

RESEARCH ARTICLE

Beyond Cultural Interpretivism: Analysis of Married Out Women Issue in Rural China

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Abstract

The dispute of married out women has become an important modernisation problem since the 1990s as the result of urbanisation and industrialisation. It concerns social stability at grassroots that may affect the ruling base. While the Chinese government is constantly striving to solve it, it also shows how deficient the protection of women's property rights is that it causes so many controversies. Currently, the cultural explanation that simply attributes the phenomenon to traditional patriarchal culture is popular among scholars and widely accepted, which is, however, proved to be misleading. This article attempts to break this stereotype and points out that this trouble is not directly related to Chinese traditional culture. Rather, it is caused by the majority's tyranny under the current villager self-government and collective property rights. This article also attempts to find possible solutions, requiring improving the rural self-government system and clearly defining the boundaries of collective property rights by law.

Keywords: married out women; traditional culture; village self-governance; the majority's tyranny; women's property rights

1. Introduction

In the past three decades, with the rapid advancement of urbanisation and industrialisation, land values have climbed dramatically, and rural collectives in many areas have accumulated huge wealth and benefits in the process of land acquisition and development of the collective economy. At the same time, disputes over the infringement of land rights and interests of married out women (wajia'nv, hereinafter "MOW") and their children have sprung up in these places, especially in southern China. In rural areas, women are labelled as MOW when they get married.¹ They are often ostracised by fellow villagers and even by their families in the collectives, deprived of land dividends, memberships, and all related property rights. Further, a large number of MOW cannot effectively protect their legitimate rights and interests through administrative and judicial apparatus, so they collectively petition and protest, which put great pressure on governments at all levels to maintain social stability.

From 2016 to 2017, the All-China Women's Federation received a total of 8807 complaints related to women's land rights, an increase of 182% over 2014–15 (Yu and Liu

¹ The term MOW comes from Professor He Xin's article 'Why did they not take on the disputes', referring to peasant women who are married outside their home villages. See He (2007).

2021, p. 49). In Foshan, Guangdong, disputes over the distribution of MOW accounted for the vast majority of rural dividend disputes in 2009 (Bai 2013, p. 116). The situation is also true in Panyu, where the type of disputes respectively made up 81% in 2006 and 83% in 2007 of the total number of petitions. To deal with the growing number of these controversies, many local governments strived to solve the problem, incurring a lot of administrative and economic costs, but have never succeeded. For example, the Nanhai district government making significant fiscal expenditures on this issue tried to establish a *Nanhai Model* (南海模式), which was proven to be unrealistic and unsustainable because of the heavy financial burden. According to a document from the Guangdong Provincial Women's Federation, at least 100,000 disputes in Guangdong are on the waiting list of courts and bureaus (Bai 2013, p. 115). It can be said that the MOW issue has become an important factor affecting the social stability in contemporary China, and has aroused attention from all walks of life over the years.

The existing studies on this subject cover two main aspects: the reasons and possible solutions. Only by deconstructing the reasons can we find a solution to the issue from the root. The first is: how did the issue arise? The current research is generally based on a comprehensive analysis of culture, legislation, administration, judiciary, and so on, among which the cultural interpretation theory is extremely common, and it is basically unanimously agreed upon and repeatedly emphasised by researchers. Is there a substantial connection between tradition and this issue, and how much are they related? These problems are undoubtedly of great value and significance in uncovering the true reasons for the MOW issue. Therefore, this paper takes the cultural interpretation theory as the starting point, and attempts to reveal the real generation logic of this issue through the reflection and analysis of this interpretation, and then explores the institutional countermeasures.

2. Methodology

In this article, we try to examine and correct the cultural interpretation of the issue of MOW from the perspective of institutional analysis. Specifically, this article breaks the situation where the patriarchal culture interpretation prevails. It shifts from the static description of the MOW phenomenon to a dynamic historical-phylogenetic analysis, from focusing on ostensible cultural theory to an exploration of political and economic deep-seated motivations. Moreover, the interaction between the various subjects in the MOW event is also a concern in this article instead of the outcome-centred research tradition. We consider the historical interpretation critically since China had experienced a cultural and institutional leap from 1949, and try to analyse the issue of MOW more logically and reasonably. To put it in the theoretical development, this helps realise a recognition and repositioning of the MOW issue and constructing the consistency of history and reality.

Following the method, this article draws on the statistics and induction of a large number of local judicial judgements displayed on official websites. At the same time, it cites the empirical study documents of researchers in other fields of sociology, anthropology (especially historical anthropology), and law. Chinese land laws, regulations, and policies are also included. These are substantial evidence that can strike abstract cultural interpretations that domestic academic circles have taken for granted. They are also used to deconstruct and clarify the issue of MOW. In setting up a new interpretation, this study integrates social gender and system perspectives to reinterpret the emergence of the problem of MOW.

The data showed in this paper mainly come from all the judgement documents related to MOW disputes in Wolters Kluwer's Legal Advance Database and typical cases in the *Annual Cases of Chinese Courts* compiled by the National Judges Academy and the Judicial

Case Research Institute of the Supreme People's Court (国家法官学院和最高人民法院司法案例研究院). They are classified according to different characteristics: geographical and types of parties. These cases provide real and sufficient information for the study and its conclusions and illustrate the comprehensive state of the case of MOW as a special type of dispute in China.

In addition, the research presented in this article is part of a larger theme of MOW status disputes and implications for women's survival in rural China. This research is a theory-driven project on the protection of women's rights in rural China based on judicial big data and fieldwork studies. Both of the authors are committed to the research of women's rights in rural China, including marital rape, domestic violence, and women's property and political rights.

