The Practice of Property Rights in Rural China

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List of Abbreviations

ACL (Administrative Compulsion Law)
ALL (Administrative Litigation Law)
ARL (Administrative Reconsideration Law)
BHA (Bureau of Housing Administration)
BLR (Bureau of Land and Resource)
BPC (Basic People’s Court)
CAQDAS (Computer-assisted Qualitative Data Analysis Software)
CCTV (China Central Television)
CCPCC (Chinese People's Political Consultative Conference)
CPC (Communist Party of China)
HPC (Higher-Level People’s Court)
HRS (Household Responsibility System)
Intermediate People’s Court (IPC)
LAL (Land Administration Law)
LCRL (Law of Contracting of Rural Land)
MLR (Ministry of Land and Resources)
NGOs (Non-governmental Organizations)
NPC (National People’s Congress)
PCSC (People’s Congress Standing Committee)
PRC (People’s Republic of China)
PSB (Public Security Bureau)
QCA (Qualitative Content Analysis)
RILAL (Regulations on the Implementation of the Land Administration Law)
SPC (Supreme People’s Court)
SBLC (State Bureau of Letters and Calls)
TVEs (Township and Village Enterprises)
UCIG (Urban Construction and Investment Group Company)
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Chapter 1 Introduction: Urbanization, Rural Land Expropriation, and Property Rights

1.1 Introduction

Urban expansion characterized by land commoditization has been a government-led development strategy in recent decades.¹ China has attached great significance to urbanization particularly after the 2008 global financial crisis when foreign investment declined and it experienced a slowdown in economic growth. With the rapid expansion of urbanization and industrialization across China, property rights have been arranged and reshaped to suit varying social and economic contexts. Land has long been of critical economic and political significance for the Chinese government and its pursuit of various goals. Within this context, the role of land property rights is an important question for urban transformation and with significant implications for the protection of land property rights.

A rich body of literature has developed different approaches to demonstrate how weak the protection of land property rights is in the context of urban expansion. One approach offers an institutional analysis on how the current expropriation legal framework provides insufficient respect, protection, and promotion for property rights.² Problematic institutions create space for the government’s arbitrary use of power in its taking practice. For instance, it has been well documented how expropriation rules have yet to be properly established, both procedurally and substantively. In particular, the under-defined ‘public interest’, compensation standard set by the government that is detached from market-based value; the procedural irregularities; and the general ineffectiveness of courts to rectify injustice all contribute to the weakening of property rights as a result of land taking.³

A second approach attempts to question political nature of Chinese property to explain why state-managed development strategy has endangered property rights. Pils offers insights into how rural collective members’ land rights are constrained by the state’s authoritarian and utilitarian understanding of property in urbanizing China.⁴ She argues that the ‘state view’ of property and ownership, in parallel with a utilitarian conception of property rights, underscores state actions in expropriations and demolitions on its path to urbanization. Long examines how political ideology underlies China’s development of property institutions, and reveals that “China's property rights are deeply rooted in the goal of national wealth and power.”⁵ Deng claims that local government is the de facto owner of

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³ Lei Chen, ‘Legal and Institutional Analysis of Land Expropriation in China’ in Fu Hualing and John Gillespie (eds), Resolving Land Disputes in East Asia: Exploring the Limits of Law (Cambridge University Press 2014).
development rights and the only winner in the process of urban and rural integration, leaving rural collective and farmers excluded from enjoying any increase in the value of land throughout the process.6

A third approach has looked at the rising social resistance that stems from disrespecting and infringing property rights.7 Social resistance scholarship, most of it empirical, has examined the imbalances in power relations between the government and individuals, reflected by their competition for control of land in the era of urban transformation. Under circumstances where farmers were victimized as a result of land seizures, they staged acts of resistance and lodged complaints against the government. This social resistance approach enhances our understanding of how property rights in land are entrenched in imbalanced property relations and are incapable of safeguarding individuals against state intrusion.8

Previous research has provided fruitful ways to explore how property rights are poorly secured during urban transformation. Yet, despite the aforesaid research issues concerning institutional deficiencies, the authoritarian nature of property, and the social resistances, China has continuously carried out various reforms to clarify property rights and establish property institutions to make them more secure (Section 1.3.2). Though discrepancy may arise between the proposed property rules and the enforcement of those rules, the changing ideas of property rights have undeniably influenced social actors’ exercise of property rights in reality. For instance, Kielsgard and Chen argue, through the lens of condominium governance in urban China, that the introduction of private property rights into Property Law and the development of private ownership in urban residential properties have fundamentally changed the fabric of civil society. Another case in point is the notable phenomenon of the ‘nail-house’ (dingzihu 钉子户) in China. The term ‘nail-house’ is used to describe a household that defies the order of a governmental taking and the house sticks out like a nail, regardless of what has happened in the surrounding area.10 The recognition of private property in the Property Law12 and the Constitution13 affirms the legitimacy of rights-based arguments for ‘nail houses’ under threat, empowering their owners in some sense to challenge the misconduct of local officials.14 However, this does not mean that changes to property rules have succeeded in securing property rights. A more likely picture is that “China’s steadfast resolve to expand capitalism in rural China is undermining its attempts to secure rural property rights.”15 Regardless of

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11 Property Law (物权法) was promulgated by the National People’s Congress (NPC) on 16 March 2007, and came into effective on 1 October 2007. An official English version is available at <www.npc.gov.cn/englishnpc/Law/2009-2/20/content_1471118.htm> accessed 8 January 2017.
12 XIANFA para 1 art 13 (2004 Amendment). XIANFA (Constitution) of the People’s Republic of China had been revised for four times, respectively in 1954, 1975, 1978, and 1982. The 1982 Constitution is still in effect, which experienced four amendments in 1988, 1993, and 2004. For articles that was introduced or revised after 1988, they will be indicated in a bracket, notifying the amended version. An official English version is available at <www.npc.gov.cn/englishnpc/Law/2007-12/05/content_1381903.htm> accessed 8 January 2017.
14 Brooke Wilmsen, ‘Expanding Capitalism in Rural China through Land Acquisition and Land Reforms’
whether or not changing property rules have strengthened or weakened protections for property rights, though, far less is known about what practical implications of those changes are in varying contexts of urban transformation. This study aims to bridge that gap.

An overlook of how the changing trajectory of property rules influences practical exercise, against the backdrop of China’s rapid development, may lead to misunderstandings that property rights are insignificant or irrelevant to China’s development. Therefore, to supplement previous research that has focused on how property rights are weakly protected in the setting of urban transformation, or, how property rights have evolved over the time, this study seeks to investigate how changes to property rules have impacted upon “the practice of property rights” in China’s era of urban transformation. By analyzing how specific contexts shape and are shaped by evolving property rights, we may better understand the logic and rationale behind property development in China.

China adopted a hybrid of property regime when it committed itself to a “socialist market economy with the coexistence of mixed ownership”. While urban land is state-owned, land in rural and suburban areas is, unless otherwise legally stipulated, collectively owned. These two types of ownership differ in many aspects, and therefore spawn various different property-related practices in urban and rural areas (Chapter 3). This research is focused on the regime of property rights in ‘rural land’ and its implications for the practice of ‘rural land expropriation’. Situating the examination of a changed rural property regime in empirical contexts, this study aims to give a holistic view of how rural land expropriation redefines and transforms the meaning and function of property rights in rural land, and how evolving property rights can impact and reconfigure the practice of property rights within a given context. The practical implications for the practice of property rights will be explored through the lens of property relationships between the state and rural communities. It will argue that dynamic and context-specific property relationships are embedded in the processes of rural land expropriation, encompassing how government and rural landholders negotiate over the exchange of property rights, how the government strategizes its exercise of power to oppose to the expropriated farmers’ claims to land entitlements, and how expropriated farmers seek possible routes of redress to resolve disputes and attain justice.

This chapter consists of eight sections. The main concern of the study is presented in this section. Section 2 presents the context for the study. Section 3 gives an overview of the current regime of property rights in rural land, including the debates over its features, changing ideas about organizing property rights in rural land, and their possible implications. Section 4 proposes the aim and questions of the research. Section 5 considers the possible contributions that the study can make to current knowledge of property theory and the improvement of property rights practices in China. Section 6 introduces a

16 Shitong Qiao and Frank K Upham, ‘China’s Changing Property Law: Global Perspectives’ in Michele Graziadei and Lionel Smith (eds), Comparative Property Law: Global Perspectives (Edward Elgar 2017). The authors offer an overview of the changes of Chinese property law in the last four decades.
17 The term “practice of property rights” is inspired by Goodale’s definition of “the practice of human rights”. In his account, “The practice of human rights describes all of the many ways in which social actors across the range talk about, advocate for, criticize, study, legally enact, vernacularize, and so on, the ideas of human rights in its different forms.” Mark Goodale, ‘Locating Rights, Envisioning Law between the Global and the Local’ in Mark Goodale and Sally E Merry, The Practice of Human Rights: Tracking Law between the Global and the Local (Cambridge University Press 2007) 24.
18 XIANFA art 11 (1993 Amendment).
19 XIANFA art 10 (1982).
20 The term ‘rural land’ is defined in Section 3.2.1 of Chapter 3.
21 The term ‘rural land expropriation’ is defined in Section 3.2.2 in Chapter 3.
methodology for this study, discussing how empirical data was collected and analyzed through coding, categorization, and interpretation. Section 7 reflects on the research limitations of this study. Finally, Section 8 outlines the study’s overall structure.

1.2 Urbanization, Rural Land Expropriation, and the Affected Farmers

The rate and pace of China’s urbanization is unprecedented. Over the past 35 years (1978-2013), the number of cities in the country increased from 193 to 658. The city-based urban population increased from 170 million to 730 million, constituting 57 percent of the total population with an annual increase of 1.02 percent.\(^2\) It is expected that a 70 percent urban rate will be achieved by 2030, which, at present rates of growth, will amount to a total urban population of 1 billion.

This rapid urbanization has brought profound social changes to Chinese society. Central to these changes is urban expansion, which has released cheap labor and substantial land resources from rural areas to be invested into industrial and urban construction, to create a favorable environment for China’s economic takeoff. To deepen urban development, the Chinese government unveiled its first official plan, the National New Type Urbanization Plan (2014-2020), in March 2014.\(^2\) The national plan aims to achieve scientific and sustainable urbanization by integrating its major policy aims, ranging from ecological progress and urbanization quality, to the expansion of domestic demand and rural-urban coordination. Of these multiple aims, economic imperative is one of the greatest driving forces. As has been stressed by the Premier, “Domestic demand is the fundamental impetus for China's development, and the greatest potential for expanding domestic demand lies in urbanization.”\(^2\) Urbanization is in some sense equaled to GDP growth. It is estimated that every 1% of rural migration into urban area increases the GDP by 1.2%.\(^2\)

Yet, despite these remarkable changes and the acclaimed goals, the adverse effects of urbanization are as astonishing as its achievements. Rural land for a long time has acted as a kind of basic social security for rural residents, who are excluded from the official social security services that are provided solely for urban residents. Rural land played a greatly significant role in ensuring food security, protecting arable land, and even maintaining social order, and has been stringently regulated to fit China’s various economic, social, and political goals. One unique restriction is that rural land cannot be put to non-agricultural uses without government approval. The sole way to convert rural land to urban use is through processes of land expropriation by the government (Chapter 3). Local government at different levels of the bureaucracy are therefore encouraged to convert large scale agricultural lands into urban uses, in order to fulfill their task of expediting urbanization and boosting local economies. Owing to the government’s monopolistic position in land supply, local state actors have been incentivized to expropriate as much rural land as possible at low rates of compensation, convert it into urban land, and then sell land use rights at much higher prices on the open market. The price differential between the government-set

\(^{23}\) ibid.
\(^{24}\) Li Keqiang (李克强), ‘Coordinating Urbanization is a Critical Strategic Option toward Modernization’ (协调推进城镇化是实现现代化的重大战略选择) (2012) 11 Chinese Public Administration (行政管理改革) 4, 6.
compensation prices for the expropriated land and the market-based transaction price for the newly converted urban land can be significant. More importantly, in most cases the net aggregate income generated from ‘buying-low and selling-high’ is reaped by local authorities. While extensive land acquisition is usually premised on the large-scale displacement and relocation of land-lost farmers, the low compensation provided for their strips of land and houses is usually far from adequate for them to maintain their original living standards.

Not surprisingly, numerous expropriation-related problems arise from the “city-based and land-centered urban transformation”.26 Farmers in many cases receive little to no opportunities to consult or negotiate before expropriation decisions are implemented and their land is then put into use to build shopping malls, industrial parks, or entertainment buildings. To make matters worse, what insufficient compensation given is often misappropriated or embezzled by local agents and village elites. As such, the massive and growing population of ‘land lost farmers’ (失地农民) has become one outstanding externality of this relentless ‘land enclosure’ process in China.27 While urbanizing cheap rural land is a favorable route for local governments to accumulate capital, granting rural residents’ urban residence registration (户口) to turn them into urban residents is costly. As a consequence, urbanization in recent decades has witnessed a gap between the ratio of urban population residing in cities and towns (53.7 percent) and urban population with urban hukou (approximately 36 percent), which suggests that around 17 percent of China’s urban dwellers have been excluded from the urban social welfare system by 2014.28 In this instance, the loss of land not only means a discontinuity with traditional ways of self-supported life and social ties, but also a deprivation of social security. Numerous landless farmers are trapped in the situation of “no land to farm, no job to take, no right to pension, no money to start a small business” (种田无地，就业无岗，保障无份，创业无钱).29 Affected farmers are typically pervaded by feelings of anger, anxiety and frustration over the loss of their land.

1.3 The Regime of Property Rights in Rural Land

To see “land law as a national construct” is to grasp the political, economic, and cultural features of the society, rearranged to address long or short term changes in varying contexts.30 Rules and regulations entrenched in the law can be seen as the results of particular state choices for the arrangement of property institutions that decide whose land interests can be viewed as property rights that deserve protection. As such, property rules are created by the law (or the state) to assign powers to different actors, which in turn affect the practice of property rights in reality.

27 He Qinglian (何清涟) and Zhang Xiangping (张祥平), “Enclosure Movement” and Change of Social Psychology in China’（“圈地运动”与中国社会心理的变迁）(2000) 4 Strategy and Management (战略与管理) 27. The authors claim that urbanization is a bitter experience for affected farmers and constitutes a modern version of the ‘enclosure’ movement that took place in the UK in the 18th century. See also Zhang Yulin (张玉林), ‘Big Site-clearing: Comparisons between China’s ‘Enclosure’ Movement and That of the UK’ (大清场：中国的圈地运动及其与英国的比较) (2015) 32(1) Journal of China Agricultural University (中国农业大学学报) 19.
1.3.1 The contentious property arrangements in rural land

Compared to full, absolute, and privatized ownership in market economies, socialist property regimes exhibit some typical features that have invariably been labeled as unclear, insecure, and ill-defined. Uncertainty arises from the indeterminacy rules that govern the use and control of publicly-owned property. There is a strong sense that a lack of well-defined property rights discourages users from expanding and improving the utility of property in the market place, a number of western property theorists and Chinese scholars advocate that privatized ownership would be beneficial for Chinese agriculture and farmers.31

Contrary to the portrayal of Chinese property rights as ambiguous and insecure, though, other analysts have reinterpreted their meaning and functions in various ways. Upham has questioned the conventional wisdom that clear, strong and enforceable property rights are casually linked with economic growth, and claims that property rights more play a political rather than economic role in China’s development.32 He bases his argument on China’s impressive economic growth that was achieved despite weak protections for property rights during the Reform and Opening-up period. Other theorists put forward that current rural land tenure has gained significant social support despite its ambiguities.33 Peter Ho, for instance, moves away from debates over institutional form to a perspective of institutional function, and proposes a ‘credibility thesis’ to explain why rural land tenure, perceived as highly insecure, could obtain support from both government and farmers.34 In his view, rural land still assumes the role of social security for rural residents. In this way, equal access to land promised in the current system ensures a provision of social welfare to farming families, which has contributed to the maintenance of social order. Zhang and Donaldson argue that the proposed land privatization would “exacerbate class inequality and social tension in rural China and further weaken farmers’ positions in dealing with more powerful actors” in China’s pursuit of agricultural modernization.35 Conversely, the established rural property institutions, most notably, the collective ownership system with individualized land use rights, may protect farmers from being exploited and dispossessed by outside capital. Therefore, despite their ambiguities, specific arrangements of rural property rights may provide credibility, maintain social stability, and uphold socialist ideology. It is from this perspective that this study will investigate the meaning and function of property rights in rural land in the Chinese rural setting with the context of its economic, social, and political features.

1.3.2 Legal clarity on property rights in rural land

Although the nature of Chinese property rights in rural land is contentious, the legal landscape of rural property has been constantly evolving to fit changing socioeconomic contexts. Concurrent with its resolve to develop a socialist market economy, China has endeavored to clarify property rights and heighten their

31 Qian Forrest Zhang and John A Donaldson, ’China's Agrarian Reform and the Privatization of Land: A Contrarian View’ (2013) 22 (80) Journal of Contemporary China 255, 256-257. The authors offers a thorough discussion on how western journalists and scholars and China watchers advocate to privatize China’s land ownership as a proper solution to reform China’s agriculture.
35 Qian Forrest Zhang and John A Donaldson, ‘China’s Agrarian Reform and the Privatization of Land: A Contrarian View’ (2013) 22 (80) Journal of Contemporary China 255.
protection. After China adopted the separation of use rights from land ownership in the 1980s, use rights in collective land developed at the same time, such that land ownership continues to be collectively owned in adherence to the principle of socialist public ownership. Use rights to rural land are categorized into three types: land contractual management right (承包经营权), use right to construction land (建设用地使用权), and use right to homestead (宅基地使用权). These three types of use rights are explicitly prescribed by Property Law and are defined as real (usufruct) rights that endow land users rights to possess, use, and derive benefit from land to the exclusion of land owners (Chapter 2). Moreover, China has recently consolidated the development of these use rights by creating new types of property rights, most notably, the land contractual management rights are disaggregated into two types of rights: contractual rights (承包权) and management rights (经营权). These new property rights are created to facilitate the transfer of management rights to the hands of more productive farmers, while at the same time preserving contractual rights held by rural households that had originally contracted with rural collectives. The aim of this policy initiative is to improve land utility by an economy of scale without diverting land for agricultural use.

New rules and regulations issued in recent years have emphasized the securing of farmer property rights. For instance, Property Law was passed to standardize property rights and grant equal protection to both public and private property. Such equal protection was a path-breaking step toward “breaking up the orthodox ideology in favor of public ownership against private ownership and individual liberty”. Moreover, it introduced the principle of numeros clausus to attain the property standardization, which allowed law to be the source of property rights.

Finally, China has recently committed to deepening reforms on rural land. One prominent reform has been the launching of experimental projects to secure property rights and improve current expropriation institutions. These projects consist of three aspects: unifying the construction land use market in urban and rural areas; reforming land expropriation; and allowing homestead land to be transferred and mortgaged under limited circumstances (in Section 3.5 of Chapter 3). This reform will last three years and the effects of the experimental projects will be evaluated and recognized after their completion by the end of 2017. It is expected that the ultimate evaluation results will provide evidence to inform the third amendment of Land Administration Law (LAL) that regulates the expropriation of China’s rural land.

1.3.3 Implications for the practice of property rights

The evolving landscape of property rights in rural land has essentially reflected state’s efforts to react to the changing socioeconomic parameters during this era of urban transformation. The tendency to

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36 The three types of property rights are prescribed in Chapters 11-13, Part 3 of the Property Law (China).
39 Zhang (n 10). Emphasis is formed in the original text.
40 Land Administration Law (土地管理法) was promulgated by the Standing Committee of NPC (PCSC) on 25 June 1986 and revised respectively in 1988, 1998, and 2004. For articles that was introduced or revised after 1988, they will be indicated in a bracket, notifying the amended version. An official English version is available at <www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383939.htm> accessed 4 June 2016.
rearrange property rights in rural land is described in this study as formalizing (做实) landownership in tandem with concretizing (做虚) land use rights, whereas use rights are subject to various restrictions to suit different economic and political goals (Chapter 2). Within the context of urban expansion, where large-scale rural land is continuously demanded for infrastructure construction, the rearranged property rules are meaningful for integrating property rights in rural land with the national urbanization strategy. To illustrate, land ownership is formalized in the sense that collective ownership can be retained without having to clarify any ambiguities regarding who has ownership to a particular tract of land. The blurry legal boundaries around rural land invite a strong and powerful state to take absolute control of rural land, thereby ceding control of rural land from the rural collective to the state through a process of rural land expropriation. Likewise, while it remains disputable whether or not the concretization of use rights with the imposition of various restrictions could genuinely suit the various goals of the state, the restrictive property rules are, nonetheless, institutionalized in ways that consolidate the government’s monopolistic position in supplying rural land to be converted into urban uses. As a consequence, it is the government that stands to extract most of the profit from this process of rural land conversion.

Despite the state’s commitments to endowing farmers with more property rights and enhancing their protection, by scrutinizing the evolving trajectory of property rules, one can see that much room is left for local governments to exert wide discretion on these matters. As will be further discussed in Chapter 3, land expropriation has been used by local authorities as a tool to accumulate capital and advance the level of urbanization in the countryside, frequently coming at the cost of rural residents. The large scale of this rural land conversion, which in many situations is carried out in a predatory form, unsurprisingly has encountered mounting protests or resistances from aggrieved rural populations. In more than a few cases, forced evictions are invoked to forcibly clear up the land which aggravates the conflicts. In this instance, as frequently reported, aggrieved farmers have engaged in resistance through protests, blockades, and even “extreme behaviors” such as self-immolation to contest and challenge the government’s power. Such incessant rural unrest has diminished political trust in local authorities.⁴¹ Although the diversified and very public acts of resistances are known, it is still under-researched how farmers might resist in hidden or covert ways, defending what they believe they deserve in the process of developing what was once their land. Such hidden or covert resistance may result from the fact that their legitimate claims are typically ignored. Such hidden resistance at least demonstrates that farmers are not entirely powerless in this situation. They may instead be quite capable of dealing with governmental power in certain circumstances, such as by taking advantage of the ambiguous property rules to explore opportunistic behaviors to maximize material gains (Chapter 4).

1.4 Main Research Questions

In light of the aforesaid research issues, this study aims to investigate the practical meaning of property rights in rural land and how they function in the Chinese rural setting. On the basis of the common view that property rights have generally been weakly protected during this era of urban transformation, this study is focused on the regime of property rights in rural land, and evaluates the practical significance for the exercising of property rights. By providing localized detail on how property rights practice in rural land expropriation that shape and is shaped by changing ideas of property rights in rural land, the aim of

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⁴¹ For a discussion on the correlation between land-related conflicts and the erosion of political trust in local authorities, see Erman Cui and others, ‘How do Land Takings Affect Political Trust in Rural China?’ (2015) 63 (1 suppl) Political studies 91.
this study is to examine the rationale of property rights function in shaping property relationships between government authorities and farmers.

Two specific research objectives are pursued throughout this research. These are:

- To articulate the meaning and function of Chinese property rights in rural land in the context of rural land expropriation;
- To assess what implications the practice of property rights might have for rural land expropriation processes in different phases from the perspective of dynamic and context-specific property relationships between state and rural communities.

