

DECOUPLING

Michelson's analysis of almost 150,000 divorce trials reveals routine and egregious violations of China's own laws upholding the freedom of divorce, gender equality, and the protection of women's physical security. Using "big data" computational techniques to scrutinize cases covering 2009–2016 from all 252 basic-level courts in two Chinese provinces, Henan and Zhejiang, Michelson reveals that women have borne the brunt of a dramatic intensification since the mid-2000s of a decades-long practice of denying divorce requests. This book takes the reader upstream to the institutional sources of China's clampdown on divorce and downstream to its devastating and highly gendered human toll, showing how judges in an overburdened court system clear their oppressive dockets at the expense of women's lawful rights and interests. This book is a must-read for anyone interested in Chinese courts, judicial decision-making, family law, gender violence, and the limits and possibilities of the globalization of law.

ETHAN MICHELSON is Professor of Sociology and Law at Indiana University Bloomington, where he has been teaching courses on law and society, law and authoritarianism, and contemporary Chinese society since 2003. He has won several awards for his published research on China's legal system.

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DECOUPLING

Gender Injustice in China's Divorce Courts

Ethan Michelson

Indiana University Bloomington



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*To the teachers in my life, including those unaware they
were teaching me*

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PREFACE AND ACKNOWLEDGMENTS

I first started learning about Chinese divorce litigation in the winter of 1995 as a graduate student. My predissertation fieldwork (with the support of the Social Science Research Council) examined the work of the Beijing law firm responsible for the well-known “Dear Lawyer Bao” legal advice column published weekly by the *Beijing Evening News*. In a sample I collected of almost 2,000 of its over 11,000 documented legal consultations between 1992 and 1995, over one-fifth concerned divorce. More than one-quarter of the over 750 legal cases it handled in court on behalf of clients in the same time period were divorces.

As I studied the struggle to divorce in China, I became palpably aware of a tension between the grim reality of divorce litigation in practice and its rosy representation to the public. On the one hand, the divorce-seekers who approached this law firm, three-quarters of whom were women, commonly faced abusive spouses and unhelpful courts. On the other hand, Lawyer Bao educated the public about China’s growing arsenal of laws giving special consideration to the rights and interests of women and children. In other words, the lawyers who regularly counseled and represented women whose divorce efforts were stymied by courts simultaneously reassured readers that courts would protect them. Decades of public legal education in China have exposed countless millions of people to a unifying message exhorting and emboldening them to “use the law as a weapon.” Aggrieved citizens who followed this advice, however, were often let down (Gallagher 2006, 2011, 2017; Michelson 2008, 2019b; Michelson and Read 2011). In the specific context of domestic violence, Chinese government agencies and media sources alike have inundated the public with the unambiguous message that an abuse victim need only go to court to present her case and obtain a divorce. For decades, battered women in China have been misled by this hollow promise that courts will protect their lawful rights and interests.

While carrying out dissertation field research on the Chinese legal profession in 2001, I invited Sally Merry to Beijing under the auspices

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of a Ford Foundation grant designed to strengthen the field of law and society in China. She gave two public lectures and held a seminar at the Chinese Academy of Social Sciences and Renmin University of China. In exchange, I offered my services arranging and interpreting interviews in support of her research. At the time, she was studying the local implementation of international legal norms protecting women from violence. Some of what she learned during her stay informed her book, *Human Rights and Gender Violence* (Merry 2006).

Professor Merry arrived in Beijing less than two weeks after the final amendment of China's Marriage Law was approved by the National People's Congress in late April 2001. After years of scholarly and activist efforts in pursuit of better legal mechanisms to combat violence against women, the term "domestic violence" finally entered Chinese law. Notwithstanding a general mood of cautious optimism about this legislative milestone, many scholars lamented the absence of both a clear definition of domestic violence and the criminalization of marital rape.

In the course of assisting Professor Merry's research in Beijing, I met some of China's leading family law scholars, including Xue Ninglan, whose work I cite in this book. I also met some of the institutional and individual actors in this book. For example, we visited the Domestic Violence Research, Intervention, and Prevention Project at the China Law Society, where Chen Min, a pioneer and leader in efforts to combat violence against women in China, was working at the time. We also visited Peking University's Center for Women's Law Studies and Legal Services, which had spearheaded China's first (and unsuccessful) "battered woman syndrome" criminal defense in a murder trial less than a year beforehand.

I regret that I never told Professor Merry about my project before her death in September 2020. As a former editor of the Cambridge Series in Law and Society, of which this book is a part, and as someone who helped attune me to the issues at the heart of this book, she was at the top of my list of people to whom I was going to send a copy with a personal note of gratitude.

Twenty years after her visit and the final amendment of China's Marriage Law in 2001, now is a good time to assess courts' legal obligation to grant relief to women seeking divorce on the grounds of domestic violence. Legally speaking, a convincing claim of domestic violence should be enough to obtain a divorce in court. Practically speaking, however, a claim of either domestic violence or irreconcilable

differences is rarely sufficient for a divorce. Judges almost never affirm litigants' domestic violence allegations.

Now is also a good time to assess the current state of China's no-fault "breakdown of mutual affection" divorce standard, over 40 years after it was introduced in the 1980 version of the Marriage Law. The near-impossibility of divorce characterized China's imperial times (Baker 1979:45; Honig and Hershatter 1988:206) and most of the 1949–1976 Mao era (Huang 2005; Tsui 2001). Like no-fault divorce elsewhere in the world, the right to divorce on the grounds of irreconcilable differences in contemporary China obviates the legal requirement to prove wrongdoing. In practice, however, judges generally affirm the breakdown of mutual affection only when both sides are willing to divorce or after a plaintiff files for divorce the second time.

