

First Submitted: 3 June 2018 Accepted: 1 September 2018

DOI: <https://doi.org/10.33182/ml.v16i2.743>

## Civic Stratification Within Cross-Border Families: Mainland Chinese Children and Wives in Hong Kong

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### Abstract

*The extant literature on family-related migration has examined the civic stratification of the right to family reunification of citizens and non-citizens and the citizenship rights of their reunited family members. However, civic stratification amongst immigrant family members has received less attention. Accordingly, the current study highlights the significance of immigration status and social reproduction in the hierarchisation of the residency and social rights of Mainland Chinese children and spouses within cross-border families in Hong Kong, particularly since the policy changes in 2003. This study asserts that children are valued as prospective contributory citizens, and thus, they are afforded preferential treatment over spouses, who are mostly women, whose contribution to the reproduction of family and society are undervalued by central and local states.*

**Keywords:** *Family-related migration; civic stratification; social reproduction; citizenship; Hong Kong.*

### Introduction

Family-related migration<sup>1</sup> has become a prominent phenomenon in Europe, the United States and Asia; in particular, the cases of marriage migration has been increasing (Dauvergne, 2009; Jones and Shen, 2008; Kraler et al., 2011; Kraler, 2010; Riaño, 2011; Schweitzer, 2015). The civic stratification of the right to family life of citizens and non-citizens and the citizenship rights of their reunited family members have also elicited increasing interest. Studies on family-related migration have examined the hierarchisation of rights to family reunification by categories or the legal status of sponsors and along the axes of gender, class and ethnicity (Bonizzoni, 2011; Kraler, 2010; Morris, 2003). Previous research has shown that immigration laws generate a stratification of residency and social rights amongst migrants based on their economic contribution and cultural affinity in a global race for talents. Reunited family members of citizens and non-citizens also enjoy differential access to socio-legal rights as the derivative rights of their sponsors. However, these studies have been conducted in the context of Europe and the United States and have primarily examined the rights of sponsors and couple relations; meanwhile, studies on marriage migrants in Asia have focused on women's citizenship experiences by gender, race/ethnicity and class (Chao, 2004; Friedman, 2010; Lan, 2008; Wang and Bélanger, 2008; Yang and Lee, 2009). In either case,

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**Acknowledgement:** The author thanks the three anonymous reviewers for their constructive comments. This project was funded by the Education University of Hong Kong (RG80/13-14R).

<sup>1</sup> Scholars have distinguished the major categories of family migrants into family reunification, marriage migration/family formation and tied migration (of an accompanying spouse or the entire family) (Kofman, 2004). Although the One-way Permit Scheme under study is a family reunification scheme for Mainland Chinese family members (mostly wives and children) of Hong Kong permanent residents (particularly those who migrated after the late 1980s), reunited spouses are likely marriage migrants who entered into cross-border marriages since the 1980s (see additional details under 'Changing immigration schemes').



civic stratification amongst migrant family members (e.g. children and their mothers) with diverse immigration statuses has received less attention, with only a few exceptions (Bonizzoni, 2015; Fresnoza-Flot, 2017).

Drawing on the concepts of civic stratification and social reproduction<sup>2</sup>, along with the related literature on the citizenship experience of family and marriage migrants, this study aims to examine the significance of immigration status and social reproduction in the civic stratification of the residency and social rights of Mainland Chinese children and wives *within* cross-border families in Hong Kong. It analyses the preferential treatment of migrant children of Hong Kong permanent residents over spouses, who are mostly women. Children and spouses are classified under different immigration subcategories in their legalisation process, which leads to permanent residency (PR)<sup>3</sup> and their subsequent access to residency-based social benefits. Although children and mothers are both crucial to the social reproduction of family and society, central and local states value children more as prospective contributory citizens but undervalue the contribution of their mothers. This valuation became particularly evident during the tightening of residency requirements for social rights after 2003. The current study contributes to the literature by demonstrating how family-related immigration law *and* social policies are instrumental in creating civic stratification *within* immigrant families by allocating newly joining members with different immigration statuses, thereby giving them differential access to legal and social rights. This study goes beyond the class-based analysis of citizenship and the social exclusion of Mainland family-related migrants in Hong Kong by highlighting the significant role of social reproduction in the construction of their socio-legal citizenship, whilst the construction of children as prospective contributory citizens extends our understanding of migrant children's citizenship (Qvortrup, 2005). As a special administrative region since its reunification with China in 1997, Hong Kong maintains a high degree of autonomy in governance and retains its own economic and administrative systems apart from those of Mainland China under the principle of 'One Country Two Systems.' Thus, Hong Kong provides an excellent case study in demonstrating the pivotal role of the local government in intra-family stratification amongst family migrants by regulating migrants' ascent to PR and social entitlements.

After a brief account of the methodology in the following section, I discuss the literature on civic stratification and social reproduction in relation to family migrants, followed by an overview of the changing immigration schemes and migration trends of Mainland Chinese in Hong Kong. Then, I present the differential treatment of immigrant children and spouses under the family reunification scheme for Mainlanders, namely, the One-way Permit (OWP) Scheme, and their paths to PR, which have significant implications to the stratified access to social rights of Mainland children and spouses after residency requirements were tightened since 2003. The discussion section analyses how immigration status and social reproduction constitute the stratified socio-legal citizenship of different family migrants, ending with the implications of these policies to the well-being of children, spousal migrants and society at large.

