RURAL CHINA:
AN INTERNATIONAL JOURNAL OF HISTORY
AND SOCIAL SCIENCE

**RURAL CHINA**
**AN INTERNATIONAL JOURNAL OF HISTORY AND SOCIAL SCIENCE**
中国乡村研究

***Aims and Scope***

*Rural China* is a multi-disciplinary journal that focuses on the past and present of China's 900 million peasants (by registration, including peasant migrant workers in the towns and cities), their families and communities, and their interactions with the urban world. It publishes the best mainland Chinese and international scholarship from the disciplines of history, anthropology and sociology, and economics, political science and law, as well as other allied disciplines such as demography and geography, art and literature, public health, and comparative studies. As the first truly bilingual journal in Chinese studies, it will henceforth include both Chinese and English scholarly articles based on new research and/or new interpretations of old research. The journal has an international editorial board of distinguished scholars who help referee articles. Its targeted audience is the global community of China studies both within and outside China. It should be of interest to both scholars and advanced students, specialists and informed readers, as well as policy makers.



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# RURAL CHINA:
# AN INTERNATIONAL JOURNAL OF HISTORY AND SOCIAL SCIENCE

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## Instructions for Authors

### Scope

*Rural China* (*RCHS*) provides a forum for high-quality scholarly research on rural China and its 900 million peasants (by registration). It aims to help stimulate advances in both empirical and theoretical research, and welcomes submissions of articles based on original research, or new understandings of old research. It aims to promote internationalization of rural China studies and welcomes articles in either English or Chinese. There will be both an international edition of the journal, to be published by E. J. Brill, to appear in April and October every year, and a mainland China edition, to be published by the Renmin chubanshe. The two editions will be essentially the same in content and include both articles in Chinese and articles in English.

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> Examples:
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DUARA, PRASENJIT (1990) "Elites and the structures of authority in the villages of North China, 1900-1949." Pp. xx-xxx in Joseph W. Esherick and Mary B. Rankin (eds.), Chinese Local Elites and Patterns of Dominance. Berkeley: Univ. of California Press.
Huailu xian zhi (Gazetteer of Huailu county) (1985 [1876]). Huailu: Huailu xian zhengfu.
MORITA AKIRA (1976) "Shindai no gito sei to sono haikei" (The yitu system and its background in the Qing dynasty). Shakai keizai shigaku 42, 2: 1-23.

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孙立平 (2000):《"过程-事件分析" 与当代中国国家-农民关系的实践形态》。《清华社会学评论》第 1 期, 第 1-20 页。
程美宝 (2001):《地域文化与国家认同—晚清以来 "广东文化" 观的形成》, 载杨念群编, 《空间 • 记忆 • 社会转型》, 第 387-417 页。上海人民出版社。
Oi, Jean C. (1989) *State and Peasant in Contemporary China*. Berkeley: University of California Press.
Huang, Philip C. C. (2001) "Women's Choices under the Law: Marriage, Divorce, and Illicit Sex in the Qing and the Republic." *Modern China*, 27, 1: 3-58. (注: 27 和 1 分别为该刊的卷号和期号, 3-58为该文在该刊的起止页码)
Whyte, Martin King. (1989) "Who Hates Bureaucracy?" pp. 23-66 in Stark, D. & Nee, V. (ed), *Remaking the Socialist Economic Institutions*. Stanford: Stanford University Press.
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# Editor's Foreword

## Whither Rural China: Capitalism, Socialism, Or?

**Philip C. C. Huang**

We lead off here with Forrest Zhang's overview of the current state of Chinese agriculture. He outlines the main characteristics of the three main types: agribusiness, family farms, and cooperatives (co-ops). He argues that the relative development of each is highly dependent on the local political economy. Agribusiness, even if engaged partly or mainly in "contract farming" with small family farms, requires local government support and availability of large tracts of land. "Commoditized" family farms, on the other hand, require ready access to public markets, often constructed by the local authorities, typically in suburban areas. Co-ops, similarly, require state support but are nevertheless often subsidiary or subservient to agribusiness. In this paper, Zhang does not attempt to forecast possible future tendencies.

My two short articles (one co-authored with Dr. Yuan Gao) each seeks to demonstrate a simple but basic (and surprising?) finding. First, that small peasants, rather than the state or agribusiness, have been the main agents behind the capital investments in the new-age Chinese agricultural revolution of the past 15 years—the article presents detailed quantitative information and analyses to show that peasant agricultural (fixed and liquid capital) investments in the aggregate dwarf both those of the state and of agribusiness. Second, that the divide between a formal economy enjoying the protection of the state's so-called "labor" laws 劳动法 for "employees-workers" 职工 and the accompanying social benefits, on the one hand, and an informal economy outside the protection of such laws and without (or with only low) benefits, is a paramount issue in the social crisis that confronts China today—on the basis of the latest and most reliable data, the article demonstrates that while the former accounts for just one-sixth of all employed persons, most of them privileged by status, the latter amounts to fully five-sixths, including especially the peasant migrant workers and their other employed household


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members. Combined, the two articles point both to optimism and to alarm about the present state of Chinese society-economy.

Forrest Zhang and I are agreed that under current realities, the main concern of "farmers," or what I continue to refer to as (commercialized) peasant family farms, are today principally concerned with their relations with the market (see Huang Zongzhi [Philip C. C. Huang] 2012). But Zhang and I do differ on a deeper level. Zhang, after Harriet Friedmann and others, is inclined to think that a highly "commoditized" agricultural economy will tend to be governed ultimately by capital, and that there is little chance of much else given the overwhelming predominance of capital in the contemporary world. I, however, am inclined to a different view, namely, that market economy, which has been quite highly developed in China for centuries, does not rule out other possibilities, such as co-ops or state-sponsored social-equity projects. The present trajectory of development of China's new-age small peasant agriculture, as well as the great divide between China's formal urban and informal urban-rural economies, in fact cry out for stronger state efforts to search out an alternative to agrarian capitalism. The issue raised here is not unlike that between Lenin and Chayanov a century ago. Zhang and I have both written multiple other articles on these issues. Readers are invited to judge for themselves, and the most interested are encouraged to comment on this question in our forthcoming issues.

The final article in the symposium is by Yulin Zhang. Its focus is on land inundations caused by the torrent of coal mines in Shanxi province, China's leading center of coal production, which accounts for one quarter of the nation's total. The resulting environmental devastation has caused hundreds of casualties, and harmed thousands of villages and millions of peasants. The government, however, has been slow and inadequate in its response, delaying for years and then providing just partial compensations for just a portion of those harmed.

For Zhang, what the Shanxi example points out is a crisis in governance, shown in shared interests between coal-mine owners and their official sponsors, a part of the linking up of the global capitalist system with China's political system. That is what has prevented satisfactory resolution of the damages done by coal mining. That is what Zhang means by the "crisis of governance." Here too we invite interested readers to consider participating in further discussions of the subject.

## References

Huang Zongzhi 黄宗智 (Philip C. C. Huang). 2012. "小农户与大商业资本的不平等交易: 中国现代农业的特色" (The unequal relations between small peasant households and big commercial capital: the special characteristics of contemporary Chinese agriculture), in 开放时代, no. 3 (March): 89-99.

# 编者前言:
# 中国农村往哪里去?资本主义、社会主义、还是?

黄宗智

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第一篇文章是张谦关于当今中国农业的概述。他点出了三种主要农业类型—企业农业、家庭农业和合作农业—的一些特征。他强调,不同地方的政治经济环境是这些不同类型农业发展程度的关键。企业农业,即便是主要依赖其与小农户订的"契约农业",需要当地政府的支持,一定程度上也需要大片的土地。"商品化"的家庭农场则需要公共(专业)市场,多是地方政府所建,多处于城市近郊。合作农业则同样需要政府的扶持,但迄今它们多从属于企业。在此篇文章中,张谦并没有试图预测未来的趋势。

我自己两篇较短的论文(一篇与高原博士合作)分别论证一个基本(而出乎意料的?)研究结果。一是最近15年以来的新时代中国农业革命的投资主体主要是小农户,而不是政府或农业企业—文章根据详细的计量资料论证小农户所做的(固定和流动)资本投入总量要远高于国家或企业。一是今天中国的社会危机的关键问题是受到"劳动"法规保护和具有优厚社会福利条件的正规经济的"职工"与没有受到劳动法规保护并没有(或只有低等)社会福利的非正规经济员工两者间的差别—根据最新的可靠资料,文章论证前者只包含全社会就业人员中的六分之一,多是具有一定程度的特权身份的职工,而后者则包含足足六分之五,主要是农民工和其家庭的其他就业成员。合起来,一篇文章勾画的图景比较乐观,另一篇则令人担忧。

张谦和我同样认为中国今天的小规模"农场主"—而我则继续称作(商业化的)小农家庭—最关心的是他们和市场之间的关系(见黄宗智2012),但我们之间有比较深层的不同。张谦,与Harriet Friedmann等一致,基本认为一个高度商品化的农业经济只可能被资本摆布,尤其鉴于资本今天在全球所占据的压倒性霸权。而我则倾向认为,相当高度发达的市场经济在中国已经有数百年的历史,并不一定排除其他的可能,例如合作社和国家各种社会公平工程。其实,中国近年来开始的新时代小农经济发展路径,以及城镇正规与城镇-农村非正规经济间的巨大差别,强烈呼吁国家探寻资本主义之外的另一种发展方向。张和我之间的不同其实类似于百年前列宁和恰亚诺夫之间的争议。我们俩

都写过多篇关于这方面的文章，欢迎读者自己做出判断，也欢迎最关心这些问题的读者在我们刊物未来的各期中作进一步的讨论。

最后的一篇文章是张玉林聚焦于山西煤矿的研究。山西是中国的“能源基地”，煤炭产量占到全国的四分之一。煤炭采掘在当地已经造成极其严重的地质灾害，所导致的土地塌陷已经造成数百人的伤亡、数千个村庄水资源的破坏、数百万村民的饮水困难。但政府的补偿性“惠民工程”则一再拖延，最终只为部分受害人提供了部分补偿。

对张玉林来说，山西煤炭采掘案例说明的是当前的“治理危机”，体现于煤矿资本家和当地官员利益的结合，最终来自全球资本主义体系与中国行政体制两者的结合。正是那样的结合导致了当前的治理危机。在这个问题上，我们也谨此邀请读者考虑参与进一步的讨论。

引用书刊：

黄宗智 (2012):《小农户与大商业资本的不平等交易：中国现代农业的特色》，载《开放时代》，2012年第3期（《中国新时代的小农经济》专题讨论）：89-99。

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# Comparing Local Models of Agrarian Transition in China

**Qian Forrest Zhang**[1]

# 中国农业转型中地方模式的比较研究

张谦

**Abstract**
The development of markets and the penetration of capital into agriculture have started the agrarian transition in rural China, which is transforming smallholding, household-based agriculture into various forms of capitalistic production. This again raises in a new historical and social context the long-debated question in the agrarian transition literature: Can family farms survive the onslaught of capitalist agriculture based on wage labor and what shapes the confrontation between family farms and agro-capital? I argue that it is the local political economy—rather than some natural obstacles in agriculture to the penetration of capitalism—that shapes this confrontation and gives rise to a variety of local patterns in how family producers interact with agro-capital. Conceptually, the primary dimension in which local patterns diverge is how direct producers' transactions with the product market are mediated. Based on this distinction, I identify three distinct local paths of agrarian transition—agribusiness-led corporate production, independent household production, and cooperative production. I use data collected from fieldwork and secondary sources to show how, in each model, characteristics of the local pattern are shaped by the local political economy.

**Keywords**
agrarian transition, agribusiness, family farming, cooperatives, capitalism, China

[1] Qian Forrest Zhang, Associate Professor of Sociology, at Singapore Management University, obtained his Ph.D. in sociology from Yale University. His current research focuses on two themes: the fate of petty commodity production (especially self-employment and family farming) in China's transition to capitalism and the role of family in shaping people's mobility processes. Other of his works on the transformation of family farming in China have been published in *the Journal of Agrarian Change*, *Politics & Society*, and *the China Journal*. His email address is forrestzhang@smu.edu.sg.


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**摘要**
市场的发展与资本的进入引发了中国的农业转型，将小规模的家庭农业转变成各种形式的资本化农业。这在一个新的历史与社会背景中重新提出了农业转型研究中一个长期辩论的课题：在资本化农业的冲击下，家庭农业能否继续生存？什么因素塑造家庭农场与农业资本之间的对抗？本文提出，是地方的政治经济，而不是农业生产中某些能阻止资本扩张的天然障碍，在塑造这种对抗，并产生出一系列家庭生产者与农业资本之间互动的模式。这些模式间的差异首先来自于直接生产者是如何与产品市场对接。我根据此区分出三种农业转型的地方性路径：企业带动的公司化生产、农户的独立生产、和合作化生产。我以实证资料来展示，在每个模式中，地方的政治经济如何塑造这一模式的特点。

**关键词**
农业转型，农业的公司化，家庭农业，公司化，资本主义，中国

Chinese agriculture is undergoing a fundamental change. In a sector that still employs around 280 million people—67.4 percent of the total rural labor force—this change will also transform economic livelihoods, the social structure, and political relations in rural China. Philip Huang has called this change "China's hidden agricultural revolution" (Huang, 2010a). It differs from the traditional agricultural revolutions that took place in other countries in both how it started and how it has unfolded: it is more "hidden." First, instead of being caused by the use of new technologies in the agricultural sector, it is primarily driven by external structural changes. More specifically, Philip Huang and Yusheng Peng (2007) identified three relevant macro-historical trends: the declining natural growth rate of the rural population, the rapid transfer of rural labor into non-farm jobs, and the country's changing food consumption patterns. Second, instead of creating a significant rise in crop yields, this new agricultural revolution mainly unfolds through a shift in agricultural production from staple grains to higher-value foods such as meat, poultry, vegetables, and dairy.

Much more than merely a change in crop choice, the shift from staple grains to higher-value foods changes the producers in many ways. For the smallholding, family-based agricultural producers who still dominate China's agricultural sector today, the shift to higher-value foods is simultaneously a shift from subsistence to commercial exchanges in their production orientation, from a reliance on the state's grain procurement system to an exposure to risky and unpredictable markets in their interactions with the external environment, and, in their behavioral patterns, from survival-first risk-aversion to specialization, competition, and risk-taking. Furthermore, besides presenting unprecedented opportunities for smallholding family farms to achieve full employment

and rising income, this agricultural revolution also introduces a new type of producer into rural China to compete with family farms: agribusiness companies. A series of changes in food consumption and agricultural production—including the growing consumption of higher-value and processed foods, the rising scale of food retailing, the increasing incidence of eating out, and the surging demand for industrial inputs in agricultural production—have made Chinese agriculture a new venue for profit making and capital accumulation. As a result, in the past decade, agribusiness has made a forceful entry into Chinese agriculture, altering the landscape of a sector that was once devoid of capitalized producers (Waldron, Brown, and Longworth, 2006; Zhang and Donaldson, 2008).

Both the transformation of family farms and the entry of corporate producers suggest that, together with the hidden revolution in agricultural production, a fundamental social change is also taking place to China's agricultural producers—one that I have called the rise of agrarian capitalism (Zhang and Donaldson, 2008). Chinese agriculture in the past was dominated by peasant producers—household-based agriculturalists who use family labor to produce staple grains mainly for subsistence and depend on non-commoditized relations for the household's reproduction (Friedmann, 1980). This pre-capitalist, peasant form of production can be transformed into capitalist agriculture through two processes. Either the organization of production goes beyond the household unit and begins to use non-family, wage labor; or, if households remain the units of production, the reproduction of these family farms becomes commoditized—i.e., through participation in land, labor, credit, and product markets (Zhang and Donaldson, 2010). These are precisely the two changes that have been triggered by the hidden agricultural revolution and mentioned above: the transformation of family farms as they shift to specialized, market-oriented production of higher-value products and the emergence of supra-family, labor-hiring corporate farms.

The entry of agro-capital and the transformation of smallholding family farms are not two independent processes, but are instead intertwined, and are competing with each other for market share, productive assets, and political influence. Even though the favorable macro-level economic and demographic contexts now provide family farms new opportunities to profit from commercial production of higher-value crops, as Huang and Peng (2007) suggest, these small producers may still lack the micro-level conditions—in terms of capital and skill endowments, market access, and local political support—to take advantage of these opportunities.

From the view of neo-institutional economics, for example, one can argue that small agriculturalists face inherent limitations—which range from information asymmetry, risk averseness, and high transaction costs—when making the shift from subsistence-oriented grain production to market-oriented production of higher-value, cash crops. In contrast, agribusiness companies, while also facing some inherent obstacles in entering agriculture and specific restrictions in rural China, which will be elaborated on later, are much better equipped with capital, technologies, organizational assets, and market access than small household farmers. This has led to them becoming a leading force in China's agrarian transition.

Agribusiness companies also enjoy greater support from the state. Since the mid-1990s, the central government has made it clear that it views the minuscule scale of the hundreds of millions of family farms in China as the main obstacle and that the "agricultural modernization" program it has designed for rural China will focus on raising the scale of production, capital investment, and market integration. The central government's preferred policy vehicle for promoting its agricultural modernization agenda is vertical integration of agriculture by the so-called "dragon-head" agribusiness enterprises, which not only bring capital investment, new technologies, and market access to agriculture, but can also organize rural households into larger-scale production.

Despite the advantages agribusiness may enjoy, China's small family farms have proven to be resilient in the face of mounting pressures from both a state that is committed to scaling up agricultural production and a market in which large firms are gaining dominance in downstream sectors (such as food processing, wholesaling, and retailing) and demanding consolidation in agricultural production. Philip Huang, Gao Yuan, and Peng Yusheng (2012), for example, find that hired year-workers account for only 3 percent of all labor input in Chinese agriculture today; they thus argue that the labor-hiring, capitalist agriculture by agribusiness only plays a minimal role in Chinese agriculture, and family farming still predominates.

Will the penetration of agro-capital dissolve family farms, proletarianize the rural labor force, and transform the sector into one based on wage labor, hierarchical organizations, and capital-intensive production functions? Or, can family farms that mainly use family labor in small-scale, labor-intensive production remain viable in commoditized production and persist—albeit it in transformed ways? The debate about this battle between agribusiness and family farms in an agricultural sector undergoing a capitalist transition has energized rural studies for generations, starting with Lenin's (Lenin, 1956 [1908]) famous argument about the dissolution of family farms resulting from the penetration

of capitalist relations of production into agriculture. After more than a decade of heated debates in the 1970s and 1980s between two main camps—one following a more orthodox Marxist-Leninist developmental logic and emphasizing the transformative power of the logic of capital (De Janvry, 1981; Patnaik, 1979), and the other more inspired by Chayanov's view about the unique logic in household production and the resilience of family farms (Friedmann, 1978; Mann and Dickinson, 1978)—this literature has become largely dormant. This is partly because the concern about family farms has since subsided in Western countries where agricultural development has become characterized more by the rise of agricultural-industrial complexes and a global division of labor. But it is equally the result of the deductivist approach shared by both sides that has brought the debate to an impasse: on one hand, the teleological tendency in the Leninist tradition that presumes the end point of the dissolution of family farms by capitalist relations of production, and on the other, the essentialist tendency in the Chayanovian tradition that presumes the permanency of family farms on the basis of either a unique logic of household production or the natural features of agriculture (McMichael and Buttel, 1990). Both sides were particularly uneasy with variations across time and space in how the balance shifts between family farms and capitalist farms. Rather than being explained in specific social-historical contexts, such variations were either discounted as some transient stages in the progressive development of capitalist agriculture, or reified as the manifestations of unique natural features of agricultural production.

The long-delayed onset of capitalist transition in Chinese agriculture has pushed the agrarian question to the forefront of social change in rural China. It not only has elevated the practical significance of the research on agrarian transition, as it now relates to the fate of hundreds of millions of smallholding household producers, but it also has provided an opportunity to reinvigorate this literature in a unique social-historical context. What is particularly interesting and challenging to the existing literature is the great amount of variations one finds in China. In various parts of rural China, different local models of transition have emerged. Family farms are disintegrated, or subsumed, or reproduced, or transformed, while agro-capital, on the other hand, uses either arms-length markets, integrated firms, or neither-market-nor-firm contract arrangements to engage in agricultural production. Wage labor appears in different forms, offered by proletarianized or semi-proletarianized laborers and employed by family-based farms or agribusiness companies. Different forms of commoditized agricultural production can become dominant in even neighboring counties in the same agro-ecological region.

The very existence of a multiplicity of local patterns of the transformation of family farms and the interplay between family farms and agribusinesses in a similar broad national and historical context means that such variations cannot be explained away as different stages in the same developmental trajectory toward a uniform capitalist agriculture. Similarly, the adoption of different forms of production in areas that specialize in the same agricultural product suggests that the persistence of family farms in some areas but not others cannot be fully explained by resorting to the essential qualities of agriculture or of specific crops; characteristics of the local political economy must be considered. Therefore, I posit that it is more productive to focus on the specific relations that develop between small commodity producers, capital, and the state and examine how local political-economic conditions shape such relations and interactions. More specifically, in rural China today, what are the local political-economic conditions that lead a specific form of commoditized agriculture to dominance and, as a result, give rise to a distinct local model of agrarian transition? What local forces and institutions produce among family farmers in the area a similar set of responses to and interactions with agrocapital and markets?

In this article I draw from both firsthand fieldwork data and secondary sources to address these questions. My intention here is not to explain at the household level the economic choices made by farming families to respond to market opportunities in specific ways, but rather to examine on an aggregate level—the village-, township-, or county-level, in various cases—the local conditions that lead to the emergence of a certain aggregate pattern among local family farms in responding to opportunities of commoditized agriculture. Thus, I first conceptually identify key factors in shaping the distinctive patterns of agrarian transition at the local level, and then empirically compare the multiple local patterns observed in rural China. Two factors prove critical. First, the primary dimension in which local patterns of agrarian transition diverge is what mediates direct producers' transactions with markets—especially the product market. Based on this, I identify two paths of agrarian transition—agribusiness-led corporate production and independent household production. Second, the use of wage labor creates a second-order differentiation in each of the two models: contract farming and corporate farming in corporate production, and commercial farming and entrepreneurial farming in independent household production. These two dimensions produce a two-by-two typology of four conceptual models of agrarian transition. I use empirical evidence from representative localities in rural China to demonstrate how, in

each model, the characteristics of small household producers and agribusinesses and relations between the two are shaped by the local political economy. I also discuss an alternative model that may provide a third way between the dominance of labor-hiring capitalist farms and the persistence of smallholding family farms—cooperative production.

## Conceptualizing Local Paths in China's Agrarian Transition

As mentioned earlier, smallholding family farms face obstacles when making the shift from subsistence-oriented grain production to market-oriented, specialized production of commodity crops. Compared to subsistence agriculture, commoditized agriculture imposes new requirements on producers that include, first internally, the skill, labor, and capital investments needed for the new production and, externally, access to product markets. Many commodity crops do not require significant new capital investment beyond what is already needed for traditional grain crops. Many subsistence producers also possess the skills of growing these crops from operating multi-cropping farms. Furthermore, despite commercialization in recent years, China's public agricultural extension system, which still employs a staff of 1.4 million in nearly 200,000 local-level service stations, remains the most developed among developing countries and the most effective in disseminating skills to rural producers (Hu et al., 2009). The increased demand for labor supply from shifting to commodity crops can also be met in most rural areas in China through either tapping into underemployed family labor or hiring temporary workers on local labor markets. Thus, in China's case at least, it is market access that poses the greater obstacle to family producers' shifting to commoditized agriculture. As a result, although the inability to meet the requirements of skill, labor, and capital has certainly forestalled the transition to commoditized agriculture in some rural areas, the ways through which direct producers gain market access are the main dimension that creates diverging local patterns of commoditized agriculture.

Market access can be further disaggregated into informational access (the knowledge of not only market demands but also basic rules of the market), relational access (contact with transactional partners), and physical access (the ability to transport the bulky products to the points of transaction). The critical importance of market access in agrarian transition is actually related to the natural characteristics of agriculture as a land-based enterprise. The

immovability of land restricts producers' spatial location and mobility. It also determines the spatial segregation of the land-based agricultural production from urban consumption, and thus, makes market information, market contact, and physical market access all difficult for agricultural producers to obtain.

In capitalist agriculture, commodity producers sell their products to the market and, through such commoditized exchange relations, socially reproduce themselves. Producers' transactions with the product market, however, can be mediated in different ways, depending on how market access is provided to the producers. Conceptually, we can identify three alternatives of mediating direct producers' transactions with the market: First, producers can directly transact in markets individually through gaining market information, knowing market contacts, and transporting products to market all on their own. Second, conversely, producers can have no direct transactions in the product market but rather sell their labor on the labor market to an external actor—an agribusiness company—and leave it entirely to the latter to gain the market information, contact, and physical access essential for selling on the product market. There is also a third possibility, in which producers' transactions in the product market are intermediated by, not an external actor, but a self-organized cooperative, which collectively gains market information, contacts, and physical access and makes them available to all individual members. These three alternatives through which small agricultural producers gain market access to shift into commoditized agriculture create three different models of agrarian transition, which I refer to as, respectively, *independent household production*, *corporate production*, and *cooperative production*. As I will show later, the three different ways of mediating direct producers' transactions with the market and providing market access to producers also shape relations of production and how labor is used in the production process.

The three competing models of agrarian transition identified here have been referred to in different terms in the literature, although not based on such a conceptual framework. For example, the official survey conducted by China's Ministry of Agriculture (MOA) uses three categories of "organizational forms of agricultural industrialization": those led by dragon-head enterprises, by intermediary organizations, and by specialized markets (Niu, 2002; 2006). Philip Huang (2010b) refers to these as three competing paths of vertical integration, but considers the specialized market-led integration an unstable and transitory path to the other two. Q. Forrest Zhang and John Donaldson (2010) identify six forms of non-peasant agricultural production, which can be grouped into

independent production and corporate production. They do not, however, single out cooperative production because their interest is mainly in distinctive types of relations of production, and cooperative farming has relations of production similar to those of independent household-based commercial farming.

Independent production and corporate production can be further differentiated. Although I do not see the use of wage labor as the exclusive indicator of the emergence of a capitalist agriculture, the replacement of nonwage family labor with wage labor remains a critical development that represents a further penetration of commodity relations into production units (households, for example) and creates new relations of production. Therefore, two variants emerge within each of the two transitional models depending on whether wage labor is used in the production units.

The use of wage labor depends on both the scale and labor-use intensity of agricultural production. The scale of production is constrained mainly by the availability of labor and land. In rural China, however, regional variations in the scale of production—and thus, the use of wage labor—depend less on the availability of commodified labor or the development of labor markets locally than on the availability of land. Given the miniscule scale of production and high labor-to-land ratio in most rural areas in China, local surplus labor or migrant labor is usually available to meet the demand for labor when it arises. The availability of land, on the other hand, poses the greater obstacle to both household and corporate producers who want to expand their production, because most of China's farmland is collectively owned and has been allocated to individual rural households via long-term leases.

Additional land for expanding the scale of production can only come from two sources: leasing unused land from the collective owners, or renting contracted farmland from individual households (or, sometimes, collectively from the village or villagers' group), both of which depend heavily on conditions in the local political economy. Furthermore, as already mentioned, the miniscule scale of agricultural production is also a crucial concern for the central government, which sees it as the main culprit for small farming households' lack of market integration, low productivity, and as a result, stagnating income. For these reasons, increasing the scale of production has been raised by the central government as a central goal in its plan for agricultural modernization. The scale of production—and related with this, the availability of land—are, therefore, an area where regional variations can be created by different policy interventions by local governments and can lead to varied patterns of wage labor use in commoditized agriculture.

Table 1 A Typology of Local Models of Agrarian Transition in Rural China

| | | *Provision of market access* | |
|---|---|---|---|
| | | *Independent production* | *Corporate production* |
| *Use of wage labor* | *Present* | Entrepreneurial family-farming | Corporate farming |
| | *Absent* | Commercial family-farming | Contract farming |

From the discussion above, I derive a two-by-two typology—based on the primary differentiation of modes of mediating direct producers' transactions with the product market and the secondary differentiation of wage labor use—that identifies four different local models in the two distinct paths of transition to commoditized agriculture. I will set cooperative production aside for a separate discussion.

Under independent production in which small commodity producers enjoy access to market information, market contacts, and physical access to the marketplace and sell their products on markets, the use of wage labor differentiates entrepreneurial farmers, whose family farms—still owned and operated by the family—have expanded in scale and employed wage labor, from commercial farmers, who rely on family nonwage labor. When agribusiness companies provide market access to direct producers and mediate producers' transactions with the product market, companies can organize production in two forms. In corporate farming, agribusiness companies directly set up corporate farms on leased land and employ wage labor in managed production. Producers, in this case, sell their labor to the company but have no transactions in the product market. In contract farming, direct producers maintain their control of land and do not enter into formal employment relations with companies; hence, wage labor is not present. However, companies directly control both the production process and the final products of these contract farmers. For the part of production that is under contract, contract farmers do not sell the products on the market, but rather deliver them to companies per the contract.[2] The

[2] In many cases, contract farmers receive all production inputs from companies and only contribute their land and family labor to the production process. The payment they receive for the delivered products is in essence a wage for their labor plus a rent for their land. Some argue that these contract farmers are merely "disguised laborers" (Clapp, 1994). This term further shows that, while contract farmers are not formally wage laborers, their participation in markets is mainly in the labor and land market, not in the product market.

next section provides details of specific cases of each model and discusses how the rise of a model is connected with local political-economic conditions.

## The Political Economy of Local Models of Agrarian Transition

China's rural reform in the early 1980s dismantled collective farming and restored households as the unit of production. Agricultural land, although still collectively owned by rural villages, was allocated to rural households on long-term leases. After an initial increase in productivity resulting from the rising incentives created by this institutional change, China's household-based smallholding agriculture exhibited its inherent limitations. Central among these limitations is smallholding peasant households' inability to participate in commodity markets and to respond to market demand for higher-value crops, which, as discussed earlier, is rooted in the inherent difficulties small agriculturalists face in getting access to market information, contacts, and facilities. Faced with stagnating agricultural productivity and rural income on one hand, and rising urban demand for higher-value, non-grain foods on the other, the central government began to formulate and implement an agricultural modernization program in the mid-1990s. The central government's plan is centered on the concept of "vertical integration"—sometimes also referred to as "industrialization"—which aims at transforming China's small-scale, household-based, and often subsistence-oriented agriculture into a modernized agriculture, with emphasis on increased scale, specialized production of higher-value goods, and market-orientation. The MOA established a new bureaucracy, with branches at all provincial and some sub-provincial units, called the Office for Agricultural Industrialization 农业产业化办公室, to support this agenda of agricultural modernization (Huang, 2010b).

In terms of specific policies, the central government has made efforts in two areas. First, the main tool selected by the central government is the so-called "dragon-head agribusiness companies," which, by vertically integrating agricultural production with their processing and marketing operations, can help provide the much needed capital, skill, and market access to agriculture and organize household farmers into larger-scale production. Agribusiness companies, domestic and foreign alike, can acquire the "dragon-head" designation from various levels of government by meeting certain requirements regarding capital, scale, use of technology, etc., and then qualify for government support that ranges from bank loans to tax deductions (Guo, Jolly, and Zhu, 2007; Waldron, Brown, and Longworth, 2006). From 2000 to 2005, according

to some estimates the central government had invested a total of 11.9 billion yuan to support national-level dragon-head companies (Huang, 2010b). Local governments have also followed the lead and have provided support for local-level dragon-head companies. Not surprisingly, the number of dragon-head companies engaged in integrated agriculture increased rapidly—nearly ten-fold, from 5,381 in 1996 to 61,268 in 2005 (Niu, 2006; Huang, 2010b).

The second area of the central government's program is rural cooperatives. Here the program started later and has been less forceful than that for dragon-head companies. The central government's first serious effort at promoting rural cooperatives began in 1998 in a directive issued by the State Council that legitimated and encouraged the growth of spontaneously formed rural cooperatives (Deng et al., 2010). Later, the MOA began to select rural cooperatives across the country to which it provided support as pilot programs to demonstrate the effectiveness of cooperatives. In 2004, the MOA invested 20 million yuan to support a second round of 100 rural cooperatives (Deng et al., 2010). Then, in October 2006, the central government gave its strongest push for cooperative so far by passing the Rural Professional Cooperative Law, which establishes the legal status of rural cooperatives and urges all levels of government to support them. Compared to the support for dragon-head companies, however, the central government provided little substantive financial support to rural cooperatives. Instead, financial, technical, and physical support for cooperatives mainly comes from the local governments, which leads to regional variations in the growth of cooperative production. According to one national survey, by 2008, 68 percent of villages in China have received some form of government support for cooperatives and 30 percent have received financial support in the form of grants, subsidies, or tax exemptions (Deng et al., 2010).

Unlike both agribusiness-led vertical integration and rural cooperatives, which have received support from the central government, independent commercial and entrepreneurial family farms receive no direct central-level support. Their growth depends more on policy interventions by local governments, especially in the area of market building, such as building specialized trading centers in the local region that help to bring markets—both physically and relationally—within the reach of small independent producers. In the Chinese-language literature, this model is referred to as "specialized market-led vertical integration" (Niu, 2006; Huang, 2010b). In the past decade, "vertical integration" through all three channels has progressed extensively in Chinese agriculture. A report issued by the MOA estimates that, by 2005, half of the country's farmland and farming households were engaged in "vertically

integrated agriculture"—in other words, engaged in commodity agriculture through independent, cooperative, or corporate production (Huang, 2010b).

## Independent Household Production

Because of the high costs of getting access to market information and market contacts, and especially, transporting goods to the physical marketplaces where transactions with processors, consumers, or merchants are conducted, small family producers can only start independent, household-based commodity agriculture when the physical marketplaces are easily accessible. In rural China, this condition is usually met in two ways: first, a rural area that has geographical proximity to urban consumers, and second, an area where some external actor—mainly the local state—has helped to create a stable marketplace locally.

The peri-urban regions of most Chinese cities have a tradition of producing vegetables and animal products commercially to meet the urban consumption demand, thanks to their easy access to the urban market (Skinner, 1978). In these peri-urban rural areas, urban traders penetrate extensively; local wholesale or retail marketplaces that directly supply vegetables and other products to urban consumers are easily accessible to producers by motorized vehicles or even by traditional unmotorized tricycles. Today, independent household-based commodity agriculture remains active and the dominant type of agricultural activity in these areas. A study of horticultural production (including vegetables, fruits, and nuts) in the greater Beijing metropolitan area, for example, finds that an overwhelming majority (87 percent) of horticultural products produced in this peri-urban region is procured through traditional supply channels, such as by itinerant small traders or in local periodic markets (Wang et al., 2009). This study's survey of 50 villages in this area further shows that "households sold almost all of their output to small traders—either in the village or in local wholesale markets" (Wang et al., 2009: 1796). Clearly, the market is easily accessible to small producers in these areas.

Geographic proximity to urban markets plays a crucial role in fostering independent commodity production. The aforementioned Beijing study (Wang et al., 2009) finds that a greater distance from Beijing's urban center significantly decreases the amount of land households devote to specialized horticultural production. It is only in the peri-urban rural areas, where the low cost of transportation has made access to itinerant small traders and local whole-

sale markets easy, that household producers with the needed capital, skill, and labor can fairly easily make the transition into independent, specialized commodity production. In fact, in 2004, a greater share of the horticultural production in Beijing's peri-urban areas came from low-income villages and households than from high-income villages and households, which shows that, on one hand, wealthier villages and households have shifted to other more profitable employment activities and, on the other, independent household-based commodity agriculture has a relatively low threshold of entry and high viability.

I observed a similar pattern in the peri-urban regions around the cities of Zhangzhou 漳州 and Xiamen 厦门 in Fujian province. In Shan'ge 山格 town in Pinghe 平和 county, which is about 30 kilometers from Zhangzhou City, for example, many local households are specializing in the commercial production of vegetables and fruits (mainly jujubes and pomelos). Along the thoroughfare that connects the town center to the cities of Zhangzhou and Xiamen, many traders—some of whom are former local farmers—have set up shops. Farmers ride on their motorcycles to deliver sacks of fruits to these shops regularly during the harvest season and get their crops weighed and are paid in cash on the spot. The fruits are then cleaned, sorted, packaged in cardboard boxes that bear a brand name and the place of origin, and stored in the shops' storage. Trucks sent in by contracted transporters arrive periodically to load up the fruits and ship them to urban wholesale markets.

In peri-urban areas like these, the geographic proximity to urban markets makes the spontaneous market-building process by small private actors possible. Active involvement by the local state, although certainly helpful, is not a necessary condition. For rural areas that are not close to urban markets, however, local government becomes the most important actor in providing the market access needed for the risk-averse and information-deficient small household producers to shift to independent commodity production.

Local governments in rural China often promote market access by literally "bringing markets to farmers"—i.e., building specialized trading centers in rural areas so that retailers, processors, and transporters will come in to buy the products that local commercial farmers specialize in producing. The most famous, widely studied, and replicated—and probably most successful—example of this kind is the Shouguang Vegetable Wholesale Market built in Shouguang county 寿光, Shandong province, the largest in the country. The market started in 1984 with just an old-style small vegetable market on 0.6 hectares of land allocated by the county government. Over the next two decades, the county government invested a total of 40 million yuan and expanded the

market nine times to its current scale: six specialized market centers covering 40 hectares of land, and annual sales of two million metric tons of vegetables of over 300 varieties. The market has brought in vegetable traders from all over the country. They have opened up operations in Shouguang to purchase products directly from small farmers and then integrate them into large volumes, before shipping them out to every corner of the country and foreign markets.

For such markets to be functional, of course, local agricultural producers need to be able to produce products that meet the market demand. State and local public officials in Shouguang also spearheaded the development and promotion of agricultural technologies that are required in commercial vegetable production. The party secretary of Sanyuanzhu 三元株 village, Mr. Wang Leyi 王乐义, has been widely credited with developing the technology of temperature-controlled greenhouses for year-round vegetable production. The county government then organized study trips to Sanyuanzhu village and sent technicians out to all over the county to help disseminate the technology to farmers free of charge.

The easy access to the market and the dissemination of greenhouse vegetable production technology have made commercial vegetable farming a safe and profitable pursuit for small farmers in Shouguang: now over 80 percent of family farms in the county specialize in commercial vegetable farming, using 300,000 temperature-controlled greenhouses covering 53,000 hectares of land; 60 percent of rural household income in the county now comes from commercial vegetable farming (Huang, 2010b).

Similar market-building efforts by local governments—although not always as successful—are found all over the country. In Chenggong county 呈贡, Yunnan, the county government built a fresh-flower trading center with hundreds of stalls for small farmers and a state-of-the-art auction center equipped with computerized trading systems. It has now grown into the largest of its kind in all of Asia. The local government also worked together with higher levels of government to designate special "green express lanes" on the highway connecting the county to the international airport in the nearby provincial capital of Kunming to speed up transportation. Local agricultural extension stations also helped with technical training and information dissemination. With this kind of state support for market-building, virtually all local farmers entered into independent commercial flower production (some in vegetable production to supply the nearby urban market). In other cases, although local governments stopped short of building new marketplaces, through disseminating technologies, providing material and financial support, and organizing a large number of farmers—especially cadre families—to pioneer the specialized

production of a new crop, they created a large enough production base in the region to attract outside merchants and processors to bring in market access (Chen, 2012).

Non-state actors can also become the main force in building market facilities and promoting market access. The multinational company Nestlé Foods, for example, has played such a role and facilitated the transition into independent commodity production of many local farmers in Pu'er prefecture 普洱 in Yunnan. Nearly two decades ago, Nestlé selected several areas in Yunnan, including Baoshan 保山 and Pu'er, as potential areas to procure coffee beans. Although Yunnan has the natural conditions for coffee production, local farmers had no tradition or knowledge of coffee production. Thus, Nestlé essentially did what the local government did in Shouguang: it provided training and technical services for coffee-growing free of charge to any interested farmers and at the same time, set up many purchasing stations throughout the region. Nestlé, by establishing a long-term presence and procuring coffee beans here for its instant-coffee production in Guangdong province, has brought once remote market opportunities directly into the reach of small producers. The presence of Nestlé also encouraged other actors—for example, local township and village enterprises—to also enter the coffee market, further increasing market opportunities for producers. As a result, even though Pu'er is geographically remote and has negligible local demand for coffee-based products, many poor farming households in the area shifted into specialized coffee production and sell to Nestlé on the spot market.

In both the peri-urban areas where market access has grown spontaneously and in areas where local state or non-state actors have actively engaged in building market facilities and disseminating market accesses that are openly accessible to small producers, market opportunities have been mostly provided by either small traders or local wholesale markets and usually are open to producers of all scales. Rural China's legacy of collectivized agriculture, relatively equal allocation of land among village members, strong public agricultural extension services, and the strong regulation of family reproductive behavior by the state have also limited the disparities among household producers in the same area in terms of skill, capital, and labor endowments. As a result, in these areas, the transition from subsistence peasant agriculture to independent, household-based commodity agriculture is usually something in which a large portion of the local agricultural population participates. Such massive participation in independent commodity agriculture in an area creates a pattern of regional specialization in selected commodity products, which results in an increased scale—on a regional level—of such production and subsequently

attracts even more market opportunities to the region, which helps to further fuel the growth of local independent commodity production and regional specialization. In the peri-urban regions surrounding the cities of Xiamen, Zhangzhou, and Quanzhou in southern Fujian, for example, neighboring villages in the same town each specialize in a different commodity, ranging from mushrooms, loquats, and bananas, to tea. In areas where the transition to specialized commodity production is facilitated by local governments, because households' specialization is determined by the specialized trading centers built by local governments, spatial specialization tends to happen at a more aggregate level—the county level, for example, in vegetable production in Shouguang and fresh flower production in Chenggong—rather than at the township or village level.

This type of massive participation in independent commodity production also means that most local households are using their allocated farmland productively, which severely restricts the availability of land on the local rental market in these densely populated areas already facing land scarcity. In many of these relatively developed peri-urban areas, rural industries are also competing for the precious land, further reducing its availability to agricultural producers who want to expand their scale of production. As a result, expansion of production through acquiring more land on the rental market becomes very difficult, if not impossible, and wage labor is usually only needed during peak seasons; commercial farming households that rely on family nonwage labor become the dominant type of agricultural producers in these areas.

The emergence of labor-hiring entrepreneurial family farms in rural China depends primarily on the availability of land for the expansion of the scale of production.[3] Land becomes available mainly in two situations. The first is in regions where there is a natural availability of land that allows for expanded-scale production. In Heilongjiang province, for example, the large-scale state farms have in recent years decollectivized. They allocated state-owned farmland to employee households on long-term leases just like rural villages did with collectively owned farmland. They also encouraged employees to reclaim new land, which employees then have long-term use rights to. As a result, former state-farm employees now have farms on a scale unheard of in more densely

[3] Strictly speaking, these farms that employ nonfamily wage labor are no longer family farms. They, however, share more similarities with family farms using nonwage labor than with the corporate farms discussed later. In these entrepreneurial farms, the farmer family usually remains the unit owning assets and organizing production. Their scale of labor hiring and land renting is usually quite small, employment relations remain informal, and no staff is employed.

populated parts of the country: the largest farm in Jiansanjiang State Farm 建三江农场 is over 10,000 hectares, while the average size of family farms in many parts of China is below one hectare. Not surprisingly, these large-scale family-controlled farms rely on hired migrant wage labor for their specialized production, mainly rice, soybeans, and corn.

The other situation in which entrepreneurial farmers can emerge is when endowments of capital, skill, or land are more unevenly distributed within the local agricultural population. Under such conditions, a proportion of the population, due to their lack of skill, capital, or land, is excluded from profitable commodity agriculture. Their land is therefore not productively used, and the opportunity cost for them to rent out their land decreases, leading more of them to rent out their land to other commodity producers. Typically, such a process starts with the unequal allocation of collectively owned nonarable land—such as mountain slopes, wasteland, marshes, and forestland. In this unequal distribution, it is families that either have or are connected to local leaders that usually benefit. Allocation of village-controlled nonarable land is much less constrained by the egalitarian principles that apply to basic farmland. Once gaining control of such land, these entrepreneurial families can expand the scale of production and hire wage labor.

In An'ning county 安宁 in Yunnan, for example, an urban businessman, whose father-in-law happened to be a village party chief, managed to rent hundreds of mu of mountain slopes in that village, which had previously been classified as wasteland, and built a commercial orchard, hiring migrant laborers to do the farming. In another case, in Shan'ge town in Pinghe county in Fujian, where we find wide participation of small family farms in commercial production of fruits and vegetables using their allocated farmland, a small number of families are also growing eucalyptus trees—to supply to a local paper mill—on a large scale on collectively owned forestland. Other farming families are excluded from this because only these families—mostly village cadres and their relatives—had both the foresight and the capital to contract from the villages or rent from other households all the forestland. Chen's (Chen, 2012) study of navel orange production in a county in southern Jiangxi reveals the same pattern of differentiation among farming households, whose access to forestland varies greatly. Some, deterred by the high risks in this new market endeavor, rented out all their forestland to pursue nonfarm wage work, while others—in this case, cadre families under the prodding of the county government, which spearheaded the introduction of this new crop—rented in forestland and became labor-hiring large producers. In other cases, scare skills, such as those needed in growing certain high-value vegetables, can also

exclude some households and lead them to pursue nonfarm jobs while renting out their land to those who have such skills.

## Corporate Production

The penetration of agribusiness into agricultural production in China takes two forms: directly employing wage labor and managing agricultural production in corporate farms (corporate farming), and organizing multiple household producers into coordinated production through contract arrangements (contract farming). In both forms of corporate production, the direct producers—whether wage labor in corporate farms or nonwage family labor in contract farming households—no longer directly transact in the product market, but neither are they independent producers. Instead, they depend on agribusiness companies to both provide inputs and productive assets that enable but also control the production process and mediate their transactions with markets.

In the literature, the choice for agribusiness companies between contract farming and corporate farming is mainly seen as determined by the technical aspects of agriculture as a natural production process (Mann and Dickinson, 1978). When capital is not able to industrially organize an agricultural production more productively than small farmers (in other words, achieving economy of scale), it then chooses to settle off-farm or near-farm on the agricultural commodity chain and specializes in producing farm inputs and processing farm outputs, while leaving the natural process of agricultural production—the most risky part in the commodity chain—to small family farms through contract arrangements. This also allows companies to take advantage of the self-exploitation by small family farms of unpaid and flexible family labor. In other cases, when capital manages to industrialize agricultural production and attain higher productivity than small farms, it then chooses to directly organize agricultural production and employ wage labor to capture the surplus generated in that process. Although such an efficiency-driven consideration by agribusiness companies can certainly be relevant, this argument overlooks the often more important constraints and incentives in the local political economy that determine companies' choice of specific forms of production, as the case of rural China shows.

The kind of agribusiness companies doing contract farming in China runs the whole gamut: domestic and foreign, big and small, processors and retailers, exporters and domestic suppliers, public and private. When entering agriculture in China, these firms face a unique constraint: virtually all arable land is

collectively owned and has been already allocated to rural households on a long-term basis. There are ways through which companies can gain access to land to set up corporate farms—for example, leasing unused land from villages and then reclaiming it, or renting land allocated to farmers from individual farmers or villages; but for most companies, contract farming becomes an important way of getting land and entering agriculture.

Agribusiness companies set up contract farming arrangements with household farmers in one of the following three patterns. First, in what is called the "company + household" model, agribusiness companies directly contract with rural households and set up terms of production and purchasing. In the second, "company + base + household" model, besides contracting with rural households, agribusiness companies also set up their own production bases—corporate farms using wage labor—on land they have gained direct control of, usually in the same geographic areas. In the third model, "company + intermediary + household," companies establish contract arrangements with intermediary agents, who represent individual farmers in their dealings with companies. The most typical intermediary agents are producers' cooperatives formed by rural households, but village authorities and even local governments may also act as the intermediary to sign contracts with companies and organize rural households' production.

Contract farming faces an inherent risk of defaulting. When agribusiness companies and household producers enter pre-production, pre-marketing contracts that require the delivery of a product at a specified price, quantity, and quality, there is almost always a loser: when the market price rises above the contracted price, farmers have an incentive to sell to open markets; when the opposite happens, companies have an incentive to buy from open markets—unless there is no alternative market outside the contract. Contract arrangements, therefore, are most stable when agribusiness companies have market monopsony and farmers are deprived of the opportunity of side-selling. Because farmers are intrinsically motivated to violate contract terms and legal enforcement is usually unpractical, for agribusiness companies, market monopsony is their best protection and, as a result, is a widely pursued strategy. The viability and stability of contract farming depends not on the essential nature of agriculture or of a certain crop, but on how successful companies are in creating and maintaining market monopsony and how effective farmers can break it—both are determined by the constraints and motivations presented to them by the local political economy.

From this perspective, the incompatibility between contract farming and independent household production becomes obvious: contract farming

requires market monopsony, which means that the agribusiness company is the sole conduit between producers and the product market and therefore monopolizes access to markets. Independent household production, on the other hand, requires the easy and open access by small household producers to market opportunities. The presence of independent production of a given product in a local area, therefore, greatly threatens the stability of the contract farming of that product. Even if there are some households in the area that, for various reasons, cannot produce independently and are willing to enter contract farming, the presence of non-contract producers and thus other purchasers would effectively break the market monopsony that agribusiness companies need to suppress contract farmers' side-selling and maintain stable contract relations.[4] Not surprisingly, in both the secondary literature and the primary fieldwork, contract farming is virtually never found in the same area where independent household-based commodity production thrives. For example, a survey of 201 villages in the Beijing metropolitan region, where commercial vegetable production dominates, found no incidence of contract farming (Wang et al., 2009). In a statistical analysis of multi-province survey data, Guo Hongdong, Robert Jolly, and Zhu Jianhua (2007) found that proximity to markets strongly and significantly reduces farmers' likelihood of joining contract farming.

Agribusiness companies in China have adopted various approaches to form de facto market monopsony. One fruit juice company in Yunnan's Xishuangbanna 西双版纳 prefecture, when facing high rates of farmers' defaults in its initial peri-urban site of contract farming, where independent production also existed, shifted to a remote mountainous area to continue contract farming of tropical fruits so that farmers there were geographically locked into the company's monopsony. Another widely used approach is only selecting for contract farming products that have no local market and can only reach the export market through the company. For example, the four companies Sachiko Miyata, Nicholas Minot, and Hu Dinghuan (2009) studied all sell above 90 percent of their products to either export markets or domestic supermarket chains, which also tend to require differentiated products. Even for these companies that control restricted access to distant markets, however, their monopsony is constantly threatened by merchants or processors who follow them into the area

[4] The only possibility for contract farming in the presence of independent production is to produce a differentiated product. But even in this situation, it is difficult for companies to prevent the diffusion of technologies and the adoption of that differentiated product by non-contract producers.

to get a share of the supply, bringing with them alternative access to markets. Take Nestlé's operation in Yunnan for example. When Nestlé brought coffee cultivation into Yunnan, it initially started with contract farming. It, however, had to abandon contract farming later due to the rampant side-selling by coffee farmers to local processors and merchants who have followed Nestlé into this lucrative market. Nowadays, Nestlé simply maintains purchasing stations in production areas and buys coffee beans from commercial farmers on spot markets.

The problem of side-selling by contract farmers threatens agribusiness companies' ability to secure stable procurement of products and thus motivates companies in rural China to gain greater control over the production process by entering corporate farming. Many agribusiness companies in China adopt the "company + base + household" model, in which they engage in two forms of production simultaneously—wage-labor production in the corporate base farm and contract farming with household producers using nonwage labor. This practice is economically puzzling: if one form is more efficient, there is no need to adopt the other. This has to be explained by the unique political economy in rural China: companies on one hand are pushed by contract producers' side-selling to enter corporate farming, but on the other, are constrained by the scarcity of land and unable to meet all procurement needs from corporate farms alone. Apart from ensuring at least a partial supply of products, having corporate farms has another advantage: by controlling a substantial share of the local market in their own base farms, companies not only can drive down the market price but also reduce the opportunity for open spot transactions, both of which limit farmers' ability of side-selling. Therefore, agribusiness companies in rural China use contract farming to supplement corporate farming and use corporate farming to stabilize contract farming. For example, Xinchang 新昌 Foods, a poultry meat processing company in Shandong province, receives 40 percent of the poultry that it processes for multinational fast-food chains from about 10,000 farmer households in Changyi 昌邑 and neighboring counties, who produce for the company on contract. But the company also runs a base farm on land leased from villages that provides another 40 to 50 percent of its poultry supply. Similarly, all four companies studied in Miyata, Minot, and Hu (2009) have base farms, including one that only provides 5 percent of one company's procurement.

Not surprisingly, in rural China, sole reliance on corporate farming by an agribusiness company is mostly seen in areas where the availability of land can meet the scale requirement of the corporate farms. Land for corporate farms can come from two sources, as mentioned earlier: leasing unused land from

villages, or renting allocated land from a large number of individual households, which is mostly brokered by the village authorities. This means that large, stand-alone corporate farms are found in three types of areas: first, areas that are geographically remote and sparsely populated; second, areas where households are willing to rent out their land and work as employees in corporate farms that provide higher incomes; and third, areas where even though households can independently engage in commodity production, companies nevertheless are able to use strong support from and connections with local governments and village authorities to either strong-arm households into renting out their land or buy-off farmers. Therefore, just like contract farming, corporate farming faces competition from independent production, as these forms of production increase the value of rural households' farmland and make them less likely to rent out land to companies.

Availability of wage labor, on the other hand, is usually not a constraint that limits the emergence of corporate farms. Even if we assume that corporate farms have a similar level of productivity as family farms and thus are not able to pay high enough wages to attract local labor from family farming into wage work, migrant labor from poorer parts of the country is usually available to meet companies' labor needs. In Dahongpo 大红坡 coffee plantation in Baoshan, Yunnan, the hundreds of wage workers mostly hailed from Zhaotong 昭通 prefecture, one of the poorest areas in the province. In other corporate farms in Fujian and Shandong, migrant workers from Yunnan and Guizhou formed the main workforce.

Among the provinces I study, Yunnan is the one where large, stand-alone corporate farms are the most prevalent, for all the above reasons. Even in places where local households are engaged in independent production, like commercial coffee farmers in Pu'er, the availability of unused land and supply of migrant labor still allow corporate farms to emerge, right adjacent to small family farms. In contrast, in southern Fujian, where population density is high and independent production highly developed, I found no presence of stand-alone corporate farms. Similarly, in the more densely populated peri-urban areas of Yunnan, such as Chenggong county, where thriving independent production by rural households restricts land supply to corporate farms, no presence of large-scale corporate farming is found. In Shandong, thanks to strong support from local governments, agribusiness companies grew rapidly; the limited availability of land, however, still restricted their scale of production. Most corporate farms here are, as mentioned above, supplemented by contract farming. Furthermore, in areas where independent production is more developed, such as Shouguang, the presence of corporate farms is much

more limited compared to areas where independent production is less developed, such as Anqiu 安丘 and Changyi, both in Weifang City 潍坊.

