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Research Note

The Clash over State and Collective Property: The Making of the Rangeland Law*

Peter Ho

China's Rangelands and Rangeland Policy

"Do you have some material about rangeland laws and regulations in the West? It does not matter from which country, we urgently need some material to give us new ideas about rangeland management," asked Li Derong, the highest ranking official responsible for rangeland policy formulation in China.¹ His question illustrates three points. First, it shows that on the way to becoming a market economy, after more than two decades China is still very much constructing, amending and reconstructing a viable and solid system for grassland management. Secondly, it is indicative of the growing awareness within the Chinese Ministry of Agriculture that rangeland policy² as it emerged after the demise of the people's communes in the 1980s is ripe for revision. Finally, it suggests an interest in examining and learning from the experience of other countries, particularly in the West.

Of the total surface of the People's Republic (9.6 million square kilometres), it was estimated in 1989 that 41.7 per cent (or 400 million hectares) was rangeland. This natural resource exhibits great geographical and ecological diversity, varying from the alpine meadows on the Tibet-Qinghai Plateau at an altitude of over 4,000 metres above sea level, to the steppe and desert in arid regions such as Xinjiang (with less than 150 millimetres of annual precipitation), and the hilly grassland in the sub-tropical zone of Yunnan province and the semi-arid Loess Plateau. From a socio-economic and ethnic perspective, the variation is no less. The people dependent on rangeland include (semi)nomadic Mongols, Tibetans and Kazakhs, as well as sedentary livestock farmers like Hui Muslims or Han Chinese. Over 50 per cent of China's rangelands are located in the north, the area that is regarded as the traditional pastoral region. The northern rangelands are strategically important, with their location in

* This article would have never existed in its present form if it was not for a coincidence which brought me into contact with professor Shi Wenzheng, whom I owe my greatest debt of gratitude. I would also like to thank Eduard B. Vermeer, Mark Selden, Jan-Michiël Otto, Tony Saich, the participants of the seminar on Law and Administration in Developing Countries, Leiden University, May 1997, as well as Ni Dongfa and Ding Wenying. In order to protect informants' privacy, pseudonyms have been used for the names of certain officials.

1. Section Head of the Grassland Section of the Department of Animal Husbandry and Veterinary Science (oral communication, 1996).

2. By policy is meant the body of aims and means, of which laws are a part. I will talk about "rangeland policy" when the whole body of rangeland policy measures, laws and regulations is meant. However, in the Chinese setting, the distinction between policy and law is often blurred. For example, the Rangeland Law (*caoyuan fa*) is frequently equated with rangeland policy (*caoyuan zhengce*).

the frontier zones and inhabited by ethnic minorities with possible separatist agendas. In addition, they represent vast grazing areas for a livestock sector with promising future perspectives. China belongs to one of the largest meat producers in the world, and it could become a major exporter of pork.

It is said that the rapid increase of grazing animals in the pastoral areas (from approximately 29 million in 1949 to 90 million in the early 1990s), as well as the decline in the area of rangeland due to reclamation (an estimated loss of 6.5 million hectares over 1949–92), has led to serious rangeland degradation and desertification. In 1994, over one-third of usable rangeland had been reported degraded to a certain degree, while total biomass production per hectare had declined to 30–50 per cent of that in the 1950s.³

For a long time, China had no comprehensive long-term policy for rangeland. In the past, policy-makers saw no urgency for a nation-wide rangeland policy as the communes seemed to provide at least some sort of institutional structure for the use and protection of pasture. However, when the communes were dismantled it became apparent that collectivist structures had actually been the very basis of a “tragedy of the commons” in pastoral and semi-pastoral areas. Moreover, it was also clear to many that pastoral areas had been disregarded by reform policy-makers and that rangeland degradation was impending if the institutional vacuum left by the communes was not dealt with properly.

The economic reforms in China have seen a drive amongst policy-makers to regulate society by means of laws. The central government firmly believes that, in the transition from a socialist to a market economy, the traditional “rule of man” – *renqing shehui*, or “society of human emotion” – which dominated China for so long needs to be supplanted by the “rule of law”⁴ to provide people with a secure, rational and impartial mediation of interests. Over the years, there has been a succession of laws: the Press Law, the Advertisement Law, the Enterprise Bankruptcy Law, and so on. More and more aspects of society hitherto untouched by legislation are included. This background and the governmental fear of large-scale destruction of rangeland without strict regulations to guide its management and use prompted the proclamation of the Rangeland Law in 1985.

The Rangeland Law is the official legal expression of a rangeland policy that attempts to devolve the use rights and liability from the state and collectives to the individual. Under the principle that grassland is owned by either the state or the collective, households and collectives are allowed to contract the use of rangeland for a “long term.”⁵ In order to

3. Yutang Li, *Caoye: fuguo qiangmin de xinxing chanye (Pastoralism: The Newly Established Industry to Strengthen the People and Enrich the Country)* (Yinchuan: Ningxia renmin chubanshe, 1994), p. 29.

4. For a detailed overview of the Chinese debate on the “rule of law,” see Ronald C. Keith, *China's Struggle for the Rule of Law* (Basingstoke: Macmillan, 1994), pp. 8–38.

5. The Rangeland Law does not specify as such the period of contracting, but in practice the maximum period is presently 30 years.

effect the so-called Pasture Contract Responsibility System (hereafter referred to as the pasture contract system), the Chinese Ministry of Agriculture envisaged the following stages: first, the distribution of animals to individual households (essentially completed by the end of the 1980s); secondly, the assessment or in some cases re-assessment of rangeland boundaries between collectives, and the consequent allocation of rangeland use rights to collectives and households (allegedly completed by the end of the 1980s); thirdly, the appraisal of pastures in terms of stocking rates (allegedly completed by the end of the 1980s); and finally, the implementation of a system of incentives and penalties to ensure that producers abide by the carrying capacities of the plots of land assigned to them (under way). In theory, the greater part of the grasslands in China has already been contracted out.⁶ The time has thus arrived to assess the carrying capacities of the various plots of contracted pasture and to enforce them subsequently.

The Failure of the Rangeland Law: The Research Questions

In reality, the official claim that the pasture contract system is firmly in place is questionable.⁷ In the words of the former deputy head of a provincial Department of Animal Husbandry (*xumuju*): “The figures of contracted rangeland have no importance at all. They are administrative figures, which the central government has required us to report, and exist on paper only.”⁸ As the base for the enforcement of the Rangeland Law – the pasture contract system – is weak, it should not come as a surprise that the implementation of rangeland policy and the Rangeland Law have

6. The following percentages of contracted rangeland in China have been mentioned: 90% for Gansu, 80% for Sichuan, 70% for Inner Mongolia, 79% for Qinghai, 69% for Ningxia, 26% for Heilongjiang, 30% for Xinjiang, 37% for Jilin and 30% for Liaoning. See Yutang Li, *Pastoralism*, p. 101.

7. See also: Peter Ho, “Ownership and control in Chinese rangeland management: a case study of the free-rider problem in pastoral areas in Ningxia, China,” in Eduard B. Vermeer, Frank Pieke and Woei Lien Chong (eds.), *Cooperative and Collective in China's Rural Development: Between State and Private Interests* (Armonk, NY: M.E. Sharpe, 1998); Robin Mearns, “Community, collective action and common grazing: the case of post-socialist Mongolia,” *The Journal of Development Studies*, Vol. 32, No. 3 (February 1996), pp. 304–305; Caoyuanchu and Caoyuan jianli zhan (ed.), “‘Caoyuan fa’ zhishi jiangzuo” (“Intellectual discussion about the Rangeland Law”), *Xinjiang xumuye: zengkan (Animal Husbandry in Xinjiang: Supplementary Issue)* (1995), p. 40; and Dee Mack Williams, “The barbed walls of China: a contemporary grassland drama,” *The Journal of Asian Studies*, Vol. 55, No. 3 (August 1996), pp. 665–691. In their extensive study of animal husbandry in Inner Mongolia, Gansu and Xinjiang, John Longworth and Gregory Williamson note the following: “Another serious source of uncertainty surrounding pasture use contracts in some areas is that while the contract specifies the area assigned to the household, it does not designate the precise location of this pasture land. These “partial” contracts obviously encourage grazing-in-common practices and discourage investments in pasture conservation and improvement by individual households.” See John W. Longworth, and Gregory J. Williamson, *China's Pastoral Region: Sheep and Wool, Minority Nationalities, Rangeland Degradation and Sustainable Development* (Wallingford: CAB International, 1993), p. 321.

