

## In defense of endogenous, spontaneously ordered development: institutional functionalism and Chinese property rights

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Neo-liberal observers have frequently raised the red alert over insecure property rights in developing and emerging economies. Development would be at a crossroads: either institutional structure needs changing or it risks a full-fledged collapse. Yet, instead of focusing on the enigma between economic growth versus ‘perverse’ institutions, this contribution posits a functionalist argument that the persistence of institutions points to their credibility. In other words, once institutions persist they fulfill a function for actors. Chinese institutions have been frequently criticized for lack of security, formality and transparency, yet paradoxically, these apparently ‘perverse’, inefficient institutions have sustained since the late 1970s throughout the entire economic boom. Key to understanding this might be the realization that institutional constellation stems from an endogenous, spontaneously ordered development in which the state is merely one of many actors that ultimately shape institutions into a highly complicated and intertwined whole. The argument is substantiated by reviewing the case of China’s rural-urban land rights structure with particular reference to its markets, history and rights of ownership and use.

**Keywords:** economic history; distributional conflict; eviction; tenure insecurity; credibility; real estate; housing

### 1. Introduction

In the debates over property rights, social scientists have been heavily divided over what one could term the dilemma of the ‘institutional chicken or egg’ (P. Ho and Spoor 2006): do institutions affect economy (and *en passant* with it, society, polity and environment) or do market forces (read: relative changes in factor prices and technology) determine institutional structure? As Libecap (1989, 6–7) phrased it, the neo-liberal literature posits that

[m]arket forces are argued to erode property rights institutions that are poorly suited for responding to new economic opportunities. (...) History, however, shows that property institutions are not mere respondents to broad economic pressures, but that they in turn, shape the path of economic progress.

One might wonder why the scholarly discussion over institutional chickens and eggs plays out so vehemently.

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Perhaps a major reason why is because either view leads to an uncomfortable truth. The axiom that relative prices and technology determine institutional structure appears nihilistic because it implies that institutions do not matter, leaving little room for government, policy and regulation. The opposing axiom is equally unsettling, as it has led us on a quest to ‘get institutions right’, which, whatever way one looks at it, has turned out to be an endless endeavor. Put differently, if institutions determine the economy, then why do the ‘right’ institutions not result in the desired effects? As we will see in the theoretical discussion below, the mutually contradicting axioms identified here have spilled over into discussions over endogeneity, spontaneous order and credibility.

However, in all our theoretical and empirical considerations, China’s emerging economy stands out as a mind-boggling enigma in popular and scholarly perception: an economic powerhouse pushing forward decades of sustained, double-digit growth, yet furnished with all the wrong institutions – authoritarian, non-transparent, unclear, ambiguous and insecure (e.g. Palomar 2002, Pei 2006, Shirk 2007, Prosterman *et al.* 2009). This contribution maintains it could be more illuminating to turn the argument around – rather than focusing on the paradox between growth vis-à-vis ‘perverse’ (Furubotn 1989, 25) institutions, it is argued that China’s institutions, as they exist and persist, are *credible* and the spontaneous cause and effect of development. In other words, Chinese institutional structure is *not* the result of intentional design by which institutions can be ‘wrongly’ or ‘rightly’ engineered. To those to whom the Chinese state appears to be a classical strong ‘developmental state’ (e.g. Evans 1995, Leftwich 1995) wielding substantive leverage over the economy and boasting great organizational muscle power, such a postulate might seem odd or even unacceptable. However, forgoing the premise of intention does not exclude intentional action *per se*, but implies that an actor will not see its intentions materialize as these water down into something else through the protracted bargaining with other actors and economic agents. The outcome is a complex, multi-layered, contradictory and, at times, downright *unintended* institutional constellation, that in its bare existence could never have resulted from conscious human design. Or as Adam Ferguson, when describing social structures in his classical essay, eloquently phrased it: ‘the result of human action, but not the execution of any human design’ (Ferguson 1782, 1).<sup>1</sup> That principle – the result of human action, but not of human design – has theoretically also been conceptualized as *endogenous, spontaneously ordered* development.

Following this argumentation, the paper examines China’s land tenure, with particular reference to rural land-based institutions. Where relevant, it will also digress on urban property rights and land markets. There might be various reasons why examining China’s institutional structure around land property rights could be important for our understanding of institutional change. First, instead of privatizing land as neo-liberal economists have advocated, the Chinese state firmly holds on to land ownership. Moreover, in many regions land has *not* entered formal registers, which implies that ownership, use and boundaries are unknown, or at least open for continuous government or corporate intervention. Second, despite the lack of formality, security and transparency, land has been and still is a core driver of China’s capital accumulation and development over the past decades (Hoo-gerwerf 2002, Flannery 2003, Lin 2009, Hsing 2010).<sup>2</sup> In addition, the widely criticized insecure rural tenure – and the agricultural land lease system in particular – is actually regarded as

<sup>1</sup>The precise reference on Ferguson’s page 1 is Part III, Section 2.

<sup>2</sup>The rapid land development is also closely related to the highly inflated real estate sector, which in the past few years has witnessed price rises of over 200 percent in major cities over 2000–2010 (Wu *et al.* 2012). For more info, see also Shen *et al.* (2005) and Hou (2009).

having facilitated China's successful transfer from an agrarian to an industrialized, urbanized society (e.g. Svejnar and Woo 1990, Peng 1995). Finally, although land has been identified as a critical source of conflict and socio-economic instability (Editorial Liaowang 2003, Griffiths 2005), China has to date not met similar institutional disintegration as, for instance, befell the former Soviet Union or the Middle Eastern regimes toppled by the Arab Spring.

In fact, despite repeated predictions of imminent transitional collapse (S. Wang and Hu 1999, Chang 2001, Pei 2006, Shirk 2007), China has been relatively stable since the start of the reforms more than 35 years ago. At the same time, this point drives home the importance of recognizing that institutional credibility, and credible land tenure in particular, are not tantamount to a situation of no conflict. For an appropriate assessment of institutional credibility, social conflict should be measured against more variables than its level alone; for instance, the incidence, frequency, nature and geographical distribution might be equally important to consider.<sup>3</sup>

Apart from the introduction and conclusion, this paper is organized into a theoretical part and an empirical part. The theoretical part provides a review of the scholarly dilemmas and debates on property rights and institutional change with particular reference to concepts of endogeneity and spontaneous order. It will be demonstrated how the discussions on these concepts could coalesce into notions of credibility and institutional functionalism as a way to solve the paradox why socio-economically inefficient institutions (read: insecure, opaque and informal) can exist and persist. Against this backdrop, it is posited that the state cannot determine the form of institutions through land titling or privatization, as outer appearance is determined by institutional function as the resultant of a long, arduous and autonomous process of bargaining. In the following, empirical part of the paper, the theoretical considerations put forward in the preceding section will be applied to land – as one of the means of production, apart from labor and capital. The analysis will be done in terms of the rural and urban land markets, their history since 1949, and the rights of ownership and use. It will be shown that the institutional amalgam that has grown from endogenous, spontaneously ordered development around land is a highly intricate, paradoxical institutional whole that, albeit conflictual in nature, has simultaneously persisted during China's economic boom and its profound rural-urban transformation.

## 2. Revisiting institutional 'hot potatoes': three postulates of neo-liberal thought

One of the least controversial principles in the economics of land markets is the notion that the more clearly defined the property rights, the greater the land market efficiency.

Micelli *et al.* (2000, 370)

The quotation above is illuminating as it succinctly sums up the main postulates of what is known as the neo-liberal – or neo-classical for that matter – view on property rights and institutional change. This section does not suggest that there is a single, consistent body of literature that represents *the* 'neo-liberal' or *the* 'neo-classical' theory, as that would be making a straw man out of something that in essence consists of various strands and viewpoints, which sometimes concur, and sometimes contradict each other. However, it is maintained that there are certain neo-liberal postulates or basic assumptions around which scholarly debate *and* empirical validation take place, which simultaneously wield great influence over development policy and intervention. These neo-liberal postulates

<sup>3</sup>For more information, see P. Ho, 2013.

are: (1) institutions affect the economy, (2) institutions can be designed by intention, and (3) secure, private and formal tenure are imperative for stable, economic growth (see e.g. Coase 1960, Alchian and Demsetz 1973, North and Thomas 1973).<sup>4</sup>

By contrast, it will be argued here that the institutional change of China's rural-urban land markets structure critically diverges from these postulates; i.e. derives from *endogenous, spontaneously ordered* development. *Ergo*, the form of institutions is not in our hands;<sup>5</sup> in fact, one might argue, it is of no real significance at all. In order to understand these conceptual distinctions, some additional explanation on each of the postulates might be helpful.

### 2.1. On 'institutional chickens and eggs': cause and effect

The first neo-liberal postulate that institutions affect the economy (or vice versa) might be given in by a positivistic, econometric requirement that dependent variables need to be strictly separated from independent variables to meaningfully, thus quantitatively, study economic and social phenomena. The vexing problem in this approach is that socio-economic phenomena are rarely a straightforward matter of cause and effect, yet are in reality the result of mutual interaction.

Methodological rigor has frequently forced scholars to struggle with the conceptualization of institutional cause and effect. As Commons described the confusion: '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' (Commons 1961, 69). Moreover, whereas North and Thomas (1973, 1, 23) start their seminal work with the statement that '[e]fficient organization entails the establishment of institutional arrangements and property rights that create an incentive to channel individual economic effort', they paradoxically write a few pages later that 'the pressure to change property rights emerges only as a resource becomes increasingly scarce relative to society's wants'. Vandenberg (2002, 227) also noted this inconsistency as he wrote that North 'implicitly accepts that institutions affect prices', but simultaneously noted that his analysis is also 'based on changes in factor scarcities, which result in changes in relative prices and which, in turn, prompt changes in institutions'.<sup>6</sup>

Some social scientists have criticized the uneasy premise that institutions are regarded as merely cause and not effect.<sup>7</sup> Others, on the other hand, have tried to crack the scholarly

<sup>4</sup>Having said this, one should recognize that the crucial element in neo-classical thought is competition and not property rights *per se*. Of course, because of the greater and greater control over firm performance, neo-classical thought has a certain preference for private, decentralized property rights, but this is subordinate to the necessity of competition. For this reason, neo-classical thought has often neglected the debate on property rights, and concentrated on the notion that, regardless the allocation of property rights, they should at least be well defined (so responsibilities are clear, and competition can be given full rein; Herman Hoen, personal communication, Groningen, 12 December 2012).

