The Evolution of Land Law in China:
Partial Reform, Vested Interests, and Small Property

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1 This draft does not discuss the 2007 Property Law, which was made quite late and serves a different role at the evolutionary process of Chinese land law. It will be examined in the revision of this draft.
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Introduction

If we observe Chinese land reform from a temporal perspective, there has overwhelming focus on its present problems and future resolutions, and too little on its past. Understanding the historical trajectory of Chinese land reform is necessary to address its present problems and to make reasonable predictions about its future, and if possible, shape its more equitable and efficient future. This paper targets three groups of audiences: scholars of China study, post-communist transition and property rights. This paper endeavors to shed some new light on the old topic of Chinese land reform by reviewing against the historical backdrop of post-communist transition and under the theoretical perspective of the evolution of property rights.

Demsetz presents a classical theory on the evolution of property rights, in which new forms of property rights will emerge if the benefit is bigger than the cost of creating them. Levmore emphasizes the influence of interest groups in the evolution of property rights, but does not investigate in-depth the mechanism through which interest groups influence the evolution of property rights nor how to address them in this context. In an unrelated article, Levmore does discuss interest groups in detail—interest groups might lead to overregulation in incremental reforms because people who have been under regulation would like to see other people are also regulated, even this extension of regulation is inefficient. He does not discuss whether and how his thesis could be applied to the evolution of property rights.

Interest groups could have been highlighted in Heller’s analysis of commercial real estate reform in Russia, because most of the holders of various sticks of property rights to the Moscow stores were actually government agencies and other government-affiliated institutes. But Heller downplayed this side of the story and focused on the fragmentation of property rights in general, which might be attributed to his agenda to develop a general theory on property rights rather than investigating the political process of the Russian property reform.

Post-communist property reform provides an excellent chance for us to observe how interest groups and the political structure in general influence the evolution of property rights. However, this path has rarely been pursued in legal scholarship. This article endeavors to bridge this gap.

In other disciplines, mainly political science and transitional economics, there has been a major debate on the choice of path in post-communist transition: shock therapy or partial reform. Some scholars argue that shock therapy is better than partial reform to overcome the old interests; some others argue that partial reform could foster social groups that benefit from

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3 For an exception, see Robert Ellickson, The Costs of Complex Land Titles: Two Examples from China, which tells us how the past can illuminate the present and the future.
8 Id.
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reform and would support further reform. In particular, Qian and others call China’s partial reform “a reform without losers.” I posit that the current state of China might refute their argument and proves that the debate has been missing the point. The biggest barrier to reform, at least in the Chinese context, is not the interest groups rooted in the old communist regime, but the interest groups fostered by the partial reform. They benefited from the partial reform and would prefer to extend the period of the partial reform. This is the problem China is facing today. This problem is particularly acute in land use reform in China.

This article investigates the history of land use reform in China and proves that the so-called rural land problem is the consequence of China’s partial land use reform. In 1988, the Chinese government chose to conduct land use reform sequentially: first urban and then rural. It was a pragmatic move because it would focus the reform and provoke much less resistance. It also made local governments in China the biggest beneficiary and supporter of the partial reform. However, a beneficiary of partial reform does not necessarily support further reform because of the excessive rents available between the market of urban real estate and the government-controlled system of rural land development and transfer. The central government, in particular its agency in charge of land administration (the former Bureau of Land Administration, which has been elevated to the Ministry of Land and Resources (the “MLR”)), also has interests embedded in the current regime. In contrast, losers of this partial reform, Chinese farmers and other relevant groups, have no voice or power in the political process of the reform, which makes it difficult for the central government to achieve an agenda that balances interests of all relevant parties.

However, this is not to say that a country, even without a democratic political structure, would necessarily be trapped in the partial reform equilibrium. In the China case, Chinese farmers challenged the existing system through forming a huge small-property market, around which social groups disadvantaged by the partial reform, mainly Chinese farmers and middle- and low-income urban population, present their interests and display their ability to jeopardize the goals of the central and local governments. This has led to adaptive policy changes. Recent news has showed that Chinese land reform is moving towards a direction that would address Chinese farmers’ concerns, though much work is needed to unify the small-property market and the legal real estate sector.

My historical investigation builds not only on my systematic examination of national laws and landmark resolutions of the Chinese Communist Party (“CCP”), but also government documents related to their drafting, hundreds of ordinances, regulations, notices and replies from the MLR and the central government to local governments and even memoirs of retired national leaders and senior government officers who participated in the reform. This paper is organized as follows. Part I introduces the dual land ownership system in China. Part II and Part III investigates the urban land use reform and rural land use reform, respectively. Part IV explores how Chinese farmers have promoted policy change through their illegal land uses. Part V concludes.

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I. Dual Land Ownership and Rural-Urban Land Conversion

A. State Ownership of Urban Land

The Chinese Communist revolution before 1949 had no intention of following the Communist Manifesto to abolish property in land. In cities taken from the Nationalist Party, the local governments of the Communist State issued new land ownership certificates to replace the old ones issued by the Nationalist Party government. Even the 1954 Constitution, which omitted the protection of the private property of workers, peasants, the petty bourgeoisie and the national bourgeoisie and declared the building of a socialist society by socialist reform, still maintained that the state protected the legal income and house ownership of citizens. However, as the CCP gradually built a communist system based on public ownership in China, private ownership of land came to an end. From 1954 to 1956, in the so-called socialist reform of the capitalist industry and commerce, most private enterprises and as a result, their land, were nationalized.

In 1956, the Central Committee of the CCP (“CCCP”) initiated the direct nationalization of urban real estate. On January 18, 1956, a notice from the CCCP said that: “all privately-owned urban vacant land and street-base land (jieji di) should be nationalized appropriately; it is possible to achieve such a purpose amid the high momentum of socialist reform.” The same notice also addresses how to change the private ownership of houses in the urban area: The state took the control of extra houses from private owners, rented them out and distributed part of the rents to the owners. The original design was to nationalize the private houses after paying rents to the private owners for several years. Later the Cultural Revolution made situation more radical. On November 4, 1967, an official document issued by the State Bureaus of House Administration and Tax provided that all urban land should be nationalized, including private residential land, under which many people lost their houses and land to various organizations in the name of the state. However, in the chaos of the Cultural Revolution, it was dubious whether those organizations actually represented the state. What’s more important, this government document could not supersede the stipulation of the 1954 Constitution, which protected the house ownership of citizens.

Actually the undisputed momentum of extinction of private land ownership in China was the pass of the 1982 Constitution, which for the first time in the history of the People’s Republic of China declares that urban land is state-owned without exceptions. Although several letters solicited from the populace on the draft of the 1982 Constitution addressed the state-ownership of urban land, overall, there was not much dispute on this clause within the amendment committee. It was not surprising that the 1982 Constitution recognized the de facto demise of private land ownership caused by the Cultural Revolution for two reasons. First, in the ideological struggle between market and planning economies, the latter still prevailed. The

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11 XINMIN HUA, FOUR OUR HOMETOWN THAT CANNOT BE LOST (2009).
12 Id.
13 CCCC Notice on the Basic Situation and Socialist Reform of Urban Private Real Estate, January 18, 1956.
14 Id.
15 Hua, supra note
orthodox Marxism understanding of property was not challenged and strictly followed and thus no need to deny the nationalization of urban real estate in the Cultural Revolution. It was not until two years later in 1984 that the CCP finally achieved consensus on building commercial economy with planning (in Chinese, you jihua de shangping jingji). Second, it was widely regarded that state-ownership of urban land would serve the state-dominated economic development, as shown from the proposal to nationalize rural land described in Part IB.

B. Collective Ownership of Rural Land

CCP’s promise to reallocate landlords’ land to millions of peasants contributed to the winning of the civil war against the Nationalist Party in 1949. The Common Program of the Chinese People’s Political Consultative Conference, which was passed in September 1949 and the temporal constitution of the People’s Republic of China until 1954, made a system of “peasant land ownership” a goal of the new Communist government and protected the private property of “workers, peasants, the petty bourgeoisie and the national bourgeoisie.”

However, this did not last long. The CCP began to promote the establishment of farmers’ co-ops (hezuohua) in the rural area in 1951, which led to the establishment of the people’s commune system in 1958. The people’s commune consisted of three echelons: the commune, the production brigade and the production team.

The key issue under discussion in the drafting of the 1982 Constitution was whether the collectively owned rural land should be nationalized. The pro-nationalization justification was farmers’ hold-out problem. As Fang Yi, then vice Prime Minister said, “… the state needs land to build enterprises, to conduct business, to develop economy, but land is limited; collective ownership of suburban and rural land has become an instrument of farmers to rip off the government, and to make excessive money; they ask for over 10,000 yuan for one mu land; by selling land, a production team makes enough for over three lifetimes; they don’t need to work anymore.”

This argument was particularly supported by national leaders that represented industrial enterprises. The anti-nationalization argument was that even nationalization could not resolve the hold-out problem and it would be too politically shocking to farmers. As Hu Qiaomu, a senior party cadre and previous long-time secretary of Mao Zedong, said: “the state would gain nothing from nationalization of rural land rather than instability.” Peng Zhen, then Chairman of the Standing Committee of National People’s Congress (“NPC”) and in charge of the revision, eventually concluded that nationalization was a good thing, but should be done gradually with the dual land system as a transition. Apparently, the disagreement lay mostly at the feasibility and political risks of nationalization and not with nationalization as a desirable end.