3. Cultural interpretation of the MOW issue

Cultural interpretivism, as the name suggests, is to owe a social phenomenon or social issue to culture. It first emerged as a method in cultural anthropology. Since the 1980s, with the rise of research on Chinese traditional culture, culture has received high attention from Chinese academia. Over the years, cultural interpretivism has been widely applied in sociology, law, and many other fields such as philosophy, history, sociology, psychology, and political science. More than 80 years ago, during the debates on China's rural development and the transformation between the *Chinese Rural School of Thought* (中国农村派) and *Village Construction School of Thought* (乡村建设派), cultural was already being applied in interpreting rural phenomenon. At that time, the Village Construction School of Thought, represented by Liang Shuming, believed that the root cause of Chinese rural degeneration was cultural maladjustment. This view, later known as the cultural maladjustment theory, was questioned by many scholars.

In the MOW issue, cultural interpretation is considered as one of the two main perspectives in existing research. It refers to the inclination of researchers to attribute most gender issues to Chinese traditional culture. They believe that male dominance and female subordination under the thousands of years of feudal culture are a non-negligible cause of the MOW issue. This method used in existing studies can be specifically classified into two types: direct or explicit elaborations and indirect implications and guidance.

3.1. Direct conclusions in cultural interpretation

In these studies, there are both relatively general and more specific or focal claims. In the former scenario, for example, Mo Wanyou argues that Chinese traditional culture is the main infringement of the rights of MOW (Mo 2013, p. 96). The latter claim further focuses on the specific manifestations of Chinese traditional feudal culture, which can be summarised as at least three aspects: ideological beliefs, social customs, and institutions.

3.1.1. Ideological beliefs

This viewpoint is quite common in research. For instance, Sun Hailong and some scholars believe that in traditional rural Chinese society, the notion that *MOW are water splashed out from their parents' family* (嫁出去的女儿泼出去的水) is deeply ingrained. It is considered natural and justified that married daughters cannot share the benefits of their natal families. This forms the ideological foundation for denying MOW's rights (Sun, Gong, and Li 2004, p. 96). Zhang Xiaohan also puts forward that rural practices are fundamentally influenced by feudal ideas such as *Husband's Residence* (从夫居) and *Male Marriage & Female Marriage* (男婚女嫁). Women are deprived of land rights even before marriage, which

inevitably leads to the increasingly severe gender bias of valuing sons over daughters in rural areas (Zhang 2012, p. 13).

3.1.2. *Social customs*

Wei Zhiming suggests that the patriarchal system in rural areas still has a fixed influence on collective governance. The folk practice of MOW not sharing their natal family's property has become a logical basis for villagers to engage in gender discrimination (Wei 2019, p. 79). Zhao Xiaoli believes that the current abuse and attacks of MOW by villagers and even their family members only indicate that the patriarchy abolished by socialist collective ownership in 1949 has revived to a considerable extent after the implementation of the household contract responsibility system (Zhao 2007, p. 226). Bai Lanzhi also argues that the loss of villager-treatment means that the patriarchal tradition has a further influence on depriving them of the livelihood security that rural collectives are supposed to provide to landless peasants. The controversy over the distribution of MOW unexpectedly discloses the complicity of the collective economy and conventional patrilineal clans, and how they consolidate collective-patriarchal alliance (Bai 2013, p. 116).

3.1.3. *Institutions*

In this regard, researchers such as Qin Wanping point out that its origin lies in the fact that the custom of the married women's family register following the man's (subordination to the husband) has a deep social basis, that is, the law of patriarchal preference in social succession (Qin 2007, p. 24). Ruan Xinbang also demonstrates that due to the tradition of wives migrating to their husbands' houses after marriage, they are in an unstable position in terms of household registration (*hukou*), land rights, and equity rights. The rural clan organisation in southern China is strong, the orderly father-son relationship and the gender relationship of male oppression of women form the core of familialism (Bai 2013, p. 114).

The three aspects mentioned above are all concrete manifestations of China's traditional patrilineal culture. In addition, many departments and practitioners also directly attribute the MOW issue to these reasons. For example, the Zhejiang Women's Federation affirms that the subjective factors of discrimination against MOW have to be feudal consciousness and traditional beliefs. The influence of male superiority and female inferiority is too profound to change traditional customs. Beijing Qianqian Law Firm, renowned for providing legal aid and public interest litigation services for gender discrimination cases, also believes that the deep-rooted discrimination against women in traditional beliefs is the underlying cause of the widespread issue of their land rights. Almost all of these kinds of cases can be traced back to this core factor.

3.2. *Indirect conclusions in cultural interpretation*

By contrast, indirect viewpoints in cultural interpretation of the MOW issue are more prevailing. They tend to explore the broader topic of the erosion and loss of land rights for rural women. In these studies, although researchers have different angles and focus, they often discover the motivations of traditional culture and emphasise the patriarchal ideology and concepts behind social gender and sex.

