

Wives, Husbands, and Lovers

**MARRIAGE AND SEXUALITY IN HONG KONG,
TAIWAN, AND URBAN CHINA**

Edited by Deborah S. Davis and Sara L. Friedman



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CONTRIBUTORS

Yong Cai, Associate Professor, Department of Sociology, University of North Carolina

Deborah S. Davis, Professor of Sociology, Yale University

John Nguyet Erni, Professor, Department of Humanities and Creative Writing, Hong Kong Baptist University

James Farrer, Professor of Sociology and Global Studies, Sophia University, Japan

Sara L. Friedman, Associate Professor of Anthropology and Gender Studies, Indiana University

Petula Sik Ying Ho, Associate Professor, Department of Social Work and Social Administration, Hong Kong University

Grace Shu-chin Kuo, Associate Professor of Law, National Cheng Kung University, Taiwan

Yu-sheng Liu, Postdoctoral Fellow, Center for Survey Research, Academia Sinica, Taiwan

Hsiu-hua Shen, Associate Professor, The Institute of Sociology, National Tsing-hua University, Taiwan

Peidong Sun, Associate Professor, Department of History, Fudan University, Shanghai, PRC

Kwok-fai Ting, Professor of Sociology, The Chinese University of Hong Kong, Hong Kong

Wang Feng, Professor of Sociology, University of California, Irvine

xii CONTRIBUTORS

Ruoh-rong Yu, Research Fellow and Executive Director, Center for Survey Research, Research Center for Humanities and Social Sciences, Academia Sinica, Taiwan

Jun Zhang, Research Assistant Professor, The Hong Kong Institute for the Humanities and Social Sciences, University of Hong Kong, Hong Kong

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DEINSTITUTIONALIZING MARRIAGE AND SEXUALITY

Deborah S. Davis and Sara L. Friedman

ON NOVEMBER 6, 2010, CHEN WEI-YI, a thirty-year-old Taiwanese woman, married herself in an elaborate Taipei wedding ceremony in the wake of an online publicity campaign that attracted thousands of comments about the pressure on single women to marry before age thirty.¹ Two years later, Hunan television broadcast a thirty-eight-episode soap opera entitled “Dutch Treat Marriage” that parodied the efforts of newly married couples in the People’s Republic of China (PRC) to clearly demarcate spousal finances.² Later in 2012, the BBC circulated a sensational story about Cecil Chao, a never-married Hong Kong shipping tycoon, who was offering £40 million to “any man able to woo and marry his lesbian daughter who had already married her partner in France.”³

Media representations such as these titillate a broad public precisely because they resonate with more general anxieties about the fate of marriage in contemporary Taiwan, Hong Kong, and the PRC. Marriage in these three societies is changing so rapidly that young and old alike often struggle to come to terms with new sexual mores, the erosion of traditional gender norms, and growing rates of marital infidelity and divorce. To marry oneself, as Chen Wei-yi did, might first appear as a bizarre twist on normative heterosexual marriage, but her act underscores the persistent centrality of the institution of marriage and the multiple ways that contemporary marriages differ from those of the past. Similarly, for those who do marry, changing expectations of marital roles and obligations challenge long-standing definitions of the good husband or the proper wife. Carefully splitting food and restaurant bills, as did the couple in “Dutch Treat Marriage,” pokes fun at these renegotiations,

but deciding whose name should be listed on a housing deed or a bank loan is a deadly serious matter.

Anxieties about the status of marriage in Taiwan, China, and Hong Kong today are also intensified by the expanding scope in which marital decisions are made, new family relationships navigated, and disputes resolved. Cecil Chao's efforts to replace his daughter's marriage to another woman in France with a heterosexual marriage, presumably to a man of Chinese descent, points to the distant reaches of this changing scale with regard to both partner choice and geography. Although this volume limits its geographic scope to three Chinese societies in East Asia, it maps the growing intensity of sexual and marital relationships across the borders of these three societies to document the rapidly expanding scale of marital decision making and intimate attachments in the region.

Until the mid-1980s governments in Hong Kong, the PRC, and Taiwan were able to treat marriage and the links between marriage and family formation according to their distinct legal and cultural conventions. Thus, even while sharing a Confucian tradition of patrilineal family formation, each had developed unique legal statutes and quite autonomous economies, and few marriages joined spouses across these jurisdictions. However, as economic integration intensified, ties between Taiwan and the PRC resumed, and Hong Kong became a Special Administrative Region (SAR) of the PRC, cross-border sexual liaisons and marriages increased, and cross-border family ties thickened. In response, individual men and women found themselves searching for partners and entering marriages under different conditions than had their parents or even their older siblings. They faced new opportunities and freedoms but also new anxieties and uncertainties.

Not surprisingly given this context of multifaceted structural and cultural transformation, the case studies in this volume illustrate diverse responses to these new conditions for entering or leaving a marriage and, in some cases, even fundamental changes in the institution of marriage itself. As recently as 1970, it was unusual for a man or woman over the age of thirty in Hong Kong, Taiwan, or the PRC to have never married. Divorce was rare, and homosexual relationships were covert or even criminalized. With the new millennium, however, none of these past generalizations holds true. In fact, marital norms and behaviors have departed so radically from those that had prevailed only a decade earlier that one could say marriages in these three Chinese societies have become "deinstitutionalized."

With the word *deinstitutionalization*, we adopt the terminology of sociologist Andrew Cherlin, who coined the term to identify a process through which previously taken-for-granted assumptions about the propriety of premarital sex, grounds for divorce, or even the necessity of marriage no longer prevail (Cherlin 1978, 2004). In this new environment, individuals have far more freedom to script their lives, but these new freedoms also create new anxieties for both individuals and society about how best to approach and understand marriage. Marriages have always involved conflict, disappointment, and not a small amount of anger, but Cherlin argued that the degree and scope of changes in marital behavior in the United States after 1970 revealed an institution that had become unmoored from earlier sureties. Although Cherlin initially presumed that the changes he observed marked a transition to a new equilibrium, by 2004 he no longer predicted reinstitutionalization around a new set of norms but instead foresaw ever greater variation in marriage, family, and household forms.

Politically and culturally, Hong Kong, Taiwan, and the PRC differ greatly from Cherlin's America. Therefore, we would not expect the process of marital deinstitutionalization to be identical, nor would we presume convergence at some point in the near future. However, there are parallels between the key shifts that Cherlin highlighted in the United States and those emerging recently in these three Chinese societies: a higher age at first marriage, fewer barriers to divorce, declining marital fertility, and greater social acceptance of premarital, extramarital, and same-sex intimate relationships. Many of these trends also replicate shifts observed in Western Europe that demographers such as Ron Lesthaeghe (2010) have defined as a second demographic transition. But whereas Lesthaeghe primarily focused on how changing marital patterns suppressed overall fertility, this volume addresses the multiple ways in which the institution of marriage itself has changed within the context of rapid legal, political, and economic restructuring. Declining fertility is one of our concerns, but it is neither the most important outcome nor the central puzzle.

By locating our study in these three Chinese societies we also offer a comparative, global dimension to existing literature on the deinstitutionalization of intimate life in the United States and Europe. Although we are inspired by Lesthaeghe's insistence that it is cultural values that drive change, we displace his dominant narrative of cultural diffusion from Western settings by tracing new trajectories and potential outcomes that differ in significant ways

from those found in Europe and North America. As a consequence, we do not assume that our three societies will display identical patterns even with their shared Confucian heritage. Instead, we pay close attention to how recent political, legal, and cultural histories have diverged across the region, thereby producing significant differences in expectations and experiences. Although each chapter addresses a specific dimension of marriage and sexuality in a single country, it does so with an eye to comparisons both across these three societies and with trends found in other parts of the world. Deinstitutionalization may summarize a global dynamic driven by individuals' pursuit of new possibilities for marital and sexual satisfaction, but the direction of this dynamic and its potential outcomes are by no means universal. Our attention to these three societies, with their shared cultural features and divergent histories, enables us to explore both the roots of change and the multiple possibilities emerging for new marital and sexual futures.

To explain and interpret these changes in marital and sexual mores in contemporary Hong Kong, Taiwan, and China, we first discuss the larger cultural, political, and economic contexts in which couples marry or divorce and in which men and women find intimate or romantic partners. Neither the editors nor any of our contributors presume that a marriage is exclusively a decision of two individuals. Nor do we reduce decisions on whether to marry or divorce to economistic choices intended to maximize individual utility, a perspective Gary Becker adopted when he reasoned that "no person can improve his marriage without making others worse off" (Becker 1991: 108). Rather, our core assumption is that marriage is a complex institution, embedded within a larger system of gendered family and kinship relationships that in turn are embedded within a socially specific economy and polity. Because of these assumptions, our discussion of variation in marital and sexual behavior directly engages questions about how and why boundaries between private and public life shift and under what conditions a society may privilege private over public preferences or distinguish norms for marriage from those for family formation.

