

THE LEGACY OF INEQUALITY IN THE STATUS OF TURKISH AND
CHINESE WOMEN’S RIGHTS TO PROPERTY

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DECLARATION OF ORIGINALITY

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ABSTRACT

The Legacy of Inequality in the Status of Turkish and Chinese Women's Rights to Property

This study aims to present an analysis comparing the differences and similarities of women's property right both as a legal concept and as a practice in China and Turkey. The focus is particularly on property rights because property is a determining factor for women's decision-making power, independence and self-determination. In fact, in the reforms Mao and Atatürk made to change the inferior position of women, they gave equality to women in property and inheritance fields. However, many women still cannot freely exercise their right to property and share of inheritance in current Turkey and China. Therefore, in order to understand this contradiction for Turkish and Chinese women who have legally gained rights but could not implement them much in practice, the property rights of women in pre-reform period in China and Turkey are examined in detail.

ÖZET

Türk ve Çinli Kadınların

Mülkiyet Hakları Statüsündeki Eşitsizliklerinin Mirası

Bu çalışma, Çin ve Türkiye'de hem hukuki bir kavram hem de bir uygulama olarak kadın mülkiyet hakkının farklılıklarını ve benzerliklerini karşılaştıran bir analiz sunmayı amaçlamaktadır. Özellikle mülkiyet hakkına odaklanılmasının nedeni, mülkiyetin kadınların karar verme gücü, bağımsızlığı ve kendi kaderini tayin etmesi için belirleyici bir faktör olmasıdır. Aslında, Mao ve Atatürk kadının ikincil konumunu değiştirmek için yaptıkları reformlarda mal ve miras alanlarında kadınlara eşitlik vermişlerdir. Fakat Türkiye ve Çin'de birçok kadın hala mülkiyet ve miras hakkını özgürce kullanamamaktadır. Bu nedenle, hukuken hak kazanmış ancak pratikte fazla uygulayamamış Türk ve Çinli kadınların maruz kaldığı bu çelişkiyi anlamak için Çin ve Türkiye'de reform öncesi dönemde kadınların mülkiyet hakları ayrıntılı olarak incelenmiştir.

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CHAPTER 1

INTRODUCTION

Patriarchy is a power structure that supports male supremacy.¹ The word “patriarchy” literally means the rule of the father.² It prioritizes men and limits women's rights to some extent. Universally women have lived under the shadow of patriarchal societies. They also have been a concern of the state not so much as citizens but as women. While men hold power, women are deprived of access to that power. This tendency becomes stronger within the modern state. As a result, laws have been proclaimed to empower women. This concern is reflected in property and education fields. Actually, there are three areas of contestation which makes it possible for women to resist patriarchy as they feel empowered. These are age, property and education.

Deniz Kandiyoti classifies patriarchy in Turkey and China as classical patriarchy. In classical patriarchy, gender and age are the main factors. The oldest male has authority over the whole family. In addition, in classical patriarchy, girls are married at a young age and are oppressed not only by the men in the family but also by the older women in the family.³ Changes in patriarchy have occurred over time all over the world. So, how did this change happen with the development of communism in China? With the establishment of the People's Republic of China in 1949, land reform was initiated and the marriage law was enacted. However, giving the land to the head of the family in the land reform shows that socialism and communism could not destroy patriarchy. Another factor that has the most influence

¹ Arat, *The Patriarchal Paradox: Women Politicians in Turkey*, 17.

² Sultana, “Patriarchy and Women’s Subordination: A Theoretical Analysis”, 2.

³ Kandiyoti, *Cariyeler, Bacılar, Yurttaşlar*, 132.

on the formation of patriarchy in China is Confucianism. According to Confucianism, there are 5 types of relationships in society, and in this relationship, the younger ones should respect their elders and the elders should be benevolent to them. These five relationships are father and son, husband and wife, older and younger brother, older and younger friend and state and family. They expressed the hierarchical imperative bonds of interdependence, which together formed a network of Confucian social relations, which would provide the source of parallel attachments to family and state.⁴

The way patriarchy is reflected in society may differ in every society. When we look at China, the two most visible patriarchal indicators were;

Widow chastity and foot-binding. Widow chastity required women to be widowed for life after their spouse dies. Scholar Guo thinks that the formation of chastity and “foot-tie (foot-binding)” is not only related to morality and education, but also to the change of women's property rights. He states further that the evolution of social traditions is largely due to changes in property rights.⁵ Before a woman reaches adulthood around the age of 10, her toes are wrapped around the palm with strips of fabric to form what has been called a “three-inch golden lotus”. The aim is to satisfy the aesthetic preferences of upper-class men. Otherwise, women who did not tie their feet could not marry. Foot binding, which was applied as of the Song period, started to be applied more brutally with the Yuan period. Guo explains this situation as follows:

“The Yuan dynasty was a turning point. Since this period, women's social status and living conditions have worsened. This is due to the change in the property

⁴ Kutcher, “The Fifth Relationship: Dangerous Friendship in the Confucian Context”, 1615.

⁵ Guo, “Chastity, Foot-binding and the Changes in the property rights of ancient Chinese Women”, 123.

rights of Chinese women during the Yuan period. Until the end of the Song dynasty, women had the right to inherit from their parents or husbands, while with the Yuan period women had the right to own property lost.”⁶

In this study, the focus has been on property as a reflection of “women and state” relationships. There is a major difference between the modern state and the historical periods. What we see in women-state relationships in the historical periods among the early Turks and the Ottomans, vis-a-vis the Chinese women is when the historical states were strong and militaristic then there was more pressure on women’s property.

The relationship between women and the state has shown great changes since the 19th century in Turkey and China, and there have been positive changes in the status of women. Women who had limited rights in areas such as labor, education and inheritance legally gained many rights. Both Turkey and China aimed to create a new modern society in the 20th century by regulating marriage and divorce and inheritance processes, empowering women in the social life by providing them with rights and privileges and modifying the family relations. Shortly after the founders of the two countries came to power, both the Marriage Law of the People’s Republic of China (1950) and Turkish Civil Code No. 743 (*Türk Kanun-i Medenisi-1926*) were entered into force by the agencies, or personal pushes of the two founders: Mao Zedong and Mustafa Kemal Atatürk. The two Codes both in modern Turkey and China gave women legal equality with men in many aspects.

It is critical to draw attention why Atatürk and Mao introduced these reforms. Şirin Tekeli and Yeşim Arat stated the emancipation of women was not the end but

⁶ Ibid., 124.

the means for modernization.⁷ Nermin Abadan Unat thought that changing the social status of women and turning them into self-confident individuals in society has been one of the primary activities of Atatürk. According to Atatürk, the liberation of women would be happening with the help of laws giving women and men equal rights. Although it seems that the revolutions made, partially changed the status of women, Atatürk has taken a rather significant step for more freedom in order to create a contemporary Turkey.⁸ However, Yeşim Arat shows that these changes would not be only in terms of the socio-economic sphere but in a patriarchal society also in the area of mentality.⁹ Binnaz Toprak states that as long as Islamic traditions and beliefs regarding sexual roles remain valid in society, the success of legal reforms has been limited.¹⁰ She also pointed out that the missing point is that these reforms were not aimed to alter gender roles but rather to achieve pragmatic political goals. The greatest aim of the Kemalist reforms was to create a modern society by transforming the Islamic society into a western one. Thus, the emancipation of women was a necessity at that point.¹¹

In regards to Chinese society, which has traditionally been defined as a patriarchal one, it has begun to show progress in achieving women's freedom and rights in the 20th century. After Mao's Communist Party came into power, Mao envisioned "women's equality" as an important force to help establish the Chinese Communist State.¹² "Women Hold Up Half the Sky (妇女能顶半边天- Fùnǚ néng dǐng bànbīāntiān)" was one of Mao's leading party slogans. Another common point

⁷ Özbay, *Women, Family and Social Change in Turkey*. 2.

⁸ Abadan Unat, *Türk Toplumunda Kadın*. 26.

⁹ Arat, *The Patriarchal Paradox: Women Politicians in Turkey*, 17.

¹⁰ Toprak, "Türk Kadını ve Din", 387.

¹¹ Toprak, "Emancipated but Unliberated Women in Turkey: The Impact of Islam." 43.

¹² Wielink, "Women and Communist China Under Mao Zedong: Seeds of Gender Equality," 128.

for the two countries is that these rights were top-down reforms. These reforms were the foundations that made concrete developments possible.¹³

This study aims to present an analysis comparing the differences and similarities of the evolution of women's property right both as a legal concept and as a practice in China and Turkey in the 19th century and early 20th century. Despite the laws on inheritance offering equality and protection of women's property rights, this equality is not applied much in the two countries. In order to understand this contradiction for Turkish and Chinese women who have legally gained rights but could not implement them much in practice, it would be better to analyze the existing situation of women in terms of accessing property before 1926 and 1949.

This thesis will attempt to answer the following questions: "Before given the legal right to acquire property, how did Turkish and Chinese women acquire property in urban and rural areas", "Did the situation in the 19th century provide a basis for women to legally gain property rights in the 20th century?" "Did women have the same rights to acquire, manage, control and alienate their property rights as men?"

Chapter 2 will firstly analyze the status and the property rights of Turkish and Chinese women. The specific reason for this study on property is because property right has great importance in determining the legal status of people. Controlling property contributes to the economic empowerment of women by increasing opportunities, decision-making power and respect. Therefore, the relationship between gender and property right will also be mentioned in this chapter and the chapter will be finalized with the current situation of Turkish and Chinese women regarding property.

¹³ Arat, *The Patriarchal Paradox: Women Politicians in Turkey*, 28.

Chapters 3 and 4, will focus on property rights of Turkish and Chinese women in the 19th century and early 20th century and examples of the problems they faced in that period will be presented. In this section, first of all, a background about the pre-19th century will be given, and then it will be mentioned about the acquisition of property by women through inheritance and marriage, which are the two important factors in women's property acquisition in both countries. With the case record examples obtained from both Chinese and Ottoman sources, the problems women experienced in acquiring property in that period will be discussed.

Finally, Chapter 5 will be the conclusion and comparison chapter of the thesis. This chapter aims to present an analysis contrasting the differences and similarities of the evolution of women's property right both as a legal concept and as a practice in China and Turkey.

This thesis will use comparative analysis examining primary and secondary sources. Although the literature is not enough to provide detailed information about pre-19th century especially about Turkic women, the court cases and the statements of state officials are used as primary sources for this thesis. Moreover, scholarly written articles are the secondary source used in constructing the historical background. This thesis is important as it not only focuses on women's property right which provides economic security for women and determines their social status in society, but also it is the one of the first studies on this topic.

CHAPTER 2

AN OVERVIEW OF TURKISH AND CHINESE WOMEN'S PROPERTY RIGHT

2.1 Introduction

The main question of this thesis is “despite the fact that inheritance laws offer equality and protection of women’s property rights, what are the reasons that this equality has not been applied much in Turkey and China?” Before answering this question, it will be beneficial to have a general idea about Turkish and Chinese women’s status in society. First of all, it will be explained and then why this thesis focuses on property rights and what kind of relationship there is between property and gender will be discussed. In order to understand why the 19th and early 20th century are focused on the current status of the woman will be examined first. In this section, it will be questioned whether the woman has full property rights with the rights she has acquired today and whether she can exercise her right freely.

2.2 An overview of Turkish and Chinese women's status in society

“Our women in working life have further strengthened our country and made us proud with their success.”

Recep Tayyip Erdoğan

“没有妇女就没有人类就没有社会”- Méiyǒu fùnǚ jiù méiyǒu rénlei jiù méiyǒu shèhuì (Without women, there would be no human beings and no society.)

习近平 (Xi Jinping)

For many centuries, women's place in society and their emancipation from the established socio-cultural settings have been mainly shaped by tradition and religion, and more importantly, them having equal political rights and socio-economic privileges to men have constituted a ‘contested terrain’ for many societies all over the globe. According to Sina News, Xi Jinping delivered an important speech titled as "Promoting Women's All-round Development and Building a Better World Together" in the Global Women's Summit at the UN headquarters in New York.¹⁴ The following sentence indicates the main theme of his speech: “*without women, there would be no human beings and no society.*”¹⁵ Like the President of China, the President of Turkey Tayyip Erdoğan said in his keynote speech in the International Women & Justice Summit organized by the Turkish Presidency in 23rd November 2018: ‘*Our women in working life have further strengthened our country and made*

¹⁴ Please see for the full text of Sina News <http://news.sina.com.cn/c/nd/2016-03-08/doc-ifxqafha0499671.shtml> (accessed 1 January 2019).

¹⁵ Ibid.

us proud with their success.'¹⁶ As can be seen from the above-mentioned statements, women's empowerment, or promotion of the autonomy of women and the improvement of their rights/privileges in the fields of politics (e.g. political participation, elections), social life (e.g. woman's equal status in marriage, divorce and inheritance), economics (e.g. woman equality in business) so as to achieve the state of them being treated equally to men, has been a hot issue both in China and Turkey in the 21st century. It is likely to suggest that, when examining their political history in the 20th century, both contemporary China and Turkey would be two prime examples in the world in which the state-imposed reforms on women's empowerment have prevailed and shaped state-society relations.

In the same vein, the state-society relations in Turkey have more or less the same patterns as the ones in China in terms of the status of women in society. Throughout history, women among Turkic peoples lived in different parts across Asia; their status changed depending on time, place and faith/belief. They had already adopted Islam before settling in Turkey.

In regard to female position in social life, it is difficult to determine the situation in the pre-Islamic period.¹⁷ The sources of information concerning that period of time have been scattered all across Asia. It is possible to find information about this period from epics, poems and Early Türk inscriptions, Uighur documents as well as Chinese sources. The Chinese who established close relations with the Early Türk give information about the Turkic ruling class rather than the society as a whole. As one of the sources giving us information about norms in social life, the

¹⁶ Please see the full text of his speech on the official website of the Turkish Presidency: <https://www.tccb.gov.tr/en/news/542/99752/-our-women-in-working-life-have-further-strengthened-our-country-and-made-us-proud-with-their-success-> (accessed 12 January 2018).

¹⁷ İzgi, *Orta Asya Türk Tarihi Araştırmaları*, 25

Zhoushu tells us that young men and young girls would meet at funerals, and if they liked each other, then the male would ask the permission of the girl's parents, who in general would give their consent.¹⁸ That after the death of one of the members of the older generation (fathers, uncles, elder brothers), younger persons marry their (fathers', uncles', elder brothers') wives (*yenge*). However, it was not considered morally appropriate for those from the upper generation to marry the wives of those of the lower generation (*gelin*).¹⁹

Moreover, women were the subject of pre-Islamic period epics and poems. Literature as well Chinese sources indicate that, polygamy was practiced by the aristocratic class.²⁰ In order for a woman to be allowed to marry, a type of bride price (*kalın*) was paid by the groom to the bride's family at that time, which is known today as *başlık* in Turkey.²¹

Although some information is available about Central Asian customary laws and rules (*töre*) regulating political, socio-economic, and social life; these rules evolved with the passage of time depending on the time, place, and needs of the societies.²² Central Asian women were also involved in state affairs, and sometimes women played an active role in administration of the government, as well as in improving relations between the two countries.²³ For instance, in the case of the deterioration of relations with China, upon agreements princesses were married off to the respective rulers. This practice was called *heqin* 和亲 (appeasement policy). The term actually had the meaning of "establishing kinship relations for the sake of

¹⁸ Kara, "Zhou Tarihi'nin Türkler Bölümü Üzerinde Metin Çalışması," 553.

¹⁹ See *Zhoushu* 50:910 and also *ibid.* 553.

²⁰ Izgi, *Orta Asya Türk Tarihi Araştırmaları* *Ibid.*, 36.

²¹ *Ibid.*, 37.

²² Dalkesen, "İslam Öncesi Devirlerde Orta Asya'da Değişen Kadın Erkek İlişkilerinde Töre", 442.

