

CONTESTING AND CONTROLLING ABORTION IN CHINA'S COURTS

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Abstract

The decision of the United States Supreme Court in *Dobbs v. Jackson Women's Health Organization* has brought renewed global attention to how legal systems protect and restrict women's reproductive autonomy. Central themes have included how the rollback of reproductive rights in the United States coincides with the judiciary's embrace of a broader "jurisprudence of masculinity" and the relationship between abortion restrictions and authoritarianism, as multiple countries have enacted restrictive measures while undergoing democratic backsliding.

Yet, the scholarly conversation on abortion, democracy, and how courts reflect and entrench gender disparities entirely omits China—the largest authoritarian state and a country with a high incidence of abortion. This is largely unsurprising: the central challenge facing Chinese women has not been abortion access but state-mandated birth control and abortion. Almost no prior scholarship examines how Chinese courts adjudicate disputes over abortion. This lack of attention reflects the common understanding that courts play no role in regulating reproduction and that abortion remains unproblematic in China.

Yet Chinese courts do confront and decide claims involving abortion. Drawing on a dataset of more than 30,000 civil cases discussing abortion, this Article examines men's claims that their wives obtained abortions without their "authorization." Chinese courts rarely award damages explicitly on this basis. Yet, men's claims to have legal rights to

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control women's reproductive choices are common, despite having no legal basis in Chinese law. The persistence of such claims suggests that women's access to abortion care is more regulated in China than academic and popular accounts have conveyed.

As China shifts toward encouraging rather than restricting births, traditional views of gender roles and the family increasingly align with the Party-state's new pro-natalist policies. Courts may be an important venue for adjudicating reproductive rights and enforcing such policies. From a comparative perspective, China also presents an important example of how abortion and gender are contested in a legal system in which constitutional rights play little role and the legal status of abortion appears to be settled. This demonstrates that resolving the legal status of abortion may not eliminate legal conflict, but rather open up new areas of legal contestation regarding reproductive rights. Men's claims to control women's reproductive choices in China suggest the need for scholars to place more attention on the role of private law litigation in contesting and restricting reproduction across legal systems, and the ways in which rights advocacy can serve both regressive and progressive goals, in both democratic and authoritarian systems alike.

INTRODUCTION

*"We must ask ourselves: if the nation gives up its control over reproduction, who will actually come to hold this power?"*¹

—Lü Pin, Chinese feminist

The United States Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*² has brought renewed global attention to how legal systems, and in particular courts, protect and restrict women's reproductive autonomy.³ One central theme in literature on *Dobbs* is how the rollback of reproductive rights in the United States coincides with the

1 Lü Pin (吕频), *Shengyu Zizhuquan, Ji Bushuyu Guojia, Ye Bushuyu Fuquan Jiating* (生育自主权,既不属于国家,也不属于父权家庭) [Reproductive Rights Belong Neither to the Nation Nor to the Patriarchal Family], Douban (豆瓣) [DOUBAN] (Nov. 11, 2013), <https://site.douban.com/226278/widget/notes/15319990/note/318707543/> [<https://perma.cc/SYE9-K6CE>].

2 *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022).

3 See, e.g., Risa Kaufman, Rebecca Brown, Catalina Martínez Coral, Jihan Jacob, Martin Onyango & Katrine Thomasen, *Global Impacts of Dobbs v. Jackson Women's Health Organization and Abortion Regression in the United States*, 30 SEX. & REPROD. HEALTH MATTERS 1 (2022).

Court's embrace of a broader "jurisprudence of masculinity."⁴ A related theme has been the relationship between abortion restrictions, democracy, and authoritarianism,⁵ as countries beyond the United States have enacted restrictive measures while undergoing democratic backsliding.⁶ Some have argued the Court's decision to return the abortion debate to the "democratic process" was grounded purely in doctrine: substantive due process, constitutional interpretation, and the nature of *stare decisis*.⁷ Others have emphasized that more than doctrine—and more than abortion itself—has always been at stake in the legal contestation of abortion.⁸

In *Dobbs*, the majority, concurring, and dissenting opinions all discussed abortion regulations in other countries.⁹ The Chief Justice's concurrence, in particular, clearly

4 Melissa Murray, *Children of Men: The Roberts Court's Jurisprudence of Masculinity*, 60 Hous. L. Rev. 799 (2023). Cf. JULIE C. SUK, *Misogyny and Maternity*, in *AFTER MISOGYNY* 87, 87–95 (2023); Aliza Forman-Rabinovici & Olatunde C. A. Johnson, *Political Equality, Gender, and Democratic Legitimation in Dobbs*, 46 HARV. J. L. & GENDER 81 (2023).

5 See, e.g., Melissa Murray & Katherine Shaw, *Dobbs & Democracy*, 137 HARV. L. REV. 728, 763–76 (2024); Reva B. Siegel, Serena Mayeri & Melissa Murray, *Equal Protection in Dobbs and Beyond: How States Protect Life Inside and Outside of the Abortion Context*, 43 COLUM. J. GENDER & L. 67 (2022); Erica Chenoweth & Zoe Marks, *Revenge of the Patriarchs: Why Autocrats Fear Women*, 101 FOREIGN AFFS. 103 (2022).

6 See, e.g., *Poland: Regression on Abortion Access Harms Women*, AMNESTY INT'L (Jan. 26, 2022), <https://www.amnesty.org/en/latest/news/2022/01/poland-regression-on-abortion-access-harms-women/> [https://perma.cc/K2C9-88KD]; Malu Cursino, *Hungary Decrees Tighter Abortion Rules*, BBC NEWS (Sept. 13, 2022), <https://www.bbc.com/news/world-europe-62892596> [https://perma.cc/K4US-4ZPY].

7 *Dobbs*, 597 U.S. at 268.

8 See, e.g., KRISTIN LUKER, *ABORTION AND THE POLITICS OF MOTHERHOOD* 11–40 (Brian Barry & Samuel L. Popkin, eds.) (1984); Kate Millett, *What is to Be Done*, 75 CHL.-KENT L. REV. 659, 661–663 (2000); Linda C. McClain & James E. Fleming, *Ordered Liberty After Dobbs*, 35 J. AM. ACAD. MATRIMONIAL L. 623, 623, 636–45 (2023); Melissa Murray & Jessica Valenti, Keynote Discussion at the NYU School of Law Symposium: Women's Rights and Backsliding Democracies (April 14, 2023) in *Dobbs, Abortion Rights and the State of U.S. Democracy*, MS. MAGAZINE (May 15, 2023), <https://msmagazine.com/2023/05/15/dobbs-abortion-rights-us-democracy/> [https://perma.cc/95UR-Y94B].

9 Justice Alito's majority opinion explicitly referenced China's permissive abortion policies, noting that, according to the Mississippi legislature's findings, China is one of "six countries" that "permit nontherapeutic or elective abortion-on-demand after the twentieth week of gestation." *Dobbs*, 597 U.S. at 232 n.15. Meanwhile, Roberts' concurrence cited "China and North Korea" as two of the "handful of countries" that "permit elective abortions after twenty weeks." *Id.* at 351 (Roberts, J., concurring). The dissenters discussed abortion laws in many other countries, noting that "more than 50 countries around the world—in Asia, Latin America, Africa, and Europe—have expanded access to abortion in the past 25 years." *Id.* at 400 (Breyer, Sotomayor, & Kagan, JJ., dissenting).

associated elective abortion with authoritarian governance in China and North Korea.¹⁰ Meanwhile, the dissenters, like many academic commentators, noted that the elimination of the right to abortion in *Dobbs* makes the United States an outlier among liberal democracies.¹¹

Despite the comparative references in *Dobbs* to global practices, the scholarly conversation on abortion, democracy, and how courts reflect and entrench gender disparities entirely omits China, the world's largest authoritarian state and also a country with a high incidence of abortion.¹² This is not entirely surprising. For most of the past forty-five years, the central challenge facing Chinese women has not been access to reproductive healthcare but state-mandated contraception, sterilization, and abortion.¹³ Although Chinese law includes both duties to practice birth planning and explicit protections for women's reproductive autonomy,¹⁴ abortion has generally been understood to be a question of Communist Party policy, not law.¹⁵ Today, China continues to regulate reproduction through a three-child policy, even as the state has shifted from controlling reproduction to encouraging it.¹⁶

10 See *id.* at 351 (Roberts, J., concurring).

11 See *id.* at 400 (Breyer, Sotomayor, & Kagan, JJ., dissenting) (“[I]t is American States that will become international outliers after today.”). See also *Roe Abolition Makes U.S. a Global Outlier*, FOREIGN POL. (June 24, 2022), <https://foreignpolicy.com/2022/06/24/roe-v-wade-overturned-global-abortion-laws/> [<https://perma.cc/2YS3-W25J>]; Kaufman et al., *supra* note 3, at 3.

12 See *Unintended Pregnancy and Abortion Rates: China*, GUTTMACHER INSTITUTE, <https://www.guttmacher.org/regions/asia/china> [<https://perma.cc/MH2T-A9L6>] (last visited Aug. 2, 2023) (providing average annual rates of abortion in China per 1,000 women aged 15–49); Tian Wang & Quanbao Jiang, *Recent Trend and Correlates of Induced Abortion in China: Evidence from the 2017 China Fertility Survey*, 22 BMC WOMEN'S HEALTH 1, 2 (2022) (“In 2019, the number of induced abortions documented in China was 9.76 million. However, given the underreporting and concealment of induced abortions that occur in private hospitals and clinics, the actual number is likely to be higher.”) (footnote omitted).

13 Therese Hesketh, Li Lu, & Zhu Wei Xing, *The Effect of China's One-Child Family Policy After 25 Years*, 353 NEW ENG. J. OF MED. 1171, 1171 (2005) (“The policy depends on virtually universal access to contraception and abortion. . . . There is heavy reliance on long-term contraception, with intrauterine devices and sterilizations together accounting for more than 90 percent of contraceptive methods used since the mid-1980s.”).

14 See *infra* notes 48–52, 74–82 and accompanying text.

15 See *infra* notes 45–46.

16 See *infra* notes 61–70 and accompanying text.

There is exhaustive scholarship on China's regulation of reproduction, marriage, and divorce.¹⁷ Yet almost no prior scholarship, in English or Chinese, examines how Chinese courts adjudicate disputes over abortion.¹⁸ This lack of attention reflects the common understanding that Chinese courts play no role in regulating reproduction and that abortion remains unproblematic in China. This lack of attention to men's potential use of the court system to control women's choices also reflects the fact that scholarship on reproduction in China overwhelmingly focuses on state-driven birth planning policy.

Yet the reality is different. Chinese courts do confront and decide claims involving abortion.¹⁹ Drawing on a dataset of more than 30,000 civil cases discussing abortion,²⁰ this Article examines one distinct line of legal argument: claims by men that their wives obtained abortions without the man's authorization. Chinese courts rarely explicitly award damages for an "unauthorized" or "unilateral" abortion, but men's legal claims that they have the right to control women's reproductive choices are common.²¹

These cases stand out beyond their clear articulation of male authority to dictate women's reproductive decisions. Men's claims to have a legal right in women's reproductive choices also have no formal basis in Chinese law, which explicitly provides that men cannot seek damages for a claim that a spouse obtained an abortion without the husband's consent.²² The persistence of such claims suggests that women's access to abortion care is more regulated in China than academic and popular accounts have conveyed and that courts play a role in both stigmatizing and regulating reproductive choices. Courts often do so indirectly, by legitimizing men's claims and by penalizing women for their reproductive choices.²³ While men seek redress to which they have no legal right, many women do not seek redress to which they are entitled or fail to highlight the legal flaws in men's arguments.²⁴ Some courts rely on the law to reject men's claims, but many others legitimize them, relying on

17 See *infra* notes 31 and 84.

18 See *infra* note 30.

19 See *infra* note 136 and accompanying text.

20 See *infra* note 136 and accompanying text.

21 See *infra* Part III.A.

22 See *infra* note 80 and accompanying text.

23 Throughout this article, we use the term women to refer to people with the capacity for pregnancy. We do this to conform to how Chinese courts and academic literature use the term.

24 See *infra* Part III.A–B.

the woman's "unauthorized abortion" as a basis for granting him compensation or denying her relief.²⁵

Our findings carry major implications for understanding the future of abortion regulation in China and for comparative study of the role of courts and law in regulating abortion. For much of the thirty-eight years in which the one-child policy was in effect, birth planning in China operated largely outside the legal system.²⁶ As China shifts toward encouraging rather than restricting births,²⁷ traditional views of gender roles and the family increasingly align with state policy. Courts may be an important venue for adjudicating reproductive rights and for enforcing the Party-state's new pro-natalist policies. At the very least, scholars should be attuned to the ways courts can reinforce gendered social and cultural norms, even when the law provides robust protection for women's rights.

Our findings also hold key lessons for scholars seeking to understand global trends in a post-*Dobbs* world. In particular, China presents an important example of how abortion and gender are contested in a legal system in which constitutional rights play little or no role and in which the legal status of abortion appears to be settled. China demonstrates that resolving the status of abortion does not eliminate legal conflict, but rather opens up new areas of legal contestation regarding reproductive rights. Recognizing how and when abortion is litigated in China suggests the need for scholars to place more attention on the role of private law litigation in contesting and restricting reproduction across legal systems. Men's claims to control women's reproductive choices in China also highlight how rights advocacy can serve regressive as well as progressive goals in both democratic and authoritarian systems. Our findings indicate that regime type may not dictate how legal systems address legal conflict over abortion.

I. Background and Regulatory Framework

China's one-child policy and the resulting state regulation of reproduction, including state-mandated abortion, has generated extensive scholarly and popular literature. Law is largely absent from this story. This is not surprising: for the first two decades of the one-

25 See *infra* Part III.A.

26 See *infra* Part I.A.

27 See *infra* Part I.A.

child policy, there was no national law on birth planning.²⁸ Instead, the policy was largely pursued through Communist Party policy documents and provincial-level regulations.²⁹ Despite the centrality of state regulation of reproduction to Chinese life over the past forty years, almost no prior scholarship has examined how courts adjudicate reproductive disputes.³⁰ In contrast, law and courts have been central to the regulation of marriage, with extensive legal scholarship on the role of law in regulating the family going back to the early years of the People's Republic of China (PRC).³¹ Yet this literature largely overlooks the degree to which reproduction and women's bodies are sites of contention within divorce litigation.

A. Regulating Reproduction: A History of Abortion and Reproductive Rights in China

Before the 20th century, abortion in China was largely understood to be a private household matter, with patriarchs afforded significant authority over reproductive decisions within the family.³² Prior scholarship has noted imperial-era attitudes toward abortion

28 China did not enact a birth planning law until 2001, more than 20 years after the one-child policy's launch. See Renkou yu Jihua Shengyu Fa (人口与计划生育法) [2001 Law on Population and Birth Planning], art. 20 (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 29, 2001, effective Sept. 1, 2002) 2002 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 1194 (China) (referring to the obligations of "husbands and wives of child-bearing age" to practice birth planning and use contraception) [Law on Population and Birth Planning]. Most provinces enacted regulations on birth planning in the 1980s, reflecting Party policies. See Zhang Cuiling (张翠玲) & Liu Hongyan (刘鸿雁), *Zhongguo Jihua Shengyu Jiange Zhengce de Lishi Biandong Fenxi* (中国计划生育间隔政策的历史变动分析) [*Historical Analysis of the Changes to China's Birth Planning & Interval Policy*], 31 NANYANG RENKOU (南方人口) [S. CHINA POPULATION] 40, 42–43, 2016.

29 See *infra* notes 42–43.

30 We located one Chinese-language article with different methodology from our own that examines disputes regarding reproductive rights. See Zhang Hua (张华), *Nüxing Shengyuyan de Sifa Baohu Zhuangkuang Kaocha: Jiyu 543 Fen Yigongkai Caipan Wenshu de Shizheng Fenxi* (女性生育权的司法保护状况考察: 基于543份已公开裁判文书的实证分析) [*Investigation of Judicial Protection of Women's Reproductive Rights: Empirical Analysis of 543 Public-Access Court Decisions*], 20 XINAN ZHENGFA DAXUE XUEBAO (西南政法大学学报) [J. SW. UNI. POL. SCI. & L.], no. 5, 45, 2018 (China).

31 See, e.g., Michael Palmer, *The Re-Emergence of Family Law in Post-Mao China: Marriage, Divorce and Reproduction*, 141 CHINA Q. 110 (1995); Margaret Y.K. Woo, *Shaping Citizenship: Chinese Family Law and Women*, 15 YALE J. L. & FEMINISM 99 (2003); JENNIFER ALTEHENDER, *What Is a Basic Spirit?: The Marriage Law and the Model Legal Education Campaign*, in LEGAL LESSONS: POPULARIZING LAWS IN THE PEOPLE'S REPUBLIC OF CHINA, 1949–1989, 89, 89–126 (2018).

32 See Bernard Hung-kay Luk, *Abortion in Chinese Law*, 25 AM. J. COMP. L. 372, 381–82 (1977). The logic of parental autonomy was reflected in imperial laws that decriminalized infanticide. See *id.*; Susan M. Rigdon,

followed a Confucian logic, recognizing potential parents' legally cognizable interests in pregnancies without giving fetuses an equivalent status to that of persons.³³ Abortion was not regulated in any capacity until the final years of the Qing Dynasty (1644–1911), when China first criminalized abortion as part of reforms importing Western legal concepts.³⁴ This prohibition carried over into the Republican Era (1911–1949), during which obtaining or providing abortion care was criminalized, though the prohibition was rarely enforced.³⁵

Although the regulation of reproduction in China has vacillated between pro- and anti-natalist policies since the beginning of the 20th century, one aspect has been consistent: reproductive autonomy was and continues to be subordinate to state interests in modernization³⁶ and national development.³⁷ The PRC banned abortion among cadres in 1950 as part of a broader effort to encourage more births.³⁸ The absolute abortion ban was relaxed after 1953,³⁹ but doctors largely avoided providing abortions, and the number performed in clinics remained low.⁴⁰ The Great Leap Forward (1958–1962) ushered in a

Abortion Law and Practice in China: An Overview with Comparisons to the United States, 42 SOC. SCI. & MED. 543, 544 (1996).

33 See Luk, *supra* note 32, at 379–84 (discussing the ontological and ethical status of fetuses in imperial China); Matthew H. Sommer, *Abortion in Late Imperial China: Routine Birth Control or Crisis Intervention?*, 31 LATE IMPERIAL CHINA 97, 120 (2010) (discussing abortion as a mode of managing evidence stemming from illicit relationships and resultant social crises).

34 Luk, *supra* note 32, at 384–86.

35 SARAH MELLORS-RODRIGUEZ, *REPRODUCTIVE REALITIES IN MODERN CHINA: BIRTH CONTROL AND ABORTION, 1911–2021*, at 19, 45–51 (2023).

36 See *id.* at 18–25.

37 See LETA HONG FINCHER, *BETRAYING BIG BROTHER: THE FEMINIST AWAKENING IN CHINA* 171–85 (2018).

38 See Jiguan Budui Funü Ganbu Datai Xianzhi de Banfa (机关部队妇女干部打胎限制的办法) [Measures Restricting Female Cadres from Obtaining Induced Abortion] (promulgated by the Min. of Health of the Cent. People's Gov., Apr. 20, 1950) (China); see also Elina Hemminki, Zhuochun Wu, Guiying Cao & Kirsi Viisainen, *Illegal Births and Legal Abortions – The Case of China*, 2 REPROD. HEALTH 5 (2005). The state also limited access to contraception and encouraged doctors to “convince abortion-seeking women to continue their unwanted gestation.” Weiwei Cao, *The Regulatory Model of Abortion in China Through a Feminist Lens*, 29 ASIAN WOMEN 27, 37–38 (2013).

39 See Mark Savage, *The Law of Abortion in the Union of Soviet Socialist Republics and the People's Republic of China: Women's Rights in Two Socialist Countries*, 40 STAN. L. REV. 1027, 1066, 1072–75 (1988) (noting that after 1953, women with four or more children could access abortion, and that 1957 regulations prohibited spousal consent requirements).

40 See Rigdon, *supra* note 32, at 545.

reassessment of the campaign for population growth.⁴¹ In the 1960s, the state renewed its emphasis on birth control to encourage women's participation in the workforce to address economic challenges.⁴²

In 1980, state policy shifted decidedly toward controlling births with China's launch of the one-child policy.⁴³ Regulating abortion was central to this effort: most restrictions on abortion were removed as the state embarked on campaigns to reduce the number of births.⁴⁴ All couples seeking to give birth had to obtain prior approval, even for a first child.⁴⁵ Given targets to control population growth, local authorities pursued a range of coercive measures including compulsory IUD insertion, sterilization for couples with two or more children, and forced abortions for out-of-plan births.⁴⁶ The number of abortions skyrocketed, remaining at more than forty abortions for every 100 live births through the early 1990s.⁴⁷ Although this effort was carried out through Communist Party policy, not law, both the 1980 Marriage Law and the 1982 PRC Constitution imposed legal duties

41 See MELLORS-RODRIGUEZ, *supra* note 35, at 74–75.

42 See Guanyu Zuohao Jihua Shengyu Gongzuo de Baogao (关于做好计划生育工作的报告) [Report Regarding Performing Birth Planning Work Well] (promulgated by the Min. of Health, published by the St. Council, July 8, 1971, effective July 8, 1971) (China), [https://www.pkulaw.com/chl/ba973434575ec1eebdfb.html? \[https://perma.cc/NV85-6CXE\]](https://www.pkulaw.com/chl/ba973434575ec1eebdfb.html? [https://perma.cc/NV85-6CXE]). The state promoted birth control during the Cultural Revolution (1966–1976), but women faced uncertainty as to whether they might be subject to discipline or persecution based on the Party's fluctuating standards of socialist morality. See MELLORS-RODRIGUEZ, *supra* note 35, at 77–80, 147–48. The burden of birth control and sterilization also fell overwhelmingly on women. *See id.*

43 See Guanyu Kongzhi Woguo Renkou Wenti Zhi Quanti Gongchandang yuan, Gongqingtuanyuan de Gongkaixin (关于控制我国人口问题致全体共产党员、共青团员的公开信) [Open Letter to All Communist Party Members and Youth League Members Regarding Limiting Our Country's Population] (published by Cent. Comm. of the CCP, Sept. 25, 1980) (China), [http://data.people.com.cn/rmrb/19800926/1/f10ed46a2af74f8bbeb97c58e2835b16_print.html \[https://perma.cc/8QQU-35LR\]](http://data.people.com.cn/rmrb/19800926/1/f10ed46a2af74f8bbeb97c58e2835b16_print.html [https://perma.cc/8QQU-35LR]).

44 See Hemminki et al., *supra* note 38, at 5. The remaining restrictions related to who could perform abortions and where. *See id.*

45 *See id.*

46 See Cuntong Wang, *Induced Abortion Patterns and Determinants Among Married Women in China: 1979 to 2010*, 22 REPROD. HEALTH MATTERS 159, 160 (2014).

47 See MELLORS-RODRIGUEZ, *supra* note 35, at 179; *see also* *Limiting Access to Abortions Won't Solve China's Population Woes*, THE ECONOMIST (Oct. 1, 2021), [https://www.economist.com/graphic-detail/2021/10/01/limiting-access-to-abortions-wont-solve-chinas-population-woes \[https://perma.cc/M8HA-ETLK\]](https://www.economist.com/graphic-detail/2021/10/01/limiting-access-to-abortions-wont-solve-chinas-population-woes [https://perma.cc/M8HA-ETLK]) (discussing China's contemporary abortion rate of roughly 28 per 1,000 women, compared with 13.5 per 1,000 in the United States).

on husbands and wives “to practice birth planning.”⁴⁸ These provisions reflected the anti-natalist shift in national policy and the fact that the state only contemplated reproduction in the context of marriage.⁴⁹ The few restrictions on abortion that existed during this period were designed to limit the growth of sex-selective abortions that resulted from the one-child policy and that, along with female infanticide, led to a growing gender imbalance in births.⁵⁰ China adopted an explicit ban on fetal sex determination in 1986,⁵¹ and many provinces issued regulations designed to limit sex-selective abortions, including in some cases requiring pre-approval for abortions after fourteen weeks.⁵²

48 Hunyin Fa (婚姻法) [Marriage Law], art. 12 (promulgated by the Standing Comm. Nat’l People’s Cong., Sept. 10, 1980, effective Jan. 1, 1981) 1980 STANDING COMM. NAT’L PEOPLE’S CONG. GAZ. 385 (China) [hereinafter 1980 Marriage Law]; XIANFA (宪法) [CONST.] art. 49 (1982) (China) (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 4, 1982, effective Dec. 4, 1982) 2018 STANDING COMM. NAT’L PEOPLE’S CONG. GAZ. 2 (China).

49 See 2001 Law on Population and Birth Planning, art. 20.

50 See Xiaoyi Jin & Lige Liu, “Bare Branches” and the Marriage Market in Rural China: Preliminary Evidence from a Village-Level Survey, 46 CHINESE SOCIO. REV. 83, 84 (2013) (noting an imbalance in births of 118 males for every 100 females in 2010). The imbalanced population has, among other things, made finding eligible spouses more difficult for men, who vastly outnumber women and are referred to, if unmarried, as “bare branches.” *Id.* at 86. The scarcity of women has increased financial pressure on men’s families to offer greater inducements for women to marry their sons. See *id.*; Quanbao Jiang, Yanping Zhang & Jesús J. Sánchez-Barricarte, *Marriage Expenses in Rural China*, 15 CHINA REV. 207, 223 (2015) (discussing marriage-related debt).

51 See Guanyu Chongshen Yanjin Jinxing Taier Xingbie Yuce de Tongzhi (关于重申严禁进行胎儿性别预测的通知) [Notice Reaffirming the Strict Prohibition on Fetal Sex Determination] (promulgated by the Min. of Health & Nat’l Fam. Plan. Comm., Apr. 15, 1993, effective Apr. 15, 1993) (China), [https://www.pkulaw.com/chl/7b5642e72437a676bdfb.html? \[https://perma.cc/8LHH-L6QQ\]](https://www.pkulaw.com/chl/7b5642e72437a676bdfb.html? [https://perma.cc/8LHH-L6QQ]) (discussing the 1986 promulgation of standards prohibiting fetal sex determination); 2001 Law on Population and Birth Planning, art. 35; see also Jinzhi Fei Yixue Xuyao de Taier Xingbie Jianding he Xuanze Xingbie Rengong Zhongzhi Renshen de Guiding (禁止非医学需要的胎儿性别鉴定和选择性别人工终止妊娠的规定) [Provisions on Prohibiting Fetal Sex Identification for Non-Medical Needs and Sex-Selective Pregnancy Termination] (promulgated by the Nat’l Health & Fa. Plan. Comm., Mar. 28, 2016, effective May 1, 2016) (China), [https://www.pkulaw.com/chl/f379c6a6c7f44310bdfb.html? \[https://perma.cc/XZ45-VAK3\]](https://www.pkulaw.com/chl/f379c6a6c7f44310bdfb.html? [https://perma.cc/XZ45-VAK3]).

52 At least seventeen provinces passed regulations banning unapproved abortions after fourteen weeks of pregnancy in the years after 1986. See *infra* note 69. Five of those provinces (Guizhou, Hainan, Fujian, Liaoning, and Jilin) have abolished the restrictions on abortions after fourteen weeks. See *infra* note 69. As of June 2023, restrictions on abortion after fourteen weeks remain effective in at least thirteen provinces. See *infra* note 69.

China began to address the harsher edges of the one-child policy with the adoption of the Population and Birth Planning Law in 2001.⁵³ Although the one-child limit remained, the law banned a range of coercive practices and clarified situations in which couples could have a second child.⁵⁴ The one-child policy remained for another thirteen years until China shifted to a two-child policy in 2015⁵⁵ and a three-child policy in 2021.⁵⁶

Although the one-child policy resulted in frequent conflicts between state agents and those subject to coercive measures,⁵⁷ courts played a relatively minor role in resolving such disputes between individuals and the state.⁵⁸ The reporting on the few disputes that did wind up in court suggests that such disputes mostly came in the form of individuals challenging the imposition of fines for violations of birth-planning policies.⁵⁹ Official data on administrative litigation—lawsuits against the state—shows a steady number of cases

53 The law also established a mechanism through which families could pay a “social compensation fee” for additional children, instead of undergoing abortions. Law on Population and Birth Planning, art. 41.

54 See *id.* at arts. 4, 18, 19.

55 See Renkou yu Jihua Shengyu Fa (2015 Xiuzheng) (人口与计划生育法 (2015修正)) [Population and Birth Planning Law (2015 Amendments)], art. 18 (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 27, 2015, effective Jan. 1, 2016) (China), [https://www.pkulaw.com/chl/18c6c388fc14eaa9bdfb.html? \[https://perma.cc/9X6R-QBJD\].](https://www.pkulaw.com/chl/18c6c388fc14eaa9bdfb.html? [https://perma.cc/9X6R-QBJD].)

56 The changes to the Population and Birth Planning Law in 2015 and 2021 raised the number of legally permissible births without altering the underlying scheme of citizens’ reproductive rights and obligations. See Renkou Yu Jihua Shengyu Fa (2021 Xiuzheng) (人口与计划生育法(2021修正)) [Population and Birth Planning Law (2021 Amendments)] (promulgated by the Standing Comm. Nat’l People’s Cong., Aug. 20, 2021, effective Aug. 20, 2021), art. 18 (China), [https://www.pkulaw.com/chl/d560ce000fba464cbdfb.html? \[https://perma.cc/S5NC-K7KN\].](https://www.pkulaw.com/chl/d560ce000fba464cbdfb.html? [https://perma.cc/S5NC-K7KN].)

57 See, e.g., Liu Jitong (刘继同), *Zhongguo Renkou he Jihua Shengyu Zhengce Moshi de Zhidu Chuangxin yu Zhanlüe Zhuanxing* (中国人口和计划生育政策模式的制度创新与战略转型) [*Systemic Innovation and Strategic Transformation of China’s Population and Birth Planning Policy Model*], 12 XUEXI YU SHIJIAN (学习与实践) [STUDY AND PRAC.], at 15 (2007) (discussing how the government’s “results-oriented approach” inevitably led to “blunt and coercive” measures, which resulted in “serious, newly formed social problems and dissatisfaction with the government,” as well as “intensified social conflicts”).