Undoubtedly, marriage is an intimate relationship, but because marital status allocates and legitimates societal privileges, rights, resources, and obligations, marriage also is a public institution. For this reason, it is not surprising that Chen Wei-yi chose to hold a public marriage ceremony or that she circulated the news of her wedding widely through social media. In fact, American historian Nancy Cott has argued that for a relationship even to be

identified as marriage, it required a certain degree of public recognition and, perhaps more importantly, “state sanction” (Cott 2000: 1–2). Although Chen Wei-yi’s ceremony lacked the imprimatur of the state, it made a clear claim for public recognition of her married status.

How do we reconcile this persistent emphasis on public recognition with what legal scholar Jana Singer identifies as a greater preference for “private over public ordering” as the driving force behind increased acceptance of diverse forms of intimacy and family formation (Singer 1992: 1453)? We see this private ordering in the same-sex partner choice of Gigi Chao, daughter of Hong Kong tycoon Cecil Chao, as well as in her father’s own lifelong decision never to marry. But Chao’s desire to see his daughter married in a heterosexual union suggests that the balance between private and public claims is still quite contested, in part because of deep-seated Confucian patriarchal family values and societal investments in some forms of marriage and family and not others.

Whereas constitutional protection of the right to “the pursuit of happiness” in the United States may provide a moral basis for privileging private over public preferences and for protecting the rights of one spouse or the best interest of the child, what moral logics dominate in Confucian societies with their greater deference to social hierarchy, minimal protection of personal rights, and continued emphasis on the family as a key social institution? Does the emphasis on family ties and obligations explain why our three societies do not display another key feature of marital deinstitutionalization and demographic transition found in the West: the high rates of childbearing outside of marriage? Although we cannot definitively answer that question, in the chapters to follow we show why it is important to distinguish the deinstitutionalization of marriage from the deinstitutionalization of multigenerational family formation. When the distinction between marriage and family is clarified, it becomes quite clear, for example, that increased access to affordable and effective contraception might lower overall fertility rates but have less direct impact on the likelihood of births outside of marriage.⁴

Attuned to these historical and societal specificities, we train a close eye on how negotiations over the balance of private and public ordering take place within families or between spouses and romantic partners, as well as in the courts, the media, and legislative debates. And we ask what this balance and the struggles it provokes teach us about why previously shared expectations about acceptable marital and sexual behaviors have atrophied or even

disappeared, while norms of childbearing and intergenerational obligation and reciprocity remain more intact.

Because variation in political, economic, and demographic profiles affects the scope and pace of deinstitutionalization, we first provide an overview of six dimensions of changing marital experience in these three societies: higher age at first marriage, rising percentages of never married, reduced legal barriers to divorce, new norms for sexual intimacy, subreplacement marital fertility, and more frequent cross-border marriage. We then step back from these empirical comparisons to consider the broader question of what the deinstitutionalization of marriage means for both personal and family life in Hong Kong, Taiwan, and urban China today.

POSTPONING MARRIAGE OR REJECTING IT ALTOGETHER?

Historically, marriage in Chinese societies was a familial decision initiated by the parents of a son seeking a daughter-in-law to continue the husband's patri-line. Fables of romance and star-crossed lovers certainly flourished in written and oral tales, but in real life young people typically conformed to Confucian expectations of parental obedience and married the mate whom their parents had chosen for them.

Marriage and family formation were sequential and conflated, and every man had the filial obligation to produce offspring within a marriage. Because men outnumbered women and marriage required substantial investments, however, men from poor families risked a future as "bare branches" who never married, whereas rich men often enjoyed the attentions of multiple consorts. By contrast, parents rarely failed to arrange marriages for their daughters, and very few women remained single into adulthood (Hajnal 1953, 1982; Lee and Wang 1999; Wolf and Huang 1980).⁵ While the early-twentieth-century upheavals of war and revolution tore apart families and decimated economic and political institutions, marriage rates for women remained high throughout the first half of the century. Thus, not surprisingly, two of the most widely appreciated dividends of China's 1949 Communist revolution were reduced parental control over mate choice and comparable rates of marriage among young men and women regardless of parental wealth.⁶

Traditionally, Chinese parents preferred that their children marry in their teens, and child betrothal was not an uncommon strategy to guarantee continuation of the family line, ensure harmonious intergenerational relations, and reduce expenditures for marriage.⁷ After 1950, legal reforms and struc-

Table 1.1. Mean age at first marriage, 1970–2005.

	<i>Hong Kong</i>		<i>Taiwan</i>		<i>China</i>		<i>Shanghai</i>	
	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>
1970	30.2	23.8	24.6	22.6	—	19.7	26.2	23.3
1980	28.7	25.3	25.3	23.9	25.1	22.4	27.0	25.1
1990	29.8	28.0	28.8	26.0	23.8	22.1	25.3	23.3
2000	31.9	29.6	30.5	27.6	25.1	23.3	—	—
2005	33.0	30.3	31.9	29.5	25.7	23.6	26.5	24.1

SOURCES: Jones and Gubhaju (2009), Wang and Zhang (1996: fn 4); figures for Shanghai calculated by Yong Cai from 2005 1 percent Population Change Survey.

tural changes in the economies of Hong Kong, Taiwan, and China reduced the incidence of teenage marriage. Over the subsequent decades, the rapid expansion of secondary and then tertiary education and the proliferation of new occupational choices for women accelerated the shift toward a higher age at first marriage. Thus in Table 1.1 we observe that, overall, between 1970 and 2005, age at first marriage rose steadily for both men and women. However, patterns of change are not uniform across the three jurisdictions. For example, while the average age at first marriage for men in Hong Kong has hovered around thirty for more than three decades, in Taiwan the shift upward toward age thirty comes after 1990, and in China, the average age falls after 1980 before resuming an upward trend nearly a decade later.⁸ For women we see a similar pattern of Hong Kong residents experiencing higher average ages than elsewhere and a unique downward turn in China between 1980 and 1990. Moreover, as late as 2005, Chinese men and women, even in the affluent city of Shanghai, married on average several years earlier than their age peers in Hong Kong or Taiwan.

As Yong Cai and Wang Feng explain in Chapter 4, the anomalous decline in age of marriage in China after 1980 derives from the central role of the Chinese government in establishing and enforcing legal and administrative constraints on marriage. Between 1970 and 1980 a nationwide policy of “late marriage” that established minimum ages higher than those prescribed by the Marriage Law had raised the marriage age above what young adults and their parents preferred. Subsequently, as the post-Mao state no longer emphasized delayed marriage as an element of population control policies, couples again married near the legal minimum. Thus, unlike in Taiwan and Hong Kong, where social and economic forces such as the expansion of educational opportunities and the increased employment of young women altered individual

preferences, in China state policies were often most decisive (Davis and Harrell 1993).

Because reduced parental control over a child's mate choice is often associated with a higher age at first marriage, rising age at marriage may indicate greater autonomy for married couples. Upward shifts in age, however, do not necessarily indicate that marriage per se is less desirable. Rather, higher average age at first marriage may merely document postponement of a still highly valued status. However, because historically few Chinese married for the first time after age thirty-five, comparing trends in the percentage of those who have never married by their late thirties does provide one metric for evaluating whether marriage is becoming less universal and thus possibly less desirable over time. Moreover, because the majority of both men and women in contemporary Taiwan and Hong Kong complete a postsecondary degree and China's postsecondary completion rates are rapidly approaching this benchmark, comparing rates of marriage among the youngest cohorts of college graduates may also signal dominant trends in the near future rather than reflecting the situation of only a small elite.

The quantitative data in Table 1.2 summarize the changing percentage of never-married college-educated men and women among three different age cohorts: those between the ages of twenty-five and twenty-nine, between thirty and thirty-four, and between thirty-five and thirty-nine for four census years between 1982 and 2005/2010.⁹ Overall, there is one story for Hong Kong and Taiwan and another for the PRC. Most simply, the trends document that, in Hong Kong between 1982 and 2005, fewer and fewer college-educated men or women had married by their late thirties. When one looks more closely at this oldest cohort, college-educated women in Hong Kong consistently have been less likely to marry than their male peers. In Taiwan, the trends generally parallel those of Hong Kong, but the rates of never marrying are lower, and the most recent figures (2010) show a convergence in male and female rates. In China, by contrast, the trend is quite different. Virtually all college-educated men and women have married by their late thirties; even in Shanghai, only 9.3 percent of men and 5.3 percent of women in the oldest age group had never married in 2005.

The trends captured in Table 1.2 do not prove that college-educated people in Hong Kong and Taiwan are rejecting marriage altogether. Rather, they indicate that the percentage who have yet to marry by their late thirties has risen dramatically since 1982. Nor do these figures definitively document a clear gender asymmetry whereby marriage is more desirable or possible for college-

Table 1.2. Percentage of never married among college-educated men and women, 1982–2010.

