatives, and the equal protection of the legitimate interests of various civil subjects by law. At the same time, Article 18 of the "Interpretation (I)" further defines clearly the violation of freedom and equality. Such behavior is recognized as "coercion", where the perpetrator coerces the other party to marry against their true will by causing damage to the life, body, health, reputation, property, etc. of the other party or their close relatives. This reflects the basic value pursuit of protecting the parties' freedom of marriage in the marriage and family code of the new era.

### **3.2. Values that promote interpersonal integrity and friendliness**

Integrity and friendliness are not only the main contents of socialist core values, but also the basic principles and value judgment standards of civil legal relations. It is also the basic code of conduct that members of marriage and family relationships should follow. For example, within a marriage and family relationship, Article 47 of the Interpretation (I) stipulates: "The conditions for parents to raise their children are basically the same, and both parties require direct child rearing. However, if the child has lived alone with the grandparents or grandmothers for many years, and the grandparents request and are able to help the child take care of their grandchildren, it may be considered as a priority condition for parents to directly raise their children." Such a provision also takes into account the friendly behavior of grandparents and grandmothers in family law trials; Outside the marriage and family relationship, if Article 28 stipulates that one party may not sell the house jointly owned by the

husband and wife without the consent of the other party, it may not oppose a bona fide third party; Article 36 If one of the spouses dies, the other party shall be liable for paying off the debts jointly owed by the couple. These explanations are all about the specific observance of interpersonal integrity and friendliness.

### **3.3. Value pursuit of family civilization and harmony**

As the old saying goes, "The foundation of the world is at home." Family construction and governance are related to national development, national rejuvenation, social harmony, and people's happiness. The Marriage and Family Code of the Civil Code also clearly stipulates that "families should establish good family conduct, promote family virtues, and attach importance to the construction of family civilization." "Interpretation (I)" also adheres to this concept, and its first article clarifies the provision that "persistent and frequent domestic violence can be recognized as abuse"; Strictly implement the principle of the most beneficial to minor children, such as Article 39 on the confirmation of parent-child relationship, and Article 43 on requesting both or one of the parents to pay maintenance fees for minor children or adult children who cannot live independently; Detailed consideration of the custody rights of children under the age of two years or over in Articles 44 to 48; Article 56 In cases of contesting the custody of minor children in divorce proceedings, provisions such as respecting the expression of the true will of children over the age of 8 shall be supplemented and improved.

### **3.4. Maintain the value goal of social fairness and justice**

Fairness and justice are the basic value goals pursued by society, and law is to adjust various social relationships under the balance of fairness and justice. Article 29 of the "Interpretation (I)" provides for the detailed determination of whether the parents contribute to the purchase of a house for both parties before and after their marriage as one party's personal property or common property. Article 34 The explanation that one spouse colludes with a third person to fabricate debts, which results in the other being denied the debt situation, and that the debts incurred by one spouse in illegal and criminal activities such as gambling and drug abuse are not recognized as joint debts, are all manifestations of the value concept of fairness and justice, balancing and protecting the rights and interests of the subject related to marriage and family relations.

## **4. The Way to Improve Marriage Legislation Rules Targeting at Socialist Core Values**

### **4.1. From the fusion of heterogeneous factors to overlapping consensus**

The core of marriage and family law is various personal and property systems, and the basic goal is always to balance and protect various interests. In the mediation process of various interests, it is inevitable that conflicts of interests will arise. However, family law emphasizes the active integration of various heterogeneous interest factors, and advocates that different subjects reach agreement on the original different views through consensus negotiation to the extent they

recognize them[2]. This is an important means and approach for the judicial mediation mechanism of family trials. The fusion of heterogeneous factors is the primary goal of family justice, and forming a consensus on order is the ideal goal of family justice. This consensus is a common understanding that eliminates various contradictions and differences, and is reflected in the connotations of core socialist values such as equality, fairness, friendliness, and the rule of law. As far as family trial is concerned, the combination of the basic concepts, legislative technical elements, and heterogeneous factors in the trial path of family trial can enable people to form overlapping consensus on the trial of family dispute cases.