58 See Chen Zhongle (谌中乐) & Su Yu (苏宇), *Jihua Shengyu Zhidu Biange yu Fazhigua* (计划生育制度变革与法治化) [*The Reform and Legalization of the Birth Planning System*], 4 QINGHUA FAXUE (清华法学) [TSINGHUA L. REV.] 84, 98 (2010) (discussing courts’ limited role to date in administrative litigation regarding birth planning laws and policies).

59 See, e.g., Chen, *supra* note 58, at 98; Wu Shengyin (吴生银), *Renmin Fayuan Yi Shouli Jihua Shengyu Xingzheng Anjian shi Biyao de* (人民法院依法受理计划生育行政案件是必要的) [*It Is Necessary for People’s Courts to Accept Birth Planning Administrative Cases in Accordance with the Law*], HUNAN CAIBAO (湖南财报) [HUNAN FINANCIAL REP.], 35, 36 (1997).

relating to birth planning, with courts accepting just over 5,000 such disputes in 2014, the last full year that the policy remained in place.⁶⁰

The relaxation of the one-child policy did not signal the state's retreat from regulating reproduction.⁶¹ China's birth planning apparatus remains in place, and some have speculated it might be redeployed to further the state's new interest in encouraging births as China struggles to manage its growing demographic imbalance.⁶² Policy pronouncements have signaled that restricting abortion may be part of such efforts, although no concrete measures have been announced to date. In 2021, the central government promulgated guidelines stating that it would "aim to reduce medically unnecessary abortions," as part of a ten-year plan on improving women's health.⁶³ The guidelines did not elaborate on how the state planned to do so,⁶⁴ but they appear to build upon a 2018 National Health Commission Interpretation that emphasized China's "large number" of abortions.⁶⁵ The 2018 Interpretation stated that abortion can "seriously harm women's health and fertility," "lead to complications," "endanger physical and mental health," and "through causing infertility, . . . threaten familial harmony and happiness."⁶⁶

60 Courts accepted 141,880 administrative lawsuits in 2014. *Renmin Fayuan Sifa Tongji Lishi Dianji 1949-2016* (人民法院司法统计历史典籍 1949-2016) [*A Historical Compilation of Judicial Statistics of the People's Court 1949-2016*], XINGZHENG JI PEICHANG JUAN (行政及赔偿卷) [ADMINISTRATION & COMPENSATION VOL.], Zuigao Renmin Fayuan (最高人民法院) [Supreme People's Court], at 180, 184.

61 See Arianne M. Gaetano, *The Chinese State, "Reform and Opening," and the Regulation of Women in Urbanizing China*, 47 *URB. ANTHROPOLOGY & STUD. CULTURAL SYS. & WORLD ECON. DEV.* 301, 312–13 (2018).

62 See *infra* note 396 and accompanying text.

63 Zhongguo Funü Fazhan Gangyao (2021-2030) (中国妇女发展纲要(2021—2030年)) [China Outline for Women's Development (2021–2030)] (published by the State Council, Sept. 27, 2021), § 2(1) (China), <https://www.chinanews.com.cn/gn/2021/09-27/9574812.shtml> [<https://perma.cc/34W4-RTFC>]. The news prompted anxiety within civil society about the signal the policy sends to lower-level officials who might begin restricting abortion access. See Vivian Wang, *China's Vow to Reduce Abortions Sparks Public Worries*, *N.Y. TIMES* (Sept. 27, 2021), <https://www.nytimes.com/2021/09/27/world/asia/china-abortion-limits.html> [<https://perma.cc/XP24-5LUN>].

64 See *id.*

65 Rengong Liuchan Hou Biyun Fuwu Guifan (2018 Ban) Wenjian Jiedu (《人工流产后避孕服务规范(2018版)》文件解读) [Interpretation of the Standards for Post-Abortion Contraceptive Services (2018 Edition)] (published by the Nat'l Health Comm., Women's Health Div., Aug. 17, 2018) (China), <http://www.nhc.gov.cn/fys/s3578/201808/c18f377e993f4a43ac068e826b7671ae.shtml> [<https://perma.cc/7R27-UBNN>].

66 *Id.*

The central government has proposed policies to encourage reproduction both directly and indirectly, including by limiting couples' access to divorce.⁶⁷ Nevertheless, under national regulations, abortion remains widespread and permitted at any stage of pregnancy, subject only to a prohibition on sex-selective abortions.⁶⁸ Twelve provinces, however, have gone a step further than the national regulations, banning all abortions after fourteen weeks, except in situations involving a fetus with a detected disability or developmental abnormality, a danger to the health or life of the woman or the fetus, the potential parents' divorce, or the woman's becoming a widow while pregnant.⁶⁹ At least seven provinces require pre-approval by birth planning officials of all abortions after fourteen weeks.⁷⁰ At

67 See Elsie Chen & Sui-Lee Wee, *China Tried to Slow Divorces by Making Couples Wait. Instead, They Rushed*, N.Y. TIMES (Feb. 26, 2021), <https://www.nytimes.com/2021/02/26/business/china-slowng-divorces.html> [https://perma.cc/2GPX-PPJC]. Provincial and local governments have also introduced incentives encouraging married couples to have children. See Nichole Hong & Zixu Wang, *Desperate for Babies, China Races to Undo an Era of Birth Limits. Is It Too Late?*, N.Y. TIMES (Feb. 23, 2023), <https://www.nytimes.com/2023/02/26/world/asia/china-birth-rate.html> [https://perma.cc/X8F7-UZAW]; Jessie Yeung, *These Chinese Villages are Paying Couples to Have More Children*, CNN (Sept. 24, 2021), <https://www.cnn.com/2021/09/24/china/three-child-cash-incentive-intl-hnk/index.html> [https://perma.cc/HBY2-XQ75].

68 See *supra* note 43. Although the central government encourages and subsidizes fertility of married, middle-class, Han women, rules targeting minorities, and particularly Uyghurs, have become more restrictive. See Amy Qin, *China Targets Muslim Women Push to Suppress Births in Xinjiang*, N.Y. TIMES (May 10, 2021), <https://www.nytimes.com/2021/05/10/world/asia/china-xinjiang-women-births.html> [https://perma.cc/88NH-LBFX]; MELLORS-RODRIGUEZ, *supra* note 35, at 213.

69 The provincial regulations, many of which identify themselves as restrictions on sex-selective abortions but are framed in general terms, restrict abortion after fourteen weeks. See, e.g., Hebei Sheng Jinzhi Fei Yixue Xuyao Jianding Taier Xingbie he Xuanze Xingbie Zhongzhi Renshen Guiding (2019 Xiuzheng) (河北省禁止非医学需要鉴定胎儿性别和选择性别终止妊娠规定 (2019修正)) [Hebei Province Regulations on Prohibiting Non-Medically Necessary Identifications of Fetal Sex and Sex-Selective Pregnancy Terminations (2019 Amendments)] (promulgated by the Hebei Prov. People's Gov't, Jan 14, 2008) (China), https://www.gov.cn/flfg/2008-02/21/content_895815.htm [perma.cc/VV5R-DTJC]; Guanyu Jiaqiang Rengong Zhongzhi Renshen Shoushu Zhengming Guanli Gongzuo de Tongzhi (14-17 Weeks) (关于加强人工终止中期妊娠手术证明管理工作的通知(14-27周)) [Heilongjiang Province 2016 Notice on Strengthening the Management of Certifications for Second-Trimester Artificial Pregnancy Termination Operations (14-27 Weeks)] (promulgated by the Heilongjiang Prov. Health & Fam. Plan. Comm., Aug. 30, 2016) (China), https://mp.weixin.qq.com/s/gZsmXx9XiNGGhsa8Ct_iqw [https://perma.cc/9HX3-2TBW].

70 Those provinces whose regulations clearly require pre-approval are Heilongjiang, Jiangsu, Hubei, Hunan, Yunnan, Gansu, and Jiangxi (although it is unclear whether Jiangxi's permit process has been implicitly repealed by subsequent regulations). Jilin previously required departmental permission for abortions after fourteen weeks. See, e.g., Jiangsu Sheng Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Jinzhi Fei Yixue Xuyao Taier Xingbie Jianding he Xuanze Xingbie Rengong Zhongzhi Renshen de Jueding (2022 Xiuzheng), 江苏省人民代表大会常务委员会关于禁止非医学需要胎儿性别鉴定和选择性别人工终止妊娠的决定(2022修正) [Jiangsu Province People's Congress Standing Committee Decision on Restricting

least some municipal regulations impose de facto spousal consent requirements.⁷¹ One province established a mechanism allowing members of the public to submit complaints regarding “illegal pregnancy terminations” in exchange for 5,000 *yuan*; violations of the regulation can result in fines up to 3,000 *yuan* and a prohibition from having further children.⁷² In another province, local government authorities are instructed to “criticize and educate” those who obtains an abortion after fourteen weeks without authorization, and authorized to “suspend” those persons’ ability to obtain a license to have further children.⁷³ Although these rules arose in response to sex-selective abortions, the legal infrastructure they create could be used to limit abortions more generally.

Non-Medically Necessary Fetal Sex Determination and Artificial Sex-Selective Pregnancy Terminations (2022 Amends.)), art. 7 (China), https://wjw.jiangsu.gov.cn/art/2023/3/2/art_80252_10784552.html [<https://perma.cc/CM4G-FK68>] (“Without approval from the health and sanitation department, no institution or individual is permitted to carry out an artificial abortion procedure.”); Guanyu Jinzhi Fei Yixue Xuyao de Taier Xingbie Jianding he Xuanze Xingbie de Rengong Zhongzhi Ren Shen de Guiding, 关于禁止非医学需要的胎儿性别鉴定和选择性别的人工终止妊娠的规定 [Regulation Restricting Non-Medically Necessary Fetal Sex Determination and Artificial Sex-Selective Pregnancy Terminations] (Yunnan Province), art. 7 (China), http://ynswsjkw.yn.gov.cn/html/2015/faguiguizhangxin_0813/2973.html [<https://perma.cc/RYJ5-LGAL>] (“Those who have satisfied the reproductive criteria of the various provincial, regional, and municipal government bodies, who have already obtained licenses to reproduce, who are . . . over fourteen weeks pregnant . . . , and who seek a nonmedically necessary pregnancy termination procedure must seek approval from the county-level family planning department . . . and obtain a certificate.”).

71 See, e.g., Kunshan Shi Guanyu Jiaqiang Ren Shen 14 Zhou Yishang Rengong Zhongzhi Ren Shen Guanli de Tongzhi (2015) (昆山市关于加强妊娠14周以上人工终止妊娠管理的通知 (2015)) [Kunshan City Notice Regarding Strengthening Management of Artificial Pregnancy Termination After 14 Weeks (2015) (promulgated by the Kunshan Mun. Health & Fam. Plan. Comm., Dec. 22, 2015) (China), <http://www.ks.gov.cn/kss/c113206puf/201512/46360ab8b1d14a869fe40e2d2f378207.shtml> [<https://perma.cc/E9LC-TGFB>]] (requiring wives to apply jointly with husbands).

72 Anhui Sheng Jinzhi Fei Yixue Xuyao Jianding Taier Xingbie he Xuanze Xing Zhongzhi Ren Shen de Guiding (安徽省禁止非医学需要鉴定胎儿性别和选择性终止妊娠的规定) [Anhui Provincial Regulations Prohibiting on Non-Medically Necessary Fetal Sex-Determination and Sex-Selective Abortions] (promulgated by the Standing Comm. of the Anhui Prov. People’s Cong., Sept. 22, 2000, effective Nov. 01, 2000), arts. 17, 21 (China), <https://law.pkulaw.com/chinalaw/16796879.html> [perma.cc/2CBB-SJ83].

73 See 关于禁止非医学需要的胎儿性别鉴定和选择性别的人工终止妊娠的规定 [Regulation Restricting Non-Medically Necessary Fetal Sex Determination and Artificial Sex-Selective Pregnancy Terminations] (Yunnan Province), art. 7 (China), http://ynswsjkw.yn.gov.cn/html/2015/faguiguizhangxin_0813/2973.html [<https://perma.cc/RYJ5-LGAL>].

In addition to stating that couples have a duty to practice family planning, Chinese law includes the right to reproduce and the right not to reproduce.⁷⁴ The Law on the Protection of Women's Rights and Interests (LPWRI), first promulgated in 1992, establishes women's "freedom not to reproduce."⁷⁵ The 2022 revision of the LPWRI additionally provides that "when medical institutions perform reproductive surgery, specialized examinations, or specialized treatment, such institutions should obtain consent from the woman, and respect the will of the woman if her family or relatives disagree."⁷⁶ Although the provision explicitly addressing women's medical autonomy was not in effect at the time of the cases we examine in this Article, the new language nevertheless reflects prior recognition of women's freedom to make reproductive choices.⁷⁷ For instance, Ministry of Health regulations adopted in 2010 that contain model consent forms for abortion providers do not require consent by anyone other than the patient, except when the patient is incapacitated.⁷⁸

74 The law provides, "[c]itizens have the right to reproduce and to implement birth planning [i.e., utilize birth control] in accordance with the law." 2001 Law on Population and Birth Planning, art. 17.

75 Funü Quanyi Baozhang Fa (妇女权益保障法) [Law on the Protection of the Rights and Interests of Women] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 3, 1992, effective Oct. 1, 1992), art. 47, 1992 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 386 (China) [hereinafter 1992 LPWRI]; *see also* Funü Quanyi Baozhang Fa (妇女权益保障法) [Law on the Protection of the Rights and Interests of Women] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 10, 2022), art. 32 (China), <https://www.pkulaw.com/chl/0ce7baee60f8694dbdfb.html?way=listView> [perma.cc/VK62-BPJN] [hereinafter LPWRI]; Chinese law provides fetuses with no status or rights, aside from the Civil Code, which allows for fetuses that are eventually born to inherit property from relatives who predecease their birth. *See* Minfa Dian (民法典) [Civil Code] (promulgated by Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021), art. 1, 155, 2020 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 2 (China) [hereinafter Civil Code].

76 LPWRI, art. 21.

77 The 1992 and 2022 versions of the law both state that women have the right "not to reproduce." 1992 LPWRI, art. 47; LPWRI, art. 32. In presentations of this paper in China in July 2023, one commentator noted that, regardless of the LPWRI, the Population and Birth Planning Law frames the obligation to use contraception as jointly imposed upon "husband and wife." *See* 2001 Law on Population and Birth Planning, art. 17, 20. That commentator argued that because the law speaks of reproduction primarily in the context of marriage, it implicitly grants rights to men as well as women. The cited language remains in the revised 2021 Law on Population and Birth Planning. Yet, despite those comments, reading that cited language against the backdrop of the LPWRI and 2011 SPC Interpretation nevertheless suggests a legal base for women's reproductive autonomy. *See infra* note 80.

78 *See* Weisheng Bu Yizheng Si Guanyu Tuijian Shiyong Yiliao Zhiqing Tongyi Shu de Han (《卫生部医政司关于推荐使用《医疗知情同意书》的函》) [Letter from the Medical Policy Department of the Ministry of Health on the Recommended Use of the "Medical Informed Consent Form"] (promulgated by the Min. Health, Mar. 4, 2010) (China); *see also* Civil Code, art. 1219.

The Supreme People's Court (SPC) has also clarified that women have the authority to make decisions about reproduction without the consent of their male partners. Likely in response to cases in which men asserted a right to control women's reproductive choices,⁷⁹ in August 2011 the SPC promulgated an official Interpretation of the Marriage Law ("the 2011 SPC Interpretation") clarifying that women's unilateral exercise of reproductive autonomy to terminate a pregnancy does not entitle their male partners' to compensatory damages.⁸⁰ Article 9 of the 2011 SPC Interpretation provides, "if a husband requests compensatory damages because his wife terminated a pregnancy without authorization from the husband, the court will not support such an award of compensatory damages."⁸¹ The same provision establishes that "a husband's and wife's dispute over whether or not to reproduce, causing marital feelings to entirely break down" can serve as grounds for a divorce.⁸² Accordingly, reproductive disputes can serve as grounds justifying a divorce, but not as grounds for compensatory damages. The LPWRI's and SPC's statements affirming

79 See Fuqi Shuangfang Yin Shifou Shengyu Fasheng Jiufen, Fayuan Ruhe Chuli? (夫妻双方因是否生育发生纠纷, 法院如何处理?) [How Should Courts Deal with Married Couples' Disputes Over Whether to Have Children?], Wuhou Qu Renmin Zhengfu (武侯区人民政府) [Wuhou District People's Government] (May 2, 2018) (China), https://www.cdwh.gov.cn/wuhou/c109276/2018-05/02/content_20ec8071652b457c919ef350a7db0815.shtml [<https://perma.cc/YE9Q-Z8GE>] (publishing cases disclaiming men's attempts to invoke reproductive rights against women).

80 See Guanyu Shiyong Zhonghua Renmin Gonghe Guo Hunyin Fa Ruogan Wenti de Jieshi (San), Fashi [2011] Shiba Hao (关于适用《中华人民共和国婚姻法》若干问题的解释(三)法释[2011]18号) [Third Interpretation Regarding Questions about Applying the PRC Marriage Law [2011] No. 18] (promulgated by the Jud. Comm. Sup. People's Ct., Aug. 9, 2011, effective Aug. 13, 2011), art. 9 (China), <https://www.pkulaw.com/chl/bee928fef142583fbdff.html> [<https://perma.cc/3KES-MNYB>] [hereinafter 2011 SPC Interpretation]. The SPC, which has hundreds of judges, has broad powers to issue judicial interpretations guiding lower courts. See generally Note, *Chinese Common Law? Guiding Cases and Judicial Reform*, 129 HARV. L. REV. 2213 (2016). These often read like statutes and are published to resolve issues that have arisen in practice for lower courts. *Id.* The SPC often issues such interpretations to clarify issues that have been left unclear by statutory law adopted by the National People's Congress, China's legislature, or to respond to specific issues that have arisen in the course of lower court adjudications. *Id.* at 221–22. For major laws, the SPC often issues judicial interpretations soon after the law is promulgated, and also issues additional interpretations as new issues arise in practice. *Id.*

81 See 2011 SPC Interpretation.

82 *Id.*; see also Hunyin Fa (婚姻法) [Marriage Law] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 28, 2001, effective Apr. 28, 2001), art. 32 (China), <https://www.pkulaw.com/chl/1bad5c748927dd10bdfb.html?keyword=%E5%A9%A%E5%A7%BB%E6%B3%95&way=listView> [perma.cc/Z4CV-YXLA] [hereinafter 2001 Marriage Law]. The 2001 Marriage Law was applicable for all of the cases discussed in this article. In 2021, the Marriage Law was incorporated into and replaced by China's new Civil Code. See Minfa Dian (民法典) [Civil Code] (promulgated by Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021), 2020 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 2 (China) [hereinafter Civil Code].

that women have the freedom to make reproductive decisions autonomously stand in contrast to rules in other jurisdictions, including Taiwan, that require a partner's consent to an abortion.⁸³

B. Regulating Divorce: Progressive Aims & Gendered Outcomes

Although courts played marginal roles in enforcing China's one-child policy, they have been central fora for resolving divorce disputes. Extensive scholarship has explored courts' role in adjudicating marriage disputes, noting how ingrained biases, state emphasis on maintaining family unity, and institutional constraints lead to gendered outcomes.⁸⁴ Yet this literature largely overlooks the degree to which divorce actions have also emerged as a space in which disputes about women's access to reproductive care are contested.

China has long sought to use the regulation of marriage as a tool for achieving greater equality for women and for transforming and governing Chinese society.⁸⁵ China first adopted a Marriage Law in 1950, immediately after the PRC's establishment.⁸⁶ The law was revised in 1980 and again in 2001.⁸⁷ Each revision was understood and celebrated as an effort to address persistent social issues, including gender inequality.⁸⁸ The 1950 Marriage Law sought to free women from forced marriages by providing access to divorce for the

83 See *infra* note 410 (discussing Taiwan's and Japan's spousal consent statutes). See also Chao-ju Chen, *Mothering in the Shadow of Patriarchy: The Legal Regulation of Motherhood and Its Discontents in Taiwan*, 1 NAT'L TAIWAN UNIV. L. REV. 45, 56–57 (2006).

84 See generally HE XIN, *DIVORCE IN CHINA: INSTITUTIONAL CONSTRAINTS AND GENDERED OUTCOMES* (2021); LI KE, *MARRIAGE UNBOUND: STATE LAW, POWER, AND INEQUALITY IN CONTEMPORARY CHINA* (2022); ETHAN MICHELSON, *DECOUPLING: GENDER INJUSTICE IN CHINA'S DIVORCE COURTS* (2022).

85 See William P. Alford & Shen Yuanyuan, *Have You Eaten? Have You Divorced? Marriage, Divorce and the Assessment of Freedom in China*, in *IDEAS OF FREEDOM IN THE CHINESE WORLD* 4–15 (William Kirby ed. 2003).

86 See Hunyin Fa (婚姻法) [Marriage Law] (promulgated by the Cent. People's Governance Comm., May 1, 1950, effective May 1, 1950) (China), <https://www.pkulaw.com/chl/1d3157c46da80f68bdfb.html?keyword=%E5%A9%A%E5%A7%BB%E6%B3%95&way=listView> [perma.cc/4NTW-26LK] [hereinafter 1950 Marriage Law].

87 See 1980 Marriage Law; 2001 Marriage Law.

88 See Alford & Shen, *supra* note 85.

first time.⁸⁹ The 1980 Marriage Law then codified no-fault divorce.⁹⁰ The 2001 Marriage Law elaborated on conditions under which a divorce could be granted due to a “breakdown in mutual affections.”⁹¹ As a result of these successive amendments, Chinese law today includes a hybrid system of fault-based and no-fault divorce.⁹²

The equalizing objectives of the 2001 Marriage Law are also reflected in the provisions governing asset division.⁹³ Article 39 of the 2001 Marriage Law provides that if parties fail to reach an agreement as to the disposition of their jointly-owned property, the courts must make a judgment based on “the principle of taking into consideration the rights and interests of the child and the wife.”⁹⁴ Article 53 of the LPWRI further provides that “the state is to ensure that women enjoy property rights equal to those of men.”⁹⁵

Yet the promise of greater equality through the laws governing marriage and divorce has been stymied both by cultural norms and state interests. Important recent scholarship by Li Ke, He Xin, and Ethan Michelson documents the persistently gendered outcomes of divorce adjudication in China.⁹⁶ Most significantly, despite the outward appearance of liberalization, it has become increasingly difficult for couples to obtain a divorce over the last several decades, with the proportion of divorce petitions that courts reject growing steadily.⁹⁷ He Xin explains how the institutional constraints faced by judges, including the professional evaluation metrics to which judges are subject and immense caseloads, compel judges to use procedural mechanisms to swiftly dismiss cases despite their

89 See Li, *supra* note 84, at 87; see also 1950 Marriage Law, arts. 1, 7 (articulating its aim to create “a system of marital freedom” and “gender equality”).

90 See 1980 Marriage Law, art. 25.

91 2001 Marriage Law, art. 32 (providing “breakdown” may be found and divorce granted where a party commits bigamy, adultery, domestic violence, familial abandonment, or excessive gambling or drinking, where the parties have not lived together for two years due to disagreement, or in “other circumstances causing breakdown”).

92 See Li, *supra* note 84, at 166–67.

93 See 2001 Marriage Law, art. 39.

94 *Id.*

95 LPWRI, art. 53. Separately, courts must also order one party to provide “financial assistance” to another party suffering from “living difficulties” after divorce. See 2001 Marriage Law, art. 42.

96 See generally Li, *supra* note 84; He, *supra* note 84; and Michelson, *supra* note 84.

97 See Li, *supra* note 84, at 172–74.

merits.⁹⁸ Michelson describes courts' reluctance to grant divorce through the judiciary's "dual imperative to maximize judicial efficiency and minimize social unrest," reflecting the Party-state's view that maintaining family units facilitates social stability, even when women seek divorce based on domestic violence.⁹⁹

The result is the routine denial of initial divorce petitions, forcing women to remain in marriages for a six-month waiting period before they can petition again.¹⁰⁰ Many such relationships are abusive.¹⁰¹ Courts routinely overlook claims of domestic violence, despite the 2001 Marriage Law, which clarifies that abuse can be grounds for divorce and fault-based compensation,¹⁰² and a 2008 SPC guidance, which urges courts to deny child custody to those who commit domestic violence.¹⁰³ Scholars explain the gap between law and practice not only by reference to institutional pressures but also as owing to the judiciary's patriarchal beliefs, which normalize and diminish domestic violence as a private matter meant to be managed within the household,¹⁰⁴ despite courts' affirmative obligations to address domestic violence allegations.¹⁰⁵ Moreover, if men leave court disgruntled, the threat of future violence—against women and even judges themselves—looms large.¹⁰⁶

98 See Xin He, *When the Cultural Explanation Is Inadequate: The Institutional Constraints of Chinese Judges in Divorce Cases*, 28 MICH. ST. INT'L L. REV. 439 (2020).

99 MICHELSON, *supra* note 84, at 3–4, 16–17.

100 See LI, *supra* note 84, at 184–87.

101 See MICHELSON, *supra* note 84, at 242. Cf. UNFPA China, *Research on Gender-based Violence and Masculinities in China: Preliminary Findings*, U.N. POPULATION FUND CHINA 3 (2013), https://china.unfpa.org/sites/default/files/pub-pdf/Executive%20Summary_Research%20on%20GBV%20and%20Masculinities%20in%20China.pdf [<https://perma.cc/PR48-G3GD>] (52% of men reported perpetrating violence against women).

102 See 2001 Marriage Law, arts. 32, 46; see also HE, *supra* note 84, at 108–10.

103 See Sheji Jiating Baoli Hunyin Anjian Shenli Zhinan (《涉及家庭暴力婚姻案件审理指南》) [Guidance on Deciding Marital Cases Involving Domestic Violence] (promulgated by Rsch. Office of Sup. People's Ct., Mar. 2008, effective Mar. 2008), art. 63 (China), <https://www.pkulaw.com/chl/b001df0ee5c6c01abdfb.html> [<https://perma.cc/84MB-TZMP>] (“The party causing harm shall not directly raise children”). See also MICHELSON, *supra* note 84, at 383.

104 See LI, *supra* note 84, at 103, 186–87; HE, *supra* note 84, at 198.

105 See 1992 LPWRI, art. 46; see also LPWRI, art. 65; see also Fan Jiating Baoli Fa (反家庭暴力法) [Anti-Domestic Violence Law] (promulgated by Standing Comm. Nat'l People's Cong., Dec. 27, 2015, effective Mar. 1, 2016), arts. 4–7, 20, 23, 32, 36 (China), <https://www.pkulaw.com/chl/ac57ba1df4413457bdfb.html?keyword=%E5%8F%8D%E5%AE%B6%E5%BA%AD%E6%9A%B4%E5%8A%9B%E6%B3%95&way=listView> [perma.cc/HD3Z-7FBR].

106 See HE, *supra* note 84, at 40–47; LI, *supra* note 84, at 240–243.

Gendered outcomes are also apparent in determinations on custody and asset division.¹⁰⁷ Li, Michelson, and He document how patrilineal and patrilocal socioeconomic conditions interact with courts' custody and asset division determinations to produce widely uneven outcomes depriving women of parental and proprietary rights.¹⁰⁸ Exacerbating apparent judicial bias are lapses in advocacy made on behalf of women—lawyers often pressure women to give up their rights to resolve cases.¹⁰⁹

One of the most contentious aspects of asset division concerns who will retain the bride price, an amount of money often paid by men as part of a marriage contract.¹¹⁰ Although the CCP banned the practice after assuming power in 1949,¹¹¹ the custom reemerged as central to marriage negotiations in the post-1978 reform era.¹¹² Today, despite the Marriage Law's prohibition on the "arrangement, purchase, or sale of marriage" or "using marriage as a means of obtaining property,"¹¹³ Chinese law accommodates—and courts readily enforce—bride price agreements.¹¹⁴ In 2003, the SPC released an official Interpretation elaborating

107 See MICHELSON, *supra* note 84, at 382–89.

108 See MICHELSON, *supra* note 84, at 382; LI, *supra* note 84, at 238–39.

109 See HE, *supra* note 84, at 179. See also LI, *supra* note 84, at 119–20 (“When law practitioners do attend to women’s and men’s marital grievances, the former tend to reshape the latter’s perceptions of discontent and remake or unmake their rights claims. In converting some grievances into disputed issues and others into nonissues, these practitioners become instrumental in presetting decision-making agendas inside courtrooms.”).

110 The “bride price,” or *caili* (彩礼), signifies an amount of money an affianced man and his family pay to facilitate marriage. See Wei Shuang, A Feminist Critical Discourse Analysis of Ideological Conflicts in We-Media Representations of Bride Price in Mainland China, at 1–10 (July 27, 2020) (Ph. D. dissertation, Peking University) (China) (analyzing male resentment and feminist critique within heated online discourse relating to the bride price); see also *supra* note 50 (discussing how China’s gender imbalance imposes steep financial consequences on men in the marriage market).

111 See Wei, *supra* note 110, at 40–42.

112 See *id.* at 44.

113 2001 Marriage Law, art. 3.