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17 Article 3 of The Common Program of the Chinese People’s Political Consultative Conference.
21 Id., at
22 Id., at
23 Id., at
This history presents the top-down picture of the evolution of the Chinese land regime, which is more a construct of administrative law rather than property rights law. Property rights are an instrument of the state to achieve the goal of the country, rather than a vehicle in which individual rights and values are embedded. Different sectors of the state, including the military, SOEs, local governments, mining industry, forestry, and even diplomatic officials, shaped the land regime to their corresponding interests. But the farmers, who had as much stake to the land regime as any of the above state sectors, did not have an access to participate in the making of the basic land regime. Their attitudes and interests were only taken into consideration when their resistance to the land regime would cause “too much shock.” (zhendong tai da)

Since early 1980s, the Household Responsibility System (hereinafter “HRS”) has replaced the people’s commune system as the main rural land institution. Under the HRS, the collective should contract collectively owned land to individual households. Individual households as contractors of rural land are free to use the contracted land for agriculture. In the past three decades, the contract rights have gradually matured to a quasi property rights due to the extension of the contract period from 15 years to “permanency” (changjiu bu bian),24 and the establishment of measures to protect rural households’ contract rights from the interference of rural collectives.25 Rural land is categorized into three kinds: residential land; agricultural land, and public construction land. The different uses of rural land are under strict control; what’s more, farmers are prohibited from diverting land to any other use that is urban, i.e., not among the three categories above.

C. Structure of Chinese Local Government and Rural-Urban Land Conversion

In 1982, the Standing Committee of the NPC passed the Regulations on the Requisition of Land by the State for Construction (“RRLSC”). Article Two of the Regulations said that:

“When the state conducts economic, cultural and national defense construction and social public affairs, it should requisition collective-owned land according to this regulation. All direct or covert buying or renting of land from rural people’s communes and production brigades by any unit shall be forbidden. Rural people’s communes and production brigades shall not participate in the business operations of any enterprise or institution by contributing land as shares.”

It was clear from the RRLSC that all land use must be consistent with the state’s economic plan; rural land was supposed to be used for agricultural and livelihood of farmers, and could only be used for “construction” if it was approved by the economic planning. State requisition is the only legal way of converting collectively owned land, which could only be used

24 See The Gazette of Third Plenary Session of the 17th CCCP.
25 Generally the collective has no right to change or revoke the contract. Under very exceptional situations, such as natural disaster, adjustment of the land contracts should be agreed by 2/3 majority of villager representatives approved by the local government. See e.g., Article 27 of Rural Land Contract Law of People’s Republic of China (RLCL). Farmers can seek conciliation by local governments, special arbitration, and litigation for rural land contract disputes. See Article 51 of RLCL. Empirical studies also prove that farmers have relatively secure rights to the contracted land. According to James Kai-Sing Kung, “reallocations are on the whole infrequent and confined mainly to a partial nature, the latter of which is found to enhance farmers’ perceived likelihood of farming the same plots in the future.” See James Kai-Sing Kung, Common Property Rights and Land Reallocations in Rural China: Evidence from a Village Survey, 28 World Development 701, 701 (2000).
for agricultural and related uses, to state-owned land, which could be used in various construction projects.

Which level of the government represented the state? According to Article Seven of the RRLSC, it is the city/county governments that were responsible for selecting sites and requisitioning land for a specific project. Land requisition is subject to the approval of the provincial or central government according to the area of land requisitioned. City/county governments can approve requisition of land of no more than three *mu* in the case of arable or garden land, ten *mu* in the case of forestry or grassroots land, and twenty *mu* in the case of other kinds of land. Although often subject to the approval of upper level governments, city and county governments are the actual manager of the state ownership of land.

Under the planning economy, land use was part of the plan: the city/county commission of economic planning reviewed the construction project from approved by the upper level government and made the corresponding plan for the construction project, including the land use plan. The plan would be sent to the city/county department of urban planning, which would select a construction site for the project. Afterwards the city/county department of land administration would requisition the land and allocate it to the project unit. The function of the department of land administration was restricted to land requisition. Regulation of land uses was distributed among different government agencies: the department of agriculture was responsible for the administration of agricultural land; the department of transportation was responsible for the administration of land used in transportation projects; etc.

Why is the county/city government? Different from the U.S., China is a unitary state, meaning that all powers of local governments are delegated by the central government. Generally speaking, Chinese local governments are divided into four levels: province, city, county, and township, as shown in the following picture:

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26 Article of the 1982 RRLSC.

Chinese provinces tend to be too large as an economic development unit and townships tend to be too small. City/counties tend to be efficient scales of economic management. In China’s economic reform process, city/counties have become the most competitive administrative units that manage economy in reality.\(^28\) Naturally city/county governments are real managers of land within their jurisdictions. In the U.S., land use power is also within the hands of the municipality or county governments.

Taking a Chinese city/county as an example, the structure of land ownership is as shown in the following picture:
However, the boundary between urban land and rural land is not static and at the control of the actual manager of the state land—city/county governments. Why is that? Here we need to understand the relationship between city/county governments and rural communities. Rural land is owned by villagers collectively. What does that mean? First, let’s look at the structure of the collective ownership of rural land in the people’s commune era. The former people’s commune consisted of three echelons: the commune, the production brigade and the production team. 29 The people’s communes were under the direct control of county or city governments. Here is a picture that shows the relationship between the city/county government and the people’s communes:

29 See Ho, supra note , at 404-405.
That means, the two kinds of land ownership, state ownership of urban land and collective ownership of rural land, are not equal. Managers of rural land, the people’s communes, were under the leadership and control of the county governments. This organization hierarchy and the legal power of the county and city governments to requisition rural land for urban construction made the collective ownership of rural land easily encroached by the city/county governments.

What’s more, at the policy level, city and county governments represented the interests of all units and individuals under their jurisdictions in the national political arena, including the rural sector. People’s communes did not have direct access to the political process of policy making. Even in exceptional situations that leaders of people’s communes were selected as a member of the NPC, their voice and influence were subject to and inferior to that of city and county government leaders.

The reforms initiated in 1978 by Deng Xiaoping dismantled the communes and granted individual households the right to use the land. Generally, the township (xiang/zhen) replaced the commune, the village (cun) replaced the brigade, and the villagers’ group (cunmin xiaozu) replaced the production team, as shown in the following diagram. \(^{30}\)

However, the political structure of the local government does not change fundamentally. Townships are still under the direct control of the city/county governments. The villagers’ committees (“VCs”) were designed to be institutions of self-governance by farmers, rather than as a level in the governmental hierarchy. However, because the party branch at the village level was granted power to “play the role of leading nucleus,” the city/county and township governments can interfere with villagers’ self-governance and often exercise effective control over village affairs through the top-down party system. This includes the election of VC

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\(^{30}\) Id, at 405.
members. As a result, the village-level self-governance organization, under the lead of the party branch, became a hand of the local government. Thus politically Chinese farmers still do not have their own “autonomous organizations” that can represent their interests in national policy making. Their rights to use the land allocated to them is still subject to the mercy of the city and county governments and easily encroached by their land requisition power. The relationship between owners of urban land and rural land is the key to understand the land use reform we are going to discuss in the following parts.

II. Urban Land Use Reform

A. The Creation of Land Use Rights: From City Experiments to Constitutional Amendment

Before 1979, land was controlled by the state and used by various government units for free according to the understanding of Marxism that price mechanism was inapposite after abolishing private property. However, with the implementation of the reform and opening-up policies, the state ownership of land must be given a richer understanding than under Marxism orthodoxy. First, a complete abolition of private property and land rents tended to be difficult to implement. Challenges arose when foreign investment entered into China. Early in 1979, the Sino-Foreign Joint Enterprise Law provided that Chinese investment in the joint enterprise could include the right to use the factory land. If the right to use the factory land was not part of the Chinese investment, the joint enterprise should pay use fee to the Chinese government. In 1980, Guangdong Regulation of Special Economic Zones also provided that overseas investors should pay land use fee for their use of land within special economic zones. These stipulations departed from the Marxism orthodoxy that land was not commodity, but were exceptions to the rule rather than the norm.

It was the cities at the frontier of reform and opening up that blazed a road of land use reform. On December 31, 1979, the Director of the Shenzhen Municipal Construction Commission signed a contract with a Hong Kong investor, which was to “build a new residential zone for overseas Chinese in the form of compensated trade” in Shenzhen. “Compensated trade” was used in China in the early period of opening-up as a form of foreign investment, in which the Chinese party compensated the foreign investment with profits of the joint enterprise and took the control of the enterprise back from the foreign investor after all the foreign investment was compensated. In this case, it meant the Shenzhen municipal government contributed land and the Hong Kong investor contributed the financing of the land development and the latter would share a fixed percentage of the benefits. On December 5, 1980, Shenzhen Municipal Construction Commission signed the first “land use fee” contract with a Hong Kong investor, which included the essential contents of today’s standard contracts of assignment of state-owned

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32 Article 5 of the 1979 Sino-Foreign Joint Enterprise Law.
33 Article 12 of the 1980 Guangdong Regulation of Special Economic Zones.
35 Feng Jie, Two Decades of Shenzhen Land Administration, Shenzhen SEZ Daily, available at http://www.szpl.gov.cn/xxgk/gzdt/zwdt/200908/t20090825_46190.html
land use rights between local governments and real estate developers, including the term (30 years in this contract) and price of the land use (HKD 5000 per square meters).  

Law-making and the practice of land use fee discussed above could be counted only as a prologue because of the limited scale, which however, turned out to be a beginning of a norm cascade.  

Shenzhen, the first special economic zone of China, went the first step further. In November 1981, it made its own regulation of land administration, which extended the charge of land use fee from foreign investors to all users of land within Shenzhen. In the post-Mao era, cities all over the country met financial difficulties, i.e., local governments were called to build modern cities but found no money to do that. Nevertheless, it took three years for non-SEZ cities to follow Shenzhen’s exploration. In 1984, the CCP changed the definition of socialist economy from “a planning economy with subsidiary market modulation” (jihua jingji wei zhu, shichang tiaojie wei fu) to “commercial economy with planning.”(you jihua de shangping jingji) This change of tune in the central government obviously encouraged Guangzhou, a central city in Southern China and Fushun39 in Northern China to charge fee from land users. In the same year, Beijing and Shanghai also prepared plans for charging land use fee. Land use fee was an attractive idea to local government leaders who needed money urgently for urban construction.  