This article relies on online government documents and reports, court documents and published and unpublished statistics provided by various government bureaus upon the author's request. These documents provide information regarding population policies and immigration schemes related to Mainland Chinese migrants, along with their entitlements to social benefits. The Report of the Task Force on Population Policy (Task Force on Population Policy, 2003) is an important document that

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<sup>2</sup> Social reproduction refers to 'the creation and recreation of people as cultural and social, as well as physical, beings', which engage an 'array of activities and relationships involved in maintaining people both on a daily basis and intergenerationally' (Glenn, 1992).

<sup>3</sup> Hong Kong permanent residents enjoy full citizen rights in Hong Kong; moreover, no separate procedure exists for naturalisation, except for foreign nationals seeking to claim Chinese nationality.



lays the foundation of many policy changes pertinent to new arrivals from the Mainland, such as raising the residency requirement for social welfare and public health benefits. Two other population policy reports published in 2012 and 2015 present the challenges of Hong Kong's aging population and strategies to increase labour supply, including enhancing the capabilities of Mainland children and mothers as human resources. Information and statistics on the OWP and Two-way Permit (TWP) Schemes are obtained from Immigration Ordinances, the annual reports of the Immigration Department and government documents submitted by the Immigration Department and Security Bureau to the Subcommittee to Study Issues Relating to Mainland–HKSAR<sup>4</sup> Families of the Hong Kong Legislative Council. Information on the eligibility criteria for social benefits, such as the Comprehensive Social Security Assistance (CSSA) and Public Rental Housing, is based on application guides published by the Social Welfare Department and the Hong Kong Housing Authority, respectively.

### **Immigration status, social reproduction and civic stratification within mixed status migrant families: Immigrant children vis-à-vis spousal migrants**

Family-related migration studies has suggested that immigration policies have generated civic stratification, a concept adopted from Morris (2003), amongst married couples through differential entitlements for various categories of spousal sponsors based on their nationality, citizenship or residency/immigration status (Bonizzoni, 2011; Kraler, 2010; Morris, 2003; Riaño, 2011). Civic stratification refers to 'a system of inequality based on the relationship between different categories of individuals and the state, and the rights thereby granted or denied' (Morris, 2003: 79). This concept has been extensively used to examine how immigration policies construct a hierarchy of rights, including the right to family life amongst nationals, European Union (EU) citizens and third word nationals (TCNs) in the European context (Bonizzoni, 2011; Kraler et al., 2011) and migrants with different legal statuses in the United States (Salcido and Menjívar, 2012; Herrera, 2013). These analyses focused on the differential access of migrant workers to residency and social rights through categories or legal statuses underscored by a managerial logic that selects migrants based on their economic merit and utility amidst a global context of the race for talents, perceived burden on public welfare and social system and cultural distance or ease of integration (Bonjour and Kraler, 2015; Kraler, 2010; Ruhs, 2013; Staver, 2015; Tan, 2008). Recently, access to family reunification has become increasingly class based, with the same logic applied to migrant labour and citizens with the imposition of income requirements (Kofman, 2018; Staver, 2015).

Whilst immigration or residency status constitutes a crucial axis of interlocking inequalities, alongside gender, class and ethnicity in the legalisation process and access to the social rights of migrants (Dauvergne, 2009; Herrera, 2013; Könönen, 2018; Salcido and Menjívar, 2012), family-related migration policies also specify the settlement rights of specific relatives and subsequent reunited family migrants of citizens and non-citizens in a defined territory (Bonizzoni, 2015; Riaño, 2011). Depending on the residency/citizenship or immigration status of their partners, foreign spouses (who are most likely women) may have differential access to secure residency, social and economic citizenship as derived rights from their sponsors (Bonizzoni, 2011; 2015; Riaño, 2011). Thus, family-related migration policies may generate 'a hierarchy of international marriages' (Tan, 2008, 84) and stratification *within* categories, i.e. family reunification, thereby producing new forms of inequality that intersects and reinforces pre-existing social cleavages in terms of gender, class and ethnicity (Dauvergne, 2009; Kraler, 2010; Salcido and Menjívar, 2012; Herrera, 2013).

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<sup>4</sup> HKSAR stands for Hong Kong Special Administrative Region.