114 The custom is criticized by men, who resent marriage costs, and women, who argue *caili* (彩礼) [bride price] “require[s] women] to be faithful to their husbands’ families because of this exchange” and reinforces women’s “subordination within [their] husband’s family.” See Wei, *supra* note 110, at 1–5, 50. For a discussion of courts’ adjudications of bride price disputes, see Hu Yunhong & Song Tianyi (胡云红、宋天一), *Caili Fanhuan Jiufen Falü Shiyong Yanjiu* (彩礼返还纠纷法律适用研究) [*Researching the Application of Law to Disputes over the Return of the Bride Price*], ZHONGGUO ZHENGFA DAXUE XUEBAO (中国政法大学学报) [J. CHINA UNIV. POL. SCI. & L.], no. 6, 5–27 (2022) (China).

grounds upon which a court should order a party upon marital dissolution to return a bride price.¹¹⁵ Yet courts retain extensive discretion in making such determinations.¹¹⁶

Despite the wide-ranging scholarship on divorce litigation in China, most accounts overlook the role that reproduction plays in such disputes. None of the three important recent books in English on divorce litigation in China discuss abortion or disputes about reproduction, although all three document the role of domestic violence, including spousal rape.¹¹⁷ The extensive literature in Chinese on divorce litigation likewise almost entirely omits discussion of the role of abortion or reproductive rights.¹¹⁸

The roles courts play in resolving divorce cases in China highlight the range of factors that can influence such court decisions. China's four-tiered court system is formally unitary, with the same law applying nationwide.¹¹⁹ Yet courts have extensive discretion in individual cases.¹²⁰ Courts are obligated to follow national laws, but also often face pressure to decide cases in line with a range of Party-state goals that extend beyond formal

115 See Guanyu Shiyong Zhonghua Renmin Gonghe Guo Hunyin Fa Ruogan Wenti de Jieshi (Er), Fashi [2003] Shijiu Hao (关于适用《中华人民共和国婚姻法》若干问题的解释(二)[2003]19号) [SPC's Second Interpretation Regarding Questions about Applying the PRC Marriage Law No. 19 [2003]] (promulgated by the Jud. Comm. Sup. People's Ct., Dec. 25, 2003, effective Apr. 1, 2004) (China), [116 See HE, *supra* note 84, at 192.](https://www.pkulaw.com/chl/7584ab701c2393f6bdfb.html? [https://perma.cc/9KM4-T826] [hereinafter 2003 SPC Interpretation]; see also ZUIGAO RENMIN FAYUAN MINSHI SHENPAN DIYITING (最高人民法院民事审判第一庭) [SUP. PEOPLE'S CT. FIRST CIV. DIV.], ZUIGAO RENMIN FAYUAN HUNYIN FA SIFA JIESHI (ER) DE LIJIE YU SHIYONG (《最高人民法院婚姻法司法解释(二)的理解与适用》 [UNDERSTANDING AND APPLYING THE SPC JUDICIAL INTERPRETATIONS OF THE MARRIAGE LAW (VOL. II)] 147 (Renmin Fayuan 2015 Nianban (人民法院2015年版) [The People's Ct. Press, 2015 ed.] 2015) (China); Hu & Song, <i>supra</i> note 114, at 22.</p>
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117 See HE, *supra* note 84; LI, *supra* note 84; MICHELSON, *supra* note 84.

118 See generally HE, *supra* note 84; LI, *supra* note 84; MICHELSON, *supra* note 84.

119 See Fayuan Zuzhi Fa (法院组织法) [Organic Law of the People's Courts] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 26, 2018, effective Jan. 1, 2019), arts. 12–13, 2019 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 735 (China); see also *Chinese Common Law?*, *supra* note 80 at 2216–17 (discussing the role of judicial decision-making in China's civil law system, in which the Standing Committee of the National People's Congress is vested with ultimate authority to interpret law) (citing Lifa Fa (立法法) [Law on Legislation] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 15, 2000, effective July 1, 2000, amended Mar. 15, 2015), art. 7, 2015 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 2. (China)).

120 See Rachel E. Stern, Benjamin L. Liebman, Margaret E. Roberts & Alice Z. Wang, *Automating Fairness? Artificial Intelligence in the Chinese Courts*, 59 COLUM. J. TRANSNAT'L L. 515, 550–51 (2021) (discussing the role artificial intelligence may play in shaping the discretion afforded to courts in China).

written law.¹²¹ The most notable of these goals is the demand that courts facilitate Party-state efforts to maintain social stability.¹²² But other values, notably morality and court-defined views of fairness, also impact court decisions.¹²³ It is not rare for courts to award damages, in particular emotional damages, without providing specific rationales for doing so, or for courts to ignore certain legal arguments made by litigants. Courts likewise will at times ignore apparently binding law.¹²⁴ These issues occur in a wide range of contexts, not just those touching on women's rights or gender.¹²⁵ But such practices may also facilitate gendered outcomes, as courts either do not resolve certain claims made by women or seek to achieve what the courts perceive to be equitable outcomes to contentious cases.

II. Methodology

Beginning in 2014, China's Supreme People's Court (SPC) ordered all courts in China to place most court decisions online.¹²⁶ Public judgments are uploaded to a centralized platform, China Judgments Online (CJO).¹²⁷ As of August 2023, CJO included more than 142 million judicial documents.¹²⁸ Our research draws on a database of 42 million cases, which includes all cases made public from the launch of CJO in 2014 to September 2, 2018. Not all cases are made public; from the beginning, rules requiring case publication

121 See Zeming Liu, *Integrating the "Socialist Core Values" into Legal Judgments: China's New Model of Authoritarian Legality*, 62 COLUM. J. TRANSNAT'L L. 215, 221–25, 233–45 (2023); Zhu Suli, *Political Parties in China's Judiciary*, 17 DUKE J. COMP. & INT'L L. 533, 539–40 (2007).

122 See Liu, *supra* note 121 (“Ultimately, the transformation of Chinese law signifies a new model of authoritarian legality, which extends the concept of law itself to accommodate the state-imposed, moralistic social norms.”).

123 See generally Rachel E. Stern, Benjamin L. Liebman, Wenwa Gao & Xiaohan Wu, *Liability Beyond Law: Conceptions of Fairness in Chinese Tort Cases*, 2023 A. J. L. & Soc. 1 (describing how ideas of fairness, not just concerns about stability, lead courts in China to decide cases beyond the formal written law).

124 See *id.*, at 3–4, 6; Benjamin L. Liebman, *Ordinary Tort Litigation in China: Law versus Practical Justice?*, 13 J. TORT L. 197, 216–18, 225 (2020) [hereinafter Liebman, *Ordinary Tort Litigation*].

125 See, e.g., Liebman, *Ordinary Tort Litigation*, *supra* note 124.

126 For details on the limitations in what is put online, see Stern et al., *supra* note 120 at 521; Benjamin L. Liebman, Margaret E. Roberts, Rachel E. Stern & Alice Z. Wang, *Mass Digitization of Chinese Court Decisions: How to Use Text as Data in the Field of Chinese Law*, 8 J. L. & COURTS 177, 177–183 (2020).

127 See ZHONGGUO CAIPAN WENSHU WANG (中国裁判文书网) [CHINA JUDGMENTS ONLINE] (China), <http://wenshu.court.gov.cn/> [<https://perma.cc/RF6Z-GLKG>].

128 See *id.*

have included numerous exceptions, ranging from cases relating to state secrets and individual privacy, to cases resolved through mediation, to “other cases not suitable for publication.”¹²⁹ Disclosure rates also vary across substantive areas, with disclosure rates highest for criminal cases and lowest for civil cases.¹³⁰ More recently, the SPC has signaled that it will no longer aim to place most cases online, instead focusing on posting cases with particular guiding or educational significance.¹³¹ The period we examine, thus, provides a rare window into the functioning of everyday justice in China.

Most significantly for this Article, beginning in 2016 SPC rules stated that divorce and child custody cases should not be made public.¹³² The rules also called for divorce cases that had previously been made public to be deleted from the website.¹³³ Though compliance with these rules was often spotty, the number of divorce cases made public has declined.¹³⁴ More recently, courts have dramatically reduced the number of cases made public; the CJO

129 Zuigao Renmin Fayuan Guanyu Renmin Fayuan zai Hulianwang Gongbu Caipan Wenshu de Guiding, (最高人民法院关于人民法院在互联网公布裁判文书的规定、法释[2013]26号) [Provisions of the SPC on the People’s Courts’ Issuance of Judgments on the Internet, Judicial Interpretation No. 26 (2013)] (promulgated by the Jud. Comm. Sup. People’s Ct., Nov. 23, 2013, effective Jan. 1, 2014) SUP. PEOPLE’S CT. GAZ., Nov. 21, 2013 (China), <http://gongbao.court.gov.cn/Details/d0e837bbafb75a8863b4d4c407d694.html> [perma.cc/7YHT-NZ53] [hereinafter Judicial Interpretation No. 26].

130 See Xiaohan Wu, Margaret E. Roberts, Rachel E. Stern, Benjamin L. Liebman, Amarnath Gupta & Luke Sanford, *Addressing Missingness in Serialized Bureaucratic Data: The Case of Chinese Courts*, 21ST CENTURY CHINA CTR. RSCH. PAPER SERIES, June 2022, at 1.

131 See Benjamin L. Liebman, Rachel E. Stern, Xiaohan Wu & Margaret Roberts, *Rolling Back Transparency in China’s Courts*, 123 COLUM. L. REV. 2407, 2421 (2023) (describing “a dramatic reduction in the volume of cases being made public”).

132 Guanyu Renmin Fayuan zai Hulianwang Gongbu Caipan Wenshu de Guiding, Fashi [2016] 19 Hao (关于人民法院在互联网公布裁判文书的规定、法释[2016]19号) [Regulations on the Publication of Judgments on the Internet by the People’s Courts, Judicial Interpretation No. 19 [2016]] (promulgated by the Jud. Comm. Sup. People’s Ct., July 25, 2016, effective Oct. 1, 2016) SUP. PEOPLE’S CT. GAZ., Aug. 29, 2016 (China), <http://gongbao.court.gov.cn/Details/415f49dd8baaa04b479d57af9616ef.html> [https://perma.cc/62KZ-VPPW]. Rules in place prior to 2016 did not bar publication of divorce cases but required names to be redacted. See Interpretation No. 26, *supra* note 129.

133 The SPC made this clear in a press briefing after publication of the rules. See Liang Zhou (梁宙), *Zuigaofa: Lihun Susong Caipan Wenshu bu Shangwang Gongkai, Yi Gongbu de Ying Jishi Chehui* (最高法: 离婚诉讼裁判文书不上网公开 已公布的应及时撤回) [SPC: *Opinions in Divorce Litigation Should Not be Published Online and Those Already Published Should be Promptly Withdrawn*], JIEMIAN XINWEN (界面新闻) [INTERFACE NEWS] (Aug. 30, 2016) (China), <https://www.jiemian.com/article/825695.html> [https://perma.cc/565M-LHQ8].

134 See Stern et al., *supra* note 120.

has also deleted hundreds of thousands of previously public cases.¹³⁵ These steps mean that cases from the early years of China's experiment with transparency likely provide a distinctive opportunity to understand court practice on family law, in particular.

Our database includes 36,711 civil cases containing Chinese-language terms used to describe abortion.¹³⁶ Of these, 30,205 were first-instance cases, with the remainder being appeals or rehearings. Divorce cases accounted for more than half of these cases: 15,152 first-instance cases.¹³⁷ Although cases referring to abortion were spread across 184 causes of action, only three other categories of cases had at least 1,000 cases.¹³⁸

We focus on a subset of divorce cases involving claims by men that a woman terminated a pregnancy "without authorization" (擅自) or "unilaterally" (私自). We began our research by reading a random sample of divorce cases that included a discussion of abortion. Cases involving these allegations of 'unauthorized' or 'unilateral' abortions quickly emerged as a distinctive trend and the most notable strategic use of arguments about abortion among the reviewed cases.¹³⁹ In our dataset, 949 divorce cases involved claims that a woman terminated a pregnancy either "without authorization" or "unilaterally." An additional 116

135 See Liebman et al., *supra* note 131 at 2425.

136 We searched our database for any first-instance civil cases with the following terms: 流产 (miscarriage or abortion); 引产 (labor induction); 终止妊娠 (pregnancy termination); 堕胎 (abortion); 打胎 (abortion); 坠胎 (abortion); 打掉孩子/小孩/胎儿 (aborting a child/fetus); and 人流手术 (human-assisted abortion). We initially read a random sample of civil cases mentioning abortion, which helped refine our search terms and eliminate case types in which abortion was mentioned figuratively or in passing (for example, insurance cases mentioning abortion as a covered treatment). One term, *liuchan* (流产), refers to either induced abortions or natural miscarriages. In reading cases, we relied upon context, in particular the parties' descriptions of circumstances under which pregnancies terminated, to determine whether parties were referring to induced abortions, miscarriages, or stillbirths.

137 In all cases, a couple's marriage has been formally registered.

138 These were automobile accident disputes (3,251 cases), marital property disputes (2,988 cases), and medical injury liability disputes (1,214 cases).

139 Our reading of a random sample of other categories of civil cases revealed other contexts in which claims regarding abortion arise: women sue to recover half of the costs of an abortion from their male partner; women sue to recover damages from a tort that caused miscarriage; husbands in divorce litigation contend their spouses obtained abortions to conceal infidelity; wives in divorce litigation cite to their husband not caring for them after a miscarriage as evidence of relationship breakdown; women sue healthcare providers for malpractice causing a miscarriage; and women sue their employers for wages and benefits during periods when they recovered from abortions or miscarriages. We also read random samples of 250 criminal and administrative cases. Most administrative cases involved individuals challenging fines for out-of-plan births; some involved men arguing authorities should not have authorized their wives' abortions. Criminal cases largely involved

similar claims arose in other categories of cases involving intimate partner disputes, such as marital property disputes or cases arising from unmarried cohabitation, making for a total of 1,065 cases. We read all 1,065 cases and coded all 949 divorce cases in detail.¹⁴⁰

Our approach is limited by what we can see in court decisions. We do not know whether the paper record created by courts accurately reflects litigant arguments because litigant filings and evidence are not made public.¹⁴¹ We likewise do not know whether cases in our database are representative of the full range of disputes regarding pregnancy termination. Despite these limitations, close reading of more than 1,000 cases allows us to identify a distinct pattern of legal arguments made by men regarding abortion and to develop an understanding of how courts respond to such arguments. Considering the number of actual divorce disputes that are channeled into mediation and not adjudicated in court, our data offers a partial, yet valuable window into phenomena that may have broader prevalence beyond the courtroom.¹⁴² What emerges is an understanding of how men articulate claims regarding reproduction to restrict women's autonomy and obtain favorable court outcomes despite such claims' lack of legal basis.

III. Findings

Given the legal framework rejecting male rights to control or participate in women's reproductive decisions, why and how do men assert such rights? This part examines men's arguments that their spouses wrongfully obtained abortions unilaterally or without the man's authorization, as well as the responses of women and the courts. Section A. focuses on men's legal claims. Section B. looks beyond specific legal claims to discuss how men use arguments regarding their partners' abortions to discredit women or explain away domestic violence. Section C. explores limited resistance to these claims from women and judges. Therein, we highlight courts' tendencies to avoid engaging directly with claims regarding abortion.

either clinics' illegal practice of medicine or assault-induced miscarriages. Though fewer in number, such cases also raise intriguing questions for future research.

140 For each case, we tracked legal representation; each party's claims; grounds for those claims; courts' rulings with respect to those claims and reasoning; parties' narratives of the events; evidence introduced; laws cited; use of certain arguments and tactics; and whether certain common features, such as domestic violence, were present.

141 See Liebman et al., *supra* note 131. Subsequent studies could develop our findings through interviews of those involved in adjudicating reproductive disputes.

142 See Li, *supra* note 84, at 94–95.

In contrast to prior literature focusing on reproductive restrictions in China that originate from the state, we show how men use litigation to exert control over and stigmatize women's reproductive choices. Many of our findings resonate with prior work on divorce litigation in China, with the gap between formal legal commitments to equality and women's rights, on the one hand, and actual practice, on the other. Yet we also identify a previously unexamined area of legal contestation: women's reproductive autonomy.

A. What Men Claim & What They Obtain: Damages, Divorce, & Other Relief

Men's claims that women obtained "unauthorized" or "unilateral" abortions are relatively rare given the total volume of divorce cases in China—we identified nearly 1,000 divorce cases in which such claims arose, while our database contains 1.87 million divorce cases. Yet the consistency with which men raise such claims—in major cities and rural counties, while either represented or unrepresented by legal counsel—suggests a pattern of legal argument that is deeply rooted and likely more widespread than in just the 1,000 cases we identified. Throughout the cases, men described their partners' pregnancy terminations as willful, unilateral, and destructive choices for which women were at fault and should be held accountable,¹⁴³ even though nearly half of the women argued they miscarried or that their pregnancies ended involuntarily.¹⁴⁴

In the majority of cases we read, men cited their wives' abortions as evidence of their wives' fault and sought damages or other relief, such as custody or divorce. In two-thirds of the cases we read, men argued their wives' abortions entitled them to compensation or were reason to deny payment to their wives.¹⁴⁵ In the remaining one-third of cases, the man cited his wife's pregnancy termination to argue either for or against divorce but sought no compensation.¹⁴⁶

143 See, e.g., Liu v. Xiao (刘某某诉肖某某), Hebei Chengde Cnty. People's Ct. (河北省承德县人民法院), (2016)冀0821民初506号, Mar. 10, 2016 (China) (even though the court found the wife experienced a "stillbirth," the husband argued his wife's abortion was a "violation of his reproductive rights" for which she "should be morally condemned" and "legally punished"). Although the cases we study sometimes include the full names of parties, the rules governing online publication require redaction of names so that only parties' surnames are listed. We thus include only the family names of litigants in this article.

144 See *infra* notes 168–169 and accompanying text.

145 Men made these arguments in 641 out of 949 cases.

146 In 167 of the 515 cases in which men sued for divorce as plaintiffs (32%), men sought only to be legally extracted from the relationship and requested no other form of financial compensation or other relief (such as child custody.)

Although women rarely contested men's legal arguments, many courts endorsed men's arguments and issued rulings that appeared to penalize women for unilaterally terminating pregnancies. Collectively, these cases suggest that stigma against women who unilaterally exercise their right to abortion—and thereby effectively reject societal expectations that women reproduce—remains prevalent.¹⁴⁷ These cases also illustrate how exercising one's legal rights to reproductive autonomy can be costly for women.

1. Emotional and Fault-Based Damages for an Abortion

Some men portrayed their wives' pregnancy terminations as causing emotional injury entitling them to damages.¹⁴⁸ In one 2016 case from Hubei province, a man sued for a divorce, his wife's return of the 94,278 *yuan* bride price, and 50,000 *yuan* in emotional damages because she obtained an abortion “unilaterally,” despite the man's insistence on wanting to have a child.¹⁴⁹ The man recounted how his spouse returned to her hometown to rest after finding out she was pregnant, but later informed the plaintiff that the pregnancy ended.¹⁵⁰ The man claimed her conduct “shocked, saddened, and dealt a psychological blow to” him and his family, and “deprived him of his right to be a father.”¹⁵¹ Multiple men even blamed their development of previously-diagnosed mental illnesses, such as paranoid schizophrenia, on their wives' “unauthorized abortions.”¹⁵² In each of these cases, men

147 For more on the pressure to reproduce that women in China often face, see generally Xiaorong Gu, *'You Are Not Young Anymore!': Gender, Age, and the Politics of Reproduction in Post-Reform China*, 13 *ASIAN BIOETHICS REV.* 57, 58, 66–68, 72–73 (2021) (discussing “the phenomenon of childless women at their late 20s and 30s being labelled as deviants who upset social norms . . . and cause moral panics in society” and noting that “[c]onsistent with the Confucian family ethos . . . , women's reproduction often is framed as a family responsibility in line with filial piety expectations rather than an individual choice”) (citations omitted); James M. Raymo, Hyunjoon Park, Yu Xie & Wei-jun Jean Yeung, *Marriage and Family in East Asia: Continuity and Change*, 41 *ANN. REV. SOCIOLOGY* 471, 472 (2015) (“Another distinctive feature of the traditional East Asian family is the paramount importance of family lineage. . . . This emphasis on lineage and ancestor worship is particularly pronounced in Chinese culture.”).

148 Men requested emotional, fault-based damages due to their partners' pregnancy terminations in 12% of cases (115 out of 949 cases).

149 *Tu v. You* (涂某某诉游某某), Hubei Huanggang Huangzhou Dist. People's Ct. (湖北省黄冈市黄州区人民法院), (2016)鄂1102民初1349号, Aug. 8, 2016 (China).

150 *See id.*

151 *Id.* The defendant asserted her right to terminate a pregnancy at her discretion but claimed the termination occurred after she experienced abnormal uterine bleeding. *Id.*

152 *See, e.g., Pan v. He* (潘某某诉何某某), Jiangxi Xunwu Cnty. People's Ct. (江西省寻乌县人民法院), (2015)寻民一初字第109号, July 9, 2015 (China).

portrayed women's pregnancy terminations as per se wrongs, not because the abortion infringed any fetal interests, but because it disrupted a husband's and his family's interests in producing children on their terms.¹⁵³

Some men argued their wives' pregnancy terminations violated men's families' rights to heirs.¹⁵⁴ One male plaintiff in a 2014 case in Henan province argued that the defendant owed him 20,000 *yuan* in emotional damages because her "unauthorized abortion caused material and mental harm both to the plaintiff and his family."¹⁵⁵ In another case from 2014, a woman from Hubei province sued for a divorce, claiming that she had reluctantly terminated her pregnancy at her husband's request following a fight.¹⁵⁶ The defendant argued that he "regretted his moment of anger and asking her to knock out the pregnancy," but contended that his wife should not have taken him seriously and that her "unauthorized abortion caused his parents to be spiritually crushed."¹⁵⁷ He requested a return of the bride price, emotional damages, and a court order requiring the plaintiff to "apologize to his parents for causing them spiritual suffering."¹⁵⁸

153 *Id.* Cf. MELLORS-RODRIGUEZ, *supra* note 35, at 77, 147–48 (discussing conceptions that women's "natural duty (*tianran yiwu*) [is] to become mothers").

154 *See, e.g.*, Xue v. Jin (薛某某诉靳某某), Hebei Gaoyang Cnty. People's Ct. (河北省高阳县人民法院), (2016)冀0628民初432号, May 30, 2016 (China) ("The defendant lied often and unilaterally killed our child, which caused great pain for me and my family."); Yang v. He (杨某某诉何某某), Henan Lingbao City People's Ct. (河南省灵宝市人民法院), (2014)灵民一初字第1751号, Oct. 30, 2014 (China) (after a woman introduced hospital records proving domestic violence by her husband caused her to miscarry, the husband argued the woman willfully had a unilateral abortion "without notifying her husband or his family"); Zhang v. Jin (张某某诉金某某), Hubei Tongcheng Cnty. People's Ct. (湖北省通城县人民法院), (2016)鄂1222民初445号, May 15, 2016 (China) (after a woman alleged her husband often physically abused her and once tried to strangle her several months after she gave birth, her husband recounted how she obtained an "unauthorized abortion" during her second pregnancy, even though his "parents strongly objected and were dissatisfied").

155 Miao v. Zhang (苗某某诉张某某), Henan Nanzhao Cnty. People's Ct. (河南省南召县人民法院), (2014)南召民初字第865号, Jan. 20, 2015 (China).

156 *See* Wang v. Ren (王某某诉任某某), Hubei Wuhan Jiangxia Dist. People's Ct. (湖北省武汉市江夏区人民法院), (2014)鄂江夏乌民初字第00158号, July 28, 2014 (China).

157 *Id.*

158 *Id.*

Men in these cases frequently appealed to notions of “rights” or “criminality” to reinforce their claims.¹⁵⁹ In one case from Guizhou province, a man argued that his wife “inhumanely knocked out a six to seven-month-old fetus in her womb without informing [him].”¹⁶⁰ He requested 13,000 *yuan* in economic loss, 50,000 *yuan* in emotional damages, and a court order that the plaintiff “submit to a criminal investigation into her liability for defrauding the defendant, destroying their family, and intentionally knocking out their fetus.”¹⁶¹ Men claimed their spouses’ pregnancy terminations violated an array of rights, including their “reproductive rights” or “right to reproduce,”¹⁶² “knowledge rights,”¹⁶³ and “right to be a father.”¹⁶⁴ None of these rights have any justiciable content under Chinese law. Nonetheless, men’s claims to have legal rights regarding women’s pregnancy terminations appear to serve as both rhetorical devices and efforts to find a legal basis for such claims.

With the law on women’s side, one might expect women to contest men’s arguments. In rare cases, women did. For example, one woman argued that her husband, who accused her of obtaining a “unilateral abortion,” was “abusing the right to sue in court,”¹⁶⁵ yet

159 Men invoked “rights” (权利) in seventy-three cases (approximately 8%) and occasionally accused their wives of criminal violations or grave injustice. *See, e.g.*, Guo v. Xiao (郭某某诉肖某甲), Anhui Jieshou City People’s Ct. (安徽省界首市人民法院), (2014)界民一初字第00646号, Mar. 21, 2014 (China); Han v. Zhang (韩某某诉张某某), Shaanxi Liquan Cnty. People’s Ct. (陕西省礼泉县人民法院), (2014)礼民初字第00647号, Aug. 12, 2014 (China); Lin v. Ma (林某某诉马某某), Liaoning Panshan Cnty. People’s Ct. (辽宁省盘山县人民法院), (2016)辽1122民初87号, Mar. 15, 2016 (China).

160 Liang v. Li (梁某某诉李某某), Guizhou Qinglong Cnty. People’s Ct. (贵州省晴隆县人民法院), (2016)黔2324民初283号, June 6, 2016 (China).

161 *Id.*

162 Men claimed “reproductive rights” in fifty-two cases.

163 Men claimed “knowledge rights” in ten cases.

164 Men claimed “rights to be a father” in ten cases. In a handful of cases, men claimed other rights, including their: “rights as husbands” (作为丈夫的权利); “parental right to be informed” (作为孩子父亲的知情权); “legal rights and interests” (合法权益) generally; “spousal rights” (配偶权); “familial rights and interests” (全家的权益); and “right to have children” (生育子女的权利). In one case, the husband claimed fetuses are “jointly owned by husbands and wives under national law.” Xu v. Liao (徐某某诉廖某某), Guangdong Jieyang Jiedong Dist. People’s Ct. (广东省揭阳市揭东区人民法院), (2015)揭东法民一初字第251号, Apr. 27, 2014 (China).

165 *See, e.g.*, Zeng v. Ding (曾某某诉丁某某), Hubei Huangshi Xisaishan Dist. People’s Ct. (湖北省黄石市西塞山区人民法院), (2014)鄂西塞民初字第00229号, May. 27, 2014 (China).

women seldom argued that men's claims for emotional damages lacked legal basis.¹⁶⁶ Instead, many women disputed only the facts, not law. In nearly half of the cases in which women appeared in court,¹⁶⁷ women argued their pregnancy terminations were involuntary and caused by either a natural miscarriage, stillbirth, medical necessity, coercive pressure from their husbands, or domestic violence.¹⁶⁸ Many other women argued their partners consented to their abortions and introduced records of texts, emails, and phone calls to prove their husbands encouraged and agreed with the decisions to terminate pregnancies.¹⁶⁹ In some cases, women suggested the pregnancy itself was involuntary, which accords with the prevalence of domestic violence allegations in our data.¹⁷⁰ Women's focus on contesting the voluntariness of their pregnancy terminations suggests they felt the need to justify abortions—as if terminating a pregnancy without a partner's consent would constitute a wrong.¹⁷¹

Courts likewise rarely cited to the law to reject men's claims for emotional damages. In a small number of cases, courts granted men emotional damages for their wives' "unauthorized" or "unilateral" abortions in direct contravention of the 2011 SPC

166 *Cf., e.g.,* Feng v. Yu (冯某某诉余某某), Guizhou Chishui City People's Ct. (贵州省赤水市人民法院), (2014)赤民初字第1589号, Dec. 19, 2014 (China) (female defendant arguing that her husband's claim for emotional damages because of her abortion was "totally unfounded in fact and law").

167 In nearly 12% of cases, women did not appear as defendants in court. *Cf. MICHELSON, supra* note 84 (describing a pattern of female defendants failing to appear at divorce hearings as being partially due to fear of exposing themselves to their abusers).

168 In 390 cases, women contested the voluntariness of their pregnancy termination. In 83 cases, or one-fifth of cases where voluntariness was contested, women claimed to have miscarried due to domestic violence.

169 *See, e.g.,* Zeng v. Ding (曾某某诉丁某某), Hubei Huangshi Xisaishan Dist. People's Ct. (湖北省黄石市西塞山区人民法院), (2014)鄂西塞民初字第00229号, May. 27, 2014 (China) (where a woman introduced medical records of abuse and bank statements indicating her husband personally authorized payment for her abortion); Zeng v. Yuan (冯某某诉余某某), Hubei Chenzhou Beihu Dist. People's Ct. (湖北省郴州市北湖区人民法院), (2015)郴北民一初字第1245号, Feb. 17, 2016 (China) (where a woman introduced medical records indicating she suffered a trauma-induced miscarriage, text messages from her allegedly abusive husband indicating he knew she was pregnant during the abuse, and a recording of him encouraging her to abort her pregnancy).

170 33% of cases included allegations of domestic violence. Many involved allegations of forcible sex and sexual abuse. *See, e.g.,* Du v. Wang (杜某某诉王某某), Henan Shangcheng Cnty. People's Ct. (河南省商城县人民法院), (2016)豫1524民初5号, Mar. 8, 2016 (China).

171 Some women may also have been trying to demonstrate a "reproductive dispute" existed to persuade the court to grant divorce. For a discussion of the relevant law, see *supra* notes 79–83.