In order to meet these objectives, the main research question is proposed as follows:

- How do Chinese farmers’ property rights function in practice in the setting of rural land expropriation?

The following sub-questions will be developed further in each chapter to address this main question:

- How have rural property rights been created and rearranged to serve multiple state goals oriented towards urban transformation? (Chapter 2)
- How have rural property rights been weakened by legal and rural land expropriation institutions? (Chapter 3)
- In light of the interactive property relations between the Chinese state and rural society, how are property rights negotiated and bargained for in the exchange of rural land? (Chapter 4)
- How is the exercise of landholders’ property rights affected by dynamic and hierarchical power structure as well as their interrelationships? (Chapter 5)
- And how do farmers employ different routes to redress their grievances and attain justice? (Chapter 6)

1.5 Contributions to Legal Scholarship and Practice

This research examines Chinese property rights from a local perspective. Chinese property rights have long been considered to be puzzling, particularly with regards to their relationship to economic development. This mystery has been described in terms of “China has grown without robust property rights”, in the sense of legally clear and judicially enforceable property rights.42 The fact that Chinese property rights and legal theory tend to go beyond the explanatory power of western property rights theory renders it relatively unattractive or even insignificant for development theorists.43 It is not the ambition of the research to offer any new theoretical insights or explanations of the ‘China Phenomenon’, such as by asking why Chinese property rights are enforced through informal mechanisms other than law, or why there is no apparent causal link between clarity of property rights and economic growth in

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43 ibid 591-600.
China.\textsuperscript{44} It is noteworthy here that previous research, which mainly built explanatory theories at a global rather than a local perspective, sought to reflect on ‘China Phenomenon’ with revelations of what Chinese property lacks or falls short of. However, in doing so without fully addressing the local contexts within which Chinese property rights have evolved and the rationale for how they are put into practice, such scholarly efforts may further mystify rather than clarify the puzzle of Chinese property rights.

As a theoretical examination of how Chinese property rights evolve in the domain of rural land and as an empirical study of the implications this has for the operation of rural land expropriation, this research intends to demystify Chinese property rights, and in so doing may contribute to the current body of knowledge and practice in two aspects. Firstly, it identifies a pattern in which property rights in rural land have evolved. The land system in China is marked by a division between urban and rural land that, reflects China’s dual urban-rural structure in various aspects, such as with the binary hukou system. Nonetheless, seldom has addressed the real meaning and function of property rights in rural land which differs greatly from that of property rights in urban land. It will draw attention to how the division between property rights in urban and rural land persists, rather than presumably diminishing or eventually disappearing entirely, in China’s endeavor to reform its rural land regime. The root cause of the persistent differentiation is that the current dual land system is a foundation of China’s socialist land regime and a source of its sustenance. As much research suggests, “The distinction between rural and urban land represents perhaps the last residue of socialism in the Chinese land scheme”.\textsuperscript{45} In other words, while it is arguable whether or not this dualism actually characterizes socialism in the Chinese land scheme, it is evident that the distinction between the two types of property rights (or, dual ownership) is unlikely to be eliminated without any major political reform.

Secondly, this study will highlight rural land expropriation as the specific context within which the impacts of the evolution of property rights can be evaluated. As will be discussed in Chapter 3, land expropriation in Chinese legal framework is mostly diagnosed as an all-inclusive matter that is unsatisfactorily standardized. Without fully addressing the vast differences between property rights in urban and rural land, as well as different arrangements about the expropriation of urban and rural land, discussion centers on how to standardize Chinese expropriation law, which converges upon similar standards and solution in takings law in western property law (for instance, the U.S. takings law).\textsuperscript{46} However, such diagnoses fail to address the root causes of the expropriation-related problems (such as rural land seizure). Instead, I shall argue that it is this dualism between urban and rural land, with its restrictions on property rights in rural land in situations of rural land expropriation, rather than the imperfect land expropriation system itself, that should be the first priority that needs to be remedied in order to solve numerous expropriation-related problems (Chapter 3).

1.6 Research Approach and Methods

1.6.1 Data collection

\textsuperscript{44} Frank Xianfeng Huang, ‘The Path to Clarity: Development of Property Rights in China’ (2003) 17 Columbia Journal of Asian Law 191, 195-196


\textsuperscript{46} Dennis Schmelzer, ‘Takings for Granted: The Convergence and Non-Convergence of Property Law in the People's Republic of China and the United States’(2008) 19 Duke Journal of Comparative & International Law 133. Schmelzer discusses how the two jurisdictions use common language to suggest similar solutions, when they actually address radically different problems based on very distinctive ideological principles.
This study will apply a socio-legal approach to address the main research questions. Using empirical case studies from China’s peri-urban areas where the compulsory acquisition of rural land is ongoing, this research seeks to reveal how rural property rights have been practiced in ways that impact the operation of rural land expropriation. As previous research suggests, the evolution of property rights shall be envisaged within China’s specific cultural, institutional, and political contexts in which sophisticated social relations are deeply embedded. Likewise, “the practice of property rights involved sophisticated social relations between the state and the individuals and among different state organizations”. Chinese property rights are deeply embedded in social relations and therefore the practice of those rights may be examined from the perspective of intricate property relations. From this vantage point, this study draws on empirical data and statutory analysis, and seeks to explain the practice of property rights through the lens of interactive property relations that are reflected in processes of rural land expropriation.

Central to questions about eminent domain is the property relationship between the state and society. As will be analyzed in Chapter 5, state-society property relationships are constituted in complex ways that involve multiple government actors on the one side and rural communities on the other. The state-society property relations are variable, specific and concrete at one place and point in time, while general and abstract at others. This variability is due to variations in, among others, the operation of rural land expropriation. In any case, one cannot evaluate the impacts of property rights in isolation from the concrete property relationships that are at the core of expropriation operations. This study intends to assess the implications of this for the practice of property rights at a number of stages during the process of expropriation, through the lens of dynamic state-society property relationships. For convenience, this study divides the process of expropriation into three stages: negotiations over the exchange of property rights (Chapter 4); the enforcement of property rights, including the exercise of property rights (Chapter 5); and redress for violations of property rights (Chapter 6).

*Multiple-method approach to qualitative research*

This study is fundamentally qualitative and applied a multiple-method approach to investigate the research question. This approach consisted of in-depth interviews, focus group discussions, and participant observation. In-depth interview and focus group discussions were mainly conducted face-to-face, with one exception of a telephone interview for the convenience of a particular participant. Formal interviews were conducted with planned and prepared questions, and informal interviews were periodically carried out with relevant parties (local officials, village cadres, and the expropriated farmers may be all or partly involved) during on-the-spot observation.

In all, I conducted thirty-eight in-depth interviews with four groups of respondents: local officials, judges, village cadres, and farmers (Interview lists as Appendices B and C). Ten formal interviews were conducted with twelve township and county-level government officials. Among them, four were with local officials who were directly involved in the task of demolition and eviction. Six interviews were with local officials who were in charge of land governance and expropriation administration at township or city-level government departments. The five interviewees served in different government departments in S City, with one from Bureau of Land and Resources (BLR), one from Bureau of Housing Administration (BHA), and another three from Urban Construction and Investment Group Company (UCiG). I had

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49 It is common practice that local governments establish Urban Construction and Investment Group Company
three interviews with four judges, two of them at the Intermediate People’s Court (IPC) and two in Basic People’s Court (BPC). Additionally, I interviewed three village cadres. One was a Party Secretary of the village authority, and the other two were “college graduates serving as village officials” (大学生村官).\textsuperscript{50} For the interviews with government officials, judges, and village cadres, I proposed open-ended questions to enable them to express their opinions in a free and lengthy way with no specific time limit set for them. The main consideration for this open format was the sensitive nature of the operation of rural land expropriation. The three groups of interviewees who were directly or indirectly engaged with expropriation operations tended to be more reluctant to divulge information. After establishing rapport with them, descriptive questions were asked to seek their cooperation in helping me find out procedural and substantive details about the operation of rural land expropriation. Rather than asking “why did you do that”, which might have pressured the target respondents and put them on the defensive, descriptive questions like, “tell me what you did”, or, “how did you get it done”, were proposed to encourage them to spell out details of the operation and their personal opinions.

In addition to those interviews with judges, local officials, and village cadres, I also conducted twenty semi-structured interviews with over forty farmers. Four were with rural households that were in a pre-expropriation phase whereby either their land or houses had not yet been included in government demolition and eviction plans, or, where they had not yet been informed of the exact date for their removal despite included in the official land use plan. Two interviews were with people whose houses had been just demolished but who had not yet been relocated.\textsuperscript{51} The remaining fourteen interviewees had already experienced expropriation. Some had neither received proper compensation nor been resettled because of their disputes with local authorities. Interviews with farmers about their different individual experiences at different stages of expropriation not only provided me with a holistic view toward government operations of rural land taking, but also variability in understandings of and actions taken regarding property rights. Questions to these farmers were generally semi-structured with some open-ended questions to let them tell their own stories as well as express their feelings.

\textsuperscript{50} Recruiting college graduates to work as village officials was a local government initiative that was officially recognized by the central government in 2008 and promoted to the national level as a unique human capital reallocation program. College graduates, termed as “college graduates as village officials”, were hired by governments and assigned to rural villages, serving as assistants to the elected village chairperson or the appointed village party sectary. The aim of the scheme was to help improve village governance, boost local economies, alleviate poverty, and reduce grassroots corruption. College graduates working as village officials could enjoy preferential treatment if they wanted to become civil servants or to resume their post-graduate education. For an introduction to the program, see Guojun He and Shaoa Wang, ‘Do College Graduates Serving as Village Officials Help Rural China?’ (November 1, 2016) HKUST IEMS Working Paper No. 39/2016 <ssrn.com/abstract=2886279 or http://dx.doi.org/10.2139/ssrn.2886279> accessed 10 June 2017.

\textsuperscript{51} During the survey period, the typical practice of expropriation authorities was “demolition first, relocation later” whereby the land was cleared quickly and government authorities installed infrastructures such as roads, electricity and water supply, after which the land could be either transferred ion the urban market or used as collateral to secure bank loans. In this way, local governments holed to earn revenue to construct government-subsidized multi-story buildings to relocate the expropriated farmers. In this case, it was the responsibility of the expropriated farmers to rent a house or to find a temporary place to relocate themselves before they were ultimately relocated into those multi-story buildings. Expenses arising from this transition were calculated into the compensation scheme.
Two focus group discussions were carried out with a group of participants in Village D and Village G respectively (my choice of fieldwork locations is discussed in detail below). The first focus group discussion was organized with six G villagers who were subject to expropriation. They all had negotiated with local expropriation authority concerning the compensation and relocation arrangements for them. Nine participants for the second group had similar experiences with forced demolition and had suffered losses in governmental taking of their land and houses. Most of them had either collectively or individually lodged petitions to central or lower-level governments, and a few had filed lawsuits in local courts to seek justice for infringements of their property rights (Chapter 6). Each group discussion lasted for approximately 2 hours, and was conducted to gather a variety of perspectives and opinions from the expropriated farmers on their use of different routes to redress their rights grievances.

Data were also collected through passive participant observation by the researcher. The reason behind employing this method was, as mentioned earlier, the sensitive nature of land expropriation. At the time, conflicts were mounting between the expropriating authorities and the expropriated people triggered by land taking in the area. This antagonism escalated in circumstances where villagers acted in direct defiance of government demolition and eviction orders and when the local authority imposed suppression as a form of retaliation, as the Village D’s case revealed (Chapter 6). “Passive participation requires the observer to play a role that is primarily that of an observer but one who also interacts with participants by way of asking questions or becoming involved in activities beyond or even unrelated to the critical areas of study”. Within this context, an appropriate role for a researcher who is engaged in an empirical study of this sort of sensitive topic might be with ‘marginal’ rather than ‘active’ or ‘complete’ participating membership in the researched activity. My overt involvement in the community (with the knowledge of insiders) allowed me to observe and gave me the opportunity to interact with participants, most notably when I was invited by the local officials for an observation of how they talked to the expropriated group and persuaded them to cooperate.

Choice of fieldwork locations

Fieldwork was conducted from early June to late September in 2015, with follow-up interviews carried out in February 2017 to collect complementary data in S City, the provincial capital city of N Province in south-central China. The reason why I chose S City as a single location for this fieldwork, rather than more extensive fieldwork in a variety of places across China, was primarily because of my previous experience conducting a separate empirical study in the same location, which proved to be conducive to my being able to establish field relations. Furthermore, this study aims to investigate possible implications on the practice of property rights, from the perspective of property relations embedded in a set of stages of the process of rural land expropriation. As noted earlier, this process is conceived as being divided into three different but interconnected stages. A coherent understanding of subject matter requires information collection and the ensuing analysis of empirical data that are of a similar local context.

I selected three villages (D, G, and P villages) in S City as fieldwork locations, and chose one of the three, Village D, for an in-depth study. The overriding reason for this choice was that Village D had been experiencing enduring land expropriation disputes between villagers and the local authority. Villagers had

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52 For the sake of protecting sources, I use pseudonyms for the names of the research locations. The four-month-long field work period was completed with the assistance from a Chinese undergraduate research assistant, who was in the second year of her studies with a research interest in Chinese land law.


54 ibid.
been taking action in various forms both to resist local authority and to seek justice for violations of property rights, and these actions were becoming influential across the whole province. Moreover, Village D as a case study offered a thorough picture of rural land expropriation over the time, which was worth exploring. That said, in order to avoid any misunderstanding that disputes might always exist or be perpetually long-lasting, villages G and P were included in this study since their quite different pictures present useful contrasts to Village D. Village G is located close to Village D, both on the eastern periphery of S City, but had been expropriated three years later, with no incidence of overt collective resistance or fierce conflict as a result. One potential influencing factor for this was that in 2012 N Province had increased compensation standard by 30%.\(^5\) P Village, located on the western periphery of S City had both similarities and differences with the other two villages. The initial expropriation project in P village started more or less in the same year as Village D, but the two differed in the purposes behind the expropriation. While land in P village was acquired to construct a wetland park and therefore, governmental action was understood as serving a public interest; land in villages D and G was expropriated for the construction of commercial projects in order to boost local economic growth. Another prominent difference was that P villagers were relocated with in-kind compensation while compensation in cash was instead applied in villages D and G (these two modes of compensation is detailed in Chapter 4).

**Access to individual farmers**

As earlier noted, I had already established a network of local contacts in the field for research. Recommendations from villagers that I knew before enabled me initially to approach several respondents. Indeed, one of these respondents turned out to be a leading actor in a number of collective actions that had taken place in Village D. After building rapport with this leader, he provided me with enormous help in referring me to more villagers and recruiting members for the focus group discussions. This sort of snowball sampling saved me both time and energy in recruiting respondents. However, while convenient, this method may also runs the risk of being biased and therefore could not be relied upon to guarantee the representativeness of samples. To offset this, I went into the rural communities and conducted random interviews with some villagers, managing in the process to make contact with individuals that I might otherwise have missed via snowballing.

In general, farmers were cooperative and willing to tell their stories during the interviews. Some of them even demonstrated a strong desire to be heard. One main reason for such enthusiasm might be that there are few opportunities or spaces for many Chinese farmers to make their voices heard in the current political system. These farmers were a ‘muted group’ in that they lacked representation or were unable to effectively air the grievances when they encountered injustice in their land disputes with government. Moreover, rural land expropriation usually occurs in the absence of any buffer like the judiciary, a third-party appraisal, or a neutral arbitrator, who might keep the two parties at a safe distance from each other (Chapter 6). The judiciary was almost absent from any involvement or participating in reviewing administrative decision-making on rural land expropriation, nor was there any formal invitation for third-party involvement in mediating the disputes. All decision-making authority rested solely with the government. It is therefore not surprising that farmers sought out channels to air their grievances, especially when they believed they were being treated unequally or suffering injustice, with no effective means for redress. However, not all of the villagers I spoke with were so eager to participate. Less

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enthusiastic were those households facing demolition but who had yet to enter into negotiations with the local authority. One compelling reason behind this reluctance was a fear that they would be subjected to retaliation if their complaints or overt dissatisfaction was disclosed to the local authority.

Access to local officials, judges, and village leaders

As mentioned above, any empirical study about rural land expropriation in China might be considered quite politically sensitive given heightened tensions in areas under expropriation. Given such sensitivities, I encountered several difficulties in accessing interviewees among local officials, judges, and village leaders. The first difficulty arose from the political environment. An unprecedented anti-corruption campaign, known as ‘catching tigers and swatting flies’ (打老虎, 拍苍蝇), was ongoing during the fieldwork period. Tens of thousands of civil servants, both senior officials and low-ranking cadres, were being toppled by this anti-corruption campaign. The whole Party was on high alert. Against this backdrop, access to the research site was challenging because officials had fewer incentives to participate in the research, and were concerned that the reckless disclosure of information might bring them trouble, in attracting undue attention from the anti-corruption campaign. Deterred by the harsh campaign, officials at the locality who might be potential ‘flies’ to be ‘swatted’ were more wary than ever of their words and deeds. In their daily work, they were more cautious than normal, and more inclined to do less of something rather than to do it wrongly, and not to be caught out by the CPC disciplinary inspection officials. Furthermore, the time was characterized by a latent but growing panic that was spreading across the party as more and more officials and colleagues were removed from their posts. This attitude of ‘avoiding trouble whenever possible’ became permeated most official work and was palpable during the interviews I managed to secure, even after having established rapport with them through the help of a key figure at the locality.

A second difficulty arose in finding a way to access the expropriation authority, a critical data source for this research topic. My initial request for access was politely declined by a Party Secretary, who was Chairperson of the sub-district office. Admittedly, this was not an unusual bureaucratic response in the prevailing political environment. This was only complicated further by a spate of media and television coverage of misdeeds of local officials that was arousing resentment, protest, and resistance from the expropriated. Expropriation was always associated with violence and conflicts during the course of expropriation operation, which was made worse by stories of officials’ corruption and rent-seeking behaviors. While the lack of consistency in the expropriation law and the socio-political complexity of the locales where expropriation was underway required local officials to exert their discretionary powers, at times that discretion may have gone too far, leading to malpractice and rule-breaking actions in some cases. In this instance, expropriation was an adventurous, but also high risky career for local civil servants. As such, the local expropriation authority appeared to prefer that information about its operations be more secretive and preserved as internal information, protected from the eyes of outsiders.

Knowing that it was not likely to overcome these hurdles, I had to resort to personal connections that I had developed in the locality. Interpersonal connections (Guanxi) was critical throughout the entire research process, proving necessary for overcoming bureaucratic obstacles, gaining participants’ initial consent and cooperation throughout the process. With the assistance of a long-time friend, a native of S City and a member of the CCPCC (Chinese People’s Political Consultative Conference) at the City-

57 CPCC is defined as an organ for the development of multi-party cooperation and political consultation under the
level Committee, it was relatively easy to secure initial consent from local officials about participation in the study and their ensuing cooperation. Despite its advantages, the Guanxi approach to access respondents has some disadvantages. One limitation, as other empirical studies have identified, was that it meant that my interviewees did not constitute a random sample. As my social network was limited to the city-level and downward to the grass-roots level, I had relatively little access to respondents serving at provincial or central-level government departments, or judges at the Higher People’s Court at the provincial level or the Supreme People’s Court. To compensate for this disadvantage, documentary data from legal and policy documents at central and provincial levels were collected. A further disadvantage arose from my social network not always suggesting the interview subjects that could generate trustworthy or valuable information. For instance, one respondent introduced by a friend was a Party Member serving in a sub-district office. He was reluctant to provide any of his personal views about expropriation operations in the locality, and was only prepared to offer me a workbook with compilations of laws and regulations in relation to rural land expropriation that I was expected to mine for data.

Those official cadres or village leaders who did agree to participate were notably concerned with keeping their remarks confidential, not wanting their names to be revealed, and generally not inclined to give written consent. Other scholars’ fieldwork experience in China has also revealed that requiring research participants to sign informed consent forms may jeopardize their anonymity in China’s current setting. For this reason, they were asked to read the informed consent letter and gave an oral consent.

1.6.2 Data analysis

Research data were collected from diverse sources. Raw data took the form of transcripts from thirty-eight in-depth interviews and two group discussions (mostly tape-recorded), field notes from participant observation, and other sources of qualitative data such as diaries, images, documentary sources, and audio sources.

Qualitative content analysis

Qualitative content analysis (QCA) was applied in this study to analyze the raw data. QCA is “a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns.” QCA is generally seen as “an inductive process by which researchers identify meanings and connections in the data from the data itself, with little or no assumptions regarding coding schemes or the categories that encompass the underlying constructs”. Depending on the design and the purpose of the study, QCA offers some “flexibility of using inductive or deductive approaches or a combination of both approaches in data analysis.”

The research was designed to investigate the implications for the practice of property rights at different stages of land expropriation processes. As noted, Chinese property rights in their current form might be beyond the explanatory power of conventional property theory, and existing literature on property rights in rural land is generally limited, much more so with regards to expropriation practices. With limited leadership of the CPC.

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59 Liang and Lu, ‘Conducting Fieldwork in China’ (n 55) 166.
61 Roller and Lavrakas, Applied Qualitative Research Design (n 52) 260.
62 Margrit Schreier, Qualitative Content Analysis in Practice (Sage Publication 2012) 4.
theoretical perspectives or preconceived categories, I primarily used an inductive strategy to allow key thoughts to emerge from the data. In general, a ‘totally inductive approach’ was applied in Chapters 4 and 6 to identify codes and categories from the data, while a ‘deductive-inductive approach’ was used in Chapter 5, where I applied categories previously identified by other research to the data analysis process, such as the concept of the ‘power cube’ in Chapter 5. I then supplemented these general categories, through an inductive strategy to elaborate and modify existing codes, and created new ones. The variations in data analysis will be further indicated in the respective chapters (Chapters 4, 5, and 6).

Analytic procedures

QCA can be conducted in manual procedure or with the application of computer software, or by combining the two to glean useful information from qualitative data. The analytic procedures I used are briefly described below.

I analyzed textual data manually at the beginning, adopting approaches from a body of sociological literature that identifies the basic phases or steps involved in processing data in QCA. I followed their basic steps in coding, categorizing, and interpreting the textual content of the qualitative data. First, I extensively read all the raw data to gain a general understanding of the whole, and then I reread them, word by word, to derive codes that I could use for the analysis. After identifying some initial codes, I applied the coding scheme to the entire data contents, during which I tested, revised, and added to the initial coding scheme. At the same time, I made notes of my thoughts and initial analysis as well. After fully coding the dataset, I sorted the codes into categories based on their relations and linkages. I then further combined or organized these categories into a smaller number of themes or patterns, and developed definitions for the codes, categories, and themes. Lastly, I drew and inferred meanings from the textual data and identified their implications. This manual coding process provided me with some preliminary thematic ideas for the research topics to be addressed in each empirical chapter.

With the preliminary coding scheme at hand, I applied the computer program Nvivo that is generally recognized as being useful for facilitating my “thinking, linking, writing, modeling and graphing in ways that go beyond a simple dependence on coding”. The outcomes of the analytic procedures I employed with CAQDAS (Computer-assisted Qualitative Data Analysis Software) assistance in many aspects resembled that which arose from the previous manual analysis, but were an enormous improvement in efficiency and effectiveness. Nvivo allowed me to revise the codes, reflect on the coding schemes and categories, and identify patterns or connections in the data, in a quick and reliable way.