²³ Alan, "The Impact of Women in The Turkish State Tradition and Its Management, *Journal of International Management*," 47

peace”. The close relations established through these marriages improved relations between the two countries.

The visibility of pre-Islamic Central Asian women and their position in the upper levels of the state apparatus contributed to the perception of gender equality among modern scholars.²⁴ Mobility and freedom of movement contributed to this perception of gender equality supposedly to be found among the Early Türk and the Uighur societies. However, in this perception the issue of women’s property was not given due attention. Examples in these studies about equality of women and men are mostly about the ruling family. In actual fact, we have very little evidence about the life of ordinary women as mentioned above.

Nevertheless, gender relations in Central Asia and states of women changed from time to time and from region to region; therefore, it is not possible to say that women always have equal rights with men in state affairs.

Another source that helps us get an idea of the male and female roles in state affairs are travel records. Reporting in the Volga-Ural region, he states that the queen sat beside the ruler, the caliphal envoy Ibn Fadlan (10th c.) felt uneasy about this.²⁵ He also recorded that when a boy was born, he was raised by his grandfather. From these examples, it is apparent that although there was no gender discrimination in the Volga-Bulghar society, there was a gender hierarchy.²⁶

This example indicates that it would not be accurate to make definite judgements about the equality of men and women in pre-Islamic societies in Central Asia. Even for the same community, it is not possible to make definite judgments since the rules were changing considering the needs of the society.

²⁴ Ibid., 29.

²⁵ Togan, “Islam: Early Expansion and Women,” 200.

²⁶ Ibid., 200.

In the 10th century, conversion to Islam took place in different regions in Central Asia and brought segregation and seclusion among sedentary people. These traits had not been prevalent among nomadic societies. In this sense, it is possible to say Islam did not diminish the socio-economic rights of the Turkic women, nor of others in these regions.²⁷ Actually in comparison to pre-Islamic periods after the adoption of Islam, at least theoretically women could choose their husbands, stipulate the condition of staying as a single wife, enter inheritance and manage their wealth and earnings.²⁸ On the political front, both in pre-Islamic and Islamic Turkic societies Hatuns (ruler's mother or wife) were able to rule the state under the title of "terken in the absence of sons or husbands".²⁹

When examining the role of women in Turkey in the Ottoman period (14-20th c.) the information is more about women who were the spouse or the daughter of a ruler than about ordinary women. European travelers' accounts and their observations provide superficial information for this period. The imperial ambassador of King Ferdinand, Ogier Ghiselin de Busbecq, visited Istanbul during 1544–62 and, noted in his observations, for instance, that,

The Turks set greater store than any nation on the chastity of their wives. Hence, they keep them shut up at home, and hide them so they hardly see the light of day. If they are obliged to go out, they send them forth so covered and wrapped up that they seem to passersby to be mere ghosts and specters.... Concubines may be either purchased or acquired in war, and when they are tired of them there is nothing to prevent them to be sent to the slave market and to be sold.³⁰

Here we can see that although women could inherit and manage their earnings and wealth according to Islam, their mobility was restricted by seclusion and segregation.

²⁷ Esin, "Katun", 476.

²⁸ Ibid, 476-477.

²⁹ Ibid, 475.

³⁰ Göçek, "Ottoman Empire: 15th to mid-18th Century", 74.

This segregation perceived as 'harem' attracted the attention of researchers during this period. Müge Göçek, in her article titled 'Ottoman Empire: 15th to Mid-18th Century', draws attention to the misunderstanding of the harem by European travelers. Although they saw harem as a place which limited women's social functions only to childbearing, raising children and serving men, it was actually the center of the family and social life.³¹ One of the dominant themes they mentioned was the seclusion of elite women, which limited women's public visibility. The inaccessibility of Ottoman women caused travelers to portray the woman as insignificant in society, and neither non-elite women's social participation nor their control of property was noticed by them.³² Restricted by their views on the visibility of the women, foreign travelers did not perceive that Ottoman women were active participants in society. Actually, they were legally seen as individuals, and therefore could inherit, own and manage both personal and immovable properties. The study conducted by Ronald Jennings and Haim Gerber on the 16th and 17th centuries *qadi* (judge) registries of Kayseri and Bursa shows that women actively participated in economic life when the court cases of women were examined. Although it can be observed that women in the Ottoman period had some rights, this does not indicate that they were equal to men as it was a male-dominated society. In this era, we see that patriarchy was reinforced and the roles of women were changed.³³

It was not only patriarchy, but also segregation and seclusion that contributed to conventional Turkish thinking, which was mainly shaped by tradition and Islam. According to this view, the main responsibility of women is to stay at home for family duties and to raise children while men are working outside. Aynur Uluatam

³¹ Ibid., 76.

³² Ibid., 73.

³³ Togan, "In Search of An Approach to The History of Women in Central Asia", 170.

noted in her work that under the Islamist tradition and Sharia Law women were supposed to wear veils and cover themselves, to stay at home, to be a good mother and a wife; whereas men had extensive rights like polygamy (up to four wives) and the unilateral right to divorce their wives.³⁴

In the 19th century after the beginning of modernization in the Tanzimat period (1839) a significant and positive development in the place of women begins to be visible. During this period, women began to question their place in society and gained rights in the field of education. Educated women started to publish magazines on women's rights and the first women associations were formed in this period.³⁵ We might say that this period did not affect many women, yet it constituted a break from traditional social thinking.³⁶ Therefore, the Tanzimat period is very important in terms of creating the first changes in the status of women. The Balkan War and the First World War also forced women to work in the absence of their husbands. With the end of the war, women returned to their former housewife roles again.

After the First World War, the Turkish Republic was established in 1923 and Mustafa Kemal Atatürk, the founder of the Republic of Turkey, was elected as president. He prepared a new reform strategy, first creating a modern Turkish state (state-building) and modernizing the nation (nation-building) based upon westernization. Thus, in order to create a nation-state in western style, there should be new modern Turkish women who should have 'equal' rights to men, defined as woman's emancipation (or women's unchanging themselves from the grips of traditional norms & dogmas mainly shaped by culture and religion), the very first

³⁴ Sumer, Boray, "Atatürk's Reforms Empowered Turkish Women and Set Example for The Developing World A Look at The Remarkable Transformation of a Nation," <https://www.lightmillennium.org/ataturk/2013/asa-paper2.pdf>, (accessed 29 December 2019)

³⁵ Arat, Turkey: Early 20th Century to Present, 294-299.

³⁶ Tekeli, "The Meaning and Limits of Feminist Ideology in Turkey," 143

stage of a wider notion of woman's empowerment. The Civil Code promulgated in 1926, the very first legal codification enabled women to obtain some rights which were same as men's, was a critical juncture to initiate Atatürk's ambitious project of creating Westernized female individuals having equal rights and privileges with men.

In regards to Chinese society,³⁷ which has traditionally been defined as a patriarchal one, it has begun to show progress in achieving women's freedom and rights in the 20th century. After Mao's Communist Party came into power, Mao envisioned "women's equality" as an important force to help establish the Chinese Communist State.³⁸ "Women Hold Up Half the Sky (妇女能顶半边天-fùnǚ néng dǐng bànbiāntiān)" was one of Mao's leading party slogans. In order to better understand the rights that women gained in this period, first it would be better to look at the status of women before the Communist Revolution.

Before the 20th century, according to traditional norms, which mainly derived from the Confucian school of thought, a woman should "obey her father before marriage (未嫁从父- wèi jià cóng fù), obey her husband when married (既嫁从夫- jì jià cóng fū), and obey her sons in widowhood (夫死从子- fū sǐ zòng zǐ)." These were referred to as three aspects of obedience (三从-sancong). Moreover, there was a large difference between the social value given to girls and boys in the same period. If a woman did not give birth to a boy, then her place in the family would be very worthless. The girls weren't given importance because they were treated like a guest at home. Pang-Mei Chang, who lived in the 20th century, begins her book telling stories about the transformation of Chinese women with the following words:

³⁷ You can find more detailed information about Chinese women in Erdoğan's article titled "Çin'de Kadın ve Kadın Yazısı"

³⁸ Wielink, "Women and Communist China Under Mao Zedong: Seeds of Gender Equality,"128.

“Before I tell you my story, I want you to remember this: In China, a woman is nothing. When she is born, she must obey her father. When she is married, she must obey her husband. And when she is widowed, she must obey her son. A woman is nothing, you see.

There were twelve children in my family-eight boys and four girls-but my mama always told people she had eight children because only the sons counted. Sons would carry forth the family name, while daughters would marry and take on the duties of their husbands’ families.

When a boy was born to the house, the servants saved his umbilical cord in a jar under Mama’s bed. When a girl was born, the servants buried her umbilical cord outside the house. A girl left her father’s house as soon as she came of age, and there was no need to save the umbilical cord of a guest.”³⁹

As we mentioned above all of these were referred to as three aspects of obedience (三从-sancong). According to a common saying in China, “The honor of the family increased according to the son's position.” As can be seen, the status of woman was traditionally determined by the status of man. Women had inferior political, social and economic rights/privileges when compared to the ones that men had. Thus, in traditional Chinese thinking, women were always dependent on their husbands or fathers and recognized as the inferior, or secondary members of society. I would also like to draw attention to the practice of foot binding in order to comprehend the place of women better. Foot binding practice caused women to have subservient position in society. Women whose feet were bound at a young age were not only exposed to deformation of their feet, but also this practice negatively affected woman’s social and economic situation and made them dependent on men. Furthermore, this practice decreased the mobility of women. It was outlawed towards the end of the Qing dynasty period in 1902. It would be good to point out that the tradition of foot binding was banned by Empress Dowager Cixi (1861-1908).

³⁹ Chang, *Bound Feet & Western Dress: A Memoir*, 6.

The most important step for women to obtain equal rights in social and economic terms with men was taken during the Mao period (1949-1976). In this period women were given many rights in the fields of economy, politics, education, marriage, divorce via state institutions through the iron fist of the state in a top-down fashion. The policymakers primarily searched for creation and then consolidation of a series of new state-imposed marriage systems in order to demolish the old “feudal” marriage which was mainly shaped by the local traditions and Confucian school of thought. For sure, the very first form of a new state-imposed marriage system, defying the old one and making people change their way of thinking (cognitive dimension) and doing things (practice dimension) when it comes to marriage practices, was a new legal codification in socialist China.⁴⁰ In the same period, the literacy and education rates of women also increased, and in addition to this, women's thoughts began to be liberalized gradually. After the collectivization of land in the mid 1950's, women, who were previously only responsible for childcare and domestic household chores and had to labor in the agricultural sector and in industry.⁴¹

In fact, there is a debate about the roles (or agencies) of Mao and Atatürk when it comes to women's empowerment. One recognizes the fact that reforms regarding women have always been the toughest one in any state and nation-building project, as the traditional setting has always had a very strong impact on people's mindsets and behaviors. Consequently, the two founders and institution builders of these societies, Mao Zedong and Mustafa Kemal Atatürk, made great efforts to

⁴⁰ “Zhōnggòng zhōngyāng guānyú bǎozhèng zhíxíng hūnyīnfǎ gěi quán dǎng de tōngzhī” 中共中央关于保证执行婚姻法给全党的通知 [The CPC's Notice on the Implementation of the Marriage Law, 44.

⁴¹ Wielink, “Women and Communist China Under Mao Zedong: Seeds of Gender Equality,” 133.

change the inferior position of women and sought to give them equal rights with men through the institutions of the newly founded states as top-down approaches.

One of the important rights that these two leaders gave women was equality in property and inheritance. Because property is a decisive factor for women's decision-making power, independence and self-determination. To understand the process this study will examine women's property rights in 19th century Turkey and China from a comparative perspective. Firstly, the specific reason for this study to choose property rights of women and then the importance of property rights in gender equality will be explained.

2.3 The relationship between gender and property right

Although there is an extensive literature on the gender division of labor and lower wages, there is not much literature on the problems they faced regarding property rights.⁴² However, in recent years, studies on property rights have increased and the importance of property in determining the status of women in society has started to be emphasized. The formation of the concept of property ownership dates back to ancient times and different types (private, public, movable, immovable...) of it emerged in with social, economic, religious and political developments over time. The property owner has the right to inherit, transfer and sell the property. This property might be ruled by an individual (private property), by state (collective property) or it is used by all members of society (common property).

Property acquisition is accepted as a human right in most countries in the world. One of the fundamental rights in the legal documents that emerged with the effect of the French Revolution is the property right. According to Virginia Declaration of Rights (1776), the United States Declaration of Independence (1776) and the United States Bill of Rights (1789), people are born as equal, free and have some innate rights and property right comes first among these rights.⁴³ According to liberalism, the individual who has the right to property is considered as a citizen in society.⁴⁴ John Locke who was a late seventeenth-century philosopher states that property right is the main part of individual freedom. Locke states in his book “Two Treaties of Government” that the protection of the natural right to life, freedom and property is one of the fundamental duties of the state. On the other hand, Marx views

⁴² Deere, Doss, “The Gender Asset Gap: What Do We Know and Why Does It Matter?”, 1.

⁴³ Akyılmaz, “Osmanlı Devleti’nde Mülkiyet Hakları ve Mülkiyet İlişkileri Çerçevesinde Kadının Hukuki Statüsü”, 195.

⁴⁴ Ibid., 196.

private property as a source of alienation and a major obstacle for the attainment of individual freedom.⁴⁵ Marx and Engels assert that whereas communism advocates the abolition of private property, capitalists stress the importance of the private property. All of these mentioned about property reflect “Western experience”. When we look at Muslim countries, it is seen that property and inheritance as a right in Islam was given to women much earlier than the French revolution. Islam allots women half of the inheritance share of men. The interpretation for this difference in the Islamic law is as follows: since the man has a duty such as economic support for family, the higher share of inheritance provides a legal balance and does not cause inequality between men and women. Women are permitted to inherit and own property and maintain their dowry. However, it would be wrong to generalize that all Muslim women have equal property rights because these rights have changed over time, depending on the conditions of their region.

If we look at the property situation in China, although Confucianism emphasized patrilineality, from earliest times on in some cases parents transmitted their property to daughters. Women’s property rights were strengthened in the Song period and with the legal arrangements made in the following years, as the property rights of women were protected, the economic confidence and freedom of women also increased.

As can be understood from the explanations above, the property right has an important effect on the freedom of the individual, but it is not applied equally to women and men even today. Some experts argue that the biggest obstacle to women's having equal property with men is social traditions and customs.⁴⁶ In terms

⁴⁵ Birdal, “Locke’s Theory of Property and Its Marxist Critique: Locke and Marx and Property Rights and Individual Liberties,” 39.

⁴⁶ Uzun, Çolak, “The Issues of Women’s Property Acquisition in Turkey,” 1.

of customs, women need to ask permission from their husbands or male relatives to sell or transfer the property. Especially in patriarchal societies, it is seen that consanguineous marriages are made to prevent the fragmentation of the land or women are not registered as resident. Not only men but even women see themselves as the inferior members of society. If they have assets, their husbands' control over them. They do not complain even if their brothers or husbands claim possession on their property.⁴⁷

Women's right to property acquisition is defined by the civil code and property and family law.⁴⁸ In the early 20th century, women in the United States, Canada and Britain had the right to own property, inheritance and will her property. But before the 1882 Married Women's Property Act in England, under British common law women and men were considered as a single person after marriage and men controlled the entire property of the family, and the women had no right to property and inheritance. Women in countries whose legal systems are derived from Roman law such as France, Spain, Portugal, and most of Latin America had the right to property, but their property was controlled by their husbands.⁴⁹

Under Islamic law women were able to acquire property through *mahr*, dowry, grant (*hibe*), trading and inheritance.⁵⁰ Married women under Islamic law, had greater control over their own property than under Roman law.⁵¹ Although various laws give women the right to property, court records and the fact that men own more property than women show that women face some problems when practicing this right.

⁴⁷ Arat, *Kadın Sorunu*, 165.

⁴⁸ Deere, Doss, "The Gender Asset Gap: What Do We Know and Why Does It Matter?," 12.

