

# Who Owns China's Land? Policies, Property Rights and Deliberate Institutional Ambiguity\*

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In many cases land leases are issued by the administrative village, while the land belonged to the natural village in the past. It is like the ownership rights to land have been silently stolen from the natural village and vested in a level higher. [...] Yet, to date there are not many conflicts, because farmers are not well imbued with the idea of "property." But problems are sure to arise in the future ...<sup>1</sup>

This statement by a senior official within the Ministry of Agriculture aptly captures one of the most sensitive issues confronting the Chinese state: rural land ownership. Around the time that the Revised Land Administration Law came into effect on 1 January 1999, a stream of writings about rural land policies and management have been published by Western social scientists. These can be divided into categories of research on the loss of agricultural land<sup>2</sup> and investigations into the relation between land tenure and use (in terms of cultivation, management and investment).<sup>3</sup>

The latter is an extension of the scholarly studies following the introduction of the Household Contract Responsibility System for rural land lease in the early 1980s. Initially the government allowed for a lease

\*I would like to thank Eduard B. Vermeer, Mark Selden, Jeroen de Kloet, Zhao Heng and the land rights jurist Ellen-Roos Kambel for their helpful comments on earlier versions of this article, together with Shi Wenzheng, Liu Jinghai, Buhe Chaolu, Lai Cunli and Li Sheng for their unlimited support and advice during the fieldwork. I take full responsibility for the opinions expressed and all possible errors. This research was funded by the European Union-China Academic Network (ECAN) and the Research School for Asian, African and Amerindian Studies (Research School CNWS) of Leiden University. Legal terms have been translated according to: Shutong Yu and Jia Wen (eds.), *Xin han-ying faxue cidian (A New Chinese-English Law Dictionary)* (Beijing: Falü chubanshe, 1998).

1. Sheng Li, oral communication, 1999. Sheng Li is a senior official within the Bureau of Law and Policy System Reform of the Ministry of Agriculture.

2. See for example, Robert Ash and Richard L. Edmonds, "China's land resources, environment and agricultural production," *The China Quarterly*, No. 156 (December 1998), pp. 836-879; Vaclav Smil, "China's agricultural land," *The China Quarterly*, No. 158 (June 1999), pp. 414-429.

3. James Kai-sing Kung and Shouying Liu, "Farmers' preferences regarding ownership and land tenure in post-Mao China: unexpected evidence from eight counties," *The China Journal*, No. 38 (July 1997), pp. 33-64; Shouying Liu, Michael R. Carter and Yang Yao, "Dimensions and diversity of property rights in rural China: dilemmas on the road to further reform," *World Development*, Vol. 26, No. 10, (1998), pp. 1789-1806; Wei Hu, "Household land tenure reform in China: its impact on farming land use and agro-environment," *Land Use Policy*, Vol. 14, No. 3 (1997), pp. 175-186. The research on urban land touches on a similar topic: the relation between property rights and the construction industry. See Anthony Walker, *Land, Property and Construction in the PRC* (Hong Kong: Hong Kong University Press, 1991); Jean Chen and David Wills, *The Impact of China's Economic Reforms upon Land Property and Construction* (Aldershot: Ashgate, 1999). For an excellent introduction on land ownership in China from the 1950s until the early 1990s, see Mark Selden and Aiguo Lu, "The reform of landownership and the political economy of contemporary China" in Mark Selden (ed.), *The Political Economy of Chinese Development* (Armonk, NY: M.E. Sharpe, 1993).

period of five years, extended to 15 in 1984 and to 30 years on top of the original contract period in 1993.<sup>4</sup> The Revised Land Administration Law confirmed this stipulation and provided the legal basis for the "second round of lease" (*di'erylun chengbao*) as most contracts expired at the end of the 1990s. During this "second round" farmers were for the first time issued individual, standardized and notarized contracts. It sparked renewed academic attention to the question asked by neo-liberal economists: can the present land tenure system – under conditions of socio-economic and demographic change, and strong control by the lessor (rural collective) – stimulate the lessee's economic incentives so as to ensure economic growth?

The research on agricultural land loss is spawned by concern over China's ability to achieve food security without relying on massive grain imports. In 1995 Lester Brown shocked the Chinese government with his prediction that the People's Republic would face critical food shortages in the future.<sup>5</sup> Despite substantial agricultural growth generated predominantly by increased use of chemical fertilizers, land is still one of the basic inputs to farm production. From the viewpoint of the government, the average area of farmland per capita is low: only one-third of the world average.<sup>6</sup> The situation is aggravated by substantial losses in arable land due to rapid urbanization, industrialization and environmental problems (soil erosion and desertification). The official figures mention a decrease of 4 per cent in the total arable area over 1978–96: an annual loss of 218,000 ha.<sup>7</sup> There is a strong economic case for regional agricultural specialization and cashcrop cultivation to enable higher grain imports. But the government is committed to grain self-sufficiency out of strategic considerations.

Brown's thesis is highly contested by scholars on several grounds: first, the full impact of farmland loss on food security is difficult to assess as the total area is unknown due to significant under-reporting in official statistics in the range of 25 to 50 per cent; secondly, Brown did not address the issue of the capacity of land for increased agricultural productivity, while the greater part of China's land actually produces well below its potential; thirdly, it is uncertain *what* land is lost. In this respect, Ash and Edmonds have rightly drawn attention to the need for a qualitative assessment of land losses in relation to the remaining area of arable land. Most valuable is their observation that "structural change within the agricultural sector [transfer of crop land into forestry, animal husbandry and aquaculture] itself has made by far the most significant

4. Yuk-shing Cheng and Shu-ki Tsang, "Agricultural land reform in a mixed system: the Chinese experience of 1984–1994," *China Information*, Vol. X, No. 3/4 (Winter 1995/Spring 1996), p. 44.

5. Lester Brown, *Who Will Feed China? Wake-up Call for a Small Planet* (New York: Norton, 1995).

6. Compared to a country with a strong export-oriented agricultural sector but with a much lower land per capita ratio, such as the Netherlands it can be seen that taking the world average as the standard is irrelevant.

7. See also Ash and Edmonds, "China's land resources," p. 838.

contribution to such losses, accounting for ... well over half of the shrinkage of China's cultivated acreage ..."<sup>8</sup>

Absent from the two kinds of research above is a comprehensive analysis of the political debate around China's land policies. This debate reflects the central government's envisaged land rights system as circumscribed by the current Marx-Leninist framework. It provides valuable insight into the government-perceived and encountered institutional problems. Why is such insight important? For the reason that China's chosen path of land reform is unique in scale and ambitions among the (ex-) socialist states: a government-owned and controlled land market that prohibits private ownership and a free land market; yet with the ideological compromise of paid lease and transfer of use rights.<sup>9</sup>

In conceptualizing development, some scholars deem competitive markets, free individuals, and civil and political liberties protected by "the rule of law" critical preconditions for stable economic growth. Private property rights are part and parcel of these preconditions that constitute the "liberal democratic" development model. Studies that show the rise of states based on liberal democratic principles<sup>10</sup> little more than reinforce the dominance of this view.

Typically, the communist world formed the major challenge to liberal democracy and its emphasis on private property. In the various stages of societal development from a capitalist, to a socialist, to a fully communist society as conceived by Marx, the issue of property rights featured manifestly in socialist states. In the process of creating an egalitarian society based on communist principles, private property was outlawed, or severely restricted, and replaced by state or collective property.

After fierce debates over property rights in the 1970s and 1980s, the dramatic fall of the Soviet Union once more bolstered the ascendancy of the private property regime throughout the world. As Hann writes:

Property became a very prominent issue after the collapse of communism in the Soviet bloc in 1989–91. Most post-communist governments and their Western advisers were ideologically committed to a very pure version of the liberal model. They then found themselves in the awkward situation of having to design and enforce structures that were generally supposed to evolve "naturally." Ministries of Privatization were set up to expedite the transfer of ownership rights away from the state, a step seen as indispensable to "systemic transformation."<sup>11</sup>

8. See Ziping Wu and Alan W. Kirke, "An assessment of some key Chinese agricultural statistics," *China Information*, Vol. IX No. 1 (Summer 1994), p. 42–76; Smil, "China's agricultural land," p. 414; Ash and Edmonds, "China's land resources," p. 847. The general academic consensus is now that on the long-term farmland loss remains a matter of serious concern. However, future research will surely need to provide more detailed qualitative assessments of land losses.

9. This situation very much resembles the Vietnamese system. See also Anita Chan, Benedict Kerkvliet and Jonathan Unger, *Transforming Asian Socialism: China and Vietnam Compared* (Lanham: Rowman and Littlefield, 1999).

10. According to Samuel Huntington the percentage of formally democratic states grew from 25% in 1973 to 68% in 1992. Cited in Adrian Leftwich, *Democracy and Development* (Cambridge: Polity Press, 1996), p. 3.

11. C.M. Hann, "The embeddedness of property," in C.M. Hann (ed.), *Property Relations: Renewing the Anthropological Tradition* (Cambridge: Cambridge University

But the impressive economic growth rates that China has shown over the past two decades seem to defy the need for privatization of land ownership. Under the ideological concept of a "socialist market economy with Chinese characteristics," the central government claims an alternative model of development that ensures long-term economic growth *without* abandoning the principle of state and collective land ownership.

Many problems still haunt the rural land lease system. Due to the unclear property structure and a low legal awareness, villagers are uncertain about the rights they enjoy to land property. For example, many farmers still believe that the land their house is built on belongs to them instead of the collective.<sup>12</sup> A major concern of the Chinese authorities and scholars is the powerful control of the lessor over land rights. The contract is often but a "paper agreement" because collectives can appropriate and redistribute leased land whenever deemed necessary.

On the other hand, redistribution of land is often a bare necessity in response to demographic change. In land-scarce regions the collective faces strong social pressure from the community to uphold a more egalitarian land allocation, which leads to frequent readjustment of the land lease.<sup>13</sup> Since the 1980s the implementation of the Household Contract Responsibility System is closely monitored by the Communist Party Central Policy Research Office. In its 1997 nation-wide survey of 271 observation villages, it was found that 80 per cent of them had readjusted the leased plots since the introduction of the land lease system (of which 66 per cent twice or more).<sup>14</sup> Liberal economists believe that the tenure insecurity will prove harmful to China's economic growth.

