

Private Investigators and Spousal Infidelity in Contemporary China

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Abstract This paper examines the recent emergence of China's private investigation industry, focusing on investigators of spousal infidelity. It outlines the professed business rationales of private investigators that target women experiencing marital crises, including claims that they provide a necessary social service, protect women's rights, promote anti-corruption measures, and uphold Chinese law. It also details growing criticisms of China's "infidelity sleuths" for violating Chinese law and citizens' rights. Finally, the paper examines some of the proposed responses to the problems associated with private investigators and the policing of infidelity. The demand for such services highlights the laissez-faire position that economic reform increasingly has forced China's governmental authorities to assume with regard to regulating the "private affairs" of Chinese citizens.

Keywords: corruption; infidelity; law; marriage; private investigators; private investigation industry.

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Private investigation agencies are a new and controversial “profession” in the People’s Republic of China (PRC). The first such agency reportedly opened for business in Shanghai in 1992. Since that time, private investigators have started business operations throughout the nation, primarily in major cities such as Beijing, Chengdu, Guangdong, Harbin, Nanjing, Shanghai, and Shenyang. The exact number of such businesses remains unclear due to their indeterminate legal status. However, unofficial estimates suggest that there are between 2,000 and 3,000 private investigation agencies in China and more than 20,000 private detectives, working either for an agency or in a freelance capacity.¹ China’s private investigation industry is thus small but expanding, with many agencies advertising their services via street posters and the internet, and adopting the sinified names of famous Western “sleuths” such as James Bond (邦德) and Sherlock Holmes (福尔摩斯).²

Although the PRC’s private investigation industry is thriving, its legal status is unclear. A 1993 ruling by the Ministry of Public Security states that: “Any work unit and individual is forbidden to open, in any form, civil affairs investigation agencies, security affairs investigation agencies and other non-governmental institutions with a nature the same as a private detective firm.”³ Prohibited businesses include those that handle civil and economic disputes, recover debts for clients, conduct searches for missing persons, offer consultation on security technologies, and investigate private matters. Similarly, the PRC’s Criminal Procedure Law does not include private investigators within its stipulations regarding the collection of evidence. The latter task remains the province of the police and the formal legal system. Yet private investigators and private bodyguards were included in an expanded version of the trademark listings of the PRC’s State Administration of Industry and Commerce for the first time in 2002.⁴ This fact, combined with a Supreme Court ruling in April 2002 indicating that camera footage, and video and voice recordings constitute admissible evidence in the courts so long as that evidence is obtained legally, has led many to conclude that private detective and security work is becoming a legitimate profession.⁵

Certainly, former military, police, lawyers, and other trained and untrained personnel, seem happy to provide an array of private investigation services for profit, services that the Chinese police are unable to perform adequately or willingly due to resource constraints.⁶ Many of

these services – such as checking the credit rating of an individual or business and collecting evidence on the manufacture and sale of fake products – either compromise the rights of individual citizens to privacy or intrude on normal police work. However, legal technicalities have neither prevented the State Bureau of Quality and Technical Supervision from using private investigators to track down the production sites of counterfeit products, nor prevented local township governments from hiring private detectives to find debtors who have absconded.⁷ In any case, private investigators tend to side-step legal constraints by advertising as information and consulting firms, and describing themselves as business advisers and civil researchers. Moreover, their services are highly sought after by the growing number of urban Chinese citizens embroiled in contentious divorce proceedings and debt repayment wrangling, or requiring evidence that they are unable to access easily in order to win their “day” in court.⁸

This paper examines one of the most controversial aspects of private detective work in contemporary China – the involvement of investigators in collecting legally admissible evidence on behalf of women who seek to expedite contested divorce proceedings by demonstrating that their husbands are involved in extramarital affairs. The first section outlines the rise of adultery and divorce in reform-era China and shows how this has generated a demand for private investigation services. With reference to several prominent case studies reported in the PRC media, the second section outlines the professed business rationales of private investigators that target women experiencing marital crises, including claims that they provide a necessary social service, protect women’s rights, promote anti-corruption measures, and uphold Chinese law. It also details growing criticisms of China’s “infidelity sleuths” for violating Chinese law and citizens’ rights. The final section examines some of the proposed responses to the problems associated with private investigators and the policing of infidelity. I conclude that the demand for private investigation services highlights the *laissez-faire* position which economic reform increasingly has forced China’s governmental authorities to assume with regard to regulating the “private affairs” of Chinese citizens.

