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The Embodiment of Enhancing Family Civility in China's Civil Code*

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Abstract "Development of family civilization" has joined legislative language system from policy language and ethical language, and has become the basic value orientation of the Marriage and Family Section of Civil Code of the People's Republic of China (hereinafter referred to as "the Civil Code"). We need to specify significance and jurisprudence of family civilization, and make family civilization harmonious with the basic principles (basic value orientations) of Marriage and Family Section and Inheritance Section. The significance of family civilization in the new era should be taken to include equality, respect, loyalty and unity, as is specified through the legal rules of marriage and family. Development of family civilization does not challenge freedom, but overcomes the defects of individualism in the identity community so as to fully realize the liberal and all-round development of each family member. By integrating family civilization with the basic value orientation of its Marriage and Family Section, the Civil Code has demonstrated a basic position of valuing "family" and of "coordinating the relationship between individual and family." Moreover, it has revealed the basic attitude of Chinese people towards marital relationship and even towards marriage and family: Marriage and family provide a warm harbor of ethical love with legal significance, a weal-and-woe-sharing community of affection and property wherein family members, husband and wife in particular, focus on overall coordination. It is a close-knit group of equality, harmony, solidarity, like-mindedness, mutual respect and care for the elderly and for the young, and of trust-worthy team.

Keywords family civilization development, Civil Code, Marriage and Family Section, identity community, common family interests

I Introduction

The first paragraph of Article 1043 of Civil Code of the People's Republic of China (hereinafter referred to as "the Civil Code") stipulates, in a newly-added clause, that: "Fine values should be promoted among all the families, family virtues should be upheld, and family civilization should be valued." "Developing family civilization" has become part of the legislative language of the Civil

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Code, originating in policy language and ethical language, and has become the basic value orientation of the Code's Marriage and Family Section. From the perspective of civil law interpretation, we need to specify the significance and jurisprudence of family civilization in terms of the specific system of marriage and family. We should find the normative interpretation power of family civilization development clauses, make family civilization harmonious with the basic principles (basic value orientation) of Marriage and Family Section and Inheritance Section. In addition, we should integrate the internal value system of the Civil Code Marriage and Family Section and Inheritance Section and implement the internal value in the external rules system. Any kind of civil law system relies on a civil law philosophy, intentionally or unintentionally, and the clauses of family civilization development and their concretization can be consistent with the philosophical position of civil law in the Civil Code on "family" and on "coordinating the relationship between individual and family."

II Enhancing Family Civility Becomes the Basic Value Orientation of the Marriage and Family Section

The clause on "Developing Family Civilization" added to the third review draft of Marriage and Family Section in the Civil Code was incorporated into Article 1043 of the Civil Code in 2019. On October 21, 2019, at the First Plenary Meeting of the 14th Session of the 13th the National People's Congress Standing Committee (NPCSC), Shen Chunyao reported on the revised draft Marriage and Family Section of the Civil Code, pointing out: "In order to better promote family virtues, uphold socialist core values, and implement the message of Chinese President XI Jinping's speech on strengthening family civilization development, it is suggested that provisions should be added on advancing fine family values, family virtues and family civilization development." The word "love" appears twice throughout the Civil Code, and specifically it appears twice in Article 1043. Love is distinctively altruistic, having no pre-conditions or time limit. "The law has not been excluded from intimate personal relationships. Even in a family, dealing with many problems in a loving way depends on the law ... Love needs the law... . The law does not take the place of love, but serves love by creating the soil in which love can grow."[1] "Developing family civilization" is also the embodiment of upholding the socialist core values stipulated in Article 1 of the Civil Code, and the meaning of the word "civilization" in "developing family civilization" is wider than that in the socialist core values. Civilization refers to the progressive and civilized state of human society, as opposed to barbarism. In the process of family civilization development, it is necessary to uphold various socialist core values as the main content.

1 Harold Joseph Berman , 法律与宗教 (*The Interation of Law and Religion*), translated by LIANG Zhiping, China University of Political Science and Law Press , at 77, 79, 80 (2003).

Law is linked closely with people. It concerns people's daily routine. "Family is the most complete measure of human existence."[2] "My heart is very much attached to what it loves; It is complete only when it is with my family."[3] "The foundation of the world is the country, the foundation of the country is the family, and the foundation of the family is the heart." The law values family building, family education, family values and family civilization development, so as to consolidate the family foundation and to grow. A family is the smallest country, and a country is millions of families. Harmony in the family leads to success in everything, while the harmony of a small family contributes to the harmony of a big country. "In order to govern the state rightly, it is necessary first to regulate the family." Some Chinese scholars even believe: "Western civilization originates from religion, while Chinese culture originates from family. The node of cultural differences between the East and the West lies in the family... Exploring the pathway to the rule of law in China cannot exclude 'family,' and 'family' should become an important resource for building law-based subjectivity in China."[4] Neither some leaving the family nor some returning to the family can deny the fact that most people always live in the family. "It is not the individual but the family that constitutes the important meaning of life in China."[5] "Before becoming a social existence, before entering the society and becoming an 'individual' in a society, individuals can only be a part of a family, and a part of family existence."[6] We should cherish family ties and maintain them. "No matter how the times change, no matter how the economy and society develop, for a society, family is irreplaceable in terms of its economic and emotional support, social functions and civic education." "We must enhance civility in Chinese families," "Family civility promotes social civility." "Without a solid foundation, the ground shakes." "Family is the first school, and parents are their children's first teachers. Family education begins as a child learns to talk. The kind of family education a child receives determines his or her future conduct. Though there are many aspects to family education, the most important is character-building." As ancient Chinese scholars put it, "If you love your children, teach them the right path," and "Love your children the right way, or you will cause them harm." "Fine family value is the mental core of a family" and "Family culture is an integral part of social ethos. Family not only provides a place for the physical body to reside; it is also where people's hearts