The reality is more unruly. Government and academic studies have shown that the majority of farmers favour redistribution of contract land in response to changes in family size.<sup>15</sup> It touches on the crucial concept

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*Footnote continued*

Press, 1998), p. 18. In the introduction, Hann provides an excellent overview of the recent anthropological theories and literature on property relations.

12. The confusion is caused by the term "family plot" or "private plot" (*ziliudi*), which was introduced in the early 1960s. With this term is meant that a small plot of land can be used for personal needs. However, land ownership remains with the collective.

13. Based on research in Sichuan province, Pennarz observed a more even distribution of resources, stricter land use regulations and a stronger commitment to strive for common interests in land-scarce (with high population pressure) as opposed to land-abundant regions. See Johanna Pennarz, *Collective Land Ownership and Sustainable Agriculture: Perspectives on the Diversity of Land Use Rights in China*, Room Document No. 2, Workshop on Agricultural Policies in China, OECD Headquarters, 12–13 December 1996.

14. Huimin Wang, "Dangqian nongcun tudi chengbao jingying guanli de xianzhuang ji wenti" ("The present situation and problems facing the management and administration of rural land lease"), *Zhongguo nongcun guancha*, No. 5 (1998), pp. 56–57. In the Central Policy Research Office's 1991 survey all 274 villages had readjusted land: 20.1% readjusted once, 25.9% twice, 30.7% three times, 12.8% four, 2.9% five and 7.6% six times or higher. Nongcun guding guanchadian bangongshi (ed.), *Quanguo nongcun jingji dianxing diaocha shuju huibian, 1986–1990* (*A Compilation of Data from the National Rural Survey, 1986–1990*) (Beijing: Zhonggong zhongyang, dangxiao chubanshe, 1992), p. 437.

15. The 1997 survey of the Central Policy Research Office indicates that 62.8% of the sample villages still advocate land redistribution. Of the 36.1% that opposed land redistributions, 46.7% thought their villagers' committee could safeguard a policy of stable land lease, 22.9% said that land was abundant and uneven land distribution would not incite

of "trusting the system" or, in the words of Diermeyer *et al.*, the "fundamental question of property rights: do economic and political actors believe that property rights are credible?"<sup>16</sup> The outcomes above feed the notion that the land lease system with its frequent readjustment *is* credible and accepted by the authorities and the rural populace. This information combined with the negative experiences of corruption and stagnating economic growth that accompanied the "shock therapy" of privatization in ex-socialist states, gave rise to an alternative view on the role of property rights in development. Instead of propagating privatization as a precondition for development, it is thought that the structure of property rights is actually the outcome of societal evolution. In this respect, privatization cannot be brought about, but only gradually guided under the proper socio-economic and legal conditions.<sup>17</sup>

Oi and Walder, however, observed that "while these arguments are appealing on intellectual grounds, the earlier failure of such evolutionary reforms in Hungary justified scepticism about calls for gradual reform."<sup>18</sup> In recent research carried out by Liu, Carter and Yao, empirical evidence is furnished on the relation between institutional change and the level of socio-economic development. They demonstrated that the privatization of land lease extended furthest in regions where land is of modest economic importance because of ample off-farm employment or because of relatively abundant land per capita.<sup>19</sup> Left aside by them is a quintessential issue raised by Oi and Walder: "Those who have championed evolutionary processes have yet to specify what institutional arrangements lead to an invigorated mixed economy"<sup>20</sup> and, in this case, a credible land rights system. The latter issue is the focal point of the present article.

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social conflict, 17.1% said that income from land was no longer important because of alternative employment opportunities, and 13.3% stated that land distribution was too cumbersome and they were unwilling to redistribute after the first time. See Wang, "Present situation and problems," p. 57. According to the 1987 survey of the Central Policy Research Office, 80.6% of the 10,679 households (40% of the total observation households) held the opinion that their contract land had to be expanded if household size increased. Unfortunately, there are no similar figures at the village level. Nongcun guding guanchadian bangongshi, *A Compilation of the National Rural Survey*, p. 329. In a survey of 800 households in four provinces done by Kung and Liu it was found that 62% of the respondents preferred the village policy "that periodically reassigns land among farm families in response to changes in the composition of their families." Kung and Liu, "Farmers' preferences," p. 34.

16. Daniel Diermeyer, Joel M. Ericson, Timothy Frye and Steven Lewis, "Credible commitment and property rights: the role of strategic interaction between political and economic actors," in David L. Weimer (ed.), *The Political Economy of Property Rights: Institutional Change and Credibility in the Reform of Centrally Planned Economies* (Cambridge: Cambridge University Press, 1997), p. 20.

17. See Peter Murrell, "Can neoclassical economics underpin the reform of centrally planned economies?" *Journal of Economic Perspectives*, Vol. 5, No. 4 (Fall 1991), pp. 59–76; David Stark, "Recombinant property in East European capitalism," *American Journal of Sociology*, No. 101 (1996), pp. 993–1027; David Stark and László Bruszt, *Postsocialist Pathways: Transforming Politics and Property in East Central Europe* (Cambridge: Cambridge University Press, 1998).

18. Jean C. Oi, and Andrew G. Walder, "Property rights in the Chinese economy: contours of the process of change," in Jean C. Oi and Andrew G. Walder (eds.), *Property Rights and Economic Reform in China* (Stanford: Stanford University Press, 1999), p. 2.

19. Liu, Carter and Yao, "Dimensions and diversity of property rights," p. 1803.

20. Oi and Walder, "Property rights in the Chinese economy," p. 2.

*Concepts, Research Questions and Methodology*

For the analysis, this article relies on concepts from the economic, legal and anthropological literature on property rights and institutional change. Here the term “institutional” is not broadly conceived as pertaining to “the rules of the game in a society or, more formally, ... the humanly devised constraints that shape human interaction,” as defined by Nobel Prize winner Douglass North.<sup>21</sup> Instead, it is used in a more narrow sense with regard to the legal and (state) administrative sphere. Moreover, the institutional problem is regarded as affecting and being affected by socio-economic phenomena – such as farmland loss, improper land use and management, and lagging investments in land resources – rather than an underlying problem of a higher order.<sup>22</sup>

In order to shed some light on which institutional arrangements lead to a credible land rights system, the article sketches the evolutionary process of national policy and law-making that shaped China's post-collective institutional framework for land rights. This is done by reviewing how the state's intentions – expressed during the political debate and embodied in laws and policies – have changed over time. In the writing of this article, I have made three conscious choices. First, to concentrate the analysis on policy and law-making, while leaving the process of implementation aside as much as possible.<sup>23</sup> I will discuss this issue in another article.<sup>24</sup> Secondly, to focus on the national level.

21. Douglass North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), p. 3. For sociologists, the term “institution” refers to an agreement system that organizes some general aspects of group life. As Babbie writes: “An institution is a relatively stable and integrated set of symbols, beliefs, values, norms, roles and statuses relating to some aspect of social life,” E.R. Babbie, *Sociology: An Introduction* (Belmont: Wadsworth, 1980), p. 114. Economic institutions are thus agreement systems that organize the production and distribution of goods and services. One of the major figures in the institutional school of economics is Commons, who clarified the institution as: “Sometimes an institution seems to be analogous to a building, a sort of framework of laws and regulations, within which individuals act like inmates. Sometimes it seems to mean the ‘behavior’ of the inmates themselves.” J.R. Commons, *Institutional Economics* (Madison: University of Wisconsin Press, 1961), p. 69.

22. There is a wide body of literature available on institutional change and the relationship between institutions and economic behaviour. One of the earliest, influential articles on the topic was written in 1955 by C.J. Wolf, “Institutions and economic development,” *American Economic Review*, Vol. 45 (1955), pp. 867–83. Currently, the literature focuses on the impact of institutions on so-called “common property resources.” See Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990); Larry L. Kiser and Elinor Ostrom, “The three worlds of action: a metatheoretical synthesis of institutional approaches,” in Elinor Ostrom (ed.), *Strategies of Political Inquiry* (London: Sage, 1982); and Norman Nicholson, “The state of the art,” in Vincent Ostrom, David Feeny and Hartmut Picht (eds.), *Rethinking Institutional Analysis and Development: Issues, Alternatives and Choices* (San Francisco: ICS Press, 1988).

23. This is difficult to achieve, because policy and law-making are, in fact, entwined with the implementation process in an evolutionary cycle. See also Merilee S. Grindle (ed.), *Politics and Policy Implementation in the Third World* (Princeton: Princeton University Press, 1980), pp. 7–8.

24. See Peter Ho, “See you in court: land rights, ownership disputes and customary tenure in China,” forthcoming, *The China Journal*.

Thirdly, to study the relation between institutional arrangements and the credibility of land tenure, which is assumed to be credible based on the research cited in the introduction. This implies that the relation between institutional arrangements and an invigorated rural economy will not be examined.

The following considerations precede these choices. First, the policy and law-making process that led to the current lay-out of China's land rights system is an extremely complex yet little researched issue. It therefore deserves to be dealt with in its own right. Secondly, the national legal-political framework for land rights underlies many of the problems that are encountered at the grassroots. In order to comprehend what is happening at the village level one cannot escape from an analysis of national land policies and laws. And thirdly, although the land rights system is an integral component of the rural economy, it is just one of many. To answer meaningfully the question what institutional arrangements can contribute to an invigorated rural economy, as Oi and Walder asked above, the role of the industrial sector *and* the lay-out of land property rights should be brought together in a single analysis. But that remains an issue for future exploration.<sup>25</sup> This analysis focuses on rural land with occasional reference to urban land.

