

Contemporary Chinese Society Lecture Series featuring Ethan Michelson
– Decoupling: Gender Injustice in China's Divorce Courts, February 1,
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– [Man] Hello everyone and welcome to today's talk, we will get started momentarily, after we give a minute or so for people to log on. We thank you very much for joining us.

– So welcome and good afternoon, everyone, a Happy Lunar New Year "Xin nian kuai le" and thank you for joining us for today's webinar. My name is Ya-Wen Lei, I am Associate Professor in the Department of Sociology at Harvard University, I'm also a faculty member at the Fairbank Center for Chinese Studies. I'm delighted to announce a new webinar series, Contemporary Chinese Society at the Fairbank Center, we will have four speakers this semester. All of them are doing cutting edge and very important research that advances our understanding of contemporary Chinese society. And today, it's our great honor to have professor Ethan Michelson give an inaugural talk for the new series. Dr. Michelson is a Professor of Sociology, Professor of Law and the Chair of the Department of East Asian Languages and Cultures at the Indiana University Bloomington. And he is one of the most prominent scholars, who study law and society in China. And today he's going to give a talk, based on his forthcoming book, titled, "Decoupling: Gender Injustice in China's Divorce Courts", which will be published by Cambridge University Press, this year. And just a little housekeeping before we get started, if you have any questions during the presentation, please type them into the question box in your Zoom control panel, we will have time for Professor Michelson to answer the questions at the end. And now, without further ado, I'm going to turn the time over to Professor Michelson, welcome Professor Michelson.

– Thank you. First of all, Happy Chinese New Year to all of you, this is a real honor to kick off this exciting new lecture series on contemporary Chinese society. And I wanna thank you, Ya-Wen, for inviting me, I'm really thrilled to be here and to present my forthcoming book. This is definitely gonna be a race against the clock, so let me just get straight to it and apologies for talking quickly, but rest assured that I will shut up after my allotted time elapses. And in the interest of time, I need to dispense with proper acknowledgements, but I'll simply mention quickly that this book rests on a lot of knowledge about Chinese divorce litigation that I gained from my first PhD student, Ke Li, who's at the City University of New York's John Jay School and whose own book on the topic, is coming out soon from Stanford University Press. So, I'm really indebted to her. Hopefully you can see the cover of the book that was in the Fairbank ad for today's talk. Let me just quickly mention that the e-edition of this book, will be open access at the price of \$0, so if you're okay reading this book on an e-reader or a computer screen, you should ignore Cambridge's hard cover price of \$155. Since the ad for this

talk includes the book cover, which you should be able to see on the Zoom screen here, let me begin here. So, decoupling, the main title, it's a double entendre, the first meaning is literal, it refers to the decoupling of married spouses. Family sociologists are a little more familiar with the word uncoupling for breakups and divorces, but I chose to use decoupling because, at another level, it also refers to a gap between official promises of the law and the degree to which courts fulfill them in practice. Loose coupling and decoupling are core concepts in the sociology of organizations and institutions, in essence, this book uses the case of marital decoupling to shed light on institutional decoupling. The sociological literature on decoupling is similar, but actually surprisingly decoupled from gap studies in the law and society literature. So gap studies are intended to assess the impact of law by measuring the gap between black letter law and judicial behavior, between legal promises and legal practices, between the law and the books and the law in action, between legal form and legal substance, between legal ideals and legal results, between legal appearance and legal reality. So, you get the idea, and this is exactly what I mean by decoupling. And the visual image of the book cover, it represents this yawning gap between all of those things, or the rift, it also symbolizes tearing up the law on paper or tearing up a marriage license. In this talk today, I'm gonna focus on the Sisyphean struggle to get divorced in China's courts, particularly among women seeking to divorce their abusive husbands. In her recent book on lower courts in Russia, Katherine Henley at the University of Wisconsin, pushes back against what she calls, a parade of horrors narrative about courts in authoritarian political contexts. I wish I could do the same with this project, so this is a bit of a trigger warning that divorce cases in China, really do make a parade of horrors, Chinese divorce litigation, it's truly a horror show. China's laws on the books and official commitments to protecting women actually are most impressive and I'm not gonna belabor this point, I have an entire chapter in the book, which I title, The Right to Decouple, on this point. But basically the freedom of divorce and gender equality, are foundational principles, not just in China, but in the socialist world more generally that I'm going back to the 1930s and then enshrined in the 1950 Marriage Law, which actually was the first body of law enacted by the People's Republic. And long before, the 2015 Anti-Domestic Law, and sorry, it's supposed to be Anti-Domestic Violence Law took effect in March, 2016, China had a huge arsenal of laws designed to combat and punish domestic violence. It's signed, all core international human rights treaties, ratified all, but one of them, it's signed and ratified CEDAW. So China's commitments to upholding these global legal norms are seen in this and in many other parts of its domestic laws. And there's public security administrative punishment, which offers protection against the maltreatment and abuse of family members and this goes way back over the past 20 years or so, China has built a domestic violence warning system. These are local systems for the most part to offer protection to women and punishment to abusers. Rules of evidence are very clear.