## Cooperative Production: A Third Way?

Cooperative production usually emerges in three types of situations. First, when a substantial number of family farms in an area are already doing independent commercial production, they may find it more beneficial—actually in almost all cases, this should be true—if they join forces in their dealings on markets or even coordinate their otherwise independent production. The benefits of joining forces to form producer cooperatives are obvious: the cooperatives can buy inputs at bulk and discounted prices, raise productivity and product quality through disseminating information and providing technical services, standardize production, secure finances, shield farmers from risks by pooling resources, and even gain forward linkage into the more profitable downstream segments through marketing and processing the products.[5]

A second type of situation in which cooperatives can emerge is when small household producers face difficulties in gaining either productive assets such as skill and capital or market accesses to enter commoditized agriculture, yet neither the local government nor outside market actors are providing these. Outside purchasers will not come in unless there is a sufficient scale of production of a product that is not easily available—at least at a comparable price—on the existing market; and it is impossible for individual households to either reach that scale or venture out to find markets for the products on their own. In the absence of local government support, cooperatives, which organize a sufficient number of households into specialized production to reach a marketable scale and thus bring in outside market actors, are the only alternative that can possibly bridge this gap between distant markets and small and isolated household producers. Cooperatives of course are also crucial in providing productive assets such as skills and capital to small producers to assist their transition into specialized commercial production.

Clearly, in both situations, but especially the latter, it is crucial to have a local social infrastructure—for example, a source of leadership, a relatively high level of trust, and the absence of severe socioeconomic differentiation

[5] The benefits of rural cooperatives to farmers are widely known in the development literature. For a general review, see Staatz, 1987.

among households—to overcome obstacles to collective action. In rural China, collective authorities or individual village leaders often have become the leading force in organizing rural households to form cooperative organizations. In Yinzhaozhai 阴赵砦 village, Xingyang county 荥阳, Henan, for example, the village's successful wheat breeding cooperative is the brainchild of the village party secretary, Mr. Yin. He conceived the cooperative ten years ago as the only way for this farming village to raise its income, and persuaded villagers to join. Similar cases can be found in the Chinese-language literature, for example, Han Shuming (2007) and Zhou Yanping, Chen Huiying, and Jiang Aiping (2002). But the difficulties faced by these bottom-up, spontaneous cooperatives are illustrated in the widely publicized case of Nanmazhuang 南马庄 village, in Henan's Lankao county 兰考. Despite the successful internal mobilization to form a cooperative within the village, led by the able village leader, the main product—organic rice—still faced a cold reaction on the market, not surprising given the cooperative's inability to either publicize it or place it with major retail chains. The venture was only salvaged after a professor from Beijing, who was seconded to the county government and attached to this village, took some rice to sell in Beijing and caught the attention of the media—a form of outside intervention that is surely irreplicable elsewhere.

Then, there is also a third type of situation where cooperatives can more easily form, but not necessarily in a healthy way. Instead of being formed bottom-up and spontaneously by household producers, cooperatives can also be formed in a top-down manner by more powerful local actors, including local governments (especially agriculture-related agencies), agribusiness companies, and large entrepreneurial producers. In keeping with the local corporatism model that had fueled the growth of township and village enterprises, the state has resorted to the same approach to mobilize grassroots governments to lead the development of rural cooperatives. Studies have found that increasing support from local governments is strongly associated with growth in rural cooperatives (Deng et al., 2010). One study found that, in Weifang City in Shandong, an area where rural cooperatives have seen rapid growth in recent years thanks to the local government's strong support since 2004, the number of cooperatives had increased to 2,324 by 2006 (92.2 percent of which are producer cooperatives), with a total of 460,000 members—about 45 percent of the county's agricultural labor force (Han, 2007).

The high growth rate in recent years, and especially the strong hand of local governments in pushing this growth, however, is a mixed blessing at best. Experiences in other countries have shown that excessive government interference has been the leading cause of politicization and inefficiency in cooperatives

and of their decline and even eventual dissolution (Baviskar and Attwood, 1995). Similar experiences are also found in China (Lu, Deng, and Li, 2011).

The word "cooperative" has become to mean many things in rural China. From visiting cooperatives during fieldwork and reading media reports of cooperatives that are lauded as success stories, I find that it is not unusual that some cooperatives are neither producer cooperatives nor producer shareholding companies, and have little to do with organizing households into coordinated commodity production. Some exist in name only and were set up by village authorities or local officials to answer to upper-level pressure about promoting cooperatives. Others are professional associations that mainly provide members supplementary pre- or post-production services in information sharing and product promotion but are not involved in the production process. Even worse, local elites can also strategically use cooperatives for their own interests.

Unlike small-scale commercial farmers, labor-hiring entrepreneurial farmers, who have already shifted to commodity production on their own—and quite successfully so, otherwise they wouldn't have expanded their production by hiring labor and renting more land—have much less incentive to join a producer cooperative. Thus, the cooperatives they form typically take the form of professional associations, and are mainly for the purpose of disseminating market information, sharing skills, and coordinating market strategies.

Besides that, large labor-hiring entrepreneurial farmers can also be a force that inhibits the healthy development of cooperatives. In some cases, large entrepreneurial farmers have formed cooperatives to capture both state subsidies for rural cooperatives and the reduced transaction costs in dealing with suppliers or purchasers. A few small farmers have been included in these cooperatives, but big farmers have taken the lion's share of the benefits. Even worse, by forming these cooperatives, big farmers can act as the middleman, and profit from the difference between the wholesale price given to the cooperatives and the price offered to smaller members of the cooperative. Agribusiness companies and commercialized government agencies are equally enthusiastic in forming cooperatives by simply re-branding themselves to get a share of state subsidies (Tong and Wen, 2009). One study finds that among the 136 cooperatives in a particular city, 125 were formed by big, entrepreneurial farmers, four by government agencies, five by dragon-head firms, and only two by villagers (Zhang Xiaoshan, 2005).

Reliable data that allow for a more rigorous analysis of local conditions that influence the growth of cooperative production in an area are not yet available. But the discussion above suggests two hypotheses. First, there appears to

be a competitive relationship between entrepreneurial farmers and agribusiness on one side and producer cooperatives on the other. In an area where entrepreneurial farmers or agribusinesses have gained dominance, the growth of producer cooperatives for smaller commercial households will likely be stunted. Second, when a strong social infrastructure for collective action is present, there are higher chances of cooperatives being successful. Having some external impetus—such as a company searching for producers to meet its demand for differentiated products or a local government actively supporting cooperatives—will further enhance the chances of cooperatives being successful; but if the two internal conditions are absent, the external impetus may only result in the short-lived or nonfunctioning cooperatives we see widely in today's rural China.

## Conclusions and Discussion

A comparison of the competing models of agrarian transition in rural China shows that variations are primarily created by different conditions in the local political economy. When markets are openly and easily accessible to small family producers—due to either the local government's effort in market building or the spontaneous spreading of market access in peri-urban areas by market actors—independent household production becomes the dominant form of commoditized agriculture. In areas where opportunities for independent production are lacking, family farms can still enter commodity production—without being dissolved into individual wage workers employed by agribusiness companies—through forming producer cooperatives and collectively gaining market accesses. The ability of local households to enter cooperative production, however, depends on both external conditions—such as the presence of unmet market demand for differentiated products and support from local governments—and internal conditions—strong collective leadership that helps to organize collective action and the relative weakness of entrepreneurial farmers and agribusiness. For agribusiness companies in China, the greater challenge they face in entering agricultural production is not some natural obstacles rooted in the biological and land-based nature of agriculture, but rather competition from independent household production. Therefore, corporate production—in the form of either contract farming or corporate farming—only thrives in places where the local political economy is unfavorable to independent production: for contract farming, the lack of locally accessible market opportunities, which allow companies to have market

monopsony; and for corporate farming, the availability of land, which is often made possible with the help of local government or village authorities.

These findings here are just hypotheses awaiting further confirmation. One theoretical insight from these findings is that the divergence between family farming and corporate agriculture is not so much determined in the production realm, but more in the circulation realm—especially in how producers interface with the product market. Both the orthodox Marxist-Leninist approach and the Chayanovian approach focus primarily on the production process and try to determine either the superiority of capitalist farms or resilience of family farms on the basis of some advantages in the production process—for example, the former's economy of scale, and the latter's insensitivity to declining marginal labor productivity and the ability of self-exploitation. The famous and long-standing debate on the inverse relationship between farm size and productivity is an illustration of this (Bramall, 2004; Patnaik, 1979; Sen, 1962). What this study suggests, however, is that the importance of these differences in the production process in determining which form of production gains dominance is overestimated. In fact, neither form has an intrinsic advantage in the production process that cannot be offset by changes in the production function—i.e., how various productive assets are combined and utilized.

This leads to two tentative propositions. First, external conditions in the local political economy—rather than some essential, intrinsic qualities—are more decisive in determining how productive and competitive a particular form of production is. If the confrontation between family farms and agro-capital were determined by the natural characteristics of agriculture rather than local political-economic conditions, then we would never see the kind of coexistence of independent, household-based commercial coffee farmers, large corporate coffee plantations relying solely on wage labor, and household farmers producing coffee under contract for local processors in the same area—such as the case in Pu'er, Yunnan. The same form of production can also have widely different results in different locations. For example, the large-scale coffee plantation I studied in Yunnan is quite successful, thanks to the availability of migrant labor; yet an experiment with large-scale, labor-hiring rice farming in Anhui failed because of stringent labor supply in a local economy where nonfarm job opportunities existed (Wang and Gui, 2011).

Second, advantages in markets are equally if not more important than those in the production process in determining the strength of various forms of production. The resilience of family farms in the face of the penetration of capital into agriculture is based less on natural obstacles in agricultural production,

than on their ability to independently access market opportunities. Only when they have such access can the natural obstacles help sustain them in competition with corporate production using wage labor. Conversely, the success of agro-capital in taking control over land and proletarianizing labor from family farms also depends more on how successful they are in restricting family producers' access to markets.

This view also suggests that if we narrowly focus on the production sphere, we may mistakenly conclude that the persisting dominance of family farms in today's Chinese agriculture evidences the lack of penetration by capital or the suppression of the logic of capital. But if we abandon the sectoral and reified conception of agriculture, and instead see it as an ongoing trans-sectoral organization of natural processes, embedded in the larger circulation of capital in agro-industrial complexes, we may in fact find that it is more advantageous for capital to settle in the circulation processes where it can more effectively appropriate the surplus from direct producers by virtue of its greater power in markets. Recent studies have shown that, in various places, commercial capital is gaining oligopolistic and even monopolistic control in every step along the circulation process that brings agricultural products to consumers—from rural procurement to urban wholesale and retail (Wu, 2012; Zhang and Pan, 2013; Zhong and Kong, 2010). By doing so, it pockets a greater surplus for itself and drives down the profit margins of direct producers. For family producers in today's China, their relationship with commercial capital, which determines their positions on markets, may have become more crucial than those with capital in the production process (Huang, 2012). In this sense, the more important transformation that capital can bring to Chinese agriculture is not the dissolution of family farms or the proletarianization of the rural labor force, but rather the integration of agricultural production into the trans-sectoral circulation of capital, which then subjects family producers to the surplus transfer in market processes.

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# The Dynamics of Capitalization in Chinese Agriculture: Private Firms, the State, or Peasant Households?

**Philip C. C. Huang and Yuan Gao***

# 中国农业资本化的动力: 公司、国家、还是农户?

黄宗智、高原

**Abstract**
Chinese agriculture has undergone a quiet transformation in the past fifteen years. The "old agriculture" of grain, cotton, and oil crops has seen a tremendous rise in uses of machinery (and also farm chemicals) to save labor. At the same time, the capital and labor dual-intensifying "new agriculture" of higher-value products—vegetables, fruit, meat, poultry, fish—has expanded greatly. These changes have been accompanied by substantial declines in the number of people working in agriculture. Together, the changes add up to a high degree of "capitalization" (i.e., increased capital inputs per unit labor) in Chinese agriculture. This article presents detailed quantitative evidence for these commonly neglected changes.
Contrary to conventional assumptions, the capitalization has been powered principally by peasant household investments, more than state or capitalist firm investments. This fact points to the need to rely more on peasant initiative in the future, by providing greater state guidance and support for peasant family farm-based endeavors, rather than strongly favoring "dragon head" enterprises as in the past decade.

**Keywords**
old agriculture, new agriculture, state investment, capitalist firms, family farming

* **Philip Huang** teaches in the Law School of the Renmin (People's) University of China, and has just completed an expanded third volume (in Chinese) of his study of Chinese agriculture from the Ming-Qing to the present.

**GAO Yuan** is an assistant professor in the School of Agricultural Economics and Rural Development of Renmin University of China. He received his PhD in theoretical physics from Shanghai Jiao Tong University.


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**摘要**
过去15年间，中国农业经历了悄然但巨大的变化。"旧农业"（粮食、棉花、油料作物）大量使用机械及农药以节约劳动。与此同时，资本与劳动双密集的"新农业"（主要是高产值的蔬菜、水果、肉、禽、鱼）有着极大的发展。这些变化是伴随农业就业人员数的持续下降而来的。结果是中国农业显著的"资本化"（亦即，单位劳动力资本投入的增加）。对于这些普遍被忽视的事实，本文将给出详细的量化证据。

与通常的假设不同，中国农业资本化主要是由农户投资推动的，其总量比国家和农业企业公司的投资还要大。这一事实的重要意义在于，未来中国农业的发展，需更注重和依赖农户的能动作用。国家需对农民家庭的经营行为给予更大的服务和扶持，不应像过去十年间那样，一味将政策支持倾斜于"龙头企业"。

**关键词**
旧农业 新农业 国家投资 资本主义企业 家庭农业

While neoliberals commonly assume that agricultural development can only be driven by marketized firms (or firm-like family farms), Marxist planners often assume that it can only be driven by state investment (or subsidies). While each of the dynamics pointed out in those two perspectives has been important in Chinese agricultural change in recent decades, there is a third and even more important dynamic that has been largely overlooked. Capital investments necessary for agricultural development have in fact come mainly not just from private firms or state investment, but even more from peasant family farms, and have been drawn mainly from the wages earned by peasants working off-farm. The last is perhaps the most unexpected dimension of the recent Chinese agricultural development experience.

Along with China's general economic development, there has been a steady rise both in the opportunities for off-farm employment and in wages, causing a rise in the opportunity cost of farm labor. That in turn has caused more and more farming peasants to expect higher and higher returns from their work. Because the returns from hand plowing-planting-harvesting and hand weeding in the "old agriculture" (i.e., of "big-field" 大田 farming of mainly grain, cotton, and oil crops) have fallen well below market wages for off-farm work, there has been greater and greater resort to hiring in tractor plowing, planting, and harvesting, as well as using herbicides 除草剂 (rather than human labor) to control weeds (mainly in rice farming). At the same time, the exit of younger peasants for off-farm employment has meant the "seniorization" of the agricultural workforce—these days consisting mainly of middle aged and older men and women. That too has added to the need for mechanization to save labor. In grain farming in general, such operating capital investments have risen five-fold in the past fifteen years, according to the National Development and Reform Commis-

sion's sampling of 68,000 selected households. Similar tendencies are evident in cotton, soybeans, and oil crops, the other major crops of the "old agriculture."

The costs-benefits survey sample, however, might well be skewed toward more "advanced" households, for reasons to be examined in detail below. Nevertheless, even lower estimates, based on the 1996 and 2006 national decennial survey of all farm households, suggest impressive expansions in the use of machinery and thin plastic covers (to control temperature, moisture, and sometimes also weeds), about three-fold in the period 1996-2010.

At the same time, the decline in birth rates since the 1970s and the tide of out-migration of peasants for off-farm work have together resulted in a marked decline during recent years in the size of the rural workforce, by about 5 million each year after the turn of the century, increasing since 2006 to nearly 10 million a year. At the same time, off-farm employment within rural China itself has also increased rapidly. The combined result is that during this past decade, the number of farming persons has declined by an average of 12 million each year, dropping from 320 million in 2001 to less than 200 million in 2010.

The dimensions of the increase have been such as to propel a quiet revolution in farming methods. In contrast to the pre-1995 "revolution" in farming, which had been mainly an extension of the original "green revolution" (principally increased use of chemical fertilizers and scientific seed selection) that had driven the modernization of Chinese grain farming since the 1960s, the last fifteen years or so have seen this new change of greatly increased use of machinery and farm chemicals 农药 to save labor. Because so little has been done along these lines, the quantification we present is of necessity very detailed, perhaps even overly so. Our data show that such operating capital investments in the old agriculture might have totaled, as an upper-limit estimate, about 407.3 billion yuan in 2010. A lower, perhaps more reliable, estimate is 244.0 billion. They have brought a degree of "capitalization" (in the sense of increased use of capital per unit labor) that is surprising and has changed the "old" agriculture in fundamental ways.

The other main change has been great expansions of the "new agriculture"—of higher-value farm products that are both capital- and labor-intensifying, such as vegetables, fruits, meats, poultry, fish, eggs, and milk. Those generally require several times more investment of operating capital than grain, for fertilizers and other special modern inputs (e.g., more fertilizers for vegetables, processed feed for farm animals, and special bags 果袋 needed for growing high-value apples). The total of such increased operating capital investments in small-scale household production of eight major products (vegetables, apples, pigs, dairy cows, cattle, mutton and lamb, chickens, eggs) of the new agriculture amounted to 1218.6 billion yuan (in 2010). Since we limit ourselves

here to the new, more advanced agriculture, there is not the same problem here of possible skewing in data toward the more advanced forms.

The new agriculture also requires capital investments in fixed assets 固定资产, such as plastic tents for vegetables (commonly termed "agriculture with infrastructure" 设施农业), fruit orchards, structures for animal raising, fish ponds, and so on. The total of such investments from peasant households reached by 2010 about 230.5 billion yuan.

Peasant capital investments (fixed and liquid, old and new agriculture), at a combined total of 1,693.1 billion yuan, have come initially mainly from earnings from the peasants' off-farm work, totaling about 5,000 billion yuan in 2010, and have been sustained partly by the higher returns from the new agriculture. That dwarfs investments by both the state and agricultural firms. In other words, peasant households have been the main force behind the vigorous capitalization of agriculture in the past fifteen years.

Needless to say, the phenomena described above have been most apparent in the more advanced east coast regions and areas adjacent to urban centers, and less so in inland, outlying or mountainous areas.

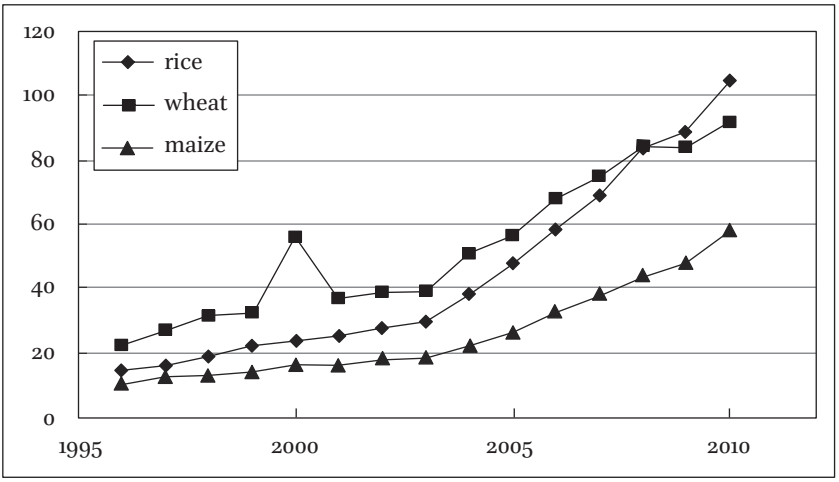
What is unmistakable is that, despite the unfair treatment as second-class citizens they have received for off-farm work in China's second-class "informal economy" (no labor law protection, lower wages, longer hours, and little or no benefits compared to urban residents—Huang 2009), peasants have in fact made huge contributions to furthering China's agricultural development. The record argues for policies that would facilitate and support still greater contributions from peasant family farms.

## Increased Use of Machinery and Labor-saving Farm Chemicals in the "Old Agriculture"

According to the National Development and Reform Commission's sampling of 68,000 households on costs-benefits in different crops between 1995 and 2010, use of farm machinery in grain farming (using the three main grain crops—rice, wheat, maize—as a proxy for all grain) increased no less than five- to six-fold (from roughly 10-20 yuan per mu to about 60-100 yuan in "constant prices" 不变价格), as shown in Figure 1. At the same time, use of herbicides (to control weeds and save labor, mainly in rice farming) and pesticides (to control insects) increased two- to three-fold, from about 5-15 yuan per mu to about 10-45 yuan per mu, shown in Figure 2.

These changes have occurred while investments in the other two major modern inputs, chemical fertilizer and improved seeds (the main propellants

Figure 1. Machinery Inputs in Grain Farming, 1996-2010 (in yuan per mu, by constant prices)

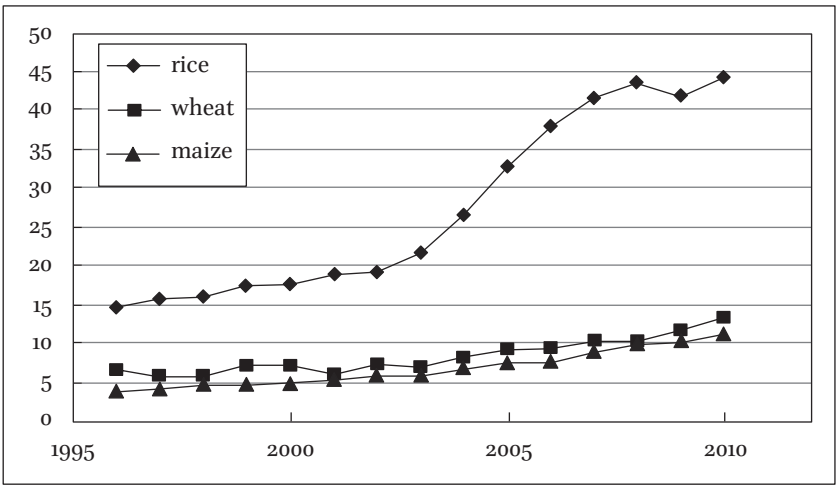



***Source***. The data in current prices come from the costs-benefits surveys in *Quanguo nongchanpin chengben shouyi ziliao huibian* (hereafter *Quanguo nongchanpin*), 2007, 2011: tables 1-2-1, 1-7-2, 1-8-2. Constant prices are obtained by using the "farm machinery" 机械化农具 price index (in the price indices for different agricultural "means of production" 生产资料) to arrive at adjusted constant prices. The data for indexed prices for different agricultural means of production come from the *Zhongguo nongcun tongji nianjian*, 1997-1999: table 7-8; 2000-2006: table 8-7; 2007-2011: table 8-4.

of the "green revolution" of the 1960s and 1970s), have increased only modestly (Figures 3 and 4). The result has been a large increase in the proportion occupied by machinery and farm chemicals inputs in all (circulating) capital inputs into farming: from about 15 percent (machinery inputs) + 11 percent (farm chemicals), or 26 percent of all "modern inputs" (farm machinery inputs + chemical fertilizer + improved seeds + farm chemicals), up to 54 percent (37 percent farm machinery and 17 percent farm chemicals).

Similar tendencies have occurred in soybeans and oil crops (8.6 percent of sown acreage in 2009) and cotton (3.1 percent), the other major components of the "old agriculture." The tendency in machinery use in cotton, soybeans, and oil crops closely parallels that in grain. In cotton and soybeans, per mu use of machinery rose from just 5-10 yuan in 1996 to 50-60 yuan in 2010 (Quanguo nongchanpin, 2007, 2011: tables 1-9-2, 1-11-2, 1-12-2, 1-13-2). Farm chemicals

Figure 2. Farm Chemicals Inputs in Grain Farming, 1996-2010 (in yuan per mu, by constant prices)



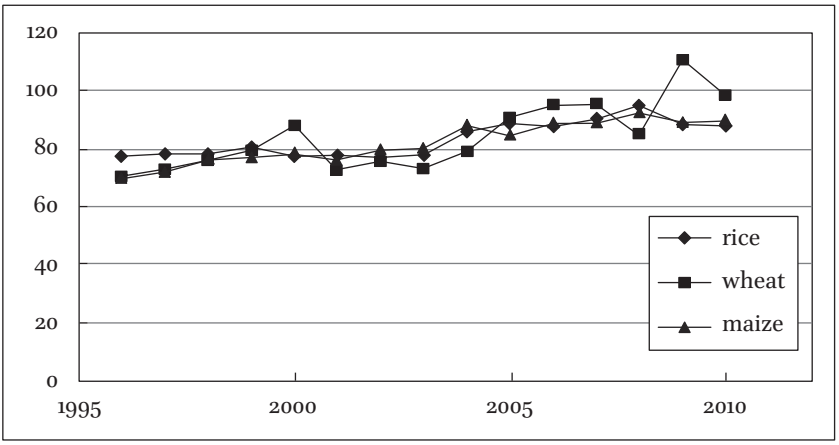

***Source***. The data for farm chemicals inputs in current prices come from the costs-benefits surveys in *Quanguo nongchanpin*, 2007, 2011: table 1-2-2, 1-7-2, 1-8-2. Constant prices are obtained by using the "farm chemicals" price index (in the price indices for different agricultural "means of production") to arrive at adjusted constant prices. The data for indexed prices for different agricultural means of production come from the *Zhongguo nongcun tongji nianjian*, 1997-1999: table 7-8; 2000-2006: table 8-7; 2007-2011: table 8-4.

(i.e., pesticides and herbicides) use has risen substantially also, though not to the same degree as machinery use (Quanguo nongchanpin, 2007, 2011: tables 1-9-2, 1-11-2, 1-12-2, 1-13-2). Chemical fertilizer use too has shown considerable increase, though again not to nearly the same degree as machinery use (Quanguo nongchanpin, 2007, 2007: tables 1-9-2, 1-11-2, 1-12-2, 1-13-2).

According to the costs-benefits data in 2010, cotton used an average of 307 yuan per mu of modern inputs (of machinery, chemical fertilizers, pesticides-herbicides, and seeds). Soybeans, at 5 percent of sown acreage, used 146 yuan for the same four inputs; peanuts, at 2.8 percent of total sown acreage, used 289 yuan; and rapeseed, at 4.6 percent of sown acreage, used 125 yuan.

Combining all major crops of the old agriculture, Table 1 shows that the three grains (rice, wheat, maize), cotton, soybeans, and the three major oil crops accounted for a combined total of 69.6 percent of all sown acreage in 2010. They used in 2010 a combined total of 407.3 billion yuan of modern

Figure 3. Chemical Fertilizer Inputs, 1996-2010 (in yuan/mu, by constant prices)



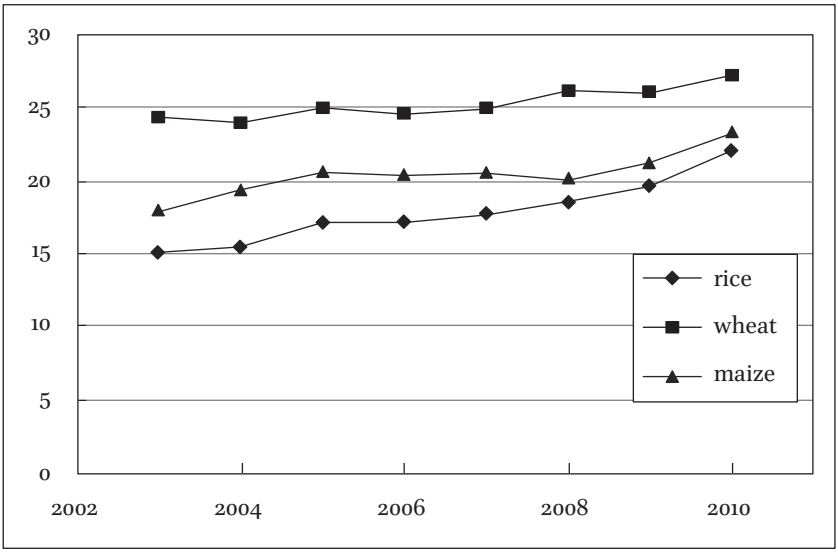

***Source***. The data for chemical fertilizer inputs in current prices come from the costs-benefits surveys in *Quanguo nongchanpin*, 2007, 2011: table 1-2-2, 1-7-2, 1-8-2. Constant prices are obtained by using the "chemical fertilizers" 化学肥料 price index (in the price indices for different agricultural "means of production") to arrive at adjusted constant prices. The data for indexed prices for different agricultural means of production come from the *Zhongguo nongcun tongji nianjian* 1997-1999: table 7-8; 2000-2006: table 8-7; 2007-2011: table 8-4.

inputs (machinery, chemical fertilizer, farm chemicals, seeds). This figure may be taken as an approximation of total liquid capital investments in the old "big field" agriculture, according to the costs-benefits survey data.

**A Different Set of Data**

However, we are inclined to think that the costs-benefits data used above need to be adjusted downward in light of the more systematic and thorough decennial survey of *all* farm households done in 1996 and 2006. As we have detailed earlier (Huang, Gao, and Peng, 2012), those two surveys required that every household be interviewed and that standardized tables be filled in on the spot by the interviewer and interviewees together. The surveys are comparable in design, scale, and detail to the decennial population surveys. We showed earlier that while the cost-benefits sampling of 68,000 households suggests that perhaps 5-10 percent of all labor in farming were hired, the decennial household-by-household survey suggests a substantially lower figure of

Figure 4. Improved Seeds Inputs, 2003-2010 (in yuan/mu, by constant prices)




***Source***. The data for improved seeds inputs in current prices come from the costs-benefits surveys in *Quanguo nongchanpin*, 2007, 2011: table 1-2-2, 1-7-2, 1-8-2. Constant prices are obtained by using the "seeds for agricultural use" 农用种子 price index (in the price indices for different agricultural "means of production") to arrive at adjusted constant prices. The data for indexed prices for different agricultural means of production come from the *Zhongguo nongcun tongji nianjian*, 2003-2006: table 8-7; 2007-2011: table 8-4. (Data on seeds are given only for the years 2003-2011.)

3 percent. And we were in the end inclined to trust in the latter figure. Indeed, the State Statistical Bureau has been adjusting the earlier figures in its *China Rural Statistical Yearbook* on the basis of the decennial surveys, in the same manner as it has adjusted population, employment, and other data to accord with the more reliable decennial population surveys.

As we suggested earlier, the sampling work has in fact been subject to the conflicting tugs of two different purposes and tendencies. One, shown for example in a speech given by the chairman of the agency conducting the survey, spoke explicitly of the purpose of the "model function of the surveyed household" to "show the peasants a visible path to becoming rich" (Zhao Xiaoping, 2004; cf. Huang, Gao and Peng, 2012: 149). The other, coming perhaps from the professional dispositions of the statisticians involved, seeks to reflect accurately the national picture—hence the efforts to adjust the data to accord with the

Table 1. Liquid Capital Inputs and Sown Acreage of Major Crops of the Old Agriculture, 2010 (in yuan)

| Crops | Sown acreage (100 million mu) | Percentage | Machinery (yuan/mu) | Chemical fertilizer (yuan/mu) | Farm chemicals (yuan/mu) | Seed (yuan/mu) | Total of four Items (yuan/mu) | Total liquid capital investment (100 million yuan) |
|---|---|---|---|---|---|---|---|---|
| Rice | 4.48 | 18.6% | 104.9 | 106.0 | 43.2 | 36.2 | 290.2 | 1,300.3 |
| Wheat | 3.64 | 15.1% | 91.8 | 118.5 | 13.1 | 44.7 | 268.1 | 975.5 |
| Maize | 4.88 | 20.2% | 58.1 | 108.4 | 10.9 | 38.3 | 215.8 | 1,051.9 |
| Soybeans | 1.28 | 5.3% | 58.1 | 46.4 | 11.6 | 29.9 | 146.0 | 186.5 |
| Peanuts | 0.68 | 2.8% | 42.4 | 103.2 | 21.8 | 121.9 | 289.3 | 196.5 |
| Rapeseed | 1.11 | 4.6% | 28.4 | 72.8 | 9.5 | 14.7 | 125.5 | 138.7 |
| Cotton | 0.73 | 3.0% | 53.8 | 152.5 | 56.1 | 44.6 | 307.1 | 223.3 |
| Total | 16.78 | 69.6% | | | | | | 4,072.9 |

***Source***. *Zhongguo nongcun tongji nianjian*, 2011: table 7-2; *Quanguo nongchanpin*, 2011: tables 1-2-2, 1-7-2, 1-8-2, 1-9-2, 1-11-2, 1-12-2, 1-13-2.

decennial national surveys. The tensions between the two tendencies seem as yet not completely resolved. We need therefore to use the decennial data as a check on the costs-benefits data, and perhaps even in preference to the latter.

However, while systematic and thorough, the decennial data are not as specific with respect to farm operations as the costs-benefits data. They do not permit a check on the same categories used by the sampling data. Rather, we have to content ourselves with suggestive indicators based on different, simpler categories. Table 2 compares trends indicated by the total number of tractors owned at year-end, divided into big-middle 大中型 and small sized 小型, given in the decennial surveys and by the machinery inputs per mu for grain given in the costs-benefits sampling data.

Clearly, the dimensions of increase suggested by the two sets of data are quite different. In one, in the ten-year period from 1996 to 2006, total farm machinery roughly doubled; in the other, in the same period, it tripled. Projecting the first trend down to 2010, machinery use might have tripled; in the latter, it went up five-fold. The average annual increase rate in the first is roughly 7 percent. In the other, it is more than 18 percent.

Another useful indicator is the amount of "thin plastic" 薄膜 used to cover crops for purposes of temperature and moisture (and sometimes also weed) control. Table 3 shows the different figures given by the decennial survey and the *China Rural Statistical Yearbook*, which has routinely incorporated the costs-benefits survey data.

Table 2. Numbers of Tractors of Different Sizes in 1996 and 2006 from the Decennial Surveys, Compared to Data on Machinery Inputs per Mu from Sampled Households (in yuan, by constant prices)

| Year | Big-medium tractors | Percent increase | Small tractors | Percent increase | Machine inputs for rice and wheat (yuan/mu) | Percent increase |
|---|---|---|---|---|---|---|
| 1996 | 680,000 | – | 11,800,000 | – | 20 | – |
| 2006 | 1,400,000 | 207.5% | 25,500,000 | 216% | 60 | 300% |

***Source***. *Zhongguo di er ci quanguo nongye pucha ziliao zonghe tiyao* (hereafter Zhongguo di er ci), 2008: table 6-7; see also Figure 1 above.

***Note***. The *2010 Zhongguo tongji nianjian*: table 13-5, shows 671,000 big-medium and 9,190,000 small tractors for 1996, and 1,718,000 big-small and 15,679,000 small tractors for 2006. We have opted to rely more on the decennial surveys of every household here. The former is extrapolated from sampling data; the latter is based on an actual household-by-household count.

Table 3. Cultivated Acreage Using Thin Plastic Covers, 2006

| Year | Decennial survey | Costs-Benefits Sampling |
|---|---|---|
| 1996 | n.a. | 97.5 million |
| 2006 | 20 million | 210 million |

***Source***. *Zhongguo di er ci*, 2008: table 3-2-11

As can readily be seen in Table 3, the *China Rural Statistical Yearbook* possibly exaggerated the extent of such farming—most likely because of the tendency to select more advanced farms in its sampling.[1]

On the other hand, we should point out that the two sets of data differ little when it comes to farm chemicals and chemical fertilizer use (Zhongguo di er ci, 2008: table 3-2-11; compare with Zhongguo nongcun tongji nianjian, 2008: table 3-9). This is probably because there is not much difference between the "average" farm and the more advanced farm when it comes to those two inputs. Both kinds of farms, it may be surmised, tend to approximate the optimal levels under the same given ecological conditions and input prices.

For now, until better data become available, we might use the decennial figures as a low estimate of increases in modern inputs (of machinery and plastic covers), and the costs-benefits sampling data as the high estimate. Projecting down to 2010 from 1996-2006, the former argues for about a three-fold increase in total, while the latter argues for five-fold, as we have seen. We ourselves are once more inclined to the decennial survey data as the more reliable and accurate. Using the fraction of 3/5 to adjust our costs-benefits data downward, we would come to a figure of 244 billion yuan (407.3 bn. × 0.6) in total liquid capital investments in the old agriculture.

**Capitalization in the "New Agriculture"**

The rise of the "new agriculture" of higher-value farm products and the resulting transformation in the structure of Chinese agriculture have amounted to what Philip Huang has termed a "hidden agricultural revolution" 隐性农业革命. The combination of increased capitalization of the old and the new agricul-

[1] Unfortunately, the *China Rural Statistical Yearbook* does not give any data for the still more important category of "agriculture with infrastructure" 设施农业, which includes tented farming of vegetables, mushrooms, some fruits and nursery farming, as does the decennial survey (Zhongguo di er ci, 2008: 10, table 7), to allow for a comparison of such new agriculture.

tures is the two-sided change that has wrought the basic transformation of Chinese agriculture in the past decade and a half.

Fortunately, because we are concerned here in this section only with the new and advanced segments of agriculture, we can simply rely on the costs-benefits sampling data, without having to deal with the discrepancies of data between the decennial surveys and the costs-benefits sampling.

*Investment in Fixed Assets*

The new agriculture involves, first of all, more fixed assets investment (e.g., tented vegetables, structures for animal raising, investments in fruit orchards, fish ponds, and so on). A good indication of such investments is the statistical category of "fixed asset investment" 固定资产投资, broken down into the "primary, secondary and tertiary sectors" 第一、二、三产业, or agriculture, industry, and services. Those investments in agriculture are further broken down by the source of fixed asset investment, from state owned 国有经济, to collective 集体经济 (divided into rural collectives 农村集体 and non-rural collectives), and individual or household investments 个体, which is further broken down to "rural individual" 农村个体, and non-rural.

As Table 4 shows, the state and rural individuals/households have been the main investors in fixed assets, the state's total rising from just over 10 billion yuan in 1996 to more than 240 billion yuan in 2010. This reflects the state's expanded role in investments for agricultural infrastructure, the biggest item of which is for water control 水利 (Zhongguo nongcun tongji nianjian, 2010:

Table 4. Investments in Fixed Assets, by the State, Collectives, and Individual Households (in hundred million yuan)

| Year | Fixed asset investment in the primary sector | From state-owned enterprises | From collectives | From rural collectives | From individuals | From rural individuals |
|---|---|---|---|---|---|---|
| 1996 | 589.09 | 108.39 | 85.09 | 81.15 | 382.5 | 382.5 |
| 2000 | 859.7 | 303.8 | 129.94 | 122.51 | 386.21 | 380.39 |
| 2005 | 2,323.66 | 521.43 | 505.68 | 476.11 | 1,115.37 | 1,004.37 |
| 2010 | 7,923.09 | 2,440.72 | 747.84 | 464.08 | 3,213.84 | 2,305.09 |

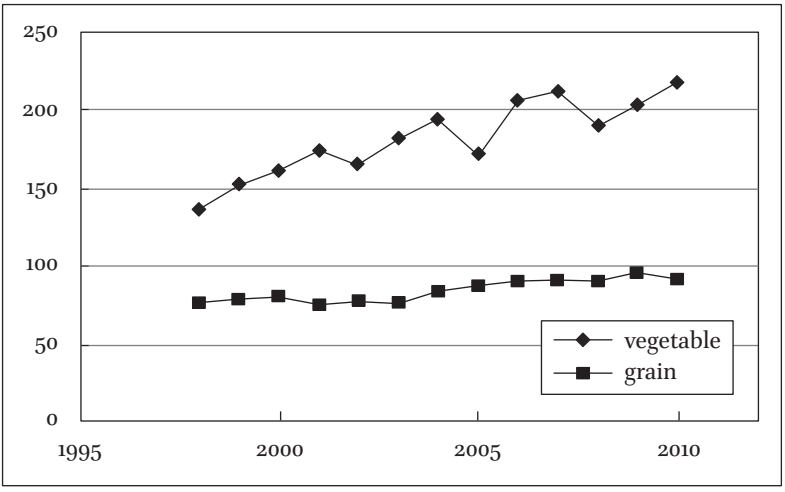
***Source.*** *Zhongguo guding zichan touzi tongji nianjian*, 1997-1999, 2001, 2003-2011: table for "main categories of fixed assets investments of the entire society" 全社会固定资产投资主要指标.

table 5-2). Household investments are mainly of the type already discussed above, for a transition from the old to the new agriculture. The last has increased from less than about 38 billion yuan per year in the period 1996-2000 six-fold to 230.5 billion yuan from "rural households" 农村个体 plus another 90 billion yuan from non-rural households/individuals, to reach a total of 321.4 billion yuan in 2010. The surprise is that individual household investments in fixed assets have equaled those from the state.

*Liquid Capital Investments*

In addition, there have been significantly more investments of liquid capital for the maintenance and capitalization of the new agriculture. Vegetables, especially the new-style tented vegetables, typically use about two times more chemical fertilizer than grain, ca. 200+ yuan in 2010 per mu, compared to less than 100 yuan for grain, as shown in Figure 5. They also use much more for

Figure 5. Chemical Fertilizer Inputs for Vegetables, Compared to Grain, 1998-2010 (in yuan/mu, by 1996 constant prices)



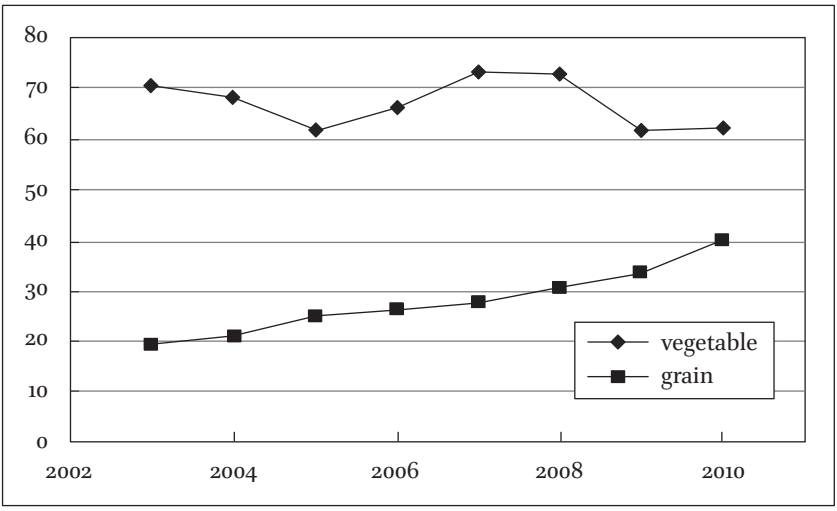

***Source***. The data for chemical fertilizer inputs in current prices come from the costs-benefits surveys in *Quanguo nongchanpin*, 2007, 2011: tables 1-1-2, 1-21-2. Constant prices are obtained by using the "chemical fertilizers" price index (in the price indices for different agricultural "means of production") to arrive at adjusted constant prices. The data for indexed prices for different agricultural means of production come from the *Zhongguo nongcun tongji nianjian* 1997-1999: table 7-8; 2000-2006: table 8-7; 2007-2011: table 8-4.

improved seeds, about 3.5 times more before the changes of the past decade, and in 2010, about 1.5 times as much—60 yuan per mu, compared to 40 yuan per mu for grain, shown in Figure 6. And for farm chemicals too (not just to kill pests and weeds, but also to control funguses and viruses), about 100 yuan per mu in 2010 compared to 20 yuan for grain, or five times as much, shown in Figure 7.

But vegetables use less in the way of machinery inputs, as might be expected, inasmuch as tented vegetable farming occurs in a small space (as opposed to the open "big-field" old agriculture; see Figure 8). Such machinery as are used tend to be for activities such as the digging and leveling of earth required for setting up tents and the mechanized openings and closings of drapes for the more advanced tents.

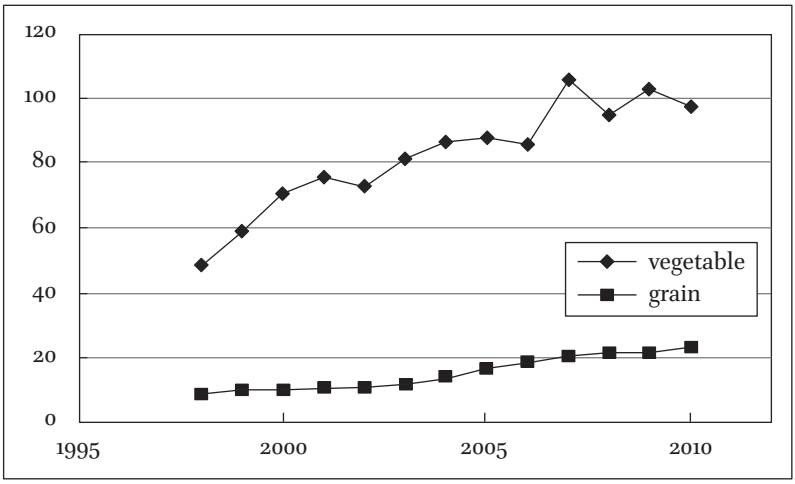
A rough summary impression of the differences between the old and the new agriculture in terms of operating capital inputs can be obtained by

Figure 6. Investments for Seeds for Vegetables, Compared to Grain, 2003-2010 (in yuan/mu, by 2003 constant prices)




***Source***. The data for improved seeds inputs in current prices come from the costs-benefits surveys in *Quanguo nongchanpin*, 2007, 2011: tables 1-1-2, 1-21-2. Constant prices are obtained by using the "seeds for agricultural use" price index (in the price indices for different agricultural "means of production") to arrive at adjusted constant prices. The data for indexed prices for different agricultural means of production come from the *Zhongguo nongcun tongji nianjian*, 2003-2006: table 8-7; 2007-2011: table 8-4. (Data on seeds are given only for the years 2003-2011.)

Figure 7. Investments in Farm Chemicals for Vegetables, Compared to Grain, 1998-2010 (in yuan/mu, by 1996 constant prices)



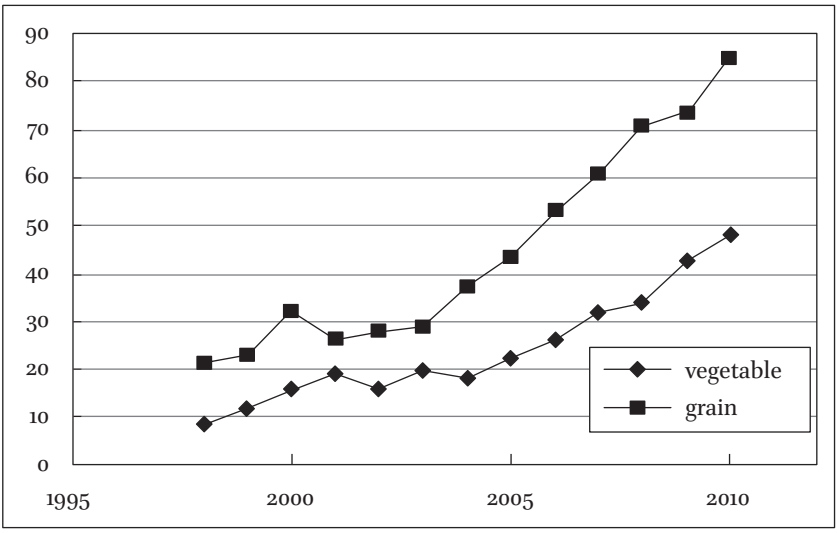

***Source***. The data for farm chemicals inputs in current prices come from the costs-benefits surveys in *Quanguo nongchanpin*, 2007, 2011: tables 1-1-2, 1-21-2. Constant prices are obtained by using the "farm chemicals" price index (in the price indices for different agricultural "means of production") to arrive at adjusted constant prices. The data for indexed prices for different agricultural means of production come from the *Zhongguo nongcun tongji nianjian*, 1997-1999: table 7-8; 2000-2006: table 8-7; 2007-2011: table 8-4.

comparing the two in terms of the statistical category of "material and service expenses" 物质与服务费用 per mu (with the caveat that category includes not just the costs for the "modern" inputs we have been discussing above, but also older ones like water, transport, and electrical fees). As can readily be seen from Table 5, vegetables (in 2010) require more than 3 times as much as rice (3.2 times) or wheat (3.6 times), nearly 7 times more than for soybeans and rapeseed, and 2.7 times as much as cotton.

For fruits, detailed data are available only for apples. As Table 5 shows, under market demand forces, apple-growing today has become a highly capital-intensive activity, requiring in 2010 yet another 1.7 times as much liquid capital as for vegetables, and 5.2 times as much as for rice.

An approximation of total liquid capital investments in vegetables and fruits can be arrived at by multiplying the investments of "material and service

Figure 8. Machinery Inputs for Vegetables, Compared to Grain, 1998-2010 (in yuan/mu, by constant prices)




***Source***. The data for farm machinery inputs in current prices come from the costs-benefits surveys in *Quanguo nongchanpin*, 2007, 2011: tables 1-1-2, 1-21-2). Constant prices are obtained by using the "farm machinery" price index (in the price indices for different agricultural "means of production") to arrive at adjusted constant prices. The data for indexed prices for different agricultural means of production come from the *Zhongguo nongcun tongji nianjian*, 1997-1999: table 7-8; 2000-2006: table 8-7; 2007-2011: table 8-4.

Table 5. Material and Service Inputs, Grain, Cotton, Soybeans, and Rapeseed, Compared with Vegetables and Fruit (Apples), 1996-2010 (in yuan/mu, by current prices)

| Year | Rice | Wheat | Maize | Soybeans | Rapeseed | Cotton | Vegetables | Apples |
|---|---|---|---|---|---|---|---|---|
| 1996 | 232.9 | 203.2 | 172.0 | 107.5 | 117.1 | 282.2 | – | 658.2 |
| 2000 | 199.2 | 229.0 | 158.5 | 96.5 | 116.0. | 260.0 | 748.7 | 563.1 |
| 2005 | 242.5 | 216.4 | 176.1 | 113.8 | 107.9 | 295.5 | 877.4 | 559.2 |
| 2010 | 358.6 | 318.4 | 260.5 | 165.1 | 162.7 | 419.9 | 1,133.0 | 1,882.5 |

***Source***. *Quanguo nongchanpin*, 2007, 2011: tables 1-2-2, 1-7-2, 1-8-2, 1-9-2, 1-11-2, 1-12-2, 1-13-2, 1-18-2, 1-21-2.

expenses" 物质与服务费用 per mu by total sown acreage, as shown in Table 6. As can readily be seen, for these two major items of planted products in the new agriculture, the total liquid capital investments amounted in 2010 to 313.5 billion yuan.

As for meat production, pork of course remains the largest category of all meats. However, even pig-raising has undergone profound changes in recent years. The traditional model, of course, was the pig as a scavenger for "hog-wash" 泔水 (and its manure, converted into compost, was the principal organic fertilizer). But today pig-raising has become increasingly modernized and capitalized. The main indication of this is the much greater reliance on manufactured high-quality feed 精饲料, traditionally referring to grain feed rather than stalks and leaves and scraps, but today often high-quality manufactured feed. A second important indicator is greater and greater expenditures for the purchase of higher-value piglets 仔猪. According to the costs-benefits sampling data, today both scattered and scale raising of pigs rely mainly on manufactured feed and high-value piglets. These data show liquid capital investments totaling 900 yuan (per 100 kilograms, or about 1.5 pigs) (including both "scattered raising" 散养 and "scale raising" 规模养猪), about three times that for the "old agriculture" of grain per mu (Quanguo nongchanpin, 2007, 2011: tables 1-20-2, 1-19-2).

To get a quantitative sense of the total picture of major animal products, Table 7 tallies the amounts of total liquid capital investments (again using "material and service expenses" as an approximation) of the major products.

Table 6. Liquid Capital Investments in Vegetables and Apples Cultivation of the New Agriculture, 2010 (yuan/mu)

| Crop | Sown acreage (100 million mu) | Liquid investment per mu (yuan) | Total liquid investment (100 million yuan) |
|---|---|---|---|
| Vegetables | 2.85 | 888.0 | 2,530.7 |
| Apples | 0.32 | 1,882.5 | 604.2 |
| Total | | | 3,134.9 |

***Source***. Sown acreage for vegetables and apples come from *Zhongguo nongcun tongji nianjian*, 2011: table 7-12, 7-30. "Direct costs" of "materials and service inputs" come from *Quanguo nongchanpin*, 2011: tables 1-18-2, 1-21-2, 1-23-2.

***Note***. In computing liquid capital investments, only the "direct costs" 直接费用 of the "materials and service inputs" are counted, and not the "indirect costs" 间接费用 (i.e., depreciation and tax).

Table 7. Liquid Capital Investments in Animal Products in Household Small-Scale New Agriculture

| Product | Scale (head) | Number for slaughter (10 thousand) | Liquid investment per head (yuan) | Total liquid investment (100 million yuan) |
|---|---|---|---|---|
| Pigs | 1-49 | 34,061.0 | 973.7 | 3,316.3 |
| | 50-99 | 11,394.7 | 1,008.1 | 1,148.8 |
| Dairy cows | 1-4 | 445.6 | 8,395.0 | 374.1 |
| | 5-9 | 264.1 | 8,395.0 | 221.7 |
| Beef cattle | 1-9 | 3,409.4 | 4,160.7 | 1,418.6 |
| | 10-49 | 1,124.7 | 4,160.7 | 468.0 |
| Lambs and | 1-29 | 17,277.3 | 359.3 | 620.8 |
| sheep | 30-99 | 9115.0 | 359.3 | 327.5 |
| Meat chickens | 1-1,999 | 13,4823.2 | 18.4 | 248.0 |
| Egg chickens | 1-499 | 53,322.2 | 69.7 | 371.5 |
| | 500-1,999 | 51,292.1 | 104.5 | 536.1 |
| Total | | | | 9,051.4 |

***Source***. The data on meat animals for slaughter 出栏 come from *Zhongguo xumu nianjian*, 2010; the liquid capital data are from *Quanguo nongchanpin*, 2010: tables 5-1-2, 5-5-2, 5-6-2, 5-7-2, 5-10-2, 5-13-2.

***Note***. In computing liquid capital investments, only the "direct costs" of "material and service inputs" are counted, not the indirect costs (i.e., depreciation and tax).

To separate out investments by small-scale farm households from investments by so-called big household entities 大户 and agricultural firms/enterprises 农业公司/企业, we employ the standard divisions between small and medium-to-large scale operations used in the statistical data. For pork, the line drawn is at the scale of 99 pigs. Individual households can manage easily 10 pigs, and more if production is well and efficiently organized (e.g., in new-style pig pens); raising dozens of pigs is not uncommon for a single peasant household. (With a high degree of automation at the frontier of modernization of hog raising, one labor unit can oversee as many as 200 pigs or more.) For milk cows, we use the statistical divide of 9 head as the upper limit of what a household can manage and, for beef cattle, 49 head. Similarly, for lambs and sheep, 99 head; for meat chickens, 1,999 chickens; for egg chickens, also 1,999. The result may be seen as an approximation of such products raised by small households, in which the household itself is the main source of labor (i.e., still the "family farm"), exclusive of the so-called big household 大户 entities that employ more than casual labor and the agricultural firms based principally on hired labor. (For actual examples of the different scales of production of the different products, see Yidu shi renmin zhengfu, 2012.)