The article's focus on the recent past and present leaves unanswered the question whether China's economic reforms eventually lead to – or should lead to – privatization of land. It will be argued that institutional indeterminacy is the “lubricant” on which the system runs: the ambiguity of legal rules allows the land tenure system to function at the *current* stage of economic reforms. Moreover, this institutional indeterminacy is partly the result of efforts by the central leadership to create leeway for reacting to societal developments. For this reason, I speak of “deliberate institutional ambiguity” as upheld by the state.<sup>26</sup>

The deliberate nature of the institutional ambiguity becomes apparent in the ownership shifts of collective land. Although land ownership was

25. There are obvious similarities between the property rights of (rural) enterprises and land. For example, Keith mentions the imprecise definition of the collective enterprise and the masquerading of private enterprises as collective entities (the so-called “red hats”). He also warns that “the sorting out of contemporary property rights can have potentially explosive political and social consequences.” See Ronald C. Keith, *China's Struggle for the Rule of Law* (New York: St. Martin's Press, 1994), pp. 137–141. The book by Oi and Walder, cited earlier, is one of the latest works on property rights in industries; see Oi and Walder, “Property rights in the Chinese economy.” Another interesting article on this topic is written by Pei Xiaolin, “Township-village enterprises, local governments, and rural communities: the Chinese village as a firm during economic transition,” in Eduard B. Vermeer, Frank Pieke and Woei Lien Chong (eds.), *Cooperative and Collective in China's Rural Development: Between State and Private Interests* (New York: M.E. Sharpe, 1998).

26. I am aware that the term “deliberate” carries with it the assumption of the Chinese state as a conscious actor reacting to societal developments, rather than a state “muddling through.” This, however, does not imply that the state created the present indeterminacy of land rights. Rather the state sanctioned and perpetuated the status quo. See also Charles Lindblom, “The science of ‘muddling through’” in Jay M. Shafritz and Albert C. Hyde (eds.), *Classics of Public Administration*, 3rd ed. (Belmont: Wadsworth Publishing Company, 1992); and Charles Lindblom, “Still muddling, not yet through,” *Public Administration Review*, No. 39 (November/December 1979), pp. 517–537.

vested in the lowest collective level (the production team) during the period of the people's communes, the ownership of its successor (the natural village or villagers' group) is no longer self-evident in the era of reforms. First, the term "collective" is intentionally kept vague in the law for fear of large-scale social conflict. It is thus uncertain which collective level actually holds the title to land. Secondly, the first national collective land registration in Chinese history has halted at the most crucial level: that of the original owner, the production team.

This article demonstrates that in the course of ownership shifts there is a significant danger that the collective ownership rights of villagers may be trampled. In the economically developed coastal regions, there is a tendency by local authorities to appropriate collective ownership rights in order to facilitate land planning and urban construction. The deliberate institutional ambiguity upheld by the central government is gratefully made use of to force through such operations. In this respect, the institutional ambiguity can become a potentially explosive source for future social conflict.

Last, but certainly not least, the analysis addresses one basic question: who is the legal owner of rural land? In this context, the term "ownership" is consciously used instead of "property." In the following section, it is argued that in the Chinese legal and political setting the modern civil law concept of ownership as an absolute and supreme right is more appropriate than Demsetz's notion of property as a "bundle of rights."<sup>27</sup>

This research draws on ample Chinese sources, including the minutes of the National People's Congress' (NPC) Standing Committee and Legislative Affairs Work Committee; the officially solicited opinions of central and local state institutions, mass organizations and relevant experts; the legal interpretations released by the NPC, various departments and people's courts; and the training and reference material for land administration cadres. In addition, fieldwork was done in the autumn of 1999. Interviews were conducted with central and local officials, as well as farmers in Zhejiang (Longquan and Yiwu county), Inner Mongolia (Wuyuan and Zunge'er Banner), and Ningxia (Yinchuan city).

The article is thematically organized and examines four critical issues in the political debate over rural land rights: land ownership, discussed in three separate subsections: the confrontation between state institutions, between collective institutions, and the state versus the collective; the registration of land ownership titles and the creation of a cadastre; the reform of the Ministry of Land Resources (*guotu ziyuanbu*), the institution responsible for land administration; and the establishment of a market for land leases.

27. See also Harold Demsetz, "Toward a theory of property rights," *American Economic Review*, Vol. 62 (1967), pp. 347-359.



*Land Ownership: "Bundle of Rights" or "Absolute and Supreme"?*

When considering land ownership titles in China, it is best to talk about "ownership" rather than "property." Anthropologists have long argued against the modern civil law concept of ownership as the absolute and supreme right because of its ethnocentric baggage. Instead, the common law definition of property as "a bundle of rights" or its more abstract notion as a "social relation"<sup>28</sup> is preferred. Conceptualizing ownership as property allows for more analytical flexibility to cope with the variations in land rights encountered during cross-cultural research. However, as demonstrated below, Chinese land ownership conforms more to the theorems of modern civil law:

Ownership is the supreme right, there can be no rights which would not be contained in ownership. Ownership is abstract: its content cannot be described by enumerating single powers, and none of these powers needs to be legitimized specifically, or related to an acceptable social purpose. Ownership is absolute: apart from what the law expressly forbids the owner may do whatever he likes, he can exclude everybody else from influencing the goods, everybody else is obliged to abstain from breaching his ownership rights, the owner is the supreme ruler over his goods.<sup>29</sup>

The fundamental principle of land rights in China is the identification of the state (and less so, the collective) as the absolute owner. All other rights are derived from this. The full logic of China's land ownership is reflected in a passage of a textbook for land administration cadres:

China practises the system of public ownership for land. According to laws and regulations, the nature of land rights can be divided into: the collective ownership to land, the use right to state-owned land, the use right to collectively owned land, and other real rights.<sup>30</sup>

Note that state ownership is not listed separately as a right. The term only appears in the phrase "the use right to state-owned land."

The implications are evident: state ownership is given and need not be established as such, in contrast to the rights of collective ownership, use and other real rights. Therefore, the law makes no stipulations on the assessment of title for state-owned land except for forest, grassland and fisheries. Moreover, the ownership of state land is a constant and the state is free to allocate state-owned land to any legal person it wants to. To use state land one can obtain the use right through non-taxed transfer (current in the past), transfer by paying a premium or tax, or lease. The ownership of collective land, however, can be changed into state ownership if the

28. Hann cites Hoebel for a textbook anthropological definition: "Property, in other words, is not a thing, but a network of social relations that governs the conduct of people with respect to the use and disposition of things." Hann, "The embeddedness of property," p. 4.

29. Van den Bergh on the notion of property in modern civil law. Govaert C.J.J. Van den Bergh, "Property versus ownership: some cursory notes," in Joep Spiertz and Melanie G. Wiber (eds.), *The Role of Law in Natural Resource Management* (Den Haag: VUGA, 1996), p. 172.

30. Hu Cunzhi (ed.), *Tudi dengji lilun yu fangfa (Theory and Methods of Land Registration)*, Vol. I (Beijing: Zhongguo nongye chubanshe, 1998), p. 12.

proper procedures for land requisition are followed.<sup>31</sup> In particular during the early period of reforms, the self-perception of local governments as holding absolute land ownership sometimes failed to ensure that proper requisition procedures were followed. The legal dispute described below in the section “the state versus the collective” is a case in point.

What is the dividing ground for state land and collective land? According to articles 9 and 10 of the 1982 Constitution, natural resources such as waters and streams, forest, mountains, grassland, and wasteland are state-owned, unless defined by law as collectively owned. This means that the burden of proof for the ownership title to natural resources lies with the collective and not the state. Suburban and rural land (including the “private plots” or *ziliudi/shan* for villagers) is collectively owned unless state ownership has been proven. Urban land is by definition state-owned; there can be no urban land owned by the collective.<sup>32</sup> The first Land Administration law of 1986 follows the above stipulations on ownership. This thus seems relatively clear: in principle, natural resources and urban land are state-owned, while suburban and rural land are collectively owned. Yet the economic reforms have exposed many weaknesses in this legal structure.

There are three imaginable situations of conflict. First, the confrontation between state institutions: for example, is military land in use by a ministry also its possession? And what about land used by subordinate units of a ministry? Secondly, conflicts generated by the confrontation between rural collectives: for instance, is the natural village as the successor of the team still the basic unit of land ownership? Can a brick factory owned by a township collective own the land on which it is built? And finally, disputes arising from the confrontation between the state and the collective: what happens to the ownership of rural land included within expanding cities? Is wasteland reclaimed by villages state or collectively owned? The consequences of such confrontations are dealt with below. It has to be borne in mind that the discussion along these three dimensions is not absolute: there are various conceivable situations that simultaneously apply to state–state and state–collective interactions.

*The state versus the state.* Ownership disputes following the confrontation between state institutions revolve around the question: who represents the state? The concept of the state as owner was not specified in law, which created a legal twilight zone. From the view of the government, the imprecise definition of state ownership is the underlying cause of arable land loss as local governments illegally and indiscriminately sell land for construction. This problem was identified by Xiang Zhongyang, the former Vice-Minister of Agriculture, as one of the main arguments to

31. For the theoretical background of Chinese state and collective ownership, see *ibid.* pp. 211–240. Definitions for taxed and non-taxed transfer of state land are given in footnote 81.

32. Zhongguo falü chubanshe (ed.), *Zhonghua renmin gongheguo xianfa* (*The Constitution of the People's Republic of China*), 4 December 1982 (Beijing: Zhongguo falü chubanshe, 1999), p. 8. These articles have been unchanged during the three revisions of the Constitution in 1988, 1993 and 1999.

draft the first Land Administration Law.<sup>33</sup> A notice on the protection of arable land (CCP Document 1997/11) jointly promulgated in 1997 by the Communist Party Secretariat and the State Council, demonstrates that land loss is still regarded as an urgent problem.

To “overcome local protectionism”<sup>34</sup> the Revised Land Administration Law favours strong centralization. For the first time, it states that “the ownership right of state-owned land is exercised by the State Council as representative of the state.” Which institution in turn represents the State Council in the implementation of land administration is also defined:

The responsible department for land administration of the State Council [the Ministry of Land Resources] is uniformly charged with the management and supervision of the nation’s land.<sup>35</sup>

According to the NPC Legal Affairs Work Committee (hereafter Legal Committee), these two stipulations should be interpreted as:

First, the definition that the various levels of local government are not the representative for the ownership of state-owned land. They have no right to deal with state-owned land without authorization ... Two, the granting of functional [authority] to exercise the management and administration of state-owned land resources to the central people’s government. Three, the definition that the right to profit of state-owned land belongs to the central people’s government and that the State Council may decide the distribution of profits from state-owned land.<sup>36</sup>

The foregoing stipulations are part of a larger scheme to concentrate and consolidate the supreme and absolute right of ownership in the hands of the central state and the collective. This is a recurring theme in China’s land administration.