8. Statement by Su Chunguo, former deputy head of the Ningxia Autonomous Region Department of Animal Husbandry and professor in rangeland management (oral communication, 1996).

been highly frustrated over the last decade. In this respect, Longworth and Williamson have observed the following:

At central government level certain policies are in place and provincial, prefectural, county and even township officials will describe ... how the policy is working. However, at the village and household level, the policy does not exist. Situations illustrating this policy failure problem were observed in relation to the policing of pasture stocking rate limits.⁹

Currently, many policy-makers believe that the rationale of the rangeland policy as developed during the early reforms is outdated, or at least insufficient to deal with the new socio-economic environment of the late 1980s and 1990s. This idea has prompted policy-makers at the central and the provincial level to rethink and reshape the Rangeland Law and the rangeland policy it represents.¹⁰

However, policy and lawmaking in China is an opaque area in which too many questions still remain unanswered. For example, why is the Rangeland Law so difficult to implement? Which department or departments took the initiative to formulate rangeland policy? Is there an underlying rationale for the Rangeland Law at all, or is it nothing more than symbolic, a political compromise between contending factions? This article argues that the Rangeland Law is a classic example of what the sociology of law terms a "symbol law."¹¹ According to Marius Aalders, symbol laws stipulate certain norms and values not yet widely accepted in society, without the lawmaker having considered their practical feasibility and implementability. Symbol laws are generally ineffective, because the manner in which they are formulated ensures that they cannot achieve their aims, in order to satisfy the faction that opposes them. On the other hand, the faction striving for their formulation has won a pyrrhic

9. Longworth and Williamson, *China's Pastoral Region*, p. 322. In this context Albert Chen writes: "the question of legal efficacy, or the gap between the law as stated in the statute book and actual behaviour on the part of officials and citizens, presents probably the most serious obstacle ... of the Chinese legal system." He cites the example of a study in Heilongjiang province where only 10% of all existing laws were being effectively implemented or enforced. See Albert Hung-yee Chen, *An Introduction to the Legal System of the People's Republic of China* (Hong Kong: Butterworths Asia, 1992), p. 92.

10. Dee Mack Williams argued that the discourse around the achievements and successes of national rangeland policy expresses "the environmental preferences and cultural biases of the Han Chinese" as opposed to nomadic, herders. According to him, "the status quo (of rangeland policy, P.H.) serves powerful political interests by reproducing a national discourse concerning the frontier that affirms fundamental assumptions about the accomplishments of the reform era, the benevolence of the Chinese state, and the superiority of Han civilization." Williams has rightly drawn more attention to the role of the discourse in shaping Foucaultian power relations between Han Chinese and nomadic pastoralists. However, the formulation and implementation of rangeland policy is not a static but rather a dynamic arena in which various forces contend with each other over maintaining or changing the status quo. Moreover, as I will demonstrate, the legal and institutional context is an even greater factor in shaping the discourse of rangeland policy, apart from cultural, spatial and ecological preferences of Han Chinese. See Dee Mack Williams, "The barbed walls of China: a contemporary grassland drama," *The Journal of Asian Studies*, Vol. 55, No. 3 (August 1996), p. 687.

11. With his research on the Norwegian 1948 Housemaid Law, Vilhelm Aubert opened up a new area of research on "symbol laws" in the sociology of law. See also: Vilhelm Aubert, "Some social functions of legislation," *Acta Sociologica*, Vol. 10, Nos. 1-2 (1966), pp. 98-121.

victory as the norms and values included in law have no practical consequences.¹²

To answer the questions above, the content of current rangeland policy is reviewed, with special emphasis on the Rangeland Law and other legal regulations. The next section takes a brief historical look at rangeland regulations, the rights of ownership and user, and rangeland protection and improvement, starting from the latter half of the 1940s. The article then charts the formulation of rangeland policies, laws and regulations from the central government level down to the provincial level.¹³ Although analysis of the implementation process at the grassroots level is necessary in order to determine the actual effects of rangeland policy, this is too extensive an issue to be dealt with here.¹⁴

Land Reform and Ownership Rights: Land to the Herdsman?

After the land reform, individual ownership was abolished, but it was not until 1956 that rangeland was officially nationalized. At present, there are two forms of ownership for rangeland: state and collective ownership.¹⁵

This reply was given by a senior official of the Department of Animal Husbandry in Ningxia in answer to my question, *when* rangeland was nationalized and *which* forms of rangeland ownership exist in China. A teamleader, a township head or any other official will probably give a reply that is a variation on this theme. The year given for nationalization can vary a little, but all will agree on the principle of state and collective ownership of rangeland. However, there is a wide diversity of views on which rangeland is state-owned and which is collectively owned. There is an apparent contradiction between the perception of ownership of rangeland at the village level and the official reading of its ownership. Where does the confusion around the rights of ownership and use arise from?

To clarify this question it is first necessary to have a closer look at the 1985 Rangeland Law. One of the crucial stipulations, article 4, clearly states that:

Rangeland is state-owned, apart from rangeland that is collectively owned as stipulated by the law. Collectives are allowed the long-term use of state-owned rangeland. State-owned rangeland, collectively owned rangeland and state-owned rangeland which is in long-term use by the collective, can be contracted by the collective or the individual for animal husbandry production.¹⁶

12. Marius Aalders, *Industrie, Milieu en Wetgeving: De Hinderwet tussen Symboliek en Effectiviteit* (Industry, Environment and Legislation: The Nuisance Act between Symbolism and Effectivity), Ph.D. thesis (Amsterdam: Kobra, 1984), p. 13.

13. In this article, I have used fixed designations for departments and offices at a given administrative level. I have used the term "department" (*si/ju/ting*) for any government body at the state and provincial level, while "section" (*chu*) corresponds to a state organ at the county level, and "bureau" (*ke*) is reserved for the township level.

14. See Peter Ho, "China's rangelands under stress: a comparative study of pasture commons in Ningxia, P.R. China," *Development and Change*, Vol. 31, No. 2 (March 2000).

15. Xin Zhongzhi (oral communication, 1996).

16. In the translation "owned by the people" has been consistently translated as "state-owned," while "fixed" for *guding* has been left out of the translation. See: Nongyebu

However – and this is the catch – the Rangeland Law does not *define* state-owned and collectively owned rangeland, for various historical reasons.

Before land reform, rangeland in China was owned by princes, lamaseries, landlords or clans, yet it was commonly used by herders and livestock farmers. The end of the traditional property rights systems in China was heralded by land reform. The timing of land reform for grazing lands differed for the various pastoral regions. In Inner Mongolia it was executed simultaneously with agricultural land reform from 1947 until 1952. In Xinjiang it took place in 1953 and 1954, in Qinghai it was conducted from 1952 until 1958, in Sichuan it lasted from 1955 until 1960, while Tibet was the latest with the period 1959 to 1961. Also the extent to which grazing lands were expropriated from landlords and rich farmers differed over time and place.¹⁷ The early land reform in the “old revolutionary base areas” (Shaan-Gan-Ning border region) took a more radical stance against landlords, and most of their land property (including grazing land) was confiscated and redistributed. However, in the later period a more moderate line was followed and rich and middle peasants were allowed to keep part of their landholdings.¹⁸ By the time land reform came to an end, rangeland had been declared public property with the policy line: “rangelands are public, grazing is free” (*muchang gongyou, fangmu ziyou*), although small portions remained in private hands.¹⁹

In his excellent work on the Rangeland Law, the Chinese jurist Shi Wenzheng gives a detailed account of the history of rangeland rules and regulations. He is the first to note that rangeland in China was declared public property without any legal expression; it was incorporated neither in the Constitution nor in any other law. This might be symptomatic of the highly politicized and revolutionized atmosphere in which land-to-the-tiller movements generally tend to take place, but it is best understood in relation to the low priority the Chinese government accorded to rangeland as compared to forests and other natural resources. The Constitution of 1954 stipulates only that “mineral resources, water, forest, wasteland and other resources specified by law as state property, are all owned by the whole people.” Neither the Constitution of 1975 nor that of

footnote continued

zhengce tigai faguisi (NZTFS) (ed.), *Nongyefa quanshu* (A Complete Edition of Agricultural Laws) (Beijing: Zhongguo nongye chubanshe, 1994), p. 685.