As can readily be seen, the total for these major products amounted in 2010 to 905.1 billion yuan, which is obviously an incomplete count, but perhaps a good approximation of the great majority of animal products production of the new agriculture (excluding fisheries, that is, for which no data have been available after 2007).[2]

Adding together our tallies of liquid capital investments in the new agriculture—313.5 billion yuan + 905.1 billion yuan—we arrive at a total of 1,218.6 billion yuan. If we add to that figure the total investments in fixed assets of 230.5 billion yuan, we arrive at a total figure of 1,449.1 billion yuan of capital investments in small-scale new agriculture. This should be taken as the minimum amount of capital investments today by peasant family farms in the new agriculture.

Adding further our (revised lower) figure of 244.0 billion yuan of liquid capital investments in the old agriculture, we come to a grand total of 1,693.1 billion yuan of capital investments, both liquid and fixed, and both old and new in 2010. That amounts to 41.8 percent of the agricultural GDP (4,053.4 billion yuan) of that year, a figure that dwarfs total state investments in agriculture by a considerable margin, as will be seen below.

At the same time as the expanding capital investments detailed above, the size of the rural labor force declined markedly. As shown in Table 8, the total number of the rural employed hovered close to 500 million throughout the years 1995 to 2000, with the numbers of those exiting the countryside balancing out those added by natural increase. But then the rural workforce begin to decline substantially, first by an average of about 5 million each year and then, starting in 2006, by nearly 10 million each year. The number of rural employed thereby declined from 487 million in 2001 to 410 million in 2010. Over and above that decline, the number of those employed off-farm (in township enterprises 乡镇企业 and private enterprises 私营企业) within rural China itself rose rapidly, from 143 million in 2001 to 192 million in 2010. The result was that the total number of those engaged in farming dropped rapidly, from 320 million in 2001 down to under 200 million (196 million) in 2010.

Of course, the decline by one-third of the number of people employed in agriculture, coupled with the capital investments detailed above, means considerable increases in capital inputs per unit labor (i.e., "capitalization" as used

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[2] Data for 2004-2007 show that in "fine farming of fresh water fish" 淡水鱼精养 an average of 26 percent of all labor input was hired labor, almost comparable to "scale meat-chicken" and "scale pig" production (Quanguo nongchanpin, 2004-2007: table 1-23-2; see also Huang, Gao and Peng, 2012: 146, figure 2; 147).

Table 8. Numbers of Rural Employed, 1980-2010 (in millions of persons)

| Year | Original figure | Adjusted figure* | Subtracted | Township enterprises | Private enterprises | Self-employed | Farming |
|---|---|---|---|---|---|---|---|
| 1980 | 318.36 | – | – | 30.00 | | | |
| 1985 | 370.65 | – | – | 69.79 | | | |
| 1990 | 477.08 | – | – | 92.65 | 1.13 | 14.91 | 368.39 |
| 1995 | 490.25 | – | – | 128.62 | 4.71 | 30.54 | 326.38 |
| 2000 | 489.34 | – | – | 128.20 | 11.39 | 29.34 | 320.41 |
| 2001 | 490.85 | 486.74 | -4.11 | 130.86 | 11.87 | 26.29 | 317.72 |
| 2002 | 489.60 | 481.21 | -8.39 | 132.88 | 14.11 | 24.74 | 309.48 |
| 2003 | 487.93 | 475.06 | -12.87 | 135.73 | 17.54 | 22.60 | 299.19 |
| 2004 | 487.24 | 469.71 | -17.53 | 138.66 | 20.24 | 20.66 | 290.15 |
| 2005 | 484.94 | 462.58 | -22.36 | 142.72 | 23.66 | 21.23 | 274.97 |
| 2006 | 480.90 | 453.48 | -27.42 | 146.80 | 26.32 | 21.47 | 258.89** |
| 2007 | 476.40 | 443.68 | -32.72 | 150.90 | 26.72 | 21.87 | 244.19 |
| 2008 | 472.70 | 434.61 | -38.09 | 154.51 | 27.80 | 21.67 | 230.63 |
| 2009 | 468.75 | 425.06 | -43.69 | 155.88 | 30.63 | 23.41 | 215.14 |
| 2010 | – | 414.18 | | 158.93 | 33.47 | 25.40 | 196.38 |

***Source***. *Zhongguo tongji nianjian*, 2011: table 4-2, 2010: table 4-2.

* The State Statistical Bureau in 2011 adjusted substantially its earlier data on the basis of the population census of 2010.

** According to the 2006 decennial survey of Chinese agriculture, there were in that year 212 million who engaged in farming for six months or more during the year, and another 91 million who did so less than six months (Zhongguo di er ci, 2009: table 2-1-15). Thus, we can see that a large proportion of the latter group was categorized instead as employed in township or private enterprises or as self-employed.

in this article), by another 50 percent above the dimensions detailed for capital investment increases alone. Needless to say, such a change is itself a major dynamic for the rising price of rural labor.

**Wage Income Origins of Capital Investments**

The chief dynamic behind the changes outlined above is rising opportunities and wages for off-farm employment, such that peasants have come to expect not 20-30 yuan per day, but rather 50-100 yuan. Those changed expectations have propelled peasants to turn to ever greater capitalization of the old agriculture, in order to save time, and to greater and greater involvement in the new agriculture, for higher returns.

Data on rural residents' incomes 农村居民收入 include figures on "wage-like income" 工资性收入, mainly of the 80 million "leave the land but not the village" 离土不离乡 peasants employed in "township enterprises" 乡镇企业 (Zhongguo nongcun tongji nianjian, 2011: table 11-5). They show a total of (2,431 yuan/rural resident × 750 million rural residents =) 1,755.7 billion yuan of such wage-like income in 2010. This figure should be distinguished from the income of the "leave both the land and the village" 离土又离乡 peasant migrant workers, who in 2010 totaled 153 million, earning a total of (2,049 yuan/month × 9.8 months worked per year × 1.53 million migrant workers =) 3,072.2 billion yuan (Zhongguo guojia tongjiju, 2011). Combining the wage incomes of those working off-farm at home and the wages incomes of those working away from home, we get a total of nearly 5,000 billion yuan in wage income for the 900 million people officially registered as peasants.

As can readily be seen, peasant wage income goes a long way toward explaining the bulk of the new capital investments peasants have made in farming. That is what has propelled, and paid for, the resort in the old agriculture to hiring more tractor plowing-planting-harvesting and using more farm chemicals, in preference to hand plowing-planting-harvesting and hand weeding. It is also what has paid for the greatly increased fixed and operating capital investments in the new agriculture.

While peasant choices are readily understandable in terms of the rising opportunity costs for farm labor, the underlying logic is perhaps not immediately apparent. What happens, in effect, is that in choosing off-farm work over the original farmwork (like hand plowing and planting, hand weeding and hand harvesting), more and more peasant households are in effect using incomes from off-farm employment to pay for the labor-saving and higher-return inputs or, in other words, for the further capitalization of farming. There are those who remain at home and contribute all or most of their earnings to the maintenance and capitalization of the family farm 经营费 for higher returns, and there are those who leave for the cities, who send part of their earnings home (to an unquantifiable extent), also to help pay for the maintenance of the family farm. Considering what peasants have had to put up with in discriminatory treatment in their off-farm employment, we might (if we were to dramatize the point) call such capital "blood and sweat capital" 血汗资本, to distinguish it from our conventional notions of capital (operating capital or capital in fixed assets) invested by private firms or the state.

**The New Age Agricultural Revolution**

In the Reform era, the gross value of agricultural products has in fact increased at an average rate of about 6 percent per year (in "comparable prices" 可比价格), doubling every twelve years and quadrupling in twenty-four years. These are dimensions that dwarf the older forms of agricultural revolutions, whether the classical English agricultural revolution of the eighteenth century or the 1960s and after "green revolution."

Most of the increase in the output value of agricultural products has of course come from the new agriculture. The increased cultivation of high-value vegetables and fruits is reflected in the quadrupling (407 percent) of the output value of "agriculture" 农业, meaning in this context planted products 种植业产品. The nearly six-fold rise (587 percent) in the output value of "big agriculture" 大农业, which includes "forestry," "animal husbandry" and "fishery," on the other hand, is to be accounted for mainly by the tremendous rise in meat products (1,043 percent) and in fish farming (1,904 percent), separately placed under "animal husbandry" 牧业 and "fisheries" 渔业 (see Table 9).

Table 10 provides a clearer picture of the composition of the new age agricultural revolution. As can readily be seen, the output values of vegetables and fruits per sown mu are generally three times that of grain. Thus, in 2010, whereas grains, at 55.9 percent of sown acreage, accounted for just 15.9 percent of total agricultural output value, less than one-third of its proportion of sown acreage, the output values of vegetables and fruits amounted to just about the same as their proportions of sown acreage. In 1980, vegetables and fruits

Table 9. Indices of Output Value of Agriculture, Forestry, Animal Husbandry, and Fishery, 1980-2010 (1952 = 100)

| Year | Total output value | Agriculture | Forestry | Animal husbandry | Fishery |
|---|---|---|---|---|---|
| 1980 | 224.9 | 203.6 | 1,014.8 | 306.4 | 1,270.7 |
| 1985 | 333.4 | 291.2 | 1,572.1 | 508.2 | 2,263.0 |
| 1990 | 420.5 | 356.7 | 1,601.1 | 704.4 | 4,238.2 |
| 1995 | 602.2 | 439.7 | 2,298.8 | 1,237.7 | 8,915.6 |
| 2000 | 807.8 | 549.6 | 2,808.5 | 1,811.4 | 1,4074.0 |
| 2010 | 1,320.2 | 828.3 | 4,681.9 | 3,195.5 | 2,4198.4 |

***Source.*** *Zhongguo nongcun tongji nianjian*, 2008, 2011: table 6-22.
***Note.*** Computed according to comparable prices.

Table 10. Relative Proportions of Sown Acreage and of Output Value of Major Farm Products, 1990-2010

| Year | Vegetable sown acreage % | Output value % | Fruit sown acreage % | Output value % | Grain sown acreage % | Output value % | Animal Husbandry output value % | Fishery output value % |
|---|---|---|---|---|---|---|---|---|
| 1990 | 4.8% | – | 3.5% | – | – | 31.4%* | 15.8% | 5.4% |
| 2000 | 9.7% | 14.4% | 5.7% | 4.2% | 54.6% | 17.4% | 18.6% | 10.9% |
| 2010 | 18.8% | 18.8% | 7.1% | 7.9% | 55.9% | 15.9% | 30.0% | 9.3% |

***Source.*** *Zhongguo tongji nianjian*, 2011: table 6-14; *Zhongguo nongcun tongji nianjian*, 2002: table 6-14.
* This is the "all food crops" figure 粮食作物合计 (which includes potatoes and beans). There is no 1990 figure for just "grains."

amounted to just 3.4 percent of the total sown acreage; in 2010, they made up 25.9 percent. They are the major components of the new agriculture, in terms of planted products (Zhongguo tongji nianjian, 2011: table 6-14; Zhongguo nongcun tongji nianjian, 2002: table 6-14). As for meats, in terms of output value they have come to account for fully 30 percent of all farm products. If one adds fisheries, which account for 9.3 percent, the total of meats and fish amounts to 39.3 percent of all output value; in 1978, meats-fish amounted to just 17 percent of all agricultural output value. Vegetables + fruits and meats + fish are the main components of the new agriculture that has propelled China's new age agricultural revolution.

**Appropriate Scale Farms**

In the projection Philip Huang made with Yusheng Peng in their 2007 article, based on trends in birthrates, in off-farm employment and farm employment, and in changing consumption patterns, they estimated that in twenty-five years time (i.e., ca. 2030), the average Chinese farm will have reached appropriate scales. Those may be considered 15 mu per farm in the old agriculture (of grain, cotton, and oil crops farming), or 3.0 mu of tented vegetables, mushrooms, fruits, nurseries (for flowers and plants) in the new agriculture. With current technologies in the new and old agriculture, those farm dimensions would represent full employment for farming households, and would bring incomes consistent with such employment (Huang Zongzhi and Peng Yusheng, 2007).

We might take the situation in the year 2006 reflected in the second nationwide survey of agriculture as our baseline, given its systematic household-by-household data gathering. A total of 200 million (200,159,127 to be exact) households were surveyed, and their farms broken down into different scales and sizes. The data do not distinguish between old and new agriculture farms. If we use them for an indication only of appropriate scale farms in the old agriculture (amounting to about 70 percent of all sown acreage), we find that family farms of 15 mu or more totaled 15.1 million, or 7.7 percent of all family farms (Zhongguo di er ci, 2009: table 2-7-1). In addition, we have data on "farms with infrastructure" 设施农业, referring specifically to hothouses, and small and medium tents 中小棚 and large plastic tents 大棚, which totaled 11.7 million mu (11,655,000), or 3.9 million farm households (assuming 2 labor units working 1.5 mu each), or about 2 percent of all farms (Zhongguo di er ci, 2008: 7). The total of "appropriate scale" farms in the old agriculture and in new-style "vegetable and others" tented farming, then, amounted in 2006 to nearly 10 percent of all farms. Philip Huang and Yusheng Peng's projection made in 2007 estimated an increase of perhaps 2 percent of all farm households per year. That would mean 18 percent in 2010, to reach possibly 58 percent of all farms by 2030. These are very rough estimates. For a more complete and accurate picture, we need to wait for the results of the 2016 decennial survey of agriculture.

## A Macroeconomic View

We are now ready to take a macroeconomic look at total investments in agriculture. To be sure, the state has played and continues to play a major role, through its investments in infrastructure 基本建设, research and development of agricultural technology 科技三项费用, and agricultural subsidies 支援农村生产支出 and services 农业事业费. In 2010 those totaled 858 billion yuan (Zhongguo nongcun tongji nianjian, 2011: table 5-1). But if we include just the infrastructural investments (and leave out the remainder, namely agricultural extension services and subsidies and services), those amounted in 2010 to 240 billion yuan, as has been seen. By comparison, agricultural investments in fixed assets (mainly in the new agriculture) by individual peasants/households 农村个体/农户 total about 230.5 billion yuan, as shown in Table 1, nearly comparable to fixed assets investments by the state.

It is in liquid capital investments that peasant households tower above the state and agricultural firms. Since peasant household farms account for by far

the greatest proportion of cultivated land, compared to state farms, which are only about 0.5 percent (0.9亿亩/18亿亩 = 0.5 percent; Zhongguo zhuyao nianfen guoyou nongchang jiben qingkuang, 2010) of all cultivated acreage, and wage-labor based capitalist farms, only about 3 percent of all labor input, their operating capital investments unquestionably total many times those of the state and private firms.

Total liquid capital investments by peasant households, we have seen, amounted in 2010 to 407.3 billion yuan in the old agriculture, 313.5 billion yuan just in vegetables and apples (the two big items of the new agriculture's planted products), and at least 905.1 billion yuan in the new agriculture's major animal products, to make up a total of 1,218.6 billion yuan.

Unfortunately, we do not have good figures for capital investments by agricultural firms. Some indication of the extent of fixed capital investments by them is given in the data provided by the Offices for Industry-ization of Agriculture 农业产业化办公室 in its 2008 report. According to that report (Zhongguo nongye chanyehua fazhan baogao, 2008: Appendix table 4), the total value of fixed assets of such firms increased at a rate of about 82.5 billion yuan in each of the years 2000-2004, rising from 307 billion yuan up to 469 billion yuan in 2002, and further to 637 billion yuan in 2004. In 2005, there was a dramatic increase of 234 billion in the total value of fixed assets (Zhongguo nongye chanyehua fazhan baogao, 2008: Appendix table 4). If accurate, that would mean that new investments in fixed assets by firms came to equal that year current investments in fixed assets by the state and by peasant households. Unfortunately, there has not been a follow-up volume to the 2008 report (and data after 2005) to date. More exact estimates must await further data.

By the industry-ization of agriculture data referred to above, the so-called "dragon head enterprises" in agriculture are said to have "brought along" 带动 a significant proportion of all farming households into integrated or industry-ized 产业化 farming (87 million farming households according to the data of the Ministry of Agriculture's Offices for Industry-ization of Agriculture, or 43.5 percent of all farming households, if we rely on the 200 million farming households figure from the 2006 decennial survey) (Zhongguo nongye chanyehua fazhan baogao, 2008: appendix table 4; Zhongguo di er ci, 2009: table 2-1-14). But, it must be pointed out, the great majority of those "brought along" households operate under "contract farming" (合同、订单、契约) arrangements. In those, it is the family farm, not the agribusiness firm, that bears the expenses for the operating capital investments. In the main, only enterprises based on wage labor bear the operating capital expenditures and those, we have seen, amount to just 3 percent of all labor input in agriculture. State farms, of course,

occupy an even smaller percentage—a total of just 0.5 percent of the cultivated area. Peasant family farms, clearly, account for the overwhelming majority of the total cultivated acreage, and our estimate of their total capital investments in agriculture, as has been seen, is more than 1,693.1 billion yuan. That total dwarfs those of the state and of private firms.

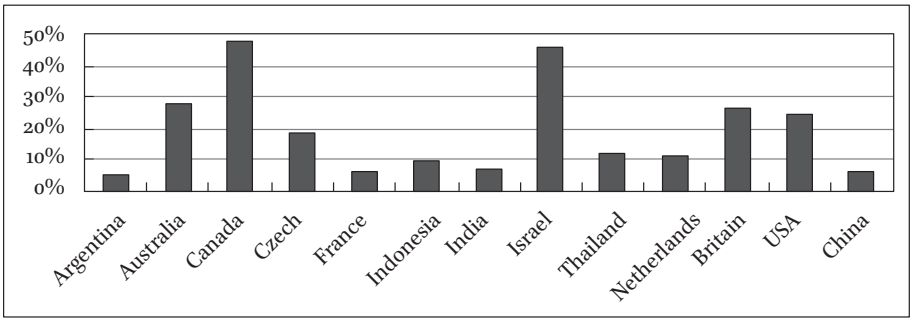
**Government Investments/Financing of Agriculture**

Chinese government expenditures for agriculture (as a percentage of agricultural GDP) are quite low by comparison with developed Western countries like the U.S., Britain, Australia, Canada, Spain, and Norway, almost all in the 20 percent or above range (see Figures 9 and 10). To be sure, the Chinese government has in place a relatively highly developed irrigation system and agricultural extension network, but its subsidies for agriculture fall well below those of the developed countries. Substantial increases in total government expenditures for agriculture during recent years, up to about 10 percent by 2006, have brought those in line with countries like Thailand, Indonesia (in 1996), and Russia (in 2006). Such expenditures had been even lower than in India in 1996 (at about 7-8 percent), but have since increased considerably, surpassing India by a considerable margin by 2006. At the same time, beginning in 2004, the government drastically cut agricultural taxes and fees, eliminating agricultural taxes completely by January 1, 2006. That too had a major effect. But total investments in agriculture remain comparatively low, especially considering the high proportion of the population engaged in agriculture. Just how low can be dramatized by the fact that, in 2010, while farming accounted for 26 percent of all employed persons in China, state investments in fixed assets in agriculture totaled just 2.8 percent of all state investments in fixed assets (Zhongguo 2010 nian quan shehui guding zichan touzi tongji, 2010).

By comparison with the developed countries, including Taiwan and South Korea, another striking difference is the underdevelopment of rural finance. Until very recently, it was well-nigh impossible for Chinese peasants to obtain credit from formal financial institutions—i.e., the state's banks. They have had to rely instead on informal networks and institutions—family, friends, and neighbors or rural usurers.

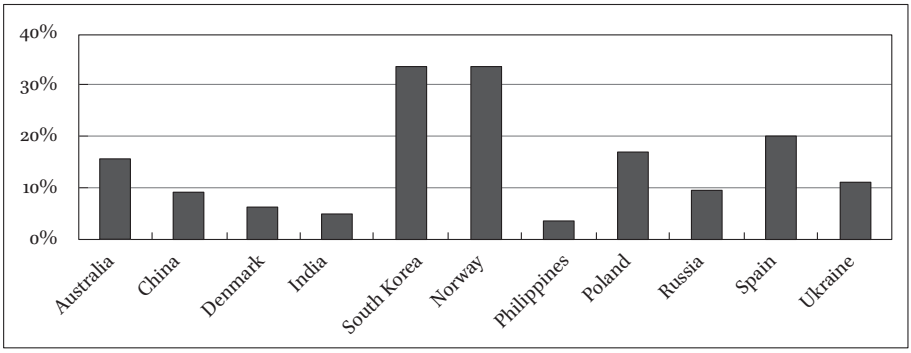
Nevertheless, Chinese agriculture has modernized dramatically in the past fifteen years, as has been seen, compiling a record of a 6 percent annual increase in output value, dwarfing in dimensions the much-touted "green revolution" of the 1960s and 1970s. Our analysis above suggests that the burden for

Figure 9. Government Expenditures for Agriculture in Selected Countries, as a Percentage of Agricultural GDP, 1996




***Source***. From Guo Yuqing, 2006, based on Zhu Gang, Zhang Yuanhong, and Zhang Jun, 2000: 131.

Figure 10. Government Expenditures in Agriculture as a Percentage of Agricultural GDP, 2006




***Source***. IMF, 2008, International Monetary Fund, statistical tables under various countries; World Bank, 2008: table 4-1.

the capitalization or modernization of agriculture has been borne mainly by the 1,693.1 billion yuan of total capital investments by peasant families, coming mainly from their off-farm wage incomes (totaling about 5,000 billion yuan in 2010). Unfair as that employment has been to the peasants, it has brought the unintended consequence of making traditional handiwork in farming obsolete, replaced by modern farm machinery and herbicides in the old agriculture. This has happened along with investments in modern fixed assets (plastic tents, structures, orchards), along with greater operating liquid capital investments

to sustain the new agriculture of higher-value agricultural products. The result has been an agricultural revolution as profound as it was unintended. Much more can be done, however.

## Conclusion

What is most surprising from this inquiry into data about investments in agriculture is the great importance of peasant household investments, coming mainly from wages earned through off-farm employment. That has in fact been a major engine in China's agricultural development in the past fifteen years. And it is a commonly neglected source of capitalization of agriculture.

But it has occurred with little proletarianization in agriculture itself, in the sense that wage laborers remain a very low percentage of total agricultural employment—only about 3 percent (Huang, Gao, and Peng, 2012), though very much accompanied by what might be called "semiproletarianization" in the sense of off-farm employment of some member(s) of the household as wage workers. The majority of peasant households today are in fact what Philip Huang has termed "half worker half cultivator" 半工半耕. It is that semiproletarianization of household members in off-farm wage work (not in farmwork), with the households combining farming with off-farm employment, that has not only transformed rural life and rural communities, but farming itself.

Given such a degree of peasant investments in agriculture, it becomes abundantly clear that peasant families need to be seen as a major creative force in agricultural development. Yet that force has not yet been properly recognized, much less harnessed to the extent it could be.

It is time to look for ways to harness the creative energy that peasant "human resources" 农村人力资源 have demonstrated, with their capacity for self-directed contributions even under the most unfavorable and adverse conditions of urban employment, the more so because of the gross inequities that now exist between urban residents and peasants (by registration), cities and countryside, regular urban employees and peasant migrant workers (nongmingong).

What would be truly transformative for all of the countryside, however, would be a program targeting mainly the small peasant farm, especially those comparatively high-earning peasants who may be able to reach appropriate scales, either with farms of 15 mu or more in the old agriculture or in the smaller labor and capital dual intensifying new agriculture. Such family farms have already contributed greatly to China's agricultural modernization, and they can do much more. Then and only then, would the present gap between

city and countryside, and urban employees and rural peasants, be closed. And then and only then, could a domestic market of tremendous depth be generated to sustain stable and long-term Chinese economic development.

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# China's Informal Economy Revisited

**Philip C. C. Huang**[1]

# 中国的非正规经济再论证[2]

黄宗智

**Abstract**
China's economy-society today, excepting high officials and capitalists, is made up principally of two status groups. One is the formal employees-workers who are protected by the state's so-called "labor" laws-regulations and enjoy good benefits, who include the white collar employees of state agencies-units and of the larger formal enterprises, and only small numbers of blue-collar workers privileged with formal status. The other is the informal workers-employees who are not protected by the state's labor laws and do not have (or have only low level) social benefits, including mainly the peasant migrant workers and the other working members of their "half worker half cultivator" families. This article documents in detail that the former totals just one-sixth of the total workforce and is in fact in large measure something of a privileged status group, while the latter totals five-sixths. The so-called labor laws today in fact have little to do with the majority of true laborers. The gap between the two status groups are the key to the social-economic crisis confronting China today and cries out for reform.

**Keywords**
formal employee-workers, labor law(s), social benefits, peasant migrant-workers, peasants

**摘要**
中国今天的经济-社会，除了顶层的高级官员和资本家之外，主要由两个等级组成。一方面是受到国家所谓"劳动"法规保护的、带有优厚社会福利的正规职工，其中包括国家

[1] 作者单位：中国人民大学法学院、美国加利福尼亚大学洛杉矶校区历史系；电子邮箱：huang@history.ucla.edu。

[2] 笔者在 08 年写过一篇关于非正规经济的初步探索（黄宗智 2009），当时国家统计局还没有建立起农民工统计监测制度，也还没有根据 2010 年的人口普查做出更精确、全面的就业统计数据，文章的一些部分因此具有一定的不确定性。本文对之前的文章做了全面的更新和充实，在分析上也做了一些修改。为了集中于非正规经济的实际，略去之前文章讨论理论背景的后半部分。


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机关、事业单位以及正规企业的白领职员，而只包含较少数享有正规身份的蓝领工人。另一方面则是不受到国家劳动法规保护的、没有社会福利（或只有低等福利）的非正规职工，主要包含农民工以及其“半工半耕”家庭的其他就业人员。本文详细论证，前者总数只是全社会所有就业人员中的六分之一，其实一定程度上是个具有特权的阶层，后者则占到六分之五。事实上，国家今天所谓的劳动法规已经脱离大多数真正意义上的劳动人民。两个等级间的差别是今天中国社会经济危机的关键，亟需改革。

**关键词**
正规职工、劳动法、社会福利、农民工、农民

在中国的户籍制度下，农民进入城市打工，把长期以来的城乡差别凸显为更加尖锐的等级划分。一方面是城镇正规单位就业的“职工”，享有中国革命传统和计划经济遗留下来的劳动法规保护和福利，另一方面则是进城打工的农民，作为非正规的临时工和城市的暂住者，他们不享有正规职工的法律保护和福利，也不享有城市人民的权利，尤其是子女义务教育的权利。作为底层的劳动力，他们做的是城市里最脏、最重、最低报酬的工作。伴随城市的蓬勃发展和越来越多的农民工打工者，中国越来越凸显为一个贫富、城乡悬殊的社会和经济体。

在过去的计划经济时代，城乡的差别虽然存在，但并不那么悬殊。农村人民生活水平虽然要低于城市，但差别绝对没有后来经过城市极其快速发展之后那么显著。至于在城镇内部，之前基本所有工作人员都属于正规人员，归属国家或集体单位，受到国家劳动法规和福利制度的保障。但是，伴随大规模的农民入城打工浪潮，越来越多的城镇就业人员变成农村户籍的人员，越来越多、越来越高比例的劳动者变成没有正式城镇身份，没有被正式纳入正规单位的“流动人口”。

中国今天的经济-社会，除了顶层的高级官员和资本家之外，其实主要由正规和非正规两个等级组成。前者包含国家机关、事业单位以及正规企业的白领职员，而只包含少数的、具有优厚社会福利条件的蓝领工人；后者则主要包含农民工及其“半工半耕”家庭的其他就业人员。本文详细论证，前者总数只是全社会所有就业人员中的六分之一，其实一定程度上是个具有特权的阶层，后者则占到六分之五。两个等级间的差别是今天中国社会经济危机的关键，亟需改革。事实上，国家今天所谓的劳动法规已经脱离了大多数真正意义上的劳动人民。

在世界其它发展中国家，“非正规经济”早在上世纪 60、70 年代以来便已伴随资本的国际化而高速扩展。发达国家企业之所以进入发展中国家，一个主要目的是寻求低于本国价格的劳动力。而其资本一旦进入发展中国家，不仅意味着企业本身将雇佣当地的劳动力，也导致与其关联和为其服务的本地公司的兴起，更会触发一系列的连锁效应，包括必要的基础设施、产品的运输和销售以及员工的各种各样服务

（例如交通工具、餐饮、娱乐、清洁工、家政等）。除了新兴的现代经济部门的正规职工之外，还有与其关联的处于正规经济部门之外的众多员工和个体户，而他们也需要各种各样的旧型或半旧型服务（例如工匠、裁缝、小摊贩、廉价餐饮、维修等）。而当地农村越是人多地少，剩余劳动力越多，其所能为现代部门提供的非正规廉价劳动力也就越多。这些现象先呈现于中国以外的发展中国家，但在中国脱离计划经济之后，也非常快速地在中国扩增。

正如联合国的国际劳工组织（International Labor Organization）（ILO）、世界银行的“社会保护单位”（Social Protection Unit）以及诺贝尔和平奖选拔委员会等机构所指出，规模庞大并不断扩展的“非正规经济”是世界发展中国家的普遍现象。根据国际劳工组织的数据，它在“亚洲”[3]已经扩展到非农就业的65%（北非的48%、拉美的51%以及撒哈拉以南非洲地区的78%）（ILO 2002）。已有众多的研究一再指出发展中国家的这个现象，其中包括世界银行的社会保护单位所发的多篇论文（例见 Blunch, Canagarajah and Raju 2001, Canagarajah and Sethurman 2001, Das 2003）。

国际劳工组织在1919年组建于国际联盟下，并因提倡社会公正而于1969年获得诺贝尔和平奖。它对“非正规经济”和其就业人员采用了合理和实用性的定义：[4] 即缺乏就业保障、福利和法律保护的劳工。在中国，最恰当的例子当然是人数庞大的“离土离乡”农民工，包括城镇中新兴的较小规模的“私营企业”员工以及“个体户”，更包括乡村的“离土不离乡”乡镇企业和私营企业员工以及个体户。此外则是乡村的农业就业人员，他们和农民工密不可分，几乎全是“半工半耕”的家庭，农业收入还要低于打工收入，并且同样没有国家劳动法规保护和基本没有（或只有低等）社会福利。这些非正规经济人员与城镇的正规职工之间，尤其是今天之所谓“白领”的“中产阶级”，形成鲜明的对照，几乎是两个不同的世界。

非正规经济人员之中有许多以低报酬、无福利的临时工或承包身份就业于正规部门。[5] 在 1970 和 1980 年代，国际劳工组织曾经将其注

[3] ILO 统计的是印度、印度尼西亚、菲律宾、泰国和叙利亚，未纳入中国。

[4] 这是因为它在组织上比较强调实践，其管理机关和每年的国际劳工会议由分别来自政府、企业主和工人的代表组成（见 The Nobel Peace Prize 1969, Presentation Speech）。这里引用的 2002 年的报告是由一组知名研究人员所写，牵头的是哈佛大学的 Martha Chen和联合国统计部的 Joann Vanek.

[5] 根据本文使用的概念，正规部门的非正规人员应该包括承包正规企业工程的非正规私营企业、个体户和未经正式登记的人员，不限于正规部门单位正式上报的在册临时工。如果简单地从正规部门单位上报的在册就业人员数出发，减去正规职工，得出

意力集中于当时被认定为可以和正规部门明确区分、处于其外的 "非正规部门" ("informal sector"), 但后来, 鉴于众多受雇于正规部门的非正规临时工的事实, 改用了更宽阔的 "非正规经济" ("informal economy") 这一概念, 将在正规部门工作的非正规人员 (ILO 2002) 也纳入其中。

## 一、中国现行法律中的正规与非正规经济

这里使用的正规与非正规经济一双概念大致相当于中国现行法律中的 "劳动关系" 和 "劳务关系" 的区别。劳动关系指的主要是具有法人身份的企业 "用人单位" 和其职工间的关系, 也包括 "国家机关、事业组织、社会团体和与之建立劳动合同关系的劳动者" (《中华人民共和国劳动法》, 1995: 第 2 条), 适用国家劳动法。它指的是固定的、全职的劳动关系。按照今天的概念来说,一般也是具有正式合同的关系。而劳务关系指的则是其它的雇佣关系,[6] 包括不具有法人身份的单位与其员工间的关系、不在册 (未经登记的) 单位的员工、没有合同的, 或短期的、临时的、非全日制的, 或以某项 "劳务" 工作为目的的关系。[7]

前者由国家立法规定, 每周总工作时间不得超过44小时, 起码休息一天, 每天工作时间不得超过 8 小时, 加班 ("延长劳动时间") 要支付工资的 150%, 并且每日不得超过 3 小时, 每月不得超过 36 小时。休息日加班要支付 200% 的工资, 法定休假日则要付 300%。工资须超过国家规定的最低标准、工资之外须附带退休、医疗、工伤、失业、生育 ("五保") 福利。(《中华人民共和国劳动法》, 1995 年 1 月 1 日起施行: 第 36、38、41、44、70、73 条; 亦见《中华人民共和国劳动合同法》, 2008 年 1 月 1 日起施行)。

这里需要明确指出, 国家法定的 "劳动者" (即被纳入正规 "劳动关系" 范畴者) 不仅包含 "蓝领" 的工人, 也包含 "白领" 的职员, 以及国家机关和事业单位人员。如果仅从狭义的 "劳动者" 一词 (或传统马克思主义中的 "无产阶级" 或 "工人") 来理解劳动法规, 便会引起较严重的

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的只是几百万的人数, 完全没有考虑到绝大多数实际存在的农民工。例见制造业、建筑业的就业人员数与职工数 (中国统计年鉴 2007: 表 5-6, 135 页; 表 5-9, 142 页)。

[6] 刘琦 2009 初步涉及这方面的不同。

[7] 2008 年的《中华人民共和国劳动合同法》则初步试图把 "劳务派遣" 和 "非全日制用工" 也纳入国家劳动法规的监督和适用范围之内。但是, 根据 2011 年的农民工监测报告 (见下一节), 截至 2011 年, 其对非正规工人所起作用不大。

误解。一定程度上，当今的中国法律话语继承了革命遗留下来对“劳动者”和“职工”的表述。工人被定义为领导阶级，甚或国家的“主人翁”。在理论上，伴随革命的胜利，蓝领（工人）和白领（职员）间的差别已经消失，“职工”成为一个统一的范畴，受到同样的国家劳动法和社会福利制度的保障。因此，劳动法所保护的不仅是蓝领工人，也是白领职工。所谓的“工会”一般代表的不仅是蓝领工人，也是白领职员。而国家正式统计的“劳动者”都是这样的正规“职工”（例见《中国劳动统计年鉴》，2007所统计的平均工资和工作时间等）。

非正规人员则基本没有被纳入国家统计的正式指标，因为其中很大部分是农村户籍的农民工，其中较高比例根本就没有在国家机构登记注册。他们不属于国家规定的“劳动关系”范畴，他们只被笼统纳入“劳务关系”或“雇佣关系”，只适用《民法通则》，遇到纠纷，只能就“侵权”、“伤害”等范畴来追求补偿，不能获得劳动法律的保护。

2012年4月的一起案例特别能够说明问题。有两位老农在一个化肥厂打工，每日工资50元。半年之后，工厂获得正式法人身份，成为法定的正式“用人单位”。两位老农要求成为该工厂的正规工人，但还是被厂主解雇了。二人向当地“劳动争议仲裁委员会”申请仲裁，要求劳动法律保护，但没有得到支持。理由是，他们在工厂工作的那半年，工厂尚未获得正式的“法人”“用人单位”资格，因此他们与工厂的关系只能算是劳务关系，不能算是正规劳动关系。所以，不适用国家的劳动法和劳动合同法。（《劳务关系不是劳动关系 诉讼难得仲裁支持》，2012）

当然，即便是属于正规“劳动关系”的蓝领工人，也不一定会得到法律的充分保护。譬如，企业可以与地方政府（作为“招商引资”的显性条件或隐性默契）串通不严格执行国家劳动法规。即便不是这样，企业职工的维权也面对重重障碍。在劳资争议中，实践中的固定程序是，先要通过工会调解，但工会领导一般会比较认同于当权者而不是劳动者。调解不成，方才可以申请当地“劳动争议仲裁委员会”仲裁。如果是劳动保障方面的纠纷，可以要求当地劳动与社会保障局出具意见。而在这两个层面上，都可能会遇到当地招商引资的地方政府对公司的庇护。不服仲裁裁决，才可以向地方法院提起诉讼。即便是在最后这个环节，仍然可能受到当地政府或官员的阻挠。（具体案例和说明见《劳动争议纠纷案件现状及情况分析》，2012《劳动纠纷起诉书—劳动纠纷案例一》，2010；《媒体公告解除劳动关系引出的诉讼》，2007）

但是，一般来说，国家机关和事业单位以及较大的正规企业会更遵守国家法规（当然，大规模的企业也意味着它具有对当地政府更大的杠杆权力，能够绕过国家劳动法规），而较小规模的“私营企业”，即便是在册的单位，并不具备正规“法人”身份，不被国家法律认定为正规的“用人单位”，因此不会太重视国家劳动法规。为了节省劳动费用，两者一

定程度上都会依赖临时工、非全日工等属于劳务关系的人员。毋庸说，这些在大城市也决不罕见的现象（例如餐馆服务员、社区保安；即便是大学的清洁工也常常如此—见李干 2008），在乡村的 "乡镇企业" 和 "私营企业" 更加如此。至于未曾登记的小规模企业或只有一、二名员工的 "个体户"，就更不用说了。

## 二、农民工

此前，因为农民工一直没有被纳入国家正规统计系统的指标，我们只能依赖 2000 年人口普查所显示的该年在城镇就业人员数，和国家登记的在册正规单位就业职工人数之间的差数，来计算未被登记的非正规农民工人数。这个方法虽然没错，但因为没有更直接的经验材料，含有一定的不确定性。2006 年发表的 "中国农民工问题研究总报告"（下称《总报告》）初步填补了这方面的空缺。那是在温家宝总理指示下，由国务院研究室牵头、召集有关部门和研究人员所做出的报告。但它只是在 31 省（市、区）、7000 个村庄的 6.8 万农户的、尚未充分精确化的抽样问卷调查基础上形成的研究，其中难免含有不甚精确的部分。[8]

之后，2008年底，国家统计局终于正式建立了农民工统计监测制度，于 2009 年和 2011 年发表了关于农民工的调查监测报告。这些报告仍然是根据 6.8 万户的抽样调查的研究，但在06到09年间，抽样调查关于农民工方面已经相当高度精确化—譬如，系统纳入了外出还是本地、各行业、参保、教育背景、地区分配等数据。当然，由于农民工依然未被树立为一个正式的统计指标（而作为流动人口，也确实不容易统计），数据不是按户或按人的直接调查或登记，而是凭借抽样的推算，因此难免带有抽样调查所不可避免的误差幅度，但是其精确度和可信度已经比此前要高出许多了。

表11.1列出迄今比较最可靠的农民工数据。可以看到，2006年报告的数据推测和估计多于系统估算，而2009和2011年的数据则明显比较精确，依据的是更细致的抽样调查，然后按照系统的统计方法估算而得。

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8《总报告》对 "城镇" 范畴的定义是和国家统计局就业人员统计一致的，即限于县城关镇及以上的城镇，不算其下的镇，但人口普查则纳入所有的镇，两个口径的统计因此有所不同。（《中国统计年鉴 2007》：123，180）

表 11.1 农民工人数、工作时间、参保率（万人、%）

| 调查年份 | 总数 | 外出农民工 | 本地农民工 | 工作时间 | 养老 | 医疗 |
|---|---|---|---|---|---|---|
| 2006 | 20000? | 12000? | 8000? | 平均 11 小时/天? | 15%? | 10%? |
| 2009 | 22978 | 14533 | 8445 | 89.4% 多于 44 小时/周 | 7.6% | 12.2% |
| 2010 | 24223 | 15335 | 8888 | 90.7% 多于 44 小时/周 | — | — |
| 2011 | 25278 | 15863 | 9415 | 84.5% 多于 44 小时/周 | 13.9% | 16.7% |

出处: 《中国农民工问题研究总报告》2006; 中华人民共和国国家统计局, 2011, 2010。

据此, 我们可以看到, 2011 年的离土离乡农民工共 1.59 亿人, 占城镇非正规就业人员的绝大部分。而离土不离乡的农民工则有 0.94 亿人, 其中绝大部分是乡村的 “乡镇企业” 和 “私营企业” 就业人员。外出和本地农民工两者加起来的总数是 2.53亿（25, 278 万）人。

根据 2006 年的《总报告》, 农民工中有 30.3%（0.364 亿）在制造业部门工作, 22.9%（0.275 亿）在建筑业工作。此外, 约 0.56 亿就业于 “第三产业”, 其中10.4%（0.125亿）从事“社会服务”, 如保姆、清洁工、清运垃圾人员、社区保安、理发店员工、送货人员等; 6.7%（0.08 亿）是住宿餐饮业服务人员; 4.6%（0.05 亿）是批发与销售业人员, 如小商店、摊位人员和小贩等。

他们不具有正规城镇户口, 在城镇显然是一种二等公民。他们从事的是低报酬和没有福利的工作。根据 06 年的《总报告》, 2004 年他们平均工资只有 780 元/月, 每日平均工作 11 小时。也就是说, 他们的工作时间比正规职工多将近一半, 而获得的报酬仅是后者的60%。当时的调查者推测他们中只有12.5% 具有工作合同、10% 有医疗保障、15% 有退休福利（根据后来更精确的数据, 这些推测其实偏高—见表11.1）。大多数要么承包大企业的工作或在小规模的非正规企业内工作, 要么就是自雇的个体户, 一般都归属 “劳务关系”, 不会得到国家劳动法规和工会的保护。因为不具备城市居民身份, 他们只能负担更高的医药费用和子女的 “择校” 教育费用。在全国每年70万工伤受害者中, 他们毋庸说占了最大多数。这些基本事实也可见于众多较小规模的研究。[9]

[9] 例如, 北京市丰台区 2002 年的一项有关调查显示, 被调查的城市居民平均工资是 1780 元/月, 而农民工则只有 949 元。他们之中有 1/3 的人员每天工作时间超过 12 小时,

以上事实在一份国际调查中得到进一步证实。这是一个由国外学者和中国社会科学院共同组成的（1988、1995和2002年三次调查中的）第三次 “中国家庭收入调查”（“Chinese Household Income Project”）。该项调查是以国家统计局的抽样调查为基础，根据经过修改的范畴而抽样进行的。[10] 2002 年的调查覆盖了 120 个县的 9200 农户以及 70 个城市具有城市户口的 6835 户，同时对 “农村移民”（“rural migrants”）进行了次级样本调查。该项调查发现，农民工的工作报酬比城市居民平均要低 50%。[11] 而这个数字尚未将两者之间在工作时间、医疗保障和教育费用等方面的差别考虑在内。（Gustafsson, Li and Sicular 2008：12, 29; Khan and Riskin 2008：76）

从表 11.1 我们可以看到，在参与社会保障方面，2009 年到 2011 年间有一定的进步。农民工在养老和医疗保险的参保比例有一定的提高，从09年的7.6%和12.2%提高到13.9%和16.7%,但仍然很低。工资方面也有一定的提高，但我们欠缺可比价格的数据。虽然如此，可以确定的是绝大比例依然违反国家劳动法律规定的每周最多 44 小时工作，09 年是 89.4%，10 年是90.7%，11 年仍然高达 84.5%。中国的农民工虽然具有大部分其他国家的 “非正规经济” 人员所不具备的平等的承包地权，但在其它方面（没有国家法律保护和没有或只有低等社会保障）是和其它发展中国家基本一致的。

## 三、城镇的正规与非正规就业人员

上列的农民工数据，结合 2011 年根据 2010 年的全国人口普查国家统计局对就业人员所做的更精确的统计和对之前的就业数据的全面调整，我们今天可以获得比较完整的关于农民工和非正规经济就业人员的数据。由此，我们可以比此前更有把握地论述农民工和中国非正规经济的数量和演变过程。

表 11.2 根据最新调整的就业人员数据列出中国历年的正规和非正规经济就业人员数（2000 年及之前的数据没有变动）。这里 “正规经济” 范畴纳入了统计局惯用的正式登记的、具有法人身份的国有单位、

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1/6 超过 14 小时 (李强、唐庄 2002); 另一项关于合肥市的研究，基于 836 份有效问卷，发现 80% 按月报酬在 800 元以下，86% 每天工作 10 到 14 小时（方云梅、鲁玉祥 2008）; 另一个 2007 年关于武汉、广州、深圳和东莞等城市的研究，根据 765 份有效问卷发现，农民工工资在 2004 年以后有显著的增长（49.5% 月薪达到 1000 元以上），但他们平均每周工作 65 小时。如果按小时计算，他们的工资只达到2005年全国正规职工平均的63%（简新华、黄锟 2007）。当然，《总报告》是最为全面的调查。

[10] 比如，加上了在自家所有房子居住人的房租等值估算，但是仍然没有纳入城市居民在医疗和教育上所享有的 “暗补” 的估算（Gustafsson, Li and Sicular 2008: 15-17）。应该指出，也没有考虑到工作时间的差别。

[11] 这是按每个就业人员计算。如果按人均计算，则低 35%。

表 11.2　中国城镇历年非正规经济就业人员数（万）

| 年份 | 私营企业 | 个体 | 未登记 | 非正规经济总数 | 占城镇就业人员% | 正规经济总数 | 占城镇就业人员% |
|---|---|---|---|---|---|---|---|
| 1978 | — | 15 | 0 | 15 | 0.2% | 9514 | 99.8% |
| 1985 | | 450 | 0 | 450 | 3.5% | 12358 | 96.5% |
| 1990 | 57 | 614 | 2313 | 2984 | 17.5% | 14057 | 82.5% |
| 1995 | 485 | 1560 | 1704 | 3749 | 19.7% | 15291 | 80.3% |
| 2000 | 1268 | 2136 | 8163 | 11567 | 50.0% | 11584 | 50.0% |
| 2005 | 3458 | 2778 | 10928 | 17164 | 60.5% | 11225 | 39.5% |
| 2010* | 6071 | 4467 | 11384 | 21922 | 63.2% | 12765 | 36.8% |

* 2010 年的数据根据第六次人口普查, 把城镇就业人数往上作了调整。根据新旧数据并存最后一年（2009年）数据的比较, 该年城镇就业人员总数经调整之后增加了0.22 亿人; 同时, 乡村就业人员数减少了0.44 亿人; 城乡总就业人员数往下调整了0.22亿人。这些调整所反映的主要是比原先数据更快速的城镇化, 也反映了相当数量农村人员在城镇化过程中从农业就业变成非农就业以及非就业人员的演变。
出处:《中国统计年鉴 2011》: 表 4-2。

集体单位、股份合作单位、联营单位、有限责任公司、股份有限公司、港澳台商投资单位以及外商投资单位。这些都是国家相对比较严格要求执行国家正式劳动法规的在册单位（虽然有一定比例并没有完全达到国家劳动法规所定标准也没有达到正规职工所享有的福利水准）。在正规单位之外的是规模较小的（虽然是经过正规登记的）、不具有法定正规 “用人单位” 身份的 “私营企业”（区别于较大型的民营股份单位和公司以及港澳台和外资单位）和个体（户）, 以及数量庞大的未经登记人员。他们更适合我们这里采用的非正规经济范畴。

所谓的“私营企业”, 按照国家的定义, 乃是“由自然人投资或自然人控股” 的单位。因此, 它们不具有 “法人” 身份, 与具有如此身份的股份合作单位、有限责任公司与股份有限公司、或“港澳台商投资单位”以及 “外商投资单位” 等较大的非国营企业不同（《中国统计年鉴》, 2007: 表 5-7,138页）。我们绝对不应像在美国语境中（和有的美国研究中）那样把 “私营企业”（private enterprise）按照其英文的字面意义理解为所有的非国有企业。事实上, 这些 “自然人” 所有的私营企业的就业人员在 2006 年只占全国就业人员总数中的 14%, 绝对不应被等同于中国 “资本主义” 的全部或其最大部分（《中国统计年鉴》, 2007: 表 5-2, 128 页）。

私营企业多为小型企业。2006年全国共有0.05亿（5百万）家经登记注册的私营企业，在城镇登记的共雇用0.395亿人员（在“乡村”登记的共0.263亿人员），[12] 每个企业平均13个员工（《中国统计年鉴》，2007: 表5-13, 150页）。根据2005年对这些企业的第六次（1993年以来每两、三年一次的）比较系统的抽样（每一千个企业抽一）问卷调查，其中只有1.13%是规模大于100位员工的企业。[13] 极大多数乃是小型的、平均13位员工的企业，包括制造业部门（38.2%）、商店和餐饮部门（24%）、以及“社会服务”（11.1%）和建筑业（9.1%）部门。如上所述，如此的非正规员工大多数没有福利、工作保障或国家劳动法律保护。（“中国私营企业研究”课题组 2005）[14]

至于2010年在城镇登记的4467万自雇个体就业人员，他们大多是登记人本身和一、两位亲朋的个体经济。（2006年平均2.2人/个体户—数据见《中国统计年鉴》，2007: 表5-14, 151页）这些“自雇”人员包括小商店、小摊子、旧的和新型手工业工人及其学徒、小食品商人、各种修理店铺等。这些人员快速扩展的部分原因是新兴现代经济部门对这方面服务的市场需求，部分是新近进城打工的农民工对这方面的需求。改革以来的城镇个体工商户，包括旧式（类似1949年前）的手工业者和小商业主的大规模复兴（人民公社化之后几乎完全消失），正是出于这样的需求。如此的就业人员有相当高比例经常从事类似于“劳务关系”的工作，当然大多没有福利和工作保障。

从阶级分析角度来说，这些“个体户”符合马克思主义生产关系视角关于“小资产阶级”所突出的特点，即以自家劳动力使用自家所有的生产资料（土地、工具、资本）的阶级（因此也可以称作“自雇者”，self-employed—Wright 1997: 第4章），因此既不同于资本家，也不同于无产阶级。同时，也符合韦伯从市场关系视角所突出的“阶级情况”，即销售自家（部分）产品的农户、手工业者或销售小商品的小商业者，因此与那些靠占据稀缺资本而具有垄断销售权力的资本家不同，也和在市场上出卖自己劳动力的工人阶级不同（Weber 1978, 1: 302-307）。正因为如此，马克思和韦伯同样把小资产阶级这样的个体生产经营单位当作资产阶级和无产阶级之外的第三阶级看待。（详细讨论见黄宗智 2008; 黄宗智 2010: 第9章）

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[12] 这里的“城镇”再次指县城关镇及以上，“乡村”则包括其下的镇。见脚注8。

[13] 2003年年底全国有0.0344亿（344万）这样的企业。当然，也有极少数符合美国语境内想象的那种中、大规模的资本主义企业。

[14] 当然，在私营企业“就业人员”中，也包括那些可被视为小型“资本家”的5百万企业所有者，以及一些高技术的高薪人员。但其绝大多数无疑是普通员工，也是待遇差于正规经济职工的就业人员。

然后是11384万（2010年）未经登记的非正规就业人员。在技能和工作稳定性方面，他们还要低一个层次，许多是临时性的人员，诸如保姆、清洁工、社区保安、餐馆服务员、运送人员、学徒等。毋庸说，他们绝大部分同样没有福利和劳动法律保护。

总体来说，以上三种主要城镇非正规经济就业人员（私营企业人员、个体户和未登记人员）共同构成一个低报酬、低稳定性、低或无福利、没有国家劳动法律保护的城镇经济体。[15]

由此可以看到,1985年以来，中国的非正规经济就业人员已经从所有城镇就业人员的 3.5% 爆炸性地扩展到2010年的 63.2%。这部分是由于（小）私营企业和个体户就业人员数的膨胀,2010年分别达到6000万人和4500万人的数目。更主要的则是未经注册人员的大幅度增加，从1985年的零数达到 2010 年的 1.1 亿人，其中当然主要是农民工。同时期，正规经济职工 2010 年的就业人员总数（1.28 亿）则仅和1985年基本一样（1.24亿）（1985~1995十年中有所增加，但上世纪 90 年代后期国营企业改制，其工人大规模下岗，正规职工基本返回到 1985 年的绝对数），而其所占城镇总就业人员的比例已经从 1985 年的 96.5%下降到 2010 年的 36.8%。这是个非常急剧的变化。

## 四、乡村的就业人员

至于乡村就业人员，2010 年人口普查发现，之前根据抽样调查估计的数据有比较严重的误差。国家统计局根据更可靠的2010普查对乡村就业人员数据作出了相当幅度的调整，下调 4369 万人，如表 11.3 所示。

此前，根据全国6.8万农户的抽样调查,国家统计局低估了2001~2010 年全国城镇化的幅度，所以要以每年平均 485 万之数对这些年份的乡村就业人员数进行调整。农民的更快速城镇化意味着农业就业人员数以同幅度比较快速递减。同时，乡镇企业从业人员在这十年间每年平均增加281万就业人员，2010年达到1.59亿人员，乡村私营企业也比较快速扩增，每年平均增加216万就业人员，2010年达到3347万就-业

[15] 当然 “私营企业”、“个体” 和未登记人员中不仅包括农民工，也包括上世纪 90 年代后期和本世纪00年代初期数量可能达到5000万的就业于非正规经济的城镇居民。其中许多是下岗职工，在非正规经济重新就业，大部分在服务业（“第三产业”）就职。我们缺乏全面、可靠的材料，但根据 1997 年一个相对系统的在 17 个省 55 个城市的问卷调查，大部分下岗职工是 “中年” 人员（年龄 30 到 50 的占 64%），只具备相对较低的文化水平（其中小学和初中学历的占 56%，上过大学或大专的仅有 5.7%），绝大部分成为交通运输、批发零售、餐饮和 “社会服务业” 等部门的非正规就业人员，或在小型的所谓 “私营企业” 工作，或者变成自雇的个体户，大多只比农民工稍高一个层次。只有很少部分的下岗人员（4.7%）认为国家的各项再就业工程对他们有过 “很大的帮助”（城镇企业下岗职工…… 课题组 1997; 亦见 Ministry of Labor and Social Security, n.d.）。