*The collective versus the collective.* The most complicated and hotly debated issue concerns not state ownership but collective ownership. The current format of collective ownership is the direct heritage of collectivization and the commune system. The former people’s commune consisted of three echelons: the commune, the production brigade and the production team. In response to the disastrous results of the Great Leap Forward, the ownership of the means of production – agricultural fields, farm animals, implements and so forth – was refashioned in a “three-level

33. Zhongyang Xiang, *Guanyu “Zhonghua renmin gongheguo tudi guanlifa (cao’an)” de shuoming* (Explanation on the “Land Administration Law of the People’s Republic of China”), speech at the 15th Session of the Standing Committee of the 6th National People’s Congress, 15 March 1986, p. 2.

34. Renda fazhi gongzuo weiyuanhui (RFGW) (ed.), *Zhonghua renmin gongheguo tudi guanlifa shiyi* (An Interpretation of the Land Administration Law of the People’s Republic of China), (Beijing: Falü chubanshe 1998), p. 68.

35. Articles 2 and 5, Revised Land Administration Law in Weilian Fang (ed.), “*Zhonghua renmin gongheguo tudi guanlifa*” shiyong jianghua (A Practical Discussion of the “Land Administration Law of the People’s Republic of China”) (Beijing: Zhongguo minzhu fazhi chubanshe, 1998), p. 207.

36. The last stipulation on the state’s right to profit is a principle. For practical reasons, however, the state “can entrust local people’s governments and state-owned companies to exercise this right” as the Legal Committee states. RFGW, *An Interpretation of the Land Administration Law*, p. 37.

ownership." Between 1959 and 1962, the central leadership wavered between the production brigade and the team as the basic holder of land ownership and accounting for purposes of organizing labour and distributing income. For reasons of economic efficiency the Eighth National Party Congress in September 1962 finally adopted the revised draft of the Work Regulations for the Rural People's Communes (popularly known as the 60 Articles). In the revised draft, the team was identified as the primary accounting unit and the owner of land:

All land within the limits of the production team is owned by the production team.... Collective forest, water resources, and grassland, are all owned by the production team.

For over two decades this was the basic document defining land tenure for the rural collectives.<sup>37</sup>

In the early 1980s, the communes were dismantled. Generally, the township/town (*xiang/zhen*) replaced the commune, the administrative village (*xingzhengcun*) replaced the brigade, and the natural village (*zirancun*) or the villagers' group (*cunmin xiaozu*) replaced the team.<sup>38</sup> What happened to the land ownership of the team after decollectivization? With a few minor revisions to the law of 1986, the outline of collective land ownership is laid down in the Revised Land Administration Law as follows:

The land owned by the farmers' collective is by law owned by the farmers' collective of the village, and managed and administered by the village collective economic organization<sup>39</sup> or the villagers' committee;<sup>40</sup> what is already owned by more than two

37. For a detailed description of the central leadership's discussion on the level of collective land ownership, see Peter Ho, "The clash over state and collective property: the making of the Rangeland Law," *The China Quarterly*, Vol. 161 (March 2000), pp. 247–49. See also CCP, "Nongcun renmin gongshe gongzuo tiaoli – cao'an" ("Work regulations for the rural people's communes – draft version") 3/1961, in *Zhongguo renmin jiefangjun guofang daxue dangshi yanjiushi* (ZRJGDDY) (ed.), *Zhonggong dangshi jiaoxue cankao ziliao* (Reference and Educational Material on the History of the CCP), Vol. 23 (Beijing: Guofang daxue chubanshe, 1986), p. 454; CCP, "Nongcun renmin gongshe gongzuo tiaoli xiuzheng cao'an" ("Revised draft of the work regulations of the rural people's communes"), 27/9/1962, in ZRJGDDY, *Reference Material on the CCP*, Vol. 24 (Beijing: Guofang daxue chubanshe, 1986), pp. 141–42.

38. There are exceptions to this description due to historical changes in the size of administrative units and regional differences. After the demise of the communes, generally an administrative village administers several natural villages, while the natural village administers several villagers' groups. However, adding to the confusion is the fact that the natural village can coincide with the administrative village and the villagers' group with the natural village. Such situations could emerge if the former commune consisted of two levels instead of three. As also written in Article 2 of the 60 Articles: "The organisation of the commune can consist of two levels: the commune and the team; but it can also consist of three levels: the commune, the production brigade and the production team." See CCP, "Revised draft of the work regulations," p. 137. Note also that the term "natural village" is not an official legal term, albeit still frequently used in Chinese official and unofficial texts.

39. This term is not defined in law. The Organic Law only states that "the villagers' committee must respect the power of decision-making of the village collective economic organization in executing economic activities according to the law." Article 5, *Zhongguo falü chubanshe* (ed.), *Zhonghua renmin gongheguo cummin weiyuanhui zuzhifa* (The Organic Law on the Villagers' Committee of the People's Republic of China), 4 November 1998 (Beijing: Zhongguo falü chubanshe, 1998), p. 2.

40. The Organic Law stipulates that "the villagers' committee is established in accordance

rural collective economic organizations of the farmers' collective is managed and administered by each of these rural collective economic organizations or the villagers' groups;<sup>41</sup> what is already owned by the farmers' collective of the township (town) is managed and administered by the rural collective economic organization of the township (town).<sup>42</sup>

The interpretation of the NPC Legal Committee makes several important clarifications. First, the stipulation that "the land owned by the farmers' collective is by law owned by the farmers' collective of the village" means that this land is "owned by the farmers' collective of the administrative village." Secondly, the stipulation that "what is already owned by more than two rural collective economic organizations of the farmers' collective" means that "if land prior to the reforms belonged to more than two production teams, their land is now still owned by each of these rural collective economic organizations or the villagers' groups equivalent to the former production teams." Thirdly, the stipulation that "what is already owned by the farmers' collective of the township (town)" means that "the land of the people's commune ... after its transformation into the township/town still belongs to the farmers' collective of the township/town."<sup>43</sup> It seems that the Legal Committee merely defines that land ownership is divided over three holders: the administrative village, the villagers' group and the township/town. But appearances are deceptive. A closer reading of this passage reveals that collective ownership has not been defined at all! Similar to state ownership, the crux lies in the question: who is the legal holder of ownership?

In accordance with the Revised Land Administration Law, the farmers' collective (*nongmin jiti*) holds the right of ownership, whereas the collective economic organization (*jiti jingji zuzhi*), the villagers' committee (*cunmin weiyuanhui*), and the villagers' group are entitled to the right of management and administration. Yet, it is unclear whether these three institutions also represent the ownership of the farmers' collective. To quote a Chinese scholar:

Although the law stipulates that the village farmers' collective is the owner, it does not define the organization or structure that represents the village farmers' collective. By law the village collective economic organization and the villagers' committee have only managerial and administrative rights, which does not necessarily imply that

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Footnote continued

with the villagers' situation of residence, number of population, and the principle of facilitating the self-government of the masses. The establishment, abolition, and adjustment of the limits of the villagers' committee is proposed by the people's government of the township, minority township and town, and reported for approval to the county people's government after debate and consent of the villagers' congress." Article 8, *ibid.*, p. 2.

41. "In accordance with the villagers' situation of residence, the villagers' committee may establish several villagers' groups, the villagers' group leader is elected by the villagers' group congress." Article 10, *ibid.*, p. 2.

42. Articles 8 and 10, Revised Land Administration Law in Fang (ed.), *A Discussion of the "Land Administration Law,"* p. 208.

43. RFGW, *An Interpretation of the Land Administration Law*, pp. 65–66.

they can legally represent and exercise the ownership of the owner or reap the profits from ownership.<sup>44</sup>

Li Boyong, the Vice-Chairman of the NPC Legal Committee, stated that the regulations on collective land ownership should be changed because "some delegates of the NPC Standing Committee remarked that it is unclear who represents the land ownership ... of the farmers' collective."<sup>45</sup> However, the revised regulations are essentially similar to those of the old Land Administration Law. Again, they are formulated in such a way to give the impression that collective ownership is defined, while leaving the problem unsolved. This proves the sensitivity of the issue. The main reason is the central government's fear of an outburst of land disputes should ownership of the various collective institutions be consolidated.

This is the central argument presented in the introduction. Legal indeterminacy is a major feature of the current Chinese land rights structure. More importantly, a great deal of this stems from the needs of the Chinese leadership for sustaining a deliberate institutional ambiguity to avoid social conflict. The state hopes that in the course of socio-economic and legal development the claims to land by the three levels of the farmers' collective (the natural village/villagers' group, administrative village and township/town) will eventually be resolved. Relevant in this respect are Dicks' comments on conflicting rules in the legal system:

With the increasing complexity and sophistication of economic and commercial transactions brought about by the economic reforms this danger [of being subjected by conflicting rules] is likely to become more serious in terms of both the risks and the potential consequences. What seems especially remarkable, however, is the relative rarity of such conflicts.<sup>46</sup>

A similar situation can be found in the realm of land rights: despite a legal system bound by conflicting and unclear rules, fundamental and large-scale conflicts that challenge the current ownership structure are

44. Feng Xu, "Gufen hezuo yu nongye tudi zhidu gaige" ("Shareholding co-operatives and the reform of the agricultural land system"), *Nongye jingji wenti*, No. 5 (1998), p. 22. Xu does not mention the right of management and administration of the villagers' group. The reason is that his article was written before the Revised Land Administration Law became effective and this right had not been stipulated in law yet. A similar line of argument can also be found with Zuhui Huang and Yinyin Chen, "Nongdi chanquan jiegou he wo guo de jiating nongye" ("The structure of property rights of agricultural land and China's household agriculture"), *Nongye jingji wenti*, No. 5 (1998), p. 19; and Cunxue Wang, Xiangcong Ma, Mingchuan Huang and Sheng Li, "Nongye falü tixi jianshe jiben wenti" ("Fundamental problems on the construction of a legal system for agriculture"), *Faxue yanjiu*, Vol. 18, No. 6 (1996), p. 72.