Meanwhile, research on civic stratification in Europe and the United States has demonstrated increased interests in the stratified rights of reunited spouses and other family members. Emphasis has been placed on the significance of categories or legal statuses on differential access to the family reunification of sponsors—citizens and non-citizens—treating their migrant family members as dependents with derivative rights. By contrast, extensive research on marriage migration in the Asia-Pacific context has focused on the citizenship experience of foreign brides, documenting the construction of their legal and substantive citizenship along interlocking inequalities by gender, class and ethnicity (Chao, 2004; Friedman, 2010; Lan, 2008; Jongwilaiwan and Thompson, 2013; Wang and Bélanger, 2008; Yang and Lee, 2009). The latest development in the literature has highlighted the significance of social reproduction and motherhood to access to socio-legal rights (Kim, 2013; Kim and Kilkey, 2016; Lee, 2012). Feminist scholars have argued that citizen rights can be granted to individuals as ‘contributory rights’ based on the evaluation of their specific contributions to society, not only through work and war service, but as parents and reproducers of the nation for nationals and migrants (Turner, 2008: 46; Erel, 2011; Erel and Reynolds, 2018). In terms of legal citizenship, bearing a citizen child may have expedited the acquisition of PR status for foreign brides in Taiwan and South Korea by eliminating their waiting period (Chao, 2004; Kim, 2013; Lan, 2008; Yang and Lee, 2009). In Europe, some countries may also grant residency to undocumented or migrant mothers of citizen children as caretakers based on ‘ethics of care’ (van Walsum, 2013). In terms of substantive citizenship, studies on marriage migrants in Taiwan, Korea and Hong Kong have demonstrated how the expansion of their social rights in the form of language classes, health care programmes for mothers and other social service schemes, are based on their reproductive and maternal roles (Kim, 2013; Kim and Kilkey, 2016; Newendorp, 2008; Wang and Bélanger, 2008). However, the extent to which their contributions as biological reproducers and care providers are recognised and rewarded by the state is uneven across societies, particularly where a paid work-focused and future-oriented model of citizenship underlies the conferment of social entitlements (Saraceno, 2015). Foreign parents do not always enjoy derivative rights from the citizenship rights of their children as in the case of the United States (Bhabha, 2009; Sullivan, 2014), the Netherlands (Bonizzoni, 2015; van Walsum, 2013) and Hong Kong in the present study.

Although these studies in the Western and Asian contexts have examined the impact of the hierarchisation of the rights of foreign spouses (mostly women), civic stratification *within* families, such as the differential citizenship of immigrant children and their parents, has undergone less scrutiny (Bonizzoni, 2011; 2015; Fresnoza-Flot, 2017). The emerging literature on civic stratification within families in the west has shown that family-related migration policies give rise to mixed-status families not only amongst couples (Könönen, 2018) but also different migrant family members, such as children and spouses, which are frequently placed in distinct immigration categories, thereby leading to diverse paths to citizenship or PR (Bonizzoni, 2015; van Walsum, 2013). Although economic utility underscores the stratification of rights of sponsors, extant studies have afforded less attention to the rationales behind specific instances of differential treatment and values placed on various migrant family members by the receiving states, onto which the recent literature on reproduction and marriage migrants’ socio-legal rights may shed light.

### **Changing immigration schemes and migration trends of Mainland Chinese immigrants in Hong Kong**

Although cross-border migration (legal and illegal) from Mainland China has been an important source of population growth in Hong Kong since the 1950s (Siu, 1996), marriage-related migration has predominated from the early 1980s onwards because of the shift in immigration



policies and the increasing number of cross-border marriages. Since 1950, legal immigrants through the OWP Scheme<sup>5</sup> and illegal migrants from China (mostly young single males of rural origin) have constituted a steady supply of low-cost and low-skilled labour that supports the labour-intensive industrialisation of the 1960s and 1970s under lax immigration control (Lam and Liu, 1998). Nevertheless, when the economy of Hong Kong transformed into a post-industrial knowledge-based economy in the 1990s, immigration policy shifted from lax to a more selective regime biased towards skilled labourers and capitalists (Baark and So, 2006). Illegal immigration declined dramatically since 1980 with the abolition of the ‘touch-base’ policy, which permitted those who evaded capture at the border to remain within the territory. With an increase in cross-border marriages, the Mainland wives and children of Hong Kong residents became the dominant immigrants in the territory rather than male adult labourers (Siu, 1996). These wives and children were mostly dependents of the illegal arrivals of the late 1970s (Siu, 1996) and the second generation of earlier migrants (Ornellas, 2014) who joined their families via the OWP Scheme.

Through the systems implemented in July 1995, a maximum quota of 150 people per day was allocated to the OWP Scheme under several categories with the following distribution: (1) 60 children of all ages with a Certificate of Entitlement (CoE) who are dependents of Hong Kong permanent residents and enjoy the right of abode in Hong Kong under Paragraph 2(c) of Schedule 1 of the Immigration Ordinance; (2) 30 spouses separated for over 10 years and their accompanying children and (3) 60 ‘others’, including spouses separated for under 10 years and their accompanying children (Tong, 2004).<sup>6</sup> Applications for OWP status are considered individually, rather than on a family basis and petitioned for by spousal sponsors or parents. Applicants awaiting the issuance of OWP may visit their family for 90 days on a TWP, which has been in place since 1971. Children with CoE were allocated higher quotas; thus, they frequently arrived in Hong Kong much earlier than their mothers, which gives rise to split families and challenges in childcare (Task Force of Population Policy, 2003; Chan, 2011; Ornellas, 2014). As a solution, TWP regulations were relaxed in late 2002 and again in 2009, thereby allowing for recurring applications throughout the year instead of only twice annually (Task Force of Population Policy, 2003); separated spouses with minors awaiting OWP are also permitted to make multiple visits to Hong Kong of up to 90 days each, within a one-year validity period (Security Bureau, 2014).

Although family migrants have dominated since the 1980s, the number and percentage of CoE children and ‘long-separated wives’ have dropped dramatically according to the data provided by the Security Bureau.<sup>7</sup> Since the early 2000s, ‘spouses separated for less than 10 years’, who were likely young brides of childbearing age, became the dominant group of family migrants (see Table 1). Amongst all wives, regardless of the length of separation, those aged 25 to 34 years increased from 18.3 percent in 1998 to approximately 60 percent to 68 percent between 2001 and 2009.