⁴⁹ Ibid, 14.

⁵⁰ Akyılmaz, "Osmanlı Devleti'nde Kadınların Mülkiyet Hakları ve Karşılaştıkları Hukuki Sorunlar," 334.

⁵¹ Deere, Doss, "The Gender Asset Gap: What Do We Know and Why Does It Matter?," 25.

Owing property allows women to be independent and self-determined consequently they acquire status and attain decision-making power. When her husband dies, a woman can continue her life comfortably without being dependent on anyone thanks to her property. Moreover, when a woman with property faces violence by her husband, she does not have to continue her marriage as she has financial security. According to Mencher's finding, when income is directly controlled by the wife in a poor family, it is spent more on basic needs. In other words, women control poverty better than men.⁵² A woman who owns property in South Asia described the benefits of being a property owner as follows:

Since I have a large, good quality house, I could decide to start a business. I am also able to save rent. We are able to manage well financially. I also know that I can make a better life due to my property. Better living is possible if one owns a house. My husband is very happy that I have this property, and he respects me. He involves me in all decisions. There is no scope for violence.⁵³

As can be seen from the example, women can get more respect from their husband when they have worldly goods. Having property strengthens women's coping with political and social gender inequalities.⁵⁴ Furthermore, having control over property enables women to make choices regarding livelihoods.⁵⁵ When women have the title of the immovable property such as land and house, they can acquire control over their own property. Land titles of women provide them financial support and enhance productivity by motivating women to make investment.⁵⁶

Despite some movement toward closing the gender gap in property ownership during the twentieth century and growing awareness of the importance of

⁵² Ibid., 4.

⁵³ Bhatla, Chakraborty, Duvvury, "Property Ownership and Inheritance Rights of Women as Social Protection from Domestic Violence: Cross-site Analysis," 92.

⁵⁴ Agarwal, "Widows versus Daughters or Widows as Daughters? Property, Land, and Economic Security in Rural India," 7.

⁵⁵ Mukhopadhyay, "Introduction: Women and Property, Women as Property," 13.

⁵⁶ Ibid., 6.

property rights of women, men still own and control the vast majority of private property in most places. The next part will focus on the current situation about women's property rights in China and Turkey.

2.4 The current situation in Turkey and China

The biggest difference of property right from other rights is that it is constantly changing by political, economic and social factors of the society. When we look at the women's property right, it is seen that there are great differences between rural and urban areas both in China and Turkey. This section will focus on the current situation of property rights in China and Turkey and explain how and to what extent women can enjoy these rights.

2.4.1 The current situation of women's property rights in Turkey

It is seen that there are huge differences in the property rights of women in different geographical regions in Turkey. For example, in research done between the years of 1993-2003 in the Black Sea region, it was observed that the land generally passed from father to son. When daughters wanted to take their inheritance share, they were given less valuable land, gold or money. In order to prevent the partitioning of the land, although rare, some examples of levirate (*yengeyle evlenme*) were observed.⁵⁷ In some cases, the father sold the land to his son before he died; thus, preventing the land from being shared by inheritance or controlled by the groom. Along with the division of the land, the notion in Islamic Law that “sons are obliged to support and protect their family members, therefore they need more property” also had an effect. This thought remained valid even after the Marriage Law was enacted.

Another study in Gaziantep, a province in south-central Turkey, indicates that women are being deprived of inheritance. Even if they get their share, it is controlled by their husbands. In the field study conducted by Şule Toktaş and Mary Lou O'Neil

⁵⁷Uzun, Çolak, “The Issues of Women's Property Acquisition in Turkey,” 5.

in 2011 and 2012, it was aimed to understand the heritage experience of two different groups of women living in Istanbul. In this research, 20 women with an average age of 45 living in Florya and 20 women with an average age of 58 living in Nişantaşı were interviewed. In both Florya and Nişantaşı, it is seen that women have acquired the property in two ways today: inheritance and marriage. Interviews show that the Florya group base their decision on an understanding according to Islamic law, which gives men more inheritance shares than women. One of the best examples of this was what one of the women interviewed said: “There were two properties. The smaller one was shared with me and the one that was twice as big for my brother.” In such cases, when asked why, the answer was: “You are a girl, you got married and left.”⁵⁸ Considering women obtain property through these ways, property management issues such as property purchases and sales, tax transactions, and tenant-related transactions are carried out by the men of the family or continued with their help. From the interview with the women in Nişantaşı, the majority of women said that the best thing that the family gave them is education not property. Because the educated women can stand on their own feet, their perspective on property rights is different. This example reveals the effect of education, which is one of the important factors in overcoming patriarchy.

Movable property is mostly given to girls in rural and urban areas even today. This is because in the urban area, it is thought that girls will appreciate items such as jewelry, ceramic tea sets, which have moral value for the family, and they will protect them. On the other hand, in the rural area, the reason for giving movable property to women is to prevent the division of the land. Therefore, immovable

⁵⁸ Toktaş, O’Neil, *Kadınların Mülk ve Miras Edinmesi: Kemalist Aydınlanma ve İslami Sosyolojik Süreçler*, 53.

property is usually given to men. Yet, this does not mean that women are not given any immovable property. When land is given to women, generally unproductive, sandy lands are chosen for women while arable lands are given to the men. In an article published in *Zaman* newspaper on June 6, 2009, it is explained how the infertile coastal lands, which are considered suitable for the daughters, are valued thanks to tourism. Neriman Akça who enriched with the income of the hotel she built on this coastal land is content with it and she says: “This is the justice of God.”⁵⁹

When we look at the legal regulations in this field, since the first years of the Republic, legal arrangements have been made to reinforce private ownership on land. With the adoption of the Civil Code in 1926, a new legal order based on private property was created. Women and men were given equal inheritance rights in 1926 Marriage Law. However, the articles such as the family’s head is the husband, and the woman needs to take permission from her husband to work show that this law does not fully defend women's rights. These articles were repealed in the Civil Law that entered into force in 2002.

The property right was regulated as a fundamental right in the 1961 and 1982 Constitution of the Republic of Turkey. "Everyone has the right to property and inheritance" statement was included in article 35 of the 1982 Constitution. The Civil Code entered into force in 2002. According to Article 188 of the 2002 Civil Code, men and women have equal status in marriage and the husband is no longer the legal head of the house.⁶⁰ In the new law, gender equality in inheritance was also adopted and the fundamental rights of women regarding property were included. In this law, limited property partnership based on the partnership of the property acquired during

⁵⁹ “Türkiye’de kadın ve toprak: kadın işsizliğinin kamuflajı; tarım”

⁶⁰ Toktaş, O’Neil, *Kadınların Miras ve Mülk Edinmesi: Kemalist Aydınlanma ve İslami Sosyolojik Süreçler*, 24.

the marriage was adopted.⁶¹ So, according to limited property partnership, when one of the spouses dies or is divorced, the property acquired during the marriage is shared equally. In case of death, half of the property acquired in marriage is first taken by the surviving spouse and then the remaining half of the property is distributed to other legal heirs. The spouse is also among these legal heirs. If this is a family with children, the spouse's right to inheritance is one-quarters of the total inheritance. If there is no child and the deceased spouse has parents in the family, the remaining spouse receives half of the inheritance. If the spouse is the inheritor together with the grand parents and their children (uncle, aunt), the spouse receives three-quarters of inheritance, if there is none of these, the spouse inherits all.⁶² As it can be understood from here, children and the spouse have priority in inheritance. If there is an adopted child or an out-of-wedlock child in the family, that child also has the right to inherit.⁶³ However, in this law which monogamy is essential, except for a legal spouse, no woman has the right to inherit.

Table 1. Proportion of Adult Population Owning Land by Sex 2012-2019 (18+ age)

Year	Total	Male	Female	Not stated
2012	36,3	43,7	27,1	0,9
2013	38,2	45,9	28,8	0,9
2014	40,6	48,4	31,0	0,9
2015	42,8	50,8	33,1	0,9
2016	45,1	53,1	35,3	0,9
2017	45,3	53,1	35,8	0,9
2018	46,5	54,2	37,3	0,9
2019	46,2	54,4	38,0	0,8
2020	47,4	55,6	39,2	0,0

Source: <https://tuikweb.tuik.gov.tr>

⁶¹ Ibid., 25.

⁶² Canarslan, “743 Sayılı Kanun’dan Günümüze Sağ Kalan Eşin Mirasçılığı,” 35.

⁶³ Ibid., 25.

The research made by general directorate of Land Registry and Cadaster between 2012-2019 reveals that although the number of adult women who own land is still not equal to men, it is increasing from year to year.

Since the foundation of the Republic, it is observed that the implementation of the Civil Law is still limited. It is clear that many women still cannot freely exercise their right to property and share of inheritance. In such circumstances, they can go to court and seek their rights in inequalities regarding property and inheritance, yet it requires legal knowledge and economic independence that many women lack.⁶⁴ As seen in the research above, the residence (rural or urban) and the educational status are prime factors affecting the property ownership of women today.

2.4.2 The current situation of women's property rights in China

The current property rights of Chinese women are similar in some respects to Turkish women. Until the 20th century, women were severely restricted from owning and controlling property in China.⁶⁵ Although women's property right was legally guaranteed in the 20th century, laws failed to protect women's rights on land upon marriage, divorce and widowhood.⁶⁶ According to the Third National Survey of the Social Status of Chinese Women in 2010, while 67.1% of men are home owners, only 37.9% of women (including those in common with their husbands) own housing assets.⁶⁷ Ray Liaw stated that although there are laws (Marriage Law, the Rural Land Contract Law, 1992 Law on Protecting Women's Rights and Interests of the People's

⁶⁴ Ibid., 96.

⁶⁵ Watson, "Women's Property in Republican China: Rights and Practice," 1.

⁶⁶ Liaw, "Women's Land Rights in Rural China: Transforming Existing Laws into a Source of Property Rights," 239.

⁶⁷ Deng, Hoekstra, Elsinga, "Why women own less housing assets in China? The role of intergenerational transfers," 1.

Republic of China and the 2007 Property Law) for women to have equal property rights with men, they have limited effect as a legal solution.⁶⁸ Because of patriarchal attitudes and social traditions, they failed to provide practical solutions. Deng, Hoeksta and Elsinga, in their article "Why women own less housing assets in China? The role of intergenerational transfers" attributed to two main reasons why women own less house ownership: women's lower earning power in the labor market and gender discrimination in intergenerational transfers from parents.⁶⁹ The origins of this discrimination are also based on patriarchy. In families with sons, property is transferred to the boys or preparations are made to buy a house before they get married, while families with girls do not make house plans for their daughters as they think that it is the responsibility of their groom. However, some young women whose parents show concern about their daughter's financial independence in marriage take financial help from parents to buy a house before getting married. Another way to accumulate housing assets for women is to become co-owner with husbands. After marriage, when the couple have sufficient income, they buy a new home. This home probably is their second home because many young men already have a home before marriage.⁷⁰

One year after the establishment of the People's Republic of China, marriage law was enacted in May 1950 and this law gave women equal property rights with men. But the concept of equality was met with resistance in society, and under the influence of customary law, women's access to agricultural land was restricted by

⁶⁸ Liaw, "Women's Land Rights in Rural China: Transforming Existing Laws into a Source of Property Rights," 257.

⁶⁹ Deng, Hoekstra, Elsinga, "Why women own less housing assets in China? The role of intergenerational transfers," 1.

⁷⁰ Ibid., 12.

their husbands or fathers.⁷¹ Even though the number of women working in the field increased with collectivization, there was no change in the status of women.⁷² The Agrarian Reform Law that aimed to expropriate landowners' lands and redistribute them to landless peasants was also enacted in 1950. Johnson states that the Marriage Law gave women and children equal property rights; the land reform law gave them real property.⁷³ From the beginning of 1953, production in the village began to turn into cooperatives, in which everybody got a share in proportion to their labor and capital. Thus, by the end of 1956, production in China was taken under state control and a socialist economic model was adopted and implemented in the following decades. When the cultural revolution ended in 1976, economic and social changes were made. In regards to the fundamental parts of Deng's reforms, in order to replace the People's Commune system with a family-based agricultural system in the villages, the Household Responsibility System (HRS) was initiated. Localization of land use from the collective level to the household level increased peasants' farming productivity, agricultural production and rural income. In this period, the economic regime began to transform from socialism to capitalism. With the turn towards capitalism, China has gradually entered the process of transitioning to private ownership.⁷⁴

In the 1980s, the commune system was abolished, and a new production system called "the household responsibility system" was adopted. According to this system, the land would be divided into parts based on the family population; the farmer would have to sell some of his produce to the state at a low price, and the

⁷¹ Liaw, "Women's Land Rights in Rural China: Transforming Existing Laws into a Source of Property Rights," 241.

⁷² Ibid, 241

⁷³ Johnson, *Women, the Family and Peasant Revolution in China*, 102.

⁷⁴ Sezen, "Çin Halk Cumhuriyeti'nde Toprak Yönetimi," 102.

remaining part could be sold at a higher price than its original value. Consequently, production in agriculture began to be privatized.

In the urbanization process, China needed to expropriate collectively owned land to meet the need for city construction and development.⁷⁵ As a result of expropriation, many people have had lost their land. Thus, they were compensated for the land they lost. If it was a land in the city, the compensation was directly paid to the land tenure owner. However, if it was a land in the village, most of the compensation was paid to village committees representing the villagers. Village committees usually deducted a certain portion of the compensation for endeavors done by the village leader, the remainder was distributed among eligible households and individual villagers.⁷⁶ Some scholars and policy makers think that predatory acts by local governments, embezzlement of village leaders, and poorly managed compensation provision have a significant impact on this issue.⁷⁷

In this case, two questions may come to mind: How has expropriation affected gender inequality in property distribution? Have women been compensated for expropriation? In a survey in 2006, of 172 village women living in different cities of Zhejiang province, only 111 women out of 172 were paid compensation, and only half of these 111 women received their money. The compensation received by the household was handed over by the government and Village Committee offices, while about a third of women received their compensation through intra-house transfers.⁷⁸ Women were neither entitled to compensation nor could they receive the money paid to them because the compensation shares were paid to someone else, usually the

⁷⁵ Zhang, "Seeking Just Compensation for Collective-Owned Land Expropriation in China," 1.

⁷⁶ Sargeson, "Why Women Own Less, And Why It Matters More in Rural China's Urban Transformation," 40.

⁷⁷ Sargeson, "Women's Property, Women's Agency in China's 'New Enclosure Movement': Evidence from Zhejiang," 651.

⁷⁸ Ibid, 649.

male household head. Therefore, the delivery path seems to be crucial in getting women's compensation.

There is a most mentioned factor determining women's compensation: residential registration. Women were only considered members of the village until they got married. If they were not registered as village residents, they were not entitled to share collectively owned assets. Daughters' rights to registration and compensation were erased when they got married 'out'.⁷⁹ After marriage, their membership status and entitlement to compensation for the expropriated assets were determined by the status of their husband.⁸⁰ In some villages, the compensation right of the woman who was about to get married 'out' was given as the half of the share which was given to her brother. By excluding or giving less rights, women who married out or were not married gained less than the men.⁸¹

When Sally Sargeson asked village women in Zhejiang in 2006 whether there is any difference in the control and use of household ownership of men and women, most of them answered that they are identical (完全一样 wanquanyiyang).⁸² While some rural women accepted household joint ownership, others desired individual property. Because they saw individual ownership as an exit option if the marriage fails.⁸³ Rural Land Contract Law was enacted in 2003 to remedy women's loss of land by retaining a woman's share of natal and marital lands upon marriage, divorce or widowhood.⁸⁴ The 1998 Land Management Law gave a thirty-year land use right to

⁷⁹ Ibid., 653.

⁸⁰ Sargeson, "Why Women Own Less, And Why It Matters More in Rural China's Urban Transformation," 40.

⁸¹ Ibid., 40.

⁸² Ibid., 646.

⁸³ Ibid., 646.