Adultery and divorce: a niche market for private investigators

The initial expansion of China’s private investigation industry is linked in part to burgeoning rates of adultery and divorce, following the PRC’s post-1978 adoption of a market-based economy and the accompanying erosion of former social controls. In interviews with media reporters, private investigators routinely suggest that a significant proportion of their work entails collecting evidence of spousal infidelity to facilitate female-initiated divorce

proceedings.⁹ A 2008 report further maintains that collecting evidence of spousal infidelity for individual clients accounted for up to 90 per cent of private detective work in the early and mid 2000s, being supplanted in more recent years by work for private and public corporations focusing on debt collection and halting the manufacturing of counterfeit goods.¹⁰

Underscoring public perceptions of private detective work as being primarily concerned with the investigation of male infidelity, China's media reporters often refer to private investigators by the generic nickname of "mistress-killers" or "second-wife assassins" (二奶杀手). The term "mistress" refers to any woman (other than a wife) who has an ongoing sexual relationship with a married man, hence the expression "mistress-killer" denotes the act of exposing participants in extra-marital affairs to public condemnation rather than literally terminating "the third party." While obscuring the fact that women engage in extramarital affairs and that men too hire the services of infidelity sleuths, the "mistress-killer" nomenclature has strong moral and melodramatic overtones in a nation where, until recently, marriage was to all extents and purposes universal and monogamous. Moreover, the practice of mistress-keeping was associated with the feudal and decadent lifestyles of rich men in imperial China, being effectively eradicated from post-1949 China by the early Chinese Communist Party as part of its proclaimed liberation of Chinese women.¹¹ The "resurgent" practice of mistress-keeping and rising rates of extra-marital affairs are therefore generally attributed to the increased levels of prosperity, deteriorating moral values and loosening of social controls that have accompanied China's economic reforms and opening-up to the rest of the world.

The phenomenon of "keeping a mistress / second wife" (*bao ernai* 包二奶) became a "new" focus of public controversy in the PRC during the early 1990s, initially with regard to the activities of overseas businessmen from Hong Kong and Taiwan. "Bao" literally means to "keep" or to provide regular financial means in exchange for services; and, "ernai" is the terminology that was used to describe the "second wife" in the traditional Chinese polygamous marriage system.¹² In contemporary usage, the term "*bao ernai*" refers to the practice whereby a married man financially supports and maintains a second relationship, of varying duration, with a non-legally married or extramarital female partner (a mistress) for the purposes of sexual cohabitation.¹³ This practice differs from traditional polygyny or concubinage in that it is neither legally nor socially sanctioned for the most part. Marriage in the PRC, Hong Kong, and Taiwan, is defined as free-choice monogamous marriage. Moreover, the first and legitimate wife usually is unaware of the existence of the "second wife," and awareness often leads to marital distress and family break-ups.¹⁴

Social welfare groups in Hong Kong and Taiwan first called upon the PRC government to introduce legal sanctions against the new phenomenon of “keeping a second wife” in the mid 1990s.¹⁵ As they argued, substantial numbers of already married men from Hong Kong and Taiwan, whether entrepreneurs, professionals, salaried workers, or container truck drivers, had commenced working on the mainland and, consequently, saw their wives and children in Hong Kong and Taiwan only infrequently. At the same time, huge numbers of young single women from China’s poor rural hinterland had migrated into the Pearl River Delta region in search of work and better opportunities. This combination had resulted in the emergence of what became known as “mistress villages” (二奶村), places wherein comparatively affluent Hong Kong and Taiwanese men kept mainland Chinese women in rent-by-the-month or long-term accommodations as their mistresses or “second wives.”¹⁶ Nowadays, China’s “mistress villages” are associated with the burgeoning yet banned practice of prostitution, which offers a cheaper and more transient means of obtaining sexual services.¹⁷

By the mid 1990s, social welfare groups in Hong Kong claimed that a significant proportion of the private counseling services they offered to families were directly related to the practice of Hong Kong men keeping a Chinese mistress or “second wife” across the border.¹⁸ They further argued that the “second-wife phenomenon” was not only producing (short-term) marital distress, domestic violence, and family break-ups, but also generating more (long-term) egregious social effects, in that divorce usually negatively impacts upon the living standards of divorced mothers and their children. In consequence, they urged the PRC government to introduce legislation designed to curb the “second-wife phenomenon,” understood as a modern-day form of concubinage and therefore as bigamy.