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<sup>5</sup> The family reunion programme is a quota system established in 1950. It sets limits on the number of OWPs issued each day and has since been modified several times. Specific quotas for different categories of family migrants were established in 1993 and further developed into the current form implemented in July 1995 (see Lam and Liu, 1998 and the details below).

<sup>6</sup> Individuals under the ‘other’ category also include unsupported children or elderly joining relatives in Hong Kong, persons coming to Hong Kong to care for their unsupported aged parents and persons coming to Hong Kong to inherit legacies (Tong, 2004).

<sup>7</sup> The establishment of the quota allocation and point system considerably reduced the backlog of OWP applications of children with CoE and ‘long-separated wives’ that accumulated before 1997. Moreover, parents have increasingly opted to deliver their babies in Hong Kong instead of in the Mainland to avoid the nuisance of applying for OWP.





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Table 1: Number of One-way Permit Holders (1997–2003)<sup>a</sup>

Categories	Year	1997 (Jul-Dec)	1998	1999	2000	2001	2002	2003
<b>CoE holders (60 places per day)</b>		10,545	25,818	24,260	26,275	29,296	16,731	13,350
<b>Spouses separated for 10 years or more and their accompanying children (30 places per day)</b>	Husbands	197	430	390	683	315	327	398
	Wives	9,607	16,344	16,169	12,410	2,814	2,519	3,751
	Children	1,472	3,114	1,212	371	200	264	818
<b>Other categories (60 places per day):</b>								
a) Spouses separated for less than 10 years and their accompanying children	Husbands	302	194	259	652	832	1,036	1,243
	Wives	3,441	2,543	5,360	11,697	14,082	16,384	24,264
	Children	432	363	395	443	931	1,426	2,757
b) Others		3,999	7,233	6,580	4,999	5,185	6,547	6,926
<b>TOTAL</b>		29,395	56,039	54,625	57,530	53,655	45,234	53,507
<b>Subtotals in percentage (%):</b>								
CoE holders		35.87	46.07	44.41	45.67	54.60	36.99	24.95
Husbands		1.70	1.11	1.19	2.32	2.14	3.01	3.07
Wives		44.39	33.70	39.41	41.90	31.49	41.79	52.36
Accompanying children		6.48	6.20	2.94	1.41	2.11	3.74	6.68

Categories	Year	2004	2005	2006	2007	2008	2009	2010
<b>CoE holders (60 places per day)</b>		10,314	5,325	7,062	4,487	4,490	5,025	4,662
<b>Spouses separated for 10 years or more and their accompanying children (30 places per day)</b>	Husbands	277	161	189	100	147	122	119
	Wives	2,632	523	1,308	482	584	467	250
	Children	773	261	489	241	310	240	182
<b>Other categories (60 places per day):</b>								
a) Spouses separated for less than 10 years and their accompanying children	Husbands	1,004	6,376	4,319	3,104	3,429	3,968	3,679
	Wives	16,482	21,363	27,168	14,437	19,142	26,580	22,765
	Children	1,723	15,260	9,864	6,387	8,413	8,044	7,002
b) Others		4,867	4,901	4,707	4,627	5,095	4,141	3,865
<b>TOTAL</b>		38,072	54,170	55,106	33,865	41,610	48,587	42,624
<b>Subtotals in percentage (%):</b>								
CoE holders		27.09	9.83	12.82	13.25	10.79	10.34	10.94
Husbands		3.36	12.07	6.18	9.46	8.59	8.42	8.91
Wives		50.20	40.40	51.67	44.05	47.41	55.67	54.00
Accompanying children		6.56	28.65	18.79	19.57	20.96	17.05	16.85

Categories	Year	2011	2012	2013	2014	2015	2016	2017
<b>CoE holders (60 places per day)</b>		3,758	3,750	4,329	4,938	3,655	3,508	2,795
<b>Spouses separated for 10 years or more and their accompanying children (30 places per day)</b>	Husbands	111	146	163	144	169	241	203
	Wives	359	428	409	469	429	466	376
	Children	149	159	170	178	155	163	111
<b>Other categories (60 places per day):</b>								
a) Spouses separated for less than 10 years and their accompanying children	Husbands	3,689	3,100	2,800	2,933	3,755	9,490	8,164
	Wives	21,172	17,519	16,474	16,366	16,093	21,924	18,212
	Children	6,600	5,127	3,919	4,229	5,294	13,847	10,471
b) Others		7,541	24,417	16,767	11,239	8,788	7,748	6,639
<b>TOTAL</b>		43,379	54,646	45,031	40,496	38,338	57,387	46,971
<b>Subtotals in percentage (%):</b>								
CoE holders		8.66	6.86	9.61	12.19	9.53	6.11	5.95
Husbands		8.76	5.94	6.58	7.6	10.24	16.96	17.81
Wives		49.63	32.84	37.49	41.57	43.1	39.02	39.57
Accompanying children		15.56	9.67	9.08	10.88	14.21	24.41	22.53

<sup>a</sup> Data provided by the Security Bureau of HKSAR (the gender of spouses are unpublished)



Apart from the changes in the composition of family migrants and immigration policies on the TWP Scheme and the inclusion of ‘overage children’ as OWP candidates,<sup>8</sup> a selective migration regime and tightened restrictions on residency-based social benefits have been in place since 2003. New immigration schemes, such as the Admission Scheme for Mainland Talents and Professionals, were established to attract Mainland talents and investors between 2003 and 2008 (Immigration Department, n.d.). Conversely, to deter the cross-border migration of ‘low-quality’ Mainland immigrants, who were scapegoated as the source of rising welfare expenditure amidst an immense economic crisis, their residency rights and social entitlements were further restricted after the 1997 Asian Financial Crisis and the 2003 SARS Epidemic (Law and Lee, 2006; Leung, 2004).<sup>9</sup> In particular, with the recommendation of the Task Force on Population Policy, tighter residency requirements were extended towards many social benefits, such as social welfare and public medical services in 2003, in line with the existing seven-year rule for means-tested public housing (detailed discussion is provided below) (Task Force of Population Policy, 2003; Legislative Council Secretariat, 2012b).