45. Boyong Li, *Quanguo renda falü weiyuanhui guanyu "Zhonghua renmin gongheguo tudi guanlifa (xiuding cao'an)" shenji jiegou de baogao* (Report on the Results of the Review of the "Land Administration Law of the People's Republic (Revised Draft)" by the Law Committee of the National People's Congress), Speech at the 4th Session of the Standing Committee of the 9th National People's Congress, 24 August 1998, p. 3.

46. Anthony R. Dicks, "Compartmentalized law and judicial restraint: an inductive view of some jurisdictional barriers to reform," in Stanley B. Lubman (ed.), *China's Legal Reforms* (Oxford: Oxford University Press, 1996), pp. 90 and 102. Dicks attributes this to the "judicial restraint" exercised by central and local state institutions.

infrequent. In fact, formal claims to ownership are seldom filed by the collectives for the reason that their ownership was never really contested by the state.<sup>47</sup> However, the potentially explosive character of collective ownership becomes apparent if the implications of the post-collective legal structure on the land ownership of the former team are considered. All is included in the words of the official quoted at the beginning of this article: "It is like the ownership rights to land have been silently stolen from the natural village and vested in a level higher."

As shown above, in the early 1960s the central government hesitated about the holder of land ownership. Eventually, the 60 Articles stipulated that land within the limits of the production team was also its possession. After the demise of the people's communes, however, the ownership of the successor of the team, the natural village, is no longer self-evident. The practice of the Household Contract Responsibility System reveals that the administrative village (under supervision of the township) usually acts as the formal lessor instead of the natural village. The 1997 survey of the Central Policy Research Office found that 60.5 per cent of the land was leased by the administrative village.<sup>48</sup> Moreover, the right to the redistribution of land in response to changes in household size is by law reserved for the institutions of the administrative village (the villagers' committee and the villagers' delegates – *cunmin daibiao*).<sup>49</sup>

The opinions by officials and scholars highly differ on this issue. During the NPC debates on the Revised Land Administration Law, some championed the division of collective ownership over the various administrative levels. According to the Central Policy Research Office:

Now that the commune has been changed into the township/town, the brigade into the villagers' committee, and the team into the villagers' group, there is no co-operative economic organization any more. To vest the collective ownership of land in the villagers' committee and the villagers' group is more attuned to reality.<sup>50</sup>

On the other side of the spectrum are radical proposals that boil down to requisition of land from the natural village. From the angle of Zhejiang province:

Some towns have already abolished the limits of the natural village (villagers' group)

47 Exemplary in this context is the land tenure of grasslands. Despite defined as state-owned unless proven collective by law, the grassland in long-term use by rural collectives is generally regarded by them as their property. Still the state never asserted its ownership over grassland, which makes collective ownership a non-issue. See Peter Ho, "China's rangelands under stress: a comparative study of pasture commons in the Ningxia Hui Autonomous Region," *Development and Change*, Vol. 31, No. 2 (March 2000), p. 394.

48. The villagers' group accounted for 32.3%, the township for 1.1% and other categories for 3%. See Wang, "Present situation and problems," p. 56.

49. See Article 14, Revised Land Administration Law in Fang (ed.), *A Discussion of the 'Land Administration Law'*, p. 209.

50. "Remarks on the 'Land Administration Law (Revised Draft)' by relevant central departments and mass organizations," in RFGW, *An Interpretation of the Land Administration Law*, p. 338. Vesting land ownership in the villagers' group is also advocated by the authors of "Remarks on the 'Land Administration Law (Revised Draft)' in letters sent by some experts, scholars, jurists and researchers," in *ibid.* p. 395.

... If we allow ownership to the villagers' group, town and village planning will be difficult to implement, which will hinder economic growth.<sup>51</sup>

To regain the control over land administration it is proposed that "the Land Administration Law changes the three-level ownership of collective land into a two-level ownership." In other words, "the ownership right to collective land of the villagers' group is not stipulated, or the three-level ownership is uniformly administrated by the [administrative] village."<sup>52</sup>

The Zhejiang proposal is extremely important. Because of its high level of socio-economic development, Zhejiang province is in the vanguard of land reform and experiments with alternative land tenure forms. The institutional ambiguity sustained by the central authorities is used by local governments in attempts to impose a land rights structure that abolishes land ownership with the natural village as the basic unit. In the haste for real estate development there is a high risk that the collective ownership rights of villagers will be violated. In particular, as the villagers' group and the villagers' committee have not been established as legal owners, they lack the power to represent the farmers' collective ownership.

The scholar Xu Feng remarked that "if the villagers' committee is entrusted by all villagers, it is eligible to be the owner of land," however, "in reality the villagers' committee has become an extension of the political power of the township/town, ... as a result of which the collective ownership of farmers is often difficult to realize and farmers cannot enjoy the rights and interests of the collective."<sup>53</sup> To protect villagers' interests, it is therefore imperative that the central government lifts the veil of institutional ambiguity and articulates the legal nature of collective ownership.

*The state versus the collective.* The Revised Land Administration Law stipulates that land of the "city's urban area" (*chengshi shiqu*) is state-owned, while land of the "city's suburbs" (*chengshi jiaoku*) belongs to the collective. This is not fixed in stone. Due to continuous urban expansion through construction, much of the former collective land has been subsumed within the limits of the city. In the rush for real estate development, collective land and sometimes entire collectives have been sold or appropriated *without* formal change of land ownership titles. The ambition to achieve in their term of service causes cadres to approve the construction of factories, office-towers and apartment buildings on agricultural land, which opens up large opportunities for corruption.<sup>54</sup> On the other hand, the position of township and village leaders as the legal

51. "Remarks on the 'Land Administration Law (Revised Draft)' by relevant units and personnel of Zhejiang province," in *ibid.* p. 366.

52. *ibid.* p. 366.

53. Xu, "Shareholding co-operatives and reform," p. 22.

54. See David Zweig, "The 'externalities of development': can new political institutions manage rural conflict?" in Elizabeth J. Perry and Mark Selden (eds.), *Chinese Society: Change, Conflict and Resistance* (London: Routledge, 2000).



holder of collective ownership is unclear, while the decision for land sale is often taken in the cadres' private capacity. *De jure* such land is still collectively owned, for which reason NPC delegates proposed that the Land Administration Law be revised. At present, however, such revision would certainly exceed the legal boundaries of the Constitution.<sup>55</sup>

Another source of possible land disputes springs from obscure ownership rights of forest, grassland and wasteland. Such disputes pertain to state-state and state-collective interactions. Conflicts of the first type result from the fragmented nature of land administration in China. For example, forest is administered by the State Forestry Bureau (former Ministry of Forestry), grassland by the Ministry of Agriculture, and wasteland by both depending on the ecological definition used (grassy forest or forested grassland). Each state institution is entitled to issue forest, grassland or wasteland ownership and use permits, in addition to the land ownership permit of the county government and land administration departments. It does not need much imagination to see that this easily leads to chaos and, as a result, unsustainable use of natural resources.

In a formal letter to the NPC, the Heilongjiang Forestry Bureau noted that the "sharp contradictions of forest titles are unfavourable for forest protection. The province ... has issued forest permits, but the greater part of forest has been occupied by individuals, townships, village collective economic organizations and local governments, which in some cases have also been issued land permits.... The Land Administration Law should bring the forest and land permits in line with each other."<sup>56</sup>

There is frequent friction between the state and the collective about forest, grassland and wasteland in long-term use by the collective. These natural resources are by law state-owned *unless* proven collective ownership and this is where the snag is: there is no legal title of collective ownership for this land. And as shown in the following section, formal title for the original owner of collective land – the production team – is the exception rather than the rule. Once reclaimed and in use, forest,

55. Article 10, Zhongguo falü chubanshe (ed.), *The Constitution of China*, p. 8; Article 8, Revised Land Administration Law in Fang, *A Discussion of the "Land Administration Law"*, p. 208; and RFGW, *An Interpretation of the Land Administration Law*, pp. 58–59. There is also confusion about the distinction between the terms "city" and "urban area." According to the interpretation of the Legal Committee, "city" must be read as the "municipality directly under the central government, city or town according to the administrative and organizational setup by the state." In contrast, "urban area" must be understood as the built-up area, and not the planned construction area as suggested by the City Planning Societies of Beijing and Hunan. See "Remarks on the 'Land Administration Law (Revised Draft)' in letters sent by some experts, scholars, jurists and researchers," in RFGW, *An Interpretation of the Land Administration Law*, p. 395. In addition, the Legal Committee has proposed that a better legal definition be made of the terms "land used for agriculture," "land used for construction" and "unused land." Boyong Li, *Quanguo renda falü weiyuanhui guanyu "Zhonghua renmin gongheguo tudi guanlifa (xiuding cao'an)" chubu shenji qingkuang de huibao (Report on the Preliminary Review of the Situation on the "Land Administration Law of the People's Republic (Revised Draft)" by the Law Committee of the National People's Congress)*, speech at the 3rd Session of the Standing Committee of the 9th National People's Congress, 24 June 1998, p. 3.

56. "Remarks on the 'Land Administration Law (Revised Draft)' by relevant departments, several experts and grassroots units of Heilongjiang province," in RFGW, *An Interpretation of the Land Administration Law*, p. 352.

grassland and wasteland were over time claimed by customary, and thus generally unwritten, land rights. In particular, in the frontier areas such as Heilongjiang, Inner Mongolia and Xinjiang, settler villages in existence before 1949 were included in state reserves without acknowledging collective land ownership. Similar problems have occurred with state land reclaimed and leased out to settlers and village colonies during and after the collective period (1956–78).<sup>57</sup>

A fascinating legal case that illustrates state and collective conflicts is the land dispute between the Shiqiao State Reservoir and the Number Three Villagers' Group of X county.<sup>58</sup> Shiqiao Commune was the owner of a water reservoir until 1963, after which the ownership of the reservoir and its land was transferred to X county and became state property. Due to expansion of the reservoir, 14 ha of land was requisitioned in 1963 from the Number Three Villagers' Group for which no official procedures were followed. This gave rise to a long series of conflicts. To end the dispute, the county government in 1993 issued an adjudication which determined that – according to the 1986 Land Administration Law and the Suggestions on the Assessment of Land Titles (hereafter Suggestions or *Yijian*) issued by the former State Land Administration – the disputed land was state-owned. Therefore, the use right belonged to the Shiqiao State Reservoir. In reaction, the villagers' group filed a lawsuit with the intermediate people's court.