Combining the use of manual analysis and computerized tools helped improve the rigor of the analysis. The combination of the tools enabled me to exploit their strengths and avoid their weakness. In my analysis, Nvivo assisted me in managing the voluminous data I had gathered in an efficient and effective way, with its provision of tools. For instance, despite having derived two thematic ideas—‘interests’ (利益) and ‘rights’ (权利) from my textual analysis (which is beyond the capability of Nvivo), both key concepts needed to interpret how the involved parties understood the ideas of property rights in their practice, I faced the challenge of somehow achieving a more thorough interpretation of their meanings because of the large size of the data set and the risk that I might have missed something while coding manually. I used the searching tool ‘text search’ to ensure all instances of this particular usage are found.

63 Roller and Lavrakas, *Applied Qualitative Research Design* (n 52) 260.
64 ibid 234-41.
65 Patricia Bazeley P and Kristi Jackson (eds), *Qualitative data analysis with NVivo* (Sage Publications Limited 2013) xiv.
Therefore, my analysis of the appearance of the two particular words was facilitated owing to the visualization of the data in the ‘word tree’, and I could explore the usage of the particular words and interpret their meanings in the underlying contexts to which I could have rapid access. The tool of ‘text search’ was used to analyze the uses of other words and expressions and to explore their textual meaning as well. Nevertheless, CAQDAS handled only the manifest content but was incapable of dealing with the complexity of latent content on its own. It relied heavily on me to identify the contextual and underlying meaning of the content.

Codebooks set up in Nvivo with code names, definitions, examples, and the features are attached as an appendix. The qualitative method for content analysis is discussed in the following subsection.

1.7 Research Limitations

Empirical research is generally limited by its research design and the representativeness of the data gathered and this research is not immune to this. This study seeks to answer the research question as posed mainly through an examination of property relationships between government and people who subjected to expropriation measures. In many cases those property relations could be described as tense and confrontational, however, as other observers have noted, “It remains uncertain to what extent the contention described between a powerful, aggressive, and greedy local state and a victimized, disadvantaged, and protective society can represent the actual and general situation.” Rural land expropriation is known to be a trigger for intense conflict between government and rural communities, even one can acknowledge that efforts have been made to mitigate and contain such conflicts. We know from existing research that experiments were conducted in some well-developed areas (such as Beijing, Shanghai, and Guangzhou) in search of new ways to urbanize land, rather than solely relying on expropriation by local governments. The effectiveness of these experimental cases is worth assessing. That said, thus far the pattern of land expropriation in which rural land is converted for urban uses in pursuit of urban transformation has been prevalent, particularly in China’s central and western districts that are less appealing for foreign investment and where the local economy is less developed. Property relations between government and expropriated farmers tend to be contentious in these areas so long as land is of strategic significance to local economic prosperity and where conflicts sometimes arise out of competition between government and the expropriated farmers as they seek to maximize their own interests.

The second potential drawback for this research is that the role of village authorities cannot be generalized in a broader context of land-centered urban transformation. Village authority figures in other locales might play a more active role in negotiating with local governments for more compensation or more favorable relocation schemes than in the cases studied here. In some cases, it might even be the village authorities themselves who convert collective-owned rural land to real estate development uses, in direct defiance of the law (known as small property rights project). Moreover, in some places, village

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66 Roller and Lavrakas, *Applied Qualitative Research Design* (n 52) 252.
68 Lanchih Po, ‘Property Rights Reforms and Changing Grassroots Governance in China’s Urban-Rural Peripheries: The Case of Changping District in Beijing’ (2011) 48 (3) Urban Studies 509. Po discusses the local experimentation that establishes a new shareholding co-operative to manage the village's collective property in Beijing Changping District, which creates a new leading group in the village governance structure.
authorities may have greater autonomy in initiating bottom-up reforms to develop their land, in ways that allow farmers to benefit from any increase in land value.\textsuperscript{69}

Lastly, interviews and observations were relatively few and therefore it is unlikely that these empirical findings can be effectively generalized. However, they do provide us with a relatively holistic view that allows one to observe the dynamics of property rights in practice between government and rural residents in China, who compete for control of land during rural land expropriation processes.

1.8 Structural Overview

This research concentrates on how China’s changing regime of rural property is having an impact on the practice of property rights in a particular context. The practical significance of property rights are explored through the lens of changing property relationships between state and society in a set of stages throughout the process of the expropriation of rural land.

Chapter 2 traces the historical evolution of collective ownership in socialist China and summarizes the pattern in which property rights in rural land have been rearranged through land reforms in the post-reform era. The main aim of this chapter is to understand how the state creates, reorganizes, and transforms ideas of rural property rights to serve multiple state goals oriented towards urban transformation.

Chapter 3 provides a legal and institutional analysis of rural land expropriation and explores how property rights have been weakened. China’s dual land system, characterized by an array of distinctive arrangements between urban state-owned land and rural collectively-owned land, created vast differences in the practice of property rights in urban and rural areas. With regards to rural land, various restrictions are imposed on the free transfer of rural land use rights, with one unique constraint that rural land is prohibited from being converted for urban uses during this era of urban transformation. The only viable legal way to do so is through land expropriation by state authorities. Limitations on rural property rights deprive farmers of any right to benefit directly from rural land development themselves. Moreover, scrutinizing the Chinese legal approach to rural land expropriation through the lens of substantive and procedural requirements reveals that property rights are substantially weakened.

Chapters 4 to 6 demonstrate the practical implications of the changed rural property regime for the practice of rural property rights in different phases of the process of rural land expropriation. Property relationships are the lens through which I explore their implications. Chapter 4 analyzes the empirical data collected from negotiation and bargaining over the exchange of property rights at the initial stage of land expropriation. The findings reveal that government and expropriated groups both engaged with rural property rights in such a way that the need to protect property rights was balanced with other government objectives, such as economic growth and social tranquility. Such goals ended up curtailing farmers’ choices about how to dispose of the land, and a market exchange of compliance was established in order to absorb their resistance and to facilitate implementation of land expropriation by local government. This chapter uses the empirical study to seek out a Chinese interpretation of property rights as pragmatic economic interests in context.

Chapter 5 provides a broader context in which complex and dynamic property relationships are embedded in social practice. The aim is to examine how dynamic and hierarchical power relations erected barriers for the realization and furtherance of farmers’ property interests, and how the expropriated

populations challenged and contested existing power structures. Complex and under-defined power relations at the local and village level allowed for much discretion to be exercised in expropriation operations. Likewise, the dynamic and elusive forms of power in which power was exerted in ways that deviated from formal property rules generated broad uncertainty in how expropriation measures should be implemented. Correspondingly, farmers took strategic actions to resist powerful government authorities, for instance by taking advantage of the division between central and local power structures to defy local authorities. Such resistance displayed a particular instrumental use of law and rights. In doing so farmers tended to articulate their immediate interests and seek to maximize their individual gains. The conspicuous fragmentation of the claimants, however, prevented them from effectively acting collectively in ways that might otherwise have allowed them to better contest prevailing power structures.

The three case studies presented in Chapter 6 revealed that disgruntled expropriated populations employ different routes of redress to resolve their disputes with the government when they perceive their rights have been violated. These findings challenge common view that Chinese citizens trust petition rather than legal action to resolve their disputes. In practice, the complainants combined, alternated, and adjusted both litigation and petition actions to enhance the possibility of their successfully attaining justice. The reasons why farmers strategically employed different routes to seek justice were partly due to power asymmetries between the administrative and the judiciary authorities in China’s governmental system, in part because petition was essentially utilized by the state as a multipurpose tool of governance and the ways that citizens mobilized petition to resolve disputes, however, was considerably managed and controlled by government. Therefore, it proved to be extremely difficult for the disgruntled to get their land disputes resolved in cases of rural land expropriation.

Chapter 7 draws a conclusion from this study. Based upon the main research findings offered in the previous chapters, it provides some theoretical reflections on how property rights in rural land shaped and were shaped by rural land expropriation, further discusses Chinese governments’ endeavors to reform rural land system and its state acquisition system. The chapter concludes by identifying policy implications for protecting property rights in rural China’s ongoing trend toward urban transformation.
Chapter 2 The Changing Regime of Property Rights in Rural Land

2.1 Introduction

Property rules in China have undergone tremendous changes in recent decades. Departing from conventional western property theory, Chinese property rights have been created, reordered, and transformed by the state to accommodate its social, economic, political, historical, and cultural characteristics. Property rights in China go far beyond ‘natural rights’ theories that understand property as being “independent of and prior to the formation of the state”. Without a natural rights tradition of its own, the Chinese view of property rights is largely positivistic, reflecting a separation of the validity of property law from its moral justifications, whereby “property claims must be derived from authoritarian rules created by the power that enforces those claims”. Moreover, the contemporary Chinese notion of property rights has roots in socialist conceptualizations of property rights, but that over time has evolved well beyond the latter, most notably during its transition from a centrally-planned economy to a ‘socialist market economy’. Chinese property rights evolved in an incremental and gradual manner. There was no immediate or direct switch from public to private ownership or widespread immediate privatization characteristic of the post-communist transition of the former eastern bloc countries. Instead, the Chinese property regime has changed from socialist public ownership to a hybrid property regime that allows for the coexistence of all types of ownership including state, collective, and private ownership, and a combination of public ownership vested in public or collective owners with use rights held by private users.

Land in China is either state-owned or collectively owned. This dual ownership structure means that property rights can be organized in many different ways, most notably, the two types of ownership differ both in form and in content. In terms of form, collective ownership allows each member in a collective to access the land, with ownership confined to a group or a community, something much narrower than state ownership (i.e. all people as a whole). With regards to content, collective ownership under the Chinese legal framework is something that is jointly exercised by collective members in the form of decision-making on land contracting and its adjustments, and the distribution of fees, such as rent and compensation. It is important to point out how property relations between the state and rural communities are embedded in this exercise of collective ownership. Keeping in mind Hohfeld’s conception of property as consisting of legal relations among persons, collective ownership in this sense can be understood as constituting that relationship between collective owners and the state with respect to land. In a sense, it is a relationship of exclusion, such that, according to Demsetz, collective property “denies to the state or to individual citizens the right to interfere with any person’s exercise of

71 Pils, ‘Waste No Land’ (n 4) 5.
73 Upham, ‘From Demsetz to Deng’ (n41) 568.
75 The Property Law art 59 (2007).
76 Hohfeld points out property does not consist of things, but rather of fundamental legal relations consisting of ‘a complex aggregate of rights (or claims), privileges, power, and immunities’. Wesley Newcomb Hohfeld, ‘Fundamental legal conceptions as applied in judicial reasoning’ (1917) 26(8) The Yale Law Journal 710,746.

21
communally-owned rights”.77 Without suggesting that state ownership is clearly defined or that it functions properly, this study instead focuses on how the Chinese state has created and allocated property rights in collectively owned rural land to serve its multiple policy goals in varying contexts over time.

Chinese property rights have invariably been described as being ambiguous or ill-defined. One obvious and acute question that arises in this rural land regime is “who owns the land”?78 As Ho has noted, two legal confusions are associated with this question. One is that the term ‘collective’ is vaguely defined in the law, making it uncertain which collective entity actually holds title to a given plot of land. The other is that the lack of titling linking the land to its original owner makes it difficult to tell who the legal owner of jointly-held land is.79 Yet, despite these ambiguities, recent scholarship argues that it is a misleading question to ask who owns a plot of land given the exclusive nature of rights that is central to property.80 Instead, ‘bundle of rights’ theories offer a better understanding of the process by which Chinese property rights have evolved.81 Drawing on this ‘bundle of rights’ metaphor, though, some property theorists argue that other rights within the bundle other than the right to exclude “can play a central role in property evolution”.82 Indeed, one can imagine various rights in the bundle being distributed among collectives, individual rural households, and the state, all of which define “each stakeholder’s specific interests in rural land”.83 As such, where land ownership is vested in collectives, land use rights are held by rural households while, the right of alienability over the land lies in the hands of the state.84

As will be discussed further (Section 2.4.3), collective ownership is parceled out among multiple actors such that the collective itself enjoys relative rather than absolute rights to the land. In this instance, one can imagine how various ‘sticks’ in these particular bundles of rights are unevenly distributed among multiple actors. In circumstances where actors with vested interests in land make competing claims to land, it is the state that has the overriding claim to control it. Likewise, farmers as land users with conflicting claims tend to defer to the land owner, namely the collective itself. As such, an important and intriguing problem arises from this application of the ‘bundle-of-rights’ metaphor to understand rural property, which is the asymmetric way that the property rights distribute power. Power asymmetries are particularly revealing in situations where the state takes a dominant position in making claims to control rural land, relegating the collective to a second place status as the nominal owner of the land, leaving the rural land users themselves to come last. As such, in addition to existing scholarship that tries to explain features of Chinese property rights by postulating “who owns the land” or imagining it in terms of the ‘bundle-of-rights’ metaphor, this chapter seeks to rethink how the evolution of rural property rights over

79 ibid 401.
80 Qiao and Upham, ‘The Evolution of Relational Property Rights’ (n 46).
81 ibid; Gaofeng Meng, ‘Contemporary China’s Rural Landownership with Reference to Antony M. Honoré’s Concept of Ownership’ (2016) 50(3) Journal of Economic Issues 667. Meng tries to defend collective ownership as an alternative to liberal private property systems, by referring to Honoré’s conception of ownership that recognizes different types of property rights in collective ownership. However, he fails to address one intriguing problem that arises when the bundle is broken up too much or overly split, thereby impairing the marketability of the property. In Honoré’s account, the core incidents, or sticks, in the bundle shall be in the hands of one person, rather than in two or more persons.
82 Qiao and Upham, ‘The Evolution of Relational Property Rights’ (n 46) 2480.
83 ibid 2481.
84 ibid 2496-98.
time has reshaped each stakeholder’s interests in land in contemporary China during this era of profound urban transformation, a time when the state, the collectives, and collective members all have vested interests in land but compete for gain in the process of rural land conversion for urban development.

The chapter proceeds as follows. Section 2 traces the historical evolution of collective ownership before the 1980s when the Chinese state created and allocated property rights for social political considerations. Section 3 derives a pattern in which the state shaped and transformed property rights in the post-reform era to conform to varying socioeconomic parameters. Section 4 explains how the evolving pattern of rural property rights came to fit the context of urban transformation in ways that impacted stakeholders’ interests in land during rural land conversion processes. Section 5 concludes with a reflection on the impacts for the security of property rights.

2.2 Tracing the Evolution of Collective Property Rights before the 1980s

To understand how property rights in collectively owned land were created and allocated before the 1980s, it is necessary to briefly trace land reforms in socialist China prior to its more recent economic reforms. Collective ownership was largely a product of the communist revolution led by the Communist Party of China (CPC). For primary ideological concerns, initial land ownership arrangements concerning their form, status, and functions were political choices that sought to shape the relationship between the state and society in the PRC. The evolution of collective ownership in socialist China prior to the far-reaching market economy reforms in early 1980s has been well documented, demonstrating that collective ownership was created out of three remarkable land reforms.85

2.2.1 Land reform between 1949 and 1952

The first reform consisted of a campaign to redistribute rural land between 1949 and 1952. Based on the ideological premise that land should be common property, land reform during this period became a significant mechanism for state building and political mobilization. The CPC leadership believed that farmers were crucial to China’s revolution and that land was key to revolutionary mobilization. As Mao Zedong noted in 1936, “Whoever wins the support of the peasants will win China…Whoever solves the land question will win the peasants.”86 After the CPC took power in 1949, it fulfilled its promise by abolishing the feudal land ownership system. Large plots of private land were confiscated to break apart the privileged landlord class in rural society and it was redistributed evenly to poor and landless farmers.

85 It is debatable how best to classify the stages of rural land reforms in socialist China. Some scholars argue, on the basis of land rights change, that the reforms should be classified into four stages: i) Private ownership (1949-1952); ii) Private ownership characterized by collective operation and management during the Elementary Cooperative (1953-1955); iii) Collective ownership characterized by collective operation and management during the Advanced Cooperative and People’s Commune (1956-1978); iv) Household Responsibility System (HRS) with separation of collective ownership rights from use rights. See Han Jing (韩晶), ‘A Track of Evolution of Rural Land Tenure in China and the Prospect for Reform’ (中国农村土地制度变迁的轨迹及改革思路) (2002) 2 Township Economy (乡镇经济) 5. Other scholars propose for a classification into five stages, on the basis of institutional changes: i) Land reform movement (1950-1952); ii) Agricultural Cooperative Movement (1953-1957); iii) People’s Commune Movement (1958-1962); iv) The adoption of the HRS (1978-1993); v) Reform on rural property system (2002-Present) by granting farmers long-term secured land use rights and enhancing its alienability. See Zhang Yuebin (张跃滨), ‘Five Reforms of Rural Land Tenure in China and their Implications’ (新中国农村土地制度五次变迁及其启示) (2004) 24 Social Science Forum B (社会科学论坛 B) 176. For the purpose of this study, this chapter examines rural land reforms from the perspective of changes to property structures of collective ownership.

86 Edgar Snow, The Other Side of the River: Red China Today (Victor Gollanzg 1963) 70.
Peasants were conferred full private ownership rights over the land they received, formalized by a new Land Reform Law,\(^87\) which was then confirmed by Article 8 of the Constitution promulgated in 1954.\(^88\)

However, despite this formalization, the CPC leadership did not see it as an ideal arrangement since private ownership did not further the revolutionary goal of socialist public ownership, nor did it fit the then socioeconomic conditions of socialist China. Indeed, in a political sense, the new private land holdings sparked a growth of land sales in many rural areas that threatened to re-concentrate land holdings and polarize society once again, thereby deviating from socialism and undermining the political legitimacy of the socialist regime. In an economic sense, at that time the CPC leadership embarked on an ambitious socialist construction project that prioritized the development of heavy industries to build up national power, which dramatically increased the demand for grain and other agricultural products to sustain it. Private ownership distributed as small and fragmented landholdings eventually deemed to be inadequate to meet the CPC leadership’s high ambitions for fast-growing agricultural productivity. In the eyes of the central leader, reform of this new private land system was a pressing concern, and the rural cooperative was the optimal solution for it.\(^89\)

2.2.2 The collectivization campaign of the 1950s

The second major land reform was marked by a nationwide agricultural collectivization and communalization campaign. The CPC leadership proposed collectivization as an efficient strategy to promote agricultural productivity and industrial expansion. To do so, the central government passed a policy directive to establish rural cooperatives that emphasized the mass mobilization of rural labor to engage in labor-intensive investment projects.\(^90\) Cooperatives primarily took three forms: the ‘elementary cooperative’, the ‘mutual-aid production team’, and the ‘advanced cooperative’. These were organized to rehabilitate agricultural production and increase farming yields. In the meantime, the CPC proposed a ‘Unified Purchase and Sale’ (统购统销) policy for grain that authorized the state to monopolize the purchase of agricultural products and reallocate them to the people for consumption.\(^91\) Agricultural cooperatives, able to avoid cumbersome negotiations with individual households, facilitated the state’s procurement of agricultural output from rural areas as it implemented this new centrally-planned policy.\(^92\)

\(^87\) Article 30 reads, “All the confiscated or expropriated land and other means of production, except for those owed by the state according to the law, shall be fairly and reasonably distributed by the township farmers’ unions to the poor peasant with no land, or in lack of land or other means of production.” The Central People’s Council, ‘Land Reform Law of the PRC’ (中华人民共和国土地改革法) (28 June 1950) <www.npc.gov.cn/wxzl/wxzl/2000-12/10/content_4246.htm> accessed 9 May 2017.

\(^88\) Article 8 declares that the state protects farmers’ right to own land and other means of production. The 1954 Constitution was adopted at the first session of the first NPC on 20 September 1954 <www.npc.gov.cn/wxzl/wxzl/2000-12/26/content_4264.htm> accessed 9 May 2017.


\(^92\) Selected Works of Chen Yun (vol 2) (陈云文选第 2 卷) (Renmin Chubanshe 1984) (人民出版社) 277. Chen Yun
Collectivization proceeded as a unified operation managed by the cooperatives, although individual households were allowed to continue to privately own land. In June 1956, a regulation was adopted to govern the advanced cooperatives that required farmers to pool their main means of production into cooperatives or teams, which included land, draft animals, and major farm tools. These stipulations effectively extinguished private ownership, and replaced it by collective ownership. It is noteworthy, however, that when land and the main means of production were collectivized, small homestead plots and ‘self-reserved lands’ (自留地) were left for private use and self-consumption.

This set the stage for the People’s Commune movement in the mid-1950s. Propelled by the ‘communist wind’ (共产风) and in pursuit of egalitarianism under the name of communism, farmers were required or even forced to join communes, surrendering all their means of production to them. “Working on private plots and trading at rural fairs, which existed in the other forms of cooperatives, were prohibited.”94 Farmers were denied any rights to withdraw their membership or assets from the commune. In accordance with the collectivized modes of production, the state instituted a three-level ownership system for production management, known as ‘three-level ownership with the production team as basis’ (三级所有, 队为基础), consisting of three collective units arranges in the following hierarchical order: the people’s commune, the production brigade, and the production team.95 This system identified the production team as both the manager and the accounting unit of the land as well as the primary owner of major productive resources on it, such as agricultural machinery and water conservancy facilities.96 One overriding principle for the People’s Commune was that all collective units were meant to follow state directives on crop cultivation, set price, and the allocation of land.97 The commune cadres, who were appointed by the state, were authorized to allocate land and other products under the overarching principle of ‘egalitarian and free allocation’ (一平二调).98 This principle allowed the state to appropriate land and other communal properties without compensation. Collectivization provided a tool for the state to hold land, labor, and other agricultural resources under its control, thereby achieving the “integration of political regulation with economic management” (政社合一).99 Despite some initial success in increasing grain outputs in its first years in the 1950s, the Commune Movement, accompanied by the Great Leap Forward, later resulted in a sharp decrease in agricultural output in 1959-61, causing a devastating famine that led to an estimation of 30 million deaths.100

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96 Work Regulations of Rural Peoples’ Communes (Amended draft) (1962) arts 2, 21.
97 Work Regulations of Rural Peoples’ Communes (Amended draft) (1962) art 3.
99 There was a sharp increase in grain procurement as a share of total grain production, which rose from 25.9% to 37.7% in 1959. This percentage amounted to 32.4% even during the disastrous famine of 1960. See Justin Yifu Lin and Dennis Tao Yang, ‘Food Availability, Entitlements and the Chinese Famine of 1959–61’ (2000) 110 (460) The Economic Journal 136.
100 Lin, ‘Collectivization and China's Agricultural Crisis in 1959-1961’ (n 25) 1228-29.
2.2.3 The establishment of the HRS in the late 1970s

When faced with the low agricultural productivity and extreme poverty that had resulted from the commune system, the reformist leadership after Mao was tasked with incentivizing rural production, enhancing agricultural productivity, and reducing poverty after they came to power in the late 1970s. The Household Responsibility System (HRS), which was initiated by the grass-root, was recognized by the CPC as a proper means to achieving its goals. Under the HRS, individual plots of rural land that were formerly collectivized and controlled by the Commune could be contracted out to individual households for a fixed term on the condition that the households met specified grain production quotas and agricultural tax obligations. The dimensions of these rural land allocations were based on household size, household labor supply, or both. Individual households were vested with land use rights while village-based administrative bodies retained ownership over the land itself. As such, the HRS established the two-tier land tenure system in rural China that remains in place today. This two-tier land tenure system separated collective ownership from individual use rights and also confirmed a contractual relationship between the collective as landowner assuming management issues and the individual household as land-users responsible for organizing their own production. Despite nationwide application in the early 1980s, the HRS was not fully formalized until the amendment to the Constitution in 1982 was acknowledged as the cornerstone of China’s land system by Land Administration Law (LAL) adopted in 1986.