However, without a land market, the standard of land use fee was fixed by law arbitrarily and applied to all land use projects. Users that valued the land most did not have an opportunity to reveal their willingness to pay higher prices. Shenzhen, as the first city to charge land use fees, also felt the constraints of land use fee first. After studying the crown land sales in Hong Kong carefully, the Shenzhen government sensed vividly of the money-generating power of a land market. It wanted to sell land and made a smart slogan that “no land market, no complete commercial economy,” in response to the CCP’s calling for building a commercial economy with planning. This reform encountered an ideological challenge from Marx: should a socialist country that abolished private property sell land? In response, the reformers separated land use rights from land ownership. Local reformer checked the classics by Marx and Engels page by page and found a word of Engels as support: “abolishing private ownership of land does not require abolishing land rents; rather it requires submitting land rents to the society.” Thus selling land use rights on one hand would not challenge the state land ownership in China and on the other hand could realize land rents.  

In 1986, Wang Xianjin, the first Director of the newly-established State Bureau of Land Administration (“SBLA”) for his enthusiastic support of the HRS in rural China, went to Shenzhen to investigate how to further reform land use system and was persuaded by the Shenzhen local government on land sales. At the same time, the Shanghai government also did some research on land use reform. These initial explorations helped spread the practice in

36 Id.  
40 HUANG XIAOHU ED., LAND ADMINISTRATION IN PRC VOL. 2, 122-3 (2005).  
41 Article 16 of the Interim Regulations on Land Administration in Shenzhen Special Economic Zone.  
42 See Nissim, Roger. Land administration and practice in Hong Kong. Hong Kong University Press, 2008.  
43 Two Decades of Land Administration in Shenzhen, supra note
Shenzhen to other parts of the country. In November 1987, the SBLA submitted a report of experimenting land sales in nine cities to the State Council, which was very quickly approved. While a plan of local experiments were still in discussion within the central government bureaucracy, Shenzhen held the first public auction of transferrable land use rights in the history of PRC on December 1, 1987. On January 3, 1988, People’s Congress of the Guangdong Province, where Shenzhen was located, promulgated the Land Administration Regulation of Shenzhen Special Economic Zone, which authorized the transfer of land use rights, in direct conflict with the then effective Land Administration Law (“LAL”) and Constitutional Law.\textsuperscript{44}

The SBLA was authorized by the State Council to organize experiments all over the country after the first public auction of land use rights in Shenzhen.\textsuperscript{45} Following Shenzhen, experiments in Shanghai, Fuzhou and Xiamen were also great successes. Political consensus on transfer of land use rights was quickly achieved. On April 12, 1988, the People’s Congress of China made a constitutional amendment to allow transfer of land use rights. On December 29, 1988, the LAL was made a similar amendment.

The 1988 amendments of the Constitution and LAL removed the legal barrier of selling land use rights for local governments. On May 19, 1990, the State Council promulgated detailed rules governing the sales of land use rights from the government and the transfer among land users, i.e., the Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas, which is still effective today. It confirms that the transfer of land use rights is the responsibility of city and county governments.

Recognizing that the success of the urban land use reform was largely up to the attitudes of city government leaders, the central government held training lessons for city mayors all over the country in the Central Party School and persuaded them that land was the mother of wealth, the key for economic development. It did not take long for city governments all over the country to realize the huge wealth embedded in this urban land use reform, which motivated local governments as enthusiastic promoters of sales of land use rights. Their enthusiasm for selling land soon turned out to be not too little, but too much. The biggest challenge to the central government soon became how to regulate the local governments’ land use power.

B. The Central-Local Distribution of Land Sales Revenue

The 1988 amendments had said nothing about the distribution of land sales revenue. However, as land use reform was initially experimented by several city governments, at the beginning, city governments controlled the land sales revenue for their own uses. This situation soon changed: the central government as the ultimate owner of state land promulgated a notice on May 12, 1989, providing that 40% of the land sales revenue should be submitted to the central government.\textsuperscript{46}

\textsuperscript{44} The Land Administration Regulation of Shenzhen Special Economic Zone (The People’s Congress of Guangdong Province, December 29, 1987).


\textsuperscript{46} State Council Notice on Strengthening Management of Revenue from Transfer of State-Owned Land Use Rights (May 12, 1989).
This promulgation was resisted by local governments, which not only tried to hide their land sales revenue from the central government, but also threatened to stop land use reform as they gained little from it. Due to the large number of cities, the central government actually had no way to know how much land sales revenue each city had collected. As a result, a bit more than one year later, on September 26, 1990, the Chinese Ministry of Finance promulgated another notice, which stipulated that the central government would return its share of land sales revenue to local governments for urban construction. For over a dozen cities that had been designated as special economic zones or coastal port cities, the central government would return 85%-99% of its share in land sales revenue to the corresponding cities. The reasons for the central government’s concession were clear: “to promote the transfer of state-owned land use rights and to consider the practical situation of local governments.”

On September 21, 1992, the Ministry of Finance promulgated another notice regarding the distribution of land sales revenue between the central government and local governments, which made some adjustment to the previous notice, but still granted most of the revenue to local governments. A more fundamental change came at on December 15, 1993, when the State Council promulgated a decision that re-divides the tax power of the central government and local governments in an effort to benefit the central government’s finances. Taxes since then have been divided into state taxes and local taxes. The central government established its own tax collection agencies all over the country. Land sales revenue, which had proved to be hard to collect without the assistance of local governments, was completely conceded to city/county governments.

This was not the end of the bargaining on the distribution of land sales revenue between the central and local governments. On April 15, 1997, in a notice of the CCCC and the State Council on the preservation of agricultural land, the central government decided that all revenue from the increased construction land (i.e. urban construction land converted from rural land) should be submitted to the central government and used in the development of land for agricultural use. It hoped that--by depriving the incentive of local governments to requisition agricultural land, it could achieve the purpose of agricultural land preservation. This attempt of the central government led to a bargaining between central and local governments in the 1998 LAL revision.

The 1998 LAL revision was the direct product of the above notice. However, in the first draft of the LAL revision (songshen gao), which was submitted by the SBLA to the Bureau of Legal Affairs of the State Council (“BLA”) on August 18, 1997, the proposal was changed so that forty percent of the revenue from rural-urban land conversion should be submitted to the central government. The reason was that, after the SBLA submitted the first draft to the BLA, the latter solicited comments from local governments, other departments of the central government, legal experts and so on. Under the prevalent opposition of local governments, the BLA made the above change. The BLA then submitted the revised draft to the National People’s Congress,

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47 Ministry of Finance Notice on the Revenue of Transfer of State-Owned Land Use Rights Submitted to the Central Government (September 26, 1990).
48 Id.
49 State Council Decision on Implementing Tax Division in Finance Administration (December 15, 1993).
50 CCCC and State Council Notice on Strengthening Land Administration and Preserving Agricultural Land (April 15, 1997).
51 Zhang Qingyong, Vertical Fiscal Competition, Bargaining, and the Land Revenue Sharing Relationship
which publicized the draft for public opinions. Again, according to the official interpretation of the 1998 LAL, edited by Bian Yaowu, then the deputy director of the Committee of Legal Affairs of the NPC (“CLANPC”), “The ratio of the central-local distribution of the revenue from increased construction land was quite controversial in the discussions.” Local governments suggested that the ratio submitted to the central government should be lowered according to various reasons. Nevertheless, in the third meeting of the Standing Committee of the Ninth National People’s Congress on June 24, 1998, the CLANPC suggested that the ratio of 40% should be kept for the purpose of more efficient use of urban land and preservation of agricultural land. However, in the fourth meeting two months later, this ratio was finally lowered to 30% due to the suggestions of some local governments and members of the Standing Committee of the NPC, which was eventually adopted. The 1998 LAL revision proved that local governments had substantial control and bargaining power over the distribution of land revenue. It is because the central government has to rely on local governments, mainly city and county governments, to actually manage state-owned land, which gives them great leverage in the making of national land laws and policies. In the daily land administration, the central government also faces frequent challenges from local governments.

C. Regulating Local Governments’ Land Use Power

Even before the 1988 constitutional amendment that allowed transfer of land use rights, illegal land use by local governments has been a problem: as land could be requisitioned at relatively low prices, local governments always had incentives to requisition more land than they need. This problem became more urgent after the legal authorization of a land use market in 1988, as local governments had more incentives to requisition land due to the profits from land sales. The effect of such incentives became more pronounced after 80-year-old Deng’s southern tour to fight against the revival of conservatives within the Party and to encourage further economic reform in 1992. The total area of land of which use rights had been transferred increased from 1,000 hectares in 1991 to 21,900 hectares in 1992, and 57,300 hectares in 1993. Deng’s southern tour initiated an economic frenzy, including a real estate bubble. In 1992 and 1993, local governments planned more than 10,000 development zones all over the country, the total area of which was about 15,000 square kilometers, roughly equal to the total built-up area of all Chinese cities at that time. In 1992, the growth rate of real estate investment was 117.42% and in 1993 was 164.98%. In Hainan province, the heart of the real estate bubble, the housing price grew from RMB 1,400 per square meters in 1991 to RMB 5,000 in 1992 and to RMB 7,500 in 1993. Local governments and real estate developers made a lot of money from this bubble.

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Those speculators who successfully withdrew from the bubble before its burst are running the biggest real estate companies in China today. The chaos and overheating of the real estate market and the whole economy panicked the central government whose dampening measures eventually burst the bubble.