17. See Tu Ba and Lin Tai, *Zhongguo caoyuan xumuye jingji fazhan gailun* (General Discussion of China's Economic Development of Animal Husbandry and Pastoralism) (Beijing: Minzu chubanshe, 1993), p. 45.

18. Richard Madsen, “The countryside under communism,” in Roderick MacFarquhar and John K. Fairbank (eds.), *Cambridge History of China, The People's Republic, Part 2: Revolutions within the Chinese Revolution 1966–1982* (Cambridge: Cambridge University Press, 1991), p. 624; and Ningxia nongye hezuo jingji shiliao bianxiezhu (NNHJSBZ) (ed.), *Ningxia nongye hezuo jingji shiliao* (Historical Material of the Co-operative Agricultural Economy of Ningxia), Vol. I (Yinchuan: Ningxia renmin chubanshe, 1988), pp. 50 and 98–101.

19. In 1948, Wu Lanfu, at the time still provincial governor of Inner Mongolia (he would in later years rise to the central leadership), had declared that in all banners and leagues the herders had free grazing rights. This became the official policy for the pastoral regions in China. See Tu Ba and Lin Tai, *General Discussion of Animal Husbandry*, p. 48.

1978 mentions rangelands. It was not until the 1982 Constitution that rangeland was formally designated as state property.²⁰

What about collective property? At the time of land reform in China there were no collectives and as a result no collective property. However, when the higher agricultural production co-operatives were established in 1956 and ownership rights of all land including rangeland were vested in the collective,²¹ collective property was still not defined. As in the case of state property, it was not until 1982 that article 9 of the Constitution finally specified what had already become common practice:

Mineral resources, waters, forests, mountains, rangeland, wasteland, sandy waste and other natural resources are owned by the state, that is, by the whole people, with the exception of the forests, mountains, rangeland, wasteland and sandy waste that are owned by collectives in accordance with the law.²²

For the first time the Constitution stipulates that rangeland can be owned by the collective, only simultaneously to create a problem by providing no clue to the meaning of the term “collective rangeland.” This question pertains to rangeland that has been in long-term use by the collective after land reform. In order to clarify ownership and use rights of rangeland, and to provide a sound legal basis for the pasture contract system, the Chinese government faces the following problem: must collective rangeland be formally declared state property, as *de jure* it does not exist? Or would it be better to formalize that which has already become customary practice, namely ownership of rangeland by the collectives?

It is striking to see how the provincial governments, in an attempt to deal with the definitional problem of collective property, responded in diverse ways to the 1982 Constitution. Basically, their reactions can be put into four different categories. First is the decision to adhere to the Constitution, with no further specification of the nature of collective property. The rangeland regulations of Ningxia, Gansu, Qinghai, Guizhou, Sichuan and Liaoning belong to this category. Most importantly, the Rangeland Law falls under this group as well. The second category involves a formalization of common practice, that is the stipulation that all rangeland that has been in permanent or long-term use by the collective is automatically collective property. The rangeland regulations of Hebei and Inner Mongolia adopt this solution. Third is the

20. See 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), pp. 37–38.

21. NNHJSBZ, *Co-operative Agricultural Economy of Ningxia*, p. 205.

22. I have chosen to translate *huangdi* as “wasteland” and *huangtan* as “sandy waste” instead of “unreclaimed land” and “beaches” as in the official translation by the Institute of Chinese Law. The term “unreclaimed land” does not account for the fact that much wasteland is actually illegally under cultivation, or has been reclaimed in the past and left fallow again. The term “beach” has a connotation with the sea, whereas *huangtan* in Chinese refers to pockets of desert in steppe or grassland. For the official English translation, see Institute of Chinese Law (ed.), *Statutes and Regulations of the People's Republic of China*, Vol. IV (Hong Kong: Institute of Chinese Law Publishers, 1989), p. 2. For the original Chinese text, see Article 9 of the 1982 Constitution, NZTFS, *Complete Edition of Agricultural Laws*, p. 3.

stipulation that rangeland is collective property only when a “land use permit” has been issued by the county government or a higher level government. An example of this settlement is the rangeland regulations of Heilongjiang. And finally there is the solution of Jilin and Xinjiang, namely that “all scattered rangeland, hill and mountain meadows that are located in the neighbourhood of collective economic organizations or agricultural fields, is collective property.”²³

It should be remarked that apart from the first option, these actually have no legal basis in national law. In fact, the solutions proposed by provinces such as Jilin, Heilongjiang and Hebei are far ahead of the national debate on state and collective ownership of rangeland.

At a time when Inner Mongolia (1984), Ningxia (1983) and Heilongjiang (1984) had already promulgated local rangeland regulations, the central government followed suit with the Rangeland Law in 1985, which ideally had to provide the legal basis for the local regulations. However, it failed to do this, and – as shown in a later section – increasingly failed in other respects as well, as the rural reforms progressed.²⁴ The central government has resolved to deal with the differences in provincial rangeland regulations about state and collective property in a future Rangeland Law. One other problem still stands out: the definition of the term “collective.”

In China, wide disagreement exists over the exact meaning of “collective,” which makes it difficult to specify which administrative unit has *de jure* (and, for that matter, *de facto*) use rights, let alone ownership rights. In the rural setting alone, the term collective refers simultaneously to several administrative levels and units: the township, the administrative village, the natural village, and any collective township and village enterprise. At the grassroots level this ambiguity becomes apparent as the township, the administrative village and the natural village frequently disagree over the unit in which the use and ownership rights of rangeland are to be vested.

Yet the discussion about the level of (range)land ownership is not new. Before the lay-out of the people’s communes was finally consolidated in the early 1960s by the “Work Regulations for the Rural People’s Communes,” the central government wavered between land ownership by the production brigade (roughly equivalent to its successor the administrative village) and the production team (the present natural village). When the Great Leap Forward was launched, the higher agricultural production co-operatives were overnight organized into the people’s communes. These huge organizational units, which owned all the means of production in their territory, sometimes encompassed ten to 20 villages and had an average population of 25,000 people. However their scale soon proved to be ineffective. In response to the initial problems encountered

23. See Wenzheng Shi, *Research for a Judicial System for Rangeland*, p. 45.

24. See Difangxing fagui xuanbian bianxiezuo (DFXB) (ed.), *Difangxing fagui xuanbian* (*A Compilation of Local Laws and Regulations*) (Beijing: Zhongguo jingji chubanshe, 1991), pp. 493–98, 702–704, 877–881, 1019–22, 3578–82, 3699–3702, 3892–98; and NZTFS, *Complete Edition of Agricultural Laws*, p. 685.

during the Great Leap, the communes' ownership of the means of production – including agricultural fields, farm animals, implements and so forth – was broken up in a “three-level ownership.” Below the commune were the levels of the production brigade and the production team.²⁵ At the work conference in Zhengzhou in February 1959, central leaders decided that a “three-level ownership, with the brigade as primary accounting unit” would be the basic structure for the communes.

In the next year the complete failure of the Great Leap became apparent. As grain production plummeted and a nation-wide famine swept through the countryside, the government proclaimed the “Urgent Notice concerning the Political Problems facing the People's Communes,” also known as the Twelve Articles. This did not change the situation of the brigade as the basic accounting unit. In March 1961, the draft version of the “Work Regulations for the Rural People's Communes” (popularly known as the Sixty Articles) was adopted at the work conference of the Chinese Communist Party in Guangzhou. Article 17 of the Sixty Articles determined that “all land ... within the territory of the production brigade is owned by the production brigade,” and article 18 continued that “the production brigade must register and give land ... in permanent use to the production team.”²⁶

However, in September 1962, the Eighth National Party Congress adopted the revised draft of the Sixty Articles. Here the basic accounting unit was changed from the brigade to the team that from then on would also hold ownership rights to the land. Article 22 stipulated the following:

Collective forest, water resources, and rangeland, are all owned by the production team ... The management and ownership rights to land, animals, agricultural implements, forest, water resources, and rangeland as described above, remain unaltered for a long-term, after they have been fixed through negotiation and agreement of the Commune Members Committee or the Commune Members Representatives Committee.

