CHAPTER 2

Women and Property in China, 960–1949,
Introduction and Conclusion*

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Introduction

Past scholarship has presented a static picture of property inheritance in China, mainly because it has taken as its primary focus men, whose rights in fact changed little over the centuries. When our focus shifts to women, however, a very different and dynamic picture of property rights emerges. Women’s rights to property changed substantially from the Song through the Qing and even more dramatically in the twentieth century under the Republican Civil Code. It is through an examination of those transformations in women’s claims that we can best discern the larger changes taking place in property rights as a whole. This book is thus at once a study of women’s rights to property specifically and a study of property rights in general.

It is also a study that would not be complete without treating both the imperial period and the Republican period. Imperial and Republican inheritance laws were based on radically different concepts of property, the full implications of which cannot be truly appreciated when each period is studied separately. When the two are examined in conjunction, however, each serves to illuminate the other: the distinctive characteristics of the property logic of each period become clear only when studied against the property logic of the other.

The Issues

As is well known, inheritance in imperial China was governed by the principles and practices of household division (fenjia 分家): equal division among sons of the father’s property. Women, it is generally assumed, had no inheritance rights. At most, an unmarried daughter would be provided with a dowry, if the family could afford one, and a widowed mother would be provided with

old-age maintenance, but neither had the right to an independent share of the property.

As is also well known, household division was accompanied by the principles and practices of patrilineal succession (chengtiao 承祧): a man had to be succeeded by a son for ritual as well as for property purposes. If he did not have a son of his own, he had to adopt one to carry on his line and to continue the ancestral sacrifices. Patrilineal succession, it is generally assumed, reinforced household division. They were but two aspects of the same phenomenon—inheritance by sons only.

This understanding of household division and patrilineal succession has given rise to a static picture of the inheritance regime of late imperial China, and understandably so. So long as attention is fastened on fathers and sons, one would indeed be hard put to find evidence of significant change from the Song through the Qing, for their rights in fact changed little.

But as this book will demonstrate, the conventional picture leaves out large parts of the story and distorts important parts of the remainder. And it does so because it fails to consider property from the point of view of women in their different capacities as daughters, wives, and concubines. Seen in that light, household division and patrilineal succession are revealed as separate processes with different implications for property inheritance. The principles and practices of household division came into play when a man had birth sons, and those of patrilineal succession when he did not. Moreover, the rules of succession changed in important ways in the Ming and Qing.

Of the two, although household division was the much more common form of inheritance in imperial China, patrilineal succession was by no means insignificant. Something on the order of one family out of every five did not have sons who survived to adulthood.1 Thus, inheritance in as many as a fifth of families in imperial times took the form not of household division, but of patrilineal succession.

For a woman, patrilineal succession mattered even more because of her membership in two separate families, her natal and her marital, during the

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1 Only an adult son could become his father’s full patrilineal heir, meaning that if a son died before reaching adulthood (20 sui), he could no longer be considered his father’s patrilineal heir and another would be needed to take his place for the father’s line to continue. As Ted Tedford found in his study of 41 lineage groups in Tongcheng county, Anhui, from 1520 to 1661, 17 percent of married men had no sons who survived to adulthood (1995: 62, 79). Liu Ts’ui-jung reports a similar rate, 17–24 percent, among five lineages in central and South China from the fourteenth through the nineteenth centuries (1995: 105, 107). All together, of the 23,029 married men in their two studies, 19 percent (4,348) did not have birth heirs.