It is important to stress that collective ownership under the HRS took on a different role and functions from that of the People’s Communes. Collective ownership assumed both economic and administrative roles in controlling rural resources and organizing production as well as the distribution. When the People’s Communes were dismantled, individual rural households were restored as the primary production units in agriculture, were given autonomy to arrange their own production, and were permitted to retain their outputs.

The adoption of the HRS effectively enhanced agricultural productivity in the way it individualized some use rights and permitted the retention of residual incomes. Similarly, the original three-level ownership system (the people’s commune, the production brigade, and the production team) was supplanted by another three-level set of collective units: township, the administrative village, and the natural village or villager’s groups. The two-tier land system under the HRS characterized China’s rural land system as one where privatized use rights coexisted with collectively-controlled ownership rights. Notwithstanding the development in land use rights, control of the ownership rights in land as well as how it was exercised in practice under this two-tier land system was left vague and uncertain. For this reason, this third HRS land reform has been depicted as an incomplete property rights reform.

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101 All the relevant grain quota requirement and tax obligations were ultimately cancelled with the abolishment of agricultural tax in 2006.


2.3 The Development of Rural Property Rights in the Post-Reform Era

With the adoption of the famous “Opening-Door” policy in the late 1970s, the central leadership of the CPC was tasked with enhancing productivity and economic growth. Explicit attention was paid to increasing agricultural production through more economic and efficient forms of land use. Although the HRS brought about an initial boom in rural economic development, the increase did not last long and soon a decline in farmland investment became evident in the 1980s. The incomplete transformation of the rural property system under the HRS was blamed as the main hurdle against sustained growth in agricultural productivity. Yet, despite such criticism, by separating use rights from ownership rights the HRS became a mainstay for a series of land reforms since the 1980s. To suit a number of socioeconomic goals during extensive market economy reforms, the Chinese government has endeavored to significantly expand and strengthen use rights in rural land while continuing to adhere to collective ownership. In parallel, however, a variety of restrictions have been imposed on those use rights, the most notable one being the prohibition against voluntary exchanges of rural lands on land markets for non-agricultural uses. The following section offers an insight into the development pattern by which rural property rights have been reorganized. This pattern is described as the formalizing of ownership rights and the concretizing of use rights along accompanied by restrictions on the latter, and sheds lights on how this pattern was formed and has consolidated over time.

2.3.1 Formalizing land ownership rights

The HRS established a two-tier land system in which the collective retains ownership rights and use rights are contracted out to individual rural households. It would be incorrect, however, to characterize the transition of property institutions away from total collectivization to a this two-tier land system as a direct transition from a public (or communal) to a private property system, such that centralized collective ownership coexisted with individuated use rights allocated to each rural household.

Although it embraced individuated use rights, this change in property institutions continued to adhere to principles of socialist public ownership, as reflected in the way it sought to accommodate a number of competing property values. It has been well documented that this reordering of collective property rights was a pragmatic compromise between communist ideology and prevailing socio-economic conditions.\(^{106}\) Ideologically, public ownership is an overarching principle that underlies socialism for which collective ownership constituted an indispensable part. Put in a historical context, though, collectivization was an innovation that lasted for several decades, after having radically negated or denied the brief window of private ownership that came with the redistribution of land during the Land Reform in 1949 to 1952. Because that experiment with private ownership had been a largely unsatisfactory experience, from the perspective of the CPC leadership, it would have been unrealistic to restore private ownership as a response to the eventual dismantling of the commune system. In this respect, even though continuing to adhere to collective ownership under the new system posed certain contradictions and unsolvable problems associated with the institution of property, doing so was politically expedient. The two-tier system that resulted from this was eventually consolidated Law of Contracting of Rural Land (LCRL) introduced in 2002, which explicitly stressed maintaining the HRS intact whilst granting farmers long-term and secured land use rights.\(^{107}\) This new and hybrid property institution sidestepped many questions,

\(^{106}\) Cheng, ‘Institutional Change of Chinese Rural Land Tenure from Public-law Perspective (n 97)114.
\(^{107}\) Law of Contracting of Rural Land (农村土地承包法) was adopted by the National People’s Congress Standing Committee (PCSC) on 29 August 2002 and amended on 27 August 2009. For articles that was introduced or revised
such as who exactly it was could or should exercise nominal ownership rights, and created a number of opportunities for the government to supplant the nominal owner and seize control over rural land when and where it wanted to (in Section 2.4.1).

2.3.2 Concretizing land use rights

The expansion of land use rights

Prior to the implementation of the expansive economic reform process, socialist ideology did not generally conceive land as having much or any intrinsic economic value. Thus, at the outset, land was distributed mainly as a means of production for the rural populace to meet their basic needs, which made sense given China’s abundant rural populace and scarcity of land. The HRS permitted the rental of land use rights, released labor from agricultural production, and allowed the trade of rural crops, even though it did not create or permit land markets in which use rights to rural land could be freely transferred. Thus, while Chinese farmers could benefit from limited use values, they enjoyed no right to benefit from exchanging rural land. Urban land, in contrast, was seen and utilized as a commodity for exchange, and the idea of a market for urban land-use rights emerged in the late 1980s. Use rights to urban land originally allocated and distributed free of charge were subject to land-use fees as a ‘state asset’ but could be priced and transacted on the open market. This soon spawned a booming urban real estate market that brought about astonishing prosperity in urban areas, creating a conspicuous income gap between urban and rural areas and rural residents could do nothing but watch how their urban counterparts were prospering. Within time it became evident that a more flexible land policy was required in rural areas to alleviate rural poverty, increase farmers’ incomes, and bridge these new regional disparities.

Before the aim of a more economically efficient land use system could be attained, however, several barriers had to be overcome. Firstly, the contractual term given to individual households under the HRS was short and indeterminate. A 5-year land lease period was initially offered under the HRS in the early 1980s, was extended to 15 years in 1984, and lengthened further to 30 years in the revised 1988 Land Management Law. The LCRL specifies various contractual terms for different land resources. For instance, the contract term for arable land is 30 years; grassland ranges from 30 to 50 years, and forestland 30 to 70 years. These contractual terms were reiterated by the Property Law. However, despite a constantly extended lease period, the variable and comparatively short leasehold had substantially destabilized contractual relationships between the collectives and its members, namely, the lessee and the lessee.

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after 2002, they will be indicated in a bracket, notifying the amended version. An official English version is available at <www.npc.gov.cn/englishnpc/Law/2007-12/06/content_1382125.htm > accessed 7 June 2017.

108 XIANFA art 2 (1998 Amendment) stated that Land use rights may be transferred according to law. The LAL art 2 (1986) set forth that China adopted paid transfer of state-owned land. For an insightful discussion of the emergence of urban land commodification and the rise of the urban real estate market, see Rithmire, Land Bargains and Chinese Capitalism (n 1) 31-65.


Secondly, it had to deal with the challenge of the periodic redistribution of rural land being a function of the collective. Under the HRS, rural land leaseholds were subject to readjustment and reallocation to accommodate any increases or decreases in family sizes on account of marriages, births, and deaths. This made land allocation processes unexpected and periodic land reallocation, threatened land tenure security, and generally discouraged farmers from making personal investments in rural land.

Finally, the threat of land expropriation added insecurity to use rights to rural land. China’s rapid industrialization and urbanization accelerated both legal and illegal acquisitions of rural land initiated by local officials or village leaders, either in the form of purchase or outright seizures. Land expropriations could terminate land leaseholds at any time, regardless of the prevailing contractual terms under which it had been previously distributed or allocated. Moreover, the legal framework prescribed that compensation for expropriation should be calculated in terms of the loss of ownership rights rather than of use rights, which made any disputes over breaches of contract regarding the obliteration of use-rights an internal issue to be settled between the collective and its members.

To overcome these barriers, the central authorities enacted a series of policy and legal reforms to grant farmers stable and secure land use rights. For instance, leasehold under the HRS was extended to an infinite contractual term. Policy documents were enacted that used the language of ‘a long-term stable contractual term’ instead of finite contractual terms to stabilize contractual durations.112 Additionally, land readjustment was prohibited with the promulgation of LCRL. Large-scale reallocations were deemed to be illegal and only small reallocations in exceptional cases were permitted, such as following natural disasters that seriously damaged contracted lands. Moreover, any reallocations required the consent of no less than two thirds of the members of village committee as well as approval from higher levels of government.113

Further reforms over the last decade have been launched to strengthen and expand land use rights. Property Law prescribed three types of land use rights: land contractual management rights, use rights to construction land, and use rights to homestead.114 All three were classified as usufruct rights, either real rights (jus in re) or rights in rem. One significant reason behind explicitly identifying use rights as real rights other than obligatory rights was that right-holders could possess, use, and profit from the exercise of usufruct to the exclusion of land owners.115 This legislative endeavor developed a notion of real rights that was considered to be crucial for providing better protection for land users over land owners. This provide some legal clarity in how land use rights were defined as real rights, which, according to one Chinese analyst, “allows for a ‘real action’ to be brought in court, as opposed to a ‘personal action’, or, more specifically, for a real right to be defined as a right in rem or a ‘right against an object’ enabling the entitled to possess it exclusively.”116

In addition to the granting of legal entitlements, the central leadership has also committed itself to creating more land property rights to further reform the regime of rural land. One prominent reform underway is the ‘Separation of Three Rights’ (三权分置) that distinguishes between ownership,

113 The LCRL art 27 (2002).
contractual, and management rights.\textsuperscript{117} This reform heralds a consolidation and development of the HRS that had distinguished only two types of rights, ownership rights and contractual management rights in the early 1980s.\textsuperscript{118} The reform of ‘Separation of Three Rights’ constitutes a new structure of rural land rights. Most notably, contractual management rights, which are understood as being use rights in a general sense, are separated into two types of rights: contractual and management rights. The three rights are designated to various holders. Ownership rights are vested at the collective level; rural households that contract with collectives hold contractual rights; and the sublessee obtains management rights. The centerpiece in the deepening reform of rural land system is “persisting in the doctrine of collective ownership, stabilizing farmers’ right to contract, and deregulating right to management” (坚持集体所有权, 稳定农民承包权, 搞活经营权), with its aim to coordinate the achievement of multiples goals such as the development of urbanization and agricultural modernization and the protection of farmers’ property interests as well as the preservation of farmland. \textsuperscript{119}

\textit{Constraints on land use rights}

It would be a mistake to treat rural land as merely a mode of production or an economic asset in China. Indeed, it is accorded much social and political significance. Over the past half century, rural land has been associated with the fulfillment of various policy objectives such as grain self-sufficiency, the preservation of arable land, and the maintenance of social order. As such, rural land use has been closely regulated to strike a balance among multiple goals. When shrinking arable land and a reduction in grain productivity emerged as critical problems that shocked the central leadership in the 1990s, stringent measures were taken to regulate farmland use in response.\textsuperscript{120} New rules imposed serious restrictions on use rights for rural land, as illustrated by two particular policy prescriptions: a prohibition against converting farmland owing to the fear of a loss of more arable land and grain insecurity; and the barring of rural land use rights from being freely exchanged on land markets in order to protect vulnerable peasant class and maintain social stability.

These and other new rules were primarily set forth in the LAL to control rural land development. To illustrate, Article 42 rigidly restricts farmland conversion from agricultural use to nonagricultural purposes. Article 42 stresses that land users must submit formal application in order to make use of state-owned land for nonagricultural usage. Article 63 provides that rural land-use rights shall not be assigned, transferred, or leased for non-agricultural construction purposes unless otherwise prescribed by law. These kinds of stipulations meant that land use for commercial, industrial, and construction purposes was to be limited to state-owned lands. In case state-owned land was insufficient to meet increasing demand for land, the supply of land would be maintained by converting collectively-owned land into state-owned land through state acquisition. The state does not allow rural land to be mortgaged or transferred for urban, commercial or industrial development. Such uses require a prior conversion into urban land that is qualified for voluntary market transaction in land market. Newly-created urban land rights in what used to


\textsuperscript{118} ibid.

\textsuperscript{119} ibid.

be rural land became entitled to heightened legal protection, in the sense that land use right holders may enjoy right of alienability and right of return. In this way, land law rules ascribe new features to rural land resources that allow private land users to benefit from their use in ways that are explicitly denied to farmers.

While prohibiting farmers from transferring their use rights to rural lands on the open market deprives them of opportunities to extract monetary gains from divesting their property interests, doing to further the state’s multiple goals in managing rural land. Insofar as scarce and valuable rural land bears much social and political significance, official land policy is a form of praxis by which the state exercises its governance of rural society. Yet, this governance is far from complete or perfect, in spite of state policy objectives, these restrictive property rules have been unsatisfactorily implemented and have proven to be ineffective in preventing rural land from being unlawfully transacted for commercial, residential, or construction purposes. Indeed, there exists a huge grey market for ‘small property’ (小产权, literally translated as ‘small title’,) in which collectively owned rural land is directly transferred for real estate development in defiance of legal procedures and prohibitions. Moreover, it is not uncommon for local governments or village authorities to acquiesce, encourage, or even overtly organize farmers to transact with private land developers to transfer land and put it to commercial and construction usages, such as building golf courses and luxurious villas.

Based on the foregoing illustration of legal and policy adjustments on rural land use, one can conclude that Chinese state has reordered property rights in rural land to enhance its economic utilization but in absence of any clarity on ownership rights. These rearranged property rules that separate ownership rights from use rights, in part reflect both an adherence to the ideological dogma that public ownership including collective ownership is foundational to socialism, as well as a pragmatic interest to incentivize rural land use to maximize production. However, rural land has always been the focus of multiple state aims, such that despite its efforts to enhance land use efficiency, it nevertheless remains wary about establishing an open market for rural land. The underdeveloped market has arguably deprived rural landholders of equal opportunities to develop their land in ways that are available to their urban counterparts. Furthermore, the reordering property rules have proceeded under a framework of ‘collective’ yet only vaguely defined and controlled ownership rights. So long as problems associated with the exercise of ownership rights remain unaddressed, as will be discussed below, conditions remain in place that permit strong government intervention to control how land ownership is exercised. In a similar vein, the expansion of land-use rights without any corresponding designation of real owners of rural agricultural land or without specifying rules to govern the exercise of ownership rights calls into the question whether these newly expanded rights really empower farmers to defend their lawful interests against government intrusion.

2.4 How the Evolved Rural Property Rights Function

122 Cheng Xueyang (程雪阳), ‘The Dilemma of the Land Management System of China’ (中国的土地管理出了什么问题) (2013) 3 Journal of Gansu Administration Institute (甘肃行政学院学报) 108,112-113. Cheng argues the central authority decided to block rural land market in order to protect and sustain the emerging urban land market that was established in the in the late 1980s and early 1990s. The liberalization of rural land markets suggests rural construction lands floods the market at much lower prices, which would cause the price drops in urban lands and undermine the newly-established urban land market.
Property rights have evolved mostly along a pattern whereby ownership rights have been formalized and use rights concretized with substantial limitations on how they are exercised. More new types of property rights are derived to accommodate socioeconomic parameters, particularly to enhance land use efficiency. It is beyond the scope of the study to assess the economic effects of evolution of property rights in China. For the time being, it is sufficient to question how this evolution of property rights under the aforesaid pattern functions to accommodate the state’s paramount goals of urban transformation. In other words, insofar as urbanization has become a national strategy to boost all-round development, whereby rural land expropriation is the indispensable pathway to urbanization (in Chapter 3), one can ask to what extent current property rules serve the practice of land expropriation in rural areas.

To address this question, one must start from the influential proposition of ‘intentional institutional ambiguity’, as developed by Ho to explain the underlying reasons why the Chinese state refuses to clear up the prevailing legal confusion about collective ownership. According to Ho, the Chinese state’s failure to clarify collective ownership is a deliberate policy for managing rural land, and the institutional ambiguity that it creates assumes two important functions. First, owing to the role of rural land as a form of social security, frequent land reallocations that result from ambiguous ownership may “provide security to social actors’ expectations of egalitarian access to land.” Second, by leaving collective ownership under-defined, it denies any legal means for original owners to make ownership claims to land, thereby avoiding large scale land disputes and social conflicts over ownership. Ho’s analysis of the ambiguous institution of rural property through the lens of social functions is provocative, but it raise a further intriguing issue that he does not explain in detail, namely that one consequence of this ambiguous ownership regime is government intervention and land taking. In other words, how these ambiguous property rights may have facilitated and opened the gateway for land seizures throughout the country. If this is true, this raises the critical question of whether and how this intentional ambiguity is associated with, if not inseparable from, governmental land takings?

Drawing on Ho’s proposition, this section argues that these institutionalized ambiguities in property arrangements may in fact serve a third function, namely, to enable the state to seize control of rural land resources. More specifically, by opting to not make further clarifications about collective ownership rules, the state is able to take advantage of prevailing institutional ambiguities to maneuver and seize control of rural lands as part of the process of transferring rural land to urban uses. To justify this claim, this section relies on Michael Heller’s analysis of the three elements of property in socialist law to address how collective ownership in China functions in ways that cede control of land to the state to facilitate urban expansion.

Heller compares these three key elements of socialist property to private property concepts. The first element concerns the ‘hierarchy of property’ whereby “Socialist law categorizes property according to the identity of the owner”, and creates a hierarchical order of property types with differentiated protection afforded to each them. The second deals with the ‘objects of socialist property’, which are in principle “unitary’ and belong to ‘the people as a whole”, thereby encouraging socialist law to rarely delineate

123 Peter Ho, Institutions in Transition: Land Ownership, Property Rights, and Social Conflict in China (Oxford University Press 2005) 188.
124 ibid.
125 ibid 189.
127 ibid 628.
property’s physical and legal boundaries. This raises the thorny issue of making it clear “Who controls the land on which we stand?” Third and finally, “socialist law created a complex hierarchy of divided and coordinated rights in the object it defined”. On the basis of these three traits of socialist property, this section examines how rural property rights work to suit the specific context of land-centered urban transformation.

2.4.1 Hierarchy of ownership: collective ownership’s subordination to state ownership

According to Heller, the typical hierarchy of socialist property consists of state property, cooperative property, and personal property. State-owned property receives the most protection, cooperative property owned by the cooperative receives somewhat less, and personal property owned by individuals receives less still. The Property Law in China recognizes a similar classification of property and ownership, albeit one that does not describe property in terms of such hierarchical protections. Instead, the law provides that different owners, regardless of their identity, are equally entitled to a right to land. In this light, Chinese property law regards itself as progressive by institutionalizing the principle of equal protection of individuals, collectives, and the state as property holders. However, in the absence of concrete and specific guidelines pertaining to how to assure equal protection within its hybrid property regime, in effect, the principle is at odds with stipulations in the LAL and other laws that regulate property rights in land. One example is the various limitations that are placed upon property rights in collectively-owned land, most notably, the restriction against selling use rights for non-agricultural purposes that is uniquely applied to rural land, in contrast with to use rights to urban state-owned land. In this way, it is possible to discern a differentiation in hierarchy of ownership between state and collective property in spite of the declaratory principle of equal protection.

Admittedly, as property theorist has noted, “ownership has never absolute…it has had a social aspect. This has usually been expressed in such incidents of ownership as the prohibition of harmful use, liability to execution for debt, to taxation, and to expropriation by the public authority.” To this end, modern governments are granted powers to enact land-use regulations in the form of land planning and zoning. Restrictions are placed on planned communities or zoned territory on the basis of the character of the land, structures, and their fitness for use. The purposes of such regulations are to promote the general welfare of the community, or to encourage the appropriate use of land in a specific territory, and the like. In principle, therefore, governments should apply restrictive regulations to ownership in property for the enhancement of public welfare, rather than other reasons, such as increasing the economic interests of any particular property owner.

In a similar vein, collective ownership is by no means absolute. Instead, collectively-owned rural land is subject to constraints pertaining to rights to alienate, to manage, or to the income it generates. Such

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128 ibid 629.
129 ibid.
130 ibid.
131 ibid 628-29.
132 Article 4 prescribes: “The real rights of the state, collectives, individuals or any other right holder shall be protected by law and shall not be infringed by any entities or individuals.”
133 Zhang, ‘From Public to Private’ (n10).
134 The hierarchical protection provided by Chinese legal framework between rural collective and its members are discussed in 2.4.3 (Ownership of property).
restrictions have been imposed in China to preserve arable land, to ensure grain self-sufficiency, and to maintain social stability. While they are often articulated in terms of serving the public interest, in practice, landholding farmers have to bear heavy costs that result from them. These restrictions have substantially deprived farmers of the opportunity to derive utility or value from the land they use. In private property systems, such as that in the United States, such restrictions are identified as regulatory takings but may only take place with just compensation.\textsuperscript{136} In the Chinese legal framework, however, the state does not compensate for any substantial harm to land utility or value resulting from limitations on use rights in rural land, which effectively has placed extra burdens on China’s vast rural populace, without necessarily enhancing rural communities’ welfare or attaining the most appropriate use of land.

Another aspect to consider with the hierarchical property regime is limitations on rural land’s alienability on a free market. Compared to urban land-use rights’ free access to an open market, a central characteristic of collective land use rights is that “no change in the nature of land ownership or agricultural use” is permitted.\textsuperscript{137} In fact, the categorization of property based on the identity of owners is so deeply-embedded that the only way to remove these various restrictions on use rights is through the government exercising its powers of eminent domain. In other words, only the invocation of eminent domain power can eliminate the dualism between rural and urban land, agricultural and non-agricultural usages, and, most importantly, realize a transition from collective to state ownership. Collectively-owned land acquired by the state through its eminent domain power benefits from elevated protection by virtue of its new state-owned status. This hierarchy between state and collective ownership in the situation of land expropriation can be illustrated in the following formula:

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\text{Collective ownership} + \text{governmental exercise of eminent domain power (authoritarian power)} = \text{state ownership}
\]

Two intriguing traits are discernible in the process represented by this simple formula. One is that the process is irreversible. Land conversion from rural collective land to urban state land cannot be reversed, reflecting not only the irresistible trend toward urbanization, but also the superiority of state ownership as a form of property. The other is the hierarchical order sustained by the authoritarian power of the state. Only the government’s exercise of its eminent domain powers can remove limitations on property rights in rural land in order for any conversion for urban uses to be possible in this era of urban transformation. As such, collective ownership is essentially subordinate to state ownership insofar as “the state exercises its property rights both as owner and as titular of sovereign power”.\textsuperscript{138}

\subsection*{2.4.2 Objects of property: blurred boundary on collective land}

An acute problem arises for socialist public ownership, when it becomes necessary to decide who is entitled to manage common property as a real owner. For state owned property that is described as “state-owned assets belonging to all the people in China”\textsuperscript{139}, who its real owners are is uncertain. This

\begin{itemize}
  \item \textsuperscript{137} The LCRL art 33 (2) (2002).
  \item \textsuperscript{139} XIANFA art 6 (1) (1982).
\end{itemize}
uncertainty created confusion that was not cleared up until the State Council (central government) was explicitly designated by the Property Law to exercise state ownership on behalf of the state.\footnote{140} As far as collective ownership is concerned, the Constitution establishes some general principles pursuant to the exercise of collective ownership, stating that collective organizations enjoy autonomy in engaging collective activities and shall be governed democratically.\footnote{141} However, it remains unclear as to who among the three-level collective entities (township, the administrative village, and the natural village or villagers’ groups) is the actual owner of the land that can exercise management and disposition rights over it.\footnote{142}

It has to be stressed that the law distinguishes between the collective that owns the land and the entity that manages and administers the land, an arrangement that is reflected by the ‘three-level ownership’ system, a historical heritage from the People’s Commune.\footnote{143} To understand the rationale behind this, Article 10 of the LAL is worth citing at length,\footnote{144}

The land owned by farmers’ collectives that belongs lawfully to farmers’ collectives of the village shall be managed and administered by the village collective economic organizations or by the villagers' committees; land already owned by different farmers’ collectives that belong to two or more different collective economic organizations of the village shall be managed and administered by the village collective economic organizations or the villagers’ groups; what is already owned by the farmers’ collective of the township (town) shall be managed and administered by the rural collective economic organization of the township (town).