giving abuse victims, the benefit of the doubt in cases that kind of boil down to, he said, she said, scenarios. So the book shows how all these things, these impressive legal protections are totally decoupled from judicial practices. In short and quoting from the title of chapter three, court behavior is decoupled from the right to decouple, if everything we knew about divorce litigation, were from the laws themselves, we'd have a very distorted picture of what's going on. In the divorce litigation process courts ignore, sideline and even subvert the very legal principles of divorce rights and gender equality, they symbolically embrace. So how do I support this argument? It's sort of a big data project in the sense that I analyzed tens of thousands of divorce cases from two provinces, Henan and Zhejiang. Since 2013, China's Supreme People's Court, has required all courts in China to post almost all of their decisions online, I mean, there are some exceptions the types of cases that courts are not allowed to post. But the Supreme People's Court, started encouraging courts to post their decisions online, even earlier, going back to the late two thousands, like 2008-2009 is when court started to post court decisions in large numbers. After 2013, court decisions were being post on mass in just massive numbers, then the Supreme People's Court ordered courts to stop posting divorce decisions specifically, beginning in October, 2016. So, my sample of, almost 150,000 divorce decisions, divided pretty evenly between the Henan and Zhejiang, span 2009 to 2016. So let's start to look at some grim findings. I'm gonna kind of zoom out first of all, to a macroscopic view of the full sample of divorce cases and then I'll zoom into a more microscopic view of individual cases. So let me start with some key and pretty alarming findings, first 25% of all divorce petitions were filed by women, making domestic violence allegations against their husbands. And this 25%, it reflects the fact that, two thirds of all plaintiffs are women and almost 40% of the petitions, the divorce petitions that they file for divorce. So 40% of the petitions filed by women, who account for two thirds of all plaintiffs include claims of marital abuse. Of all divorce petitions, containing domestic violence allegations, fewer than 2% were granted by judges on this basis, some of these petitions that contain domestic violence allegations were granted, but for other reasons typically. Usually when the defendant, the husband consented to the divorce or if the defendant was absent, that the judges were more inclined to grant the petition. And part of the reason why, so few of these divorce petitions were granted is because, few divorce petitions are granted in general, courts denied the vast majority of divorce petitions containing domestic violence allegations. I mean, huge proportions, this lines up actually pretty closely to the denial rates for all cases. So the point is that, domestic violence cases are not really any different from cases in general, judges don't really treat domestic violence cases any differently than they treat other kinds of cases. Now, when they deny divorce petitions, this causes delays, huge delays, there's a statutory waiting period of six months and then women have to go back to file a new divorce petition and the delays are typically about one

year. And using some back of the envelope math to extrapolate, to China as a whole, from my collections of cases from Henan and Zhejiang. The upshot is that, very conservatively speaking, at least 90,000 women beaten by their husbands, have been exposed to further violence, typically for another year after courts deny their divorce petitions. This is 90,000 per year, and this is a very conservative estimate. A lot of them, when they're waiting for a new trial, like a new opportunity to file a divorce petition, they go into hiding and become what I call, domestic violence refugees. And this is sort of the flight part, fleeing domestic abuse, that's the flight part of the story of fight or flight. A lot of criminal domestic violence cases, so outside of the divorce courts, now we're talking about criminal courts. So, criminal domestic violence cases, including marital homicides, involved women, who had previously attempted to divorce in court and their cases were denied and they were further exposed to domestic violence and were murdered by their husbands. Or it's the fight part of the story of fight or flight, a significant proportion of all women incarcerated for violent crime in China, were convicted of murdering their abusive husbands and often while waiting for a new opportunity to file a new divorce petition. I devote an entire chapter of the book to this issue of fight or flight. Finally, almost one outta five women in Henan, who did secure a divorce on their first try, gave up property or child custody claims in order to do so. And this is something that Ke Li has found and is a big part of her research, exchanging property and child custody for freedom from toxic marriages and from domestic violence in particular. So it took me about two years to do the empirical research behind this book, that part was a fairly enjoyable process of discovery, I guess, as enjoyable as studying, such a depressing topic can be. And then after that, it took me another two years to actually write it up into readable text, writing the chapters. And that part was excruciatingly painful, I mean, just the process, the mechanical process of writing, constructing sentences and paragraphs, that was really hard. But when the writing process was particularly miserable, I would remind myself that two years, is how long it often takes abused women in China to finalize their divorces. So in the book, I move back and forth between aggregate statistical analysis of the cases in my collection and in depth narrative analysis of individual cases, and I'll try and do the same in this presentation. Let me start with a little bit of context, so this figure on the screen now, I created from official government statistics, not from my collection of court decisions. This figure shows the proportion of divorce petitions, granted in divorce trials or divorce adjudications. And we can see a conspicuous decline in rates at which divorces were granted over time, so beginning in the early two thousands. In terms of absolute numbers of cases, this figure chose the proportion of cases of divorce petitions that were granted by adjudication, but in terms of absolute numbers of cases between the year 2000 and the year 2018, so that's kind of the period of this judicial clampdown on divorce. The total number of divorce requests denied by court adjudication, each year, it more than tripled