It was also in this process that the central government’s control over land use confronted serious challenges, which came from two aspects. First, state-owned land was under control of different government agencies, government-affiliated institutes and state-owned enterprises. Once there was a market of land use rights, all these players had incentives to profit from the transfer of the use rights to the state-owned land under their control. What’s more, they continued to apply for state-owned land under the name of their uses, but actually for future profit-making transfers. Though China had allowed transfer of state-owned land use rights, it did not abolish the land assignment system, in which different kinds of public agencies, including state-owned enterprises, could get land for free. What’s worse, as collectively owned land can be requisitioned and converted to state-owned land, various government agencies requisitioned rural land without clear authorization. Second, city and county governments requisitioned land beyond their power without applying for approval from upper level governments. Local governments’ land use almost went beyond the control of the central government.

When the value of land use rights was recognized while there was no clear definition and enforcement of state land ownership, a rush to grab and develop state-owned land, including land requisitioned from farmers, occurred. This resulted in both the above real estate bubble and rapid decrease of agricultural land. There was a significant risk of the tragedy of the commons due to the incomplete definition and enforcement of state land ownership.

In numerous notices and regulations, the SBLA emphasized that it must “strengthen the high monopoly of transfer of land use rights,” (“jia qiang dui tu di chu rang de gao du long duan”) and “approval of land requisition with only one pen” (“yi zhi bi shen pi”). The SBLA devoted a lot of resources to build a system that centralized the control of use of state-owned land within the government system and did not tolerate land use outside of the system it was endeavoring to build. As we will see in the following, this has had great effect on rural land use reform under discussion.

III. Rural Land Use Reform

A. Rural Land Transfer Is Nothing New

The first decade of China’s economic reform began with the establishment of the HRS, which liberated households from the people’s communes and greatly increased agricultural productivity. The need for better housing came immediately after satisfying the need for food. In the early 1980s, farmers all over the country began to devote their savings from agriculture into

61 Id.
62 SBLA’s Notice on Further Promoting Land Use Reform (June 25, 1992); SBLA’s Emergent Notice on Strictly Approving Land Use (July 31, 1992); SBLA’S Reply on Legal Issues Regarding Commercial Real Estate Development (October 16, 1992).
building houses. The saying was that “each family was in preparation; each village was under construction.” (jiajia beiliao, cuncun dongtu). In 1980, the total area built was 500 million square meters and in 1981 it was more than 600 million square meters. Within only two years, Chinese farmers built one square meter for each person in China. China had no specialized land administration agency before 1986. Farmers only had to apply to leaders of their villagers’ groups and would get a plot of residential land for free. In many cases, even this minimum approval procedure was ignored by farmers, who just built on the land contracted to them by villagers’ committees. The building of rural houses was out of the state economic plan and thus under the radar of local governments. Generally, local governments saw no need to regulate housing building in rural area—farmers used their own money to build houses, what was wrong? Actually, local government officers also joined this trend and became a main force in rural housing development. Average housing area per person in the urban area had decreased from 4.5 square meters in 1949 to 3.6 square meters in 1978. The central housing planning system could not even afford a spacious apartment to a city mayor. It would take several years to reform the urban housing sector to provide enough apartments to employees of the government and other state sectors. This unsatisfied demand for housing could only be met by rural housing development. The central government publicly acknowledged that the leading role of local government officials was one main reason for the rural housing fever. In the effort to cool down this rural housing fever, the central government had to discipline many local government leaders who were involved in rural housing development. For example, in 1982, the Office of the State Council (“OSC”) circulated a brief report from Jinjiang prefecture of Fujian Province, which punished one deputy party-secretary of the city and one vice mayor for their building of houses in the rural area.

Unsurprisingly, when the urban demand met the rural supply of housing, real estate transactions occurred, not just between individuals, but even between institutes. On Feb. 18, 1982, the OSC circulated an investigation report among departments of the State Council. According to this report, six central government agencies rented 310 rooms from rural hotels, 16 agencies bought or rented other rural housing in the area of 60,000 square meters, which occupied 200 mu rural land. These houses had been used for office, training, dormitory, and many other uses. These government agencies either rented houses from rural collectives, or bought houses directly, or bought land to develop by themselves, or contributed money to a rural housing project and got part of it at the end. These transactions were prohibited, but constituted a real estate market. It was not unusual to see competition between market participants and profit-driven behaviors of rural collectives in housing development.

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63 CCCCP, Summary of Minutes of the Second Rural Affairs Conference (1982).
64 Id.
65 Id.
67 OSC Forwarded Notice of the Ministry of Urban and Rural Construction and Environmental Protection on the Rural Housing Fever in Jinjiang of Fujian Province (September 17, 1982).
68 Summary of Minutes of the Second Rural Affairs Conference (1982).
69 OSC Forwarded Notice of the Ministry of Urban and Rural Construction and Environmental Protection on the Rural Housing Fever in Jinjiang of Fujian Province (September 17, 1982).
70 OSC Forwarded Notice of the Bureau of Agencies on Renting and Buying of Rural Real Estate by Some Central Government Agencies (February 18, 1982).
71 Id.
This market was not a result of intentional reform. At the beginning, the central government was short of effective response. On April 17, 1981, the State Council promulgated an emergency notice restating the illegality of land transactions.\textsuperscript{72} It also initiated campaigns all over the country to deter rural land development, including the campaign against government employees involved in rural land development.\textsuperscript{73} The central government also realized the importance of making general laws to regulate rural land development. The effort to build a system of rural land administration in this period was under the tension between the preservation of agricultural land and rural economic development. In 1982, two landmark regulations were passed in the State Council. One was the 1982 RRLSC, which stipulated that rural land must be requisitioned to be used in urban construction and prohibited any form of buying or renting rural land.\textsuperscript{74} The other one was the Regulation on Rural Housing Construction Administration ("RRHCA"), which instituted an approval procedure for rural housing construction. The approval power was within the people’s commune (later the township government) and the county government’s approval was required if agricultural land was used.\textsuperscript{75} It also required rural land to be requisitioned for non-rural uses. However, it made exceptions for several kinds of urban population to build houses in the rural area. Overseas Chinese, retired urban employees and military employees could build houses in their hometowns. The more meaningful exception was for non-agricultural population in towns. They could “negotiate with” (\textit{xieshang}) the production teams to get a residential plot, subject to the same approval procedure as production team members applied for residential plots.\textsuperscript{76} This exception was due to the small-town urbanization strategy in that period. Generally the idea was that China should be urbanized by building small towns in the rural area. This strategy was further clarified in the No. 1 document of the CCCCP and the State Council in 1985, which permitted rural economic organizations to build hotels and other facilities to make profits.\textsuperscript{77}

On March 21, 1986, the State Council promulgated a notice on strengthening land administration and deterring unapproved agricultural land development. It said that rapid decrease of agriculture land would bring harm to the people and the country in the long term. The reason for the rapid decrease of agricultural land, according to this notice, was the weakness of land administration: some units requisitioned too much and used too little; rural people developed land without any approval; local government officials approved land use beyond their authorization; some people transferred land unconstitutionally.\textsuperscript{78} To deter this trend, the State Council required all levels of the local government to assess their land use since the promulgation of the 1982 RRLSC to discover and stop illegal land use.\textsuperscript{79} The most lasting effect of this notice, however, was to set up the SBLA, the main purpose of which was to regulate land use and prevent waste of agricultural land.\textsuperscript{80} In the same year, the NPC passed the first comprehensive land administration law in China, which became effective since 1987. The 1987 LAL, on one hand, restated the prohibition on the alienation of land; on the other hand, permitted

\begin{itemize}
  \item \textsuperscript{72} State Council Emergency Notice on Stopping Development of Agricultural Land for Rural Housing (April 17, 1981).
  \item \textsuperscript{73} Summary of Minutes of the Second Rural Affairs Conference (1982).
  \item \textsuperscript{74} Article 2 of the 1982 RRHCA.
  \item \textsuperscript{75} Article 13, 14 of the 1982 RRHCA.
  \item \textsuperscript{76} Article 18 of the 1982 RRHCA.
  \item \textsuperscript{77} CCCCP and State Council on Ten Policies to Further Stimulate Rural Economics (January 1, 1985).
  \item \textsuperscript{78} Id.
  \item \textsuperscript{79} Id.
  \item \textsuperscript{80} Id.
\end{itemize}
rural collective organizations to use rural land to cooperate with urban enterprises.\(^{81}\) It seemed to be an imitation of the urban land use reform, which began with allowing state-owned land as a form of investment in Sino-foreign joint enterprises.\(^{82}\) The 1987 LAL also permitted urban residents to build houses in rural area, subject to the approval of the county government and paying fees according to the standard of land requisition by the state.\(^{83}\)

In the initial period of China’s economic reform, Chinese farmers and their collectives developed and transferred rural land to realize their potential use and commercial value, which was not essentially different from Chinese city government’s experiments with commodification of urban land. Land commodification in both the urban and rural area challenged the old legal and ideological systems, and there was reason to believe that land commodification, whether in the urban or rural area, would be achieved at the end. Both the central government, as revealed in the exceptions made in the 1982 RRLSC and the 1987 LAL, and the local governments, as revealed in their connivance in rural land development and transfer, showed willingness to tolerate farmers’ development and transfer of rural land, in particular those caused by social and economic needs legitimate in their views.