表 11.3　乡村就业人员数, 1980~2010（万人）

| 年份 | 原数 | 调整数 | 增减 | 乡镇企业 | 私营企业 | 个体 | 农业 |
|---|---|---|---|---|---|---|---|
| 1980 | 31836 | — | — | 3000 | | | |
| 1985 | 37065 | — | — | 6979 | | | |
| 1990 | 47708 | — | — | 9265 | 113 | 1491 | 36839 |
| 1995 | 49025 | — | — | 12862 | 471 | 3054 | 32638 |
| 2000 | 48934 | — | — | 12820 | 1139 | 2934 | 32041 |
| 2001 | 49085 | 48674 | -411 | 13086 | 1187 | 2629 | 31772 |
| 2002 | 48960 | 48121 | -839 | 13288 | 1411 | 2474 | 30948 |
| 2003 | 48793 | 47506 | -1287 | 13573 | 1754 | 2260 | 29919 |
| 2004 | 48724 | 46971 | -1753 | 13866 | 2024 | 2066 | 29015 |
| 2005 | 48494 | 46258 | -2236 | 14272 | 2366 | 2123 | 27497 |
| 2006 | 48090 | 45348 | -2742 | 14680 | 2632 | 2147 | 25889* |
| 2007 | 47640 | 44368 | -3272 | 15090 | 2672 | 2187 | 24419 |
| 2008 | 47270 | 43461 | -3809 | 15451 | 2780 | 2167 | 23063 |
| 2009 | 46875 | 42506 | -4369 | 15588 | 3063 | 2341 | 21514 |
| 2010 | — | 41418 | | 15893 | 3347 | 2540 | 19638 |

*根据 2006 年的全国农业普查, 该年有 2.12 亿劳动力全年从事农业劳动 6 个月以上, 0.91 亿 6 个月以下。（《中国第二次全国农业普查资料汇编, 农业卷》2009: 表 2-1-15）由此可见, 后者之中有相当比例被归纳为乡镇企业、私营企业或个体为主业的就业人员。
出处: 《中国统计年鉴 2011》: 表 4-2; 2010: 表 4-2。

人员。[16]　毋庸赘言, 农村乡镇企业和私营企业人员大多同样处于国家劳动法规保护和社会保障制度之外。

至于农村个体就业人员, 他们在 1995~2000 年间达到3000万左右人员的顶峰之后, 下降到 2004 年的 2066万人, 之后再次攀升, 2010 年达到2540万人。和城镇个体户一样, 我们当然可以把他们理解为一种"自雇"的"小资产阶级"。但是,应该指出,许多农村的个体户其实经常处于一种 "劳务关系" 之中（例如工匠、裁缝、理发师、运输者）。他们

[16] 这里应该附带说明，中国农村今天越来越多的就业人员同时从事不止一种职业—譬如, 部分时间耕种、部分时间在乡镇企业或私营企业就业, 或以个体身份从事小买卖、运输、工匠等工作。以上的统计是按照主要业务—每年就业 6 个月以上—来归纳的（详见《中国第二次全国农业普查资料综合提要》, 2008 以及《中国第二次全国农业普查资料汇编, 农业卷》, 2009）。

同样不会受到国家劳动法保护。小摊小贩也一样。无论从国家劳动法规还是收入水平来考虑，他们也可以被纳入非正规经济范畴。

至于以农业为主业的就业人员，在这十年间平均减少1213万人/年，多于国家统计局过去的估算。也就是说，从每年1个百分点提高到2个百分点。第1个百分点可以根据彭玉生和我在07年文章里分析的三大因素（生育率下降、城镇非农就业扩增、农业结构转化）来理解（黄宗智、彭玉生 2007），第 2 个百分点则一半来自比我们预测要更快速的城镇化，另一半来自我们没有充分考虑到的乡村非农就业（即乡镇企业以及私营企业就业）的扩增。结果是，2010 年的（以农业为主业的）农业就业人员已经下降到低于 2 亿人，仅为1.97 亿人。

在我看来，中国的农业就业人员也应该纳入“非正规经济”范畴，因为他们明显也属于二等经济，同样不具有劳动法律保护，也没有（或只有低等的）福利。在总数 2.53 亿的外出和本地农民工的现实下，当前绝大多数的农村农户家庭都有人在外打工。今天，几乎所有的农户都是 “半工半耕”的家庭，也可以说是“半无产化”了的家庭。在外打工的家人直接受到其农民和非正规身份的影响，属于“劳务关系”。同时，农民工之所以是城镇的非正规二等人员，正是因为他们同时也是农民，户籍在农村，家也在农村。其实，城镇之所以形成了两个等级的经济体，说到底是因为城乡间的差别。由此来看，农民工和农民其实应该更简洁地被概括为同一的非正规经济。

当然，中国的农民和农民工多具有承包地的使用权，由此可以说具有某种意义的社会保障，和许多其他发展中国家不一样。如此的平均划分土地制度是中国革命的遗产之一，具有一定的社会保障功能，但它到底和正规职工的医疗、失业和退休福利有较大差距。

我们固然可以特别突出农民之不同于其他非正规经济人员，而继续用“农民”、“小农”、“农业就业人员”，或“第一产业就业人员”等范畴来概括农民。我们也可以用以上提到的 “小资产阶级” 范畴（黄宗智 2008）。那样的话，我们实际上是在使用一个三元的分析框架—农村、以及（城镇）非正规、正规，并且是把农民视作三者中最低位置的人员。

但在我看来，更简洁的办法是把“乡村”的从业人员也纳入非正规经济之内。和其他发展中国家不同，中国许多从农村进入城市打工的农民不会真正完全脱离农村和完全城镇化，部分原因是中国的户籍制度和承包地权制度，部分原因是中国家庭作为一个基本经济单位的顽强持续（详见黄宗智 2012）。如果我们像国际劳工组织那样，把非正规经济限定为城市经济的现象，便会过分隔离中国的城镇与农村，过分隔离农民工与农民，不符合中国实际情况。

把农民也纳入非正规经济的好处是能够更鲜明地突出中国具有明显差别的头等和二等经济的实际。最高层的当然是高级官员和资本家。除了他们之外，头等是城镇大企业和国家机关中的正规职工，

具有福利并得到国家劳动法规的保护；二等则是此外的农民工和农民。这样把农民工、农村非农就业人员和农业就业人员一起纳入"非正规经济"范畴的好处是能够更清晰、简洁地突出中国的关键性城乡差别。

表11.4按照以上的正规与非正规的定义来划分中国历年的就业人员。可以见得，在大规模市场化和计划经济的社会保障制度全面解体的大潮流下，中国的社会经济体在1980年代从一个基本全是正规经济的体系极其快速地成为一个大部分是非正规经济的体系。2005年，全国就业人员中的85.0%基本没有社会保障和劳动法规保护。到2010年，伴随最近几年正规大"企业"（包括国有和国有控股企业）的扩增以及把部分非正规经济正规化的一些措施，正规经济所占比例稍有增加，非正规经济略有减少。同时，伴随福利制度的初步重建，非正规经济部门的福利情况稍有改善，但是和正规职工的保障差别仍然非常鲜明，和集体时代的农村医疗保障制度也有一定的差距。对农民工来说，农村的低等合作医疗保险所起作用比较有限，达不到城镇居民的水平，并且，和子女义务教育权利同样，基本只在户籍所在地才起作用，在打工所在地并不起作用。当然，非正规身份意味着不被纳入国家法定的"劳动关系"范畴下，不受到劳动法律的保护。制度整体显然仍然是个区分两个不同等级的经济和社会。该年，非正规经济人员占到总就业人员数的83.2%。

上述非正规经济的图像也可以从历史的角度来理解。它有以下的主要组成来源和部分：一是1980年代乡村工业化和乡镇企业的兴起，绝大多数是非正规的；一是1980年代后期开始的农民工大规模入城就业，也基本都是非正规的；一是1980年代农村医疗保障制度的全面解体；一是1990年代中期以后国有和集体企业职工的大规模下岗以及在非

表11.4　全国正规与非正规经济就业人员数和比例（1980~2010）

| 年份 | 总就业人员数 | 正规经济人员数 | % | 城镇非正规经济人员 | 乡村非正规经济人员数 | 非正规经济人员% |
|---|---|---|---|---|---|---|
| 1978 | 40152 | 40152 | 100% | 0 | 0 | 0% |
| 1990 | 64749 | 14057 | 21.7% | 2984 | 47708 | 78.3% |
| 1995 | 68065 | 15291 | 22.5% | 3749 | 49025 | 77.5% |
| 2000 | 72085 | 11584 | 16.1% | 11567 | 48934 | 83.9% |
| 2005 | 74647 | 11225 | 15.0% | 17164 | 46258 | 85.0% |
| 2010 | 76105 | 12765 | 16.8% | 21922 | 41418 | 83.2% |

出处：《中国统计年鉴》2011：表4-2。

正规经济中重新就业; 一是非正规私营企业和个体户从 1990 年代开始的快速兴起; 最后是同样处于国家劳动法和福利制度之外的小规模家庭农业的顽强持续, 而今天几乎每户都有人在外打工, 成为半工半耕的家庭。这些是 1980 年代以来非正规经济快速扩展的主要组成部分。

总而言之, 在改革期间, 非正规经济极其快速地成为全国绝大多数就业人员的经济体, 今天占到全国总就业人员中的83.2%。正规经济就业人员则只占到 16.8%。

## 五、结论

国内有不少学者把中国今天的社会结构想象为一个类似于美国的 "橄榄型" 结构, 区别于 "金字塔" 型。他们认为, 改革期间, 中国的 "中产阶级"一直在极其快速地扩增, 行将像美国那样达到所有就业人员中的高比例, 甚或大多数（详细讨论见黄宗智 2009 后半部分）。这也正是全球化跨国公司的想象, 以为中国将会成为全世界最大的中产阶级商品市场。

但事实是, 中国今天的社会结构距橄榄型显然还很远。处于顶层的当然是高级官员和资本家。除了他们之外, 我们绝对不该夸大所谓的 "中产阶级" 的人数和比例。一个比较精确的统计是国家统计局在 2005 年的一项研究, 它采用的定义是, 家庭年收入 6 万到 50 万元人民币（即当时的约 7500 美元到 62500 美元—按照美国的收入水平来说, 其实才处于中下层）, 凭那个定义, 中国的中产阶级只占到其全人口的 5.04%。2007 年, 这个数字上升到 6.15%（《国家统计局称……》2007; 亦见黄宗智 2010：198）。他们包含的是国家机关（事业单位、社会团体）、企业、体育娱乐、科技、研究和文化教育等单位和领域的较高薪人员。之后, 我没有看到同样精确的统计。

即便是2005年的5.04%之数,已经占到当时所有正规经济职工中的三分之一（11225 万人中的 3762 万）。我们如果取 10% 来作为 2010 年的相应之数, 那就意味着中产阶级已经占到全部正规经济人员中的60%, 即 12765万人中的7655万人, 而蓝领工人和较低工资的白领职员则只是5106万人。这样的估计意味正规经济人员中高薪人数多于蓝领和低薪白领总数, 很可能偏高。但无论如何, 还是去 "橄榄型" 的想象很远。

可以完全确定的是, 我们需要纠正人们对国家劳动法以及其所使用的 "劳动者" 和 "劳动关系" 等词汇的理解。劳动法所保护的其实只是劳动人民中的较小部分。在蓝领工人中, 它所保护的其实只是在改革和 "转型" 中保留了优越社会福利条件的少数职工; 同时, 它所保护的职工中有相当高比例的正规高薪白领职员。一定程度上, 今天受到国

家劳动法律保护的人员其实不是真正意义上的一般劳动者，而是白领职员和具有特权身份的少数蓝领工人。

具有讽刺意味的是，真正底层的打工者则几乎完全被置于劳动法律保护的正规 "劳动关系" 之外，而被归属于非正规 "劳务关系" 之下。今天的国家劳动法规实际上把绝大部分的真正劳动人民—即农民工和他们的半工半耕家庭—排除在其覆盖范围之外。也就是说，官方话语中的 "劳动者"、"劳动关系"、劳动法和劳动合同法其实已经脱离了大多数的真正劳动人民。这也是我们这里要使用 "非正规经济" 和 "非正规人员" 这样的表述的原因。

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# Disaster Reproduction and the Crisis of Governance —The Shanxi Example in China's Experience

**Yulin Zhang**[1]

# 灾害的再生产与治理危机[2] —中国经验的山西样本

张玉林

**Abstract**
Energy development can be understood to a large extent as a process of "creating disasters." Although this type of typical "man-made disaster" can be predictable, the study of this paper on the related conditions in Shanxi Province shows that because of the intertwining of complex systemic political, economic, and social defects, the power for creating disasters became huge. The land of Shanxi was thus dismembered in a "shocking" way. At the same time, since it is difficult to develop an effective response, the disaster came to be remade over and over again, expanding the affected areas and the affected numbers of people. Redress for the rural residents who lost their means of survival is nowhere in sight. The "crisis of governance" has come to mean in effect a crisis of survival. How to eliminate such a crisis becomes thus an exceptionally urgent problem.

**Keywords**
"Geological disaster of mines", reproduction of disasters, Chinese experience, rural Shanxi, crisis of governance

**摘要**
能源开发在很大程度上可以理解为"造灾"的过程。尽管这种典型的"人祸"具有可预见性,但是本文通过对山西省的相关状况的考察表明,由于复杂的政治、经济和社会体制的诸多缺陷交织到一起,使得造灾的动力巨大,从而将山西的大地肢解得 "触目惊心、山河破碎"。同时由于有效的救灾机制难以形成,导致灾害不断地扩大再生产,受害区

[1] 南京大学社会学系

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域和人数增加。而当对那些丧失了生存基础的农村居民的救助遥遥无期，“治理危机”实质上意味着生存危机，如何消除这种危机成为异常紧迫的问题。

**关键词**
“矿山地质灾害”，灾害的再生产，中国经验，山西农村，治理危机

## 问题的提出：为什么是“矿山地质灾害”

中国农村的改革或“转型”迄今已有三十余年，其间的巨变令人想到“三十年河东，三十年河西”。但具体地说，它目前究竟是在“河东”还是“河西”？抑或仍然在河的中央“摸着石头”？若将问题转换成非常“理论”、也非常“现实”的学术话语，那就是：今天的中国农村到底是一个什么样的“社会”？它的社会性质属于什么“主义”？

不过，这种整体性的追问目前似乎难以获得能够达成广泛共识的整体性的回答。因为，就“理想类型”的社会主义和资本主义而言，无论将其界定为哪一种“主义”，似乎都能找到太多的反例。最基本的问题在于，如果说对“主义”的判断标准主要依据经济制度或所有制形态，那么今天中国农村的混合经济形态显然将两种主义都包含在了其中，并显示出较大的区域差异和不稳定性。另一方面，官方话语中的“中国特色社会主义”以及民间话语中的“中国特色资本主义”，固然也算提供了现成的答案，但又因为“中国特色”非常含混而具有相当宽泛的理解空间，似乎说了等于白说。

基于回答的困难（至少对作者本人是这样），本文将关注的问题下放一个层次，重点探讨中国农村的治理方式及其结果。这样做的理由还在于如下的假设：不管何种“主义”以及其下的（或者背离了它的）政府，都必然将“善治”作为目标，都会希望有更高的行政效率、更低的行政成本、更好的公共服务和更多的公民支持。虽然“治理”被认为是一种偏重于技术性的政治行为（俞可平，2008:2），但具体的治理方式及其效果，却最终指向抽象的“主义”以及与其相关的实在问题：被“治理”的社会处于何种状态？被治理者的“幸福”或“痛苦”又与治理政治有着怎样的关系？

关于中国农村的治理问题，在最近的十多年间一直受到国内学术界的高度关注，关于中国整体的治理问题的研究也经常会涉及这一问题。其中的不少成果因其内容的宏富和讨论的深入而给人以较多启迪，展示了多个层面的“治理”困境或危机，及其背后的制度、机制和政策缺陷。但本文选取的是一个很少受到关注的独特而又波及甚广的论题：伴随着煤炭开采而发生的“矿山地质灾害”——一种生态环境灾难——的治理。

选取这一论题的理由在于，在人口大国中国（它今天的人口规模相当于19世纪中期也即第二次工业革命开始时的全球人口）快速迈向

工业化的过程中，整个经济和社会体系已经具备“大量生产、大量消费（耗）、大量废弃”这种“现代文明”或资本主义的显著特征。为了支撑经济和社会运行，中国需要采掘巨量的矿产资源，尤其是作为能源的煤炭（2011年全国的采掘量超过35亿吨，铁矿石的开采量达到13亿吨），而绝大多数矿山处于农村地带，其开采过程深度地改变了当地乡村的政治、经济和社会形态，并且以其巨大的生态环境代价颠覆着当地农民的生活和生存基础，甚至威胁着人身安全。对于这种状况的展开过程及其结果，以及政治和社会层面的回应（“治理”）进行详细考察实属必要。进而，正如19世纪的英国经济学家威廉·杰文斯曾经把煤炭看做整个英国的工业体系赖以运转的“基本动力”（约翰·福斯特，2006: 93）所启示的那样，在煤炭占到能源生产的三分之二以上的中国，煤炭及其采掘能够成为我们理解许多“中国问题”的有效切入点，并带来一些新的发现，对采煤造成的“矿山地质灾害”的治理实际上深受中国社会整体的生产方式和生活方式的制约，由此表现出来的困境或危机也就不仅是农村或者政治和行政制度的问题。

基于这样一种思考，本文将把中国的“国家能源基地”山西省作为案例来考察。所利用的资料包括作者本人已有的研究积累（张玉林，2010/2012）、近期开展的实地调查所获，以及相关的政府文献、研究著述和新闻报道资料。

## 灾害的制造：煤炭开采与“矿山地质灾害”

山西的煤炭资源探明储量约占全国的三分之一，在15.6万平方公里的土地上，含煤面积达6.2万平方公里，占全省土地面积的40%；在目前的119个县级行政区域中，有94个区域地下埋藏着煤炭（山西省统计局，2006；王宏英、曹海霞，2011）；在28000多个行政村中，“矿产资源型农村”5266个（王社民、杨红玉，2010）。其煤炭的成规模开采可以上溯到明代，但受到需求和采掘技术的限制，直到1949年，年间采掘量仍只有267万吨。此后的工业化推动了采掘量的快速增长，“大跃进”期间突破了4000万吨，随后因经济萧条和“文化大革命”而减少和徘徊，进入70年代重又突飞猛进，末期达到了1亿吨规模（表1）。

从对生态环境的影响来看，决定性的转变是在80年代初，改革开放和“能源基地建设”真正揭开了大量采煤的帷幕。此前的煤矿基本上是国有企业，除了隶属中央政府的8大统配煤矿外，还有340个地方国有煤矿控制着绝大部分煤炭资源，70年代才开始兴起少量的社队煤矿，开采有限的“边角煤”。1979年，一位山西籍的国务院副总理提出了将山西建成“全国能源基地”的设想，并很快确立为国家战略，中央政府于1982年设立了“山西能源基地建设办公室”，“对山西的总体要求是以较

表 1　山西省的煤炭产量 (1949-2011) 单位: 万吨

| 年份 | 产量 | 年份 | 产量 | 年份 | 产量 |
|---|---|---|---|---|---|
| 1949 | 267 | 1970 | 5298 | 1991 | 29162 |
| 1950 | 380 | 1971 | 5487 | 1992 | 29687 |
| 1951 | 603 | 1972 | 5994 | 1993 | 31015 |
| 1952 | 994 | 1973 | 6398 | 1994 | 32397 |
| 1953 | 906 | 1974 | 6796 | 1995 | 34731 |
| 1954 | 1310 | 1975 | 7542 | 1996 | 34881 |
| 1955 | 1696 | 1976 | 7720 | 1997 | 33843 |
| 1956 | 1930 | 1977 | 8754 | 1998 | 31482 |
| 1957 | 2368 | 1978 | 9825 | 1999 | 24900 |
| 1958 | 3715 | 1979 | 10893 | 2000 | 25152 |
| 1959 | 4355 | 1980 | 12103 | 2001 | 27660 |
| 1960 | 4412 | 1981 | 13253 | 2002 | 36762 |
| 1961 | 3258 | 1982 | 14532 | 2003 | 45232 |
| 1962 | 3180 | 1983 | 15918 | 2004 | 51495 |
| 1963 | 3466 | 1984 | 18716 | 2005 | 55426 |
| 1964 | 3597 | 1985 | 21418 | 2006 | 58142 |
| 1965 | 3927 | 1986 | 22180 | 2007 | 63021 |
| 1966 | 4198 | 1987 | 23164 | 2008 | 65577 |
| 1967 | 3386 | 1988 | 24648 | 2009 | 61535 |
| 1968 | 3664 | 1989 | 27501 | 2010 | 74000 |
| 1969 | 4465 | 1990 | 28597 | 2011 | 87228 |

数据来源: 1949-1998 年的数据见《新中国五十年统计资料汇编》第 229 页; 1999-2011 年的数据见《山西统计年鉴》及《山西省经济和社会发展统计公报》各相关年度版。从有关报道推测, 2002 年以后的数据可能小于实际采掘量。

小投入获取全国的煤炭商品保障（占全国商品煤 78%-80%）和京津地区的电力缺口补充”（吴达才, 2004）。而时任中共中央总书记的胡耀邦则在1981年到晋北视察期间鼓励“有水快流”。[3] 与此相应, 基于缓解煤炭供应持续紧张的局面, 中央政府1983年正式提倡发展乡镇小煤矿。因应国家领导人的号召和中央政府的政策鼓励, 山西省政府于 1984 年出

[3] 据记述, 胡耀邦看到大同、朔州的老百姓太穷, 而那里的煤炭埋藏很浅, 便问为什么不挖煤? 当地官员回答: 煤是国家的, 私人不能挖。胡耀邦说: “有水快流嘛。大的矿山国家开采, 稍大一点的集体开采, 贫矿和那些国家、集体不值得投资去开的, 就让群众自己去开采。”（石破, 2008）

台了《关于进一步加快我省地方煤矿发展的暂行规定》: "要实行有水快流,大中小结合,长期和短期兼顾,国家、集体、个人一齐上的方针。" 具体的分工则是 "农民挖煤、国家修路" (董继斌, 1994; 吴达才, 2004; 苗长青, 2006)。

在农村地区, 政策鼓励和 "致富" 愿望的驱动使得大量乡村煤矿急剧涌现。"社队煤矿" 矿井在 1980 年即比前一年增加了 1000 多个, 翌年则达到 3000 多个 (戎昌谦, 唐晓梅, 1981; 石破, 2008)。而政策话语中的 "有水快流" 在地方演变为更加通俗的 "要想富, 挖黑库", 到 1985 年, 全省乡镇煤矿已办理开采批准手续的有5000处、未经批准但已开办的约有 2600 处 (李承义, 1986), 其煤炭产量占到全省总产量的 40% 以上, 而全省的产煤量则突破 2 亿吨, 超过了外运能力。也正是在这一时期, 采煤的环境影响开始突显, 政府从1987年开始转向关闭小煤窑、实施联合重组等, 也曾因私挖滥采 "抓过不少人", 但效果有限 (李北方, 2006)。

进入90年代, 邓小平的 "南巡讲话" 掀起了第二次改革开放浪潮, 中共十四大确立了 "社会主义市场经济" 路线, 关于所有制的意识形态束缚得以解除, 股份制企业和个体私营经济发展受到鼓励, 这为山西的煤炭采掘进一步注入了动力: 乡镇煤矿的产量 1996 年达 1.63 亿吨, 占全省产量的一半, 超过了国有统配煤矿 (吴达才, 2004), 而全省地方的 "有证煤矿" (含证照不全) 1997年达到10971座, 形成了 "多、小、散、乱" 的格局 (周洁, 2008)。不过, 受到石油大量进口和东南亚金融危机等因素的冲击, 煤炭市场自 90 年代中期陷入低迷, 政府则趁机掀起了又一次整顿浪潮: 在 1998-1999 年的两年中取缔、关闭私开煤矿和布局不合理的煤矿3000多个 (周洁, 2008)。但也正是在这一低迷期, 乡村集体煤矿开始大量转让或承包给个人—包括在当地从事煤矿工程建筑而被拖欠了工程款的浙江人。这为2001年煤炭市场快速升温、价格暴涨之后 "煤老板" 的大量涌现埋下了伏笔。

煤炭市场的升温与中国正式加入世界贸易组织 (WTO)、境外资本大量涌入、工业化的列车进一步提速有关。新世纪的 "世界工厂" 具有不可遏制的能源需求,带动了山西采煤量的剧增:在2003-2007年接连突破4 亿吨、5亿吨、6亿吨大关。而在经过2009年的 "煤炭资源整合" 之后, 形成了烈度更强的开采:2010年达到 7.4 亿吨, 相当于 1970 年代十年的全省采掘量, 以及 1900 年的全球采掘量; 2011 年更是飙升到 8.7 亿吨, 是当初曾经设想的最大采煤量的 2.3 倍。[4]

长时段的汇总数据显示了煤炭采掘量的加速度膨胀: 1949-1978年的30 年间总计 12 亿吨,1979-2000 年的 22 年间为 54 亿吨,而在 2001-2011

[4] 有报道显示, 在开始能源基地建设时, 曾经讨论过山西 "究竟挖多少煤是顶峰" 的问题, "最终结论是 4 亿吨。" 见《南方周末》2009 年 4 月 29 日。

年的 11 年间就达到62.6亿吨。由于新世纪以来地方政府和煤矿存在着少报产量的倾向, 第三阶段的采煤量实际上更大。

规模越来越大的采掘当然为中国经济的长期高速增长提供了动力。山西的煤炭产量长期占到全国的四分之一左右，省际调出量则始终保持在全国的四分之三左右, 它被源源不断地输往全国的 20 多个省区, 特别是华北和华东地区。可以认为, 中国的工业化列车在很大程度上是由山西的煤炭所驱动, 在 21 世纪的 "世界工厂", "能源基地" 山西实际上成了动力车间或锅炉房。

然而，正如大量的经验资料显示的那样，煤炭采掘业是一个多重意义的 "要命产业"。首先, 产权制度的混乱和煤矿伴随的巨大利益, 使得围绕采矿权和煤炭资源的争夺异常激烈, 经常引发令人震惊的血案, 诸如孝义市两个村庄的"火并案"，保德县冀家沟村的"忻州第一案", 以及临县的 "白家峁血案"[5]。其次，在采掘的过程中，获得超额利润的冲动，以及被金钱收买了的权力的放纵，造成经常性的安全措施落空, 大量的矿工丧生于频发的 "矿难": 1980-2004 年间, 全省有 17000 多名矿工魂断井下（苗长青, 2006），这还不包括为逃避惩罚而瞒报了的死亡人数。第三, 高度依赖煤炭的畸形产业结构具有高度的不稳定性, 在市场萧条时容易引起整体经济衰退。这里要强调的是它的另一种要命后果: 大面积的水资源破坏和水源枯竭, 大范围的地裂和地面沉陷, 以及耕地废弃、房屋倒塌、人员伤亡。

根据调查,至迟在20世纪60年代后期,山西的一些矿区已经有村庄因地陷和房屋倒塌而被迫搬迁, 80 年代出现了更多的关于村庄塌陷的报告, 而 90 年代则进入了灾害爆发期。根据 1998 年一项的不完全统计, 全省煤炭采空区面积已达1300平方公里，土地塌陷面积520平方公里; 因采煤漏水造成 18个县的 300多个村庄、26万人丧失饮用水源, 39 万亩水浇地变成旱地; 塌陷、破坏和煤矸石压占耕地112.5万亩; 9 亿多吨煤矸石堆积成 106座煤矸石山, 其中40多座自燃, 由此产生大量的废气、二氧化硫和烟尘，污染着周围的水、土壤和空气（王宏英，2000: 曹金亮等, 2004; 秦文峰、苗长青, 2009: 392）。在著名的 "煤海" 大同市境内, 1997 年就发生采空区塌陷 37 起, 有9 人在塌陷中丧生。[6]

到了 2005 年, 问题之严重已经让山西省的一位高官用 "触目惊心、山河破碎" 来形容: 全省矿区面积达 19847 平方公里, 其中采空区 5115 平方公里，地表沉陷2978平方公里—而且塌陷面积还以每年94平方公里的速度扩展；由此导致的地质灾害分布面积达到6000平方公里, 涉及 1900 多个自然村、220万人; 水资源遭到破坏的范围则为20352 平

[5] 相关报道分别见《中国新闻周刊》2003 年第 13 期,《南方都市报》2009 年 10 月 22 日;《中国青年报》2009 年 11 月 11 日。

[6]《瞭望》2004 年第 47 期。

方公里（占全省总面积的 13%），全省 3000 多处井泉枯竭，作为许多河流水源的 19 个岩溶大泉中有 4 个干涸、7 个流量衰减，导致 8503 自然村、496.73万农村人口和54.72万头大牲畜饮水困难。另据截至前一年的十年间的 "不完全统计"，塌陷造成 500 多人伤亡。[7] 回顾两百多年来工业化导致的环境问题的历史（克莱夫 • 庞廷, 2002; J.R. McNeill, 2000/2011），可以断定，发生在三晋大地上的这种灾害，在规模、范围和烈度方面，都堪称举世无双。

在政府的文献中，上述灾害被称为 "矿山地质灾害"。如果按照中国传统的灾害分类习惯，这种完全由人为扰动形成的灾害当然属于 "人祸"。客观而言，这种人祸无法根除。因为，从物理的角度来看，一旦对土地或山野开肠破肚，采掘和搬运出沉睡于地下的大量 "资源"，必然引起地质变动，进而破坏地表生态环境、威胁当地居民的生活和生存。而当采掘的力度和规模足够大，造成的灾害就会非常惊人。这也就意味着，灾害的产生是必然的和可以预见的，采矿就意味着制造灾难或者 "造灾"，意味着灾害的生产和再生产。但是要满足现代社会的需要，又不可能完全放弃采掘，除非回到原始时代。面对这种现代宿命，较为理想的选择是，尽量控制开采的方式和规模，将其生态环境后果、社会经济后果和人身安全后果控制在最低限度，同时采用一切可能的手段，对已经发生的破坏及时治理和恢复，对因此受害的社会成员进行补偿、赔偿和救济。但是在山西，多种政治、经济和社会因素的结合，使 "理想" 无法变成现实。

首先，"国家能源基地" 的角色，使山西的煤炭采掘量必须随着中国经济对能源需求的增加而增加，而且这种增加是超越了常规速度的高速度。众所周知，追求高速度背后的历史动力是近代史赋予的 "落后就要挨打" 的集体记忆，这种记忆自1949年以来一直推动着中国 "赶超"，而赶超的主要手段就是工业化和经济增长。它的现实动力则是通过高速经济增长来确保就业和居民收入的增加，以及与此相关的政治合法性和社会稳定。如果说延续不衰的历史记忆和不断弱化的政治合法性成了中国经济列车难以减速的最大约束，那么与其相关的当代中国的两种核心价值观—国家层面的 "发展" 和个体层面的 "发财"，分别演化为 "发展主义" 和 "拜金主义"—则为经济列车的高速运行提供了巨大的精神动力。只要中国经济必须高速增长，山西也就无法摆脱 "能源基地" 的紧箍咒，它必须拉动着中国前行。正如山西的一些官员也曾慨叹的那样，采煤变成了一种 "政治任务"。而为了确保任务的实现，80 年代以来配备的 "基地" 主政者大多出自煤炭行业，以至于 "走了一

[7] 此处资料综合了《经济观察报》2005 年 11 月 6 日，《山西晚报》2005 年 4 月 20 日，人民网 2004 年 9 月 21 日，以及郭建立 (2011) 等的相关报道。

个挖煤官, 又来一个挖煤官", 至于市县和乡镇, 许多主要官员也都是煤炭系统出身, 在 90 年代, 各县甚至专门配备了 "挖煤副县长"。[8]

当然, 指出宏观层面的历史和现实动因, 并不能替代中观和微观层面的政治和社会动力分析。不仅 "中央需要煤炭", 山西的各级政府也越来越离不开煤炭。长期重视单一煤炭产业的结果, 致使山西的经济体系到 90 年代已经锁定在煤炭之中, 不仅经济增长主要依赖采煤量及相关产业（如焦炭行业）的扩张,财政体系也成为典型的"煤炭财政"。进入新世纪之后, 煤炭工业收益占到全省可用财力的一半, 91 个产煤县财政收入的 40%至 50%、36个国家级重点产煤县财政收入的 70%以上来自于煤炭（《南方周末》2009 年 4 月 30 日）。而且, 基于财税体系的划分, 愈是地方和基层, 就愈加依赖地方煤矿和 "小煤矿"。新华社的一篇报道曾经指出: 在许多县区, "地方政府为了得到预算外资金, 就公开支持 '黑口子' 生产和黑煤运输, 私自印制本辖区内使用的车辆通行凭证。"（孙春龙, 2005）

对煤炭和煤矿的需要, 同样适用于权力体系的多数分支和个体官员。伴随着政府权力部门化、部门权力 "法制化" 以及个人化的权力私有化进程, 部门和个体的 "设租"、"寻租" 冲动都越来越旺盛, 而丰富的煤炭资源自然成为标的,"只要有一项关于煤炭的政策出台,各部门都能从中搜罗到可以发财的地方"（《南方周末》2009 年 4 月 29 日)。当权力部门和个体官员都更加需要煤矿尤其是 "非法煤矿", 大量的小煤矿在关停之后总是存在大面积复活[9]的可能。进而, 当权力本身变成了资本, 它就必然按照资本的逻辑运行。在设租和寻租之外, 直接投资入股或者获得更为清爽的 "干股", 将会获得更大的利润。近年来因为种种偶然因素案发的煤炭局长、反贪局长、以及 "人民警官" 成为 "煤炭富豪" 的大案, 只不过露出了冰山的一角。比如, 在产煤大县汾西县, 在 2005 年 "最少有上千个黑口子", 而好多有煤的山沟都被当地民众称为 "公检法一条沟", "乡里根本管不了"（孙春龙, 2005）。

在这样的格局中, 无论是国有煤矿还是个体 "煤老板", 完成更高的生产和利润指标的需要, 追求更多财富的动机, 都为挖掘机朝着更深更远处掘进注入了动力, 由此导致公然的 "私挖滥采" 和不会被视为问题的大量开采。而在开采过程中, 国有煤矿可能会对矿工的安全有较多

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[8]《南方周末》2008 年 10 月 23 日,《经济观察报》2005 年 10 月 31 日。

[9] 比如, 在经过 2003 年的称为 "技术改革" 的压缩小煤矿之后, 全省的 "各类小煤矿" 仍然多达 12000 多个, 意味着 5000 多个 "矿产资源型农村" 中的每个行政村平均拥有 2.3 个; 而到 2005 年, 当新上任的省长屡次催问非法煤矿的数量之后, 汇报上来的数据是 4000多个, 比合法的煤矿 4200 个还要多, 以至于新的主政者感叹: "阻力不仅是几千个非法矿主, 而是背后的干部啊, 每个非法的煤矿没有十个八个基层党政干部和执法管理部门的工作人员作保护伞, 它是干不下去的。" 相关资料见《半月谈》2004 年 6 月 25 日、《南方周末》2006 年 7 月 20 日的报道。

考虑，但在对外部环境影响的考虑方面却不可能“文明”。至于那些必须向权力部门和权力者交租[10]的“煤老板”，则必然要通过加倍开采寻求补偿，从而也就更容易漠视矿工的生命和外部的环境；而“一有矿难，全省小煤矿都关闭”的惯用手法，也会让未来预期不确定的矿主加速采掘。而在这一过程中，如同大多数“矿难”调查结果显示的那样，监管机构往往闭上或被蒙上了眼睛。[11] 当然，“出一场矿难，倒下一批干部；抓一个矿主，咬出成群官员”[12] 之类的连锁效应，也会让官与商双方都感到风险，但在大面积官商一体化的社会土壤中，“风险”仍然是小概率事件，纵有“三年内换了四任市长”的问责现象，甚至在举国震惊的“重大责任事故”之后连续撤换两任省长，整个权力系统却不可能得到彻底清洗。

在“政府和市场”一道失灵的同时，挤压在“社会”下层的当地农民，不具备基本的制衡能力。他们通常被排斥在整个过程之外，直接关系到其安全和利益的国家的煤炭政策自然不会征求他们的意见，国有煤矿何时进入村庄的地下，以及开采多少和如何开采也都似乎与他们无关。原本属于村庄的集体煤矿大多在90年代就已经承包或卖给了个人，而基于“出事后当地人不容易打发”的算计，矿区的农民很少会被当地煤矿雇用。在这种状况下，最划算的选择就是以合法或非法的方式承包一个煤矿。而当灾害造成之后，其高度分裂的零散状态难以形成有效的集体行动，因为名义上代表其利益的村支书和村主任，在多数情况下正是私挖滥采的急先锋或内应。以作者2012年夏天走访过的大同市南郊区6个“沉陷村”的情况而言，所有村庄的书记和主任早已先于大部分村民搬离村庄。在其中的口泉乡曹家窑村，留下的最后一位村干部妇女主任也已于近期出走，只有一个“农民权益保障促进会”的牌子还悬挂在她家空房的山墙上，而村中仅剩的二十余人都是缺少多重意义的“活动能力”的老人、妇女和穷人。

这样，我们能够发现，在煤炭开采及其伴随的生态环境影响方面，政治、经济、社会，上层、中层、下层，几乎所有的领域和环节都具有推进煤炭开采的动力，和对生态环境的破坏性。这些破坏性的力量共同形成了合力，在山西的大地上造就了史无前例的灾难。而当灾难与产量一道快速增长，在采煤必然导致采空、采空必然导致塌陷这样一种算得上自然规律的背后，确实存在着政治和社会机制的加倍效应。

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10 这几乎成为一种制度性的租金，虽然租率并不固定，往往随着权力的大小而升降。这方面的精彩记述可参照石破：《“煤窑文化”的政府转型》，《南风窗》2006年第21期。

11 代表性案例是2006年暴露的“安监系统腐败窝案”：一年内有7名局长先后落马，被指控的主要罪名都是“受贿”或“巨额财产来源不明”。相关报道见《中国青年报》2006年9月14日。

12 李其谚等：《大同原副市长落马幕后》，《财经国家周刊》2010年5月10日。

灾害的治理:“惠民工程”的拖延与变形

“山西省煤炭工业可持续发展政策研究环境专题小组”的一项研究显示:在 1978-2003 年间, 全省采煤造成的环境污染、生态破坏等项损失合计达 3988 亿元, 但投入治理的资金仅 13.85 亿元(《山西晚报》2005年4月28日)。这似乎能够表明, 在由煤炭行业出身的官员较多主政的山西省, 政府更重视采煤,[13] 而不是其生态环境后果和社会经济后果。与此相关, 尽管灾害在 90 年代末已经变成严重的生态问题、生存问题和社会问题, 但无从看到系统的治理和救助方案。唯一的例外可能是2000 年晋城市“城区”制定了土地塌陷治理规划, 但由于资金难以保障, 可治理的只有少数实力雄厚的村庄, 而随着后来煤价飙升, “更是私采滥挖、越层越界屡禁不止, 地灾也就愈发严重了。”(《山西日报》2008年 9 月 5日)

事态的转机是在2002年中央政府的促动之后。包括山西在内的全国采煤沉陷区治理问题纳入了中央政府的议事日程。国家发改委2004年6月下发的一个通知[14]显示, “由于历史遗留的采煤沉陷区范围广、破坏严重, 不仅给沉陷区居民生活带来困难, 威胁到部分居民生命财产安全, 而且经常引发群体性事件影响社会安定, 党中央和国务院领导对采煤沉陷区治理工作十分重视,多次深入采煤沉陷区进行调研”, 并批准了原国家计委和发改委的相关请示报告。而根据国务院批复的文件精神, 发改委曾于 2002 年底专门开会要求有关省区开展治理的前期工作, 但各地进展差别较大, “为尽快解决沉陷区群众居住和生活困难, 维护社会安定”, 特明确规定: “经国务院批准, 从 2003 年起力争用 3 年时间, 完成原国有重点煤矿历史遗留的采煤沉陷区全部受损民房、学校、医院的搬迁或加固, 以及供水、道路等设施的维修。”

按照通知要求, 治理工程应该在2005年底完成。山西省政府于2003年组织万余人次对九大国有煤矿矿区 1000 多平方公里采煤沉陷区内的居民受损情况进行了调查,制定了治理方案。[15]但不知何种原因,“九大国有重点煤矿沉陷区治理方案” 在应该完成的年度才上报, 经批准后翌年启动。计划安置灾民 18.1 万户、60 万人; 总投入资金 68.66 亿元, 其中, 中央政府负担 40%, 省、市、县(区和县级市)三级政府共同

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[13] 苗长青 (2006) 曾提到: “片面重视发展能源工业的做法是与当时一些领导同志的指导思想分不开的。比如, 当时有人提出了经济结构调整的问题, 但遭到省里一位负责同志的批评: ‘搞什么结构调整, 山西的主要任务是挖煤, 支援全国经济建设。’”。

[14] 国家发展与改革委员会:《关于加快开展采煤沉陷区治理工作的通知》, 发改投资[2004]1126 号。

[15] 刘鸿福:《山西地方煤矿采煤沉陷区综合治理的冷思考》,http://www.txsxmr.com/txsxmrmore.aspx?id=198&ejclass=28&classtype=7。九大矿区为大同、轩岗、万柏林、古交、汾西、霍州、潞安、晋城和阳泉。

负担 25%, 相关煤矿负担 26%, 个人支付 9%。治理方案包括: 集中建设居民住宅587.8万平方米, 安置沉陷区居民 97965 户; 维修加固住宅 294.8 万平方米, 受益居民 64920 户; 针对农村居民的货币补偿近 91 万平方米, 涉及 18133 户; 另有学校、医院及道路、桥梁、供排水等城乡基础设施的新建或维修加固等。

从上述规划可见, 这项迟迟出台的救灾方案存在着四个缺陷。第一, "原国有重点煤矿历史遗留的采煤沉陷区"并不包括国有非重点煤矿和大量的地方煤矿沉陷区, 因而存在着明显的所有制差别, 在位于后者的农民看来, 这是 "同样的太阳, 照耀着不同的人"。第二, 考虑到灾害完全是煤矿企业和政府的监管不力造成, 让受灾居民承担 9% 的资金, 显然是将部分责任转嫁给了受害者。第三, 虽然山西省负责这项工程的机构在其官方网站标明的是 "山西省国有重点煤矿沉陷区综合治理", 但实际的治理限于居民搬迁、住房加固和基础设施的修复, 并不包括耕地复垦、水源问题的解决, 以及广义的生态修复, 这样, 沉陷区的农民在治理后仍然难以恢复生存基础, 那些完全丧失了耕地的"失地农民"则有更大的后顾之忧。第四, 就作为治理重点的住房问题来看, 解决办法是按照房屋损毁程度分为四等, 其中A、B 两类补助修理费, C、D 类中的城镇居民迁至新建的居住小区（住房标准为60平方米）, 对农民则提供重建费（每平方米450元）和宅基地由其自建, 但上限为每户 50 平方米。这也意味着, 虽然同为灾民, 但受灾影响更重的农民与城镇居民之间的区别对待非常明显。

按照规划, 山西的治理工程应该在 2008 年结束, 新华社当年 3 月 31 日的一篇报道确实也显示它 "将在 2008 年年底基本结束"。不过, 正式宣布 "治理任务全部完成" 是在又过了三年之后, 在 2011 年 1 月召开的山西省人代会上省长所做的《政府工作报告》中。但随后刊载于《中国矿业报》4 月 11 日的一篇报道显示, 实际进展并非如此。报道说: "山西省把国有重点煤矿采煤沉陷区治理作为惠及民生的一件实事, 连续多年举全省之力推进实施, 治理工程取得阶段性成果。截止目前, 已完成新建和维修住宅面积 670余万平方米, 搬迁家庭和维修加固房屋共近 10 万户, 惠及 30 余万人。"

将报道的完成情况与规划方案加以比较（表2）可以看出,已完成项目占规划目标的比例分别为: 住宅建设面积为 77%, 搬迁安置居民为 66%; 维修加固面积为75%, 涉及户数比例相同。从报道所言 "搬迁家庭和维修加固房屋共近 10 万户, 惠及 30 余万人" 可见, 似乎只分别覆盖了目标覆盖户数和人口的 55% 和 50% 多。而考虑到报道可能漏掉了货币补偿部分, 假定货币补偿涉及的户数和人口全部到位, 总 "受益" 户数也只有 73% 、人口则不会超过 75%。也就是说, 由中央政府确定的、到 2005 年就应该完成的 "国有重点煤矿采煤沉陷区治理" 工程, 在拖延了 6 年之后, 至少仍然还有 27% 的受灾户和 25% 的受灾人口没有 "受益"。

表 2　山西省 “国有煤矿采煤沉陷区综合治理工程” 计划与完成状况

| | 新建住宅 万m² | 搬迁户数 万户 | 货币补偿 万户 | 维修住宅 万㎡ | 涉及户数 万户 | 覆盖人口 万人 | 投资总额 万元 |
|---|---|---|---|---|---|---|---|
| 规划目标 | 587.8 | 9.80 | 1.81 | 294.8 | 6.49 | 60.0 | 686629 |
| 完成情况 | 450 | 6.5 | 不明 | 220 | 4.84* | >30 | 不明 |
| 2011 年4 月完成率 | 77% | 66% | 不明 | 75% | 75% | >50% | 不明 |

数据来源: 规划目标见 “山西省国有重点煤矿采煤沉陷区综合治理网站” (http://cx.sxei.cn/gzdt.asp); 完成情况见《中国矿业报》电子版 2011 年 4 月 11 日的报道 “山西 30 余万人告别采煤沉陷区”。*处数据为笔者推算得出。

但随后不再有相关的消息，工程似乎随着《政府工作报告》的审议通过而画上了句号。

这种拖延状况在全国最大的采沉陷区（2005年已达500平方公里）大同市似乎更加明显。在 2005 年, 大同市南郊区和左云、新荣、浑源三县已有 375 个村庄属于 “地质灾害严重村”, 受灾农民达 69959 户、23 万人。按照规划,大同市将建起一个庞大的住宅区用来安置45625户灾民, 拟建的住宅面积占到山西省的一半。但在实施过程中，“沉陷区治理” 与大同煤矿集团的 “棚户区改造” 工程并到了一起，而 “两区工程” 先期建起的房子被优先安排给了 “棚户区” 的矿工, 从而导致大量沉陷村农民的搬迁被悬置。比如, 在南郊区, 有 5 个乡镇的 71 个村庄（灾民 21294 户, 10 万间房屋和 20 多万亩耕地遭到破坏。其中 30 多个村庄受到有害气体泄漏的威胁）需要搬迁, 但是到 2010 年 9 月, 只有 21个村实现了搬迁, 除去已达成协议而 “有望搬迁” 的村庄外, 尚有三分之一的村庄无法落实（吴天有，2010）。在左云县，纳入治理规划的有47个村, 到 2011 年 5 月只有 8 个村实现了搬迁、2 个村和区域实施了治理（《大同日报》2011 年 5 月 18 日）。

那么, “地方煤矿沉陷区” 的治理状况又如何呢? 国家发改委的前述通知规定: “对于地方国有煤矿和乡镇煤矿历史遗留的采煤沉陷区治理资金由省、市、县政府和企业、个人共同筹措解决，中央原则上不予补助。” 在山西省, 由于地方煤矿数量众多, 且多数处于村庄附近、开采多为浅层、技术落后, 造成的灾害范围远远超过国有重点煤矿。《山西日报》（2009年3月7日）曾报道说:“据初步测算,全省地方煤矿采煤造成的沉陷区为3000余平方公里,受灾人口超过160万,在全国最为严重。” 但尽管如此, 在制订国有重点煤矿沉陷区治理方案的时候, 山西省政府并没有将受灾人群更大的地方煤矿沉陷区纳入治理和救助的范围。

不过，似乎是陆续发生的塌陷造成人员伤亡的事件，[16] 特别是2006年8月宁武县西马坊乡采空区塌陷造成18人死亡的重大事故触动了新的主政者，山西省政府于当年推出了又一项覆盖范围有限的治理规划：从2007年起，力争用三年左右完成"采矿权灭失地"[17] 676个村庄的塌陷、房屋损坏和地下水疏干等严重地质灾害的集中治理任务。在2007年初召开的山西省人代会上，省长宣布当年治理 201 个村，解决 4.8 万户、17 万农民的住房和饮水严重困难问题，并作为 "向全省人民承诺要办好的 12 件实事之一"。随后制订了实施方案，成立了领导机构，召开了动员大会，并由常务副省长分别与各市的分管副市长签订了 "目标责任书"，"一场农村地质灾害治理工程的大幕" 就此拉开。[18]

按照规定，治理资金主要由地方各级政府分担、"受益人"适当负担，而当年所需要的 "政府补助资金" 共 11.9 亿元，由省、市、县三级按照5:3:2的比例分担，资金出处主要从各级财政收取的探矿权、采矿权使用费和价款中安排。具体措施包括搬迁 193 个村（31503 户）、修缮住房 8 个村，旧村土地复垦 2.5 万亩，新水源地建设 199 项，采取工程措施治理地质灾害 35 项。资金补助标准是：避让搬迁每人 5000 元，危房修缮每人1200元，打井每米平均2000元，造地每亩5000元。[19]

这项工程算是对因 "采矿权灭失" 而无法找到相关企业承担治理责任的情况下最终由政府 "买单"。惟其如此，它覆盖的灾民也就只有20多万，而对于160多万受灾人口中的其他灾民如何救助，也就没有考虑。后者似乎属于能找到责任主体，按照 "谁破坏、谁治理" 的原则，应由相关煤矿解决，虽然这在实践中经常落空。另一方面，政府的最终 "买单" 仍然有限，因为正如国有重点煤矿沉陷区的治理一样，它同时要求 "受益人适当分担"。而据后来的报道，由于新居住点需要征地、建房和水电暖设施的配套等等，每人5000元的搬迁补助根本不足，除了各县要自筹大量资金外，搬迁村民也必须出钱，最多的出到了2.7万元。而对于那些担心找不到就业门路的村民来说，"这笔支出太沉重了，有

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16 据山西省国土资源厅 2006、2007 年度《地质灾害防治方案》所载的 "不完全统计"，2005-2006 年发生突发性地质灾害 68 起，死亡 43 人，"采矿强度加大使矿山地质灾害进一步加剧"。而宁武县的塌陷事故造成的死亡人数之多为全国同类事故所罕见（《经济参考报》2006 年 8 月 16 日）。

17 所谓 "采矿主灭失地"，是指由于煤矿关闭找不到责任主体或因多家煤矿交叉开采而责任主体不清的状况，它意味着无法找到相关企业来承担治理资金，因此只能由政府来 "买单"。

18 《经济参考报》2007 年 6 月 15 日；《中国矿业报》2008 年 2 月 19 日。

19 山西省财政厅：《山西省农村地质灾害治理工程资金管理办法》，财政厅晋财建[2007]132 号。

人干脆迟迟不搬新居。”[20] 当然, 与前述国有煤矿沉陷区治理相比, 它增加了旧村土地复垦、新水源地建设和工程措施治理, 但同样没有解决搬迁居民的后顾之忧。

关于工程的进展状况, 尽管有报道说 “部分市、县和广大人民群众存在着等待和观望的思想, 至 8 月底, 许多治理工程没有取得实质性进展”, 但经过后来的动员和突击, 最终超额完成了当年的计划。[21] 2008 年 4 月又下达了第二轮治理方案: 集中治理 100 个村, 涉及 1.6 万户、6 万农民, 并列为当年要办的 “10 件实事之一”。而 “山西省农村地质灾害治理工程领导组办公室” 在 2009 年 2 月下发的相关通知[22]中提到: “通过两年来的工作, 全省采矿权灭失地因采矿造成的村庄塌陷、房屋损坏和地下水疏干的 6.7 万户、25 万农民的住房安全问题和严重饮水困难得到有效解决, 农村地质灾害治理工程工作取得了阶段性成果。2009 年, 省领导组要求各市再接再厉、努力工作, 全面完成 2007、2008 年工程项目的收尾工作, 使这项为群众办的实事真正落到实处。”

通知没有交代 676 个村庄中有多少得到了安置。但据新华社后来报道, “两年多里一共解决了 305 个村、23.1 万人的住房和饮水问题”, 省、市、县三级财政总计投入资金 18 亿元[23] (这意味着平均到每个灾民不足 8000 元)。而按照当初的计划, 还有 371 个村庄需要治理, 涉及的人数也应该超过新华社报道的 23.1 万人和 “晋农灾治办” 所说的25万人。但通知没有提到对这些村庄的治理计划, 此后也终无下文。至此, 这项被定位为 “省委、省政府落实科学发展观、着眼改善民生的一项重大决策部署” (晋农灾治办 [2009]1 号语), 在同样只是取得了 “阶段性成果”—按照村庄数计算的 “完成率” 只有 45%—之后, 也同样不了了之。

由于缺少对相关政策过程的详细了解, 难以说清为什么被赋予了巨大政治意义的两项 “惠民工程” 都成了十足的 “半拉子工程”。不过, 在山西省政府宣告 “农村地质灾害治理” 工程进入收尾阶段后一个月, 在北京召开的全国人代会上, 山西省的 17 名全国人大代表联名提交了一个提案, 要求中央政府 “将山西地方煤矿采煤沉陷区治理列为国家试点给予支持” (《山西日报》2009年3月7日)。所谓的支持当然意味着政策和资金支持, 而在中国的行政话语中, “政策支持” 当然也意味着资金的再分配。这容易让我们推测, 直接的或首要的原因是治理工程遭遇了资金短缺。

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[20] 《半月谈》2009 年第 8 期。

[21] 据《中国矿业报》2008 年 4 月1日报道, “当年已让 206个村、5.1 万户、20 万农民群众从中受益”。

[22] 山西省农村地质灾害治理工程领导组办公室:《关于做好 2007、2008 年全省农村地质灾害治理工程收尾工作的通知》, 晋农灾治办 [2009]1 号。

[23] 《半月谈》2009 年第 8 期;《半月谈内部版》2010 年第 11 期。

资金短缺的诱因似乎是山西省政府2007年开始推进的“煤炭资源整合”,这切断了许多县市的大部分财源。如前所述,由于采煤大县（当然也是采煤沉陷大县）的财源主要来自地方煤矿，当山西省政府大力推进煤矿的兼并重组之后,许多县市的中小型煤矿被大型国有煤矿“整合”,或者停产而等待重组。例如原来的千万吨产煤大县左云县,“近一年内只有一座煤矿在生产”（《南方周末》2009年11月5日）。在紧邻左云的大同市南郊区,国有煤矿沉陷区治理工程原计划投资7.8亿元,用于安置71个村的搬迁,在计划立项时,基于南郊区财源丰厚而由该区政府承担了多数资金,但工程开始不久即遭遇“煤炭资源整合”,导致多数地方煤矿关闭,留下的18座也全部停业而等待重组,区级财政因此丧失了大部分财源,权力机构的正常运转已出现困难,治理资金也就缺少着落,而搬迁费用到2009年已经飙升到21亿元。该区的官员为此呼吁:希望省政府给予资金配套和政策扶持。[24]