Calls for the PRC government to take action against the proliferating “second-wife phenomenon” gathered domestic momentum during the late 1990s as part of a series of proposed amendments to the PRC’s Marriage Law put forward by the All-China Women’s Federation (ACWF). Public discussions surrounding these revisions were heated, as they focused on the issue of how to stop rich mainland Chinese men (read senior government officials and private entrepreneurs) from keeping “second wives.” Anti-corruption campaigns conducted throughout the mid to late 1990s had revealed that the practice of keeping a “mistress” was not restricted to overseas Chinese men. Men from mainland China – especially senior Party-state bureaucrats and wealthy private entrepreneurs – were also keeping a “second,” “third,” and even “fourth” wife, in developing economic areas.¹⁹ Campaign-related investigations also revealed that an estimated 95 per cent of senior

government officials who were charged with corruption had either expropriated public resources to keep a “mistress” or accepted bribes to do so. These revelations not only generated a highly charged critique of moral turpitude within the ranks of China’s “new rich,” including members of the Chinese Communist Party, but also fed into more general concerns about the PRC’s rapidly changing sexual culture and a perceived corollary decline in traditional family values.²⁰ The fusing of these concerns meant that domestic calls to legislate against the “second-wife phenomenon” were often conflated with a proposed legal ban on adultery *per se* during the late 1990s.²¹

The late-1990s conflation of domestic calls to ban the “second-wife phenomenon” with a blanket prohibition on adultery also owed much to broader concerns about the documented link between extramarital affairs and China’s rising divorce rate (divorce being a relatively new phenomenon in the PRC). Shortly after its accession to power in 1949, the CCP promulgated the 1950 Marriage Law. This Law upheld monogamous free-choice marriage and banned old-style “feudal” practices such as arranged marriages, mercenary marriages and concubinage, in order to promote more equitable socio-sexual relations. Campaigns to implement the new Marriage Law were followed by a spate of divorces as women, in particular, sought to dissolve “old-style marriages.” However, the initial support of the CCP for unilateral divorce was soon halted due to the unpopularity of this policy with male peasants, who constituted both the mainstay of the military and early CCP support, as well as with members of the older generation who “felt their control of family affairs to be threatened.”²²

China’s divorce rate remained extremely low during the Maoist era (1949–76) for two reasons. First, although divorce was permitted in theory, it was discouraged in practice, unless there were compelling political reasons to warrant such an action. Put simply, by the end of the 1950s, it was assumed that all “feudal” forms of marriage had been eradicated or dissolved and therefore only “good, socialist forms” remained. Second, the early communist regime’s distaste for the “bourgeois legal system” resulted in a general decrease in access to legal institutions. As a result, “ordinary” disputes such as divorces were predominantly mediated by socialist organizations such as the work units, the ACWF and neighborhood residents committees. This combination of factors meant that relevant procedures were geared primarily towards reconciliation rather than dissolution of a marriage.²³

Then, in 1980, along with the re-institution of a formal legal system to facilitate the economic reforms and Open Door Policy, a revised version of the 1950 Marriage Law “de-politicized” the accepted rationales for initiating divorce proceedings by permitting divorce upon a

showing that the emotional relationship between a couple was “broken” (感情破裂).²⁴ Once the courts were provided with guidelines on how to assess such a breakdown in November 1989, the number of divorce petitions in China’s major cities soared. An estimated 1.13 million divorces were registered in 1996, compared to only 389,000 in 1980; and, an estimated 1.4 million married couples in China filed for separation during 2007. Overall, China’s divorce rate (the number of break-ups divided by marriages) now stands at about 20 per cent, which constitutes a more than fivefold increase since the nation’s shift from a planned to a market economy.²⁵