2 ZHANG Yan, 论我国法律体系中的家与个体自由原则 (On the Principle of Freedom of Family and Individual in China's Legal System), 4 中外法学 (*Peking University Journal*), 705 (2013).

3 Jean-Jacques Rousseau, 爱弥儿：论教育 (Emile: On Education), Vol. 2, translated by LI Pingwei, The Commercial Press, at 770 (1978).

4 LI Yongjun, "家"视野下的法治模式的中国面相 (The China Face of the Rule of Law Model from the Perspective of "Family"), 6 环球法律评论 (*Global Law Review*), 87 (2019).

5 Zhang Yan, 何为我们看重的生活意义——家作为法学的一个基本范畴 (What Is the Meaning of Life We Value—Family as a Basic Category of Law), 1 清华法学 (*Tsinghua University Law Journal*), 5 (2016).

6 XIAO Si, 家哲学——西方人的盲点 (Family Philosophy—The Blind Spot of Westerners), The Commercial Press, at 617 (2010).

lie."[7] "Family is the basic cell of society and the first school of our life. No matter how time has changed, family values, family education and family building must be stressed."[8] Family values, family education and family building must play their important role in grassroots social governance.

III The Specific Significance of Family Civilization and Its Embodiment in the Civil Code

"Development of family civilization" has joined the legislative language system of the Civil Code, originating from policy language and ethical language. We need to specify significance and jurisprudence of family civilization and make it harmonious with the basic principles (basic value orientation) of the Marriage and Family Section and the Inheritance Section. Developing family civilization includes carrying forward the family virtues of the Chinese nation, such as in respecting the elderly and caring for the young, equality between men and women, harmony between husband and wife, loyalty and mutual accommodation, diligence and thrift, and neighborhood unity. Moreover, it also includes establishing fine family values, resisting bad values, staying away from falseness and ugliness, upholding a clear and clean code of conduct, shaping good social ethos with a clean and clear harmonious family value, and promoting the formation of a set of new socialist family morality and values. "The pleasure of family life is the best antidote to the poison of a bad atmosphere."[9] Combining marriage and family legislation and judicial practice, the core significance of family civilization in the new era can be condensed into equality, respect, care, loyalty and unity. As a basic value orientation, the abstraction of family civilization is built upon the basic principles, and family civilization is embodied through the basic principles and specific rules of the Civil Code.

A | Equality

Equality is one of the core socialist values, and one of the basic principles stipulated in the Civil Code. Equality is also the essence of family civilization. From the perspective of family civilization, it means equality between men and women. The first paragraph of Article 1041 of the Civil Code stipulates the equality of the marriage system. The second paragraph of Article 1043 emphasizes the maintenance of equal marriage and family relations, and "mutual respect" is also highlighted in this paragraph as an inevitable requirement of the principle of equality between men and women. Article 1055 states: "Husband and wife have equal status in marriage and family relations." Paragraph 2 of Article 1062 states: "Husband and wife have equal rights to dispose of common

7 See 注重家庭，注重家教，注重家风 (Family Values, Family Education and Family Tradition), in 习近平谈治国理政 (*Xi Jinping: The Governance of China*), Vol. 2, Foreign Languages Publishing House, at 354, 355 (2017).

8 XI Jinping, 在2015年春节团拜会上的讲话 (Speech at the 2015 Spring Festival Gathering), 人民日报 (*People's Daily*), Feb. 18, 2015.

9 Jean-Jacques Rousseau, 爱弥儿：论教育 (*Emile: On Education*), Vol. 1, translated by LI Pingwei, The Commercial Press, at 21 (1978).

property." Article 1071 stipulates that children born out of wedlock are equal to those born in wedlock. Article 1126 stipulates equality between men and women in inheritance. The first paragraph of Article 1130 stipulates: "The share of the property inherited by the same successor in sequence shall be equal in general." Some scholars believe that the common system of marital income also "embodies the equality of property relations between men and women,"[10] "under the unique traditional concept, Chinese people often regard their equal rights to inheritance from their parents as their natural right. If parents don't follow this concept, it is often regarded as a violation of common sense."[11] Chinese people value the concept of equality in inheritance, as well as support for the elderly and a collective approach to family debts. As the Chinese ancient sayings go, "When everyone is equal in possession of wealth, nobody is richer or poorer than others, " and "Confucius is not concerned lest his people should be poor, but only lest what they have should be ill-apportioned."