Some scholars approach the issue from the perspective of traditional ethics. For example, Geng Zhuo believes that traditional culture, represented by the three obedience and four virtues² (*san cong si de*), devalues women and makes them subservient to men

² The three obedience: (to father before marriage, to husband after marriage, and to son after the death of husband); the four virtues: (morality, proper speech, modest manner and diligent needlework).

while excluding women from society and politics. Although traditional culture experienced a drastic strike after the May Fourth Movement in 1919, it persists due to its long-established historical inertia and its permeation of the spiritual soul, and it has intentionally or unintentionally formed a collusive structure with various institutional arrangements that violate women's land rights (Geng 2016, p. 121). Some scholars are more concerned about the kinship consciousness. For example, Zhang Peiguo, in his study of land rights in modern Jiangnan, points out that ancestral consciousness, based on the patrilineal inheritance of family lineage, is centred on the notion of patriarchal preference for sons and has a serious impact on women's property rights (Zhang 2002, p. 23). Some researchers delve into the culture of village clans in-depth. For example, Xu Yong discovers that for the majority of peasants, the culture is also embedded in the community and unconsciously shapes their autonomous ideologies as well as behaviours. It will be around for a long time in the process of village self-government, which is characterised by popular participation (Xu 1997, pp. 364–366). Liu quoted Habermas's view that culture precipitated over time has a nature, that is, a tradition in terms of meaning, morality, and ethics. Clans and villages, as naturally formed units of grassroots governance, acquire a certain legitimacy because of their naturalness, that is, bringing benefits to local people. Once people still benefit from these organisations, their culture will be immortal in reality even if it is not substantial anymore (Liu 2020, p. 4). Some scholars focus on social power dynamics. One of them is Yu Lijuan who concludes that there have always been inertial constraints in Chinese rural society that daughters do not share property, and as a result, girls are brought up with the idea that they cannot enjoy land rights when they marry outside. Rural women's land property rights have been greatly eroded by social power characterised by a culture that also weakens the initiative or effectiveness of women's groups to achieve the goal of land rights and interests (Yu and Liu 2021, p. 48). In addition, there are some studies specifically based on a social gender perspective.

The list goes on. Although many articles neither directly discuss the issue nor take gender and traditional culture that seriously, they do, largely unconsciously and indirectly, link the loss of land rights of rural women to these interpretation theories. Broadly speaking, these studies can be called cultural hermeneutics.

4. A rebuttal to cultural interpretation of the MOW issue

Is this prevailing cultural interpretation theory of the MOW issue accurate? If we consider the inner mechanism, we will find that the explanatory power of this cultural theory is actually very limited, and even untenable, through apparent rationality and justification.

First of all, cultural explanatory theory cannot explain the same situation that other subjects, such as married out men, retired soldiers, agricultural transfers, college students, and migrant workers who have moved from rural areas to study in cities are in with MOW who are all non-native. The statistics show that these groups are all included in the existing judicial disputes involving the membership of rural collective economic organisations.³ Putting these few special peasant groups aside,⁴ private property rights are also not fully satisfied even within the majority of interest community due to the

³ According to statistics, of the 109 land dispute cases on the determination of collective membership in the 10 years compiled by the National Academy of Judges and the Judicial Case Research Institute of the Supreme People's Court, 58 cases involved MOW, while the other 51 cases involved other subjects, including matrilocal sons-in-law, migrant workers, non-native persons, retired soldiers, newborns, foetuses, and agricultural transfers.

⁴ The academic community generally refers to this group of peasants with population mobility as a *special peasant group*. These subjects often have certain population movements based on marriage, schooling abroad, and working outside the home, resulting in the separation of household registration, land contract relations, and production and living relations, which lead to complex collective membership determination.

restrictions and limitations imposed by village rules. For example, the village of Yangcheng in Guangzhou stipulated that if one more child is born, all shares of the household will be cancelled, and the distribution of shares will be stopped during the sentence of villagers who committed a crime, etc.⁵ Whatever the cause is, obviously, no distinction is made between genders. In other words, in addition to MOW, other minority groups in rural areas, especially the matrilineal men, are subject to the same bias concerning their collective membership within the village at present. It is just that this group has not attracted as much attention in society as women.⁶ Can disputes over collective membership and damage to property interests of such male groups also be attributed to the inferiority of men and women in traditional patriarchy?

Second, the village's denial of collective membership to MOW is not simply a gender exclusion; rural unmarried women also exclude the property rights of married women. In other words, the loss of collective membership of rural women is timed by marriage. Before marriage, according to Article 16 of China's Rural Land Contracting Law, whether men or women belonging to the family members of the peasant households of the collective economic organisation are entitled to equal enjoyment of a share of the land contracting management right and various land rights and interests.⁷ Therefore, the interests of unmarried and married out women in rural areas are not unified and even opposed. This means that when faced with their rights and interests' distribution, rural unmarried females and male villagers will choose to coincidentally exclude their property rights out of common interest. Therefore, the deprivation cannot be attributed purely to gender reasons.

Third, even in the inheritance of traditional ancestral succession, patriarchal culture is only a veneer, and the deeper logic behind it is actually the fight for family property by family and collective members. The rule of defining the identity of a patriarchal society, that a daughter who has been married is like water that has been spilled, is just a tool that villagers reflexively use under the drive of maximising the distribution of benefits, without any real connection to the patriarchal culture. A specific analysis will be made later.

Based on the above, it is clear that the cultural explanatory theory of the issue does not stand up to scrutiny in a fundamental sense, and its explanatory power is extremely limited. However, this cultural interpretation theory is so deceptive that it has led many researchers to accept it without rethinking it. Moreover, the theory is confusing in three main ways:

First, it is backed by the long-standing traditional Chinese culture. From ancient times to the present, researchers in different fields have basically agreed in their investigations and conclusions about the situation and status of Chinese rural women and the real state of their land rights, that is, rural women have long been in a powerless and vulnerable state. In traditional China, men grew up with the right to inherit property, while women did not (Zhao 2006, p. 72). Despite the indispensability of women's labour, the principle of patrilineal inheritance of family property does not entitle them to a share of family property at all (Zhang 2000, p. 145). Even in the Song Dynasty, when it was widely believed that women had the right to inherit independent property, it was clarified that the imperial court did not and could not make a law to give women half of the household

⁵ In addition, there are also provisions in Yangcheng village such as if a person is executed by political or legal organs or deprived of political rights for life before or after the allotment of shares, his shares will be cancelled, although these provisions do not have any legal basis, they are generally accepted and implemented by villagers.