This tenure system would stay essentially unchanged until the start of the demise of the communes in 1983.²⁷

In time, the production teams came to regard rangeland they used as their own. However, the land tenure system of the collectivist period was

25. See Madsen, “Countryside under communism,” pp. 640–44.

26. Zhongguo renmin jiefangjun guofang daxue dangshi yanjiushi (ZRJGDDY) (ed.), *Zhonggong dangshi jiaoxue cankao ziliao* (*Reference and Teaching Material for the History of the Chinese Communist Party*), Vol. 23 (Beijing: Guofang daxue chubanshe, 1986), p. 454. Note that the version of the Work Regulations published by the Chinese Nationalist Government is incorrect both as regards the date (March 1961 instead of June), and the title (the draft not the revised draft). See Gong fei “nongcun renmin gongshe gongzuo tiaoli” *xiuzheng cao'an* (*Revised Draft of “The Work Regulations for the Rural People's Communes” by the Communist Bandits*) (Taipei: unpublished, 1965), Article 17.

27. See ZRJGDDY, *Reference Material for History of Chinese Communist Party*, Vol. 24, pp. 137–38 and 141–42; Jiyuan Chen (ed.), *Zhongguo nongcun shehui jingji bianqian: 1949–1989* (*Socio-economic Change in China's Countryside: 1949–1989*) (Taiyuan: Shanxi jingji chubanshe, 1993), pp. 333–37; Qibin Ma and Wenbin Chen (eds.), *Zhongguo gongchandang zhizheng sishi nian* (*Forty Years of Chinese Communist Party Rule*) (Beijing: Zhonggong dangshi chubanshe, 1989), pp. 190, 197 and 220.

never formally incorporated in law (only in Party regulations). When the communes were dismantled and the commune was replaced with the township, the brigade with the administrative village and the team with the natural village, rangeland ownership became ambiguous, particularly since the ownership rights stipulated in the Sixty Articles were not followed up in national law. As a result, no one knew which unit held ownership rights of rangeland: was it the former production team, which held *de facto* ownership rights of land? Or was it the brigade – the present administrative village?

As mentioned above, collective and state ownership of rangeland was only officially included in the Constitution on the eve of decollectivization. But the level of collective ownership remained as much an enigma as the legal procedures to establish it. Therefore, legally, all rangeland is still state-owned, whereas the practice of the pasture contract system gradually forces the Chinese government to clarify the uncertainty over state versus collective ownership of rangeland, and, if collective, the level of ownership.

The discrepancy in ownership perception between higher and lower administrative levels is clearly captured in two statements by officials in Ningxia. When asked about the difference of state and collective rangeland, the deputy head of the Ningxia Department of Animal Husbandry answered: “In Ningxia all rangeland is state-owned, but we have given use rights of rangeland to collectives or individuals under the pasture contract system.” But a township head in the pastoral region in Ningxia, surprisingly stated: “Most of the rangeland in our township is collective property of administrative villages, while only a minor part, maybe a half per cent of all pasture, is state-owned, namely by state cattle farms.” The following section discusses the practical consequences of the unclear structure of ownership rights for the pasture contract system.

Continued Confusion over Definitions: Who May and May Not Use and Contract Pasture

The first reference to use rights of rangeland in contemporary Chinese legal texts appeared in the Rangeland Regulations enacted by the Inner Mongolian government in 1965. They were amended in 1973, and two years later the Ministry of Forestry and Agriculture provisionally approved their extension to eleven provinces and autonomous regions. The 1975 regulations stated that each county and banner (administrative unit equal to county) could allocate use rights: to state-owned profit and non-profit enterprises; and to production teams of the people's communes. In addition, they stressed the need for clear boundaries for rangeland, and called for well-defined use rights to be vested in the commune or the team.²⁸

The use rights of rangeland were not defined in national law until 1985, three years after those for ownership rights. Article 4 of the Rangeland

28. See Wenzheng Shi, *Research for a Judicial System for Rangeland*, p. 48.

Law provides that long-term use rights to state-owned rangeland can be allocated to the collective. Furthermore, under the same article state and collectively owned rangeland, as well as state-owned rangeland in long-term use by the collective, may be contracted to collectives or individuals for purposes of animal husbandry. The government directly above the county level (prefecture and above) is responsible for the registration and issue of user permits for the lease of state-owned rangeland, while the county government can assume these responsibilities for collectively owned and used rangeland.²⁹

In order to be able to exert stricter control over rangeland use and management, some policy-makers propose that use rights ought to be vested in the township (*sumu* in Inner Mongolia),³⁰ or any other collective economic organization at the township level. The township would then be charged with the co-ordination of rangeland use by the individual herders. Others argue against this on the grounds that pastoralists' incentives for sustainable livestock production can only be enhanced if use rights are vested in the lowest possible unit, the administrative village (*gacha*), or even the natural village. Amongst the proponents of the latter view are those who plead for the politically sensitive option of the recollectivization of livestock production, or a land tenure system based on more traditional social ties. According to this, pasture contracts would be issued to traditional groupings such as the *khot ail* in Mongolia. These are herders' groups of from two to over a dozen families, depending on the region. The *khot ail* is responsible for the socialization of children, for the performance of familial rites and for economic activities such as the herding of collective flocks. However, this discussion is still going on, and a solution does not seem to be close.

Little is still known about the actual implementation of the pasture contract system in China. However, it seems that in Gansu and Inner Mongolia, the administrative village is generally seen as the owner of rangeland and therefore responsible for the issue of contracts, while the township acts as monitoring unit.³¹ Ningxia, on the other hand, shows a much more amalgamated image. In the pastoral region, user contracts have been issued directly by the county government to the natural villages. After use rights had thus been fixed, the township issued pasture contracts to individual households (implying that the township is the owner of rangeland), with the administrative village as monitoring unit. In the semi-pastoral regions no pasture contracts have been issued, either to natural villages or to farm households. The pasture is used in common by the administrative or natural village on the basis of boundary agreements issued by the township, or written by administrative villages

29. See NZTFS, *Complete Edition of Agricultural Laws*, p. 685.

30. In Inner Mongolia the equivalent for the prefecture, county, township and administrative village are respectively: *meng* (league), *qi* (banner), *sumu* (township) and *gacha* (administrative village).

31. In Bairin Right Banner and Ar Horqin Banner, Inner Mongolia, the administrative village is the owner, while the township supervises. The same counts for Sunan county, Gansu. See Longworth and Williamson, *China's Pastoral Region*, pp. 183, 231, 259–261.

themselves. In general, natural villages do regard rangeland in their vicinity as their own, and, in spite of overlapped grazing and frequent grazing disputes, boundaries are quite clear to all.

Another aspect on which the Rangeland Law is imprecise is the transfer of rangeland use rights. Article 80 of the General Principles of Civil Law, based on article 10 of the Constitution, states that “land may not be sold, leased, mortgaged or illegally transferred by any other means.” This situation was altered by article 2 of the constitutional amendment adopted by the first session of the seventh NPC in April 1988. This stipulates that “the use right of land may be transferred according to the regulations of the law.” In the same year, an amendment to the 1986 Land Management Law was adopted which provided that land use rights may be granted to others in return for payment.³²

In addition, article 4 of the Land Management Regulations of 1991 prescribes that ownership and use rights of rangeland must be regulated according to the Rangeland Law.³³ Article 4 of the Rangeland Law provides that state and collective pasture may be contracted to collectives and individuals. But it does not state whether pasture contracts may be transferred or sold, in contrast to another basic law, the Agriculture Law, which stipulates that: “The contractor may transfer the contracted land, mountain, rangeland, wasteland, sandy waste and waters ... if permission from the party that issued the contract has been obtained” (article 13).³⁴ Several Chinese jurists have pointed out the legal uncertainty created by the fact that basic national laws such as the Land Management Law and the Agriculture Law allow the transfer of land contracts, while the Rangeland Law does not.