⁸⁴ Liaw, "Women's Land Rights in Rural China: Transforming Existing Laws into a Source of Property Rights," 239.

all farmers and reduced the frequency and scope of readjustments.⁸⁵ Limitations on readjustments affected women negatively because a woman was forced to quit natal land when she got married, and to quit marital land when she got divorced. Although women have the risk to lose their land when they marry non-local men or divorce local men, when the marital status of the man changed, there was no change in their land right. An international survey conducted by the Women's Federation in 2004 revealed that 70 percent of the landless peasants were women. In 2010, the Third National Survey on the Status of Chinese Women indicated that since 2000 the percentage of landless women increased by 12 percent to 21 percent. Among all landless peasants, **27.7** percent of women lost their rights to use as a result of marriage, divorce, remarriage or widowhood, while only 3.7 percent of men were left without land for these reasons.⁸⁶ As stated in Landesa survey in 2011, only 17.1% of the existing contracts and 38.2% of the existing certificates include women's names.⁸⁷ According to a woman farmer in Yunnan:

“It's the women who marry in, we're considered to be outsiders. Men are recognized as locals, the members of village households. So, the village leaders always write the men's names. Usually they don't even ask us, just put everything under his name.”

In the 2010 Study on the Status of Chinese Women, 37.9 percent of women, who consist of 52.5 percent urban and 47.6 percent rural, are homeowners. However, among married couples in urban, 13.2 percent of women held sole title to their houses.

⁸⁵ Ibid., 242.

⁸⁶ Sargeson, “Why Women Own Less, And Why It Matters More in Rural China's Urban Transformation,” 38.

⁸⁷ “Landesa 6th 17-Province China Survey”

These surveys show that there is significant gender inequality in the property ownership in both rural and urban families even today.⁸⁸

⁸⁸ Sargeson, “Why Women Own Less, And Why It Matters More in Rural China’s Urban Transformation,” 41.

CHAPTER 3

PROPERTY RIGHTS AND PRACTICE IN TURKEY BEFORE 1926

3.1 Introduction

When the Republic of Turkey was founded on 29 October 1923 after the War of Independence, Mustafa Kemal Atatürk endeavored to secularize (freedom from religion) and westernize (or modernize) Turkish Law. The most valuable legal workpiece of the revolutionary movement triggered by the proclamation of the Turkish Republic is Turkish Civil Code. It provided a ‘revolutionary character’⁸⁹ to Atatürk’s reforms due to its significant acquisition of the newly founded Turkish state that strongly persisted with its institutions and rules over the traditional socio-cultural setting which was mainly shaped by the Islamic Sharia Law. For this purpose, the Swiss Civil Code (SSC, *Zivilgesetzbuch*) of 10 December of 1907 and Code of Obligations (SCO, *Obligationenrecht*) of 30 March 1911 was translated into Turkish from the French version with some minor alterations and modifications because of the differences between the state structures and judicial systems in Switzerland and Turkey.⁹⁰ Turkish Civil Code No. 743 (*Türk Kanun-i Medenisi*) of 17 February 1926 entered into force 4 October 1926. The 1926 Civil Code aimed to create a new modern society in Turkey by regulating marriage, divorce and inheritance processes, empowering women in the social life by providing them with rights, privileges and modifying the intra-family relations.

Article 439 of the Civil Code was about inheritance and gave women the right to inherit equal shares with men. As women have had such a right for over

⁸⁹ Kılıçoğlu, “Medeni Kanunumuzu nasıl değiştirdik.”

⁹⁰ Rivera, *The Scope and Structure of Civil Codes*, 388.

ninety years, it was expected that a great number of women were to own property. However, according to the data of the international amnesty organization for 2004, %92 of the immovable property in Turkey belong to men.⁹¹ It illustrates that although the laws on inheritance offer equality and protection of women's property rights, in practice, this equality is not applied much in Turkey. Binnaz Toprak states that as long as Islamic traditions and beliefs regarding sexual roles remain valid in society, the success of legal reforms will be limited.⁹² She also emphasized that the missing point is that these reforms were not aimed to alter gender roles but rather to achieve pragmatic political goals. The greatest aim of the Kemalist reforms was to create a modern society by transforming the Islamic society into western society. Therefore, the emancipation of women was a necessity.⁹³ Şirin Tekeli and Yeşim Arat stated the emancipation of women was not the end but the means for modernization.⁹⁴ Nermin Abadan Unat thought that changing the social status of women and turning them into self-confident individuals in society has been one of the primary activities of the Atatürk. According to Atatürk, the emancipation of women would be with the help of laws giving women and men equal rights. Although it seems that the revolutions made partially changed the status of women, Atatürk has taken an important step for more freedom and a contemporary Turkey.⁹⁵ Yet, Yeşim Arat indicates that these changes would be valid not only in the socio-economic sphere but in the area of mentality of the patriarchal society as well.⁹⁶

In order to understand this contradiction for a Turkish woman who has legally gained her rights but could not implement them much in practice, it would be

⁹¹ "Turkey: women confronting family violence."

⁹² Toprak, "Türk Kadını ve Din," 387.

⁹³ Toprak, "Emancipated but Unliberated Women in Turkey: The Impact of Islam," 43.

⁹⁴ Özbay, *Women, Family and Social Change in Turkey*, 2.

⁹⁵ Abadan Unat, *Türk Toplumunda Kadın*, 26.

⁹⁶ Arat, *The Patriarchal Paradox: Women Politicians in Turkey*, 17.

better to analyze the existing situation of women in terms of accessing property before 1926. There are two important factors affecting the asset accumulation of women: marriage and inheritance.⁹⁷ Hence, the property rights of Ottoman women acquired by inheritance and marriage will be examined in two groups. The focus will be on the 19th century and the questions of how urban women acquired property in that period and which problems they encountered in acquiring property. Firstly, the inheritance rights of the women and then, the property women could get through marriage will be examined. Finally, the problems faced in this regard will be examined on the basis of the estate registries and the Sharia registers.

⁹⁷ O'Neil, Toktaş, "Women's Property Rights in Turkey," 29.

3.2. Ottoman woman's acquisition of property through inheritance (19th Century-1926)

The Ottoman Empire enabled people from many religions, languages and different cultures to live together during the 600-yearlong period and ruled over a rather wide geography. Over the years, as in many areas, the legal status of women in society changed and developed. One of the most important factors affecting the legal status of women was the position of women in inheritance law. The Ottoman legal system was based on two different legal systems: religious law (*Sharia*) and customary law (*örfi hukuk*). While the primary sources of Sharia law were the Quran, the Sunnah, *ijma* and *qiyas*, customary law (*örf*) was based on tradition and the Sultan's orders. The law to be based on would differ according to the type of property. In the Ottoman Empire, land was divided into three groups: privately owned land, land belonging to *waqf*, and *miri* land.⁹⁸ The privately-owned lands, all kinds of movable property and real estates related to private property were shared on the basis of Sharia law. Waqfs are institutions formed to benefit religious purposes with donated money or property. Miri land was the land distributed to cavalry men, court members as service fee.⁹⁹ After 1567, the Ottoman state ensured that the miri land was passed on to the heirs in order to encourage the use of land.¹⁰⁰ According to the legal regulations in 1567, if the deceased was a man, his son was his only heir. If he did not have a son, the right to own property passed to the daughter. If the deceased was a woman, the only heir was her son, the daughter did not have the right to be the heir. With this arrangement, it is seen that the distribution of inheritance changed

⁹⁸Imber, "Women as Outsiders the Inheritance of Agricultural Land in the Ottoman Empire," 256.

⁹⁹ Kocabiçak, "What excludes women from landownership in Turkey? Implications for feminist strategies," 118.

¹⁰⁰ Kenanoğlu, "Miri Arazi,"

according to the gender of the deceased and the heir. Daughters first gained the right of inheritance of parents' land in 1847 (*irade-i seniyye*) and after that date it was acknowledged that sons and daughters had equal right of transfer. With the 1858 land law, the number of heirs in regard to inheritance of land increased. The first right of transfer of the land was to the sons and daughters, then came the father, the mother was the third position. In 1867, grandchildren, regardless of gender, were also included among the heirs. In the transfer of miri land, the order of inheritance was as follows¹⁰¹: 1-Sons and daughters, 2-Grandchildren, 3-Parents, 4-Brother, 5-Sisters, 6-Spouses. As it can be understood from here, it cannot be said that men and women have completely equal rights because sisters cannot be inheritors in case of having a brother. Another point I would like draw attention to here is that according to the civil law, parents had the right to inherit if there were no spouses and children in the family. Siblings were entitled to inherit if there were no parents; according to this arrangement they were entitled to inherit before the spouse. With the last regulation made in 1913, in customary law in acquiring miri land an equality between genders was achieved. It is obvious that contrary to the unchanging provisions of Islamic Inheritance Law, legal regulations based on equality between genders emerged over time in customary law.

When talking about women's property rights in the Ottoman period, waqfs occupy an important place. Waqf is the endowed property used for a charitable or religious purpose. It was also a way to save and pass on property for Ottoman women. Gül Akyılmaz expressed that women taking less shares than men according to Islamic

¹⁰¹ Akyılmaz, "The Position of Woman in Ottoman Inheritance Law,"492.

law were seen in reduced numbers in waqf documents; although waqf is also an Islamic institution, the practice was different.¹⁰²

According to the ministry records 393 waqfs were established by men and 126 by women in the eighteenth century.¹⁰³ In spite of the fact that Islamic law ensures women's property right, the waqf gives extra protection to the property of women.¹⁰⁴ In addition, contrary to the property sharing in Islamic Law that gives men double the share of women in property, the owners of the waqfs made provisions to benefit their children equally from the waqf. For example: Hamza Efendi, who established a waqf in Manisa in 1635, took the waqf's income as long as he lived and left it equally to his daughters after his death.¹⁰⁵ However, Baer mentions a negative aspect of the waqfs that even if the waqfs were established by women, they usually were managed by male members of the family and then again, the property belonged to men.

When we look at the inheritance right of women in Islamic law, Sharia is the Islamic law that regulates social life according to religious rules. Prior to 1923 the Sharia was the basic source for family law. In Turkey, as in many Muslim societies, there is a debate about the woman's status in society before and after Islam. In this debate some scholars claim that Islam has a positive effect on women's life. They think that after Islam women's position and social status became much better. For example, Jane Smith says: "it is considered one of the great innovations of the Qur'an over earlier practices that women are permitted to inherit and own property and maintain their dowry."¹⁰⁶ The evaluation of Ruth Roded about women's property rights is as

¹⁰² Ibid., 485.

¹⁰³ Fay, "From Concubines to Capitalists: Women, Property, and Power in Eighteenth-Century Cairo". 122.

¹⁰⁴ Ibid., 121.

¹⁰⁵ Akyılmaz, "The Position of Woman in Ottoman Inheritance Law," 486.

¹⁰⁶ Smith, "Women in Islam: Equity, Equality and the Search for the Natural Order."

follows: When Islamic law is compared with any society before the modern age, women were given a lot of property rights in the Ottoman Empire.¹⁰⁷ When we look at the legal rules regarding the property of western countries in the same period, men and women are considered as a single person after marriage, and all the family property is controlled by men and the women have no right to property. Only single or widowed women have the right to property. When we look at the Ottoman legal system, the marital status of women does not affect the property rights of women.

Islam was introduced in the 9-10th centuries to Turkic people and according to some scholars women lost both their social and economic rights. Muhammed's statement that “you should marry a woman who can give birth to a child and love her family”, has been interpreted as Islam obliging the woman to give birth and to take care of her home and that it restricted the economic and social rights of women. The basic principles of Islam combined with the Arabic, Iranian and Turkish customs and traditions have changed over the centuries and an Islamic civilization was born.¹⁰⁸ Turkic peoples, on the one hand, continued their deep-rooted customs and traditions but they were under the influence of Arab and Iranian culture where men are dominant. In contrast to the Mongols Turkic people were patriarchal and male dominant. Therefore, Turkic women had to comply with a social order that was very restricted in terms of their rights compared to the previous period. However, if we look at the Arab and Iranian women, the practices of the “jahiliyyah” the period before Islam, in which the girls were ignored, the women were treated like a property and not seen as a member of the community came to an end. After Islam, Arab and Iranian women began to gain a place in society.

¹⁰⁷ Roded, “Osmanlı Tarihine Cinsiyet Açısından Bakılması,” 419.

¹⁰⁸ İnan, *Tarih Boyunca Türk Kadının Hak ve Görevleri*, 33.

According to Islam, it is the duty of the man to meet all kinds of economic needs of the woman until she gets married. After marriage, the husband has to take care of the economic needs of women and if the husband dies, the son or male relative assumes this responsibility. But the woman is not expected to obey her son as in China. There are many verses in the Qur'an explaining the status of women in the society and the right to property. According to the 34th verse of the An-Nisa of the Qur'an:

“Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So, righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard...”

In the 11th and 12th verse of the An-Nisa of the Qur'an, the inheritance right of the women is explained in detail:

“Allah instructs you concerning your children: The male receives the equivalent of the share of two females; but if they are daughters, more than two, then they get two-thirds of what the deceased leaves and if there is only one daughter, she gets one-half. And his parents each gets one-sixth of what he leaves, if the deceased leaves a child; but if he has no child, and his parents inherit from him, then his mother gets one-third and if he has brothers and sisters, then his mother gets one-sixth, after fulfilling any bequest and paying off debts.”

“If a wife dies, her husband will get half of the wife's estate if they have no children, but if they have a child, then he will get a fourth of her property. If a husband dies first the wife will get a fourth of her husband's estate if they are childless. If they have a child, she will get an eighth of the total property.”

As it is also understood from these verses, according to the Qur'an women have no financial responsibility for the family, all responsibility is assigned to men. While some Western scholars described this situation as inequality, according to some scholars, it would be unfair for men to share of the properties equally with women. Hüseyin Hatemi, a Turkish scholar, states in his article that when it comes to equality between men and women comparing them physically is against nature. It is more

accurate to make a legal comparison, not physiological. Hatemi emphasizes that the reason why men are more active in business life is their body structure being more convenient for some challenging tasks. However, this is a priority, not a privilege for men in business life and also this situation causes the man to take on more duties. In addition, since the man has a duty such as economic support for the family, the higher share of inheritance provides a legal balance and does not cause inequality between men and women.¹⁰⁹ Sevim Can also advocates that according to Sharia law they receive half the inheritance rights of men, since women receive dowry and mahr.¹¹⁰

On the authority of Islamic law, women can do all kinds of legal procedures like men. They were able to acquire property through mahr, dowry, grant (hibe), trading and inheritance. According to the official records, the assets of women mostly consist of immovable properties such as jewelry, gold, silver, silk while the assets of men consist of immovable properties such as house, vineyard and orchard... Even if women had immovable property which is small houses consisting of 2-3 rooms, men usually had houses with 2-3 floors. As can be understood from here, the total values of the properties of men are much more than those of women. The question that needs to be asked here is why do women have less property, while they can acquire property through mahr, waqf, wills and inheritance?

¹⁰⁹ Hatemi, "Modern Mahrem and Islamic View of Woman," 329.

¹¹⁰ Can, "Osmanlı Mahkemelerinde Kadın," 17.

3.3 Ottoman woman's acquisition of property through marriage (19th Century-1926)

Islamic law gives women the right to acquire property through marriage. In this chapter, the mahr and dowry that the woman acquired through marriage will be discussed.