B. Rural Land Transfer Is Not Legalized

In 1988, the NPC passed amendments to the Constitution and the LAL. Both laws removed the prohibition on land rents and added a clause permitting the transfer of land use rights, essentially a form of land renting. The 1988 Constitution amendment says land use rights can be transferred according to law. The 1988 amendment to the LAL states it more clearly—rights to use both state land and collective land can be transferred according to law and the State Council would make specific regulations on the transfer of land use rights. However, the added Section V, Article II of the LAL only says that the state implements state land use with consideration and does not mention the collective land use with consideration. In the report to the Standing Committee of NPC, the Deputy Commissioner of the Committee of Legal Affairs of the NPC, Lin Jianqing revealed the reason:

“Regarding the use of collective land with consideration, some central government departments and local governments raised that the main task of deepening rural reform was perfecting the household responsibility system (HRS); implementing use of collective land with consideration might alter the HRS and also raises all kinds of concrete questions; different regions are at different levels of development and have different land management systems, which makes it hard to settle down the details of use of collective land with consideration. We could firstly experiment with collective land use reform in some places and leave the laws untouched. In this way, we can further explore and accumulate experiences to deepen rural reform.”\(^{84}\)

The reasoning against rural land use reform is understandable. HRS was the focus of rural reform or even the overall economic reform through the 1980s. It is widely regarded that China’s economic reform began with villagers’ experimentation of the HRS in Xiaogang, Anhui

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\(^{81}\) Article 36 of the 1987 LAL.  
\(^{82}\) See Part  
\(^{83}\) Article 41 of the 1987 LAL.  
in 1978. It was first incorporated into the first No. 1 Document (yi hao wen jian) of the CCCC in 1982. The HRS gives individual rural households relatively secure rights to farm over the land they contracted from the rural collectives and has rid China, a country that experienced 30-million death in the famine of the Great Leap Forward, of the threat of hunger.\textsuperscript{85} The great increase of agricultural productivity also boosted the rise of township-village enterprises and built the foundation of reform in the urban area. Using the words of the CCP—“First to eat; second to construct.” (yi yao chi fan, er yao jian she) Therefore, the Chinese government put the security of the HRS at the very high priority of its agenda. Even in the late 1990s, the central government promulgated several regulations to protect the security of the HRS.\textsuperscript{86} Going back to 1988, in which time the HRS had been only formally recognized no more than six years, villagers’ rights to the contracted land were still often violated by village collectives despite the central government’s strict prohibition against that and villagers were further worried about the credibility of the central government’s commitment to protecting their rights. Land use reform, to the Chinese government, was a form of renting out land by the owner. In the urban area the owner was the state and in the rural area was the village collective. Implementing a land use reform in the rural area would mean granting village collectives the right to transfer use rights to the rural land, most of which had been granted to individual households through the HRS. Thus rural land use reform would necessarily incur rearrangement rural land rights towards the direction of strengthening the control of the village collectives, which would jeopardize the security of villagers’ rights to farm the contracted land. This is a risk the central government would not take.

C. Experiments in Early 1990s

1. Top-down Rural Land Use Reform Experiments

As indicated in Lin Jianqing’s report to the Standing Committee of the NPC, the Chinese government could experiment with collective land use reform in some places. While focusing on urban land use reform, the SBLA did experiment with rural land use reform after the revision of the LAL in 1988, which consisted of two types: one was charging fees for using rural land for township and village enterprises and carried out in more than 20 counties all over the country; the other was charging fees for rural residential land. Following are two representative local experiments.

\textit{The Jinan Experiment of Charging Land Use Fee from Township and Village Enterprises}\textsuperscript{87}

On April 15, 1992, the SBLA circulated two documents on rural construction land reform of Jinan City and called for other cities to learn from Jinan.\textsuperscript{88} From the documents we can get an image of the experiment.

\textsuperscript{86} State Council Forwarded Notice of the Ministry of Agriculture on Maintaining and Improving Land Contracting Relationships (March 28, 1995); CCCCP Office and OSC Notice on Further Maintaining and Improving Rural Land Contracting Relationships (August 27, 1997).
\textsuperscript{87} SBLA Forwarded Two Documents from Jinnan City on Charging Land Use Fee from Township and Village Enterprises (April 15, 1992).
\textsuperscript{88} Id.
• Purpose: Make use of economic ways to control the non-agricultural use of rural land; preserving agricultural land; raise money for rural construction.

• Who Paid land use fee? Profit-making individuals and enterprises that used collectively owned rural land; most were villagers or village collectives which had not paid any money for using rural land before the experiment.

• Who collected land use fee? Township Land Administration Office

• Who used land use fee? Should be used for public facility investment and agricultural land protection in villages, but subject to the approval of township governments; 10% as management fee for township or county governments.

The overall plan of the Jinan experiment was made by the Jinan City Bureau of Land Administration in response to the SBLA’s call for charging rural land use fees, and approved by the Jinan City government. From the plan of this experiment, we can see that this top-down experiment is far from a proposal to grant farmers more land rights. Rather it was a plan to realize the SBLA’s purpose of protecting agricultural land, and local governments’ need for public finance. Neither the collection nor disposal of land use fees was in the control of farmers or their collectives. The fees for using rural land for construction were collected by the township office of land administration, set up by the land administration agency of the county governments. As a result, villagers, either collectively or individually had to pay a fee for their non-agricultural use of rural land, which they had not had to pay at all as collective owners of rural land.

The Zhejiang Experiment of Charging Rural Residential Land Fee

Until March of 1991, the residential land reform had been implemented in more than 27 provinces. Zhejiang was one of them. Following were the main contents of the Zhejiang experiment.

• Purpose: Protection and reasonable use of agricultural land

• Who Paid Land Use Fee? Villagers who used residential land

• Who collected land use fee? Village collectives

• Who used land use fee? Although village collectives were distributed 85% of the fee, all of the collected fee should be sent to township finance for uniform management, which made the control and disposal of land use fee in the hands of township governments rather than village collectives.

Overall the Zhejiang experiment was initiated by the Zhejiang Bureau of Land Administration in response to the SBLA’s call for experimenting with charging rural residential land use fee. The main purpose was to preserve agricultural land. It was said in the experiment report that if the experiment was implemented province-wide, it would save about 50,000 mu agricultural land. As the entire fee was subject to the uniform management and control of township governments, thus the same as the Jinan experiment, it was a top-down experiment that served the purpose of land administration. Neither were farmers or their collectives granted more complete rights, even after they paid the land use fee.

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Though both reforms were implemented in the early 1990s, right after the 1988 amendments of constitution and LAL, the real background was the decrease of agricultural land caused by rural economic development. According to the SBLA, from 1985 to 1988, rural construction took one third of the total area of agricultural land that was developed in the same period. (The other two thirds were devoted to urban construction.)

Overall these experiments were initiated by the SBLA and local governments, rather than by farmers or their collectives. Land use fee is collected and managed by the township government. Although it was said that villages should get the majority of the revenue, they had no control over the collection and disposal of the revenue. Thus it is hard to say that the charge of land use fee is a step towards more complete property rights for Chinese farmers. At the end, both experiments were stopped by the CCCP as they constituted a kind of financial burden for farmers. The purpose of these experiments was to build a uniform system to control rural land use. As said in a notice of the SBLA, for rural construction land, it should implement a system of uniform planning, uniform takings, uniform development, uniform transfer and uniform administration. Granting more complete rights to individual farmers or even to village collectives would not serve this purpose. The potential conflict between granting farmers rights to transfer their land and urban land use reform had been noted in the urban land use reform process and was eventually the downfall of rural land use reform. The conflicts came from two aspects: the challenge of individual or decentralized property rights to a uniform land administration system; and the competition of interests in land supply.

2. The Incompatibility of Rural Land Use Reform with Urban Land Use Reform

Although the 1988 amendments of the constitution and the LAL had legalized transfer of urban land use rights, the Chinese government still needed to build a functioning land administration system. The ambiguity of property rights under the public land ownership brought a lot of trouble to the SBLA, which only set up in 1986, before which China did not even have a centralized agency in charge of land administration. The chaos of the whole land use system was exemplified in the 1992-93 real estate bubble. Different kinds of public agencies and institutes were rushing to the real estate business. The main source of the land was rural land. Public is a vague word. Any public agency or institute could fake a need for construction, according to which it requisitioned rural land, and then devoted it to the real estate sector. Of course, farmers and their collectives did not hesitate to develop their land when there were profit-making possibilities. In a word, when the old system of land use in a planning economy was collapsing without either a clear definition of property rights or delineation of land administration power present, rural land became commons for relevant parties to grab.

90 State Council Forwarded SBLA Notice on Strengthening Administration of Rural Residential Land (January 3, 1990)
91 CCCP Office and OSC on the Financial Burden of Farmers in 1993 (No. 9, 1994); CCCP Office and OSC on Examination of Projects Related to Farmers’ Financial Burden (July 22, 1993).
93 SBLA Notice on Seriously Implementing State Council’s Order to Stop Developing Agricultural Land for Real Estate Industry (No. 182, 1992).
94 See part II, at the end paragraph.
95 See part IIC.
Against this background, the SBLA and local governments endeavored to centralize the land administration power within their hands and to eliminate any use of land outside of their control. This effort was due to both the intention to have a functioning land administration system and financial incentives.

Local governments sensed acutely the need to monopolize land use supply. For example, early in 1989, Fujian provincial government emphasized in a notice that city and county governments must monopoly the primary market of land use rights; rural collectively owned land must be requisitioned to be state-owned land to be transferred.\(^96\) In 1992, the Jilin Provincial government emphasized that the land administrative agency was the representative of state land ownership for the same-level government, and in charge of the requisition and transfer of rural land. All other agencies and institutes, including rural collective economic organizations should not transfer land use rights directly.\(^97\)

To cool the 1992-93 real estate bubble, the SBLA promulgated an emergency notice on July 31, 1992, emphasizing that the transfer of land use rights must be highly monopolized. On November 4, 1992, the State Council promulgated a notice, providing that collectively owned land must be taken to be state-owned before being transferred. This stipulation attempted to close the door opened by the 1988 constitutional amendment for transferring use rights to collectively owned rural land.\(^98\) To further eliminate any transfer of land use rights outside of the urban land system, the notice also clarified that while rural collective economic organizations could invest their land in foreign-invested enterprises and township-village enterprises, the land shares were non-transferrable.\(^99\)

From paragraphs of this notice, we can see that there is a direct link between rural and urban land use reforms. The choice was: whether to allow farmers to sell rural land use rights, or to require rural land to be requisitioned before being transferred. There was no middle ground or time for delay: once the transfer of urban land use rights created a market of land use rights, buyers would be interested in all land—both urban land and rural land. The more the urban land market grows, the more there is a demand/speculation for rural land transfer. That’s why in 1992 the State Council had to make it clear that collectively owned rural land must be requisitioned before being transferred. It was not ready for the other option of allowing the transfer of rural land.