The foregoing stipulation lays the foundation for collective ownership regarding the holding, managing, and administering of ownership rights. As it reads, in absence of clear-cut physical or legal boundaries, land may be managed and administered by different entities, such as rural collective economic organizations (at different levels), villager committees, or the villager groups. But the problem rests with who is eligible to exercise the right of management and administration as the actual representative of the collective entity. Given these ambiguities, it is common that various entities may assert control over the same plot of land at any given moment. In terms of exercising ownership rights, in most cases it is the villagers committee that functions as the village administrative governing body that determines whether or how to exercise ownership rights, rather than villager groups or rural collective economic organizations that are not considered to be self-governing units. Nevertheless, one vexing problem, though, is that collective decision-making authority is often surrendered to a small group of people, most often village authorities in the villager committees, which calls into question whether it is ‘collective ownership or cadres’ ownership’ that prevails in practice.\footnote{145} More likely, owing to direct interventions on personnel and financial issues, villager committees tend to succumb to pressure from local government authorities (Chapter 5). Therefore, it is questionable whether villager committees effectively represent farmers’ legal interests in land.

Based upon the preceding illustrations, there is some difficulty in delineating the physical and legal boundaries of collective-owned land to determine who is entitled to exercise right of management and

\footnote{140}{The Property Law art 45 (2007).}
\footnote{141}{XIANFA art 17 (1982).}
\footnote{142}{Ho, \textit{Institutions in Transition} (n 122) 27-32.}
\footnote{143}{Wang, ‘Land Use Rights’ (n 115) 72.}
\footnote{144}{The LAL art 10 (1998).}
\footnote{145}{Yongshun Cai, ‘Collective Ownership or Cadres’ Ownership? The Non-agricultural Use of Farmland in China’ (2003) 175 The China Quarterly 662, 668-89.}
administration as a real owner. Under the current rural governance system, a qualified ultimate owner is lacking who can really represent farmers’ interests to control and manage village land.

2.4.3 Ownership of property: overlapping rights and claims

Compared to full, absolute ownership in private property, ownership in socialist property is divided in a way where owners parcel out different types of property rights such as use, control, and income rights to other actors. Existing literature informs us how socialist state ownership works in practice given that state property is inalienable and indivisible (i.e. prohibited from being bought or sold). The key point is that the state retains ownership and grants administrative rights horizontally to overlapping state structures, or downwards to actors, such as local authorities and enterprises at lower levels. Some recipients may even further allocate those rights to others. In this way, Chinese collective ownership has been differentiated from state ownership in both content and form. Insofar as ownership is jointly held by smaller entities and is also divisible like state ownership, one important distinction that must be made is that collective ownership structures fall short of the highly staked out hierarchy of administration found in state ownership.

In theory, the right to exercise property rights over collective ownership should be limited to the community, without any extension to outsiders. However, the state can have a considerable stake how collective property rights are exercised. The scenario in which multiple actors hold various types of property rights is explained by some analysts in reference to the notion of the ‘bundle-of-rights’ that some deem to be viable for understanding China’s collective ownership. Meng puts forth that the various sticks that compose the bundle of property rights are divided and held by three legal persons: the state, the collective, and the individual. Individual rural households have rights to use and manage, with limited transmissibility; the collectives as the nominal owners of the land have the right to lease, possess, and administer land; while the state is entitled to the right to the capital, security, and execution. In other words, not only the collective and its composite members, but also the external state holds certain types of property rights in a given tract of rural land.

However, such a division lacks clear-cut legal boundaries around collective ownership. Naturally, these three legal persons holding various types of property rights may make similar yet competing claims on the same plot of land. Conflicts inevitably arise from these overlapping claims in property practice. In collective ownership, rural landowner (the collective) and land users (individual rural households) hold limited rights to use, dispose, and profit according to the various restrictions that are imposed on rural land. The law stipulates that the state can exert eminent domain powers to remove these restrictions, by converting collectively owned land into state owned land, and eventually provide higher-level protections for what were once use rights to collectively owned land. In such cases, rights of alienation and disposition in rural land lie in the hands of the state. It is the state that makes final decisions in relation to what and in which way to alienate rural land in order to extract value increase from the land.

Similarly, when it comes to the exercise of rural property rights between the collective and its members, the collective holds a claim to ownership as nominal owner and individual households to use rights as landholders. However, in the Chinese legal framework, ownership is ‘original and major rights’

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146 Verdery, ‘The Property Regime of Socialism’ (n 137) 192-193.
147 ibid.
148 Meng, ‘Contemporary China’s Rural Landownership with Reference to Antony M. Honoré’s Concept of Ownership’ (n 80) 667.
from which use rights are derived. In cases where conflicts arise, ownership assumes a supreme status and takes precedence over use rights and, consequently, individual land users may be deprived of their use rights and thereby have their interests infringed upon by the representatives of land owners.

In sum, collective ownership is parceled out to different subjects. In the context of rapid urbanization where the state, collective authorities and farmers are all increasingly competing for interests in land, conflicts have unavoidably arisen from their overlapping claims. Despite each member in the collective being entitled to an ownership right in the Chinese legal framework, rural landholders (i.e. farmers) are actually subordinate to both the state and the collective. By the same token, the collective assumes a relatively weak bargaining position where the state takes absolute control of a given tract of rural land. In this light, the problem might not be that ownership is subdivided or parceled out to different entities, but rather which legal person “can control all or most of the core bundle, such that the owner’s decision on inclusion or exclusion will be treated as relatively final by society”. More specifically, “at what point does he cease to be the owner, and who then owns the thing?”

2.5 Conclusion

This chapter delved into how property rights in rural land evolved in accordance with varying contexts over time. As the foregoing discussions revealed, rural property rights have been created, rearranged, and transformed by the state to address the interplay between political considerations and socioeconomic parameters. The institution of collective ownership was created to replace the private land system for the purposes of political mobilization and grain procurement. During the period of the communization and collectivization, ownership rights held by the communes were placed under the direct administration of the state, which enabled the state to capture agricultural surplus from rural areas. The two-tier system formed by the HRS reform laid the foundation for China’s agrarian transition and land reforms.

Rural property rights are organized in terms of neither private nor purely public ownership. Instead, the current regime of rural land is characterized by a combination of socialist collective ownership with individualized use rights, which may be explained with the bundle-of-rights metaphor. This explanation aside, the prevailing regime calls into question how property arrangements serve state goals of urban transformation. As this chapter revealed, a notable lack of clarity on collective ownership leaves crucial problems associated with the real exercise of ownership rights unresolved, and opens a gateway for strong state interventions into the control of land. Moreover, restrictions on use rights that prohibit rights of alienability have strengthened government control of rural lands that have become an invaluable resource in the current era of large-scale urbanization.

Therefore, the evolution of rural property rights has substantially reconfigured property relationships between state and rural society. The ambiguous collective ownership regime has in practice facilitated the state’s absolute control over rural land resources. This could in part account for why rural property rights are incapable of securing landholders from government interference or of checking political powers when rural land is expropriated. Admittedly, property rights are not always determinate of property relations between state and rural society, particularly given that “when property law lags behind property relations,

149 Wang, ‘Land Use Rights’ (n 115) 64.
150 ibid.
the latter prevails."
Nevertheless, the evolution of property rights has significant effects on interactions between state and rural landholders amid wide-scale rural land expropriation. These will be discussed in later chapter.

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Chapter 3 Weakened Property Rights in Rural Land Expropriation

3.1 Introduction

This chapter identifies rural land expropriation in a specific setting giving explanation to how property rights are respected, protected, and promoted. Before moving on, the chapter will first clarify some misconceptions of China’s rural land expropriation.

It is noteworthy the body of literature (principally written by non-Chinese specialists) that concentrates on Chinese property and its rules takes land expropriation as an all-inclusive issue, without distinguishing between expropriation over urban and rural land or explicitly identifying their differences. There are several reasons for this. Firstly, governments in most countries are granted power of ‘eminent domain’ that allows them to take private property to enhance the well-beings of all citizens. These rules are exercised over private property, regardless of the type of land (rural land or urban land) or the status (for instance, identity and profession) of owners. Secondly, ‘rural land expropriation’ has thus far not been specified as a legal term in Chinese law, nor is there any special law governing the takings of rural land. Lastly, and perhaps most importantly, there is a perceivable trend in which Chinese property law, especially the clause of takings, has evolved to converge with the standards that are stipulated in private property systems (like the United States). Regulation on the Expropriation of Buildings on State-owned land and Compensation (hereafter to be referred as the 2011 Expropriation Regulation) is illustrative in this point. The 2011 Expropriation Regulation adopted similar solutions with those in free market economies to standardize the process of expropriation, such as the enumerated types of public interest and the adoption of a fair compensation doctrine based upon market value appraisal. Although these solutions are not applicable to rural land expropriation, the practice of taking standards familiar in the West seems to blind many scholars to the discriminatory treatment of land expropriation in rural areas, which are generally unfamiliar to non-Chinese specialists.

Vast differences remain between rural and urban land expropriation. More detailed differences will be further discussed in the following sections. For the moment, an initial distinction in two aspects is illuminating. Firstly, China still lacks a comprehensive and consistent expropriation law. The 2011 Expropriation Regulation was promulgated to exclusively govern expropriation over urban property. Although its passage was acclaimed as heralding a leap forward in regulating governmental action to acquire property and safeguarding private property rights, it is not applicable to rural land expropriation. Rules regulating rural land expropriation are scattered throughout various pieces of


155 Eminent domain, compulsory purchase, expropriation, compulsory acquisition, and taking are different names used to allow a state or national government to take private property for public benefit. In this study, these names may be used interchangeably.

156 Schmelzer, ‘Takings for Granted’ (n45).


158 Chen, ‘Legal and Institutional Analysis of Land Expropriation in China’ (n3) 59.

159 ibid 67.

160 ibid 79.
legislation in China. Before a consistent expropriation law is established, distinction and inconsistency persist in between urban and rural land expropriation.

Secondly, China’s land expropriation is grounded on, and derived from, its own specific land system. The dual land system between urban and rural land results in distinctive approaches to urban and rural land acquisition, and there are different procedural and substantive requirements for the operation of takings (in Table Three below). Consequently, the way in which government exercises power and compensates the landholders differs enormously, which inevitably affects farmers’ property rights to varying degrees. Sometimes, in peri-urban areas, completely different pictures emerge. Two households with differences, for example, in family size and land acreage might be compensated in totally different ways, with a significant disparity in their compensation fee.

The foresaid distinction between urban and rural land expropriation reveals that, rural land expropriation shall be identified as a specific context within which property rights are uniquely practiced, rather than being integrated into eminent domain as an all-inclusive issue. It does not mean the division between the two is irreconcilable. As explored in Section 5, China has undertaken experimental reforms to unify construction land use market in urban and rural areas, which allows rural collective to directly transact ‘rural construction land’ (in Table One) for commercial use with land developers without the involvement of local government. It remains to be seen how the effects of the experimental reforms will be assessed and ultimately accepted by the central authority. It is important to note that rural land expropriation currently remains the only viable legal means to convert rural land into urban use lands. Drawing on the existing differentiated institutional arrangement on expropriation of urban and rural land, it calls into question how and to what extent property rights in rural land can be protected in the setting of land takings. This is the central concern of this chapter.

This chapter unfolds in six sections. Section 2 defines two terms—‘rural land’ and ‘rural land expropriation’. Clarity on the two terms helps understand how a divided land expropriation system comes about. Section 3 outlines a dual land system in China, and provides an institutional analysis on how the current land system catalyzes rural land seizure. Section 4 presents a Chinese legal approach to the exercise of and compensation for rural land expropriation. A comparative analysis of the different approaches to urban and rural acquisition demonstrates that different substantive and procedural requirements are established and practiced in terms of expropriation over urban and rural land. Section 5 concludes with some reflections on the implications for farmers’ property rights in rural land.

### 3.2 Setting the Scenery: Rural Land Expropriation

#### 3.2.1 On rural land

Before defining the setting of rural land expropriation, the term ‘rural land’ has yet to be clearly defined. Despite familiarity and commonality, rural land is not a legal term. Following from an urban-rural disparity that derives from dual land ownership in China, ‘rural land’ is commonly termed as opposed to urban land. In line with dual land ownership, urban land refers to state-owned land whereas rural land including land in suburban areas is owned by rural collective. Therefore, the dualism between state ownership and collective ownership leads to a disparity between urban and rural land.

Land in urban and rural areas, based on utilization purposes, is classified into different types that leave aside ownership. An extract from Land Administration Law (LAL) reads:
Agricultural land includes cultivated land, forest land, grassland, and land for irrigation and water conservancy and water surfaces for aquaculture. Construction land designates land for constructing buildings and other structures, including land for housing in urban and rural areas, for public utilities, for factories and mines, for communications and water conservancy, for tourism and for military installations. Unused land means land other than land for agriculture and construction.

Rural lands include agricultural lands (i.e. cultivated land), forestlands, and grasslands that are collectively-owned and state-owned, as well as other lands used for agricultural purposes (in Table One).

Drawing upon the above, the same term ‘rural land’ has acquired two different meanings. First, rural land refers to land that is collectively owned, as opposed to state-owned land. The second meaning denotes that land is used for agricultural rather than non-agricultural purposes. Therefore, the meaning varies in different contexts. That being so, in most cases, the two overlap in that rural collectively owned lands are in principle exclusively used for agricultural purposes. However, when used in terms of usage, ‘rural land’ is broader than rural collectively-owned land, because it may entail lands in a rural area that are owned by the state.

Table One The Classification of rural land for agricultural utilization

<table>
<thead>
<tr>
<th>Rural Land</th>
<th>Cultivated land, forest land, grassland, land for water conservancy and water surfaces for aquaculture</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Homestead land; land for Township Enterprises; land for other rural public facilities</td>
</tr>
<tr>
<td>Rural agriculture land</td>
<td>Barren mountains; barren gullies; barren hills; barren beaches</td>
</tr>
<tr>
<td>Rural construction land</td>
<td></td>
</tr>
<tr>
<td>Rural unused land</td>
<td></td>
</tr>
</tbody>
</table>

3.2.2 Defining rural land expropriation

Like ‘rural land’, ‘rural land expropriation’ is not a legal term, yet it is commonly used in everyday language. ‘Expropriation’ is adopted in legal documents to refer to state’s acquisition of land for public purpose, regardless of the division between rural and urban land. Given the particularity of rural land expropriation as alluded to earlier, a conceptual clarification is necessary. To this end, it is firstly worth noting that several legal terms such as ‘expropriation’ (zhengshou 征收), ‘appropriation’ (zhengyong 征用), ‘demolition and eviction’ (chaiqian 拆迁), and ‘reclamation’ (shouhui 收回) are used

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161 The LAL art 6 (1986).
162 The LCRL art 2 (2002).
interchangeably to mean the same thing. They are used indiscriminately to designate the state’s action of land acquisition. This is without identifying the various distinctions entailing different types of land, distinctive means of acquisition, or impacts on who are the expropriated. Furthermore, this renders the definition of rural land expropriation more perplexing. At this point, a clarification on synonyms, based upon a comparison between two sets of legal terms may serve as an appropriate starting point to conceptualize rural land expropriation.

The first set deals with ‘expropriation’ and ‘appropriation’. Both terms were enshrined by the 2004 Constitutional amendment, specifying the state may expropriate or appropriate land in the public interest. However, the statement did not receive much attention. Both the terms ‘expropriation’ and ‘appropriation’ have been used in a loose way, particularly when rural land acquisition is at issue. The distinction is not merely minor. A semantic distinction was clarified by the National People’s Congress (NPC) to explain the draft of the 2004 Constitutional amendment. Wang Zhaoguo, the then vice-chairman of the NPC, explained:

[Land] expropriation brings about a change in ownership, whilst appropriation suggests a change in use right... it is necessary to distinguish expropriation from appropriation since they lead to different property relations.

The constitutional amendment was reiterated by the LAL amended in 2004, which indicated all the statutes previously pursuant to appropriation should be revised instead as expropriation. A further distinction was formalized by Property Law, setting forth the acquisition authority’s legal responsibility to return appropriated property to original owners after a certain time period. The distinction, which leads to different outcomes, is by no means meaningless. A shift in use rights, rather than ownership rights, makes a significant difference for the expropriated population who may retain landholding without necessarily being stripped of their land. Drawing on the distinction, some scholars advocate for appropriation rather than expropriation as a proper remedy to addressing expropriation-related problems in rural areas. As proposed, rural land expropriation is essentially a permanent acquisition of property

164 XIANFA art 10 (3) (2004 amendment).
165 It is not rare that people do not draw a line between expropriation and appropriation in the case of rural land acquisition. For instance, Rithmire introduces China’s methods of transferring land-use rights in her book by describing that ‘Rural land may only become urban land for construction through state acquisition (zhengyong 征用)’. State acquisition appears as a wholesale term here, but the Chinese term is appropriation (zhengyong). See Rithmire, Land Bargains and Chinese Capitalism (n1) 8. For a discussion of the underlying constitutional principles governing expropriation and appropriation, see Lei Wang, ‘The Unconstitutional Issues Concerning Land Expropriation and Appropriation in China’ (论我国土地征收征用中的违宪问题) (2016) 34(5) Wuhan Law Review (法学评论) 23.
with the confiscation of ownership. This process, in most cases, is predicted by an increase in land-lost farmers and potential rural unrest. In comparison, appropriation is applied as something like ‘state borrowing’, allowing land owners to regain control of their land after a certain time period. In this light, appropriation may be an ideal alternative insomuch as it strikes a balance between the promotion of urban development and the protection of farmers’ interests.

The second set of terms to be clarified includes ‘expropriation’, ‘reclamation’, and ‘demolition and relocation’. Insofar as ‘expropriation’ and ‘reclamation’ are concerned, their distinctions stem from the current land system featured by dualistic landownership. Procedures for acquisition of urban and rural land differ. For urban land that is already state-owned, land acquisition takes the form of ‘reclamation’ or ‘resumption’, describing state’s action to take back the land from individual or private users. As of rural collectively-owned lands, a change in ownership from collective ownership to state ownership is at stake when it is taken by the state for non-agricultural use. An expropriation also affects building structures and not just lands. In China’s property system, where land is publicly owned, the building structures on public land may be privately owned. In this instance, not only land, but also those existing structures on the land, is subject to expropriation. Land expropriation is thus accompanied by the demolition of buildings or houses and the relocation of the property’s occupants. When the ‘2011 Expropriation Regulations’ replaced the former ‘Regulations for the Administration of the Demolition of Urban Buildings and Relocation’ (2001 Demolition Regulations), the legal term ‘demolition and relocation’ was abandoned, replaced by the seemingly neutral term ‘expropriation’. ‘Expropriation’ has therefore been an alternative usage for ‘demolition and relocation’. Nevertheless, the term ‘demolition and relocation’, by reference to the demolition of structures and the eviction of residents as concomitant of land expropriation, has been generalized and widely accepted by the society.

Despite the foregoing distinctions along with its conceptual implications on the expropriated, land expropriation in everyday language is used as an umbrella term to accommodate the acquisition of land as well as the expropriation of private property on the land, whether it be urban land or rural land. In this research, in order to more accurately define the setting, expropriation is applied to such objects as rural collectively-owned land, private property including houses and fixtures that are privately owned on both urban and rural land. That is to say, expropriation is not applicable to urban land that is already under state ownership. Instead, reclamation is a proper term on this specific point.

### 3.3 Rural Land Expropriation under the Dual Land System

#### 3.3.1 Restrictions on rural land under a dual land system

In China, all land is publicly owned and no land is allowed for outright purchase or sale. Use rights are granted by public (collective) owners. For urban land, the state grants use rights by means of paid transfer (出让) with different time limits and are free of charge (划拨) for an unlimited time. Rural land is contracted out to individual rural households, who attain use rights over rural land. There are clear legal distinctions between use rights in urban and rural land. For instance, use rights in urban land are

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172 Bo Zhao, ‘Land Expropriation, Protest, and Impunity in Rural China’ (2009) 54 Focaal 97, 98.
173 In China, the LAL, Property Law, and the LCRL have the greatest relevance to use rights regulations. While the
alienable amongst private users by means of transfer, mortgage, and lease. By comparison, restrictions are imposed on the right to alienate rural land. Use rights in rural land may be circulated by means of subcontract, lease, exchange, transfer, and mortgage is only permissible in exceptional cases. Moreover, alienation of use rights is limited within the community. If the collective decision is to contract out use rights to an individual outside the community, “consent from not less than two-thirds of the members of the villagers’ assembly, or of the villagers’ representatives, and approval from the township government” are required (Article 48). In any event the individual household transfers use rights to a third party, approval shall be obtained from the collective (Article 37). Additionally, for all the circulations, they shall be within the original contract term (Article 33).

Apart from foregoing limitations on use rights to rural land, one unique and remarkable restriction on rural land is rural land use should be maintained for agricultural purposes and barred from non-agricultural development. The stringent control on rural land is elucidated by Article 63 of the LAL, which provides use rights to rural land are not allowed to be sold, transferred, or leased for non-agricultural purpose in exceptional circumstances. By contrast, only state-owned land is viable for commercial, construction, or any other non-agricultural ends. The distinction between urban and rural land pursuant to use restriction is stated by Article 43 of the 2004 LAL:

All units and individuals that need land for construction purposes shall, in accordance with law, apply for the use of State-owned land. There are exceptions where the use of rural collectively owned land has been lawfully approved for (1) township and village enterprises; (2) rural housing sites; 3) township (town) or village public utilities or other public welfare undertakings. “The State-owned land” mentioned in the preceding paragraph includes land owned by the State and land originally collectively owned but expropriated by the State.