over this period of time while the annual number of divorce requests granted by court adjudication each year declined. By the time we get to 2015, 2016, 2017 and so on, so in more recent years, only about 40% of divorce adjudications, resulted in an actual divorce and compare that to the mid 2000s, when it was about 70%. So this is a huge decline in the proportion of divorce petitions actually granted, so this is what I call the judicial clampdown on divorce. But these lines here, they actually obscure some really important dynamics and this is what I want everybody to be clear about to understand. These lines here, the lines for China as a whole, for Henan and Zhejiang, the lines they double count a lot of divorces, the lines show all divorce adjudications in China as a whole and the two provinces. But actually, a lot of these and probably most of these, are multiple adjudications of the same case, let me explain. China's civil procedure law, provides an exception for divorces to the general rule, that the second instance trial is the final instance. So for every other type of case, or almost every other type of case, litigants get one chance to appeal a first instance verdict, divorces get a litigation do over when judges deny them. So for this reason divorce petitions could conceivably and sometimes do become groundhog day that are refiled and retried in perpetuity, and this does sometimes happen. You might also note that the line for Zhejiang, is considerably lower than the line for Henan, so divorce is a lot harder to get in Zhejiang than in Henan. I don't have time to delve into this two province comparison today, but what I wanna do next is to separate, first attempts from subsequent attempts. Now that we know that a lot of divorces are denied on the first attempt and then are refiled after a statutory six month waiting period, let's separate the probabilities of getting, a divorce petition being granted by first attempt filings and subsequent attempt filings. We can't do that with official government statistics, but we can do that with the cases in my collections. So, you wanna focus, well, first of all, the line here with the dots, that's the exact same line that we just saw for Henan in the previous figure. The solid line here is, basically my effort to replicate that from my collection of court decisions that I scraped from the websites. And you can see they're very, very similar and in Zhejiang as well, so the line that I constructed from my collection or my sample of cases is very, very similar to official government statistics in both provinces. Now, let's look at the line below that, the dashed lines, those dashed lines here for Henan and down here for Zhejiang, these are limited to first attempts, the first try getting a divorce in court. And remember what I just said, it typically takes two or more attempts to get a divorce in court, it sometimes takes 3, 4, 5 or more attempts, sometimes judges will never grant the divorce, no matter how many times a plaintiff files. So basically what happens is, a woman and they're typically women, the majority of plaintiffs are women, goes to court, seeking a divorce on the grounds of marital abuse. And the judge says, sorry, it's not gonna happen today, come back in six months and try again. And this a you routine kind of universal practice in courts across China, I didn't discover this, it's actually