Interpretation.¹⁷² We encountered only four such decisions.¹⁷³ In one case, an unrepresented man from Shandong countered his wife's allegations of "frequent domestic violence" with accusations that she obtained a "secret abortion" without his "consent or knowledge."¹⁷⁴ Implying the abortion was evidence of infidelity, the man claimed his spouse violated his "right to know" and owed him 60,000 *yuan* in emotional damages, 30,000 *yuan* for her medical costs, and an explanation of why she obtained an abortion.¹⁷⁵ The court ordered the woman to compensate the man 5,000 *yuan* in emotional damages.¹⁷⁶

In another case, a woman from Hebei province petitioned for divorce a second time, citing her husband's physical and verbal abuse.¹⁷⁷ Her husband claimed that she was the party at fault and owed him the bride price, 50,000 *yuan* in emotional damages, and other relief, because she "concealed the fact she obtained an abortion," depriving him of his "right to be a father."¹⁷⁸ The court granted the divorce, but ordered her to return the bride price and compensate her husband 20,000 *yuan* in emotional damages for her "unauthorized abortion."¹⁷⁹ Despite her allegations of domestic violence, the court declared she "ran away due to trivial household matters," that she was guilty of a "civil violation" for obtaining an abortion at five months without her husband's consent, and that she should compensate

172 Two of the four cases involved domestic violence allegations. *See, e.g.*, Li v. Sun (李某某诉孙某某), Shanxi Lingchuan Cnty. People's Ct. (山西省陵川县人民法院), (2015)陵民初字第184号, May 21, 2015 (China) (finding that the husband engaged in defamatory online harassment of the plaintiff after her abortion but interpreting his conduct as evidence of genuine emotional pain and ordering the plaintiff to pay him 7,000 *yuan* for her "unauthorized abortion"); Wang v. Peng (王某某诉彭某某), Hebei Chengde Cnty. People's Ct. (河北省承德县人民法院), (2014)承民初字第1668号, July 8, 2015 (China); Huang v. Wen (黄某某诉文某某), Shandong Shen Cnty. People's Ct. (山东省莘县人民法院), (2015)莘民一初字第1714号, Oct. 12, 2015 (China); Peng v. Ding (彭某某诉丁某某), Jiangxi Pingxiang Xiangdong Dist. People's Ct. (江西省萍乡市湘东区人民法院), (2015)湘排民初字第121号, Mar. 17, 2016 (China).

173 These cases represent approximately 5% of the cases in which men raised emotional damage claims and the court granted a divorce.

174 Huang v. Wen (黄某某诉文某某), Shandong Shen Cnty. People's Ct. (山东省莘县人民法院), (2015)莘民一初字第1714号, Oct. 12, 2015 (China).

175 *Id.*

176 *See id.*

177 *See* Wang v. Peng (王某某诉彭某某), Hebei Chengde Cnty. People's Ct. (河北省承德县人民法院), (2014)承民初字第1668号, July 8, 2015 (China).

178 *Id.* (husband requested wife compensate him tens of thousands of *yuan* for various expenditures incurred during marriage).

179 *Id.*

her husband for the “significant mental damage” she caused him by “terminating her pregnancy.”¹⁸⁰ These cases are small in number but are also consistent with prior findings that judges at times go beyond the law to appease litigants and mitigate the possibility of protest.¹⁸¹

In cases where courts denied men emotional damages, courts rarely rejected men’s arguments in clear terms. Many courts ignored the man’s claim and reproductive dispute entirely,¹⁸² while some expressly rejected the request for damages but did so without referencing contrary law.¹⁸³ For example, many courts rejected men’s claims of emotional damages only because of insufficient evidence—not because of their lack of legal basis.¹⁸⁴

2. Bride Price

Although the SPC’s interpretations provide that bride prices shall be returned if a couple has not “lived together,” some men instead focused their arguments for the return of the bride price on pregnancy termination.¹⁸⁵ In these cases, men portrayed their partners’ pregnancy terminations as violations of implied marriage contracts in which reproduction is expected.¹⁸⁶ The finding that disagreements over reproduction can lead to relationship

180 *Id.* Notably, the man argued his wife’s “late-term abortion” at five months contravened “appropriate family planning procedures,” appearing to invoke a province-level regulation that aims to prevent sex-selective abortion by limiting abortions after fourteen weeks of pregnancy. *Id.* The court recounted that a local agency fined the woman 500 *yuan* and the hospital performing the abortion 10,000 *yuan*. *See id.*

181 *See* MICHELSON, *supra* note 86, at 3–4, 16–17.

182 *See infra* Part III Section C.2.

183 *See infra* note 374 and accompanying text (describing how only 4% of courts cited the 2011 SPC Interpretation).

184 Even in cases where the court denied men’s requests for emotional damages, the grounds upon which the claims were dismissed were neither uniform nor explicit rejections of men’s arguments. Many courts did not elaborate on why men’s claims had “no legal basis,” while several courts denied the claims due to insufficient evidence of the man’s emotional pain, indicating such damages may be theoretically possible.

185 *See infra* notes 195–196 and accompanying text.

186 Men requested the return of the bride price or engagement gifts based on the woman’s abortion in 40% of cases (380 out of 949). For an illustration of the extent to which women’s “failure” to reproduce can result in men’s hostility, see, e.g., Luo v. Huang (罗某某诉黄某某), Guangdong Lianzhou City People’s Ct. (广东省连州市人民法院), (2016)粤1882民初791号, Sept. 19, 2015 (China) (man arguing that his wife terminated pregnancies unilaterally without his permission, though his wife recounted how she suffered from four miscarriages, one of which was due to domestic violence, but nonetheless wanted to provide him with

breakdowns is not surprising. However, it is novel to observe that courts at times provide a compensatory remedy for the perceived violation of such expectations. Moreover, men in these cases notably seek to translate the genuine financial pressure they face in affording marriage into pressure on their female partners to reproduce.¹⁸⁷

In one 2015 case from Shanghai, a man recounted confiscating his wife's property, including the bride price and engagement jewelry, upon learning she had an abortion.¹⁸⁸ He justified his actions by asserting "[she] terminated a pregnancy without asking [me] first."¹⁸⁹ In another case from Jiangxi province, a woman sued for a divorce, pleading that her husband was "mentally abnormal" and that his "sole purpose in marrying the plaintiff was to have a child."¹⁹⁰ Her husband insisted that the two stay married, emphasizing that he spent 50,000 *yuan* on the marriage and that the plaintiff "aborted their child without authorization" and "violated [his] reproductive rights."¹⁹¹ In many litigants' apparent worldviews, creating a line of succession operated as a nonnegotiable condition for fulfilling their marital obligations.

Women only occasionally objected to these arguments, contending that they had not violated their husbands' reproductive rights. Some called their husbands "sexist" or "misogynistic," citing, among other things, their husbands' preference for male children.¹⁹²

a child so badly that she underwent reverse tubal ligation surgery). For a general discussion of the growth of collateral marital contracting in China after the passage of the 2001 Marriage Law, as well as a commentary on the marital "traditions that... make motherhood virtually mandatory for women to be treated as adults," see Davis, *supra* note 116, at 565–66, 570–71.

187 See Jiang et al., *supra* note 50 at 214–15 (describing how the bride price can be worth many times average annual income).

188 See Wang v. Lu (王某某诉陆某某), Shanghai Jinshan Dist. People's Ct. (上海市金山区人民法院), (2015)金民一(民)初字第3736号, Dec. 3, 2015 (China).

189 *Id.* The plaintiff argued she only obtained an abortion because the couple did not have financial means to support their child because the defendant "refused to find work" and did not care about the plaintiff. *Id.*

190 Zhou v. Ge (周某某诉戈某某), Jiangxi Xingan Cnty. People's Ct. (江西省新干县人民法院), (2014)干民一初字第522号, Nov. 10, 2015 (China).

191 *Id.*

192 See, e.g., Bu v. Chen (卜某某诉陈某某), Henan Xiayi Cnty. People's Ct. (河南省夏邑县人民法院), (2015)夏民初字第03755号, Dec. 24, 2015 (China) (woman claiming that her husband and his family "thought women are inferior to men"); Zhang v. Li (张某某诉某某), Anhui Funan Cnty. People's Ct. (安徽省阜南县人民法院), (2015)南民一初字第01707号, June 30, 2015 (China); Xu v. Liu (许某某诉刘某某), Henan Mengjin Cnty. People's Ct. (河南省孟津县人民法院), (2015)孟民四初字第90号, June 25, 2015 (China); Pang v. Chen

Others described being dehumanized in being held to such expectations and valued primarily on the basis of reproductive obedience.¹⁹³ Some women gave these objections a legal formulation, arguing that their pregnancy proved the two meaningfully “lived together,” thereby negating their husband’s claim to the bride price.¹⁹⁴

Men’s arguments regarding the bride price appeared far more effective than requests for emotional damages.¹⁹⁵ Courts split roughly 50–50 on whether to order the return of the bride price.¹⁹⁶ In awarding men the bride price, courts appeared to use their broad discretion to determine whether a couple had “lived together” to compensate men and

(庞某某诉陈某某), Guangdong Zhanjiang Potou Dist. People’s Ct. (广东省湛江市坡头区人民法院), (2016)粤0804民初1139号, Sept. 19, 2015 (China); Liu v. Zeng (刘某某诉曾某某), Guangxi Hezhou Babu Dist. People’s Ct. (广西壮族自治区贺州市八步区人民法院), 贺八民一初字第3303号, Nov. 17, 2015 (China).

193 Some female litigants described how their husbands and husbands’ families would treat them with derision if they experienced reproductive difficulties. *See, e.g.*, Sun v. Bi (孙某某诉毕某某), Jiangsu Guanyun Cnty. People’s Ct. (江苏省灌云县人民法院), (2015)灌少民初字第00432号, Aug. 7, 2015 (China) (woman pleading that her “husband’s parents had a negative opinion of her because she was unable to bear a second child”); Yang v. Wang (杨某某诉王某某), Henan Xihua Cnty. People’s Ct. (河南省西华县人民法院), (2014)西民初字第407号, May 13, 2015 (China) (woman alleging that her husband, who argued she had a unilateral abortion causing “injury to him and his family,” did not “think of [her] as a human being at all.”); Wang v. Yan (王某某诉闫某某), Shaanxi Yang Cnty. People’s Ct. (陕西省洋县人民法院), (2017)陕0723民初1106号, Aug. 23, 2015 (China) (woman alleging that her husband and “his family did not treat me like I was a person at all,” did not take care of her or pay for treatment when she was ill during pregnancy, and accused her of being lazy and not doing enough housework).

194 *See, e.g.*, Zhou v. Wu (周某某诉吴某某), Jiangsu Nanjing Lishui Cnty. People’s Ct. (江苏省南京市溧水县人民法院), (2014)溧民初字第2003号, Nov. 28, 2015 (China) (woman arguing that her husband had not satisfied the legal conditions for returning the bride price and describing the mental and physical difficulties she experienced in terminating a pregnancy after seven months); Hu v. Qin (胡某某诉覃某某), Guangdong Guangzhou Tianhe Dist. People’s Ct. (广东省广州市天河区人民法院), (2015)穗天法民一初字第1937号, Jan. 12, 2016 (China) (woman arguing that she spent the bride price on their joint livelihood and that his parents were chairpersons of construction firms and had no grounds to claim “financial hardship”); Shen v. Sun (沈某某诉孙某某), Jiangsu Wuxi Beitang Dist. People’s Ct. (江苏省无锡市北塘区人民法院), (2014)北民初字第0704号, July 18, 2014 (China) (woman arguing that “because [she and her husband] had already wedded and lived together,” she should not have to return the bride price and noting that she terminated the pregnancy because of their frequent arguments and only after notifying her husband).

195 Although men requested the bride price or engagement gifts based on the woman’s abortion in 40% of all the cases in our dataset, courts only reached the issue in 239 cases, i.e., those in which the court had granted a divorce.

196 Courts ordered the woman to return the bride price in 113 of the 239 cases in which they decided the issue.

penalize women for “unauthorized abortions.”¹⁹⁷ In fewer than half of such cases,¹⁹⁸ courts discussed one or both of the relevant statutory grounds for returning the bride price: failure to live together and financial hardship caused by the bride price payment.¹⁹⁹ Although some

197 See, e.g., Liu v. Li (刘某某诉李某某), Gansu Jingyuan Cnty. People’s Ct. (甘肃省靖远县人民法院), (2013)靖乌民初字第251号, Jan. 16, 2014 (China); Zhao v. Wu (赵某某诉吴某某), Shaanxi Zhouzhi Cnty. People’s Ct. (陕西省周至县人民法院), (2017)陕0124民初61号, Apr. 17, 2017 (China). For a discussion of how surveyed judges feel they lack adequate guidance on the bride price analysis and enjoy broad discretion in adjudicating such disputes, see Hu & Song, *supra* note 114. An important caveat is that judges may have felt obligated by law to return the bride price if one of the statutory factors is found (even if on mixed evidentiary grounds), yet still exercise their discretion in favor of women by reducing the amount of the bride price that women are ordered to return.

198 The Marriage Law and a subsequent SPC interpretation establish that courts should support demands for the return of the bride price in three situations: failure to complete marriage registration formalities; failure to live together after completing marriage registration formalities; or financial hardship to the person who paid the bride price. See 2003 SPC Interpretation. According to a 2004 SPC commentary reprinted in 2015, whether the couple has “lived together” after completing marriage registration depends on whether the couple has actually lived together and has “experienced providing and receiving mutual support” for one another. Zuigao Renmin Fayuan Minshi Shenpan Diyiting (最高人民法院民事审判第一庭) [SUP. PEOPLE’S CT. FIRST CIV. DIV.], ZUIGAO RENMIN FAYUAN HUNYIN FA SIFA JIESHI (ER) DE LIJIE YU SHIYONG (《最高人民法院婚姻法司法解释(二)的理解与适用》) [UNDERSTANDING AND APPLYING THE SPC JUDICIAL INTERPRETATIONS OF THE MARRIAGE LAW (VOL. II)] 147 (Renmin Fayuan 2015 Nianban (人民法院2015年版) [The People’s Ct. Press, 2015 ed.] 2015) (China). The SPC acknowledged this policy aims to strike a balance between avoiding “situations where people utilize marriage as a trap to obtain a valuable bride price” and situations where people, particularly in “rural areas,” begin marriages in substance without registration. *Id.*

Some scholars and lower-level courts have argued courts’ assessments of whether couples have “lived together” should take into account whether “the parties have fulfilled the rights and obligations within the husband-wife relationship,” either before or after registration; sexual activity; and the duration of the marriage. Guo Yinghua & Du Qiong (郭英华、杜琼), *Caili Fanhuan Xingwei Zhouyi Jianshi Hunyinfu Sifa Jieshi er Dishitiao ji Xiangguan Guiding* (彩礼返还行为刍议——兼释《婚姻法司法解释(二)》第十条及相关规定) [*Behavioral Patterns in Returning the Bride Price: An Explanation of Article 10 and Related Provisions of the Second Judicial Interpretation of the Marriage Law*], XINGZHENG YU FA (行政与法) [ADMIN. & L.], no. 2, at 115, 115-123 (2019) (China). Notably, some lower courts have maintained that parties’ fault—a criterion not within any of the SPC Interpretation’s recognized grounds for bride price return—should play a role. See, e.g., Guo v. Lü (郭某某诉吕某某), Henan Song Cnty. People’s Ct. (河南省嵩县人民法院), (2014)嵩民五初字第22号, May 29, 2014 (China); see also Ma Yinan & Zhuang Shuangli (马忆南、庄双遭), *Caili Fanhuan de Sifa Shijian Yanjiu* (彩礼返还的司法实践研究) [*Research on the Judicial Practice of Returning the Bride Price*], 31 ZHONGHUA NÜZI XUEYUAN XUEBAO (中华女子学院学报) [CHINA ACAD. OF WOMEN J.], no. 4, 10-19 (2019) (China). In practice, courts often order the return of a portion of the bride price, with the amount determined in part by how long the couple lived together.

199 Out of 113 cases in which courts awarded men the bride price, the court cited a short period of living together in 16 cases, financial hardship in 20 cases, and both in 17 cases.

courts required men to satisfy pleading and evidentiary burdens,²⁰⁰ many did not, explicitly granting a “presumption” of hardship based solely on the payment.²⁰¹ One court in Hebei province ordered a woman to return 55,000 *yuan* of the bride price despite contested facts, because “rural customs” created a presumption that men typically provide women “three gold pieces” as part of the bride price.²⁰² Likewise, when courts awarded the bride price to men on the basis of the couple “failing to live together,” they often insinuated that couples who have not procreated have not “lived together” in a meaningful sense.²⁰³ Many courts overlooked one major explanation by women for why the couple did not live together for a longer period: domestic violence. In one case from Jiangxi province, a woman requesting divorce testified that her husband “punched, kicked, and strangled her, making her fear for her life and forcing her to leave.”²⁰⁴ Her husband countered that she was at fault for terminating a pregnancy without his authorization, despite her testimony that the fetal heartbeat had ceased, likely due to her domestic violence-induced depression.²⁰⁵ The court ordered her to return the bride price, reasoning that the defendant “spent a significant amount of money on their marriage” and their “short period of living together” warranted the refund.²⁰⁶

200 For instance, one court required that the male litigant demonstrate “absolute” financial hardship and reliance on state support, as opposed to “relative” financial hardship. *Hu v. Tang* (胡某某诉汤某某), Gansu Jiuquan Suzhou Dist. People’s Ct. (甘肃省酒泉市肃州区人民法院), (2017)甘0902民初2927号, Oct. 13, 2017 (China). This was evinced simply by the fact the husband’s family had taken out a multi-purpose loan when the couple entered into their marriage. *See id.*; *see also* Hu & Song, *supra* note 114.

201 *See, e.g.*, *Wang v. Si* (王某某诉司某某), Henan Runan Cnty. People’s Ct. (河南省汝南县人民法院), (2014)汝民初字第00265号, July 15, 2014 (China); *Xia v. Huang* (夏某某诉黄某某), Fujian Lianjiang Cnty. People’s Ct. (福建省连江县人民法院), (2014)连民初字第901号, July 7, 2014 (China).

202 *See, e.g.*, *Yang v. Zhang* (杨某某诉张某某), Hebei Jinzhou City People’s Ct. (河北省晋州市人民法院), (2017)冀0183民初1333号, May 20, 2014 (China).

203 *See, e.g.*, *Li v. Zhao* (李某某诉赵某某), Xinjiang Korla City People’s Ct. (新疆维吾尔自治区库尔勒市人民法院), (2015)库民初字第2626号, Aug. 31, 2015 (China) (ordering a woman, who claimed domestic violence, to return the bride price and engagement gifts worth more than 60,000 *yuan* because a real marriage had not formed, while also denying her claims for medical and emotional damages); *Ji v. Xiang* (纪某某诉项某某), Inner Mongolia Uxin Banner People’s Ct. (内蒙古自治区乌审旗人民法院), (2014)乌民初字第1741号, Dec. 10, 2014 (China) (ordering a domestic violence survivor to pay court fees and the bride price because “a real marriage did not exist”).

204 *Cai v. Song* (蔡某某诉宋某某), Jiangxi Yujiang Cnty. People’s Ct. (江西省余江县人民法院), (2014)余民一初字第323号, Jan. 30, 2014 (China).

205 *See id.*

206 *Id.*

Numerous courts offered no rationale for their bride price determinations. This is not unusual: Chinese courts often provide scant legal analysis in decisions. More than 30% of courts adjudicating bride price disputes ordered the wife to return the bride price to her husband without providing any justification or legal analysis.²⁰⁷ By contrast, only one court denied a male litigant's bride price claim without citing any basis for its decision,²⁰⁸ though, as indicated above, some courts denied men's bride price claims by simply noting that the male litigants failed to offer sufficient proof of their claims.²⁰⁹ Several courts expressly invoked considerations of equity, fairness, and social values to order the return of the bride price, despite these factors not being recognized grounds in the SPC interpretation.²¹⁰ Likewise, some courts ordered the return of the bride price based on a finding of the woman's fault, even though fault is not among the three listed legal grounds.²¹¹ For instance, one court in Jiangsu province ordered a woman to return the bride price based on the "degree of fault

207 In 37 of 113 cases in which men succeeded in their claims for return of bride price, courts ordered the return without any analysis or legal justification.

208 See Wang v. Du (王某诉杜某), Shanxi Wugong County People's Ct. (陕西省武功县人民法院), (2014)武民初字第00947号, Mar. 9, 2015 (China) (ruling, following the receipt of testimony regarding domestic violence, that the male plaintiff's claim for a return of the bride price was not supported, without further elaboration).

209 See, e.g., Liu v. Zhao (刘某诉赵某), Henan Handan City Fengfengkuang Dist. People's Ct. (河北省邯郸市峰峰矿区人民法院), (2015)峰民初字第11号, May 26, 2015 (China) (denying male plaintiff's request for a return of a 40,000 *yuan* bride price where the plaintiff provided no evidence in support of that claim); Liu v. Xiao (刘诉肖), Hebei Chengde Cnty. People's Ct. (河北省承德县人民法院), (2016)冀0821民初506号, Mar. 10, 2016 (denying both the female plaintiff's and the male defendant's respective claims for the return of marital property because the parties presented insufficient evidence).

210 See, e.g., Hu v. Tang (胡某某诉汤某某), Gansu Jiuquan Suzhou Dist. People's Ct. (甘肃省酒泉市肃州区人民法院), (2017)甘0902民初2927号, Oct. 13, 2017 (China) (holding that "according to the civil law's principle of fairness, the defendant's request for the return of the bride price is supported."); Li v. Jia (李某某诉贾某某), Shaanxi Dali Cnty. People's Ct. (陕西省大荔县人民法院), (2016)陕0523民初2365号, Oct. 18, 2014 (China) (holding that woman should return the bride price based on "public order and good customs").

211 See, e.g., He v. Dong (何某某诉董某某), Anhui Si Cnty. People's Ct. (安徽省泗县人民法院), (2015)泗民一初字第01122号, May 5, 2014 (China) (holding that although a couple had lived together for more than 1.5 years before they fought, the woman should return the 100,000 *yuan* bride price due to "the short duration of their marriage as well as the unauthorized abortion and relatively large size of the bride price"); Chen v. Luo (陈某某诉罗某某), Hunan Liling City People's Ct. (湖南省醴陵市人民法院), (2016)湘0281民初311号, Mar. 28, 2016 (China) (responding to the man's allegations that the "unauthorized abortion was totally irresponsible toward the family, caused great injury to both the plaintiff's property and spirit, and totally destroyed their marital feelings," by ordering the woman to return the bride price and commenting "both sides had faults"); Cao v. Lin (曹某某诉林某某), Jiangsu Xinghua City People's Ct. (江苏省兴化市人民法院), (2014)泰兴民初字第2197号, Dec. 11, 2014 (China) (stating that bride price determinations are based on "factors such as the cause of the marital dispute and the parties' fault," before awarding the man a portion of the bride price).

between the parties,” when the only allegation levied against her involved an “unauthorized abortion.”²¹² In another Jiangsu case, the court ordered the woman to return 30,000 *yuan* of the bride price because “the parties only lived together for one month before separating” and “the defendant terminated her pregnancy without authorization.”²¹³ In many of these cases, courts appeared not only to be applying the SPC’s 2003 Interpretation but also to be providing legal recourse for men’s expectations that marriages secured by a bride price payment confer an enforceable expectation of reproduction.

3. Custody

In addition to pursuing a broad range of claims for pecuniary relief,²¹⁴ men also cited their partners’ abortions while staking claims for nonpecuniary relief. Some men argued

212 Zhou v. Wu (周某某诉吴某某), Jiangsu Nanjing Lishui Dist. People’s Ct. (江苏省南京市溧水区人民法院), (2014)溧民初字第2003号, Nov. 28, 2014 (China).

213 Shen v. Sun (沈某某诉孙某某), Jiangsu Wuxi Beitang Dist. People’s Ct. (江苏省无锡市北塘区人民法院), (2014)北民初字第0704号, July 18, 2014 (China) (woman arguing that she terminated a pregnancy only because the two argued extensively during her pregnancy, and not because she was uncommitted to “living together” as a married couple). *See also, e.g.*, Guo v. Guo (郭某某诉郭某某), Ningxia Yanchi Cnty. People’s Ct. (宁夏回族自治区盐池县人民法院), (2014)盐民初字第512号, Sept. 15, 2014 (China) (finding that the man’s “physical abuse caused her to leave the home” after reviewing photos of the woman’s injuries but still ordering her to return the 25,000 *yuan* bride price); Zhao v. Wu (赵某某诉吴某某), Shaanxi Zhouzhi Cnty. People’s Ct. (陕西省周至县人民法院), (2017)陕0124民初61号, Apr. 17, 2017 (China) (although the woman claimed they were married for two years and she “miscarried because of the male plaintiff,” the court ordered her to return the bride price, opining that “she was certainly at fault for terminating her pregnancy without authorization or the consent of the plaintiff and his family”); Du v. Wang (杜某某诉王某某), Henan Shangcheng Cnty. People’s Ct. (河南省商城县人民法院), (2016)豫1524民初5号, Mar. 8, 2016 (China) (ignoring the woman’s request for spousal support, ordering a return of a large portion of the bride price, and denying her request for damages due to domestic violence, even though she introduced police reports, photos of her injuries, and medical records documenting the costs of her domestic violence-induced miscarriage).

214 Some men sought forms of pecuniary relief specific to their perceived circumstances, beyond the categories of economic damages that recur in these cases, (i.e., emotional damages, bride price return.) For instance, some men requested reimbursement for the costs of their wives’ reproductive care or for administrative fees paid to the Family Planning Commission to register a second child, where such a license was never utilized due to an abortion. *See, e.g.*, Liang v. Li (梁凡妹诉李金祥), Guizhou Qinglong Cnty. People’s Ct. (贵州省晴隆县人民法院), (2016)黔2324民初283号, June 6, 2016 (China) (male litigant sought reimbursement for lost work while he cared for his spouse while she was on medical leave); Niu v. Fu (牛某某诉付某某), Henan Tanghe Cnty. People’s Ct. (河南省唐河县人民法院), (2016)唐民一初字第1260号, Mar. 14, 2016 (China) (male litigant sought reimbursement for costs of wife’s abortion); Ayi v. Busha (阿依某某诉布沙某某), Sichuan Ganluo Cnty. People’s Ct. (四川省甘洛县人民法院), (2016)川3435民初70号, Apr. 5, 2016 (China) (male litigant sought various forms of relief and to avoid paying for the costs of the birth of one of his children). A few men sought compensation for “loss of youth” and even for labor performed in service of their wives’

their partner's abortion was a reason to award the man custody.²¹⁵ In a 2014 case from Guangdong province, the husband's only argument for custody was that his wife "had taken the initiative to abort [our] second child. Therefore, custody of [our] first child should be granted to [me]."²¹⁶ Likewise, in a 2016 case from Gansu province, a woman petitioned for divorce after having fled her marital home due to domestic violence.²¹⁷ Her husband argued that because she obtained an "abortion procedure without his consent or authorization" and "ran away from home," thus "failing to fulfill her obligations as a mother," he should be awarded custody of their children, who were twins.²¹⁸ In its factual summary, the court

families' land or business during the marriage. *See, e.g.*, Luo v. Yuan (罗某某诉袁某某), Sichuan Jianwei County People's Ct. (四川省犍为县人民法院), (2016)川1123民初159号, Mar. 9, 2016 (China) (male litigant sought 150,000 *yuan* in damages as a "loss of youth fee"); Li v. Cai (黎某某诉蔡某), Guangdong Yangshan County People's Ct. (广东省阳山县人民法院), (2015)清阳法黎民初字第208号, Jan. 18, 2016 (China) (male litigant sought 50,000 *yuan* as a "loss of youth" fee); Gao v. Zhang (高某某诉张某某), Zhejiang Jiaxing Xiuzhou People's Ct. (浙江嘉兴市秀洲区人民法院), (2010)嘉秀王民初字第130号, Sept. 16, 2010 (China) (male litigant sought, *inter alia*, compensation for years of allegedly unpaid labor for his wife's parents' business, while his wife alleged that he began working for her parents once his career "failed"); Yin v. Chen (殷某某诉陈某某), Anhui Xuancheng City Xuanzhou Dist. People's Ct. (安徽省宣城市宣州区人民法院), (2015)宣民一初字第01385号, Aug. 13, 2015 (China) (male litigant sought compensation for "more than twenty years of hard labor" on his wife's family's land, for which he was allegedly "not compensated").

215 Custody was disputed in 111 cases. In many cases, men's allegations of their wives' "unauthorized abortion" were not explicitly cited as the basis for their requests to be granted custody; however, men raised the subject of their wives' pregnancy terminations for seemingly no other purposes than emphasizing their wives' relative faults, before requesting custody. *See, e.g.*, Lin v. Liu (林某某诉刘某某), Anhui Ma'anshan Huashan Dist. People's Ct. (安徽省马鞍山市花山区人民法院), (2015)花民一初字第01398号, Aug. 19, 2015 (China) (husband arguing his wife, who alleged fleeing domestic violence, was "immoral" for "aborting their five-month old daughter" and for moving out and that he deserved custody, child support, and equitable division of their assets); Wang v. Zhu (汪某某诉朱某某), Zhejiang Kaihua Cnty. People's Ct. (浙江省开化县人民法院), (2017)浙0824民初2487号, Oct. 14, 2017 (China) (husband alleging that his wife once obtained an "unauthorized abortion" and requested custody after the wife alleged that he failed to support their daughter following their separation); Peng v. Li (彭某某诉李某某), Hunan Liling City People's Ct. (湖南省醴陵市人民法院), (2013)醴法民一初字第326号, Apr. 2, 2014 (China) (husband citing his wife's "unauthorized abortion" as the "main issue in the relationship" and requested full custody after the wife alleged she was the sole caregiver to their toddler).

216 Jiang v. Lin (江某某诉林某某), Guangdong Jieyang Jiedong Dist. People's Ct. (广东省揭阳市揭东区人民法院), (2014)揭东法曲民初字第84号, Apr. 8, 2014 (China).

217 *See* Duan v. Guo (段某某诉郭某某), Gansu Jingtai Cnty. People's Ct. (甘肃省景泰县人民法院), (2016)甘0423民初848号, May 4, 2016 (China).

218 *Id.*

did not discuss the domestic violence issue—instead, it focused on the woman’s “abortion without the husband’s consent,” and then awarded each parent custody of one twin.²¹⁹

No court explicitly cited a woman’s reproductive decision as grounds for denying custody. However, within the cases we read, courts granted men custody at two times the rate they granted women custody. Courts often did so without explanation or simply because children had been residing with the man’s family following a separation,²²⁰ even though separations are often due to domestic violence and the default conditions of a patrilocal marriage system.²²¹ In one case from Hunan province, a woman petitioned for divorce and custody, alleging her husband threatened and beat her severely after she obtained an abortion, which caused them to separate.²²² After the husband argued that their child would “suffer” under her mother’s custody, the court found “the plaintiff’s private abortion shook their marital foundation” and awarded him custody.²²³ Generally, our findings confirm prior scholarship, which has found that courts deny women custody at disproportionate rates.²²⁴ Our findings additionally suggest that judicial bias against women who exercised reproductive autonomy may constitute an additional finger on the scale weighing against women in custody determinations.