The plaintiff demanded that the county notice be annulled as it had no valid legal grounds, and the title to the disputed plot reassessed. The defendant retorted that the laws and regulations applied for the notice were lawful and the plaintiff's claim should be dismissed "to safeguard the correct enforcement of the state's laws." Of specific interest is the claim by the defendant that the villagers' group by law cannot enjoy collective ownership, and thus was not entitled to act as a legal person in the lawsuit. Instead, this should be the administrative village under which jurisdiction the villagers' group falls.

The court allowed the claim of the villagers' group and made two surprising rulings. First, the stipulations on collective ownership of the Land Administration Law were interpreted as "there are two kinds of

57. *Ibid.* p. 352. For problems about land ownership titles of grassland and wasteland, see also Wenzheng Shi, *Caoyuan yu caoye de fazhi jianshe yanjiu (Research of the Construction of a Judicial System for Rangeland and Pastoralism)* (Hohhot: Neimenggu daxue chubanshe, 1996), p. 43.

58. The name of the county is not stated in the documents. However, from the name of the town, it is clear that this refers to Shiqiao town in the vicinity of Chengdu in Sichuan province. See Xinhua Liu (ed.), *Xin tudi guanlifa quanshu (Encyclopedia of the New Land Administration Law)*, Vols. I and II (Beijing: Zhongguo wujia chubanshe, 1998), pp. 895–97. Ample detailed descriptions of land disputes can also be found in: Zuigao renmin fayuan (ed.), *Renmin fayuan anli xuan – xingzheng juan: 1992–1996 (A Selection of Cases from the People's Courts – Volume for Administrative [Cases]: 1992–1996)* (Beijing: Renmin fayuan chubanshe, 1997), pp. 258–262; 282–88; 334–340; 341–350; and Zuigao renmin fayuan (ed.), *Renmin fayuan anli xuan – minshi, jingji, zhishi chanquan, haishi, minshi sugong chengxu juan: 1992–1996 (A Selection of Cases from the People's Courts – Volume for Civil, Economic, Intellectual Property Rights, Maritime, Civil Procedures Cases: 1992–1996)*, Vol. I (Beijing: Renmin fayuan chubanshe, 1997), pp. 1187–99 (three cases on land lease).

collective land ownership: ownership by the villagers' committee *and* ownership by the villagers' group." The importance of this reading of the law is that it recognizes the ownership of land by the lowest collective level.

Secondly, the court reviewed the defendant's use of the State Land Administration's Suggestions. Article 8 stipulates that if farmers' collective land was in use by state institutions before the proclamation of the 1962 60 Articles and was not returned until the present, the land is state-owned. Since the disputed plot was appropriated by the state in 1963, this section does not apply. In the same article it is stipulated that if the land was in use after 1962 until 1982, and a land transfer agreement signed or approval obtained by the county government, the land is also state-owned.<sup>59</sup> The appropriation falls under this specified period. However, at the time no requisition procedures had been followed, which brought the court to the decision that the defendant's adjudication was wrongful and should be revoked.

This ruling is important because it demonstrates the workings of the judiciary in a legal environment governed by deliberate institutional ambiguity. During the initial period of the reforms when many laws still awaited proclamation, some economic sectors were almost exclusively ruled by administrative regulations. As these have not been reviewed, debated and passed by the NPC, nobody knows their exact legal implications.<sup>60</sup> In fact, the rules applied here do not even have the status of an administrative regulation, but are merely "suggestions."<sup>61</sup> In this case the court resorts to the interpretation of rules with an unclear legal status since there are no laws that stipulate the nature of collective ownership.

59. The original text runs: "If before the proclamation of the Work Regulations for the Rural People's Communes in September 1962 (hereafter: 60 Articles), state institutions, urban collective institutions, and collective farms of overseas Chinese, used land originally owned by the farmers' collective (including individual land prior to co-operativization), which has not been returned to the farmers' collective in the period after the proclamation of the 60 Articles until the present, it is state-owned. If after the proclamation of the 60 Articles in September 1962 until the proclamation of the Regulations for the Requisition of Land for State Construction in May 1982, state institutions and urban collective institutions, used land originally owned by the farmers' collective, it is state-owned under one of the following conditions: (1) after an agreement or any other relevant document has been signed for the transfer of land; (2) if it has been used after approval from the country people's government; (3) if compensation or settlement of labour force has taken place; (4) if it has been donated by the farmers' collective; (5) if the farmers' collective enterprise has become state-owned. In all other cases, the farmers' collective land ... must be returned to the farmers' collective or the then current procedures for the compensation of land requisition must be followed." See Guojia tudi guanliju, "Guanyu queding tudi quanshu wenti de ruogan yijian" ("Suggestions on the question of the assessment of land titles"), in Zhongguo tudi guanli zonglan bianji weiyuanhui (ZTGZBW) (ed.), *Zhongguo tudi guanli zonglan (An Overview of Land Management in China)* (Beijing: Falü chubanshe, 1992), p. 69.

60. According to Dicks, the administrative regulations or *guizhang* are "falling short of the status of 'law'." Dicks, "Compartmentalized law and judicial restraint," p. 106.

61. Under normal circumstances in China, the law is followed by "rules for implementation" (*shishi tiaoli*) of the State Council which provide the official judicial interpretation. As these did not provide a definitive answer here, the court resorted to the State Land Administration's Suggestions.

*Land Registration: Assessing the Boundaries of Ownership*

Under the present legal framework the county people's government and higher<sup>62</sup> are charged with the assessment of land ownership titles, as well as the issue of permits for the use of state land and the ownership of collective land.<sup>63</sup> As shown above, in contrast to urban land, forest and other natural resources, the burden of proof for the ownership title of rural land lies with the state. That is, rural land is – in principle – collectively owned. The only task for the state is to determine and register the title to land. Here the problems start, because rural land was never systematically registered, whereas the majority of land ownership titles that did exist were lost during subsequent political campaigns after Land Reform.

In theory, land registration begins with the formation by the County Bureau of Land Administration of a Leading Group in which representatives of relevant departments and local governments partake. Under the Leading Group a Land Assessment Team is set up, responsible for executing the actual land registration. This team works closely with the Township Land Management Station and village officials. Land registration consists of five stages: land declaration to the relevant authorities by the owner or user; examination of the land title; verification of the title; registration in the cadastre; and issue of the permit. The most important stage is the examination of the land title, which includes the assessment of land rights (collective ownership, use right of collective land, use right of state land, and other real rights); and the land survey (geographical location, boundaries, land use and quality, and so forth). Together with the owner and user, the Land Assessment Team collects all necessary statistical data, documents and maps on the land title.<sup>64</sup>

The boundary assessment and conflict resolution of all administrative levels down to the township/town is not – as could be expected – carried out by the Ministry of Land Resources but by the Ministry of Civil Administration.<sup>65</sup> The boundary assessment of farmers' collectives at the administrative village level and lower is the responsibility of local people's governments and the land administration departments. It is uncertain what the influence of the Ministry of Civil Administration is in this respect. The national land registration of farmers' collectives was

62. The term “*xianji yishang*” in the Land Administration Law refers to the administrative levels starting from the country and higher.

63. Article 11, Revised Land Administration Law in Fang (ed.), *A Discussion of the “Land Administration Law,”* p. 208.

64. For reasons of space I have only given a brief overview of the land registration procedures. They are described in detail in Hu, *Theory and Methods of Land Registration*, Vol. I, pp. 94–143.

65. See “*Xingzheng bianjie zhengyi chuli tiaoli*” (“Regulations on the handling of administrative border disputes”), in Neimeng xingzheng quhua bianjie eingdao xiaozu (ed.), *Xingzheng quhua, tiaochu bianjie zhengyi wenjian xuanbian* (*A Compilation of Documents on the Handling of Boundary Disputes and Administrative Divisions*) (Hohhot: Restricted Circulation, 30 August 1990), pp. 141–49.

executed from 1984 until the late 1990s,<sup>66</sup> but stopped at the level of the natural village and villagers' group. This is of major importance, as the natural village and villagers' group are the *de facto* successors of collective land ownership since the demise of the people's communes. With this move and the decision to leave collective ownership rights undefined in law (see section "the collective versus the collective"), the central state intentionally supports a certain degree of institutional ambiguity.

Even at the level of the administrative village, land registration has run into quite a few problems because of the state's deliberate institutional ambiguity. The terms "farmers' collective," "collective economic organization" and "villagers' committee" are often confounded by cadres.<sup>67</sup> Together with the vague distinction between state and collective land, this created a great deal of confusion in the establishment of a nation-wide cadastre. For instance, in an administrative village in Inner Mongolia land ownership title was granted to a primary school.<sup>68</sup> A senior economist in the Institute of Land Policy of the Ministry of Land Resources, indignantly stated that vesting land ownership in a school is "absolutely illegal," because it is not a "collective economic organization." Only if officially registered with the Department of Industry and Commerce can an institution be regarded as a collective economic organization and entitled to land ownership.<sup>69</sup> Restricting the right of ownership to the collective economic organization is bound to create problems as other collective institutions, such as village infirmaries, temples and mosques, will in the future surely claim the land they are built on.<sup>70</sup> At present, however, land registration has been carried out in relative silence with a striking absence of large-scale disputes that contest the format of rural land ownership.

66. The period for the boundary assessment of the administrative villages differs per province and region. For example, in Inner Mongolia the work was completed from 1984 to 1992, and in Ningxia from 1984 to 1998. Oral communication, 1999.

67. For the present legal definitions, see footnotes 39 to 41.

68. A collection of land ownership certificates was obtained of villages in Inner Mongolia during the 1999 fieldwork. However, due to reasons of space they have not been included in this article. Unfortunately, cadres were unwilling to provide such certificates for Ningxia and Zhejiang.

69. Confusingly, the same official stated that the villagers' committee is not a collective economic organization albeit entitled to land ownership, because it is considered a "self-governing organization" (*zizhi zuzhi*). Jian Xu, oral communication, 1999. The illegal nature of granting ownership to this school was also confirmed by the Deputy Director of the Real Estate Consultative Centre of the Ministry of Land Resources, Xianbin Chen, oral communication, 1999.