Adding to the unprecedented high rate of divorce in reform-era China, nationwide studies estimate that women file 70 per cent of divorce proceedings, citing bigamy, adultery and domestic violence as major reasons for doing so.²⁶ Awareness of this problem prompted the ACWF to agitate for reforms to China’s Marriage Law on the grounds that women and children were the clear “losers” in the PRC’s apparent shift from a society based on the presumption of monogamous marital heterosexuality to one characterized by multiple socio-sexual arrangements. Hence, the revisions to the Marriage Law passed by the National People’s Congress in 2001 confirmed the PRC’s historical stress on free-choice marriage, while facilitating the provision of financial compensation for “no-fault” parties in divorces involving bigamy, domestic violence and desertion. As with the 1950 Marriage Law, Article 2 of the 2001 Marriage Law defines marriage as free-choice, monogamous marriage, based on equality between the sexes. However, in recognition of China’s changing sexual culture and rectifying absences in the 1980 Marriage Law, Article 3 affirms the principle of monogamy by prohibiting bigamy or “the cohabitation of a married person with any third party,” and affirms the presumption of sexual equality by prohibiting domestic violence, desertion and maltreatment. Article 46 of the revised Marriage Law further stipulates that:

A no-fault party shall have the right to make a request for damage compensation under any of the following circumstances bringing about divorce: 1) bigamy; 2) cohabitation of a married person with any third party; 3) domestic violence; and 4) maltreatment and desertion of the family member by another.²⁷

Despite the introduction of legislation to facilitate the dissolution of failed marriages, women in present-day China still encounter serious obstacles when initiating divorce proceedings, particularly those that are contested in the courts. Solid evidence is still required to prove such cases and the adoption of a formal court system in the reform era has meant that the onus and cost of providing that evidence now lies with the individual who files the case, primarily “the woman.” In addition, lawyers in China are costly and few and far between. In 2005, there

were 114,000 lawyers and 11,691 law firms in the PRC, but 206 out of China's 2,000 counties had no lawyers.²⁸ As of mid-2006, there were still only 156,000 practicing lawyers and 12,000 law firms in the PRC.²⁹ China's lawyers are also reluctant to take on divorce cases, viewing them as unprofitable and difficult to resolve.³⁰ Acknowledging these structural limitations, the Shanghai branch of the Women's Federation established China's first women's legal aid center and help-line in Shanghai in 2000. Similar centers have since been founded throughout the PRC, albeit primarily in major cities.³¹ These centers provide services that include free legal counseling and contact with a solicitor; but, being merely "legal advice centers," they exclude help with legal investigations and the collection of evidence.

Viewed in this context, private investigation businesses that collect evidence of male infidelity to facilitate female-led divorce proceedings fill a significant gap in the market – indeed, in some cases they provide the only means for damage compensation requests to succeed. This background accounts for much of the attention accorded to private investigators by China's media during the early to mid 2000s. Private investigators attracted the attention of media reporters because their professed involvement in collecting evidence of spousal infidelity offered a vehicle for providing "human interest" stories couched in terms of "sleuth" plus "sex." News stories involving "criminality," sexuality, moral controversies, and a glamorous if somewhat "shady" new profession, are highly newsworthy in the reform era, primarily due to the virtual absence of such topics and stories during the Maoist period. Sensationalism and sexual scandal presumably also offer a more exciting "read" than stories about debt collection and intellectual property rights, which are an increasing and more profitable component of private detective work in China today. However, in addition to capitalizing on the marketability of sensationalist journalism, media discussions of private investigators in the PRC raise questions about gaps in public policy and the legality of the private investigation industry. Accordingly, the next section of this paper examines the professed business rationales and practices of China's so-called mistress-killers, as well as some of the problems associated with that work.

