CHAPTER EIGHT

DIVORCE DENIALS

Judicial Discourse and Judicial Decision-Making

Chapter 7 contains findings from a qualitative analysis of selected examples of judges' treatment of domestic violence allegations. We saw that judges normalized abuse by discounting its severity. We also saw that they discounted and turned on its head evidence women submitted in support of their abuse claims. My approach of thoroughly reading, one by one, the full text of – and *qualitatively* drawing out salient themes across – selected court decisions fruitfully illuminated the rhetorical strategies by which judges invalidated women's allegations of domestic violence. This approach does not, however, support an assessment of how widely these themes were shared in the full corpus of over 100,000 first-attempt divorce adjudications in my two samples. Nor can it sustain an assessment of the extent to which factors such as plaintiff sex and domestic violence allegations were associated with case outcomes.

In this chapter, I *quantitatively* demonstrate the ubiquity of judges' gaslighting strategies and their gendered consequences, to rule out the possibility that the case examples in Chapter 7 are cherry-picked outliers. This chapter is broadly divided into two parts. The first part is devoted to an analysis of judicial discourse. I focus on how courts justified their decisions to deny divorce petitions in general and to ignore domestic violence allegations in particular. We will see that they did so less on legal grounds and more on ideological, moral, and therapeutic grounds. We will also see that the gaslighting strategies I identified in Chapter 7 pervade the samples and that judges did not apply them equally by plaintiff sex. Judicial discourse was gendered insofar as judges directed

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it toward women more than toward men. The second part is devoted to an analysis of judicial decision-making: (1) the extent and nature of gender inequality in case outcomes, and (2) the effect of domestic violence allegations on case outcomes. I will also show sizeable gender gaps in plaintiffs' adjudication outcomes and in some of their determinants. Women's claims were deemed less credible and were thus taken less seriously than men's. Most of these problems were concentrated in rural courts, which account for the majority of divorce adjudications. We saw in Chapters 5 and 6 that divorce cases have been casualties of courts' relentless pursuit of efficiency. In this chapter we will see that women are casualties in the divorce litigation process.

Because China's endogenous legal test of breakdownism dominated judicial discourse and supported judges' holdings to deny divorce petitions even in cases involving statutory wrongdoing, plaintiffs' domestic violence claims did not improve their chances of obtaining a divorce on the first try. If judges had been more willing to decide divorce cases according to fault-based standards, the opposite pattern would have emerged – namely, female plaintiffs would have had higher success rates than male plaintiffs – simply by virtue of the sheer prevalence of domestic violence allegations made by female divorce-seekers.

What I report in this chapter is limited to first-attempt divorce petitions for two reasons. First, as we saw in Chapter 6, courts denied most first-attempt petitions and granted most subsequent-attempt petitions.[1] Second, as we also saw in Chapter 6, divorce courts were leaky: first-attempt adjudicated denials far outnumbered subsequent-attempt

[1] I excluded from all analyses in this chapter cases filed after prior divorce litigation attempts that resulted in either adjudicated denials or withdrawals. According to legal scholars (X. Wang 2016:52) and a great deal of anecdotal legal advice posted online by lawyers, courts tend to treat first-attempt case filings as if they never happened after plaintiffs withdraw their petitions. For this reason, one might expect a court to treat a second-attempt divorce petition filed following the withdrawal of a first-attempt petition like a new first-attempt petition and therefore to be less inclined to grant it compared to a second-attempt petition filed following an adjudicated denial. The court decisions in my provincial samples only partially support this expectation. While second-attempt divorce petitions were significantly more likely to be granted when the first-attempt petition was denied than when it was withdrawn, courts in both scenarios were nonetheless highly inclined to grant divorces. In other words, although subsequent-attempt divorce litigation outcomes differed depending on whether the prior petition had been denied or withdrawn (on subsequent litigation attempts, prior denials were more advantageous than prior withdrawals), both sets of outcomes were far more similar to one another than they were to the outcomes of first-attempt trials; both sets of outcomes stood in sharp contrast to the outcomes of first-attempt trials. Whereas courts granted only a minority of first-attempt divorce petitions (Chapter 6), they granted the clear majority (over 70% in both samples) of divorce petitions that followed both first-attempt denials and first-attempt withdrawals. These patterns support my argument in Chapter 6 that withdrawals were part of the divorce twofer and, in many cases, an adjudicated denial by another name.

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petitions. Because they were so routinely denied, first-attempt divorce petitions were more consequential than subsequent attempts. Relatively few plaintiffs whose petitions were denied on the first attempt returned. When China's multiple legal divorce standards clashed and breakdownism prevailed over faultism, battered women were often subjected to further violence or forced into hiding as they awaited the next opportunity to file for divorce – the central topic of Chapter 9. When they did return to court after an adjudicated denial, plaintiffs' subsequent-attempt petitions were usually granted. For these reasons, first-attempt divorce petitions are where most of the action has been and where the stakes have been highest. We will see in Chapter 9 that the outcomes of initial divorce attempts were hugely consequential for the physical security of abused women.

JUDICIAL DISCOURSE

In her study of disputes in American lower courts, Merry (1990) identified two prevalent types of nonlegal discourse: moral and therapeutic. She found that judges invoked moral discourse in marital cases, for example, to redefine the legal problem of domestic violence as a moral problem of failing in the social role of husband. Chinese judges did the same thing. Their moral discourse was also conspicuously ideological. Chinese judges invoked the language of socialist morality to urge disputants, in their political role as citizens, to fulfill their obligation to support nation-building priorities.

The qualitative case examples I presented in Chapter 7 also bring into high relief Chinese judges' use of therapeutic discourse. In American lower courts, judges' use of therapeutic discourse excused wrongdoing, such as marital abuse, by attributing it to individual illness or psychological weakness (Merry 1990:114–15). In China, judges' therapeutic discourse similarly rationalized domestic violence as a matter of poor communication skills or weak trust, and thus eliminated abusers' legal culpability by redefining it as a fixable, shared problem between spouses.

Chinese divorce litigation boils down to a discursive battle between plaintiffs and judges over whether mutual affection has broken down. Unsurprisingly, much of the lexical material fueling this battle derives from the SPC's 1989 Several Concrete Opinions on How to Determine in Divorce Trials Whether Marital Affection Has Indeed Broken Down, to which this book refers by its nickname, the Fourteen

Articles (Chapter 2). Plaintiffs borrowed the language of the Fourteen Articles by claiming mutual affection had broken down and reconciliation was hopeless. They referred to officially stipulated grounds for affirming the breakdown of mutual affection that were both no-fault, such as a weak marital foundation or physical separation, and fault-based, such as abuse, bigamy, gambling, indolence, or other "odious habits."

Judges pushed back by using the same language to invalidate plaintiffs' claims. They most commonly did so in two ways, as we have seen. First, they held that plaintiffs failed to prove their claims with admissible evidence. Second, focusing on the key condition of "the possibility of reconciliation" (有无和好的可能) stipulated throughout the Fourteen Articles, they held that plaintiffs' assessments were wrong, that their marriages could be restored, and that reconciliation was still very much possible. In judges' holdings, reconciliation potential as legal grounds for denying a divorce petition almost always outweighed wrongdoing as legal grounds for granting it. Even when a plaintiff could prove domestic violence, the court often held that it had not damaged the marriage beyond repair, and that the breakdown of mutual affection could therefore not be affirmed. In so doing, judges upheld the enduring ideological principle of "opposition to frivolous divorce."

In their adjudicated denials, judges almost invariably offered relationship advice. This tendency long predated China's domestic relations trial reforms introduced in 2016, when marital reconciliation became a focus of national policies designed to stem explosive divorce rates (Chapter 3). The official rationale for providing marital counseling, of course, was to help the couple reconcile and thus to contribute to social stability maintenance. An unofficial purpose was to help the court reconcile a glaring and ubiquitous contradiction: on the one hand, its holding that the possibility of marital reconciliation was very much alive, which it used to *disaffirm* the breakdown of mutual affection, and, on the other hand, compelling allegations of the defendant's wrongdoing, which the court could and should have used to *affirm* the breakdown of mutual affection. When a court provided relationship advice, which it did in almost every adjudicated denial, it did so to express confidence that the marital problems in the plaintiff's legal complaint – even if they constituted statutory wrongdoing that automatically established grounds for the breakdown of mutual affection – could be overcome, and thus that marital affection had not broken down. Although judges who forcibly preserved

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marriages by ignoring or making light of statutory wrongdoing unequivocally flouted abuse victims' legal right to a divorce, judges' emphasis on marital reconciliation was simultaneously in line with long-established judicial norms and practices. After all, ever since the Marriage Law was introduced in 1950, mediation with the aim of reconciliation has been a bedrock practice at every step on the road to divorce (Chapter 1).

As we saw in Chapter 7, judges acted like marriage counselors and therapists. Recall the case example in which the judges chastised the litigants for treating their marriage as a video game and urged them to "treasure each other, communicate with sincerity, love each other, and jointly nourish with care this precious gift of a family." When they denied divorce petitions, judges almost unfailingly provided advice such as, "Divorce is not the only way of resolving marital conflict" (e.g., Decision #2830590, Jiaxing Municipal Nanhu District People's Court, Zhejiang Province, March 13, 2014).[2] Also recall from Chapter 7 the paternalistic words of wisdom judges imparted in other case examples in support of their holdings that reconciliation remained possible, such as "improve [your] communication and show mutual understanding, forgiveness, and tolerance," "forgive, accommodate, and respect each other," "forgive, accommodate, and trust each other," and "strengthen [your] communication skills, forgive each other, and cherish family." Beyond justifying their optimism about reconciliation prospects and their determination that marital discord had not reached the point of the breakdown of mutual affection, therapeutic discourse such as this did not pertain to any formal source of law.

For the purpose of assessing the degree of importance judges attached to allegations of domestic violence, I quantitatively analyzed the lexicons of judges' holdings by counting words, terms, and expressions in judges' holdings. Holdings are devoted to judges' legal reasoning behind their decisions, and they almost always begin with the phrase, "The court holds that" (本院认为). We already know from Chapter 6 that divorce decisions as a whole were considerably shorter than those of any other type of civil case. Mean/median numbers of characters in the holdings sections of first-attempt divorce decisions were 199/157 in Henan and 179/158 in Zhejiang.

I identified key themes in judges' gaslighting strategies by measuring the prevalence of salient vocabulary (based on my qualitative analysis

[2] Case ID (2014)嘉南民初字第225号, archived at https://perma.cc/2JVS-4VZA.

of Chapter 7's case examples). I also identified the most commonly used words in judges' holdings. I ranked words according to the frequencies in which judges invoked them in two sets of holdings: (1) adjudicated denials of first-attempt petitions (24,896 and 29,790 holdings in the Henan and Zhejiang samples, respectively) and (2) first-attempt cases involving domestic violence allegations (16,102 and 13,122 holdings in the Henan and Zhejiang samples, respectively). Most first-attempt divorce adjudications in which plaintiffs alleged domestic violence resulted in denials (72% in Henan and 86% in Zhejiang). For this reason, domestic violence cases accounted for a sizeable share of all adjudicated denials of first-attempt petitions (32% in Henan and 28% in Zhejiang). In order to rule out the possibility that lexical similarities between these two sets of holdings are an artifact of overlap between these two categories of cases, I first removed every holding in the set of domestic violence cases from the set of adjudicated denials, thus ensuring that no holding was double-counted.

Before ranking words according to their usage by judges, I segmented all the text into words because there is no white space between Chinese words. I used the Stanford Word Segmenter to segment the text of holdings according to the Penn Chinese Treebank standard (Chang, Tseng, and Galen 2018). I then used KH Coder to count word frequencies (Higuchi 2020). Not every word in sets of holdings I analyzed was a candidate for counting and ranking. Words on a list of meaningless "stop-words" were excluded.[3]

I use word frequencies to analyze and compare the vocabularies in judges' holdings, not only between divorce case types (adjudicated denials versus cases with domestic violence allegations) but also between provinces (Henan versus Zhejiang). If, as Chapter 7 suggests, judges' first priority is clearing their dockets and supporting political priorities, then we should expect to find a high degree of linguistic similarity across provinces and across all denied divorce cases, including those without domestic violence allegations, reflecting a blanket approach. If, on the other hand, judges' first priority is treating domestic violence allegations seriously and protecting the legal rights of plaintiffs, then we should expect to find divergent vocabularies across both sets of holdings, reflecting case-by-case judicial decision-making. By the

[3] I am grateful to Zuoyu Tian for his assistance building the list of stop-words. Examples of stop-words excluded from the topic model are common subjects and objects ("I," "you," "he," "she," etc.), prepositions, articles, and so on. Stop-words also include ubiquitous but meaningless nouns such as "plaintiff" (原告), "defendant" (被告), and "court" (本院 and 人民法院).

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same token, if judges did not routinely gaslight plaintiffs who made allegations of domestic violence, then we might also find lexical variation between the two provinces.

Word frequencies are useful for identifying salient words in a corpus of documents that are simply too large for conventional qualitative analysis. I will focus on the top 50 most frequently used words. Lists of salient words such as these are commonly referred to as "bags of words" because they contain no information about their syntactic organization. For this reason, I apply hierarchical clustering methods to these word lists in order to identify clusters of words that judges tend to use together in stock phrases. Word rankings in conjunction with hierarchical clustering thus bring specific characteristics of judges' gaslighting strategies into sharper focus.

Lexicons of Adjudicated Denials

The contents of divorce holdings exhibited astonishingly little variation, regardless of whether a plaintiff made a domestic violence allegation. Whether the trial was held in Henan or Zhejiang likewise made little, if any, difference. Judges drew from an extremely limited pool of stock words and phrases that referred overwhelmingly to breakdownism and rarely to faultism. They rendered their holdings mechanically, in highly standardized and scripted boilerplate.

In both provincial samples of first-attempt divorce decisions, plaintiffs used the word for "mutual affection" (感情) in 83% of their legal complaints. In both Henan and Zhejiang, only the words "marry" and "divorce" appeared in more legal complaints. Judges used the word for "mutual affection" even more frequently: it appeared in 93–94% of their holdings in the two samples. Whereas plaintiffs used it to claim that mutual affection had broken down, judges used it to hold the opposite. Defendants who were unwilling to divorce also challenged plaintiffs' claims that marital affection had broken down. All participants in divorce litigation spoke the language of breakdownism. As we saw in Chapter 7, plaintiffs also spoke the language of faultism in their efforts to establish the breakdown of mutual affection.

By contrast, rarely did judges refer to fault-based standards of wrongdoing. Judges used terms such as "violence" (暴力), "odious habit" (恶习), "fault" (过错), and "Article 46" (四十六) or "46," the provision in the Marriage Law on civil damages for wrongdoing, in their holdings in only 4% of first-attempt decisions in each of the two

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samples.[4] On the rare occasions judges used the language of wrongdoing, they did so only to say that it was not tantamount to the breakdown of mutual affection. Meanwhile, judges grounded their decisions in political and ideological discourse by using words such as "harmonious" (和谐 and 和睦), "stability" (稳定), and "civilized" (文明) in 25% and 13% of holdings in my Henan and Zhejiang samples, respectively. These politically salient words are similarly represented in subsamples of holdings involving allegations of domestic violence.

Before scrutinizing judges' language at a more granular level, we can draw a couple of preliminary conclusions from this simple exercise. First, even in cases that involved wrongdoing, judges were averse to applying fault-based legal standards. They tended to apply the breakdownism standard in a one-size-fits-all manner. Second, we can also see that, within this general pattern that applies to Henan and Zhejiang alike, ideological discourse was almost twice as prevalent in Henan as it was in Zhejiang. Judges used political slogans as grounds for denying divorce petitions. Variations of "for the sake of maintaining harmonious and civilized marital and family relations" (维护和睦文明的婚姻家庭关系), "for the benefit of marital and family stability and of social harmony" (为有利于婚姻家庭稳定和社会和谐), and "in order to maintain family harmony and social stability" (维护家庭和谐、社会稳定) are prevalent throughout holdings in both samples, but somewhat more so in holdings from Henan.