Under the Islamic Law, the money or certain goods delivered to the bride by her husband when getting married is called mahr. It was certain requirement of every marriage. In fact, the purpose of mahr is to provide economic security to a woman at the death of her husband, but in many cases, women use mahr to support their husband or to help for meeting household expenses.¹¹¹

Neither husband nor male members of family can claim rights on the mahr. The bride directly receives the mahr and continues to control it.¹¹² Mahr is paid in gold, silver, money and in addition to these, it was also seen in the estate records that it was paid as immovable property. The amount of mahr to be given to the bride is determined according to the physical, cultural and financial status of the woman.¹¹³ There is no fixed amount of mahr, it is determined upon mutual agreement. Moreover, if a widow remarries, she has the right to get mahr again.¹¹⁴ In Ottoman practice, the whole mahr was not paid to women at once. The first part *muqaddam* was paid to the bride at the time of the signing of the marriage contract (consisting usually of about one-half to two-thirds of the total), the second part *mu'akbkhar* was given to bride at the time of dissolution of the marriage through divorce or death.¹¹⁵

In theory, the mahr should only be used by women. Yet in practice it is seen that fathers would claim rights on the mahr.¹¹⁶ In Turkey it is also seen that the mahr

¹¹¹ Olmstead, "Gender, Aging and the Evolving Arab Patriarchal Contract," 56.

¹¹² O'Neil, Toktaş. "Women's Property Rights in Turkey," 37.

¹¹³ Maydaer, "Osmanlı Klasik Döneminde Kadınların Servet Edinme Yolları (Bursa Örneği)," 10.

¹¹⁴ Ibid., 11.

¹¹⁵ Tucker, *In the House of The Law Gender and Islamic Law in Ottoman Syria and Palestine*, 53.

¹¹⁶ Olmstead, "Gender, Aging and the Evolving Arab Patriarchal Contract," 56.

is deferred and just paid in the case of divorce.¹¹⁷ There are many examples of Ottoman women going to court to get unpaid mahr after her husband divorced her in the 18th and 19th century. For instance: According to an example from Istanbul court records in 1801, after Ahmed had divorced his wife Zeynep, she filed a suit against Ahmed to get 60 *kurush*. This is one of the examples from the 19th century when a woman sued her ex-husband in order to get the unpaid mahr right.¹¹⁸ According to Ottoman practice, when the husband died, first the mahr was paid to the wife and then his property was shared among the heirs. When the wife died, her mahr was recorded as assets to be transferred to her heirs. For example, in 1749 after the death of his wife Zeyneb, Salih paid 40 *kurus* mahr to his wife's mother and father.¹¹⁹ Moreover, in some cases we see that men received a warning to pay debts to their former wife. For example, Ibrahim was warned by court to pay his divorced wife Aliye in 18th century¹²⁰ and again we see the example of Fazlı Beşe, who received a warning and paid the rest of the mahr debt to his divorced wife in 18th century.¹²¹

There is another common practice in Turkey: dowry. It is completely different from mahr. This practice is common in Muslim countries, Middle East the South Asia, China and Europe.¹²² The dowry is the property that women bring into the marriage. Ögel defines the dowry as the share of father's property for girls.¹²³ Goody considers that dowry is considered as a form of inheritance paid to the women when getting married. The dowry is considered as a property that can be used not only by

¹¹⁷ O'Neil, Toktaş, "Women's Property Rights in Turkey," 37.

¹¹⁸ İSAM. Kadı Sicilleri Dizisi, İstanbul Mahkemesi, M. 1749-1750, 30b-5,226

¹¹⁹ İSAM. Kadı Sicilleri Dizisi, İstanbul Mahkemesi, M. 1749-1750, 30b-5,226

¹²⁰ İSAM. Kadı Sicilleri Dizisi, İstanbul Mahkemesi M. 1749-1750, 90a-2,694

¹²¹ İSAM. Kadı Sicilleri Dizisi, İstanbul Mahkemesi, M. 1740, 6b-2,36

¹²² O'Neil, Toktaş, "Women's Property Rights in Turkey," 37.

¹²³ Ögel, *Dünden Bugüne Türk Kültürünün Gelişme Çağları*. 258

the bride but also by her husband. Since it is considered as the property of the family rather than the woman, dowry is not mentioned in detail.

According to Sharia Law, the reason of women getting half share of inheritance that a man would get is that the women get mahr and dowry.¹²⁴ Some scholars think that Sharia Law has discriminated against women in terms of property right. The shares of a man are double than that of a woman seems unfair. However, some scholars advocate that it is quite reasonable because man has responsibilities to support and maintain his family members during their lifetime and to pay mahr his wife at the moment of marriage. Men need more property and so, demanding equal share of inheritance for both men and women is unfair.¹²⁵ McCreery suggests that when women inherit, they have the same rights as men however when women receive dowry, their future inheritance rights are either restricted or disappeared.¹²⁶ Goody also thinks that dowry is considered as a form of inheritance paid to the women when getting married. Therefore, dowry and inheritance sometimes work against each other.¹²⁷

¹²⁴ Can, "Osmanlı Mahkemelerinde Kadın," 17.

¹²⁵ Ahmad, "Muslim Women's Right to Property in the Sharia Law: Are they discriminated?" 14.

¹²⁶ McCreery, "Women's Property Rights and Dowry in China and South Asia," 163-164.

¹²⁷ These issues will be in greater detail with regard to China.

3.4 The problems women faced in Ottoman empire about inheritance

The difficulties faced by women in the Ottoman state and their struggle to protect their property rights will provide an understanding of today's problems. In terms of property rights, there was no difference between men and women in the Ottoman legal system. Women were able to acquire property through marriage (mahr and dowry) and inheritance, and also made purchases and sales. But when the Sharia registers and archives are examined, it is clear that women were struggling to protect their property rights.

Court records show us that the Ottoman women preferred to protect their property by selling and converting them into money.¹²⁸ Because when the women are in possession of the property, the men of the family have generally been dispossessed. Iris Agmon considers it is an improved strategy against male domination by women specifically to sell off property they have acquired through inheritance.¹²⁹ Apart from selling and converting them into money, women have generally consented to less inheritance rights than male heirs because of some pressures and promises by the male members of family. Moreover, especially in the Middle East lands of the Ottoman state such as Syria and Palestine, women's rights on property were restricted through endogamy.¹³⁰

When looking at the Sharia court records and the archive documents, it seems that women had a serious legal struggle to protect their property right. Women stated their complaints on this issue by applying to courts, and if they did not get any results, they wrote petitions to the Sultan. When the Ottoman official documents are

¹²⁸ Akyılmaz, "Osmanlı Devleti'nde Kadınların Mülkiyet Hakları ve Karşılaştıkları Hukuki Sorunlar," 334.

¹²⁹ Agmon, "Women, Class and Gender: Muslim Jaffa and Haifa at the Turn of the 20th Century," 479

¹³⁰ Akyılmaz, "Osmanlı Devleti'nde Kadınların Mülkiyet Hakları ve Karşılaştıkları Hukuki Sorunlar," 339.

analyzed, it is seen that the issues that women complain about most are related to inheritance and property rights, and that they outnumbered the complaints about marriage and divorce.¹³¹ Some petitioners presented their cases directly or through a representative. In these petitions, it is generally seen that male members of the family (husband, brother, brother ...) try to dominate the management of the immovable property of the women or try to disinherit them. For example: In a complaint in the Antakya Sharia registry in 1867, a girl named Fatma bint-i es-Seyyid Ahmed stated that she inherited sixteen shares of seventy-two shares of fig orchard, but that Mustafâ Çalû confiscated her inheritance. After Fatma's complaint, the situation was examined. As Fatma was right, it was decided that Mustafâ would give his share to Fatma.¹³² (Appendix, 1) In some cases, women were regarded as unfair. For example, In the Antakya Sharia registry dated October 1, 1867, Sallum bint-i bin Mehmed claimed that a significant amount of immovable property (olive garden, fig garden, barn ...) was disseized by her husband, Hacı Mustafa. However, when Hacı Mustafa claimed that these properties had been in his possession for 25 years and that his wife had not objected until today and proved his claim with two witnesses, the trial was concluded in favor of the husband.¹³³ (Appendix, 2)

Ottoman women, who did not dare to send petitions before, started to apply to the courts and wrote complaintive petitions when necessary, after the 2nd Constitutional Period. Even in the petitions written during this period, women began to show their courage to put their signature under the petitions and used confident statements, not in the way of being embarrassed or apologizing at the end of the

¹³¹ Ibid., 325.

¹³² Bahçeci, H.1284/ M. 1867-1868 (35 Nolu) Antakya Şer'iyye Sicili (Transkripsiyon ve Değerlendirme), 158-159

¹³³ Ibid., 250-251

petition.¹³⁴ When we look at women who filed a complaint through court or petition, it is seen that these women were the ones who have good socio-economic status and lived in Istanbul. For women living in the rural areas, this process was very long, hard and expensive. For example, in 1675 İstanbul presented more than 763 petitions, Aleppo 57, Izmir 38, Bursa 58, Sivas 64 and Selanik 50.¹³⁵ As petitions show, after the late seventeenth century, Ottoman women were aware of their legal rights. The late seventeenth and the eighteenth centuries were a transition period to powerful state formation, particularly after the Tanzimat reforms.¹³⁶

¹³⁴Demircioğlu, “Medeni Kanunların Toplumsal Hayatı Belirleyici Rolü ve Bunun Aile Hukuku Özelinde Değerlendirilmesi,” 50.

¹³⁵Zarinebaf-Shahr, “Women, Law and Imperial Justice in Ottoman İstanbul in the Late Seventeenth Century,” 86.

¹³⁶ Ibid., 94.

CHAPTER 4

PROPERTY RIGHTS AND PRACTICE IN CHINA BEFORE 1949

4.1 Introduction

Until now, the property rights of Turkish women and the problems they faced were introduced. Now, the property rights of pre-reform Chinese women and the problems they face will be explained in detail in this chapter. Since there are some changes in the property rights of women in every dynasty in the imperial period, and in order to create a historical background, the property rights of pre-Qing women will be looked at first. In this section, contrary to the chapter about Turkish women, the classification will be made according to the marital status of the woman, not the way of acquiring property. However, the point that can be mentioned in common in both chapters is patriarchy.

Patriline principles have been a part of Chinese society since ancient times and have shown their influence on marriage and property, as in many other fields. Confucian classics and marriage customs promoted patrilineality by requiring more male control over the property.

The Confucian tradition emphasizes the difference between gender roles and insists on keeping property along the male line. According to Confucianism, the husband and wife are united in marriage in order to continue the patrilineal line. Their estates provide the financial resources to maintain the home and the sacrifices of their ancestors. Despite Confucian patrilineal ideals that emphasize the transmission of property along a male line, it is not true to say that laws completely excluded women from inheritance. As it can be seen in further details in chapter 4.1, which will examine the property rights of women in detail before the Qing period

and will show that it was quite common to transfer some properties to daughters as dowry.¹³⁷

The main function of the dowry is to provide the necessary assets for women to continue their lives after the death of their husbands. Freedman emphasized that the dowry also has the function of an assertion of the status of the daughter's family as follows:

“Before her marriage a woman is of course entitled to support; at marriage she must be endowed with a minimum of household equipment, clothing and jewelry to take with her to her new home. And it is likely that she will get as much as her family can afford, because the men who send her out in marriage would not wish to demean themselves before the other family or more generally, in the eyes of the public in whose presence the marriage rites are played out.”¹³⁸

The most common term used for dowry in Chinese is 妆奁 (*zhuanglian*). It refers to the property that the woman received from her family when she got married. The character 妆 (*zhuang*) refers to a woman's personal adornments; 奁 (*lian*) means box or case. Thus, *zhuanglian* literally means a makeup box. Just because it refers to a small item such as a make-up box, it does not mean that the dowry consists only of movable properties. It could also be an immovable property like a piece of land. Women's right to control over the dowry has changed over time. During the Song (960-1276) period, the conflict between the property rights of women and Confucian patrilineal ideals reached its peak.¹³⁹ In the Song period while men in a joint household could not officially own private property, women could. Her property was not merged with her husband's estate and not included in the family division. However, after the Song period, this practice changed and women were deprived of the right to property, especially when the marriage was over.

¹³⁷ Ebrey, Watson, *Marriage and Inequality in Chinese Society*, 2.

¹³⁸ Freedman, *The Study of Chinese Society: Essays* (Freedman, 1979), 258.

¹³⁹ Birge, *Women and Property, and Confucian Reaction in Sung and Yuan China (960-1368)*, 138.

There is a debate about the property rights of women in the Song period and there are two significant questions of this debate. The first question is: is dowry a form of inheritance? Goody argues that inheritance and dowry are the implementations of the same basic right in different ways. Thus, it can be treated as a form of inheritance. Chinese scholars Zhang and Chan also think that dowry can be interpreted as a form of premortem inheritance.¹⁴⁰ On the other hand, McCreery suggests that dowry and inheritance are totally different things. When women inherit, they exercise their rights like men, but when they receive a dowry, their inheritance rights are either restricted or eliminated.¹⁴¹

The second question is: do women inherit property? Niida Noboru contends that daughters were the co-owners of the family property though not to the same degree as sons.¹⁴² The most obvious example of this is that during the Song period, daughters were given the right to take half of the son's share in the division of household property. Bernhardt, on the other hand, rejects this interpretation.¹⁴³ Shiga Shuzo accepts the half share rule, but she identifies it as a temporary anomaly.¹⁴⁴ In her opinion, women never inherited property because property inheritance is linked to ancestral sacrifice. Only the sons were considered as masters of the household to perform ancestral sacrifices; therefore, they were the only ones who could inherit. Whereas daughters had only the right to dowry. They took dowry irregularly thus dowry cannot be interpreted as a form of inheritance in any way. Birge thought it is not an anomaly. Because in the judicial report from Southern Song, the *Qingmingji*-清

¹⁴⁰ Zhang, Chan, "Dowry and Wife's Welfare: A Theoretical and Empirical Analysis," 787.

¹⁴¹ McCreery, "Women's Property Rights and Dowry in China and South Asia," 163.

¹⁴² Birge, *Women and Property in Sung Dynasty China (960-1279): Neo-Confucianism and Social Change in Chien-chou, Fukien*, 41.

¹⁴³ Bernhardt, "The Inheritance Rights of Daughters: The Song Anomaly?" 272.

¹⁴⁴ Shiga Shuzo in Birge, "Review: Gender, Property, and Law in China," 581.

明集¹⁴⁵ there are some cases to be of evidence for the existence of a half-share law.

Hence, in medieval China women's property right was quite strong.¹⁴⁶ These two important questions will be answered in the following section for the Qing period.

¹⁴⁵ The full name of this text is the *Minggong shupan qingmingji* (Collection of decisions by famous judges to clarify and enlighten)

¹⁴⁶ Birge, *Women and Property, and Confucian Reaction in Sung and Yuan China* (960-1368), 78.

4.2 Women and Property Acquisition until the Qing Dynasty (1046 BC – 1644)

There is an assumption that Chinese family property was divided equally among all brothers and this practice continued unchanged over the centuries until the Qing period. However, it would be wrong to generalize this assumption for all periods before the Qing dynasty. Looking back in history, some scholars argue that Zhou dynasty (1046 BC – 256 BC) was governed by the rule of primogeniture. This system was called *zongfa* (宗法). According to the *zongfa* system, kingship passed to the eldest son, *dazong* (大宗). But it was a system just used among noble families and it is ambiguous whether *zongfa* system was used by common people. It is also not clear that how the property was transferred to the next generations because it is unclear whether in the Zhou period there was private property or not.¹⁴⁷ However, the *Collection of Stories* (说林- Shuo Lin) written by Han Fei Tzu (韩非子) in the third century B.C. gives information about the private property rights of women:

There is a man from Weiguo (The Principality of Wei) who told his daughter when she got married: "You must accumulate your wealth in secret. It is common that a wife could be divorced and kicked out from the house. It is a fluke for a couple to live successfully for a lifetime." As a result, his daughter accumulated wealth in secret, and her mother-in-law thought she had accumulated too much private money and made her son divorce her. The property brought back by the Patriotic's daughter was many times more than the property she had when she was married. Her father did not blame himself for misleading his daughter, instead he thought it was smart to increase wealth. Nowadays all the officers are this type of people.¹⁴⁸ (Appendix, 3)

We see from this text that at that time a woman could have private property. Even in the case of ending their marriage, she could take this property with her. We see at the end of the Zhou dynasty, private property emerged among commoners and, China's recorded inheritance law is from the Qin dynasty period (221 BC – 207 BC)¹⁴⁹

¹⁴⁷ Wakefield, *Fenja-Household Division and Inheritance in Qing and Republican China*, 10.