Under China’s current land system, as long as rural land is needed for non-agricultural construction (except for listed uses), private land users shall apply for the use of urban land, namely, state-owned land. In case supply of urban land use rights falls short of demand, the state may acquire land from rural areas through state acquisition to meet urban need. Eminent domain thus becomes the only viable means to breaking the division between urban and rural land. More significantly, only the exertion of public power could remove use restrictions imposed on rural land, which qualifies its non-agricultural usages for commercial, industrial, or residential purposes. Admittedly, administrative regulation on land use is common practice for modern governments that impose restrictions on land rights through land use planning and zoning regulation. Nevertheless, zoning law is commonly viewed as unenforceable or rarely effectively in governing city planning. In rural areas, however, use restrictions are distinctively

first two laws apply extensively to a wide range of lands pertaining to land use rights, the third law merely applies to arable land, forestland, grassland, both collectively and state owned but used by the agricultural collective, as well as other lands used for agriculture according to the law (art 2).  
174 The LCRL art32 (2002). According to Article 180 (3) of the 2007 Property Law, only barren land that is contracted through bidding (招标), auction (拍卖), and negotiation (协议) is permissible. Other types of collective land cannot be mortgaged. For the remaining in-text citations in parenthesis in this paragraph, they are articles stated in the 2002 LCRL.  
175 The exception includes the transfer of use rights in rural construction land for non-agricultural purposes, which have been already lawfully obtained by the enterprises in conformity with the land use plan. Owing to bankruptcy or merging or other reasons, the use rights must be transferred.  
176 The LAL art 43 (2004 Amendment).  
imposed based on the status of collective ownership, less so with land use planning or zoning regulation.\textsuperscript{178} Phrased slightly differently, restrictions are imposed upon the vast bulk of Chinese farmers that are rural land users who hold collectively owned land. As will be elaborated on later, owing to government’s monopoly on rural land supply for urban uses and their exploitation of the profit, these restrictions have actually deprived numerous farmers of their right to benefit from rural land value increase. The restrictions on property rights, however, are far from justifiable particularly in the circumstance where rapid urbanization is considerably premised on a large scale rural land conversion to urban use.

3.3.2 Institutional incentives for rural land seizure

The dual land system—under which the alienability of rural land use rights is limited and conversion for non-agricultural purpose is tightly controlled—paves the way for the local authority to control land as an increasingly valuable commodity in China’s rapidly developing economy. As noted, China’s remarkable economic growth has been accompanied by rapid urban spatial expansion.\textsuperscript{179} Insofar as land for urban development shall be acquired from rural collectives through expropriation and local governments are authorized with power to take land, an expanding urban land demand has been primarily met by way of land acquisition.\textsuperscript{180} The reasons why land expropriation has become a privilege for local authority to accumulate land requires an analysis of both the role of government in land management and the further underlying incentives for these behaviors.

\textit{State monopoly of rural land market}

As stated earlier, under the dual land system, rural landholders are not allowed to change agricultural land for use in non-agricultural purposes, albeit they are granted use rights by contracting with the collective entity. Rather, private land users in China rely on local governments to convert rural land for urban use through expropriation and then make it transferable in the urban land market. The market, in which private users may obtain use rights from the state alone, is commonly known as ‘primary land market’ (一级市场). The state has the monopoly on ‘primary land market’, which distinguishes it from the ‘secondary land market’ (二级市场) where land use rights become transferable amongst private users.\textsuperscript{181} The state’s monopolistic position in land supply or land assembly establishes the conditions under which local governments could exclusively leverage the land resource beyond agricultural purposes. By right of eminent domain alongside administration control over rural land use, local government expropriates ownership rights from village collectives, removes use restrictions on rural land, and utilizes the land for non-agricultural use. As will be discussed later, when local government may transact the converted land use rights at market price, they can always get rural land at a small fraction of market


value on the urban land market, with compensation for the expropriated rural land deviating from market-based value.

The rationale for China’s rural land expropriation distinguishes substantially from the way in which eminent domain is invoked in other property systems. In many private property systems, the doctrine of eminent domain does not necessarily rule out private negotiations among the government, land developers, and private property owners. A consensual transfer is generally preferred with land owners before government exercises eminent domain power as a ‘privileged taker’ to acquire land without the owner’s consent. Eminent domain may be invoked in limited circumstances where the government fails to reach an agreement with owners to purchase private property. For instance, in the American idea of eminent domain, the purpose of eminent domain is to overcome holdout problem, which renders consensus exchange impractical for land assembly in a free market. By contrast, in rural China’s case, in the absence of a free rural land market where the state holds absolute and actual control of land supply, it rests with the state to decide how to amass land to fulfill public ends. To put it starkly, under a state-managed instead of a market-led mechanism, mutual negotiation or the method of consensus is not a necessary step in practice. Without suggesting that the exercise of eminent domain is more efficient or effective than the method of mutual consensus exchange, the aforesaid difference at least explains why land expropriation is prevalent and has been frequently invoked in China’s situation. The underlying reason is that eminent domain is essentially deployed by local government as an efficient and effective means to acquiring land, or more accurately, to accumulate capital, as is explored in the following section.

**Fiscal incentives**

Fiscal incentives underlie local government’s rapacious land acquisition from rural community. Central to land conversion through expropriation is to remove use restrictions from rural land and convert it for urban development. Removing restrictions allows for non-agricultural usage of what was once rural land, which may ‘unlock the asset potential of rural land’ and appreciate its value through commercial exchange in a more vibrant urban market. Local government, pursuant to land law, acquires land from rural landholders at a very low price set unilaterally by themselves (i.e. calculated on the output value of agricultural land, see in Section 4), and transfers the newly converted use rights to private land developers at a market price. The land conveyance fee (土地出让金) that local government receives from private users far exceeds the cost it pays for the expropriation. Empirical research on land expropriation in one of China’s counties shows that, the land conveyance fee was 602,000 yuan per mu in 2003, whereas the compensation fee for rural land was 41,000 yuan per mu, which was only 6.9 percent of the land conveyance fee. As illustrated, a huge price difference exists between acquiring land from rural

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183 Thomas W Merrill, ‘Economics of Public Use’ (1986) 72 Cornell Law Review 61, 65. Merrill argues eminent domain, from an economic analysis perspective, is to overcome barriers to voluntary exchange created when a seller of resources is in position to extract economic rents from a buyer.
184 Noticing that the CPC had avowed to develop rural market economy through diverse means, among others, to unlock the asset potential of rural land by granting more property rights to rural land holders is emphasized consecutively by No.1 Document, issued by the State Council. See also the Central Committee of the CPC, ‘Decision on Some Major Issues Concerning Comprehensively Deepening Reform’ (关于全面深化改革若干重大问题的决定) (12 November 2013).
185 Zhou Feizhou (周飞舟), ‘The Role of Government and Farmers in Land Development and Transfer’ (生财有道: 土地开发和转让中的政府和农民) (2007) 1 Sociological Research (社会学研究) 49, 75-76. As the data also reveals, in the case of urban land requisition in the same county, the compensation fee for urban residents accounted for 52 percent of the conveyance fee.
landholders and selling it to individual land developers. The large difference in value, namely, the ‘expropriation surplus’, drives local authorities to excessively expropriate more rural land, and eventually to accumulate more profit from the acquisition.\textsuperscript{186} Should expropriation surplus motivate local authorities’ predatory acts of land acquisition, two underlying reasons explain why they are highly dependent on this sort of lucrative undertaking. The first, as partly addressed above, is their reliance on fiscal revenue generated from both land expropriation and the ensuing use rights lease activities. The term ‘land finance’ (土地财政) is widely used to describe this phenomenon.\textsuperscript{187} After fiscal decentralization reforms in the early 1990s, fiscal power and the responsibilities for provision of public services was shifted to the local level.\textsuperscript{188} Faced with an increasing budgetary deficit, local government was compelled to find new revenue streams.\textsuperscript{189} The substantial revenue generated from land acquisition, as well as its derivative incomes, filled the void.\textsuperscript{190} Insofar as this revenue is concerned, local government not only gains an expropriation surplus, they also collect steady revenue through taxation and fees that derive from land expropriation. After the conversion of rural land, use rights in the newly-converted land can now be leased to private users, from which local government may collect various taxes such as value-added tax, real estate tax, and construction tax. The tax from land may contribute to one third of annual local tax revenue.\textsuperscript{191} Moreover, the newly-converted use rights can be used as collateral to obtain bank loans for local governments to finance wider urban infrastructure construction. Worth noting here, loans raised from banks tend to be substantial with further proliferation of public infrastructure projects in the locality. Local authorities gradually receive bigger debt loads than they can sustain. Since local authorities’ ability to repay the huge debt largely depends on their ability to raise revenue by selling land, as observers point out, it is crucial for land prices to remain stable or keep going up. Otherwise they will not be able to service their loans ‘if property markets crash and land prices fall’.\textsuperscript{192} Therefore, the increasing expansion of local debt derived from land conversion and land mortgage has triggered financial risks in China.

Political incentives for local officials are another reason attributable to local authorities’ reliance on land revenue. Under the current polity system, local leadership is primarily evaluated by a series of economic indicators, such as the local GDP annual growth, employment increase rate, annual revenue accumulation and contribution to upper-level governments.\textsuperscript{193} Those economic ends, in the eyes of local officials, are attainable, directly or indirectly, through the means of land expropriation. In this light a stronger political performance and a better political career are bound up with land expropriation.

Rural land expropriation has been utilized by local governments as a significant means to pursue urban expansion and local economic prosperity. Under the current land system, local government has multiple

\textsuperscript{186} Expropriation surplus means the difference between the value of land use rights in new state-owned land and the value reflected by the statutory compensation system of the same land. Washburn, ‘Regular Takings or Regulatory Takings’ (n 2) 84.
\textsuperscript{187} Whiting, ‘Values in Land’ (n 7) 507.
\textsuperscript{189} Ding, ‘Policy and Praxis of Land Acquisition in China’ (n 179) 5.
\textsuperscript{190} ibid.
\textsuperscript{191} Huang Xiaohu (黄小虎), ‘Analyzing Local Land Finance’ (解析土地财政) (2010) 20 Red Flag Manuscript (红旗文稿) 13, 15.
roles, such as land regulator, land supplier, and acquisition authority as well as decision-maker on compensation. The functional autonomy brought forth by these multiple roles make it possible for the local authority to manipulate the system in a way to take more land from rural landholders whilst simultaneously lower the compensation price. In so doing, the government seizes profitable benefits at the expense of farmers. As statistics show, the land conveyance fee generated more than 3.15 trillion yuan in 2011, and expenditures for ‘agriculture, rural areas, and farmers’ (三农) totaled 123.4 billion yuan to the end of October of the same year, which accounted for less than 4 percent of the newly-increased value from land. Uneven distribution of the incremental land value is exploiting and depriving the affected farmers of an equitable stake, which undermines the rural economy and exacerbates an urban-rural gap in China.

3.4 A Chinese Legal Approach to Rural Land Expropriation

In China, expropriation finds its main authority in the 2004 Constitutional amendment. As Paragraph 3 of Article 10 reads, “The state may, in the public interest, expropriate or appropriate land and make compensation for the loss of land in accordance with law.” The constitutional provision was reiterated by the LAL amended in the same year and Property Law promulgated in 2007. It has to be noted that the taking clause was modeled on the written Constitution in many free market economies such as United States. While the twin requirements, ‘just compensation’ and ‘public use’, justify holding the state to a duty to protect and promote individual interests in owning and holding property in a private system, these two terms in Chinese law are vaguely defined in both content and form. Consequently, this provides wide discretion for the local authorities to exert the delegated power of eminent domain. This section delves into a Chinese legal approach to expropriate rural land, both substantively and procedurally, to examine how the state compensates for the loss of land and distributes gains generated by rural land conversion.

3.4.1 Public interest

Public interest is a prerequisite for eminent domain to justify government’s legitimate end in taking private property. Though land acquisition ‘in the public interest’ is provided in China’s major legal documents, the term ‘public interest’ is not sufficiently or clearly defined. No explicit guidelines are available in those laws to determine whether a government act of expropriation really serves the public interest. Two underlying reasons may explain the legislative equivocality in defining the term.

In the first place, public interest per se is highly indeterminate. Analogous to the doctrine of ‘bona fide’ or any other general legal principles, the doctrine of “public interest” is dynamic and abstract, which makes it impossible to give a definite, clear definition. The elasticity of the content and scope underpins legislators’ reluctance in conceptualizing public interest. The legislative intent was embodied

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194 Han Jun (韩俊), ‘Deeping Reform on Rural Land Management System and Lawfully Safeguarding Farmers’ Property Rights over Rural Land’(深化农村土地管理制度改革依法保障农民土财产) Farmers’ Daily (农民日报) (Beijing, 8 February 2012) 2.
197 The US Constitution’s Fifth Amendment states: “nor shall private property be taken for public use, without just compensation.”
by the NPC’s drafting on Property Law, which vowed to respect the sanctity of private property.\textsuperscript{199} Notwithstanding a strong debate over whether public interest shall have a complete list or an indefinite content with respect to land acquisition, the NPC decided to shelve the dispute.\textsuperscript{200} After cross-government discussions, legislators insisted that it was indeed a difficult issue to establish an appropriate scope or an explicit definition which varies from circumstance to circumstance. To this end, an ideal solution is to leave the problem to specific regulations, such as the LAL and the 2011 Expropriation Regulation that governs urban housing expropriation.\textsuperscript{201}

On the other hand, there is a conspicuous tension between a definite concept of public interest and the practice in rural land expropriation. As previously addressed, land expropriation is applied by the government to convert more agricultural land into urban land in order to serve urban and commercial purposes. In rural land acquisition, in practice, government does not necessarily meet the doctrine of public interest. Facing ever-increasing urban land demand in an era of rapid urbanization in the country, local governments would opt for land expropriation, no matter if it serves a public end or private interest, or a mixture of both. In other words, rather than the justification of public interest as a legitimate end in land-taking, it is the conversion of rural land for urban profitable use that primarily concerns local governments.

A discrepancy arises between the establishment of legal standard and the real practice of rural land expropriation. The discrepancy is aptly depicted as a ‘Paradox of Expropriation’ by a Chinese economist, Qiren Zhou, who raises the question as to the legality of rural land conversion that is not for public use.\textsuperscript{202}

As Zhou argues, as long as ‘urban land is owned by the state’ and rural land shall not be used for non-agricultural purposes without permission, it is unlawful for rural land to be used for a non-agricultural purpose without ownership conversion. However, given that rural land can only be developed by the government through the eminent domain process, it is profoundly unconstitutional for the government to acquire land that is not for public use. This is because, according to the taking clause, the power of eminent domain should be exercised to serve public interest only. Zhou’s point is insightful, albeit it is also contested as an unbalanced view that “goes too far in implying that private interests should never be involved in the process of promoting public interest.”\textsuperscript{203}

\textsuperscript{199} Article 4 of The Property Law 2007 provides equal protection to state-owned, collective-owned, and private property.


\textsuperscript{201} Hu Kangsheng (胡康生) (ed), Property Rights Law Commentary (中华人民共和国物权法释义) (Law Press China 2007) (法律出版社) 102.


That being said, the expropriation paradox at least reveals that Chinese legislators are in a predicament to define public interest in the context of urban development. Should they define public interest, legislators would have to define it properly, in a way that streamlines governmental power without hindering local government’s ability to develop local economy. However, an unequivocal definition or an enumerated list may be resisted by local governments since it profoundly goes against their interest to boost urbanization and local economy through land acquisitions. In fact, in China’s fast-growing economy where urbanization is overwhelming, the encroachment on rural land is considered unavoidable and necessary. Given a large portion, if not the majority, of land acquisition does not necessarily serve public interest in the first place, two options might be possible to break the impasse. First, the definition of public interest is broadened to its widest scope to accommodate all governments acts; Second, rural land conversion for non-public use is strictly prohibited, which radically runs counter to local governments’ professed policy approaches as well as the national policy priority in urbanization. Obviously, neither is acceptable for legislators who hold the view that legislation shall serve societal development. In this circumstance, it would be more feasible for the legislators to hold a vague attitude and not to specify a definition of public interest.

The insufficient provision of a clear standard of public interest in rural land expropriation has created leeway for practical operations. Without being clearly defined or enumerated, the standard is interpreted at the discretion of local governments, who tend to expand to a wide scope to accommodate all commercially profitable ends, be it enhancing public welfare or serving private benefit. Notwithstanding that the central authority takes various measures such as the imposition of a quota for newly added construction land and the centralized approval for farmland conversion to tightening control over rural land conversion, the measures in question are curing the symptoms not the disease. The disease resides in the state’s monopolistic position in land supply for non-agricultural usage, which, to be precise, is underpinned by the governments’ absolute administrative control over rural land resources. Therefore, one may draw the conclusion that the crux of the rural land expropriation problem may rely less on a definite and clear concept of public interest, but more on how to rein in the administrative power from disrespecting, and interfering with, farmers’ property rights.

In comparison with the under-defined term of rural land expropriation, the doctrine of public interest is applied in a relatively clear way to legitimize government actions in urban land-taking practice. Amongst the legal improvements in the 2011 Expropriation Regulation, the boundaries of public interest were for the first time clearly demarcated. It listed the types of public interest requirements that the acquisition authority shall comply with. Local governments shall apply expropriation in six situations enumerated in Article 8, which ranges from national defense and foreign affairs, public utility construction, to urban regeneration (see Table Three). The enumeration has narrowed down the scope of public interest and ruled out the private takings of urban houses for private gains. However, the enumeration is not without question. For instance, urban regeneration is considered too broad and vague to constitute public interest, which may encourage the pursuit of private interest in various redevelopment projects.

### 3.4.2 Right to compensation

204 In extreme cases, so long as land expropriation is for urban development, it is interpreted as public use. For an outright analysis, see Eva Pils, ‘Contending Conceptions of Ownership in Urbanizing China’ in Fu and Gillespie (eds), Resolving Land Disputes in East Asia (Cambridge University Press 2014) 131.

205 George S Lin and Samuel P Ho, ‘The State, Land System, and Land Development Processes in Contemporary China’ (2005) 95(2) Annals of the Association of American Geographers 411. They discussed state’s intention to increase land use efficacy was compromised by the pervasive illegal activities in rural land acquisition.
It has been a settled feature in both common and civilian legal systems that property shall not be taken without just compensation.\textsuperscript{206} Nevertheless, like the doctrine of public interest, neither the Constitution nor other laws have spelt out the level of the compensation, should it be just, fair, or whatsoever.\textsuperscript{207} Regardless of the reason why a proper modifier is absent in Chinese statutes, the uncertainty leaves leeway for the government to determine the level and the form of the payment.

The compensation formula for rural land is specified by Article 47 of the 2004 LAL. The compensation package consists of three items (see Table Two): land compensation fee (土地补偿费), relocation subsidy (安置补偿费), and compensation for attachments and young (unharvested) crops (地上附着物与青苗补助费). The overarching principle for compensating rural land loss bases on annual agricultural output. Compensation amount is calculated by the criterion of ‘average annual output value of the expropriated land for three years prior to expropriation’ (hereafter the average annual output), with multiples varying from different items. For instance, for the acquisition of cultivated land, ‘six to ten times’ the average annual output is calculated as land compensation fee. The relocation subsidy is ‘four to six times’ of such value for each person to resettle, although the amount is capped at fifteen times the average annual output per hectare. If the aggregate of the two items (land compensation fee and relocation subsidy) is inadequate to maintain the ‘original living standard’ of the expropriated population, it is required the provincial governments (namely, provinces, autonomous regions and municipalities directly under the central government) increase the relocation subsidy. However, the increased amount given shall be capped at thirty times the average annual output. For expropriation of other types of land other than cultivated land, the power of standard-setting is delegated to the provincial government who may refer to the compensatory standards for cultivated land as established. In terms of compensation for the attachments and young crops, namely, compensation for rural houses and other facilities as well as the standing crops on the rural land, the legislature delegates the power to the provincial government to enact local regulations with regard to the actual amount. Additionally, a supplementary clause provides the State Council may increase the compensatory standard under particular circumstances.

Compensation remains problematic in the case of rural land expropriation. In terms of decision-making for compensation standard, firstly, the overriding principle for compensation of the loss of land is price set by the government rather than based on market value. Despite fair market value being a common practice through eminent domain in many jurisdictions worldwide, China displays a different picture in the case of rural land expropriation. Legal prohibitions on use rights transfer lead to an underdeveloped, if not a lack of, discernible market in the rural area. Therefore, compensation for land at market-based value is simply next to impossible. Moreover, state acquisition as a sole means to converting rural land for urban uses, rather than mutual negotiation or consensus exchange, raises doubt on the fairness with respect to compensation. In the absence of a market-based price to assess the value of rural land, it relies on the government to unilaterally decide the price for compensation. In practice, local governments have much delegated power in formulating a specific standard in line with the local economic condition. It seems reasonable and flexible when taking regional disparity into account; however, it casts doubts over the fairness of the compensation, particularly when local governments assume multiple roles in the situation of rural land expropriation. Local authorities are not only decision-makers, but also stakeholders to whom substantial gains from land expropriation are accrued. The advantageous position in land

\textsuperscript{206} James W Harris, \textit{Property and justice} (Oxford University Press 1996) 95.

\textsuperscript{207} Article 117 of General Provisions of the Civil Law of the PRC puts forth that compensation should be just and reasonable. General Provisions of the Civil Law of the PRC (中华人民共和国民法总则) was promulgated by the NPC on 15 March 2017 and is effective on 1 October 2017.
management drives local authorities to lower down compensation standards in pursuit of enormous ‘expropriation surplus’.

Secondly, ‘annual agricultural output’ is the underlying criterion for compensation. Compensation calculus is based on the average annual output of the cultivated land. The LAL adopts annual output value of the land as its calculus benchmark, which is far below the market price at which the government sells the converted use rights to private land developers. Obviously, the established compensation standard for farmers’ loss of rural land fails to honor the incremental value generated from the conversion of rural land into urban land.

The compensation standard has affected farmers’ property rights in at least two aspects. In one aspect, a government-set compensation criterion renders compensation at the mercy of local government. For instance, notwithstanding the loss of land suggests the deprivation of social benefit, this does not necessarily mean the expropriated group would be conferred urban social security insurance. Though Article 42 of the 2007 Property Law stipulates the affected shall have social security insurance to guarantee their living standard, it does not provide further details on how to enforce or who shall take the responsibility. As such, it has not been a legal duty for local authority to grant the expropriated population with urban social security service. In practice, expropriation authorities at local levels selectively provide the expropriated people with social security insurance on condition that farmers agree to surrender their land. This malpractice has been widely known as ‘land in exchange for social security’ (土地换社保) in the locality, which fails to respect farmers’ will to exchange their land and therefore harms their property interests in holding land.208

Additionally, the value of the expropriated items is downgraded to some degree. Compensation for attachments and the young crops is illustrated in this point. Rural occupants may use the type of house site land (see Table One) to construct residential houses and their affiliated facilities. However, their houses and affiliated facilities are legally defined as attachments in terms of compensation.209 Though both urban and rural housing structures are recognized by Property Law as privately owned property, unlike urban houses that are valued at market price on the real estate market, rural houses are compensated as attachment whose price does not align with and falls far below the market-based price. One reason why a rural house is considered as attachment rather than commodity that can be evaluated at market-based price is that homestead land is assigned to rural occupants for free, as a kind of social welfare.210 In this sense, rural houses, like the land underneath, shall not be taken as a commodity. However, this sort of thinking is untenable because unlike land that is publicly owned, rural houses or other facilities are privately owned property. The view of rural houses as attachments to land suggests that houses are inferior to the land itself, both in terms of their value and the significance. As a matter of fact, most farmers have spent their entire savings to build their residential houses. However, in many cases, the compensation amount for a rural house based on attachments is even not enough to cover their cost of house construction.