quite a well known phenomenon. So most plaintiffs get turned away, the first time they file for divorce and their chances of getting divorced diminished, diminished dramatically between 2009 and 2016. So that's the clampdown. In Henan in 2015, only 25% of petitions, led to actual divorces on the first try, only 18%, so less than one in five, led to a successful divorce in Zhejiang in 2016. What about subsequent attempts? So this is on the first try. Your chances of getting divorced on the first try, are pretty slim, if you go back for a second try, I lumped together all subsequent attempts, whether it's a second, third or fourth attempt, it's a subsequent try, then your chances are much, much higher, 75% in Henan and 76% in Zhejiang. So, the plaintiffs who went back for another try, were generally successful, but that's if you define success as actually getting divorced. The cost of this success was often giving up property and child custody as I mentioned before, so judges are hell bent on denying, first attempt divorce petitions. They twist and subvert the law in order to do so, even when it means ignoring domestic violence allegations, they won't let anything, not even domestic violence allegations, get in their way of this universal practice, which significantly prolongs women's exposure to violence. Now, let's further disaggregate the dashed lines by plaintiff sex, to see if judges have treated women and men differently. And we'll see, let's look at Henan first, women have born the brunt of the judicial clampdown on divorce, most of the toll has been paid by women. Women have been disproportionately subjected to this clampdown, you can see that, women's probability of success is much, much lower than men's, more than 10 percentage points lower than men's. And same thing in Zhejiang. Given that so many women seeking divorce, are seeking to escape their abusive husbands, this massive gender gap reflects almost unthinkable gender injustice. About 40% of female plaintiffs claim to have been abused by their husbands, for this reason, strictly according to the law, courts should be more likely to grant the petitions of female plaintiffs than those of male plaintiffs. I mean, if so many women are seeking divorce on the grounds of domestic violence, and if domestic violence is grounds for divorce than all else equal. I mean, women should be more likely than men to get their divorces granted, but it's exactly the opposite. In fact, claims of domestic violence, do not move the needle towards divorce, on the contrary, they're somewhat counterproductive. So how do judges get away with clamping down on divorce by sidelining these claims of marital abuse? The answer is that they do so through their contorted efforts to establish the existence of mutual affection, despite allegations and evidence of marital violence. Judges inscrutable logic defies and subverts China's laws, protecting women from their abusive husbands, so what does it take for a plaintiff to succeed on the first try? Basically, plaintiffs need to convince judges that mutual affection, that's the term, mutual affection has irrevocably broken down and women have a much harder time than men doing so. So what the law says, basically the key legal test for divorce in China, is known as the breakdown of mutual affection. As you can see, it's Article 32,

of the 2001 Marriage Law, it's now become Article 1079, Article 1079 in the 2020 Civil Code, which took effect on January 1st, 2021. So this legal standard, the breakdown of mutual affection standard, it's kind of an analog of no fault divorce, elsewhere in the world. It was intended to help people get out of unhappy marriages and to support ex parte or unilateral divorce on the basis of irreconcilable differences. But judges enjoy a huge amount of discretion in the interpretation and application of this divorce standard. In principle, if mediated reconciliation fails and the plaintiff insists on divorcing, judges are supposed to grant the divorce. But in practice, judges exercise almost limitless discretion to affirm the existence of reconciliation potential and therefore to disaffirm the breakdown of mutual affection. When judges deny first attempt divorce petitions, they tend to do so on the grounds or the pretext really, that the marriage has not fallen apart, that the couple can still patch things up. Judges rulings then typically boil down to their assessments of the married couples reconciliation potential. This is the legal language, basically judges rule on divorce petitions, according to the unknowable, hypothetical future counterfactuals, reconciliation potential almost always, trumps domestic violence. That is to say, judges typically sideline downplay and trivialize domestic violence allegations by saying that, reconciliation potential is still there, that reconciliation is still possible despite the abuse. But judges are not supposed to do this, they're supposed to affirm the breakdown of mutual affection on the basis of statutory wrongdoing and that's what the rest of Article 32 shows here, these wrongdoing standards. Rarely though do judges actually apply these, these wrongdoing or fault based standards, so the result is that, no matter how egregious plaintiff's allegations of wrongdoing are, and no matter how well plaintiffs support and document, their allegations of wrongdoing with evidence, judges tend to say, well, yes, this is all very bad behavior, but you still haven't proven the breakdown of mutual affection. Judges tend to act in a paternalistic manner and with patronizing relationship advice of zero legal relevance, they infantilize litigants by acting as if they know what's best for them. Court decisions are bursting with hackneyed cliches, written by these paternalistic judges, professing to know better than the plaintiffs themselves and imploring plaintiffs to treasure the toxic marriages that they're desperate to exit. Finally, I mean, they could also, judges could also affirm the breakdown of mutual affection on the basis of physical separation, so that's another legal test. And as you can see here, I underlined family violence, domestic violence, So that is a statutory standard for granting divorce and judges very, very rarely apply this standard, they typically ignore it. So, I did regression analysis, so the various factors that increased and decreased the probability of a court ruling to grant a divorce. And in the regression analysis, domestic violence allegations made no difference, they did not improve plaintiff's chances of getting divorced. Simply put domestic violence, doesn't matter to judges, judges simply don't care about abuse victim's allegations and the