Figure 8.1 depicts word clouds of the top 50 most frequent words across the two provinces in two types of holdings: (1) adjudicated denials and (2) cases involving allegations of domestic violence.[5] If every word were unique, there would be 200 words across all four word clouds (50 per word cloud). In fact, there are only 73 unique words because there is so much redundancy between holdings for adjudicated denials of cases without domestic violence allegations (Panels A and B) and holdings for domestic violence cases (Panels C and D). Clearly, judges attached little importance to domestic violence allegations. To judges, there was nothing about cases involving domestic violence allegations that merited their special attention or consideration. Redundancy between holdings from Henan (Panels A and C) and Zhejiang (Panels

[4] Article 46 of the 2001 Marriage Law subsequently became Article 1091 in the Civil Code, which took effect on January 1, 2021.

[5] Again, these are mutually exclusive sets of holdings because I removed all domestic violence cases from the set of all adjudicated denials.

Figure 8.1 Word clouds of top 50 most frequently used words in judges' holdings
Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: Limited to first-attempt adjudications. Words were scaled according to their frequencies in holdings. Their placement locations were optimized according to their sizes. For this reason, although Chinese words and their English translations are scaled identically, they are not located in the same places in their respective word clouds. Every adjudicated first-attempt divorce decision in my samples is included, except granted divorce petitions that did not contain domestic violence allegations. Court decisions are not used in more than one word cloud; each court decision is used in only one word cloud.

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B and D) also underscores the extent to which domestic violence was similarly unimportant to judges in both provinces.

All four word clouds share a common set of 35 words. Panels A and C of Figure 8.1 each contains seven unique words found in no other word cloud; Panel B contains three unique words; and Panel D contains only two unique words. Word clouds from the same province share even more in common. Henan's two word clouds share 41 words, Zhejiang's 45 words. Because some domestic violence cases led to actual divorces (28% and 14% in Henan and Zhejiang, respectively), the word clouds for domestic violence cases contain unique words pertaining to granting divorces. With respect to Henan, Panel C contains nine such words (in italics) that do not appear in Panel A: *granting* (予以) the divorce petition on the basis of the Marriage Law's provision (Article 32), *stipulating* (规定) that divorce should be granted when *mediation* (调解) fails or when a physical *separation* (分居) test is satisfied, and thus also ruling on the disposition of *premarital* (婚前) *property* (财产), *custody* (抚养) of a *child* (孩子), and *child support payments* (抚养费). Similarly, in Zhejiang, Panel D contains five such words (in italics) that do not appear in Panel B: after *affirming* (认定) that mutual affection has indeed broken down and *granting* (予以) the divorce, some *claims* (主张) such as child custody (抚养) could be *dealt with* (处理), but other claims (typically concerning property) could not be dealt with (不予处理) or must be *dealt with* through separate litigation (另案处理 or 另行处理).

Although the word clouds for domestic violence cases contain words associated with granted divorces, their tiny sizes reflect their relatively rare usage owing to high denial rates. Notably absent are words associated with wrongdoing in general and domestic violence in particular, a point to which I will return later.

For reference purposes, Table 8.1 contains all 73 unique words across both provinces and case types. The first page of the table contains the 35 words shared by all four word clouds.

To support their holdings, judges cited Article 32 of the Marriage Law in 94% and 98% of their adjudications in the Henan and Zhejiang samples, respectively. Indeed, this was the sole legal provision judges cited in 32% and 44% of all holdings in the Henan and Zhejiang samples, respectively. Article 32 contains 12 words in the word clouds, three of which are particularly prominent: "marital" (夫妻), "affection" (感情), and "breakdown" (破裂). These three words account for only 4% of all 73 unique words but for 21% of all word frequencies in the

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TABLE 8.1 Unique Chinese words in word clouds

English translation	Original Chinese	# Clouds	Denials		Domestic violence	
			Henan (Fig 8.1A)	Zhejiang (Fig 8.1B)	Henan (Fig 8.1C)	Zhejiang (Fig 8.1D)
1. marital	夫妻	4	✔	✔	✔	✔
2. affection	感情	4	✔	✔	✔	✔
3. both sides	双方	4	✔	✔	✔	✔
4. divorce	离婚	4	✔	✔	✔	✔
5. breakdown	破裂	4	✔	✔	✔	✔
6. live	生活	4	✔	✔	✔	✔
7. deny	不予	4	✔	✔	✔	✔
8. evidence	证据	4	✔	✔	✔	✔
9. support	支持	4	✔	✔	✔	✔
10. family	家庭	4	✔	✔	✔	✔
11. marriage	婚姻	4	✔	✔	✔	✔
12. request	请求	4	✔	✔	✔	✔
13. demand	要求	4	✔	✔	✔	✔
14. together	共同	4	✔	✔	✔	✔
15. marry	结婚	4	✔	✔	✔	✔
16. postmarital	婚后	4	✔	✔	✔	✔
17. litigation	诉讼	4	✔	✔	✔	✔
18. relations	关系	4	✔	✔	✔	✔
19. prove	证明	4	✔	✔	✔	✔
20. reconcile	和好	4	✔	✔	✔	✔
21. foundation	基础	4	✔	✔	✔	✔
22. supply	提供	4	✔	✔	✔	✔
23. conflict	矛盾	4	✔	✔	✔	✔
24. has indeed	确已	4	✔	✔	✔	✔
25. possibility	可能	4	✔	✔	✔	✔
26. trifles	琐事	4	✔	✔	✔	✔
27. communication	沟通	4	✔	✔	✔	✔
28. definite	一定	4	✔	✔	✔	✔
29. mutual	相互	4	✔	✔	✔	✔
30. register	登记	4	✔	✔	✔	✔
31. give birth	生育	4	✔	✔	✔	✔
32. children	子女	4	✔	✔	✔	✔
33. build	建立	4	✔	✔	✔	✔
34. occur	发生	4	✔	✔	✔	✔
35. fact	事实	4	✔	✔	✔	✔

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English translation	Original Chinese	# Clouds	Denials		Domestic violence	
			Henan (Fig 8.1A)	Zhejiang (Fig 8.1B)	Henan (Fig 8.1C)	Zhejiang (Fig 8.1D)
36. completely	彻底	3	✔	✔	✔	✘
37. grant	予以	2	✘	✘	✔	✔
38. cherish	珍惜	2	✘	✔	✘	✔
39. claim	主张	3	✔	✘	✔	✔
40. rapport	互谅	3	✔	✔	✘	✔
41. custody	抚养	2	✘	✘	✔	✔
42. lawful	合法	2	✘	✔	✘	✔
43. produce	产生	2	✘	✔	✘	✔
44. grounds	理由	2	✘	✔	✘	✔
45. romance	恋爱	2	✘	✔	✘	✔
46. law	法律	2	✘	✔	✘	✔
47. compromise	互让	2	✔	✔	✘	✘
48. according to law	依法	2	✘	✔	✘	✔
49. submit	提交	2	✔	✘	✔	✘
50. angry	生气	2	✔	✘	✔	✘
51. ought to	应当	2	✔	✘	✔	✘
52. insufficient	不足	2	✘	✔	✘	✔
53. strengthen	加强	2	✘	✔	✘	✔
54. time	时间	2	✔	✘	✔	✘
55. property	财产	1	✘	✘	✔	✘
56. premarital	婚前	1	✘	✘	✔	✘
57. child	孩子	1	✘	✘	✔	✘
58. good	较好	1	✘	✔	✘	✘
59. voluntary	自愿	1	✘	✔	✘	✘
60. separate	分居	1	✘	✘	✔	✘
61. stipulate	规定	1	✘	✘	✔	✘
62. deal with	处理	1	✘	✘	✘	✔
63. child support	抚养费	1	✘	✘	✔	✘
64. bring forward	提出	1	✔	✘	✘	✘
65. freely	自由	1	✘	✔	✘	✘
66. affirm	认定	1	✘	✘	✘	✔
67. mediation	调解	1	✘	✘	✔	✘
68. litigant	当事人	1	✔	✘	✘	✘
69. withhold consent	不同意	1	✔	✘	✘	✘
70. maintain	维护	1	✔	✘	✘	✘
71. harmony	和睦	1	✔	✘	✘	✘
72. valid	有效	1	✔	✘	✘	✘
73. stability	稳定	1	✔	✘	✘	✘

Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: Words are ranked according to their share of all words in all four word clouds combined.

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four word clouds; at least one of them appeared in 95–96% of holdings in each provincial sample of first-attempt divorce adjudications. At least one of these three words was in the vast majority of holdings to grant divorces (94% and 91% in the Henan and Zhejiang samples, respectively) and almost universally found in holdings to deny divorces (98% in each sample).

Article 32 contains an additional nine words in the word clouds: "has indeed" (确已), "family" (or "domestic," 家庭), "demand" (which can also mean "request," 要求), "bring forward" (提出), "divorce" (离婚), "litigation" (诉讼), "ought to" (应当), "mediation" (调解), and "separation" (分居). Elsewhere in the Marriage Law are 30 additional words in the word clouds, the most prominent of which are "both sides" (双方), "live" (or "living," "life," 生活), "marriage" (婚姻), "request" (or "petition," 请求), "together" (or "joint," "common" 共同), "marry" (结婚), and "postmarital" (婚后). Some of these words – such as "marital," "affection," "breakdown," "marry," and "family" – were more likely to be used in holdings to deny divorces. Others – such as "divorce," "live," and "together" – were more likely to be used in holdings to grant divorces. The words "live" and "together," for example, appeared in holdings to grant divorces when they referred to joint property, joint debt, child custody, and future living expenses.

Although Article 32 also contains the term "domestic violence" (家庭暴力) as grounds for affirming the breakdown of mutual affection, the language of violence rarely appears in judges' holdings. As we have seen, it is conspicuously absent even in cases involving allegations of domestic violence. Violence words are therefore also conspicuously absent in all the word clouds, even those constructed from holdings of cases involving allegations of domestic violence. The word "violence" (暴力) appears in only 2% of the holdings in each provincial sample of first-attempt divorce adjudications, and in only 5% and 8% of holdings in cases involving allegations of domestic violence in the Henan and Zhejiang samples, respectively. The contracted form of "domestic violence" (家暴) appears in fewer than 70 out all the nearly 150,000 holdings in both samples of first-instance divorce adjudications. We also saw in Chapter 7 that judges' holdings are largely devoid of other words related to domestic violence, such as "beat," "hit," "punch," "kick," and so on. Finally, when judges did use violence words, they often did so in the process of invalidating plaintiffs' claims of abuse on evidentiary grounds or on the grounds that the incidents were not serious enough to constitute domestic violence.

A Typology of Judicial Discourse in Adjudicated Denials

While Marriage Law words in general and Article 32 words in particular formed the core of judges' lexicon of adjudicated denials, they were similarly central to holdings to grant divorces. Words associated with Article 32 were therefore not uniquely constitutive of the language of adjudicated denials. Because they were not deployed specifically for the purpose of denying divorce petitions, they did not define a distinct discourse of adjudicated denial. Other words, however, did form four discourses strongly associated with adjudicated denials of divorce petitions: (1) ideological words, (2) Fourteen Articles words, (3) other therapeutic words, and (4) evidentiary words. I will discuss each in turn.

First, in contrast to the Marriage Law words I just described, ideological words were deployed for the specific purpose of denying divorce petitions and do define a distinct discourse of adjudicated denial. I already showed that four words with political valence in China – "stability," "civilized," and two synonyms for "harmonious" – appeared in a lot of holdings, particularly in the Henan sample. Of these four ideologically salient words, only "stability" (稳定) and one of the words for "harmony" (和睦) were among the top 50 most frequently used words in any word cloud: They both appear in Panel A of Figure 8.1 for adjudicated denials. Judges were far more likely to use these words when denying divorces than when granting divorces. Judges often riffed on the ideological language of socialist morality by holding that divorce would be to the detriment of family unity and *harmony*; that litigants should stay together and work earnestly to protect *harmonious* and *civilized* marital and family relations; that for the sake of family and social *harmony* and *stability*, the litigants should try to reconcile; and so on.

China's ongoing domestic relations trial reforms have renewed the supply of this discursive grist for the mill of adjudicated denials. We previously saw that judges parroted ideological discourse by holding that "the family is the cell of society" (also see Fincher 2014:23–24). Divorce decisions are not merely legal matters but also political matters. The following adjudicated denial is a case in point:

> The plaintiff claimed that "the defendant spends the entire day glued to online video games and carried out severe domestic violence against the plaintiff, resulting in their failure to develop marital affection." Although the plaintiff submitted police and medical documentation, and although during the trial the defendant admitted physically fighting with the plaintiff owing to family conflict, the plaintiff must submit

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> valid evidence to prove that it constitutes domestic violence. … At the same time, the family is societal, and plays a huge role maintaining equal, harmonious, and civilized marital and family relations as well as social stability. This is the unshirkable duty of every family member. (Decision #1077421, Zhengzhou Municipal Erqi District People's Court, Henan Province, November 18, 2013)[6]

This example also anticipates my discussion in the following pages about the importance of judges' evidentiary discourse, which they used to invalidate plaintiffs' legally valid evidence.

Second, the SPC's 1989 judicial interpretation, known as the Fourteen Articles, is a major source of vocabulary in judges' discourse of adjudicated denial. Each italicized word and phrase in the rest of this paragraph appears in the Fourteen Articles. Because the Fourteen Articles stipulates that *inadequate premarital acquaintanceship* constitutes grounds for affirming the *breakdown of mutual affection*, plaintiffs often claimed not to know the nature of the person they married until it was too late, whereas judges held that both sides had established a solid *premarital acquaintanceship*. Likewise, because the Fourteen Articles calls for consideration of the *marital foundation* when determining the state of *mutual affection* and *marital relations*, plaintiffs claimed a weak *foundation*, whereas judges claimed a solid *foundation*. Because the Fourteen Articles stipulates as grounds for divorce *difficulty living together* owing to wrongdoing – including *maltreatment* – and failure to *establish* or *build marital affection*, plaintiffs claimed that *living together* was impossible, whereas judges held that the litigants had already *built* definite *marital affection* in their years *living together*. Finally, because the Fourteen Articles stipulates that *marital affection* should be determined according to *reconciliation potential*, plaintiffs claimed the *impossibility of reconciliation*, whereas judges held that *reconciliation remained possible*.

Some of these italicized words and terms – most notably, "marital," "affection," "breakdown," and "both sides" – also appear in the Marriage Law. But others – most notably, "establish" or "build" (建立), "foundation" (基础), "reconcile" (和好), and "possibility" (可能) – are unique to the Fourteen Articles. Judges put the words "reconcile" and "possibility" together to form "reconciliation potential." These words and expressions should be familiar from the

[6] Case ID (2013)二七民一初字第2676号, archived at https://perma.cc/NBX3-HGJE.

case examples in Chapter 7. Although the Marriage Law stipulates that the breakdown of mutual affection is grounds for divorce, it contains no legal test to help judges determine "whether mutual affection has indeed broken down" (part of the title of the Fourteen Articles). For this reason, these three words and terms intended to help judges assess the strength of mutual affection – namely "build," "foundation," and "reconciliation potential" – unique to the Fourteen Articles appeared in the clear majority of adjudicated denials in my samples.

Several courts in Zhejiang were particularly fond of quoting the Fourteen Articles almost verbatim: "After conducting a comprehensive analysis of the marriage's foundation, postmarital affection, grounds for divorce, the current state of marital relations, and other aspects, the court's holding is to confirm that marital affection between plaintiff and defendant has not completely broken down and that reconciliation is possible" (e.g., Decision #3417261, Yiwu Municipal People's Court, Zhejiang Province, March 26, 2015).[7] When judges used the word "foundation" in a manner consistent with the Fourteen Articles, namely to refer to the foundation of marital affection, they sometimes added ideological words to the discursive mix. Another court in Zhejiang, for example, frequently held that "Marital and family relations should be constructed on a foundation of civilization, equality, and harmony" (e.g., Decision #3592860, Huzhou Municipal Wuxing District People's Court, Zhejiang Province, June 4, 2015).[8]

Judges sometimes used the word "foundation" to deny divorce petitions in an exclusively ideological manner inconsistent with the Fourteen Articles. In 86 of its holdings in my sample, Henan's Taikang County People's Court held that "mutual affection is essential for marital preservation, and family stability is the foundation of social stability." Other courts similarly held that "harmonious and stable families are the foundation of a harmonious society" (e.g., Decision #1305470,

[7] Case ID (2015)金义民初字第243号, archived at https://perma.cc/7VLR-MK4L. The Fourteen Articles calls on judges to "conduct a comprehensive analysis of the marriage's foundation, postmarital affection, grounds for divorce, the current state of marital relations, reconciliation potential, and other aspects when determining whether marital affection has indeed broken down." In addition to the Yiwu Municipal People's Court, urban district courts in Ningbo, Taizhou, Shaoxing, and Jinhua as well as the Yuhuan County People's Court were similarly fond of paraphrasing the same passage to deny divorce petitions.