¹⁴⁸ Han Fei Tzu, "Shuo-lin (Collection of Stories)"

¹⁴⁹ Wakefield, *Fenja-Household Division and Inheritance in Qing and Republican China*, 11.

During the Qin dynasty period, families were encouraged to divide the property. According to the inheritance law of Qin period, families with two or more men in their house would pay twice as much tax if they did not divide their property.¹⁵⁰ David Wakefield stated in his book about *fenjia* (division of property) that this policy aimed at cultivating new lands and agricultural expansion.

Han Dynasty (206 BC - 220): During the Han period, the state implemented some policies to weaken the economic power of nobles and so, all princes were required to divide their property among their sons.¹⁵¹ The term of *jia*-家 (household) was basis of “communal life, common ownership” in the Han dynasty.¹⁵² Based on this household system, sons lived with their parents while daughters married out and lived with their husbands' families and serve them. After the death of parents, household was divided equally among sons for both nobles and peasants. As it can be understood from these two early periods of China, the state supported partible inheritance¹⁵³ in order to avoid unigeniture.¹⁵⁴ In the Han dynasty period, a daughter also took property as dowry when she got married. A woman's dowry only belonged to her, not to her husband or to the husband's family. She could take her private property with her and go back to natal family in case of a divorce.¹⁵⁵ A document from in the 5th century unearthed in Jiangsu province shows that women had the right to property in certain situations. This document written by a woman named Yu, mentions that Yu gave land to her daughters when her son was sentenced, and after her son returned from punishment, she took back the land from her daughters and

¹⁵⁰ Ibid., 11.

¹⁵¹ Wakefield, *Fenjia-Household Division and Inheritance in Qing and Republican China*, 11.

¹⁵² Birge, *Women and Property in Sung Dynasty China (960-1279): Neo-Confucianism and Social Change in Chien-chou, Fukien*, 68.

¹⁵³ Partible inheritance: It is an inheritance system in which property is shared among heirs.

¹⁵⁴ Unigeniture: The fact that only one male heir inherits the whole property.

¹⁵⁵ Birge, *Women and Property in Sung Dynasty China (960-1279): Neo-Confucianism and Social Change in Chien-chou, Fukien*, 75.

gave it to her son.¹⁵⁶ This example clearly demonstrates that at this time women were able to manage their land. In accordance with Han dynasty records, a widow also could manage her husband's property and took it with her when she remarried.

Tang Dynasty (618-906): The Tang period was a period when Confucian morality was tried to be injected into social practice.¹⁵⁷ The most important indicators of this were that the Tang Code that encouraged filial piety and descent line sacrifices.¹⁵⁸ The Tang code is important in that it was organized according to the needs of next periods and continued to be implemented by later governments.

As claimed by the inheritance law of the Tang dynasty, family property was divided equally among all sons. Property brought by women when getting married was not included in this division. If one of the sons died before the father, his son (the grandson) would receive his father's share. If all of the sons died, the property would be divided equally between all of their sons (grandsons). If a son was unmarried, he received extra property for marriage expenses. If a daughter or father's sister was unmarried, she got one-half of a brother's marriage expenses. Widows who did not have sons could receive their husband's share of the property (This rule did not change until the 20th century).¹⁵⁹ If she continued to live with her deceased husband's family and did not remarry, she was called "chaste widow" and the chaste widow could keep and dispose of her deceased husband's property. Shiga Shuzo states that the transformation of her husband's patrimony by a widow ensures the continuation of the lineage.¹⁶⁰ If the widow remarried, she was not allowed to take

¹⁵⁶ Wakefield, *Fenja-Household Division and Inheritance in Qing and Republican China*, 30.

¹⁵⁷ Birge, *Women and Property in Sung Dynasty China (960-1279): Neo-Confucianism and Social Change in Chien-chou, Fukien*, 91.

¹⁵⁸ *Ibid.*, 91.

¹⁵⁹ Wakefield, *Fenja-Household Division and Inheritance in Qing and Republican China*, 12.

¹⁶⁰ Birge, *Women and Property in Sung Dynasty China (960-1279): Neo-Confucianism and Social Change in Chien-chou, Fukien*, 84.

her deceased husband's property share with her. In this period, the Tang government promoted joint families, under the patriarchal authority of the family head.¹⁶¹ So, if a son left the household for three or six years, he lost his right to inherit from family division in this period. Consequently, it can be understood that not only patrilineality but also co-habitation was emphasized in that period.

In the Tang period, in the families with no male heirs (extinct family), the property would go to the daughter regardless of whether the girl was married or single. If there was no daughter in the family, the inheritance would go to close agnatic kin; lacked any agnatic kin, the property was confiscated by the state. Niida calls this situation as "right of survivorship".¹⁶² This rule changed during the Song dynasty, and close agnatic kins were excluded from the inheritance and the property directly went to the state if there were no daughters in the extinct family.¹⁶³ It is important to point out that during the Tang period while daughters could receive inheritance regardless of whether the girl was married or single in an extinct family, whereas during the Song period it became important whether the daughters were married or single.

We can conclude that although women were not official coparceners in the Tang period, they acquired property under the custom called "dowry" within a marriage. Fathers could give dowry to their daughters as much as they wished. If there were no sons in a family, in order not to cut off the family line, daughters could receive inheritance in addition to dowry.

Song Dynasty (960-1276): When we come to the Song period, we see that some changes were made in regards to inheritance law. At this period, women could

¹⁶¹ Ibid., 79.

¹⁶² Ibid., 89.

¹⁶³ Ibid., 18.

obtain property not only by customary but also by codified law.¹⁶⁴ They generally acquired property through dowry when getting married. The dowry was of great importance in determining the status of the woman in her husband's family after marriage. The daughters, who received a low value dowry from their family were humiliated by their new families. Patricia Ebrey argues that the dowry portion women received in the Song was more than in any period before then.¹⁶⁵ However, Birge suggests that this applied only for elite women, not even all elite women.¹⁶⁶

Besides dowry, they could also inherit land or movable property from their families. According to Confucianism the property of women and men should be merged after marriage. In case of widowhood, a widow should stay chaste and adopt an heir to pass her husband's property. However, it generally was not like that during the Song period.

The Song period provided women with greater economic independence than they ever had.¹⁶⁷ The property of women and men was not merged after marriage. In the event of widowhood and divorce, woman would be able to take her property into the second marriage. The daughters whose father died before they married, would receive half of what their brothers got. This is a good example showing that the double inheritance right of a son is related to patriarchy rather than Islam. When no sons survived in a family, it meant that there was no male descendant to carry on the ancestral line. In such cases where the family line has been cut off, the property should all be given to unmarried daughters.¹⁶⁸ Unmarried daughters took all estate into her marriage as dowry. While divorced and widowed daughters were treated like

¹⁶⁴ Ibid., 105.

¹⁶⁵ Ebrey, Watson, *Marriage and Inequality in Chinese Society*, 112.

¹⁶⁶ Birge, *Women and Property in Sung Dynasty China (960-1279): Neo-Confucianism and Social Change in Chien-chou, Fukien*, 139.

¹⁶⁷ Ibid., 199.

¹⁶⁸ Ibid., 121.

unmarried daughters, it is seen that there was a reduction of married daughters' inheritance compared to the past. Since married daughters already received their inheritance share as dowry, they only could inherit one third of the estate, the remained two thirds were confiscated by the government.

If a family had no sons, they could adopt an heir from agnatic relatives for transmission of the property along a male line. In that case there were some property division rules¹⁶⁹:

- If there were unmarried daughters and a posthumous heir, the daughters got three times as much as the heir.
- If there were married daughters and a posthumous heir, the married daughters, the posthumous heir and the state all got one-third of the property.
- If there were returned daughters and a posthumous heir, the daughters, the posthumous heir and the state all got one-third of the property.
- If there were unmarried daughters, returned daughters and a posthumous heir, the posthumous heir got one-fifth of the property. The daughters divided the remainder.
- If there was only a posthumous heir, the heir got one third of the property and the state got the remaining two-third.

All of these rules and the share of the inheritance which women got according to their marital status during the Song period is summarized in the table below.

¹⁶⁹ Birge, *Women, Property, and Confucian Reaction in Song and Yuan China*, (960-1368), 110.

Table 2. Distribution of Inheritance Between Daughters, Sons, Posthumous Heirs and the State in the Song Period (After the death of both parents)

<u>Survivors</u>	<u>Daughters</u>	<u>Posthumous heir</u>	<u>State</u>
Natural sons and daughters	Each daughter ½ son's share	-	-
Adopted son and daughters	Each daughter ½ son's share	-	-
Sons and adopted daughters	Each daughter ½ son's share	-	-
Unmarried daughters only	All	-	-
Married daughters only	1/3	-	2/3
Returned daughter only	2/3 or 1/2		1/3 or 1/2
Unmarried and married daughter	All to unmarried (unless over 1.000 strings)	-	-
Unmarried and returned daughter	2/3 to unmarried 1/3 to returned	-	-
Married and returned daughter	2/3 to returned 1/6 to married	-	1/6
<u>Daughters and Posthumous Heir</u>			
Posthumous heir and unmarried daughter	3/4	1/4	-
Posthumous heir and married daughter	1/3	1/3	1/3
Posthumous heir and returned daughter	1/3	1/3	1/3
Posthumous heir and unmarried and returned daughter	4/5 (How the daughters divide it is not exactly known)	1/5	-
Posthumous heir unmarried and married daughter	?	?	-
Posthumous heir only	-	1/3	2/3

As can be understood from the table, the property right given to the unmarried, divorced, widowed and returned woman increased and was protected by law during the Song period. However, it is obvious that there is only a decrease in married daughters' inheritance share compared to the past. In spite of all these positive

changes, the Song period is the period when women's mobility was curtailed by foot binding.

Yuan Dynasty (1279-1368): During the Yuan period, China was ruled by the Mongols, who had different rules on the property rights of women. Unlike Chinese women, Mongol women did not receive much dowry when they got married. Moreover, polygamy was allowed in Mongol's customs and this could cause unequal inheritance by the spouses. The inheritance system was as follows:

“Four shares for a son or sons of the wife; three shares for a son or sons of concubines; and one share for sons born of illicit sex with a worthy person or a favored slave girl.”¹⁷⁰

Another big difference regarding Chinese and Mongol women's property rights was the way to keep the wealth within the family. One way of doing this was the levirate. Most of the Inner Asian nomadic societies practiced levirate. While the levirate was the common practice in Mongols; to the Chinese the levirate was anathema.¹⁷¹ Because as stated by Jennifer Holmgren, the main reason of the different attitudes to remarriage in Mongol and Chinese society was economic. Like other steppe societies, Mongols also had a tradition of bride price. So, the marriage wealth passed from the groom's family to the bride's family. On the contrary, in Chinese society, marriage wealth was passed from the family of the bride to the family of the groom with the tradition of the dowry.¹⁷²

According to the Mongol rules, when a son got married, he was given a certain amount of property mainly livestock and set up a separate house with his

¹⁷⁰ Ibid., 13.

¹⁷¹ Wakefield, *Fenja-Household Division and Inheritance in Qing and Republican China*, 16.

¹⁷² Holmgran, *Observations on Marriage and Inheritance Practices in Early Mongol and Yuan Society*, with particular reference to the Levirate, 129.

wife. A small portion of the property would be given to him when he was married and the rest of it would devolve to the youngest son who would inherit the family hearth after his parents died.¹⁷³

A widow without a son would take ownership of her husband's share of family property. Because the husband's property was separated from his family's property while getting married, she could control it. When a man died, the widow would receive his remaining assets until her son came to age. Unlike the Song period, if a woman wished to remarry outside the household after widowhood or divorce, she had to leave her dowry property behind. The new laws of this period represented a break with Chinese tradition and made clear the decline of property rights, especially for widows, which read as follows:

“Regarding dowry lands and other goods that a woman brings into her marriage: from now on if a woman who has once been married wishes to marry again to someone else, whether she is divorced while her husband is alive or is living as a widow after her husband has died, her dowry property and other belongings that she originally brought into her marriage should all be taken over by the family of her former husband. It is absolutely not permitted for her to take them away with herself, as was formerly done.”¹⁷⁴

Another Mongolian practice that prevented the transmission of the family's assets to go outside of her husband's family was levirate.¹⁷⁵ Levirate kept the extended family's assets together and ensured that the youngest son did not lose inheritance right because of his mother's remarriage.¹⁷⁶ The widows were forced to levirate marriages. Thus, the widow's authority over her assets was taken away.

As explained above, laws and practices related to women's property changed in the Yuan dynasty and the new laws deprived women of property rights and freedom to

¹⁷³ Ibid., 13.

¹⁷⁴ Birge, “Women and Property, and Confucian Reaction in Sung and Yüan China (960-1368), 263.

¹⁷⁵ Levirate: A practice by which the widow remarried a male relative in her husband's clan. (Yenge ile evlenmek)

¹⁷⁶ Birge, “Women and Property, and Confucian Reaction in Sung and Yuan China (960-1368), 206.

remarry. As Birge pointed out, there was a shift in property transmission away from women—especially Chinese (Han) -- and towards men, in such a way that in the Yuan period the Mongolian practice came support the Confucian patriline.¹⁷⁷ But elite Mongolian women's position was different.

Ming Dynasty (1368-1644): During the Ming dynasty, the Yuan law which restricted women's property rights and promoted the chastity of widows, were adopted with some minor changes. However, in contrast to the Yuan period, in the Ming period the levirate was outlawed.¹⁷⁸

According to the Great Ming Commandment and the Great Ming Code, regardless of whether he was born of a wife, concubine or slave, all sons inherited equally. If there was no appropriate successor in a family, the illegitimate son may inherit all of the assets. If there was no male heir, the property went to daughters equally regardless of their marital status and if there was no daughter in the family, then the state confiscated all property. So, as understood above, according to the Ming laws, the daughters could inherit only if there was no son or an adopted heir in the family. Ming law further narrowed women's property rights by requiring widows to legally appoint an heir.¹⁷⁹ This postmortem adoption requirement caused widows to be deprived of their right to inheritance. In case of remarriage, as in the Yuan period, widows' property rights were restricted. The husband's property and the dowry should all be disposed of by the former husband's family.”¹⁸⁰

To conclude, the Ming period was a period that the property rights of men increased while the property rights of women, especially widows, were narrowed.

¹⁷⁷ Ibid., 280. See also Holmgren 1986.

¹⁷⁸ Ibid., 277.

¹⁷⁹ Wakefield, *Fenja-Household Division and Inheritance in Qing and Republican China*, 20.

¹⁸⁰ Birge, “Women and Property, and Confucian Reaction in Sung and Yuan China (960-1368), 278.

The above explanations reveal that before the Qing period, it is not possible to make generalizations about the property rights of women. Because, with the new laws in every period, the property rights of women changed, either in a positive or a negative way. It is clear that the most positive developments were experienced during the Song period. Under the Yuan women's property decreased. But it is worth noting that this was Han women's property not Mongolian or Central Asian Muslim women's. Under the Ming, the diminished property rights continued. Women enjoyed not equal property rights with men before the Qing period. The biggest factor underlying the lack of equal rights is the patrilineal social structure. The next part will focus on how patriarchy affected women's property rights and how women's relation to property changed during the Qing period.

4.3 Qing dynasty period (19th century-1911)

In the Qing dynasty, although some laws regarding the property rights of women have continued from ancient times, there were also some changes. In this period, the property rights of women were never equal to those of men, with the influence and constraint of patriarchal and legal systems.¹⁸¹ Another striking feature of this period is that it was the time of conquests and militarization. Susan Mann states that explosive population growth, dramatic economic transformation, and high rates of migration and mobility were the crucial changes affecting gender relations at that period.¹⁸² With the developing economic conditions, the life expectancy increased, and this brought a higher rate of marriages. Economic opportunities also accompanied huge population movements. The fact that immigrants were men increased the value of female chastity and seclusion. Owing to the fact that women staying at home had to take care of children and the elders, they supervised the home economy and managed property. In short, they managed everything.¹⁸³ Although women were in charge in regards to running a household, they had limitations when it came to property rights.