<i>Age</i>	<i>Year</i>	<i>Hong Kong</i>		<i>Taiwan</i>		<i>all PRC</i>		<i>Shanghai</i>	
		<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>
25–29	1982	58.3	49.4	65	47	46.6	36	72.9	57.3
	1990	73.6	59.3	78	65	31.3	18.8	61.3	36.2
	2000	83	75.9	85	75	38.2	21.1	57.8	30.9
	2005	87.7	83	—	—	46.9	30	61.3	46.8
	2010	—	—	88	77	—	—	—	—
30–34	1982	33.6	19.6	17	19	7	8.3	20.3	18.5
	1990	34.6	35	28	25	4.3	6	17.6	10.6
	2000	48.1	43.2	39	35	6.2	3.9	20.2	13
	2005	52.2	46.7	—	—	10	5.4	20.8	15.2
	2010	—	—	51	41	—	—	—	—
35–39	1982	8.2	11.4	5	11	1.4	1.8	6.8	4.8
	1990	16.6	21.6	9	15	0.9	2.6	4.5	6.6
	2000	23.6	30.5	15	22	1.6	1.4	9.6	6.1
	2005	27.3	31.3	—	—	2	2.2	9.3	5.3
	2010	—	—	23	24	—	—	—	—

SOURCES: Taiwan figures calculated from census of the Directorate-General of Budget, Accounting and Statistics (DGBAS), with 1980 substituted for 1982 and 2010 substituted for 2005. PRC figures calculated by Yong Cai from census micro samples. Hong Kong figures calculated from 1 percent census samples (1981–1996), 5 percent census samples (2001–2006), Hong Kong Census and Statistic Department 2007a, 2009a, 2009b.

educated men than women. In 2005, 27.3 percent of college-educated Hong Kong men in the oldest cohort had never married; for their female peers it was 31.3 percent. This gap of 4 percent is not trivial, but it is small. In Taiwan in 2010 and in the PRC in 2005, the gap between men and women in their late thirties was virtually nonexistent: a 1 percent difference in Taiwan and 0.2 percent in China. Yet in the public media and in the discourse on “surplus women” in China (Zhang and Sun Chapter 5), one repeatedly finds strong assumptions about the poor marriage prospects of highly educated young women. To address these widely circulating views, we go beyond aggregate rates and turn to our contributors’ findings regarding gender asymmetries in the desirability of marriage or satisfaction with the quality of marriages.

Using a 2009 survey, Kwok-fai Ting (Chapter 6) found that, although marriage is still highly desired by Hong Kong residents, men and women express different levels of satisfaction with marriage. Overall men reported higher levels of satisfaction than did women, and younger men’s satisfaction with their marriage was higher than that of older men. By contrast, levels of satisfaction among women did not vary across birth cohorts. Petula Sik Ying Ho’s

interviews (Chapter 7) with Hong Kong men who have had multiple sexual partners before and during marriage suggest a similar gender asymmetry. Men who openly admit to extramarital relationships describe themselves as respectful of their wives and as better husbands and fathers than their own fathers. Without access to wives' views we cannot know whether the wives of these men share their husbands' portrayals of successful marriages. Ting's findings, however, point to the possibility that marital norms have not kept up with the expectations and desires of Hong Kong women, and Ho's research suggests that Hong Kong men and women may have different understandings of what constitutes a good marriage. Over time, therefore, it is certainly possible that gender-distinct definitions of a good marriage may translate into a different propensity to marry.

Similarly, in Taiwan, our contributors identify norms that seem to make marriage less satisfying for women. However, the trends are not identical with Hong Kong. When comparing attitudes of husbands and wives in three national surveys, Yu and Liu (Chapter 10) find that even when wives work and husbands do not, women perform most of the housework. Moreover, the housework gender gap is most extreme among married women in the youngest cohort between the ages of twenty-five and twenty-nine, who may hold more traditional attitudes than older married women. Similarly in Hsiu-hua Shen's study (Chapter 11) of families in which the Taiwanese husband/father works in China while his wife and children remain in Taiwan, persistent attachment to traditional norms that privilege breadwinning over sexual fidelity allows men the freedom to explore extramarital sexual relationships with Mainland Chinese women while their wives enjoy reduced demands on their household labor but without the same extramarital sexual prerogatives. If such gender asymmetries in expectations of married life continue to grow over time, we may very well observe a similar gap in the appeal of marriage for Taiwanese men and women that we see emerging in Hong Kong. As a consequence, perhaps we should not be surprised that the Internet has yet to feature a male equivalent to Chen Wei-yi and her solo wedding and honeymoon to Australia.

DIVORCE ON DEMAND AND THE SHIFT FROM PUBLIC TO PRIVATE ORDERING

Although imperial Chinese law permitted divorce under certain circumstances, husbands and wives faced very different access to such legal protections. Whereas a man could easily replace his wife with a new spouse or

concubine, a woman encountered much higher barriers to marital dissolution. Women themselves could not initiate a divorce lawsuit against their husband or senior conjugal kin; only their natal family could do so on their behalf (a consequence of the Qing code's prohibition of inferiors litigating against legal superiors), and the criteria for granting a divorce were far more rigorous for women than men.¹⁰ By the early twentieth century, Chinese reformers of differing ideological persuasions saw these traditional practices as both symbolic and substantive obstacles to creating a modern Chinese nation, and they drafted marriage laws that made the freedom to divorce part of a larger effort to assert the "equality [of China] among the world of nations" (Tran 2011: 118; see also Glosser 2003; Li and Friedman forthcoming). In practice, however, the new freedom to divorce codified in both the Nationalists' 1931 Civil Code and the Communists' Jiangxi Soviet code was rarely realized, and high barriers to divorce persisted in both urban and rural China (Bernhardt 1994).¹¹

Similarly, after the establishment of the PRC, Chinese Communist Party (CCP) leaders acted quickly to promulgate a new Marriage Law that included provisions liberalizing access to divorce.¹² In practice, however, after a brief surge in divorces in the early 1950s, rates declined rapidly as a result of cumbersome and politicized review procedures and societal stigmatization of divorcees (Diamant 2000; Platte 1988). In Hong Kong and Taiwan, divorce also was rare during the three decades after 1950 both because of social stigma and because the state took no initiative to substantially liberalize the grounds for granting divorce. The decade after 1980, however, witnessed a dramatic rise in divorce rates across all three jurisdictions, as the legal barriers to voluntary dissolution of marriage fell and societal attitudes shifted (see Figure 1.1).

In the PRC, reduced legal barriers to divorce followed from a major realignment at the apex of political power after the death of Mao Zedong in 1976. Under Deng Xiaoping, the leadership rejected the extreme politicization of private life that characterized the Maoist decades and moved to draft laws that more clearly defined the rights and legal remedies available to individual citizens. One of the first results of this shift was the promulgation of the 1980 Marriage Law, which permitted divorce solely on the basis of the complete breakdown of affection between husband and wife, even in cases where only one spouse sought to dissolve the marriage. Subsequent revisions to the law in 2001 further reduced obstacles to unilateral divorce, and administrative changes in 2003 cleared the way for marital dissolution even in cases

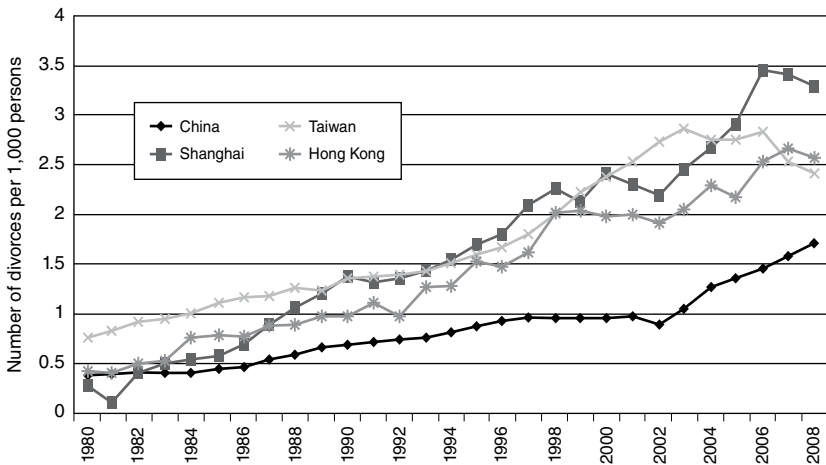


Figure 1.1. Crude divorce rates, 1980–2008.

SOURCES: For Hong Kong, Hong Kong Census and Statistics Department 2007a, 2007b, 2009a, 2009b; for Shanghai, Shanghai Tongji Nianjian 2008; for China, Zhongguo Minzheng Tongji Nianjian 2012; Zhongguo Tongji Nianjian 2012; for Taiwan, Taiwan Department of Household Registration, Ministry of the Interior, “Number and Rates of Birth, Death, Marriage and Divorce, 1981–2012.”

in which the petitioner had been accused of blameworthy marital conduct (Davis Chapter 2).