The fuzziness around the transfer of the right of use and contract created by the Rangeland Law translates into legal chaos at the provincial level. A short review of provincial legislation will make this obvious. The rangeland regulations proclaimed by the governments of Inner Mongolia (1984), Jilin (1987) and Heilongjiang (1984), and the former provisional rangeland regulations of Ningxia (1983), permit no transfer of rangeland. These regulations also make no distinction in the transfer of use or contract rights. On the other hand, the regulations of Liaoning (1988) and Xinjiang (1989) allow only the transfer of the use right (whatever that may imply, as both provinces have no legal procedures to formalize rangeland use rights) while no mention is made of the transfer of use rights under the pasture contract system. The amended regulations on range management in Ningxia (1994) provide for the transfer of pasture contracts, but stipulate nothing about the transfer of use rights. The regulations issued by Gansu do not even mention the transfer of rangeland.³⁵ It is clear that the Rangeland Law must be more specific on the

32. Chen, *Introduction to Legal System of China*, p. 198.

33. NZTFS, *Complete Edition of Agricultural Laws*, p. 562.

34. *Ibid.* p. 7.

35. Inner Mongolia Rangeland Regulations, Article 9; Ningxia Provisional Rangeland Regulations, Article 3; Liaoning Rangeland Regulations, Article 5; Jilin Rangeland Regulations, Article 9; Heilongjiang Rangeland Regulations, Article 6; Xinjiang

transfer of use and contract rights, in particular on the distinction between the two, and on the conditions under which the transfer of land use and contract rights is allowed.

According to a small group of Chinese scholars and officials, the present laws and regulations on the transfer of land lease contracts do not offer sufficient legal protection for the contractor. For example, at present any transfer of land lease rights has to be approved beforehand by the party which issued the contract: the collective. It is argued that such an arrangement opens up the possibility for the misuse of land through administrative measures by the collective, as it always has the final say in any transaction of land. A Chinese scholar at the Chinese Academy of Social Sciences comments:

The use of such administrative means in order to effect land management and the best allocation of land neglects farmers' right of independence, and is principally unbeneficial for the stability of rural production. The fact that the transfer of lease rights to land has to be approved by the party which issued the contract actually restricts the free transfer of land use rights.³⁶

A case that illustrates some of the current problems involved in the transfer of pasture contracts is that of a farmer, Wang, living in Zhengyi village, Hongri township, Inner Mongolia. In the spring of 1991, he contracted 5,000 *mu* of pasture from the village committee for a period of five years, for which he paid a contract fee of a half *yuan* per *mu*. One year later, Wang sold the land use rights for one *yuan* per *mu* to another farmer, without the consent of the village committee. The county grassland management station charged him with "illegal contract transfer" and imposed a 500 *yuan* fine. Wang appealed, but the court ruled that he had violated the Agriculture Law. However, in the meantime the grassland station had dropped the charges and annulled its former verdict. The case was then left to the village committee to resolve.³⁷

Apart from wondering why the village committee opposed the transfer of pasture contracts, the first question that arises is why the Agriculture Law was used as the legal basis on which Wang was found guilty. Wang had certainly breached the Inner Mongolia Rangeland Regulations, which prohibit any transfer of rangeland. However, national law always precedes provincial law. The national law most closely related to this case is the Rangeland Law, which unfortunately provides no clause on the transfer of land use rights, so the verdict was based on the Agriculture Law. As shown earlier, this law states that "... the contractor may transfer the contracted rangeland ... if permission from the party that issued the

footnote continued

Rangeland Regulations, Article 12. See DFXB, *A Compilation of Local Laws and Regulations*, pp. 494, 703, 877, 1020, 3893; "Ningxia Huizu zizhiqu caoyuan guanli tiaoli" ("Rangeland management regulations of the Ningxia Hui Autonomous Region), Article 10, *Ningxia ribao* (*Ningxia Daily*), 29 December 1994, p. 3.

36. 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 use rights"), *Zhongguo faxue* (*Chinese Law*), Vol. 3 (1996), p. 89.

37. Wenzheng Shi, *Research for a Judicial System for Rangeland*, pp. 190-91.

contract has been obtained.” Wang allegedly had not asked for permission from the village committee. Thus, he had committed an offence.

Also intriguing is the change in attitude from the grassland station: the charges were suddenly dropped, while it was clear that Wang had violated the law by selling the right of use without permission from the village committee. The end of the event is typical for a society dominated by the “rule by men”: it is left to the village committee to mediate and solve the conflict.³⁸

Protect the Range, Prohibit Reclamation

The third category of rules to be reviewed in this article pertains to the protection and improvement of rangeland. One of the most important aspects of rangeland protection includes the prohibition of reclamation for agricultural purposes. The official and academic view in China holds that reclamation directly leads to land degradation and soil erosion. However, reclaimed pasture unsuitable for agriculture is often abandoned after a certain length of time after which the original vegetation can recover. For example, in Qitai county in Xinjiang over one million *mu* of rangeland was reclaimed during the early People’s Republic. At present not even one-fifth of it is under cultivation. The same applies to Qinghai province, where 5.7 million *mu* was reported reclaimed in the 1950s, but in 1963, only 3.2 million *mu* was still under cultivation.³⁹ The long-term effects and the extent of irreversibility of degradation and erosion caused by reclamation are issues that need to be studied in more detail.⁴⁰

What reclamation of rangeland does incite, however, are the ongoing conflicts between pastoralists and sedentary farmers, which can be traced back over a long time.⁴¹ Because of rising population pressure and the seeking of short-term economic gains encouraged by the reforms, en-

38. Albert Chen notes “the system of mediation of disputes by people’s mediation committees has always been stressed as an important feature of the Chinese legal system.” People’s mediation committees are established under village committees or resident committees (urban areas). Also the judicial assistants at the county and township people’s governments and county courts may help in the settlement of disputes through mediation. Chen gives figures for 1989, stating that there were more than 1 million mediation committees, that successfully handled over 7.34 million civil cases. Chen, *Introduction to Legal System of China*, pp. 150–51.

39. Wenzheng Shi, *Research for a Judicial System for Rangeland*, p. 94.

40. Roy Behnke, Ian Scoones and other scientists have written extensively on the misconceptions of rangeland ecology and rangeland degradation. See Roy H. Behnke, Ian Scoones and Carol Kerven (eds.), *Range Ecology at Disequilibrium: New Models of Natural Variability and Pastoral Adaptation in African Savannas* (London: Overseas Development Institute, 1993). In another article, I have used the theoretical underpinnings proposed by Behnke and Scoones to examine the claim of rangeland degradation by Chinese officials and scholars. See Peter Ho, “Rangeland degradation in northern China – a myth? A statistical analysis to validate non-equilibrium range ecology” (forthcoming).

41. For a historical description of the shifting frontier between Mongols and Han Chinese see for example Eduard B. Vermeer, “Checks without balances: Manchu state building and Chinese agricultural expansion on the Inner Mongolian frontier,” in James Reardon-Anderson (ed.), *Continuities and Changes on the Mongolian Steppe: Implications for Land Use* (forthcoming); Thomas J. Barfield, *The Perilous Frontier: Nomadic Empires and China* (Oxford: Basil Blackwell, 1989).

croachment of pastoral areas has become a common practice. A stricter control of reclamation is urgently needed for both livestock farmers and pastoralists.

The earliest law codes on rangeland use and conservation are the Great Law promulgated by Genghis Khan, the Tsaazing Bichig Code (1230) and the Laws by Khubilai Tsetsen Khan (1321). Naturally, the articles on environmental protection included in these have a completely different meaning from those developed in the 20th century. In general, these regulations prohibited fire on pastures and restricted hunting. This also counts for the Mongol law codes of the 18th century, such as the Khalkh Jirum (1709) and the code by Woqilai (1728/29).⁴² For example, the fifth law code of Woqilai Tuxietuhan⁴³ provides that anyone who accidentally sets fire to pasture will be fined one horse and five head of cattle, and have to recompense for the losses of the pasture. The witness will be rewarded with one head of cattle out of the five forementioned, while the one who extinguishes the fire will get the remaining four. If the offender puts down the fire himself he may be exempted from prosecution.