Debating the work of China's mistress-killers

Considerable insight into the business practices of China's private investigators, and the nature of the public debate concerning the most appropriate regulatory response to the industry, can be obtained by examining prominent case studies reported in the media. A good example is the controversy surrounding Debang (得邦), one of the PRC's most famous private investigation agencies. The word 'Debang' is a play in the Chinese language on the

name of James Bond (邦德), the fictional secret agent 007.³² The company opened for business in Chengdu City, Sichuan Province, on 17 February 2004, and soon established branches in the cities of Kunming (Yunnan Province) and Yiwu (Sichuan Province), and eventually set up a branch in Shanghai on 22 December 2004. Registered as the Chengdu Debang Business Information Services Company 成都得邦商务信息服务有限公司, the company claimed to provide business information and marketing surveys. However, it advertised part of its business operations under the name of “China’s First Women’s Rights Protection Center” (全国首家女子维权中心), and claimed not only to investigate suspected incidences of bigamy and adultery, but also to provide legal counseling on women’s rights, marriage, divorce, property conflict between husband and wife, extramarital affairs, child custody, and domestic violence.³³

Debang’s targeting of women experiencing marital crises proved to be the source of its fame and ultimately its “real-life” problems. The company’s claim to protect women’s rights, chiefly by collecting evidence of spousal infidelity or other wrongdoings, and thereby facilitating the speedy resolution of contentious divorce proceedings, soon grabbed the attention of local media. Capitalizing on the fact that many of the 25 women who worked at the company had personal experience of marital crises, China’s media variously portrayed the company as a dedicated team of female sleuths determined to halt violations of women’s rights, and as a vigilante-style band of mistress-killers who were “ritually sworn to vengeance against all two-timing husbands.”³⁴ By all accounts, this “pulp-fiction image was great for business,” with Debang taking on an alleged 3,700 cases in the city of Chengdu alone during 2004.³⁵

But the image of Debang’s detectives as alternatively angel-like protectors of women’s rights and vicious man-haters indirectly brought the company’s business operations to the attention of local government authorities. On 6 January 2005, the State Administration of Industry and Commerce closed Debang’s Shanghai-based agency for operating beyond its legal scope, a practice that attracts a potential fine of 100,000 RMB. Municipal authorities ordered the agency to suspend all marital investigations, citing allegations of unlicensed business practices, misrepresentation, overcharging, and possible extortion. These allegations were prompted by a complaint about the company from an anonymous woman to representatives of the ACWF. This woman had seen the company’s advertising material, and, believing it to be a government-affiliated women’s legal aid center, had gone to the Shanghai branch of Debang to get free advice about her marital problems. Upon being told that her problems could be resolved for the costly sum of 8,000 RMB, the woman realized she had mistaken a

commercial business for a government-run center and tried to leave. However, company representatives would not let her go until she paid a “consultation fee” of 300 RMB, a fee that she had to haggle down to that price and still felt was exorbitant since she had received no actual help, was not given a receipt, and, having been laid-off from work, could not afford in the first place.³⁶ Following this complaint, Debang’s business operations were suspended temporarily while the company was investigated for breaching advertisement regulations by claiming to offer services that it did not have a legitimate brief to provide, i.e., marriage counseling and rights protection.³⁷ The company soon resumed business in Shanghai: this time as a “do-it-yourself” consulting service for women wanting to know how to collect evidence of marital infidelity rather than as a private investigation agency.³⁸

Although payment of a fine prevented the company’s permanent closure, Debang was obliged to halt its private investigations into marital infidelity due to charges that such investigations were conducted at an excessive cost to the client, breached laws relating to the collection of evidence and violated the rights of individuals to privacy.³⁹ As with other private investigation agencies, Debang had used surveillance techniques to collect evidence of marital infidelity that properly belong to law-enforcement authorities and without respecting the procedural rules that govern the use of such techniques by the same authorities. For example, private detectives routinely stalk their “suspects” and use hidden cameras to photograph them in compromising situations. Although private investigators have defended their actions in the media, claiming that they merely use technology that can be bought on the open market, rather than using professional spying equipment or illegal technology, such as electronic bugging devices or pinhole cameras, legal commentators in China increasingly condemn such actions for violating the rights of individual citizens to privacy. Concerns have also been raised regarding the “illegal” practices of some unscrupulous private detectives who extort excessive fees from clients and blackmail the “cheating husbands” of female clients.⁴⁰