4. Divorce

In one-third of the cases we read, men referenced an “unauthorized abortion” simply to argue for or against a divorce. To these men, the “unauthorized abortion” explained why conflict arose in the relationship or served as evidence of a “breakdown of mutual affection” so severe that their wives were unwilling to bear children with them. Unlike the

219 *Id.*

220 *See, e.g.,* Guo v. Feng (郭某某诉冯某某), Henan Puyang Cnty. People’s Ct. (河南省濮阳县人民法院), (2014)濮民初字第2853号, Dec. 24, 2014 (China) (“Regarding the question of child-rearing,” the couple’s child “currently lives with the [male] defendant. Because changing the child’s living and educational environment is not conducive to child’s development,” the father shall be awarded custody.); Ren v. Sun (任某诉孙某), Shandong Yanggu Cnty. People’s Ct. (山东省阳谷县人民法院), (2016)鲁1521民初2376号, Aug. 18, 2016 (China) (because the couple’s daughter “currently lives with the [male] defendant,” and because “unauthorized changes to her living environment are not conducive to her development,” she “shall live with the defendant”).

221 MICHELSON, *supra* note 84.

222 *See* Chen v. Zhang (陈某某诉张某某), Hunan Luxi Cnty. People’s Ct. (湖南省泸溪县人民法院), (2014)泸民初字第80号, Apr. 11, 2014 (China).

223 *Id.*

224 *See* MICHELSON, *supra* note 84, at 382–89.

arguments for financial compensation, these claims are recognized under Chinese law.²²⁵ Yet many such arguments came with a strong tone of opprobrium for women who sought reproductive care²²⁶ and could have resulted in adverse outcomes for women.²²⁷

Courts regularly dismiss first-time divorce petitions on procedural grounds, regardless of the merits of the claims.²²⁸ In cases where courts did eventually grant divorces, many courts attributed marital breakdown to the woman's pregnancy termination.²²⁹ However, only a handful of courts cited the law that allows courts to grant divorce on the basis of reproductive disputes.²³⁰ Instead, in granting men's petitions for divorce, several courts

225 See *supra* notes 79–82 and accompanying text.

226 See *infra* Part III Section B.2–B.3.

227 On one hand, where men relied on such arguments to seek divorce, women faced losing custody and the socioeconomic safety net of their marriages. See, e.g., *Li v. Wei* (李某某诉魏某某), Henan Qianxi Cnty. People's Ct. (河北省迁西县人民法院), (2016)冀 0227民初1299号, Aug. 30, 2016 (China); *Pang v. Chen* (庞某某诉陈某某), Guangdong Zhanjiang Potou Dist. People's Ct. (广东省湛江市坡头区人民法院), (2016)粤 0804民初1139号, Sept. 19, 2015 (China). The consequences of this are disparately high for women, given the stigmatization of divorce and the maintenance of patrilocal and patrilineal customs. Cf. HE, *supra* note 84, at 141–72. On the other hand, where men cited their partner's abortion to oppose divorce, women were forced to remain in often abusive marriages. See, e.g., *Wu v. Cao* (吴某某诉曹某某), Shandong Linshu Cnty. People's Ct. (山东省临沭县人民法院), (2015)沭民初字第931号, May 7, 2015 (China); *Wang v. Zhao* (王某某诉赵某某), Ningxia Lingwu City People's Ct. (宁夏回族自治区灵武市人民法院), (2015)灵民初字第2905号, Nov. 25, 2015 (China). Outcomes could be even worse for women who were disabled, older, or divorced, as they were encouraged to stay in abusive marriages. The courts estimated that such women would struggle to remarry or support themselves after divorce. See, e.g., *Zhong v. Huang* (钟某某诉黄某某), Guangdong Yunan Cnty. People's Ct. (广东省郁南县人民法院), (2016)粤5322民初67号, Mar. 3, 2016 (China) (remarking that a woman should be grateful for the husband's "generosity" for "voluntarily marrying" someone with a hearing disability after she petitioned for a divorce from her three-year "unbearable marriage" in which her husband physically and sexually abused her); *Jiang v. Miao* (姜某某诉苗某某), Hubei Nanzhang Cnty. People's Ct. (湖北省南漳县人民法院), (2014)鄂南漳长民初字第00226号, Nov. 20, 2014 (China) (denying a woman's petition for divorce, because the couple was "older and should cherish their relationship").

228 See *supra* notes 100–101 and accompanying text.

229 See, e.g., *Cao v. Shen* (曹某诉沈某某), Jilin Siping Tiexi Dist. People's Ct. (四平市铁西区人民法), (2015)四西郊民初字第235号, July 8, 2015 (China) ("This court believes . . . that the defendant's lack of consideration for the plaintiff's feelings in doing away with the couple's children without authorization, especially, was extremely injurious to the couple's connection and led the marriage to an irretrievable point"); *Wang v. Ren* (王某诉任某), Hubei Wuhan City Jiangxia Dist. People's Ct. (湖北省武汉市江夏区人民法院), (2014)鄂江夏乌民初字第00158号, July 28, 2014 (China) ("The pregnancy termination, which was undertaken due to quarrels over trivial things, caused the relationship to deteriorate.").

230 See *supra* notes 79–82.

suggested that couples who did not procreate did not have a “real marriage.”²³¹ Although dismissing divorce petitions is courts’ default ruling, some courts specifically used the fact of a prior pregnancy termination to deny women’s divorce petitions. Several judges interpreted evidence of pregnancy as evidence of sexual activity between the parties and, therefore, inferred the existence of a good marriage.²³² In one case from Jiangsu province, the court declared that “the parties must have a good relationship if the defendant became pregnant multiple times.”²³³ In another case, a woman seeking divorce claimed to have suffered serial abuse within her marriage.²³⁴ The defendant introduced the plaintiff’s ultrasound to demonstrate “that the relationship between the parties is good.”²³⁵ The court denied the divorce and adopted the man’s rationale: the parties “conceived a child, which is evidence of a good marital relationship.”²³⁶

Other courts denied women divorces despite allegations of spousal abuse and sexual assault because of the couple’s reproductive potential and the husband’s desire to continue the relationship.²³⁷ In a case from Hebei province, the female plaintiff petitioned for divorce and recounted to the court her experience of being forced to have sex with the

231 *See, e.g.*, Li v. Zhao (李某某诉赵某某), Xinjiang Korla City People’s Ct. (新疆维吾尔自治区库尔勒市人民法院), (2015)库民初字第2626号, Aug. 31, 2015 (China) (ordering domestic violence survivor to return the 70,000 *yuan* bride price because a real marriage had not formed, while denying her claims for medical and emotional damages).

232 *See, e.g.*, Wang v. Zhang (王某某诉张某某), Shandong Leling City People’s Ct. (山东省乐陵市人民法院), (2016)鲁1481民初1191号, June 23, 2014 (China) (denying a woman’s divorce request, despite her introducing medical records showing she was hospitalized for domestic violence, because the parties had a daughter and therefore had an “average” relationship); Yang v. Zhang (杨某某诉张某某), Shaanxi Yang Cnty. People’s Ct. (陕西省洋县人民法院), (2016)陕 0723民初1467号, Sept. 21, 2016 (China); He v. Bian (何某某诉边某某), Shaanxi Yulin Yuyang Dist. People’s Ct. (陕西省榆林市榆阳区人民法院), (2016)陕0802民初5415号, Aug. 10, 2016 (China); Yang v. Wang (杨某某诉王某某), Henan Xihua Cnty. People’s Ct. (河南省西华县人民法院), (2014)西民初字第407号, May 13, 2015 (China). *Cf.* UNFPA China, *supra* note 101 at 3 (reporting that 14% of men surveyed admitted to sexually assaulting their partners).

233 Wang v. Liu (王某某诉刘某某), Jiangsu Huaian Qingpu Dist. People’s Ct. (江苏省淮安市清浦区人民法院), (2014)浦民初字第4177号, Dec. 4, 2016 (China).

234 *See* Liu v. Zhu (刘某某诉朱某某), Jiangxi Pingxiang Anyuan Dist. People’s Ct. (江西省萍乡市安源区人民法院), (2016)赣0302民初399号, May 30, 2016 (China).

235 *Id.*

236 *Id.*

237 *See, e.g.*, Zhong v. Huang (钟某某诉黄某某), Guangdong Yunan Cnty. People’s Ct. (广东省郁南县人民法院), (2016)粤5322民初67号, Mar. 3, 2016 (China) (denying a divorce claim from a woman married to an allegedly sexually and physically abusive defendant, ordering her to pay court fees, and encouraging her “to

defendant multiple times, including one instance of physical and sexual abuse that induced a miscarriage.²³⁸ The defendant denied that the couple had anything but a good marriage, yet accused the plaintiff of “obtaining an abortion without the defendant’s consent or authorization.”²³⁹ The court denied the woman’s petition and ordered her to pay all court fees, opining that “although the plaintiff claims the defendant committed sexual abuse against her, leading to the breakdown of their relationship, the plaintiff has not satisfied her burden of proof, so this court cannot support a divorce.”²⁴⁰ The court proceeded to wish the two well in their marriage: “The two sides should cherish one another’s feelings. It is inevitable for husbands and wives to have conflicts, and divorce is not a solution The two should mutually respect one another and be considerate and sincere toward one another. If so, everything will be okay.”²⁴¹ Court decisions thus normalized men’s expectations that wives remain reproductively—and sexually—available to their husbands, while legally confining women to abusive relationships.

B. How Men Discredit Women

This Part discusses how, beyond seeking compensation, custody, or divorce, men also strategically used claims regarding abortion to rationalize domestic abuse, question a range of conduct by women, and raise doubts about their wives’ sexual morality. Male litigants were aided by legal counsel in most cases presenting these claims,²⁴² suggesting that lawyers believed such arguments had strategic value. Courts’ expressions of sympathy toward men and reprimands of women, which often mirrored men’s arguments in both style and substance, indicate that such litigation strategies were often effective.

cherish her existing family . . . dispel the idea of a divorce, communicate more with the defendant, and give the children a healthy and happy environment in which to grow up”).

238 See *Wang v. Ning* (王某某诉宁某某), Hebei Handan Yongnian Dist. People’s Ct. (河北省邯郸市永年区人民法院), (2012)永民初字第03602号, Jan. 29, 2013 (China).

239 *Id.*

240 *Id.*

241 *Id.*

242 Men were represented by a lawyer in at least 511 cases (54%). In 65 of the 115 cases in which men requested emotional or fault-based damages based on the pregnancy termination (57% of such cases), the court decisions noted that men were represented.

1. Distracting From and Rationalizing Abuse

Men's arguments regarding unauthorized abortions often appeared to be efforts to distract attention from claims of abuse, rather than simply efforts to obtain compensation or other relief.²⁴³ Men responded to women's accounts of domestic violence that led to hospitalization (and in some cases loss of their pregnancies) by offering a different account of why their wives were hospitalized: to obtain an abortion without the husband's consent.²⁴⁴ In one 2016 case in Shandong province, for example, a woman sued for divorce, custody, and half of her husband's income earned during the marriage.²⁴⁵ According to the plaintiff, her husband had a serious temper and could not handle their newborn daughter's crying; he began physically abusing the plaintiff and cut her and their daughter off financially.²⁴⁶ The plaintiff introduced hospital records to prove that she was treated for domestic violence.²⁴⁷ In response, the defendant asserted that the hospital records did not relate to or prove treatment for domestic violence, but rather were the result of an "abortion she obtained without his authorization."²⁴⁸

Men repeatedly introduced women's medical records as evidence, including records of gynecological exams, abortion procedures, medical bills, and ultrasounds, to argue that

243 See, e.g., Yan v. Xiao (严某某诉肖某某), Sichuan Gao Cnty. People's Ct. (四川省高县人民法院), (2015)宜高民初字第589号, May 10, 2015 (China) (when a wife argued she fled due to domestic violence, her husband argued that her spending habits, departure, and unilateral abortion were evidence not of domestic violence, but rather of her intent to defraud him); Hu v. Tang (胡某某诉汤某某), Gansu Jiuquan Suzhou Dist. People's Ct. (甘肃省酒泉市肃州区人民法院), (2017)甘0902民初2927号, Oct. 13, 2017 (China) (wife alleged her husband caused her to miscarry by forcibly having sex with her during her pregnancy, after which he "spread negative rumors" about her and accused her of willfully terminating her pregnancy; her husband responded that the abortion proved she intended to defraud him through the marriage); Jia v. Li (贾某某诉黎某某), Gansu Chongxin Cnty. People's Ct. (甘肃省崇信县人民法院), (2015)崇民初字第309号, Aug. 20, 2015 (China) (a woman introduced medical records and hospital reports to prove that her husband had stabbed her, and he responded that she had obtained an abortion without his consent).

244 See, e.g., Yue v. Cai (岳某某诉蔡某某), Ningxia Wuzhong Litong Dist. People's Ct. (宁夏回族自治区吴忠市利通区人民法院), (2015)吴利民初字第2845号, Nov. 27, 2015 (China) (after a woman alleged suffering persistent domestic violence, resulting in a miscarriage, her husband denied only the specific allegation that he "dragged her down the stairs" and claimed she went to the hospital to abort a fetus, not for trauma treatment).

245 Wang v. Zhang (王某某诉张某某), Shandong Leling City People's Ct. (山东省乐陵市人民法院), (2016)鲁1481民初1191号, June 23, 2014. (China).

246 See *id.*

247 See *id.*

248 *Id.*

women had terminated healthy pregnancies.²⁴⁹ Male efforts to introduce such evidence coincided with cases in which women alleged domestic violence.²⁵⁰ In one case from Jiangxi province, a woman without a lawyer sued for divorce, arguing that her husband abused her and that the two had been separated for three years.²⁵¹ The defendant claimed that their relationship had soured when the plaintiff announced that she “aborted their child without authorization” and ran away.²⁵² He introduced a copy of an ultrasound performed on the plaintiff to prove “the relationship between the parties [was] good”—that the two were sexually active.²⁵³ In these cases—and potentially in a great number of cases in which female litigants were less vocal in raising claims of abuse—female litigants were effectively forced to confront their alleged abusers as those men accessed their personal medical information. By introducing medical evidence, abusers may also have been weaponizing the very fact and result of their abuse: a pregnancy.

In a related set of cases, male litigants attempted to rationalize abusive conduct as an emotional but justifiable reaction to learning about their wives’ reproductive decisions.²⁵⁴ One

249 Men did so in eighty-nine cases.

250 In twenty-seven of the eighty-nine cases in which men introduced such evidence, women claimed to have been either survivors of domestic violence or to have lost a pregnancy involuntarily. In eleven of these cases, women alleged their husband’s domestic violence caused them to miscarry. In a 2012 case from Hebei province, for example, a woman recounted her experience of being forced to have sex with the defendant multiple times, including one instance of physical and sexual abuse that led her to lose a pregnancy. *Wang v. Ning* (王某某诉宁某某), Hebei Handan Yongnian Dist. People’s Ct. (河北省邯郸市永年区人民法院), (2012)永民初字第03602号, Jan. 29, 2013 (China). The defendant argued that the plaintiff obtained a “voluntary abortion without his consent” and introduced his mother’s testimony that she attended a fetal check-up with the plaintiff earlier in the pregnancy, which he claimed proved the fetus’s viability. *Id.*

251 See *Liu v. Zhu* (刘某某诉朱某某), Jiangxi Pingxiang Anyuan Dist. People’s Ct. (江西省萍乡市安源区人民法院), (2016)赣0302民初399号, May 30, 2016 (China).

252 *Id.* The male litigant stated that “everyone wanted the child.” *Id.*

253 *Id.* Unfazed by the allegations of abuse, the court denied the divorce petition, holding it was persuaded by the man’s “evidence the parties had a good marital relationship.” *Id.* Men also argued that pregnancies were evidence of healthy, loving marriages. See, e.g., *Wang v. Ning* (王某某诉宁某某), Hebei Handan Yongnian Dist. People’s Ct. (河北省邯郸市永年区人民法院), (2012)永民初字第03602号, Jan. 29, 2013 (China); *Wang v. Zhao* (王某某诉赵某某), Ningxia Lingwu City People’s Ct. (宁夏回族自治区灵武市人民法院), (2015)灵民初字第2905号, Nov. 25, 2015 (China).

254 See, e.g., *Zhang v. Deng* (张某某诉邓某某), Gansu Jishishan Baoan Dongxiang and Sala Autonomous Cnty. People’s Ct. (甘肃省积石山保安族东乡族撒拉族自治县人民法院), (2016)甘2927民初153号, June 28, 2016 (China) (husband admitting that he beat his wife with a leather belt because she terminated her pregnancy); *Yang v. Feng* (杨某某诉冯某某), Ningxia Yongning Cnty. People’s Ct. (宁夏回族自治区永宁县人民法院), (2016)宁0121民初754号, June 23, 2016 (China) (husband admitting he beat his wife because

woman's divorce petition alleged that her husband suffered from a "harmful machismo" and was prone to domestic violence, especially after she obtained an abortion.²⁵⁵ The defendant did not contest her allegations of domestic violence but rationalized their conflicts as being caused by the plaintiff's "unauthorized abortion."²⁵⁶ In another case, a woman from Hubei province petitioned for divorce, claiming that her husband exhibited highly controlling behavior, surveilled her communications, and eventually began physically abusing her.²⁵⁷ The defendant admitted to the abuse but blamed their conflict on her "unauthorized abortion."²⁵⁸ In two other cases, men attempted to legitimize abusive, controlling behavior by arguing that they acted to protect the pregnancy.²⁵⁹ One male defendant asserted a sense of entitlement to have sex and reproduce with his spouse, arguing that "allegations of spousal rape are contrary to the understanding of husbands and wives."²⁶⁰

she terminated a pregnancy, although she alleged she terminated the pregnancy because she suffered from dysplasia); *Xia v. Luo* (夏某某诉罗某某), Hunan Changsha Kaifu Dist. People's Ct. (湖南省长沙市开福区人民法院), (2015)开民一初字第05189号, Dec. 21, 2015 (China) (husband admitting to beating his wife after learning about her miscarriage but argued that she took no action to mitigate the risk of miscarriage and denied him his "reproductive and knowledge rights").

255 *Qu v. He* (屈某某诉何某某), Chongqing Banan Dist. People's Ct. (重庆市巴南区人民法院), (2016)渝0113民初445号, Mar. 18, 2016 (China).

256 *Id.* The court denied the woman's divorce petition and urged the couple to "enhance communication, mutually care for one another, [and] try to understand one another" *Id.*

257 *See Shen v. Chen* (申某某诉陈某某), Hubei Xianfeng Cnty. People's Ct. (湖北省咸丰县人民法), (2014)鄂咸丰民初字第00338号, May 30, 2014 (China).

258 *Id.* The court granted the divorce, requiring the female plaintiff to pay all court fees, and finding that "the plaintiff's obtaining an induced unauthorized abortion led to an emotional crisis." *Id.*

259 One man admitted to locking his wife in a room "to protect the fetus" when she was attempting to "run away and obtain an unauthorized abortion." *Liao v. Huang* (廖某某诉黄某某), Henan Xinyang Pingqiao Dist. People's Ct. (河南省信阳市平桥区人民法院), (2014)平民初字第02434号, Dec. 29, 2014 (China). Another man rationalized confiscating his wife's phone and refusing to let her communicate with others, claiming that "using [her] phone is not good for [her] health when [she is] pregnant." *Gou v. Tan* (苟某某诉谭某某), Chongqing Shizhu Tujia Autonomous Cnty. People's Ct. (重庆市石柱土家族自治县人民法院), (2016)渝0240民初2553号, Aug. 18, 2016 (China).

260 *Zhong v. Huang* (钟某某诉黄某某), Guangdong Yunan Cnty. People's Ct. (广东省郁南县人民法院), (2016)粤5322民初67号, Mar. 3, 2016 (China). In this case, the man did not seek the bride price, but claimed his wife was "lazy" and using him for money. *Id.* Additionally, responding to his wife's allegations of sexual assault, he called her "frigid" (性冷淡) and argued that her claims were disingenuous, as neither the police nor the Women's Federation had ever received a complaint from her. *Id.* For further discussion of sexual entitlement, see Brian Wong, *The Long Road to Ending Gendered Violence in China*, 3 U.S.-ASIA L. INST. PERSPS. 1, 1-2 (2022).

In several cases, men admitted to using coercive tactics outside of court to prevent their spouses from accessing abortions. In a 2016 case from Guangdong, a male litigant sought the court's assistance to prevent his wife from obtaining an abortion.²⁶¹ She sued for divorce after three years of marriage, claiming the defendant's "personality changed" once she gave birth to a daughter and that he physically abused and sexually assaulted her.²⁶² Calling the marriage "unbearable," she requested a divorce and custody.²⁶³ The defendant requested the court deny the petition.²⁶⁴ He argued that the plaintiff could not seek a divorce while pregnant, but only six months after terminating a pregnancy or one year after childbirth,²⁶⁵ ignoring the fact that the relevant legal restriction on filing for divorce during or after a pregnancy applies only to men.²⁶⁶ The defendant threatened the plaintiff with "unpredictable consequences" if she "illegally and without authorization used certain tactics to obtain an abortion" to extricate herself from the relationship.²⁶⁷ The court did not address the legal argument or the woman's pregnancy, but it rejected the divorce, ordered the woman to pay court fees, and effectively returned her to her husband's control.²⁶⁸ In another case, a husband admitted to making his wife sign a "guarantee letter" after she obtained an abortion.²⁶⁹ In the letter, she admitted to her fault and promised both not to terminate a pregnancy again and "to live a good life with her husband."²⁷⁰ In yet another

261 See *Zhong v. Huang* (钟某某诉黄某某), Guangdong Yunan Cnty. People's Ct. (广东省郁南县人民法院), (2016)粤5322民初67号, Mar. 3, 2016 (China) (the suit was a first-time petition).

262 *Id.*

263 *Id.*

264 *Id.*

265 *Id.*

266 See 2001 Marriage Law, art. 34. Another court deemed it "necessary" under the same provision to adjudicate a man's divorce claim when he sought divorce less than six months after his spouse miscarried. *Qu v. Pan* (曲某某诉潘某某), Liaoning Dandong Yuanbao Dist. People's Ct. (辽宁省丹东市元宝区人民法院), (2016)辽0602民初995号, Sept. 28, 2016 (China).

267 *Zhong v. Huang* (钟某某诉黄某某), Guangdong Yunan Cnty. People's Ct. (广东省郁南县人民法院), (2016)粤5322民初67号, Mar. 3, 2016 (China).

268 *Id.*

269 *Niu v. Fu* (牛某某诉付某某), Henan Tanghe Cnty. People's Ct. (河南省唐河县人民法院), (2016)唐民一初字第1260号, Mar. 14, 2016 (China).

270 *Id.*

case, a woman alleged that her husband often beat her, “especially when she refused to have sex with him,” and had threatened to “kill her entire family if she obtained an abortion.”²⁷¹

Men’s efforts to use abortion to distract from and discredit domestic violence claims appear to have succeeded in many cases: Courts often did not acknowledge women’s domestic violence allegations, but instead recounted men’s allegations that women obtained “unauthorized abortions.”²⁷² In the rare cases where courts did acknowledge domestic violence, courts used passive language—such as that the two “had fights”—and thus did not attribute blame to the husband.²⁷³ Some courts balanced women’s fault for having an abortion against men’s fault for engaging in adultery, domestic violence, or defamation, and let losses lie based on that comparison.²⁷⁴ In a 2014 case from Jiangsu province, a woman sued for a divorce and division of assets, claiming that her husband frequently beat her and that she was “forced” to terminate her pregnancy, after which her husband’s “violence” continued.²⁷⁵ Her husband, who had a lawyer, agreed to a divorce, but argued his wife should compensate him for emotional damages for her “unauthorized abortion.”²⁷⁶ The court granted the divorce but ordered him to pay only a fraction of their joint assets,

271 *Lü v. Wen* (吕某某诉文某某), Guangxi Pubei Cnty. People’s Ct. (广西壮族自治区浦北县人民法院), (2016) 桂0722民初327号, Mar. 9, 2016 (China) (the female litigant explained that she initially tried to cope with her husband’s physical and sexual abuse by complying and providing him with a son, but she decided she could no longer tolerate the abuse and sought divorce during her second pregnancy, at which point her husband continued to threaten, follow, and harass her).

272 Chinese court opinions generally recount each party’s arguments, followed by the court’s factual summary. *See, e.g., Ma v. Ding* (马某某诉丁某某), Henan Sanmenxia Hubin Dist. People’s Ct. (河南省三门峡市湖滨区人民法院), (2016)豫1202民初1162号, May 24, 2016 (China).

273 *See, e.g., Cheng v. Zhou* (程某某诉周某某), Shaanxi Xian Lintong Dist. People’s Ct. (陕西省西安市临潼区人民法院), (2015)临潼民初字第01298号, Aug. 20, 2015 (China) (writing that “she had soft tissue injuries all over her body,” without describing who inflicted them but then used active language when writing “she aborted her pregnancy without informing him.”).

274 *See, e.g., Mei v. Xu* (梅某某诉徐某某), Anhui Tongling Cnty. People’s Ct. (安徽省铜陵县人民法院), (2014)铜民一初字第00573号, Jan. 5, 2015 (China) (ruling that “both parties were responsible for mishandling the situation” after the wife allegedly obtained an abortion without her husband’s consent and the husband allegedly harassed her and defamed her as being adulterous, while also arguing that she should not have terminated the pregnancy).

275 *Yuan v. Yue* (袁某某诉岳某某), Jiangsu Xuzhou Tongshan Dist. People’s Ct. (江苏省徐州市铜山区人民法院), (2014)铜茅民初字第959号, Aug. 27, 2014 (China).

276 *Id.*

given “the relative fault of the parties.”²⁷⁷ His alleged faults involved domestic violence and gambling, while hers only involved an abortion.²⁷⁸

Our analysis confirms the prior scholarship regarding divorce litigation: courts distrust women, ignore extensive documentation of domestic violence,²⁷⁹ routinely characterize domestic violence as unproblematic,²⁸⁰ and rarely intervene to stop or even acknowledge abuse.²⁸¹ We additionally find that courts are more sympathetic to men’s claims about

277 *Id.*

278 *See id.*

279 Courts routinely ignored extensive documentation of domestic violence, including hospital diagnostic records, photos of injuries, and police reports. *See, e.g.,* Lin v. Hong (林某某诉洪某某), Fujian Nanan City People’s Ct. (福建省南安市人民法院), (2015)南民初字第5460号, Sept. 25, 2015 (China) (ruling that evidence of injuries alone could not prove who caused them); Yin v. Chen (殷某某诉陈某某), Anhui Xuancheng Xuanzhou Dist. People’s Ct. (安徽省宣城市宣州区人民法院), (2015)宣民一初字第01385号, Aug. 13, 2015 (China) (ruling that hospital records, photos of injuries, and police reports indicating domestic violence did not prove that the wife’s husband was the cause); Dong v. Zhu (董某某诉朱某某), Zhejiang Shaoxing Yuecheng Dist. People’s Ct. (浙江省绍兴市越城区人民法院), (2007)越民一初字第1985号, Oct. 9, 2007 (China) (ruling that the evidence proved the wife broke her nose, but it did not prove that her husband broke it).

280 *See, e.g.,* Dong v. Zhu (董某某诉朱某某), Zhejiang Shaoxing Yuecheng Dist. People’s Ct. (浙江省绍兴市越城区人民法院), (2007)越民一初字第1985号, Oct. 9, 2007 (China) (ruling that frequent physical abuse did “not rise to the level of domestic violence”); Mu v. Li (穆某某诉李某某), Henan Yongcheng City People’s Ct. (河南省永城市人民法院), (2013)永民初字第2898号, Oct. 16, 2013 (China) (interpreting a signed guarantee letter promising to stop committing domestic violence as evidence that a man was not a threat, despite his persistent violations of the statement); Xiao v. Zhang (肖某某诉张某某), Hunan Huarong Cnty. People’s Ct. (湖南省华容县人民法院), (2016)湘0623民初286号, Apr. 11, 2016 (China) (ruling that a man’s behavior did not constitute domestic violence even after he injured his wife so severely that she had to miss work and was recommended ten days of rest by her doctor); Ma v. Ma (马某某诉马某某), Ningxia Guyuan Yuanzhou Dist. People’s Ct. (宁夏回族自治区固原市原州区人民法院), (2015)原民初字第3088号, Nov. 20, 2015 (China) (finding that “the [marital] relationship [was] acceptable,” even though the wife described her husband beating her with a leather belt until she miscarried and he did not deny it, because “conflicts are inevitable”); Xiao v. Chen (肖某某诉陈某某), Hunan Chenzhou Suxian Dist. People’s Ct. (湖南省郴州市苏仙区人民法院), (2016)湘1003民初418号, Sept. 19, 2016 (China) (denying divorce, despite finding domestic violence, because the husband promised to “correct his behavior”); Xu v. Zhao (许某某诉赵某某), Gansu Dunhuang City People’s Ct. (甘肃省敦煌市人民法院), (2015)敦民初字第1480号, Dec. 10, 2015 (China) (holding that allegations of physical and verbal abuse did not amount to domestic violence and constituted average “family arguments”).

281 *See, e.g.,* Gu v. Chen (顾某某诉陈某某), Jiangsu Taixing City People’s Ct. (江苏省泰兴市人民法院), (2014)泰济民初字第0578号, Aug. 13, 2014 (China) (stating that the couple had a solid relationship, despite the woman’s claim that she miscarried due to domestic violence); Cheng v. Zhou (程某某诉周某某), Shaanxi Xi’an Lintong Dist. People’s Ct. (陕西省西安市临潼区人民法院), (2015)临潼民初字第01298号, Aug. 20,

women's unilateral abortions than women's claims regarding domestic violence or their reproductive trauma.²⁸² These disparities suggest a segment of the judiciary is guided by two unspoken maxims. First, male pain should be taken seriously, while female pain can be ignored and excused. Second, perceived offenses to men's reproductive interests are more serious than violence against women.