On the eve of the People's Republic, a policy that explicitly prohibited rangeland reclamation was proclaimed by the government of Inner Mongolia. In 1947, the newly established Inner Mongolia Autonomous Region adopted the policy "protect the range, prohibit reclamation" (*baohu muchang, jinzhi kaihuang*). Elaborating on the same theme, the central government proclaimed the "Fundamental Summary of Animal Husbandry in Pastoral Regions such as Inner Mongolia, Suiyuan, Qinghai and Xinjiang" in 1953. This provided for the practice of rotational grazing, and pasture protection and improvement. Other pastoral regions adopted local norms of rangeland protection along the same lines.⁴⁴

The first national law in Chinese history dealing explicitly with the protection and improvement of rangeland was the 1985 Rangeland Law. In contrast to the regulations concerning ownership and use rights, those for rangeland protection are quite comprehensive and complete. They range from rules on illegal reclamation to the exploitation of medicinal plants. In addition, many provincial regulations provide a detailed system of fines and punishment for the various offences.

Moreover, unlike the regulations on ownership and use there is no apparent contradiction between central and provincial regulations con-

42. See Pieter W. Germeraad, *The Mongolian Landscape Tradition: A Key to Progress – Nomadic Traditions and their Contemporary Role in Landscape Planning and Management in Mongolia* (Rhoon: Pieter Germeraad and Zandangin Enebisich, 1996), pp. 51–54.

43. The name Tuxietuhan Woqilai (as the clanname comes first in Mongol, like in Chinese) would in modern Mongol transcription most likely be "Tüsiyetü Ochir." The term Tüsiyetü (literally: "providing support to the ruler"), is an honorific title, in former times equal to a counsellor to a monarch. However, in the 18th century it could also have been the clanname of the person or even the name of a place. Ochir comes closest to the Chinese transcription, but leaves the ending "-ai" unsolved, which could be a genitive case here. Nugteren (oral communication, 1997).

44. Su Chen, "Changing the contract right to land," p. 17; and Tu Ba and Lin Tai, *General Discussion of Animal Husbandry*, pp. 48–49.

cerning protection and improvement.⁴⁵ Many of the rules exist on paper only and have little direct influence on the people at the grassroots level for whom they are meant. However this is more because of the weakness of the state institutions that have to enforce them than any legal inconsistencies within the rules. The following sections examine the formulation of rangeland policy and laws at the national level.

Making the National Rangeland Law

Setting the agenda for the Rangeland Law. The idea of making so-called “National Rangeland Regulations” already existed a few years before the official drafting of the Rangeland Law started.⁴⁶ However, as soon as the project got under way it acquired a momentum of its own and evolved into what would eventually become the first national Rangeland Law. The agenda-setting confirms the remarks of Tanner that it is “characterized by a good deal of ‘competitive persuasion’ by the senior policy advisers to top leaders” and that “top leaders appear to depend heavily upon their key advisers and their advisers’ subordinates to generate and screen policy options for them.”⁴⁷ The route the Rangeland Law took in order to get on the agenda of the National People’s Congress (NPC) was similar to that of some other major laws, which were only formulated after high leaders had publicly stressed the necessity of their drafting.

The most active proponent of the Rangeland Law was Li Yutang, the former section head of the Rangeland Section (*caoyuanchu*) within the Department for Animal Husbandry and Veterinary Science (*xumu shouyisi*, hereafter DAHVS) of the Ministry of Agriculture. In order to get the Rangeland Law included in the lawmaking agenda of the NPC, Li lobbied with many high-ranking officials and influential scientists. In the end, he managed to secure the support of Qian Xuesen, a famous aeronautical scientist and the former executive chairman of the Chinese Academy of Sciences who was concurrent deputy chairman of the People’s Political Consultative Conference. With the help of Qian, Li Yutang was able to

45. The Chinese Constitution stipulates that national laws should not conflict with the Constitution, administrative regulations (promulgated by the State Council) should not conflict with the Constitution and laws, and local regulations (proclaimed by the people’s governments of provinces and autonomous regions) should not conflict with the Constitution, laws and administrative regulations. A legal system has been established for invalidating norms at lower echelons, which are inconsistent with norms at higher levels. However, Albert Chen notes that up to 1992 the system has not yet become operational. See Chen, *Introduction to Legal System of China*, pp. 90 and 92.

46. Murray Scot Tanner has given a detailed description of the five different phases in the Chinese national procedure for law formulation: agenda-setting, which consists of getting a particular draft law on the agenda of major state lawmaking agencies; inter-agency review, referring to the period of consensus-building about the draft law among major state agencies; top leadership approval of a draft “in principle”; review, debate and passage by the National People’s Congress; implementation of the law. Murray Scot Tanner, “How a bill becomes a law in China: stages and processes in lawmaking,” in Stanley B. Lubman (ed.), *China’s Legal Reforms* (Oxford: Oxford University Press, 1996), p. 45.

47. *Ibid.* p. 48.

bring the idea of the Rangeland Law to the attention of China's paramount leader, Deng Xiaoping.

In his speech at the Central Working Conference of the Party on 13 December 1978, Deng Xiaoping stated: "We must concentrate on enacting criminal and civil codes, procedural laws and other necessary laws, like the Factory Law, the People's Communes Law, the Forest Law, the Rangeland Law, and the Environmental Protection Law ..." ⁴⁸ Hereafter the green light was given to the Rangeland Law and the work could begin.

The clash of interests over rangeland. The initiative for the formulation of the Rangeland Law was taken in 1978 on the instigation of the DAHVS. Yet it was another seven years before the Rangeland Law was formally promulgated. What were the reasons for this protracted formulation process?

An official formerly involved in the drafting of the Rangeland Law remarked:

There are basically two reasons why it took so long to draft this law. First of all, because of the lengthy and complicated legislative procedures that require us to solicit the opinions of concerned departments several times, organize meetings, and send investigation teams into the field, before the bill can be passed by the NPC. Secondly, because of contradictions between departments over certain issues. ⁴⁹

The latter point pertains in particular to the struggle over responsibilities between the Ministry of Agriculture, the Ministry of Forestry (now the State Forestry Bureau), the State Land Administration Department (*tudi guanliju*, at present the Ministry of Land and Natural Resources) under the State Council, and the State Environmental Protection Agency (*huanbaoju*): a struggle which culminated in the debate over ownership rights.

The unclear lines of authority between the State Land Administration, the Ministry of Agriculture (including the DAHVS) and the Ministry of Forestry find their origin in articles 5 and 9 of the Land Management Law. Article 5 states: "The state institution for land administration under the State Council is the main responsible unit for the unified management of land of the entire nation": while article 9 stipulates: "Use and ownership rights of specified forest, and rangeland ... are to be dealt with according to the relevant provisions of the Forest Law and Rangeland Law." ⁵⁰ Article 11 of the Forest Law states that the Forestry Departments

48. Deng Xiaoping, "Emancipate the mind, seek truth from facts and unite as one in looking to the future," in Editorial Committee for Party Literature (ed.), *Selected Works of Deng Xiaoping (1975–1982)* (Beijing: Foreign Languages Press, 1984), p. 158. The translation in the edition of the Foreign Languages Press is corrupt in the last sentence, as it speaks of "laws concerning ... grasslands," while the original text talks about "a rangeland law." It has been corrected here.

49. Niu Futing (oral communication, 1997). Niu Futing is a present member of the Amendment and Drafting Group for the revised Rangeland Law.