Article 17 of the original Judicial Interpretation of Marriage Law specifies the equal right of husband and wife to dispose of common property, and the second paragraph of Article 1062 of the Civil Code should be interpreted in the same way. For example, it is invalid for a spouse to transfer a large sum of money to a third party outside marriage in violation of the duty of loyalty, and the other spouse can claim recovery of the funds in full. In such cases, this spouse has the right to ask the donee to return not half but all of the donated property. "During the marriage relationship, where one of the husband and wife (the transferor) violates the obligation of loyalty and transfers a large sum of money to a person of the opposite sex (the transferee or donee) outside marriage, without the consent of the other party, this is a violation of public policy and is an invalid civil legal act. The other spouse may claim a full refund from the transferee. If the transferor does not request recovery of the money in the lawsuit, the court shall not judge that the transferee must return the money to the transferor beyond the scope of the litigant's claim."[12]

B | Respect and Care

Respect and care mean respecting the elderly and caring for the young. However, respect and care do not mean simply supporting the elderly and raising the young. In addition to support, they have to be "respected," and in addition to raising, they have to be "taught." The ancient people of China yearned for a society in which all people under the Heaven are of one family, and "When the Great Way rules, the land under Heaven belongs to the people. Officials are selected on the basis of merit; good faith is exercised and friendliness is granted to others." In such an ideal society, "people not only take care of their own parents and children, but also those of others, so that the elderly can enjoy

10 MA Xinyan, 民法典家事财产法制的教育功能——以社会主义核心价值观为价值理念的研究 (The Educational Function of Family Property Legal System in the Civil Code—A Study Based on Core Socialist Values), 1 当代法学 (*Contemporary Law Review*), 8 (2020).

11 See LI, fn. 4 at 89.

12 See "Dispute Between LUO Fei, HE Jiamei and ZHOU Zhong about Confirming Invalid Contract," Chongqing No.1 Intermediate Court (2019) Yu 01 Minzhong No.10429 Civil Judgment.

their elderly life, the middle-aged can serve society, the children can be well raised, and the widowed, the lonely, the disabled can be cared for as well." Respect and care also embody altruistic value orientation and protection of the vulnerable in Marriage and Family Law. The parties in marriage and family relations have a distinct altruistic tendency in the interest interaction of marriage and family groups. The joys and sorrows between husband and wife stem from love, the care between parents and children comes from blood, and mutual help between other relatives comes from ethics.[13] Respecting the elderly and caring for the young, supporting the elderly and raising the young, are inclined to protect the elderly and the young based on weak-type equal treatment.[14] Article 128 of the Civil Code stipulates: weak-type equal treatment, which enriches the significance of the principle of equality; protection and thereby more substantial equality and more full freedom of vulnerable groups. The Article conveys the flexibility and warmth of the Civil Code, and highlights its concept of humanistic care.

On July 5, 2019, Article 864 of the second review draft of the Civil Code on Marriage and Family Section stipulates: "If grandparents visit their grandchildren, and if they have fulfilled their maintenance obligations or one of grandchildren's parents dies, the provisions of the previous Article can be referenced." In October, 2019, when the 14th Session of the 13th NPCSC deliberated on the draft Marriage and Family Section, there were significant differences in the rights of grandparents to visit grandchildren. The NPCSC Constitution and Law Committee noted that since no consensus could be reached on this right of grandparents to visit grandchildren for the time being, the Civil Code could go without incorporating this right. If grandparents cannot reach an agreement with the party directly raising their grandchildren, they can file a litigation at the court for resolution according to the specific circumstances through litigation. The author believes that it is more appropriate to delete the "one size fits all" provision on visiting other generations in the third review draft of the Civil Code on Marriage and Family Section, and leave it to the court to make specific judgment case by case. The provision in Article 864 of the second review draft of the Marriage and Family Section does not conform to the concept of treating the elderly with filial respect. Based on the blood-relative relationship, it is not appropriate to deny the necessity and appropriateness of grandparents to visit grandchildren, even if grandparents fail to support their grandchildren because of their own limited abilities. Parents' divorce terminates the in-laws relationship, but the blood-relative relationship and the blood kinship between grandparents and grandchildren remain. It is beneficial to the physical and mental health of the young to transmit and maintain the family affection, to exchange

13 ZHAO Yu, 婚姻家庭法中的利他主义 (Altruism in Marriage and Family Law), 10 社会科学战线 (*Social Science Front*), 202 (2018).

14 WANG Yi, 民法价值判断问题的实体性论证规则 (*Substantive Argumentation Rules of Value Judgment in Civil Law*), 民法原理与民法学方法 (*Principles of Civil Law and Methods of Civil Law*), Law Press China, at 48, 54 (2009).

feelings and to comfort through visits between generations.