不过,在资金短缺的背后,应该存在更深层的原因。首先,它与各级政府之间的事权与财权分配的失衡有关。高层政府掌握了更多的财源，而将更艰巨的任务交给市县，必然造成后者的资金短缺。其次,退一步说,任何一个（级）政府几乎都会面临“资金短缺”的难题,关键在于有限的资金优先用于何处，其轻重缓急之分当然从属于“重大决策部署”。而山西主政者的频繁更迭无疑导致“重大决策部署”缺少延续性。比如,来自广东的于幼军2005年7月开始执掌山西省政府,同时省委书记也由原省长张宝顺接替，正是在两位非煤炭系统出身的官员共同主政期间,出台了上述两项治理工程和一系列“煤炭新政”。但是,于幼军在两年后即因“洪洞黑砖窑事件”离任,继任者孟学农又于2008年8月因为“襄汾溃坝事件”辞职,而新的主政者则是具有长期的煤炭行业背景的王君。[25] 固然难以弄清走马灯般的人事变动如何具体影响到工程的实施,但在盛行“人治”的大背景下,除了需要考虑整个政府系统的某种严重缺陷之外,可以肯定这种变化影响了相关工程的进展。

简要考察2006年前后接连推出的一系列“煤炭新政”的实施情况,可以确信上述推论的合理性。所谓的“煤炭新政”包括:关闭小型煤矿、实施“煤炭资源整合”;推行限产政策,“十一五”期间实现“零增长”,期末控制在7亿吨左右;经国务院批准实施“煤炭工业可持续发展政策措施试点”，并为此制订了《山西省煤炭开采生态环境恢复治理规划》，旨在建立生态补偿机制,做到“渐还旧账,不欠新账”,“争取用十年左右使

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[24] 见《大同日报》2011年5月18日的相关报道,以及民盟山西省委参政议政部的调研报告(http://www.sxmm.org.cn/main/Article.asp?LocaTxt=%,2009年7月28日)。

[25] 王君在1985-1997年间曾先后任大同矿务局党委副书记、第一副局长、局长,后调任北京、江西,在2008年9月以国家安全生产监督总局局长之职率团调查襄汾溃坝事件期间,就地受命为山西省代省长,翌年初正式出任省长至今。

全省矿区生态环境明显好转"。如果这一系列措施得以实施, 无疑会产生显著的防灾救灾效应。但是从结果来看, 三项政策中只有 "煤炭资源整合" 借助超强度的行政手段超额完成了目标, 原来的上万家煤矿企业到2009年底减至1053家（这强化了"国有煤矿"或大型煤炭集团的垄断, 但并没有彻底遏制"黑口子"）; "限产政策"很快流产, 2010 年的采煤量比限产之前增加了 2 亿吨; 而 "可持续发展" 试点征收了数百亿元的 "煤炭可持续发展基金" 和 "矿山生态环境恢复治理保证金", 但实际用于生态恢复治理的大约只有 3 成。[26]

在这样一种背景下, 我们能够看到许多沉陷村的 "地质灾害治理工程" 在实践中发生着怎样的变形。为了弥补资金的不足, 县乡政府以默许 "采煤" 来换取承包商的 "治理", 而对于资本来说, 这当然意味着巨大的商机: "一旦被列入676个村庄的名单, 就等于拿到了露天采煤的许可证"。[27]于是,这就导致了新的产能、赢利机会和灾害。迄今已被报道的案例有: 山阴县吴马营乡、乡宁县尉庄乡、交口县窑则山村、汾西县李家坡村、沁水县上峪村, 以及盂县上曹村。在这些地方, 地质灾害治理工程或搬迁后的 "土地复垦" 全都伴随着对煤炭资源的私挖滥采, 以至于 "新的地质灾害正在形成"。其中上曹村原先已被破坏的耕地迟迟不见复垦, 而未被破坏的 1000 亩耕地变成了承包商的露天煤矿, 经过四年多的 "治理" 后变得千疮百孔。[28]

## 结语: 如何理解 "治理危机"

从本文的考察可以看出, 就 "矿山地质灾害" 这种生态环境灾难的形成及其治理而言, 破坏的动力巨大而拯救的动力不足, "治理" 的速度赶不上破坏的速度。它的直接后果当然是灾害或灾难的扩大再生产: 到 2011 年的夏天, 山西省采煤沉陷区的 "受灾人口达到了 300 万"。[29] 也就是说, 灾民的规模比开始 "治理" 之前的 2005 年又多出了 80 万人。

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[26] 据山西省发改委负责人介绍, 从 2007 年 4 月试点开始至 2009 年 11 月底, 全省累计征收煤炭可持续发展基金 416.2 亿元, 实际用于 "跨区域的生态环境综合治理" 为 113.5 亿元 (http://www.sxdrc.gov.cn/lddt/ldjh/201108/t20110812_49066.htm), 也即只占征收额的 27.3%; 另据新华社 2010 年 9 月 29 日报道, 截至当年 8 月, "山西省重点煤炭集团共提取矿山生态环境恢复治理保证金 103 亿元, 使用 33 亿元"。

[27] 《21 世纪经济报道》2010 年 12 月 31 日。

[28] 相关案例见 http://tv.people.com.cn/GB/166419/14412952.html (2011年4月18日);《时代周报》2011年11月3日,《新民周刊》2011年第43期;《中国经济周刊》2011年第41期;《中华工商时报》2009年4月30日;《中国产经新闻报》2011 年 3 月 2 日; http://www.kjfnews.cn/a/xinwendiaocha/20120614/6424.html; http://jjsx.china.com.cn/c11/0323/17253591425_3.htm。

[29] http://www.chinanews.com/gn/2011/08-11/3252161.shtml。

对于沉陷区的农民来说，“矿山地质灾害” 所包含的实际内涵—水源枯竭，土地开裂或塌陷，耕地无法耕种，房屋开裂或倒塌，在危房中度日如年，乃至要面对地裂缝中冒出的有害气体—意味着名符其实的生存危机，也是一种总体性危机。当然，由于村庄内部的分裂和村庄之间的缺少联系，为了摆脱这种危机而进行的呼救和 “抗争” 总是局限在单个村庄中的小群体，乃至个人。这样，尽管生存危机会引发一些 “群体性事件”，从而在更大范围内汇聚为一种社会危机，但迄今为止，还难以发现表面上此起彼伏而实际上非常零散的诸多事件构成了整体性的“统治危机”。换句话说，“抗争” 并没有构成实质性的挑战。

不过，对统治的稳定性构成威胁的 “治理危机” 确实已经非常明显。种种状况及其背后的制度、机制和逻辑都充分表明，尽管目前仍然处于 “转型” 的过程中，但是问题的发生和表现出来的危机状况确实不是有学者所说的 “转型危机”,[30] 而是真正的 “治理危机”。

当然，进一步的问题在于如何看待这种危机的根源。酿成社会危机或治理危机的似乎并不仅仅在于“国家体制”（黄宗智,2009），以及由其主导的整个政治行政系统。这个系统的缺陷在近年来多个领域的研究中已经有比较充分的展现，本文的研究也进一步揭示了它所具有的破坏性。但除此之外，还需要强调的是，如果考虑到中国在世界格局中所处的地位（“世界工厂” 和全球产业链的中低端），以及山西在中国所处的地位（“世界工厂的锅炉房”和中国产业链的低端），就应该承认，山西的大地上呈现的危机状态似乎不仅仅源自早已非常明显（但未必人人都公开承认）的 “中国特色” 的政治和行政体制，它的另一头也与全球市场体系或者全球资本主义相连。这种联系既表现在国家体制已经完全接受了资本的逻辑、权力系统实现了彻底的资本化，又表现为更广泛的文化或文明的特征，也即大量生产、大量消费、大量消耗、大量破坏，以及大量地制造灾难。

而当山西和中国都已经锁定在、并且反过来强化了全球资本主义这一庞大的系统，再来考虑对 “治理危机” 的治理，恐怕必须在既有的两种或多种 “主义” 之外另辟蹊径。当然，对这一艰巨课题的探讨已经远非这篇短小的论文所能及。

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30 徐湘林 (2010) 认为，在转型国家存在着两种不同类型的危机，也即 “转型危机” 和“国家治理危机”。前者是指经济和社会关系发生重大结构变迁从而产生大量矛盾和冲突，需要国家干预；后者则是指作为治理者的政府在特定时期无法有效地对社会矛盾和冲突进行控制和管理，进而严重影响到政府统治能力的状态，其特征是国家治理体制存在着不可克服的严重缺陷，而且自身无法进行有效调整。他的判断是：中国目前面临的社会危机是一种 “转型的危机”，“是在特定历史背景下结构性转型的必然现象”。

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# Marriage, Revolution, and Law—Divorce Law Practice in the Shaan-Gan-Ning Border Region

**Liu Yang**[1]

# 婚姻、革命与法律—陕甘宁边区的离婚法实践

杨柳

**Abstract**

Based on the judicial archive of the Shaan-Gan-Ning Border Region, this article examines the Border Region's divorce law practice in the context of the Chinese Communist Revolution.

Despite the withdrawal from the Soviet's radical approach to divorce during the Yenan period, women were encouraged by various Revolution-introduced changes to exercise the right to divorce, and their failure or success in divorce litigation was closely associated with their respective positions or statuses as defined in connection with the Revolution.

On the other side, male peasants, the major social force of the Revolution, experienced a downward movement in the marriage market, and their encounter with *Gongjiaren* in divorce litigation revealed the gap between the ideal of marriage as anticipated by the lawmakers and the marriage market in the reality. To a large extent, this tension contributed to the development of a mediation-focused judicial system, which would deeply influence the civil justice system of the People's Republic of China.

**Keywords**

Revolution, Marriage Freedom, Peasants/*Kangshu*/*Gongjiaren*, Judicial system/Mediation

**摘要**

本文利用陕甘宁边区的司法档案，在中国共产党革命的背景下考察陕甘宁边区的离婚法实践。尽管边区的婚姻立法已从苏维埃时期完全支持离婚的激进立场撤退，但革命带来的各种现实变化，尤其是对个人身份的重塑，仍然激励妇女积极地行使离婚的权利，而她们在革命中所处的位置或身份对于她们在离婚诉讼中权利的实现有重大关

[1] 杨柳，加尼福利亚大学洛杉矶校区博士候选人，Email: yangl.liu@gmail.com. 本文的初稿曾两次提交学术会议讨论，我感谢所有与会者对本文的评论，尤其黄宗智 (Philip Huang) 和白凯 (Kathryn Bernhardt) 两位教授。他们仔细阅读了每一稿，并提出重要的修改意见。



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联。作为革命主要社会力量的男性农民在婚姻市场上经历了下滑，他们和公家人在离婚诉讼中的对抗清楚地显示了立法者预期的婚姻理想和现实的婚姻市场之间的紧张关系。对此法官们创造性地摸索出一套以调解为主要手段的司法技术，对于中华人民共和国的民事法律制度有根本性的影响。

**关键词**
革命、婚姻自由、农民/抗属/公家人、司法制度/调解

## 引言

1943 年2月12 日深夜，在众人沉睡之际，米脂县一个张姓农民家庭的两位儿媳杜桂蓉和崔桂如收拾行装，勒死家中报晓的公鸡，相携跳窗逃走了。一个月后，桂蓉的丈夫张怀宝在绥德县的一家军工厂找到了她们。彼时，两个逃走的妯娌已“参加革命”，成为“公家人”。怀宝要她们回家，后者则双双提出离婚。离婚后，她们分别和军工厂的两名干部结婚。怀宝则陷入了长达两年的婚姻保卫战，从米脂县司法处、绥德地方法院、陕甘宁边区高等法院一直上诉到陕甘宁边区政府审判委员会。这起离婚诉讼经过多次判决，最终于 1945 年调解结案，怀宝从桂蓉的再婚丈夫那里获得了 5 石米的赔偿。[2]

在中国法律史领域，对共产党革命时期婚姻法的研究主要集中于1931年《中华苏维埃共和国婚姻法》和1950年《中华人民共和国婚姻法》。前者是一个革命性的里程碑，对婚姻自由原则采用一种激进主义立场；后者则与同时期的土改运动相呼应，在全国范围内掀起了变革传统婚姻家庭关系的浪潮。相比之下，共产党在延安时期的婚姻法则较少受到关注。[3] 人们对该时期婚姻法的一个主流看法来自亲临延安的女权主义作家丁玲。在《三八节有感》一文中，丁玲批评了革命队伍中的大男子主义，在她看来，婚姻法所赋予的离婚的权利仅仅便利了那些事业成功的男性干部离开他们“落后”的妻子，“……离婚的口实，一定是女同志的落后…… 不是听说法律上还在争论着离婚只须一方提出，或者必须双方同意的问题么，离婚大约多半都是男子提出的……”。[4]

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[2]《陕甘宁边区高等法院司法档案》，陕西省档案馆，全宗 15，卷 1468。

[3] 最近几年，国内学界逐步有人开始研究延安时期的婚姻法和司法制度，例如，汪世荣(2007)：《陕甘宁边区高等法院推行婚姻自由原则的实践与经验》，载《中国法学》2007年02期；胡永恒：《陕甘宁边区的离婚法实践》(2011)，载《史学集刊》2011年 01期；刘全娥(2012)：《陕甘宁边区司法改革与“政法传统”的形成》，吉林大学博士学位论文，等。

[4] 丁玲 (1942)：《三八节有感》，载《解放日报》（1942 年 3 月 9 日）。正是基于类似的看法，中央妇委的大部分人在起草 1950 年婚姻法时，都主张限制单方请求离婚的权利。见邓颖超 (1950)：《关于中华人民共和国婚姻法的报告》，引自中国妇女研究网 http://www.wsic.ac.cn/internalwomenmovementliterature/12095.htm；以及《婚姻法诞生始末》，载《南京日报》（2010年8月9日）。

其后的学者，如 Kay Ann Johnson，则从共产党革命策略和社会基础的角度分析了延安时期的婚姻法。她认为，由于性别平等在当时共产党的革命策略中并不占据重要位置以及农村革命根据地根深蒂固的父权制传统，婚姻法和婚姻自由的原则并未真正付诸实施。[5] 尽管丁玲和 Johnson 的观察角度不同，但她们显然都认为边区婚姻法并无解放妇女之实效，妇女从法律所赋予的离婚权中获益甚少。不过，当我在陕甘宁边区高等法院司法档案中读到离婚案卷时，我开始意识到边区离婚法的实践或许比丁玲和 Johnson 所述更为复杂一些：边区的妇女在何种程度上、以何种方式运用了法律所赋予的婚姻自由的权利？法庭处理不同类型离婚案件所适用的司法原则是什么？离婚法的实践是仅服从于共产党的政策考虑，还是也反映了中国革命背景下普通民众的态度和行为？

本文将结合中国共产党革命带来的各种变化，尤其是革命对人们身份的重塑，来考察陕甘宁边区的离婚法实践。本文将从两个方面讲述边区离婚法实践的故事。一方面是妇女争取离婚的故事。尽管边区的立法者已从支持离婚的激进立场撤退，革命带来的各种变化却鼓励妇女积极地行使离婚的法律权利，而她们在离婚诉讼中的成败也与她们各自在革命中所处的位置或身份紧密相关。总的说来，在边区妇女中，公家人妇女能够最大限度地行使离婚的权利。这个故事的另一面则是农民丈夫如何捍卫他们的婚姻。作为革命主要社会力量的男性农民在婚姻市场上经历了下滑，而男性农民和公家人在离婚诉讼中的对抗清楚地显示了立法者预期的婚姻理想和现实的婚姻市场之间的紧张关系。最终，法律理想和社会现实的断裂只能交由法庭以调解的方式予以调和。

本文使用的原始资料主要来自八十年代后期开放的《陕甘宁边区高等法院司法档案》（以下简称 "司法档案"，并以卷号引用）。[6] 这批档案的原件已移往中央档案馆，其复印件则存于陕西省档案馆（全宗 15），尚未被整理出版。它包括从 1938 年到 1949 年的 1733 个卷宗，绝大部分为手写，可能是我们研究早期中国共产党法律史可能获得的最详实的原始资料。其中的1200卷为各类刑民案件卷宗，婚姻案约占80卷。由于未经整理，每卷可能包含数个案件，从十数页到一百多页不等。除判决书或调解协议外，案卷通常还包括法庭调查询问笔录和各级法院讨论案情的往来信函。这些案卷中的证据使我们得以超越自上而下的视角，揭示出司法实践的逻辑以及被官方话语所湮没的普

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[5] Johnson, (1983) *Women, the Family and Peasant Revolution in China*. Chicago: University of Chicago Press, pp. 66-67.

[6] 一些卷宗封面所注的卷号与卷内首页所著卷号略有差异。如，张怀宝vs. 杜桂蓉一案的卷宗封面所注为1470卷，但卷内首页所注为1468 卷。本文所引为卷内首页所注卷号。

通民众的态度和行动。其余各卷为司法会议记录、统计报告、高等法院对下级法院的指示和复函、司法人员档案、判例汇编、新闻报道和法律杂志等。其中，司法会议记录对本文的研究尤有帮助。司法会议是法院的内部论坛，因不为宣传之目的，法官们通常都会就司法中的难题畅所欲言，而离婚案是他们讨论的焦点。在一定程度上，司法会议记录可弥补法律史研究者无法访谈这些法官的遗憾，帮助我们进入他们的视野和经验。

## 婚姻立法的演变

尽管本文强调的是离婚法的实践，但还是有必要首先简要地回顾陕甘宁边区的婚姻立法。陕甘宁边区政府共颁布了 5 个婚姻法：1939 年《陕甘宁边区婚姻条例》、1944 年《修正陕甘宁边区婚姻暂行条例》、1946 年《陕甘宁边区婚姻条例》、1942 年《关于严禁买卖婚姻的具体办法》以及 1943 年《陕甘宁边区抗属离婚处理办法》。[7] 这些条例和规章吸取了中国共产党在土地革命时期（1927-1936）的婚姻立法，尤其是由中央红军带到陕北的1934年《中华苏维埃共和国婚姻法》。[8] 然而，与土地革命时期的婚姻立法相比，边区在离婚的方法、离婚后的经济安排、处理传统婚姻的方式以及对军婚的保护等方面发生了明显的变化。

过去的研究已指出，边区婚姻立法的一个显著的变化是放弃了一经请求即准予离婚的方法。1934年《婚姻法》规定，“确定离婚自由。凡男女双方同意离婚的，即行离婚。男女一方坚持离婚的，亦即行离婚”（第十条）。边区的立法则区分了双方自愿的离婚和单方请求的、有争议的离婚。双方自愿的离婚是允许的，只需要双方当事人向当地区乡政府或市政府登记和领取离婚证。单方请求的离婚则须基于特定的理由，并由司法机关做出裁决。1939年的《陕甘宁边区婚姻条例》列出了十种离婚理由：“有重婚之行为者；感情意志根本不合，无法继续同居者；与他人通奸者；虐待他方者；以恶意遗弃他方者；图谋陷害他方者；不能人道者；患不治之恶疾者；生死不明过一年者，但在不能通信之地方以二年为期；有其他重大事由者”（第十一条）。1944年和1946年的《婚姻

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7 中国法制史资料汇编很多，本文采用的是陕西省档案馆和陕西省社会科学院合编的《陕甘宁边区政府文件选编》（共十四辑），北京：档案出版社，1986 年。上述条例和规章依次参见《陕甘宁边区政府文件选编》第一辑，第 221-223 页；第八辑，第 94-96 页；第十辑，第 82-83 页；第六辑，第 295 页；第七辑，第 35-36 页。

8 这一时期的婚姻立法还包括 1930 年《闽西苏维埃婚姻法》、1931 年《鄂豫皖工农兵第二次代表大会婚姻问题决议案》、1931 年《湘赣省婚姻条例》、1931 年《赣东北特区苏维埃婚姻法》、1931 年《湘鄂赣苏区婚姻法》、以及 1931 年《中华苏维埃共和国婚姻条例》。见张希坡（2004）：《中国婚姻立法史》，人民出版社，第 122-133 页。

条例》在此基础上增加了一个理由，“男女一方不务正业，经劝解无效，影响他方生活者”。

上述变化在一定程度上反映了统一战线下国民党法律制度对边区的影响：区分双方自愿和单方请求的离婚与国民党民法典的方法一致，而上述离婚理由的大部分也与民法典第 1052 条所列相同。[9] 然而，“感情不合” 却是共产党的一个创新。正如黄宗智指出的，“感情” 的构造既拒斥传统中国视婚姻为丈夫的家庭获得一个妻子的观念，也不同于现代西方视婚姻为民事契约的观念，它预示了建立在爱和双方自由选择基础上的婚姻模式。更重要的是，任何判断夫妻感情的标准都是不精确的，因此，这个构造赋予法官相当大的自由裁量的空间，以作出符合政策和个案的具体情况决定。[10] 下文将显示，在解释和适用 “感情不合” 时，法庭把当事人的不同身份纳入考虑，使看似普遍性的婚姻法出现差异性适用。另外，除列明的各项具体离婚理由，边区的婚姻法还允许当事人以“其他重大事由”请求离婚。这种概括的、无所不包的表达方式同样也起到扩大法庭自由裁量权（司法弹性）的作用。其次，边区的婚姻法改变了对妇女有利的离婚后的经济安排。土地革命时期的立法者意识到妇女的经济地位较弱，为使离婚成为一个现实可行的选择，他们采取了对妇女极为有利的离婚后的经济安排。如，1934 年的婚姻法规定，如果婚姻关系存续超过一年，结婚后双方共同经营所得之财产 在离婚时由双方均分，但结婚后所负之债务由男方单独负责偿还（第十三条）。同时，如果妇女在离婚后不能维持生活，男方应以代耕或其它方式给予帮助，直至她再婚（第十五条）。而 1939 年婚姻条例则规定男女双方应在离婚时共同处理其财产和债务，并为离婚后男方对女方的经济扶助设定了三年的上限 （第十九条）。1944 年和1946 年的婚姻条例干脆完全回避了经济扶助的问题。

另外，边区的婚姻法还对传统的婚姻模式表现出更大的容忍。土地革命时期的婚姻法给包办、买卖、童养媳等传统婚姻模式贴上了“封建”的标签，并宣布予以 “废除”，而实现该目标的重要手段就是准予单方请求的离婚和没收彩礼。边区的婚姻法尽管也宣称禁止各种 “不自由” 的婚姻，却没有把它们列为法定的离婚理由，那些违背婚姻自由原则的婚姻是否能够解除往往取决于法庭的酌情处理。1942 年的《关于严禁

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9 尽管共产党在夺取全国政权的前夕宣布彻底废除六法全书的 “伪法统”，但国民党法律实际上对共产党治下的各边区有着重要的影响。这主要有两方面的原因：其一，边区大部分的法律专家是来自国统区的法律职业人士，他们熟悉并受过国民党法律的训练；其二，边区自身的立法十分有限，不足以应付司法实践中出现的各种问题。从司法档案显示的情况来看，各边区都在名义上承认国民党法律的效力，但司法实践中优先适用边区自身立法，而在边区法律未作规定之处，有选择地援用国民党法律。

10 黄宗智 (2006):《离婚法实践—当代中国民事法律制度的起源、虚构和现实》，载黄宗智编《中国乡村研究》第四辑，第 1-52 页。

买卖婚姻的具体办法》更是对买卖婚姻作出了明显的妥协，“对于婚姻习惯上由男方出备财礼于女方，外表近似买卖婚姻者……非经当事人亲告，法院不得受理；即经亲告成为诉讼，法院只审查婚姻本质上有无瑕疵……否则所纳财礼虽多，仍无碍于婚姻之成立，财礼不能予以“没收”。[11] 由此看来，与其表达的“严禁买卖婚姻”的目的相反，这个《办法》实际上放宽了法律对买卖婚姻的限制。一方面，它承认收取财礼是一种“婚姻习惯”，否认以财礼的数量作为判断买卖婚姻的标准，但又未提出任何替代性的标准，从而使买卖婚姻成为一个无效的法律范畴；另一方面，它又禁止法院主动干预买卖婚姻，并取消了对买卖婚姻的经济制裁。此后，高等法院在给下级法院的一封复函中进一步表明“政府如果取缔过严，一般无知人民，容易对政府引起不满，离避边区，去到顽区作婚姻买卖行为……对婚价款目是否没收问题，主张以下列二办法为宜：(1) 不干涉。(2) 不没收”。[12]

最后，边区的婚姻立法给予军人的婚姻更严格的保护。1934 年的《婚姻法》已经把军婚列为一个特殊的范畴，一经请求即予离婚的方法并不适用于这一范畴。红军战士之妻须取得其夫的同意才能离婚；或者在通讯便利的地方二年以上不得其夫音讯、通讯不便的地方四年以上不得其夫音讯才能向政府提出单方离婚请求。1943 年的《陕甘宁边区抗属离婚处理办法》对军人的妻子的离婚请求施以更严格的限制。首先，军人的妻子须五年以上不得其夫音讯并取得夫家亲属允许其离婚的书面凭证才能提出离婚请求（第一条）。在这里，夫家的亲属是不在场的军人的代表。换句话说，上述单方请求离婚的规定并不适用于军人的妻子，她们无权单方请求离婚，不论基于何种理由。其次，当军人的妻子请求离婚时，法庭“必须尽力说服”（第二条）。因此，“调解”已经成为处理军婚的必经程序。1944 年的《修正陕甘宁边区婚姻暂行条例》吸收了上述条款，还加上一句，“抗日军人之配偶，在抗战期间原则上不准离婚”（第十一条）。

上述变化显示了边区的婚姻法从土地革命时期的激进立场撤退。立法者把单方请求的离婚交由司法裁决，而婚后的经济安排和对军婚的保护更直接地限制了妇女对离婚权的行使。当然，这并不是说边区的婚姻立法“保守”。实际上，它比同时代许多国家的婚姻法更开明。但共产党婚姻立法的演变反映了当时的首要的政策考虑，即发动农民夺取全国政权，而强调离婚自由则可能分离男性农民。

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[11] 陕西省档案馆和陕西省社会科学院合编 (1986):《陕甘宁边区政府文件选编》第六辑，第 295 页，档案出版社。

[12]《高等法院对赤水县询问买卖婚姻价款应否没收问题的意见》，载陕西省档案馆和陕西省社会科学院合编 (1986):《陕甘宁边区政府文件选编》第六辑，第296-297页，档案出版社。

革命背景下的离婚案件

如果仅仅考察成文法和共产党的政策需要，我们很可能会同意 Johnson 的看法，认为婚姻自由在陕甘宁边区仅仅是停留在纸面上的一个空头承诺，取得离婚是一件很困难的事。然而，司法档案显示出一副不同的图景。离婚诉讼可能比我们想象的更为频繁。根据陕甘宁边区高等法院的统计，婚姻案件（包括离婚和解除婚约）构成了边区最大的两类民事案件之一（另一类是土地案件）。1940年，婚姻案件占民事案件的 21%（司法档案：卷 156），而在 1941 年和 1942 年升至 28%（司法档案：卷 193）。法庭也并非例行公事地拒绝离婚申请。事实上，相当部分的离婚请求得到批准。1944 年和 1945 年上半年，经高院审理或由下级司法机关呈报高院的离婚案有 209 件，其中有 140 件准予离婚。[13] 在边区人口最稠密的绥德地区，仅 1944 年就有 65 个准予离婚的案件。另外，与丁玲的叙述大相径庭的是，离婚诉讼主要由妇女提起。如上述 65 起案件中有 62 起都是由女方提起。[14]

需要说明的是，陕甘宁边区实际发生的离婚可能远远超出高等法院的统计数据。首先，统计数据并不包括未经司法机关的双方自愿离婚。据 Kathryn Bernhardt 观察，由于国民党法律对双方自愿离婚的开明态度及其所需费用较低，国统区的大部分离婚均采用此种方式。如，从 1928 年 8 月到 1934 年 8 月，双方自愿离婚占上海华界所呈报离婚的 70%.[15] 与此相似，在共产党治下的晋察冀边区北狱区，1941年上半年发生了 268 件双方自愿并向政府登记的离婚，而同期的离婚诉讼仅有 196 件。[16] 尽管缺乏相关数据，但可以合理地推测双方自愿离婚在陕甘宁边区也为数不少。另外，由于边区的缺乏规范的案件呈报机制，高等法院的统计数据也未能涵盖下级司法机关处理的全部离婚案件。如，边区在县以下不设单独的司法机关或司法人员，由区乡政府兼理司法。[17] 实际上，作为最

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13 《边区的婚姻问题》，见于陕西省档案馆，全宗 4 目录 1 卷 65。男干部单方申请离婚的情况在司法实践中很少发生。据绥德县法官史文秀观察，男干部通常有资源和他们的妻子谈判、达成双方自愿的离婚协议，走司法程序的很少（司法档案：卷 78）。

14 另见《边区的婚姻问题》，1940 年绥德地区处理离婚案 99 件，其中 94 件是女方提出的。子长县给民政厅的报告也称，“离婚案逐年增多，十分之九尽是女方提出离婚”，见秦燕和岳珑（1997）：《走出封闭—陕北妇女的婚姻与生育》，第 149 页，陕西人民出版社。

15 Bernhardt, Kathryn. (1994) “Women and the Law: Divorce in the Republic Period”, in Bernhardt and Huang, eds., *Civil Law in Qing and Republic China*, Stanford: Stanford University Press, p. 193.

16 《晋察冀边区行政委员会工作报告（节录）》，载北京政法学院编（1956）：《中华人民共和国审判法资料选编》，第 110 页。

17 1942 年《陕甘宁边区保障人权财权条例》规定，“区乡政府对该管区居民争讼事件，得由双方当事人之同意为之调解”（第十六条）。载北京政法学院编（1956）：《中华人民共和国审判法资料选编》，第 48 页。

贴近普通民众的基层行政机构，区乡政府在纠纷解决、一审和调解、以及为上级司法机关所审理案件进行调查取证等方面均扮演了重要角色。然而，区乡政府并不向上级司法机关汇报。因此，区乡政府处理的离婚案件如未经上诉就不会列入高等法院的统计数据。

尽管不够精确，高等法院的统计数据仍有助于我们评估边区婚姻法的实效，尤其是它所确立的离婚的权利在何种程度上为边区的民众所实践。当然，如何理解这些数据取决于比较的角度。边区的人口约在一百三十万到两百万之间变动，[18] 按此计算，其离婚率显然远低于当今的中国社会。然而，边区在离婚方面发生的变化或许比国统区的大多数地区更明显。如，上海华界在1940年和1941年离婚诉讼仅有65件，包括判决离婚和判决不离婚的案件在内。[19] 而上海是当时中国现代化程度最高的大城市，其华界的登记人口在1940年为1,479,726人，和边区的人口相近。[20] 在远离现代西方影响的农村，国民党婚姻立法带来的变化则更有限。如，满铁对华北三个村庄的调查资料就几乎未显示离婚方面的变化。[21]

婚姻法的学者一般都认为，相较于传统、封闭的农村，在现代化程度高的城市，人们更愿意也更能够行使离婚的权利。那么，如何解释共产党婚姻法在边区的实效或者边区民众（尤其是妇女）对婚姻法的积极运用？一个比较直接的原因是，秉着“人民司法服务人民”的精神，边区实行一套低成本的、简便的诉讼制度。如，边区的各级司法机关均不收取诉讼费，允许当事人口头申诉，还可以代替当事人主动进行调查取证。[22] 这种制度为贫困、不识字、缺乏法律知识的人们进行诉讼开了一扇门。不过，要全面理解上述法律直接引入的变化还不能仅局限于法律自身，而需将其置入中国革命的大背景之中。

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[18] 陕甘宁边区的人口在1939年接近200万，但随着边区面积的缩减而减少。1941年和1946年的登计人口分别为1,332,175人和1,595,065人。盐池县党史办公室编（1988）：《陕甘宁边区概述》，宁夏人民出版社，第307-322页。

[19] Bernhardt, Kathryn. (1994) “Women and the Law: Divorce in the Republic Period”, in Bernhardt and Huang, eds., Civil Law in Qing and Republic China, Stanford: Stanford University Press, p. 195.

[20]《上海通志》，第三卷第一章第二节，见上海地方志办公室网站：http://www.shtong.gov.cn/node2/node2247/node4564/node79123/node79137/userobject1ai103293.html.

[21] Huang, Philip. (2001) *Code, Custom, and Legal Practice in China*, Stanford: Stanford University Press, p. 199.

[22] 关于诉讼费，见《陕甘宁边区保障人权财权条例》：“人民诉讼，司法机关不得收取任何费用”（第十四条）。接受当事人口头申诉和法庭主动调查取证则是被奉为边区司法典范的马锡五审判方式的特征，见《马锡五同志的审判方式》，载《解放日报》（1944年3月13日）；以及马锡五（1954）：《新民主主义革命阶段中陕甘宁边区的人民司法工作》，载《政法研究》1955年第1期。

在统一战线之下，共产党基本停止了土改这样的激进社会经济改革，但共产党的政治、经济、文化和组织建设仍然带给当地民众，尤其是妇女，以前所未有的经历革命的体验。在 1930 年代早期，陕北的妇女普遍不识字，也很少参与生产。共产党到达陕北后，很快用妇联、生产组、学习小组等形式发动、组织妇女：1938 年，边区妇联的成员已达 173,000 人，[23] 边区妇联一级的干部有 40 多人，县级有 200 多人，乡级有 6200 多人；[24] 1944 年，从事家庭纺织的妇女达 137,000 人；[25] 1945 年，边区政府开办的工厂中有 5,000 多名女工，占工人总数的一半；[26] 1939 年，参加各类学校和学习小组的妇女达 15,000 人，识 200 字左右的妇女已占全边区妇女的 10%。[27] 通过增进政治、经济、文化参与，妇女不仅提高了在社会和家庭中的地位，也必然会接触到婚姻法的观念和语言。事实上，案卷记录显示，“婚姻自由”、“自由恋爱”和“感情不合”已成为妇女的日常用语和她们争取离婚时使用的武器。

共产党中央革命根据地吸引的大量移民也是导致当地婚姻实践发生变化的重要因素。首先，相当数量的移民是教育程度较高的城市男性。据 Keith Schoppa 估计，从 1937 到 1940 年，约有 100,000 移民涌入陕甘宁边区，其中一半为学生、教师、新闻记者和其他知识分子。[28] 这些移民中的自由恋爱和因恋爱而结婚的实践无疑对当地民众有着示范效应。同时，移民也改变了人口结构。人口史学家已指出，中华帝国长期存在性别失衡和适婚妇女短缺的问题。抛开革命前陕北的性别结构不论，大量的移民的确在很大程度上加重了当地的性别失衡。1946 年，边区的登记人口包括男性 844,361 人，女性 750,704 人，男女比例为 100:88.9。需要说明的是，上述数据不包括军队、政府机关、工厂和学校的人员。[29] 换句话说，在边区的总人口中，男女比例失衡更为严重。在婚姻法所开放的婚姻市场中，性别失衡会给予妇女和她们的娘家人更好的机会通过婚姻实现在社会经济阶梯上的上移，从而激励他们行使共

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23 邓颖超和孟庆树 (1938):《关于陕甘宁边区妇女运动概况的报告》，载陕西省妇联编 (1985):《陕西省妇女运动文献资料》，第 31 页。

24《陕甘宁边区突飞猛进的女子教育》(1939)，原载《中国妇女》第一卷第八期，转引自陕西省妇联编 (1985):《陕西省妇女运动文献资料（续编）》第 115 页。

25 李维汉 (1944):《陕甘宁边区建设简述》，载盐池县党史办公室编 (1988):《陕甘宁边区概述》，第 29 页，宁夏人民出版社。

26《陕甘宁边区的女工》，载陕西省妇联编 (1985):《陕西省妇女运动文献资料》，第 12 页。

27《陕甘宁边区突飞猛进的女子教育》(1939)，原载《中国妇女》第一卷第八期，转引自陕西省妇联编 (1985):《陕西省妇女运动文献资料（续集）》，第 110-111 页。

28 Schoppa, Keith. (2000) *The Columbia Guide to Modern Chinese History*, New York: Columbia University Press, p. 96.

29 盐池县党史办公室编 (1988):《陕甘宁边区概述》，第 315 页，宁夏人民出版社。

产党婚姻法所承诺的离婚的权利（尽管他们有时会以立法者始料未及的方式行使权利）。

最后但对本文的分析非常重要的一点是，随着共产党革命政权的建设，在原本社会经济分化较小的陕北农村中形成了新的身份，如“公家人”和“抗属”。尽管没有精确的定义，陕北农民通常用“公家人”指称那些直接为革命政权工作的人，包括党政干部、军人、以及政府开办的工厂、商店和学校的人员。“公家人”与陕北农民的自我指称“受苦人”形成参照。公家人的自我认同、利益和社会网络都从农村社区转移出来，而与革命政权紧密相连。抗属或抗日军人的家属则指军人的妻子。“属”精确地定义了这些妇女在革命中的地位：她们并未作为自主的行动者直接参与革命，而是通过与革命军人的婚姻与革命政权联系在一起。公家人、抗属与普通农民之间的身份差别成为影响边区婚姻市场和离婚法实践的重要因素。

## 离婚诉讼中的妇女

Tani Barlow 对“妇女”一词的考古学分析指出，无论在帝制时期还是在共产党革命中，“妇女”都不等同于英语中作为一个普遍范畴或身份的“womanhood”。在帝制时期，“妇女”指女性的家族成员，包括妻子（妇）、女儿（女）、母亲等由家族关系决定的身份，不存在超越家族关系的、抽象的“妇女”。中国共产党革命援用了“妇女”一词，但把它转化为一个国家主义政治实践的范畴，即那些能够响应共产党的动员、克服家族主义观念、竭力为政府服务的革命女性，她们必须在革命的政治实践中获得“妇女”的身份。“这个主体存在于超越乡村社会关系的政治领域……一个正在形成的官僚体系关心她们的福利，保障她们的婚姻自由”。[30] 尽管边区的婚姻法宣告了普遍的婚姻自由原则，但革命对个人政治身份的重塑还是以微妙的方式进入离婚的司法实践。

## 抗属

作为革命军人的附属（家属），抗属行使离婚权的空间受到了极大的限制。1943年的抗属离婚处理办法正式把抗属从一种政治身份转化为婚姻法领域内的法律身份，对抗属的离婚请求单独设定了严格的法定条件：仅在与其夫至少五年未通音讯并取得夫家书面同意的情况下，抗属才能申请离婚。在司法实践中，这种区别对待开始得更早，也执行得更严苛。

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[30] Barlow, Tani. (1991) “Theorizing Woman: Funv, Guojia, Jiating” (Chinese Women, Chinese State, Chinese Family), on *Genders Number 10*, Spring 1991, pp. 133-160.

一起历经延安地方法院、陕甘宁边区高等法院和陕甘宁边区政府审判委员会的离婚案件有助于我们了解 1943 年抗属离婚处理办法颁行之前的司法实践（司法档案: 卷 1334）。1940 年，15 岁的左润儿被她的父母嫁给王银锁，聘礼包括 80 法币、8 斗米、几匹布和杂粮。左润儿从一开始就很不满意这门婚事，她声称自己是被骗上花轿的，并在婚后几天就逃回娘家。几个月后，王银锁加入延安保卫团，左润儿则向延安地方法院提出离婚。本案的主审法官显然知道这类案件的特殊性质，他在给高等法院的信函中承认，“如准左润（儿）所请离婚，则不利巩固部队”。然而，当时有效的 1939 婚姻条例并未对抗属离婚做出专门的限制，而左润儿的婚姻属于法律明确禁止的包办买卖婚姻，且未达到法定的结婚年龄（18 岁）。此外，由于年幼及身体发育不良，左润儿十分排斥婚后的性生活，“因生理关系不堪同居”，而王银锁则 “强行同居”。她威胁说如果不能离婚就要自杀。尽管这一点并未出现在判决书中，却成为法官在判决过程中考虑的重要因素，他在给高院的报告中写道，“如判不离则要强制同居，该女人有决心自缢，事关重大”。在综合权衡这些因素后，延安地方法院于 1941 年 2 月判决离婚，并以卖女为由分别判处左润儿的父母半年徒刑和 3 个月的苦役处罚。

收到离婚判决后，王银锁并未立即上诉。1942 年 9 月，他又要求左润儿 “履行同居义务”。应左润儿的请求，延安地方法院向王银锁发了一份禁止令，令其不得纠缠左润儿。王银锁于是向陕甘宁高等法院提出不服离婚判决的上诉。他解释说左润儿要求离婚的真实原因是她不愿在农村居住（左润儿是城里人，而王来自农民家庭），更加不愿意丈夫参军。王银锁的上诉得到军队的支持，他的团长和政委三次致函高等法院，“如果为了革命把妻子都革掉，这样实有影响”。他们还建议，如果左润儿拒绝和王银锁同居，法院可以把她拘留起来。不过，也许是出于和延安地方法院类似的考虑，高院并未撤销原判，“婚姻应以双方自愿为原则”，还附加了一条驳回上诉的程序理由—根据国民党的民事诉讼法，一审判决早已确立，王银锁超过了诉讼时限。1942 年 12 月，该案进一步移送至陕甘宁边区政府审判委员会。

值得注意的是，左润儿在一、二审判决中的胜利可能并不反映当时边区司法实践的常态。更多的情况是法官们出于 “巩固部队” 的考虑而拒绝抗属的离婚请求。然而，该案至少说明当成文法没有引进 “抗属” 这一特殊范畴时，一部分法官会遵循婚姻自由的普遍性原则进行判决。或许正因为如此，当王银锁上诉到陕甘宁边区政府审判委员会，时任边区政府主席和审判委员会主席的林伯渠亲自推翻了该案的原判。显然，在林伯渠看来，这是一个具有示范效用的模范案例。在撤销原判的判决书中，林伯渠批评了左润儿不愿嫁农民和军人的 “落后思想”，“特别是后一种（即不愿嫁军人）更不该在一般青年妇女中发展”。在他看来，婚姻自由的原则显然不应适用于妇女出于落后思想而提出的离婚

请求。他进一步阐明抗属适当的位置是在家庭之内，“男子身体强健上战场，女子身体柔弱就在家庭做她应做的工作”。因此，“关于抗属离婚的案件…… 是绝对不能准许的…… 至于父母包办、未达婚龄，在今天过渡时期还不足以构成离婚之理由”。这份判决书被广泛分发给各级地方政府和法院作为学习材料。在做出该判决一月之后，1943年1月17日，边区政府颁布了《陕甘宁边区抗属离婚处理办法》，正式把“抗属”这一范畴法律化。

上文已提到，《抗属离婚处理办法》对抗属的离婚请求作了严格的限制。然而，即使符合该《办法》所规定的条件的抗属也并不必然能成功地离婚。1945年的《边区的婚姻问题》调查了清涧县店子沟和新社乡的38位抗属，其中15人已有9年或更长的时期与她们的丈夫失去了联系。而在这15人中，仅有2人离婚再嫁，其余的13人中有6人通奸，3人招夫，1人自杀，1人患精神病。[31] 尽管该报告未注明这13位妇女是否向法院提出过离婚请求，但可以合理地推测她们大多希望结束这种名存实亡的婚姻。而清涧县法官辛大名观察，阻碍这些妇女离婚的障碍通常并非来自其夫家，“很多时候娘婆两家都同意抗属离婚，而是政府不准”(司法档案:卷85)。事实上，一些军人的家庭很愿意嫁掉他们的抗属儿媳，他们的考虑非常实际：一些抗属在经历了和丈夫长年不通音讯的痛苦和随之而来的经济困难之后，成为家中的麻烦人物，寻衅滋事或与人通奸;[32] 嫁掉这些妇女则会带来一笔聘礼，通常由她们的娘家和原夫家分享。但这些理由却不在法院考虑的范围之内。对革命政权而言，重要的是维护脆弱的军婚，以及抗属妇女甘愿为革命的丈夫无私奉献的理想形象。为此，革命政权一方面限制抗属离婚的权利，另一方面却高度容忍她们的非正统行为。[33] 在清涧县，政府就保护了一个通奸的抗属留在夫家的权利。在该案中，刘老汉有4个儿子，两个参军常

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31 《边区的婚姻问题》，陕西省档案馆，全宗4目录1卷65。招夫养夫是陕北的地方风俗，指一妻二夫共同生活在一个家庭内，妻子和第二个丈夫一起扶养第一个丈夫。从其起源来看，形成招夫养夫风俗的一个主要原因是第一个丈夫不能生育。后来，它演变为因丈夫生病或残疾不能养家的贫苦妇女的一个选择：妻子再婚须得到第一个丈夫的同意;第二个丈夫负担全家的生活开支;再婚期间妻子不能和第一个丈夫同房;再婚期间所生的子女归第二个丈夫。见秦燕和岳珑 (1997):《走出封闭—陕北妇女的婚姻与生育》，第28-29页，陕西人民出版社。延安时期，这种风俗进一步被借用，改造为抗属家庭的一种临时安排：招夫一般由抗属的原夫家主持，所招之夫住在原夫家并支持家庭经济。但与正式离婚后再嫁不同的是，一旦抗属的原夫返家，所招之夫就须离开。

32 据《边区的婚姻问题》，由于不能离婚，“在抗属方面是不满意的并焦灼万分”，一些抗属“无论什么问题上她都找茬子”，“闹得不行”，或 “胡打游击（指通奸）”。

33 辛大名评论，政府对抗属的非正统行为 “不干涉，教育方面也很少，打游击也不禁止”，“所以（一些）抗属在家里就成了公开合法的二流子” （司法档案：卷85）。边区司法的一位关键人物、时任陕甘宁边区政府审判委员会秘书长的朱婴，也在司法会议上就抗属招夫明确表达了不干涉的立场（司法档案：卷86）。

年未归，两个媳妇就与人通奸，影响到家里另外两个媳妇也通奸。老汉干预无效，就找区长，说“我不要这些败坏家风的，要她们走!”但政府不准许。后来一个抗属生下私生子，老汉抱着孩子又去区政府，却招来区委书记的训斥，“老头子，你简直混蛋，诬赖抗属。我们抗属就没有打游击的”（司法档案：卷 85）。

当然，还是有一些抗属离婚成功，但她们的第二次婚姻将会面临严峻的考验：如果她们的前夫从前线回家并想要回妻子该怎么办？婚姻法从未涉及该问题，但高等法院在 1944 年对下级法院指示，“近年来抗日军人回来要老婆发生抢婚的颇多。如抗属未经任何手续私自结婚，应撤销婚姻判回前夫；如有手续则不必判回”。[34] 此处，高院未解释何为“手续”，但可能是指在政府/法院离婚及再婚登记的程序。在 1943 年延川县的一起案件中，一名军人的家庭在 7 年未收到其音讯后，私下把他的妻子嫁掉了（司法档案，卷 895）。[35] 此后，军人的哥哥听说他还活着，就提起诉讼把弟媳要回来。法院还没收了该军人的家庭收取的聘礼，并以“买卖抗属罪”判处第二任丈夫 5 个月的劳役。前文已提到，1942 年《严禁买卖婚姻的办法》实际上对聘礼采取了相当宽容的态度。但因该案涉及军婚，法院作出不同的、更严厉的处罚以儆效尤。

有时，法院会走得更远，判回已经履行离婚和结婚登记手续的抗属。张桂兰的案子就属于这种情况（司法档案：卷 946）。张桂兰本人很不愿意回前夫家—她和第二任丈夫贺士文的关系很好，并已生育一子。“为全抗日军人之荣誉”，法院决定调解此案。这种调解当然不同于现代西方基于平等双方自愿的调解，而涉及直接或微妙的权力运用。在本案中，法官通过指责张桂兰和贺士文婚前通奸—证据是前者在婚前给后者做了一双鞋—向他们施压，迫使他们同意分手。张桂兰返回前夫家几天后就试图自缢，所幸被及时发现。这出险些酿成的悲剧使贺士文决定诉诸武力。他求助于族叔贺麟图，后者是前清秀才，时任安塞县参议会的参议员。贺麟图答应帮忙，在他看来，侄儿的要求不但合于情理也符合婚姻自由的法律原则，“我已经研究好婚姻法，婚姻自由没问题”。于是，1944 年 12 月的一个深夜，贺麟图和贺士文带领贺氏家族的其他 10 人把张桂兰抢了回来。最终，这起事件被法院认定为抢婚，尤其是贺麟图“以参议员资格，用精通律例自豪，籍以威胁”。贺家所有的参与人都受到从训诫到 1 年劳役不等的处罚。

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[34]《高等法院 1942-1944 两年半来的工作报告》（1944 年 9 月 30 日），（司法档案：卷 86）。

[35] 考虑到通过司法程序离婚的困难，抗属的家庭通常会避免正式程序。但私下离婚/结婚仍不同于招夫，因为后者仅仅是一个暂时的安排，各方当事人都同意其效力低于军婚并不与军婚发生冲突。

公家人妇女

与抗属不同，公家人妇女独立参加革命，因而被视为自主的行动者。反映到婚姻法领域，她们有权行使独立意志而作出婚姻选择，而法庭也会对她们的选择予以充分考虑。这一点在法庭适用感情不合的法定离婚理由时，表现得尤其清楚。此外，还有两个因素也加强了公家人妇女在离婚诉讼中的优势。其一，与普通农民妇女不同，公家人妇女享有革命政权提供的工资和福利，这使离婚成为经济上现实可行的选择。[36] 其二，由于政府机关、工厂、商店和学校都集中于城镇，公家人妇女通常可以远离农村社区。在她们与农民丈夫的离婚诉讼中，这种地理因素不仅使她们得以避开相对保守的农村社区的压力，也便利了她们使用坐落于城市的法庭。前文提到，边区的司法机关不收取诉讼费用，但进城打官司所需的旅费和时间对农民丈夫仍是不小的负担。如果长期缠讼，男方可能会因为这个实际的考虑而放弃。

当夫妻双方均为公家人，法庭对女方离婚请求态度最为开明。在某种程度上，法庭预期这些革命者能遵循进步的婚姻自由的原则。在1942年延安的一个案件中，夫妻双方均从四川来延安参加革命，男方是警卫团战士，女方是护士，他们通过自由恋爱结婚。1941年5月，妻子董绍林生了孩子，吩咐丈夫吴国俊去买些米作为滋补品。吴国俊却从公家偷了1斗米，并因此被撤去班长之职。妻子对此“极为不乐”，和丈夫吵了两架。1942年8月，董绍林以感情不合为由提出离婚，在延安地方法院和边区高等法院均胜诉。(司法档案：卷1340)

法庭的判决书明确地把双方在婚姻选择方面的自由意志与他们的身份联系在一起，“男女婚姻以本人之自由意志为原则。本案当事人一为革命军人，一为革命医务人员，同为革命服务，其婚姻关系亦应当由其自由决定”。因此，法院认为，“被上诉人提出离婚，经说服无效，足见与上诉人感情破裂、无法继续同居”。如前所述，由于对夫妻感情的任何判断都是不精确的，感情不合这个概念就给法庭留下了很大的自由裁量空间，根据个案的具体情况作出裁决。本案中，董绍林的意志是法官作出离婚判决所考虑的关键因素：作为其自由意志的表达，董绍林坚持要求离婚的行为本身就足以证明夫妻感情不合，或者说满足了法定的离婚条件。

再举一个公家人夫妇离婚的例子(司法档案：卷775)。该案的当事人本为陕北当地农民，由父母包办结婚。后来，妻子刘桂花提出离婚，

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[36] Meijer在分析1950年代土地改革和婚姻法运动的关联时指出，妇女分得的土地是使她们能够提出离婚申请的重要物质条件。见Meijer, M.J. (1971) *Marriage Law and Policy in the Chinese People's Republic*. Hong kong: Hong Kong University Press. 但司法档案显示，虽然共产党没有在陕甘宁边区进行大规模土改，但仍然给农民妇女提供了一条取得经济独立的渠道，即成为直接为革命政权工作的公家人。

丈夫郭有海 "便当了红军, 因红军家属不准离婚"。1941 年 5 月, 郭有海任职于中央总务处, 刘桂花也来到延安保育院当了保姆。刘桂花再次提出离婚。让事情变得比较复杂的是, 刘桂花当时正与丈夫的同事刘保亭通奸。在 6 月的一次斗殴中, 刘桂花、刘保亭重伤了郭有海, 两人也因通奸和伤害罪被分别判处 6 个月和 2 年的劳役。1942 年 3 月, 刑满后的刘桂花又以感情不合为由提起离婚诉讼。她给边区高等法院写信, 称 "我的婚姻问题至今尚未决定, 叫我每天非常难受, 对工作不能前进。婚姻问题影响工作, 请尽快解决"。尽管刘桂花有通奸的过错, 法庭仍作出离婚判决, 其理由是在服刑之后刘桂花与郭有海的 "夫妻关系仍不能和好, 足证双方感情已破裂, 难再继续同居"。

上述两个例子与抗属左润儿的案件形成了有趣的参照。三个案件的男方均为军人, 导致不同判决结果的关键因素是女方与革命政权的关系或她们在革命中的身份。董绍林和刘桂花是军人的妻子, 但她们还兼有另一种重要的身份, 即独立自主地参加革命的妇女。与这种政治上的自主选择相对应的是婚姻关系中的自主选择, 因此, 法庭采纳了 "感情不合" 的理由, 承认并充分考虑了她们对离婚的选择, 而完全忽略了她们兼具的抗属身份, 或者更准确地说, 并不认为她们有 "属" 的身份。与此相反, 在政治上附属于其夫的抗属左润儿则无权在婚姻关系中进行选择, 或者说, 法庭不认可她的意志, 她的离婚请求尽管有许多实际的理由, 但也仅仅只能说明其 "落后思想", 而不构成感情不合的法定离婚理由。

如果一位公家人妇女想与农民丈夫离婚, 情况会更微妙一些。1942 年 5 月, 陕甘宁边区政府发布了如下训令: "注意今后凡女子离家在公家任职者, 不要允许其很快就离婚结婚, 以免对群众影响太坏"。[37] 1944 年, 边区高等法院以更严厉的口吻重申了类似立场, 但又附加了一句 "如由男方强迫拉（女方）回去未免太过。可以不准离, 但不能阻止（女方）工作" (司法档案: 卷 193)。上述训令反映了两种不同的考虑: 一方面, 这类离婚会使许多男性农民产生抵触情绪, 且不利于在招募当地妇女参加革命时取得农民丈夫的配合; 另一方面, 革命政权又不希望失去那些直接为其工作的公家人妇女。权衡两种因素, 上述训令对这类离婚表达了温和的否定态度, 但公家人妇女可以留在公家的庇佑之下与其夫分居。在司法实践中, 法官也可能会出于某些实际的理由对这类离婚请求开绿灯。如, 延安地方法院的法官高继先就坦率地承认了公家人和农民的身份对婚姻的影响, "女子到延安来住了工厂, 进了学校, 她就变得很洋, 洗脸用的是新华皂。但她的老公是一个农民, 他的脸从来不

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[37] 《陕甘宁边区政府关于如何处理四个案件给甘泉县的命令》（1942 年 5 月 6 日), 载陕西省档案馆和陕西省社会科学院编 (1986): 《陕甘宁边区政府文件选编》第六辑, 第 144 页, 档案出版社。