Previous studies on the citizenship of immigrants have attributed these policy shifts and the increasing social exclusion of Mainland Chinese migrants, in general, to a rise in the demand for quality productive labour, in support of Hong Kong’s desire to become a global Asian city in the context of globalisation and rising neo-liberalism (Law and Lee, 2006; Leung, 2004; Leung, 2016; Pun and Wu, 2004). However, this class-based analysis has failed to address civic stratification *within* cross-border families, i.e. the differential treatment of children and spouses under the OWP Scheme and their entitlement to various social benefits, particularly at a time when women and children, instead of male labourers, comprise the bulk of immigrants, which is the focus of the analysis in the subsequent section.

## **Differential paths to permanent residency for Mainland children and wives**

### ***Mainland children and wives as OWP holders***

Scholars have argued that the immigration policies of Hong Kong have become increasingly exclusionary towards Mainland Chinese migrants (Law and Lee, 2006; Leung, 2004; Leung, 2016; Pun and Wu, 2004). However, the priority given to children over spouses (who are mostly women) in the legalisation process with the formalisation of the OWP Scheme since 1997 and their subsequent differential social rights with tightened residency requirements for various benefits after 2003 remain unexplored. In the succeeding paragraphs, the differential paths towards the PR of children and spouses are firstly examined under the following mechanisms: (a) quota allocations under the OWP Scheme, (b) the wait for permits to be granted and (c) the overall duration to PR status.

(a) Quota: As mentioned earlier, children with CoE were allocated 60 OWP places, the highest quota as a single category amongst all categories. In addition, to guarantee the early issuance of permits to CoE children, these places were not used for spouses in other categories to shorten their waiting period (Task Force of Population Policy 2003), although the number of CoE children dropped dramatically after the early 21st century (Table 1). Moreover, the age limit for accompanying children of separated spouses was relaxed from 14 to 18 years; the restriction that

<sup>8</sup> ‘Overage children’ are Mainlanders under 14 years old when their biological parent obtained Hong Kong resident status before a designated date in different rounds of applications, with 1 November 2001 as the date set for the first round (Legislative Council Secretariat, 2012a).

<sup>9</sup> No income requirement is set for sponsors under the OWP Scheme. Restrictions have been imposed by raising the residency requirement for social entitlements since 2003 to deter lower-class and low-skilled migrants, who may become a burden on social expenditure.



only one accompanying child could be considered was removed in 2003 (Security Bureau, 2014). When the quotas for CoE holders and long-separated wives were under-utilised, unused places were officially allocated to ‘overage children’ rather than to spouses that had been separated for 10 years or less (Legislative Council Secretariat, 2012a).

(b) Wait for permit issuance: The waiting time for the issuance of an OWP is considerably shorter for CoE children. Given that CoE children and spouses have been placed under different immigration categories and spousal application for OWP has been managed under a point system, children may be issued an OWP in only six months to a year<sup>10</sup> compared with the minimum of four years (as of August 2018) for mothers. This circumstance has a significant consequence on spousal migrants given that their eligibility to petition for OWP as a spousal applicant lapses upon separation from their spouses due to divorce, death or the ‘disappearance’ of the spousal sponsor whilst awaiting OWP.<sup>11</sup> Given that PR is nontransferable from a citizen child to non-resident parents, single mothers can only join their children in Hong Kong via the OWP scheme at the age of 60 years as unsupported elders, with exceptions granted upon discretion. Nonetheless, they may renew their TWP on a 90 day stretch and stay as ‘visitors’ for childcare.

(c) Total duration to PR status: An extended waiting period for an OWP prolongs the path to PRship for spouses. Children with CoE are granted the right of abode upon landing, whereas spousal migrants can only apply for PR after residing in Hong Kong for seven consecutive years. Mainland wives must wait a minimum of *11 years* to achieve PR after marriage, which is the longest duration to apply for PR compared with six years for Chinese wives in Taiwan and two years for foreign brides in Korea (Kim 2013; Yang and Lee, 2009).

## **Immigration status and social citizenship of Mainland mothers and children**

### ***Social rights of children versus OWP mothers***

Children and their mothers experience civic stratification in their paths to PRship after being allocated under different subcategories, and their access to social rights is uneven within cross-border families. Social rights are residency-based; hence, a longer duration to attain PRship considerably impacts the substantive citizenship of spousal immigrants, particularly under the implementation of tighter residency requirements for many social benefits in 2003.<sup>12</sup> By then, children with CoE, who have the right of abode, already have early access to entitlements after landing, but the local HKSAR government has played an important role in constructing differential social citizenships within immigrant families by exempting the young from residency rules that surrounds many social benefits since 2003.