<sup>5</sup>Meaning: it is not in our hands, regardless, whether we talk about actors from state, civil society and peasant organizations, business, social movements, academia, media and the like.

<sup>6</sup>Vandenberg also thought that this conceptual tension might be inherent to North and Thomas' economic historical analysis, as they left behind hard-core, econometric methodology. He cautiously quotes: 'Clark suggests that North's increasing deviation from the hard and fast parameters of neoclassical analysis has led him to assemble "a noisy rabble of all the pet concepts and theories of a variety of disciplines and sub-disciplines"' (Clark quoted in Vandenberg 2002, 232).

<sup>7</sup>As, for example, Inglehart (1997, 206) wrote: 'institutions *do* help shape their society's culture – along with many other factors. But the plausibility of the interpretation that institutional determinism is the major explanation is severely undermined by the finds ( . . . ) that economic development leads to democracy, but democracy does not bring economic development'. (Emphasis in original document).

puzzle by defying the methodological premise for the separation of dependent and independent variables, and maintaining that institutions can simultaneously be dependent *and* independent variable. As, for instance, Putnam (1993, 8) introduced his method: 'Taking institutions as an independent variable, we explore empirically how institutional change affects (...) actors. Later, taking institutions as a dependent variable, we explore how institutional performance is conditioned by history'. Although merging dependent and independent variables in a single analytical go is equal to capital statistical offense, it also shows the reach of quantitative analysis, for which reason some have made the case for mixed methods – the combination of quantitative and qualitative methodologies (Cresswell 2003, Brannen 2005).<sup>8</sup>

## 2.2. *Endogeneity and spontaneous order*

How can it be that institutions which serve the common welfare and are extremely significant for its development come into being without a common will directed toward establishing them?

Menger (1883, 146)

Perhaps the prime reason for the heated discussions over the causality between institutions and economy (or society and polity, for that matter) is its inextricable connection to the second postulate of neo-liberal thought: the notion that institutions can be designed by intention.<sup>9</sup> Examples of the influence of this line of reasoning on land policy and administration abound (e.g. De Soto 2000, 47, Micelli *et al.* 2000, Palomar 2002, 1). However, the haunting issue here is, if the form of institutions is the result of human design, why is it then so difficult to 'get institutions right' (e.g. see the cases described by Amsden 1997, Cornia and Popov 2001, Kuran 2012)?<sup>10</sup>

Against the backdrop above, the principle of endogeneity<sup>11</sup> or endogenous development attempts to chart a way out by positing that institutions and property rights are the resultant of social actors' and economic agents' *interaction*.<sup>12</sup> In this view, institutions are not shaped and enforced by a single, outside agent, but instead through the mutual

<sup>8</sup>One could imagine, for instance, a study on the causal effect of institutions on economic growth through qualitative historical analysis, while the opposite effect of economic growth on institutions could be assessed through quantitative regression or factor analysis.

<sup>9</sup>The typical example of this is the so-called 'Washington Consensus', a set of policy prescriptions which included privatization of state-owned enterprises and the provision of legal security for property rights (Williamson 1989). The 'Washington Consensus' became the guiding principle for many social engineering programs financed by the World Bank and the International Monetary Fund in the former Soviet Union and other Eastern bloc countries.

<sup>10</sup>Or, as Aoki (2007, 2) rightfully asked: '[I]f institutions are nothing more than codified laws, fiats, organizations, and other such deliberate human devices, why can't badly performing economies design (emulate) "good" institutions and implement them?'

<sup>11</sup>The term 'endogeneity' in a statistical sense refers to circular causality between the independent and dependent variables; in other words, variable X affects Y, which in turn affects X again. Conceptualized in terms of a supply and demand model it would imply that when predicting the demand level at equilibrium, the price would be endogenous because producers change their price in response to demand and consumers change their demand in response to price. Contrarily, a change in consumer tastes or preferences would be an exogenous change on the demand curve.

<sup>12</sup>The notion of interaction could also be termed 'contracting', 'negotiation', or 'bargaining'. See for instance Libecap (1989, 7).

interaction of that agent with others. The endogeneity principle therefore precludes an external agency that can shape institutions, as any actor is involved in the ‘game’,<sup>13</sup> albeit institutions may be *perceived* as externally shaped. As an eminent student of institutional change aptly phrased it: ‘an institution thus conceptualized is essentially *endogenous*, but appears to be an *exogenous* constraint to the individual agents’ (Aoki 2007, 3, italics added). The preclusion of externally, and thus also intentionally shaped, established and enforced institutions inevitably leads to the question of autonomy, for which reason social scientists tabled the ultimate question: do actors have a choice at all in the design of institutions, or does it ultimately escape human intentionality? Here one might also recall the late Duesenberry, who noted with a tinge of irony and humor: ‘Economics is all about how people make choices; sociology is all about how they don’t have any choices to make’ (1960, 233).

It is at this point that the endogeneity principle intersects with the notion of spontaneous order, for which some of the recent proponents include Schotter (1981), Knight (1998) and of course Hayek (1976).<sup>14</sup> The latter viewed the economy as ‘a more efficient allocation of societal resources than any design could achieve’ (Hayek cited in Petsoulas 2001, 2), and described it as ‘the order brought about by the mutual adjustment of many individual economies in a market’ (Hayek 1978, 101).<sup>15</sup> Although reasoning from a neo-liberal viewpoint, Hayek’s conceptualization of markets, prices and the economy as brought forward by spontaneous order is particularly relevant, not only economically speaking, but also for our understanding of social, political and cultural institutions.<sup>16</sup>

### 2.3. *Tenure security and evolution*

The third and final neo-liberal postulate reviewed here posits that tenure security is a precondition for sustained growth (e.g. Gordon 1954, Coase 1960, Cheung 1970, Alchian and Demsetz 1973). This postulate is entwined with the idea that the institutional change of property rights follows a given evolutionary trajectory; simply put, from traditional, informal, opaque, insecure and common property rights to modern, formal, accountable, secure and privatized property rights (e.g. North and Thomas 1973, North 1994).<sup>17</sup> Through competition, different institutional forms will be engaged in a

<sup>13</sup>This is different from the widely used definition by North, who assumed externality in his view of institutions as ‘the rules of the game in a society or, more formally, ... the humanly devised constraints that shape human interaction’ (North 1990, 3).

<sup>14</sup>Aoki, for instance, employed the term ‘self-sustaining’ to reject the principle of intentionality, and subsequently defined institutions as ‘self-sustaining, salient patterns of social interactions, as represented by meaningful rules that every agent knows and are incorporated as agents’ shared beliefs about how the game is played and to be played’ (2007, 7).

<sup>15</sup>Hayek’s notion of spontaneous order was inspired by Adam Ferguson, who described social structures in his essay as ‘the result of human action, but not the execution of any human design’ (Ferguson 1782, 1, Part III, Section 2). Ferguson’s most famous contemporary is, of course, Adam Smith (1776), whose notion of the ‘invisible hand’ has become the textbook example of this line of reasoning. Carl Menger (1871, 1883) can be seen as the nineteenth-century representative of the thought on spontaneous order.

<sup>16</sup>It is relevant, not in defense of free trade, privatization and deregulated markets, but, paradoxically, as opposed to the neo-liberal postulate that institutions can be designed by intention.

<sup>17</sup>A very useful overview of the application of evolutionary principles in economic theory is provided in Bergh and Stiglitz (2003).



process of selection by which the most efficient institution eventually prevails over others (see e.g. Alchian 1950, Hawley 1968, Hannan and Freeman 1977).<sup>18</sup>

However, whereas evolutionary theory – in its original conception and current readings – consciously steers away from any teleological assumptions,<sup>19</sup> in the neo-liberal view, each stage not only follows from the other, but is also regarded as more advanced (read: preferred) than the preceding stage. Following neo-liberalist theory's second postulate that institutions can be intentionally engineered, it is not a far step to move to a teleological interpretation of institutional evolution; in sum, the belief in what could be labeled a Comtean 'Law of Institutional Progress'.<sup>20</sup>

It is such belief that propels neo-liberal strong interests in the form of institutions and, more specifically, in the ability to predict institutional form over time. The scholarly stakes of institutional prediction are high: should one be able to predict form as a function of time, one could ultimately design and guide societal development and economic growth. Hence the attempts at classifying and staging institutional forms, as well as at creating preconditions for economic 'take-off' and 'high mass consumption'.<sup>21</sup> Hence also the strong interest in institutional convergence or, as the political scientist Inglehart (1997, 17) worded it: 'In a given economic and technological environment, certain trajectories *are* more probable than others: it is clear that in the course of history, numerous patterns of social organization have been tried and discarded, while other patterns eventually became dominant.' (Emphasis in original).

#### 2.4. Confusion over convergence

The idea of convergence or the teleological principle of an ultimate final form has incited considerable debate and scholarly confusion (Radice 2000, Streeck and Thelen 2005),<sup>22</sup> not least because empirical study has yielded a dazzling variety of institutional forms. As a matter of fact, the common principle seems: the more study, the more forms, the more confounding matters become. Some scholars found evidence for institutional convergence;

<sup>18</sup>The ideas expounded here are no novelty and, in this regard, it might be helpful to recall that new theories often derive from the adage 'originality is the product of a faulty memory' (Louis Wirth quoted in Becker and Richards 1986, 136). Institutional theory clearly draws upon Herbert Spencer's principles of social darwinism. In his 'System of Synthetic Philosophy', Spencer (1897) describes societal evolution, in which societies best adapted to their environment will prevail through a process of the 'survival of the fittest'. Shortly after Spencer's book was published, Veblen (1898) followed suit and coined the term 'evolutionary economics'. The idea of institutional evolution through selection has since then played a crucial role in neo-liberal thought. For instance, Friedman (1953) proposed that markets as one type of institution act as major mechanisms of natural selection. As firms compete, unsuccessful rivals fail to capture an appropriate market share, go bankrupt and have to exit.