On July 26, 1993, about one month after the burst of the real estate bubble,\(^100\) the SBLA promulgated another notice emphasizing the so-called monopoly of land sales. According to the SBLA, without the strong monopoly of land sales by the government, the use of land for construction would greatly exceed the planned quota.\(^101\) The 1993 notice clarified that without further reform, rural land must be requisitioned by the government before being transferred.\(^102\) It also emphasized that development of agricultural land must be strictly controlled.\(^103\) In 1994 the

\(^{96}\) Notice of Fujian Provincial Government on Experiments on the Assignment and Transfer of State-Owned Land Use Rights (No. 37, 1989).

\(^{97}\) Notice of Jilin Province on Strengthening Management of Assigned State-Owned Land Use Rights (May 3, 1992).


\(^{99}\) Id.

\(^{100}\) SBLA Notice on Strengthening Macro Regulation of Real Estate Market (No. 120, 1993).

\(^{101}\) Id.

\(^{102}\) Id.

\(^{103}\) Id.
State Council promulgated the Regulation on Protection of Basic Agricultural Land, which required local governments to mark some land as basic agricultural land and made stricter approval procedure for developing this kind of land.104

In 1995 the SBLA proposed experiments in eight provinces that rural land must be requisitioned before being converted to non-agricultural uses.105 According to the SBLA’s proposal, the first two principles of the experiments were (1) to protect agricultural land from being used non-agriculturally, and (2) to facilitate the government monopoly over land supply for a unified socialist land market. The essential content was that transfer of rural land for non-agricultural use must be subject to strict approval and the land must be requisitioned first.106

The efforts to protect agricultural land, to build a uniform land administration system, and to monopolize land supply led to the 1998 comprehensive revision of the LAL.

D. 1998 LAL Revision: The Strictest Land Use Control System in the World

In 1997, the CCCCP and the State Council decided to freeze the non-agricultural use of agricultural land for one year to finish the revision of the LAL.107 According to the deputy director of the revision team, the purpose was to build the strictest land use control system in the world to preserve agricultural land.108 The revision established several mechanisms to achieve this purpose. The first was to control the total amount of land development by planning. The central government would plan on how much land to be developed in the fixed number of years all over the country. The current effective plan has been made for 2006-2020.109 Local (province, city, county and township governments) will then make plans of land use within their jurisdictions according to the national plan and the plan of higher-level governments, subject to the approval of the central government or the province-level governments.110 Each year, local governments also make annual land use plans, which are subject to the approval of the higher-level governments.111

The second one was categorization of land into three kinds: agricultural land, construction land and unused land and the strict control over converting agricultural land to construction land.112 Province-level governments should guarantee that the amount of agricultural land would not be decreased; otherwise the State Council would require them to create agricultural land equal to the decreased amount.113 The conversion of agricultural land to construction land will have to be approved by either the State Council or province-level governments.114 The 1998 revision also centralized the approval power of land takings to the

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104 See 1994 Regulation on Protection of Basic Agricultural Land.
105 SBLA on Non-Agricultural Collectively Owned Land Should Be Requisitioned Before Being Transferred (July 21, 1995).
106 Id.
107 CCCCP and State Council on Strengthening Administration and Protection of Agricultural Land (April 15, 1997).
110 Article 21 of 1998 LAL
111 Article 24 of 1998 LAL; Regulations on Annual Land Use Plan.
112 Article 4 of the 1998 LAL
113 Article 33 of the 1998 LAL
114 Article 44 of the 1998 LAL; Gan Cangchun, at 38.
province-level governments and the State Council. In summary, after the 1998 revision, the requisition of a plot of agricultural land needs to satisfy three requirements: consistency with the land use plan, approval of converting agricultural land to construction land, and the approval of land requisition.

Under the supreme goal of preserving agricultural land, the 1998 revision left little room for the transfer of rural land use rights. It revised Article II of LAL from “use rights to the state-owned land and collective-owned land can be transferred according to law” to “land use rights can be transferred according to law.” The intentional deletion of “collective land” signaled a change of tone: the former one was basically pro transfer of rural land use rights, subject to further law reform; while the latter deleted that option. Further Article 43 of the 1998 LAL says that

“any unit or individual that needs to use land for construction must apply for the use of state-owned land in accordance with law; however, use of collectively owned rural land for township and village enterprises, construction of village residences, or public facilities is allowed subject to approval according to law.”

This article makes the transfer of rural land use rights for non-rural uses impossible according to law, despite the still effective 1988 constitutional amendment on land use rights. Under this article, there are only three situations in which collectively owned land can be used for construction: township and village enterprises, construction of village residences, and public facilities.

Article 63 of the 1998 LAL was even clearer: “The right to use land collectively owned by farmers shall not be assigned, transferred or rented out for non-agricultural construction.”

In the official interpretation of this article, it states very clear the purposes of the prohibition on rural land transfer:

“First, allowing collectively owned rural land into the market would influence state-owned land use reform. As land market was just established in our country, the government’s regulation of the market is yet well-functioning; the real estate fever and development zone fever

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115 Article 45 of the 1998 LAL.
in previous years have created much vacant unused land; allowing collectively owned land into the market would convert more of them into construction land, creating more vacant land, which would make state-owned land use reform difficult to proceed. Second, it is for the purpose of preserving agricultural land. Township and village cadres are very enthusiastic about real estate development; without strict control there would be tons of agricultural land converted into construction land, making our purpose of preserving agricultural land difficult to achieve.”

This interpretation clarifies why top-down rural land use reform did not proceed towards transferrable land use rights for farmers: the basic purposes of the land administration system, including preserving agricultural land and land supply monopoly, are in direct conflict with individual or decentralized property rights. The parties who would benefit from individual or decentralized property rights, villagers and their collectives, were the silent majority in the whole process of the top-down rural land use reform. In the making of national laws and policies, their opinions had not much weight. During the 1998 LAL revision, the Office of the Standing Committee of the NPC solicited public comments on the revision draft, the first time since 1978, making it a precedent of open-door legislation in the post-1978 China.

In the report to the Standing Committee, suggestions on the transfer of rural land use rights were divided into two parties:

“Some mass suggest that allowing the transfer of rural land use rights is consistent with what’s happening in reality and the market demand. Some mass think that we should not allow the transfer of rural land use rights; otherwise a lot of agricultural land would be converted to construction land and farmers’ interests would be grabbed by a few people. The Committee of Legal Affairs holds that allowing rural land into the market is a very complicated issue and needs serious research and suggests we maintain the current prohibition.”

Overall, Chinese farmers’ interests in the transfer of rural land use rights were not represented in the making of national laws and policies. They are always the masses (qunzhong) whose interests should be taken care of, but are never allowed to take care of their own interests. Compared to the local governments’ huge influence in the making of national laws and policies, as seen in the bargaining on the distribution of land revenue between the central government and local governments, Chinese farmers’ influence and voice were too weak to play a role.

In the post-communist transition, partial reforms generated arbitrage opportunities arising from rent-seeking between the liberalized sectors of the economy and those still coordinated by nonmarket mechanisms. Beneficiaries of partial reform often attempt to block specific advances in the reform process that threaten to eliminate the remaining market distortions upon which their special advantages are based. Instead of forming a constituency in support of advancing reforms, these short-term winners have often sought to stall the economy in a partial reform equilibrium that generates concentrated rents.

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116 Interpretation of Article 63 of the 1998 LAL.
119 Winners Take All, 219.
120 Id., at 204.
In the background of Chinese land reform, Chinese local governments benefited from the partial land use reform, i.e., a liberalized urban land market and an unreformed rural land regime. The overall purpose of land use reform is to have a unified liberalized land market, as indicated in the 1988 constitutional amendment and other official documents. Starting reform from the urban area made sense with the historical background: local governments needed money for urban construction and the focus of rural reform was the household responsibility system. It is important to make the most powerful stakeholders of the land regime—local governments—supporters of the reform. But winners of this partial reform, local governments, sought to prolong the period of partial reform because the rents from taking land from the unreformed rural sector and selling it on the liberalized urban sector were too huge to give up.

The central government and the SBLA in particular, are concerned about preservation of agricultural land and a unified land administration system. Local governments successfully prolonged the period of partial reform by threatening the central government with the potential loss of agricultural land and the chaos of land administration that might be caused by a liberalized rural land market. These concerns, though not necessarily accurate, were well grounded and easily accepted by a central regulator. Millions of farmers did not have a say in the reform process, not to say a chance to address these concerns of the central regulator. They are the losers of this partial reform. Is there a way that these politically-weakened farmers can drive this reform forward against the opposition of local governments?

IV. The Weapons of the Weak: Increasing Illegality and Institutional Adaptation

The 1998 LAL revision consolidated the government’s monopoly over land, from which the government has accumulated huge amount of wealth. Since then, land finance (tu di cai zheng) became more and more important to the Chinese government. Land sales revenue became a major source of local government finance. From 2003 to 2012, the Chinese government requisitioned 37,400 square kilometers of rural land at an average price of about 30,000 to 40,000 RMB per mu, calculated according to the agricultural value of the land, and the total amount of revenue from selling these land on the urban market was 15.2 trillion RMB, which supported China’s rapid urbanization in the past years.