70. In Ningxia, for example, the land of a mosque is by Islamic Law regarded as *waqf*, which "is a form of charitable endowment, similar to the modern concept of trust. It entitles any kind of private property – buildings, land, or wells – to be constituted as inalienable public estate." Peter Ho, *Rangeland Policy, Pastoralism and Poverty in China's Northwest: Ningxia Province in the Twentieth Century*, Ph.D. thesis (Leiden University: Leiden, 1999), p. 55; Pieter W. Germeraad, *Open Space in Human Settlements: The Lesson from the Islamic Tradition*, (Wageningen: Germeraad, 1990), p. 33; One of the best explanations of Islamic Law (Shari'a) and *waqf* is – in Dutch – given by Ruud Peters, "Het Recht – recente Ontwikkelingen" ("The law: recent developments"), in Jacques Waardenburg (ed.), *Islam: Norm, Ideaal en Werkelijkheid* (Antwerpen: Standaard Uitgeverij, 1984), pp. 292–310.

*The Ministry of Land Resources: From Fragmentation to Centralization*

Exemplary for the problems in land administration in China are the current *and* postponed organizational reforms of the Ministry of Land Resources. The structure of land management is in a flux transiting from fragmented authority to centralized administration. What is presently administered by various institutions was the sole jurisdiction of the former Ministry of Internal Affairs (*Neiwubu*).

After the Republican model of unified land administration, China erected the Ministry of Internal Affairs in 1949. It included the Department of Land Administration responsible for rural and urban land matters. In the mid-1950s this system was abolished and land administration scattered over different sectors: urban, rural and other land resources. Today urban land is administered by institutions under the municipal government called the Land Administrative Agency or Real Estate Administration Agency, while rural land falls under the jurisdiction of the Ministry of Land Resources. Other land (and water) resources fall under a wide variety of institutions such as the State Forestry Bureau, and the Ministries of Agriculture, Water Resources, Railways, Communications, National Defence and Civil Affairs.<sup>71</sup>

An earlier section of this article revealed that the lack of co-ordination between the issue of land permits by different institutions led to great confusion about land ownership titles. This particularly concerns forest, grassland and water resources. To solve this problem, some NPC delegates proposed to broaden the legal scope of the Land Administration Law to determine ownership titles of land resources now still stipulated in the respective Forest Law, Grassland Law and Fishery Law. This would be a major step towards the unification of land administration in China. The Legal Committee replied that the principle of unified land management should be defined in law, but added:

The administrative system which defines in law the definition of titles and issue of permits for forest, grassland and fisheries ... was formed over many years. Under the present circumstances it is still effective. The main aim to revise the Land Administration Law this time is to reinforce the protection of arable land. Should we change the administrative system and revise the currently effective, relevant laws, it will pose complex problems; at this time it is too difficult to solve.<sup>72</sup>

The very name of the Land Administration Law implies a postponed restructuring of land management. When the law was first drafted in the early 1980s it was originally meant to concentrate the authority of all

71. Their respective responsibilities are forest, grassland, land for railways, land for roads and waterways, water resources, military land, and the determination of administrative boundaries and boundary conflict resolution. Han Wang and Jingming Yao, "Neiwubu jigou ji zhineng" ("The functions and structure of the Ministry of Internal Affairs"), *Zhongguo minzheng*, No. 1 (1999), p. 35; Xinhua Liu (ed.), *Xin tudi guanli fa quanshu* (*Encyclopedia of the New Land Administration Law*), Vol. I (Beijing: Zhongguo wujia chubanshe, 1998), pp. 169–170; Jen-Kai Liu, "The main national leadership of the PRC," *China Aktuell*, (Juli 1998), pp. 2–5.

72. Li, *Preliminary Review "Land Administration Law,"* p. 2.

land resources in one state institution and a single “mother law” (*mufa*): the “Land Law.” However, out of fear of intensified inter-departmental strife, the NPC Legal Committee advised that the name be temporarily changed into “Land Administration Law” and its legal scope restricted until more practical experience was gained on “the planning, consolidation and development of the nation’s land.”<sup>73</sup> Despite this there are numerous signs that point to a gradual centralization in land administration.

First, in 1998 the former State Land Administration, the Ministry of Geology and Mineral Resources, the State Bureau of Marine Resources and the State Topography Bureau merged into the newly established Ministry of Land Resources. At the same time, the Ministry of Forestry was downgraded to a bureau directly under the State Council.<sup>74</sup> The organizational reforms at the central level meant a significant strengthening of the institutions charged with land matters. The implications for the provincial level and lower are still unknown.<sup>75</sup> The law leaves the options open by stipulating that this is decided according to regulations of the State Council. But these still need to be drafted.<sup>76</sup>

Secondly, the Revised Land Administration Law concentrated power in the hands of the central leadership by granting the State Council the authority over state land ownership and use by central state institutions. According to the Legal Committee “this is a relatively large revision” as it “facilitates the unified control over land resources of central state institutions ... and prevents the loss of state land resources through corruption and the unauthorized handling of use rights by departments.”<sup>77</sup>

Finally, the old quota system was replaced by a hierarchical approval system for land use planning. Under the new system the State Council gains the final say in land use planning. The strong centralization triggered criticism from NPC delegates and ministries: “It is imperative that the right for approval is drawn to the centre, but the rules of the draft are too centralized, which makes them difficult to implement.” In reaction, the Legal Committee allowed for limited authority by the prefecture and country.<sup>78</sup>

73. RFGW, *An Interpretation of the Land Administration Law*, p. 50.

74. Zou Xiaoyun, a senior economist within the land planning division of the Ministry of Land Resources stated that there are rumours that the Bureau of Forestry might again be upgraded to a ministry. The background for this is the sandstorms that swept over Beijing in the spring of 2000, caused by the increasing desertification in the north-west. In reaction, Premier Zhu Rongji placed natural resource management high on the political agenda with the policy to give up agriculture in favour of forestry and animal husbandry (*tuigeng huanlin, huanmu*). Oral communication, 2000.

75. The question is whether the local equivalents of the central departments will merge into one provincial Bureau of Land Resources. Or, for example, will other institutions charged with urban land matters also be included?

76. Article 5, Section 2, Revised Land Administration Law in Fang, *A Discussion of the “Land Administration Law,”* p. 207.

77. Articles 2 and 11, Revised Land Administration Law in *ibid.* pp. 207–208; RFGW, *An Interpretation of the Land Administration Law*, p. 68.

78. Articles 21:4 and 44:3, Revised Land Administration Law in Fang, *A Discussion of the “Land Administration Law,”* pp. 211–212; Li, *Preliminary Review “Land Administration Law,”* p. 3.

*Land Use and Lease: Wavering between Ideology and Market*

What the Chinese authorities are attempting to do as part of their reform policy is to shift the boundaries of definition, such that the right to use and transfer property rights falls under the now much broader heading of commodities (and therefore tradeable), and not means of production.<sup>79</sup>

In present-day China land ownership by the state and collective is an ideological given. For this reason, the "socialist market economy" in rural areas can only be realized by commercializing the rights to land use and lease. In this policy arena, however, the clash between Marx-Leninist tenets and the reality of the reforms features most prominently. For this reason, land policy-making strongly resembles a trial-and-error process accompanied by deliberate institutional ambiguity for political manoeuvring. The ambiguity results in a lot of confusion about the officially condoned land property arrangements. On the other hand, it also allows a certain degree of experimentation by local cadres.

In the course of the economic reforms, a market has emerged at which use rights to state-owned land can be sold and transferred. In general, state-owned land can be developed and leased for real estate and agricultural purposes. Concerning rural land, the Household Contract Responsibility System has moved beyond its initial confines and farmers can in principle sublease and transfer their contracts provided that land use is limited to agricultural purposes (including forestry, animal husbandry and fishery). In addition, since 1999 the lease by individuals and units outside the collective has become possible.<sup>80</sup> However, practices such as sublease and transfer are rare in the greater part of China.<sup>81</sup> In addition, the pricing of rural land is still an ideological taboo which inhibits an economically efficient exchange of land use rights. In this respect, the "rural land market" is a far cry from its urban parallel.

The "land market" as it exists in China today has come a long way. The revision of the Constitution in 1988 legitimized land rent and transfer under a "valued use system" (*youshang shiyong zhidu*) and heralded the first major land policy change since decollectivization.<sup>82</sup> In the same year, the State Land Administration argued for the implementation of a valued use system for state *and* collective land for three reasons: realizing an efficient and sustainable use of land resources; securing for the state and

79. Walker, *Land, Property and Construction in China*, p. 61.

80. Provided that approval of two-thirds of the villagers' congress or delegates has been obtained. Article 15, Revised Land Administration Law in Fang, *A Discussion of the "Land Administration Law"*, p. 208.

81. Several terms are often mistakenly used as synonyms for the "transfer of use rights": *huabo*, *churang*, *zhuanrang* and *zhuanbao*. *Huabo* is non-taxed land transfer to companies and institutions that invest in land development at the first-level market (state-monopolized). The period for this varies from 40 to 70 years. Contrary to the past, the state now attempts to levy tax or a premium for land transfer, which is then called *churang*. *Zhuanrang* refers to the second-level market at which use rights are transferred to land users. *Zhuanbao* is sublease without the farmer ceding the rights to land. A good introduction on the theoretical background of China's land use market is provided in Kewei Ma (ed.), *Tudi dacidian (The Great Dictionary on Land)* (Changchun: Changchun chubanshe, 1991), pp. 93, 183, 891 and 988; and Walker, *Land, Property and Construction in China*, pp. 38–44.