<sup>19</sup>Thus, contrary to what is popularly believed, Spencer's notion of 'survival of the fittest' does not refer to physical fitness, but implies that a society is most suited to its direct environment. It is the reason why evolutionary biologists prefer the more neutrally worded 'natural selection' over the popular, yet discriminatory, 'survival of the fittest'. See also Mayr (1992) and Ruse (1998, 93–98).

<sup>20</sup>One of the earliest proponents of the teleological development of humanity is, of course, the Enlightenment philosopher Auguste Comte (1798–1857), who in *The law of human progress* set forward his theory of three succeeding stages in the development of humanity and human knowledge. In his view, each stage was a necessary precondition for the next (Lenzer 1997, Pickering 2006).

<sup>21</sup>Rostow identified various fixed stages in economic development, moving from traditional, static society with limited technology to the age of high mass consumption. See Rostow (1960).

<sup>22</sup>The works by Radice (2000) and Streeck and Thelen (2005) attempt to make sense of the conceptual confusion by providing substantive overviews of the different models of institutional change in relation to convergence.

others saw divergence *and* convergence, while there are those who reject the notion altogether. As an example of the first view, Long (2006, 321), in scrutinizing the Chinese economic transition, noted that its ‘good economic performance since 1978 can be attributed to the convergence of China’s economic institutions with the economic institutions of modern capitalist economies, particularly the East Asian capitalist economies’. By contrast, when examining political institutions of the European Union, Botcheva and Martin (2001) observed divergence *and* convergence.<sup>23</sup> Lastly, Campbell (2004), for instance, rejects convergence and, in opposition of it, put forward the idea of ‘bricolage’ which consists of a dual mechanism of the use of locally available elements and an institutional translation to local contexts.

The paradox that has for long puzzled economists, sociologists and political scientists alike, is – if we accept convergence as a result of competition and efficiency – why is there such abundant empirical evidence for institutional *divergence* through the persistence of ‘perverse’, inefficient and opaque institutions? Put bluntly, why do traditional, informal, insecure and common institutions and property rights continue to persist, while they are blatantly inefficient?<sup>24</sup> Theorists – even within the neo-classical, neo-liberal schools – have tried to account for the paradox by pointing to the role of power in the formation of institutions.<sup>25</sup> For example, North (1994, 360–1) wrote: ‘Institutions are not necessarily or even usually created to be socially efficient; rather they or at least formal rules, are created to serve the interests of those with the bargaining power to create new rules’. Due to differences in power, certain institutions can be forced upon others, which in turn lead to their persistence despite their inefficiency (Acemoglu and Robinson 2006). Some have tried to explain the puzzle by drawing attention to organizational bureaucratization and standardization (Meyer and Rowan 1977, DiMaggio and Powell 1983),<sup>26</sup> while again others argued that it is the contracting (bargaining or negotiation) that ultimately explains the existence of inefficient institutions: ‘to better understand the observed variety of property rights institutions and the associated levels of economic performance, attention must be directed to the political bargaining underlying the creation and modification of property rules and laws’ (Libecap 1989, 7). From bargaining as an explanatory factor, it is but a small step to the idea of social actors’ interaction, which means we have come full circle, and are back to Theoretical Square One.

<sup>23</sup>Botcheva and Martin’s (2001) article may have added to the confusion as it inadvertently reasons from the neo-liberal axiom, in which institutions externally affect human (or in their case: statal) behavior, yet without explicitly stating so.

<sup>24</sup>As Furubotn rephrased Libecap’s perspective, the question is ‘why seemingly “irrational” or “perverse” structures of property rights are adopted, and are able to persist in society’ (Furubotn 1989, 25). An example of such inefficient institutions is described in Kuran, who identified Islamic law in the failure of producing sustained and credible limitations on government takings (2012, 1088).

<sup>25</sup>In this regard, Vandenberg noted that ‘North is cognisant of the importance of power and how power affects the design and operation of institutions’ (Vandenberg 2002, 227).

<sup>26</sup>This relates to the argumentation around the notion of ‘institutional isomorphism’. In this view, it is maintained that, different from institutional convergence, isomorphism does not occur as a result of efficiency gains but due to external factors, such as bureaucratization, professionalization and standardization (or myths and ceremonies). As Meyer and Rowan wrote: ‘[O]rganizational success depends on factors other than efficient coordination and control of productive activities’ (1977, 352), while DiMaggio and Powell (1983, 147) noted: ‘[B]ureaucratization and other forms of organizational change occur as the result of processes that make organizations more similar without necessarily making them more efficient’.



Perhaps we should readjust the paradigmatic lens through which we are viewing the problem. If certain institutions have emerged, and more importantly, *persist* as a result of spontaneous, endogenous development, they are likely to fulfill a certain function, and apparently are perceived as credible.<sup>27</sup> It then no longer matters what form these institutions or property rights have assumed, and whether that form is regarded as ‘economically inefficient’ (i.e. traditional, backward, insecure, informal, undemocratic or common). As Beckert (2010, 151) stated in an illuminating article: ‘The question is not whether homogenization or divergence is more important’ as the same mechanisms that cause convergence can also cause divergence.<sup>28</sup> An institution that performs a function for the overall survival of an economy, society, polity or a group of actors will persist; or, vice versa, becomes an ‘empty institution’,<sup>29</sup> that sooner or later will vanish (as might happen during armed conflict, social movements and revolutions). Or, it will evolve into a different institution in accordance with the new function it needs to fulfill. This line of thought flows from a functionalist inspired approach in institutional theory (Aron 2000, 128, Rodrik 2002, 5, H.-J. Chang 2007, 19–20),<sup>30</sup> which has recently revolved around the notion of credibility (e.g. Grabel 2000, P. Ho 2005a, P. Ho and Spoor 2006).

It should be noted that the discussion around credibility as a function of the perceived social support for endogenously shaped institutions is radically different from a neo-classical reading about ‘credible commitment’ by which credibility is regarded as a measure of the external, intentional commitment by the state to engineer and enforce tenure security through formalization, privatization and titling (see e.g. Haber *et al.* 2003, Frye 2004). In this sense, it is also different from the notion of functional equivalents (Rodrik 2002, 2007), albeit coming from a functionalist approach. That notion still presupposes the principle of intentional and external design, as evident in this quotation:

[T]he Chinese leadership *devised* highly effective institutional shortcuts. The Household Responsibility System, Township and Village Enterprises, Special Economic Zones, and Two-Tier Pricing, among many other innovations, *enabled* the Chinese government to *stimulate* incentives for production and investment without a wholesale restructuring of the existing legal, social, and political regime. (Rodrik 2002, 8, italics added)

By contrast, the credibility thesis forgoes any principle of intentional, institutional design.

<sup>27</sup>Grabel (2000, 11) is probably one of the first scholars to use the principle of endogeneity in a reconceptualization of credibility.

<sup>28</sup>Similarly, H.-J. Chang (2007, 20) noted that ‘institutional forms may not matter that much, as the same function can be performed by different institutional forms’.

<sup>29</sup>In other words, an institution that exists on paper alone, and that has no significant effect on social actors’ behavior, or might even be socially contested. See also the discussion of the ‘empty institution’ in P. Ho (2005a, p. 73.).

<sup>30</sup>Aron (2000, 128), for instance, argues that in relation between institutions and economic development, we should describe institutions by certain ‘performance or quality measures’ (i.e. function variables), rather than variables that ‘merely describe the characteristics or attributes’ of institutions (i.e. form variables). Also, in Rodrik’s later work, the notion of ‘functional equivalents’ is used. The principles of functionalism go back to the theory of evolution developed by Lamarck, and published in seven volumes as *Histoire naturelle des animaux sans vertèbres* from 1815 to 1822, as well as the ideas of functionalism represented by Émile Durkheim (1858–1917).

### 3. Credibility as lens for institutional functionalism

The notion of credibility, or what could perhaps be termed the ‘credibility thesis’,<sup>31</sup> posits that even when rejecting the neo-liberal reading, we might in fact still be examining the question within the same paradigm, as we reason from the importance of form over function. Instead of focusing on what out of paradigmatic necessity must be considered an ‘empirical anomaly’ through the lens of neo-liberal institutional teleology and evolution, we had better first focus on the question of how institutions function, or fail to function, at a given time and place. Then, and only then, can we – through meticulous description of the ‘rules of the game’ that constitute the institution – establish what its form is. That scholarly endeavor – the meticulous description of institutions – is done far too little, yet is absolutely critical to understand the distinction between form and function. Why so? Because what we are bound to see, and that is the reason why dichotomies and institutional categorization will never work, will be a bewildering variation and hybridization in institutional shades of gray, because spontaneously ordered and endogenously formed institutions are as numerous as the multitude of times and spaces in which they take shape.

The credibility thesis’ premise that institutional form is subordinate to function might have several contributions to make in the scholarly debates described above: (1) ‘inefficient’ or ‘perverse’ institutions – be they insecure, fuzzy, undemocratic or traditionally backward – have no relevance in this view, as any institution fulfills a function once it *persists*; (2) following from this, divergence and convergence, too, have no significance for our understanding of institutions – what counts is whether institutions are perceived as credible by the actors through whose endogenous, spontaneously ordered interaction they sprang forward, and finally (3) the credibility thesis might divert us from the overly optimistic and positivist belief in a ‘Law of Institutional Progress’ and institutional engineering, as it is detached from any theoretical teleology, normative conviction or political doctrine.