[8] Case ID (2015)湖吴民初字第550号, archived at https://perma.cc/3ACE-UT87.

Qi County People's Court, Henan Province, October 31, 2014)[9] and "the family is the cell of society; harmonious and civilized marital and family relations are the foundation of a harmonious and civilized society" (e.g., Decision #1353450, Xia County People's Court, Henan Province, January 13, 2015).[10] Notwithstanding some variation in usage, judges tended to invoke the word "foundation" in the context of the "marital foundation" as stipulated by the Fourteen Articles.

Because they were so frequently used by judges to deny divorce petitions in both provinces, the words "build," "foundation," "reconcile," and "possibility" are in all four word clouds. Judges' reliance on the Fourteen Articles helps us understand the basis of their impulse to privilege breakdownism over faultism. Both the 1989 Fourteen Articles and the 2001 Marriage Law provide fault-based grounds on which judges *may* affirm the breakdown of mutual affection. Neither source of law, however, stipulates that judges *must* affirm the breakdown of mutual affection when they affirm wrongdoing. Meanwhile, judges roundly ignored a separate source of law – the 2001 Interpretations of the SPC on Several Issues Regarding the Application of the Marriage Law – requiring them to grant divorces when a faultism test is satisfied (Article 22; Jiang 2009b:18). Indeed, I found only ten cases (out of almost 150,000 first-instance divorce adjudications) in which judges explicitly cited this provision. (They granted the divorce in all ten of them.) Judges routinely affirmed the occurrence of domestic violence but nonetheless denied the divorce petition by holding that mutual affection had not broken down and that reconciliation remained possible. In essence, judges rendered adjudicated denials as if the SPC never issued its judicial interpretation in 2001 requiring them to privilege faultism over breakdownism.

Judges also contorted facts and evidence to ensure that faultism tests were not satisfied in the first place. As we saw in Chapter 7, judges routinely held that plaintiffs' allegations of domestic violence did not meet the legal definition of domestic violence. Even in the face of overwhelming evidence of domestic violence, including confessions by defendants, judges routinely – and inexplicably – held that plaintiffs' allegations could not be proven. Normalizing domestic violence by reducing them to the mere family trifles and petty squabbling that (they asserted) were unavoidable and intrinsic features of marriage

[9] Case ID (2014)杞民初字第1502号, archived at https://perma.cc/SJ5X-WM4M.
[10] Case ID (2014)陕民初字第1159号, archived at https://perma.cc/4KBL-67SH.

was one of judges' gaslighting strategies for privileging breakdownism over faultism. Contriving an inability to affirm wrongdoing, as judges so often did, helped them skirt the SPC's 2001 judicial interpretation requiring them to grant divorces when they did affirm wrongdoing.

The ease and efficiency of denying a divorce petition simply by holding – on the ostensible basis of a *comprehensive analysis* of the *current state of marital relations* – that *reconciliation is possible* because husband and wife *built* a solid *marital foundation* helps explain the enduring allure to judges of the Fourteen Articles. And yet, despite its profound influence, judges cited the Fourteen Articles by name in less than 1% of their holdings in all first-attempt divorce adjudications in my samples.

Third, judges' therapeutic discourse emerged from the vocabulary they used in their relationship advice to litigants. To be sure, judges also used Fourteen Articles vocabulary therapeutically. When they held that *reconciliation* remained *possible*, they expressed hope and encouragement to litigants, urging them to invest time and effort into strengthening the *marital foundation* they had already *built* in their years of life together.

Most of the words that formed their therapeutic discourse, however, are altogether outside the scope of the law. Judges normalized abuse by diminishing it to ordinary *conflict* (矛盾, literally meaning "contradiction") and family *trifles* (琐事) that, with commitment and effort, could be overcome. They held that couples could overcome this minor and unavoidable friction by virtue of having already built a *definite* (一定) marital foundation. Although, as judges so often held, marital problems had *occurred* (发生), reconciliation was possible if both sides improved their *communication* (沟通) and worked to cultivate greater *mutual* (相互) understanding, care, and consideration. Each of these six italicized words appears in all four word clouds in Figure 8.1.

An additional ten words that helped form judges' therapeutic discourse appear in at least one of the word clouds. The fact that both wife and husband registered their marriage *voluntarily* (自愿) after *freely* (自由) forming a *romance* (恋爱) was proof, according to judges, that the couple had built a *good* (较好) foundation of mutual affection. Although marital life inevitably *produced* (产生) some conflict, judges urged both sides to *strengthen* (加强) their communication skills, build mutual understanding and rapport (互谅), accommodate one another and *compromise* (互让), *cherish* (珍惜) their families, and *maintain* (维护) family harmony and stability for the sake of social harmony and

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stability. Therapeutic discourse accompanied the vast majority of adjudicated denials.

Fourth, judges grounded their adjudicated denials in evidentiary discourse. They held that plaintiffs failed to *prove* (证明) their claims because they failed to *supply* (提供) valid *evidence* (证据). Each of these three italicized words appears in all four word clouds. Judges also held that the evidence plaintiffs did *submit* (提交) was *insufficient* (不足) to support their claims. Judges' frequent use of evidentiary discourse to deny divorce petitions is also reflected in a legal provision they were fond of citing: Article 64 of the Civil Procedure Law, which stipulates that "litigants are responsible for supplying evidence to support their claims." This specific provision was cited in 33% and 12% of all first-attempt adjudicated denials in the Henan and Zhejiang samples, respectively, more than double the rate at which it was cited in first-attempt adjudicated approvals. Judges invoked this provision as a legal pretext for denying divorce petitions.

Even when plaintiffs did submit evidence, judges often held that it was circumstantial or otherwise insufficient to support their claims, as we saw in Chapter 7. Moreover, judges' use of evidentiary discourse to deny divorce petitions belied judicial rules and interpretations issued by the SPC obliging them to relax this provision, shift the burden of proof to the defendant, and adopt an alternative "preponderance of evidence" standard in domestic violence cases (Chapter 2). This alternative standard – namely, Article 73 of the 2001 Several Provisions of the SPC Concerning Civil Procedure Evidence – appeared in only two out of the nearly 150,000 first-instance adjudicated divorce decisions in my samples. Judges almost always applied conventional standards of evidence to domestic violence cases as if the SPC had never issued special instructions for the purpose of extending the benefit of the doubt to vulnerable abuse victims.

So far I have identified the words and terms judges used most frequently in two sets of holdings: (1) adjudicated denials of cases that do not involve domestic violence allegations and (2) all adjudicated decisions (both to deny and to grant divorces) in cases that do involve domestic violence allegations. Vocabularies in these two sets of holdings were strikingly similar both because judges tended to deny the divorce petitions of plaintiffs who made domestic violence allegations and because judges' gaslighting strategies were similar in cases that did and did not involve domestic violence allegations. Table 8.2 summarizes the key words and terms in each of the four judicial discourses of

TABLE 8.2 Typology of judicial discourse in holdings to deny divorce petitions

Discourse type	Component words and terms
Ideological	Harmony (和睦, 和谐), stability (稳定), civilized (文明)
Fourteen Articles	Reconciliation potential, possibility of reconciling (和好可能, 和好的可能), build (建立), foundation (基础), comprehensive analysis (综合分析)
Other therapeutic	Trifles (琐事), conflict (矛盾), occur (发生), produce (产生), cherish (珍惜), rapport (互谅), compromise (互让), mutual (相互), maintain (维护), good (较好), strengthen (加强), communication (沟通), definite (一定), freely (自由), romance (恋爱), voluntary (自愿)
Evidentiary	Evidence (证据), prove (证明), insufficient (不足), submit (提交), supply (提供)

Note: With the exception of "civilized" and "comprehensive analysis," every word and term in this table appears in at least one dendrogram in Figure 8.2. The words "reconcile" and "build" were counted only if they were positive (i.e., I excluded variations of "lack of reconciliation potential" [无和好可能] and "failure to build" [未建立]).

adjudicated denial. Frequency distributions of words, which are reflected in the word clouds in Figure 8.1, tell us how often judges used them in their holdings but tell us little about their contextual meanings. So far I have provided only selected examples of context for the words that formed four types of judicial discourse in holdings to deny divorce petitions. I will now present results from a hierarchical cluster analysis (HCA) of the 50 most frequently used words in each sample of holdings.

Patterns of Judicial Discourse in Adjudicated Denials

By identifying words that tended to be used in tandem and thus to cluster together, HCA is a useful tool for contextualizing words and teasing out discursive patterns in the entire corpus of holdings. I limit the scope of the HCA to domestic violence cases because one of my key tasks in this chapter is to assess the influence of plaintiffs' domestic violence allegations on judges' holdings and verdicts.

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Let us now take a closer look at how judges used the words depicted in the word clouds for first-attempt divorce adjudications involving allegations of domestic violence. Figure 8.2 contains two dendrograms – one for each province – depicting average conditional probabilities of the co-appearance of words and clusters of words within individual holdings. That is, the unit of analysis is the holding; the results of the HCA show the words judges tended to use together in the same holding. The holdings I used to construct the word clouds in Panels C and D of Figure 8.1 are the same ones I used in the HCA. Like the word clouds, each dendrogram contains the 50 most frequently used words in its corresponding provincial sample of holdings. The words in Panels A and B of Figure 8.2 are thus the same as those in Panels C and D of Figure 8.1, respectively. Both dendrograms share 38 words in common (denoted by a heavier font). Every pairwise combination of words in each dendrogram exists in its corresponding sample of holdings. Put another way, every possible pair of words in a dendrogram can be found within at least some of the holdings from which it was constructed. Although all clusters in each dendrogram are therefore connected to one another, I removed weaker links in order to facilitate the identification of word clusters. More specifically, I removed links connecting clusters of words whose average conditional probability of co-appearance in the holdings was 0.2 or less. As I present findings from the HCA, I will illustrate key discursive patterns with examples both of phrases and sentences judges commonly constructed with words in the dendrograms and of synonyms judges commonly used in lieu of words in the dendrograms.

We already know that well over 90% of holdings in first-attempt divorce cases contained the word "affection." We can see in Figure 8.2 that this word almost always appeared together with the words "marital" and "breakdown" in both provincial samples (Cluster 1a). This is hardly surprising given that these three words appear together in both the Fourteen Articles and Article 32 of the Marriage Law. Nor should we be surprised that the words "deny" and "support" clustered together in both samples of holdings (Cluster 1b), given that judges tended to rule to "*deny support* of the plaintiff's divorce petition." Judges' holdings to deny divorce petitions often referenced plaintiffs' legal complaints: the court *denies support* of "the plaintiff's *litigation request demanding* a divorce" (原告要求离婚的诉讼请求). For this reason, the words "demand," "request," and "litigation" clustered together in both Henan (Cluster 1c) and Zhejiang (Cluster 1d).

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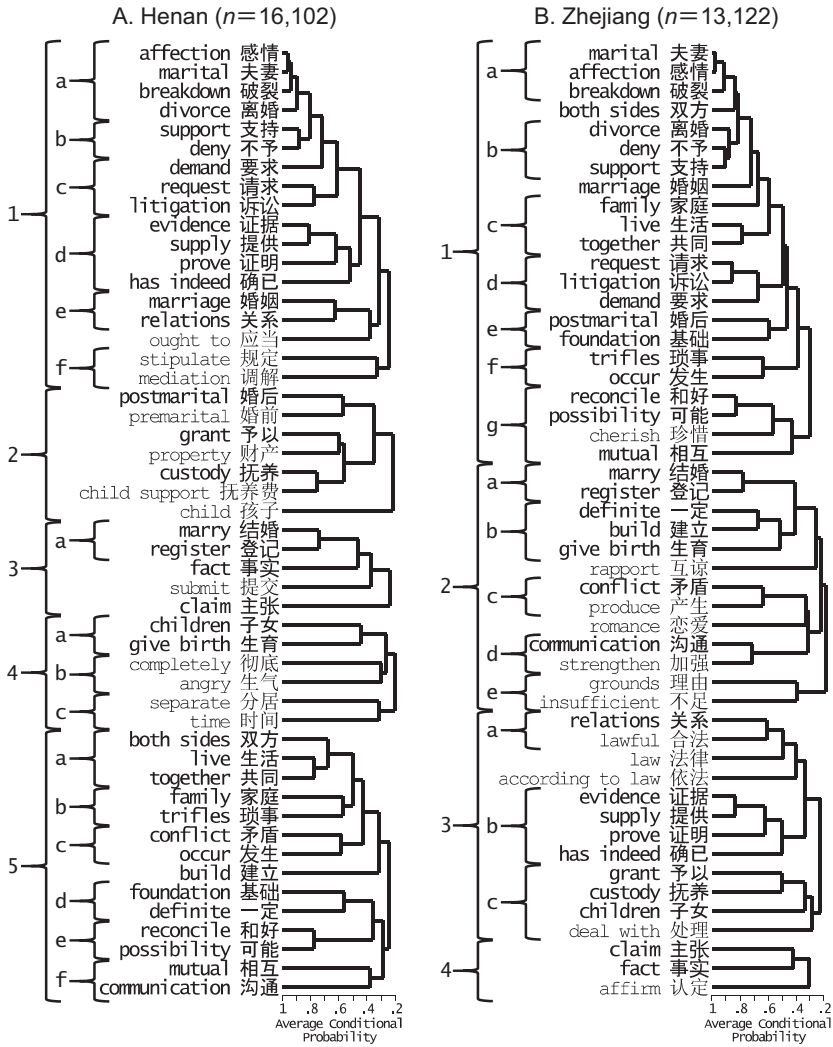

Figure 8.2 Hierarchical cluster analysis of top 50 words in domestic violence cases
Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: Limited to first-attempt adjudications. The words in these dendrograms in Panels A and B are identical to those depicted in Panels C and D of Figure 8.1, respectively, because they were derived from holdings in first-attempt divorce decisions containing allegations of domestic violence. Major clusters are numbered and minor clusters are lettered. Words common to both dendrograms are in a heavier font (38 words); unique words are in a lighter font (24 words in total, 12 words per dendrogram). Words are clustered using the farthest neighbor (or complete linkage) method according to Kulczynski's similarity measure of the average conditional probability that Word B is present in a holding given that Word A is present in the same holding.

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The dendrograms also contain clusters of words judges used to grant divorces. They are less prominent, however, because judges so rarely granted first-attempt divorce petitions even in cases involving allegations of domestic violence. Henan's Cluster 2 and Zhejiang's Cluster 3c contain the word "grant" as well as words associated with property division and child custody.

Given that the breakdownism test requires determining whether "mutual affection has indeed broken down," we also know that the word "has indeed" was inextricably linked to the words "breakdown" and "marital affection" in both the Marriage Law and the Fourteen Articles. In judges' holdings, however, "has indeed" was more closely linked to evidentiary discourse. "Has indeed" was closely linked to "evidence," "supply," and "prove" in both Henan (Cluster 1d) and Zhejiang (Cluster 3b). Many if not most adjudicated denials contain variations of a boilerplate sentence along the lines of: "The plaintiff failed to supply evidence proving her claim that mutual affection has indeed broken down."