⁶ As a matter of fact, the disputes of MOW have attracted widespread attention because of its continuous and tenacious resistance (petition and litigation) and actions.

⁷ Article 16 of the Law of the People's Republic of China on Rural Land Contracting [《中华人民共和国农村土地承包法》]: The contracting party of a household contract is the peasant household of the collective economic organisation, and the family members within the peasant household equally enjoy all rights and interests in the contracted land in accordance with law.

property, and women could only enjoy the right to inherit property if they did not have brothers and sons.⁸

It can be said that, regardless of the motivation, the overall deprivation of women in the traditional Chinese patriarchal culture is obvious and unquestionable. Although China is currently in the process of modernisation and reformation, it has not, on the whole, transcended the entrenched family culture, which still impacts all aspects of Chinese society with its far-reaching influence and powerful dominance. In rural societies, family culture is more ingrained. Especially since the appearance of the rural household contract responsibility system in 1978, the patriarchal system, which was abandoned and suppressed by the socialist collective ownership system, has made a considerable comeback and has undoubtedly cultivated fertile soil for the occurrence of gender inequality. In short, past records provide natural reasonableness for cultural interpretation.

Second, the villagers use traditional culture as an extremely sexist and highly misleading language tool which even develops into a famous gender-biased colloquialism. In rural areas, villagers constantly cite the proverb that a daughter who has been married is like water that has been spilled, and so do researchers. However, these quotations either only float to describe the phenomenon, or are used without confirming their justification (Sun, Gong, and Li 2004, p. 27). Eventually, the traditional identity definition rule has firmly become an unbreakable label on the MOW issue today and is recognised by most Chinese. In addition, many villages have concocted a number of slogans opposing their collective dividends whose appeals are even more vulgar. For example, a village in Foshan has hung a banner that reads *the MOW are wild ghosts, and firmly opposes their competition for the collective dividends* (坚决反对外嫁女的孤魂野鬼抢夺分红), and *who fighting for collective dividends will die without a burial place* (外嫁女抢夺分红死无葬身之地). Such obviously sexist slogans, exhibited with great fanfare in villages, will undoubtedly create a strong psychological implication and guidance in the collective, successfully transforming the identity issue into a gender issue, making gender and the traditional culture behind it invisibly become the plausible main reason for this problem.

Third, judicially, the geographical differences linked to the gender gap in these legal cases are also very misleading (Table 1). From the perspective of geographical distribution, different quantities of cases have shown obvious regional differences between the North and the South of China. A large number of legal cases of MOW mostly happened in southern China, especially in Guangdong, Hunan, Hainan, etc. It is widely believed that clan culture and clan consciousness are stronger in the southern region with multi-clan villages than in the northern region with small kinship groups and the central region with atomised villages. Therefore, it is easy to establish the causality between the number of disputes and the strength of clan culture, and to assume that the stronger the clan culture is, the more disputes there are. But such geographical differences can at best represent that the local clan culture is stronger in areas where there are more such cases. As to whether there is an authentic connection between the two and how big the connection is, a more rigorous inquiry is needed.

These three points are enough for people to associate traditional culture with the issue, which appears to be true and has led many researchers to make very imprecise conclusions without deliberation. Nevertheless, traditional culture is only a cover, let alone the fundamental, and therefore should not be infinitely magnified. The cultural interpretation, currently prevalent in academic circles, can easily flow into cultural determinism which seems superficial and is often not easily perceived due to the strong

⁸ For a daughter, the adoption of mandatory nephew succession in the early Ming meant a virtual loss of any right to inherit in the absence of brothers. Simply put, whereas in the Song a daughter was legally entitled to inherit the family property should her parents die without any sons, whether biological or adopted, under the rule of nephew succession, the claims of nephews took precedence over her claims. See Bernhardt (1999, p. 4).

Table 1. Geographical distribution of legal cases of MOW

Province	Number of MOW cases	Ratio to the nationwide number of MOW cases (%)
Guangdong	7,736	23.47
Hunan	7,047	21.38
Hainan	7,032	21.33
Fujian	2,545	7.72
Guangxi	2,190	6.64
Zhejiang	1,427	4.33
Anhui	853	2.59
Shaanxi	821	2.49
Henan	420	1.27
Guizhou	416	1.26
Jiangxi	347	1.05

Source: VK Advance—legal information database, as of 1 April 2023.

confusion of this viewpoint, hindering the real reasons being exposed and focused. This is where cultural interpretation deserves our vigilance.

4.1. The real reason: The system of villager autonomy in rural China leads to the tyranny of the majority

In the study of the MOW issue, some researchers have keenly pointed the finger at the current system of village self-government, indicating that there is a problem with the tyranny of the majority in this system which gives the cloak of legality to the infringement of women's land rights and interests by village collectives in some areas. They also believe that villagers' autonomy is the crux of the issue, difficulties, and challenges. Through the fog of culture, the rural villagers' self-governance system is behind the scenes.

On 24 November 1987, the Organic Law of the People's Republic of China on Villagers' Committees was promulgated. Since then, the rural areas throughout the country have changed the long-standing top-down people's commune system and begun to practice villagers' self-government. According to the law, China's villager autonomy system is the grassroots people's autonomy in rural areas, i.e., villagers deal with affairs related to villagers' interests through grassroots mass self-governance organisations such as villagers' committees. The CCP wants to help the villagers to be aware of self-management, self-education, and self-service autonomy through a democratic election, democratic management, democratic decision-making, and democratic supervision. The establishment of the village self-governance system has activated the intrinsic motivation of the vast rural development and realised the organic combination of state management and social self-management. However, on the other hand, the village organisations and villagers in rural areas also use the self-governance platform to successfully achieve the deprivation of identity and exclusion of the interests of the rural minority groups represented by MOW.