When Ziyou asked his teacher, Confucius, about filial piety, Confucius said, "The filial duty today means providing for parents. People also raise dogs and horses. If the parents were not respected, what would be the difference between providing for parents and raising dogs and horses?"[15] Like Article 1043 (2) of the Civil Code, Article 4 of the Marriage Law uses expressions such as "respect the elderly and care for the young" instead of "respect the elderly and love the young," or "provide for the elderly and love the young" in order to carry forward the core of "respect" in Confucian traditional filial piety culture; this is the core of Chinese traditional family culture, where "respect" and "providing for" together constitute "filial piety." "A lamb shows gratitude to its mother sheep by kneeling and suckling, and the little crow has the kindness to feed the mother cow." The marriage and family identity relationship in China has continuity or feedback. Fei Xiaotong, a famous sociologist of China, pointed out that Chinese and Western family models can be summarized as a "feedback model" and a "connection model" respectively. If the life of Chinese people is divided into three periods, the first period is the period of being raised, the second is the period of raising children, and the third is the period of supporting the old age. There may be considerable overlap between the second and third periods, that is, when people reach middle age, they have to go through a period of "caring for their children and supporting the elderly." From the meticulous care of their children, one comes to realize how their parents raise them, so that biological care and cultural support are unified on the ethical level. It is called "you never understand the kindness of your parents until you raise your own child."[16] The mental support stipulated in Article 18 of the Law on Protection of the Rights and Interests of the Elderly is the legal formalization of the virtue of respecting the elderly. In view of the claim for alimony in material support, Article 196 (3) of the Civil Code stipulates that the limitation of action is not applicable to the claim for alimony or the claim for maintenance, and this arrangement is conducive to the repair of family ties, emotional healing and the maintenance of family harmony and unity. This particular rule of excluding the limitation of action also shows that the family recognized by the Civil Code concerns a particular field of social communication, and the claims for alimony, maintenance and alimony enjoyed by family members are related. The protection of the rights and interests of the vulnerable in family life is related to the survival and operation of the family. From the concept of filial piety, the Inheritance Section of the Civil Code also encourages or inhibits the heirs in the aspect of inheritance acquisition, such as the system of loss of inheritance in Article 1125 of the Civil Code, the system of multiple shares or reduced shares for legal heirs

15 论语译注 (*Annotations to the Analects of Confucius*), translated by YANG Bojun, Zhonghua Book Company, at 15 (2006).

16 FEI Xiaotong, 家庭结构变动中的老年赡养问题——再论中国家庭结构的变动 (The Old-Age Support in the Changes of Family Structure—Re-Discussion on the Changes of Family Structure in China), 3 北京大学学报（哲学社会科学版）(*Journal of Peking University* [*Philosophy and Social Sciences*]), 7 (1983).

in Article 1130, paragraphs 3 and 4, and so on.

Providing for parents and valuing family ties are important family ethics that have been passed down for thousands of years in China. Parents put up with hardships in bringing up their children. When they grow up, children should be kind to their parents and create a stable living environment for them. In a specific co-owned property division case, parents paid most of the house price for buying the house and agreed that their daughter own 90% of the house property rights. However, their daughter Liu requested ownership of all the house property rights on the grounds that the two defendants, her parents, decorated the house without obtaining her prior consent, and damaged the plaintiff 's legal rights. Specifically, she requested putting the remaining 10% of the house property rights under her name while she compensated the two defendants for 28,000 yuan. Moreover, she requested 5000 yuan from her parents for compensating her loss caused by their unauthorized decoration. If parents buy a house and register property rights in the name of their child or children, this arrangement has the nature of a gift. Children should not only support their parents materially, but also comfort their parents mentally, and strive to make their parents live peacefully and happily. The daughter's claim to exercise property rights over the houses donated by her parents in accordance with the specific provisions of the Property Law, requiring her parents to transfer their house share to her, is inconsistent with public policy and traditional virtues, and would harm her parents' standard of living. Thus, the court does not support her claim in accordance with the General Provisions of the Property Law.[17] With regard to her claim, there are the following approaches from the perspective of interpretation based on the Civil Code: Firstly, the "disposal" in Article 301 of the Civil Code is usually understood as external transfer. Liu wished to transfer 10% of her parents' property shares to herself, but such an action infringed on her parents' common ownership (by shares), because whether to transfer or not should be decided by her parents themselves. Secondly, according to Article 303 of the Civil Code, the parents' unauthorized decoration of the house in this case can be considered as a major reason for the need to dispose of the common property. Liu requested owning the property at a price and compensating the parents with her own money, so that Article 301's external transfer rules were no longer applicable or analogized, but the request did not meet the applicable conditions of the first sentence of Article 303, "The co-owners agree not to divide the common real estate or movable property in order to maintain the common relationship." Thirdly, according to Article 303, "the co-owners may request disposal at any time." Liu requested owning the property at a price and compensating her parents with her own money, so that the external transfer rule of Article 301 is no longer applicable or analogized, but such a request does not satisfy the applicable conditions of the first

17 See "Case of LIU Keyu v. LIU Maoyong and ZHOU Zhongrong's shared house division," published in the Supreme Court Gazette, 7th Issue, 2016.

sentence of Article 303. "The co-owners agree not to split the common real estate or movable property, in order to maintain the common relationship." Thirdly, according to Article 303, "co-owners may request split at any time." According to the first paragraph of Article 304, when the co-owners fail to reach an agreement on the splitting method and it is difficult to split it in kind, "the price obtained from conversion into money or auction or sale shall be divided." In this case, Liu's request is the split of price, that is, even if the request conforms to the specific rules of the law, it must still be controlled by the principle of public policy. The significance of family civilization of filial piety, respect for the elderly and public policy has entered the civil law through the principle of public policy.