In Taiwan, there were equally fundamental shifts in the laws regulating divorce, but the drivers of change were not the same as in the PRC. Whereas in the PRC a small national elite took the initiative, in Taiwan reforms were spurred by broad political and societal forces. Thus, for example, revisions to Taiwan’s divorce laws have been embedded within reforms of the civil and family codes that have introduced greater gender equality into the legal statutes regulating child custody allocation and property rights.¹³ Moreover, as Grace Kuo explains in Chapter 9, many of these changes originated from feminist advocacy of divorce as a woman’s “right” as well as from broader democratic pressures on Taiwan’s Constitutional Court to make family laws conform to constitutionally guaranteed rights to equal protection and treatment under the law. Unlike the top-down legal and administrative shifts that liberalized the Marriage Law in the PRC, in Taiwan a powerful women’s movement and democratic political system pushed for legal reforms that remedied certain gender biases in family laws and reduced barriers to divorce.

Nevertheless, despite broad societal and political support for these legal reforms, the 2008 crude divorce rate (CDR) in Taiwan was lower than that in either Hong Kong or PRC cities such as Shanghai.¹⁴ One explanation may

be that, although the legal parameters for approving divorce have expanded dramatically, couples in Taiwan must still divorce on the basis of fault. Hence, to fully understand the statistical face of divorce as reflected in numbers such as the CDR, we must look to both legal reforms and broader social transformations (such as those documented in Chapters 9, 10, 11, and 12) to explain why, despite Taiwan's earlier surge in divorce rates, its divorce trajectory and current patterns do not match precisely those in either Hong Kong or urban China.

Hong Kong's route to more liberal divorce law diverges from those both in the PRC and in Taiwan due to its history as a British colony. Prior to 1997, all those who married or divorced in Hong Kong were subject to British colonial law. Until 1971 the colonial government recognized four forms of marriage, but after the adoption of the Marriage Reform Ordinance of 1971, the law no longer tolerated customary marriage, concubinage, or secondary wives, and legal practice in Hong Kong became more closely aligned with that in the United Kingdom. Henceforth, all marriages were to be registered with the Hong Kong government and conform to legal stipulations of monogamy. Courts recognized no-fault unilateral divorce after a separation of five years. In 1992, the government reduced the number of years couples needed to live separately before applying for uncontested divorce from five years to two and strengthened claims for equal division of conjugal property. As legal barriers to divorce fell, no-fault divorce became the norm; by 2009, only 10 percent of divorces were contested in the courts.¹⁵

Despite variation in the letter of the law and the structure of the judiciaries, courts in all three jurisdictions have adopted a legal logic for granting divorce that privileges private over public preferences, an orientation that scholars first identified as a hallmark of North American and European courts (Cohen 2002; Shanley 2002; Singer 1992). In all three jurisdictions, courts approach marital disputes as a conflict between two individuals and only rarely involve parties other than the two spouses (or in some case minor children) in the proceedings. Thus, even when a contentious relationship with in-laws or financial entanglement with nonkin are central to the breakdown of the marriage, the laws regulating marriage privilege spouses' personal satisfaction and prevent third parties from instigating divorce proceedings.¹⁶

Beyond courts' new privileging of individual satisfaction and deference to "private ordering" (Cohen 2002: 185), recent legal reforms in all three jurisdictions also point to the privatization of the institution of marriage itself. In making this claim we are not adopting the argument of legal scholars such as

Cass Sunstein and Richard Thaler (2008), who advocate privatization of marriage as a correction to the distortions created when government licensing subsidizes one form of intimacy over another. Rather, we use privatization to identify the trend of states retreating from close supervision of marital discord and increasing legal protection for individual preferences on the grounds that marriage is foremost a private relationship. This trend requires us to balance two dimensions of contemporary marriage and marital regulation. On the one hand, we recognize that marriage performs public functions, and we endorse Nancy Cott's view that the institutionalization and regulation of marriage "facilitate the government's grasp on the populace" (Cott 2000: 1). This public face of marital regulation remains prominent when marriages join spouses across national borders or when groups mobilize to legalize same-sex unions. On the other hand, the recent experiences of men and women seeking divorce in our three jurisdictions document a diminished role for states and judiciaries. In each country, the government no longer routinely privileges social stability, the interests of specific groups, or state policies over the individual civil rights of a husband or wife when adjudicating marital disputes.

SEXUAL INTIMACY: BEFORE, DURING, AND WITHOUT MARRIAGE

As in most societies, men and women in China historically followed gender-distinct sexual scripts. Men were allowed, even encouraged, to gain sexual experience before marriage; by contrast, brides were expected to be virgins on their wedding day. During marriage, wealthy men were free to have multiple partners, even concubines, but women could be divorced for even one adulterous affair. After the death of a spouse, men remarried as quickly as they could afford the cost of a new marriage; widows, by contrast, were to remain chaste, remarrying only in cases of extreme poverty.

In the early twentieth century, gender-distinct sexual norms and expectations came to the forefront of efforts to reform marriage as part of broader initiatives to modernize Chinese society. Reformers across the political spectrum sought to popularize companionate marriage and marital monogamy, and they pushed for legal reforms that would prohibit child betrothals, expand access to divorce, and protect women's right to remarry. New legal codes implemented after the fall of the Qing Empire in 1911 criminalized concubinage as adultery and held both married men and women to expectations of monogamy (Tran 2011). In practice, however, Republican courts did little

to enforce restrictions on men's extramarital sexual prerogatives, and gender asymmetries in sexual norms persisted across the region.

Consequential changes came first in the PRC where broad enforcement of the 1950 Marriage Law routinized monogamy and strengthened state regulation of private life. Simultaneously, campaigns to eliminate prostitution dramatically shrunk the commodified sphere of sexual exchange and further restricted sexual relations to the institution of marriage (Hershatter 1997). In this context of close state supervision of intimate relationships, even premarital and extramarital sexual liaisons became politically and socially stigmatized (Evans 1997: 113).

The very different political conditions in Hong Kong and Taiwan after 1949 precluded such direct and comprehensive state regulation of sexual intimacy either within or outside of marriage. Hong Kong mandated monogamy only in 1971, and while organized prostitution was not legal or licensed, brothels openly catered to local and foreign customers. In addition, Hong Kong residents did not face the same political or legal restrictions on sociability and geographic mobility as their PRC counterparts and thus were able to more easily pursue (and if necessary hide from public view) extramarital or non-marital relationships.

Taiwan's experience took yet another route. The Japanese colonial administration (1895–1945) licensed courtesan houses and brothels and made minimal effort to regulate local marriage practices. In the first years after decolonization, the KMT government attacked the culture of “immorality” inculcated under Japanese rule, but the military retreat of more than one million, mostly young, unmarried men in 1949 led the government to outlaw illicit prostitution while simultaneously “managing” women working in licensed brothels (Huang 2011: 87–90). As the sex industry expanded rapidly in the 1960s in response to an enlarged U.S. military presence on the island, police intensified their surveillance of all forms of nonmarital sexuality and pornography (Ding 2000; Huang 2011: 92–100). A new sexual order gradually emerged in which a normative model of “respectable” heterosexual femininity and marital sexuality coexisted uneasily with a persistent sexual double standard for men and women (Chang 1999; Ding and Liu 1999; Ho 2007; Huang 2011: 104–111).

As residents of these three societies experienced the evolving legal, economic, and cultural environments of the 1980s, they did not share identical expectations of acceptable sexual behavior. PRC residents, in cities and

villages, had little premarital sexual experience unless with their affianced, prostitution was criminalized and relatively rare, concubinage was illegal, and long-term cohabitation outside of marriage was invisible if not nonexistent. In Hong Kong, by contrast, heterosexual liaisons were only lightly policed, and men had considerable freedom to pursue sexual intimacy outside of marriage through purchasing sexual services from prostitutes or cultivating longer-term extramarital relationships. Martial law Taiwan was characterized by a more contradictory sexual climate in which, although monogamy was prescribed in law, prostitution flourished in both legal and illicit forms and police responded alternatively by cracking down on nonmarital sexual liaisons and turning a blind eye to men's heterosexual prerogatives.

In the past two decades, however, sexual norms and the state's regulatory roles have partially converged across the three societies. Courtship now routinely involves sexual intimacy for women as well as men (Chang 1996; Chang et al. 1997; Chow and Lum 2008; Farrer 2002; Ho 2007; Yan 2011; Zhang 2011), and even in rural China premarital sex is no longer stigmatized (Friedman 2006; Yan 2003). Yet the place of sexual fidelity within marriage remains contested. Although the courts and public opinion across the region uphold the ideal of marital monogamy, sexual intimacy is now far less exclusively confined to marriage. During divorce hearings, Taiwanese courts can use evidence of extramarital relationships to establish fault, and courts in all three jurisdictions can assign compensation to the nonblameworthy spouse, but marital infidelity for ordinary citizens rarely generates consequences in other domains of social and economic life, such as advancement in the workplace.