2. Problematizing Women's Conduct: From Accessing Healthcare to Contraceptive Use

Men also used arguments regarding abortion to problematize and question other healthcare choices by their spouses. For instance, men sought to assign blame to women for using contraception, even though Chinese law requires all couples to practice birth control.²⁸³ In a 2014 case, an unrepresented woman from Jiangxi province sued for divorce, alleging her husband had subjected her to nearly lethal domestic violence, leading her to miscarry.²⁸⁴ She introduced as evidence photos depicting her injuries and medical records demonstrating she miscarried due to gynecological complications. The defendant, who was represented by a lawyer, responded that the plaintiff had utilized contraception (birth control pills) "without authorization [...] which caused her pregnancy to develop abnormally and brought the defendant great psychological pain."²⁸⁵ In a case from Guangxi, a male petitioner similarly argued his wife was at fault for taking contraceptives before her pregnancy, which "caused fetal development issues" and led to her having to obtain an "unauthorized abortion."²⁸⁶

Other men made similar arguments that women were responsible for jeopardizing their pregnancies.²⁸⁷ One male defendant from Zhejiang asked the court to deny his wife's divorce

2015 (China) (denying divorce because the couple only fought over "trivial" matters, despite the woman's claim that husband beat her severely, resulting in hospitalization).

282 See *infra* Part III Section C.1.

283 See 2001 Law on Population and Birth Planning, art. 20.

284 See *Cai v. Song* (蔡某某诉宋某某), Jiangxi Yujiang Cnty. People's Ct. (江西省余江县人民法院), (2014)余民一初字第323号, Jan. 30, 2014 (China).

285 *Id.*

286 *He v. Yang* (何某某诉杨某某), Guangxi Rong Cnty. People's Ct. (广西壮族自治区容县人民法院), (2016)桂0921民初1631号, July 27, 2016 (China).

287 See, e.g., *Zhang v. Gong* (张某某诉巩某某), Gansu Wushan Cnty. People's Ct. (甘肃省武山县人民法院), (2014)武民初字第550号, Aug. 12, 2014 (China) (husband accusing his wife of "killing their child")

request, arguing that “he had always wanted a child more than anything, but that he was forgiving and not angry when the plaintiff obtained an abortion without authorization.”²⁸⁸ He described the plaintiff’s hysterectomy as destroying his hopes for the marriage.²⁸⁹ In another case, a woman recounted how she suffered from chronically elevated blood pressure during her pregnancy and how, when she “risked her life” to become pregnant a second time, her husband prevented her from seeking timely care, resulting in her suffering a disabling cerebral infarction.²⁹⁰ Her husband, who was ultimately awarded custody as a non-disabled parent, argued that she obtained a unilateral abortion without his consent.²⁹¹

when the court found his wife sought treatment for lupus); *Fang v. Li* (方某某诉李某某), Guangdong Lufeng City People’s Ct. (广东省陆丰市人民法院), (2014)汕陆法甲民初字第17号, Apr. 2, 2014 (China) (husband arguing that his wife deceived him by saying she was spending money on “medical treatment,” but actually spent it on a “unilateral abortion”); *Li v. Zhang* (李某某诉张某某), Sichuan Dazhou Tongchuan Dist. People’s Ct. (四川省达州市通川区人民法院), (2014)通川民初字第3312号, Oct. 13, 2014 (China) (husband’s family placed so much pressure on the pregnant wife to seek specific medical treatment that she found objectionable, leading her to threaten suicide); *Wang v. Wang* (王某某诉王某某), Shandong Jinan Licheng Dist. People’s Ct. (山东省济南市历城区人民法院), (2016)历城民初字第3315号, Jan. 13, 2016 (China) (husband sought divorce, bride price, and emotional damages for his wife’s “unilateral abortion” and accused her of “marital fraud,” though she presented hospital records showing she suffered from severe nausea, fainting, and vomiting during pregnancy, leading to health concerns for her and the fetus); *Pan v. Gu* (潘某某诉顾某某), Guizhou Danzhai Cnty. People’s Ct. (贵州省丹寨县人民法院), (2016)黔2636民初66号, Mar. 18, 2016 (China) (wife describing how her husband verbally abused her on street outside of a hospital after she sought treatment for a gynecologic hemorrhage, signifying her pregnancy’s termination); *Wang v. Huang* (王某某诉黄某某), Shaanxi Xiayang Qindu Dist. People’s Ct. (陕西省咸阳市秦都区人民法院), (2016)陕0402民初379号, Apr. 18, 2016 (China) (husband acknowledging that the fetus lacked a heartbeat and that the pregnancy was causing his wife to be increasingly ill, but he still dissuaded her from undergoing an operation, which she later did “unilaterally”); *Li v. Tao* (李某某诉陶某某), Yunnan Zhanyi Cnty. People’s Ct. (云南省沾益县人民法院), (2015)沾民初字第1215号陕0402民初379号, Sept. 14, 2015 (China) (husband accusing his wife of obtaining an abortion without his consent, but she alleged she terminated her pregnancy because her husband injured her head); *Liang v. Liu* (梁某某诉刘某某), Shanxi Lan Cnty. People’s Ct. (山西省岚县人民法院), (2017)晋1127民初463号, June 16, 2017 (China) (husband accusing his wife of privately and voluntarily terminating a pregnancy, while the wife argued her pregnancy ended due to fetal hypoplasia).

288 *Shen v. Mao* (沈某某诉毛某某), Zhejiang Shaoxing Yuecheng Dist. People’s Ct. (浙江省绍兴市越城区区人民法院), (2016)绍越民初字第4785号, Mar. 21, 2016 (China).

289 *Id.*; see also *Gu v. Zeng* (顾某某诉曾某某), Zhejiang Jiashan Cnty. People’s Ct. (浙江省嘉善县人民法院), (2013)嘉善西民初字第67号, July 25, 2013 (China) (man expressing frustration that he “paid close to 40,000 *yuan* to treat wife’s congenital heart disease, so she could have a baby,” only for her to obtain an “unauthorized abortion”).

290 *Liu v. Sun* (刘某某诉孙某某), Hunan Xinhua Cnty. People’s Ct. (湖南省新化县人民法院), (2015)新法民一初字第1271号, Sept. 9, 2015 (China).

291 *See id.*

Other men argued that their spouses harmed their pregnancies by “going hiking”²⁹² or using “a cell phone.”²⁹³

In a small set of cases, men argued that women had given birth “without authorization” and should have terminated their pregnancies.²⁹⁴ Almost all of these cases involved women initiating a suit against a partner to whom they were not married for his failure to pay child support.²⁹⁵ In each case, the man’s defense was that he should be exempted from support obligations because she gave birth without his “consent” or “authorization.”²⁹⁶ Just as men argued that women’s unauthorized pregnancy terminations were wrongful, men in these cases painted the continuation of the pregnancy as a selfish act that violated either

292 *Tang v. He* (汤某某诉何某某), Shanghai Jing’an Dist. People’s Ct. (上海市静安区人民法院), (2016)沪0106民初12133号, Aug. 25, 2016 (China).

293 *Gou v. Tan* (苟某某诉谭某某), Chongqing Shizhu Tujia Autonomous Cnty. People’s Ct. (重庆市石柱土家族自治县人民法院), (2016)渝0240民初2553号, Aug. 18, 2016 (China). While men appeared inclined to find fault with a wide range of healthcare decisions made by their partners, we could not find cases within CJO in which women challenged their husband’s decisions to obtain vasectomies as wrongful.

294 We located fourteen cohabitation and child support cases where men claimed that their partners had “unauthorized births.” See *Hu v. Yang* (胡某某诉杨某某), Hunan Jishou City People’s Ct. (湖南省吉首市人民法院), (2015)吉民初字第1754号, Dec. 25, 2015 (China); *Wan v. Geng* (万某某诉耿某某), Beijing Pinggu Dist. People’s Ct. (北京市平谷区人民法院), (2015)平少民初字第05531号, Sept. 29, 2015 (China); *Xiang v. Zhang* (向某某诉张某某), Guangdong Wuchuan City People’s Ct. (广东省吴川市人民法院), (2015)湛吴法民一初字第167号, Aug. 24, 2015 (China); *Yang v. Yang* (杨某某诉杨某某), Chongqing Yubei Dist. People’s Ct. (重庆市渝北区人民法院), (2017)渝0112民初11761号, June 16, 2017 (China); *Chai v. Wang* (柴某某诉王某某), Zhejiang Jiangshan City People’s Ct. (浙江省江山市人民法院), (2014)衢江民初字第289号, May 8, 2014 (China); *Zhang v. Lü* (张某某诉吕某某), Zhejiang Hangzhou Xiacheng Dist. People’s Ct. (浙江省杭州市下城区人民法院), (2011)杭下民初字第1675号, Dec. 15, 2011 (China); *Wang v. Li* (王某某诉李某某), Fujian Xiamen Huli Dist. People’s Ct. (福建省厦门市湖里区人民法院), (2015)湖民初字第1418号, June 10, 2015 (China); *Yang v. Wang* (杨某某诉王某某), Jilin Yedian City People’s Ct. (吉林省桦甸市人民法院), (2016)吉0282民初3868号, Dec. 26, 2016 (China); *Liu v. Liao* (刘某某诉廖某某), Guangdong Zhaoqing Duanzhou Dist. People’s Ct. (广东省肇庆市端州区人民法院), (2015)肇端法民一初字第349号, Dec. 30, 2015 (China); *Yang v. Zhu* (杨某某诉朱某某), Zhejiang Dongyang City People’s Ct. (浙江省东阳市人民法院), (2016)浙0783民初6075号, June 24, 2016 (China); *Li v. Li* (李某某诉李某某), Beijing City High People’s Ct. (北京市高级人民法院), (2018)京民申1433号, Mar. 30, 2018 (China); *Du v. Yang* (杜某某诉杨某某), Chongqing Wushan Cnty. People’s Ct. (重庆市巫山县人民法院), (2013)山法民初字第01978号, Apr. 18, 2014 (China); *Li v. She* (李某某诉余某某), Henan Shaan Cnty. People’s Ct. (河南省陕县人民法院), (2015)陕民初字第626号, July 7, 2015 (China); *Cao v. He* (曹某某诉何某某), Shanxi Zhangzi Cnty. People’s Ct. (山西省长子县人民法院), (2015)长民初字第1046号, May 3, 2016 (China).

295 See *supra* note 294. However, in one case, a man sued his spouse for having a second child in violation of national policy. *Cao v. He* (曹某某诉何某某), Shanxi Zhangzi Cnty. People’s Ct. (山西省长子县人民法院), (2015)长民初字第1046号, May 3, 2016 (China).

296 See *supra* note 294.

the men's rights to not become fathers²⁹⁷ or an agreement between the parties not to have children.²⁹⁸ Some men referred to their payments of several thousand *yuan* to their partners to facilitate an abortion as if it were contractual consideration.²⁹⁹ For instance, in one 2015 case from Hunan province, a woman requested custody, child support, and compensation for half of the child's medical expenses from her partner, whom she alleged had been absent from her and the child's life.³⁰⁰ The defendant argued that the plaintiff's "childbirth without the defendant's consent violated his reproductive rights."³⁰¹ In these cases, courts uniformly ruled in favor of women and ordered men to pay child support.³⁰² Many cited Article 25 of the Marriage Law, which establishes that children born out of wedlock have the same rights as children born into marriages.³⁰³

Two themes run through men's arguments regarding unauthorized abortions and unauthorized births. First, men use legal and rights-focused rhetoric to reinforce arguments that appeal to socially conservative values and that cast their partners as immoral actors.

297 See, e.g., *Liu v. Liao* (刘某某诉廖某某), Guangdong Zhaoqing Duanzhou Dist. People's Ct. (广东省肇庆市端州区人民法院), (2015)肇端法民一初字第349号, Dec. 30, 2015 (China) ("she had a child for her happiness, but in so doing condemned the child to a life of unhappiness").

298 See, e.g., *Yang v. Yang* (杨某某诉杨某某), Chongqing Yubei Dist. People's Ct. (重庆市渝北区人民法院), (2017)渝0112民初11761号, June 16, 2017 (China) (man arguing he and his partner entered into an "agreement that she would not give birth, expressing his clear objection to her continuing her pregnancy").

299 See, e.g., *Xiang v. Zhang* (向某某诉张某某), Guangdong Wuchuan City People's Ct. (广东省吴川市人民法院), (2015)湛吴法民一初字第167号, Aug. 24, 2015 (China); *Chai v. Wang* (柴某某诉王某某), Zhejiang Jiangshan City People's Ct. (浙江省江山市人民法院), (2014)衢江民初字第289号, May 8, 2014 (China); *Wang v. Li* (王某某诉李某某), Fujian Xiamen Huli Dist. People's Ct. (福建省厦门市湖里区人民法院), (2015)湖民初字第1418号, June 10, 2015 (China); *Yang v. Wang* (杨某某诉王某某), Jilin Yedian City People's Ct. (吉林省桦甸市人民法院), (2016)吉0282民初3868号, Dec. 26, 2016 (China); *Liu v. Liao* (刘某某诉廖某某), Guangdong Zhaoqing Duanzhou Dist. People's Ct. (广东省肇庆市端州区人民法院), (2015)肇端法民一初字第349号, Dec. 30, 2015 (China); *Yang v. Zhu* (杨某某诉朱某某), Zhejiang Dongyang City People's Ct. (浙江省东阳市人民法院), (2016)浙0783民初6075号, June 24, 2016 (China).

300 See *Hu v. Yang* (胡某某诉杨某某), Hunan Jishou City People's Ct. (湖南省吉首市人民法院), (2015)吉民初字第1754号, Dec. 25, 2015 (China).

301 *Id.*

302 See *supra* note 294.

303 See 2001 Marriage Law, art. 25.

Second, when litigation becomes contentious, men manipulate women's capacity for pregnancy, regardless of the decisions women make in managing their pregnancies.³⁰⁴

3. Insinuating Licentiousness

Men also used women's abortions to discredit their spouses, insinuating that their wives were engaging in sexual activity for purposes other than reproduction and flouting traditional gender roles.³⁰⁵ For instance, many male litigants cited their spouse's "unauthorized abortions" as the primary evidence that their spouses were never committed to the marriage. Specifically, men claimed their wives' abortions were components of plans to commit "marital fraud" (骗婚) and dishonestly obtain bride-price payments.³⁰⁶ Some men alleged their pregnant spouses extorted them by threatening to have an abortion unless the men paid large sums of money.³⁰⁷ Others accused their wives of covertly terminating pregnancies resulting from extramarital affairs.³⁰⁸ Men combined claims that women engaged in unauthorized abortions with arguments that their wives refused to do

304 In other cases, women pleaded that their husbands would not be satisfied regardless of how pregnancies were handled. For example, in a 2015 case in Beijing, a woman claimed her husband accused her of becoming pregnant with someone else's child, urged her to obtain an abortion, and then, following her abortion, accused her of defrauding him for marital assets. *See He v. Yao* (何某某诉姚某某), Beijing Tongzhou Dist. People's Ct. (北京市通州区人民法院), (2015)通民初字第14188号, Sept. 28, 2015 (China).

305 *Cf. Zhang v. Lü* (张某某诉吕某某), Zhejiang Hangzhou Xiacheng Dist. People's Ct. (浙江省杭州市下城区人民法院), (2011)杭下民初字第1675号, Dec. 15, 2011 (China) (man, who argued his partner gave birth "without authorization," downplaying their relationship in which he paid her rent and claimed the two "were not in a boyfriend-girlfriend relationship, but just spent the night together after meeting in a nightclub" and that "she sleeps with other people"); HE, *supra* note 84 at 201–02 (discussing how women avoid raising subjects related to sex out of fear of being seen as indecent, promiscuous, or licentious).

306 Some men making this argument cited Article 3 of the Marriage Law, which prohibits "exact[ing] of money or gifts in connection with marriage," repurposing a legal provision designed to protect women. *See* 2001 Marriage Law, art. 3.

307 *See, e.g., Ma v. Jia* (马某某诉贾某某), Beijing Chaoyang Dist. People's Ct. (北京市朝阳区人民法院), (2013)朝民初字第29105号, Jan. 10, 2014 (China).

308 *See, e.g., Meng v. Xu* (孟某某诉徐某某), Shandong Linyi Lanshan Dist. People's Ct. (山东省临沂市兰山区人民法院), (2014)临兰民初字第836号, Apr. 16, 2014 (China). *See also, e.g., Hu v. Huang* (胡某某诉黄某某), Fujian Yongding Cnty. People's Ct. (福建省永定县人民法院), (2014)永民初字第2326号, Dec. 16, 2014 (China) (husband insinuating that his wife committed adultery with her ex-husband because she took her daughter from the previous marriage to visit the child's father).

“household chores,”³⁰⁹ behaved “rudely” to the man’s parents,³¹⁰ engaged in sex work,³¹¹ became “addicted to the internet, neglecting her children,”³¹² and stayed out late playing mahjong.³¹³

Male litigants also at times used value-laden language to describe both pregnancies and pregnancy terminations, heightening the moral stakes of their claims and bolstering their assertions that their spouses were at fault. The term most frequently utilized by male litigants was *dadiao* (打掉), which means “knock out.”³¹⁴ The phrase is common, although coarse, in China and does not carry as much of a negative connotation as it might in English. By contrast, if women referred to their pregnancy terminations at all,³¹⁵ they most often used the term *liuchan* (流产), which is the most generic term signifying a miscarriage, abortion, or pregnancy termination.³¹⁶ Men were also four times more likely than women to refer to a pregnancy in language that endowed a fetus with personhood. For instance, male litigants claimed their spouses aborted “a child” (小孩, 孩子) in 177 cases, a “little life” in two cases (小生命, 一条生命), and the plaintiff’s “flesh and blood” (“原告的亲骨

309 See, e.g., *Jing v. Chang* (井某某诉常某某), Beijing Fengtai Dist. People’s Ct. (北京市丰台区人民法院), (2013)丰民初字第18880号, Jan. 14, 2014 (China).

310 See, e.g., *Ke v. Zheng* (柯某某诉郑某某), Guangdong Maoming Maonan Dist. People’s Ct. (广东省茂名市茂南区人民法院), (2012)茂南法民初字第852号, July 10, 2012 (China).

311 See, e.g., *Chen v. Zhao* (陈某某诉赵某某), Jiangsu Yizheng City People’s Ct. (江苏省仪征市人民法院), (2016)苏1081民初541号, Feb. 15, 2016 (China) (husband suggesting that his wife was a sex worker). Cf. *Wang v. Li* (王某某诉李某某), Fujian Xiamen Huli Dist. People’s Ct. (福建省厦门市湖里区人民法院), (2015)湖民初字第1418号, June 10, 2015 (China) (man arguing that his partner gave birth “without authorization” and that they met at a karaoke bar and slept together, insinuating that she was a sex worker).

312 See, e.g., *Chen v. Liu* (陈某某诉刘某某), Shandong Laizhou City People’s Ct. (山东省莱州市人民法院), (2014)莱州民初字第1965号, Jan. 27, 2015 (China).

313 See *Xu v. Jiang* (徐某某诉蒋某某), Shanghai Minhang Dist. People’s Ct. (上海市闵行区人民法院), (2016)沪0112民初3665号, Mar. 31, 2016 (China).

314 In 248 cases (approximately 26%), men used the term “*dadiao*.” By contrast, women used “*dadiao*” in forty-eight cases. Women often used medical terminology in their arguments, describing their pregnancy terminations as receiving “healthcare” (治疗/医疗), undergoing an “operation” (手术), or experiencing a “stillbirth” (胎死腹中), “hemorrhage” (大出血), or “inability to save the fetus” (没有保住).

315 In 306 out of 838 cases in which women appeared in court, women made no reference to pregnancy termination.

316 Women used the term “miscarriage” (流产) in 241 cases.

肉”) and a “baby” (婴儿) in one.³¹⁷ In contrast, women only referred to their pregnancies as representing “children” (小孩, 孩子) in forty-two cases, and such language was generally utilized to respond to men’s claims or describe a pregnancy loss caused by domestic violence. Courts’ language was also revealing as to their views on abortion, as judges occasionally copied men’s value-laden terminology, emphasizing fetuses’ gestational age in several cases and using the term “child” to describe a fetus.³¹⁸

Courts frequently criticized or attached moral blame to women’s reproductive decisions, suggesting men’s attempts to use arguments regarding abortion to discredit women resonated with judges.³¹⁹ In 2015, a woman from Ningxia Hui Autonomous Region petitioned for divorce, claiming that she and her husband often fought and that he kicked her out of their home and physically assaulted her mother.³²⁰ When her husband accused her of obtaining an unauthorized abortion, she claimed it was medically necessary and introduced ultrasound

317 Men referred to fetuses’ gestational age and the duration of their spouses’ terminated pregnancies in 149 cases.

318 Courts emphasized the gestational age of a pregnancy in several cases and used the term “child” at one-third of the rate they used the term “fetus.” *See, e.g.*, Xiang v. Xia (项某某诉夏某某), Hubei Huangmei Cnty. People’s Ct. (湖北省黄梅县人民法院), (2017)鄂1127民初3128号, Feb. 27, 2018 (China); Yang v. Li (杨某某诉李某某), Henan Jiyuan City People’s Ct. (河南省济源市人民法院), (2014)济民一初字第193号, July 23, 2014 (China); Fu v. Zhang (符某某诉张某某), Shandong Shanghe Cnty. People’s Ct. (山东省商河县县人民法院), (2015)商民初字第849号, July 29, 2015 (China); Luo v. Zheng (罗某某诉郑某某), Chongqing Qijiang Dist. People’s Ct. (重庆市綦江区人民法院), (2016)渝0110民初4854号, Sept. 14, 2016 (China). One court even stated, “the loss of an innocent life before it came into this world is regrettable and upsetting.” Li v. Zhou (李某某诉周某某), Shandong Jiaozhou City People’s Ct. (山东省胶州市人民法院), (2014)胶民初字第3247号, Mar. 17, 2015 (China).

319 *See, e.g.*, Liu v. Li (刘某某诉李某某), Hebei Tangshan Lunan Dist. People’s Ct. (河北省唐山市路南区人民法院), (2012)南民初字第412号, June 7, 2012 (China) (holding that “[the wife’s] conduct of obtaining an abortion was improper...”); Chen v. Si (陈某某诉司某某), Shanxi Zezhou Cnty. People’s Ct. (山西省泽州县人民法院), (2014)泽民初字第400号, June 24, 2014 (China) (finding that “[the wife’s] behavior in obtaining an abortion was improper”); Li v. Tao (李某某诉陶某某), Yunnan Zhanyi Cnty. People’s Ct. (云南省沾益县人民法院), (2015)沾民初字第1215号, Sept. 14, 2015 (China) (stating that “both parties are at fault,” when the only allegation against the woman was her “unilateral abortion” and the allegations against the husband involved him beating her until she lost her pregnancy and was hospitalized); Li v. Chen (李某某诉陈某某), Jiangxi Fuzhou Dongxiang Dist. People’s Ct. (江西省抚州市东乡区人民法院), (2014)东民初字第736号, Nov. 13, 2014 (China) (chastising the woman for not adhering to a joint plan in managing her pregnancy, “a major event in the life of a husband and wife”); Xi v. Dai (奚某某诉戴某某), Anhui Wuhu Wanzhi Dist. People’s Ct. (安徽省芜湖市湾沚区人民法院), (2013)芜民一初字第00545号, June 18, 2013 (China) (“While the plaintiff was at her parent’s home, she—for unknown reasons—obtained an abortion.”).

320 *See* Kong v. Li (孔某某诉李某某), Ningxia Shizuishan Dawukou Dist. People’s Ct. (宁夏回族自治区石嘴山市大武口区人民法院), (2015)石大民初字第2111号, Aug. 6, 2015 (China).

records to demonstrate she suffered from a subcutaneous lipoma, a condition that required the excision of benign tumors across her abdomen and made pregnancy unsustainable.³²¹ The woman argued her husband neglected her during her treatment and pregnancy loss.³²² The court denied her divorce petition and thus awarded no damages.³²³ However, the court took the opportunity to comment: “During her pregnancy, the plaintiff did not negotiate or communicate with the defendant and underwent a labor induction operation without the defendant’s authorization or knowledge. Because of this, the plaintiff was at fault.”³²⁴ The court did not acknowledge the plaintiff’s medical condition or the alleged abuse.³²⁵

Judicial moralization appeared across our data with regularity: A Chongqing court opined in 2016 that the female litigant’s abortion was “completely wrong” and “harmful to the marital relationship.”³²⁶ The court seemed unperturbed by her husband’s admission that he exchanged blows with his wife.³²⁷ The same year, a Shaanxi court denied a husband emotional damages for his wife’s “unilateral abortion,” but wrote that his wife “did not respect her husband’s reproductive rights.”³²⁸ In a case from Jiangsu province, the court ordered the female litigant, who had obtained an abortion, to “reflect on her behavior and how it affected the relationship.”³²⁹ Another court from Jiangsu wrote that the woman’s “unauthorized abortion did not take into account the feelings of the plaintiff and his family,” even though the woman described discovering at an ultrasound that the fetus lacked a heartbeat.³³⁰

321 *See id.*

322 *See id.*

323 *See id.*

324 *Id.*

325 *See id.*

326 *Luo v. Zheng* (罗某某诉郑某某), Chongqing Qijiang Dist. People’s Ct. (重庆市綦江区人民法院), (2016)渝0110民初4854号, Sept. 14, 2016 (China).

327 *See id.*

328 *Qi v. Liu* (齐某某诉刘某某), Shaanxi Fuping Cnty. People’s Ct. (陕西省富平县人民法院), (2016)陕0528民初958号, May 10, 2016 (China).

329 *Ding v. Ren* (丁某某诉任某某), Jiangsu Nantong Tongzhou Dist. People’s Ct. (江苏省南通市通州区人民法院), (2015)通高民初字第01347号, Sept. 25, 2015 (China).

330 *Wang v. Liu* (王某某诉刘某某), Jiangsu Huaian Qingpu Dist. People’s Ct. (江苏省淮安市清浦区人民法院), (2014)浦民初字第4177号, Dec. 4, 2016 (China).

In criticizing women, courts overlooked the self-defensive nature of women's attempts to extricate themselves from abusive marriages and seek out abortion care.³³¹ For instance, in a 2015 case from Shanghai, a male defendant requested the court deny his wife's petition, alleging that she ran away from home and obtained an abortion without his consent.³³² The court chided the woman, who alleged domestic violence, characterizing her "refusal to return to their marital home" and "refusal to cohabit with the defendant" as a "unilateral avoidance tactic that is not an appropriate way to handle matters in the marital relationship."³³³

In several cases, the term "unauthorized abortion" appeared to originate from the court, rather than the male litigant.³³⁴ In some cases when men failed to appear in court, courts seemingly stepped in to advocate for the absentee male litigant, described the woman's pregnancy termination as "unauthorized," and denied her a divorce because, in the court's view, the "unauthorized abortion," not fundamental breakdown, caused the relationship to be strained.³³⁵

331 See, e.g., Liu v. Wang (刘某某诉王某某), Hunan Shuangfeng Cnty. People's Ct. (湖南省双峰县人民法院), (2014)双民一初字第711号, Dec. 1, 2014 (China) (criticizing a woman for having an "extreme personality" and "not fulfilling [her] marital obligations," the woman allegedly attempted suicide and obtained an "unauthorized abortion" before running away); Sun v. Jiang (孙某某诉蒋某某), Zhejiang Jiashan Cnty. People's Ct. (浙江省嘉善县人民法院), (2008)善民一初字第292号, July 18, 2008 (China) (criticizing an absentee woman, who the plaintiff claimed was "unwilling to have children," as being "wrong" and "incorrect" for running away and "not facing her problems").

332 See Sun v. Jiang (孙某某诉蒋某某), Shanghai Chongming Cnty. People's Ct. (上海市崇明县人民法院), (2015)崇民一(民)初字第3889号, July 24, 2015 (China).

333 *Id.*

334 See, e.g., Dai v. Sun (代某某诉孙某某), Henan Dancheng Cnty. People's Ct. (河南省郸城县人民法院), (2013)郸民初字第1350号, Oct. 23, 2013 (China); Chen v. Yang (陈某某诉杨某某), Guangxi Ziyuan Cnty. People's Ct. (广西壮族自治区资源县人民法院), (2011)资民初字第480号, Jan. 14, 2012 (China) (awarding the absentee male defendant visitation rights and commenting that it was "wrong" for the plaintiff to obtain an abortion without the man's consent). However, it is possible litigants made arguments not summarized or repeated in final court opinions.

335 See, e.g., Shen v. Chen (申某某诉陈某某), Hubei Xianfeng Cnty. People's Ct. (湖北省咸丰县县人民法院), (2014)鄂咸丰民初字第00338号, May 30, 2014 (China) (accepting a man's statement over the phone and noting, in reference to the man's admission that he abused his wife, that the plaintiff's "unauthorized abortion led to an emotional crisis"); Jiang v. Jiang (蒋某某诉蒋某某), Hunan Xinning Cnty. People's Ct. (湖南省新宁县县人民法院), (2014)宁民一初字第925号, Jan. 6, 2015 (China) (allowing an absentee man's father to allege the female litigant obtained an "unauthorized abortion," denying her divorce petition, and finding that her "unauthorized abortion" was responsible for their conflict).

In summary, men and their lawyers deployed a variety of tactics relating to their wives' pregnancy terminations, to obtain—or to block their wives from obtaining—relief from the courts. Courts appeared to be swayed by these tactics. Courts seemed inclined to accept as fact men's accounts of the circumstances surrounding a pregnancy termination, as well as of the state of the couple's marriage, even when women offered a different account.³³⁶ Courts also penalized women for exercising their reproductive rights while materially rewarding men. More broadly, many of the courts faulted women for terminating a pregnancy without their husband's permission and equated abortion to domestic violence. In so doing, courts assigned ethical and moral obligations to women that do not exist in the law and privileged patriarchal norms over legal ones.

C. How Women and Judges Respond

As discussed above, women rarely challenged their husbands' legal arguments directly, gave voice to their own trauma, or asserted their own rights. Likewise, the cases in which courts explicitly rejected men's arguments and reaffirmed women's reproductive rights were rare. Instead, most women adopted non-combative positions. Courts typically avoided the issue of abortion, although some courts rejected men's arguments and applied the law to support women.