Legal or not, media reports suggest that there is strong public demand in China for the services of people who collect evidence of spousal infidelity, and that private investigators not only use diverse means to elicit public support for their work, but also seek to diminish their legal culpability for the collection of such evidence and how it is presented in the courts. For instance, private investigator Cheng Ming, claims that approximately one third of his business comes from women who want evidence of their husband’s infidelity in order to initiate divorce proceedings and possibly to claim financial compensation. Cheng justifies his work on social and personal grounds: it provides an important social service, and he is happy to catch usually rich and successful men who are cheating on their wives, because his own girlfriend left him for precisely that “type” of man. Cheng further maintains that all of his

employees operate according to the principle of “never doing anything that is against the law.” In keeping with this dictum, Cheng will establish that an adulterous affair is taking place and then inform his client of the situation and ask her to take control. To use his own words: “As it is against the law for us to break into a house, sometimes we just ask the wives to enter the trusting house and teach her how to collect the evidence there.”⁴¹

Private investigator, Wei Wujun, who often has been interviewed on national TV in China, and who goes by the nickname “mistress-killer,” similarly suggests that his work assists the Chinese family and Chinese law, as well as the nation’s battle against corruption. According to Wei, his private investigation agency has helped more than 1,300 women to compile evidence of misconduct by their husbands and subsequently to secure financial compensation in their divorces.⁴² Wei justifies his work by arguing that the practice of keeping a “second wife” harms the institution of marriage; and that Article 3 of the 2001 Marriage Law of the People’s Republic of China bans the cohabitation of a married person with any third party. As he explains: “You can’t stop a married man from playing around, but when he takes a mistress and actually sets up a household, then he breaks the law.”⁴³ Wei adds that the practice of keeping a “second wife” is linked to corruption, with executives and officials using corporate or government funds to pay for their “mistresses and homes.”⁴⁴ He therefore implies that private investigation agencies provide a necessary social service, one that upholds the institution of marriage, as well as China’s proclaimed reform-era shift to a rule of law and more transparent government.

Likewise, a now-defunct female-led detective agency in China’s north-western city of Xi’an justified its existence on the grounds that it provided an important social service for women. Referred to by the Chinese media as the “mistress-killers” or “love detectives” (情感侦探), Zhang Yufen and 12 other women claimed to have established the Xi’an Phoenix Business Information Services Company (西安火凤凰商务信息服务有限公司) with the explicit intention of helping women to collect evidence of marital infidelity in order to expedite divorce proceedings.⁴⁵ Their motivation for doing so reportedly was personal at first. Zhang suspected her husband of infidelity and had approached a local branch of the ACWF for information on how she should go about collecting evidence of a “second wife” to support a divorce lawsuit. Zhang did not receive the exact advice she desired, since a formal organization such as the ACWF cannot offer information that may be construed as encouraging people to take the law into their own hands. It is for this reason that efforts by Debang to affiliate with the ACWF also proved to be unsuccessful – i.e., the ACWF was unwilling to align itself with a commercial enterprise that encourages extra-legal activity.⁴⁶

As a result, Zhang, and three female acquaintances with “cheating husbands” began “tailing” their husbands and collecting evidence of spousal infidelity to use in divorce proceedings. Following the perceived success of their initial investigations, they joined forces with nine more women in early 2002 to open a private investigation agency dedicated to exposing the existence of “the third party” and “second wives.”

Taking a cue from a short segment about the agency’s work on China Central Television Station, Shaanxi Television Station made a documentary about the activities of Zhang Yufen and her team of female detectives between April 2003 and mid 2004. A series was produced on the work of the agency, which included the investigation of extramarital affairs, as well as cases of blackmail, missing children and counterfeit goods. Zhejiang Television Station showed the documentary series, which received record “high ratings” and considerable publicity.⁴⁷

Despite this publicity, the Xi’an Phoenix Business Information Service closed down on 17 February 2004 due to financial problems. This consideration suggests that female-led detective agencies are not as lucrative as media reports suggest. However, Zhang Yufen’s explanation for the failure of that particular investigation agency was simple (she has continued to work as an “infidelity sleuth”): women in the impoverished province of Shaanxi, unlike those in China’s booming cities and richer open coastal areas, do not have the money to pay for private investigation services. Consequently, she had provided most of her services for free, i.e., she claimed that her agency had styled itself more as a public service than as a business.⁴⁸ This example hints at a broader issue, namely, that the solicitation of private investigation services remains the privilege of people with sufficient private resources to do so. Conversely, those with limited access to financial resources currently lack the means to retain such services, which may hamper any attempt to “escape” a marriage jeopardized by a cheating spouse.