Credibility’s three critical dimensions identified here beg the ‘what’ question: *what* is the institutional structure in a given time and space-determined context, and what levels of credibility does it command? The ‘what’ of institutions implies that if we want to understand why institutions – as endogenous, spontaneously ordered ‘rules of the game’ – are socially accepted by those whom they govern, one must know their structure over time *and* space. At the same time, when institutions are non-credible and heavily contested, or merely exist on paper as an ‘empty institution’, we need to know their structural make-up as well. As a first step in dissecting the question of credibility,<sup>32</sup> we need to chart to the minutest detail what rules exist longitudinally and geographically. That is the aim of what can be called ‘institutional functionalism’, and is the aim of this writing as well. We will do so by looking at land as a means of production with reference to its markets, institutional origins and rights of ownership and use.

## 4. Land property in China: markets, historical origins and rights

### 4.1. The land market

In neo-liberal theory, markets are seen as a prime institutional mechanism through which firms compete in their struggle for greater efficiency and survival (Alchian 1950, Friedman 1953). Against this background, we will here zoom in on one of China’s major factor

<sup>31</sup>See also the discussion in Ho (2013).

<sup>32</sup>Thus, the second question – what levels of credibility does a certain institution command? – will not be taken up in this writing.

markets: the land market. Resulting from the continuous bargaining between actors, the rural-urban land markets form a complex, intertwined whole with certain intended and as many *unintended* outcomes, yet adapted to its time and space-specific context there where institutional arrangements persist.

On 1 December 1987, China auctioned its first piece of land (note: urban *not* rural land) since the Communist government had come to power almost 40 years earlier. This revolutionary breakthrough marked the beginning of China's land market (Walker 1991). When traveling to China's bustling and high-rising cities it becomes clear that the land market is most developed near and in the urban areas. The socialist past makes research on the Chinese land market a daunting undertaking as things are seldom what they appear. First, in a pragmatic marriage between ideology and market needs, certain terms are avoided in the Chinese context. For instance, the word 'contract' (*chengbao*) is the politically correct term for 'lease', while 'valued land use' (*youchang shiyong*) is a euphemism for 'land market' or 'commercial use'. Second, although the Constitution stipulates that rural land is owned by the collective unless stipulated otherwise, there are widely diverging interpretations by which the collective is actually represented: the township, administrative village or villagers' group.<sup>33</sup> Thus, rural land rights are built on legal quicksand which on the one hand results in externalities, such as forced evictions, rent-seeking and land disputes (e.g. Guo 2001, Griffiths 2005), but which, on the other hand, has also provided the 'institutional lubricant' which makes the system tick (P. Ho 2005a, p. 21). Third, China's urban and rural land markets are *very* much in transition and know certain procedures and institutional arrangements (some formal, many informal) that may be uncommon or purposively kept in a legal twilight zone (S.P.S. Ho and Lin 2003, Lin 2009).

#### 4.1.1. Rural land market

In China, one cannot speak of a 'true' rural land market in the neo-classical sense of the word, as there is no freely negotiated price for agricultural land determined through demand and supply. Despite repeated calls for reform both within and outside government circles, the central government has been wary to bring market forces into the countryside out of fear for the loss of institutional credibility, and, thus, the eruption of socio-economic instability (read: the rise of landless peasants). As a result, since the introduction of the Household Contract Responsibility System (*jiating chengbao zerenzhi*), the 'rural land market' has been divided into two levels: a primary (or *yiji shichang*) and a secondary market (*erji shichang*).

As we can see from Figure 1 below, at the primary market, the owner of rural land (in practice represented by the administrative village and *not* the original owner, the villagers' group; see explanation in the historical section below) is allowed to 'contract' or lease land to farmers for 30 years. In the past, land tax was paid to the collective based on the acreage of the contract land. However, since 2006, the government has exempted all agricultural taxes in an effort to reduce farmers' financial burden (X. Li 2004, Xing 2005).<sup>34</sup> From the onset of the rural lease system, farmers were allowed to 'circulate' (*liuzhuan*, euphemism for trade) their lease to other farmers *within* the same village at the 'secondary

<sup>33</sup>By which 'local' refers to the province, prefecture, municipality, city or county. For more information on this, also see P. Ho (2000).

<sup>34</sup>For more info on the various taxes that existed in the past, see X. Li (2004). Also see Kennedy (2013) as well as Day (2013).

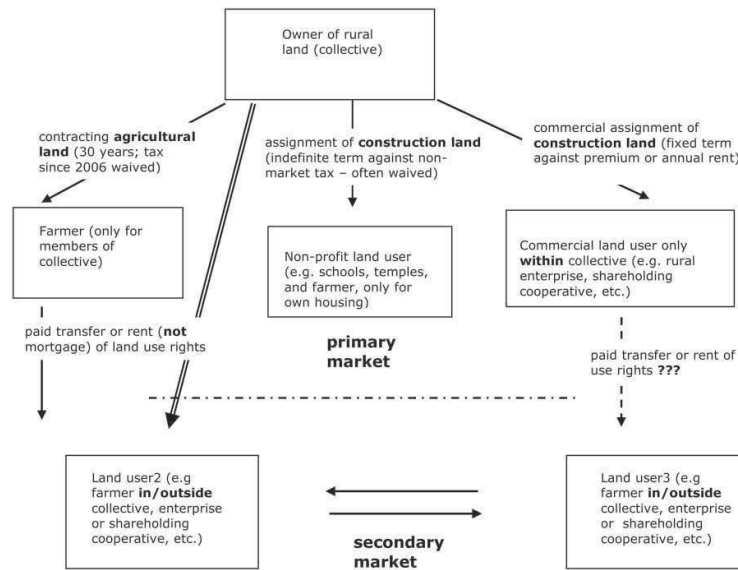


Figure 1. Overview of the rural land market.  
Source: drawn by the author.

market'.<sup>35</sup> Simultaneously, however, the central government initially refrained from stipulating whether this could be a 'valued use'.<sup>36</sup> The possibility of paid or commercial transfer of land lease rights was thus intentionally left undefined. (Depicted as a broken arrow in Figure 1).

A significant change in the transfer of lease was made during the revision of the Land Administration Law in 1998. As a result, the right to transfer at the secondary market was also extended to individuals and legal persons *outside* the village collective. At the same time, the law strengthened the role of the village collective by stipulating that such transfers are subject to a two-thirds majority vote by the villagers' representatives meeting (in practice: two-thirds of the village population).<sup>37</sup> Although Chinese law contained no regulations for paid lease transfer, this was already common practice in the urbanized regions.<sup>38</sup> Commercial lease of agricultural land happens in two ways: when the farmer (after migration to the city) subleases land to someone else, or when the collective leases directly to a farmer or agricultural enterprise (shown as a thick arrow in Figure 1).<sup>39</sup> Not until the proclamation of

<sup>35</sup> Allowed under the 1986 Land Administration Law, article 2, which states: 'the right to the land owned (...) by the collectives may be lawfully transferred'.

<sup>36</sup> For a detailed review of the internal debates by the Legal Committee of the National People's Congress on the exact formulation of the Land Administration Law in relation to the balance between state and market forces at the countryside, see also P. Ho (2005a pp. 38–41).

<sup>37</sup> See Huang, 2001.

<sup>38</sup> For example, in Jianli County (Hubei Province), the farmers working outside agriculture numbered 220,000 in 2001, which is 49 percent of the total rural labour force. They left behind 520,000 mu (35,000 ha of arable land – one third of the county's total area of arable land – which was subsequently sub-leased. In most cases the original lessee has to pay the new tenant a fee to work his land, as agriculture is less profitable. This fee could amount to 300 Renminbi (Rmb) per mu (G. Huang 2001, 1).

<sup>39</sup> This is common in situations where farmers have migrated to the city permanently and have returned their contract land to the collective.

the Rural Contracting Law in March 2003, some 20 years after the establishment of the Contract Responsibility System, were the principles for commercial lease finally defined:

- It must be a voluntary, consultative and paid lease while no individual or organization may impose or frustrate the transfer;
- The ownership and agricultural land use cannot be changed;
- The term of lease cannot exceed the remaining time of the original term (30 years);
- The new lessee must have agricultural management capacity;
- Members of the same village enjoy priority in obtaining lease rights.<sup>40</sup>

In addition to agricultural land, at the primary rural land market the village collective can also assign *non-agricultural* land – i.e. rural construction land – to users. Commercial users, such as village industries, shareholding cooperatives and private enterprises, can lease rural construction land for 30 years against a fixed premium or an annual land rent. Chinese law has imposed several restrictions on this type of lease:

- (1) Only industries, cooperatives and enterprises within the collective are entitled to rural construction land;
- (2) It is forbidden to transfer or rent the lease right of rural construction land for non-agricultural construction;<sup>41</sup>
- (3) Construction land, in fact *all* rural land – be it agricultural or non-agricultural land – cannot be mortgaged.<sup>42</sup>

The lease of rural construction for *non-commercial* purposes refers to the use of land for housing, schools and public works, such as roads, bridges and irrigation systems. Farmers are only allowed one plot of land for housing, which is provided to them as a type of rural ‘social housing’. As no land rent is asked for construction land granted to non-commercial users, no lease term is specified (although this cannot exceed 30 years), and the rural housing land (in Chinese: *zhaijidi*) is generally not titled, the lessee often erroneously (or intentionally) assumes that the land on which his house (or school, temple or mosque) is built, is also his ownership. During Maoist times, such beliefs seldom posed problems.

<sup>40</sup>As stipulated in the 2002 Rural Contracting Law, Chapter 5, Article 33.

<sup>41</sup>The National People’s Congress justifies this measure by stating that: ‘The past years “real estate is hot” ( ... ) as a result of which much land has been left idle. If collective land is allowed to enter the market, large quantities of collective land will be converted into construction land, and even more land will be left idle. This will frustrate the reform of the state-owned land use system’. 1998 Land Administration Law, Article 43 (the Chinese term ‘*ben*’ or ‘own’ is crucial regarding the first restriction). The prohibition on rent or transfer of rural construction land is further explained in the official legal interpretation of this law (National People’s Congress Legal Work Committee 1998, 176).