"Raising children is not a private matter that individuals can choose at will, but a job related to social survival and safety."[18] "To feed without teaching is the father's fault." To feed without respect is not filial piety. To feed without teaching does not foster love. "The kindness given by parents is the greatest. They not only bear and nurse children, but also are children's teachers."[19] Family is the first school in life, and parents are the first teachers of children. It can even be said that parents are children's best teachers and lifelong teachers. "The easiest decision in the world and the most influential decision in life is who your parents are." "If we want to understand individuals, we can't help but start with family life."[20] Fertility itself contains two meanings: reproduction and nurturing. Parents have the obligation to raise, educate and protect their young children, which is also the "kindness" corresponding to "filial piety." The parents' kindness and filial piety are two-way interaction, and form the "feedback mode" of the Chinese family, and together they constitute the core essence of "maintaining family virtues." Both upbringing and education should be based on attention to specific methods, conform to the different characteristics of the physical and mental development of the child at different ages, and take the healthy growth, all-round development and smooth socialization of the child as the judgment standard. According to Article 1068 of the Civil Code, parents should bear civil liability if young children cause damage to others.

Moreover, maximizing the interests of the young is also the proper manifestation of the concept of "caring for the young" in family civilization. Paragraph 2 of Article 35 of the Civil Code emphasizes "respecting the true wishes of the child according to age and intellectual status." In the middle of the first paragraph of Article 3 of the Law on the Protection of Minors, the concept of maximizing the interests of minors is specifically expressed as "the state gives special and priority protection to minors according to their physical and mental development characteristics." Articles 1044 and 1084 of the Civil Code both emphasize "the principle should be most beneficial to the adoptee/minors and

18 FEI Xiaotong, 乡土中国：生育制度 (*From the Soil—The Foundation of Chinese Society: Fertility and Education in the Chinese Rural Family Before 1949*), Peking University Press, at 133 (1998).

19 Aristotle, 尼各马可伦理学 (*The Ethics of Nico Kyle*), translated by LIAO Shenbai, The Commercial Press, at 252 (2003).

20 See FEI, fn, 18 at 69, 187.

to the issues of raising children of divorced parents." The most important criteria for judging the characteristics of minors' physical and mental development are their age and intellectual status, which is in line with the concept of gradual natural education. Rousseau's natural education thought advocates that children should be educated to adapt to the process of natural development, obey the eternal laws of nature, let other people's bodies and minds develop freely, and avoid forcing their growth and disregarding their natural course. Rousseau repeatedly stressed: "Education should be delivered according to the growth of children and the natural development of their hearts."[21]

In brief, filial piety as well as respect and care are the traditional virtues supporting the development of family civilization. They are rich in significance, but there are also uncertainties in concepts, which are suitable topics to be approached by way of the specific "jurisprudence" of family civilization. However, the implementation of the system primarily depends on specific rules or the principle of public policy in judicial decisions. Some Chinese scholars have pointed out that in judicial practice, the concept of filial piety is generally placed under the implication of the principle of public policy, and the court can understand and rule on the scale of filial piety through the principle of public policy in specific cases.[22]

C | Loyalty

Loyalty emphasizes harmony and civilization, honest and mutual accommodation, mutual respect and love, integration of husband and wife, and sharing weal and woe. "Honest officials can't judge family issues" and "every couple quarrels." "To cultivate and practice the socialist core values in the family," the loyalty obligation of husband and wife is the concretization of the value of honesty. "More accommodation and humility in the family mean less quarreling." "There has never been an always happy family in the world."[23] In his book entitled The System of Child Bearing and Teaching in China, Fei Xiaotong, highlighted ideas based on functionalism and the function of marriage and family in raising children, in completing social metabolism and generational replacement through birth and rearing, and in maintaining the integrity of social structure. The author of this paper believes that from the perspective of sociological functionalism, marriage and family have multiple functions, including filial piety for the elderly, emotional companionship, economic cooperation and so on, in addition to giving birth to children and helping them integrate into society.

In the field of marital relationship, ethics and law are intertwined, and loyalty is the ethical bottom line of marital relationship, which also needs to have formal recognition in law. "Spousal system is adapted to the civilized era," "Mutual love between the parties should be higher than

21 See Rousseau, fn. 9 at 29.

22 ZHU Xiaofeng, 孝道理念与民法典编纂 (The Concept of Filial Piety and the Compilation of Civil Code), 1 法律科学 (*Science of Law*), 84 (2019).