### **4.2. Constructing the Value System of Family Law with the Goal of Realizing Entity Value**

After the Second World War, profound changes have taken place in family organizations, social structures, and international patterns, and the protection of human rights has become the focus of international attention. The human rights values and concepts advocated by human rights conventions have begun to enter the domestic laws of some countries. The specific concepts and rights implementation are often integrated and reflected in a country's marriage and family legislation and family trials, resulting in profound changes in marriage and family law. The marriage and family law system and marriage values established at the beginning of modern times have undergone a series of challenges, criticisms, and amendments. The principles of equality before the law, the prohibition of any discrimination, the prohibition of domestic violence, and the protection of the interests of the weak have become important basic principles of a country's marriage and family law and the value judgment criteria for participating in the internal governance and benefit distribution of marriage. After the introduction of the concept of human rights into marriage and family law, it began to intersect with other departmental laws and have unclear boundaries. Marriage and family law began to perform some functions of public law, resulting in a trend towards the legalization of identity law[3]. Its main manifestations are: equal rights for men and women, equality of family members, equal respect for the right to life, health, and personal dignity, protection of the right to personal and family life freedom, the principle of anti discrimination, equal reproductive rights, and the principle of safeguarding the best interests of children. Therefore, the fundamental rights and objective value order guaranteed by the Constitution, such as equality between men and women, the right to freedom, respect for individual will, and family autonomy, have replaced the traditional ethical order based on the order of status, such as the distinction between dignity and inferiority, parental rights, and cohabitation and common wealth. Become the basic content of the new value system of marriage and family law[4]. The marriage value system and specific systems have changed and developed in the vicissitudes of human history. "Any sustained social life inevitably forms a form of restriction and organization. The law is the most stable and clear form of these organizations"[5].

Realizing justice is the ultimate ideal and goal pursued by substantive values, and only the order of actual justice can be recognized and observed. As Bodenheimer pointed out, "The focus of justice can be considered as whether the order of a

group or the system of a society is suitable for achieving its basic goals[6]."The legal system is a behavioral rule formulated with justice as its inner soul, and its perfection and reflection in application still require justice to measure. Only a system with universal justice connotation can achieve the basic goal of justice value. Therefore, from the perspective of the relationship between the mutual achievements of justice and law, legal rules must meet certain minimum moral requirements and living standards in human social life. These requirements originate from the different attribution requirements of human beings as natural and social individuals, and are the greatest common divisor for satisfying individual will, maintaining community life, and achieving orderly social operation. In a modern society ruled by law at the civilized stage of the construction of human order, law, as a powerful way to adjust social relations, sets moral bottom line requirements for the operation of the marriage system, constructs a protective barrier for interests, balances interests, and corrects and regulates any behavior that deviates from the marriage system. The justice goal of marriage law is to maintain the ideal state necessary for marriage and family life and achieve individual happiness and family harmony[7]. This is also the reason why philosophers and jurists have adhered to the principle of "justice" throughout the ages to judge the legitimacy and rationality of subjective behavior and social systems. This expectation reflects the brilliance of human rationality and social civilization.

How to define the criteria for judging justice in family cases? The primary theme of Rawls' theoretical system of justice is that social systems apply equally to all members of society with regard to the distribution of rights and obligations among subjects, as well as the division of specific interests[8]. Under the guidance of the concept of justice, a series of value indicators that can express the connotation of justice have been derived, such as equality, freedom, security, and good customs. Together, they constitute the substantive content of the substantive value goal of justice in marriage law. The principle of equality in marriage and family law is first embodied in the independent and equal status and personality of both spouses, and gender equality is the most direct embodiment of the principle of equality in the field of marriage law. In property relations law, the principle of equality requires both spouses to enjoy equal rights to the common property of the husband and wife, and thereby assume equal obligations. The principle of freedom is the soul of establishing marital relationships, which is related to the happiness and harmony of individuals and families. The principle of freedom is mainly embodied in marriage law as freedom of marriage. In the theory of marital relationship model, there is a claim that the marital relationship belongs to contractual relationship, which has formed a consensus in western countries and has been recognized by some countries' legislation[9]. Therefore, civil contractual acts must be based on the premise of the parties' freedom of will and centered on autonomy of will. Freedom of marriage is a fundamental right of citizens recognized in the Constitution and a fundamental principle of marriage law. Marriage freedom is not only reflected in pure identity relationships such as freedom of marriage and freedom of divorce, but also applies to property freedom during the existence of marriage relationships. Such as the choice of marital property system, the agreement on property between husband and wife, the agreement on negative property between husband and wife, and the