Since the 1990s when state power was empowered to the townships, villagers' self-governance has developed rapidly, and villagers' committees have begun to play the role of agents of the government, with resources and wealth originally controlled by the government actually handed over to village organisations for management (Xu 1997,

Table 2. Types of defendants in legal cases of MOW in China

Type of defendants	Ratio to the nationwide number of MOW cases (%)
Individuals	41.12
Corporations	58.88
Individual business	0

Source: WK Advance—legal information database, as of 1 April 2023)

pp. 301–310). Since rural land in China is collectively owned, villagers’ committees, as institutional self-governance platforms, decide on matters related to rural land ownership and undertake various matters such as the issuance of land contractual management rights, distribution of homesteads, negotiation on land expropriation and dividends from the collective economy. This provides a lot of room for village committees and other village organisations to use their discretion power for personal gain in the name of collectives and exclude minorities such as women.

In the context of villagers’ autonomy, the subjects of infringement of rural women’s land rights and interests are more village collectives than individuals (Zhang 2012, p. 12) (Table 2). After the 1980s, with the acceleration of urbanisation, the original urban–rural separation was broken, and a certain amount of population movement occurred between urban and rural areas based on marriage relations, schooling, migrant work, etc., and the phenomenon of separation of people and household registration appeared. For villages, these mobile populations are a minority, and the minority is often vulnerable and thus easily falls prey to intra-village interest contests. Generally speaking, there are two main ways of self-governance that village collectives use to deprive the rights and interests of the weaker group. The first type is the formulation of normative documents, mainly including village rules and regulations, autonomous statutes, and autonomous decisions. For example, many village rules and regulations directly stipulate that all MOW are not allowed to participate in the distribution of any land acquisition; they are not entitled to contract the village’s land, and the village committee has the right to take it back. The second control way is to use the voting form of democratic meetings such as villagers’ assemblies or village congresses to determine the distribution of property interests through the establishment of rules and regulations, which are at present spreading over the country. Rules, assemblies, and congresses constitute the tyranny of the majority. As Tocqueville said, “The very essence of democratic government consists in the absolute sovereignty of the majority; for there is nothing in democratic States which is capable of resisting it” (de Tocqueville 2002, p. 282). It is because of the establishment of the villagers’ self-governance system that the village collective has easily achieved the tyranny of the majority over the minority by using the absolute advantage of numbers, i.e., depriving the minority villagers of their collective membership, and successfully excluding their land rights and interests, especially the collective dividends, from the collective.

Village self-government is often most effective in crowding out vulnerable groups internally, which is not uncommon in democratic societies (Bai 2013, p. 123). The expropriation of a small number of villagers represented by village collectives for a long time is not based on the public interest of the village but on self-interest. The resolutions reached by the majority of villagers in seemingly democratic forms are also not based on public will but on the will of the sum of individual wills. This is because the interests of the group and other villagers are contradictory and rival. When a daughter who married a non-native participates in the distribution, the benefits for other villagers will be reduced. The so-called democratic decision under village self-government is a form of majoritarian democracy, encouraging the tyranny of the majority over the minority. As an inherent

defect of democracy, the majority of people can suppress the legitimate interests of the minority with the strong force of the collective via the democratic system, making the result less fair and free (Cheng 2013, p. 34). At present, the deprivation of the legal rights and interests of MOW by using villagers' autonomy in the vast rural areas has seriously endangered their livelihood. In reality, many MOW are caught in the miserable situation of no land, no room, and no money, and have to embark on a long road to self-help and defend their rights. And it is precisely because of this obvious unfairness and bullying behaviour that it has aroused great sympathy and widespread concern from all walks of life.

"Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure" (Hamilton, Jay, and Madison 2008, p. 258). In most rural areas of China, this majority decision is not only reflected in the unequal distribution of benefits within the village group for the sake of profit maximisation but also in the strong resistance and refusal of the village as a whole to external intervention. Many researchers have found that the attitude of village cadres and local villagers towards break-in outsiders is surprisingly consistent and tough, that is, they have an instinctive aversion to government and court intervention. Even in the Nanhai District of Foshan City, where there is a better atmosphere for protecting the rights and interests of married women, villagers have resisted which even led to violent incidents.⁹

As a democratisation process of mass participation and a rationalised social construction, villagers' autonomy in the form of institutionalisation, which fixes the participation and management of village affairs as the democratic rights of villagers, is undoubtedly an important part of modern China's state establishment and an important practice for the cultivation of rural civil society, and must continue to deepen and develop steadily. But on the other hand, it is in the democratisation process of villagers' autonomy that the issue arose and intensified. And at least for the time being, it seems that this problem has fallen into an insoluble situation under the established framework of villagers' autonomy, which makes people contemplate.

4.2. The real reason: Patriarchal appearance and the roots of property disputes under the collective property rights system

As mentioned above, the village collective's deprivation of the membership of a few villagers, such as MOW, is not based on the public interest of the village but is focused on self-interest. If the villagers' self-governance system has the institutional ability and does actual harm, then the traditional culture is only a cover, and the villagers' interest demand for property that lurks behind the system is the fundamental reason.