<sup>42</sup>During the revision of the Land Administration Law, Shanghai and Henan provinces requested to include the following stipulation: ‘Under the condition that the ownership and land use will not be altered, the use right to collective land can be legally transferred, rented out, or mortgaged’. But this suggestion was not adopted by the National People’s Congress (National People’s Congress Legal Work Committee 1998, 381). In July 2010, China started with the first pilot for the mortgage of rural land. Provinces such as Guizhou followed soon after. At the national level, the first change was signaled by Article 20 of the Communiqué of the Communist Party Congress of 12 November 2013. This stipulated: ‘[F]armers should be given the rights to occupy, use, benefit, and transfer their contract land, as well as the rights to *mortgage and hypothec* the contract management right’ (CCP, 2013). How this Party stipulation will work out legally and in actual practice is unknown at the time of writing.” (Editorial 2010, Y. Huang 2011).

However, with the commodification and urbanization since the economic reforms, non-commercially-acquired rural construction land is increasingly used for commercial purposes.

For instance, despite the fact that it is strictly prohibited to sell or rent out farm houses and subsequently apply for new plots of housing land,<sup>43</sup> farmers increasingly engaged in the sale of their property. Over the years, clandestine yet extremely lucrative markets for ‘small property rights housing’ (*xiaochanquan fang*, i.e. without ownership and clear rights on the term of the lease) have emerged, particularly in the peri-urban areas. Chinese scholars and politicians have long been divided over the issue. A renowned law professor and advisor to the Minister of Land and Resources remarked that regarding China’s land markets anything might be possible, because ‘if it is not explicitly forbidden, it is allowed (*wu jinzhi, ji xuke*)’.<sup>44</sup> Other Chinese academics have argued that farmers should be allowed to marketize and mortgage their property, as it is the only capital asset they have, and would potentially lift them out of relative poverty (Q. Zhou 2004, Gao and Liu 2007).<sup>45</sup> The central government, on the other hand, has stressed that rural housing has been provided by the collective to farmers as free social housing, and should therefore not be sold. By 2012, the central government officially declared its intention to crack down on the illegal sale of rural ‘small property rights housing’ (Ministry of Land and Resources 2012).

From an institutional credibility perspective, the interesting aspect about small property rights housing is its high market demand, despite the limited, ill-defined property rights – no ownership, no land permit and no clearly defined lease term. The market demand is mainly driven by migrant workers and low-income families, who cannot afford to buy commercial housing in the cities. A study by the Ministry of Land and Resources (C. Wang and Zhang 2010, 116) found that in 62 percent of 1083 sample villages, housing land had been sold, with a higher rate of sale in the more affluent, developed regions. Rural housing with unclear and insecure property rights obviously fulfils a certain need and, thus, a function for social actors.

#### 4.1.2. Urban land market

To have a good sense of the endogenous nature of land-based institutions in China, how they function and what tensions they generate, it is equally important to describe the urban land market as well. The urban sprawl has caused substantive losses in arable land<sup>46</sup> and a sharp rise in social conflict as expropriated farmers are inadequately

<sup>43</sup> As is stipulated in the 1998 Land Administration Law, Article 62. The illegal sale is also made possible due to the unclear responsibility over land and housing in the countryside. Instead of being issued by the relevant government housing and land administration departments, the township government or village committee issues the house and land permits.

<sup>44</sup> Personal communication, Wang Weiguo, Beijing, 16 November 2005.

<sup>45</sup> As Gao and Liu (2007, 31) argue: ‘the current system overemphasizes the role of administrative approval. As the land use right for farmers’ housing has the nature of a usufruct right, the rules of the original acquirement should be restructured according to the principles of the property law. The role of rural land owners must be stipulated’.

<sup>46</sup> For instance, official figures mention a decrease of four percent in the total arable area over 1978–1996: an annual loss of 218,000 ha. See Ash and Edmonds (1998). More information is also available in S.P.S. Ho and Lin (2003) and J. Wang *et al.* (2012).



compensated.<sup>47</sup> This is not to say that there is no conflict over urban land. Contrarily, urban redevelopment,<sup>48</sup> popularly known as *chaiqian* (literally: tear down and relocate), has also led to protracted disputes and civil protests as ex-home owners are poorly compensated (Kahn 2006, Zhu and Ho 2008). This issue, however, falls outside the scope of this contribution.

China has a strongly centralized land planning system under which land use must strictly follow the comprehensive land use plans (*tudi liyong zongti guihua*) and annual land use plans (*tudi liyong niandu jihua*). Under this system, land use plans and any change therein must be approved by the designated government unit, and subsequently reported to a higher level in the administrative hierarchy. However, due to the high potential economic gains in land and real estate development, clandestine deals and 'land theft' frequently occur, despite the strictness of the planning system (Pieke 2005). It is an open secret in China that there are four basic avenues for rent-seeking, a major one of which is over land,<sup>49</sup> and more specifically, the expropriation and subsequent development of rural land.

Ironically, China is losing its most productive land first as urbanization is geographically concentrated in the coastal and southern provinces where land is most fertile.<sup>50</sup> On a more positive note, the cities also provide alternative employment for the farmers. As farmers start to work elsewhere, contract land is directly sub-leased to others within the village, or returned to the village collective, which sub-leases the land to fewer (outside) farmers or agricultural companies.<sup>51</sup> As a result, a farming operation emerges with larger economies of scale and longer-term lease rights.

Similar to the rural market, the urban land market is divided into two levels (see Figure 2 below). At the primary market, the use rights to urban land (already owned by the state, or acquired through expropriation from rural collectives) are assigned to users in a commercial and non-commercial way. In the non-commercial manner, land use rights are 'allocated' (*huabo*) to state or non-profit organizations (e.g. schools, parks and temples) with no time limits to the lease term and at non-market costs (in certain cases the land tax is even waived). In the commercial manner, land use rights are 'conveyed' (*churang*) to commercial users (land developers) for a fixed term (40 years for commercial land, 50 years for industrial land, and 70 years for residential land) (Ma 1991, 93, 183, 891, 988, Walker 1991). This is done against a lump-sum premium that is determined through mutual negotiation, tender or auction. Other variations of 'valued use' at the primary market include an

<sup>47</sup>In 1993, China experienced only 8709 incidents related to peasants' and workers' unrest. By 1999, these conflicts had quadrupled to over 32,000. Six years later, they had again tripled to an excess of 87,000 (Chinese Academy of Social Sciences 2005).

<sup>48</sup>A well-known example of this is the conflict over the redevelopment of the Dongbakuai District in Shanghai (Chinaview 2006).

<sup>49</sup>The other ways of rent-seeking are through: (1) government purchase of materials (*zhengfu caigou*), when for instance a corrupt official would buy a government car at a higher price than the market price, with the difference divided between him and the car dealer; (2) infrastructure development (named: *jiben jianshe*), by which similar arrangements exist as with government purchase, or by which the construction company sends gifts to senior state officials to win a tender, and (3) appointments (*dang guan*) when gifts are generally given to the decision-makers in order to obtain a wanted position [personal communication, section head of municipal auditing agency (*shi shenjiu*), 5 June 2008]. For privacy reasons, the official's name and the city to which the auditing agency belongs have not been mentioned.

<sup>50</sup>For instance, in an attempt to halt indiscriminate expropriations and urban sprawl, the governor of Guangdong province decreed that 'collective construction land which rights are disputed is forbidden to enter the market' (literally: 'to be transferred') (Guangdong Provincial Government 2005, 1).

<sup>51</sup>An example of this is provided in Appendix J in P. Ho (2005a).

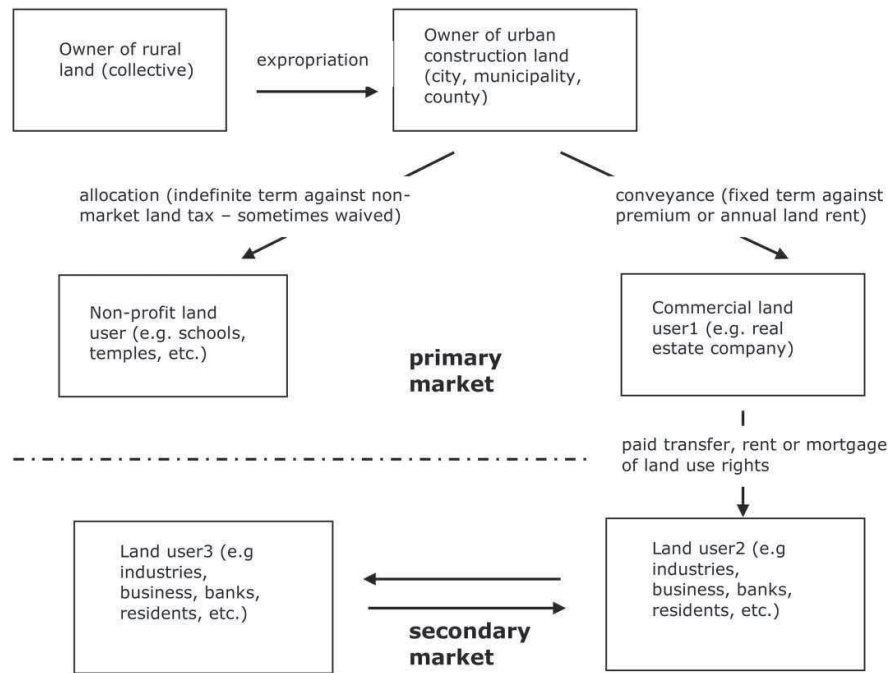


Figure 2. Overview of the urban land market.  
Source: drawn by the author.

annual land rent or, in exceptional cases, the exchange of enterprise shares for the rights to use state land.

At the secondary market, those who have acquired land use rights through commercial state conveyance may transfer (*zhuanrang*) or rent (*churang*)<sup>52</sup> these rights to others, while they may also be used as a collateral (which, as we have seen, is legally still not allowed for rural land). The mortgage of land is considered of vital importance for China's economy which has a relatively undeveloped capital market. At the secondary market, real estate corporations can sell their land use rights to businesses, industries and urban residents. Non-profit organizations that have acquired land use rights through non-commercial state allocation are excluded from participation at the secondary market, unless they compensate the state for the difference between the allocation price and the conveyance price (J. Chen and Wills 1999, S.P.S. Ho and Lin 2004).