洗…… 一个参加工作，一个是受苦的农人，生活不得在一起" (司法档案: 卷 82)。绥德县的法官史文秀则认为，法庭拖延离婚判决最终可能于事无补，而长期缠讼反而会给农民丈夫带来经济损失，"她今年离不了明年离，明年离不了后年离……而男方要不离婚牵连在城妨害生产" (司法档案: 卷 78)。

结果，公家人妇女和农民丈夫的离婚诉讼留下了一个混合记录。一些案件显示了法庭对离婚的限制: 如，三五九旅大光纺织厂的女工李志英用了 6 年的时间 (1940-1945) 争取离婚，但没有成功 (司法档案: 卷 79)；再如，西北烟厂的女工党秀英因通奸被移送法院处罚，在接受调查时，她也吐露了自己多次请求离婚但被驳回的经历（司法档案: 卷 946）。然而，更多的案卷表明法庭在涉及公家人妇女和农民丈夫的离婚诉讼中采取了相对开明的态度。

在绥德县的一个案件中，妇女主任张逸斋于 1940 年离家参加革命，在次年三月就以感情不合为由请求解除她与刘崇如 15 年的婚姻。法庭两次传唤刘崇如，他都"因为不愿离婚"而未到庭。于是，法庭迅速地作出了缺席的离婚判决。1942 年 4 月，当张逸斋打算和延安贸易局的一个干部结婚时，刘崇如向边区高等法院提出上诉。我们无法从案卷确切得知为什么刘崇如在超过离婚判决的上诉期之后才采取行动: 据他解释，因为张逸斋不断让人捎信表示要回家，并在 1941 年 11 月回家住过十来天，所以他认为没有必要上诉；张逸斋则完全否认。不过，高等法院最初并没有太多地关注这个程序问题，而是开始调查离婚的原因。在接下来的庭审中，尽管刘崇如坚持夫妻感情不错，张逸斋则称两人"感情不好…… 主要是常常不说话"，而在她看来，这就足以证明夫妻感情不合。值得注意的是，在进行了 3 个月的实体审查之后，高等法院并未对两人是否符合感情不合的法定离婚理由作出判断，却援引国民党的民事程序法，以超过上诉期限为由驳回了刘崇如的上诉。在这里，法庭显然运用程序上的理由"包装"了他们对公家人妇女离婚请求的开明态度 (司法档案: 卷 778)。

在赤水县，一位小学教师白苗贞也以"感情不合"为由与她的农民丈夫离了婚。白苗贞受过高中教育，这在陕北当地妇女中很罕见。因此，县政府希望聘她为镇上的小学教师。最初，白的婆家担心她一旦出外工作就会和丈夫离婚，但县政府成功地劝服他们同意让白"为革命工作"。不幸诚如他们所虑，白搬到学校去住之后很快提出离婚，"他是农民，耽误我的革命前途。我们感情不合"。县政府担心准许离婚会损害政府的诚信，且考虑到白的丈夫和婆家人对她不错，认为白还"不够离婚条件"，但也没有以高压手段强制她回家。对丈夫而言，这种事实上分居的状态并不比离婚好多少。在接下去的几个月，他一次次地奔波到镇上请求白苗贞回家，或者请求县政府劝说白回家。最后，绝望的丈夫

决定诉诸武力—他把白捆绑起来，准备用马驮回家。他的鲁莽的行动给这起离婚诉讼画上了句号：不但他本人因“妨碍人身自由”被拘留，也为白苗贞所述的感情不合提供了证据（司法档案：卷 79）。

实际上，在一些农民妇女（尤其是那些离婚请求已被法庭驳回的妇女）看来，加入“公家”是寻求离婚或至少暂时摆脱其痛苦婚姻的希望之路。在 1946 年的一个案件中，当事人李桂花 13 岁就结了婚，一直闹离婚，经区政府调处，县司法处禁闭（据称，这是由于李与丈夫的侄儿通奸），仍不能与其夫“和好”。1943 年，李桂花来延安的一所幼儿园当了保育员，再未返回夫家。1946 年，她开始和西北局的一位干部谈恋爱，并向延安地方法院提出离婚请求。离婚理由除父母包办和夫家虐待之外，她也称自己和丈夫感情不合，“我现在公家，他是老百姓，意志不合，生活不到一块”，并表达了自己脱离旧家庭加入公家的决心，“…… 为家庭压迫。现在我参加工作，公家就是我的家庭、我的父母亲，我是绝不回去的……”。法庭以“感情已经破裂”为由准予离婚，而李的丈夫上诉到边区高等法院。当时正值农忙季节，高院决定推迟审理，但李和她的男友很快就结婚了。最终，尽管高院以重婚为由宣布李的第二次婚姻无效，但也确认了一审的离婚判决（司法档案：卷 1068）。

和李桂花有类似经历的妇女并不鲜见。绥德县的法官史文秀观察到，“判决不离婚，女人死也不回去，上诉、住工厂、当保姆…… 1942 年，在绥德上诉的有三、四十个妇女…… 一般离婚的女子大多数被各机关和工厂收容作工或作保姆”（司法档案：卷 78）。对这些妇女而言，李桂花对“公家”和娘家的类比颇具深意。在帝制时期，娘家是妇女逃避不幸婚姻的避难所，而“公家”则不仅提供给那些逃离夫家的妇女一个栖身之所，还赋予她们一个新的身份以及最终获得离婚判决的希望甚至保证。

## 农民妇女

在离婚诉讼中，农民妇女的境遇处于抗属和公家人之间。当她们受到严重虐待或不能从夫家取得生存所必需的物质条件时，法庭通常倾向支持她们的离婚请求。然而，与公家人相比，农民妇女行使离婚权利的空间要小得多。一个最明显的证据就是许多农民妇女在离婚受挫之后离开农村社区，最终以公家人的身份获得离婚。

在司法实践中，法庭对感情不合这一法定离婚理由的解释和适用方式清楚地体现了对农民妇女离婚请求的限制。前文已经讨论过，在董绍林、张逸斋等公家人妇女的案件中，法庭认为她们选择离婚这一事实本身就足以证明“感情不合”。然而，在涉及农民妇女的离婚案件中，法庭通常要求她们提供其它事实来证明“感情不合”，如，虐待、遗弃。

用曲子县法官陈守学的话来说就是,“离婚都说情感不合,按照字面可以,但没有三五个条件就不让离婚”。[38] 如果女方仅仅宣称感情不合而不能以其它具体事实举证,则通常会被认为是嫌贫爱富追求物质享受。延川县法官张生财就认为, “农村中的一些不正派的女人…… 她看到商人和公家人吃得好穿得好,就要闹离婚。没有条件她就说感情不合”(司法档案:卷81)。而另一位法官 (司法会议上的发言,姓名不详) 则干脆称, “农村里落后的东西占上风。农村女子她就不知道感情, 她只看谁有钱、谁漂亮一点就对了” (司法档案: 卷 86)。照此逻辑,感情不合这一离婚理由根本就不适用于 “落后” 的、“不知道感情” 的农民妇女。

在一些比较棘手的情况下, 法庭还用召开群众大会的方式有效地阻止农民妇女离婚。以 “民主离婚” 的名义, 法庭可以完全摆脱成文法的制约, 最大限度地与农村社区的保守力量达成妥协, 而请求离婚的妇女则会被直接置于夫家及夫家所在社区的压力之下。当然, 也有妇女幸运地通过群众大会获得离婚。子长县韩家的媳妇因受夫家虐待而提出离婚, 区长 “认为 (其辖区内) 离婚太多”, 就让韩家所在的村召开群众大会审理此案。大会主持人本打算让韩家找一个保人, 保证他们今后不再虐待媳妇,但由于韩家虐待媳妇的行为已臭名昭著,现场群众无人愿为他们作保, 并一致同意准予离婚(司法档案: 卷 81)。不过, 不难想象,群众审判在其它一些案件中不但会挫败妇女的离婚请求,还可能演变为一出暴力戏剧。一位袁姓妇女就遭遇这种情况。据称, 袁氏行为放荡,婚后大多时间都住在娘家。当她提出离婚,她丈夫的祖母威胁说要自杀,于是区政府决定召开群众大会解决问题。在大会上,村民们 “齐喊口号,反对离婚”。袁氏 “当场跳井,捞出来,过来过去的人踢她,几乎踢死” (司法档案: 卷82)。而在绥德, 一个未成年即嫁给年长 20 多岁丈夫的妇女申请离婚, 却在 “被护送” 前往群众大会的路上投河(司法档案: 卷 78)。允许在相对保守的农村社区以群众大会的方式处理离婚纠纷—尽管我们无法精确估计其发生的频率—显然说明司法对农民妇女离婚案件的保守立场。

不过, 相较于抗属, 普通农民妇女离婚还是要容易一些。尤其当妇女遭受严重虐待或无法从丈夫那里获得生存所需的最低限度物质条件, 法庭通常倾向于支持她们的离婚请求。1944 年绥德地区批准的 65 件离婚案中, 有 11 件是基于虐待。[39] 边区的立法者没有定义何为 “虐待”, 从司法实践来看, 虐待主要指殴打或人身伤害。在 1942 年的一个案件中, 当事人任祖兰以父母包办、丈夫经常打骂、感情不合为由申请离婚。开庭前, 已从夫家搬走的任祖兰又偷偷回去取出自己的衣物并带走小孩。她被丈夫截住,当街遭受殴打。尽管没有验伤报告,但许

[38]《边区的婚姻问题》,陕西省档案馆,全宗 4 目录 1 卷 65。
[39]《边区的婚姻问题》,陕西省档案馆,全宗 4 目录 1 卷 65。

多目击者证明她被打得头破血流。法庭据此立即作出离婚判决，小孩由任祖兰抚养，并判处其夫劳役十天。任的丈夫向边区高等法院上诉，并控告任在申请离婚之前已与人通奸并同居。然而，与原审法院相似，高院强调严重的人身伤害已使婚姻关系无法存续。至于所控通奸，高院则援引国民党民事程序法予以驳回—该事由未在一审中提出，因此二审不予受理（司法档案: 卷 1336）。

丈夫不能给妻子提供生存所需的最低限度物质条件也是一个重要的离婚理由。1944年绥德地区批准的 65 件离婚案中，有 5 件与此相关。[40] 在延安县，一位名叫高花魁的寡妇于1948年1月招刘米仓为夫。刘米仓曾答应给高花魁的娘家 2 斗粮食，但在结婚后反悔了，两人因此"感情破裂"。不久，刘米仓因琐事打了妻子，高花魁就连同她前夫的家人与刘 "斗争" 了两次。刘米仓害怕，逃到他三叔家居住，并在 1948 年 4 月动身去洛川打短工。高花魁无法维持生活，只好四处讨饭，遇到孙立山，"因孙尚无婆姨，她又肚饿的没法，两人因此就同居在一起"。1949 年 1 月，刘米仓回来向延安县起诉，希望要回妻子，而高花魁则要求离婚。在这起离婚案中，物质的因素是显然的—高花魁与刘米仓结婚及与孙立山同居都是为了维持最起码的生计。法庭理解妇女在生存压力之下的婚姻选择，迅速地准予离婚，而对高花魁和孙立山在离婚之前同居的行为仅给予批评。高等法院确认了一审判决，但在判决书中回避了物质因素，称 "双方都承认感情不好，有吵嚷打骂之事"（司法档案: 卷 1643）。

当然，那些受虐待或缺乏夫家经济支持的农民妇女也并不必然能成功地离婚。在处理她们的离婚请求时，法官仍有很大的裁量空间，会审查请求离婚的妇女的行为和动机是否有值得指责之处。如，受虐待的妇女要打赢离婚官司通常要保证自己的行为端正。在1946年的一个案件中，当事人高桂花在请求离婚前半年之内被她的丈夫和公婆殴打了将近 20 次，后者并不否认这一事实但将之归诸于高桂花的行为放荡。尽管一审判决离婚，但高院却以 "行为不好" 为由推翻了原判。高桂花即随人逃到关中，高院下令追回，却因战争的原因未果。三年后，高桂花再次申请离婚，高院才考虑到夫妻分居两地的事实而判决离婚（司法档案: 卷 1643）。

而如果一个妇女为了超出生存必需的物质条件而寻求离婚，她也很可能会输掉官司并面临道德谴责。在志丹县，法庭甚至因其中所涉的物质因素而阻止了一起双方自愿的离婚。当事人陈鱼的夫家是贫农，父亲又抽大烟，因此希望离婚再嫁。小商人李树贵充当了中介人，安排陈鱼和一个刘姓男子见面相亲。这里，司法档案详细地描画出陈鱼嫌贫爱富的离婚动机，"第一次见面，陈鱼嫌刘的衣服（老羊皮袄）不好，

[40]《边区的婚姻问题》，陕西省档案馆，全宗 4 目录 1 卷 65。

不同意亲事; 第二次, 刘借来一套新衣, 陈才同意"。李树贵又说服陈鱼的夫家同意离婚来换取一笔聘礼, "现在世事不同了, 有离婚的…… 她常和你们淘气, 准备离婚, 不如趁早叫她离婚, 免得人财两空"。这样, 陈鱼和丈夫去区政府领取了离婚证, 几天后就与刘姓男子登记结婚。然而, 陈鱼丈夫的家族有人不满向县司法处起诉, 最终的处理意见批评陈鱼"嫌贫爱富", 责令其仍回原夫家。从成文法的角度而言, 陈鱼的离婚和再婚都是合法的, 陈鱼丈夫的族人甚至没有提起诉讼的权利。但法院不支持陈鱼这样的 "嫌贫爱富" 的妇女利用 "婚姻自由" 追求物质利益, 因为 "嫌贫爱富" 既是传统道德所反对的, 也是新的社会秩序所不容许的。革命与传统在这一点上是吻合的。(司法档案: 卷 842)

正如延安地方法院法官高继先观察,尽管农民妇女希望行使婚姻法所赋予的离婚的权利, 但在司法实践中, "(离婚的) 门开得太小"。一些妇女选择逃离农村社区, 以公家人的身份继续争取离婚。还有一些则走向极端: 1944 年到 1945 年上半年, 陕甘宁边区发生命案 202 起, 因奸杀人与离婚未遂而自杀案件达 106 起, 占总数的 50.4%, 在三边分区甚至占总数的 73.6%。[41]

## 离婚诉讼中的农民丈夫

Neil Diamant 指出, "包办婚姻制度尽管造成了许多不幸福的婚姻关系, 却能给予贫穷的男性一定的保障, 使他们有机会娶妻。然而, 当婚姻法开放了婚姻市场, 妇女们利用新的机会更频繁地向社会上层流动。贫穷的男性就将被置于一个在新的婚姻市场上极不安全的位置"。[42] 无论在共产党一贯的政治纲领还是在延安时期的具体政策中, 农民都确定无疑地是革命的参与者、支持者和最大的同盟军, 但他们的婚姻仍然主要依托于传统的习俗和伦理。对于边区的农民丈夫来说, 他们面临的不仅仅是婚姻市场的开放和人口性别失衡造成的流动性问题。更直观也更具冲击力的挑战是, 在革命中成长起来的男性公家人成为婚姻市场上可欲的目标, 而婚姻法也为妇女提供了一条摆脱旧式婚姻家庭的路径。因此毫不奇怪, 边区离婚诉讼中的被告主要是男性农民。如, 1944 年绥德地区有身份背景可考的离婚案件的 33 位男性中, 有 25 个贫农, 5 个中农, 1 个富农和 2 个工人。[43]

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41 《边区的婚姻问题》, 陕西省档案馆, 全宗 4 目录 1 卷 65。

42 Diamant, Neil. (2001) "The Anatomy of Rural Family Revolution: State, Law, and the Family in Rural China, 1949-1966", in Perry Keller, ed., *Chinese Law and Legal Theory*. England: Dartmouth Publishing Company Limited, p. 185.

43 《边区的婚姻问题》, 陕西省档案馆, 全宗 4 目录 1 卷 65。

然而，农民丈夫在这种不利的婚姻处境下并非完全被动，他们不是“公家人”，但也是革命序列中的一员。从边区司法档案提供的资料来看，农民丈夫并不都如前述案件中那样面对妻子的离婚请求表现出消极或鲁莽，而是有能力有效地使用各种政治的、舆论的和法律的策略尽力保护自己的婚姻利益。在法庭上，他们用“挑拨”一词来描述对他们婚姻的威胁，并对抗妻子的离婚请求。挑拨揭示了立法者期望的理想婚姻和现实的婚姻市场之间的紧张关系，而这种紧张关系最终由法庭以“赔米”的方式予以调和。

## 挑拨与赔米

1942 年，延川县农民鲁万富向高院递了一份诉状，状告他的岳母和一名区长挑拨其妻马存花离婚。鲁万富和马存花于 1940 年结婚，据称夫妻关系“异常和睦，远近夸赞”。1942 年 7 月，马存花回娘家，岳母马樊氏即挑拨她离婚，意图卖女“得一笔巨大的财帛”，再婚的对象是当地区长张宏永。马存花本人似乎同意母亲的计划，正如鲁万富所称 “妻虽与民感情和睦仍系农村之无知妇女，又无丝毫思想，竟然受伊等挑拨煽惑，心肠大变”。7 月 3 日，张宏永就给鲁万富去信，通知他马存花已决定离婚，并于7月14日给他寄来离婚证。考虑到张宏永在当地的影响，鲁万富选择向高等法院起诉，以妨害婚姻家庭罪控告马樊氏和张宏永（司法档案: 卷 779）。

尽管本案的结果不得而知（高院以管辖权为由驳回起诉），但这份诉状却清楚的勾画出挑拨离婚的几个要素：丈夫通常称夫妻关系良好，但妻子是一个不能作出独立婚姻选择的“无知”妇女，因第三方的挑拨而要求离婚；典型的第三方则是贪图财礼的娘家人和意图娶女方为妻的男性公家人。娘家人代表婚姻中日渐增长的物质因素。由于陕北地区的社会经济分化程度较低，财礼在当地的传统的婚俗中并不占据重要的位置。[44] 婚姻自由的权利结合当地婚姻市场上有利于妇女的性别比例的确刺激部分妇女和她们的娘家人追求基于物质利益的婚姻关系。具有反讽意味的是，尽管边区的婚姻法明文禁止，买卖婚姻却成为“边区群众中占统治地位的婚姻形态”，且“近年来价格有增无减。身价价格，绥德分区十二到十六石米，布匹尚在外；陇东最高为法币一百四、五十万元，普通二十万元左右；三边一带最高为边币二百万元，最低为二十万元，靖边一带有达到小米二十石，延属分区最高有银洋八

[44] “陕北自古婚姻不论财，清末民初买卖婚姻才开始增多。”见秦燕和岳珑 (1997):《走出封闭—陕北妇女的婚姻与生育》，第 27-28 页，陕西人民出版社。而绥德县法官史文秀则认为，土地革命时期“没有买卖婚姻，穷人好结婚”（司法档案，卷 79）。

百六十元, 普通的为边币一百多万元”。[45] 然而, 典型的、可欲的结婚/再婚对象却并非传统意义上的富人, 而是公家人。他们是在革命中成长起来的新的精英, 其政治、社会甚至经济地位均优于农民。正如陕北信天游所唱, “三层层花儿红上红, 妹妹爱的是公家人”。[46]

尽管边区的婚姻法从未论及挑拨, 该问题却反映（甚至以放大的形式）为司法的焦虑。在 1945 年边区司法会议上, 挑拨, 尤其是涉及公家人的挑拨成为法官们讨论的核心问题:

> 这离婚的都不是女子积极离的, 都是有人挑拨… 原因是想多卖几个人。因小时定下的都是 50、60 元现洋, 现在要一两百万。（李福元, 司法档案: 卷 83）
>
> 离婚的娘家哪一个不吃钱? 都是娘家卖两次。女人离婚后还能不能自主呢?（史文秀, 司法档案: 卷 78）
>
> 处理婚姻案中, 最坏的是干部挑拨离婚… 挑拨婚姻一般群众不敢做, 大半是地方党政干部或军队人员。他们用很多办法与人家妇女见面, 并强行娶亲。（周鸣, 司法档案: 卷 75）
>
> 离婚的女子大多为了吃好的、穿漂亮, 太太观念。都被公营商店的人结婚去, 本质上也不说年龄相符, 人材相配, 失了婚姻自由的原则。这也是老百姓最反对的事。（马耀德, 司法档案: 卷 75）
>
> 在绥德, 离婚的十分八九是和公家人结婚。（史文秀, 司法档案: 卷 78）

法官们的焦虑来自两方面。其一, 共产党婚姻法意图建立一种基于“感情” 的理想婚姻模式, 婚姻自由仅是实现这一目标的手段; 但在现实的婚姻市场上, 妇女或婚姻双方之外的娘家人却利用结婚/离婚自由追逐物质利益。在法官们看来, 这种形式上的自由不仅有悖传统道德, 也有违婚姻自由原则的本质。按上述马耀德法官的话来说就是 “失了婚姻自由的原则” （司法档案: 卷 75）。其二, “挑拨” 离婚的 “受害者” 是农民丈夫, 而典型的 “挑拨者” 则是公家人。如果处理不慎, 不仅会损害个体农民丈夫的利益, 也会触及到整个农民群体的公正感, 从而动摇革命政权的基础。正如《边区的婚姻问题》所说, 干部中 “挑拨婚姻极普遍存在……是为群众最不满”。

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45 见《边区的婚姻问题》, 陕西省档案馆, 全宗 4 目录 1 卷 65。法币是国民党政府发行的货币, 边币则是陕甘宁边区政府发行的货币。由于抗战时期通货膨胀严重, 我们很难知道上述 “身价” 的确切经济价值, 但下面的例子会大体告诉我们买卖婚姻给即使是较为富裕的农民也造成了极大的负担: 曲子县张满银把一个漂亮的女儿以边币一百九十万的“身价”嫁给一个家道殷实的富农田君山。田家现钱不够只好卖家当,卖了“4个驴、38 只羊、2 条牛、20 几亩好川地, 又在亲戚处借了些款, 但仍短少几万元, 张满银要田家找下了保人才算把亲作成”。

46 秦燕和岳珑 (1997):《走出封闭—陕北妇女的婚姻与生育》, 第 143-144 页, 陕西人民出版社。

为调和上述矛盾，法庭创造了“赔米”的安排：由女方在离婚时应给予男方一定的经济补偿。赔米的安排在司法实践中被广泛使用。如，从1944年到1945年上半年，在绥德地区获得离婚判决的140个妇女中，有73个都对男方做出了经济补偿。

从法律层面上看，赔米是为了平息男方的怒火和不公平感，有赔偿的性质，有利于达成一个最终的双方大致能接受的妥协方案从而结案。从现实的层面看，赔米一方面是为了平衡男方当初付出的财礼，亦即是默认了当初婚姻的买卖色彩；另一方面也假定妇女离婚后通过再婚获得更好的经济处境。

赔米的逻辑和婚姻法的官方表达形成了有趣的参照。婚姻法拒绝承认婚姻中的物质因素。离婚后的财产安排是为了妇女能实现婚姻自由。不仅财产分割照顾到妇女的经济弱势，还规定男方离婚后继续扶养女方。赔米却反映了现实的婚姻市场的逻辑。它承认婚姻中的物质因素，假定离婚的妇女能通过再婚获得一个更好的经济地位。事实上，在很多离婚案中，再婚的对象早已浮出水面，而赔米的协议就是在离婚的男方和再婚的对象之间形成的（这可能是为了确保赔米的落实）。

因此，总体上看，赔米并不是基于法律上的过错，而是对在婚姻市场上经历下滑的农民的一种救济，也是法庭为调和离婚诉讼中复杂的冲突所作的无奈的选择。然而，它承认婚姻中的物质因素，有悖于婚姻自由的原则，因此不能以判决的形式作出，而通过调解，由法庭对双方施压来达成赔米方案。

## 一个农民丈夫的婚姻保卫战

回到本文一开始提到的案件。一个倔强的青年农民张怀宝因为不服离婚判决而打了两年官司，从县司法处一直上诉到陕甘宁边区政府审判委员会。案卷纪录长达135页，是一个罕见的完整标本，详尽地展示了离婚法实践中的复杂关系和矛盾，尤其是农民丈夫和公家人在离婚诉讼中的对抗，以及法庭调和这些矛盾的努力。

1943年3月，当张怀宝在绥德军工厂找到杜桂蓉时，后者以夫家不给吃穿、丈夫经常打骂以及感情不合为由提出离婚。因杜桂蓉未提出虐待的证据，米脂县司法处认为“不够离婚条件”，通过“调解”让二人“和好”，并“劝说”他们一同返家。1943年7月，回到张家后不久，杜桂蓉就要回娘家。正在田里干活的怀宝听说了，来不及放下锄头就去追赶，两人在半路相遇后发生争吵，杜桂蓉滚下一个山坡受了点皮外伤。于是，桂蓉再次向米脂县司法处提起诉讼，控告张怀宝把她推下山坡，“[张怀宝]意图陷害……请求脱离夫妇关系，以逃生命”。怀宝则辩称是杜桂蓉自己滚下山坡，目的是捏造一个离婚的借口。由于他们各执一辞而

又无目击证人，法庭传唤了二人所在地的乡长。乡长推测可能是怀宝把杜桂蓉推下山坡的，并表示“我们看到他们夫妇终不在一块相处，不如把婚离了，免得逼出人命”。结果，法庭采纳了杜桂蓉的证词，在 9 月判决离婚。怀宝立即向高等法院绥德分庭上诉。尽管对一审判决的关键证据—张怀宝把杜桂蓉推下山坡持有怀疑，绥德分庭却意识到这一事件本身已说明杜桂蓉离婚的决心，维持了离婚判决，“双方意志根本不合…男方过于压迫，因此不能同居下去”。

1943 年 11 月，怀宝继续上诉到陕甘宁高等法院。他声称夫妇关系原本不错，二人在婚后没有争吵打架，张家的人也从未不给杜桂蓉吃穿，“家里小米不断，春有春衣，夏有夏衣，冬有冬衣”。他认为一、二审的法官缺乏“调查”，自己根本没有把杜推下山坡，“我受洋罪到处找她，还打她吗…… 她自己溜下去的，不这样，不能批准她离婚”。在他看来，造成杜桂蓉想要离婚的主要原因有两个。其一是有公家人“挑拨”：1943 年正月，一位曾在军工厂工作的亲戚来怀宝家“和女人打了话”；2 月 9 日，乡干部张仲连和军工厂指导员来庄上给杜桂蓉和崔桂如开了去绥德的路条，“12 日就把我们那两个女人引走了……同时引走的女人还有五、六个”。第二个原因是杜桂蓉嫌贫爱富，“她嫌我是受苦人…… 她嫌生活不好…… 工厂吃得好”。此外，怀宝还指出杜桂蓉很可能在工厂“找下对象”。

虽经高院多次传唤，杜桂蓉却未到庭。此时，她正准备与军工厂的指导员覃正玉结婚。在向“组织”申请结婚的报告中，他们都明确的把自己的婚姻选择和革命联系起来。杜桂蓉与张怀宝离婚体现了妇女解放，“我与他（张怀宝）关系不好，主要打骂，各项压迫，我要脱离他们家长制的压迫”；而她与覃正玉的婚姻则符合革命工作的需要，“我永远愿随着革命前进。所以我看到覃教导员经常来工厂谈话开会，对我们也有些帮助。同时他是老革命，为了继续地帮助，我愿意同覃教导员二人结婚”。覃正玉则谈到，他以前的“对象”一个是国民党党员的女儿，成分不纯，另一个是有敌特嫌疑，他为了革命的事业与她们断绝了关系。而杜桂蓉是出身贫农、要求革命的劳动妇女，希望组织批准他们结婚。1943 年 10 月，组织批准了他们的申请，但由于当时处于整风期间，两人只先行订婚。

对离婚的两种解释之下是两种冲突的利益：一方面是在婚姻市场经历下滑的男性农民要求捍卫自己的婚姻；另一面是公家人要求婚姻自由。经过权衡，高院试图通过“赔米”来调解这起离婚纠纷。他询问了张怀宝和杜桂蓉结婚时的财礼及婚礼的花费，提出让杜桂蓉和覃正玉赔给怀宝 5 石米。怀宝起初坚持“要人”，但在法院的劝说下同意接受“赔米”。为方便杜桂蓉到庭，高院把该案发回绥德分庭调解。

如果高院提出的赔米调解方案能够成功，张怀宝的上诉之路本可以就此终结。然而，1943 年 12 月，当绥德分庭按高院提出的方案进行赔

米调解时，覃正玉拒绝了，“政府不知道是和部队（的人）结婚，知道也不会这样处理”，“这个没法子……生产我主要搞公家的……没有时间搞私人生产”。尽管法官将赔米额从5石减到2石，覃正玉还是不同意。绥德分庭显然不满意覃正玉的强硬立场，他们向高院汇报调解不成，因为“有人连两石米都不肯出”，并建议以判决的方式结案—如果不够离婚条件就撤销原判。高院即指示分庭通知杜桂蓉不得与他人结婚，因为张怀宝还在上诉，离婚判决还未最终确立。然而，杜桂蓉和覃正玉不顾法院的通知，在几天后就结婚了（不知是否为了规避政府的审查，他们没有履行婚姻登记手续）。

在怀宝看来，两人匆忙结婚证实了他先前关于挑拨离婚的猜测，而且这个挑拨者拒绝对他做出任何补偿。另外，他的弟媳崔桂如此时也已经离婚并与军工厂的另一名干部结婚了。愤怒的怀宝决定不再接受经济补偿的方案，而是要讨个说法。为此，他和劝他放弃的家里人吵翻了，甚至不惜花钱雇了一个类似讼师的人。也许是在这位讼师的指点之下，怀宝向陕甘宁边区政府审判委员会状告覃正玉拐走了他的妻子—这个诉由无疑比离婚更能唤起政府的注意及给对方当事人施压。审判委员会意识到这个案件牵涉复杂而敏感的“军民–军政–政民”关系，指示高院立即重审。

1944年5月，高等法院重审该案，决定仍然使用调解的方式来平衡各方冲突。从询问笔录中我们可以看到，法官运用了类似于后来的毛主义时期法官所惯用的调解技巧，求助于法律原则、物质刺激以及情理等因素来劝说张怀宝：“我给《婚姻条例》你看看，你识字吗？不识字我给你读一下。第一条男女双方以自由为原则”；“你打官司这样久了，要怎样才能给你消口气？……命令她跟你恐怕不容易，因为她那样坚决，我们不能把她捆来跟你……如有感情才算真正的好夫妇，硬拉回去是没有用的……如她对不起你，可以叫她向你道歉”；“要她给你些钱，回去好好生产，当个劳动英雄，婆姨还不是多着吗？叫她帮助你一些钱，回去再办一个婆姨”。

值得注意的是怀宝的抵抗策略。首先，他坚持不够离婚条件，杜桂蓉要离婚是因为公家人的挑拨，“工厂里为什么跑来给我引走了，为什么跟工厂里结婚……同公家人一块睡比跟我睡好嘛，人家穿得漂亮比我强嘛……那和她结婚的人没有错吗？应该吗？”其次，他指出法院没有按照统一的逻辑或公平的方式处理公家人和农民的婚姻纠纷，“我们是老百姓，要是公家人早（把妻子）给我了。二十四年闹革命，好多婆姨的丈夫走了，就另外嫁人。现在丈夫从前方回来，她们已生了娃，还要归回去”。另外，农民娶妻困难的实际问题是一个能够博得法官同情的因素，“她不跟我，那叫她给我找个婆姨就随她去。要我另找婆姨一辈子也不容易”。最后，张怀宝威胁还要继续上诉，“你们说够离婚条件，你们就判吧，我还有走处”。

由于调解失败，高院的法官在 1944 年 9 月下到张怀宝所在的乡调查。他们的目的不仅是要澄清案件的一些相关事实，还要收集“群众”对如何处理这起离婚纠纷的意见。法官们发现，村民们一致认为张家待杜桂蓉极好，从不打骂虐待，反倒是杜桂蓉“跳皮”，“还敢对她（杜桂蓉）不好哩……每天太阳照得门上她才起来，张怀宝给她端来洗脸水，她的婆婆把饭做好。拿来她的面前。但是饭好的话她就吃，饭不好不吃”。这也为杜桂蓉的母亲证实，“打骂是没有的，但张家吃的不好”。当问到杜桂蓉离开张家去工厂是否有乡干部“挑拨”时，一些村民含糊其辞，“我可不敢说！你们心里明明的，还叫我说哩，不会错的”，“总之女人家黑天半夜是不敢走，同时女人不知道路”；另一些则直率地指出是两个乡干部“捣鬼”，“他们过去和张怀宝的婆姨来来往往的做些不明不白的事……当时他们对张怀宝的婆姨是有想结婚的意思”。最后，村民们还表示，杜桂蓉要离婚是因为“看不起受苦人”，而“老百姓对他们离婚普遍不满意”。

1944 年 11 月 3 日，综合上述调查结果，高院作出案情分析报告。一方面，杜桂蓉受人挑拨，捏造虐待事实，而她滚落山坡一事则无法确定责任。因此，一审和二审的离婚判决缺少调查，与事实不符，杜不够离婚条件；另一方面，杜桂蓉和张怀宝的性格不合，没有感情，而杜又已另嫁怀孕。因此，高院决定对杜桂蓉进行申斥，令其赔给张怀宝 5 石米以及打官司的路费。如仍然拒不赔偿，则判决她与张怀宝继续夫妻关系。

此后，高院给覃正玉所在的部队写信，表明群众普遍反对杜桂蓉离婚，如判决离婚会损害“军民–军政–政民”关系，请军队协助调解。同时，高院也联系了怀宝的家人，希望他们劝说怀宝接受调解。最终，在高院的努力下，双方于 1945 年 2 月达成调解离婚协议。

张怀宝的婚姻保卫战不得不接受离婚的结局。从整个审判过程认定的事实来看，怀宝本人没有任何法律上的过错。相反，相对的一方却有明显的法律过错，在离婚判决尚未生效的情况下，未经正式婚姻登记即行结婚并怀孕；更远地说，如果覃正玉并非以公家人身份、以招工的名义将杜桂蓉引出张家，甚至会构成拐带妇女罪；杜桂蓉虽然正式的动机是参加革命工作，但她并未以平等的身份与丈夫坦诚商量，而是以私逃的方式将农民家庭与公家对立起来，这并不符合当时的政治构造。但仅从结果来看，法院虽然同情怀宝并在调解协议中给与了适当的照顾，但实体上支持了杜桂蓉和覃正玉。

乡政府从杜桂蓉的出走计划之初就支持“公家人”，在后来的离婚诉讼调查中也是以“公家人”的口吻发表意见，这个不难理解。耐人寻味的是张家人的反应，案卷资料显示，张家对怀宝的缠讼是持劝阻态度的；同一事件中的平行当事人—张怀宝的弟弟，并没有对妻子的出走和离婚提出任何法律上的主张，案卷中甚至没有提及弟弟的名字；而最终，

也是张家的一名亲戚接受法院的委托，说服怀宝接受了调解协议。此外，社区的村民在离婚调查中，虽然普遍表现出对怀宝的同情，对桂蓉的谴责以及对乡干部的质疑，但面对法官也是含糊其辞，不愿发表正面意见。

从上述总体反应来看，人们对农民丈夫与“公家人”之间的婚姻对抗实际上有一个普遍的、清晰的判断，这个判断既可能来自于人们的经验印象，也来自于对当时的社会政治经济结构的理解，甚至不排除古老的对身份差别的刻板定见。

但这并不意味着，怀宝的婚姻保卫战就是一个倔强农民不顾现实的徒劳反抗。恰恰相反，他的反应正是对应于当时的司法特别焦虑的也是意义重大的一个因素，即婚姻自由原则与农民的婚姻利益之间的冲突；而从法院对于怀宝的回应中，可以清楚地看到后来半个多世纪主导着并且至今仍在影响着的中国民事法律制度和司法政策的源起和雏形。

## 结语

仅以有限的司法档案来全面描绘边区时期的离婚法实践无疑是不够的，至少是不全面的。比如丁玲从她的角度和视野中看到的男子沙文主义式的离婚，就是一幅截然不同的、从司法档案中无法觉察到的图景。但在对司法档案的整理中，可以重现微小的个人包括法官、不同阶层和身份的当事人和相关人在中国共产党空前宏大的制度建构中扮演过的活生生的角色，帮助我们更深度的发掘和理解历史。

在边区的离婚法实践中，“公家人”从一种直接为政权服务的职业身份或革命身份不期然地变成了一种隐性的法律身份。它可能像几何学里的辅助线一样，本身并不可见，一经画出，可以帮助我们在复杂的头绪中更便利地理解各种关系和影响因素。

一名妇女以独立的身份参加革命，成为“公家人”，即摆脱了传统家庭意义上对父亲、丈夫或儿子的附属地位，亦即象征性地拥有了独立的意志和自主权。表现在司法待遇上，她的离婚请求及意志表达会得到充分的支持和认可，尤其是当她把自己的离婚请求和革命关联起来的时候；而一名停留在农民家庭的妇女提出离婚请求时，除非有充分的事实证明“感情不合”，不仅她的婚姻道德和离婚动机会受到质疑和严格的审查，法官还会较多地顾及丈夫的感受及社区舆论，从而驳回请求。这里面固然有安抚农民丈夫、调和不同阶层之间婚姻利益冲突的政策考虑，但同时也暗含着一个司法假定：一名没有通过参加革命来证明自己的自主意志和自主权的妻子，对丈夫有某种程度的传统依附关系，她的离婚请求可能只是为了寻求对另一个丈夫的依附，而这种动机无论传统的还是革命的婚姻制度都是不支持的。不过，一旦这名妇女参

加革命，这个假定也就消失，从而成为一个法律上具有完全自主意志和自主权的人；抗属的情况则更加复杂一些，虽然可以以一些法定的理由提出离婚，但几乎无法使用“感情不合”这个最能体现婚姻道德革命性的离婚理由。对军婚的特殊保护限制了抗属的离婚权，在司法中即使离婚的理由按通常的标准和一般的情理已经非常充分，抗属的离婚请求也很难得到批准。毫无疑问，这里面暗含着一个强烈的政策前提：婚姻的道德服从于革命的道德。对抗属来说这意味着一种政治荣誉，以及在婚姻生活方面要作出重大牺牲，但同时也意味着在离婚权这一点上，抗属的法律身份完全从属于丈夫。而从司法档案中已知的情况来看，抗属一旦以自主意志参加革命，自身成为“公家人”，在离婚权方面，她的司法待遇和一名普通的“公家人”妇女几乎没有差别。

然而，“公家人”并非一个法律身份范畴，也不是边区司法实践中的人为构造，而是特定的历史背景下，立法原则、司法政策和当事人的策略交互作用下形成的身份差序基准线，它只是便于我们观察和解释，而不是重构历史。以这条基准线，还可以发掘出一些值得进一步探讨的相关问题，比如，司法档案中清楚地显示，“公家人”妇女的通奸行为会受到法律的惩处，但对其离婚请求影响有限；农民妇女的通奸行为不会受到惩处，但可能会成为驳回其离婚请求的理由；抗属的通奸行为则显然受到司法宽容和回避处理。革命的身份差别是否也对应着性道德标准的差别尚需更多的史料来印证。也许这些问题只是一个大变动的历史时期特有的现象，但系统细致的研究将有助于理解共产党革命以来社会与制度的变迁，尤其是司法制度的变迁。

BRILL

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# Organized Violent Conflicts over Water Control in Rural China: The Jianghan Plain, 1839-1979

**Jiayan Zhang**[1]

# 江汉平原清后期以来与水利有关的有组织的暴力冲突

张家炎

**Abstract**

This article explores organized violent conflicts over water control in the Jianghan plain,[2] Hubei, central China, from 1839 to 1979. These include both large-scale conflicts between residents of the upper and lower reaches of the rivers of the Jianghan plain, or between residents on the opposite banks of the same rivers, and small-scale conflicts between neighboring polders or villages or clans. The organizers of these conflicts were usually men with military experience or were community leaders, such as clan leaders and village cadres. Their methods of organization

[1] Jiayan Zhang is an associate professor of history at Kennesaw State University. He received his Ph.D. in history from UCLA. He has published numerous articles on the history of the Jianghan plain. His research interests include agrarian history, environmental change, and peasant studies.

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[2] The Jianghan plain in this research includes the following counties (or cities): Jiangling, Songzi, Gong'an, Shishou, Jianli, Honghu, Qianjiang, Mianyang, Tianmen, Hanchuan, Wuchang, Hanyang, Xiaogan, Yunmeng, Yingcheng, Jingshan, Jingmen, Zhongxiang, Dangyang, Zhijiang, and Shashi.



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included issuing flyers, establishing (illegal) dike bureaus, and mobilizing members of a whole village or clan. These kinds of organized violence over water control were civil actions involving villagers struggling to protect and promote their interests, not revolutionary action aimed at overthrowing the government. In the pre-1949 era, the government usually responded to such conflicts slowly and passively; in the post-1949 era, the government has responded quickly and actively. As a result, organized conflicts over water control occurred more often and were more violent in the pre-1949 era. This demonstrates that the occurrence of organized violent conflicts caused by human nature and environmental issues are not necessarily related to a sociopolitical form and its change, but their scope and frequency are determined by state control.

**Keywords**
organized violent conflicts, water control, the Jianghan plain, rural China

**摘要**
本文探讨华中地区湖北江汉平原自 1839 年至 1979 年间与水利有关的有组织的暴力冲突，包括河流上下游、左右岸居民之间的大规模冲突与邻垸、邻村、或不同家族之间小规模的冲突。这些冲突的组织者往往是有军事经验者或地方领袖，如族长及乡村干部。其组织方法包括发放传单、私设堤局、及全村（族）动员等。这种为争水权的有组织的暴力冲突只是老百姓为保护、促进切身利益的民事行为，不是旨在推翻政府的革命行动。冲突发生后，1949 年以前政府往往应对缓慢、被动，而 1949 年以后政府则迅速、积极处理。因此此类由水利而引起的有组织的冲突在清代民国发生较多、更具暴力。这表明这种因人本性、因自然环境原因而形成的有组织的暴力冲突与社会政治形态及其改变没有必然关系，但冲突的规模与发生的频率则与政府的控制有关。

**关键词**
有组织的暴力冲突，水利，江汉平原，中国农村

According to conventional wisdom, China's peasants were cowardly, afraid of the government, and always tried to keep out of trouble; according to Chinese Communist orthodoxy, they were born rebels fully imbued with revolutionary ideology and intent on overthrowing the old regime to build a new one. These two perspectives, though oversimplified and rejected by almost all students of Chinese studies, indeed represent two extremes of Chinese peasants' characteristics: either docile subjects or violent mobs. Chinese peasants, of course, are not just submissive citizens or oppressed and exploited rebels. Other than engaging in many kinds of "collective violence" (Perry, 1984), in imperial times and the Republic they also used the notion of civil justice to defend their rights through legal venues (Huang, 1996), local customs to bargain for power in daily village governance (Li, 2005), and demonstrations, riots, and petitions to protest against the government (Hung, 2011). In recent decades, all over China they have engaged in various forms of resistance to the state (Perry and Selden, 2000; Friedman et al., 2005; O'Brien and Li, 2006).

Most of these studies look at the peasants from a state-peasant perspective. In rural society, however, non-state-engaged conflicts among the peasants are more common than state-peasant conflicts. For example, while it is true that there were frequent peasant uprisings in Chinese history, more commonly peasants fought among themselves over issues such as landownership, rent, water control, and the like. Disputes over water rights were probably the most common form of violent conflicts in rural Guangdong in the eighteenth century (Buoye, 2000: 82-83). However, one might say that such disputes generally occurred between villagers by accident. The conflicts over water control in the Jianghan plain in the past one and a half centuries—the subject of this article—were different: they were not only violent, they were organized.

The Jianghan plain—which lies between the Yangzi and Han Rivers—is an alluvial plain located in the middle of the Yangzi River valley in Hubei province, central China. Hubei once was called "the province of a thousand lakes." Most of these lakes are located in the Jianghan plain. Thus there is an abundance of water—and frequently an overabundance. In the Qing dynasty, water calamities were a part, albeit a devastating part, of life in the Jianghan area. Droughts also occurred, but they were far less common than water calamities (Mei, Zhang, and Yan, 1995: 190). This sets the Jianghan plain apart from other regions of rural China. In late imperial times, the North China plain, for example, frequently suffered from both droughts and floods. Droughts lasting more than ten years were not rare, and changes in the course of the Yellow River could bring disaster to half of the North China plain. Frequent natural disasters also contributed to social chaos such as peasant rebellions. In the Yangzi delta, some communities relied on the protection of sea walls, and others also built polder dikes to protect their farmland, but the area rarely suffered a huge disaster such as those following a change in the course of the Yellow River, which was certain to nearly reshape the local ecosystem. The differences in the environment also help to explain why society in the Yangzi delta was more stable than in the North China plain.

In terms of the water control systems, in the North China plain, the main system included the Yellow River dike, which was managed by the state, and numerous wells owned by the locals. In the Yangzi delta, the state was responsible for some major water control works but the locals were in charge of their own community water-control projects. The Jianghan plain was similar to the Yangzi delta in that the state was responsible for some sections of its major dikes and the locals responsible for the rest of them as well as all polder dikes. As for the importance of flood control and irrigation, both flood control

(particularly the safety of the Yellow River dikes) and irrigation were important in the North China plain, but irrigation was more important than flood control in the Yangzi delta, while flood control was far more important than irrigation in the Jianghan plain.

The local residents of the Jianghan plain have built river dikes to protect their farmland from annual high water for about two millennia, and they began to reclaim polder (or *yuan* in the local dialect) land on a large scale a millennium ago. The endless construction of river and polder dikes in the area, however, naturally reduced the flood-discharge area of the Yangzi and the Han Rivers and the water surface of lakes, which contributed to the increased incidence of water calamities, such as flooding, inundation, and waterlogging. An observer in 1840 claimed that Hubei suffered the most water calamities of any of China's provinces, and most of these water calamities occurred in the Jianghan area (Yu, 1999 [1840]: 8). In fact, reports show that from 1736 to 1911 in the Yangzi River valley, the most frequent water calamities occurred in the Jianghan plain (Zhang Jiayan, 2011: 60). Once a water calamity occurred, the result was usually a zero-sum game, as a break in one polder's dike would reduce the pressure on the dikes of its neighboring polders; a break of a river dike in its lower reaches would reduce the pressure on dikes in its upper reaches; and a break of a river dike on one side of the river would guarantee the safety of the river dike on the other side of the river along the same section. Therefore in some extreme cases, people even deliberately broke a dike on the other side of the river or the dike of their neighbors' polders. Naturally, this would inevitably cause conflicts among people at different locations and with different interests. Local residents also frequently fought over the opening/closing of an outlet of a river. In order to exercise control over waterways and minimize the damage caused by water calamities, local residents not only engaged in fights but also pursued various lawsuits to protect their interests. In sum, the Jianghan plain is characterized by an abundance of dikes and lakes, and the local residents repeatedly suffered from water calamities, which caused frequent violent conflicts.

These conflicts rarely occurred between individual peasants. Instead, since rivers run through several counties and lakes are sometimes bordered by two or more administrative jurisdictions, any single conflict could involve dozens, hundreds, or even thousands of people. In view of this background, this article will not touch upon irrigation disputes among individual villagers. Instead, it will focus on group conflicts: organized violent conflicts over water control. To be sure, violent group conflicts seldom occurred spontaneously; instead, they were usually organized and planned events. These conflicts took different forms, but most common were struggles over the closure or opening

of one river outlet or dike rupture, or over drainage and/or irrigation. These were mostly horizontal conflicts among different groups; vertical conflicts between the peasantry and the state only occurred occasionally. Participants in either of the two sides of these conflicts could come from the upper and lower reaches or two banks of the same river, or neighboring polders, villages, or clans. In terms of administrative divisions, the participants could belong to different counties, prefectures, or even provinces.

People sometimes tried to settle disputes through recourse to the law. Lawsuits, however, usually could not resolve problems. Thus more often, peasants tried to find a solution themselves via fighting. Fighting usually failed to completely solve problems either; some fights—particularly when there were deaths—would cause endless lawsuits, which was common in areas such as the lower Han River valley, where water calamities occurred almost every year. In some places, the residents of neighboring polders even became bitter enemies due to violent conflicts over the control of waterways.

Frequent water calamities and the ensuing conflicts led to a reputation of people who lived in the lower reaches of the Han River as litigious and bellicose. The Zekou case, for example, lasted from 1844 to 1913; those on either side of this extraordinarily protracted conflict fought/sued thirteen times (Da zekou cheng an, 2004). According to some Qing officials, some of these people were not struggling for water rights, but were "rebels" (Xiangdi cheng an, 1969: 741-45). This view was shared by Morita Akira, who thought their action was "anti-feudal" (Morita, 1974: 134). As will be seen later, these conflicts in the Qing dynasty were not vertical conflicts between the peasantry and the state; they were horizontal conflicts among the peasants. The state did not use troops to settle disputes at their very beginning; it did so only reluctantly and as a last resort. Even so, peasants were struggling for the control of waterways, not aiming at overthrowing the government; they were not rebels. In other words, these conflicts were not anti-government, or "anti-feudal" as Morita argued.

Like Morita, most scholars on the subject have focused on the Qing dynasty (1644-1911), with an occasional mention of the republican era (1912-1949) (Zhang Jiayan, 2006), but none has touched on the period of the People's Republic of China (PRC). In this article, it can be seen that organized violent conflicts over water control continued to exist in the republican and the PRC eras. As we will see, the people who participated in these violent conflicts were not rebellious peasants (although some happened to be members of the White Lotus); they were average peasants who struggled for control of waterways without any intention or ambition of overthrowing the government. Indeed, in

the PRC, these kinds of conflicts were categorized as contradictions (*maodun*) among the people, not people-enemy contradictions.

In addition, past scholarship has analyzed different forms of conflicts over water control in the Jianghan area in the Qing and the Republic, and has noted that the participants could come from different administrative divisions (Peng and Zhang, 1993; Zhang Jiayan, 2006). If rural residents who actively participated in violent conflicts came from different administrative divisions, good organization would be essential to their success. Past scholarship, however, has not explored how these peasants, sometimes numbering in the hundreds or even thousands, were able to be mobilized and organized, without the involvement of the state, when most importantly, in many cases, they were not from the same administrative unit. This article will examine this key issue.[3]

In exploring organized violent conflicts over water control in the Jianghan plain during the period from 1839 to 1979, this article will examine who were the organizers, how the peasants were mobilized and organized, and when and why the state stepped in, as well as different governmental attitudes or strategies and their varying results. The results of this research should contribute to a better understanding of Chinese society and Chinese peasants, the relationship between political ideology and society, and the relationship between human beings and their living environment.[4]

## The Organizers

In China's peasant rebellions, large or small, the leaders were usually clear: such as Zhu Yuanzhang at the end of the Yuan dynasty, Li Zicheng and Zhang

[3] Water control has long been an important topic in Chinese studies. Two examples of the many works in English are Chi Ch'ao-ting (1963 [1936]) and Karl Wittfogel (1957). However, few works by scholars in the West have focused on the organizers, the organizational means, and the changes in organized violent conflicts over water control from the late Qing to the present. In China, studies of the so-called "hydraulic society" have becoming increasingly popular in recent decades; conflict over water use is a natural part of such research. It seems, however, these studies focus on the formation of those conflicts, and the relationship between the conflicts and their associated sociopolitical situation, such as in Sichuan (Chen, 2011), Shanxi (Zhang Junfeng, 2008), and the Pearl River Delta (Zhong, 2009).

[4] The main source materials in this article are memorials and case records related to water control in the Qing dynasty, gazetteers of the late Qing, the Republic, and the PRC, and archives of the Republic and the PRC. The article starts with 1839, the first year of a decades-long case in Jianli, and ends in 1979, the most recent year for which archives are available (governmental archives within the past thirty years are not open to the public), also the year that the rural reform was launched.

Xianzhong at the end of the Ming dynasty, and Hong Xiuquan of the Taiping Rebellion, and so on. Some peasant rebellions actually were named after their leaders, such as the Chen Sheng and Wu Guang Rebellion in the Qin dynasty, the Huang Chao Uprising in the Tang dynasty, and the Fang La Uprising in the Song dynasty. But who the leader or leaders in a particular conflict over water control may have been is usually unclear. In fact, there are few or no well-known leaders of conflicts over water control at all. Because these conflicts entailed violence and involved hundreds or even thousands of participants, it is certain that these were organized events, and that the organizers must have been determined or influential figures. This is indeed the case in the Jianghan area.

First, many organizers had militarily experience or a military background.

Yan Shilian, for example, was a major leader in the Zekou case. It is said that he was born to a poor family and had no access to education; but he was handsome and glib, and happened to be adopted by a general in Jingzhou. Relying on the power of this general, Yan was able to mobilize people of four counties (Qianjiang, Jianli, Mianyang, and Hanyang), and "self-appointed as the commander-in-chief," to work on the closing of the Zekou (Ze outlet, an outlet of the Han River) (Mianyang chenchang qu xiangtu zhi, 1987: 296).[5] Two other less important figures in the Zekou case also had a military background: Guan Juncai was a former military degree-holder (but was stripped of his military degree, for reasons unknown), and Wang Zifang was a former military official (Xiangdi cheng an, 1969: 807-13, 829-31). According to Xiao Qirong (2008: 112), the involvement of these former military personnel in the violent conflicts over Zekou reflected the militarization of local society after the Taiping Rebellion and the Nian Rebellion.

For the same reason, often those who wanted to block the Zekou outlet were quasi-military personnel—"each has guns, cannons, and [other] weapons" (Xiangdi cheng an, 1969: 633)—who formed a de facto paramilitary organization. Their goal, of course, was to prevent others from stopping them from blocking the outlet, not to rebel against and overthrow the government. But that does not mean that they were willing to be subject to the state. On the contrary, they mostly turned a deaf ear to the government—in any case, the state definitely did not support their behavior. In one instance, after hearing that the government had decided to destroy a dam built by them, they intentionally mobilized more people and collected more money to work on their supposedly

[5] In this source, his name is Yan Shilin, it should be Yan Shilian.

illegal project (Xiangdi cheng an, 1969: 641), a characteristic, of course, entirely at odds with the conventional image of obedient peasants.

This tradition carried over to the PRC. In 1954, residents of two neighboring polders in Honghu fought against each other over the closing/opening of an outfall on a dike. The commander in the fight was a certain Zhu who had practiced martial arts and served in the Guomindang army (SZ 34-2-489).[6] In 1957, fisherfolk of two clans, one from Tianmen, the other from Hanchuan, fought for the control of a lake located between these two counties. Members of the Yan clan of Hanchuan, following a red signal flag, charged at members of the Xiao clan of Tianmen (SZ 113-3-197). In 1961, in a conflict between Tianmen and Yingcheng, an organizer of Yingcheng's peasants used a bugle to sound an emergency rally and quickly called together three hundred or so people (SZ 34-5-22: 45). Even in 1979, several days after a deadly clash between residents of Yingcheng and Jingshan, the Jingshan side still prepared to deal with revenge by gathering dozens of people every day, and "hired three hatchet men [or fighters]" (SZ 67-5-91a). All of these were related to militarily experience. Some leaders of the Fankou case (which involved conflicts over the building of Fankou dam in Southeastern Hubei, 1876-1883) were degree-holders and ex-soldiers as well (Rowe, 1988: 378). It has been found that the organizers of "rightful resistance" in current rural China also "are often male and demobilized soldiers" (O'Brien and Li, 2006: 135).