At the same time, there are some significant gender disparities in how societal anxieties about sexual fidelity are expressed. Men espouse greater approval of extramarital sex (Parish, Laumann, and Mojola 2007), and a wife's infidelity is generally perceived as more threatening to a marriage than a husband's (Chang 1999; Ho Chapter 7; Shen Chapter 11). In practice, however, an increasing number of women do engage in extramarital and nonmarital sexual relationships. For instance, Farrer and Pei found that Shanghai women were as capable as their male counterparts of finding extramarital partners, making time for and legitimating their affairs, and managing deception in their relationships (Farrer and Sun 2003; Pei 2011). This is likely true for Hong Kong and Taiwan women as well. Yet the stakes in pursuing extramarital relationships and the likelihood of doing so may vary between men and women and among them by class, ethnicity, residence, and educational level. As we

discuss later in the chapter, these distinctions become more salient with enhanced cross-border mobility across the region and the greater sexual opportunities such movement provides for some groups of men and women.

INCREASED ACCEPTANCE OF SAME-SEX INTIMACY

In all three jurisdictions, the state has reduced its surveillance and regulation of sexual relationships between consenting men and women. However, to what extent have there been comparable shifts in recognizing forms of intimacy that do not align with heterosexual desires? For some observers, the years since 1980 map onto a linear shift from “sex for reproduction” to “sex for pleasure” (Pan 2006: 28). And, indeed, when one observes the greater tolerance for premarital and extramarital sexual relationships between consenting men and women and the legal position that emotionally unsatisfying marriages provide sufficient grounds for granting divorce, it appears that the logic of “sex for pleasure” has gained legitimacy in all three societies. However, perhaps an even stronger indicator of reduced state oversight of sexual relationships is to be found in changing legal attitudes toward homosexuality and the increased social visibility and acceptance of same-sex relationships.

In imperial China, the social and erotic expression of same-sex intimacy was generally confined to a continuum of behaviors that coexisted with heterosexual marriage, so long as such behaviors did not challenge existing social hierarchies (Chou 2000; Hinsch 1990; Sang 2003; Wu 2002).¹⁷ The Ming and Qing legal statutes did penalize certain sexual acts, specifically anal sex between men, whether forced or consensual (Kang 2012; Somer 2000), but overall the law did not criminalize nonheterosexual relationships (Balzano 2007; Chou 2000; Hinsch 1990; Ruskola 1994). The concept of homosexuality as a specific sexual orientation, even identity, was introduced in the early twentieth century through Western sexology discourses but did not enjoy widespread societal or legal recognition (Sang 2003). Following the precedent set by the revised 1907 Qing legal code, Republican laws did not explicitly criminalize same-sex sexual behaviors, including sodomy.

After 1949, sustained campaigns against prostitution, concubinage, and nonmarital intimacy in the PRC created a more restrained and repressed sexual climate. Yet the government took no steps to alter legal statutes so as to criminalize sodomy or other homosexual acts (Balzano 2007; Kang 2012: 234–236; Li 2006). In practice, however, those who engaged in consensual same-sex relations were often sanctioned outside of the legal system: Party

membership could be revoked, jobs lost, and the individuals detained without trial or even sent to labor camps (Balzano 2007; Kang 2012: 236). But, without explicit statutes, the PRC courts could not criminalize homosexuality; they could only condemn homosexual acts as harmful to society.¹⁸

In an ironic about-face, the post-1978 effort to build a rule of law in the PRC explicitly criminalized sex between men by identifying male anal sex with hooliganism in the new criminal law. Despite this criminal association, punishment typically followed only when such behavior was coerced or violent (Balzano 2007; Kang 2012). Thus it was not homosexuality (同性戀) as a category that came under legal sanction but a specifically male sexual behavior. By contrast, sexual relations between women have never been identified as a legal problem in the PRC (Kang 2012). Reinforcing this process of legally codifying criminal sexual behavior was the 1989 pathologization of homosexuality in the second edition of the *Chinese Classification and Diagnostic Criteria of Mental Disorders* (Kang 2012).

In the second decade of PRC economic and legal reforms, however, the trend to criminalize homosexual intimacy was reversed. The Revised Criminal Law of 1997 deleted any specific reference to the crime of hooliganism that previously had been used to punish male anal sex (Jeffreys 2006; Kang 2012; Li 2006; Rofel 2007).¹⁹ In 2000, the Ministry of Public Security announced that “members of the Chinese public have the right to choose their own sexuality”; in 2001, homosexuality was no longer explicitly pathologized as a mental illness (Jeffreys 2006: 10; Kang 2012). Transgender individuals were granted the right to marry in 2003, and recent years have witnessed a spate of public wedding ceremonies for gay and lesbian couples, although such marriages to date are not sanctioned by the state.²⁰

Currently there are over 300 LGBT organizations throughout China that work to advance the rights and the public visibility of gay men and women through magazines, hotlines, support groups, and even an Internet television station dedicated to gay viewers (Rofel 2013). Nevertheless, legal reforms and the growth of grassroots nongovernmental organizations (NGOs) and media do not, by any means, indicate a wholesale acceptance of gay sexuality or the end of repressive actions on the part of police, the medical establishment, or PRC society more generally. To this day, administrative policies that criminalize behaviors deemed to “disrupt the public order” are used by police to detain men found engaging in consensual sex and to disperse openly gay gatherings and events.²¹ Although the very existence of these events points to a

more open societal attitude toward homosexuality and its presence in the PRC public sphere, it would be rash to suggest that homosexual relationships have acquired the same kind of normativity attributed to heterosexual intimacies or that legal recognition of same-sex marriage is an imminent possibility in the PRC.

In Hong Kong, British law and legal precedents have generally shaped the overall direction of both local ordinances and the application of legal statutes. In the treatment of homosexual and transgender relationships, however, Hong Kong law has often lagged behind legal reforms not only in the United Kingdom but even in the PRC. Only in 1991 did the Hong Kong Legislative Council decriminalize private, adult, noncommercial, and consensual homosexual relations, and only in 2005 did the High Court strike down laws that created a different age of consent for same-sex as opposed to opposite-sex sexual acts. Gays and lesbians still confront discrimination in their daily lives and lack legal recognition of their relationships and family forms (Erni Chapter 8).

Public bias in Hong Kong extends to transgender individuals and couples as well. Only in May 2013 did the high court reverse two lower court decisions prohibiting Miss W, a transgender woman, from marrying her boyfriend (Erni Chapter 8). Reaffirming a procreative heterosexual bias in legal definitions of marriage, the judge ruling against Miss W argued that “it is difficult and unrealistic to consider marriage to be entirely unconnected with procreation” (Voigt 2013), an association that the United Kingdom had rejected as early as 1947 (Liu 2011). Despite growing public support in Hong Kong for new laws to penalize discrimination on the basis of sexual orientation and greater acceptance of same-sex marriage,²² the narrow legal victory in the Miss W case, as John Erni contends in Chapter 8, was secured in large part by claiming that hers was not a same-sex marriage. Although the final ruling acknowledged new bases for defining gender and sexual intimacy, it nonetheless reaffirmed that legal marriage in Hong Kong remained a union of one man and one woman.

Taiwan legal codes followed the precedent set by the Republican government on the mainland prior to 1949 by not explicitly criminalizing sodomy or homosexuality. Nevertheless, both under martial law and after 1987, sexual and gender deviancy were punished under statutes that banned behavior deemed “deleterious to virtuous customs” (妨害風化罪 or 妨害善良風俗).²³ Because homosexuality was never explicitly named or prohibited in law, its threat was simultaneously nebulous and yet far reaching. As Fran Martin

argues, nonnormative sexualities have acquired public intelligibility in Taiwan through “a set of laws that remains anxiously preoccupied with protecting the moral and cultural integrity of the Chinese nation” (Martin 2003: 14; Huang 2011). In this regard, Taiwan resembles the PRC, where police crackdowns on businesses and events associated with homosexuality are justified to this day in the name of “public morality” (Rofel 2007: 96).

That said, societal acceptance of gays and lesbians in Taiwan has expanded rapidly over the past two decades, and, although openly declaring a nonheterosexual identity or preference is not without consequence, more women and men have found ways to maintain same-sex relationships throughout adulthood. Taipei now hosts the largest annual gay pride parade in all of Asia, and same-sex sexuality and identity have become recognizable and at times sensationalized topics discussed avidly in the media and public discourse. Declining marriage rates across Taiwanese society provide some support as gays and lesbians seek to deflect familial pressure to marry and bear children (Hu 2011). A 2013 poll commissioned by the Taiwan Alliance to Promote Civil Partnership Rights found that 53 percent of those surveyed favored legalizing same-sex marriage (Lee 2013).

The current absence of explicit legal protections for gays and lesbians, however, creates a climate of vulnerability with regard to the right to share property, make medical decisions, and bear or adopt children. These vulnerabilities have sparked ongoing activist efforts in Taiwan to recognize civil unions as well as same-sex marriage, both goals as yet unrealized (Kuo Chapter 9; Lee 2013; “Support for Same-Sex Marriage” 2013). When a transgender marriage case came to public attention in 2013, Taiwanese officials followed the precedent set by the Hong Kong courts in the Miss W case, upholding the couple’s right to remain married but explicitly rejecting any framing of the case that would endorse same-sex marriage rights (Hsu 2013; Lin 2013).