As these examples highlight, the controversy regarding China’s private investigation industry reflects two issues. On the one hand, private detectives provide a necessary supplement to public services by undertaking tasks that the Chinese police, the ACWF and government-sponsored legal-aid centers are unable to perform adequately, such as conducting private investigation work for individuals in cases involving allegations of adultery and / or the cohabitation of a married person with a third party. On the other hand, many of these tasks not only intrude on normal police work and undermine the rights of Chinese citizens to privacy, but also are performed without a clear legal basis. Collecting evidence of spousal infidelity to facilitate the speedy resolution of divorce proceedings has thus become one of the most

contentious aspects of China's private investigation industry. The provision of such services is either lauded for providing a necessary social service and protecting the rights and interests of women and children, or condemned for violating Chinese law and citizens' rights.

Privatizing the policing of "private affairs"

Proposed responses to the problematic nexus between private detective work and the policing of infidelity have been mixed, with members of China's private investigation industry making various attempts to professionalize the industry, both individually and as a collective. Interviews that private investigators have given to media representatives, for instance, consistently document their efforts to acquire business licenses and trademark names in an effort to legitimize private detective work.⁴⁹ To date, private investigators in China have also convened two publicized "Summit Meetings." The first meeting was held in Chongqing Municipality on 5 December 2002 and the second was held in Hangzhou City, Zhejiang Province, between 18 and 20 December 2003.⁵⁰ Both meetings were designated as "secret," due to the illegitimate status of the industry; yet both meetings were attended by over 100 hundred private detectives and selected guests, who attended lectures and seminars on subjects such as "collecting evidence," "surveillance tactics," and the legal status of private security work. Domestic and international media representatives also attended, with China's legendary female detective, Zhang Yufen, giving interviews at the first summit, and another legendary mistress-killer, Meng Guanggan, giving a lecture on the "historical background of private investigation work" at the second.⁵¹ These efforts underscore both the public recognition that is afforded to China's mistress-killers and an acknowledged desire on the part of some investigators to regulate and professionalize the private investigation industry.

Media accounts of community and local legal responses to the existence of the "second-wife phenomenon" further underscore the perceived need for a broader regulatory response. Apart from documenting the work of China's mistress-killers, the PRC media has reported other cases that allegedly highlight public frustration over the apparent failure of the 2001 Marriage Law to control the "second-wife phenomenon," and, by extension, the problem of adultery.⁵² One case involved a young married woman who wanted the legal equivalent of a pre-nuptial agreement stipulating that her wealthy husband would pay an "empty bed fee" (空床费) for every hour of every evening, between 12 am and 7 am inclusive, that he did not spend at home, specifically in the marital bed.⁵³ Another case turned on the enforcement of a traditional village covenant in the Baiyun District of Guangzhou City, which guarantees that, in circumstances where a divorce results from the "keeping of a second wife," all contested

assets will revert to the “first” and “legal” wife.⁵⁴ According to many media reporters, these actions highlight both the endemic nature of the “second-wife phenomenon” and the need for a broader regulatory response, such as that already provided, albeit in a de facto capacity, by China’s private investigation industry.