The contemporary disputes over MOW began to emerge in economically developed regions as the result of the process of urbanisation and industrialisation in twentieth-century China. The more prosperous these places are, the more prominent the conflicts and disputes are. This phenomenon is manifested both in the strong deprivation of the membership and land rights of MOW by the village collective and in the unyielding resistance to defend their legitimate rights and interests. Judicially, the obvious geographical difference between the South and the North is due to their urbanisation

⁹ On 1 July 2009, Chen Guohang, the president of the Danqiu Economic Society and leader of the village group in Yanfeng Village, Dali Town, Nanhai (南海) District, Foshan City, was judicially detained by the Nanhai District Court for 15 days for refusing to comply with the town government's requirements for dividends for MOW, and for failing to appear in court summons. On the afternoon of 2 July, nearly 100 villagers from the Danqiu Stock Economic Cooperative in Yanfeng Village, Dali Town, gathered at the Dali Town Government to protest against the implementation of dividends of them within the group.

and industrialisation sequence. Villages in southern China, especially in the eastern coastal areas, have accumulated huge wealth in the process of land acquisition and development of the collective economy with considerable income such as land share dividends for villagers. Many researchers have found that the village registration system in some super villages in contemporary rural China manifests itself as an extremely strict household registration system, such as the Yantian Management Area in Dongguan City (Zhe 1996, p. 76). The common feature of these super villages is that village-run enterprises are growing fast and the profits of the collective economy are large.

In addition, cities such as Dongguan City, Shenzhen Longgang District and Foshan Nanhai District, the reason why they are at the forefront of solving the problem is precisely because of their similar superior economic conditions in the process of preceding industrialisation and urbanisation. Many researchers even believe it is the main reason for these disputes (Sun, Gong, and Li 2004, p. 27; Yang and Xu 2006, p. 23). In a word, the rapid advancement has made the cake of the rural collective economy expanding, which has led to disputes over property within villages.

In fact, even in the inheritance of traditional clansmen, patriarchal culture is only a cloak. The deeper motive behind the predominance of men under the patriarchy is actually the struggle for family property, and the identity problem is inherently economic. In traditional patriarchal societies, the principle of patrilineal transmission of family property disqualifies women as a whole from inheritance. In the Qing Dynasty, although the widow had a relatively large right to dispose of the family property, the younger son was the main owner of the family property, and the widow only disposed of the family property on behalf of the younger son. Liang examines the customary law of this period and points out that a marriage linked to property is like a business; when a widow remarries, the question of whom to choose as the officiant is not only related to patriarchal ethics but actually related to the bride price (Liang 2015, p. 75). Margery Wolf, in rural Taiwan in the twentieth century, found that the father may suffer from his daughter's getting married, though, he must regret every penny spent on the dowry because it meant that his family will permanently lose that property (Margery 1972, p. 131). There is a proverb in Huangyan County, Zhejiang Province: *Mother's meal is fragrant, husband's meal is long, brother's rice, don't think about it* (娘饭香, 夫饭长, 兄弟饭, 莫思量) (Ding 1995, p. 853). Although a daughter does not have the right to inherit the family property, the dowry at the time of marriage can be used as the foundation for the new family, which is undoubtedly the distribution of the share of the family property in the eyes of her brother-in-law, so it is regarded as a money-losing proposition. The practice of drowning baby girls, which has been prevalent in Jiangsu and Zhejiang since modern times, is a typical economic choice based on cultural practices (Zhang 2002, p. 225).

The above examination shows that behind the traditional rules of social identity definition is a real property issue. Therefore, even if women are excluded, there is also fierce competition for family property among men who are eligible for the distribution of household property. Under the consciousness of small peasants who *do not worry about the small share, but the uneven distribution* (不患寡而患不均), *even the ancestral redbud tree has to be split into three* (祖传的紫荆树还要一劈为三). If the property concept under the modern market emphasises that "what's mine is mine and what's yours is yours", then its counterpart in traditional patriarchal society can be said as "what's mine is mine and what's yours is also mine." Countless family property disputes are arising from this. Zhang pointed out that the inheritance of the family is only a cloak of patriarchal clan ethics, and its essence is actually determining who would win in competing for family property (Zhang 2002, p. 221). In short, the rules of identity definition in traditional patriarchal societies and contemporary disputes over rural MOW contain the same logic, that is, underneath the surface of traditional culture there is a struggle for property and economic interests.

Accordingly, minorities such as matrilocal husbands, non-native persons, and adopted sons also have faced the same identity problems throughout history. Some scholars demonstrate that villagers' qualifications appear to reflect village community relations, though, it actually implies the allocation of land. These minorities often find it difficult to integrate into the local family's network of relationships and never achieve clan membership. Non-native people are treated as outsiders, even if they have settled for several generations. Some clans even write restrictions in the genealogy, formulating strict family laws and rules. Adoption is still rejected by the family because the family property will be impacted, and some clans even forbid the selection of other surnames as stepsons. Regarding these restrictions, clan ethics and hukou institution can certainly explain, but the deeper factor is probably still the distribution of family property, which is not allowed to flow to outsiders of the clan (Zhang 2002, pp. 110–115).

Similar identity issues are rooted in similar property systems. The identity disputes of contemporary rural MOW have the same institutional basis as the identity disputes of matrilocal son-in-law and non-native people. From the perspective of property, the uncertainty or ambiguity of the boundary of property rights is a common and fundamental reason. Constrained by clan ethics, the boundaries of property rights in traditional society are quite blurred, and it is difficult to clearly distinguish individual property rights. Under the situation of family living together and sharing property, land rights do not belong to the individuals, but are connected to the family, and the family community and the village community control and distribute the property. In fact, the idea of *family property* itself has already excluded the requirement of members to independently dispose of family property. Liang once concluded that the essential feature of traditional Chinese society is based on ethics (Liang 2018, p. 89), which highlighted the ambiguity of property boundaries, leaving a huge space for the blast of family property disputes.