50. See NZTFS, *Complete Edition of Agricultural Laws*, pp. 555–56.

at all levels are responsible for the management and supervision of forest resources, while article 3 of the Rangeland Law stipulates that the Agricultural and Veterinary Departments of the State Council are responsible for national rangeland management.⁵¹

The vague task definition between the Ministry of Agriculture, the State Land Administration and the Ministry of Forestry has caused frequent haggling over policy issues. Recent policies that touch on land tenure problems, such as the Four Wastelands Auction Policy, have only sharpened the contradictions between these three state organs at every administrative level. Says one official of the Provincial State Land Administration:

We are entitled to hand out land use permits. Any other department, like the Department of Animal Husbandry or the Department of Forestry, that hands out land use permits for rangeland or forest must ask our prior approval. For us the division of responsibilities is clear: the Department of Animal Husbandry and the Department of Forestry only have authority over the soil surface, while we control the subsurface as well. However, these departments wrongly assume that they have subsurface authority, which has created conflicts.⁵²

The friction between the Ministry of Forestry (including the National and Provincial Departments of Forestry, *linyeting*) and the DAHVS concerns the definition of forest and rangeland. In particular the steppe in semi-arid and arid areas poses a problem, as it is an ecological mixture consisting of sparse tree vegetation on rangeland. For example, how should grazing that takes place in forest be dealt with? In addition, the term “wasteland” is notoriously ambiguous in this context. It is illustrative that in one county the Department of Animal Husbandry can claim to be in charge of the management of wasteland, while in a neighbouring county the Department of Forestry makes this claim. Recently, talks have been held about a redefinition of the term “rangeland.” For example, Heilongjiang province has proposed the following definition: “Grassland used for, or planned for the use of grass collection or pasturing, with a predominant grassy vegetation (trees or shrubs with a canopy density below 30 per cent).”⁵³ In any case, there seems to be more consensus between the forestry and animal husbandry institutions about this definition. Whether this will also positively affect the working relation between these two departments is a question for the future.

Finally, there is discussion over the division of responsibilities between the Ministry of Agriculture (and DAHVS) and the Environmental Protection Agency. Although at present the Environmental Protection Agency is mainly concerned with pollution problems in urban areas, it has legal responsibilities for forests, rangelands and nature

51. *Ibid.* pp. 594 and 686.

52. Section Head of the Land Pricing Section, Ningxia Land Administration (oral communication, 1996).

53. See Wang Kuilong, Shang Lisheng and Zhang Xiuzhi (eds.), *Heilongjiang sheng shishi “Zhonghua renmin gongheguo caoyuanfa” tiaoli yiyi (An Interpretation of the Rangeland Regulations of Heilongjiang Province according to the “National Rangeland Law”)* (Harbin: Heilongjiang renda nonglin bangongshi, internal publication, 1994), p. 14.

reserves as well.⁵⁴ Because of the perceived problem of increasing rangeland degradation caused by overgrazing, the Environmental Protection Agency has gradually come to interfere with rangeland matters as well. However, the friction between this state institution and the DAHVS seems less than in the other two preceding cases.

One of the most contentious issues between the various parties involved in the formulation of the Rangeland Law was state and collective ownership. The Secretariat of the State Council issued a notice soliciting the opinions of all provinces in China on rangeland ownership in March 1982. There was a variety of reactions. Some provinces were in favour of ownership by the state, as had been the case ever since Land Reform, because collective property was not defined by law. Yet others advocated that there be a distinction between state and collective property of rangeland. For example, Hebei, Inner Mongolia and Heilongjiang argued that rangeland in long-term use by the collectives should be formally declared collective property, either automatically or through the issue of land use permits.

With the controversy over unresolved rangeland tenure, the draft version of the Rangeland Law presented to the NPC for passage was based on the principle of a dual co-existing ownership of rangeland: state *and* collective. This implied that a legal solution had to be found for defining what collective property is. At the time, the Ministry of Agriculture felt confident that the bill would pass, since formal approval by the Legislative Affairs Department, as well as the State Council, had already been obtained. However, during the last meeting of the Standing Committee of the NPC in which the bill actually had to be passed, things turned out quite differently. Speaking for many others, the deputy director of the Legislative Affairs Work Committee, Song Rufen, argued against it on two grounds. First, the Rangeland Law could not possibly deviate from article 9 of the 1982 Constitution, which only states the basic principle of state and collective rangeland without defining the two ownership forms. Secondly, rangeland had always been state property ever since it was nationalized in the early 1950s; therefore, it was not necessary to grant ownership rights to collectives, use rights would suffice as well.

Through the intervention of Song Rufen, the earlier draft version was rejected after long debate. On 18 June 1985, the Standing Committee of the NPC finally adopted the version that literally copied article 9 on the issue of ownership rights. It is important to realize that article 9 is the essence of a symbol law, as it states that rangeland is in principle state-owned, unless otherwise defined by national law as collective property. As no such law exists to date, the Rangeland Law simply maintains the status quo in which the enigmatic nature of collective property persists. Eight years later, when the drafting of the revised

54. For a description of tasks and mission of the Environmental Protection Commission and Agency, see: B.J. Sinkule and Leonard Ortolano, *Implementing Environmental Policy in China* (Westport: Praeger Publications, 1995), pp. 1–23.

Rangeland Law began, a group of reformists would launch a renewed attack on the faction represented by Song Rufen.⁵⁵

Revising the Rangeland Law

At the time when the Rangeland Law was formulated, the philosophy behind it was based on two premises: the possibility of delineating and classifying rangeland by means of objective criteria of productivity and sustainability (stocking rates or carrying capacity); and an interventionist and active state to ensure that pastoralists comply with stocking rates. The DAHVS had envisaged rangeland policy developing in several stages. In the first stage, stocking rates of rangeland had to be assessed. For this purpose, the subordinate organs of the DAHVS were charged with the classification of rangeland in terms of typical vegetation and productivity (in kg per *mu* pasture) divided over warm and cold seasons. The pasture categories included plain grassland, steppe, sandy pastures, desert pastures and grassy desert pastures. Stocking rates are expressed in sheep equivalents, which is a weighted total of all the various kinds of ruminants.⁵⁶

During the ensuing phase, rangeland was to be delineated (if necessary by means of fencing) and allocated to collectives and individual users. Livestock holders could then contract pasture use rights for a period of 30 to 50 years, while the ownership of rangeland remained in the hands of the state. In this manner liability of rangeland utilization would be effectively decentralized, thus relieving the tasks of control for the government, which only had to see to it that rangeland users abided by the prescribed stocking rates.

However, as noted above, enforcement of stocking rates has proven to be extremely difficult and in the majority of pastoral regions the pasture contract system for rangeland has not been implemented at all. In the process of rural reforms, livestock farmers and pastoralists have gained more managerial freedom and countervailing power. As a result the enforcement of stocking rates by means of purely administrative measures in a command-like fashion as during the people's communes has become increasingly ineffective, which has led to free-riding and overgrazing. On top of this, the retrenchment of the Chinese state is incompatible with the high transaction costs for the enforcement of stocking rates.

A few years ago, officials in the Ministry of Agriculture stated that the Rangeland Law was becoming outdated as a result of the fast socioeconomic changes kindled by the economic reforms. Although the problems with the implementation of the contract system for rangeland have

55. Niu Futing, oral communication, 1997.

56. See Wenzheng Shi, *Research for a Judicial System for Rangeland*, pp. 220–21. For the Chinese standard sheep equivalent conversion see Longworth and Williamson, *China's Pastoral Region*, p. 112.

not been officially acknowledged,⁵⁷ the alarm has been raised for the pastoral areas in reaction to perceived problems of rangeland degradation and lawlessness amongst the rural population.

In 1993, the NPC Standing Committee officially approved an Amendment and Drafting Group to be responsible for formulating a revised version of the Rangeland Law. The bill was then included in the annual legislative plan of the Standing Committee of the NPC without any time specification for its review and debate. After many rounds of “opinion-solicitation” during which the various ministries, provincial and national departments had to be brought in line, consensus was finally reached at the Taiyuan conference in May 1997. Six different draft versions had already been formulated when the bill was sent for approval to the State Council in August that year. The Ministry of Agriculture presented the bill to the NPC for review several months later. The bill was scheduled for presentation to the NPC in 1998. However, one member of the Advisory Group of the revised Rangeland Law has recently stated that the review stage by the NPC Special Committees has been stalled for an indefinite period because of the institutional restructuring of major ministries and departments proclaimed during the Ninth NPC in March 1998, as well the shifts in leadership.