evidence they submit to support them. They probably care on a personal level, but it's clear that they care a lot more about other things, the many other competing and countervailing pressures on their work, which are a big part of the book that I don't have time to get into today. The upshot is that making domestic violence allegations, makes not one iota of difference in divorce court. Women seeking to divorce their abusive husbands, they presented allegations of domestic violence in gruesome detail and meticulously documented them with evidence, they reported all manner of weapons used against them, including cleavers, fruit knives, daggers, single blade knives, folding knives, switch blade knives, long knives, machetes, scissors, sickles, hatchets, axes, pick axes, trowels, hammers, shovels, pipes, rods, benches, folding stools and so on. They reported getting stabbed, cut, and hacked. They reported being choked, strangled, suffocated and burned. They reported bone fractures, ruptured eardrums, broken noses and concussions. Here on the screen, on this slide, are 57 common violence words in divorce petitions in the Henan and Zhejiang samples of divorce cases, about half of plaintiff's petitions, contained at least one of these violence words. And of course not surprisingly, there's a massive gender gap in the use of this vocabulary, it was overwhelmingly women using this kind of vocabulary. And in yellow here, these nine violence words for battery, different forms of beating, violence, domestic violence, getting beaten, berated, cursed, so it's both physical and verbal abuse, getting punched and kicked. And so, it's just these nine words, almost 40% of female plaintiffs included at least one of these nine violence words in their divorce petitions. So does the use of words like these make a difference in outcomes or in how judges handle cases? In other words, do judges handle domestic violence cases, any differently than they handle other cases? The answer is simply, no, they don't. Plaintiff's allegations of domestic violence are pervasive as I just described, but they have virtually no influence on judges' rulings and in their holdings, these words, rarely, rarely appeared in judges' holdings. So this sort of language is just pretty much absent from judges' holdings and rulings. And we can see this just by doing a fairly rudimentary, a fairly simple sort of natural language processing analysis of the text, the vocabulary in judges' holdings. So, I just wanted to compare the kind of language that judges used in cases as a whole and then in domestic violence cases in particular. And very quickly, I mean, I don't have have time to get into a lot of detail, but I constructed word clouds that just depict the frequency of words that are pure and are used in judges' holdings. In two types of cases, denials, cases that were denied and then, in cases that involved, domestic violence allegations. And the domestic violence cases are those that in which the plaintiff's petitions, contain at least one of those nine violence words that I highlighted in yellow before. No cases were double counted across these word clouds, so there's no overlap between the word clouds, each case appears in only one word cloud and they show that basically judges vocabulary, their discourse was remarkably uniform. And both in between the two

provinces and between the two types of cases, denials in general and domestic violence cases, they're pretty much all the same. I'm gonna kind of skip the details 'cause I really don't have time, I'm just gonna kind of plow ahead. But basically, just kind of doing a cursory scan of the kinds of words that the judges use, shows that they recycle and rehash boilerplate text, emphasizing plaintiff's failure to submit evidence, proving the breakdown of marital affection, So that's what's front and center, the marital affection or mutual affection, judges assert that reconciliation remains possible, if the couple will just work harder on the relationship skills, if they learn to forgive and forget, and to compromise to improve their communication skills and so on. And this is the kind of language that is front and center in judges' holdings and rulings. In essence, judges gaslight plaintiffs, who have been abused by their husbands, they discursively transform what plaintiffs understand as intolerable and unlawful abuse constituting grounds for divorce into innocent misunderstandings and mistakes on the part of caring husbands. And in so doing, judges gaslight plaintiffs by calling into question their sense of reality. Let's now take a closer look at individual cases and I'm mindful of time, and like I said, I'll just get through as many as I can and then stop. But the individual cases, when you get outta the aggregates, sort of macroscopic analysis of the full corpus of court decisions, and you look at the individual cases, you read them closely. And I read hundreds and hundreds of cases very closely, and you just see, I mean, truth is stranger than fiction, you just can't make this stuff up. And these court decisions are often legally preposterous, I mean, they may seem like impossibly outrageous cases, but they're actually utterly typical. If they weren't so tragic, I mean, they would be comical. And I often wasn't sure whether I should laugh or cry, when I was reading these cases. So, consider this one case, I mean, it couldn't be clearer, the plaintiff included in her legal complaint, the divorce petition, all these horrible things that happened, hospitalization after the defendant caused a concussion and chest hemorrhaging. And then another hospitalization, after the defendant cut her with the glass lining of a hot water thermos, smashed her over the head with a beer bottle, caused a cerebral hematoma. Then another, a third hospitalization with a broken nose, fractured eye socket, an ear contusion, head and chest wounds. She had evidence from police and hospital documentation and the defendant, in his defense simply said, I don't consent to divorce, marital relations are good, both sides occasionally argue and fight, but afterwards we're as good as new. And the court in its holding said, in an epic understatement in recent years, some conflict has emerged over family trifles, this is the kind of this is the sort of language that's used, trivial household matters. Last year, the defendant was on, the extreme side of contentious, but mutual affection has not declined to the level of complete breakdown, and on this basis, the court denied the plaintiff's request. There was a case that hit the news in April of 2021 of last year, spring of last year, so the plaintiff in this case, Ning Shunhua, had filed for divorce five times, between 2017 and