The economic reforms have also led to the demise of the urban collective sector in China. During the socialist era, citizens – as employees of a 'work unit' (*danwei*) – were entitled to collective pension and disability schemes, medical insurance and housing. During the late 1990s, two developments forever changed the face of China's urban real estate market. First, a great number of work units sold the housing they owned to their employees at below-market prices in a once-only offer. Second, at roughly the same

<sup>52</sup>In the latter case, a new contract and (possible) new conditions are stipulated. In the former case, the original contract is transferred under the same conditions.

time, real estate companies started to develop commercial housing catering to the rising middle class that was increasingly able to afford to buy apartments on their own accord. The urban market has developed at such a quick pace, leading to a boom in the prices of real estate. Over the period from 2005 to 2009, average housing prices in the country have more than tripled (Chovanec 2009).<sup>53</sup> In reaction to what by many has been labeled a 'real estate bubble', the government repeatedly called for a 'cooling down' in the urban housing market, which culminated in 2010 in strict limits on the number of houses that can be owned by one household (in effect in 20 major Chinese cities) (China Daily 2005, 2011). However, by the end of 2012, it was clear that house prices in major cities, such as Beijing, Shanghai, Shenzhen and Guangzhou, had again increased (Anjuke 2012a, 2012b, 2012c, 2012d).<sup>54</sup>

#### 4.2. Historical sketch of Chinese land property

In the neo-liberal view, history is often regarded as the cumulative amalgam of past ideas, beliefs, and decisions that have led to sub-optimal or inefficient economic allocations and present market failures. History, therefore, materializes into an institutional blockage that can impede or 'lock in' efficient performance: the notion of path dependence or (sarcastically) also termed the 'historical hangover' (Arthur 1994, Liebowitz and Margolis 1995, Garrouste and Ioannides 2001). The idea of endogenous, spontaneously ordered development would acknowledge the causal effects between history and institutions, yet simultaneously concur with the historian's view that social actors' interactions are context-specific, and therefore hard to emulate.<sup>55</sup> Some argued that due to history's uniqueness, institutional arrangements, too, are unique, and that as a result, inter-societal comparison is difficult or even beyond our reach (Ben-Dor 1975). Against the latter perspective, this contribution reviews the recent institutional history of Chinese land property rights.

In the years following the communist takeover in 1949, the Chinese government launched a Land Reform (or *tudi gaige*) through which land was seized from 'capitalist rich farmers' and 'landlords' and redistributed to landless and small peasants.<sup>56</sup> However, contrary to widely accepted beliefs, urban land was *not* nationalized during the 1950s land reform. This decision was partially given in by government concerns to avoid alienating the middle and upper class from the Communist cause. However, during the Great Proletarian Cultural Revolution (1966–1976) much of the privately-owned

<sup>53</sup>Before this, the average real estate price rose by 14.4 percent over 2003–2004, and by 12.5 percent in the first quarter of 2005 (Lan and Shun 2005).

<sup>54</sup>Per unit (m<sup>2</sup>) asking price for Beijing had increased with 19.4 percent from 25166 to 30054 RMB over January to December 2012; Shanghai 3.1 percent from 22665 to 23356 RMB; Shenzhen 10.4 percent from 17428 to 19247 RMB; and Guangzhou with 11.6 percent from 14762 to 16476 RMB over the same period.

<sup>55</sup>In other words, as opposed to the popular adage '*l'histoire se repète*'.

<sup>56</sup>However, historical research has proven that the rate of tenancy was different from what the Chinese communist regime tried to make people believe. In fact, tenancy showed huge regional differences, with owners generally distributed in North China and tenant farms more abundant in South China. From the famous 1930 study by Buck of a large number of farms, 'owners average 63 per cent for all of the 2866 farms studied' (Buck 1930, 145). Another problem of the land reform movement was the classification of farmers into poor, middle, rich farmers and landlords. Madsen rightly notes that 'the official criteria for determining who was a landlord or a rich peasant, and so forth, were themselves imprecise' (Madsen 1991, 626).

urban land (and real estate) was forcefully confiscated by the Red Guards, and redistributed to factory workers or used for public purposes (such as for schools and government offices).<sup>57</sup>

These shifts in urban land property were, however, never formally included in laws or regulations. Interestingly, with the start of the economic reforms and perhaps also under pressure from descendants of previously expropriated capitalist entrepreneurs, the Chinese state tried to revert, or at least account for, the complex patchwork of private, public and confiscated property in the cities. In March 1982, the State Agency for Urban Construction (*guojia chengshi jianshe zongju*) proclaimed that:

[T]here are various property systems for urban housing in China [*sic!*]. We should strengthen the titling and administration of housing and land property. The urban land and real estate administrations should according to law, determine property rights, differentiate between the different situations in land ownership and use rights, conduct land surveys, and establish titling documentation and management structures. (State Agency for Urban Construction 1982)

However, shortly after this surprising notice, the National People's Congress adopted the Revised Constitution which quickly smothered what could have become a major ideological debate, and unequivocally, irrevocably stipulated that: 'urban land is state owned' (Revised Constitution 1982, Article 1, Section 1). With certain exceptions,<sup>58</sup> this has become the basic land ownership structure for China today: state-owned in the cities and, as we will see below, collectively owned in the villages.

The legitimacy of Communist rule in the countryside was mainly accomplished through 'land-to-the-tiller' programs by which peasants were won over to the revolutionary cause with the promise of a plot of land of their own. However, this brief interlude when private land ownership was a dream come true for China's peasantry was soon ended. In the late 1950s, the central authorities stepped up their control over land by setting up rural collectives. During the Great Leap Forward in 1958 – Mao's ambition to catapult China into the modern age – the means of production were brought under the control of large-scale collective entities, known as the People's Communes.<sup>59</sup> The result of the sudden, large-scale collectivization during the Great Leap was disastrous: millions of farmers died from starvation as agricultural production plummeted due to a combination of collective inefficiency, bad management and natural disasters. In reaction, the state tried to restructure the ownership of the means of production of the People's Communes into a 'three-level ownership' divided over the commune, the brigade and the team. Yet only after three years of intense debate amongst reformist and conservative factions in the Party did the new ownership structure take effect. In 1962, the Chinese Communist Party decreed in party regulations – but never in law – that land ownership from then on

<sup>57</sup>For a detailed description of the history of urban China under Mao, see MacFarquhar and Fairbank (1991).

<sup>58</sup>The main exceptions being: forest, grassland, wasteland, infrastructural, mining and military land in the countryside.

<sup>59</sup>Collectivization was executed in phases with a gradual pooling of the means of production – labor, capital and land. Before the People's Communes were set up in 1958, they were preceded by the Mutual Aid Teams, the Lower Agricultural Production and the Higher Agricultural Production Cooperatives. The official end to private land ownership in China came in the year 1956, when the ownership of agricultural land was vested in the Higher Agricultural Production Cooperatives. See Madsen (1991).

was to be vested in the lowest administrative level, the production team.<sup>60</sup> This remained China's basic ownership structure for rural land until the economic reforms in 1979.<sup>61</sup>

In response to the state of collectivist lethargy in which Chinese agriculture had been for many years, various localities experimented with new institutional arrangements for rural land use (C.-H. Chen 2002). By the mid 1980s, one of these experiments – the one in Xiaogang Village in Anhui Province – had evolved into a national model for more private land tenure. After over 20 years of planned, collectivized agricultural production, the use rights to land – when, what and how much can be produced – were once more returned to the Chinese farmer (Eyferth *et al.* 2004, 1–2). This new model entered the history books as the 'Household Contract Responsibility System', as farm households were allowed to 'contract' or lease land from the village collective for a fixed period of time. Although not at all intended, the practice of household contracts eventually led to the complete disbandment of the communes (C.-H. Chen 2002). These and their subordinate units – the production brigade and the production team – were subsequently replaced by new administrative units, respectively the township, the administrative village and the villagers' group (also known as the natural village).

China is frequently depicted as a country with 'fuzzy' or ambiguous property rights. However, legally speaking, the urban property rights structure is fairly straightforward as urban land is by definition state-owned. Furthermore, to overcome 'local protectionism', the law specifically stipulates that ownership is exercised by the central and *not* the local state.<sup>62</sup> Therefore, the ambiguity of the Chinese property rights structure is more apparent through the rural ownership and use rights, which will be discussed below.

### 4.3. Land ownership and use

#### 4.3.1. The ownership right

The first level at which the institutional ambiguity of property rights in China manifests itself is that of ownership. Despite the explosive development of 'a market economy with Chinese characteristics', the government has time and again stressed that there is no going back on the ideological foundations of state and collective land ownership.<sup>63</sup> Yet

<sup>60</sup>Article 17 of the earlier 1961 draft of the Sixty Articles stipulated that 'all land ... within the limits of the production brigade is owned by the production brigade'. However, by the time the revised draft of the Sixty Articles was issued by the CCP Central Party Committee on 27 September 1962, the team had been given land ownership (CCP Central Party Committee 1961, 454). As the final version of the Sixty Articles decreed: 'All land within the limits of the production team is owned by the production team' (CCP Central Party Committee 1962, 141–2).

<sup>61</sup>The Plenum of the 11th Central Committee of the Communist Party in December 1978 marked the beginning of the economic reforms and the official end of collectivism.

<sup>62</sup>The Land Administration Law states that 'the ownership right of state-owned land is exercised by the State Council as representative of the state'. In practice, state ownership is exercised by the Ministry of Land Resources: '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'. See Articles 2 and 5, Revised Land Administration Law (Fang 1998, 207). Moreover, the National People's Congress Legal Affairs Work Committee formally issued the legal interpretation 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 ...' It also added that 'the right to profit from state-owned land belongs to the central people's government' (Renda Fazhi Gonguo Weiyuanhui 1998, 37).