In addition to the problematic compensation standard, the issue of distribution is also under contention. The law provides that the collective receives the land compensation fee; compensation for attachments

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208 Liu Shouying (刘守英), ‘Contending “Land in Exchange for Social Security” (质疑 “土地换社保”) China Reform (中国改革) (Beijing, 1 April 2011) 2. More empirical discussion on the unruly compensation practices is detailed in Chapter 4.

209 The LAL art 47 (2004 Amendment).

210 Shen Jianping (申建平), ‘Rethinking the Scope of Compensation for Rural Collective Land Expropriation’ (对农村集体土地征收补偿范围的反思) (2013) 2 Journal of Comparative Law (比较法研究) 100.
and young crops goes to individual land holders (in Table Two). Regarding the relocation subsidy, it shall be designated for resettlement purpose. Legally speaking, compensation may go to the collective or other units who take charge of building resettlement houses for all the affected. Compensation may also be given to individual households who choose to relocate in their own ways.\textsuperscript{211} All the affected collective members are entitled to the compensation and the compensation fee shall be properly distributed amongst them.\textsuperscript{212} In real practice, however, both land compensation fee and relocation subsidy would go directly to the collective. The aggregation of the two items accounts for the largest part of the total compensation for farmers’ loss of the land. No legal guidance is provided on the issues concerning how and when to distribute the fee.\textsuperscript{213} This leads to collective cadres’ wrongdoings, \textit{inter alia}, seeking corruption and embezzlement over the compensatory amount is rampant.\textsuperscript{214}

In comparison with the problematic rural land compensation, the 2011 Expropriation Regulation has adopted a comparatively reasonable standard for expropriation in urban areas. It establishes a market-oriented compensation standard, which shall be calculated upon ‘the market value in the day of the announcement of the expropriation decision’. More importantly, it introduces an appraisal mechanism in which a qualified and independent appraisal institution chosen by the expropriated party takes charge of value appraisal. The expropriated people are entitled to a review of the decision if they object to the appraisal. The adoption of a fair market value, which converges in an internationally common practice in land-taking, is progressive in securing a fair, reasonable, and transparent compensation mechanism. Therefore, it may effectively constrain the acquisition authority from abusing their authority and safeguard private property rights.

Table Two  Compensation package for rural land expropriation and its distribution

\begin{table}[h]
\centering
\begin{tabular}{|c|c|}
\hline
\textbf{Compensation Package} & \\
\hline
\textbf{Land Compensation fee} & Paying to the collective \\
\hline
\textbf{Resettlement remedy} & Paying to the collective or individual households \\
\hline
\textbf{Compensation for attachments and young crops} & Paying to the individual households \\
\hline
\end{tabular}
\end{table}


\textsuperscript{213} ibid.

\textsuperscript{214} Statistics reveal, from January to September 2014, corruption cases associated with rural land and expropriation accounted for up to 33.3 percent of all the cases related to rural issues. Interview with Fuliang Zhan. Zhan is Vice Director of Bureau of Anti-corruption of the Supreme People's Procuratorate of the PRC. CCTV-2. Economy 30 Minutes. See CCTV Finance Official Channel, ‘To wipe out Corruption in the Village: A Village Cadres Embezzled More than Ten Million in Seven Years’ (铲除村庄里的腐败: 村官七年贪污七千万) (Economy 30 Minutes 3 November 2014)
3.4.3 Procedural requirements for expropriation and compensation

Overall, the procedural requirements to regulate rural land acquisition are prescribed in the LAL and Regulations on the Implementation of the Land Administration Law (RILAL). It should be pointed out the requirements are too general to regulate the whole process, and eventually local regulations must specify the details on enforcement to fit local conditions. The procedural requirements consist of: (1) Decision-making on expropriation over rural land; (2) Notifying the affected of the expropriation decision and registering the property to be expropriated; (3) Publishing the scheme on compensation and relocation and dispute resolution.\(^{215}\) On closer scrutiny, the respective procedure is revealing.

To illustrate this, hierarchical approvals are required to initiate expropriation over rural land. The chief purpose is to tighten control of rural land use. The review and approval authority stays at the level of central and provincial governments. The authority is divided according to the type and the scope of land to be expropriated. To protect the shrinking cultivated land and ensure food self-sufficiency, expropriation of basic farmland, regardless of its scope, shall be subject to the approval of the State Council. For cultivated land not exceeding 35 hectares and other types of land less than 70 hectares, expropriation shall be authorized by the provincial authority.\(^{216}\) When decision-making in this process results in land conversion from rural land to urban land, which profoundly affects ownership and land use rights, the procedure excludes public participation or outside oversight from governmental decision-making. As such, decision-making over the expropriation of rural land appears as an internal process within the administrative hierarchy. Likewise, as specified in the legal documents, the prefectural and county government shall notify the affected of the detailed plan on expropriation only after expropriation is approved. This chiefly specifies the acreage, location and new usage of the land to be expropriated, legal and policy documents on compensation and relocation, and a timeline for expropriation and compensation. Moreover, the expropriated shall get their land certificates registered within a designated time period for the sake of receiving the compensation.\(^{217}\) The notification here, rather than any sort of oversight or supervision, is nothing more than a formalistic supplement to the decision-making, which aims to achieve the purpose of getting the affected party registered.

Likewise, before the enforcement of expropriation, a specific local scheme on how to compensate and relocate shall be proposed and published in the affected area for public consultation.\(^{218}\) It is stipulated that the land administration department, in coordination with relevant departments, shall propose a scheme on compensation and relocation. Public opinion is needed to be consulted upon before making a final decision on this scheme. Notwithstanding that it remains questionable whether public opinions can effectively be solicited and adopted given a lack of guidance on implementation; the public consultation is confined to the compensation calculation and relocation arrangements. To phrase it different, the affected are not likely to challenge decision-making on the disposal of their land. Therefore, they have little choice but to negotiate with the government about the price of the expropriation.\(^{219}\) Rarely is it that even if public opinion may be adopted in specific cases, or the affected people could approach the local government with their complaints about the compensation and relocation scheme, it does not prevent the

\(^{216}\) The LAL art 45 (2004 Amendment).
\(^{217}\) The LAL art 46 (2004 Amendment); The RILAL art 25 (2011 Amendment).
\(^{218}\) The LAL art 48 (1988).
enforcement of demolition and eviction as is prescribed in the RILAL.\textsuperscript{220} The procedural curtailments on the rights of the affected group profoundly enlarge power asymmetry between government and the expropriated population. It is noteworthy that the power asymmetry is further reinforced in the circumstance where local government applies for a judicial enforcement when an agreement with the expropriated people is unattainable.\textsuperscript{221} Local courts tend to defer to the local governments in their decision-making on compulsory land taking and issue the judicial enforcement. This somehow indulges local authorities in abusing their power, rather than the other way round.\textsuperscript{222}

To sum up, the procedural requirements for rural land expropriation produce a unilateral administrative decision in land-taking, excluding “legislative scrutiny, judicial check, or public input”.\textsuperscript{223} The procedural irregularity has profound implications, as observers comment, “expropriation decision is made by the government, compensatory amount is formulated by the government, and dispute resolution also relies on government discretion. Those are sources of social conflicts and contradictions.”\textsuperscript{224} At this point, the procedural requirements serve less the security of property rights but more the governments’ interests.

Comparatively, a more transparent procedure was embodied by the 2011 Expropriation Regulation to regulate government’s acquisition of urban houses. It adopts progressive measures in legitimizing governmental acts in land-taking. To begin with, the regulation states that public participation is obliged. An expropriation plan initiated by the acquisition authority shall be subject to cross-government examination and verification. A period of no less than 30 days is required to publish the plan for public consultation. Public input becomes effective as local government must incorporate public opinions into the revised plan. Moreover, in case more than half of the affected do not agree with the plan, a public hearing is obligatory and local government shall modify the plan based on the feedback from the hearing. Moreover, the affected may apply for administrative review or institute a lawsuit to appeal the plan. In addition, before commencing the enforcement, adequate compensation shall be deposited by the local government in a specific bank account of the affected.

\textsuperscript{220} The RILAL art 25 (3) (1998).
\textsuperscript{221} The RILAL art 45 (2011 Amendment).
\textsuperscript{222} More empirical details are discussed in Chapter 6.
\textsuperscript{223} Peng, ‘Chinese Rural Land Expropriation Law: Problems, Prescriptions and Obstacles’ (n 50) 181.
\textsuperscript{224} Zheng Zhenyuan (郑振源), ‘Reforming the Land Expropriation System’ (改革征地制度) Southern Weekend (南方周末) (Guangzhou, 11 July 2013) 31. Zheng was then director of the law department of the Ministry of Land and Resources.
### Table Three  An outline of distinctive expropriation standards for urban and rural land in China

<table>
<thead>
<tr>
<th>Public interest requirement</th>
<th>Urban house expropriation 226</th>
<th>Rural land expropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 8 enumerates different types of public interest</td>
<td>Compensation for expropriating rural collective land and its distribution are provided in the LAL and the RILAL. Article 47 of the LAL provides three parts of compensation: (1) Land compensation fee; (2) A resettlement subsidy; (3) Compensation for young crops and attachments; For cultivated land expropriation, Item (1) is six to ten times, Item (2) is four to six times the average annual output value for the land for the three years prior to the expropriation, and compensation standard for Item (3) is determined by provincial government in line with local conditions. Compensation for Item (2) shall not exceed 15 times the annual average output value per hectare. If the sum of Item (1) and (2) are insufficient to maintain the affected</td>
<td>No clear definition</td>
</tr>
<tr>
<td>National defense and foreign affairs;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The construction of energy, transportation, water and other infrastructures initiated by the government;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public utilities as science and technology, education, culture, health, sports, environment and resource protection, disaster prevention and mitigation, protection of cultural relics, social welfare or municipal utilities;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The construction of government-subsidized (social welfare) housing;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Urban regeneration;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any other public interest as prescribed by a law or administrative regulation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 19 establishes a market-value-based mechanism of the expropriation decision</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The compensation shall not be lower than the market value of similar housing on the day of announcement of the expropriation decision;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>An appraisal should be conducted by a qualified and independent real estate appraisal institution chosen by the affected. A party has the right to object to the appraisal value by applying for a review of the decision;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A further and final appeal on the appraisal value may be lodged at the real estate appraisal expert committee.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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225 The 2011 Expropriation Regulation governs urban house expropriation on urban land. Procedural rules regulating rural land expropriation are primarily provided by the LAL and the RILAL.

226 For a thorough analysis of the 2011 Expropriation Regulation as well as its improvements compared to the former regulation, see Chen, ‘Legal and Institutional Analysis of Land Expropriation in China’ (n 3).
The subsidy may be increased, but shall be capped thirty times of the annual average output value.

**Article 26 of the RILAL provides the distribution of compensation**

Land compensation fee goes to the rural collective organization; compensation for attachments and young crops belongs to the landholders. Relocation subsidy shall be designated for resettling the expropriated, embezzlement is prohibited. Relocation subsidy shall go to the collective economic organization or other units who take charge of relocating the expropriated. The collective economic organization administers and manages the relocation subsidy. The subsidy may go to the expropriated who relocate in their own part.

<table>
<thead>
<tr>
<th>Procedural requirements</th>
<th>Procedure is detailed in Chapter 2;</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Article 10</strong></td>
<td>Housing expropriation authority drafts a compensation plan; The prefectural or county government organizes relevant local authorities for deliberation, and publishes the plan for a public consultation for no less than 30 days.</td>
</tr>
<tr>
<td><strong>Article 11</strong></td>
<td>The plan is revised to reflect public opinion; If more than half of the affected object to the plan, a public hearing shall be organized and the opinions expressed in the hearing shall be considered for revising the plan;</td>
</tr>
<tr>
<td><strong>Article 12</strong></td>
<td>To conduct risk assessment of social stability</td>
</tr>
<tr>
<td><strong>Article 13</strong></td>
<td>To publish the expropriation decision;</td>
</tr>
<tr>
<td><strong>Article 14</strong></td>
<td>To appeal the decision, the expropriated may choose to either apply for administrative review or institute a lawsuit.</td>
</tr>
<tr>
<td><strong>Article 15</strong></td>
<td>in-house measurement of the expropriated space, and publish the report</td>
</tr>
<tr>
<td><strong>Article 26</strong></td>
<td>To reach an agreement between the expropriator and the expropriated. Local government may make compensation decision and put in on notice. If the expropriated object to the decision, she could either apply for administrative review or file a lawsuit against the local government;</td>
</tr>
<tr>
<td><strong>Article 27</strong></td>
<td>The exercise of expropriation power shall be subject to ‘compensation first, demolition later.’ Should compensation payment be effected, the expropriated shall vacate at the designated time.</td>
</tr>
<tr>
<td><strong>Article 28</strong></td>
<td>Should the expropriated not apply for administrative review or institute a lawsuit, nor move out at the specified time, the local government may apply for judicial enforcement of the decision.</td>
</tr>
</tbody>
</table>

| Procedural requirements in the LAL and the RILAL: |
| **Article 44 of the LAL** | Approval for arable land conversion; |
| **Article 45 of the LAL** | The central/ provincial governments authorize rural collective land expropriation; |
| **Article 46 of the LAL and Article 25 of the RILAL** | Local governments publish the expropriation plan; |
| | Landholders get land certificate registered for compensation; |
| **Article 25 of the RILAL** | The affected may apply to the local governments for negotiation if they oppose to the compensation and relocation scheme, or apply to the government who gives authorization to the scheme for arbitration if negotiation fails. The objection does not stay the enforcement of expropriation. |
| **Article 48 of the LAL and Article 25 of the RILAL** | Local governments publish the scheme on compensation and relocation to collect public opinion from the affected; |
| **Article 45 of the RILAL** | For unlawful noncompliance that obstructs land expropriation, local authority may compel the affected to transfer land, or to apply for a judicial enforcement if the affected refuses the order. |
3.5 Conclusion

Scrutiny into dual land ownership and vast differences in the practice of urban and rural land expropriation demonstrates that rural land expropriation becomes a pragmatic and expedient tool for local governments to achieve their goals of urban expansion and capital accumulation. Rural land expropriation is frequently evoked by the local authorities to boost urban development and economic prosperity. The property relationships between state and rural community embedded in the operation of rural land expropriation differ fundamentally from those in free market economies.

On the surface, and similar to taking clauses in many other jurisdictions, the Chinese constitution mandates that the state may expropriate property for public interest with compensation. Nevertheless, the requirements differ in both the content and the form. Both terms are vaguely defined which creates much room for local authorities to interpret through their own real practice. Therefore, the implications of the requirements for the exercise of government power and its relation with individual property rights are substantially different. In private property systems, such as the United States, the power of the state to take private property “must be limited in the ends that will be served and in the means chosen to serve them”. Specifically, the normative requirement of just compensation “assures that the state will give to each person a fair equivalent of what has been taken”, and public use requirement “demands the gain generated by the action of coercive power is divided among individuals in accordance with the size of their original contributions. Each gain from public action therefore is uniquely assigned to some individual, so that none is left to the state, transcending its citizens.” By comparison, the eminent domain clause in China is stipulated and interpreted in different manners. The first and remarkable point is that government compensates for the loss of land according to output value of the land, which deviates from market price reflecting how a willing buyer pays a willing seller and therefore has significantly underestimated the value of said land. Moreover, huge gains generated from rural land conversion are accrued to urban governments who prioritize to invest into urban infrastructural construction to fuel urban sprawl. As such, rural land expropriation, which by nature is reassignment of property rights moves beyond the distribution rules according to the size of individual’s original contributions, and therefore deprives the original owner of compensation for all or part of the value increase of what was once their land.

In addition, while the process of expropriation has been significantly standardized, rural land expropriation remains under-regulated. The vast differences between expropriation in urban and rural area presented in this chapter reflect unequal protection of urban and rural property rights in land. Therefore, a perception that land expropriation is simply an all-inclusive matter, without clarifying discriminative regulations on urban and rural land expropriation, may miss the crux of why property rights in rural land have been weakly protected. Correspondingly, the proposed wholesale solutions that expropriation related problems boil down to the standardization of the expropriation process, rather than questioning the dual land system, may not be enough to curb rampant land seizures in the countryside.

In a nutshell, existing legal and institutional arrangements have weakened property rights in rural land. Rural property rights are susceptible to, if not entirely exposed to, governmental intervention in the Chinese rural setting of land taking. Given a conspicuous power asymmetry between state and society, it calls into question as to how rural property rights will be practiced in the countryside where rural

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228 ibid 5.
community is defined as self-governing organization. When rural residents are generally portrayed as less aware of what property rights they have and how they may exercise those rights, one may draw a quick conclusion that they are vulnerable or powerless vis-a-vis the powerful expropriation authority. However, the central state has in recent years put much emphasis on safeguarding farmers’ property interests while simultaneously condemning local officials who defy the center state and mistreat farmers. Increasingly farmers have a strong sense to defend their property interests from being violated by local officials. Against this backdrop, how do the affected farmers interact with the powerful government to negotiate over the exchange of property rights? How do they make claims to land against the expropriation authority? How do they defend their property rights in the case of governmental intervention? Those are the main concerns for empirical analysis in the next three chapters.
Chapter 4 Expropriation Trap: Rights as Interests

4.1 Introduction

As previously noted, the twin requirements of public interest and compensation for rural land expropriation are vaguely defined, thus leaving much discretion for the local authorities to operate. In the absence of legislative clarification as well as the lack of a consistent expropriation law, it remains highly uncertain and unpredictable to what extent local governments will protect and promote individual property interest in their actual operation of land-taking. More specifically, how the government would compensate for the loss of land and distribute the gains to individual landholders. We have demonstrated how the procedural and substantive stipulations for rural land expropriation contribute to weakening rural property rights in the previous chapter. Drawing on empirical analysis, this chapter focuses on interactive property relationships between government and rural residents embedded in negotiation and bargaining over the exchange of land. Furthermore, this chapter seeks to unpack how property rights are compensated and how the increased value generated by rural land conversion is distributed.229

This chapter is divided into eight sections. After posing the problems in this section, Section 2 describes research method for addressing the problems at issue. Sections 3 to 6 display how compensation and loss on property rights are bargained, negotiated, and compensated throughout the expropriation process. Section 3 starts from the initial stage, describing how local government formulates compensation and relocation schemes, and furthermore how villagers deal with their own balance sheet of compensation and loss for the land taking. Section 4 demonstrates how both sides make competing claims to property interest, particularly the large increase in land value. Section 5 presents what bargaining chips both sides have developed and their respective strategies for negotiation. The consensus-seeking stage in which how both sides accept economic concessions to reach agreement is presented in Section 6. Section 7 develops an analytic model to analyze how a Chinese notion of rights is conceived as and transformed into a utilitarian understanding of pragmatic material interest. Section 8 concludes with the practical implications of a transformative understanding of property rights as interests on the operation of rural land expropriation. In particular, this chapter focuses on the fulfillment of requirements of compensation and public interest.

4.2 Data and Method

In Chapter 1, an overview of the methodology used to collect data was presented. Qualitative data sets were primarily generated from in-depth interviews, participant observation, and focus group discussions. Additionally, information was also generated from documentary sources, including laws and regulations. Also, local policies publically available and written files such as joint-letter provided by the interviewed farmers were gathered and analyzed.

229 One clarification must be made. Though property relations are pinpointed on the government and farmers, the property relationships in rural land expropriation are more complex and confusing. In practice, the government may interact with multiple actors, including the collective as nominal owner and farmers as landholders. Nevertheless, as collective leadership (mostly, the rural collective committee) would succumb to, or become absorbed by local authority, more often than not, the bargain and negotiation takes place between the government and individual farming households. A more detailed analysis of the roles of different stakeholders in rural land expropriation is elaborated on in Chapter 5.
A comprehensive inductive approach was utilized to analyze the qualitative data. As earlier addressed in Chapter 1, existing theory or literature on how rural property rights are practiced in Chinese rural setting of land expropriation is limited. I therefore immersed myself into the text data to allow the codes and categories as well as their definition to flow from the data. Insofar as the targeted question was to address how the local authority and the expropriated village members negotiated and bargained over the exchange of the land, an initial coding scheme was generated from the two relevant parties. This included a set of phases (from the beginning of the negotiation, then making competing claims, to reaching a consensus), and their respective strategies. Codes were then organized and grouped into categories based on how the two relevant parties employed what strategies to negotiate over the exchange of land at different phases. Without using a preconceived theoretical perspective, I derived an analytic model from my content analysis. Knowledge was primarily generated from the respondents’ perspectives and grounded in the actual data. The coding book has been presented as an appendix (Appendix E).

### 4.3 When Expropriation Started

#### 4.3.1 Official scheme of compensation and relocation

*Compensation scheme in S City* (in Table One)

Land-taking is accompanied by the displacement and resettlement of the expropriated population. Chinese expropriation regulations require the government to effect payment of compensation and to relocate the now land-loss farmers. The requirements are provided in Regulation on Expropriation Compensation and Resettlement of S City (Hereafter as Expropriation Regulation of S City), a local regulation governing rural land expropriation in N Province promulgated in 2008.\(^{230}\) The regulation specifies the compensation scheme stipulated in the LAL with further implementation rules. As stated in Article 47 of the 2004 LAL, compensation for the taking of rural land is composed by three items: land compensation fee, relocation subsidy and compensation for attachments and young crops. The loss of arable land shall be compensated based on annual agricultural output value of the land, with *multiples* varying from the three different items (i.e. six to ten times for land compensation fee, four to six times for relocation subsidy). For other types of rural land other than arable land, the provincial authorities are authorized to specify compensation standard by reference to the standard for arable land stipulated in the 2004 LAL. The principle is that compensation shall be sufficient to maintain the original living standard of the expropriated population. While the LAL does provide a relatively specific compensation calculus for the first two items (land compensation fee and relocation subsidy) it leaves compensation for attachments and young crops at the discretion of local authorities to fit local economic conditions.

Measures for Implementation of Regulations on Expropriation Compensation and Resettlement of S City (Hereafter as Implementation Measures of S City) set forth compensation for attachments and young crops.\(^{231}\) As provided, compensation for the removal of young crops shall also be based on the annual output value of the land. Compensation for attachments such as rural houses and other auxiliary facilities is constituted by compensation for house and auxiliary facilities and housing allowance. Compensation for house and auxiliary facilities is valued according to ‘the documented area’ (合法面积) of the house,

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building structure (房屋结构) such as reinforced concrete structure or structure of bricks and timber, interior decoration, and other related factors. Housing allowance is effected according to both the documented area and the family size, namely, the population with rural hukou per household (户籍人数).

Table One Compensation scheme for rural land expropriation in S City

<table>
<thead>
<tr>
<th>No.</th>
<th>Compensation Item</th>
<th>Calculation formula(^{232})</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Land compensation fee</td>
<td>Land compensation fee = expropriated area (mu) * annual agricultural output * multiplier (6-10 times)</td>
</tr>
<tr>
<td>2</td>
<td>Relocation subsidy</td>
<td>Relocation subsidy = population with rural hukou per household * annual agricultural output * multiplier (4-6 times)</td>
</tr>
<tr>
<td>3</td>
<td>Compensation for attachments and young crops</td>
<td>Compensation for attachments = (cost of housing structure + decoration + housing allowance) * documented area (m²)</td>
</tr>
<tr>
<td></td>
<td>Compensation for young crops</td>
<td>Compensation for young crops = expropriated area (mu) * annual agricultural output</td>
</tr>
</tbody>
</table>

Remarks: 1) Item 2 is capped at 15 times of the annual agricultural output value;
2) The aggregate of Item 1 and Item 2 is capped at 30 times to meet a “no worse-off” living standard;
3) According to Implementation Measures of S City, housing allowance in Item 3 also includes a one-off cash payment per capita.
4) One mu is equal to one sixth of an acre.