But if media reporters aver that the establishment of a regulated private investigation industry will help to resolve the public policy lacuna that is associated with China’s rising rates of adultery and divorce, they also insist that the industry still needs clear restrictions placed on its capacity to investigate cases of spousal infidelity and sex-related corruption. This codicil stems from recent suggestions by legal scholars, in particular, that law enforcement authorities and members of the general public fail to distinguish adequately between what constitutes bigamy or an illegal form of cohabitation and a more straightforward if adulterous “love affair.”⁵⁵ The 2001 Marriage Law, for instance, makes living with someone else when still married a legal offence in order to protect the legitimate family. In practice, however, it is difficult to establish legally exactly if and when a “second” or “unlawful” relationship has commenced; and, the conventional presumption that the “offending spouse” and “the third party” are “guilty” simply blurs the already grey area between extramarital relationships that attract legal penalties and those that do not.⁵⁶ Concomitantly, although the extra-marital affairs of “ordinary” citizens are increasingly viewed as a private matter for individuals to resolve, media reporters often claim that the extra-marital affairs of government officials should be criminalized and publicly condemned, irrespective of whether they entail corruption or not.⁵⁷ In view of these problems, some legal scholars contend that devolving investigatory powers to private investigators in lawsuits involving adultery, particularly those that involve allegations of corruption on the part of government officials, would undermine the perceived rights of all Chinese citizens to freedom from unnecessary intrusion into their private affairs.

The case of He Yuxiu illustrates the extent to which individual privacy can be abrogated in the pursuit of “justice” and evidence of spousal infidelity. In 2004, He contacted the newly founded Sherlock Holmes Agency in Chengdu City, Sichuan Province, seeking evidence that her husband, Wen Youming, was having an affair.⁵⁸ Members of that agency and a local TV camera crew subsequently accompanied He and some of her relatives to an apartment where Wen and his lover were staying. He Yuxiu then broke down the door, surprising a naked Wen and a young woman. All of the events, including He’s bitter and triumphal cry of: “I’ve got you both,” were caught on film by a local television station. That footage was later used and accepted as admissible evidence in her lawsuit for divorce. It was also used in a reality law show on Sichuan Television, with an entire episode being devoted to He’s story, a story of

requited revenge that reportedly turned her into a heroine for many local women. Other reports similarly relate narratives of private investigators leading a “cheated wife” and media representatives to the “scene of the crime” and then waiting while the wife and her male relatives proceed to break into the apartment, take photographs of the “trysting couple,” and force the errant husband to write a confession that can be used in court to ensure a favorable division of property for the aggrieved wife.⁵⁹

In conclusion, the demand for “infidelity sleuths” highlights the laissez-faire position that economic reform increasingly has forced China’s governmental authorities to assume with regard to regulating the “private affairs” of Chinese citizens. Lawyers, police, and representatives of the ACWF, note that members of the public should be wary when seeking the “non-legal” services of private investigators to resolve divorce proceedings that involve allegations of adultery. Yet they also concede that China’s changing sexual mores, combined with the erosion of what was formerly state services and the limited availability of government-sponsored legal advice, has produced a gap in the market that private investigators seem uniquely positioned to meet. One oft-vaunted solution to this dilemma is to promote the new technology of “the law” and for the media to provide community education that promotes traditional values and extols exemplary models with regard to marital relationships.⁶⁰ Such a “solution” seems unlikely to succeed given the dramatic changes that have occurred in China’s sexual culture since the beginning of the reform era.

The broader demand for private investigation services further highlights the altered nature of China’s state/society relationships. In April 2008, the PRC’s Ministry of Justice offered a training course for private investigators on collecting evidence for civil cases in a manner that accords with Chinese law, respects citizens’ rights and provides legal protections to private detectives.⁶¹ Attendees, including law graduates and former police, claimed in media interviews that they had willingly paid the required fee of 5,000 RMB in order to obtain “professional certification” for employment that now chiefly involves working for large corporations, rather than chasing “cheating spouses,” with an estimated annual salary of between 20,000 and 50,000 RMB for “good investigators.” At the same time, attendees indicated that they did not know whether such certification gave them formal state approval or not. They nonetheless concluded that it facilitated links between private investigators and the legal structure regarding the solving of civil cases, in a context where there is an abundance of work that the Chinese police cannot handle and where there are no laws banning the private investigation industry, other than an outdated 1993 ruling by the Ministry of Public Security. As this example suggests, China’s increasingly differentiated and “entrepreneurial” governmental agencies now exploit and rely on the unregulated private

sector to govern aspects of social and economic life that the “Party-state” is no longer capable of and no longer recognizes as its responsibility.

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