If we look broadly across each of the three jurisdictions over the past twenty years, we see that the letter of the laws and their enforcement have reduced sanctions against heterosexual and homosexual relationships outside marriage. Paralleling these legal changes have been tectonic shifts in public attitudes toward previously stigmatized sexualities (Kong 2010).²⁴ Nevertheless, despite these significant shifts in legal and community norms, at present all three jurisdictions still restrict marriage to one man and one woman, effectively eliminating the right to marry for gays and lesbians. Thus, although the

overarching conclusion about a sexual revolution across these Chinese societies holds true, legal rules and logics remain tethered to heterosexual moorings.

MARRIAGE, PARENTHOOD, AND SUBREPLACEMENT FERTILITY

Throughout the world, marriage historically has preceded parenthood, and children born to unmarried parents or fathered by someone other than their mother's husband were often stigmatized. In the wealthy countries of the West these conventions held through most of the twentieth century, but attitudes shifted after 1970; by 2009, more than a third of births in the OECD (Organisation for Economic Co-operation and Development) countries were to unmarried women or women not in a legal relationship with the father. In countries as economically and culturally diverse as Mexico, France, Sweden, and Slovenia, fewer than half of children were born to married mothers by 2009.²⁵ This pattern of nonmarital childbearing has been coupled with dramatic declines in overall fertility (Lesthaeghe 2010). In many parts of the world, therefore, the new millennium has simultaneously witnessed very low rates of childbearing and the "delinking" of procreation from marriage.

In Chinese societies, attitudes toward ideal family size are also changing, but attitudes that link (and sequence) marriage and parenthood have not moved in the same directions as in OECD countries. Despite soaring divorce rates, increased tolerance for nonmarital sexuality, and below-replacement fertility in all three of our locales, childbearing continues to take place largely within the context of marriage.²⁶ In other words, conditions and value orientations that delink procreation from marriage must be differentiated from those that shape decisions about the number of children a woman will bear and the timing of childbearing.

During the 1960s and 1970s, governments in all three jurisdictions introduced family planning and modern contraception to reduce birth rates; and, in response, the total fertility rate (TFR) fell dramatically in Hong Kong, Taiwan, and China.²⁷ However, the actions of the PRC government were more deliberate and ultimately more interventionist than those in the other two locales. As Yong Cai and Wang Feng (Chapter 4) explain, the PRC government's initial effort to reduce births combined policies to enforce a higher age at first marriage with improved access to contraception and incentives to delay second births and prohibit third or higher-order pregnancies. However, with the

introduction of the one-child policy in 1979, the controls and penalties escalated: Not only did the new policy dictate specific birth quotas, but it also imposed heavy penalties on those who failed to comply with the policy.²⁸ The PRC, therefore, was the only state of the three to directly dictate marital fertility. In Hong Kong and Taiwan, by contrast, governments never proscribed the number of births either inside or outside of marriage, and the radical decline in fertility was the decision of individual couples responding to their own calculations of the value of becoming pregnant, enlarging the size of their family, and supporting their children throughout their educational years.

Recent responses to subreplacement birth rates also vary among our three settings. By 2005 the TFRs in Hong Kong, Taiwan, and urban China all hovered at the subreplacement rate of 1.0, but only in Hong Kong and Taiwan have governments expressed growing anxiety about plummeting birth rates.²⁹ Taiwan President Ma Ying-jeou recently described the country's shrinking number of births as "a serious national security threat" (Branigan 2012). Hong Kong officials have discussed tax incentives to encourage couples to have a third child, and the Taiwan government has offered subsidies for child care, and in some locales, even a monetary bonus for each birth (Branigan 2012; Hogg 2005). Nevertheless, neither government has engaged in systematic efforts to destigmatize childbearing outside of marriage, and both Taiwan's Artificial Reproduction Act and Hong Kong's Human Reproductive Technology Ordinance restrict access to reproductive technologies to married couples. Thus, even when these governments consider incentives to increase births, they do not waiver in their disapproval of nonmarital childbearing.

Because none of our contributors directly compares an individual's desire to be married with the desire to have a child, we cannot analyze whether these extremely low fertility rates indicate a deliberate rejection of parenthood or whether the desire to have children differs between men and women. Were we to have such information, we could better evaluate the extent to which contemporary patterns of marriage and childbearing represent a radical break with traditional norms of family formation and the high value placed on becoming a parent. If we had these data we also could follow Lesthaeghe's (2010) analytic trajectory and estimate whether current low levels of fertility will persist or whether these societies will experience a fertility rebound as women bear children later in life regardless of marital status. Although none of our authors directly explored this question, recent demographic research on declining birth rates across Asia provides a useful framework for comparison. In

general, this literature confirms our argument that changes in marriage must be understood alongside both transformations and continuities in the norms for family formation.

In his analysis of Western Europe's second demographic transition (SDT), Lesthaeghe argued that the SDT was driven by a fundamental "disconnection" (2010: 211) between marriage and procreation supported by a cultural shift that endorsed "individual autonomy and self-actualization" (2010: 245). Lesthaeghe supported his theory of diffused SDT trends by adding data on East Asia to suggest that postmaterialist and expressive value orientations were emerging in Asia as well, especially in Japan, where he found greater evidence of premarital cohabitation, conception, and what he termed "shotgun marriages" (2010: 237–238). In concluding his assessment of whether Japan was, in fact, experiencing a second demographic transition similar to that in the West, however, Lesthaeghe argued that "the only missing ingredient so far is parenthood among cohabiting couples" (2010: 239). Needless to say, this "missing ingredient" is not trivial, especially when one considers decisions about becoming a parent in relation to marriage and family formation.

Looking across East and Southeast Asia, demographers Gavin Jones and Bina Gubhaju (2009) find that, despite more than a decade of subreplacement fertility rates, marriage and parenthood remain tightly linked. Even with educational parity among women and men and an increase in the age at marriage across the nine countries surveyed by the authors, they conclude that "marriage can rarely be separated from its expected outcome in Pacific Asia, the bearing and raising of children" (2009: 258). Similarly, in Hong Kong, Taiwan, and China the linkage between marriage and parenthood and the nearly universal expectation that childbearing should occur only within marriage continue to define the parameters of marital deinstitutionalization. Ultimately, then, we disagree with Lesthaeghe's argument that similar value orientations have spurred reduced fertility rates in Europe and Asia (see also Jones 2007). Although we document similar declines in childbearing within marriage, we do not find a concomitant trend of childbearing outside of marriage that would support the conclusion that marriage and parenthood have become definitively "delinked" in these Chinese societies.³⁰

CROSS-BORDER INTIMACIES AND MARRIAGES

For centuries, even millennia, China has been a civilization where ideas, objects, and people moved along trade routes and across lines of conquest that

stretched far from the metropole. Sojourning men, hundreds or even thousands of miles away from their natal home, returned periodically to marry and faithfully sent remittances to build homes for children and grandchildren whom they might never know. Parents contracted marriages for their children by moving strategically within the same nested hierarchy of markets that allowed for the extensive flow of crops, goods, and services (Duara 1988; Skinner 1964–1965). Moreover, because the norms of succession and inheritance were more uniform and obligatory in China than in societies that used wills and testaments to cement family fortunes, marriage provided a valuable opportunity for both individuals and families to forge societal alliances and allocate resources (Watson 1991).

By the mid-twentieth century, however, the consequences of civil war and British colonial policies constrained the geographic reach of such marital strategies. Taiwan became a *de facto* independent state after 1949, and both Beijing and Taipei blocked family reunification of spouses or parents and children separated by the Taiwan Strait. Crossing the border between Hong Kong and Guangdong became more difficult after 1960, and families that for generations had arranged marriages effortlessly across the border restricted them to local marriage markets. Beijing turned its back on the economic resources of the coastal areas, blocked Hong Kong radio and television, and stigmatized citizens with kin in Taiwan. Family connections that had stretched across these borders and been reproduced through adoption, fictive kin, and betrothals were severely attenuated if not completely severed.

After the PRC's opening to world markets and global trade in 1979 and the resumption of cross-Strait ties in 1987, these barriers to cross-border intimacy and marriage quickly began to erode. With Hong Kong's subsequent reintegration into China's national orbit in 1997 and the expansion of Taiwanese investment in China throughout the 1990s and 2000s, opportunities multiplied for men and women to meet and form intimate bonds across borders. The gendered impact of these cross-border intimacies has not been uniform, however, and such differences have fostered growing gender disparities in marital and sexual experiences in all three locales. For instance, because Hong Kong men in their twenties and thirties are far more likely either to be transferred by their companies or to seek new entrepreneurial opportunities in China than Hong Kong women, men have more opportunities to find a spouse or lover in China than their female counterparts. Moreover, because the Pearl River Delta has attracted millions of young unmarried women from across China to work in factories and offices, the sex ratio is often in the man's favor. As a

result, by 2006, 42.7 percent of marriages in Hong Kong involved a spouse from the mainland, 84 percent of whom were female (Hong Kong Census and Statistic Department 2009a).