### ***Social welfare***

As mentioned earlier, social welfare benefits have been a point of contention in public debates during the economic downturn in the early 2000s, with Mainland migrants being portrayed as a burden on the welfare system and society (Law and Lee, 2006; Task Force of Population Policy, 2003). Upon the recommendation of the Task Force of Population Policy (2003), eligibility requirements for CSSA were tightened from one- to seven-years of residency for *adult* new arrivals in 2004. However, those under 18 years old were not only exempted from the new seven-year rule

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<sup>10</sup> CoE children are still required to apply for a CoE from Mainland authorities to affix to their OWP.

<sup>11</sup> Some lower-class males cannot support their dependents after they moved to Hong Kong and ‘disappeared’ or left, although they still reside within the territory.

<sup>12</sup> Given that new arrivals must live in Hong Kong for seven consecutive years to apply for PR and a permanent identity card, the seven-year residency rule indicates that only permanent residents are eligible for these benefits.





but also from the former one-year requirement (Security Bureau, 2014).<sup>13</sup> Furthermore, CoE children can apply on an individual basis although a CSSA recipient must apply on their behalf as a guardian since 2008 (Social Welfare Department, 2015).<sup>14</sup> By contrast, married individuals are required to submit applications on a family basis (same for the public housing benefits discussed in the following section)<sup>15</sup> according to a breadwinner model (Social Welfare Department, 2015). Although the Court of Final Appeal restored the 1-year residency requirement in 2014,<sup>16</sup> female non-permanent residents remain unable to apply independently if their husbands are alive at the time of writing.

### *Right to public housing*

Similarly, for the means-tested public housing benefit, full entitlement is granted not only to right-of-abode children but also to *all* children under 18 years old, regardless of their residence status, including Mainland children migrants not born to a Hong Kong permanent resident (e.g. in the case of parental remarriage). However, although adult non-permanent residents may be included in an application as a family member, current stipulations require that at least half of the family members must be living in Hong Kong for seven years at the time of allocation of a public rental flat (Hong Kong Housing Authority, 2015). Even if the family meets this requirement, the non-permanent resident member will be excluded in the calculation of the size of the allocated flat based on the number of eligible members.

### ***(Absence of) Social rights of TWP holders***

Non-permanent resident mothers have been deprived of welfare and housing rights, but the impact of immigration status on the social entitlements of Mainland mothers has been most significant amongst TWP holders. Their ‘visitor’ status not only prevents them from rights to welfare, public housing or employment but also from access to many charities, social services and support provided by local nongovernment organisations, such as food banks and language classes, which are mostly offered to Hong Kong identity card holders only (Chan, 2011). Single mothers, who are TWP holders and non-permanent resident mothers must ‘rely on their [children’s] CSSA for a living’<sup>17</sup> and make do with the welfare allowance entitled to their citizen children. The former must also rely on their dependents for food assistance and other social services provided by NGOs.

Moreover, TWP women have their reproductive rights and access to public medical services hampered as they are treated as outsiders similar to Mainland women with no ties to Hong Kong permanent residents who deliver their babies in Hong Kong.<sup>18</sup> As non-residents without Hong Kong identity cards, both groups have been categorised as ‘non-eligible’ persons (NEPs) for medical and obstetric services in public hospitals (with the exception of the Mainland wives of civil servants)

<sup>13</sup> New arrivals who had been on CSSA before 2004 were also exempted.

<sup>14</sup> Since 2008, social workers from the Social Welfare Department may no longer serve as guardians of children under 18 years old whose parent(s) is(are) ineligible for CSSA. Children may only apply under the guardianship of an adult, who is a CSSA recipient and residing with them.

<sup>15</sup> Exceptions to this rule are those who are divorced or undergoing divorce proceedings, widowed or whose spouses have not been granted the right to land in Hong Kong.

<sup>16</sup> *Kong Yunming v. The Director of Social Welfare*, FACV 2 of 2013, December 17, 2013.

<sup>17</sup> *Kong Yunming*, 20 (n 16).

<sup>18</sup> Babies delivered in Hong Kong have a right of abode, regardless of the residency status of their parents according to the *Director of Immigration v. Chong Fung Yuen (FACV 26 of 2000, July 20, 2001)*. With the implementation of the Individual Visit Scheme in 2003 (which allows Mainland residents of designated cities to visit Hong Kong in their individual capacity) and the promotion of medical services as one of the six new industries for economic growth, an influx of pregnant Mainland women arrived for birth migration from the mid-2000s to 2012. These women had no ties to Hong Kong permanent residents but visited Hong Kong to deliver their babies with an aim of securing Hong Kong PR for their child.



from 2004 onwards (Task Force of Population Policy, 2003). They were charged with a substantially higher rate for an obstetric package of three days and two nights, an offer that was introduced for NEPs in public hospitals in September 2005; it was then revised from HK\$20,000 (approximately US\$2550) to HK\$39,000 (approximately US\$4970) in 2007, with prior booking for a delivery as an additional requirement (Legislative Council Secretariat, 2012b). By contrast, eligible persons, including citizen children and children who are Hong Kong residents and under 11 years old, only need to pay HK\$100 (approx. US\$13) per night for hospitalisation (Hospital Authority, 2018). When exceptions were made for TWP wives when delivery in the territory was completely banned for NEPs in 2013, they were only permitted to give birth in private hospitals. However, child residents under 11 years old not only enjoy public medical services at a low cost as eligible persons but also receive other health benefits, such as free child health services and vaccination for various diseases (including pneumococcal and varicella vaccines) and immunisation for infectious diseases for children up to 5 years old (Department of Health, 2018).