2021. She claimed in her petition that she discovered her husband, Chen Dinghua has gambling problems, violent temper and she left him, in 2017, so they've been separated for four years and obviously satisfied the physical separation test, which should have been automatic grounds for a divorce. She submitted medical documentation of a beating, so this is on the fifth attempt, but there had been, even before the fifth divorce attempt, there was other kinds of evidence. She had previously applied for personal protection orders against her husband, the same court granted personal protection orders, which is also supposed to constitute evidence of domestic violence and therefore is grounds for a divorce. Her husband had been held in administrative detention, six times. There was evidence of obviously, that of his bad behavior, should have been grounds for divorce. He submitted allegedly over a hundred, had given her had written over a hundred pledge letters, these are basically like apology letters or promise letters, like, I'm sorry for beating you, I promise I'll never do it again. They're very, very common in divorce cases, they're supposed to be used as evidence of domestic violence. But courts are supposed to say, these pledge letters, they're confessions, they're the husband's confessions of beating their wives and should be used as evidence of domestic violence and grounds for divorce. But instead, it's much more common for judges to use these letters to disaffirm the breakdown of mutual affection. Because the judge says, look how much he loves you, he loves you, he's apologizing to you, he cares about you, he wants a new chance to mend his ways. There was no ambiguity, I mean, the law is extremely clear that her divorce should have been granted, but as we see so typically and so commonly, the courts did exactly the opposite. I'm sort of skipping ahead, I kinda wanted to make the point about, how courts also use medical documentation. So all the medical documentation she submitted, showing her bruises, showing her injuries, how extreme they were, judges will very, very commonly say that the medical documentation only proves the occurrence of an injury, but it doesn't prove who caused the injury. So judges are often really reluctant to link the injury to the defendant, and the same thing with photos, like the ones that I just showed on the screen. It's like, the judges will say, yep, you are really badly injured and I'm very sorry about that, but this doesn't prove that your husband's the one, who caused these injuries. And then defendants will claim that, these injuries were self-inflicted, the wife did it to herself because she's mad at me or coincidental accidents, she fell down the stairs, it had nothing to do to do with me. And so, judges claim, well, my hands are tied here because I have to side with the evidence, I have to listen to the evidence. But in fact, that's not true, the Chinese evidence law actually allows judges to give women the benefit of the doubt in situations like this. I don't have time to get into the preponderance of evidence provisions in the law that judges are actually supposed to use in cases like this, but they never, ever, ever do. I looked in all these cases, I found like one or two out of 150,000 cases in which judges actually did that. The husbands in these cases, they often will

admit in court to committing domestic violence, like in this case, the husband said, she became determined to divorce, so I occasionally taught her a lesson. And he's complaining about how expensive it was to marry her, the bride price he paid, and he's like, I'm not gonna give up so quickly, I'm not willing to divorce. And so I have to use in order to keep her in line, I sometimes have to threaten and beat her, he's saying this, and we often see this in court decisions in their defense statements, defendants will often say, yeah, I occasionally beat her, but I apologized and I promise I'll never do it again. Or I beat her and it wasn't that serious, and therefore it doesn't constitute domestic violence, it doesn't rise to the level of domestic violence, and judges will often make the same kinds of statements about, yeah, you were beaten and you were injured, but it doesn't rise to the level of domestic violence. Judges are also very concerned about these violent men, they're very concerned that, violent men will direct their anger at the judges themselves. They're concerned about their personal safety, but they're also concerned about being, professionally punished in their performance evaluations, for so-called extreme incidents that threaten social stability, all important social stability, and China's official stability maintenance efforts. So, an angry disgruntled husband, who takes out his anger on his wife after a judge grants the divorce and hurts the wife that could come back to hurt the judge. 'Cause judges are liable, they assume lifelong professional liability for improperly decided cases or decisions that lead to complaints and petitions. So this is absolutely on judges' minds as well. So, I was gonna get into a lot more examples from my collection of cases, this is one that was in the newspapers all over China, this was not reported in the English language press. There was another case that did make it to the front page of the New York Times about a year and a half ago, that was similarly egregious, just unbelievable. But the only thing unusual about cases like these, is the public attention that they receive, getting picked up in the media, letting the public be aware of these cases, that those are the only unusual aspects to these cases. Cases like this are utterly typical as I found in the course of my research. So, I know I'm out of time and I had all these other specific cases, they're all over the book, I provide sort of in depth case analysis of over a hundred individual cases throughout the book, so all these slides that I prepared. And one thing that I knew that I would not have time to get into, would be the child custody determinations. And just how poorly women fair in general in gaining child custody and the reasons for that and the really striking patterns in child custody determination, so I have two chapters devoted to that. And with that, I will stop here and look forward to questions and comments from the audience.