23 See FEI, fn. 18 at 133, 217.

everything else and become the basis of marriage," "It is the exclusive sex according to its nature."[24] "A marriage requires both husband and wife to be loyal to each other, and loyalty is the most sacred right among all rights."[25] Article 4 of the Marriage Law and paragraph 2 of Article 1043 of the Civil Code present one of the basic principles of the Marriage and Family Law, and judicial decisions, which is to "prohibit escaping to the general provisions." The drafter of the Judicial Interpretation of the Marriage Law believes that Article 4 of the Marriage Law is "the legal formalization of the ethical norms of marriage and family," and that husband and wife should be faithful to each other and respect each other should be treated "as an advocacy clause" and "not a legal right and obligation."[26] Article 3 of the original Judicial Interpretation of Marriage Law stipulates: "If a party files a lawsuit only on the basis of Article 4 of the Marriage Law, the court will not accept it. If it has been accepted, the ruling will dismiss the prosecution." The certain and negative interpretation of this Article concludes that the parties can apply other provisions regulating specific behaviors as the basis of the claim right,[27] but they cannot simply use the principle of loyalty in Article 4 of the Marriage Law as the basis of the claim right. Article 4 of Judicial Interpretation I of Marriage and Family in the Civil Code extends this provision. In fact, the loyalty obligation between husband and wife to remain dedicated and being honest with each other is also derived from this series of basic norms. The Civil Code has further strengthened the concept of marital loyalty and the duty of loyalty. Article 46 of the Marriage Law only lists four scenarios in which compensation for divorce damages is applicable. Article 1091 of the Civil Code has improved the divorce compensation system, increased the miscellaneous provisions of compensation for divorce damages, and technically changed the legislation to an example provision plus miscellaneous provisions instead of a closed enumeration, so that some "other major fault" scenarios that do cause serious damage to the innocent party are included in the scope of application of compensation for divorce. The normative purpose of this legislative change is to maximize the preventive and sanction functions of the divorce damage compensation system and promote the stability of marriage relations. For example, the scenario of "the spouse living with others" stipulated in Article 46 (2) of the Marriage Law the case whereby the spouse and the opposite sex outside marriage live together continuously and stably, not in the name of husband and wife. The spouse living together with the opposite sex outside marriage continuously and stably in the

24 Karl Marx & Friedrich Engels, 马克思恩格斯选集 (*Selected Works of Marx and Engels*), Vol. 4, People's Publishing House, at 73, 77, 80 (1995).

25 See Rousseau, fn. 3 at 735.

26 The Supreme Court Civil Trial Court No.1, edited by HUANG Songyou, 婚姻法司法解释的理解与适用 (*Understanding and Application of Judicial Interpretation of Marriage Law*), China Legal Publishing House, at 18, 19 (2002). This kind of judicial attitude is still continuing. See the Supreme Court Civil Code Implementation Leading Group, 中华人民共和国民法典婚姻家庭编继承编理解与适用 (*Understanding and Application of Marriage and Family Succession in the Civil Code of the People's Republic of China*), People's Court Press, at 34, 36 (2020).

27 TANG Dehua, 关于适用《婚姻法》若干新规定的探讨 (Discussion on the Application of Some New Provisions of Marriage Law), 3 法律适用 (*Journal of Law Application*), 9 (2002).

name of husband and wife will constitute bigamy as stipulated in paragraph 1 of Article 46 of the Marriage Law. Bigamy and the cohabitation of a spouse with another are not enough to cover all the scenarios of unfaithfulness in marriage. Adding the miscellaneous provisions can take other extramarital affairs into account, which is more conducive to maintaining the mutual loyalty of husband and wife.

The duty of loyalty can be guaranteed by legal relief after divorce damages, and unfaithfulness can be prevented and avoided using prior agreement between husband and wife. Some loyalty agreements constitute marital property agreements with effective conditions, such as should one party cheat or commit domestic violence, the post-marriage common income and some personal pre-marriage property of that party will be transferred to the injured party.[28] There is also a tendency to turn loyalty agreements into marital property agreements in judicial practice. The common "loyalty agreement" in marriage and family life aims to ensure that both husband and wife do not violate their loyalty obligations during the marriage relationship. In the form of responsibility, they often take liquidated damages, compensation or inclined distribution of property, "leaving children and all properties behind to the party after divorce." These agreements related to property disposal are also, in essence, property agreements between husband and wife. Loyalty agreement and divorce compensation agreement, which are common in practice, also belong to the scope of marital property agreement and are legally binding on both parties.[29] Mutual loyalty is the basis of mutual respect and care between husband and wife, and it is also the basis of equality, harmony and civilization in marriage and family relations. Faithfulness embodies the function of family emotional companionship from the level of the husband-wife relationship, provides institutional guarantee for eternal love, and portrays marriage as a love community. From the perspective of family civilization, strengthening the concept and obligation of loyalty can enhance people's expectation of marriage stability, enhance their confidence in love and in the marriage system, and help to encourage marriage.

D | Unity

Unity from the perspective of family civilization is a commitment to maintaining the harmony and stability of identity relations and realizing the common interests of families. Present-day China sees a high divorce rate, low marriage rate and high divorce-marriage ratio. The phenomenon of flash-marriage and flash-divorce and rash divorce is serious. The Marriage and Family Section of the Civil Code encourages marriage, opposes hasty divorce, and maintains the harmony and stability of identity relations such as marriage. "Long-term marriage relationship is a necessary condition for raising children. In order to maintain dual-parenting, so many tricks

28 WANG Lei, 论身份关系协议对民法典合同编的参照适用 (On the Referential Application of Identity Agreement to Contract Compilation of the Civil Code), 1 法学家 (*The Jurists*), 40 (2020).