### **Discussion and conclusion**

This study demonstrates that family-related immigration law and social policies are instrumental in creating civic stratification not only amongst different categories of migrants or their sponsors (Bonizzoni, 2011; Kraler, 2010; Morris, 2003; Riaño, 2011; Salcido and Menjívar, 2013) but also *within* immigrant families by allocating newly joining members with different immigrant statuses. Given that social entitlements are residency-based, the construction of different immigration categories for children and spouses leads to their different paths to PR and is crucial for constituting the substantive rights of Mainland spousal migrants in Hong Kong, particularly at a time of tightened residency requirements for many social benefits.

The system of stratified rights structured by immigration laws not only reflects national values in terms of who is valued, considered to have contributed to the economy and the family and deserved protection (Dauvergne, 2009: 336), but also which ties to the sponsor and which specific family members are worthy (Bonizzoni, 2015). The bifurcated treatment of Mainland children and spousal migrants (who are mostly women) in the legalisation process and access to social entitlements underscores the preferential evaluation and reward to the contributory value of children as future citizens over their caretakers by the central and local states. Considering Hong Kong's low fertility rate, children are considered valuable for the reproduction of society by mitigating the aging of the population and rejuvenating the labour force (Task Force of Population Policy, 2003: 41; Steering Committee on Population Policy, 2012: 57, 61) under a worker citizen paradigm. The government disagrees with adverse public opinions on the OWP Scheme and suggestions of its abolishment or quota reduction not only to 'appreciate the need for family reunion' but to regard new arrivals as a major source of population growth and valuable human resources, which can help lower the economic dependency ratio of an aging population (Chief Secretary for Administration's Office, 2015: 21–22): 'As Hong Kong's fertility rate remains low, the daily intake of OWP holders will continue to be a major source of our population growth in the foreseeable future. They are our valuable human resources'. In fact, not only Mainland dependents of Hong Kong permanent residents but those born in Hong Kong—and thus, have the right of abode—to non-citizen Mainland parents (i.e. Type II babies)<sup>19</sup> are considered potential human assets worth of social investment, particularly in education. Although 'these children should be encouraged to stay with their family

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<sup>19</sup> See *footnote* 18. Children born in Hong Kong whose parents are non-citizen Mainland parents are called 'Type II babies' in government statistics. 'Type I' babies are local-born citizen children from cross-border marriages, whereas CoE children are Mainland-born dependents of HKPRs who joined their Hong Kong parents via the OWP Scheme.



at a tender age', the Progress Report (Steering Committee on Population Policy, 2012) recommends adhering to the principle that 'a more embracing attitude to the return of Type II children for secondary education in Hong Kong should be adopted, in order to nurture these children into useful human resources of Hong Kong in future' (p. 61); moreover, 'while it is acknowledged the schooling and support for these children will carry a public cost, we must also bear in mind that education is a long-term investment for Hong Kong's future' (p. 58).

Considering the few significant differences existing in university attendance between native-born children and the Mainlanders arriving before the age of nine, children with CoE are given priority in the OWP Scheme to encourage their arrival at a young age and facilitate their integration into Hong Kong's society, particularly into the education system (Task Force of the Population Policy, 2003: 24). To ensure the early issuance of permits to CoE children, unused places were not officially reallocated to spouses to shorten their waiting period even when the number of CoE children has dropped dramatically since the early 2000s. However, these places have been assigned to 'overaged children' since 2011. Not only did the legalisation process favour children, policy changes surrounding welfare and other social entitlements offer additional protection and investment to children, who are 'citizens in becoming' (Dobrowolsky and Jenson, 2004). Moreover, state surveillance on mothers as recipients of social benefits and migrants with non-permanent status increased (van Walsum, 2013). Although immigrant women 'made a valuable contribution' to the reproduction of society by 'looking after children who have the right of abode',<sup>20</sup> the contributions of mothers and wives have been undervalued compared with the value placed on children as prospective contributory citizens (Saraceno, 2015).

The contributions of women to the reproduction of society have not been constantly rewarded with access to legal and substantive rights (Turner, 2008), but reproduction and motherhood are pivotal in constructing their socio-legal citizenship (Chao, 2004; Erel, 2011; Erel and Reynolds, 2018; Kim, 2013; Kim and Kilkey, 2016; Lan, 2008; Wang and Bélanger, 2008; Yang and Lee, 2009). In particular, policy changes in the TWP Scheme were premised on and reinforced women's reproductive role. Although the amendment in late 2002 claimed to allow Mainland mothers to provide proper care to their children and encourage them to reunite with their families sooner (Task Force of Population Policy, 2003), these mothers were further relegated to a purely reproductive role as caretakers. Moreover, their care labour was expropriated through the denial of their access to PR, employment or social rights. Additional relaxations of the Scheme in 2009 that allowed TWP holders to make multiple visits within a one-year period were clearly premised on their care provider role given that only separated spouses with minors residing in Hong Kong were allowed to apply for this special arrangement.