– Great. Thank you so much, Professor Michelson, so we will go ahead and take some time for questions now. So just a reminder, and please be sure to type your questions into the question box in your control panel. Now, it looks like we have one question from Professor Marty White, so Professor Marty White asked, what is the background of

judges? And what is their gender breakdown? And do judge differences have an impact on granting divorce for family violence? And I want to actually add some more question, based on Professor Marty White's question. So, Professor Michelson, you mentioned that, judges have some kind of incentives, they calculate some kind of metric evaluation standards that maybe the government imposed on them. So, could you please also, say explain to the audience those kind of considerations more, and also you didn't really have a chance to talk about, how to actually explain the decreasing rates, successful rates of divorce over time. And could you also talk a little bit about, why is this the case? Because I assume that actually, the level of professionalization of judges have increased over time and judges have become more and more educated, and so why is it the case that? So there could be some kind of conflicting considerations and why this kind of perhaps pressure from the government becomes so important to them? So could you please just answer this question first and we can move to another question. Thank you.

- Absolutely, yeah, thank you. Yeah, these are fantastic questions, thanks Marty, for coming and for your question. And of course, this is something I looked for, I mean, I spent a lot of time looking for this, I mean, I agonized over. So, the court decisions, they include the names of judges and you can see if there's a panel of three judges or if there's a mix of judges and lay assessors, or if it was just a single judge, applying the simplified civil procedure. We don't know the judges' sex, but we can guess, and there are all kinds of algorithms that are available publicly, thankfully, that allow us to infer someone's sex from their name. It's not perfect, but it's pretty good, I mean, it's like 75 to 80% accurate. And so, I was fully expecting that female judges would be a lot more sympathetic to female plaintiffs, who make allegations of domestic violence. And I didn't find it, I didn't find it at all, I found no evidence, I mean, it makes no difference, women judges, they rule no differently than male judges. You asked about the backgrounds and the prevalence, or sort of the gender breakdown of judges, still a minority of judges are women, it's about a third in my sample. In Zhejiang, a little more female judge, better female representation on the bench than in Henan, Henan was more like a quarter and it's going up every year of course. And as Ya-Wen mentioned, judges are becoming increasingly professionalized as well and more sort of, I guess, just more sensitive and more qualified and more educated. And so you would expect these things, to make a difference, but I found... And by the way, I should also add that, I included all of this information that I had about the composition of judges, the gender representation of judges making these decisions, they were all control variables in all of my regression models, everything I present in the book controls for this. And I didn't report them in the book, I mean, I mentioned that it didn't make a difference, but I didn't report those coefficients because they were just not interesting, there was nothing to report there at all, there was no story whatsoever. As for the evaluation, so yes, ding out

judges like civil servants across the Chinese administrative bureaucracy, their performance is being evaluated. Judges are evaluated above all on, clearing their dockets, on case volume, just closing cases, the more cases that they close, they get scored primarily according to efficiency. But they're also these sort of stability type of measures, they get punished for appeals, particularly appeals that are overturned by the appellate court or remanded back to the lower court for retrial. These things all come back to ding judges, so judges want things to be... They wanna minimize contentiousness, they don't want these fraught contentious cases, which is one of the reasons why they just deny divorces on the first attempt. And they tell the litigants plainly, they say, I'm not gonna grant you the divorce today, you guys work it out, get all your ducks in a row, come to an agreement on all terms of the divorce and come back in six months and then I'll grant you the divorce. But that's sort of the condition and your other question was a really good one and I had the answer in my head, remind me.

- Yeah, the other question is, how do you explain the change over times?

- Yeah, yeah, yeah, so the answer to that it's very, very simple, the clampdown, the judicial clampdown on divorce, it maps perfectly onto the China's litigation explosion, the explosion of civil cases, it's like a perfect correlation. So judges are simply overwhelmed, they're overworked, there was an acute shortage of judges, even before the recent judge quota reform, which cut the number of judges in half. I have a whole chapter in the book on the problem of, too many cases, too few judges, this problem of overworked judges. And it really helps lighten their load, it helps judges in a number of ways, if they can close a divorce case by denying it in five minutes, then it allows them to move on to the next case. It also allows them to increase their efficiency scores, their efficiency numbers, it increases their volume, their efficiency. It reduces the likelihood of an appeal, I mean, it helps judges in so many ways. And so, I spent a whole chapter answering the question of the judicial clampdown, and it really boils down to, the rise and this just explosion in civil litigation.