29 On February 27, 2020, the Beijing No. 3 Intermediate Court held an online news briefing through Sina Weibo platform, and gave a risk warning on the legal issues related to the property agreement between husband and wife. This is the view of this briefing.

have been created."[30] Article 1077 of the Civil Code specifies a scheme of pre-divorce cooling-off period. On September 5, 2018, Article 854 of the Civil Code (Draft) added the provision of the pre-divorce cooling-off period. The legislature pointed out in the "Notes on the Civil Code (Draft)": "In practice, because divorce filing is simple, the number of hasty divorces is increasing, which is not conducive to family stability. To this end, the draft Civil Code requests a one-month cooling-off period before divorce, during which either party can withdraw the divorce application from the registration machine."

Article 2 of the original Judicial Interpretation III of Marriage Law only stipulates the action of confirming parent-child relationship and the action of denying parent-child relationship from the perspective of husband or wife, lacking the provisions on whether children, especially adult children, can file such lawsuits, and there are open loopholes. Article 1073 of the Civil Code stipulates that parents can sue for confirmation and denial of a parent-child relationship, while adult children can only sue for confirmation, and not for denial, of a parent-child relationship. On September 5, 2018, Article 850 of the Civil Code (Draft) stipulated: "If there is any objection to the parent-child relationship, the father, mother or adult child may file a lawsuit to the court to request confirmation or denial of the parent-child relationship." Since then, the draft legislation has gradually tightened the types and conditions of parent-child relationship complaints that adult children can bring, limiting them to the complaint of confirming the parent-child relationship, not the complaint of denying it, and must provide legitimate reasons. Article 850 of the second review draft of the Marriage and Family Section and Article 850 of the third review draft of the Marriage and Family Section all stick to this position and are extended in the draft Civil Code. The Constitution and Law Committee of the National People's Congress stated in the report on the revision of Article 850 of the second review draft: "It is suggested to further raise the threshold of such lawsuits and make it clear that the parties need legitimate reasons to file them, so as to better safeguard the harmony and stability of family relations and parent-child relations. Some localities, departments, experts and scholars have suggested that allowing adult children to file a lawsuit of denying parent-child relationship may lead them to evade their obligation to support their parents, and it has been suggested that adult children should be restricted from filing such lawsuits. After research, the Constitution and Law Committee recommended adopting these opinions." Combined with the legislative tightening process of the application scope of the lawsuit of denying parent-child relationship, it can be seen through historical interpretation that "maintaining the harmony and stability of family relationship and parent-child relationship" has become the proper meaning of development of family civilization.

Unity is strength. Family members should maintain mutual understanding and

30 See FEI, fn. 18 at 132.

accommodation, and stay in harmony and unity. Paragraph 2 of Article 1043 of the Civil Code requires family members to help each other. "The family is a cooperative group, and all cooperative groups have the potential to resist rupture."[31] "Family is often defined in part as a group of economic units formed by cooperation in pursuit of economic purposes ... In modern society, most productive activities are carried out outside the family, but the family is still an important unit of economic activity."[32] The identification of the debt nature of individual industrial and commercial households and rural contracted households all emphasize the characteristics of "households," such as collectivity, economic cooperation, advancing together and retreating together, and sharing weal and woe. All-round cooperation among family members is devoted to promoting the common interests and overall interests of the family and avoiding cynical calculation. Family life also pays attention to the co-construction, co-governance and sharing among family members. Article 56 of the Civil Code fully affirms the civil status and group character of "household," and the Civil Code will not dilute the close relationship between family members and "household," and "Civil Law" will not terminate "loyalty and filial piety." A "household" can also participate in democratic self-government, as facilitated by the household representation system in Article 22 of the Organization Law of Villagers' Committees and the villagers' representatives selection system in Article 25 of the Organization Law of Villagers' Representatives Meetings, both of which are the embodiment of grass-roots democratic self-government by households. There is also a similar mechanism of grass-roots self-government relating to household representations in the Organic Law of Residents' Committees. Apart from individual industrial and commercial households and rural contracted households, the family is not regarded as an independent civil subject, but the characteristics of family identity community and family common interests are regarded as important values by legislation, and even constitute an important part of the nature of identity relationship agreement in paragraph 2 of Article 464 of the Civil Code.

A couple is a community of affection and property that shares weal and woe, highlighting the characteristics of family integrity and of an identity community. In modern society, the emphasis of economic behavior of families has changed from production to consumption with the emergence and growth of economic organizations such as enterprises. Supposing a family is an economic unit, mostly it practices purchase and consumption. Article 1064 of the Civil Code stipulates the criteria for determining the common marital debt. Co-debt and Co-signing are part of a range of scenarios that constitute common marital debt. It is also necessary to pay attention to the "Common Purpose Theory" based on the family daily needs and other consumption beyond such needs but used for husband and wife

31 See FEI, fn. 18 at 221.

32 David Popenoe, 社会学 (*Sociology*), translated by LI Qiang et al., China Renmin University Press, at 427 (2007).

to live together or jointly produce and operate. This theory is also in line with the principle that rights, interests, justice and services are consistent, sharing weal and woe.