Meng Xiaoliang thought that when we compare the laws of the previous dynasties, it is clear that the government from Tang to Qing took a harsher legal attitude towards women's property inheritance rights, and women's property rights were constantly undermined.¹⁸⁴ On the other hand, Lu Kuanqing advocated that women in the Qing Dynasty could inherit property such as fields, houses directly from their natal families, and could directly inherit various properties in their

¹⁸¹ Meng, *Qīng dài hòuqī hù jué nǚzǐ de cáichǎn jìchéngquán tànxi* 清代后期户绝女子的财产继承权探析 [An analysis of Hujue women's property inheritance rights in the late Qing Dynasty], 143.

¹⁸² Mann, *Precious Records Women in China's Long Eighteenth Century*, 33.

¹⁸³ *Ibid.*, 36.

¹⁸⁴ *Ibid.*, 144.

husbands' family and enjoyed the right to own and dispose of property.¹⁸⁵ In his research based on Qing Dynasty archives he found that many Qing Dynasty women owned basic property rights and acquired property through five main methods: inheritance, division of property, personal labor, gift, and contract.

In my opinion, it is certain that women owned property during the Qing period, but this was not a directly acquired property. Only in some exceptional cases (like there were no sons in the family and the deceased husband did not have a brother) women could have the right to inheritance. Moreover, the marital status of the woman has been an important factor that determined the acquisition of property. We will first examine the distribution of property according to the Qing code and then look at what rights the woman acquired or lost according to her marital status in Qing code.

On the authority of the Qing code, family property belonged to the head of the family and no one could use it or not dispose of it without his consent. The head of the family was in charge of managing family property, and only a male could be the head of the family. When the family head died, the property was divided among the sons. As we can see here, women not only could inherit directly during this period, but also, they could not be the head of the family. Therefore, all indications are in the direction that they could not manage family property. Only in some exceptional cases women could have the right to inheritance. According to Qing code:

“When a household is extinguished due to lack of male offspring (hujue-户绝), and there is truly no one of the same lineage eligible for appointment as

¹⁸⁵ Lu, *Qīng dài fùnǚ cáichǎn láiyuán wèntí tànxi* 清代妇女财产来源问题探析[An Analysis of the Source of Women's Property in Qing Dynasty], 77.

successor and heir, then the daughters of the household shall inherit its property" (No. 88-2}”¹⁸⁶

If there were no sons or an appointed heir in the family, then woman could be the head of the family, yet her authority was limited. She was not free to dispose of family property. Furthermore, if the woman's son is too young to be the head of the family, the woman could manage the family property until he came of age.

For lineages and families to be able to reproduce themselves over the generations, it was essential that a lineage continued to expand itself in the correct order and with pure lineage, and so the following rules had to be followed:

“The Ming and Qing codes ruled that "whoever adopts a *son* of different surname and thereby disrupts the proper lineage succession shall receive 60 blows of the heavy bamboo; whoever provides his son to someone of different surname for adoption shall receive the same punishment. The son shall be returned to his own lineage. (Statute 78).”¹⁸⁷

As with the Ming code, the Qing code emphasized the point of including sons born of illegal sexual relations in the division of the family property.

“Aside from any heritable title or position, for which exclusive precedence shall be given to the eldest son of the main wife (*dizhangzi* -嫡长子), in the division of household property and land, each son of both main wife and concubines, without regard to his mother's status or to birth order, shall receive an equal share, the division being based solely on the number of sons.

A son who is the progeny of a proscribed sexual relationship (*jian- shengzi*) shall receive half the share of a legitimate son; if there are no other sons, a proper

¹⁸⁶ Huang, Bernhardt, *Civil Law in Qing and Republican China*, 55.

¹⁸⁷ *Ibid.*, 52.

successor shall be appointed, and he shall divide the property equally with the illegitimate son; only if there is no one else who can properly be appointed successor, shall a son who is the progeny of a proscribed sexual relationship be allowed to inherit the entire property. [No. 88-1)]”¹⁸⁸

If there were no sons, there would be no one to inherit the family property. The head of the family was required to appoint his successor and heir. In making this choice, priority should be given to those with close blood ties over those who are more distant, and older ones over younger ones. If he became unhappy with the one, he appointed, he had right to choose someone else:

“When a man without sons appoints an heir and successor, aside from following the procedure mandated by statute, if the one so chosen does not suit him, then he may appoint someone else by reporting this decision to the local authorities. He may select someone of particular virtue or talent, or of whom he is particularly fond, and as long as the proper sequence of generations is not disrupted, then the lineage shall not be permitted to dispute his choice on the basis of proper order of succession; moreover, magistrates shall accept such cases for adjudication should they arise.”¹⁸⁹

Therefore, it can be said that in families with sons and nephews who could inherit, women had less inheritance rights than they had in Tang and Song. As a consequence, in an extinct household, the right to inheritance was passed on to the male cousin, not to the daughter.

Despite not having inherited rights, daughters were entitled to two things: living expenses and dowry. Thus, in 1897 Yang family division, the fourth sister had

¹⁸⁸ Ibid., 53.

¹⁸⁹ Huang, Bernhardt, *Civil Law in Qing and Republican China*, 57.

not yet been married and it was decided to set aside money to fund their living and dowry expenses.¹⁹⁰

While the woman was rarely able to obtain property as wife, her rights increased when she became widow. After the death of the family head, the widow might be the head of the family. In 1793, Han family's father was dead, after receiving her own share, widow Guo divided family property among their six sons.¹⁹¹ But if a widow remarried, she could not take her husband's property and her dowry with her to the new husband's house. So, she lost all her property.

In the light of the information above, it would not be wrong to say that regardless of who their mother is, all legitimate sons were basic shareholders, while daughters were optional shareholders in a Qing family.¹⁹² In this period, women had property right, but it was considerably narrowed compared to previous periods.

¹⁹⁰ Wakefield, *Fenjie-Household Division and Inheritance in Qing and Republican China*, 85

¹⁹¹ Wakefield, *Fenjie-Household Division and Inheritance in Qing and Republican China*, 86

¹⁹² McCreery, "Women's Property Rights and Dowry in China and South Asia", 167.

4.4 Republican period (1911-1949)

As can be understood from the part that has been explained so far, in traditional Chinese society, women gained property rights through marriage and family inheritance. Since the continuation of the lineage and the worship of ancestors were important, and only the sons in the family could do this, inheritance could only be left to the sons. In terms of parents, all the properties in the family belonged to the parents of the man. Women could not own property. But if we ask whether women have anything to do with property, Lin Ting explained that in only 3 cases the woman can own property:

- 1- In the case of Hujue, that is, if there were no male heirs at home, daughters could take property.
- 2- A woman whose husband is dead and who does not have a son could take property.
- 3- Concubines could take property

At the beginning of the Republic of China, although property inheritance was still linked to the male lineage, the Dali Court made amendments in a series of decisions that opened the door for daughters to obtain property inheritance rights from the perspective of judicial practice.¹⁹³ The enactment of civil laws during the Republic of China finally enabled women to legally obtain the right to inherit property. Li Ting examined the reasons for the changes in women's property rights during this period under three main headings: political factors, legal modernization and the impact of women's liberation movement. If we are to draw attention to the women's movements here, one of them the "Death of Li Chao (李超之死)", which

¹⁹³ Zheng, *Mín chū nǚzǐ cáichǎn jìchéngquán de biànciān* 民初女子财产继承权的变迁 [The Change of Women's Property Inheritance Rights in the Early Republic of China], 142.

occurred when women were deprived of their property inheritance rights at that time, became the instigator of the struggle for the property inheritance rights of women during the Republic of China.¹⁹⁴ Li Chao lived in Guangxi. She had two sisters. Since there were no sons in the family, her family cousins became the heirs of the Li family. Her stepbrother forced her to marry and cut off her income. Li Chao was so angry and sad that she fell ill, had pneumonia, and had no money for treatment. Finally, she died. Li Chao's death caused a strong reaction in the community. This death exposed the shortcomings of the social system and became the reason women fought for property inheritance rights. The movement to fight for women's property rights developed rapidly and became an important part of the feminist movement during the Republic of China.¹⁹⁵

The Second National “Kuomintang” Congress, held in Guangzhou in January 1926, passed the "Women's Movement Resolution" requiring women to have the right to inherit property. However, the Court of Cassation and the Court of Appeals acknowledged that at that time only unmarried women and women who stayed in their parents' homes after divorce from their husbands had the right to inherit, whereas married women still did not have property rights.

On April 27, 1929, the court of justice formally required women to have the same inheritance rights as men, regardless of whether they were married or not. In December 1930, the Nationalist Government approved the article "Spouses have the right to inherit each other's inheritance, and married women and relatives are

¹⁹⁴ Zheng, *Lùn mínguó shíqí nǚzǐ de cáichǎn jìchéngquán* 论民国时期女子的财产继承权 [On Women's Property Inheritance Rights in the Period of the Republic of China], 123.

¹⁹⁵ *Ibid.*, 124.

recognized by law to have equal inheritance rights with men." ¹⁹⁶ And in 1931 the law came into force.¹⁹⁷

First of all, when we look at the property rights of the wives in the old system, the property right was controlled by the father before the woman married, and by her husband after the marriage. She did not have the right to inherit and even question her property right. The woman was allowed to keep her private property with the regulations in the civil law.¹⁹⁸ In fact, although women were given rights by law, these rights were recognized when the woman's husband died. Below is an example of a widow's right to inheritance:

The Chang Huang and Chang Runfeng couple did not have a child, and the couple adopted the baby son of Chang Runfeng's brother. After the death of husband Chang Runfeng in 1935, the following year, his heir Chang Zhentai died, leaving behind a wife and two sons. Under the previous law, all of Chang Runfeng's property would belong to the heir's family, while under the new law, Chang Huang took half of her husband's property in 1940.¹⁹⁹ (Appendix, 4)

While widows in the past did not have the right to inherit, now, in the Republican Period, they could get their legal share.

During this period, one of the important developments in property ownership was concubines. According to the law, concubines should be treated the same as other family members; although there is no legal marital relationship with the parents of the man, they should be responsible for supporting the concubines. Since the

¹⁹⁶Original version of the text: 配偶有相互继承 遗产之权 ,承认已嫁女子及亲女在法律上 与男子有相等的继承权。Pèi'ǒu yǒu xiānghù jìchéng yíchǎn zhī quán, chéngrèn yǐ jià nǚzǐ jí qīn nǚ zài fǎlǜ shàng yǒu nánzǐ yǒu xiāngděng de jìchéngquán.

¹⁹⁷ Zheng, Lùn mínguó shíqī nǚzǐ de cáichǎn jìchéngquán 论民国时期女子的财产继承权 [On Women's Property Inheritance Rights in the Period of the Republic of China], 124.

¹⁹⁸ Ibid., 125.

¹⁹⁹ Original version of the text:

concubine is a member of the family, if the parent of the man dies, the heir or another person managing the inheritance will of course have an obligation to support her and she will not be forced to remarry.

Finally, if we look at daughters' property rights, the ones struggling for property inheritance were mostly from wealthy families in urban areas. It has been difficult for rural areas to break traditions that had been practiced for thousands of years.

In July 1931, Chen Kuigen, a farmer in Xinchang County, Zhejiang Province, died of a disease, leaving two daughters behind. The daughters, who had no brothers, invited their father's relatives to a meeting, Chen Kuigen's nephew, Chen Songyun, was identified as heir. Chen inherited Kuigen's property. After a while, Chen Kuigen's three eldest nephews (another brother's grandson, namely Chen Songyun's nephew) sued Chen Songyun, saying he was not the legal heir of the clan under civil law and therefore could not inherit the property. The Supreme Court said that since the inheritance of the male heir no longer determines the inheritance of the property, the father's property must be given to the legal heirs, to the two daughters, stipulated in civil law. But since Chen Kuigen's two daughters never claimed their right to inherit in the meantime, Chen Songyun eventually inherited Chen Kuigen's inheritance. (Appendix, 5)

As can be seen in this example, the traditional male dominated inheritance system gradually started to be replaced by an egalitarian law. As a matter of course, this is not the case in all parts of the country. It was rather difficult to disrupt the traditional order. Granted that it was hardly applicable in practice, at least for the first time, women acquired legally the right to property.

In the next part, the difficulties faced by women in acquiring property in the 19th century and the first half of the 20th century will be discussed by looking at court decisions and examples.

4.5 The problems Chinese women faced in acquiring property in the 19th century and the first half of the 20th century

In this section, court records were used to understand the problems faced by women regarding property. If we first look at the 19th century, we can see that there are cases related to division of household property. In the normal course of events, household division did not involve the Qing state or the court. Yet in some inheritance related cases, people applied to the court. The courts decided who was right or mediated among the plaintiffs. If we look at the legal system in this period in more detail, there was a civil law in Qing period and division of household property was determined according to this law. The judges refused to accept some division of household cases and sent them back with responses such as “don't waste time with these kinds of cases”. This is stated in the book *A Complete Book Concerning Happiness and Benevolence* of judge Huang Liu-Hong-黄六鸿 as follows:

“In case of controversy over dividing the family estate, the magistrate should order the head of the clan and the village elders to make an inventory of the family estate and present it to him. The magistrate then orders the family property divided equally among the brothers. The head of the clan and village elders are to be punished if they practice partiality and present an inaccurate inventory.”²⁰⁰

The magistrate generally did not accept to hear the complaints about division of the household property. If there was a Qing civil service degree or violence and injury, the court easily accepted to hear the case. If we look at the situation of women applying to court, we can see that predominantly they were widows. For instance, in 1858, Widow Zhao received financial support alternately from her three sons. However, brother Mingtai refused to go on paying his share and sold her mother's

²⁰⁰ David Wakefield, *Fenja-Household Division and Inheritance in Qing and Republican China*, 114.

grave plot. Thereupon widow Zhao went to the court, and the court decided in her favor. Mingtai was ordered to pay his share and provide grave plot.²⁰¹

Generally, widow's remarriage was a problem. They took their children when they remarried or returned to the natal house. Yet the court did not approve it. In 1867 a widow, her name is not given, after her husband died, took her daughter, son and some property with her and decided to return to the natal house in North China. However, when they arrived in Shanghai, they were stopped because her husband's family did not allow children to go with the widow. The court ordered the property which she took and children to return to their father's house.²⁰²

As can be understood from this situation, a widow could only take her children either into her new marriage or her natal home if her husband's family allowed. If the widow had no son, the lineage or family would choose an heir or an adopted son for her. All property would pass to him. If a widow remarried, she had to leave their deceased husband's property. This situation sometimes led to negative consequences. For example, when her husband died, Widow Guo was left with a son and some assets. Widow Guo's elder cousin wished to dispossess their property but in order for him to have this property, the widow Guo had to remarry. For that reason, Cousin Guo threatened widow Guo and pressured her to marry again. Widow Guo who could not stand the pressure killed herself. Cousin Guo was found guilty and sentenced to exile for life.

Another court case from 1830 shows that concubines had the same rights as wives and brothers were responsible for funding unmarried sisters' dowry. Widow Zhan with four sons and two daughters was a concubine. After her husband died,

²⁰¹ Ibid., 121.

²⁰² Ibid., 121.

there was a dispute between two sons of her husband's principal wife and the two sons of her own. Hence, they went to court. Since the wife was also dead, the head of the family was now widow Zhan. In this case, the court decided that four brothers should pay not only to support widow Zhan, but also to pay the dowry of the two unmarried daughters.²⁰³

With the establishment of the Republic of China, some legal rights were given to women. Although I could not obtain detailed information about the court records of women during this period, it particularly emphasizes that the woman owned private property when looking at the court record decisions.