assumption of debts, etc. Safety value is mainly applied to the relationship between one or both parties of a marriage in external civil activities. The relationship between the parties to a marriage and their partners is more coordinated by the internal values of the marriage. When it comes to the interests of a third party outside the marriage relationship, it cannot be handled solely according to the values and rules within the marital group. At this time, the marriage law should also consider the external transaction safety and order issues related to the marriage relationship. Such as the nature of civil transactions involving marital property, rights and obligations, and responsibility distribution. Good customs are of great significance to the formation of the value system of marriage law. In the long-term family and social life, people have formed some consensus values that are internalized and externalized, such as respecting the old and caring for the young, protecting the interests of the weak, and maintaining fidelity between spouses. These values are also the essence of the justice value goal of abstract marriage law, and it is crucial to weigh and choose interests in the legislation, justice, and compliance of marriage and family relations.

### **4.3. Focus on the safeguard function of the order value of family trials**

The institution of marriage, as one of the ways of social governance, also pursues the realization of the value of marital order in the same way. The pursuit and maintenance of the substantive and orderly values of marriage law are both necessary for the realization of marital justice, and both belong to two aspects of the same issue. The setting and maintenance of the order value of marriage law is based on the preservation of the entity value of marriage, and the order value is the means and way to guarantee the realization of the entity value. The two complement each other, one cannot be without the other[10]. Many institutions in society are composed of a series of related rules, including the value connotation set by the institution and a chain of rules that can be logically self-contained to satisfy the value realization. These rules are generally clear, specific, universal, and stable in nature. Established procedural rules require or guide people to repeat their behavior on a defined track, so that the values contained in the system are translated into an external and achievable behavior. Of course, if the value concept of these institutional rules can be generally recognized and consciously implemented by people, then the implementation cost of the system will reach the lowest.

The order value of marriage law is the value of "how to do", the ultimate goal is to realize the substantive value of marriage law, so that the implementation and implementation of the substantive value of marriage law, is the materialization of the substantive value. At the same time, the entity value also reviews the legitimacy and rationality of the rules of order. This includes the legislative activity, theoretical review and judicial evaluation of the rules of order itself. Specifically, it is mainly manifested in the regulation and requirements of specific legal relationships such as internal and external relationships related to marriage, divorce, spousal relationship, parent-child relationship, etc. and Specific legal acts such as specific requirements or advocacy between spouses and family members regarding personal acts, property acts, and mixed personal and property acts.

#### **4.4. Focus on party autonomy in the application of the value system of marriage law**

The construction and examination of the marital value order should be realized from different viewpoints and perspectives of private law. The law is a form of regulation of human relations, and it is always centered on the individual and human relations, which are the individual, the relationship between two people, and the collective and social relations between more people. Marriage and family law mainly regulates the individual rights of spouses, the interests of the group of spouses, and the maintenance of the relationship formed by spouses, which corresponds to the three dimensions of the value system of marriage law: "individualism", "groupism" of spouses, and "state or socialism"[11].

##### **4.4.1. Autonomy is the logical starting point for the value of "individualism" in marriage law**

Since the 20th century, due to the development of productivity, women's emancipation and human rights theories, marriage and family law has undergone qualitative changes in terms of values, practical frameworks, and specific contents. Marriage law extends to different fundamental value requirements in each country. However, there are certain similarities. The recognition of the value of the individual, the granting of independence and whether this is the basic object of the role of law become the main markers that distinguish ancient law from modern law. The individual is separated from the subordination of family, household, and husband and wife, forming a new independent individual, and the initial establishment of the concept of individual personality becomes the starting point of modern civilized private law. From then on, the value orientation of marriage and family law has moved from the subordination of status to the independence and equality. The central task of the law also shifts from the absolute fulfillment of the individual's obligation to identity to the care of the individual's rights. The relationship between rights and obligations is viewed dialectically, and the realization of the content of rights is the basis for the fulfillment of obligations. The process of moving from the "duty-based" to the "right-based" approach is being described.