Being it a debt of an individual industrial and commercial household, or a debt of a rural contracted household, or a marital common debt, it reflects the unity and cooperation of marriage and family in organizing economic life. It should be noted that there may be confusion between the rules of formulation specified in the latter part of the first paragraph of Article 56 of the Civil Code and the rues of presumption governing marital common debt in Article 1064 of the Civil Code. To avoid system violation, and to prevent oversight of application Article 1064 but instead shifting to the first paragraph of Article 56, the premise of applying the debt of individual industrial and commercial households based on "family property" (in the latter part of that paragraph) is that the creditor still has to prove that the disputed debt is actually used for the operation of individual households. However, it is impossible to distinguish between individual operation and family operation.

In brief, unity, being part of family civilization, encourages marriage, maintains the marital harmony and stability between husband and wife, and between parents and children. It also advances family economic cooperation through teamwork between family members, and realizes common interests through the overall cooperation of husband and wife and other members of the identity community. Although the Civil Code does not extend the operator position of "household" to all families, the concept of family unity has penetrated the essence of family law. Family members depend on each other in mutual unity, share joys and sorrows, advance and retreat together, honor and disgrace together, and take "family" as their mental destination. Family unity is not born in the development of family civilization, but is inherent in family life and family law, which we should discover and uphold.

IV Looking at Family from the Perspective of Development of Family Civilization

In China's social life and legal provisions, family is a very flexible concept, which is not limited to the nuclear family. The function of family is flexible and multiple, and relatives and family members also have hierarchical expansion. The third paragraph of Article 1045 of the Civil Code defines the scope of "family members." "'Relatives' can even be used to refer to people who are not related... for suggesting a closeness."[33] The family has a profound influence on Chinese people from the inside out. The family shapes the thinking of Chinese people, and a sequence extends outward from the family; the family is the starting point of the country and the world. Family has multiple functions, such as respecting the elderly and raising

33 See FEI, fn. 18 at 269.

children, emotional companionship and economic cooperation, and the cooperation among family members is comprehensive cooperation. Family covers the whole length of human life, and the liberal and all-round development of each family member is the condition for the liberal and all-round development of all family members.

"Under the legal tradition of statutory law, the Civil Code often contains a nation's mental code, expressing a nation's basic position on a series of key issues."[34] By developing family civilization as the basic value orientation of the Civil Code's Marriage and Family Section, under the cover of property law centralism, the Civil Code is increasingly finding the lost "family," and can really be regarded as an "encyclopedia of social life," not just a "basic law of the market economy." "The human relations between members cannot be accurately calculated by rights and obligations ... The Civil Code has incorporated family law ... mainly because of its status as the basic law of the market economy and family life."[35] Developing family civilization does not challenge freedom, but overcomes the defects of individualism in the identity community so as to fully realize the liberal and all-round development of each family member. Family civilization has become the source of the internal value system of Marriage and Family Section and Inheritance Section in the Civil Code. Equality, respect, care, loyalty and unity are the specific manifestations and "legal principles" of family civilization, which are consistent with the second paragraph of Article 1043 of the Civil Code and realize the organic combination of law, reason and affection in marriage and family life. Equality is the natural requirement and concretization of equality values and civil law equality principles in the development of family civilization; loyalty is the natural requirement and concretization of honesty values and civil law honesty principles in the relationship between husband and wife. Respect and care can be a weak-type equal treatment, enriching the philosophy and operation of the principle of equality, and can also be seen as the concretization of a principle of public policy in developing family civilization in order to strengthen the protection of the vulnerable. Unity, and even maintaining the harmony and stability of identity relations and realizing family common interests, can also be used as the embodiment of the principle of public policy in the development of family civilization. The principle of public policy itself is the expression of civilized values in civil law. In the value system of the basic principles of civil law, the principles of public policy have the function of a value reservoir, and they can accommodate the fine family values and family virtues in the new era, corresponding to development of family civilization. When the new significance of family civilization becomes

34 WANG Yi & GUAN Shufang, 论民法总则的基本立场 (On the Basic Position of General Principles of Civil Law), 1 中共中央党校（国家行政学院）学报 (*Journal of the Party School of the Central Committee of the C.P.C.* [*Chinese Academy of Governance*]), 103 (2018).

35 XIE Hongfei, 民法典与特别民法关系的建构 (Developing the Relationship Between Civil Code and Specific Civil Law), 2 中国社会科学 (*Social Sciences in China*), 114 (2013).

more and more important, and becomes a popular consensus, it is then possible the popular consensus is not dependent on but stands alongside the principle of public policy.

Summarizing and refining the core manifestations of family civilization—equality, respect, care, loyalty and unity, from the specific system of the Civil Code, can show the basic position of the Civil Code regarding "family" and "coordinating the relationship between people and families," and demonstrate the basic attitude of Chinese people to the relationship between husband and wife and to marriage and family. That attitude takes marriage and family as a warm harbor of ethical love with legal significance, and as a community of affection and property that shares weal and woe. Family members, especially husband and wife, value overall cooperation, in a close-knit group with personal trust, equality, harmony, and sharing weal and woe. The group is like-minded, faithful and with mutual accommodation, respecting the elderly and caring for the young, working as one.