Among married couples, long-term separations as a result of cross-border migration provide different kinds of opportunities for husbands and wives. Shen (Chapter 11) finds that, among Taiwanese couples where the husband works in China and the wife resides in Taiwan with their children, both spouses adopt gender-specific strategies for living as temporary singles. Like Chinese women who reside apart from their husbands (Liu-Farrer 2010), Taiwanese wives may take pleasure in decreased housework pressures and greater opportunities to enjoy leisure activities with peers. Unlike their Chinese counterparts, however, Taiwanese women may be less likely than their husbands to engage in extramarital sexual relationships (Shen Chapter 11; Freeman 2011: 211–218; Liu-Farrer 2010). Despite these differences, in both cases migration and the marital separations that ensue often reinforce traditional gender role expectations of husbands as economic providers and wives as domestic housekeepers and caretakers. Certainly, wives actively create meaningful lives for themselves when separated from their husbands, but these marital separations do not necessarily transform dominant gender role expectations within marriage.

When marriages join spouses of different nationalities, gender asymmetries may combine with other forms of inequality and marginalization. Since 1987, unions between Taiwanese and PRC citizens have created hundreds of thousands of new families, but only a tiny fraction of these have included a Taiwanese woman. Moreover, because the national origin of noncitizen spouses matters more in Taiwan than in Hong Kong due to the different sovereign statuses of the two jurisdictions, Chinese wives in Taiwan face heightened state scrutiny of their marriage motives in a context where cross-Strait marriages stand in for broader political contestation between China and Taiwan. Although political and social concerns about Chinese wives are not altogether absent in Hong Kong, such concerns do not translate into policy responses such as those in Taiwan that create unequal trajectories toward citizenship and national incorporation for spouses of “Mainland” as compared to “foreign” origin (Friedman Chapter 12).³¹

A NEW ERA OF FAMILY, MARRIAGE, AND SEXUALITY?

Across the centuries, states and markets have regulated marriage and family formation in Chinese societies. In accordance with Confucian orthodoxy,

state regulation was indirect, and markets functioned primarily at the microlevel. The emperor exercised authority over men in their official roles, and men in turn ruled their families as a microcosm of the imperial state. These parallels extended to sexual and marital relations: Just as the emperor's preference for a consort trumped that of all other men, so fathers chose wives for their sons and husbands dictated the needs and desires of their wives. Within this Confucian, patriarchal universe, marriage strategies were family strategies designed to maximize the assets—human and material—of the patrilineal family.

In the early twentieth century, reformers of many political persuasions attacked Confucian orthodoxy and identified reform of the family with reform of the state (Glosser 2003). In the stronger, modern China they envisioned, parents would not control their children's choice of a spouse and marriage would be based on love between a young man and woman. Within these new modern marriages, men and women would have equal rights to divorce and to own property. However, even as reformers criticized the hierarchical and mercenary strategies of the existing status quo, they did not reject the core set of family roles and responsibilities anchored in principles of collective and intergenerational reciprocity that limited the degree to which the institution of marriage could be viewed as the "personal property" of two spouses (Ocko 1991: 320).

That both the Nationalists and Communists conflated reform of the family and the fate of the nation is well established. What is less obvious, and yet essential to understand when we assess more recent changes in marriage, is the enduring respect for the value of intergenerational reciprocity and lifelong commitments to family ties that extend beyond those between a husband and wife. Thus, for example, when Jun Zhang and Peidong Sun document Shanghai parents' deep engagement in their children's marriages (Chapter 5), when Hsiu-hua Shen explains the family commitments that allow Taiwan couples to remain married despite long separations and repeated sexual infidelity (Chapter 11), or when married men in Hong Kong with multiple sexual partners identify themselves as better husbands and fathers than their own fathers (Ho Chapter 7), we see quite clearly how marriage remains inextricably linked to the institution of family in contemporary Chinese societies. In short, while we clearly observe the deinstitutionalization of marriage in these three Chinese societies over the past thirty years, we simultaneously identify strong continuities in the "rules of the game" for family formation, especially in the

insistence that marriage precede childbearing and in broad support for the norm of lifelong reciprocity between generations. As a result, the institution of family appears more robust and far less deinstitutionalized across the region than that of marriage.

One confirmation of this conclusion can be found by briefly comparing the different family strategies of gay men and lesbians.³² Across all three societies, gay men consistently report feeling more pressure to marry than their lesbian counterparts precisely because they recognize a filial obligation as sons to produce children who will continue the patriline; as a result, gay men are more likely to marry heterosexually to fulfill this obligation (Chou 2000; Hu 2011; Kong 2010; Rofel 2007). Lesbians, on the other hand, may be better positioned to withstand familial and societal marital expectations precisely because their procreative capacities are not deemed essential to natal family reproduction, although as daughters they, too, are socialized to view marriage as part of the normative transition to adulthood (Engebretsen 2009; Hu 2011). In the absence of same-sex marriage as a legal option, gay men and lesbians face different pressures with regard to marriage and childbearing, and these very differences confirm the continued relevance of filial obligations and intergenerational reciprocity to the institution of marriage in these three Chinese societies.

As anthropologist Lisa Rofel writes about the PRC: "Family is the metonym for belonging, not simply to the nation-state but to Chinese culture writ large" (2007: 100). Given this familial model of cultural and national belonging, how might we reassess the relationship between family and nation and the legal privileges states create for married persons across these Chinese societies? Both Erni and Kuo (Chapters 8 and 9) adopt a logic similar to that advocated by American political philosopher Jean Cohen, who argues that "it is no longer justifiable to construe a single model of intimate association as intrinsic to . . . national identity nor to assume that there is only one morally right way to conduct intimate relationships" (2002: 14).³³ Building from this position, Erni and Kuo argue that in Hong Kong and Taiwan marriage need not be tied to procreation, childbearing need not necessarily follow marriage, and marriage need not be limited to heterosexual unions. However, courts in both of these jurisdictions continue to reject arguments that depart from traditional understandings of marriage as a heterosexual, procreative union. More flexibility is evident in responses to cross-border heterosexual intimacies, although as the chapters by Ho, Shen, and Friedman underscore, state

regulation of cross-border unions also reflects the contested status of families formed across China, Taiwan, and Hong Kong. The gendered role expectations of these new intimacies, the presumed class affiliations of those who pursue cross-border relationships, and fears in Hong Kong and Taiwan about the various threats posed by Mainland Chinese women confirm that the relative weighting of private and public ordering remains very much a matter of debate in these societies, especially when sexual intimacies and family formation stretch across increasingly porous political boundaries.

At the beginning of this introduction, we emphasized that marriage is a multifaceted relationship, simultaneously an intimate, private bond and a social, public institution. The chapters to follow document the diverse negotiations currently taking place across Taiwan, Hong Kong, and urban China as a result of this complex interface of private and public needs and desires. Given the broad structural changes in the context and content of marriage today, it is not surprising that the authors characterize the contemporary marital landscape as highly contested and contradictory. Only through their detailed assessments can we grasp the diverse trajectories of change and the potential futures for marriage, sexuality, and family that they portend.

NOTES

1. "Taiwanese Woman to Marry Herself" 2010; "The Woman Who Married Herself" 2010.

2. AA制婚姻; retrieved on December 13, 2013, from http://v.youku.com/v_show/id_XMzc1MjIxODI0.html.

3. BBC News Asia, "Hong Kong Tycoon Recruits Husband for Lesbian Daughter"; retrieved on September 9, 2012, from <http://m.bbc.co.uk/news/world-asia-19733003>.

4. The percentage of nonmarital births in the PRC is difficult to confirm due to the politicized nature of such statistics with implementation of the one-child policy. We found estimates of 5.6 percent for 1993 ([http://en.wikipedia.org/wiki/Legitimacy_\(law\)](http://en.wikipedia.org/wiki/Legitimacy_(law))) but no recent figures. Reports of local governments fining women who bear children outside of marriage suggest that the practice is ongoing despite its illegality under national population policies (Zhou and Wang 2013). In Taiwan, nonmarital births grew from approximately 1.7 percent in 1981 to 4.51 percent of all births in 2010 (Taiwan Department of Household Registration, Ministry of the Interior, "Number and Rates of Birth, Death, Marriage and Divorce, 1981–2012"). Hong Kong rates of nonmarital childbearing are the highest of the three, rising from 5.8 percent of all births in 1981 to 13.9 percent by 2010 (The Hong Kong Council of Social Service, 2013; available at www.socialindicators.org.hk/en/indicators/family_solidarity/27.4). None of these figures, however, comes close to percentages for the United States and the

European Union. By 2011, U.S. rates of nonmarital childbearing were just shy of 40 percent, and in the European Union as a whole, 40 percent of births took place outside of marriage. Moreover, countries as diverse as Belgium, Bulgaria, Estonia, France, Iceland, Slovenia, Norway, and Sweden showed rates of 50 percent or higher (Carl Haub, "Rising Trend of Births outside Marriage," Population Reference Bureau; retrieved on September 2, 2013, from www.prb.org/Publications/Articles/2013/nonmarital-births.aspx).