<sup>63</sup>A principle also enshrined in the successive revisions of the Chinese Constitution.

there is more to this issue than meets the eye. Communist ideology is nowadays perhaps of less importance in the decision against private ownership than pragmatic considerations. Contrary to China, states-in-transition such as the former East German Democratic Republic (DDR) chose to privatize land after the fall of the Berlin Wall. This decision led to a large-scale eruption of land-related grievances (Kerres 2004).<sup>64</sup> China, on the other hand, has avoided the question of ex-ownership. Instead, the Chinese government has privatized use rights while leaving ownership in the hands of the state: an institutional compromise that over time could incrementally evolve towards a property rights structure not unlike the British system of Crown land to which individual tenants can be entitled to a 'freehold' (Simpson 1976, 28).<sup>65</sup>

Although land use rights had been returned to individual farmers at the time of decollectivization during the mid 1980s, nothing was stipulated regarding ownership. As we have seen above, the ownership of agricultural land during Maoist times was vested in the lowest collective level: the production team. When the teams were disbanded, nothing would have been more logical than to name their successor – the villagers' group – the new owner. But the Chinese government refrained from doing so as it feared to open a Pandora's Box of ex-ownership conflicts.<sup>66</sup> On the other hand, the parliamentary debates about the owner of collective land – the administrative village or the villagers' group – have in practice already been decided in favor of the former. A survey commissioned by the Chinese Communist Party found that the overall majority of the agricultural land was *de facto* already leased out by the administrative village (Wang 1998, 56).<sup>67</sup>

Today, the village collective is a relatively weak institution when it comes to safeguarding and representing peasants' interests over land. The institutional ambiguity over collective land ownership is an important factor in this. Yet its weakness also stems from the fact that the Chinese government has been wary to allow farmers to organize themselves. Whereas in the cities a limited but vibrant civil society has emerged, the countryside

<sup>64</sup>One only needs to think of the descendents of Jewish families expropriated during the Holocaust, or the heirs of the former German gentry driven away from their estates when the Russian Red Army defeated the Nazi regime. Ex-ownership issues are notoriously complex: claimants often lack titles as these were destroyed during wars and political upheaval, while new owners can not simply be evicted as they have invested in the land for many decades. This is shown, for example, in a case at the European Court for Human Rights in Strasbourg. In the final days of the German Democratic Republic, Prime Minister Hans Modrow ordained that full ownership be granted to the farmers of the former collectives (LPG) and their heirs. The German government of Helmut Kohl, however, reversed this measure in 1992. In response, around 70,000 former LPG members and their descendants filed a case at the European Court for Human Rights, which in January 2004 ruled that the decision made by the Kohl administration was unlawful. In addition, the German government has been ordered to provide suitable financial redress to the victims of expropriation (Kerres 2004, 5).

<sup>65</sup>As Simpson described: 'Freehold originally meant that the land was held by services of a free nature and not that it was free from all rent and conditions, as its name seems to imply. This indeed is what it has come to mean, for it can now be regarded as synonymous with absolute ownership' (Simpson 1976, 28). In the North of The Netherlands, there is a similar right called 'Beklemrecht', a right originating from the seventeenth century under which the tenant ('Beklemde Meier') had full rights over the land against a fixed, yet relatively low, rent.

<sup>66</sup>There are many claimants to collective land, ranging from individual farmers to schools and temples. For instance, in an administrative village in Inner Mongolia, land ownership title was granted to a primary school. See P. Ho (2005a, Appendices C and Appendix D, 212–25). Many farmers also believe that they, rather than the collective, own the land on which their houses are built (Sargeson 2002).

<sup>67</sup>The villagers' group accounted for only 32.3 percent, the township for 1.1 percent, and other categories for 3 percent (Wang 1998, 56).



generally lacks voluntary peasant organizations.<sup>68</sup> This might be less problematic in the inland regions, yet where commercialization and the urban sprawl have transformed China's countryside at breakneck speed, the collective finds itself in an increasingly undermined position to protect its members' interests over land. It is thus also at this locus where new institutional arrangements might emerge.

#### 4.3.2. The use right

The central state has attempted on several occasions – yet by and large without much success – to strengthen tenure security of farmers' use right.<sup>69</sup> Initially, the Chinese state experimented with a lease period of only five years. To ensure farmers' economic incentives to invest, the lease term was later extended to 15 years, in 1984. This meant that the majority of contracts would expire towards the end of the 1990s. By 1993, the government stipulated that the term should be extended with another 30 years on top of the original contract period.<sup>70</sup> This measure is popularly known as the 'second round of lease' (*di'erlun chengbao*) as opposed to the first round of lease following decollectivization in the mid 1980s.<sup>71</sup>

The second round of lease was explicitly intended to guarantee a secure tenure of 30 years for farmers, free from any outside (government) intervention. For this purpose, local authorities were instructed to issue farmers individual, standardized and notarized contracts. Reality proved unruly as contracts were frequently kept by the village collective (administrative village or its subordinate villagers' group), instead of being issued to farmers.<sup>72</sup> In addition, changes in property rights were more often than not recorded informally, or based on oral agreement instead of written down in a contract. More importantly, the term of lease – 30 years – is often little more than a paper agreement. In practice, the village collective can appropriate and redistribute contract land whenever deemed necessary. Research has shown that contract land was often redistributed once every four to five years. Strangely enough, at least from a neo-liberal perspective, the land readjustments are actually supported by the majority of farmers (Kung and Liu 1997, Wang 1998, Kung 2000).

<sup>68</sup>See also the introduction in P. Ho and Edmonds (2008). The government has organized elections for the cadres of the administrative village since the mid 1980s. Although these have changed the role of the village collective, they have not significantly strengthened it either – certainly not regarding farmers' interests over land. See Z. Wang (1998).

<sup>69</sup>The strengthening of tenure security was done through large-scale titling programs. A detailed overview of the efforts of the Chinese state in this direction is given in P. Ho (2012).

<sup>70</sup>Cheng and Tsang, (1996, p.44) The term of lease is different for other types of land – forest, grassland and wasteland. The 2002 Rural Land Contracting Law defined that 'the lease term for grassland can be 30 to 50 years, for forest land 30 to 70 years, and for forest land with special trees and shrubs the lease term can be extended after approval by the forest administrative departments of the State Council'. Hu 2002 p.174). The term for urban land according to the Land Administration Law is 70 years.

<sup>71</sup>The 1986 Land Administration Law was revised in 1998 to provide the legal basis for the 'second round of lease' (*di'erlun chengbao*). See article 20 which stipulates that the lease term for agricultural land (not forest, wasteland, and grassland) is 30 years.

<sup>72</sup>Local custom also affected the state's effort to title collective land ownership. As a government notice warned: 'Land permits must be issued to the hands of the rights holder; it is strictly prohibited to withhold these under the pretext of a uniform administration' (Ministry of Land and Resources *et al.* 2011).

The underlying reason for this apparent contradiction lies in the absence of alternative risk-avoiding arrangements and sufficient employment outside agriculture. In short, the redistributions are a sheer necessity to ensure that everyone in the village has equal access to land. Suppose somebody in a household dies, while a newborn can be welcomed in another; the collective faces substantial social pressure to redistribute land among these two households.<sup>73</sup> In effect, the agricultural lease system thus functions as a social welfare net for the vast surplus of China's rural labour.<sup>74</sup> The readjustments have resulted in land fragmentation, which arguably inhibits a farming operation with greater economies of scale.<sup>75</sup> However, China is no exception, as land fragmentation elsewhere in the world is a logical outcome of farmers' risk-avoiding strategies when alternative social welfare mechanisms are unavailable or more costly (Charlesworth 1983, Ilbery 1984). The rural land lease system's role as an institution for the distribution of social security services, rather than for the distribution of land as a commodity, explains what is described elsewhere as the 'institutional credibility' of property rights.<sup>76</sup>

### 5. Cursory thoughts on China's relevance for understanding property rights and institutions

China poses a valuable case for the study of property rights and institutional change. In many observers' eyes, the country features an authoritarian, opaque polity with imperfect markets, in which property rights – regardless of whether they relate to immovables, corporate capital or intellectual property – are ill-protected by the state. According to neo-liberal thought, there are only two trajectories out of this developmental deadlock: institutional structure must change, or will collapse. Certain journalists and China-watchers believe that the Chinese nation-state is already heading towards an institutional collapse. They point to the widening gap between rich and poor, and the rise in social conflict (Chinese Academy of Social Sciences 2005, Young 2007). For instance, Pei (2006, 10, 132) speaks of a 'trapped transition' caused by a 'decentralized, predatory state'. Rampant corruption, local protectionism and political rent-seeking will herald the end of the Chinese developmental miracle.<sup>77</sup> What will happen? Some speculate that another Tian'anmen movement, ethnic separatism or a peasants' uprising will force the Communist Party out of power. Others believe that the People's Republic might implode in a similar vein as the former Soviet Union and Yugoslavia (Gordon 2001, Shirk 2007).

However, despite the predictions of an imminent collapse for many years,<sup>78</sup> Chinese institutional structure has not broken down, but appears to tenaciously persist without

<sup>73</sup>In this regard, Kung (2000, 702) made the important observation that: 'reallocations are partial in nature, involving only households that have experienced a change in membership. Villages well endowed with land resources or with abundant off-farm income opportunities have tended to reallocate land less frequently, and involved fewer households and less land'.

<sup>74</sup>As Guhan (1994, 40, 41) notes: 'In the agricultural economy, land is the primary asset from a subsistence point of view: it provides food security, enables utilization of family labour, and reduces vulnerability to labour and food markets. (...) The example of China shows how access to land can provide the fundamental basis for social security in an agrarian economy'.

<sup>75</sup>The average area of cultivable land is less than 0.10 ha per capita (National Bureau of Statistics 2003, 6, 97).

<sup>76</sup>See Chapter 1 in P. Ho (2005a), and P. Ho and Spoor (2006). Note that this is different from the neo-classical explanation of credibility as described in e.g. Diemeyer *et al.* (1997, 20).