In Henan, judges tended to use the Fourteen Articles word "foundation" in conjunction with the word "definite" (Cluster 5d). They frequently held that litigants possessed a "definite marital foundation" (一定的婚姻基础 or 一定的感情基础). This word cluster was strongly associated with another Fourteen Articles word cluster (Cluster 5e) containing the words "reconcile" and "possibility." Judges often held that reconciliation was possible because the marriage rested on a solid foundation. Judges expressed their optimistic prognosis for reconciliation using a variety of synonyms for "reconcile" (e.g., 可调和, 重归于好, 如初, 重新, 修复, 恢复, 有望). As we continue to review judges' flimsy determinations of the existence of mutual affection and reconciliation potential, bear in mind that each case in the HCA involves an allegation of domestic violence.

In Zhejiang's holdings, the words "definite" and "build" were part of a cluster of words that also included "give birth" (Cluster 2b). In addition to the word "build" (which can also be translated as "establish") that appears in the Fourteen Articles, judges also used a few synonyms (e.g., 构建, 共建, 组建) to refer to building happy families, building a harmonious society, and so on. This cluster in turn was connected to another cluster that included "marry" and "register" (Cluster 2a). When judges affirmed the validity of the marriage by holding that it was lawfully registered, they did so not only to establish the court's standing. Insofar as marrying under duress constitutes grounds for

divorce according to the Fourteen Articles (Article 6), judges used these words to hold that litigants had registered their marriages on their own volition. Judges also regarded voluntary marriage registration as proof that a couple had "built definite marital affection" (e.g., 应视为已建立一定的夫妻感情). Applying the same logic, judges regarded childbirth as additional proof of marital affection. My samples of holdings are full of statements such as "Plaintiff and defendant, having voluntarily registered their marriage and given birth to a son and a daughter, should have a definite foundation of mutual affection."

Judges in Henan, too, used childbirth as evidence that marital affection had not broken down. Consider the words in Cluster 4. Judges held that occasional *anger* and arguing over family trifles was unavoidable, and that *giving birth* was evidence that marital affection was once strong and could therefore be rebuilt. As judges often put it, *anger* had led to physical *separation* but had not caused mutual affection to break down *completely*. They often added that the *time* duration of *separation* was relatively short and thus did not satisfy the minimum two-year requirement. Judges also used defendants' unwillingness to divorce as evidence of marital affection. Although the term "withhold consent" is not among the 50 most frequently used words in the holdings of domestic violence cases, it is in the word cloud in Panel A of Figure 8.1. Judges sometimes cited the "earnest" (诚恳) "wishes" (愿望) of defendants – even those who had committed domestic violence – to reconcile as evidence of the couple's marital affection and reconciliation potential. Judges similarly cited abusive defendants' "remorse" (悔改, 后悔) for their wrongdoing, promises to "rectify" themselves (改正, 改造, 改错, 改善), and hopes for another chance to reconcile as grounds for denying divorces. As we saw in Chapter 7, judges sometimes used defendants' apology letters as grounds for their adjudicated denials. Judges also used the words "child" and "children" to justify denying divorces "for the sake of the healthy upbringing of children."

Zhejiang's Cluster 1 contains Fourteen Articles words. The word "foundation" is most closely linked to the word "postmarital" (Cluster 1e). Sentences in which judges used both words include the following few examples: both the marital *foundation* and *postmarital* affection are good; both the premarital *foundation* and *postmarital* affection are good; although the marital *foundation* is good, disputes that emerged in their *postmarital* life together have not been properly handled; both sides built a good premarital *foundation*, their *postmarital* life together

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has been long, and they gave birth to a daughter; and plaintiff and defendant possess a good *foundation* for their marriage, and in their *postmarital* life together have built definite marital affection. Judges used a variety of synonyms for "good" when describing the quality of the marital foundation (e.g., 一般, 尚好, 尚可).

In both Henan and Zhejiang, Fourteen Articles words were closely linked to therapeutic words. In Henan, the Fourteen Articles words "build," "foundation," "reconcile," and "possibility" belong to a cluster of words that also includes the therapeutic words "both sides," "live," "together," "family," "trifles," "conflict," "occur," "mutual," and "communication" (Cluster 5). One of Zhejiang's corresponding clusters that includes "foundation," "reconcile," and "possibility" also includes "both sides," "live," "together," "family," "trifles," "occur," and "cherish" (Cluster 1). Zhejiang's Cluster 2 also contains the Fourteen Articles word "build" as well as the therapeutic words "rapport," "conflict," "produce," "communication," and "strengthen."

Judges held that marital conflict "occurred" as a result of – or was "produced" by – "family trifles" (家庭琐事), and was thus a normal and even inevitable part of marriage. While "conflict" was their word of choice in this context, they had a repertoire of synonyms (e.g., 冲突) and words that similarly expressed marital discord, including "estrangement" or "grown apart" (隔阂) and "argument" or "dispute" (争执, 吵架, 纠纷, 分歧, 吵闹, 争议, 争吵). A common synonym for "trifle" was "friction" (摩擦). Judges also used synonyms for "occur" and "produce" in this context (e.g., 造成, 导致). When they trivialized and normalized domestic violence, judges often held that "occasional" (时有, 偶尔) "rifts" (裂痕) did not rise to the "level" (地步) of "major" (大的) or "fundamental" (根本性, 原则性) marital problems. Some judges responded to allegations of domestic violence by holding that "opposition to frivolous divorce is a fundamental spirit of China's Marriage Law" (Decision #3128494, Quzhou Municipal Kecheng District People's Court, Zhejiang Province, October 30, 2014).[11] And they held that litigants' marital issues were not serious enough to cause the breakdown of mutual affection and that plaintiffs had either failed to submit evidence in support of their claims otherwise or had submitted evidence that was "insufficient" (不足, 不充分) to prove their claims.

[11] Case ID (2014)衢柯巡民初字第00317号, archived at https://perma.cc/97EC-WQTF.

Judges' acknowledgment of marital discord was the premise of their relationship advice. They held that marital damage could be mended – and even that documented domestic violence could be prevented in the future – if both sides "worked harder" (加强, 多加, 增强, 增进, 努力, 尽到, 坚持, 进一步) on their relationship skills. They advised litigants to fix their "shortcomings" (不足之处, 缺点), deal with conflict "correctly" (正确, 妥善), and "improve" themselves (改正, 改造, 改错, 改善). As judges so often explained in their holdings, litigants could overcome the "personality" (性格) differences at the root of their marital discord "provided" (只要) they learned to build "rapport and mutual understanding" (互谅, 体谅, 理解, 融洽); "compromise" or "give and take" (互让); "love, respect, and tolerate each other" (互敬, 互爱, 尊重, 宽容, 包容); "show care, affection, and consideration for one another" (关爱, 爱护, 呵护, 照顾, 体贴); "trust each other" (信任, 互信); "communicate" more regularly and effectively (沟通, 交流); be "honest, sincere, and loyal" (忠诚, 以诚相待); act "rationally" (理性) and with a "sense of responsibility" (责任感, 责任心); and "help and support each other" (互助, 扶助, 帮助, 扶持, 持家).[12] Finally, judges also explained that their holdings to deny divorce petitions were for the purpose of providing an "opportunity" (机会) for litigants to "cool off" (冷静) and "reflect on" (思考, 考虑) their commitment to their families. Judges advised litigants to adjust their attitudes and to "cherish" (珍惜, 珍视) and to feel blessed to have their "happy" (美满, 美好, 幸福), "perfect" (完美), "complete" (完整), and "precious and hard-earned" (来之不易) families. We have seen variations of a common cliché in judges' holdings: "If you cherish what you have you can restore marital harmony."

Clearly, the top 50 words in each set of holdings are a fraction of the rich vocabulary judges used to deny divorce petitions. Ideological words are absent from both dendrograms in Figure 8.2 because they were not among the top 50 most frequently used words in either sample. This does not mean that ideological discourse was unimportant. As we saw at the outset of this section and can see again in Table 8.3, ideological words appeared in the holdings of 25% and 13% of all first-attempt adjudications in the Henan and Zhejiang samples, respectively. The other three types of judicial discourse were simply more prevalent. Indeed,

[12] Some of these separate words typically appear as combined words in judges' holdings (e.g., 互谅互让 and 互敬互爱).

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therapeutic words that appear in at least one word cloud in Figure 8.1 dominated judges' holdings. At least one of the 16 words comprising therapeutic discourse appeared in 75% and 83% of holdings in the Henan and Zhejiang samples, respectively. Each of the remaining two judicial discourses of adjudicated denials – Fourteen Articles discourse and evidentiary discourse – also appeared in the majority of holdings in first-attempt divorce adjudications in both samples. Finally, Table 8.3 shows that whereas judges' ideological discourse was more prevalent in

TABLE 8.3 Proportion of judges' holdings (%) containing types of words, by plaintiff claim of domestic violence

	All decisions	By plaintiff domestic violence claim		Domestic violence claim difference
		Yes	No	
Any ideological words				
Henan	25	27	24	3
Zhejiang	13	15	13	2
Any Fourteen Articles words				
Henan	54	57	53	4
Zhejiang	69	73	68	5
Any other therapeutic words				
Henan	75	80	73	7
Zhejiang	83	89	81	8
Any evidentiary words				
Henan	61	67	58	9
Zhejiang	60	67	58	9
Any of the above categories				
Henan	93	96	92	4
Zhejiang	93	97	92	5

Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: Limited to first-attempt adjudications. Categories of words correspond to the typology of judicial discourse in Table 8.2. Henan n = 57,502 and Zhejiang n = 51,573 adjudications of first-attempt divorce petitions. All differences are statistically significant ($P < .001$, χ^2 tests).

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the Henan sample than in the Zhejiang sample, Fourteen Articles discourse and therapeutic discourse were more prevalent in the Zhejiang sample than in the Henan sample.

Perhaps the most disconcerting pattern in Table 8.3 is that domestic violence allegations did not reduce judges' use of any of these types of judicial discourse. On the contrary, judges responded to domestic violence claims with even greater usage of these types of judicial discourse. Domestic violence claims also triggered evidentiary discourse. More often than not, domestic violence claims were invalidated on evidentiary grounds, as we have seen. Next I will show that judges were much more likely to invoke any of the four judicial discourses when the plaintiff was a woman than when the plaintiff was a man.

Gendered Exposure to Judicial Discourses of Adjudicated Denial

Table 8.4 contains two sets of comparisons of the prevalence of judicial discourses: (1) female versus male plaintiffs and (2) divorces denied versus divorces granted. With respect to the first comparison, all four types of judicial discourse in both provincial samples were more prevalent in judges' holdings when the plaintiff was a woman. Given that domestic violence allegations so greatly increased the incidence of evidentiary discourse, we should not be surprised that the gender gap was greatest there: 7 and 6 percentage points in the Henan and Zhejiang samples, respectively. Judges' disproportionate use of therapeutic discourse in cases filed by women was also pronounced: a gap of 3 and 5 percentage points in the two respective samples.

With respect to the second comparison, Table 8.4 brings into sharp relief the concentration of all four types of judicial discourse in adjudicated denials. All four types of judicial discourse represent the language judges tended to use to deny divorce petitions. In both samples, judges' use of these discourses was vastly more likely in adjudicated denials than in holdings to grant divorces. The degree to which these judicial discourses were concentrated in adjudicated denials is truly striking. Differences in the Henan and Zhejiang samples were 21 and 8 percentage points, respectively, in the use of ideological words, 25 and 33 percentage points, respectively, in the use of Fourteen Articles words, 21 and 36 percentage points, respectively, in the use of other therapeutic words, and 40 and 44 percentage points, respectively, in the use of evidentiary words. The incidence of these judicial discourses in adjudicated denials was generally about double their incidence in holdings to grant divorces.

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TABLE 8.4 Proportion of judges' holdings (%) containing types of words, by plaintiff sex and outcome

	All decisions	By plaintiff sex		Gender difference	All outcomes	By outcome		Outcome difference
		Female	Male			Denied	Granted	
Any ideological words								
Henan	25	25	24	1**	25	32	12	21**
Zhejiang	14	14	13	2*	13	15	7	8**
Any Fourteen Articles words								
Henan	53	54	52	2**	54	63	38	25**
Zhejiang	71	71	70	2	69	76	43	33**
Any other therapeutic words								
Henan	75	76	73	3**	75	83	62	21**
Zhejiang	85	87	82	5**	83	90	55	36**
Any evidentiary words								
Henan	61	63	56	7**	61	75	35	40**
Zhejiang	63	65	59	6**	60	69	25	44**
Any of the above categories								
Henan	93	94	92	2**	93	99	84	15**
Zhejiang	95	96	93	2**	93	97	78	19**

Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: Limited to first-attempt adjudications. Categories of words correspond to the typology of judicial discourse in Table 8.2. For cross-tabulations by plaintiff sex, Henan n = 54,200 and Zhejiang n = 8,626 adjudications of first-attempt divorce petitions. For cross-tabulations by outcome, Henan n = 57,502 and Zhejiang n = 51,573 adjudications of first-attempt divorce petitions. Slight discrepancies between numbers in the "gender difference" and "outcome difference" columns and numbers from which they were derived in the "by plaintiff sex" and "by outcome" columns, respectively, are due to rounding error.
* $P < .05$ ** $P < .001$, χ^2 test

If women were at greater exposure to these four judicial discourses, and if these four judicial discourses were associated with adjudicated denials, then perhaps women's greater risk of having their petitions denied explains why they were more exposed to these four judicial discourses. In other words, perhaps judges were more likely to invoke a judicial discourse of denial in cases filed by women simply because they were more likely to deny the divorce petitions of women. If this is true, then female and male plaintiffs who won their cases should have been similarly or identically exposed to these judicial discourses. Likewise, female and male plaintiffs who lost their cases should have had essentially the same level of exposure to these judicial discourses.

We can easily test this possibility with regression analysis. If women's greater exposure to judicial discourses of denial was simply a function of their greater likelihood to lose their cases, then controlling for the outcome should erase gender differences in exposure to the four judicial discourses. The results presented in Table 8.5 entirely support this expectation. The regression models in Table 8.5 also allow for a comparison of gender gaps between rural and urban courts. Rural courts are those in counties and county-level cities, and urban courts are those in urban districts (Chapter 4).

To facilitate the interpretation of the regression models in Table 8.5, I converted regression coefficients into average marginal effects (AMEs), which are interpreted simply as changes in the probability of a given outcome associated with changes in a given explanatory variable. For example, in Model 1 for Henan's rural courts, changing the plaintiff from male to female is associated with a .03 increase in the probability that at least one ideological word appeared in the holding. Zhejiang's corresponding AME was identical. AMEs for female plaintiffs in models for judges' use of Fourteen Articles words in rural courts (Model 3) were identical or nearly so. The magnitude of AMEs for female plaintiffs was even greater in models for the appearance of other therapeutic words and evidentiary words in rural courts' holdings (Model 5).

Note, however, that AMEs for female plaintiffs are only positive and statistically significant (at the conventional level of $P < .05$) in models for rural courts. Female plaintiffs in urban courts, by contrast, were no more exposed than male plaintiffs to these four judicial discourses (with the possible exception of therapeutic discourse in Zhejiang, where the AME is only marginally statistically significant).