From these analyses, it is apparent that compared to the traditional period, women had acquired more rights legally towards property ownership; yet at the beginning of the 20th century patriarchy was still deeply rooted in marriage and family in the Republic of China. Therefore, we should note that most women in the Republic of China, principally rural women, had inherited property rights according to the logic of long-established customary rather than the logic of the national law. There is no clear indication of how much property the woman would acquire in this period either.

²⁰³David Wakefield, *Fenjia-Household Division and Inheritance in Qing and Republican China*, 123.

CHAPTER 5

CONCLUSION

This study aims to understand how 19th century Chinese and Turkish women acquired property. Thus, in the first chapter I try to explain why I focus particularly on the 19th century and property right. Property is a decisive factor for women's decision-making power, independence and self-determination. Hence, in the reforms Mao and Atatürk made to change the inferior position of women, they gave equality to women in property and inheritance fields. However, many women still cannot freely exercise their right to property and share of inheritance in current Turkey and China. Therefore, in order to understand the ownership status of women in China and Turkey before the reform, the property right of women in Turkey (chapter 3) and China (chapter 4) were examined in detail.

In chapter 3, the property rights of Turkish women before 1926 was examined under two main subheadings: marriage and inheritance. This chapter revealed that patriarchy is an important factor restricting the property rights of women. This examination also showed that there is a great difference between the educated urban women have and the uneducated rural women in showing resistance to these restrictions.

Chapter 4 which examined the property rights of women in China from the Zhou period to the Republican period, shows that besides patriarchy, marital status is also an important factor restricting the property rights of women.

Looking at the information obtained from chapter 3 and 4, in chapter 5 the comparison of the property rights of women of the two countries is made. The comparison results are as follows:

Turkish and Chinese societies have undergone many changes in the form of a historical process; as a result, in the 20th century, women were legally given the right to property in both societies. When we look back to the 20th century, the main responsibility of both Turkish and Chinese women was to stay at home for family duties and raise children while men were working outside. It is obvious that patriarchy is in force in both societies. When it comes to land ownership it becomes apparent that women occupied in the secondary place from the perspective of the state. The source of this thought was Sharia in the Ottoman Empire, and Confucianism in China. Sharia laws and Confucian classics promoted patrilineality by requiring more male control over the property. The girls were not given importance since they were treated like a guest at home. Family property belonged to the head of the family. When the family head died, the property was divided among the sons. Therefore, only sons could inherit land in that period. It would be wrong to say that women never inherited before they were given legal rights as in both societies, women could inherit in certain situations, such as the absence of a son in the family. If there were no sons in the family, the right to own property passed to the daughter in Ottoman Empire. However, there were also appointed heirs in the Qing empire. If there was no son or appointed heir in the family, then woman could be the head of the family, but her authority was limited. Until the 20th century, women were severely restricted from owning and controlling property in China and Turkey.

There are two main ways women acquired property in the two countries before the 20th century: inheritance and marriage. When daughters got married, they were given some properties as dowry in both Ottoman and Qing period and women's dowry only belonged to them, not to their husbands. In addition to the dowry, there was also mahr in the Ottoman Empire. In theory, the mahr also should only be used

by women. Since the mahr is the private property of the woman, she can sell it or rent it out. Nonetheless, in practice it is seen that fathers claimed rights on the mahr.

Another common point for the two countries is that these rights were top-down reforms. But there is a difference between them: From the Chinese point of view, the top-down has always existed, not something that emerged in the 20th century. The best example of this is the 5 relationships in Confucianism: father-son, husband-wife, elder-younger brother, elder-younger friend, state- family

While examining the sources on Turkish and Chinese women's property rights, the classification and under which headings the subject was explained was one of the most fascinating things for me. When I look at the English and Turkish sources about Turkish women's property rights, in which ways women can acquire property are pointed out and the subject is generally explained under the titles "Ottoman woman's acquisition of property through marriage" and "Ottoman woman's acquisition of property through inheritance."

On the other hand, when I examine the sources written by Chinese scholars, the property rights of Chinese women, regardless of the period, are classified according to women's marital status. The property rights of Chinese women are described under headings such as "The Property Rights of Chinese Daughters / Wives / Widows / Concubines." As can be seen from these classifications, while the marital status of Ottoman women did not affect the acquisition of property, it was of great importance for the Chinese women.

Another dominant factor affecting the property rights of Chinese and Turkish women is the area where women live. It is seen that there are great differences in the property rights of women between rural and urban areas in China and Turkey. It was difficult for rural women to break traditions that have been practiced for thousands of

years. The struggle for the property rights of women were mostly from urban areas. They were able to fight for more rights, but of course, we cannot generalize this for all urban women.

In fact, apart from the factors such as region and marital status, the chief factor that causes deprivation of property rights of women in both countries is patriarchy. Patriarchal attitudes and social traditions promoted patrilineality by requiring more male control over the property. Consequently, even the legal rights given to women could not be fully exercised.

APPENDIX

ORIGINAL VERSION OF THE TEXTS

1. Ma'rûz-ı Dâ'îleridir ki Medine-i Antâkiye'ye muzâfa Fenk Karyesi sâkinelerinden Fâtma bint-i esSeyyîd Ahmed bin Hasan Koca nâm hâtûna karye-i mezkûre ahâlisinden şeyh Mustafâ Çalû ibn-i Abdâh muvâcehesinde karye-i mezkûre toprağında vaki' kıbleten Ahmed ibn-i el-Hâc Ahmed incirliği Şarken ammîm Hammâdî incirliği Şimâlen ibni Kara Ali incirliği garben Halîl irsî tarlası ile mahdûd bir kıt'a incirlik târihinden on dört sene mukaddem hâl-i sagirîmde vefât iden babam mezbûr es-Seyyid Ahmedin mülkü olup ba'de-i vefât yetmiş iki sehmden on altı sehmi bana mevrûs olup ve mezbûr şeyh Mustafâ Çalû vâz'-i yed itmekle hisse-i mezkûremi taleb iderim deyu da'vâ mezbûr şeyh Mustafâ dahî mezkûr incirlik babası mezbûrun mülkü olduğunu ikrâr lakin on dört sene mukaddem hâl-ı hayâtında li-ebeveyn er-karındaşı Hammâdiye yüz altmış gurûşa bey' idub ol- dahî iki mâh sonra yüz altmış gurûşa bana bey' itmiştir deyu eylediği def ini ba'del-emhâlüş-şer'î atiyân-ı beyyineden izhâr-ı acz idub müdde'îye-i mezbûre Fâtma bit-taleb ba'det-tahlîfü'-'şer'î hisse-i mezkûresini müdde'îye-i mezbûre Fâtma hâtûn'a teslîmi mezbûr şeyh Mustafâ'ya tebeyyün olduğu huzûr-ı 'Alilerine î'lâm olundu. Gönül Bahçeci, H.1284/ M. 1867-1868 (35 Nolu) Antakya Şer'iyye Sicili (Transkripsiyon ve Değerlendirme), 158-159
2. Original version of the text: Haleb Vilâyeti dâhilinde kâ'in Medine-i Antâkiye'ye muzâfa Kar Beyâz Karyesi saki- nelerinden zât-ı ta'rîfûş -şer'î ile ma'rufe Sallûm bint-i bin Mehmed nâm hâtûn tara- findan da'vâ-yı itmiş

vekil-i müseccel-i şer'î Sâlih Ebû Bekir nâm kimesne huzûr-ı şer'-i şerîf-i enverde mevsiline mezbûrenin zevc-i dâhli iş bu bâ'isü'l-kitâb el-Hâcî Mustafâ bin Abdâh nâm kimesne muvâcehesinde bi'l-vekâle üzerine da'vâ ve takrîr-i kelâm idub karye-i mezkûre toprağında vâki' bir taraftan Gerzûn oğlu Mehmed Ağâ ve bir taraftan Kul Halîl tarlası ve bir taraftan mezbûr el-Hâcî Mustafâ tarlası ve taraf-ı râbi'î Kalâşi oğlu Mehmed tarlası ile mahdûd beş yüz gurûş fî'atlı ve bir kıt'a bağı ve yine Mezrû'ân Mezra'ası'nda vâki' iki taraftan Kalâşi oğlu mezbûr Mehmed tarlası ve bir taraftan Kabâşi Mûsâ tarlası ve taraf-ı râbi'î Selmân bin Süleymân zeytûnu mahdûd dört yüz gurûş fî'atlı nısf zeytûnluk ve yine Fericîn Mezra'ası'nda vâki' etraf-ı erba'ada cebel ve Kazrûk oğlu Mustafâ tarlası ve Kasîrîzâde Mehmed Efendi tarla ve zeytûnu ile mahdûd iki yüz gurûş kıymetli bir kıt'a incir-i ve yine karye-i mezkûrda vâki' etraf-ı erba'adan Kalâşi Ali ve Çobân oğlu Mustafâ menzilleri ve müvekkilim mezbûrenin ahuru ile mahdûd elli gurûş kıymetli bir bâb ahur ile dört yüz gurûş kıymetli köhne üç kat yatak ve iki 'aded tencere ve iki 'aded hamîr laknî vebir 'aded satıl ve bir 'aded kazgân ve bir 'aded sahan iş bu eşya ve emlâk müvekkilem mezbûre Sallûm hâtûnun olub zevc-i mezbûr el-Hâc Mustafâ fuzûlen zabt ve mutasarrıf olmağla sû'âl olunub lede's -şer'ü'l-enverde emlâk ve eşyâ-i mezkûrede keff-i yed ve müvekkilim mezbûre hâtûna teslîm mezbûr el-Hâcî Mustafâ'ya tebeyyün olmakla bi'l-vekâle matlûbumdur didikde gıbbe's-sû'âl mezbûr el-Hâcî Mustafâ cevâbında emlâk ve eşyâ-i mezkûreye yigirmi beş seneden beri mülkiyet üzere zevcem müvekkile-i mezbûre Sallûm hâtûn muvâcehesinde mutasarrıf olmakdayım ve mezkûre hâtûn bilâ-'izn sükût itmişdir deyu ba'de'd-def' mezbûr elHâc Mustafâ,,nın def'-i mezkûreye mutâbık-ı beyyine

taleb olundukda karye-i mezkûre ahâlisinden olan muhtâr ve â‘zâlarından bâ-
mestûre sırrân ve ‘alenen lede’tta‘dîl ve’t-tezkir makbûlü’ş -şahâde idukleri
ihbâr olunan Kara-fak oğlu Osmân bin Süleymân ve Kaddûr bin Osmân nâm
kimesneler bi’l-muvâcehe ber-vech-i şer‘î ba‘de’l-isbât ve’l-hükm-i
mûcibince on beş sene bilâ-‘izn terk olunan emlâk ve eşyâ da‘vâsı bi-emr-i
mesmûm olunmayacağı vekil mezbûre Sallûm’e ba‘de’t-tefhîm mu‘âruzadan
men‘ olun- mağın mâ-vaka‘ bi’t-taleb ketb olundu. Hurrîre fî’l-yevmü‘‘s-sâni
min Cemâzi‘‘yel-âhirî li-sene erba‘a ve semânîn ve mi‘eteyn ve elf. Gönül
Bahçeci, H.1284/ M. 1867-1868 (35 Nolu) Antakya Şer’iyye Sicili
(Transkripsiyon ve Değerlendirme), 250-251

3. 有个卫国人嫁女儿的时候教导她说“一定要私下里积攒财物。做人家的
妻子而被休了赶出门，是常有的事；夫妻成功地居住一生，是侥幸的
事。”他的女儿因此便私下里积攒财物，她的婆婆觉得她积攒了很多私
房钱而把她休了。这个卫国人的女儿所带回来的财物，是她出嫁时财物的
很多倍。她的父亲不怪罪自己在教导女儿方面的错误，却自认为增加
财富很聪明。如今身居官职的臣子，都是这一类人。Yǒu gè wèi guó rén
jià nǚ’ér de shíhòu jiàodǎo tā shuō “yīdìng yào sīxià lǐ jīzǎn cáiwù. Zuò rénjiā
de qīzi ér bèi xiūle gǎn chūmén, shì cháng yǒu de shì; fūqī chénggōng dì
jūzhù yīshēng, shì jiǎoxìng de shì.” Tā de nǚ’ér yīncǐ biàn sīxià lǐ jīzǎn cáiwù,
tā de pópo juédé tā jīzǎnle hěnduō sīfáng qián ér bǎ tā xiūle. Zhègè wèi guó
rén de nǚ’ér suǒ dài huílái de cáiwù, shì tā chūjià shí cáiwù de hěnduō bèi. Tā
de fùqīn bù guàizui zìjǐ zài jiàodǎo nǚ’ér fāngmiàn de cuòwù, què zì rènwéi

zēngjiā cáifù hěn cōngmíng. Rújīn shēn jū guānzhí de chénzǐ, dōu shì zhè yī
lèi rén. ¹ Han Fei Tzu, “Shuo-lin (Collection of Stories)

4. 常黄氏 的丈夫 常润峰是前清太监,没有子女,夫妇俩领养了常润峰兄弟在襁褓中的儿子为嗣。1935 年常润峰被土匪绑票遇害。第二年, 1936 年,嗣子常振泰去世,留下一妻二子。根据先前的法律,常润峰的全部财产都将归他们所有,但根据民国《民法》,常黄氏在 1940 年为自己争得了其丈夫的一半财产(包括一幢房子, 5.2 亩房基地和 1220 亩农田)。Cháng huáng shì de zhàngfū cháng rùn fēng shì qián qīng tài jiān, méiyǒu zǐnǚ, fūfù liǎ lǐngyǎngle cháng rùn fēng xiōngdì zài qiǎngbǎo zhōng de érzi wèi sì. 1935 Nián cháng rùn fēng bèi tǔfēi bǎngpiào yùhài. Dì èr nián, 1936 nián, sìzi cháng zhèn tài qùshì, liú xià yī qī èrzi. Gēnjù xiānqián de fǎlǜ, cháng rùn fēng de quánbù cáichǎn dōu jiāng guī tāmen suǒyǒu, dàn gēnjù mínguó “mínfǎ”, cháng huáng shì zài 1940 nián wèi zìjǐ zhēng déliǎo qí zhàngfū de yībàn cáichǎn (bāokuò yī chuáng fángzi, 5. 2 Mǔ fáng jī de hé 1220 mǔ nóngtián). Quanhong Zheng, Lùn mínguó shíqí nǚzǐ de cáichǎn jìchéngquán 论民国时期女子的财产继承权 [On Women's Property Inheritance Rights in the Period of the Republic of China], 125.

5. 他的女儿 召集父亲的亲 戚开了一个 会议,陈奎根的一个侄子陈松云被立为嗣子,继承陈奎根的遗产,并立了继书。不久,陈奎根的三个侄孙(另一个兄弟的孙子,也即陈松云的侄子)控告陈松云,说他根据民法不是合法的宗桃嗣子,因此不能继承财产。最高法院回答说,由于宗桃继

承不再决定财产 继承 ,所以父亲的田产必须给民法中 规定的法定继承人—— 两个女儿。 Tā de nǚ'ér zhàojí fùqīn de qīnqī kāile yīgè huìyì, chénguīgēn de yīgè zhízi chéngsōngyún bèi lì wèi sìzi, jìchéng chénguīgēn de yíchǎn, bìnglìlè jì shū. Bùjiǔ, chénguīgēn de sān gè zhísūn (lìng yīgè xiōngdì de sūnzi, yě jí chéngsōngyún de zhízi) kònggào chéngsōngyún, shuō tā gēnjù mínfǎ bùshì héfǎ de zōng tiāo sìzi, yīncǐ bùnéng jìchéng cáichǎn. Zuìgāo fǎyuàn huídá shuō, yóuyú zōng tiāo jìchéng bù zài juédìng cáichǎn jìchéng, suǒyǐ fùqīn de tiánchǎn bìxū jǐ mínfǎ zhōng guīdìng de fǎdìng jìchéng rén—— liǎng gè nǚ'ér.

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