<sup>77</sup>As Pei (2006, 166) asserts: 'Doubtless ... China's state capacity will continue to erode and sustainable development will be put at risk'.

<sup>78</sup>Perhaps the earliest influential report in that direction is the study by S. Wang and Hu (1999).

significant change. This seemingly enigmatic yet tantalizing paradox that China poses to certain students of institutional change sets it apart from the main postulates of neo-liberal thought reviewed in this paper: (1) that there is a direct causal relationship between institutions and the economy (or vice versa); (2) that institutions can be intentionally designed, and (3) that secure, private and formal tenure is a pre-condition for sustained economic growth. In trying to account for this divergence, it was argued that there is no way of 'getting institutions right' because institutional change derives from endogenous, spontaneously ordered development. It implies that institutions that persist at a given time and space perform a function amongst the actors that use and depend on them, as they have come into being through actors' internal, autonomously driven interaction. The outcome is a highly complicated, paradoxical and, generally, unintended institutional amalgam, that could never have been the resultant of human design, yet does spring forth from human action. China's rural-urban property rights structure is a testimony to this.

Land – as one of the means of production – is evidently situated at the crux between institutional function and actors' interaction therewith. For one thing, although Chinese agricultural tenure is regarded as insecure due to its informal, untitled character and frequent land reallocations by the collective, there is ample evidence that it is deemed credible by the overall majority of the rural populace (Kung and Liu 1997, Wang 1998, Kung 2000). Similarly, although the law makes no stipulations about the extension of the urban land lease<sup>79</sup> after its expiration, and lease permits for the land on which homes are built are often lacking (Jia 2005, Qi 2009), Chinese citizens still buy new housing *en masse*,<sup>80</sup> and even settle for so-called 'small property rights housing' (illegal housing with no ownership rights, located at the rural-urban fringe).<sup>81</sup> The above hardly seems to point to a low institutional credibility of land-based property rights in China. Having said this, it would be a misconception to think that credible land tenure can be equated with a situation of no conflict. In any interaction between social actors there will be power divergences, and as a result, frictions and distributional conflict over resources (Libecap 1989, Knight 1998).<sup>82</sup>

If Chinese social actors and economic agents perceive land property rights as credible, is there also evidence that they originate from endogenous, spontaneously ordered development? What we have seen in this contribution is that property rights cannot be externally designed. The efforts and intentions of the Chinese state – albeit perceived as a strong, centralized state with substantial organizational muscle power – are shaped and limited in its

<sup>79</sup>As a commentator stated about the Property Law: 'What will happen to the house after 70 years? It is an issue that is now closely watched by society' (Lu 2005, 3).

<sup>80</sup>Note that long before the housing boom and the bubble in real estate even materialized (Shen *et al.* 2005, Hou 2009), a poll carried out in 2003 amongst 23,000 urban citizens of several major Chinese cities (Beijing, Guangzhou, Shanghai, Wuhan, Xi'an and Shenyang) found that close to a quarter of the respondents (24.6 percent) had already bought new housing (at the secondary urban market), while another 73.8 percent expected to buy a house in the next year (Institute for Marketing Information 2003, 135).

<sup>81</sup>There are basically two possible situations: (1) the house is owned by a farming household, which illegally sold its ownership right to a third party; (2) the house has been newly built on rural land that has not been officially expropriated, and is thus not formally designated as urban construction land. For more information, see also J. Cai (2011) and Ministry of Land and Resources (2012).

<sup>82</sup>In this regard, the 'credibility thesis' concurs with Libecap's view that distributional conflicts are 'inherent in any property rights arrangement, even those with important efficiency implications' (Libecap 1989, 2).

endogenous interaction with other actors.<sup>83</sup> Furthermore, in contrast with the (neo-liberally inspired) popular and scholarly views, Chinese property rights and land-based institutions are not static and caught in an institutional deadlock, but change incrementally as the state ‘muddles through’ (Lindblom 1959) in its attempts to liberalize land markets.

At times, the state forges through with new laws, regulations and policies, as was the case in 1987 when the Chinese government auctioned its first piece of land, which heralded the end to Communist ideology on the control over land as a means of production. In other instances, the central state is forced backwards and needs to adopt a ‘hands-off’ approach, which involves toning down earlier intentions, such as its land titling programs through the issue of notarized, standardized contracts, or even leaving major issues undefined, such as rural collective ownership. The results of these dynamics are complicated and opaque land markets, which on paper are strictly divided into rural versus urban, and ‘primary’ versus ‘secondary markets’, yet which in practice feature extremely fluid institutional arrangements. Many observers remain concerned about the insecurity, opacity, and inconsistency of Chinese landed property rights. Yet China’s property rights over land are not cut in stone.

The great mistake in the study of institutional change is to take a snapshot of that which is in flux. Institutional change implies a shift in the endogenous, spontaneously ordered ‘rules of the game’ over time and space. For instance, we have seen how, from the onset of decollectivization in the mid 1980s, farmers were allowed to ‘circulate’ or transfer agricultural land use rights. At the same time, however, it was unclear whether such ‘circulation’ could be done commercially (or as ‘valued use’, as it is euphemistically called). It was not until over two decades later that the principles of commercial rural lease were finally codified in law, although full-fledged trade in rural land use rights had been going on long before that (Deng 2001). Similarly, although clear laws and regulations are missing, farmers have been freely selling their homes and housing land to urban dwellers, leading to a lively but illegal market in ‘small property rights housing’. The trade was recently met with a total ban by the central authorities (Ministry of Land and Resources 2012). It remains to be seen, however, if the ban can be effectively implemented and what will be done with the rural property that has already been sold. For one, politicians, scientists and non-governmental organization (NGO) representatives have become increasingly concerned over the growing rural-urban divide. To close the gap, it has been argued that farmers should be allowed to marketize and mortgage their homes (Q. Zhou 2004, Gao and Liu 2007). Furthermore, as the rural land market is increasingly integrated in the urban land market due to the ongoing urbanization, it will become more and more difficult to separate one from the other.

If we ever want to understand the Chinese property rights puzzle, we should recognize that it is not institutional form that counts, but function. It might well be that the heavily criticized insecurity, opacity and inconsistency of China’s property rights are exactly situated at that functional core. Put bluntly, the flexibility and opacity of the land markets are perhaps the very drivers of China’s capitalist development. Evidence already supports such a view: over approximately the same period as the institutional structure was in place that is described here, a large-scale conversion of rural land into urban construction land has been taking place (Ash and Edmonds 1998, Lin and Ho 2003, Lin 2009, J. Wang *et al.* 2012),

<sup>83</sup>For all analytical clarity, in fact, they are also shaped and limited in the interaction with itself – the different factions and vested interests from within the state, as well as between the different levels of the state (central versus local).

which in turn has propelled substantial profits in the real estate sector.<sup>84</sup> For years on end, real estate has been in the top echelons of most profitable industries.<sup>85</sup> Moreover, arable land conversion has also been crucial in powering the regional economy. The local government heavily relies on revenues from the conveyance of rural land use rights to commercial users at the (primary) urban market, which is partly due to the absence of a property tax<sup>86</sup> and the specifics of the promotion system for officials (Y. Cai 2003, L. Zhou 2007, Kung *et al.* 2009, Hsing 2010). It is estimated that up to 40 percent of local government budgets originates from the sale of land use rights. In 2010, local governments earned close to US \$441 billion on land sales, while the annual increase from land sale revenues by local government exploded from just nine percent in 2006 to 116 percent four years later (White 2011, Chovanec 2012, Wu *et al.* 2012).

In China's present stage of development, a large-scale codification and formalization of land rights might not only result in the establishment of non-credible and empty institutions, it might also be socially highly disruptive. This is not to say that at a certain time and place in the trajectory of development, more formalized and secure property rights might not emerge as credible institutions (in fact, we might already see such developments in the wealthier, urbanized areas). However, it is definitely to say that credible institutions and property rights are not ours to design or engineer, but appear through the interaction of social actors and economic agents bound together in an endogenous, spontaneously ordered development.

## 6. Glossary of key Chinese terms

*Chaigian* 拆迁, literally: tear down and relocate

*Chengbao* 承包: To 'contract', politically correct term for 'lease'

*churang* 出让: Commercial land conveyance to industries and companies

*di'erylun Chengbao* 第二轮承包: Second round of lease, i.e. extension of lease in the 1990s

*erji shichang* 二级市场: Secondary land market: land rights transferred/traded between users

*huabo* 划拨: Non-commercial land allocation to state or non-profit organizations

*liuzhuan* 流转: Literally 'circulation', i.e. trade of lease contracts

*yiji shichang* 一级市场: Primary market: land rights assigned to users by state or collective

<sup>84</sup>The average profit is 15 percent per transaction of real estate (approximately three times the world average). However, even higher profits can be made, as the following example illustrates: when land from a village near the southern section of Beijing's Fourth Ring Road was expropriated, the farmers received only 177 RMB per square meter. The same land was sold two years later for almost 38 times the original price (China Times 2006, 4). It is therefore no surprise that among the 100 wealthiest Chinese business leaders, more than 40 were in real estate. Even after some of these tycoons were arrested for economic crimes, 35 real estate developers still remained on *Forbes'* 2003 list (Hoogewerf 2002, Flannery 2003).

<sup>85</sup>From 2001–2004, real estate ended in first place, and in 2005, real estate ended in third place (China Economic Net 2006).

<sup>86</sup>By the end of 2012, there were pilots with property taxation in only two Chinese cities: Shanghai and Chongqing. In the US, property tax accounted for 73.9 percent of all revenues for the local government in 2009, a figure based on the 2009 Comprehensive Annual Fiscal Report (CAFR) and presented by Prof. John L. Mikesell, mikesell@indiana.edu, International Symposium on China's Urban Development and Land Policy, Peking University, Shouren International Conference Center, 14–15 July 2012.

*youchang shiyong* 有偿使用: 'Valued land use', i.e. commercial land use or land market  
*zhuanrang* 转让: Transfer of original lease contract under same conditions

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