82. Article 10, *Zhongguo falü chubanshe, The Constitution of China*, p. 8; and in the same volume Article 2 of the Bill of Amendment, p. 42.



collective the benefits from land holdings through land tax or a premium (rent for the entire lease term); and attracting (foreign) investments into land and real estate.<sup>83</sup> The Legal Committee, however, feared that the valued use system might destabilize rural land lease and proposed that “the law temporarily makes no stipulations, in order to conduct further investigation and gain more experience.”<sup>84</sup>

The current trend of the rural land lease system can be summarized as stabilizing farmers’ contracts and limiting the valued use of land outside the agricultural realm. The protection of farmers’ legal interests has become common ground for policy makers. During the NPC Standing Committee discussion on the Revised Land Administration Law in June 1998, delegates put forward that “the revised draft does not make sufficient stipulations ... on the protection of farmers’ contract right; this needs to be completed.”<sup>85</sup> In this respect, the new law breaks with the past in two aspects: reiterating the policy of 1997, which in principle guarantees a land lease of “30 years no change”;<sup>86</sup> and curtailing the power of the villagers’ committee through the stipulation that leased land can only be redistributed if two-thirds of the villagers’ congress or delegates approval has been obtained. A senior official of the Ministry of Agriculture commented: “What the central government ultimately aims for is granting farmers the right to lease in perpetuity (*yongdianquan*), because what will happen after 30 years? The lease will be extended with another 30 years, then another 30 years, and so on infinitely.”<sup>87</sup>

As regards the valued use of rural land, there is less agreement. During the presentation of the draft for the Revised Land Administration Law, the debate on this issue flared up again. With many others, the Zhejiang Land Administration Bureau argued: “The scope of the valued land use system for state land is too small ... and should be extended to collective land. In fact, valued land use is already practised for collective land.” But again, the NPC Legal Committee reiterated its official stance of the late 1980s, with the result that the valued use system is restricted to state-owned land.<sup>88</sup>

83. RFGW, *An Interpretation of the Land Administration Law*, p. 39.

84. Jianqing Lin, *Quanguo renda falü weiyuanhui dui “Zhonghua renmin gongheguo tudi guanlifa xiuzheng’ an (cao’ an)” de shenji jiegao de baogao* (Report on the Results of the Review of the “Revised Amendment of the Land Administration Law of the People’s Republic (Draft)” by the Law Committee of the National People’s Congress), Speech at the 5th Session of the Standing Committee of the 7th National People’s Congress, 23 December 1988, p. 1.

85. See Li, *Preliminary Review “Land Administration Law,”* p. 6.

86. Zhonggong zhongyang bangongting, *Zhonggong zhongyang bangongting, guowuyuan bangongting guanyu jinyibu wending he wanshan nongcun tudi chengbao guanxi de tongzhi* (Notice by the Central Secretariat of the CCP and the Secretariat of the State Council on the Further Stabilization and Perfectioning of the Contract Relations of Rural Land), No. 16 (1997); Article 14, Revised Land Administration Law in Fang, *A Discussion of the “Land Administration Law,”* p. 208.

87. Sheng Li, oral communication, 1999. The official view fits in with the recent Chinese academic discussion on transforming the right to lease into a real right. See, for example, Su Chen, “Tudi chengbao jingying wuquanhua yu nongdi shiyongquan zhidu de quelì” (“Changing the contract right to land into a real right and the establishment of a system for agricultural land user rights”), *Zhongguo faxue*, 1996/3, p. 89.

88. RFGW, *An Interpretation of the Land Administration Law*, p. 366; Li, *Preliminary Review “Land Administration Law,”* p. 6; Article 2, Revised Land Administration Law in Fang, *A Discussion of the “Land Administration Law,”* p. 207.

What are the main points the valued use of rural land boils down to? The free transfer, rent and mortgage of land in and outside the agricultural realm. The valued use of rural land is an opaque area in which economically more developed regions have often taken liberties not (yet) defined in law. For example, some village collectives rented land to companies for agriculture or land improvement that strictly speaking transcends the current boundaries of national law. Equally confusing is the mortgage of use rights. The mortgage of state-owned land use rights is allowed by the central government, albeit not laid down in law.<sup>89</sup>

A typical borderline case is the mortgage of wasteland. According to a notice by the State Council "those who buy [wasteland] use rights, have the right to inherit, transfer, mortgage and shareholding management."<sup>90</sup> According to the Constitution, wasteland is state-owned, unless proven collective property.<sup>91</sup> This stresses a well-known problem discussed earlier. The greater area of wasteland is *de jure* state-owned only because collectives fail to prove title to the land they used and invested in for ages. But this does not keep the collectives from laying customary claims to wasteland. It therefore can happen that collectives mortgage the use right of wasteland claimed by customary right, while such practice is prohibited by higher authorities that regard wasteland as state-owned. This hampers the development of a rural land market. In a writing to the NPC, Sichuan province proposed to include the mortgage of collective land use rights in the Land Administration Law, but to no avail.<sup>92</sup>

### *Summary and Concluding Observations: What Makes the System Tick?*

In the academic debate on states-in-transition, some argue for radical privatization of property rights, while others maintain that privatization needs gradual guidance in keeping with the socio-economic and legal conditions. The People's Republic of China seems to defy the former argument. Of the three means of production – land, capital and labour – the first is still firmly in the hands of the Chinese state and the collective. At the same time, research is finding increasing evidence that the current

89. See the legal interpretation of the NPC Legal Committee. RFGW, *An Interpretation of the Land Administration Law*, p. 41.

90. Article 6, Secretariat of the State Council, "Zhili kaifa nongcun 'sihuang' ziyuan jin yi bu jiaqiang shuitu baochi gongzuo de tongzhi" ("Notice on the control and development of the rural 'four wastelands' resources and the intensified strengthening of soil and water conservation"), in *Zhongguo falü nianjian bianji weiyuanhui* (ed.), *Zhongguo falü nianjian 1997* (*China Legal Yearbook 1997*) (Beijing: Zhongguo falü nianjianshe, 1997), pp. 425–26.

91. See Article 9, *Zhongguo falü chubanshe*, *The Constitution of China*, p. 8. Note that wasteland is only mentioned as such in the Constitution. It is not defined as a separate natural resource in other laws. For this reason, it is unclear whether wasteland should be handled according to the Forest Law or the Grassland Law. It is the cause for frequent strife between the Bureau of Animal Husbandry under the Ministry of Agriculture and the State Bureau of Forestry. See Peter Ho, "The four wastelands auction policy: removing the rural–urban divide or another commandist mass campaign?" *China Information*, Vol. XIV, No. 1 (2000), pp. 1–37.

92. "Remarks on the 'Land Administration Law (Revised Draft)' by all provinces, autonomous regions and municipalities directly under the central government," in RFGW, *An Interpretation of the Land Administration Law*, p. 381.

land tenure system with its frequent readjustments in response to demographic change is found to be credible by the rural populace. And the impressive economic growth that began and continues to be rooted in the rural sector lends support to the idea that – apart from other economic factors – the privatization of land is actually not a *conditio sine qua non*. One may wonder what underlying institutional arrangements have led to this situation. In the case of China's land lease system no such analysis has yet been undertaken, which is the reason for writing this article.

As land tenure touches on the very foundations of the Chinese state, striking the right balance between ideology and the socio-economic reality is an arduous task for the central leadership. The question is how far privatization can proceed before corrupting the Marx-Leninist principles of state and collective land ownership. Land policy-making is, therefore, an alternation of restraining practices that exceed legal boundaries and giving space to experimentation by formulating intentionally unclear policies and laws. Throughout this article, it has been argued that this "deliberate institutional ambiguity" makes the system tick. The argument was substantiated by reviewing four critical issues in the political debate over land administration with particular reference to rural land: the right of ownership; registration of land ownership titles; the reform of the Ministry of Land Resources; and the establishment of a market for lease and use rights.

To the question: who owns the land? no unequivocal answer is possible. The lack of clarity on state ownership springs from the scattered authority in land administration over various ministries. Thus, clarifying state ownership is closely linked to the organizational reform of the Ministry of Land Resources. In order to streamline land administration, the national government advocates centralization, which generated inter-departmental conflicts. Although the NPC Legal Committee regards unified land administration as the ultimate aim, it ruled that this should be postponed rather than forcefully implemented at present. It explains the contradictory formulation in the Revised Land Administration Law that defines unified land administration, while leaving intact the separate management of forest, grassland and fisheries.

A similar decision was taken for the nature of collective land ownership. To avoid an escalation of land disputes between the various levels of the rural collective, the law maintains a deliberately vague definition of collective ownership. However, it did not seriously impede the execution of land registration. To date the land titles of collective institutions at the administrative village level and higher have been assessed without the eruption of large-scale social conflict. This is certainly because land registration halted at the most sensitive level, that of the successor of the original owner of collective land: the natural village or villagers' group. It testifies to the central government's caution in land reform.

In response to economic change, land rent and value principles were included in the Constitution in the late 1980s. It opened the way for a free transfer of land use and lease rights. But also in this area, the central

government exerted considerable restraint. In the course of reforms the right to lease in perpetuity has materialized as a viable option in the eyes of the state. From an outright ban on the commercialization of land rights before 1988, the central government has gradually moved to "valued use" of urban land, while a legal twilight zone still surrounds the transfer of rural land rights.

As stated in the introduction, the objective of this article is not to address the question of whether the Chinese economic reforms will or should lead to privatization of land rights. Instead, it gives a detailed account of the past and present institutional framework, which is essential for understanding institutional change and the present land tenure system. On the basis of China's relatively successful economic performance over the past two decades, the farmers' support for a lease system that includes frequent reallocations, and the absence of large-scale social conflict that challenges the current structure of ownership, it may be concluded that this institutional framework *is* credible and acceptable for the state and rural society today.

The fact that the Household Contract Responsibility System has generally been unchallenged is surprising in light of the fact that in the past land ownership was granted to the lowest collective – the team – while current lease practices point to the abolition of land ownership at this level. The explanation lies in the indeterminacy of the legal framework that provides no decisive answer to the question of whether the former ownership structure is extended under the reforms. This institutional indeterminacy is exploited by economically more developed regions. The rapid urbanization and frenzy for real estate development there has led to a boom in the value of land. For this reason, the local government would welcome a legitimization of its common practice: robbing the natural village from its land ownership. At this point, there is a high risk that the deliberate institutional ambiguity becomes an instrument in the violation of villagers' interests. To secure villagers' rights, it is critical that the central leadership takes the lead in clarifying the legal boundaries of collective ownership. Confronting the Chinese government is the responsibility to shape the future institutional framework for land policy and administration, and guarantee its social credibility.