TABLE 8.5 Average marginal effects on the appearance of word types in judges' holdings, calculated from logistic regression models

	Any ideological words		Any Fourteen Articles words		Any other therapeutic words		Any evidentiary words	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Henan (n = 54,200)								
Rural courts (n = 45,353)								
Female plaintiff	.03***	.004	.03***	.01	.04***	.02***	.06***	.01**
Adjudicated denial		.19***		.21***		.19***		.41***
McKelvey & Zavoina pseudo-R^2	.61	.64	.26	.31	.15	.20	.17	.34
Urban courts (n = 8,847)								
Female plaintiff	−.01	−.01	−.03**	−.03*	−.01	−.005	.01	.02*
Adjudicated denial		.26***		.23***		.24***		.29***
McKelvey & Zavoina pseudo-R^2	.42	.50	.16	.22	.23	.33	.26	.34
Zhejiang (n = 8,626)								
Rural courts (n = 5,753)								
Female plaintiff	.03***	.02*	.04***	−.004	.07***	.02**	.06***	.003
Adjudicated denial		.06***		.32***		.33***		.39***
McKelvey & Zavoina pseudo-R^2	.75	.74	.23	.31	.54	.59	.26	.38
Urban courts (n = 2,873)								
Female plaintiff	.01	.01	.01	−.01	.03+	.01	.02	.01
Adjudicated denial		.11***		.35***		.31***		.30***
McKelvey & Zavoina pseudo-R^2	.48	.50	.49	.54	.21	.43	.27	.36

Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: Limited to first-attempt adjudications. Categories of words correspond to the typology of judicial discourse in Table 8.2. All models include court fixed effects (court dummies) and year of decision. Significance tests are based on standard errors calculated using the delta method and are adjusted for nonindependence between decisions clustered within courts (108 rural courts and 53 urban courts in Henan; 53 rural courts and 38 urban courts in Zhejiang).
+ $P < .10$ * $P < .05$ ** $P < .01$ *** $P < .001$, two-tailed tests

Once the verdict to grant or deny the divorce petition is introduced into the models for rural courts, the effect of plaintiff sex almost or entirely disappears. The interpretation of this pattern is clear: what originally appeared to be a gender difference in exposure to judicial discourses of denials was actually the effect of a gender difference in adjudicated denials. Judges were more likely to use judicial discourses of denials in their holdings when the plaintiff was a woman because they were more likely to deny the divorce petitions of women. At the same time, this pattern is limited to rural courts. In urban courts, by contrast, for the simple reason that judges were equally likely to deny the divorce petitions of female and male plaintiffs, judges were also equally likely to infantilize female and male plaintiffs with holdings ordering them to stay together for the sake of society, the nation, their children, and their own happiness. Women were disproportionately targeted with judicial discourses of adjudicated denial only because they were disproportionately targeted for adjudicated denial. Judges were more likely to gaslight women because they were more likely to deny their divorce petitions.

JUDICIAL DECISION-MAKING

So far we have seen astonishingly little variation in judges' holdings. In their crusade to deny divorce petitions, they mindlessly applied boilerplate holdings of little bearing on the specific circumstances of the cases at hand. Holdings were often so general that they could apply to almost any case after filling in a few blanks with the litigants' names, their children, pertinent dates, the thrust of the plaintiff's legal complaint, and so on. Judges' holdings to deny divorce petitions shared a remarkably limited lexicon of words and terms grounded in political ideology, relationship advice, and cherry-picked legal provisions on reconciliation potential (in the Fourteen Articles) and evidence that should not apply to cases involving allegations of domestic violence. Copying and pasting boilerplate text helped judges realize one of the key benefits of the divorce twofer, which is to clear their dockets by expeditiously denying divorce petitions. This section is devoted to documenting the reason why judges were more likely to apply this strategy in cases filed by women than in cases filed by men: judges were much more likely to deny a divorce petition if it was filed by a woman than if it was filed by a man. I will begin with descriptive patterns before turning to regression analysis results.

Descriptive Correlates of Adjudicated Denials

Reading and manually coding even a small fraction of documents in a corpus of this size is infeasible. Chapter 4 documents my methods of machine-coding the contents of court decisions into measures that I use to analyze divorce verdicts in the remainder of this chapter. My dependent variable – my object of inquiry, the outcome I try to explain – consists of verdicts in first-attempt divorce trials. There are only two possible outcomes in this analysis of judicial decision-making: a granted or denied divorce petition.

China's judicial clampdown on adjudicated divorce has been achieved in no small part on the backs on women. Figure 8.3 disaggregates by plaintiff sex the long-dash lines in Figure 6.2 (Panels B and C) depicting China's judicial clampdown on divorce. Panels A and B of Figure 8.3 show a wide gap between female and male plaintiffs in the probability of an adjudicated denial. The overall gender gaps were 11–12 percentage points in the two samples. In Henan, the gender gap widened over time from 2 percentage points in 2009 to 13 percentage points in 2015. Among first-attempt divorce adjudications, the probability of a denial increased from 43% to 66% for men and from 45% to 78% for women (Panel A). As we saw in Figure 6.2, trends were flatter in Zhejiang, particularly after 2009. Zhejiang's gender gap remained stable at 12–13 percentage points from 2010 to 2016 (Panel B). By 2015, Henan's denial rates had almost caught up with Zhejiang's. In 2015, 75% and 78% of adjudicated first-attempt divorce petitions were quashed in the Henan and Zhejiang samples, respectively. Meanwhile, in the same year, among female plaintiffs, denials accounted for 78% and 82% of all first-attempt adjudications in the two respective samples.

In short, women's divorce requests were far more likely than men's to be denied on the first attempt. Women's disproportionate burden was compounded by five factors. First, as we can also see in Figure 8.3, the gap between female and male plaintiffs in first-attempt divorce denial rates was widest in rural areas where most divorce petitions were filed. In the two samples, the average gender gap (the female denial rate minus the male denial rate) was 14–15 percentage points in rural courts, which we know contained the majority of both people and divorce petitions. Figure 8.3 also shows that urbanization not only shrank the gender gap, but also, at least in the case of Henan, reversed it. No different from the gender gap in exposure to judicial discourses of denial discussed in the previous section, the gender gap in adjudicated

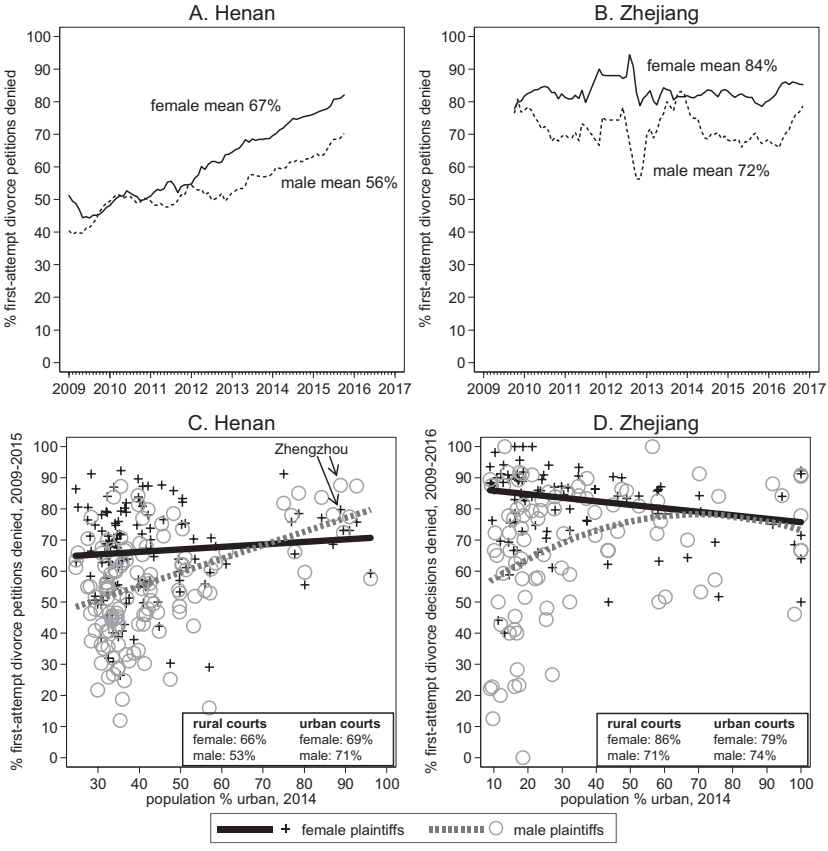

Figure 8.3 Proportion of first-attempt divorce petitions (%) denied
Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: n = 54,200 and n = 8,626 first-attempt adjudicated decisions (granted or denied) from Henan and Zhejiang, respectively. All sex differences are statistically significant (χ^2, $P < .01$). Panels A and B are smoothed with moving averages. For more information on scatterplot points, see the note under Figure 4.5.

outcomes appears also to have been largely a rural phenomenon. In urban courts, the average gender gap flipped to −3 percentage points in Henan and shrank to 5 percentage points in Zhejiang.[13] Consider

[13] The discrepancy between the Henan's gender gap of 14 percentage points and the numbers presented in Panel C for rural courts (66 − 53 = 13) is due to rounding error: 66.19 − 52.52 = 13.67. Similarly, the discrepancy between Henan's gender gap of −3 percentage points and the numbers presented in Panel C for urban courts (69 − 71 = −2) is due to rounding error: 68.75 − 71.49 = −2.74.

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Henan's provincial capital of Zhengzhou, labeled in Panel C. In Zhengzhou's seven district courts, which together supplied 953 decisions, female plaintiffs were more likely than male plaintiffs to win the divorces they sought. The rate at which divorce petitions were denied was 80% and 88% among female and male plaintiffs, respectively. The positive impact of urbanization, however, was relatively limited, as only 16% and 33% of first-attempt divorce adjudications in the Henan and Zhejiang samples, respectively, were filed in urban courts.

Second, Table 8.6 reproduces what we already saw in Figure 7.1, namely that women were disproportionately exposed to marital violence. Table 8.6 presents descriptive characteristics of key explanatory variables in the regression analysis later in the chapter. In both samples, female plaintiffs made allegations of domestic violence in almost 40% of their petitions. The remarkable discursive similarities we saw between judges' holdings in adjudicated denials and judges' holdings in domestic violence cases suggests that allegations of domestic violence did not sway judges to grant divorces. Indeed, because domestic violence allegations increased the likelihood that judges invoked a judicial discourse associated with adjudicated denials, we should not be surprised to discover that domestic violence allegations were also positively associated with adjudicated denials.

Third, the improbability of obtaining an adjudicated divorce on the first attempt disproportionately impacted women in part because male defendants were more likely than female defendants to withhold consent. Table 8.6 shows that cases in which the defendant withheld consent represent by far the largest category of the "defendant consent and absenteeism" variable and account for at least one-half of all first-attempt divorce trials in each sample. Within this category, public notice trials were far rarer in Zhejiang than in Henan, perhaps because they reduce judicial efficiency by virtue of the requirement that they be conducted according to the ordinary civil procedure (Chapters 2 and 5). Meanwhile, defendants in only a small proportion of cases (15% and 14% in the Henan and Zhejiang samples, respectively) consented to divorce. Table 8.6 also shows that female plaintiffs were more likely than male plaintiffs to face defendant obstructionism and less likely than male plaintiffs to have defendant consent. We know that judges used defendants' unwillingness to divorce as evidence of mutual affection and thus as grounds for denying divorce petitions. We also know that judges fear provoking the violent wrath of disgruntled male defendants.

TABLE 8.6 Frequency distributions (%) of main variables in regression models

	Henan (n = 54,200)				Zhejiang (n = 8,626)			
	All plaintiffs	By plaintiff sex		Gender difference	All plaintiffs	By plaintiff sex		Gender difference
		Female	Male			Female	Male	
Sex composition of plaintiffs	100	66	34		100	67	33	
Court verdict								
Divorce denied	63	67	56	10***	80	84	72	12***
Divorce granted	37	33	44	−10***	20	17	28	−12***
Total	100	100	100		100	101	100	
Domestic violence								
Apparent plaintiff claim	28	38	8	30***	30	39	11	27***
No apparent plaintiff claim	72	62	92	−30***	70	61	89	−27***
Total	100	100	100		100	100	100	
Defendant consent and absenteeism								
Defendant in absentia								
Public notice	12	9	19	−10***	6	4	10	−6***
No public notice	23	24	20	4***	23	24	22	2*
Defendant consented to divorce	15	15	16	−2***	14	14	15	−1+
Defendant withheld consent	50	52	45	7***	56	58	53	5***
Total	100	100	100		99	100	100	
Civil procedure								
Ordinary civil procedure	47	47	47	−0.2	8	6	11	−5***
Simplified civil procedure	53	53	53	0.2	92	94	89	5***
Total	100	100	100		100	100	100	
Plaintiff submitted evidence								
Apparently yes	50	50	49	1***	82	83	80	3***
Apparently no	50	50	51	−1***	18	17	20	−3***
Total	100	100	100		100	100	100	

TABLE 8.6 (*cont.*)

	Henan (n = 54,200)				Zhejiang (n = 8,626)			
	All plaintiffs	By plaintiff sex		Gender difference	All plaintiffs	By plaintiff sex		Gender difference
		Female	Male			Female	Male	
Case complexity								
Both children and marital property	74	76	69	7***	72	76	65	11***
Children no, marital property yes	16	14	21	−7***	18	15	25	−10***
Children yes, marital property no	7	8	7	1***	6	7	6	1
Neither	3	2	4	−1***	3	2	4	−2***
Total	100	100	101		99	100	100	
Physical separation claim								
Apparently yes	41	41	42	−1**	52	53	50	2*
Apparently no	59	59	58	1**	48	47	50	−2*
Total	100	100	100		100	100	100	
Plaintiff gave up property or child custody								
Apparently yes	7	7	5	2***	3	3	3	0.1
Apparently no	93	93	95	−2***	97	97	97	−0.1
Total	100	100	100		100	100	100	

Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: Limited to first-attempt adjudications. The numbers of observations here and in Table 6.5 ("first attempts") are different because this table is limited to the subsample of observations with disclosed litigant sex and nonmissing values of covariates included in the logistic regression models. Ordinary civil procedure cases exclude public notice trials in order to prevent redundancy between the two variables; public notice trials, by definition, use the ordinary civil procedure. Totals do not always equal 100% owing to rounding error. Slight discrepancies between numbers in the "gender difference" column and numbers from which they were derived in the "by plaintiff sex" columns are also due to rounding error.
$^{+}$ $P < .10$ * $P < .05$ ** $P < .01$ *** $P < .001$, χ^2 test

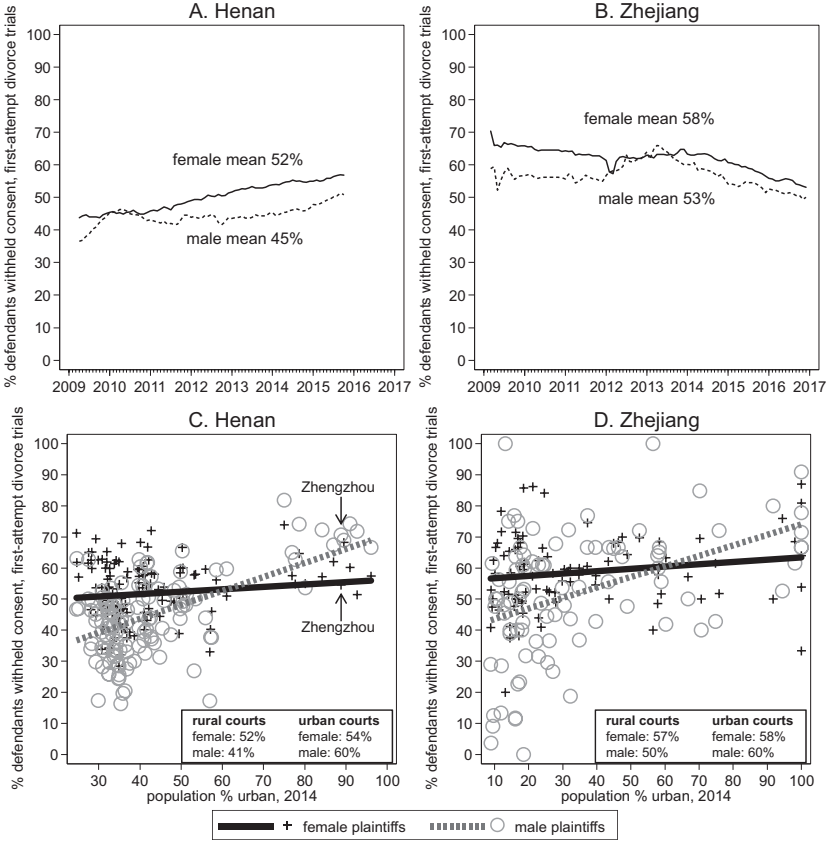

Figure 8.4 Proportion of defendants (%) who withheld consent to divorce
Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: Lines for females and males refer to plaintiffs. Lines for female plaintiffs are interpreted as the proportion of defendants who withheld consent to divorce when the plaintiff was female. n = 54,200 and n = 8,626 first-attempt adjudicated decisions (granted or denied) from Henan and Zhejiang, respectively. With the exception of urban courts in Zhejiang, all sex differences are statistically significant (χ^2, $P <$ .001). Panels A and B are smoothed with moving averages. For more information on scatterplot points, see the note under Figure 4.5.