Unlike traditional family property disputes, contemporary MOW disputes involve the distribution of collective property. To a certain extent, the subject of property distribution shifted from the family to the collective. At present, China's rural land is collectively owned, and the collective itself is also a vague concept. According to Article 16 of China's Rural Land Contract Law, the right to use agricultural land is divided on a household basis, and thus the right to land does not belong to individuals but is connected to small households. Different from traditional society, the distribution rights of contemporary rural contracted land, homesteads, and collective dividends all lie with the collective, and peasant households only enjoy the right to use a fixed amount of land as a family. In other words, the form of property is changed from family property to collective property. However, the communal nature of the property has not fundamentally changed, and its ambiguity remains, which also leaves huge room for the infringement of property rights. Li inspected Guangzhou's urban village and pointed out that the collective land property rights in Yangcheng Village is generally incomplete. From the government to the village collective to the individual, land disputes between them are often the strong party taking advantage of the characteristics of incomplete property rights to infringe on the property rights and interests of the weak party's property (Li 2019, pp. 67–68). From this point of view, the current dilemma is not just a simple majority issue as mentioned above, but the tyranny of the majority caused by the structure of the collective property rights institution.

Although the rules of male superiority, preference for sons, and exclusion of the right of women to marry are incompatible with the modern rule of law, they have a sensible economic logical basis in rural areas (Zhu and Lei 2019, p. 137). In short, while the issue can reflect to a certain extent the ideological imprint of the subordinate status of women in a traditional patriarchal society, the derivation is not necessarily related to traditional culture. The rationale is that villagers catch the chance provided by villagers' autonomy to compete for property under the framework of the collective property rights system.

Driven by immediate interests, village collectives and villagers pick up the undying patriarchal tradition to fight against the current laws and administrative management. From this point of view, not only the women but also a series of identity disputes of minority groups in rural areas can be reasonably explained.

5. Countermeasures: Improve the system of villagers' self-government

"It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part" (Hamilton, Jay, and Madison 2008, p. 258). Since the MOW issue arises from rural self-governance in contemporary China, the solution must be found therefrom. Correcting the current system of rural self-governance from both internal and external perspectives will be more effective, and promote the improvement of this system together through joint efforts.

In terms of the internal aspects of the village self-governance system, it is first necessary to clarify that not all issues can be translated into public opinion, and public opinion and politics can never be an obstacle to an individual's basic rights, including life, liberty, property, and the pursuit of a better life. As Justice Jackson said, we must liberate certain things from political conflict, placing them in a position beyond the reach of both the majority and the government, and establish them as legal principles that the courts rely on, such as the individual's life, liberty, and property, as well as other basic rights. These rights are neither subject to a ballot nor depend on election results. For the females who choose to marry outside the village, their collective membership and related property rights are essential to their basic survival and livelihood, and therefore should not be decided and controlled by the village congresses. In other words, a simple majority vote against the fundamental rights of minority villagers should not have a legal effect.

In practical operations, the principle of party autonomy can deal with conflicts between the majority and minority, as well as between collective and individual interests. According to this principle, when it comes to matters and interests mainly related to collective affairs, the will of the majority through democratic procedures should be respected, while in matters mainly related to individual affairs, the priority should be given to individual will. This can effectively prevent village organisations from sacrificing the basic rights and legitimate interests of a minority of people in the name of democracy (Liang 2010, p. 53). Specifically, since collective membership is related to individual affairs, the priority should be given to the personal will of daughters who married non-natives. In other words, the acquisition and loss of the collective membership status of minority villagers should not be determined by village rules or democratic elections.

Secondly, practically thinking, villages can only democratically determine the membership of a small number of villagers, then village rules and regulations and village organisation meetings must reflect public opinion. It must be emphasised here that public opinion is not the sum will of the people, but the will of the rational public. Village rules and people's covenants are not popular laws, but public laws. The premise of the existence of laws and institutions is different, and different subjects often have differences or even confrontations on the same issue. In the process of formulating rules, lawmakers should fully consider, respect, and balance the interests of all parties, allow each subject to express their own interests and demands, and then negotiate together, while not ignoring or denying the significance of the actors in constructing the system. The current deprivation of collective membership through democratic means in rural areas does not respect their practical wishes at all, and the daughters who married outside as a whole are voiceless and represented. The village rules and regulations formulated in this way and the democratic vote results cannot be on behalf of the authentic public opinion, and therefore should not be effective.

Thirdly, give full play to the role of village committees. As an extended part of public authority, villagers' committees are an important link in the development of rural democratic politics. They should not only consider procedural democracy on the surface and use simple majority decisions as rational judgements and conclusions but also listen to the voices of the people and fully consider the opinions all around. Besides, they should allow and increase the participation of minority villagers in village self-governance. Without the members' involvement, there will be no improvement or authentic democracy of the village self-governance system. Establishing different group representatives to ensure their collective participation is also helpful.

In addition to internal adjustments within the village, village self-governance also requires external intervention, including administrative and judicial review. While the former is the most vital variable in the development of rural villagers' self-governance system, the latter can play the foremost role. Effective administration as a supervisor is conducive to activating the inherent initiative and motivation of villages. The grassroots government can provide practical support and assistance when villages formulate institutional documents, and can also promptly order corrections when villagers' autonomy infringes on the rights and interests of MOW.¹⁰ Judicial review is also on the scene. Autonomy is premised on the rule of law. Village autonomy, as a democratisation process of popular participation, must be regulated by strict regulations, otherwise, it can easily encroach on human rights. In order to protect the legitimate rights and interests of minority villagers, the court should take the initiative to offer judicial remedies, such as reviewing the documents formulated by collective organisations and amending or directly revoking the contents that violate the existing laws and regulations.