However, at the same time, land conflicts became the top causation for large-scale mass incidents (da gui mo qun ti shi jian) in China, making headlines of both Chinese media and international media. This of course pressed the Chinese central government to change its land regime. Most attention has been on the reform of the eminent domain regime. In 2010, the State Council promulgated the Regulations on the Requisition of Real Estate on State-Owned Land; a corresponding regulation on the requisition of rural real estate was said to be under discussion. The effect of such efforts is still subject to the test of time.

Mass protests are only a rare form of resistance that Chinese farmers take to contest for their property rights. An arguably more significant everyday form of Chinese farmers’ contestation for property rights – illegal rural land development and sales – has received scant attention. This part seeks to highlight the daily illegal property arrangements Chinese farmers developed to deal with the formal land administration system, and how this increasing illegality

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121 Caixin Symposium, The Success and Failure of Land Finance.
122 Lecture minutes of Zheng Zhenyuan, New Urbanization and China’s Land Reform, April 23, 2013, 7:00 pm-9:00 pm, Moot Court Room of Peking University Law School, on file with the author.
jeopardizes the normal functioning of the Chinese land administration system and causes policy adaptation at both the local and central levels. The illegally developed and transferred real estate are called “small properties” because their property rights are “smaller” (weaker) than legal properties. Following are two specific forms Chinese farmers have taken to develop and transfer rural land.

A. Township and Village Enterprises (“TVEs”)

Township and village enterprises (xiang zhen qi ye) emerged from the market rather than by law. Originally it was the township and village economic organizations that got involved in agriculture-related industries, such as the processing of agricultural produces. Later, their activities extended into other industry areas, such as family electronics, and beyond. Their organization and ownership structure has never been clearly defined. Originally, it was the township and village economic organizations that provided initial capital and equipment and organized production. Later, their control fell into the hands of individuals, mostly managers who were village cadres. As TVEs were viewed a form of public enterprises, whose status, though not as high as state-owned enterprises (SOEs), were still recognized as a form of socialist enterprises, and thus recognized and protected by law. Many Chinese entrepreneurs built their own enterprises under the auspices of TVEs.\(^\text{123}\)

TVEs, due to their more flexible management structure, were more attuned to market demand and had great advantage against the SOEs in the market of daily goods. They were the main force of China’s economic growth from middle 1980s to 1990s. Even the 1998 LAL revision, which intended to implement the strictest control of land use in the world, made land use by TVEs an exception to the prohibition on non-agricultural use of rural land. Land of TVEs is not allowed to transfer except in the situation of enterprise merge and bankruptcy. This little legal exception was made by the central government to promote the development of TVEs, but has become a main access of rural land development and transfer in local practices.

It was under the TVEs that much rural land has been developed and devoted to commercial and industrial uses, and even illegally transferred to users outside of villages, resulting in huge markets of rural land.\(^\text{124}\) Through illegal transactions, villagers were able to break the government monopoly of the land market, and promote a bottom-up institutional change. For a few Chinese local governments have experimented with granting farmers the right to transfer rural land, the prevalence of illegal transactions was a common motivation for their adaptive changes. Following, I use cases from Suzhou City of Jiangsu Province and Guangdong Province to explain how villagers’ transfer of rural land led to local governments’ policy changes.

(1) Su Zhou

Suzhou is a major city in the southeast of Jiangsu Province in Eastern China, adjacent to Shanghai Municipality. Southeast of Jiangsu is the place where township and village enterprises originated and are most highly developed. It was once called South Jiangsu Model (su nan mo shi), as a model of TVEs-driven economic development. In the late 1990s, TVEs in China has experienced a period of transformation and reform, which called for the clarification of the


enterprise ownership. Investors of TVEs became more diversified and not limited to members of the local villages. Further development of TVEs also called for making use of the land capital as a way of enterprise finance. But the 1998 LAL revision left little room for transfer of rural land, except that the land of TVEs could be transferred in situations of bankruptcy and merger. Even for this narrow exception, there is no institutional infrastructure for these transactions, such as a recording system that is common in real estate transactions.

The institutional barrier did not stop entrepreneurs in Suzhou from transferring the land of TVEs, many of which were actually owned by private entrepreneurs or even foreign investors. This market emerged even before the 1998 LAL revision. In 1997, the Suzhou municipal government found in a special investigation that transfer of rural construction land had become a prevalent phenomenon. To regulate this market, the Suzhou municipal government made a regulation to allow the transfer of rural land use rights of TVEs, far beyond the little exception made in the 1998 LAL.\(^{125}\)

(2) Guangdong

Guangdong province is a frontier of China’s economic reform, where much overseas Chinese investment is concentrated. In addition to local government requisitioning rural land and transferring to foreign investors to build factories, many villages built their own factories and rented to foreign investors in a form of long-term lease. These two tracks of economic development used to work without interfering with each other when land was abundant. However, when land became scarcer, the local governments found it more and more difficult to supply land through requisitioning rural land. By 2012, Guangdong province has requisitioned 28.457 million mu rural land, while the central government required Guangdong to keep the total amount of rural-urban land conversion within 30.09 million mu by 2020, leaving only 1.63 million mu to use in the remaining seven years, averaging no more than 0.24 million mu each year. But from 1996 to 2005, the average number of actual rural-urban land conversion was 0.48 million mu. At the city level in Guangdong, according to data in 2002, Shenzhen had developed 72.93% of its usable construction land; Zhongshan 84.24%; Foshan 87.23%.\(^{126}\) Local governments in Guangdong needed to find new source of urban construction land.

Meanwhile, the development and transfer of rural land happened in Guangdong as early as 1980s, but were not legally recognized. This illegal-used land became a potential source for urban construction land after all other rural land had almost been requisitioned by the government. Illegal building on the land also made government requisition very difficult. Local governments thus had to negotiate with farmers for the use of the land illegally transferred and developed by farmers. As a result, in 2005, the Guangdong provincial government promulgated No. 100 Decree, titled Guangdong Province Regulations on Transfer of Collectively Owned Construction Land Rights, explicitly saying that collectively owned rural construction land can be transferred the same as state-owned land according to the principle of “the same land, the same price, the same rights.”\(^{127}\) This is the only province-level decree that has allowed the

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125 Wu Ye et al., Resolving a New Problem: Wuhu Experiment on Transfer of Collectively Owned Construction Land, China Land, No. 4, 2001, at 14-16.
transformation of rural construction land, being called a groundbreaking move in China’s rural land use reform, which also goes against the national prohibition.

B. Agricultural Construction

As Article 63 of the 1998 LAL says that rural land use rights shall not be assigned, transferred or rented out for non-agricultural construction, many rural real estate business in China take the form of agricultural construction. One typical form of small properties is called Greenhouse-Farm Houses (in Chinese, “da peng fang,” “GFH” hereinafter). This kind of projects appears as greenhouse farms, part of which are buildings for storage and housing for farm employees. It is possible to get this kind of projects approved by the government as Chinese government has promoted agricultural investment in recent years. There have been a lot of investments in greenhouse farms, which are legal and provide vegetables to big cities. In Beijing, the municipal government has publicized over a dozen small-property neighborhoods under the name of agricultural buildings, which are called GFH, Chicken Farm Dorm (yangjichang zhuzhailou), Berry Garden (caomeiyuan), Planation Base (zhongzhi jidi), Fruit-Picking Orchard (caizhai yuan), and so on.128

Article 43 of the 1998 LAL provides that the construction of village residences is allowed as an exception. This became another camouflage of small properties, which is called uniformly constructed buildings (“tong jian lou,” TJL hereinafter). Recently the MLR has called farmers to live in uniformly-constructed buildings, rather than individual residential houses, as a way to save construction land. It is also consistent with the local governments’ interests because they do not want to use the precious quota of construction land in building houses for farmers. Thus, village collectives often applied for construction projects in the name of TJL. But these projects provided more than enough apartments for their villagers to live—a small portion of it were allocated or sold at very low prices to local villagers; most of which were sold to outsiders. TLJ has become the one of the main forms of small properties in Shenzhen.129 In Beijing, reports have disclosed a similar form of small properties, which is called resettlement housing (“huiqian fang”).130 In some government-approved projects, farmers whose land was requisitioned are authorized to build a building as resettlement housing. The same as TJL, farmers make use of such opportunities to expand the project and sell apartments to make money.

According to the MLR, by 2007, Chinese farmers had built over 6.6 billion square meters of houses in evasion of the legal prohibition on private rural land development and transfer, resulting in a huge market of illegal houses. By way of comparison, in 2007, the total floor space of housing sold on the legal housing market was 0.76 billion square meters (China Net 2008).

C. Policy Adaptation

This huge market of small properties has involved millions of farmers, middle-and-low income buyers, various kinds of real estate developers, grassroots-level governments because

small properties promoted economic development of particular districts where they are located and contributed to business taxation of the grassroots-level governments. For municipal and central governments, small properties also relieved them of the responsibility of providing public housing and public facilities in the remote area of cities, where most middle-and-low income population live. These combined interests make small properties a serious challenge to the current land system in China.

The central government’s initial response was to enforce the law. On May 6th, 1999, the Office of the State Council promulgated a notice to provincial governments and central government agencies, pointing out that illegal transactions of collectively owned land had become a serious problem and many such transactions were conducted in the name of orchards and farms. This notice states very clearly that:

“Farmers’ residential houses cannot be sold to urban citizens; nor to allow urban citizens to buy collectively owned land to build residential houses.”

“Any units or individuals should not sign land use agreements with rural collective economic organizations privately.”

“Agricultural and forestry projects should use land strictly according to the approved use; change to real estate development use is strictly prohibited; for legitimate needs of accompanying facilities, approval for construction land use must be obtained according to law.”

This notice also requires provincial governments to investigate illegal land transactions and to halt approvals of orchards, farms, or tourism agricultural projects before finishing the investigation.