Figure 8.4 shows that the gender gap in defendant obstructionism remained fairly stable over time. It also shows how defendant obstructionism varied by urbanization. Female plaintiffs' disadvantage was another exclusively rural phenomenon in both samples. Whereas female plaintiffs were more likely than male plaintiffs to face defendant

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obstructionism in rural areas, the opposite was true in urban areas (although the small difference in Zhejiang's urban courts was not statistically significant). Once again, Henan's capital of Zhengzhou is illustrative of urban courts more generally: whereas the husbands of 55% of female plaintiffs withheld consent, the wives of 71% of male plaintiffs withheld consent. On the whole, female plaintiffs' advantage in urban courts such as those in Zhengzhou was far overshadowed by their disadvantage in rural courts, where the vast majority of divorce adjudications occurred.

Fourth, as we can also see in Table 8.6, female plaintiffs were less than half as likely as male plaintiffs to have public notice trials. Because, as we will see, judges were relatively inclined to grant divorces when defendants were unable or chose not to participate in first-attempt trials, women's lower chances of success in their attempts to divorce are explained in part by men's vast overrepresentation among plaintiffs in public notice trials.[14]

Figure 8.5 depicts patterns with respect to courts' utilization of the ordinary procedure. Note that Henan's time trend – its turn away from the ordinary procedure in favor of the simplified civil procedure beginning in 2012 – reflects what we already saw in Figure 5.1. Zhejiang's far greater aversion to the ordinary procedure also reflects what we saw in Figure 5.1. Figure 8.5 disaggregates the application of the ordinary civil procedure according to plaintiff sex. Men who filed for divorce were much more likely than women to have their cases tried according to the ordinary civil procedure. This gender gap narrowed or altogether disappeared with urbanization; like other gender gaps, it was primarily a rural phenomenon.

As mentioned in Chapter 4, the ordinary civil procedure was much more common when the defendant was in absentia because its application is legally mandated in public notice trials. Courts applied the ordinary civil procedure in practically 100% of public notice trials, as required by the SPC. Because my measure for civil procedure and my measure for defendant consent and absenteeism are therefore partially

[14] Data limitations prohibit an assessment of the extent to which this overrepresentation is endogenous to courts. It could be a function of men's greater likelihood to claim missing spouses, courts' greater likelihood to accept the missing spouse claims of male plaintiffs, or a combination of both. Regardless of its origins, this overrepresentation disadvantages female plaintiffs relative to male plaintiffs. Although, as I discussed in Chapter 2, the Marriage Law stipulates that a formal missing person declaration by a court constitutes statutory grounds for divorce, my samples of court decisions reveal that this almost never happens, undoubtedly because, as also discussed earlier, courts can enjoy all the conveniences of a public notice trial without the hassle of making a formal missing person declaration.

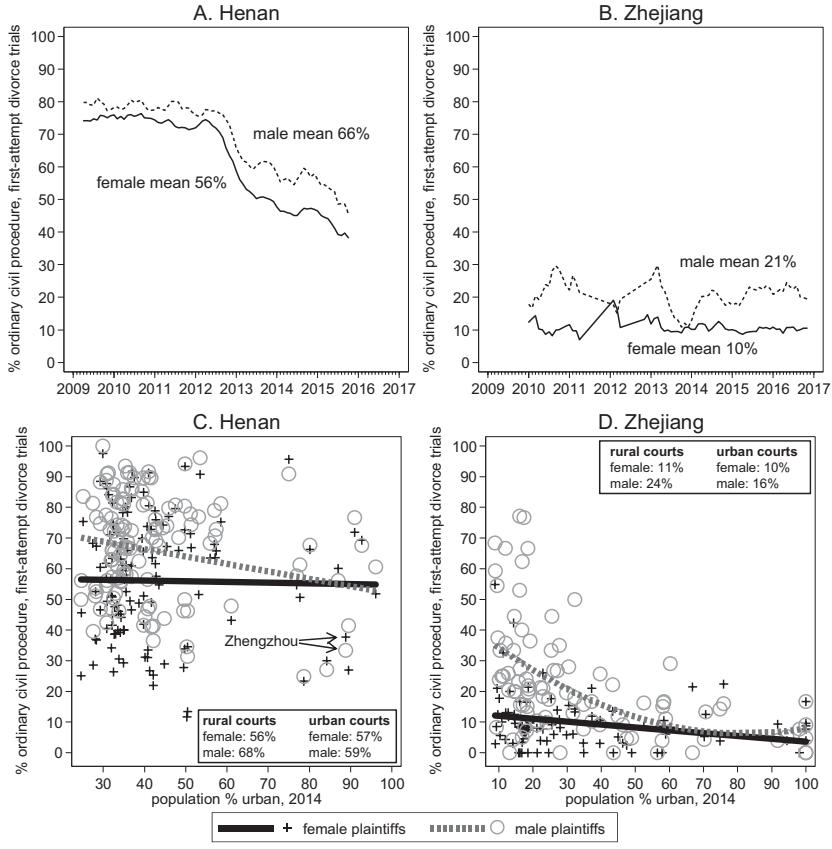

Figure 8.5 Ordinary civil procedure utilization rate (%) in first-attempt divorce trials
Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: n = 54,200 and n = 8,626 first-attempt adjudicated decisions (granted or denied) from Henan and Zhejiang, respectively. With the exception of urban courts in Henan, all sex differences are statistically significant (χ^2, $P < .001$). Panels A and B are smoothed with moving averages. For more information on scatterplot points, see the note under Figure 4.5.

redundant (i.e., we already know the type of civil procedure that courts used in public notice trials), in the regression analyses later in the chapter I removed all public notice trials from the measure of the ordinary civil procedure in order to prevent multicollinearity.

The gender gap in courts' use of the ordinary civil procedure was partially an artifact of a gender gap in defendant absenteeism. In other words, gender gaps in public notice trials depicted in Figure 8.6 mirror gender gaps in courts' application of the ordinary civil procedure in

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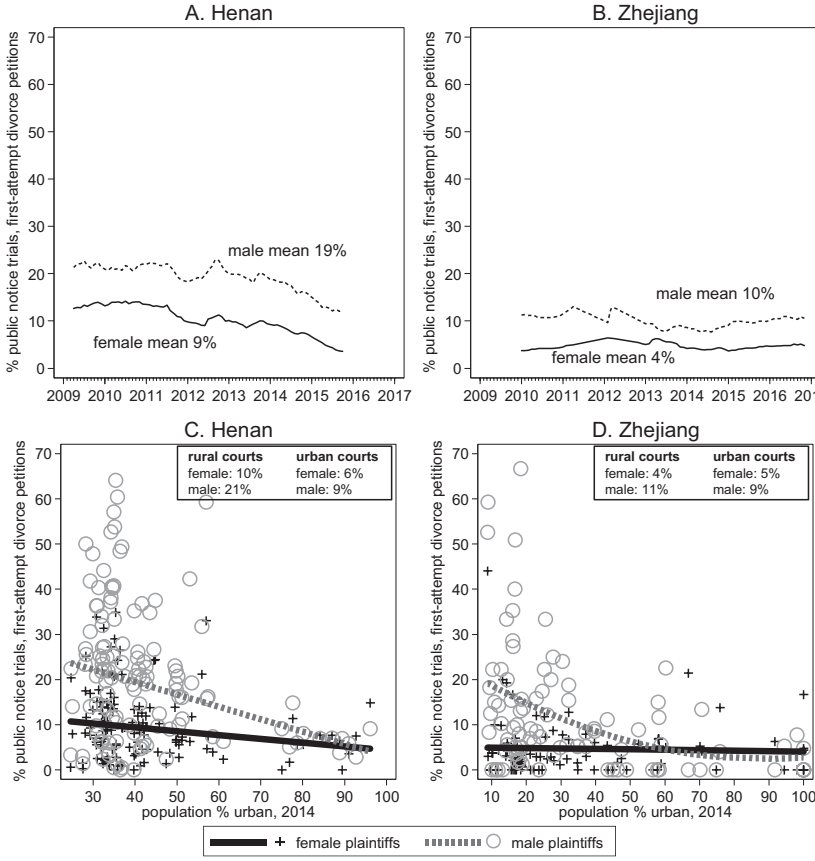

Figure 8.6 Public notice trials (%) among all first-attempt divorce trials
Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: n = 54,200 and n = 8,626 first-attempt adjudicated decisions (granted or denied) from Henan and Zhejiang, respectively. All sex differences are statistically significant (χ^2, $P < .001$). Panels A and B are smoothed with moving averages. For more information on scatterplot points, see the note under Figure 4.5.

Figure 8.5. To some extent, female plaintiffs were less likely to have their cases tried according to the ordinary civil procedure *because* they were less likely to have public notice trials. Indeed, as we can see in Table 8.6, once we remove public notice trials from my measure of ordinary civil procedure, the gender gap narrowed (Zhejiang) or disappeared (Henan). The wives of male plaintiffs were a lot more likely than the husbands of female plaintiffs to be summoned by public notice and absent from

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their trials. And this is an important reason why male plaintiffs were more likely than female plaintiffs to have their cases tried according to the ordinary civil procedure. Once again, this gender gap with respect to public notice trials was limited almost entirely to rural courts.

Altogether, about one-third of plaintiffs in each sample did not face defendants in their first-attempt trials. A far greater share of defendants was AWOL in Henan than in Zhejiang undoubtedly because Zhejiang is far more urbanized than Henan. We can see in Figure 8.6 that defendants whose whereabouts were allegedly unknown or who opted out of court proceedings for other reasons were overrepresented in rural areas. In the rural courts in my samples, 35–40% of first-attempt trials were held without the participation of defendants (including but not limited to public notice trials), compared with only 25–30% in the urban courts in my samples.

Fifth, the foregoing dynamics that militated against women's efforts to divorce were multiplied by women's disproportionate representation among first-attempt divorce petitioners in court. Table 8.6 shows that, as previously reported in Chapter 4 (Figure 4.5), and consistent with previously published estimates reported in Chapter 2, women accounted for 66% and 67% of all plaintiffs filing first-attempt divorce petitions in the Henan and Zhejiang samples, respectively.

The remaining variables in Table 8.6 also pertain to divorce verdicts. Female plaintiffs were more likely than male plaintiffs to submit evidence in support of their legal complaints. As we will see, whether judges treated women's evidence as seriously as men's evidence is another matter. The cases of female plaintiffs were more likely than those of male plaintiffs to involve both children and marital property. Judges' aversion to ruling on complex and contentious matters such as these may have therefore contributed to female plaintiffs' higher risk of adjudicated denial. Physical separation of at least two years is statutory grounds for divorce that should reduce the probability of an adjudicated denial. Over 40% of cases in Henan and a little over half of cases in Zhejiang involved claims of physical separation. Finally, plaintiffs sometimes gave up claims to property or child custody as a means of obtaining defendants' consent to divorce and thus of boosting their chances of obtaining a divorce verdict. Women were more likely than men to make this sort of concession in Henan but not in Zhejiang. Plaintiffs' concessions on property or child custody were concentrated in cases in which the divorce was granted. In Henan, almost one out of five female plaintiffs – but only about

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one out of 10 male plaintiffs – whose divorce petitions were granted had "voluntarily" given up property or child custody claims. The same pattern, albeit a more muted one, emerges from the Zhejiang sample.

Descriptive characteristics of additional variables not included in Table 8.6 are available elsewhere (Michelson 2019c). Let us now turn to a multivariate assessment of the relative importance of domestic violence allegations as grounds for granting divorces (faultism) and defendants' unwillingness to divorce as grounds for denying divorces (breakdownism).

Multivariate Correlates of Adjudicated Denials

I use AMEs to assess the impact of plaintiff sex, domestic violence (faultism), and defendant consent (breakdownism) on courts' verdicts, net of control variables included in the regression models. A marginal effect – also known as a first difference – is the difference between the predicted probabilities for each group. An AME is the average of all marginal effects computed for each observation in the sample. The interpretation of AMEs is highly intuitive. An AME can be interpreted as the effect of a variable (say, of changing the value of plaintiff sex from male to female) on the probability the outcome of interest occurs, holding all remaining variables at observed values (Long and Freese 2014:242–46; Mize 2019:85–87).[15] An AME of .05 for "female plaintiff" thus means that the probability a court denied a divorce petition was .05 higher for women who filed for divorce than for men who filed for divorce. The difference between two AMEs is known as a second difference.

I will proceed in two steps. In the first step, I will present overall AMEs for plaintiff sex, domestic violence (faultism), and defendant consent (breakdownism). Comparing the magnitudes of these effects allows me to conduct two empirical assessments: (1) the magnitudes of and reasons for gender differences in adjudicated outcomes of divorce trials and (2) the importance judges attached to the faultism and breakdownism standards for granting divorces. In the second step, I will present AMEs for domestic violence (faultism), defendant consent (breakdownism), in absentia trials (defendant absenteeism), and other explanatory factors that vary by plaintiff sex. For example, comparing

[15] Marginal effects at the mean (MEMs) are calculated while holding all remaining variables at sample means. AMEs are generally the preferred choice (Long and Freese 2014:245–46; Mize 2019). I replicated all analyses using both methods; results are highly robust.

the effects of defendant consent by plaintiff sex allows me to test whether defendant consent interacted with plaintiff sex.[16] Recall from Chapter 4 that I combined defendant consent and defendant absenteeism into a single variable in order to isolate affirmative consent (and affirmatively withholding consent) from failure to withhold consent by virtue of being an absentee defendant and not participating in the litigation process.

I include fixed effects for the court that adjudicated the case in order to account for unobserved heterogeneity across contexts. Because basic-level court jurisdictions correspond to rural counties and urban districts, court fixed effects (court dummy variables) serve the function of controlling for unobserved characteristics of both courts and the contexts in which they are embedded. For example, court fixed effects control for court-level variation in caseloads, an issue at the heart of Chapters 5 and 6. Court locations also reflect and therefore control for the social origins of divorce litigants. Divorce litigants who hailed from rural areas were overwhelmingly at the mercy of rural courts. As we saw in Chapter 4, migrants from rural areas rarely filed their divorces in urban courts. Rural courts tended to serve rural residents, and urban courts tended to serve urban residents.

The models also include additional control variables. Control variables are essential in order to minimize the possibility that an observed effect is an artifact of an omitted correlate. In order to assess the effects of the variables of central interest among otherwise similar cases, I control for the year of the decision, whether or not the plaintiff submitted evidence, whether or not the plaintiff gave up marital property or child custody, a physical separation claim, the participation of one or more female judges, the civil procedure adopted (ordinary or simplified), marital duration, marital property, children, and the participation of legal counsel. We will see that some of these control variables are important in their own right. Details on the construction of all measures are in Chapter 4.

[16] Regression models presented in this section include interactions between plaintiff sex and all explanatory and control variables. I test interaction effects by testing the equality of AMEs (i.e., by testing whether second differences are statistically significant; Long and Freese 2014:285). In regression models for categorical outcomes, group differences cannot be reliably assessed by testing the statistical significance of the coefficients of interaction terms (Allison 1999; Long and Mustillo 2021). Current methodological best practices call instead for testing interaction effects – that is, testing differences between groups in the effect of a covariate on the probability of experiencing a given outcome – by testing whether first differences (one for each group) are equal (Long and Mustillo 2021; Mize 2019).

Table 8.7 contains AMEs estimated from models of judges' decisions to deny first-attempt divorces in the Henan and Zhejiang samples. In Model 1, which controls only for decision year and court, the AMEs for the gender gap in the probability of an adjudicated denial – average female predicted probabilities minus average male predicted probabilities – are .09 in Henan and .11 in Zhejiang. Model 2 adds claims of domestic violence. In both Henan and Zhejiang, a claim of domestic violence increased the probability of a first-attempt adjudicated denial by .09 and .04 in the Henan and Zhejiang samples, respectively. Model 2 also shows that the highly statistically significant gender gap is reduced by controlling for claims of domestic violence. As we will see, this effect of domestic violence in Model 2 is largely an artifact of (1) an overrepresentation of domestic violence claims in cases in which defendants withheld consent (because judges rarely granted divorces in such cases) and (2) an underrepresentation of domestic violence claims in public notice trials (because judges were reasonably likely to grant divorces in such cases). In short, defendant consent and defendant absenteeism are driving what appears to be an effect of domestic violence.