- Yeah, okay. And actually, I also have other questions. So, China actually has changed a lot over time, but at least at one point of time, there was growth in civil society and also social movement, feminist movement and women's rights movement and also the public sphere. To what extent, but of course now that the space for this kind of activity has been shrinking, but according to your observation, to what extent this kind of outside social forces have influenced the decision making within the court? Or it doesn't really matter at all, even when there was more political freedom in China, like larger social environment changes in larger social environment and how kind of social forces outside of the profession can actually shape and influence the decision making within the court system.

- Well, so I can only answer that question with respect to divorce cases, I can't answer that question with respect to other kinds of cases, was your question about sort of in general?

- Or you can actually focus on divorce cases specifically.

- Yeah.

- Yeah.

- I mean, the influence, I think clearly, has been minimal, minimal to zero influence, otherwise we wouldn't see this just horrific, the parade of horrors in China's divorce courts, where judges just so brazenly, flout the laws on the books. I mean, such egregious violations of China's own laws intended to protect women, and I can only imagine that judges are able to get away with this because, so few people know about how pervasive these practices are. Which is kind of an interesting, I think, given that courts have been posting their decisions online, they're in the public domain, anyone can access them and read them. So these cases are hiding in plain sight, my guess is that, it's just hard for people to analyze them en masse and it would be hard for them to access them at their finger. I mean, they're still buried in like a mountain of day, I see there are more questions on-

- Yeah, there are two more questions, so the first question is from Terry, so he said, thank you for a very interesting talk. And could you talk a bit about trial custody and whether that might be related to the one child policy and exceptions and could divorce couple have another child. And then the second, so we kind of collect two questions because we only have one minute left and Professor Tom, got to ask a question. So he said, congratulations, Ethan, Happy New Year and astounding amounts of research. And in days gone by the danwei got involved in trying to reconcile contentious marriage relations. And does this practice still exist? And you focus on two high majority provinces, any sense of cases in minority areas? So we just have like one minute and please just-

- Yeah, the flurry of questions now, and if you need to shut down at five, that's fine, I can stick around for a little bit if you want. So the one child policy and the exceptions, I don't think had a big influence, reading these cases and analyzing, I didn't see a lot of evidence that people were concerned about about this because they were so routinely violated anyway, for years, even before, it was sort of rescinded or relaxed to become a two child policy. I mean, people were just routinely having, in the countryside anyway, in rural areas, so, I'm not sure that that had a big influence. I wish I had more time to talk about child custody because the patterns are just so striking and so interesting and so gendered. And so many rural couples did have multiple children, and child custody, the determinations were decided

according to... The child and the parent sex were matched. So the danwei, now going to Tom's question, I didn't see much evidence of that. In the old cases, when I was doing the literature review, reading the old Chinese literature, you would see the danwei getting involved and gaslighting women in the same way that judges gaslight women, generally siding with the men, doing what they could do. I mean, it was all about mediated reconciliation, it was all about mediation to reconcile the couple to patch things up and using the same kind of discursive strategies, give him another chance, he loves you, stay together for the sake of the children, that's sort of what the danwei did. The bride price, people should feel free to just email me these questions, I'd be more than happy to continue the conversation. Bill Alfred asks about the "Fu lian" and this is the All-China women's Federation, absolutely, I mean, kind of a go-to place, but generally did the same thing that the danwei did, they generally sort of tried to mediate and with the aim of reconciling couples, not so much to advocate for and represent the legal interests of women and to help them escape abuse, but rather to help preserve the marriage. Yeah, so Sarah Freedman's question, there has been discussion of implementing a mediation system outside of the court, not just a discussion, but it's actually been happening, there is such a system now, mediation system outside of the court. But still kind of under the umbrella of the court, and it doesn't seem to be offering much relief, that's sort of the quick take on that. And the final question, well, I thought it was the final question before Nuwon popped up, about judges' rulings in divorce cases and what we're reading about in the newspapers increasingly, frequently about China's sort of looming demographic collapse, this demographic crisis, the China's low fertility rate. And there's no question that the political ideology that supports the judicial clampdown on divorce, is to some extent rooted in concerns about low fertility below replacement fertility, but it's just the logic, it escapes me. I don't understand how anybody, any reasonable person could think that, forcibly preserving toxic marriages, will promote childbearing, it just makes no sense to me.

- Yeah, and it seems that we have run out of time. And just thank you so much, Professor Michelson for your insightful talk and thank you everyone, and we really appreciate you being here. And thank you again for joining us today, and we hope to see you next time, and thank you, Ethan, and Happy New Year again.

- Thank you, thank you, Ya-Wen, and thanks everybody for coming and feel free to get in touch.

- Yeah, thank you, bye.

- Buh-bye.