The result of this notice was poor. In the following years, the central government emphasized the strict implementation and enforcement of land administration laws again and again in many notices. On December 30, 2007, the OSC promulgated a notice on the strict implementation of rural collective construction land laws and policies. It defines TVEs as investment mainly from farmers or their collectives, and mainly for the purpose of supporting agriculture, and prohibits strictly the illegal use of land collectively owned by farmers for non-agricultural construction in the name of establishing TVEs or township and village public facilities. It was an effort to deter illegal rural land development and transactions in the name of TVEs. It also used the term “small properties” for the first time in central government notices, marking the first official recognition of the term coined by small-property market participants. It provides that “urban citizens should not buy rural residential land, farmers’ residential houses, or ‘small-property houses;’ units and individuals should not rent or occupy land collectively owned by farmers for real estate development.” The No. 1 Document of the CCP Central Committee of 2008, publicized on December 31, 2007, also referred to the term “small properties” and reiterated the same prohibition as the OSC publicized the previous day. Since 1980, the CCCCPC has devoted its first annual official document to agricultural policy, called No. 1 Document, laying down the agenda and policies for a new year. The appearance of the term “small properties” in

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131 OSC on Strengthening Land Administration and Prohibition of Land Speculation (May 6, 1999).
132 OSC on Strictly Implementing Laws and Policies Related to Rural Collectively Owned Construction Land (December 30, 2007).
such an important document was an indication and confirmation that it had become a national phenomenon that the top policy makers could not ignore.

Meanwhile, policy reflection and change is under discussion. On January 16, 2003, the CCCCP required local governments to encourage TVEs to be concentrated in small towns and to resolve the land use problem in this process through transfer of collectively owned construction land and other ways.\(^{134}\) This allowed some room for transfer of rural construction land in the purpose of promoting TVEs reform. A similar stipulation appears in the State Council Decision on Deepening Reform and Strictly Administering Land, issued on October 21, 2004.\(^{135}\) On April 4, 2005, the State Council promulgated the Opinions of the State Council on Deepening Reform of Economic Institutions, which calls for further exploration of the entry of rural collectively owned land use rights to market.\(^{136}\)

In early October of 2008, at the Third Plenary Session of the 17th CCCPC, the rural land use reform passed a new milestone: for the first time in the history of land use reform of PRC, 20 years after the 1988 amendments of the Constitution and LAL, which said use rights to state-owned land and collectively-owned land can be transferred according to law, the Chinese central government proposed to “gradually unify the construction land use market in urban areas and that in rural areas” and that “legally-acquired rural collectively-owned construction land has equal rights to state-owned land.”\(^{137}\) It also emphasizes that rural land use rights must be transferred through a unified and \textit{visible} market and in \textit{a public} way, a clear indication to the central government’s concern on the \textit{invisible} and \textit{hidden} small-property market.

Only one month later, the MLR issued a notice to its different departments and local branches on implementing the decision of the Third Plenary Session of the 17\textsuperscript{th} CCCPC, saying that the transfer of rural construction land has particularly important meaning to the protection of farmers’ land rights and calling for the establishment of institutions for the assignment and transfer of rural collective construction land that are compatible with the existing urban land use market.\(^{138}\)

This proposal was reiterated and reformulated as two points in the decision of the Third Plenary Session of the 18\textsuperscript{th} CCCPC, publicized on November 12, 2013: (1) establishing an unified construction land market: allowing rural collective construction land to be transferred the same as state-owned land; (2) granting more property rights to farmers: selecting several experimental sites and cautiously promoting the lien, mortgage and transfer of farmers’ property rights to their residential houses.\(^{139}\)

Through the review of the policy change of the central government and two representative local governments, we can see that the small-property market has caused formal institutional change through demonstrating the great interests embedded in a market of rural land

\begin{itemize}
\item \(^{134}\) CCCCP and State Council Opinions on Agricultural and Rural Affairs (No. 3, 2003).
\item \(^{135}\) State Council on Deepening Reform and Strictly Managing Land (October 21, 2004).
\item \(^{136}\) State Council Opinions on Deepening Reform of Economic Institutions (April 4, 2005).
\item \(^{137}\) CCCCP Decision on Several Crucial Questions about Promoting Rural Reform (October 15, 2008).
\item \(^{138}\) MLR Party Branch on Studying and Implementing the Spirit of the Third Plenary Session of the Seventeenth CCCPC (November 14, 2008).
\item \(^{139}\) Decision of the CCCCP on Several Crucial Questions about Comprehensively Deepening Reform (The Third Plenary Session of the Eighteenth CCCPC, November 12, 2013).
\end{itemize}
use rights, which are not limited to that of farmers, but also to the interests of the central and local governments and to the overall society. It is not to say that the central and local governments’ endowed interests in the existing land system, including preservation of agricultural land and local government finance, do not matter anymore. As discussed in the previous section, the lack of voice and political power of the Chinese farmers and their collectives was the main reason that land use reform in China has remained a partial one that benefited the winners of this reform, mainly local and central governments. This section presents to us that farmers and their collectives challenges this formal system through their everyday resistance, i.e., illegal development and transfer of rural land, sometime under the camouflage of legal projects, and influences the policy agenda of land use reform. Small properties are the weapons of Chinese farmers. They are powerful because they greatly increased the costs of the whole land administration system, and eventually proved the legal prohibition on rural land development and transfer impossible to implement. The central government has no other choice, but to reform the current system.

Nevertheless, it is not the same to say that the Chinese government would legalize the small properties. What I present here is that finally through the small-property market, Chinese farmers and other stakeholder whose voices had been ignored in the first round of land use reform after 1988, were able to express their interests to and to exercise their influence on the policy makers. This would ensure that land use reform in China would take into consideration of the interests of all relevant parties. But it is not to say that land use reform in China would go directly towards complete and absolute land rights for farmers. The central government’s concern for the preservation of agricultural land, for an orderly and uniform land market, and the local governments’ need for finance, should still be taken very seriously and carefully, which is crucial to the success of a reform that is designed to grant more property rights to farmers.

Actually immediately after the of the Third Plenary Session of the 18th, the Offices of the MLR and the Ministry of Housing and Urban-Rural Development issued an urgent notice to their provincial branches to deter small-property development and transactions. It reiterated that small-property development and transactions violated land use regulations and disturbed the land market order and thus are not protected by law. It required local branches to demolish some small properties as deterrence. In response, the Beijing municipal government demolished several small-property neighborhoods to deter small-property transactions. This urgent notice was a response to the popular anticipation that small properties would be legalized after the third plenary session of the 18th CCCPC. It reflects a policy conundrum the Chinese government has confronted in dealing with small properties: demolition would cause social conflicts and thus not feasible as a final solution; legalization would encourage further illegal development and the disregard of land use regulations. As I argue in another paper, titled “Small Property, Adverse Possession and Legal Entitlements,” rather than a top-down titling approach, the Chinese government should grant options rather than titles to small-property owners and establish a

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141 Id.
IV. Toward a Theory of Property Rights in China?

This paper investigates the evolution of the Chinese land regime in the past three decades and focus on one question: why the land use reform has succeeded in the urban area, but not in the rural area? Through asking this question, it presents a holistic view of Chinese land reform, rather than the conventional “rural land rights conflict” picture.\(^\text{143}\)

This paper is meaningful in the following aspects. First, to scholars of China study, it brings to light certain legal and policy changes that had not previously been fully examined and provides a comprehensive historical account and original interpretation of the Chinese land reform in the past three decades. Second, to scholars of post-communist reform, it endeavors to continue the shock therapy vs. partial reform debate, which is not only theoretically but also practically important to post-communist countries, including China and Vietnam, both of which have taken the latter approach, and Russia and the former east Europe bloc, which have taken the former approach. Moreover, half-way through the post-communist transition, we are also in a better position to evaluate the lasting reforms of both groups.

Lastly and the most importantly, to scholars of property rights, it is a case study of the evolution of property rights. There are two stories about the evolution of property rights. One is a bottom-up view and focuses on the costs and benefits of property evolution; the other is a top-down view and focuses on the political process of the evolution property rights. Contemporary discussions on the evolution of property rights began with Demsetz’s seminal paper “Toward a Theory of Property Rights,” which is still a starting point of most discussions in this field after almost half a century of its publication. The bottom-up or economic view of the evolution of property rights still dominates the field through continuous theoretical and empirical studies. Nevertheless, it is widely recognized that while this economic view might explain the origin of property rights well, but “cannot explain the development of complex property systems.”\(^\text{144}\)

There has been increasing interests in the political process of property rights in recent years. Fitzpatrick investigates the availability and effectiveness of enforcement mechanisms to understand the property rights failure in contemporary Third World circumstances.\(^\text{145}\) Katz focuses on the interaction between the state and individuals and argues that the formalization of private property rights actually makes owners more vulnerable to the state and enhances the state’s governance powers over them.\(^\text{146}\) Wyman emphasizes the political character of property


rights through studying the case of New York taxicab medallions[^147] and the evolution of individual tradable rights in U.S. coastal fisheries[^148]. As compared to the bottom-up approach, this top-down approach of property rights is still under development and more empirical and theoretical studies are needed.

To the author’s knowledge, Levmore’s interest group theory is to this date the most concrete one on the political process of property rights evolution, and worthy of further exploration in different backgrounds. Anderson and Hill, Epstein, and Banner have also investigated the political process of property rights in separate case studies[^149]. Nonetheless, although the above literature recognizes the key role of the government in the evolution of property rights, it fails to investigate and incorporate the internal structure of the government and its interactions with other parties into the evolution of property rights, which are particularly crucial in understanding property reform in developing and transitional countries. Building upon the above studies, this Chinese land reform case, due to its complexity, provides a richer account of the political process of the evolution of property rights.