Thanks to the militarily background or experience of organizers and commanders, it is understandable that many of the participants wielded weapons, such as rifles and cannons, as frequently mentioned in memorials of the Qing dynasty and recorded in gazetteers and archives of the Republic. It must be noted, however, that those weapons were not regular weapons used by troops. These so-called "rifles" were actually hunting guns, "cannons" were locally made or were blunderbusses; more commonly people used non-firearms such as spears, knives, sickles, or even fishing tridents (Xiangdi cheng an, 1969: 743; Mianyang chenchang qu xiangtu zhi, 1987: 298; Jianli shuili zhi, 2005: 383). In the PRC, firearms were strictly controlled; "weapons" used in fights were consequently more diverse and less lethal. In 1959, for instance, to discharge floodwater, some residents of Hanchuan forcibly dug out a dike in Mianyang, enraging its residents. In the fighting that ensued, the "weapons" used included shovels, sickles, bricks, dirt clods, and even 666 powder (hexachlorocyclohexane, a pesticide) and lime (SZ 113-2-263). In 1961, residents of Tianmen

[6] SZ 34 is category [quanzong] number, 2 is subcategory [mulu] number, and 489 is file [ juan] number. The same as the following archives; all come from The Hubei Provincial Archives.

and Yingcheng fought over the use of water from a small reservoir historically shared by the two sides; the "weapons" they used were homemade guns, shoulder poles, knives, poles, shovels, plus stones (SZ 34-5-22: 45). All these weapons were non-military and not inevitably fatal.

Second, some organizers had a background as gangsters or were members of a secret society.

The influence of gangs and secret societies in pre-1949 rural China is obvious: it can be seen in the activities of the Big Sword Society and the Boxers in the North China plain, the Red Spear Society in the Huai River area, and the Gelao Brotherhood Society in the Yangzi River valley, among others. According to recent research, gangs and/or members of secret societies were also very active in rural Jianghan in the Republic (Yin, 2008). Not surprisingly, some organizers of conflicts over water control in the area had some relations with gangsters. Tang Chuanxun, the leading organizer of the thirteenth, and last, fight in the long, drawn-out Zekou feud, was a gang member. At first, Tang was a merchant in his hometown. He later moved to Hankou, a major commercial town of central China, to run an inn. There he got the chance to make friends with various gang members and gradually became their leader. Later, he went back to his hometown and became a "protector" of the area—if you paid him a "protection fee" in advance, nobody would dare to steal your property, such as cattle or farm implements; in case anything was stolen, Tang would get it back for you. Tang therefore became a very influential figure in the area (Mianyang chenchang qu xiangtu zhi, 1987: 296).

Third, community leaders served as organizers.

The Zekou case and the like were large-scale conflicts, which needed figures influential across a large area to organize and mobilize many people to participate. Smaller fights were usually organized by community leaders such as the rural gentry or clan leaders in the Qing dynasty and the Republic, or rural cadres in the Republic and the PRC. In late Qing Mianyang, two groups of neighboring polders (12 upstream polders vs. 25 downstream polders) had fought for the maintenance/opening of a dike (for the purpose of drainage), and many were killed and wounded. The leaders were the rural gentry and other powerful people in the polder communities (Mianyang Chenchang qu xiangtu zhi, 1987: 297-98). In 1942, residents of two neighboring villages in Jiangling fought over the digging of a drainage ditch; one side was led by the head of the village's public security office, the other side was led by gentry. Five people were killed; and many were wounded ( Jiangling xian shuili zhi, 1984: 166).

Many of these conflicts, particularly feuds, actually occurred between clans; thus clan leaders naturally became organizers and leaders. For instance, in the

Suohe area in Hanchuan, one duty of the clan leaders (who were usually the elders of powerful and influential families) was to plan and plot battles, which were over the control of reed fields and lakes (Suohe zheng zhi, 1991: 364-65). The same was true in Hanyang, where clan leaders organized battles over the control of lakes (Hanyang xian zhi, 1989: 513).

The power of clans declined in the early years of the PRC, and rural cadres became the chief leaders. In 1953, residents of Hanchuan and Yingcheng fought for the control of a lake (for lake weeds, as manure), and the leader of Yingcheng side was a township head (SZ 34-2-383). In 1959, residents of Hanchuan and Mianyang fought for the maintenance or digging out of a dike (for the purpose of drainage), and production team leaders and production brigade leaders on both sides led the fight. The result of this clash was one drowned, ten critically wounded, and six-two otherwise wounded (SZ 113-2-263). In 1960, residents of Mianyang and Hanyang fought over dike building and the reclamation of wasteland; it was found that the organizers were village and commune cadres (SZ 34-4-506). In 1963, conflict over the use of lake weeds between these two counties again broke out, and 1,300 residents of Mianyang were reportedly organized by county leaders (SZ 34-5-313). In 1964, residents of Mianyang, led by their village leaders (the party secretary, brigade head, and others), seized some paddy fields from Hanchuan (SZ 113-2-295). In 1979, residents of Jingshan and Yingcheng fought for the control of an irrigation water source; one died and many were wounded. Later, investigators found that this was an "organized" event, with the involvement of cadres of both villages and communes (SZ 67-5-91ab, 38).

In sum, the organizers of these conflicts were usually those with military experience or background, and/or leaders of gangs or secret societies, as well as community leaders such as clan leaders in the Qing dynasty and the Republic and village cadres in the Republic and the PRC eras.

## Means of Organization and Mobilization

The basic reason for the Zekou case is simple: some people of Jiangling, Qianjiang, Jianli, and Mianyang who lived on the south side of the Han River wanted to close Zekou, because the floodwater from this outlet every year flooded some of their lands. Some people of Tianmen, Hanchuan, and Hanyang who lived on the north side of the Han River wanted it to remain open, because the river dike on their side then would be safe and their lands protected. At the same time, residents of about 1,600 polders along the Chailin River, 700 polders

on one side and 900 on the other, had fought each other for decades; in terms of administrative units, everyone involved belonged to one or another of four counties (Dongjinghe difang zhi, 1994: 37, 70).

It is clear in both cases people were not acting according to administrative jurisdiction in which they lived, but according to their interests. How, then, could the above-mentioned organizers, mostly not affiliated with government at any level (except for some rural cadres in the Republic and the PRC), organize or mobilize hundreds, and sometimes thousands, of people who did not belong to the same administrative unit to engage in a fatal fight? Based on memorials, gazetteers, and archival materials it can be seen that the participants in large-scale conflicts were organized or mobilized by the distribution of flyers and the establishment of (illegal) dike bureaus; participants in smaller conflicts were organized or mobilized by their polders or villages, and clans, with some aftermath measures to encourage peasants to charge forward in battle.

### *The Distribution of Flyers*

Distributing flyers was a common means of sending messages to residents who lived in different polders. In the Zekou case, for instance, several times the organizers distributed flyers to related polders to inform the residents to come to Zekou to work on the project (either to block the outlet, or to establish a sluicegate, or to build a dike or dam), and to collect fees (in kind or in cash). The flyer also informed polder residents to bring their own tools, and called for those who were rich to contribute money and those who with strength to contribute manpower. The flyer also dealt with other matters that needed attention. The flyer of 1913 is one of the most detailed.

In this year, one hundred or so people, some in military uniforms, carrying weapons and flags, under the leadership of Tang Chunxun and others, came to block Wujia Gaikou (another name of Large Zekou [Qianjiang shuili zhi, 1997: 311, 314]). The flyer dated December 28, 1912, reads:

> [We] wish to inform you that it has been decided that the dike work on Wujia Gaikou will to start on the thirteenth day of the first month of the lunar year of Kuichou.[7] [Please] register in the Peng Family Ancestral Temple. Friends of each polder, [please] provide carrying-baskets and shovels for yourself, and bring luggage and money and

[7] According to the Chinese lunar calendar, the numbering of years using the ten heavenly stems and the twelve earthly branches, Kui is the last of the ten Heavenly Stems, and Chou is the second of the twelve Earthly Branches. In this case, the lunar year of Kuichou is 1913.

provisions for ten days. Be careful not to disturb the local residents. Notice is hereby given

Notification of an order of the military governor

Wujia Gaikou has been plagued for decades,

Now [our] petition for rebuilding has been approved; please all come to work on the project with no delay.

[Please] provide carrying-baskets, shovels, money and provisions for yourself, everyone must eagerly contend for first place.

The rotation term is ten days, per laborer per yuan of copper coin.[8]

[We] will purchase land buried or used for digging earth, [please] donate according to your ability.

[We] will purchase wood, bamboo, grass, and the like.

Be cautious when asking for lodging and cooking; do not make trouble for the residents of the area.

Everything should be enjoined to [your] representative; negligence and idleness are not allowed. (Da zekou cheng an, 2004: 8b-9a)[9]

The Wuchang Uprising, which ended China's imperial system, occurred at the end of 1911. The Republic of China was established the next year, but society became even more disorderly. That some of those who came to block this outlet were in military uniforms implies that they were probably stragglers or disbanded soldiers. That they wore military uniforms does not mean they represented the state and therefore could issue orders to the commoners, nor were they supported by the government—they claimed their notification was "an order of the military governor," but this was untrue; the military governor soon sent troops to stop them (Da zekou cheng an, 2004: 15a). But, at least at that moment, they showcased their force publicly and deterred the other side of the conflict from acting imprudently.

The information this flyer carries is clear and rich: who is responsible for tools, materials, money, and food; when, where, and how long people are require to work. And, interestingly, the flyer warns those called not to make trouble for the local people. In a word, this is a detailed and thoughtful flyer. The most ironic part of it, however, is it discourages any kind of troublemaking. But the activities the flyer announces are per se troublemaking and violence-oriented from the very beginning.

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[8] It is not clear from the flyer whether this amount of cash is the payment for the labor for the term mentioned, or the amount each peasant had to pay to the organizer, or something else.

[9] Unless mentioned otherwise, all translations in this article are mine.

*The Establishment of (Illegal) Dike Bureaus*

The flyers the organizers distributed at most could only deliver messages to the residents of the related polders; they had no binding force. But why did hundreds, and sometimes thousands, of people answer the call of these flyers and get together to work on a project that clearly was against the wishes of the government? From the case reports submitted by the other side of the conflict, that is (mostly) the residents of Tianmen on the northern bank of the Han River, it seems some residents on the southern bank of the Han River were voluntarily working together (Xiangdi cheng an, 1969: 603). Even if this is the case, it is also true that many peasants were law-abiding people and did not willingly engage in any kind of troublemaking. How were the organizers able to mobilize these people to participate? They used force. One method was the establishment of (illegal) dike bureaus.

There were many dikes in the Jianghan area, and most dike fees were usually apportioned among all residents whose land benefited from the dike. To avoid surcharging and overcharging of dike fees by the responsible government officials or clerks, many dike bureaus had been established since the mid-Qing to be responsible for the collection of dike fees; the local residents were asked to select some upright, honest, and experienced gentry members to handle the matter ( Jiangling xian zhi, 1876, vol. 8: 45a). In other words, the dike bureau was an agency affiliated with the government. Thus, the dike bureaus established by the organizers of these conflicts were unauthorized, and considered by the government to be *si*, or illegal.

The organizers, however, ran the dike bureaus just the same way as the legal ones. They asked the residents of the related polders to pay fees and to contribute labor according to the land they owned. What if people refused to listen to them? Then the organizers would punish these people by taking away their farm cattle (oxen), and/or knocking down their houses. It was said that the organizers were so ferocious that the residents did not dare to report to the authorities (Xiangdi cheng an, 1969: 748). This again demonstrates the toughness of the organizers. In the countryside of the Jianghan plain, taking away someone's farm cattle and knocking down someone's house are the most severe and cruelest way to force that person to give in. A similar method (taking away someone's ox and quilt) also had been used by the head of dike building and repair committees of some polders in the Republic to force the residents to pay fees (LS 31-4-60).

That is to say, some residents might voluntarily respond to the organizers' call; others were forced to participate.

*Organized and Mobilized on the Basis of Clans*

The above-mentioned methods were used to organize and mobilize hundreds and sometimes thousands of people to participate in large-scale conflicts. Smaller conflicts involving fewer people were usually organized and mobilized on the basis of clans or lineages. Armed fights between clans were common in traditional rural China. Any reason could stimulate two or more clans to fight, such as disputes over land, controversies over rituals, and in the Jianghan area, struggles for the control of dikes, waterways, and lakes.

Compared to clan power in the countryside of south China, in most parts of rural Jianghan clans were relatively weak. In some places of the Jianghan plain, however, clans were apparently also very powerful, or at least influential. In Hanchuan, for example, the Huang clan and other clans had fought for centuries for control over parts of Lake Diaocha, the largest lake in this county (Zhang Xiaoye, 2005). In fact, in the Suohe area of this county, before 1949, every large clan had trained a group of hatchet men (fighters), and stored weapons (in preparation for fighting) (Suohe zheng zhi, 1991: 365).

The same was the case in Hanyang. Armed fights among clans frequently occurred at the end of the Qing and the early Republic, for the control of reed fields, lake weeds, fishing areas, and irrigation water. In 1911, for instance, the area was hit by a severe drought and the Taidu River almost dried up. In the rush to get water from the river, two clans, each with two hundred young and middle-aged men, fought a merciless battle; some were killed, many were wounded. In 1912, the Li clan and Gao clan fought another battle for the control of a lake. The ensuing lawsuit lasted for six years. For the Gao clan, the cost of a lawsuit was apportioned among all clan members (Hanyang xian zhi, 1989: 513). In 1936, the county governments of Tianmen and Mianyang co-investigated the Lake Cheng area in order to solve a long-standing feud between the Liu clan and the Guo clan (and others) over the ownership of newly silted lakeside lands (LS 19-2-2676). In 1947, an armed clash over the control of lake land broke out between the Zhang clan and the Guo clan of Tianmen, because "the Zhang clan is large, has many members, and is fond of fighting" (LS 1-4-820).

Clan-based fights continued in the early PRC. In 1957, to control a lake shared by two clans (of two counties), the Yan clan of Hanchuan mustered 43 fishing boats and 140 men in total in a battle with the Xiao clan of Tianmen (SZ 113-3-197). In 1968 in Yingcheng, several hundred fisherfork of two clans engaged in a ferocious melee over fishing; fifteen were wounded, and six were killed (Yingcheng xian zhi, 1992: 205).

*Organized by Polder or Administrative Units (Commune, Brigade, Team)*

With the increase of environmental deterioration in the Jianghan plain in the late Qing, conflicts over the control of waterways became more violent. The breach of the Chailin River dike at Zibeiyuan in 1839, for example, brought the residents of hundreds of polders into violent conflict. Since 1839, the residents of Jianli who lived on the upper reaches and the residents of Mianyang who lived on the lower reaches of this river continued to fight over the blockade of the breach. They hated each other so much that even relatives who lived in different counties were thought of as enemies. Small clashes gradually evolved into large-scale battles. Battles between fully armed residents of Jianli and Mianyang in 1881 alone reportedly caused thousands of deaths. In 1882, residents of seven hundred or so polders on the southern side of this river and residents of nine hundred or so polders on the northern side of this river joined in the battle (Peng and Zhang, 1993: 225; Dongjinghe difang zhi, 1994: 70).

This tradition continued in the early PRC. For instance, in Honghu, where residents of an upstream polder and a downstream polder had fought and sued for control of a drainage ditch for two centuries, conflict exploded again in 1954. The organizer of the upstream polder called a mass rally to decide to not allow the downstream polder to block the drainage ditch; the organizers also claimed that "if there is not enough gunpowder, each household has to contribute a liter of peas to buy [gunpowder]" (SZ 34-2-489). Both sides of the conflict were organized by polder.

One polder could include one or more villages. In the early years of the PRC, when the state deeply penetrated into rural society, local administrative units, such as the production team (village), the production brigade (administrative village), and even the township began to become the basis of the organization of violent conflicts over water control in the Jianghan area. For example, in 1952 there was a abortive violent conflict in Zhongxiang organized by townships (Zhongxiang shuili zhi, 1998: 241). In 1979, to get precious irrigation water, a melee erupted between the residents of a production team in Jingshan and a production team (backed by its brigade) in Yingcheng (SZ 67-5-91b). The organizing unit in this case was the production team.

In some places, such as the Suohe area, where clans had been powerful in the pre-1949 era, the sense of attachment to a clan gradually shifted to the sense of attachment to a territory in the post-1949 era. Concomitantly, the organizing unit for conflicts over water control shifted from clans to production teams and villages (Suohe zheng zhi, 1991: 365).

*Some Organizing Principles and Aftermath Measures*

Participants in these conflicts not only had to contribute money and labor, but also ran the risk of being wounded or even killed—a not very large-scale battle in Qianjiang in 1884, over the control of a sluicegate, resulted in thirty-seven deaths and seventy-six injuries (Qianjiang shuili zhi, 1997: 311). The following paragraphs will discuss some organization principles and aftermath measures, including force and the obligation of clan regulations, used by the organizers to push people to charge ahead in battle.

The use of force has been mentioned earlier, as in the Zekou case in which some people were forced to participate; otherwise their cattle would be taken away and their houses would be torn down. In Honghu in the early PRC, when a battle was imminent, the organizer promised that if someone was killed, the community would be responsible for the funeral expenses; if someone on the other side was killed, he would turn himself in to the authorities and pay this with his own life. "That is the decision, we must abide by it. . . . No one can sneak away before battle starts" (SZ 34-2-489). In Yingcheng in 1953 a cadre warned that those who did not want to participate in a fight would have to contribute a sum of money, and middle peasants who did not go to fight would not get one share in the future (SZ 34-2-383).[10]

In the pre-1949 era, there was a special kind of pre-battle arrangement in Honghu where armed fights frequently occurred due to conflicts over drainage. Lawsuits ensued after fatal fights. The leaders (landlords) believed that one death on their side would ensure that they would win the case. Thus, a poor peasant was chosen to be beaten to death in the battle by his own people; then his fellow villagers would use his death as the basis for a lawsuit against the opposing side. The family of the one chosen to die was promised that it would be well taken care of by the community. Eighteen such victims were killed by their own people in thirty-six clashes led by two landlords in one township in the period from 1933 to 1947 alone. Many of those families, tragically, were not taken care of as promised (Honghu xian zhi, 1992: 408).

Clan members were bound by clan regulations. For example, in the Suohe area before 1949, whenever a battle was about to begin, all males of the clan would drink at a dinner gathering. Everyone had to fight, no one was allowed to sneak away; those killed would be posthumously hailed as martyrs (with some monetary compensation to the family) (Suohe zheng zhi, 1991: 365). In

[10] The original material did not make clear one share of what. It seems it means one share of everything.

this case, the clan regulations made it very clear that every male member had to participate; there was no other option.

As mentioned earlier, for larger-scale battles over water control, the organizers would distribute flyers calling on the residents of the related polders to participate. The organizers also would set up (illegal) dike bureaus and require these residents to pay fees and contribute labor (exacted by force in some cases). For smaller-scale conflicts, the participants could be organized and mobilized on the basis of clans or polders, or in the PRC era, administrative units such as the production team, the brigade, or even the commune or township. In some clans and polders, there were some principles that compelled members to participate.

## Governmental Attitudes toward and Reactions to Organized Violent Conflicts over Water Control in the Qing Dynasty and the Republic

Many conflicts over water control ended up in violence, but they did not begin that way. If the government had reacted promptly and correctly, in many instances it could have forestalled a violent outcome. The Qing provincial government, however, usually only issued an order to the prefect and asked him to take action; he then transferred the order to the county magistrate to ask the people to stop. The exchange of documents among different levels of government, of course, was of no avail in settling disputes. The Qing government usually only stepped in after things were almost out of control.

Among the Qing governmental officials, the county magistrate was the key. On the one hand, as the lowest-ranked formal official, he certainly needed to represent the interests of the local area he served. Moreover, the effectiveness of his governance, such as whether there were water calamities or not, whether social order was maintained or not, whether the tax quota was met or not, was an important criterion for his assessment and promotion. On the other hand, he also had to obey any orders issued by the upper levels of government. It would be fine if an order was favorable to him and his county; but if an order ran counter to his interests and that of his county, he had to make a choice between the upper levels of government and his county—there was no middle ground. Most times, he would obey the upper levels of government. But sometimes he did not. The magistrate of Jiangling, for example, once organized his people in 1882 to open a river outlet by force, which caused a battle between the residents who lived on either side of this river (Dongjinghe difang zhi, 1994: 70).

The situation of the prefect was no better. He had to obey the orders of the governor; he also needed to consider the requirements of the magistrates. Things would be more difficult to handle if a conflict occurred in different counties of his prefecture—if this was the case, he might try to work out a compromise by putting the blame on the two parties equally. But this kind of moderation usually did not work. It is just because of such indecisiveness of Qing governmental officials that organized violent conflicts over water control, such as in the Zekou case, occurred again and again on the lower reaches of the Han River.

As for organizers—especially those on the initiating side—of conflicts, they not only used force to collect fees and recruit participants, but also worked out regulations to monitor those participants. As a result, the discipline of the participants, the weapons they carried, and the militarily background of the leaders, combined to create quasi-military organizations. To make things worse, they frequently refused to yield to the government; at one time, they even surrounded the sub-prefecture courtyard. To the state, all of these were crystal-clear signs of rebellion. Even though they had no intention of rebelling, once they were labeled bandits and rebels, they became the enemy of the state, which gave the state a legitimate basis for military suppression.

A typical case occurred in 1874. This was the fifth of the thirteen clashes of the Zekou case, and the only time that the participants directly collided with the state. The drama reached its climax when the participants, led by Yan Shilian, bullied the government into meeting their demands. According to a report reported by the magistrate of Mianyang sub-prefecture:

> The illegal leader Yan Shilian . . . again leading two thousand people came to Mianyang. One thousand [of them], put aside their flags and weapons at the Dongyue Temple outside the city, and entered the city through five city gates. . . . [They] surrounded the yamen compound of Mianyang sub-prefecture . . . and forced me to give them 60 notifications that allow them to collect fees, and 100 strings of meal fees. They looked formidable and similar to rebels. . . . [I] therefore wrote them 60 notifications one after another and gave them 100 strings as meal fees. [Only then did] they withdraw from the city. . . . According to my investigation, this time Yan Shilian got together even more people, many of them carrying spears, sickles, and knives; their formation was clear and they marched in step; anyone who violated discipline would soon be taken to [their] court to be accused and punished. [What they did] is unpredictable. . . . The rebellious intent of their behavior is obviously clear . . . and Yan Shilian was originally a White Lotus bandit. . . . Most of them are adherents of the White Lotus. [If we] do not disband their companies and arrest their adherents as soon as possible, the disaster in the future will be beyond description. (Xiangdi cheng an, 1969: 741-45)

A typical example of a folk Buddhist sect, the White Lotus was popular from the twelfth to nineteenth centuries; in the Qing dynasty, its followers launched two uprisings, in 1796 and 1813 (Overmyer, 1976: 73, 105). Understandably, the Qing government was hostile to the White Lotus. Yan Shilian and some of his men might have happened to be members of the White Lotus. Even so, this can only add one more explanation of why Yan was able to gather them together; it is clear that their intention to control waterways had nothing to do with the tenets of the White Lotus. As in the above-report noted, Yan Shilian and his men actually did not carry their weapons with them when they entered the city. So, clearly they had no intention of rebelling against the government. Using Ho-Fung Hung's categories, they were at most violent protestors (Hung, 2011: 59-60). According to Xiao Qirong, these people were tired of government's neglect of water control in the area and used violence to "struggle for their rights to survival and development" (2008: 114). But the fact that the magistrate labeled them White Lotus rebels and bandits gave the state a perfect excuse for a military crackdown. The goal of the government, of course, was not to settle conflicts over water control, but to wipe out any potential threat. What must have particularly frightened the government officials was that Yan and his men were highly disciplined. With this kind of quasi-military organization and its actions, particularly their besieging of the yamen compound, the policy of any government had to be absolutely zero tolerance.

According to Marxist ideology, this is a perfect example of a peasants' revolutionary rebellion, as the peasants were so oppressed and exploited that they rebelled against the oppressing and exploiting class—in this case, the magistrate and the sub-prefecture yamen. It is probably by this logic that Morita viewed this case as representing a peasants' anti-feudal movement in the Qing dynasty. The reality, as discussed above, is that Yan Shilian and his men had no intention of overthrowing the regime and establishing a new one, as Zhu Yuanzhang and Li Zhicheng had done; nor did they want to be bandits holed up in remote mountainous areas and frequently plundering and terrorizing the locals. What they wanted was approval from the local government allowing them to collect fees for a dike project. To the Qing government officials, however, this was a typical rebellious behavior that threatened social order and imperial rule, and could not be tolerated under any circumstances. Yan Shilian was soon arrested and sentenced to death.

In another case, the participants in a battle in Mianyang even dared to fire on the Qing soldiers who were sent by the government to suppress the disorder. This should be understood as self-defense, and again, not as rebellion. In

this case the government also called the leader a bandit and sentenced him to death (but he was released later) (Xiantao shuili zhi, 2008: 474). In fact, the Qing government usually labeled those who were directly involved in violence over water control as bandits. In 1882, the residents who lived on either side of the Zibeiyuan engaged in violent conflicts. According to a memorial, "in this past winter and this spring, crafty people living on both banks each recruited bandits to burn and kill each other" (Zai xu xing shui jin jian, 1970 [1942]: 471).

That is to say, officials themselves usually did not view the peasants as rebels or enemies of the government. In 1876, the prefect of Jingzhou went to Jianli to investigate a conflict over the closure/opening of a river outlet. After an on-site investigation, he thought that the outlet should not be blocked. This irritated the residents of Jianli, who insisted that the outlet be blocked. They threw dirt clods at the prefect's sedan chair; the enraged prefect ordered the responsible people arrested; the locals then erected many banners (reading "The officials compel the people to change") in fields and swarmed before the prefect to rescue their fellow villagers, and in the melee the magistrate of Jianli (who was protecting the prefect) was wounded by accident (Zai xu xing shui jin jian, 1970 [1942]: 388-89). This is another good example that demonstrates that Chinese peasants were not always docile subjects, nor rebels brimming with revolutionary ardor; they were struggling for control over waterways for their own interests and even dared to fight against governmental officials, but they definitely had no intention to kill or overthrow them. The prefect went back to Jingzhou in great haste and reported the event to his superior, who preferred to quickly send troops to crackdown on the peasants. The prefect, however, thought that might stir up a true rebellion, and troops were not dispatched. In a word, even the prefect knew that those people were not rebels.

In the Republic, the distribution of flyers, the gathering of hundreds or thousands of laborers, and the use of weapons to threaten others in conflicts over water control, however, continued to be viewed as illegal and something not to be tolerated. Thus, when these occurred again in 1913—the thirteenth clash in the Zekou feud—the military governor of Hubei sent troops to suppress the peasants. After this crackdown, the seven-decade-long feud finally ended (Qianjiang shuili zhi, 1997: 117).

Other organized violent conflicts over water control, however, continued. In Jianli in 1921, a battle was fought between residents of Mianyang and Jianli over the control of a dam; one person died, forty-eight houses were burned, and lawsuits followed. In 1949, residents of an upstream polder and a downstream

polder fought over drainage; three were killed and several died in jail ( Jianli shuili zhi, 2005: 383).

In a word, in the Qing and the Republic, the official reaction to organized violent conflicts over water control usually relied on the exchange of documents first, and troops were only sent to settle a conflict when it was almost out of control.

## Changes in the PRC Era

From the above discussion it can be seen that organized violent conflicts over water control in the Jianghan plain continued in the PRC era. The scope and frequency of these conflicts, the government's attitude toward them, and the measures applied by the government to handle them, however, changed.

A major cause of the violent conflicts over water control in the late Qing and the Republic was frequent water calamities, particularly flooding. Such conflicts could have been diminished if the calamities had been abated. The new government of the PRC spent a great deal of time and energy on the improvement of water conservancy; thereafter water calamities, as well as the ensuing conflicts, indeed declined. The major measures applied by the PRC government have included the nationalization of rivers and lakes, the adjustment of administrative boundaries, and the strengthening of dike management.

Since the Jianghan plain is dotted with rivers and lakes, and the rivers usually run through many counties and prefectures, and many lakes are located among several neighboring counties, management of them is difficult. And poor management contributed to frequent conflicts. As early as in 1950, the PRC government decided to nationalize these waters, an important new policy included in the Agrarian Reform Law (Article 18, 1950). In the pre-1949 era, they were usually privately owned—even though they were not really "owned" by private entities, which was infeasible in some cases since nobody could, for instance, own the Yangzi River, but they were de facto managed by different groups such as clans (Shishou xian zhi, 1990: 207). The nationalization of these rivers and lakes largely reduced conflicts over control of them.

Frequent floods also reshaped local landscapes, such as villages being in effect moved from one side of a river to the opposite side of it after the change of river's course. Furthermore, as we have noted, violent conflicts over the control of waterways were not uncommon, particularly conflicts over drainage and irrigation involving neighboring polders or villages that belonged to

different counties. To reduce this kind of conflict, the PRC government adjusted administrative boundaries according to the nature of the local waterways, such as using the Han River as a boundary between two counties in the lower Han River valley (Xiantao shuili zhi, 2008: 43). In another example, in 1957, when a conflict over water conservancy broke out, a production team in Zhongxiang was incorporated into neighboring Jingmen (Zhongxiang shuili zhi, 1998: 242). Similar kinds of adjustments of administrative boundaries were used to forestall clashes over dikes, which could snake through several counties and prefectures. In late Qing, people were usually not enthusiastic about building "others'" dikes, another cause of conflict (Xiang di cheng an, 1969: 130). Thus, in the lower Han River valley, the PRC government adjusted the jurisdiction over the southern bank of a stretch of the dike that had previously been managed by Tianmen county. In the readjustment, that stretch was placed under the jurisdiction of Mianyang county; and some dikes on the northern bank, previously managed by Mianyang and Qianjiang, were turned over to Tianmen. By 1955, all Han River dikes managed by Tianmen were located on the northern bank of the Han River (Tianmen xian zhi, 1989: 137).

As mentioned earlier, the Jianghan area had numerous dikes, and many times conflicts were caused by the rupture of dikes. In the Qing and the Republic, the state was only responsible for the management of some important sections of river dikes, and left the rest for the locals to manage (Zhang Jiayan, 2006). Dike disputes at the polder level also became a "persistent ailment" in some places (Hubei xian zheng gai kuang, 1934: 1004). The newly established PRC government paid special attention to the reinforcement of the dikes in the Jianghan area, including the establishment of dike bureaus to manage not only river dikes but also polder dikes. It also emphasized the importance of annual flood control, the construction of new dikes, and the reinforcement of existing dikes (SZ 34-2-45; SZ 113-2-11; SZ 113-2-35; Jianli xian zhi, 1994: 159; Hubei shuili zhi, 2000: 8). In the pre-1949 era, the major dikes of the Jianghan plain frequently broke; however, they have remained safe since 1954—so safe that there has not been a single breach. This great achievement automatically eliminated, or at the very least reduced, violent conflicts caused by the rupture of dikes.

If a conflict occurred, the PRC government usually handled it with administrative means, mostly by promoting reconciliation, but if necessary severely punishing the leaders involved. For example, in 1952, in Zhongxiang, rising lake water after a downfall flooded farmland of Jianxin township. Its residents planned to dig out a bridge to speed drainage, which would enlarge the flooded area of Xuanlian township. This township organized scores of militia and

martial arts masters to safeguard the bridge. The county government stepped in and meditated a settlement, thus forestalling violence (Zhongxiang shuili zhi, 1998: 241). In 1973, in Jianli, after a downpour flooded the paddy fields of Wuxing brigade, members of this brigade secretly twice dug out the dikes of neighboring Heshan brigade (to promote drainage). A conflict ensued and the county court promptly sent personnel to the scene and they headed off a violent outcome ( Jingzhou diqu zhi, 1996: 643). In Qianjiang in the post-1949 era, all conflicts over water control between townships were settled through consultation organized by upper-level government (Qianjiang shuili zhi, 1997: 315). If the situation was really serious, troublemakers would be punished. For instance, in 1954 in Honghu, to drain some flooded land, three hundred or so men of a downstream polder and a hundred or so men of an upstream polder turned a deaf ear to cadres' exhortation and fought each other in a pitched battle. Troops were sent in to suppress the violence; three leaders were arrested and it was suggested that they be sentenced to death (SZ 34-2-489).[11] This was a special case, since thereafter the PRC government has hardly ever sent troops to settle conflicts over water control.

The reasons for violent conflicts over water control were usually complicated; it was difficult to find a solution that satisfied everyone involved. This is particularly true for historical conflicts; otherwise, they would not have lasted for decades or even centuries. The PRC's principle in handling these conflicts and averting violence is mutual beneficial cooperation. This principle was made clear in the agrarian reform regulations in Hubei: "Small benefits must yield to large benefits, present benefits must yield to long-term benefits, and local benefits must yield to benefits for all. The upstream and the downstream, and the left bank and the right bank look after each other" (SZ 37-1-9). This principle was applied in the Xiaozhiyuan case in Shishou. Residents of Shishou and Jiangling had been fighting over the blockage/opening of the mouth of the Xiaozhiyuan rivulet for two centuries. In 1951, persuaded by the upper-level government and following the principle of "small benefits must yield to large benefits," the residents of Shishou agreed to open the mouth (SZ 34-2-117). The same principle was applied in many other similar cases with a long history, such as in Tianmen (where two polders [upstream 72 polder vs. downstream 72 polder] fought over drainage), Jianli (where the issue was drainage along the Laolinchang rivulet), and Jiangling (where two large polders struggled for the control of drainage and irrigation). In all of these cases, the government asked both sides of the conflict to cooperate with each other

[11] The final punishment is unclear (it was not recorded in the archives).

and built new waterways and thus end the source of conflict (Tianmen xin zhi [chugao], n.p.; Jianli xian zhi, 1959: 119-20; Jiangling xian shuili zhi, 1984: 165).

In handling violent conflicts over water control, the PRC government frequently made it clear that these were contradictions among the people, not class contradictions. The peasants of Huanggang, on the northern side of the Yangzi River, and the peasants of Echeng, on the southern side, had fought for the ownership of newly formed islets for about a century since the reign of the Xianfeng emperor (r. 1850-1861). Both sides fought again in 1950. The government immediately stepped in. To clear up historical animosity among the peasants, the PRC government emphasized that "all peasants belong to one family" (SZ 34-2-178). In other words, according to the new ideology, this was a contradiction among people, not a people-enemy contradiction. In 1959, for the managerial convenience of a water control project, three villages of Jingshan were planned to be incorporated into Anlu. In the process, conflicts arose between those who agreed with this decision and those who opposed it. An impulsive cadre viewed this as a class contradiction and ordered the militia to arrest the "ringleaders." However, for this he was criticized (SZ 34-4-390). That is to say, this was a contradiction among the people, not a people-enemy contradiction. In the same year, residents of Hanchuan and Mianyang fought over drainage after a rainstorm. During the fighting, both sides had team heads as commanders. As a result, among four hundred or so participants, one drowned, sixty-two were wounded, and ten were seriously injured. The work team sent to the scene to handle the issue made it clear at the outset that this was "a purely internal conflict" (SZ 113-2-263). Once again, this was not a contradiction between different classes. This is also the principle local cadres followed in solving strife over the control of lake weeds (one of the worst feuds in local history) in the lower reaches of the Han River in the 1950s and the 1960s (SZ 114-2-89; SZ 114-2-126). It is worthy of note here: the 1950s-60s was still an era when the ideology of class struggle was in command.

To be sure, new policies and treatment of organized violent conflicts over water control in the PRC did not completely uproot them, as can be seen in the above discussion. Here, I give one more paradigmatic example to wrap up. On May 29, 1979, a serious battle was fought between a production team of Jingshan and a production team of Yingcheng over the use of reservoir water for irrigation. These two neighboring teams shared a small reservoir that provided irrigation water for them both; they had cooperatively used the reservoir for a long time. In May, the area was hit by drought and the water in the reservoir was reduced. One team did not want the other team to take water from the reservoir. Several dozen peasants, from either side, engaged in a battle that

resulted in one death, five seriously injured, and many wounded. Work teams sent by the county, district (prefecture), and provincial government rushed to the scene to settle the dispute. Although cadres denied their involvement in the fighting, the investigators found that this was indeed an organized conflict, with both brigade and team cadres more or less involved in the organization and mobilization of villagers. This case was regarded as the most serious conflict of the year (SZ 67-5-91ab; Hubei shengzhi minzheng, 1994: 347-48). The fact that even the provincial government sent a work team to handle the case, and that the case was recorded in many gazetteers, including the gazetteer of Hubei province, all indirectly indicate that this was indeed a serious or typical case at that time. In the Qing dynasty and the Republic, however, this case would have been too trivial to be mentioned or recorded.

In sum, all the examples show that organized violent conflicts over water control did not disappear in the PRC era, but their frequency has been largely reduced, their scope has been getting smaller and smaller, and they have become less and less violent and fatal.

## Conclusion

This article revises our understanding of China's peasants, the relationship between the peasants and the government, and the relationship between human beings and their environment. It is not enough to just see the peasants and the state as two opposing parties. This article also looks at the conflicts among the peasants themselves. Here too, it is not enough to view the relationship between the peasants and the state from a political angle alone; it is essential to also take an environmental perspective.

In this article, I have briefly discussed organized violent conflicts over water control in the Jianghan plain in the period from 1839 to 1979. During this one-and-a-half centuries, China's polity had changed from an empire to a republic to a socialist regime, but organized violent conflicts over water control persisted over time. What differed was their form, scope, and frequency, as well as the government's treatment and the results.

Large-scale conflicts mostly occurred among residents who lived upstream and downstream or on different banks of the same river, over the closing or opening of an outlet or a dike rupture. Smaller conflicts could occur among residents of two neighboring villages struggling for control over the same irrigation ditch, or residents of two neighboring counties fighting for control over a drainage ditch. The participants would use farm tools, knives, and even

hunting guns as weapons, and often lives were lost. The organizers of these conflicts usually had a military background or experience, or were community leaders such as clan leaders and rural cadres. The distribution of flyers, the establishment of dike bureaus, and clan regulations were all means to organize and mobilize villagers to participate in conflicts.

Although their organizations seem to have had some quasi-military aspects, the peasants were definitely not rebels motivated by revolutionary ideology as Marxist scholars have long contended. Neither were they bandits of the White Lotus type, as the Chinese imperial government had traditionally claimed. Those who participated in these organizations never intended to overthrow the government—whether it was feudal or republican. What they wanted was to control a certain waterway or dike in order to protect their farmland and village from flooding. But both the imperial and republican governments could not tolerate these kinds of quasi-military organizations—they viewed them as a threat to their rule—and therefore they sent troops to put them down. In the PRC, the government has made it very clear that this kind of conflict is "a contradiction among people," not a people-enemy contradiction.

According to Michael Mann, traditional China had high despotic power (a high level of centralized state power) but low infrastructural power (the state's power to control local society was weak) (Mann, 1984). That is to say, in both the Qing dynasty and the Republic, the Chinese government's control of rural society was weak, while in the PRC, the state has both high despotic power and high infrastructural power and has strictly controlled rural society, at least before the rural reform.

Thus, in the pre-1949 era, in most cases, it was the peasants who initiated conflicts over water control; only after the situation was almost out of control would the state step in. The major local officials, that is, the county magistrate and prefect, in fact were not very enthusiastic about dealing with such conflicts. They preferred to seek peace from both sides, but this usually did not work. Thus in many cases the conflicts recurred again and again and dragged on without a solution.

Collective action or group protest is a hot topic in the study of contemporary China. It has been argued that the traditional ways of protest, such as going to the capital to petition (capital appeals), continue to exist or have been revived in today's China (Ocko, 1988; O'Brien and Li, 2006; Hung, 2007, 2011). But organized violent conflicts over water control in rural Jianghan diminished drastically after the establishment of the PRC. In the post-1949 era, the Chinese government has sought to reduce these violent conflicts over water control by

building more water conservancy projects, adjusting administrative boundaries (to make them fit best with the natural flow of rivers), and penetrating into the villages to control rural society. Large-scale organized violent conflicts over water control have almost disappeared; small, but still violent, conflicts continue, but have become less frequent and violent. The state had to intervene, mostly through "administrative mediation," or a legal venue if necessary, for a peaceful solution.

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# The Problems of Married-Out Women Under the Rural Collective Ownership System—The Example of Jiaojiang, Taizhou

**Xuefang Pan**[1]

# 农村集体所有制构架下的农嫁女问题: 以台州椒江为例[2]

潘学方

**Abstract**

Villagers, peasants, and commune members were social identities constructed by the collective ownership system. These identities were the qualification to enjoy the rights and interests of the collective property of the village. The process of urbanization that triggered the de-agriculturalization of land, peasants and villages brought about the separation of name and reality of these identities, and blurred the boundary of the rights and interests of collective property. Under this background, the marriages between men and women that had continued for thousands of years became an "institutional problem".

The married-out women intertwined private matters with the management of collective affairs, individual rights with the fair distribution of collective interests, and customs with modern legal conflicts. It did not help if people just relied on so-called "rights preservation.". The problem of married-out women was a symptom caused by the encounter between rural collective ownership and market economy. The problem was deep-rooted in the structure of the collective ownership system. Solving the problem of married-out women awaits the further reform of the rural land system.

[1] 潘学方, 中共台州市椒江区委党校高级讲师。Email: pxf95001@163.com.

[2] 感谢椒江区委、区政府办公室, 区委区政府农办等部门为本文提供相关资料; 感谢原白云党工委书记苛溢滨、海门街道副主任林跃波、葭沚街道组织委员何峰和联谊村仇仲清、东方村陈小林、星星村周云富、塘岸村郑广东以及三山村林如勇等在我调查过程中给予的大力支持;投稿《中国乡村研究》后,又获得审稿人很有价值的意见,深表谢意。



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**Keywords**
(Rural) women marrying (urban) residents, problem of married-out women, collective ownership system, identity and property rights

**摘要**
村民、农民和社员，是集体所有制建构的社会身份，这种身份是享有村集体资产权益的资格。城镇化过程引发的农地、农民以及农村非农化造成了这种身份名实分离，模糊了集体资产权益的边界。在此背景下，延续几千年的男娶女嫁竟然成了一个制度性的“问题”。
农嫁女问题交织着个人私事与集体事务的管理、个人权利与集体利益公平分配、习俗与现代法治等的冲突，光靠所谓的维权是无济于事的。农嫁女问题只是农地集体所有制与市场经济遭遇所引发的一个症状，其病根盘错于集体所有制架构中。农嫁女问题的消解有待于农村土地制度的深化改革。

**关键词**
农嫁居 农嫁女问题 集体所有制 身份和产权

几千年来，男娶女嫁，即从夫居的习俗一直延续着，只是在特定的制度架构下，这个习俗才成了一个问题。

农嫁女问题，即农村嫁到村外的妇女要求享有与原籍村其他村民相同待遇引发的纷争是这些年来横亘在处于城镇化过程中的村集体及基层政府面前的一道难题。把农嫁女视为弱势群体，从维权角度，要求予以她们与同村男子相同的集体资产权利，是主流观点和解决该问题的主要思路。但农嫁女问题只是城镇化进程中，农地、农民和农村非农化所引发的一个症状，其根盘错于农地集体所有制的架构中。

## 一、村民、农民及社员与农村集体资产产权

农村集体资产归农民集体所有。这不仅由《土地管理法》、《土地承包法》以及《物权法》等现行法律明文规定的，而且还是《宪法》确立的国家社会主义经济基础即公有制的一项重要内容。由于集体资产属于公有性质的资产，公有资产不能分割或量化到个人或家庭。这样，任何个人或家庭均不能成为集体资产的主体。但是，作为集体成员的家庭或个人有资格享有集体资产的权益。组成农民集体的应该是农民，所以，也只是农民才有资格享有农村集体资产的权益，这应该是不言而喻的。现在的问题是:作为农民集体组成部分的农民是什么?农民与村民、社员又是什么关系呢?

1、村民、农民和社员

通常意义上，村民、农民和社员是分别从居住地、职业以及组织成员来界定的。但农村集体所有制框架内的这三个概念，却不如此单纯。

王海光先生认定城乡二元结构制度是分割城市居民和农民两种不同身份的制度，这种制度造成了不平等的两个社会集团。（王海光，2003）而我国的村民、农民和社员就是二元结构制度的产物，把握这三种身份以及这三种身份之间的关系，不能脱离二元结构制度。

村民，本来是指乡村居民，居住在乡村者自然就是村民，但城乡分割后的中国，“居民”成了城镇居住者、确切地说成了拥有非农业户口者的专门用语；乡村居住者、只能叫村民而不能称之为“居民”。本文无意给农民下一个全面和完整的定义，但有一点可以肯定，所谓“农民”，必须具备以农为业和下地耕作这样两个条件。而社员之“社”，指的是农民的经济合作组织，社员就是农民集体成员。在农耕社会，限于交通等条件，居住在城市的人不可能到乡村务农，农民通常与“乡下人”联在一起。正如费孝通先生所说的，乡下人离不开泥土，因为在乡下住，种地是普通的谋生办法。（费孝通，1984:1）可见，农民肯定是村民。但村民未必都是农民，乡村居民中，并非人人都亲自从事农耕，如土地改革前的地主，根据阶级斗争理论，地主属于与农民对立的阶级，根据土地改革时划分阶级的标准，地主不参加农业劳动，地主显然不是农民；再如乡村中的泥木工匠等从事手工业者，他们虽是劳动者，但由于他们从事的不是农业劳动，也不能算是农民。还有一些村民，进入党政机关及事业单位工作，但户口的农业属性没有转变，这些人的身份仍然属于村民，但不是农民。可见，村民与农民应该属于逻辑上的属种关系，村民包含农民。

从理论上说，社员是农民集体成员，只有农民方可参加农民集体组织。如 1993 年 1 月 1 日起施行的《浙江省村经济合作社组织条例》（以下简称《条例》）第九条规定：

> 户籍关系在本村、年满 16 周岁的农民，均可以参加村经济合作社成为社员。

按照那个时候的规定，成为一个社员，必须具备村民、年满 16 周岁以及农民这样三个必要条件。照此说法，农民与社员在逻辑上是属种关系，农民包含社员。可在事实上，首先，经过农业集体化，凡农户几乎全部“组织”起来，少有人能置身集体之外，直至今日，在中国大陆，没有哪个农户不是社员。其次，集体化后，所有的农地都成了公有制的集体资产，根本不存在个体自耕农生存的空间。如此，凡农民都是社员，农民和社员在外延上是同一的。

那些工匠等从事非农职业的村民，在合作化时期，他们也加入诸如手工业合作社、运输合作社等集体组织，这些人虽然也是集体经济

组织成员、或者说也是“社员”，但此社非彼社，社与社因农与非农而属性不同，凡加入之“社”属于城镇集体经济组织者当然不是农民。因而不能算村经济合作社社员，但他们又居住在村里，户籍在本村，具有村民身份，这些人员被称为“非社员村民”。所谓“非社员村民”，还应该包括前面提到的进党政部门和事业单位工作但户口没有农转非的村民以及其他由于各种原因造成户居分离的人员。

2007年，浙江省人大常委会通过了对《村经济合作社组织条例》的修订，该修订本可以说是颠覆了此前对社员的界定。《条例》（修订本）第三章关于社员的规定：

> 第十七条　户籍在本村，符合下列条件之一，且遵守村经济合作社章程的农村居民，为本村经济合作社社员：
> （一）开始实行农村双层经营体制时原生产大队成员；
> （二）父母双方或者一方为本村经济合作社社员的；
> （三）与本社社员有合法婚姻关系落户的；
> （四）因社员依法收养落户的；
> （五）政策性移民落户的；
> （六）符合法律、法规、规章、章程和国家、省有关规定的其他人员。
>
> 第十八条　因下列原因之一户籍关系迁出本村或者被注销的，应当保留社员资格：
> （一）解放军、武警部队的现役义务兵和符合国家有关规定的初级士官；
> （二）全日制大、中专学校的在校学生；
> （三）被判处徒刑的服刑人员；
> （四）符合法律、法规、规章、章程和国家、省有关规定的其他人员。
>
> 第十九条 除本条例第十七条、第十八条规定以外的人员，履行村经济合作社章程规定义务，经本社社员（代表）大会表决通过的，可以成为本社社员或者保留本社社员资格。

按照这个规定，几乎全体村民都具备社员资格。值得注意的是，《条例》修订本对“应当保留社员资格”的规定，大大扩展了社员的范围。原来，在因参军、读书和服刑离村的三类人员中，退伍人员和刑满回到原籍村者这两类人，一直是一回到村就自然恢复社员资格了；而读书离村者则不同，在过去很长一段时间里，国家对大专院校毕业生实行包分配的政策，农业户口者一旦考上大中专院校，就取得了国家工作人员或国企员工身份，脱离了农村，这些人根本不存在回到村里的问题。可自1995年后，国家不再实行对大中专毕业生包分配政策，但直至2003年止，对大专院校的学生户口仍然沿用必须迁入就读学校的做法，有人戏称，这种做法是对农村学生实行强制“农转非”。这些年，不少毕业后没有在城镇找到工作，其中有相当数量的学生返回村里，就是一些已经在城里就业了的也要把自己的户口迁回原籍村。对这些因读书带着户口离

村又返乡者的社员资格如何确定，一直存在争论。起初，这些返乡的大专院校毕业生无法恢复或获得社员资格，这种现象被戏称为“大学生不如劳改犯”。在浙江，至2007年，即《条例》修订本公布前，大中专毕业生的非转农问题基本得到了解决。以椒江区为例，2006年5月1日该区正式实施了《大中专毕业生回原籍农村落户实施办法》，规定：

> 1995年及以后毕业（肄业）的大中专毕业生，未曾被行政机关、事业单位、国有（控股）企业和区（县、市）属集体企业正式录用；迁出时属农业户口；本人生活在原籍农村，方可把户口迁回原籍村，享受村民同等待遇，履行村民同等义务。

自改革开放以来，类似的不从事农业劳动的村民不断增加。本来，从事农业劳动是社员的必要条件，社员等于农民集体成员。但随着非农民的村民普遍的出现，村民与社员逐步趋于同一。

按通常理解，村民和农民本来就自然地存在着，只有社员才是特定制度的产物。因为一个人成为村民和农民无需“加入”或资格“获得”，村民和农民是自生自长的，而一个人只有通过“加入”方能“获得”社员资格。其实，经由集体化以后的村民和农民已经不是游离于制度之外的自然存在，在二元结构的制度中，村民与居民，农民与工人之间的制度性鸿沟，通常情况下是无法跨越的，所以村民和居民是由国家制度确定的。生为村民、基本上注定终生做农民，也必然成为农民集体成员。由于组成农民集体的基本单位不是农民个人，而是农户（这个问题，我将在下面分析），所以，除了一些非社员村民特殊情况以外，村民、农民与社员一样，都是作为农村集体所有制之“集体”的组成部分而存在。

农村集体经济组织的前身是人民公社，根据中共第八届六中全会《关于人民公社若干问题的决议》，人民公社是我国社会主义结构的工农商学兵相结合的基层单位，同时又是社会主义政权组织的基层单位。其实，人民公社不仅政社合一，而且也是生产单位与居住地的合一，以及乡村居民与“农业员工”的合一。虽然存在着“非社员村民”的特殊情况，但总体而言，村民、农民以及社员基本上属于同一关系。这种情况，并没有随着人民公社的解体而随之根本改变，农村集体经济组织，虽然称为经济组织，但其与其他任何经济组织有着根本的区别。

总之，在二元结构制度中，一个出生在乡村者基本上便终生居住在乡村；而一个村民，也几乎终生务农；同时，经由农业社会主义改造，所有农户成了集体组织成员，没有人能够处于集体之外。所以说，村民、农民和社员都是依照实行了集体所有制的村庄的社群成员资格来构建的社会身份。这个社会身份就是享有村集体资产权益的资格。

2、社会身份与集体产权

只有农民才享有集体资产权利资格,这是由农民集体作为农村集体资产的主体所决定的。《土地管理法》、《物权法》等现行法明确规定, 农村集体资产属于农民集体所有。这句话换一种表述就是: "农民集体的资产属于农民集体所有", 这是同语反复, 因而, 该命题也是永真的。这样看来, 农村集体资产理所当然属农民集体。财产归属财产所有者并不需要理由。

但是, 这个看起来不应成其为问题的命题隐匿着一个问题: 当今这些以土地为主的资产为什么只能是集体资产?