1. Women's Muted Resistance and Claims

Throughout the cases we read, women's responses to men's arguments were often muted. One case from Inner Mongolia provides an example.³³⁷ A woman petitioned for a divorce in 2015 after suffering serial abuse by her husband.³³⁸ The woman described how after one year of marriage she feared her husband, who drank excessively, "tortured" her, and harmed dogs and cats with knives.³³⁹ She recounted two particular occasions on which he set their home on fire and pushed her into the flames while screaming that he wished

336 See, e.g., *Jiang v. Miao* (姜某某诉苗某某), Hubei Nanzhang Cnty. People's Ct. (湖北省南漳县人民法院), (2014)鄂南漳长民初字第00226号, Nov. 20, 2014 (China) (inferring that a woman obtained a voluntary abortion from medical records describing "labor induction," even though induction procedures could be used to treat a variety of conditions under which pregnancies are naturally terminated).

337 See *Zhang v. Bao* (张某某诉包某某), Inner Mongolia Horqin Right Middle Banner People's Ct. (内蒙古自治区科右中旗人民法院), (2015)右民初字第569号, June 8, 2015 (China).

338 See *id.*

339 *Id.*

for her to die.³⁴⁰ The woman presented hospital records as evidence she miscarried at six months due to her husband's physical abuse.³⁴¹ He claimed she "knocked out their child without authorization" and requested she return the 80,000 *yuan* bride price.³⁴² Although the woman had a lawyer and receipts for her hospitalization, she sought only a divorce and her pre-marital property.³⁴³ She did not claim reimbursement for medical expenses, emotional damages, or any other damages, despite having strong claims.³⁴⁴ Nor did she challenge the legal basis of her husband's claim.³⁴⁵ The case reflects how extra-legal barriers facing female litigants, including threats of continued violence and social expectations about what women deserve, may result in less assertive advocacy on behalf of women.³⁴⁶

Women's assertions of their injuries were infrequent and subdued, particularly compared to men's claims.³⁴⁷ Women seldom requested fault-based emotional damages regarding their husband's role in their pregnancy and its termination.³⁴⁸ Despite the prevalence of domestic violence within the data, eighty percent of women who alleged domestic violence did not seek fault-based damages to which they are entitled under the Marriage Law.³⁴⁹

340 *See id.*

341 *See id.*

342 *Id.*

343 *See id.*

344 *See id.* *See also infra* notes 349 and 350.

345 *See* Zhang v. Bao (张某某诉包某某), Inner Mongolia Keyouzhong Banner People's Ct. (内蒙古自治区科右中旗人民法院), (2015)右民初字第569号, June 8, 2015 (China). The husband agreed to a divorce, but requested she return the 80,000 *yuan* bride price. *Id.*

346 For a discussion of socialized diffidence and barriers to women's self-assertion in a comparative context, see LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE* (2003).

347 For instance, women requested returns of their pre-marital property, usually consisting of furniture and household items, in just 10% of cases (102), whereas men requested a return of either the bride price or engagement gifts in 40% of cases (380).

348 Women requested emotional, fault-based damages for reproductive trauma alone in twenty cases, although more claims were based on domestic violence, cheating, and abandonment. By comparison, men requested emotional damages because of their partners' abortions in 115 cases.

349 Women requested emotional, fault-based damages in only 20% of cases in which they alleged domestic violence. *See* 2001 Marriage Law, art. 46. It is possible that a greater percentage of women suffered, but did not allege, domestic violence, given women's potential hesitancy to incite their husbands and discuss intimate household matters, as well as the disparity between the statistical accounts of the incidence of domestic violence and the lower rate at which it is alleged in the cases we read. *See, e.g.,* Chen v. Liu (陈某某诉刘某

Women also rarely requested need-based awards for financial difficulties or compensation for half of the costs of their medical care, despite the law authorizing such damages.³⁵⁰ Lawyers often failed to raise clear statutory claims on their female clients' behalf.

Yet some women asserted their rights and articulated offense at the arguments proffered by their spouses. In one 2013 case, a *pro se* litigant from Hebei province countered her husband's claim that her "unauthorized abortion dealt a blow to his heart" and entitled him to the 30,000 *yuan* bride price.³⁵¹ She alleged that she obtained a medically necessary abortion when complications arose following domestic violence, and asserted "a right as a woman to decide whether or not to give birth, without others' interference."³⁵² Nonetheless, comprehensive and forceful self-advocacy on behalf of women was highly unusual. Rather, women regularly declined to assert the full extent of their own legally-cognizable injuries and reproductive trauma, while acquiescing to the premises of men's arguments, both in cases where women had legal representation and where they did not.³⁵³

某), Shandong Laizhou City People's Ct. (山东省莱州市人民法院), (2014)莱州民初字第1965号, Jan. 27, 2015 (China) (where the woman initially entered sparse pleadings, but the court eventually elicited that she suffered abuse at trial).

350 Women requested financial assistance in fewer than thirty cases, although they were likely entitled to it in a greater number of cases. *See* 2001 Marriage Law, art. 42. Likewise, other litigants had grounds under Article 46 to request damages due to adultery but did not do so. *See id.* at art. 46. Women requested the man contribute to the medical costs of the woman's reproductive care in only 10% of cases, although it is likely women could have done so in a greater number of cases. *See supra* notes 94 and accompanying text (discussing spousal obligations to pay for medical treatment); *see also* Zuigao Renmin Fayuan Minyiting Fuzeren jiu "Zuigao Renmin Fayuan Guanyu Shenli Sheji Fuqi Zhaiwu Jiufen Anjian Shiyong Falü Youguan Wenti de Jieshi" Dajizhewen (最高人民法院民一庭负责人就《最高人民法院关于审理涉及夫妻债务纠纷案件适用法律有关问题的解释》答记者问) [The Responsible Person from the Supreme People's Court First Civil Division Answers Questions from Reporters on 'The SPC Interpretations on Questions Concerning Application of the Law to Trying Marital Debt Dispute Cases'], Zhonghua Renmin Gongheguo Zuigao Renmin Fayuan (中华人民共和国最高人民法院) [Sup. People's Ct.] (Jan. 17, 2018) (China), [<https://perma.cc/96NE-C4TW>] (clarifying that spouses' joint assets and liabilities typically includes medical costs).

351 Shi v. Cui (史某某诉崔某某), Hebei Luan Cnty. People's Ct. (河北省滦县人民法院), (2013)滦民初字第2455号, May 30, 2013 (China).

352 *Id.*

353 Women who contested the voluntariness of their pregnancy terminations were represented in 61% of cases. In the cases we read, 58% of women who appeared in court were represented by lawyers.

A small number of women sought compensation linked to their pregnancy terminations.³⁵⁴ One woman argued that the court should recognize that “the termination of her pregnancy [after seven months] was also very physically and emotionally painful for her” and “she was the party who was truthfully hurt emotionally in this process.”³⁵⁵ In another case, a woman from Guangdong province countered her husband’s allegations of her “unauthorized abortion” with testimony that she terminated her pregnancy after she lost hope for the relationship, given his verbally and physically abusive conduct, harassment of her at her workplace, and their separation.³⁵⁶ She requested 50,000 *yuan* in emotional damages for domestic violence, having to undergo an abortion, and reputational harm.³⁵⁷ She called for the court to “protect the legal rights and interests of women.”³⁵⁸ Additionally, in a handful of cases, women requested men pay additional compensation, including wages from periods during which women were recovering from a miscarriage or abortion and could not work.³⁵⁹ Our findings indicate that the majority of women who did advocate for

354 *See, e.g.*, Liang v. Zhou (梁某某诉周某某), Jilin Baicheng Taobei Dist. People’s Ct. (吉林省白城市洮北区人民法院), (2015)白洮西民初字第184号, Jul. 30, 2015 (China) (woman requesting the court order her husband to compensate her for costs of her miscarriage treatment, “because husbands and wives face mutual obligations of support”). Separately, one woman’s assertiveness with respect to the trauma stemming from the marriage also invoked other legal rights. *See, e.g.*, Bai v. Sun (白某某诉孙某某), Inner Mongolia Kailu Cnty. People’s Ct. (内蒙古自治区开鲁县人民法院), (2014)开民初字第1140号, Apr. 22, 2014 (China) (woman claiming that her husband’s abuse led to her miscarriage and that he surveilled and limited her communications, “violating her right to privacy”).

355 Zhou v. Wu (周某某诉吴某某), Jiangsu Nanjing Lishui Cnty. People’s Ct. (江苏省南京市溧水县人民法院), (2014)溧民初字第2003号, Nov. 28, 2015 (China) (reserving the right to claim emotional damages and recover her abortion costs).

356 Hu v. Qin (胡某某诉覃某某), Guangdong Guangzhou Tianhe Dist. People’s Ct. (广东省广州市天河区人民法院), (2015)穗天法民一初字第1937号, Jan. 12, 2016 (China).

357 *See id.*

358 *Id.*; *see also, e.g.*, Liang v. Li (梁某某诉李某某), Guizhou Qinglong Cnty. People’s Ct. (贵州省晴隆县人民法院), (2016)黔2324民初283号, June 6, 2016 (China) (woman arguing that her husband’s accusation that she “murdered her child” was absurd and hurtful, especially when he neglected her during a “painful miscarriage”); Lin v. Lin (林某某诉林某某), Fujian Putian Licheng Dist. People’s Ct. (福建省莆田市荔城区人民法院), (2015)荔民初字第208号, Apr. 17, 2015 (China) (woman requesting the court consider “the rights and interests of women, under Marriage Law”); Gong v. Liu (龚某某诉刘某某), Jiangxi Xingan Cnty. People’s Ct. (江西省新干县人民法院), (2016)赣0824民初197号, Apr. 26, 2016 (China) (woman accusing her husband, who prevented her from visiting their son, of denying her the “right to be a mother”); Yang v. Yi (阳某某诉易某某), Jiangxi Yichun Yuanzhou Dist. People’s Ct. (江西省宜春市袁州区人民法院), (2015)袁民一初字第509号, Apr. 23, 2015 (China) (“I have the right to decide whether or not to have children.”).

359 *See, e.g.*, Cheng v. Dong (程某某诉董某某), Hubei Yunmeng Cnty. People’s Ct. (湖北省云梦县人民法院), (2014)鄂云梦民初字第00057号, Jan. 6, 2014 (China).

themselves more strongly were represented by lawyers.³⁶⁰ Yet, the fact that these cases are so rare suggests that legal representation is often inadequate.

Courts overwhelmingly denied women's claims for emotional damages and medical reimbursement, despite the Marriage Law authorizing such damages.³⁶¹ Although the law establishes that debts and expenditures incurred during the marriage should be divided and that courts must be mindful of women's interests in asset division,³⁶² the courts rarely invoked these provisions.³⁶³ Instead, courts frequently denied women reimbursement without analysis³⁶⁴ or by referencing the "unauthorized" nature of the abortion.³⁶⁵ For

360 For instance, women were represented in nearly 65% of cases in which they requested emotional damages.

361 In cases where women asked for reimbursement of half of their medical costs, they alleged to have paid for medical care with separate assets, suggesting the couple did not merge finances upon marriage. Courts ordered sharing of medical costs in only twenty-eight of the eighty-three cases in which women requested such relief and a divorce was granted.

362 See 2001 Marriage Law, art. 39, 41.

363 Two courts that ordered men to pay half of their wives' medical costs appealed to equitable notions. See *Sun v. Zhuang* (孙某某诉庄某某), Liaoning Xinmin City People's Ct. (辽宁省新民市人民法院), (2014)新民民三初字第1440号, Apr. 1, 2014 (China) (reasoning that "pregnancy was a very intimate issue for the defendant, whose body suffered as a result of the operation," so "social morality dictates the man should pay"); *Lu v. Ji* (路某某诉姬某某), Shanxi Fuping County People's Ct. (陕西省富平县人民法院), (2015)富平民初字第02414号, Mar. 19, 2015 (China) (concluding that ordering the man to pay half of the documented costs of his wife's abortion would be appropriate "from the perspective of women's rights protection"). Cf. *Ma v. Wu* (马某某诉吴某某), Gansu Linxia City People's Ct. (甘肃省临夏市人民法院), (2015)临市法民初字第1293号, Mar. 16, 2016 (China) (ordering the defendant to return a portion of the bride price and the male plaintiff to pay half of his wife's proven medical costs, without citing equitable considerations, in a case involving documented and repeated domestic violence toward the female defendant).

364 Of the fifty-four cases where courts denied women reimbursement, courts ignored the request in eleven cases, denied it as having "no legal basis" without elaboration in nine cases, and denied it because of "insufficient evidence" in twenty cases. Courts also occasionally ignored women's claims for compensation without comment. See, e.g., *Du v. Guo* (杜某某诉郭某某), Hebei Zhengding Cnty. People's Ct. (河北省正定县人民法院), (2014)正民新初字第00139号, Apr. 17, 2014 (China) (ignoring a woman's request for 30,000 *yuan* in costs stemming from her miscarriage); *Zhou v. Wu* (周某某诉吴某某), Jiangsu Nanjing Lishui Cnty. People's Ct. (江苏省南京市溧水县人民法院), (2014)溧民初字第2003号, Nov. 28, 2015 (China) (ignoring a woman's claim for 30,000 *yuan* in mental damages, but addressing the man's claim for the same).

365 See, e.g., *Du v. Wang* (杜某某诉王某某), Henan Shangcheng Cnty. People's Ct. (河南省商城县人民法院), (2016)豫1524民初5号, Mar. 8, 2016 (China) (denying a woman reimbursement of 30,000 *yuan* in costs stemming from her treatment for a miscarriage induced by domestic violence, even though she introduced medical receipts, testimony regarding sexual and physical violence, and photos of her injuries, because she did not provide sufficient evidence the "pregnancy termination was due to domestic violence" and because she "did

instance, in a 2014 case from Hebei province, the court denied a woman's request for 4,665 *yuan* in medical expenses, reasoning that she "did not discuss the abortion with the defendant."³⁶⁶ Likewise, in a 2013 case, a Henan court denied the plaintiff's request for 2,763 *yuan* in medical expenses for treatment following a miscarriage, stating that because she "obtained an unauthorized abortion without the defendant's consent," and because the court "does not support" such acts, it would "not divide those costs between the parties."³⁶⁷ Courts granted women emotional damages at a nearly equivalent rate to that which they granted men emotional damages for the woman's "unauthorized abortion"—even though women's claims were typically grounded in domestic violence or adultery and were authorized by the Marriage Law.³⁶⁸

Overall, the advocacy made by or on behalf of women suffered from chronic weaknesses and critical omissions, even though women were represented by lawyers in the majority of cases and the law clearly supported women. Men sought compensation to which they were not entitled, while women failed to seek redress to which they were entitled. What explains

not consult the plaintiff" before terminating her pregnancy); *Li v. Zhou* (李某某诉周某某), Shandong Jiaozhou City People's Ct. (山东省胶州市人民法院), (2014)胶民初字第3247号, Mar. 17, 2015 (China) (denying a woman medical reimbursement because the abortion was undertaken "of her own initiative"). Several courts conflated the law on asset division with fault-based damages and denied women reimbursement for medical care because they did not adequately prove the miscarriage was caused by the husband's domestic violence. *See, e.g., Li v. Zhang* (李某某诉张某某), Hebei Botou City People's Ct. (河北省泊头市人民法院), (2015)泊民初字第2403号, Nov. 25, 2015 (China); *Li v. Zhao* (李某某诉赵某某), Xinjiang Korla City People's Ct. (新疆维吾尔自治区库尔勒市人民法院), (2015)库民初字第2626号, Aug. 31, 2015 (China).

366 *Miao v. You* (苗某某诉尤某某), Hebei Zhuozhou City People's Ct. (河北省涿州市人民法院), (2014)涿民初字第3149号, Oct. 31, 2014 (China).

367 *Yu v. Tian* (余某某诉田某某), Henan Yongcheng City People's Ct. (河南省永城市人民法院), (2013)永民初字第1276号, June 4, 2013 (China).

368 *See* 2001 Marriage Law, arts. 42, 46. Courts granted women fault-based emotional damages, including for domestic violence, cheating, abandonment, and reproductive trauma, in just five cases. Courts granted men emotional damages for the woman's pregnancy termination in four cases. Courts' reluctance to grant women fault-based damages was often clear. *See, e.g., Chen v. Lu* (陈某某诉卢某某), Guangdong Zhaoqing Dinghu Dist. People's Ct. (广东省肇庆市鼎湖区人民法院), (2013)肇鼎法民一初字第10号, May 6, 2013 (China) (denying a woman fault-based damages because she presented only "evidence of domestic violence, but not adultery"); *Li v. Zhao* (李某某诉赵某某), Xinjiang Korla City People's Ct. (新疆维吾尔自治区库尔勒市人民法院), (2015)库民初字第2626号, Aug. 31, 2015 (China) (reasoning that a woman did not sufficiently prove the connection between the domestic violence and her miscarriage, after she requested emotional damages because her husband's domestic violence caused her to miscarry); *Pan v. He* (潘某某诉何某某), Jiangxi Xunwu Cnty. People's Ct. (江西省寻乌县人民法院), (2015)寻民一初字第109号, July 9, 2015 (China) (denying a woman's claim for fault-based damages, despite her allegations of suffering from fraud and violence against her family members, because she did not sufficiently prove "emotional injury").

this gendered advocacy gap? Female litigants and their lawyers may have internalized patriarchal norms and harbor low expectations as to what they, as women, can and should receive.³⁶⁹ Female litigants may also have internalized the idea that a woman's unilateral termination of a pregnancy could constitute a wrong. Women and their lawyers may also understand that institutional actors—including judges, village cadres, and public security officers—often fail to intervene on behalf of women. In a system that is widely known to be stacked against women, women's primary goals may be to extricate themselves from abusive marriages and avoid triggering violent retaliation. Nevertheless, the small number of cases in which women assert their legal rights provide an alternative picture of what could be.

2. Judicial Avoidance & Rare Rejections of Male Entitlement

Despite the prevalence of cases in which courts expressly endorsed men's arguments, their dominant response was avoidance: In nearly 50% of cases, courts remained silent in the face of men's arguments that their spouses terminated their pregnancy without their agreement and avoided any explicit mention of the reproductive dispute in their analysis.³⁷⁰ Courts' avoidance is not surprising: scholarship on divorce litigation in China has noted that litigants rarely raise and courts often ignore a range of issues, from claims of domestic violence to most matters relating to sex, including impotence and sexual orientation.³⁷¹ Although courts possibly avoid discussing abortion because they do not believe men's claims merit any response, such avoidance likely reflects broader discomfort with issues tied to sex, reproduction, and intimate family life. Court opinions generally include summaries of each party's factual arguments, followed by courts' findings of facts. Many courts ignored allegations regarding pregnancy terminations in their findings; reluctant to even use terms such as "pregnancy," "abortion," or "miscarriage," courts frequently stated instead that the parties "did not have children"³⁷² or "quarreled over trivial, household matters" (因生活琐事争吵)³⁷³—the same phrase courts use to downplay domestic violence.

369 See HE, *supra* note 84, at 198.

370 In 451 cases (47%), the court ignored the reproductive aspect of the dispute.

371 See HE, *supra* note 84, at 201–02, 220. *But see, e.g.*, Zhang v. Qin (张某某诉秦某某), Chongqing Tongliang Dist. People's Ct. (重庆市铜梁区人民法院), (2015)铜法民初字第04499号, Sep. 24, 2015 (China) (woman talking openly about her husband's impotence).

372 See, e.g., Zhang v. Gong (张某某诉巩某某), Gansu Wushan Cnty. People's Ct. (甘肃省武山县人民法院), (2014)武民初字第550号, Aug. 12, 2014 (China).

373 See, e.g., Ma v. Ma (马某某诉马某某), Ningxia Guyuan Yuanzhou Dist. People's Ct. (宁夏回族自治区固原市原州区人民法院), (2015)原民初字第3088号, Nov. 20, 2015 (China).

Similarly, only 4% of courts cited the most relevant piece of law, the 2011 SPC Interpretation.³⁷⁴ Although courts operating under resource constraints³⁷⁵ may seek to avoid conflict escalation and bring swift resolution to the dispute,³⁷⁶ courts' failures to reject men's arguments may also serve to reinforce patriarchal social norms and discourage women from asserting their rights. Overall, judicial avoidance may signify that reproductive disputes are too intimate an arena for formal legal rights to carry any meaning.³⁷⁷

Not all courts avoided arguments regarding reproduction or sided with men. A small number of courts explicitly rejected men's claims that their wives' decisions to terminate pregnancies were "unauthorized," either by citing the 2011 SPC interpretation or writing that such claims have no legal basis.³⁷⁸ For instance, one Chongqing court rejected a man's claim for emotional damages due to his wife's alleged violation of his "reproductive rights."³⁷⁹ The court wrote:

When women, without their husband's consent, unilaterally terminate a pregnancy [...] a husband cannot utilize reproductive rights he enjoys to challenge and constrain his wife's reproductive right to choose [E]ven if the plaintiff underwent an abortion procedure to terminate a pregnancy, that does not violate the defendant's reproductive rights.³⁸⁰

374 Failure to cite binding law is not uncommon in China. *See, e.g.*, Liebman, *supra* note 124 at 216–18, 225.

375 *See* HE, *supra* note 84, at 34–35.

376 Li and He explain judicial avoidance as a byproduct of fear: judges overseeing divorce disputes consciously avoid rulings that could create disgruntled men capable of violence against the other party and judges. *See* HE, *supra* note 84, at 40–47; LI, *supra* note 84, at 240–43.

377 Extensive scholarship has documented how courts avoid involvement in domestic violence, viewing it as a domestic matter. *See, e.g.*, HE, *supra* note 84, at 110.

378 Only 4% of courts cited the most relevant piece of law, the 2011 SPC Interpretation. However, a larger percent of courts summarily dismissed men's reproductive arguments as having "no legal basis" without providing further detail into their reasoning. *See, e.g.*, Bai v. Jiang (白某某诉蒋某某), Gansu Yuzhong Cnty. People's Ct. (甘肃省榆中县人民法院), (2016)甘0123民初246号, Apr. 7, 2016 (China); Li v. Lan (李某某诉兰某某), Hebei Longyao Cnty. People's Ct. (河北省隆尧县人民法院), (2014)隆民初字第204号, Mar. 27, 2014 (China). All courts to consider men's arguments that their spouse's had "unauthorized births" rejected such claims.

379 Gou v. Tan (苟某某诉谭某某), Chongqing Shizhu Tujia Autonomous Cnty. People's Ct. (重庆市石柱土家族自治县人民法院), (2016)渝0240民初2553号, Aug. 18, 2016 (China).

380 *Id.* The court awarded the woman 5,000 *yuan* for medical costs. *See id.*

Other opinions demonstrated judges' capacity to appreciate women's experience of pregnancy and abuse. One court in Zhejiang province reacted to a man's argument that his wife obtained an "unauthorized abortion" by stating that the man should have cared for his spouse following her miscarriage.³⁸¹ Another court denied a man's claim for the bride price in part because his wife's pregnancy termination "hurt her physically and psychologically."³⁸² In some cases, courts' support for women extended beyond expressions of empathy to citations of relevant laws affirming women's interests.³⁸³ For instance, one court in Henan province denied the man's bride price claim "because the parties cohabitated for a period and because the defendant was pregnant, the plaintiff cannot satisfy the conditions required by our law to justify a return of the bride price."³⁸⁴ In another case, a Shanghai court applied the LPWRI to award a woman favorable division of the marital assets based on "principles of promoting the lawful rights and interests of women" and "the plaintiff's having to undergo medical treatment," referring to abortions into which the male defendant pressured her.³⁸⁵

These cases come across as outliers because they largely apply the law as written. What explains these outliers within the law? One theory is that the cases come from more developed areas, where judges may be better trained. Another possibility is the gender of the deciding judges, or the presence of layperson "people's assessors" (人民陪审员) on the adjudicative panel, might make a difference.³⁸⁶ Yet we identified no such patterns in

381 Jiang v. Yin (蒋某某诉尹某某), Zhejiang Linhai City People's Ct. (浙江省临海市人民法院), (2015)台临民初字第74号, Feb. 2, 2015 (China) (stating "after the defendant terminated her pregnancy, she suffered from various illnesses, and needs better care and consideration from the plaintiff.").

382 Zhang v. Li (张某某诉李某某), Shandong Yanggu Cnty. People's Ct. (山东省阳谷县人民法院), (2015)阳民初字第1440号, Sept. 15, 2015 (China).

383 See, e.g., Li v. Wen (李某某诉文某某), Hubei Xiaochang Cnty. People's Ct. (湖北省孝昌县人民法院), (2014)鄂孝昌民初字第01370号, Feb. 25, 2015 (China) (denying a man's bride-price request "because the parties cohabitated for a time and the defendant was pregnant.").

384 *Id.*

385 Wei v. Qiang (卫某某诉强某某), Shanghai Pudongxin Cnty. People's Ct. (上海市浦东新区人民法院), (2014)浦民一(民)初字第1736号, July 17, 2015 (China).

386 As of 2017, 32.7% of China's judiciary was female. See Pingdeng Fazhan Gongxiang: Xinzhongguo 70 Nian Funü Shiye de Fazhan yu Jinbu (平等 发展 共享: 新中国70年妇女事业的发展与进步) [*Equality, Development & Sharing: The Progress and Development of Women's Work in the 70 Years Since the Founding of New China*], GUOWUYUAN XINWEN BANGONGSHI (国务院新闻办公室) [ST. COUNCIL INFO. OFFICE] (Sept. 9, 2019) (China), http://www.xinhuanet.com/politics/2019-09/19/c_1125015082.htm. [<https://perma.cc/L6VR-ZPSU>]. Several prior studies have attempted identifying effects of judges' genders on case outcomes and the institutional pressures judges face. See, e.g., Yiwei Xia, Tianji Cai & Hua Zhong, *Effect of Judges' Gender*

these cases. Many cases from developed cities ignore the law. Similarly, the ratio of male to female judges does not appear to differ across the cases where courts legitimate or reject men's claims.

Although some judges rejected men's claims and affirmed women's rights, in the vast majority of cases, courts did not follow the law or protect women's dignity and equality. Instead, most courts adjudicating disputes about abortion reinforced women's reproductive subordination to men—through either affirmative endorsement of men's claims or passive neglect of both women's pain and men's wrongdoing.

IV. Implications

What will happen if and when the state retreats from regulating reproduction? On the eve of China relaxing its one-child policy, leading women's rights activist Lü Pin³⁸⁷ posed this question.³⁸⁸ Lü argued that with the one-child policy the Chinese state “only temporarily suspended and confiscated the patriarchy's power, though both have always competed for control over women's wombs.”³⁸⁹ The loosening of the one-child policy, she predicted, would provide an opportunity for the reassertion of traditional views regarding the role of women in society.³⁹⁰

on Rape Sentencing, 19 CHINA REV. 125, 128, 140–42 (2019) (finding no consistent differences between the criminal sentences imposed on men convicted of rape by male and female judges, but finding “the presence of a female-dominated collegiate bench does make a difference [in shortening] sentence lengths”); Shen Anqi & Zhu Lingyao (沈安琪、朱玲瑶), *Shenpan Nüxing Zuifan de Nüxing Faguan: Guanyu Xingbie yu Shenpan de Zhongguo Anli Yanjiu* (审判女性罪犯的女性法官：关于性别与审判的中国案例研究) [*How Female Judges Judge Female Culpability: A Case Study in Gender Difference and Adjudication in China*], HENAN JINGCHA XUEYUAN XUEBAO (河南警察学院学报) [HENAN POLICE COLLEGE J.], no. 5, at 47, 52–53 (2020) (China) (observing that female judge-interviewees “explicitly blamed female [criminal defendants] for violating expectations of motherhood and their gender,” in addition to the law, and resisted interpreting female litigants' plights through structural lenses).

387 Lü Pin founded *Feminist Voices*, one of China's most widely read media sources focusing on women's issues, in 2009, and remained its editor-in-chief until Chinese authorities shut the site down in 2018 as part of a broader crackdown on the #MeToo movement and women's rights advocacy. Leta Hong Fincher & Lü Pin, *Feminist Voices in China: From #MeToo to Censorship*, COUNCIL FOREIGN REL. (July 28, 2018), <https://www.cfr.org/event/feminist-voices-china-metoo-censorship> [<https://perma.cc/2ME3-D4GA>].

388 See Lü, *supra* note 1.

389 *Id.*

390 See *id.*

Our findings illustrate how Lü's concerns manifest in interpersonal disputes in China's courts. Our findings also shed light on the source and nature of those concerns by explicating men's efforts to weaponize partners' reproductive history. Abortion manifests as a symbol of women's agency and resistance to their husbands' control. Men's efforts to problematize abortion signify that many still conceive of women's value as inextricably tied to reproductive capacity and take women's reproductive cooperation for granted. The cases we analyze also show how these ideas resonate with legal institutions.

What insights do these cases offer for understanding the state's role in regulating reproduction in China, both now and in the future? And what does the existence of legal conflict regarding abortion in a context unburdened by debates about religion or constitutional arguments regarding privacy, fetal rights, judicial review, or democratic legitimacy, tell us about the likely trajectory of legal disputes regarding abortion globally? This Section turns to these questions, examining first the implications for understanding the state's role in regulating reproduction in China, and then insights about the nature of legal debates about abortion in China and elsewhere.

A. China's Constant, Yet Evolving Regulation of Reproduction

Two decades ago, William P. Alford and Shen Yuanyuan asked whether "the cause of freedom in China will best be advanced through the state's retrenchment and a concomitant ceding of power to non-state actors."³⁹¹ Alford and Shen's hesitancy to celebrate the state's retreat from regulating marriage grew out of a recognition that freedom from the state entails an absence of state protection from the dangers posed by other actors, notably men.³⁹² Our findings demonstrate that such concerns were prescient in the context of reproduction as well.