When "defendant consent and absenteeism" is introduced in Model 3, the gender gap shrinks yet again, suggesting that some of the gender gap in the probability of an adjudicated denial on the first attempt was due to female plaintiffs' greater exposure to domestic violence and spousal obstructionism, and to the more limited use of public notice trials for their cases. Indeed, defendant consent and absenteeism accounts for the majority of the gender gap in the Henan sample. Just as striking is the sheer magnitude of the effect of defendant consent and absenteeism. Recall from Chapter 2 that statutory grounds for the breakdown of mutual affection can be established relatively straightforwardly both in public notice trials and when the defendant consents. Regression results show that only under these two circumstances was a court reasonably likely to grant a plaintiff's divorce request. In the full model (Model 4), a spouse's unwillingness to divorce increased the probability of an adjudicated denial by .51 and .47 in the Henan and Zhejiang samples, respectively. The effect of defendants' withholding consent was greater than the effect of plaintiffs' domestic violence allegations on divorce outcomes by dozens of orders of magnitude. Similarly, in absentia trials in which defendants were not served by public notice (because they were not alleged to be missing) increased the probability of an adjudicated denial by .27 and .35 in the Henan

TABLE 8.7 Average marginal effects on adjudicated denials, calculated from logistic regression models

	All basic-level courts				Rural	Urban
	(1)	(2)	(3)	(4)	(5)	(6)
Henan						
Female plaintiff	.09***	.07***	.03***	.03***	.04***	−.01
Plaintiff domestic violence claim		.09***	.02***	.01*	.02***	−.01
Defendant consent and absenteeism						
Defendant in absentia						
Public notice			−.06**	−.11***	−.10***	−.16***
No public notice			.25***	.27***	.26***	.32***
Defendant withheld consent			.57***	.51***	.50***	.54***
Cf.: Defendant consented to divorce						
Ordinary civil procedure				−.09***	−.09***	−.10***
Plaintiff submitted evidence				−.05***	−.04***	−.07***
Case complexity						
Children no, marital property yes				−.06***	−.06***	−.03*
Children yes, marital property no				−.15***	−.14***	−.18***
Neither				−.20***	−.20***	−.20***
Cf.: Both						
Physical separation claim				−.10***	−.11***	−.08***
Plaintiff gave up property or child custody				−.32***	−.33***	−.27***
Additional controls	No	No	No	Yes	Yes	Yes
McKelvey & Zavoina pseudo-R^2	.20	.21	.53	.63	.64	.62
n (first-attempt trials)	54,200	54,200	54,200	54,200	45,353	8,847

TABLE 8.7 (*cont.*)

	All basic-level courts				Rural	Urban
	(1)	(2)	(3)	(4)	(5)	(6)
Zhejiang						
Female plaintiff	.11***	.10***	.08***	.06***	.08***	.01
Plaintiff domestic violence claim		.04***	.01	.01	.01	.01
Defendant consent and absenteeism						
Defendant in absentia						
Public notice			.07+	.07+	.09+	.05
No public notice			.30***	.35***	.36***	.32***
Defendant withheld consent			.49***	.47***	.46***	.49***
Cf.: Defendant consented to divorce						
Ordinary civil procedure				−.21***	−.19***	−.27***
Plaintiff submitted evidence				−.02+	−.02*	−.01
Case complexity						
Children no, marital property yes				−.04***	−.04**	−.03+
Children yes, marital property no				−.09***	−.08**	−.12***
Neither				−.13***	−.13*	−.15**
Cf.: Both						
Physical separation claim				−.08***	−.08***	−.07***
Plaintiff gave up property or child custody				−.23***	−.26***	−.18**
Additional controls	No	No	No	Yes	Yes	Yes
McKelvey & Zavoina pseudo-R^2	.14	.15	.42	.50	.52	.49
n (first-attempt trials)	8,626	8,626	8,626	8,626	5,753	2,873

Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: All models include court fixed effects (court dummies) and year of decision. Significance tests are based on standard errors calculated using the delta method and are adjusted for nonindependence between decisions clustered within courts (161 and 91 in the Henan and Zhejiang samples, respectively). "Cf." denotes the omitted reference category. In order to prevent multicollinearity, "ordinary civil procedure" excludes public notice trials (which by definition entails the application of the ordinary civil procedure).
+ $P < .10$ * $P < .05$ ** $P < .01$ *** $P < .001$, two-tailed tests

and Zhejiang samples, respectively. The relatively minor importance of faultism standards and the major importance of breakdownism standards are also reflected in the minor change in pseudo-R^2 values between Model 1 and Model 2 and the major change in pseudo-R^2 values between Model 2 and Model 3.[17]

In both samples, defendant consent and absenteeism substantially reduced the effect of making a domestic violence claim. When controlling for plaintiff sex, defendant consent, and defendant absenteeism in Model 3, the effect of an apparent domestic violence allegation approached irrelevance in both samples (.02 in Henan and .01 in Zhejiang). Note that with the introduction of additional variables in subsequent models, the effect of a claim of domestic violence almost entirely disappeared (although its effect of .01 remained statistically significant in the Henan sample). Defendant consent and absenteeism explained away most of the effect of domestic violence claims for two reasons: (1) defendants who did not consent to divorce were disproportionately accused of perpetrating domestic violence and (2) plaintiffs were relatively unlikely to make claims of domestic violence in public notice trials. One obvious interpretation is that abusers also tended to be obstructionists. However, given limitations in the data, we cannot entirely rule out an alternative possibility that abuse claims were endogenous to spousal consent: some plaintiffs may have made abuse claims because their spouses were unwilling to divorce. Similarly, although it seems highly plausible that plaintiffs were at much lower risk of domestic violence when their spouses were missing, we cannot entirely rule out an alternative possibility that missing spouses obviated plaintiffs' perceived need to make abuse claims.

We now have clues that help explain why male plaintiffs were more likely than female plaintiffs to succeed in their efforts to divorce on the first attempt. Women's sizeable disadvantage in the probability of obtaining an adjudicated divorce stemmed from a triple whammy of gender differences in the incidence of domestic violence, defendant obstructionism (in the form of withholding consent), and missing defendants. We also know that these costs were further amplified by a huge overrepresentation of women among plaintiffs who filed for divorce in court.

[17] This pattern is mirrored by various pseudo-R^2 formulas, including adjusted count and McFadden's (for a discussion of competing pseudo-R^2's, see Long and Freese [2014:126–31]).

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The average marginal effect of a claim of abuse in the full model (Model 4) was tiny in both samples, and below the threshold of statistical significance in the Zhejiang sample. Meanwhile, the effect of defendant consent and absenteeism remained immense: it alone contributed more to pseudo-R^2 values than did all remaining control variables combined, including the court dummies. The effect of defendant consent and absenteeism towers above that of everything else in the model.

Female plaintiffs' disadvantage persisted in Model 4 net of controls. Even among plaintiffs who were otherwise similar in terms of defendant consent, defendant absenteeism, domestic violence claims, and an array of controls, women were still less likely than men to obtain an adjudicated divorce on the first attempt. I disaggregated rural and urban verdicts by applying the same model separately to rural (Model 5) and urban courts (Model 6). Separately modeling rural and urban court decisions shows that women's net disadvantage was limited to rural areas in both provinces. We already saw descriptive findings showing that urbanization reduced and erased gender differences in verdicts as well as in two of their key determinants, namely defendant consent and defendant absenteeism. Model 5 shows that, net of controls, the probability of an adjudicated denial in a rural court was statistically significantly higher for female plaintiffs than for male plaintiffs in both provinces (by .04 in Henan and .08 in Zhejiang). Model 6, by contrast, shows no gender difference whatsoever in urban courts in either province. The absence of a gender difference in urban courts is not a function of control variables, as the effect of plaintiff sex remained statistically insignificant even after stripping them out to create an urban-only version of Model 1. For this reason, had Model 1 been limited to urban courts, the AMEs for female plaintiffs would have been much smaller and statistically insignificant in both provinces (details omitted).

We already know that public notice trials, which must be held using the ordinary civil procedure, were associated with relatively low adjudicated denial rates. Regression results also show that the application of the ordinary civil procedure outside the scope of public notice trials reduced the probability of an adjudicated denial by .09 in Henan and by .21 in Zhejiang compared to when judges applied the simplified civil procedure. Which civil procedure judges used was generally a good predictor of its verdict. Judges tended to reserve the ordinary civil procedure for when they granted divorces.

Not surprisingly, courts were less likely to deny the divorce petitions of plaintiffs who reportedly submitted evidence in support of their petitions. Compared to plaintiffs who apparently did not submit evidence, the probability of an adjudicated denial among those who apparently did submit evidence was .05 and .02 lower in the Henan and Zhejiang samples, respectively.

In both provinces, cases that involved both children and property were much more likely than cases that involved only one or the other, or neither, to result in an adjudicated denial. In other words, cases that involved marital property but no children, children but no marital property, or neither, were much less likely than cases that involved both marital property and children to result in an adjudicated denial. Ruling on property division and child custody can be both time-consuming and fraught. In their efforts to maximize judicial efficiency and minimize the possibility of complaints, petitioning, and other "extreme incidents" antithetical to the political imperative of maintaining social stability, judges shied away from granting divorces in relatively complex cases, including those involving domestic violence claims. Moreover, as we have seen in both Chapter 7 and this chapter, judges used children as evidence of mutual affection and thus as grounds for denying divorce petitions.

Owing to their disinclination to grant divorces in cases involving marital property and children, judges' likelihood of applying the simplified civil procedure perversely increased commensurately with case complexity. Although judges are supposed to use the simplified civil procedure only when "the facts are clear, rights and obligations are unambiguous, and the dispute minor" (see Chapter 5), they tended to do precisely the opposite. In Henan, 34% of lower-complexity cases involving neither marital property nor children, 37–39% of cases involving one but not the other, and 42% of higher-complexity cases involving both marital property and children were tried according to the simplified civil procedure. In Zhejiang, simplified civil procedure utilization rates also increased with case complexity: 65% in lower-complexity cases, 76% in cases involving one item but not the other, and 85% in higher-complexity cases involving both items. Judges averse to wading into the thicket of property division and child custody determinations fast-tracked for adjudicated denial cases involving such matters by designating them as "minor disputes" in which "the facts are clear" in order to apply the simplified civil procedure. In so doing, as we saw in Chapter 5,

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they deprived litigants of their due process rights. By contrast, lower-complexity cases that did not involve marital property, children, or both were more likely to be tried according to the ordinary civil procedure, because judges were more willing to grant divorces when they could do so without the hassle and risk of ruling on such matters. Domestic violence allegations, which are often complex from an evidentiary standpoint, were similarly associated with higher simplified procedure utilization rates.

Claims of physical separation reduced the probability of an adjudicated denial by .10 in Henan and by .08 in Zhejiang, which comes as no surprise given that physical separation constitutes grounds for divorce in both the Fourteen Articles and the Marriage Law. Nonetheless, a physical separation claim far from guaranteed a successful divorce. Judges were often unconvinced that litigants met the statutory minimum separation period or that separation was the result of the breakdown of mutual affection.

Because withholding consent had the practical effect of preserving a marriage or at least prolonging a divorce petition, defendants weaponized consent by withholding it until plaintiffs made concessions on the terms of the divorce. Even when defendants wanted out of their marriages, they often strategically withheld consent in order to gain an advantage vis-à-vis property division and child custody. Such a tactic forced some plaintiffs to exchange their legal rights for their freedom (Li 2022). When plaintiffs gave up their rights, defendant consent magically increased. As we can see in Table 8.6, 50% and 56% of defendants in the Henan and Zhejiang samples, respectively, withheld consent. By contrast, in cases in which the plaintiff gave up property or child custody, only 26% and 44% of defendants in each respective sample withheld consent. Not surprisingly, therefore, abandoning a claim on marital property, child custody, or both dramatically reduced the probability of an adjudicated denial by .32 in Henan and .23 in Zhejiang.

Such concessions were also captured by my case complexity measure. Rather than explicitly stating that they forwent a claim to marital assets (variations of "the plaintiff gives up" identified in Chapter 4), plaintiffs could simply claim that there was no marital estate to contest (variations of "there is no common property" also identified in Chapter 4). Either way increased plaintiffs' chances of winning their bid for divorce.

Gender Gaps in Adjudicated Denials

My final empirical task in this chapter is to assess conditions under which playing fields were relatively even and uneven between female and male plaintiffs. Table 8.8 goes beyond the contents of Table 8.7 by presenting predicted probabilities from which AMEs in Table 8.7, Model 4, were calculated. In Table 8.7, the AME of .01 for making a domestic violence claim in Model 4 for Henan corresponds to the overall difference in Table 8.8 between plaintiffs in Henan who made claims of domestic violence (.64) and those who did not (.63). Table 8.8 further shows that this slightly positive effect of making a claim of domestic violence is limited to female plaintiffs in the Henan sample. Among female plaintiffs in Henan, the difference between those who made claims of domestic violence (.66) and those who did not (.63) is statistically significant. A claim of domestic violence had no effect among female plaintiffs in Zhejiang or among male plaintiffs in either sample. Let us now consider gender gaps among plaintiffs who made allegations of domestic violence before turning to gender gaps among plaintiffs who shared other characteristics.

In Henan, claims of domestic violence widened the gender gap considerably. Whereas the gender gap was only .02 among plaintiffs who did not make such a claim, it was a much wider .06 among plaintiffs who did make such a claim. The difference between these two gender gaps (a test of second difference) is statistically significant. Thus, the effect of making a claim of domestic violence was greater for female plaintiffs than for male plaintiffs. The obvious interpretation of this pattern is that judges treated men's domestic violence claims more seriously than women's domestic violence claims; they more readily dismissed women's domestic violence claims as unimportant or fabricated. In the Zhejiang sample, by contrast, domestic violence claims were equally irrelevant to women and men alike.