Xin He's research was my first exposure to this phenomenon. As far as I know, he was the first to introduce to English-language audiences Chinese courts' common practice of denying divorce requests the first time and granting them the second time. In the first of a long series of articles he published on Chinese divorce litigation, culminating in a book, *Divorce in China* (He 2021), published after I finished mine, Professor He (2009) showed that only about 70% of divorce requests adjudicated by courts were granted in the mid-2000s. As I show in this book, rates at which courts granted the divorce petitions they adjudicated dropped to about 40% in a matter of only one decade.

Prior to launching this research project, by far my greatest source of knowledge about Chinese divorce litigation and the raw deals women get in the process was my first Ph.D. student, Ke Li, currently on the faculty at the City University of New York's John Jay College of Criminal Justice. Her pathbreaking dissertation (Li 2015a) informed much of my initial research agenda as I set out to write this book. I am enormously grateful to Professor Li for reversing roles, teaching me about Chinese divorce litigation, and serving as a critically helpful sounding board as I worked through the data. Her own book, *Marriage Unbound*, on Chinese divorce litigation was forthcoming at the time I finished mine (Li 2022). My book is thus part of a wave of book publications on Chinese divorce.

The world has changed since I started writing. When I settled on this book's title, I used the word "decoupling" to describe the decoupling of spouses in the divorce process and the decoupling of judicial practices from ideals enshrined in the law. However, since mid-2019, in the wake of the US–China trade war, "decoupling" has taken on a new and very

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different meaning in public discourse: economic decoupling between the two countries. Furthermore, in 2020, the urgency and global relevance of domestic violence and divorce as an escape hatch for victims – issues at the heart of this book – spiked. Academic and media reports chronicle both an apparent surge in the prevalence of domestic violence and an apparent narrowing of avenues to divorce during the COVID-19 pandemic, not only in China but around the world. An already perilous situation has escalated. As I was writing this book over those two tumultuous years, I was mindful that two years is also how long it might take a woman in China to divorce her abusive husband.

I have many debts of gratitude. This project emerged from a fateful meeting organized and generously hosted by Benjamin Liebman at Columbia University on October 5, 2015. Without Peter Lorentzen's matchmaking services, Ben Liebman, Rachel Stern, and Alice Wang – and the court decisions from Henan Province they painstakingly amassed – would not have been paired with Margaret Roberts and her team at the San Diego Supercomputer Center. I am indebted to all of them for the invitation to join the initial effort, for generously sharing their collection of court decisions published by the Henan Provincial High Court, and for their support as I dove into the data over the next five years.

Kathryn Hendley helped jump-start this project by inviting me to present preliminary findings at the University of Wisconsin-Madison Law School in March 2017. I also benefitted from feedback I received when presenting pieces of this book at the Renmin University of China Law School (January 2018), the Association for Asian Studies Annual Conference (March 2018), the Sichuan University School of Law (May 2018), the Chinese Academy of Social Sciences' Institute of Sociology (May 2018), and the University of Hong Kong School of Law (April 2019). I am grateful to the many friends, including Gardner Bovington, Sara Friedman, Padraic Kenney, Jayanth Krishnan, Adam Liff, Christiana Ochoa, and John Yasuda, who indulged me in conversation about this project and served as helpful sounding boards over coffee, beer, and meals (before the pandemic).

I thank Laurel Bossen, my undergraduate mentor at McGill University, who first taught me about the Chinese family when I took her anthropology of Chinese society class in 1990. I thank Bill Parish for mentoring my pursuit of the sociology of China through graduate school. I thank Tom Gieryn for believing in me when, after congratulating me on my tenure and promotion over a decade ago, he said,

“I think your best work is ahead of you.” I thank the editors of the Cambridge Studies in Law and Society series, Mark Massoud, Jens Meierhenrich, and Rachel Stern, for supporting this project. I am particularly grateful to Professor Stern for her endorsement and support. I thank Margaret Boittin and Margaret Woo for their outstanding comments and suggestions that made this book better than it otherwise would have been. I thank John Berger, who shepherded this project through the review and approval process at Cambridge University Press before retiring in 2019. I thank Matt Gallaway for catching the baton and putting it into print.

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When I accidentally wrote enough text for two books, Gretchen Knapp masterfully edited and cut it down to size as much as humanly possible. I thank her for reducing this book’s burden on readers.

Portions of this book appeared previously in the *American Journal of Sociology* and *The Journal of Comparative Law*. The anonymous reviewers and editors provided extraordinarily helpful suggestions.

I want to thank my parents, Ellen and Bill, for raising me to be conscious of social inequality and injustice. Above all, I owe a massive debt of gratitude to my children, Rachel and Shimona, for their infinite forbearance as I slogged away on this book through weekends and holidays. They never once complained even though I disappeared into my office for a couple of years and cancelled summer travels and

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family reunions. With an understanding of the gravity of the issues in this book, they were never less than fully supportive of my determination to finish it. The writing process was even longer in dog years for poor Jewel, who did not get walked as often as she would have liked but who loves me anyway.

Supplementary online material, including the original Chinese names of all legal sources I cite in this book, is available at <https://decoupling-book.org/>. In Chinese names, surnames come first. In this book's body of text, the surnames of Chinese litigants, scholars, judges, political leaders, and so on precede their first names. Only in in-text citations do Chinese first names (or initials) precede surnames.

A final note to the reader: In this book I rely to a considerable degree on internet resources. For reference purposes, I use Perma.cc permalinks for case examples and court work reports. I reference many other online materials, however, using their original URLs (a few particularly long ones were shortened at <https://tinyurl.com/>). I urge readers who encounter dead URLs to search for them on <https://archive.org/>. They should all be there.