Despite lawmaking efforts to establish and strengthen women's rights and the Party-state's relaxation of birth regulation, the Party-state has been unwilling or unable to ensure that women's rights are protected from social pressures and non-state forces. Prior scholarship has noted how legal protections for women do not necessarily mean that the state takes women's issues seriously—it was exactly because the Party-state did not see

391 Alford & Shen, *supra* note 88, at 1.

392 *See id.* at 19 ("We would do well . . . to heed the concerns that other Chinese feminists have raised . . . about assumptions of society's benevolence and from this, to be mindful of the perhaps singular capacity of the state to curb private abuses of power and structure an environment in which freedom might be widely enjoyed.").

women as a genuine threat to stability or power that it advanced laws protecting women's rights.³⁹³ According to Alford and Shen, the "state's indifference, if not condescension, toward women helps explain how the debates [about the PRC's marriage laws] were able to achieve such public prominence and take on the character they did."³⁹⁴ The state's tolerance of women's rights advocacy has been more limited in recent years, as authorities have shuttered women's rights organizations and jailed some activists.³⁹⁵ This shift not only reflects a tightening of regulation over civil society in general but also suggests that the Party no longer views advocacy of women's rights with indifference. Future efforts to advocate for women's reproductive autonomy are likely to be seen as more of a threat, particularly if such arguments are in tension with state policies encouraging more births.

One constant in China's approach to regulating reproduction has been advancing or restricting women's rights in service of state goals. The one-child policy was itself an example: the Party-state justified the policy by arguing that it facilitated women's greater participation in the workforce.³⁹⁶ In the end, however, the policy yielded birth planning without fundamentally altering conceptions of women's roles and status. If anything, the policy raised the stakes of couples' singular opportunity to have children, placed additional pressures on women, and inflamed latent biases against women and girls, resulting in heightened rates of female infanticide. These outcomes reflect the fact that the goal of the one-child policy was to limit births—not to liberate women. Similarly, the protection of women's rights in the 2001 Birth Planning Law was secondary to the Party-state's goals of reducing social conflict over reproduction and addressing the growing gender imbalance in births.

393 See, e.g., Alford & Shen, *supra* note 85, at 22.

394 *Id.* at 22.

395 See *Gender-Based State Violence & Reprisals Against Women Human Rights Defenders in China*, CHINESE HUM. RTS. DEFS. (July 23, 2023), <https://www.nchr.org/2023/07/we-strip-you-naked-to-crush-your-spirit-gender-based-state-violence-reprisals-against-women-human-rights-defenders-in-china/> [<https://perma.cc/M2WJ-4FK7>]. See also, e.g., Li Maizi, *I Went to Jail for Handing out Feminist Stickers in China*, GUARDIAN (Mar. 7, 2017), <https://www.theguardian.com/commentisfree/2017/mar/08/feminist-stickers-china-backlash-women-activists> [<https://perma.cc/2S3B-M6XA>].

396 For discussions of how the policy centered itself on women's welfare, see 2001 Population and Birth Planning Law, art. 3 ("The implementation of the population and family planning work shall combine with an increase in opportunities in education and employment for women, and the enhancement of women's health and the promotion of their social status."); Susan Greenhalgh, *Fresh Winds in Beijing: Chinese Feminists Speak Out on the One-Child Policy and Women's Lives*, 26 SIGNS 847, 853–55 (2001) ("[T]he policies and programs of the state were justified by a narrative of women's health and liberation."); Vanessa L. Fong, *China's One-Child Policy and the Empowerment of Urban Daughters*, 104 AM. ANTHROPOLOGIST 1098, 1099–1105 (2002).

Our findings also raise questions regarding the future of the regulation of reproduction in China. How will the Party-state apparatus enforce its new pro-natalist policies? The Party-state may have relaxed birth planning, but it has not retreated. It continues to view reproduction as something to be managed. Formal laws have hardly changed, other than to shift birth limits from one to two to three children, and the vast birth planning bureaucracy remains in place, though merged into the National Health Commission.³⁹⁷ To date, many watching for shifts in the Party-state's approach to abortion have looked for clues in Party-state policy documents—in particular, whether the Party-state may seek to restrict or ban abortion. If and when the state decides to shift policy, the legal infrastructure to do so is in place.

As the Party-state's efforts to boost birth rates to combat demographic imbalance take a more defined shape over the coming years, will the courts be transformed from passive guardians of male power into active participants in state efforts to encourage or even compel births? Our findings suggest that changes in abortion policy may manifest in subtle ways, particularly within private law litigation. The Party-state has relied on courts to restrict divorce in service of Party-state goals of family unity and, by extension, social stability. It seems possible and perhaps even likely that restrictions on abortion will likewise come through increased stigmatization of abortion in courts' resolution of routine marital disputes.³⁹⁸ If nothing else, one lesson from our research is that observers seeking clues to shifting state attitudes toward abortion should pay attention to developments in the courts as well as policy pronouncements. The courts and men may be well-positioned to serve the Party-state's new pro-birth policies, when and if the Party-state demands it. This effort may already be partially underway in the form of Party instructions to courts to promote social stability and to embrace “socialist core values” in deciding cases.³⁹⁹

397 Li Zhichao, Tan Xihan & Liu Bojia Liu, *Policy Changes in China's Family Planning: Perspectives of Advocacy Coalitions*, 20 INT'L. J. ENV'T. RSCH. & PUB. HEALTH 1, 12 (2023).

398 Relying on the private family structure for discipline and the cultivation of what the state sees as productive members of society is not a new tactic within the playbook of Chinese governance. On the centrality of the family unit to Chinese governance, see Di Wang, *Jia, as in Guojia: Building the Chinese Family into a Filial Nationalist Project*, 5 CHINA L. & SOC. REV. 1, 3–5 (2020); Alford & Shen, *supra* note 88, at 3. This tactic is also certainly not unique to China. See generally Melissa Murray, *Marriage as Punishment*, 112 COLUM. L. REV. 1 (2012).

399 Although discussion of “socialist core values” does not currently include discussions of the obligation to reproduce, some model cases have made clear that courts should support patriarchal norms, and that those norms should at times trump or merge with legal norms. See generally Liu, *supra* note 121. These insights build on a growing body of work on the Chinese legal system that seeks to explore the actual sources of law that Chinese judges apply and respond to arguments that the Chinese courts have become more law-based. See, e.g., Taisu Zhang & Tom Ginsburg, *China's Turn Toward Law*, 59 VA. J. INT'L L. 306 (2019). Prior work has

A related question is how much courts continue to defer to cultural or social norms in marital disputes, especially in cases involving reproduction. The receptivity of courts to men's claims—sometimes passive, sometimes active—also highlights that altering legal norms without changing or challenging social norms may limit the effectiveness of these new legal norms. Yet, viewing reproductive rights in China solely in terms of a struggle between new legal rights and resurgent cultural traditions may also be reductionist. China is home to multiple traditions, including a revolutionary heritage of women's agency and autonomy.⁴⁰⁰ While men's claims to have a right to participate in women's reproductive decisions may be rooted in patriarchal traditions, they may also reflect strategic efforts to maximize court payouts in divorce litigation. The intersection of Confucian traditions with contemporary capitalist culture may produce the results we observe in these cases. Nevertheless, the combination of cultural and political traditions in China does not bode well for those hoping to see stronger protections for reproductive autonomy in China—at least not through the courts.

B. Comparative Implications

China has long been considered an outlier in global discourse on abortion and reproduction, both because of its permissive approach to abortion and due to its long history of coercive birth planning. Yet China presents an important case study for observing and understanding legal conflict regarding reproduction precisely because abortion, due to its relative ubiquity, has generally been understood to be neither contentious nor stigmatized in Chinese society. China also stands out for its strong legal protections for abortion access. Our findings suggest that the central question in China is shifting from when and how

examined: (1) how conceptions of fairness and morality influence decisions (*see, e.g.*, Stern et al., *Liability Beyond Law*, *supra* note 123; Liebman, *Ordinary Tort Litigation*, *supra* note 124); (2) how courts turn to Party normative documents, (*see, e.g.*, Benjamin Liebman, Rachel Stern, Eva Gao, Xiaohan Wu & Margaret Roberts, *Seeing the Shadow: Party Documents in Chinese Courts*, BERKELEY J. OF INT'L L. (forthcoming 2025)); and (3) when stability concerns prevail over legal arguments, (*see, e.g.*, Benjamin L. Liebman, *Legal Reform: China's Law-Stability Paradox*, Daedalus (Spring 2014)). Our findings add deep-seated cultural norms to this list. Indeed, one takeaway is that male litigants may not see themselves as seeking redress beyond the law. Rather, they seek to have the legal system reflect and protect deep-rooted cultural traditions and viewpoints.

400 *See generally* Liu Huawen (柳华文), *Zhongguo Funü Quanli Fazhan 100 Nian: Cong Qianglie de Zhengzhi Dandang dao Rizhen Wanshan de Falü Baozhang* (中国妇女权利发展 100 年: 从强烈的政治担当到日臻完善的法律保障) [*100 Years of Women's Rights Development in China: From Strong Political Commitment to Gradually Improving Legal Protections*], 5 RENQUAN (人权) [HUM. RTS.] (2021).

the state compels abortion to when and how the state and private actors combine to limit women's reproductive autonomy and exploit women's reproductive capacity.⁴⁰¹

Might China's experience have implications for how reproductive rights are litigated elsewhere? At first glance, China's rapid shift from coercive birth planning to Party-state encouragement of more births suggests that what happens in China may be of little relevance to debates elsewhere. Yet our analysis suggests at least three potential paths for deepening comparative research on how reproductive rights are contested and adjudicated. In the discussion that follows we first discuss insights that our study yields for understanding the role of private law litigation in regulating reproduction. We then turn to a discussion of how rights advocacy can serve regressive goals in both liberal and illiberal societies. We conclude by discussing the implications of the interplay of authoritarian governance, democracy, and women's reproductive autonomy.

1. Regulating Reproduction through Private Law

Observing the role of abortion in legal disputes in China helps to illuminate how private law litigation can serve to regulate reproduction even when the legality of abortion is formally settled by law. In Western systems, legal questions surrounding abortion and women's rights to autonomy over their own bodies are constitutionalized⁴⁰²—simply put, constitutional litigation is the site of legal struggle. In contrast, there is no constitutional controversy in China, because there is no significant debate regarding the legality of abortion, and the constitution is rarely a site of legal contestation. Yet the absence of constitutional debate in China does not mean there is no legal conflict regarding women's reproductive autonomy: the site of conflict is instead recast in private law claims.

Men's attempts to use divorce litigation to challenge abortions demonstrate the regenerative nature of the abortion debate and men's eagerness to find new grounds on which to contest abortion as a means of controlling women—grounds that are beyond the usual contest over whether abortion is legally permissible. The cases we analyze illustrate that abortion is being disputed because of its salience as a social matter to men who find themselves uneasy with (or willing to exploit societal disapproval of) women's reproductive unavailability and socioeconomic and sexual independence.⁴⁰³ Stigmatization

401 See generally Julie C. Suk, *A World Without Roe: The Constitutional Future of Unwanted Pregnancy*, 64 WM. & MARY L. REV. 443 (2022) (discussing how society fails to compensate women for reproductive labor).

402 See, e.g., *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

403 See Murray, *supra* note 4.

and contestation of women's reproductive autonomy arise in China even when the law is straightforward. National laws clearly articulate women's rights, religious debates about fetal life are absent, and there are few, if any, debates about constitutional interpretation, federalism, judicial review, precedent, or substantive due process. China thus provides a case study of how abortion is persistently contested by patriarchal constituents as a proxy battle over women's appropriate status in society.

Understanding how and where abortion is contested in China's courts suggests methodological insights for scholars studying reproductive rights in other jurisdictions. Scholars should be attuned to how private law litigation may become a site of legal struggle over reproductive rights even (and perhaps particularly) after the legal status of abortion is settled. Legal resolution of the constitutional status of abortion will not eliminate legal conflict over abortion.

Other countries have seen a similar uptick of novel forms of litigation designed to restrict women's reproductive autonomy. In the United States, for example, the issue has received renewed attention as anti-abortion activists seek to weaponize the civil justice system as a tool for restricting abortion.⁴⁰⁴ The United States is not alone in this trend toward private enforcement. In Uruguay, Argentina, and Colombia, courts have granted men preliminary injunctions restricting their partners' access to otherwise legal abortion on paternity rights grounds,⁴⁰⁵ despite the existence of constitutional or other legal protections for abortion.⁴⁰⁶ Other jurisdictions in which abortion is legal require spousal consent,

404 See, e.g., John C. P. Goldberg & Benjamin C. Zipursky, *Tort Theory, Private Attorneys General, and State Action: From Mass Torts to Texas S.B. 8*, 14 J. TORT L. 469, 470 (2021); Laura Blockman, "A Solemn Mockery": *Why Texas's Senate Bill 8 Cannot Be Legitimized Through Comparisons to Qui Tam and Environmental Protection Statutes*, 77 U. MIA. L. REV. 786 (2023). Even prior to the fall of *Roe*, Texas' Senate Bill 8 circumvented *Roe* by granting members of the public the authority to regulate abortion through private rights of action targeting anyone who "performs or induces an abortion," "knowingly engages in conduct that aids or abets the performance or inducement of an abortion," or "intends to engage" in such conduct. S.B. 8, § 3, 87th Leg., Reg. Sess. (Tex. 2021) (upheld in *Whole Women's Health v. Jackson*, 142 S. Ct. 522 (2021)). See also *Memo: Twelve States and Counting Poised to Copy Texas' Abortion Ban*, NARAL PRO-CHOICE AMERICA (Oct. 20, 2021), <https://reproductivefreedomforall.org/news/twelve-states-and-counting-poised-to-copy-texas-abortion-ban/> [<https://perma.cc/A8DR-U5AV>].

405 See Sofia Armando, Guillermina Pappier, Maria José Arango Salazar & Natalia Acevedo Guerrero, *The Alleged Right to Paternity as an Obstacle to Access the Right to Abortion*, O'NEILL INST. (June 30, 2022), <https://oneill.law.georgetown.edu/the-alleged-right-to-paternity-as-an-obstacle-to-access-the-right-to-abortion/> [<https://perma.cc/96VG-MBKF>].

406 See Suk, *supra* note 401 (citing Corte Constitucional [Constitutional Court], Feb. 21, 2022, Sentencia C-055/22, Comunicado de prensa [C.P.] (vol. 5, pg. 1) (Colom.); *La Justicia de San Juan Aceptó el Pedido de*

opening the door for men to assert rights to control women’s choices.⁴⁰⁷ And still, in other jurisdictions, abortion can be considered as grounds for courts to find “marital fault” and award damages or material relief on that basis.⁴⁰⁸

Attention needs to be paid to how reproduction may be regulated even when abortion is not the primary issue being litigated. Abortion is being regulated in China not by formal legal authorization of vigilante lawsuits, as in Texas,⁴⁰⁹ or through a rule requiring spousal consent, as in Taiwan or Japan.⁴¹⁰ The case of China helps illuminate that the many ways in which women’s rights are adjudicated and restrained may be difficult to see—in China, reproduction is also regulated in the hidden corners of the legal system, through routine legal arguments that seek to privilege men and by court decisions receptive to these arguments.

un Hombre Para Impedir que su ex Pareja Aborte, INFOBAE (May 2, 2021), <https://www.infobae.com/sociedad/policiales/2021/05/02/la-justicia-de-san-juan-acepto-el-pedido-de-un-hombre-para-impedir-que-su-ex-pareja-aborte/> [https://perma.cc/TNB4-3S8B].

407 According to the Guttmacher Institute, twelve countries or territories required spousal consent as of 2019. See Lisa Remez, Katherine Mayall & Susheela Singh, *Global Developments in Laws on Induced Abortion: 2008–2019*, 46 INT’L PERSPS. ON SEXUAL & REPROD. HEALTH 53, 55 (2020). See also, e.g., Ayse Dayi, *Neoliberal Health Restructuring, Neoconservatism and the Limits of Law: Erosion of Reproductive Rights in Turkey*, 21 HEALTH & HUM. RTS. J. 57, 59 (2021) (Turk.). For a discussion of third-party authorization’s discordance with human-rights norms, see *Law and Policy Guide: Third-Party Authorization*, CENT. FOR REPROD. RTS., <https://reproductiverights.org/maps/worlds-abortion-laws/law-and-policy-guide-third-party-authorization/> [https://perma.cc/F79V-JHMC] (last visited Mar. 18, 2023).

408 See Oberster Gerichtshof [OGH] [Supreme Court] May 28, 2015, 9 Ob 29/15b (Austria); OGH, Oct. 23, 2017, 5 Ob 166/17y (Austria).

409 S.B. 8, § 3, 87th Leg., Reg. Sess. (Tex. 2021). See also Caroline Kitchener, *Antiabortion Groups Plan New Crackdowns, Emboldened After Election*, WASH. POST (Nov. 20, 2024), <https://www.washingtonpost.com/politics/2024/11/20/antiabortion-crack-down-pills/> [https://perma.cc/76NL-G4QQ] (reporting that “Texas Right to Life would help file at least one lawsuit [under Senate Bill 8] by February [2025],” and that, according to the group’s director, it “is now searching for plaintiffs to file suit against those who help facilitate abortions, focusing on men who disagreed with their partner’s decision to end her pregnancy”).

410 See Yousheng Baojianfa (優生保健法) [Genetic Health Act], art. 9 (enacted Jul. 8, 2009) (Taiwan) (“Induced abortion to a married woman . . . shall be subject to her husband’s consent unless her husband is missing, unconscious or deranged.”); Botai Hogohō (母体保護法) [Maternal Health Act], Act No. 156 of 1948, art. 14 (Japan) (“[I]nduced abortion can be performed, provided that consent from both the woman and her spouse is provided.”); see also *MOJ Backtracks as Women Protest Abortion Proposal*, TAIPEI TIMES (Nov. 4, 2024), <https://www.taipeitimes.com/News/front/archives/2024/11/06/2003826455> [https://perma.cc/QN47-5D2X]. But see Lily LaMattina, *Amendments to Taiwan Abortion Law Could Remove Need for Husband’s Consent*, TAIWAN NEWS (Nov. 13, 2024), <https://taiwannews.com.tw/news/5970842> [https://perma.cc/5TGV-NDKU].

2. Recasting Rights

Scholarship on Western liberal systems has detailed how rights can be manipulated and recast to support regressive, illiberal goals. One example is the scholarship on how the language of human rights has been weaponized by some in the United States to argue in favor of “unalienable rights” to property and religion at the expense of women’s rights, racial equality, and LGBTQ+ rights.⁴¹¹ Others have noted how the statutory “right to know” under the Freedom of Information Act,⁴¹² originally viewed as supporting progressive goals, has been reformulated to support libertarian goals that seek to obstruct rather than advance government action.⁴¹³ The repurposing of rights has also generated scholarly attention in the field of gender studies with the growth of the “men’s rights” movement.⁴¹⁴

The insight that the discourse of rights can be used for regressive as well as progressive purposes has, however, largely been overlooked in the growing body of scholarship on authoritarian legal systems.⁴¹⁵ Writing on China, for example, has often assumed either that there is little space for rights advocacy in China or that increased rights discourse will over time equate to more civil liberties.⁴¹⁶ Sociolegal literature on China has documented how greater state emphasis on legal education and the formal incorporation of new rights

411 See, e.g., Katharine G. Young, *Human Rights Originalism*, 110 GEO. L. J. 1097, 1100 (2022).

412 Freedom of Information Act, 5 U.S.C. § 552.

413 See, e.g., David E. Pozen, *Transparency’s Ideological Drift*, 128 YALE L.J. 100, 148–52 (2018); MICHAEL SCHUDSON, *THE RISE OF THE RIGHT TO KNOW: POLITICS AND THE CULTURE OF TRANSPARENCY, 1945–1975*, at 28–63 (2015).

414 See, e.g., Mary Ziegler, *Men’s Reproductive Rights: A Legal History*, 47 PEPP. L. REV. 665 (2020); Pam Lowe & Sarah-Jane Page, *Rights-Based Claims Made by UK Anti-Abortion Activists*, 21 HEALTH & HUM. RTS. J. 133 (2019); Lisa Gotell & Emily Dutton, *Sexual Violence in the ‘Manosphere’: Antifeminist Men’s Rights Discourses on Rape*, 5 INT’L J. CRIME, JUST. & SOC. DEMOCRACY 65 (2016).

415 Cf. Erica Frantz & Andrea Kendall-Taylor, *A Dictator’s Toolkit: Understanding How Co-Optation Affects Repression in Autocracies*, 51 J. PEACE RSCH. 332 (2014) (discussing cooptation in authoritarian political systems).

416 See, e.g., Kurt M. Campbell & Ely Ratner, *The China Reckoning: How Beijing Defied American Expectations*, 97 FOREIGN AFF. 60, 60–64 (2018) (discussing the “assumption” that China’s apparent openness would result in “political liberalization,” as “a burgeoning Chinese middle class demand[ed] new rights and pragmatic officials embrac[ed] legal reforms that would be necessary for further progress”). Cf. Eva Pils, *Asking the Tiger for His Skin: Rights Activism in China*, 30 FORDHAM INT’L L. J. 1209 (2007) (explaining the dilemmas facing rights lawyers in China, including the potential for advocacy to generate government suppression).

into law has engendered greater rights-based advocacy by citizens.⁴¹⁷ In a wide range of contexts, including land rights, environmental rights, and the rights of those facing gender- and health-based discrimination, Chinese citizens have sought to use the state's embrace of law to protect their interests.⁴¹⁸ Sometimes this advocacy takes place in courtrooms, other times it takes place on the street or online. Often such claims reach beyond the law as formally written and reflect demands for new rights. An optimistic reading of these developments casts the popular demand for law and rights as a positive restraint on the Party-state, compelling the Party-state to observe the law.⁴¹⁹ Others note law can be a vehicle for social mobilization.

Our findings regarding abortion litigation highlight another possible outgrowth of the state's emphasis on law and rights: the reformulation of arguments for protecting entrenched cultural norms and interests in the language of the law.⁴²⁰ What appears particularly striking in our findings is that men use rights-based discourse not just to fill in gaps in the law, but also to demand that courts ignore clearly binding law—and that courts are at least sometimes receptive to such arguments. The extensive literature on rights-based advocacy in China has not accounted for non-state actors' illiberal weaponization of rights. Although scholars have noted how Party-state leaders privilege certain rights over others or argue that China has a different approach to rights than Western nations, scholarship has yet to examine how individual litigants may similarly use the language of rights to advance or entrench cultural or social norms that marginalize women.

Observing when and how individual litigants weaponize rights-based claims may be a fruitful area for comparative research across authoritarian legal systems. Rights are central

417 See, e.g., Mary E. Gallagher, *Mobilizing the Law in China: "Informed Disenchantment" and the Development of Legal Consciousness*, 40 L. & SOC'Y REV. 783 (2006) (studying the meaning of the rise in legal consciousness in China for rights awareness, rights mobilization, litigiousness, public perceptions of the legal system's legitimacy, etc.).

418 See generally RACHEL E. STERN, ENVIRONMENTAL LITIGATION IN CHINA: A STUDY IN POLITICAL AMBIVALENCE (2013); Neysun Mahboubi, *Suing the Government in China*, in DEMOCRACY IN CHINA, KOREA, AND SOUTHEAST ASIA? LOCAL AND NATIONAL PERSPECTIVES, 141–154 (Kate Xiao Zhou ed. 2017) (discussing the promises and limitations of administrative litigation against the Chinese state).

419 See Zhang & Ginsburg, *supra* note 399.

420 Our findings are also a reminder that more lawyers do not equate to more law or to a fairer application of law. In prior years, the lack of legal representation was often one explanation for the disadvantaged position of women in divorce litigation, or the failure of courts to follow the law. Today legal representation is far more widespread. Our findings suggest that ineffective advocacy remains widespread, as lawyers routinely perpetuate inequity by neglecting to rebut legal fallacies or to demand full recovery for their clients.

to legal arguments in China, even if those rights are often largely articulated as private law rights. In the cases we read, men appear to be taking advantage of the significant space opened up for rights-based advocacy in the post-1978 reform period, appealing to entrenched cultural norms, and seeking to align their own claims with the state's goals. The tightening of political control in China in recent years may not result in the elimination of rights-based legal claims; it may simply shift the scales in favor of more regressive claims.⁴²¹

3. Authoritarianism, Constitutional Democracy, and Abortion

A third area for deepening comparative research is to examine the relationship between authoritarianism and greater restrictions on women's reproductive autonomy. In the United States, the Supreme Court's decision in *Dobbs* has brought renewed attention to the subject, given the majority's insistence on returning decisions about abortion to a "democratic process" characterized by severe representational deficits.⁴²² Recent commentary has noted how authoritarians (and want-to-be autocrats), including Donald Trump, Narendra Modi, Jair Bolsonaro, and Recep Tayyip Erdoğan, use misogynistic language and policy platforms to consolidate support for militaristic, nativist projects aiming to "restore" the nation and entrench existing power structures.⁴²³ In China, this can be seen in an array of recent state actions, including the crackdown on portrayals of so-called "sissy men" in the media and in the omission of even a single woman in the Politburo Standing Committee following the Twentieth Communist Party Congress in 2022.⁴²⁴

Yet one key insight from this Article is that it may be a mistake to view the state's indifference toward women's rights as due solely or primarily to China's authoritarian system, in particular its long history of instrumentalizing reproduction to serve state goals. Significant efforts have been made to provide legal protections for women. Yet such rights

421 Cf. Murray, *supra* note 4 (discussing the Roberts Court's privileging male-coded rights over female-coded rights).

422 See Forman-Rabinovici & Johnson, *supra* note 4; Siegel, Mayeri & Murray, *supra* note 6.

423 See Nitasha Kaul, *The Misogyny of Authoritarians in Contemporary Democracies*, 23 INT'L STUD. REV. 1619 (2021).

424 See Joe McDonald, *China Bans 'Sissy Men' from TV in New Cultural Crackdown*, L.A. TIMES (Sept. 2, 2021), <https://www.latimes.com/world-nation/story/2021-09-02/china-bans-sissy-men-tv-new-crackdown-culture> [<https://perma.cc/HZB5-D4ZU>]; Shen Lu, *No Women on China's Politburo for First Time in a Quarter Century*, WASH. POST (Oct. 23, 2022), <https://www.wsj.com/livecoverage/china-xi-jinping-communist-party-congress/card/no-women-on-china-s-politburo-for-first-time-in-qwSOFxdI9smnVTbgmCv8> [<https://perma.cc/X893-W92Z>].

run into entrenched cultural norms and institutional interests. It is thus no surprise that courts that find themselves adjudicating questions regarding reproductive rights either avoid such questions entirely or privilege cultural continuity, social stability, and their own interests in resolving cases. China's political system has surely played a significant role in shaping how courts adjudicate cases touching on gender rights and reproduction. The Party-state continues to view women's rights through the lens of its own goals. But the similarities to how courts elsewhere adjudicate reproductive rights also suggest caution in assuming that such outcomes are due solely or primarily to Party policy. The cases we analyze illustrate that infringement of rights should not always be interpreted as caused by—and may even be occurring despite—China's political system.

Similarly, it may be a mistake to assume that democratic systems will necessarily be better protectors of women's rights and reproductive autonomy. After all, similar claims seeking to restrict abortion arise in vastly different legal contexts and regime types. In the United States, much of the debate about abortion has been cast in terms of the role of unelected institutions in a democratic society—with critics and supporters of abortion rights presenting their positions within the context of democratic theory.⁴²⁵ Yet what the case of China helps us to see is that legal conflict over gender and reproductive rights will arise and persist regardless of constitutional structure or regime type. Our findings confirm that institutional resolution of the abortion debate will not resolve the issue as a social matter, in China, the United States, or elsewhere.⁴²⁶ Rather, resolving the abortion debate will likely require resolving broader, deeper, and more intransigent debates about gender and male power.

CONCLUSION

Party-state birth planning authorities are not the only forces constraining women's reproductive autonomy in contemporary China. Likewise, law and courts are not irrelevant to regulating abortion in China. Men seek to control women's reproductive autonomy and use the courts to do so. Chinese courts have not only served as unexpected fora for contesting reproduction, but have also played an indirect role in regulating abortion by ignoring,

425 See Murray & Shaw, *supra* note 5, at 731 (“Despite this lofty talk of returning the abortion question ‘to the people,’ the *Dobbs* majority’s conception of democracy . . . collapses upon close examination . . . [and] the conception of democracy it displays is profoundly limited.”).

426 For a discussion of how laws can be usefully discordant with social values, see CASS R. SUNSTEIN, *LEGAL REASONING AND POLITICAL CONFLICT* (1996). For a discussion of how on a global level “more legal grounds for abortion [and healthcare capacity-building] do not inevitably translate to more access” due to “entrenched stigma,” see Remez et al., *supra* note 407, at 61.

legitimizing, and occasionally rewarding men's claims. Our findings paint a picture of how persistent male claims to control women's reproduction can be, how and why women and their lawyers often fail to raise legal objections to such claims, and how legal institutions often bend or ignore the law in favor of deep-rooted cultural norms. As China emerges from an era in which the state coercively administered contraception, sterilization, and abortion, the relaxation of birth regulation does not necessarily equate to greater freedom for women. In addition, as the Chinese Party-state increasingly embraces pro-birth policies, the Party-state seems likely to rely on a combination of cultural norms and private law enforcement to achieve its new goals of restricting abortion and encouraging births.

Scholars working across a range of jurisdictions should be attuned to how legal systems create space for and reinforce men's claims to control women's reproductive choices, even when the right to abortion is clear and well-established in law. In particular, scholars should consider how routine private law lawsuits can become sites where reproductive rights are either fulfilled or denied, how rights can be weaponized to serve regressive goals, and the extent to which political regime type affects how and where a state regulates abortion. The U.S. Supreme Court's ruling in *Dobbs* has reignited and reshaped global conversation regarding reproductive rights.⁴²⁷ China's recent experiences demonstrate that there is much to learn from looking beyond frameworks that assume a clear divide between authoritarian and liberal systems when it comes to regulating abortion. Viewing how abortion is contested in China's courts reveals what is at the core of litigation over reproductive rights: a struggle between men and women to control women's bodies, one in which the participants regularly search for new modes of legal expression.

427 See, e.g., Kaufman et al., *supra* note 3.