In Table 8.8, we see once again that plaintiffs' divorce prospects were highest when they passed the breakdownism test with either a public notice trial or defendant consent. The overall predicted probability of an adjudicated denial in a public notice trial (.23 in Henan and .53 in Zhejiang) was far less than the overall probability (.63 in Henan and .80 in Zhejiang). In Henan, plaintiffs' chances of getting denied were even lower in this type of trial (.23) than in trials in which the defendant expressed consent to divorce (.34). By contrast, when defendants failed to participate in court proceedings for other reasons,

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TABLE 8.8 Average predicted probabilities of adjudicated denials

	All plaintiffs	By plaintiff sex		Gender difference
		Female	Male	
Henan (n = 54,200 first-attempt trials)				
Overall	.63	.64	.61	.03***
Plaintiff claim of domestic violence				
a. Yes	.64[b]	.66[b]	.60	.06***[b]
b. No	.63[a]	.63[a]	.61	.02***[a]
Defendant consent and absenteeism				
a. Defendant in absentia: public notice	.23[b, c, d]	.26[b, c, d]	.16[b, c, d]	.09***^[b, c, d]
b. Defendant in absentia: no public notice	.61[a, c, d]	.66[a, c, d]	.50[a, c, d]	.16***[a, c, d]
c. Defendant consented to divorce	.34[a, b, d]	.33[a, b, d]	.35[a, b, d]	−.02[+a, b]
d. Defendant withheld consent	.85[a, b, c]	.84[a, b, c]	.86[a, b, c]	−.02***[a, b]
Evidence				
a. No apparent evidence from plaintiff	.65[b]	.66[b]	.64[b]	.02***[b]
b. Plaintiff supplied evidence	.61[a]	.62[a]	.58[a]	.05***^[a]
Case complexity				
a. Both children and apparent marital property	.66[b, c, d]	.67[b, c, d]	.64[a, b, d]	.03***
b. No apparent children, apparent marital property	.60[a, c, d]	.61[a, c, d]	.57[a, c, d]	.05***^[d]
c. Yes children, no apparent marital property	.51[a, b, d]	.51[a, b, d]	.49[a, b]	.02[+]
d. Neither children nor apparent marital property	.46[a, b, c]	.45[a, b, c]	.46[a, b]	−.003^[b]

Zhejiang (n = 8,626 first-attempt trials)				
Overall	.80	.82	.76	.06***
Plaintiff claim of domestic violence				
a. Yes	.80	.83	.77	.06*
b. No	.79	.82	.76	.06***
Defendant consent and absenteeism				
a. Defendant in absentia: public notice	.53[b, d]	.61[b, c, d]	.37[b, d]	.23***^[c, d]
b. Defendant in absentia: no public notice	.80[a, c, d]	.86[a, c, d]	.69[a, c, d]	.16***^[c, d]
c. Defendant consented to divorce	.45[b, d]	.46[a, b, d]	.44[b, d]	.03^[a, b]
d. Defendant withheld consent	.93[a, b, c]	.93[a, b, c]	.93[a, b, c]	.002[a, b]
Evidence				
a. No apparent evidence from plaintiff	.81	.82	.80[b]	.02[b]
b. Plaintiff supplied evidence	.79	.82	.75[a]	.07***[a]
Case complexity				
a. Both children and apparent marital property	.81[b, c, d]	.84[b, c, d]	.79[b, c, d]	.05***
b. No apparent children, apparent marital property	.78[a, c, d]	.81[a, d]	.73[a, d]	.08***
c. Yes children, no apparent marital property	.72[a, b]	.76[a]	.66[a]	.09*^
d. Neither children nor apparent marital property	.68[a, b]	.70[a, b]	.65[a, b]	.05

Source: Author's calculations from Henan and Zhejiang provincial high courts' online decisions.
Note: All contents of this table are postestimation calculations from the same models used to make the postestimation calculations of AMEs in Table 8.7, Model 4. A caret (^) denotes a slight discrepancy due to rounding error between an AME (in the "gender difference" column) and the corresponding predicted probabilities from which it was calculated (in the "by plaintiff sex" columns). Likewise, differences between predicted probabilities in this table are not always identical to corresponding AMEs in Table 8.7 owing to rounding error. Superscript letters correspond to other categories of the same variable. Known as contrasts, they denote the statistical significance (at $P < .05$) of differences between variable categories (first differences). In the "gender difference" column, they also denote the statistical significance (at $P < .05$) of gender gaps (second differences) across different variable categories. On contrasts, see Long and Freese (2014:252) and Mize (2019:106).
$^{+}$ $P < .10$ * $P < .05$ ** $P < .01$ *** $P < .001$, two-tailed tests

overall predicted outcomes were about the same as in all trials taken together. Public notice trials and mutual consent were by far the most realistic pathways to divorce in terms of likelihood of success. They were also the least common pathways, together accounting for only 28% and 20% of first-attempt divorce trials in the Henan and Zhejiang samples, respectively.

Although plaintiffs as a whole benefitted from in absentia trials only when an allegedly missing defendant was served by public notice (thus satisfying the breakdownism standard), male plaintiffs enjoyed a large and statistically significant advantage over female plaintiffs when defendants failed to participate in court proceedings for any reason. Gender differences in the probability of a divorce on the first attempt, ranging from .09 to .23, were massive and statistically significant in both samples when defendants were AWOL, regardless of how the court served the defendant. Indeed, among male plaintiffs in the Henan sample, divorce approached a forgone conclusion (.84) in public notice trials. Tests of second difference show that, among all in absentia trials, public notice trials narrowed the gender gap in Henan (.16 versus .09, a statistically significant difference) and widened the gender gap in Zhejiang (.16 versus .23, a statistically insignificant difference).

Women's severe disadvantage in the context of in absentia trials – both as plaintiffs and as defendants – is consistent with patriarchal cultural beliefs about women as less credible and less deserving than men. My empirical findings suggest that judges, who themselves were mostly men, took claims about missing spouses more seriously and treated them as more credible when they were made by male plaintiffs. The court decisions in my samples reflect cultural narratives not only about female plaintiffs making false claims of domestic violence in illicit efforts to abscond with marital property and child custody (Epstein and Goodman 2019), but also about female plaintiffs who, for the same reasons, falsely conceal the whereabouts of their husbands. The court decisions may further reflect judges' implicit belief that missing female defendants, particularly those they suspected were in illicit extramarital relationships, were less deserving than male defendants of the legal protections and due process rights they lost when they were absent from trials. In short, judges were far more inclined to protect husbands than to protect wives from getting "unwittingly divorced" (Chapter 3).

Courts were also relatively inclined to grant divorces to plaintiffs when defendants expressed their consent. In neither sample were

female plaintiffs disadvantaged when both sides agreed to part ways. In the Zhejiang sample, mutual consent put women at a small but statistically insignificant disadvantage (.03). Quite the contrary in the Henan sample, where courts were more inclined to grant divorces to female plaintiffs than to male plaintiffs in the context of mutual consent, albeit to only a small (−.02) and marginally statistically significant extent.

Finally, an adjudicated divorce was highly improbable in the absence of spousal consent. According to Model 4, the average predicted probability of an adjudicated denial when the defendant withheld consent was .85 in Henan and .93 in Zhejiang. In other words, the probability of obtaining a unilateral divorce among plaintiffs whose spouses withheld consent was only .15 in Henan and .07 in Zhejiang. In the context of defendants who withheld consent to divorce, female and male plaintiffs were on a playing field that was similarly harsh to everyone. Adjudicated unilateral divorce prospects were slim for female and male plaintiffs alike on the first attempt. The chances of female and male plaintiffs seeking unilateral divorces in Zhejiang were identical. However, female plaintiffs in Henan had a small (−.02) but statistically significant advantage over male plaintiffs when defendants withheld consent.

Judges likewise treated evidence submitted by male plaintiffs more seriously than evidence submitted by female plaintiffs. Although female plaintiffs were more likely than male plaintiffs to submit evidence (Table 8.6), the probability a court denied a divorce to a female plaintiff who submitted evidence was .05 and .07 greater than it was for a male plaintiff who submitted evidence in the Henan and Zhejiang samples, respectively. By contrast, the probabilities of adjudicated denials were more similar for female and male plaintiffs who did not appear to support their claims with evidence (gender gaps of only .02 in both samples). These patterns suggest that plaintiffs' failure to submit evidence levelled the playing field and that their submission of evidence widened the gender gap in adjudicated divorce outcomes in both samples. Judges attached greater weight to evidence submitted by male plaintiffs and discounted evidence submitted by female plaintiffs. Evidence benefitted male plaintiffs far more than it benefitted female plaintiffs, strongly suggesting that courts treated men's claims more seriously than women's.

Finally, with respect to case complexity, the gender gap in the probability of obtaining an adjudicated divorce was relatively wide in cases that involved marital property but did not involve children. In both

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samples, female and male plaintiffs were more similarly likely to obtain an adjudicated divorce in cases involving both children and marital assets as well as in cases involving neither children nor marital assets. Male plaintiffs' significant advantage over female plaintiffs in cases involving marital assets but no children suggests that property division was more contentious than child custody and that courts protected the financial interests of male litigants (both plaintiffs and defendants) more than they protected the financial interests of female litigants (both plaintiffs and defendants). Previous research shows that judges, in their property division rulings in divorce cases, favored men over women (Li 2015b). Although an analysis of courts' rulings on property division is beyond the scope of this book, my findings nonetheless reveal that female plaintiffs were significantly less likely than male plaintiffs to be granted divorces in cases involving marital property. Judges, consciously or unconsciously, were more likely to deny divorce requests when they were made by women who threatened the integrity of marital estates, over which men tend to exercise control, particularly in rural areas. Insofar as judges in both Henan and Zhejiang, when deciding cases involving marital assets but not involving children, were more likely to preserve the marriage if the plaintiff was a woman, they acted, wittingly or unwittingly, to preserve the assets – such as housing and farmland – owned, controlled, or used by men and their families.

SUMMARY AND CONCLUSIONS

The evidence in this chapter is unambiguous: In the Chinese context of divorce litigation, breakdownism was king and faultism was of practical irrelevance. Consistent with poignant anecdotal evidence of Chinese courts' general failure to grant divorces on the basis of domestic violence (Fincher 2014), plaintiffs' claims of abuse clearly did not improve their chances of getting divorced in court. This is precisely what we would expect if judges privileged breakdownism over faultism. Judges in both provinces responded to domestic violence allegations in the same way they responded to other legal complaints they deemed "frivolous": they were similarly likely to deny them on ideological grounds, on evidentiary grounds, and, above all, on breakdownism grounds by holding that mutual affection had not broken down. Indeed, claims of abuse appear to have been counterproductive. An allegation of domestic violence perversely increased the likelihood of an adjudicated denial, particularly in rural Henan.

Judges heeded ideological calls to prevent frivolous divorce, preserve marriages, and reduce social instability. China's breakdownism divorce standard, applied by judges in support of the national political priority of preserving marriages and clamping down on frivolous divorces, overwhelmingly trumped other circumstances, including marital violence, that, strictly according to China's domestic laws and international commitments, could – and should – fully support judges' rulings to dissolve marriages. The breakdownism test enabled judges' routine denial of first-attempt divorce petitions even when they contained well-supported allegations of domestic violence. Although the essential nature of judging is to rule on contentious disputes, judges avoided entering the fray for fear of fallout from "extreme incidents" caused by male defendants whom they perceived as potentially violent. Judges' fear of the potential harm to social stability posed by documented wife-beaters may help explain why plaintiffs' domestic violence allegations perversely increased the likelihood of an adjudicated denial. Stability maintenance was not judges' only source of pressure. Also under enormous pressure to close cases, they saved time, enhanced their work productivity, and improved their efficiency scores by disregarding and trivializing domestic violence claims. Finally, cultural forces led them to look askance at domestic violence claims as potentially exaggerated or fabricated.

Although divorce litigation was rife with allegations of domestic violence, they had no discernable effect on the character of judicial discourse in court holdings. Regardless of domestic violence claims, judges fixated on couples' reconciliation potential, a key test stipulated by the Fourteen Articles for determining whether mutual affection broke down. By doing so, they flouted a separate SPC judicial interpretation requiring them to grant divorces when fault-based grounds could be established. Judges infantilized plaintiffs by attributing their marital strife to poor relationship skills. In their holdings, judges asserted their judgments of what was morally appropriate as much as – if not more than – what was legally appropriate. As if judges knew what was best for the personal lives of litigants, and as if the patriotic duty of litigants to reconcile trumped their legal right to divorce, judges challenged plaintiffs' claims, assessments, evidence, and wishes, instead promoting socialist values to justify and obscure their legally dubious holdings to deny divorce petitions that satisfied fault-based standards. Judges gaslighted plaintiffs by characterizing domestic violence

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as minor conflict produced by family trifles with husbands who loved them. And they offered paternalistic and patronizing relationship advice which, they assured abuse victims, would help prevent future conflict from escalating to violence.

Much if not most of the judicial discourse in judges' holdings was disconnected from the law. Ideological and therapeutic discourses were pervasive. Although the similarly pervasive Fourteen Articles and evidentiary discourses were, by definition, rooted in the law, judges turned the law on its head, deployed these discourses to advance their professional needs and political priorities (which of course were intertwined), and in so doing undermined the lawful divorce rights of plaintiffs. Judges tended to invoke the Fourteen Articles to affirm reconciliation potential and thus to preserve rather than to dissolve marriages. By the same token, they tended to invoke rules of evidence to disaffirm rather than to affirm plaintiffs' claims.

Compared to male plaintiffs, female plaintiffs were at greater risk of exposure to these judicial discourses because they were at greater risk of adjudicated denial on the first try. Notwithstanding strong legal bases in China for granting divorces on fault-based grounds, judges handled cases involving domestic claims essentially the same as they handled any other divorce case. No matter how egregious or well-supported an abuse allegation may have been, judges adhered to their boilerplate script proclaiming that the plaintiff had failed to prove the breakdown of mutual affection, that marital conflict was only minor, that the defendant was eager to reconcile, that reconciliation was therefore possible, and that marital preservation was in the national interest. In the face of documented accounts of horrific violence, judges hardly skipped a beat as they waxed ideological, moral, and therapeutic platitudes for the purpose of justifying their adjudicated denials.

Courts carefully rationed scarce judicial resources and tended to devote collegial panels only to divorce petitions which, if granted, struck judges as unlikely to lead to appeals, complaints, or "extreme incidents," and which were filed by plaintiffs who seemed deserving of divorce and whose claims seemed credible to judges. Courts routinely denied first-attempt divorces in part because they preferred to let litigants work out contentious child custody and property division matters on their own and to return for a second attempt after coming to an agreement on the terms of the divorce (He 2009). For this reason, plaintiffs deemed uncredible and undeserving – in no small measure on the basis of cultural stereotypes – and plaintiffs with contentious

and untied loose ends were fast-tracked to adjudicated denials using the simplified procedure. The perverse upshot is that courts turned upside down (admittedly vague) legal standards concerning the determination of civil procedure. In practice, the ordinary procedure was reserved for the most straightforward cases, such as childless couples with no marital property, and flagged for adjudicated approval. The simplified procedure was used for more complex cases, such as those with children, property, claims of domestic violence, or the perceived potential for "extreme incidents" of violence, and flagged for adjudicated denial.

My empirical findings show that mutual consent and public notice trials, key statutory conditions of the breakdown of mutual affection, were the only realistic pathways to divorce on the first attempt. Domestic violence, a competing fault-based statutory condition, did not move the needle toward divorce. Victims of domestic violence, mostly women, were revictimized by judges who ignored their claims. Although breakdownism prevailed over faultism by a massive margin, judges did not apply the breakdownism standard equally. Judges showed a far greater inclination to affirm the breakdown of mutual affection on the basis of a missing defendant when the plaintiff was a man. Women's overall disadvantage in getting a divorce on the first attempt was attributable in part to their specific disadvantage in trials in which defendants were missing or refused to participate. Male litigants – both plaintiffs and defendants alike – enjoyed preferential treatment from judges in in absentia trials. Judges were far more reluctant to grant the divorce requests of female plaintiffs in the absence of their husbands than they were to grant the divorce petitions of male plaintiffs in the absence of their wives.

Women had worse outcomes than men both as plaintiffs and as defendants. As plaintiffs, wives were less likely than husbands to get divorced on the first try. Their greater exposure to spousal obstructionism required them to make concessions on property division and child custody in exchange for their freedom. As defendants, wives were more likely than husbands to get "unwittingly divorced" in public notice trials, in which they were often deprived of due process rights, property rights, and child custody rights.

These findings emerged with remarkable consistency from both Henan and Zhejiang. At the same time, most gender disparities were confined to rural courts in both provinces. Women's experiences were far less grim in urban courts. To be sure, rural and urban courts were similarly likely to brush off female divorce-seekers who

suffered domestic violence. However, gender differences in the probability of spousal obstructionism, the probability of a public notice trial, and, most importantly, the probability of an adjudicated denial were almost entirely limited to rural courts.

In Chapter 9, we will see that the result of denying divorces in the name of harmony can be anything but harmonious. Indeed, an adjudicated denial can be tantamount to a death sentence – to either plaintiff or defendant. Judges' fear of extreme incidents of violence – directed toward plaintiffs or even the judges themselves – was one of many factors behind their tendency to deny the divorce petitions of abuse victims. Such is the inscrutable logic by which marital preservation promotes social stability. We will see that, in their efforts to prevent such incidents from occurring, judges in fact enabled them, by prolonging women's exposure to their abusive husbands. Judges aggravated the physical security risks of abuse victims by routinely denying their first-attempt divorce petitions. China's ideological call to maintain social stability by preserving marriages is dubious on its face. Chapter 9 suggests it is also dubious in light of relevant empirical evidence. The experiences of domestic violence victims in China's criminal justice system suggest that greater and more effective intervention by public authorities – including court intervention in the form of dissolving abusive marriages – would more effectively protect abuse victims and promote social stability.