Residency or citizenship rights might have been granted to the primary caregivers of citizen children as derived rights or in keeping with 'ethics of care' in selected Asian and European countries (Kim, 2013; van Walsum, 2013; Yang and Lee, 2009). By contrast, Mainland mothers in Hong Kong are not rewarded as reproducers of society, and they do not enjoy derivative socio-legal rights from their children. Considering that bearing a child citizen does not transfer any citizenship rights to Mainland mothers, immigration laws and restrictions on social entitlement reflect a masculine bias, thereby making spousal migrants dependent on their husbands and reinforcing the patriarchal family system, particularly amongst lower-class families. Eligibility to petition for OWP, PR and access to state support made available on a family basis for married individuals has been attached to conjugal relationships with sponsor husbands, which curtails the social rights of

<sup>20</sup> *Kong Yunming*, 31 (n 16). Notably, marriage migrants also contribute to Hong Kong's society with productive labour, particularly in the retail sector, in low-wage jobs and amongst older female migrants (Census and Statistics Department, 2012).



spousal migrants. Although presented in gender-neutral terms, the OWP/TWP Scheme and tightened restrictions on social benefits are in fact disproportionately gendered and mostly affected female migrants. Such a disparity is not only caused by their larger share amongst OWP holders and spousal migrants but also by the higher likelihood that they are caretakers entering as TWP holders compared with male immigrants.

Studies have shown how national governments in Europe may not always comply with supranational directives in granting the right to family reunion by transferring citizenship rights from children to parents (van Walsum, 2013). The current research highlights the significant role of local governments in the construction of family migrants' differential citizenship by imposing a residency requirement for access to family reunion and other social entitlements (Könönen, 2018). Studies in Taiwan and South Korea have confirmed that the household registration system administered by the local civil affairs bureaus constitutes additional obstacles to foreign brides in their access to social rights in addition to challenges arising from immigration laws (Chao, 2005; Kim, 2013). In the case of Hong Kong, although the issuance of OWP is under the jurisdiction of Chinese authorities, the local state (i.e. the HKSAR government) further contributes to civic stratification amongst Mainland family migrants by regulating the legalisation process to PR and imposing discrete residency requirements surrounding social entitlements for children and spousal migrants. By granting immigrant parents and their dependents differential access to PR and social benefits, the local state fortifies the patriarchal and patrilineal family system and reinforces the dependent and reproductive role of lower-class immigrant mothers.

Immigration and social policies not only exclude women from access to resources but also have significant repercussions on their capability to reproduce their families and the long-term development of society at large (Bonizzoni, 2011; Kofman, 2012). The OWP Scheme and restrictive changes in social policies may betray the goals of family reunion and enhancement of the social integration of adult *and* children immigrants by creating civic stratification within and reducing support to cross-border families. Given that mothers are most likely the caretakers of citizen children, their lack of a secure resident status and access to resources hamper their capability to perform their reproductive role and curtail the well-being of citizen children, whom these policies aim to protect. The rate of child poverty is considerably higher for immigrant than local families (36.2 percent versus 12.1 percent), and the risk may have increased substantially due to a reduction in benefits for immigrant parents who failed to meet the seven-year residency requirement, and thus, are ineligible for welfare (Chou, 2013). The number of OWP new arrivals did not decrease after the implementation of the seven-year residency rule for welfare benefits, nor did it save CSSA expenditure as claimed by authorities; however, the rule disproportionately affected adult non-permanent residents, leaving them and their children unable to meet their basic needs.<sup>21</sup> Although Mainland wives of childbearing age have a low labour force participation rate because of insufficient affordable childcare support services provided by public agencies and NGOs,<sup>22</sup> the ineligibility of TWP holders for employment during the waiting period for an OWP reinforces their image as 'lazy' new migrants and 'unproductive' mothers and wives. Such circumstances may

<sup>21</sup> In *Kong Yunning* (n 16), the Court ruled that the seven-year residency requirement was unconstitutional, as it prevented the applicant from meeting his or her basic needs; thus, the pre-existing one-year requirement was restored.

<sup>22</sup> On the basis of unpublished census data on persons from the Mainland who have resided in Hong Kong for less than seven years (thereafter PMRs) obtained from the Census and Statistics Department, in 2011, only 29.9 percent of the now married female PMRs aged 15 to 24 years and 37.3 percent of those aged 25 to 34 years were engaged in paid work. These figures are comparable with 51.1 percent (aged 15 to 24 years) and 66.1 percent (aged 25 to 34 years) for all married women in Hong Kong within the same age groups. Although Mainland migrant women are eager to work, a lack of affordable and suitable childcare assistance constitutes the major obstacle to employment (Leung, Hong Kong Federation of Women's Centres and the Tin Shui Wai Community Development Network, 2013).



further enhance social prejudice against Mainland immigrants, hinder their social integration into local society and create social disharmony. This study contributes to the literature on family migrants' citizenship experience by highlighting civic stratification within immigrant families and the role of reproduction in constituting their stratified citizenship/residency and social rights. Moreover, this study brings to the attention of policy makers the repercussions of such situations, which contradict the policy's aim of familial and social integration. Further research directions may explore the political and socioeconomic contexts, which shape the differential evaluation of and reward to foreign women's contribution as social reproducers in different societies. Their functions as mothers and wives have played a critical role in the negotiation of Taiwanese women in Malaysia with regard to their PR status (Chee et al, 2014) and of Mainland wives on TWP for their rights to public obstetric services in Hong Kong (Ornellas, 2014). Further studies may examine how the mothering practices of Mainland spouses may constitute 'acts of citizenship' and challenge citizenship as defined by the state through immigration and social policies (Erel and Reynolds, 2018).

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