也就是说, 实际上, "农村集体资产归农民所有" 是有前提的, 是以集体所有制的存在为前提的, 而农村集体所有制创立和存在的理由不是直接自明的。

农地集体所有制是根据马克思主义公有制理论建构的。我曾把这种建构理论概括为"集体所有制的建构逻辑"(潘学方: 2010), 其要点是:

首先, 集体所有制建构的逻辑是 "与传统观念决裂" 的逻辑。传统的土地观念是自然的或者说是世俗的关于对土地的看法: 土地是农耕的基本要素, 但土地同时也是一种财富, 土地可以供自己亲自耕种以获得成果; 也可以出租等方式来获得地租等收入, 这种非亲自耕作的收益在今天称之为一种 "财产性收入"; 土地还可以通过出典、出售以转变财富形式等等。而集体所有制建构逻辑则从根本上颠覆了传统的和自然的土地观念,认为土地只归劳动者所有,并由劳动者亲自耕作,彻底否定了土地的财产性收入。其理由是:谁若拥有土地而不亲自耕种、或者除亲自耕种外还有多余的土地用于出租, 都是罪过。土地由不亲耕者占有是剥削的根源, 也是劳动者贫困的根源。向农民收取地租是封建社会地主阶级剥削农民阶级的主要形式。

其次, 农地集体所有制作为一种劳动者与生产资料直接结合的制度安排, 不仅消灭了剥削, 实现了耕者有其田, 更重要的是消灭了私有制, 从根本上杜绝了两极分化。这制度有两个特点: 第一、凡土地都归农民集体所有,而个体农民只作为集体成员,这样,农民个人及其家庭不仅不拥有土地所有权, 同时也不能脱离集体, 因为一旦脱离了集体就没有可耕种的土地了, 不事耕种者当然也就不能算是农民了。第二、集体化建立的集体所有制是以一个生产大队(村)甚至一个小队(村民小组)范围内的人与土地的结合, 这种所谓劳动者与生产资料的直接结合实际上把个人封闭在集体之内, 又把一小群人的集体与一片公有属性的土地捆绑在一起, 使得人与地都无任何流动性可言。这就决定了农村集体所有制是个封闭的系统。

总之, 农地之所以归农民集体, 是集体所有制的建构逻辑的内在要求。根据这个逻辑, 只有让劳动者拥有自己劳动所需要的生产资料,

才能消灭剥削、消灭私有制,才能实现人人平等、富裕的理想社会。这里,暂且不论这个理想的社会只存在于马列主义的理论中,在现实世界能否实现还是未知的。我要强调的是,根据这个逻辑,农地之归于农民集体,其唯一的理由就是农业劳动者亲自劳动的需要;换言之,只有亲自参加耕种者才有资格享有农村集体资产的权益。

## 二、"农嫁居"和农嫁女问题

在乡村,跨村婚姻多从夫居,嫁出村的妇女通常被称为"农嫁女"或"外嫁女"。男娶女嫁本来就自然存在着,只有在特定的制度下,农村外嫁女才成为"问题"。

### 1、农嫁居和农嫁女

在二元结构制度中,虽然政策和法律没有禁止城乡居民通婚,但农业户口者与城镇居民结婚,农业户口者的户口属性却不能因婚姻而改变。这样,如果农妇嫁入城镇,人虽然"投靠"到城镇夫家居住,但户口只能留在原籍村,口粮由原村供应,她的身份仍然是村民、农民和社员;由于当时政策规定子女的户粮关系随母,所以,农嫁居家庭子女的户粮关系也只能在农村。这样,农嫁居人员除了该妇女本人,同时还包括其子女。

男娶女嫁源远流长,农村外嫁女从来就存在,而"农嫁居"是农嫁女中的一个特殊部分,是特殊时期的一种特殊现象;嫁女是自然而然地存在,"农嫁居"则是二元结构制度的产物。

1998 年 7 月 22 日,国务院批转公安部《关于解决当前户口管理工作中几个突出问题的意见》(国务院[1998]24 号文件)中规定:

> 实行婴儿落户随父随母自愿的政策;放宽解决夫妻分居问题的户口政策,对已在投靠的配偶所在城市居住一定年限的公民,应当根据自愿的原则准予在该城市落户。

这样,农嫁居妇女及其子女的户口可以迁进城镇了。照理说,至此,所谓的农嫁居现象可以消解了。问题是,这个时候,国家不再实行对城镇居民包就业的政策,城镇户口的价值已经大不如前了;相反,城镇化过程,城郊村土地被大量征收,村留地转化为巨额资产,村集体经济组织成员不仅有宅基地、土地补偿金,还有社会保险及各种福利。农嫁居现象,本来多产生在城郊,农地非农化也多产生在城郊,城郊村的农业户口,不仅不再是个消极的因素,反而成了一笔价值不菲的财富。在此背景下,基本上无人愿将自己的户口农转非,不少村出钱鼓励农嫁居人

员农转非的现象。如: 2002 年, 白云街道 JP 村原准备给 "农嫁居" 妇女每人一次性补贴 6000 元, 让她们户口农转非, 结果由于40名农嫁居妇女中有18人不同意而作罢。再如: 海门街道的 DFH 村, 2003 年, 在对村集体资产进行股份制改造中, 规定 "农嫁居" 人员不享受社区人口股和劳动补偿股, 不作为股份公司的股东。但给予每人一次性补偿 1 万元, 称作一次性处理费。[3] 该方案虽经村民（社员）代表会议通过, 但却遇到不少农嫁居人员的抵制。

对于村集体来说,过去,之所以让农嫁居们把户口留在村里,保留她们的社员身份并提供口粮等是执行国家的政策, 如今户口解禁了, 村妇出嫁, 嫁农嫁居就没有什么不同了, 都应该把户口从村里迁出。站在农嫁居者的立场可不是这样: 长期以来, 就因为农业户口而饱受歧视, 现在, 好不容易熬到农业户口值钱了, 却要农转非, 谁干呢?

在椒江城郊, 1998 年 7 月 22 日后, 即国务院下文允许人员户籍进城后的一段时间里, 虽有部分人把户口迁进城市, 但多数人却仍然把户口继续留在农村。没过多久, 那些前期把户口迁进城镇者却不断有人要求把户口迁回原籍村。为配合台州市委市政府开展的撤村建居工作, 椒江区相关部门对全区各村基本情况进行调查, 根据该调查汇总统计, 截止 2000 年底, 椒江已农转非的农嫁居人员共 2254 人, 仍然保留农业户口的3195人。而到 2001 年底, 各村在册的 "农嫁居" 本人有 2193 人, 子女是 1859, 两者合计4052人。可见, 农嫁居人员自户口允许迁往城镇后, 在数量上不仅没有减少, 反而增加了 945 人。在这 945 人中, 有新结婚的, 更多是前期户口农转非后又将户口迁回农村的。[4]

台州市的农嫁居在 1998 年后形成 "问题", 2000 年前后逐渐发展为涉及农村集体资产权益纠纷的一个热点。这个热点产生的背景就是台州地区城市化进入了快速发展的时期。配合城市化的发展, 从 2000 年开始试点, 2002 年进行, 市委市政府在部分市县区进行撤村建居工作;同时,对农村集体资产进行股份制改造。从理论上说来,撤村建居的改造是由政府主导, 集体资产改制是由村集体主导, 但这两项工作实际是合二而一的。2002 年 10 月, 中共台州市委、台州市人民政府下发的《关于在三区和市县城区开展撤村建居工作的若干意见》（试行）》中, 规定城区的村在集体资产股份制改革完成的同时实现村民户口整体农转非, "村" 变 "居"。该 "意见" 对村集体如何进行股份制改革也作了详细的规定。只是在实际进程中, 村民们感到户口农转非后小孩只能

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[3] 参见 2003 年 12 月 18 日村民（社员）代表大会通过的《东方红村社区股份合作制改革实施方案》。

[4] 前期户口农转非者主要有因村集体土地被征用招工而转为城镇户口的和购买蓝印户口者,其中有不少土地征用工因企业改制而下岗了,这些人（不限于农嫁居人员）要求回到村里享受社员待遇。以上数据由原中共椒江区委办公室陈忠贤副主任提供。

生一个, 宅基地只能换公寓房不能建立地房等等并不合算, 致使不少村在集体资产股份制改革完成后并没有将村改成 "居", 村民们的农业户口也没有转为 "非"。如在台州市的主城区椒江, 只有白云街道的 LY 村实现整村农转非的, 但该村农转非是上世纪 90 年代, 那时, 农业户口并不值钱。进入本世纪后, 市政府本来准备在海门街道的 DFH 村进行撤村建居试点, 但由于村民普遍抵制而半途而废。但由政府主导的改制却引发了农村集体所有制框架内身份与资产利益分配的纠结, 凸现了农嫁居和类似人员享受集体资产权益的资格等等问题。与此同时, 城市化的发展推动了土地价值的迅速升值、村集体财富的飞快增长, 致使不少前期已经农转非了的农嫁居人员抱怨到手的补偿过低, 这些人中多数有把户口回迁或增加补偿款的要求。前期户口农转非了的农嫁居人员主要集中在城区葭沚、海门和白云三个街道, 仅白云的 XM 村有 380 人, 葭沚的 XG 村有370人; 海门的 DFH、XF 村以及白云的 XX 等村庄, 每村都有200人以上。相对集中的人员分布容易形成群体性事件。自2000年开始, 与在册的农嫁居人员争取 "相同待遇" 相呼应, 那些户口已经农转非、脱农者要求把户口转回农业和恢复原籍的身份之类的群体性上访经常发生。

农嫁居现象存在时间长, 情况复杂, 老的农嫁居人员已经有了第三代, 而新结婚的农嫁居又不断产生。不同地区、甚至同一个县、同一乡镇的不同村庄之间, 由于情况不一, 农嫁居们的诉求也不相同, 各村对农嫁居们的 "政策" 也不相同。决定各村 "政策" 的, 除了法律法规以及政府相关部门的指导性意见, 农嫁居人员在本村诉求力量的强弱也起着很大的作用。所谓诉求力量, 涉及诸多因素、全面分析非常复杂, 如人员多寡、有无担任村干部或与村干部的关系、在村里影响力等等。这里我仅以农嫁居人数为例子加以说明: 海门, 白云和葭沚, 历史上一直是椒江的城郊区域, 现在这三个街道全都进入城区, 甚至有些地段成了中心区域。农嫁居人员也以这三个街道居多。本区农业人口为34万, 农嫁居人员4000多, 占农业人口稍微超过 1%。而海门、白云等三个街道的农嫁居人员 2595 人, 超过全区一半还多, 这三个街道的农业人口只有六万多, 只占全区农业人口的六分之一多点。所以, 椒江区关于农嫁居问题的群体性上访, 几乎全集中在这三个街道。相应地, 农嫁居们所能获得的待遇, 以属于这三个街道的村庄最好。如葭沚街道的 S S 村, 是农嫁居人员相对集中的村庄, 该村的农嫁居妇女, 除了不能让她们的丈夫在村里落户外, 其他待遇与村里其他社员没有差别; 而该村的农嫁农妇女婚后必须把户口从村中迁走, 如果不迁也不会得到任何集体资产的利益。而离城区较远的如下陈、三甲、章安等街道, 农嫁居人员很少; 其中有些村, 当我向该村干部询问农嫁居人员情况时, 他们竟然搞不清村里有无、有几个农嫁居人员。可以说, 在这

些街道多数村的农嫁居人员还没力量形成“问题”，这些村的农嫁居妇女的待遇，与农嫁农妇女几乎一样，婚后都得把自己的户口迁往丈夫所在地，如果不迁，一年后取消社员资格。从各村的情况看，有相当一部分村以1998年7月22日为界，对农嫁居人员作新老区分是较普遍的现象。如葭沚街道的JY村规定，1998年7月22日前结婚的农嫁居妇女，如果男方在城镇没有住房的（需要房管部门证明）可以分配宅基地；而此后结婚的人员一律与农嫁农一样，不能享受社员待遇。其他如海门街道的DH等村规定也与此类似。也有部分村把本村的开发时间作为一个界限。所谓“开发”，就是该村有大片土地被征用，这使得该村在获得土地补偿款、村留地升值的同时，政府也对该村进行规划.通常情况下，在这个关节点，该村社员都能获得村集体分配的如宅基地等较大集体资产的利益。也正因为如此，在有些村，农嫁居人员的社员资格问题本来是隐性或不突出的，此时也就凸现出来了，这样，致使有些村的农嫁居问题得到解决或使得农嫁居人员获得一定的利益。如白云街道的YU村，2003年开发时，根据规划，该村不向农户分配宅基地，而是用宅基地与开发商共同开发商品房，该村社员的住房由开发商提供。在这宅基换房中，农嫁居人员享受到与该村社员一样的待遇，此后，农嫁居人员再也不能享受村集体资产利益了。

在笔者所调查的数十个村庄中，以海门街道群辉村处理农嫁居最为规范，也较有代表性。该村对在册户籍的“农嫁居”人员及其子女享受村民待遇的比例及办法，以村规民约的形式，作了明确规定：

> 1984年6月30日及以前结婚的，按一般村民同等享受村发放的各项福利款；1984年7月1日至1998年7月22日结婚的，按一般村民的80%享受；在1998年7月22日后结婚的，按一般村民的50%左右享受。“农嫁居”人员生育一个子女后领取《独生子女证》的，在分配宅基地时不享受土地部门规定的独生子女待遇，按实际人口数计算。年龄在18周岁以上31周岁以下的“农嫁居”人员及其子女按实际年头由村集体出资进入社保，余下年头部分的社保经费由本人自行交纳。

一方面，村集体要求农嫁居人员把户口迁出村，并对不迁出户口者不给集体成员的待遇；另一方面，农嫁居们则通过上访甚至提起诉讼等方式要求拥有社员身份。农嫁居就这样成为了一个问题。

总的说来，1998年7月22日结婚以前的农嫁居妇女，有相当一部分人的问题已经得到解决，这些人如果还有什么问题，也基本上属于历史遗留下的、处于不断消解中的问题。现在的问题在于：在城乡分割制度解构过程中、城乡通婚现象已成普遍趋势的背景下，新的农嫁居人员将不断产生，从而引发的利益纠纷必将成为一个在村集体资产利益分配方面无法回避的问题。

根据浙江省妇联的调查，“农嫁居问题”主要表现为：土地二轮承包中，农嫁居妇女及其子女不能平等分到土地，不能平等获得征地补偿金的享受；少数农嫁居妇女被强行迁出户口；“村规民约”损害农嫁居人员的合法权益。（浙江省妇联，2002）

一句话，所谓农嫁居问题，就是农嫁居妇女及其子女关于原籍村社员资格的诉求得不到满足而引发的纷争。仅就眼下而言，一般的农嫁农妇女，通常会随着出嫁把户口迁往夫家。女子出嫁到男方落户，在一般人看来是很自然的事。这样，农嫁居问题似乎是与农嫁农妇女无关。可是，在有些地方，有一些农嫁农妇女，在不符合村规民约的留村条件的情况下，不迁出户口，要求享有与同村其他村民相同的集体资产利益待遇。也就是说，原先仅由农嫁居人员引发的“问题”，有了一些农嫁农妇女也参与到其中的苗头了。农嫁居人员，虽然会随着城乡分割鸿沟的逐渐消除而有扩大的趋势，但直至今日，其仍然多限于城郊区域，分布不广、人数很少，普遍性不强，影响也相对有限。相比较，农嫁农妇女则不同，分布于所有农村、几乎存在于各个村庄的家家户户，并且具有普遍性，有很强的示范性：只要少数几个农嫁女妇女提出诸如男女平等之类的诉求，就很有可能引起其他农嫁女的共鸣。一般的农嫁女若成了问题，该问题造成的影响就不是农嫁居问题可同日而语的。虽然目前包括农嫁农妇女参与其中的问题只不过初见端倪，但从趋势上看，在市场经济体制下，只要农村集体所有制仍然持续，只要集体资产的产权不清晰，农嫁农妇女也象农嫁居人员一样成为问题是必然的。

问题可能还不仅限于由农村出嫁的妇女，城镇妇女嫁到农村，即“居嫁农”也可能会成为一个问题。虽然目前“居嫁农”还远没有形成“问题”，但随着城乡通婚的普遍化，若目前状态的集体所有制仍然存在的话，那么居嫁农妇女成为问题也不是不可能的。公安部门有明文规定，除如前面提到的原籍在农村的大专院校毕业生等特殊情况，城镇户口者原则上是不能转为农业户口的。通常，根据政府相关部门的政策，户口没有农转非者是不能成为村经济合作社社员的。如浙江省农村政策研究室（浙农研[1993]5号）文件规定：“居住（户籍）在本村的非农业人口，或者已经农转非的村民，均不能成为村经济合作社社员。”当然，你可以说，农村政策研究室并无资格定社员身份，这样的文件并无具有法律意义上的效力，何况 1993 年的文件也可能已经过时了。但对村集体来说，如果要抵制“居嫁农”妇女在本村落户，有这样文件的规定也就足够了。从椒江目前的情况看，多数村的居嫁农妇女并没有获得社员资格，也有少数村，如在海门的 DY 村，居嫁农、农嫁农，一视同仁，都给予社员身份，另外，还有一些村，给“居嫁农”的妇女以“半个社员”的待遇。问题在于，在没有得到社员待遇的居嫁农妇女的“维权”行动已经在一些村点燃了起来，虽然目前还只是星星之火。如下陈街道 XYQ 村有一“居嫁农”妇女向公安部门提出这样的理由：我人居住在这个村，

户口当然也要迁进该村。这种理由让人无法拒绝,于是,公安部门与该村协调,最终,村集体同意接受该女的户口,但讲明,仅允许户口迁入,社员待遇一律不给。这样,该居嫁农妇女把户口迁进村,户口登记簿上注明“非农”属性,村里不给她社员身份以及相应的待遇。由于该妇女的户口迁进了村,当然就算是该村的村民,现在,她一时争取不到经济权利,却提出了政治权利的诉求—选举权。选举权可是法定的权利,不能打马虎,村里必须予以明确答复,可关于她是否能在本村参加选举,成了该村争论不休的一个问题。

目前,“农嫁居”、“农嫁女”这两个概念存在着混用的情况,有人所用的“农嫁女”(或“外嫁女”)实际上指的就是“农嫁居”妇女。本文把“农嫁居”与“农嫁女”作了区分,也把“农嫁居现象”和“农嫁居问题”视为两个概念:农嫁居现象源于计划经济时期,而农嫁居成为“问题”,即农嫁居人员要求获得村集体成员资格而引发的,主要是市场取向的改革后,在城镇化过程中农地显现财富效应后才出现的。如果说“农嫁居现象”产生的直接原因是户籍制度,那么,“农嫁居”成为“问题”,恰恰是在农嫁居者户口可以农转非后。同时,在下面分析中,我将用“农嫁女问题”概念来概括包括“农嫁居”在内的农村外嫁女现象引发的问题。因为,本文的分析将不限于农嫁居人员,从逻辑上看,农嫁女与农嫁居妇女是属种关系,“农嫁女”包含“农嫁居妇女”,用“农嫁居问题”不仅无法概括有农嫁农参加其中的问题,而且由于历史原因,“农嫁居”,总给人以偏重户籍制度的感觉,相反,“农嫁女问题”的概念,不仅完全蕴含了“农家居问题”,同时能更明显地揭示出农村社员身份诉求的内涵,因而也在一定程度上可以蕴含诸如居嫁农等类似的问题。

2、农嫁女问题与男女平等

有人认为“农嫁女问题”主要是指,“农嫁农”的妇女不能享受夫家集体经济组织的成员权益,而娘家的原集体经济组织成员权益又被剥夺;“农嫁居”的妇女,由于不能在城市落户或者其他原因,不能享受城市居民的待遇,而娘家的原集体经济组织成员权益又被剥夺;离婚、丧偶的农村妇女的集体经济组织成员权益被剥夺。(邓慰霞:2007)我认为,这样的描述,有点言过其实了。以上所说的,我不敢说根本没有,但我敢说,这些情况即便存在,也肯定只是个别现象。现在,很少有城镇不允许与居民结婚的农村女子的户口农转非的情况;更少有不允许村民娶进门的农村户口属性的媳妇在本村落户的村庄。如果说存在着娘家夫家两头都无着落的情况,多是一些妇女为在原籍村争权益而没有把户口迁到夫家所在地所致;另外,也有少数妇女出嫁时,娘家村土地承包还未开始,而夫家的承包已经完成,这样,原籍村的承包地没有她的份,而当她把户口迁到嫁入村时,夫家所在村的承包地已经分配完

毕, 同样没有她的份。对这一类妇女的承包地确实应予落实, 但不能把这种情况简单地归为歧视妇女问题, 因为还存在着与此相反的情况, 有些村在土地承包时, 给适龄未婚男子预留了其未婚妻的承包地, 这样致使一些在娘家村已经分得了承包地的女子到夫家又有了承包地, 难道可以把这说成是妇女享有特权?

从维护妇女权益角度, 要求给农嫁女以 "与相同条件的男性村民享有同等权利" 是政府相关部门解决该问题的指导意见。[5] 这里的 "条件相同的男性村民" 是指原籍村的村民还是嫁入村的村民? 不言而喻, 对农嫁农者来说, 如果原籍村不比嫁入村更富裕的话, 出嫁的妇女会爽快地 "嫁" 入夫家, 不会有什么问题, 问题的产生一定是娘家村较夫家村富; 对农嫁居者而言, 问题的产生也一定是城镇居民的待遇比不上原籍村村民身份所带来的利益。可见, 农嫁女所诉争的是与原籍村村民相同的待遇,即原籍村村民的资格。所争的这种权利有两个特点:一是,这种权利实际上是一种基于社会身份的利益: 虽然不能完全排除外嫁女对原籍村的集体经济作出一些努力或者一些贡献, 但总体而言, 她们所要求的不是一种基于自身的努力, 也不是基于自身所作的贡献, 而是基于社群成员资格即社会身份的利益。其二, 农嫁女诉求的利益是一个差额: 农嫁女所诉求的原籍村成员权, 对农嫁居人员来说, 是城镇居民身份与村民身份之间利益的差额; 对农嫁农者来说, 则是原籍村与夫家所在村两个村社员所能享受到的利益之差。这就是说, 一个农嫁女人员, 如果争取不到原籍村社员的资格, 那么, 通常情况下她就能获得夫家所在地的成员权 (除非她不把自己的户口从原籍地迁往夫家), 换言之, 农嫁女之所争, 不属于基本生存权利的范围, 而是一种福利性的财富。

作这样的分析, 并不是说农嫁女所诉求的权利不是她们应得的, 针对那种认定农嫁女的权利属于男女平等权利而男女平等权利是宪政保护的最高权利, 其他权利似应都要为其让步的观点, 我的意思仅是指出农嫁居人员的权利并不是什么神圣的或最高的权利。相比较, 与其冲突的村集体经济组织成员数量自然均衡的重要性起码也不是可以忽略不计的。因为, 如果满足农嫁女所诉求的权利, 那么势必造成村民数量的无限制增长, 起码从理论上是如此, 从而使村人均所能享有的集体资产权益的不断缩水。(这一点我将在下面分析。)

但是, 如果仅仅为了避免村集体资产不断被稀释而取消农嫁女的权利, 这种理由也不充分。如果农嫁女所诉求的权利是她们所应得的,

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[5] 参见中共中央办公厅、国务院办公厅发布的《关于切实维护农村妇女土地承包权益的通知》: "农村妇女无论是否婚嫁, 都应与相同条件的男性村民享有同等权利。" 以及 2005 年 12 月 12 日公布的《中华人民共和国妇女权益保护法》第三十条规定: "农村划分责任田、口粮田等, 以及批准宅基地, 妇女与男子享有平等的权利, 不得侵害妇女的合法权利。"

那么根据公平正义原则，一部分人无权为了多得利益而取消另一部分人、那怕是极少数人的利益。农嫁女问题处于二难境地。

3、习俗与法治

我认为，农嫁女问题的关键不是男女平等问题。如果说农嫁女之受到的待遇不符合男女平等原则，那么这种男女不平等主要表现在：普遍地存在着这样的成文（村规民约）或不成文（惯行）的规定：如果本村妇女与村外人结婚，除非如独生女等特殊情况，女方必须落户到男方，户口也必须随之迁出，这样，她在本村社员的资格也随之取消；反之，本村男子若与村外人结婚，不仅他本人理所当然保留社员的身份，而且他的配偶也可以在本村落户—她可以把户口迁入村里并当然地获得本村社员的身份，并以此身份享受与村集体经济的权益。可见，村规民约或惯行中存在着所谓的“歧视妇女”内容，只不过是村集体在确立什么人享有村集体资产权益的资格时把习俗作为行动的指南，代代传承的风俗习惯是：男女结婚，实行的是从夫居，或者叫男娶女嫁。

男娶女嫁是传统社会中父系家庭制度中的重要内容。“男娶”，就是娶一妇女作为自己家庭成员。相应的，“女嫁”，就是妇女离开一个父系家庭进入另一个父系家庭。妇女无继承自己娘家财产的权利。一个无男姓子嗣家庭，属于“无后”的家庭，无后的家庭通常要从近亲的子侄中选一个继承人，或者招一个女婿入赘当作儿子以延续香火。父系家庭，作为一种制度，以现行《婚姻法》的施行为标志早已消亡。传统家庭主义，如果说仍然存在，那也只不过存在于传统观念和习俗中。可恰恰是当年构建的作为与传统决裂的集体所有制，却成为父系家庭主义的顽固堡垒。

把习俗做成强制性的规定看来不仅违背了现代法治精神，同时也与现行法相关内容直接抵触。如《婚姻法》第九条明确规定，根据男女双方的约定，女方可以成为男方家庭的成员，男方可以成为女方家庭的成员。这就是说，男女结婚，在哪里落户完全是男女双方自己的事，其他人别人根本无权干涉。如此，较通行的观点是：农嫁女的合法权益得不到保护，是落后的传统对现代法治的抵制。如浙江省妇联的关于农嫁女的调查报告所持的观点就很有代表性，它把农嫁女“受歧视”的“主观因素”归结为：封建意识和传统观念根深蒂固，“男尊女卑”、“女不如男”的思想影响相当深刻，传统习俗还很难更改。（浙江省妇联：2002）如此，农嫁女问题的解决有赖于移风易俗了。

可是这个风俗不是随便可以移易得了的。市场取向的改革，实际上是向着世俗化和常规化的回归。但世俗化并不等于简单地向传统回归，由于法治社会已经成了一种普世价值，农地制度改革取向，在回归世俗社会的同时，也在一定程度上走向法治社会。在西方，习俗在某种意义上是法律的基础，法治可以在习俗基础上发展而来。中国不同

于西方，没有法治传统。现代意义上的法治理念完全是从西方移植的。所以在中国，传统习俗与现代法治从本质上是冲突的。

椒江区政府应对农嫁居问题的政策调整过程就是一个说明这个道理的很好实例：

2000年6月22日，针对农嫁居人员的诉争，椒江区人民政府出台《关于当前村级集体资产管理有关问题的通知》（椒政发[2000]90 号文件），该文件规定：

> 凡是已经农转非的村民和居住（户籍）在本村的非农业人口（包括“农嫁居”人员），都不是村经济合作社社员，不能享受村经济合作社社员权利。未农转非的必须办理农转非手续。对于户粮在村的“农嫁居”人员，应办理农转非手续。对于“农嫁农”人员，只能在落户方享受社员的待遇。

—可见，开始应对农嫁居问题时，椒江区政府的立场与村集体是一样的，把男娶女嫁的习俗作为规范，这里并没有所谓男女平等原则或维护妇女权益的东西。有意思的是，2001 年 5 月 8 日，也就在椒江区政府这个文件出台不到一年，中共中央办公厅、国务院办公厅发出《关于切实维护农村妇女土地承包权益的通知》（厅字[2001]9 号文件）：

> 农村妇女无论是否婚嫁，都应与相同条件的其它社员（集体经济组织成员）享有同等权利。

显而易见，椒江区政府此前规定关于农嫁居人员的内容不符合中央两办《通知》的精神。于是，椒江区政府在 2001 年 11 月 21 日又发了一个《关于“农嫁居”人员及其子女享受村级集体经济待遇问题的补充通知》（椒政发[2001]254号）。所谓“补充通知”，实际上是把前一《通知》中关于农嫁居人员的规定完全推翻，重新规定了：

> ‘农嫁居’人员及其子女，应与相同条件的其它社员（集体经济组织成员）享有同等权利。

这样的规定，与中央两办文件的精神一致起来，也符合了政府的角色。

以今天的眼光看，作为一级政府，2000 年的文件是个低级的错误。但应该考虑到，该文出台时，还没有中央两办的《关于切实维护农村妇女土地承包权益的通知》，而《妇女权益保护法》要到2005年12月12日才公布，那时，连影子都没有；当时，椒江区政府的这个文件是针对群体性事件的应急措施，目的是止纷息争、维护正常的农村集体资产管理秩序。应急措施与一个自然人出乎本能的行为是一样。就是说，遵照习俗的做法对于区政府来说是完全出于自己的“内心”。相比较，后一个

《补充通知》之所以纠正前一文件相关内容,完全是由于作为下级政府除了贯彻落实上级的指示别无他途。这也说明了:习俗是内生的,法治是嵌入的,两者在一定程度上是冲突的,在农村尤其如此。

习俗与法治的冲突是多方面的,其中一个焦点是:传统社会并不存在严格意义上的个人财产权,而是以父系家庭为基本社会单元。正如黄宗智先生指出的:清代法典实际上视财产,特别是土地,为父系家庭所有,无论凭什么理由,父亲都不能剥夺其亲生儿子的继承权。(黄宗智,2007:148)而现代社会则以个人为中心,个人财产权是现代法治社会的一个基石。

集体所有制的构建逻辑根源于马克思主义理论,马克思理论宣布与一切传统观念作彻底决裂;同时,所谓现代法治理念,是属于资产阶级的意识形态,当然为马克思主义阶级理论所不容。如此,集体所有制构建逻辑、传统习俗以及现代法治理念,在农地制度改革过程中纠结在一起了。

农嫁女问题的根源在于农村集体所有制,虽然集体所有制遵循的是与传统习俗决裂的逻辑,但以父系家庭为社会单元的传统作为习俗仍然顽固地存在着,并且不知不觉地成了集体所有制的一块基石。农村外嫁女,就反映着传统父系家庭的影子:村庄就象一个家庭,在这个家中,儿子娶媳,女儿出嫁,出嫁的女儿没有财产继承权。这种以家庭为社会单元的传统不仅体现在理念上,而实实在在地存在于现实的社会结构中,农村集体所有制就是以家庭为基本单元。

组成农民集体的"农民"不是农民个人而是农户。最初的村集体资产是合作化时农户入社时投入的土地和其他主要生产资料。当年农民们不是以个人而是连丁带口全家加入合作社的,而随之入社的土地以及其他主要生产资料当然是家庭财产而不可能是个人的财产。合作化时,官方统计入社数量,一律以农户为单位。可以说,社员是指农户而且不是农民个人,这是众所周知的事实,但也是被普遍忽视的事实,所谓被普遍忽视的一个显见例子是,凡规范性文件界定"社员"时,基本上都把社员定义为个人而不是家庭,把社员定义为个人并没有遭到任何质疑。

社员应该是指包括刚出生婴儿等没有劳动能力者在内的农民家庭。在人民公社时期,虽然家庭不是生产单位,但在一定程度上却是分配单位,那时实行的是所谓的按劳分配原则,直接与这原则关联的当然只是参加生产队劳动的人,但如自留地、宅基地,则是以家庭为单位进行分配的。集体所有制当今的实现形式是家庭承包制,家庭是经营的基本单位,当然也是集体经济组织的基本单位。享受村集体资产权益者是农户而不仅仅限于具有劳动能力的农民本人。这可以从相关政策中体现出:计划生育政策在城乡的差别在于,城市"只生一胎"而农村是"见男则止"——农业户口家庭第一胎是男孩,则不准生二胎;如果第

一胎生女，还可以也只能再生一胎。这样，在农村，除了独生子和一女一男家庭之外，还有一定数量的两个女儿的家庭。两个都是女儿的家庭台州俗称为“两囡户”。对“两囡户”，按规定可以留下其中一个女儿，这个留下的女儿不仅本人能享受社员的所有权利，而且结婚时还能让丈夫在本村落户，落户到本村的夫婿便获得本村社员的身份，有资格享有与本村其他男姓社员一样的集体资产利益。同时，对独生子女家庭实行优惠政策，农村独生子女家庭，全家三口人按照四口人分配宅基地；分宅基地标准是：以户为单位，三人或三人以下一间，四个人便可分到两间。上了年纪的老人不能参与宅基地的分配，因为有儿子的老人只能与自己的儿子居住在一起。[6]

规定多囡户只准留一个在村中落户，是一个典型的以父系家庭制度为中心的行事规则：这就如同传统社会没有男性子嗣的家庭，留下一个女儿招婿入赘代替儿子传宗接代一样。如果从现代法治的视角看，这样的规定，首先与男女平等原则不符，多个儿子的家庭中的儿子们可以全部留在村里而全囡户却只允许一个招婿进村，其他的女儿都只能嫁出。其次，在法治社会，个人是权利主体，婚后在哪一方落户的事完全属于个人的事务，无论是村组织还是家庭都无权干涉。但如果因此就认定传统习俗是保守落后的话。那么我们愿意担任这保守落后习俗的律师，为村集体坚守习俗的行为辩护。辩护的理由是：

首先，村集体组织用村规民约规范男“娶”女“嫁”，是对集体资产利益管理的需要。这种行为并非意味着对个人事务的干涉，更不必然导致违法。婚姻如果不与某种身份挂起勾来，婚姻确实是个人事务；户口如果不成为一定的财富权利的资格，男女双方谁落户在谁家当然也属于男女自己可以约定的事。但关键是，婚姻嫁娶却引发了集体成员的增减，进而引发了集体资产权利资格的转移，这些问题已经超出个人事务的范围而属于村里的公共事务了。这样，如果不对此类的婚嫁及婚嫁后的落户情况进行管理，那么失控的并不是某户村民的婚姻情况，而是全村村民人数的非自然增长，使得村人均享有的集体资产利益迅速被稀释，这对于其他村民来说，是不公平的。具体说，如果在哪方落户由男女双方自由约定，那么，由于能落户在某个村庄就意味着宅基地、承包地以及土地补偿款等村集体资产的利益；相反，城镇居民的待遇的价值已经大不如前了。这样，如果一个农村妇女与城镇人结婚，女方当然不会把自己的户口迁往城镇；也由于穷村与富村的存在，而穷富村村民所能享有的集体资产的利益差别很大，这样穷村富村通婚，人口肯定单向流往富村而不是双向流动，致使富裕村的人口增长而失去了均衡。

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[6] 参见：《台州市市区农村村民住宅用地管理办法》。该“办法”规定，村民宅基地标准是：3人以下的小户一间；4-7人的中户二间；8人以上大户三间（第六条）；领取独生子女证的家庭，独生子女算作两人（第八条）。

其次，由于男娶女嫁的习俗已经成了被普遍遵守的秩序，起码到今天为止，这是唯一行得通的规范，或者说，除此，我们根本无法在农村推行其他的行为规范：如规定结婚后男方必须落户到女方；规定两地通婚者婚后一律保持婚前的居住状况而两地分居或者婚后人可以住在一起而户口不迁使之人户分离，诸如之类。这些，听起来就荒唐，肯定行不通！如果按照婚姻法的规定，把在何处落户的选择权交给当事人，那么，其结果必然置村集体资产利益的分配于无序状态，将造成普遍性的不公平。我用一个实例加以说明：

> 白云街道的 XX 村有一独女之家，招一男入赘，按规定，该男可以在村里落户，随着户口的迁入，该男取得了该村社员身份村民，具有与其他村民社员同等的权利。不久，小两口离婚了，此后，那女的再婚了，她提出要让这再婚的丈夫在村中落户。

—如果把婚姻以及婚后在哪一方落户视为个人的事务村里不加干涉的话，那么，该女子再婚可以招婿入村，她的前夫当然也可能提出以社员的身份娶妻进村，这样就一变二，二变四，没有个完。有这么个榜样，其他人当然也会参照，更会发扬光大，假离婚、假结婚的事例可能没有穷尽，致使与村集体资产根本无关的人都无限制地参与分集体资产的蛋糕，这样，村集体资产还能持续多久？如果在哪方落户由男女双方自由约定，那么，社员的界线可能被冲击得名存实亡，从而将集体资产权利分配置于无序的境地，造成范围更大的不公平。

第三，村规民约或惯行中存在着与现行法相抵触的内容最为人所诟病。所谓违法内容指的就是指村规要求出嫁妇女必须把户口从村中迁出，这一点与《婚姻法》中男女双方可以自由选择在哪一方落户的规定明显抵触。可这种指斥未必有理，实际情况是，村集体迁户口规定的着眼点不是户口，而是户口所标志的享有集体资产权益的资格。农嫁女们不迁户口，村集体实际上并没有什么强制手段非要她们迁不可。实际上，不少农嫁女结婚后的户口也一直就留在本村，只是村集体不分配给她们集体资产的利益。这不是干涉农嫁女人员的个人事务，而是集体经济组织在处理内部利益的分配问题。至于处理得是否合理，则另当别论。

## 三、农嫁女，是个什么问题？

在第一部分，我曾提及农村集体所有制的构建逻辑：农地仅属于耕种该土地者集体所有。由此可以得出这几个要点：一、土地集体所有制之“集体成员”一定是该土地之耕种者；二、只有耕种该土地者才有资格享

有以土地为主要构成的集体资产权益; 三、该集体资产利益只能是耕种该土地者的劳动成果,而不能是诸如财产性收益等非劳动收益。只是,这几个要点仅就理论上而言的, 现实中没有一点与此相符。用黄宗智先生的话来说就是: 表达性现实和客观性现实相互背离。(黄宗智, 2003: 66)

1、谁享有集体资产权利, 劳动者还是全体村民?

《土地管理法》、《土地承包法》以及《物权法》等相关的法律都规定村集体资产:

> 由村集体经济组织或者村民委员会代表集体行使所有权。

本来 "集体" 对应的就是 "村集体经济组织"。照理说, 由村集体经济组织代表村集体行使集体资产所有权理所当然。当年的人民公社政社合一, "社" 就是今天的集体经济组织, 即经济合作社; 而 "政", 生产大队一级的则类似今天的村民委员会。为什么在由谁代表集体行使所有权的问题上, 又 "政社合一" 起来, 把这两个机构拉扯在一起呢?

我的推测是: 由于此前的规范性文件把村集体经济组织成员定义为 "成年农民", 而实际上享有集体资产利益资格者已超出了 "成年农民" 的范围, 如此, 如果规定仅由村集体经济组织代表 "集体" 行使集体资产所有权就不合适; 又由于集体资产之集体是 "农民集体", 这样, 如果规定仅由代表全体村民的村民委员会来行使 "农民集体" 的资产所有权, 当然也不合适。于是,作为农村基层管理者的村委会,与作为农村集体资产管理和经营者的经济合作社走到一起, 共同承担了集体资产所有者代表的角色。"政" 与 "社" 又合在一起了。

如果有资格享有村集体资产权益的是包括农民及其家庭所有成员在内的农户,如果把集体经济组织成员界定为农户,那么,村集体经济组织也就是当然的集体代表, 由集体经济组织代表集体行使集体资产所有权也顺理成章,用不着把村民委员会拉扯进来。表面看来,浙江省《村经济合作社组织条例》修订本就是按这个路子走的。根据该《条例》修订本规定, 凡社员子女、与社员结婚在本村落户者等, 都自然成为社员。这给人的感觉就是,《条例》修订前后关于 "社员" 的规定之不同就在于,修改前的社员等同于农民本人,修订后的社员除了农民本人外还包括其家庭成员。

在我看来,事情并不如此简单。在当今农村,把户籍作为享有村资产权益的标准已经是个普遍的现象。如果说,在前些年,一些所谓的非社员村民还享受不到完整的村集体资产权益的话,那么,这种现象随着农民的非农就业普遍化已经或开始改变。在多数农业社区, 农民及其家庭成员与村民的外延几乎是同一的。这样,很容易给人以错觉: 村集

体资产权益由村民来享受和由农民及其家庭成员来享受并无区别，或者说并没有区分的必要。可实际上，村民与农户并不相同，谁有资格享有村资产权益决定于村资产的属性。集体所有制之“集体”，指的是由劳动者组成的集体。之所以把农民家庭中那些非劳动者算作劳动群众集体的组成部分，也不能与“农业劳动”脱离干系，因为其一，在农耕社会，农业和家庭手工业不分，农家子女在很小的时候就帮大人们干些力所能及的活，这样，在农家，成年未成年，劳动者与非劳动者本来就没有明确的区分；其次，劳动者需要养家活口，需要生产新的劳动者，如果说农家子女们不是劳动者，那么也只不过是非现实的劳动者，他们是潜在的劳动者，迟早会成为劳动者；至于老年人所享受养老送终的福利，则属于其应得的、实际上是其自己先前劳动成果的延续。而所谓村民，指的是乡村居民，从理论上说，居住在乡村是成就村民的充分条件，用不着去问其是否从事农业劳动。从浙江省《条例》修订本关于社员定义的内容看，并没有把农民或农业劳动作为必要要素。从属性看，这种“社员”与农业劳动扯不上边，当然不能同农民划等号。这种社员实际上就是社区成员、即以户籍为标志的村民，而且还仅仅是名义上的村民。

应该说，浙江省《条例》作这样的修订就是针对今天的所谓“农民”已经有相当一部分不再以农为业、更不亲自耕作的情况。如此，该《条例》对“社员”进行重新定义，才改变了原先规范性文件的规定与事实相脱离而被束之高阁的困境；才能使政策适应市场经济和当今农村实际。只是，这样一来，该《条例》已经把集体所有制的构建逻辑抛到九霄云外了；不仅如此，作为地方性法规，浙江省的《条例》不仅与其上位法相关内容有抵触，更是违背了现行《宪法》确立的集体所有制原则，因为《宪法》规定的集体所有制之“集体”，指的是，“劳动群众集体”，不是所有的社群成员都有资格成为集体成员。

现在，我们可以由全体村民都有资格享有村集体资产权益的事实，反推出所谓的属于村集体经济组织全体成员集体的资产实际上就是属于全体村民的“集体资产”，或者说是“村民集体”的资产。需要说明的是，根据“资产”的“集体”属性，还不能称之为全体村民的资产，因为，若把该资产界定为全体村民所有，该资产就不属于“公产”性质了，而成了全体村民共有的财产了，全体村民对该资产就有完全的处分权了，而土地等“集体资产”则属于公有财产，不能分割给个人或家庭所有。可是，“村民集体”的词汇不属于马列主义的话语，不符合集体所有制的定义。但把我杜撰的这个不伦不类的“村民集体”作为当前村资产的主体应该是恰当的，这就是说，当前农村村资产的属性是集体的公产，而组成该“集体”，是全体村民而不是从事农业的劳动者。

农村集体资产归农民集体所有是宪法和法律规定的，可普遍存在着的事实却是集体资产权益由全体村民享有。出现违背宪法和法律

现象应该属于不正常的而且需要纠正的，问题恰恰在于，没有人视之为不正常，更没有人主张纠正之，想纠正也肯定纠正不了。

在现实世界，集体所有制虽然建立，但却没有达到如当初设计时所设想的那样，使之朝着两个目标过渡：由集体所有制向全民所有制过渡，由社会主义向共产主义过渡。而实际上，到达人民公社之后，该制度却与全民所有制和共产主义这两个目标渐行渐远：从全公社所有制退到队为基础，三级所有；从“集体经营、共同劳动”退至家庭承包经营。显然，集体所有制存续过程，并没有贯彻集体所有制的建构逻辑。

这里，不妨把与农地集体所有制建构逻辑对应的传统观念称之为农地的自然逻辑。所谓自然逻辑，是由于这种观念是自发的和自然存在着的世俗理念，并不是设计的和理论的构想。它是通过诸如习俗、惯行表现出来。可以说，从集体所有制建立至今，从来没有完全消除自然逻辑的作用。农地的建构逻辑不认可农地非亲耕收益。把地租看作剥削是土改合法性的一个基石。但土改运动并没有完全消灭土地的自然逻辑。比如，土改后，土地的分配是按人口进行的，就是一些根本没有劳动能力的孤儿寡妇也都分到一份地，分地给无劳动能力者的理由很简单，因为土地具有生活保障的功能。但这种保障是靠地租或类似地租来支撑的，承认土地的这种保障功能，也就等于承认了类似地租等非亲耕收益。当然，土改后实行的仍然是土地私有制，在私有制的条件下，地租的存在是合法的，如土改后政府发给农民的土地证均有“私有产业有耕种典卖转让赠与出租等完全自由”等字样。彻底消灭地租是集体所有制建立后的事，但就是在人民公社时期，土地非亲耕收益不仅在事实上存在，而且其价值仍然被人们广泛接受。在当时的农村，普遍的情况是：一些缺少劳力的农户把自留地转让给别人耕种，耕种者通常都会给出让自留地者以收获物一定比例的回报。今天，把土地作为对村民的保障手段已经成为政府的制度安排。在关于农地应该私有化与否的争论中，反对私有化者的一个基本理由就是“土地保障代替社会保障”。（温铁军：2004）这里所谓的土地保障，当然不限于农民靠自己在这块土地上耕作以养活自己和家人，同时也包含了转让农地以获得收益的意思。也就是说，在城镇化、农地和农民非农化的条件下，把农地作为保障手段，是以承认土地的非亲耕收益为前提的。

经过多年的演变，农村集体资产实际上已经成为社区的公产。社区内的公产归本社区全体成员所有，这是自然逻辑。自然逻辑是法律有效性的基础，而一些偏离自然逻辑的法律法规，如关于集体资产归农民集体所有之类的规定，实际已经被束之高阁，表现为习俗的自然法则却成了被普遍遵守的法律。

2、社员身份的名与实

农嫁女从来就存在,为什么几千年来都不会成为“问题”?这是由于,在传统的农耕社会, 婚姻只属于个人或者家庭的事, 与公共事务无关, 所以并无所谓农嫁女诉争集体资产权益的问题。问题产生的一个重要原因在于:在农村集体所有制构建中,村民和社员是基于姻缘和血缘的身份,这种身份是享受集体资产利益的资格。不过,当农民或者社员的身份名实相符时,农嫁女也不必然产生“问题”。

在集体所有制的体制内, 人被封闭在集体内、集体被捆绑在土地上。但集体成员中的男婚女嫁是不能废除的, 而结婚当然也不会只限于村内, 跨村通婚是常事, 于是有了由婚姻带来的人员流动。可以说, 在计划经济体制中的农村, 经常的和普遍的人员流动就是跨村通婚。婚姻造成人员的双向流动, 有出嫁也有娶进, 这样, 对涉及婚姻的具体家庭而言, 或娶或嫁造成了人口的或增或减; 而就全村范围来说, 嫁女娶媳有出有进,人员流动在通常情况下是自然均衡的,因而这种人员流动与不流动是一样的。在集体所有制架构内, 人与以土地为主的生产资料联结在一起的, 所以, 跨村婚姻所造成的人员跨村流动, 必然要牵扯到人与集体产权的对应关系。换言之,作为集体成员的妇女出嫁了,她的社员身份以及与该身份相应的集体资产权益又如何调整呢?

实际上, 当年人们的观念根本没有今天我们想象的那么复杂。当时的所谓社员身份,只不过是参加生产队劳动的资格,这种“资格”,是最底层的社会身份,根本不会有人去争。与此相应的,农村土地也只不过是农业生产的基本条件,并无财富效应,所谓对土地的权利,如果也叫权利的话,当然只属于在这片土地上劳动的人们,离开的人想带也带不走,带走也没用。当然,队（村）与队（村）之间也有贫富差别,但在计划经济时期, 在同一区域内, 村与村之间总体而言是同质的, 虽有贫富差别, 这种差别也大不到哪去, 何况这种差别可以作为婚姻考量的因素。所以不存在出嫁的妇女要求保留原籍地集体经济成员资格的情况; 何况, 在共同劳动的条件下, 除了工分以外, 根本不存在集体资产中有属于个人份额的说法, 因而也没有离开村庄的人要求分割并带走集体资产中属于其个人的那份权益。

实际上,在处理外嫁女与集体成员资格问题上,自然形成的方法简便实用: 妇女出嫁了, 留下的待遇（如果也叫待遇的话）转给娶进村的媳妇。这已成了惯行, 虽然没有硬性规定, 但每个村都是这样做的,这样, 对出嫁的妇女来说, 除了农嫁居特殊情况外, 虽然不再保留原籍村成员的资格,但却获得了嫁入地成员的身份。对于一个村而言,人地的固定关系乃至集体成员与集体资产的对应关系也不会因社员的婚姻而改变。

作为农嫁女中的一个特殊部分，农嫁居人员的身份一直以来就有问题。在计划经济时期，如果允许城乡居民因通婚而迁户口的话，肯定会对二元结构制度造成猛烈的冲击，这当然是不允许的。于是，城乡通婚虽事实上存在，但国家却不予以承认，农嫁居便成了不正常的现象—社会身份与身份所标志的内容脱离了：不居住在乡村，却是农业户口、是村民；不务农，却算是农民；不参加生产队的集体劳动，但具有社员身份。当然，身份名实不符的情况不限于农嫁居人员，大饥荒时期后，从1961 年开始，国家为了减轻城市粮食供应压力，在两年半的时间，共精简职工 1940 万人，减少城镇人口 2600 万人。在精简人员中，由于种种原因，有相当一部分人实际没有到农村落户，只是把户籍和口粮迁到农村，这些人与农嫁居者的性质没有差别，人生活在城镇，却没有城镇人的身份。再如，知识青年上山下乡后期，有大量知青返城，这些返城的知青，人居住在城镇，户粮关系在农村。这种身份名不符实在计划经济时期当然也不正常，只不过：一是，这些人员相对城镇居民比例也不高，相对全国人口更是微不足道。为了国家利益，牺牲少数人的一些利益在当时看来并没有什么不妥；二是，对当事人来说，虽然没有非农户口住在城镇会受到这样那样的歧视，但在当时，人们对受到不平等待遇是麻木的，特别是由国家制度所造成的不平等，个人无可奈何。所以这些现象的存在不会对二元结构制度造成根本性的冲击。至于“享有”农村集体成员的资格问题，当时政府控制的是非农业户口，除了城镇居民，其他人一律扔到农村，农村愿不愿意都得接受。这样，农嫁居人员也好，精简人员还是其他什么人，“享受”农村集体成员的身份，总的说来不会有问题。

农村集体所有制构建的身份是以封闭体制为前提的。由于村际通婚就象在同质的各个封闭系统间进行人员交换，所以这种交换在本质上并没有打破体制的封闭性；而其中的农嫁居妇女，虽然嫁进了城，但她们的户籍口粮仍然封闭在农村，这样就等于人也仍然被封闭在农村。只要系统的封闭性没有问题，身份也就不会有问题。农嫁女只是市场化过程中才会产生问题。

### 3、问题只不过是症状，病根盘错在农地集体所有制中

农嫁女与农民工看似风马牛不相及，但如果从社会身份的角度看，二者有个共同点：都是集体所有制遭遇市场经济后，产生了身份的名实分离。如此，引入农民工现象作为参照，可能有助于分析更加清晰。

计划经济时期的工人和农民，与其说是职业，不如说是社会身份。无论是工人还是农民，都是制度性的安排，与个人选择无关。在二元结构中，工人是工人，农民是农民，起码从理论上说，不存在农民工，即便

城里出现季节性的临时工，那也只不过是特殊的现象。在完善的市场经济体制下，在具备职业由个人自由选择和迁徙自由的条件下，当然也不会出现如此庞大的、实际居住地偏离法律意义上的住所、游离于城乡之间的、不能成为正宗城镇居民的就业大军。

市场经济体制是个开放的系统，以产权清晰为前提的要素自由流动是市场经济的内在要求和显著特征。现在，我国以每年 1% 的速度在城镇化，每年数千万人口离开农村进入城镇，农地非农化和农民不务农成为常态。当集体所有制的封闭系统被打破后，身份产生问题是必然的。

集体所有制构建的社会身份所面临着的，说到底就是人地关系问题。就农民工如今的状况而言，在身份问题上与当年的农嫁居妇女有些相似：在城镇居住和工作，却无法获得与城镇居民相同的待遇；离开了农村，仍然是村民、农民和社员。与当年农嫁居情况不同的是：虽然二者都无法完全融入城市，这对当年的农嫁居而言，主要是由于体现在户籍制度上的城乡二元分割，而今天的农民工之为农民工，户籍制度虽然也算是一个因素，但更重要的原因在于农村土地制度，是由于不务农的所谓农民仍然无法完全摆脱农地的束缚。

这样说似乎有问题：农嫁女们之所以要被取消原籍村的社员资格而农民工仍然保留，原因就是农嫁女们的户口随嫁迁出而农民工通常不会因外出打工将户口迁走。这岂不说明了，农嫁女问题与农民工现象似乎与人地关系无关而只与户籍制度相关？

在二元结构制度中，户籍制度与人地关系是相互依存不可分的。当户籍关系变动时，人地关系不可能不随之调整，反之也一样。但二者的侧重点毕竟有所不同，户籍制度的作用主要是分割城乡，阻止农业户口者流入城镇；人地关系是农村集体所有制的内核，主要起着巩固农村土地集体所有制的作用。联系到农嫁女问题和农民工现象，除了农嫁居外，农嫁女问题基本上不涉及城乡关系，倒是农民工现象横跨了城乡之间。但本文仅从农村集体所有制的角度考察农民工现象，暂且不论城乡关系。这样，无论是农民工还是农嫁女，都可以归结为集体所有制框架内土地制度解构过程的产物：当人被完全束缚在土地上、农地仅仅作为农业生产资料时，农嫁女也就遵照习俗落户到丈夫所在地，不会有什么问题；也不会有农民大量离开土地成为农民工。如果人地关系理顺了，集体产权清晰了，也就不会有作为一种社会现象的农民工，如果有，也只不过是特殊的、零星的现象；农嫁女也不会要求分割集体资产利益的什么问题了，椒江区的 LY 村、XM 村、和 DFH 村等，对村级集体经济进行股份制改造后，虽然其过程充满波折，结果是农嫁女问题随着改制而消解了。农嫁女成为问题和农民工现象的存在一方面表明农地集体所有的封闭体制开始打破，另一方面又表明集体所有制的封闭性仍然存在。

农嫁女问题和农民工现象的不同在于，到目前为止，有“问题”的农嫁女只是少数地区少数人的特殊现象，这些特殊现象不可能冲破传统的男娶女嫁习俗，更不可能改变集体所有制构建逻辑，因而，出嫁妇女提出的用世俗眼光看来不合情理的要求而得不到满足也就不奇怪了。在农民工已经作为一种普遍性的存在时，集体所有制构建逻辑，即不亲自耕种土地者不得享受土地收益的逻辑也就失去了作用。

城镇化过程中出现的“城中村”模糊了乡村与城镇边界，许多原村民或迁移到城里居住或本来居住的地方成了城市，村民居民界线不清楚了；非农化就业使得农民不务农成为常态，眼下的所谓“农民”和农耕不相干了；至于“社员”，虽然村集体经济组织仍然存在，但所谓的“农民集体”或“劳动群众集体”早就徒有虚名。村民、农民以及社员的实际标准根本不存在了。问题的要害是，集体所有制构建的身份是享受农村集体资产权益的资格，这种资格必须是明确的和可操作的，不然，在如何分配集体资产利益问题上，纷争难免。

当然，确定村民、农民以及社员的标准是有的，这个标准就是户籍。户籍是国家的法定制度，所以是确定的；一个人的户籍所在地很明确，因而这个标准也具有可操作性。

为什么农嫁女离开了本村不能享受本村集体资产利益，而农民工却可以？二者的区别就在于户口，因为出外打工者通常都保留了本村户口而农嫁女则随着户口的迁出而失去村集体资产权利。再比如，根据《中华人民共和国农村土地承包法》第二十六条规定：户口农转非者，就失去了土地承包权。户口是人所在的标志，只要户口在本村，人就是本村村民，哪怕人实际上跑到天涯海角了无踪影；哪怕这户口是父辈的遗留、如“新生代农民工”一直生活在城里，其中有些人甚至在城里出生，但他们仍然是村民。同时，户口还是一个人参加农业生产与否的标志，凡持有农业户口者就是农民；而且，户口还是劳动者集体成员的标志，只要你有农业户口，你就是村合作社员。支撑集体所有制架构中的村民、农民和社员这三种社会身份的，只是一本薄薄的户口簿！如此，当这种社会身份成为分配集体资产权益的依据、甚至是唯一的依据时，“问题”的产生是必然的。

农嫁居问题仅是农地集体所有制与市场经济体制遭遇所引发的一个症状，其病根盘错在于集体所有制架构内。农嫁女问题的消解有待于农村土地制度的深化改革。

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