The principle of meaningful autonomy has the highest priority among the basic principles of civil law, which is determined by the essential nature of private law. Other basic principles can only reveal their special value in the sense of contrast with the principle of meaningful autonomy[12]. The fundamental theoretical support for the protection of "individualism" in marriage law is derived from the principle of autonomy of intent in the field of private law. The freedom of marriage is a typical expression of the autonomy of meaning in marriage law. The basis for the construction and logical derivation of the system of marriage law is the beginning and establishment of the marriage relationship, which is based on the freedom to marry on the basis of autonomy. Each person has the fundamental right to enter into marriage and to whom to enter into marriage, and it is on the basis of this freedom that the creation and extinction of other legal acts during the marriage and at its end are derived. In the value of marriage law, which focuses on the realization of the rights and obligations of individuals, the freedom of individuals is the highest, and the space for individual autonomy is also the greatest at this time.

##### **4.4.2. Autonomy is a modest amendment to the value of "groupism" in marriage law**

In the pursuit of individualistic values, based on the standpoint of independent individuals, whether starting from individual freedom in the natural order or from rights in the legal order, the expression and effect of individual actions depend on one's own will. At this time, the individual is both an ethical person and an economic person, and although the individual will inevitably be influenced by external factors in various choices, they are ultimately autonomous actions expressed by the individual in truth. The main reason for the contradiction between the "individualism" and "groupism" values of marriage law is the different positioning and division of social roles. In a conjugal group relationship, the husband or wife represents not only himself or herself as an individual, but also the identity role of the spouse of another. The group value of marriage law pursues the unity of individual happiness and family harmony, focusing on the wholeness, stability and orderliness of the group. Spouses are often seen as one, including the oneness of identity and property. As an important social constituent unit, the conclusion of a group of spouses begins with a union in identity, manifests itself in the absorption of the full range of personalities of both parties, and is based on a bond of affection between the concluding partners, with mutual relations not easily replaced. The most prominent manifestation of the oneness of property is the choice of the type of matrimonial property regime in China, where the law has chosen the common system of matrimonial income as the legal property regime[13]. The matrimonial property regime has evolved from a single legal community property regime to a legal property regime alongside a contractual property regime, and then to the improvement of the contractual property regime and the establishment of an individual-specific property regime. The progression of this change is a continuous expansion of the individual spouses' right to determine the status of their property. Thus, in the perspective of group value pursuit, although the expression of individual will is bound to be restricted and limited by certain internal and external conditions and factors of the group, the degree of freedom of individual will is lower than that in the legal structure from the perspective of individual position. But the true expression of individual will is also a moderate amendment to the group value of the couple, in personal autonomy in a certain degree effectively group value under the unity of the couple, so that the independent personality of the couple is more obvious, effectively isolating the legal effects of the unity of identity and property.

##### **4.4.3. Autonomy is an effective defense against the "statist" value of marriage law**

Before the introduction of the Civil Code, there were theoretical debates on the attributes and legal status of the Marriage Law as a public and private law[14]. There are views of legal attributes such as mixed public and private law, public law, and mixed law of private law and social law. The debate on the legal status can be summarized into two views: the independent sector theory and the return to civil law theory[15]. The root of these arguments comes from the special social foundation and functions of marriage and family. The marital family has reproductive, nurturing, and support duties, and has the function of protecting the interests of vulnerable groups of children, women, and the elderly, which determines that the marital family inevitably has the intervention and control of the public power of the state. The

first marriage law introduced in China in 1950, due to the influence of Soviet legislation, emphasized the comprehensive control of the state in the field of marriage and family, and the excessive intervention of public power led to the limitation of the free space of the parties, and the direct manifestation of these interventions was the excessive mandatory norms in marriage and family law. Both the Marriage Law of 1980 and the revised Marriage Law of 2001 are based on the legislative philosophy of continuously expanding the private law autonomy of citizens and safeguarding the principle of their meaningful autonomy. After the introduction of the Civil Code, marriage law has formally returned to the civil law system. In the corresponding conflict between public and private values, the principle of meaningful autonomy, as a direct theoretical support to defend against excessive intervention of the state public power, plays the role of checking the excessive intervention of the state public power, preventing the public legalization of private law and guaranteeing the realization of private rights.

## Acknowledgment

This work was supported in part by the School of Law of Beijing Normal University. The project number is 2020LAW001.

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