6. Countermeasures: Clarify the boundaries of collective property rights

The predicament of MOW is not simply a problem of majority tyranny, but rather a tyranny in the collective property rights system. In fact, some researchers have recognised that the ambiguity of collective boundaries is the root cause of this issue (Pan 2013, p. 301; Yu 2014, p. 31). The socialist tradition has always emphasised the role of collective social security and opposed privatisation. However, the justice of a society does not depend on whether it is publicly or privately owned, but rather on whether the fruits of property rights institution are fairly distributed in the society (Ji 2001, p. 57). While in traditional feudal society, the concept of family property *per se* excluded the demand for individual members of the family to dispose of property independently, the collective concept similarly plays the role in contemporary rural China. The boundary of collective property is so obscure that it leaves a huge space for property disputes among members of the collective, and the problem is more prominent in villagers' autonomy arrangements. Moreover, the following property disputes will become increasingly intense with the improvement of the market economy and the continuous enhancement of citizens' rights consciousness. The issue of the MOW is a typical example.

Compared with the ambiguity of property ownership in family production, the modern market economy rewards labour on an individual basis, and each person can clearly distinguish the wealth they have obtained, and the right border is clearer. A socialist

¹⁰ Article 27 of the Organic Law of the Villagers Committees of the People's Republic of China stipulates that the village self-governance charter, village regulations and agreements, and decisions of village meetings or villagers' representative meetings shall not be in conflict with the Constitution, laws, regulations, and national policies, and shall not contain contents that infringe upon the personal rights, democratic rights, and lawful property rights of villagers. If the village self-governance charter, village regulations and agreements, and decisions of village meetings or villagers' representative meetings violate the provisions of the preceding paragraph, the people's government of the township, nationality township, or town shall order correction.

market economy requires that all factors of production be allocated by the market and flow freely. Clear property rights are a prerequisite for market allocation and free flow, which will more effectively stimulate economic entities via the market mechanism (Xu 2017, p. 103). Also, the construction and operation of the agricultural land market in China cannot be achieved without this condition being satisfied. It facilitates enterprises to accurately and effectively obtain information on agricultural land transactions, protect trades, accelerate the circulation of agricultural land, and thereby improve efficiency. The current property structure arrangement of peasants' professional cooperatives in China is centred on the clear definition of property rights boundaries between members and cooperatives (Kong 2019, p. 28).

Property rights are also the basis for establishing the rule of law and protecting human rights and are the cornerstone for individuals to maintain their independent personality and free will. Article 13 of the Chinese Constitution stipulates that citizens' lawful private property is inviolable, and property rights can only be freely realised if they are truly enjoyed by every member.¹¹ Therefore, in rural contemporary China, land rights and collective benefits should be distributed to individuals, not households. The property rights of members of rural collectives, including the MOW, must be determined within the scope of the rule, so as to provide institutional guarantees for each villager and increase their independence as subjects of law. Only in this way can we prevent the majority of villagers from depriving a small number of villagers to compete for property, avoid the obscuration of rural women by the land policy, and truly realise villagers' autonomy as a democratic practice of rational social construction.

The coming of the era of peasants' rights also means the coming of disputes (Gan 2021, p. 484). The development of the modern rule of law gave peasants rights for the first time, they cannot be fulfilled unless the rights are plain. Once the law is enacted, it must be taken seriously and earnestly enforced. These policies are believed to help resolve grassroots conflicts and disputes invisibly while maintaining social stability and promoting modern democracy and the rule of law.

7. Conclusions

A just society allows neither the sacrifice of the majority for the sake of the minority nor the sacrifice of the minority for the sake of the majority. Currently, the MOW issue protesting against the loss of their rights in land reflects the long-standing problem of rural women's land rights in China not being protected and also exposes the weakness and limitations of the law. The importance of studying the causes of the issue is self-evident both for the government and judiciary in order to properly deal with the disputes.

In fact, there is no clear definition of the criteria for determining the qualifications of rural collective members in current legislation, but protective provisions regarding women's rights have already been incorporated into laws such as the Constitution, the Law on the Protection of Women's Rights and Interests, and the Rural Land Contract Law. Regrettably, however, the explicit provisions of laws, regulations, and policies have not been absorbed in the framework of villagers' autonomy, which is the hidden reason for the issue.

At present, China has not surpassed the basic attributes of traditional village family culture, patriarchal culture is still deeply preserved, and there is indeed a conspicuous

¹¹ Article 13 of the Constitution of the People's Republic of China: The legitimate private property of citizens shall not be violated. The state protects the private property rights and inheritance rights of citizens in accordance with the law. The state may, in accordance with the law, expropriate or requisition citizens' private property for public needs and give compensation.

phenomenon in contemporary Chinese rural society. However, the influence factor of traditional culture is not the main, let alone the fundamental factor. In the description of this article, it remains to be demonstrated whether there is a correlation between the disputes of MOW and traditional culture as well as how much is the extent. The connection is not significant were it true. The proverb and common saying is that belittling females is just a malicious strategy to compete for more dividends. This article pierces through the outer layer of traditional culture and points out the dual logic of political and economic generation behind the MOW issue. In a nutshell, it arises within the framework of villagers' autonomy system and collective property rights system. Village collectives and villagers in the name of villagers' autonomy and convention revival illegally deprive rural minority groups of their membership and property rights and interests out of the motive of profit maximisation.

Data availability statement. The data that support the findings of this study are available from Wolters Kluwer: <https://law.wkinfo.com.cn/?tip=>

Acknowledgements. This article comes from a common phenomenon in rural China that sends it to publication. Many thanks to our joint efforts with the Asian Journal of Law and Society and China Institute for Socio-Legal Studies Shanghai Jiao Tong Univeristy, and for bringing attention to the plight of women.

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