5. One exception to this norm of universal marriage for women was the practice of sworn spinsterhood among a small community of women in the early twentieth-century Pearl River Delta region (Sankar 1978; Siu 1990; Stockard 1989).

6. For example, by 1982 among those between age forty and forty-four, 94.3 percent of men and 99.8 percent of women had married at least once (1982 Census, table 71; available at <http://chinadataonline.org/member/census1982/ybListDetail.asp?ID=1>).

7. In those areas of the Mainland and Taiwan where young girls were brought in as adopted daughters-in-law (童養媳) when a son was still a child, brides could be several years older than their future husbands. As Wolf and Huang argued, these arrangements were motivated less by poverty and more by the desire to cultivate harmonious mother-in-law and daughter-in-law relations. Because couples were raised together as children, however, these marriages often were less "successful" in producing offspring, and a significant number ended in divorce (Wolf and Huang 1980).

8. Ideally we would want median rather than mean ages because means are distorted upward by the small number of individuals who marry at unusually old or young ages. However, data limitations require that we use mean age at first marriage.

9. Because of different census years in the three jurisdictions, we will not have data for every year.

10. A woman's family could pursue divorce only under a highly limited set of conditions: for instance, spousal abandonment of more than three years, severe physical abuse (by the husband or his parents or grandparents), or the husband selling his wife to another man (Bernhardt 1994: 189).

11. The Nationalist 1931 Civil Code specified ten conditions for divorce that applied equally to men and women; the Communists' Jiangxi Soviet code permitted unconditional divorce in principle.

12. Article 17, 1950 Marriage Law. On the face of it, the law guaranteed no-fault *ex parte* divorce because it did not specify any conditions under which divorce would be granted. But the procedural requirement of mediation undermined the law's promise of divorce on demand, creating a tool that could be applied loosely or strictly according to Party agendas and societal responses (Huang 2005).

13. Family law reforms in 1996 and 1998 gave mothers and fathers equal parental rights and eliminated the provision automatically granting child custody to the father on divorce (Lee 1998–99). Changes to the law in 2002 aimed to redress women's

weaker property claims in marriage and recognize the contributions made by a non-wage-earning spouse to the marital estate. These and later reforms throughout the 2000s were initiated under pressure from a growing women's movement that fought to eliminate traditional social norms and cultural principles enshrined in family law that discriminated against women as daughters, wives, and mothers (Chen 1999; Kuo 2007; Lee 1998–99).

14. The CDR in Hong Kong rose from 0.3 in 1978, to 0.91 in 1991, to 2.01 in 1998, to 2.55 in 2008. For China as a whole the rate rose for these years from 0.18 to 0.6 to 0.96 to 1.7, but the Shanghai CDR rose from 0.27 in 1978 to 1.32 in 1991, to 2.26 in 1998 to 3.3 in 2008. In Taiwan, the shift for these years was from 0.63 to 1.26 to 2.0 to 2.43 by 2008 (Sources: for Hong Kong, Hong Kong Census and Statistics Department 2007a, 2007b, 2009a, 2009b; for China, *Zhongguo Minzheng Tongji Nianjian* 2012, *Zhongguo Tongji Nianjian* 2012; for Shanghai, *Shanghai Tongji Nianjian* 2008; for Taiwan, Taiwan Department of Household Registration, Ministry of the Interior, "Number and Rates of Birth, Death, Marriage and Divorce, 1981–2012."

15. Based on an interview on June 19, 2009, with a lawyer at the Hong Kong law firm that claimed to handle the highest number of divorce cases.

16. In her research in rural China, Ke Li found that relatives and friends may be deeply involved in the process of mobilizing for a court appearance and may be asked to testify in court (see Li and Friedman forthcoming). Legally, however, the court may address the grievances of only the two principles.

17. For instance, in some late imperial portrayals of "utopian polygamy," female same-sex intimacy was portrayed as compatible with and even supportive of polygamous marriages (Sang 2003: 49–52; Wu 2002).

18. For example, in the famous 1957 Heilongjiang case of consensual sex between two male labor camp inmates, the court could not penalize their behavior as criminal due to the absence of explicit legal prohibitions (Balzano 2007; Kang 2012).

19. Kang (2012) builds on existing legal scholarship within China to argue that the decriminalization of male anal sex after 1997 was an unintended consequence of efforts to regularize China's legal codes and strengthen the rule of law. He contends that the PRC legal system has never included homosexuality under its purview but only specific sexual behaviors. After 1997, sex between men could also be criminalized as a form of prostitution.

20. Two recent instances of public wedding ceremonies involving same-sex couples, one in Beijing in 2009 and one in Fuzhou in 2012, suggest that public acceptance may be growing ("Gay Wedding Reflects Growing Tolerance in China" 2012; Zhang 2011). For the rights of transgender individuals to marry in the PRC, see "Hong Kong Court Allows Transgender Woman to Marry a Man" 2013.

21. For instance, in its twelve-year history, the Beijing Queer Film Festival has experienced repeated harassment from public security officials intent on forcing the

organizers to cancel the festival. In response, festival organizers have shifted to a guerilla style of film screenings and discussions, moving from site to site to avoid police detection. The most recent festival held in June 2013 was the first to take place without government interference (Beijing Queer Film Festival; retrieved on August 15, 2013, from www.bjqff.com).

22. In a 2005 survey, only 28.7 percent of respondents supported a law barring discrimination, but in a November 2012 survey support rose to 76 percent. In 2005, 38.9 percent of respondents thought homosexuality conflicted with community morals, but by 2012, 71.5 percent said they had absolutely no prejudice against homosexuals and roughly similar proportions (32.7 percent and 39 percent) either explicitly supported or explicitly rejected same-sex marriage (Lau 2011: 7730; Chung et al. 2012; "Sexual Minorities Need Legal Shield" 2012).

23. See Criminal Law (刑法), Book 2, Chapter 16-1 (available at <http://law.moj.gov.tw/LawClass/LawParaDeatil.aspx?Pcode=C0000001&LCNOS=%20230%20%20%20&LCC=2>) and the Social Order Maintenance Act (社會秩序維護法), Book 3, Chapter 2, Articles 80–84 (available at <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=D0080067>).

24. See also Human Rights Watch report of 2012 of an incident on July 5, 2011, where a CCTV host in the PRC urged greater respect for gays and lesbians in response to a homophobic slur by a celebrity guest (2012: 322).

25. "Share of Births Out of Wedlock and Teenage Births." Social Policy Division, Directorate for Employment, Labour and Social Affairs, OECD. Last updated February 24, 2012. Retrieved on December 16, 2013, from www.oecd.org/dataoecd/38/6/40278615.pdf.

26. See note 4 above.

27. In 1970 the TFR was 3.42 in Hong Kong, 4.0 in Taiwan, 3.2 in urban China, and 6.3 in rural China. By 1990 the TFRs were respectively 1.28 in Hong Kong, 1.81 in Taiwan, 1.3 in urban China, and 2.4 in rural China (Chen et al. 2011; Tu 2000: 23; World Bank 2012).

28. There are exceptions to the one-child limit for women with urban residence. In early years, women whose healthy child had died or who had given birth to a disabled child were permitted a second birth as long as they could prove that the next pregnancy would not result in a second disabled child. In marriages where both spouses were only children, they were permitted a second birth five years after the first, and after 1990 several provinces began to allow a second child in cases where only one partner was an only child. In addition, most provinces allow second births to women who have remarried, regardless of whether they or their new husband had a child in their first marriage (Gu et al. 2007).

29. In 2005 the TFR in Hong Kong was 0.97, in Taiwan 1.12, in urban China 1.0, and in rural China 1.7 (Chen et al. 2011; World Bank 2012).

30. Lesthaeghe also admits that his model is unable to account for the impact of state-driven population policies such as China's one-child policy, which he argues would have to be lifted before one could assess whether China was experiencing a second demographic transition (2010: 248, n8). Unlike this volume, therefore, his analysis gives little attention to legal reforms or state policy consequences.

31. The term *foreign spouse* in Taiwan typically refers to wives from Southeast Asia, especially Vietnam, Indonesia, Thailand, Cambodia, and the Philippines.

32. One could also see the centrality of intergenerational ties in the emphasis on family in Hong Kong's gay pride parade. In 2005, the Hong Kong parade emphasized "the primacy of family life in Chinese culture," and participants marched behind such banners as "Hate is not a family value" and "Don't be prejudiced against your children" (Lau 2011: 793).

33. Sociologist Judith Stacey makes a similar argument but ties it specifically to democratic forms of governance: "A democratic state has no business dictating or even favoring any particular brand of intimacy or family life. It should value the quality and substance of relationships over their form" (2011: 202).

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