This article does not deal with the ongoing discussions over the issues raised for revision of the Rangeland Law. In addition to problems such as the expropriation of rangeland and the establishment of a pasture use fee,⁵⁸ the issue accorded the highest priority for change by the DAHVS concerns the rangeland ownership and use rights. However, the members of the Amendment and Drafting Group are pessimistic that a suitable solution for this problem will be found in the short term. As a Chinese jurist remarked: “The Rangeland Law can not be a legal forerunner. As long as the issue of ownership and use rights to land has not been dealt with in the General Principles of Civil Law, we cannot hope that the Rangeland Law will bring this up on its own.”⁵⁹

57. Neither officials responsible for rangeland policy, nor literature about rangelands in China mention anything about the gap between the official statistics of contracted rangeland and the actual rate of implementation of the HCRS for rangeland.

58. In order to solve the “Tragedy of the Commons,” the government attempts to imbue rangeland users with a sense of economic liability, in other words, the principle of “the user pays.” The idea is that if rangeland users have an appreciation of the notion that land as a resource and a factor of production is not a free good, they will have incentives to develop a sustainable range use.

59. Niu Futing (oral communication, 1996). In order to avoid the ambiguity around the term “collective,” Chinese jurists propose that the revised version of the Rangeland Law should follow the provisions in article 8 of the Land Management Law. “Land owned by the collective that is owned by the collective of the people of the village according to law, shall be managed by the village agricultural production co-operative, such as the agricultural collective economic organization (further referred to as the economic co-operative) or the village committee. The [land] that is already owned by the township (town) shall be owned by the collective of the people of the township (town). Land owned by the people of the village, which is owned by more than two economic co-operatives within the village, shall be collectively owned by the peasants of the forementioned economic co-operatives.” Terms in “[]” added by author. See NZTFS, *Complete Edition of Agricultural Laws*, p. 556, and *Zhonghua renmin gongheguo falü shiyi quanshu* (*Complete Edition of the Interpretation of Laws of the PRC*) (Beijing: Zhongguo yanshi chubanshe, 1997), Vol. 3, pp. 1929, 1932.

Concluding Remarks: The Catch-22 Situation of Chinese Rangeland Policy

Of lawmaking Bismarck is said to have once remarked: “Laws are just like sausages, you don’t want to know how they have been made.” In China and abroad a considerable number of scholars and officials seem to adhere to this statement: they truly do not want to know. An attempt to chart rangeland policy in China from the centre to the locale has often been greeted with the reaction: why should you? Chinese bureaucrats justify their reaction by saying, “oh, the cultural level of the peasants is too low” (*wenhua suzhi tai di*), or “our legal system is incomplete” (*fazhi bu jianquan*), and would leave it at that.

There are many scholarly perspectives. Some scholars maintain that policy implementation studies should focus on implementation and concentrate on the lowest administrative level – the grassroots level, or the shopfloor level – because street-level bureaucrats⁶⁰ are not only the tiniest cog in the bureaucratic machine but also the most essential one. If they fail or refuse to implement a policy the whole system stalls. Moreover, they are the ones directly in contact with the people for whom the policy is meant. It is their mutual interaction that determines the outcome of a policy. Some negative voices add that higher-level cadres do not even understand the situation at the grassroots, so that there is also no need to study their involvement in policy formulation. Naturally, there is some basis of truth in each of the arguments above. However, there are basically two reasons why the formulation process of the Rangeland Law itself is important to consider.

First, the history of the Rangeland Law and rangeland policy are in themselves a chronicle of the arduous struggle by the Chinese government to build up a coherent and effective body of laws and regulations to provide the basis for the “rule of law” in the pastoral sector. Studying the formulation process of the Rangeland Law and rangeland policy is thus also the study of a trial-and-error policy-making process by a government attempting to bring about social change by means of new rules. Every amendment in this process signifies a new stage, a new awareness of changed circumstances in the economy, as well as a political will to respond to these different circumstances.

Secondly, I maintain that the problems in rangeland management encountered at the grassroots level in China can only be fully understood in relation to the content of rangeland laws and policies, and how they came into being. The content of laws and policies are intricately linked to interministerial and departmental interest struggles, and this is nothing new. The Rangeland Law, however, is a classical example of a so-called “symbol law.” This is clear, in particular, from article 4, which defines

60. The term “street-level bureaucrat” was first introduced by Michael Lipsky. See Michael Lipsky, “Street-level bureaucracy: the critical role of street-level bureaucrats,” in Jay Shafritz and Albert Hyde (eds.), *Classics of Public Administration* (Belmont: Wadsworth Publishing Company, 1992).

the framework of the pasture contract system based on the principle of state and collective rangeland. This article falls short in defining the nature of state and collective ownership, as a result of which the entire legal basis of the pasture contract system is undermined. At this point the main feature of a symbol law becomes clear: article 4 is the result of a political compromise between a faction striving to have the issue of state and collective rangeland included in law, and a faction that has succeeded in postponing an effective solution for this politically sensitive issue through its deliberately ambiguous formulation, rendering the law virtually impossible to enforce. The core of this problem is partly historical.

Over 40 years have elapsed since rangeland was nationalized during Land Reform in the 1950s. However, state ownership of rangeland was not written down in law until much later. When the people's communes were established shortly after, certain portions of rangeland were included in their land holdings. Yet these were still state property thus producing a murky area of ownership and management. The lay-out of the communes finally consolidated in 1962 and ownership of land was vested in the production team by the Sixty Articles. But this left unresolved critical issues of the level of ownership. The Constitution of 1982 mentioned the existence of state and collective ownership of rangeland, but failed to clarify the meaning of collective property. Was rangeland in long-term use by the collective also its property? And if so, how were collective ownership rights to be legally established, automatically, or through the issue of land property permits? Moreover, since the term "collective" comprised the commune, the brigade and the team, the level of ownership was also ambiguous.

In this legal vacuum, the 1985 Rangeland Law defined the pasture contract system under which individuals and collectives could contract collective or state rangeland. But as long as state and collective ownership of rangeland, and the level of collective ownership, are not clarified, the consistency of the entire pasture contract system will be in jeopardy. Because of the implementation problems of the Rangeland Law, a small group of officials and scholars within the Ministry of Agriculture is quite determined to resolve the issue of rangeland ownership. However, it seems that the current political tide will work against them, and the chances that the revised Rangeland Law will provide a final and clear-cut decision on this matter are slim.

This article has also considered the relationship between central and provincial regulations on rangeland management and use. The first matter that arises is the inadequate demarcation of legislative responsibilities between the lawmaking bodies at various administrative levels. In some cases, provincial regulations have run ahead of national law. This is not a problem as long as provincial regulations have been formulated within the legal framework of the Rangeland Law. However, in the case of a delicate issue such as the definition of state and collective ownership, provinces have gone far beyond the boundaries of this framework and have taken political decisions over matters that have not even been resolved at the national level. This has happened because provincial

governments are under pressure to stretch the limits of the existing national legal framework that no longer suffices to deal with the problems they encounter at the grassroots. Their legislative actions are attempts to innovate in areas where the centre is politically hamstrung because of interest struggles between departments and ministries.

Guiding the pastoral sector safely through the reform period is a very complex and difficult task facing the Ministry of Agriculture. The establishment of a coherent rangeland policy and a sound system of laws and regulations for rangeland management and use is hampered by many contradictions both within the content of laws and policies, and between the various policy-makers. Sometimes the solution of one merely evokes the rise of another. The present Rangeland Law reflects the political compromises that have been struck over sensitive issues, thereby allowing certain contradictory situations to persist. Although it cannot be hoped that the revised Rangeland Law – at present with no fixed schedule to be voted on by the NPC – will be able to deal with all these conflicting issues, there is no reason for pessimism.

Within the Ministry of Agriculture, and within research institutes scattered over the country, a small but growing group of officials and scholars continuously pushes at the limits of the politically possible. It has always struck me how well aware and critical this group of people is about the problems of rangeland policy formulation and implementation.⁶¹ It is time that charts the way out of the catch-22 situation of rangeland policy.

61. However ironical it may seem, the good thing about the Cultural Revolution is that it has formed this group of critical officials and scholars. At the time, many intellectuals were sent down to the pastoral areas to labour, or herd the sheep and goats. Quite a number of those working in research institutes that presently advise the Ministry of Agriculture on rangeland policy were once sent down to the countryside.