Relocation scheme

Expropriation Regulation of S City stipulates two modes of relocation. Monetized relocation (货币安置), which is literally a one-off compensation in cash for relocation; Centralized relocation (集中安置) which is an in-kind compensation holding the collective accountable to build the resettlement houses (usually buildings of high-rise apartment houses) in a reallocated parcel of rural land.\(^{233}\) The two modes are applied according to whether land is taken in part or as a whole. For those whose land and house are entirely taken a one-off compensation in cash is applied and the relocated are entitled to urban hukou, which grants the landless access to urban employment training and the social security network.\(^{234}\) Comparatively, compensation in kind is mostly applied in circumstances where land is partly taken or, arguably more importantly, where land is still suitable for agricultural production despite the construction

\(^{232}\) The calculation formula is formulated in accordance with Article 47 of the LAL (2004 amendment) and the Implementation Measures of S City.

\(^{233}\) Relocation modes are provided in Chapter 4 of Expropriation Regulation of S City.

\(^{234}\) The Expropriation Regulation of S City art 29 (2008).
of expropriation projects. Under the mode of compensation in kind, another tract of rural land in remote areas is reallocated to allow the collective to build resettlement houses and enable the displaced farmers to resume their subsistence farming. Insomuch as the expropriated farmers are reallocated rural land and can retain food production land they are generally not seen as land-losing farmers and, are not entitled to urban hukou.

Comparing to the reallocation of expropriated populations with new tracts of rural land at relocation site, local governments in practice would rather compensate with a one-off cash payment. As the hunger for rural land in peri-urban areas has been incessant, the reallocated rural land is subject to expropriation in the near future. When land value increases the expropriated group will have higher expectations of the compensation amount, which would subsequently increase the transaction cost for local government to acquire rural land. Therefore, local government unsparingly chooses to bypass the policy to eschew the in-kind compensation but impose in-cash compensation. A case in Village D was illustrative in this point.

Villagers in Village D were informed of a centralized relocation scheme publicized by the city government early in 2009. In the initial expropriation plan, the city government promised to reallocate a parcel of land (109mu) for D villagers’ relocation. The tract of land was adjacent to the site of the expropriation project, which was officially planned as a provincial logistics park. According to the local regulation, under the centralized relocation mode, the collective economic organization within the rural community would be responsible for the construction of the resettlement houses after local government effected the payment. Each household would be compensated in-kind in accordance to the family size and the rural hukou. However, this regulation was not properly implemented. Prior to the construction of the expropriation project in 2012, the centralized relocation mode was changed into in-cash compensation owing to a mutual agreement between the township government and the village authority without villagers’ consent.\(^{235}\) There were two reasons for the change. One reason was that government could make enormous gains by selling out the valuable land which was previously relocated to villagers in proximity to the imminent prosperous logistics park project. The second reason was because of the urban integral planning of S City. One official explained:

It is an inevitable trend for an urban expansion to the surroundings in order to upgrade S City. To promote urban and rural integration, it is not likely for the local state to leave rural land in these [peri-urban] areas only for farming. More importantly, under the current trend of urbanization, it is foreseeable they [the expropriated] would be subject to expropriation for the second time if we give them rural land to construct resettlement houses now.\(^{236}\)

### 4.3.2 Farmers’ balance sheet of compensation and loss

Before those villagers in peri-urban areas were asked to vacate their land, they earned their living in a variety of ways. Firstly, some households sublet their land use right to outsiders for growing cash crops. The sublease contract was renewed every three years or five years, and the rental went up for each renewal due to the rising price of the land in the rapidly urbanized place.\(^{237}\) Secondly, most villagers built up two-story or three-story rural house, partly for their own accommodation and partly for rental to migrants who worked in adjacent towns. In addition, some households built a second house by occupying another housing unit, even though it was not allowed by the law. As will be further described in the

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\(^{235}\) Interview with three activists in collective action in Village D (14 July 2015).

\(^{236}\) Interview with a female official of UCIG of S City (4 August 2015).

\(^{237}\) Interview with a middle-aged female villager in Village D, whose house was subject to expropriation (22 July 2015).
following (subsection of ‘planting houses’ in Section 4.5.2) villagers had strong incentives to do so. Not only because they could rent out the house to private companies who were looking for cheap warehouses in their surroundings before the completion of the project, but also, they could count on governments’ upcoming taking of the newly-built house to maximize compensation. Thirdly, without leasing out their farmland, some villagers were planting vegetables (mostly, eggplants, cucumbers, or capsicums) twice or three times a year. Their income doubled and was higher than that of rice-growing and the lease of the land, owing to the prevalence of the agricultural technology of greenhouse vegetable growing. Fourthly, fewer villagers (especially young generations) were willing to engage in farming meant that, a combination of elder people engaged with subsistence farming and young people working as wage laborer’s in adjacent area. Migrant workers in distant cities were more common in the urban fringe. In sum, the annual income varied from household to household. Owing to various opportunities to participate in a more vibrant property market that was near hubs of major centers of economic activity, villagers were generally better off than their peers in remote rural regions.

The compensation cleavage

Xu, among many others in D village, was reluctant to give up her land and house for destruction. Her house was rebuilt near the street market in D village in 2009, with the old one demolished to make room for the road being built. It was a three-story house with an interior area of over 400 square meters. The first floor was a five-bay store fronts for renting, the second floor was renovated into a karaoke bar, and the third floor accommodated the family of five. Each year, Xu could attain an income of approximately 300,000 yuan, including the rental for the five-bay storefronts with each used for retail activity and business income from the karaoke bar. The income was sufficient to cover the costs of living of the entire family, including medical expense for her husband who had a serious car accident three years ago, her son’s tuition for high school, and the expense for supporting her parents in law who were both in their seventies. When the local expropriation authority visited her, they listed a compensation package amounting to 1,800,000 yuan in exchange for the vacation of her house and her land. It was a one-off compensation, with an amount of 60,000 yuan to compensate for the loss of storefronts on the first floor. Xu and her family disagreed with the compensation package. The flash point was that local officials declined her claim to compensate for the five-bay storefronts and the karaoke bar. Instead, they only agreed to compensate for two bays of these storefronts, with a price of 30,000 yuan for each bay. The grounds were neither did Xu have a complete set of business license for all the storefronts on the first floor, with which Xu could officially run her rental business, nor had the karaoke bar been officially registered. In the local officials’ view, they had already done Xu a big favor since they did not give her penalty for her previous unlawful business. How was it possible to compensate for these businesses?

The so-called illegal business that Xu and many other villagers were engaged with was not a novel phenomenon in the clear majority of China’s rural and peri-urban areas. Those businesses, ranging from retail activities and private house renting as warehouse, to entertainments (e.g. karaoke) were commonly practiced. They had either partially registered or completely unregistered and run beyond the government’s formal regulation that mainly took place in urban regions. Those activities had long been a constitutive part of rural society and their existence was recognized by both rural residents and even local state actors. Ironically, the business did not become a prominent problem until the launch of expropriation and specifically when the compensation issue came to the fore.

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238 ibid.
It was extremely difficult for Xu to accept the symbolic compensation for the storefront, nor a denial of compensation for her substantial investments into the karaoke bar covering expenses for decoration, karaoke devices, and other items. She questioned the huge gap between the tendered compensation and her cost. Xu claimed, she would have to spend at least five times (150,000 yuan) more to rent a one-bay storefront in the township if she was to restart her business after relocation. Therefore, she deemed it extremely unfair that local officials ignored the ‘added-value’ to the house since the family had invested almost all the savings into it. The calculus in fact made no difference between her house and many other rural houses in which much less was invested. In Xu’s view, the undervalued compensation due to the denial of the investment would bring a devastating blow to the family. She complained:

The whole family stakes the livelihood on the house. We cannot live without the house. Had it not been for the expropriation, my sick husband’s medical expense and my son’s college education fee would be guaranteed. I did not have to worry about our life. Now I can only afford two small apartments with this sum of compensation, plus a cheap car, at most. It is impossible for us to restart a new business. My livelihood is destroyed. \(^{239}\)

Xu’s family might be an extreme case. Nevertheless, many of her rural peers had benefited from their multiple choices of land use before the initiation of expropriation, as was addressed earlier. Most villagers in D Village complained about the low level of compensation that was based on agricultural production, with its value determined by the government and not the market. The tendered compensation was considered too low to maintain their original living standard.

Even the vegetable-growing families, who were not running the so-called ‘illegal’ businesses, deemed the compensation hard to accept. \(^{240}\) Dong was a vegetable farmer in his 50s. He grew greenhouse vegetable twice per year, which was common practice in D village. He could earn approximately 8-10,000 yuan by growing vegetables per mu per year. The land compensation fee tendered by the local expropriation authority was 52,600 yuan per mu for the loss of the arable land. Dong might receive 47,340 yuan since 5,260 yuan (10 percent of the land compensation fee) would have to be deducted as his own social security fund. As it turned out, the eventual compensation fee per mu Dong could get was equivalent to a two-year living cost for a rural household surviving in the urban fringe. The compensation package in this instance could hardly maintain the expropriated farmers’ original living standard.

### 4.4 Competing Claims

Thus far, the increasing value of rural land was a focal point whereby both government and farmers were competing to acquire a higher share. As addressed in Chapter 2, owing to the vaguely defined collective landownership, multiple actors with their vested interests in land make competing claims to the value increase generated by rural land conversion. The foregoing illustration revealed there was a discrepancy between the government-tendered compensation price and the claimed loss. This context raised two questions. First, what claims would local government and farmers make on rural land? Second, how would they justify the claims to interests in land?

#### 4.4.1 Local government’s claims

\(^{239}\) ibid.

\(^{240}\) Interview with an elder male villager, who just experienced demolition but not yet relocated as of interview (8 July 2015)
Denial of farmers’ entitlements

The increased benefits villagers received (part of them generated by their entrepreneurial skills) from the land in the urban fringe did, however, impose burdens on the local governments to compensate them. Local government’s incentives to accumulate more gains from land conversion clashed with villagers’ demands for higher compensation prices. In fact, local government was greatly motivated in making enormous gains from expropriating more rural land. One official even blatantly admitted, “If land expropriation is unprofitable, we need not to engage in.”

Therefore, both local government and villagers were claiming for a larger share in value increase. The conflict of interests forced the local government to justify its own claim and attempt to delegitimize or deny farmers’ rights and entitlements to rural land, particularly their claim to benefit from the increased value.

To inhibit farmers’ expectation on obtaining higher compensation for their loss, local state actors first declined their benefits from non-agricultural usage, and then discursively reframed what shall be farmers’ due. One official explained at length:

Although their practices have not been strictly prohibited along the way, the expropriated lack confidence in claiming the compensation for their rental or other income after we warn them of the illegality of their behaviors. We would tell them, previously, it was your personal use of land and we decide not to confiscate the profit you earned, now, because your land has to be vacated, we need to trace back to the original use of your land and house. By far only urban land is allowed for nonagricultural usage such as building commercial or residential houses, and urban users having their land documented must pay tax to the government. Collective land is yet to be documented for neither non-agricultural use, nor farmers pay tax or whatsoever, naturally we do not consider this sort of income for compensation.

Although it was originally a ‘personal issue’ for farmers to invest their labor or money into the land or houses to profit, in the eyes of local officials, the activities would not be recognized since neither were officially approved nor placed under the government’s governance. Farmers made their efforts in gaining income from a more efficient use of rural land. Without attempting to adopt proper measures to guiding or regulating their activities, local authorities had simply rejected their individual efforts and investments into the land.

Admittedly, local state actors did so mainly because the established legal rules lent legitimacy to them. The LAL provided annual output value as a benchmark to compensate the loss of land. The rules, however, ran counter to the market-oriented trend in which land property rights had developed. As analyzed in Chapter 2, the state intended to promote the transfer of rural land and economy of scale in order to realize agricultural modernization. The state encouraged local authorities to initiate experimental projects to integrate the urban and rural construction land market. This might be a first step to dismantle local government’s monopoly on rural land supply in the land market. Use rights were divided and more property rights were created, with an attempt to encourage rural land use in a market efficient way. Ironically, the current compensation rules governing rural land expropriation went against the market-led strategy to develop rural economy. Whilst a market-led strategy was employed to enhance market efficiency of land use and maximize agricultural productivity in the rural area, rural land expropriation

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241 Interview with a female official from District-level Demolition and Relocation Office (1 July 2015).
242 Interview with a male official, who was a manager in Urban Construction and Investment Group Company (UCIG) S City (4 August 2015).
followed a government-managed mode premised on rural land conversion. This conversion itself was monopolized by government to boost urban development and economic prosperity.

That being so, while local government declined farmers’ rights and entitlements, their aim was to defend their larger share in value increase at the cost of farmers. This could explain why local governments firstly rejected farmers’ demands by claiming compensation should be dated back to the original use of land, and then reframed farmers’ due compensation in a way that the compensation for the loss shall be based on agricultural output value of the land.

*In the name of development*

The denial of farmers’ claim to land value increase, of course, was not persuasive enough to remove rural landholders from their land. Moral claims were provided as supplement to justify government land taking. The moral claim was grounded on the premise of governmental action, which was pronounced to generate greater social and economic development and would eventually benefit the whole society. Urbanization was now deemed as the most promising route to development. As aforesaid in Chapter 1, urbanization became the top priority for the state to achieve its multiple goals, including the growth of GDP, the expansion of domestic demand and the increase of employment rate. Alongside these, the enhancement of developments in many other social areas was a top state priority.

The axiom of pro-development land expropriation was endorsed by local implementers at the grass-root level. In villages where land expropriation was underway, an array of red banners was posted along the main street to stress the correlation between land expropriation and development. To name several red banners, they read: “No expropriation, no development” (没有拆迁, 就没有发展); “More development, less difficulty; less development, more difficulty; no development, even more difficult” (大发展, 小困难; 小发展, 大困难; 不发展, 不困难); “Without demolition, it is no more than land; after demolition, land earns money” (不拆迁是地, 拆迁后地生财).243 In the official rhetoric, expropriation and demolition were unavoidable and they were prerequisites for more wealth and further development.

Nevertheless, under a land-centered mode, development was intimately linked with displacement and relocation of people, which inevitably demanded their collective sacrifices for greater long-term developments. The sacrifice was also incorporated into the official rhetoric. As more banners read, “Understanding expropriation, responding to expropriation; supporting expropriation; participating in expropriation” (理解拆迁, 响应拆迁, 支持拆迁, 参与拆迁); “To sacrifice individual interest for public interest, urban construction depends on everyone” (舍小家为大家 城市建设靠大家).244 When state-governed acquisition was essentially an imposition of social burden on the expropriated people, the propaganda was frequently used. Not only was this used to invite farmers’ compliance rather than resistance, but also to ask for their sacrifice rather than let them make claims.

In circumstances where propaganda demanding individual sacrifice was less workable, the ideology of urbanism was promoted to portray land expropriation as a more promising undertaking. Land expropriation was described to bring on a more civilized urban life and entitlements to urban services such as education, health care, and a pension. On persuading villagers to give up the land, local officials would start by painting a bright future of an urban livelihood which, they believed, would be appealing to the expropriated group. An official shared openly her persuasion skill:

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243 Photo taken by the author in the field.
244 ibid.
First and foremost, we have to impress farmers with a bright future and a better life style. We would tell them: do you want to resume your life in the noisy, dirty, and disorderly countryside, or choose to live in a bright and spacious apartment in a city where you can conveniently take a lift to go up and down, reach any place simply by walking a few steps, and buy everything you need. You will have all modern services around, such as supermarket, bank, school, hospital. You may also afford a car and even start your own business with the compensation, if you like. Moreover, your children would access good schools and your parents would enjoy better health care service in well-equipped hospitals.\footnote{Interview with a female official (n13) (1 July 2015).}

Here, development discourse was constructed to primarily problematize, downgrade, and even disavow farmers’ way of life such that farmers ‘began to think of themselves as inferior, undeveloped, and ignorant and to doubt the value of their own culture, deciding instead to...[fulfill] the promises that development seemed to be making’.\footnote{Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 2011) 52-53.} In this way, the discourse of development shifted farmer’s attention to urbanization that was intrinsically linked with displacement and relocation from the fact that it would be economic exploitation imposing social burden or inflicting losses on them, to a direction that it was a simply a rational choice to the extent the relinquishment of land was an absolute necessity and a basic premise to devote to a more materialistic and modernized way of life.

### 4.4.2 Farmers’ claims on subsistence and development

*The claim of right to subsistence*

Land was not merely a means of production, but also an integral part of rural social welfare that acted a role in providing basic social security for numerous farmers. In governmental operations of rural land expropriation, a package of compensation and relocation was offered to exchange with farmer for their land. For farmers, however, this sort of exchange oversimplified the situation. Instead, in their account, the compulsory exchange meant to “sell all the properties and belongings and then go into the cities as the proletariat”.\footnote{Focus group discussion (23 July 2015).} Farmers were subject to loss of land and houses, and they had no choice but to ‘move upstairs’ (被上楼, literally, moving to the newly-constructed high-rise building in the township or city area).

At first glance, the one-off compensation in cash with the grant of urban *hukou* enabled farmers to attain urban residence and urban citizenship, which might assure them of “short-term and transitory security”. However, long-term livelihood was left as a profoundly insecure issue for farmers.\footnote{ibid.} Given many landless farmers’ disadvantageous position in the competitive urban job market, compared to their urban counterparts, it remained a highly uncertain issue whether they could get a job to survive in the city environment. Most villagers expressed their concerns over how to ‘address the subsistence problem’ (解决生存问题) after relocation.\footnote{Interview with a male villager in Village D, whose parents-in-law’s house was subject to expropriation (25 June 2015).}

On the surface, we are paid a large amount of money. Outsiders may think we make a great fortune overnight. However, this is not the case. We lose everything and then have to start from scratch.
Now everything is almost free for us, like food, water. In contrast, everything is too costly in the city, even the property management fee is a big burden for us. We will have no money left after moving into the city. It only takes us 3 to 5 years to return to poverty.\textsuperscript{250}

It was undoubtedly true that it was crucial for the relocated population to make their living in city areas and eventually get integrated into an urban life. However, one big challenge facing them was how to survive as a real urbanite. Urban citizenship merely provided them with basic urban social security services, which was far from adequate to address their subsistence problem in the longer term. In this light, expropriation with insufficient compensation was very likely to plunge those vulnerable rural households like Xu’s family into destitution. Unsurprisingly, the subsistence concern centered in farmers’ talk when they interacted, negotiated with the local state about land exchange.

\textit{The claim of right to development}

During the fieldwork interviews with the expropriated villagers, they were not really opposed to the development policy, nor did they resist the new project that was under construction. In contrast, they took pride in having their place selected as the site for construction from the very beginning when they believed the project would promise them greater economic prosperity. Some even hoped to start their own business or at least find a job there after the completion of the project. Interestingly, they changed their mind after they were more informed of the compensation and relocation scheme. Not only was it unlikely to start a business since they could not afford to rent a storefront with the tendered compensation, it was not possible to find a job there after development because the reallocated land to build resettlement homes was cancelled and they had to relocate at a distance from the place where the project was located. The change in relocation plan from compensation in kind to compensation in cash disillusioned villagers’ hope of both relocating adjacent to the promising project and in ‘sharing the fruit of development’. Therefore, there was a wide gap between what villagers previously benefited from land use and the burdens they then had to bear as a consequence.

Villagers deemed it unacceptable when they perceived the gap as a kind of unequal treatment and a denial of their right to development. When villagers had limited choice but to move out, their eviction was not to serve ‘public’ or ‘collective’ interest, but to make room for newcomers to start their new businesses. Villagers were left to watch outsiders profit from what was once their land. As a consequence, villagers felt exploited owing to their exclusion from the process of development. One villager expressed this in a blunt way:

\begin{quote}
We cannot afford to live here. Land expropriation drives away locals. The wealthier and the more powerful outsiders are invited to move in and occupy our land. Expropriation is essentially impoverishing insiders and enriching outsiders.\textsuperscript{251}
\end{quote}

Moreover, there was a feeling of discontent generated from their ineligibility to receive the compensation, including money and labor, from what they had invested into the land. Rejection of their income from their market-like activities was a denial of their entitlements attached to the land, more specifically perhaps, their right to develop rural land in their own way. In the absence of mutual negotiation based on market price at which a willing seller could receive payment from a willing buyer, villagers had to accept the compulsory exchange of land that went beyond the market logic. If villagers intended to apply for what was once their land for non-agricultural development, they had to obtain use rights from government

\textsuperscript{250} Focus group discussion (23 July 2015).
\textsuperscript{251} Interview with a female villager in Village D (22\textsuperscript{nd} July 2015).
at a market price. This price was much higher than the price at which they exchanged their land. Xu expressed her discontent with the government-managed strategy to develop land:

If I could choose, I would either ask the government to allocate me a similar plot of land so that I may regain my business and my life, or, ask them to compensate my loss according to market value. It is simply so ridiculous that the government takes everything far below the market value and asks us to buy everything at a market price.252

Drawn from the foregoing, the notion of right to development was reconstituted by the local authority. Whilst farmers’ development in their own way to benefit from a more economically efficient way of land use other than agricultural production, their entitlements to development derived from property rights over rural land were denied by the local authority. By contrast, as the D village’s case revealed, development should be defined by the authority and limited with the official determination. The utilization of land resource, rather than determined by individual landowners or holders, should be government-governed through the transfer of land from the collective (or private) to the government’s ownership. The development logic, as expropriation-premised urbanization revealed, goes like: rural land is not allowed for non-agricultural use, according to the law. Due to inefficiencies in the use of rural land, it requires government to take land and manage it in a more market efficient way. The increased value of rural land has less to do with farmers’ contribution but more to do with the government’s governance or management. Under this logic, it is natural that the government rather than farmers shall be entitled to the enormous value increase.

4.5 Bargaining Chips

The oppositional claims posed by the two parties were still diametrically opposed, which could hardly be compromised. In spite of forced eviction that was periodically deployed in the locality, the central government put increasing emphasis on voluntary exchange and resettlement which would hopefully safeguard the expropriated population’s lawful rights. For instance, the 2011 Expropriation Regulation governing expropriation of urban home set forth that land exchange at the local level should be operated with a willing seller under a negotiated and fair price of sale.253 However, as aforesaid, there were no explicit requirements for rural land expropriation. It remained a largely arbitrary issue concerning how to carry out the operation itself rather than including within decision-making the views of the expropriated population.

4.5.1 Local government’s proposal

*Tradeoff between rights and realistic interests*

Despite local government’s rejection of farmers’ compensation demands for their entrepreneurial investment into their home, they had to respond to farmers’ claims on subsistence and development derived from their landholding. A contextual understanding of property rights, which local authority claimed to fit China’s circumstance, was a favorable response. One official’s comments were illustrative:

The common people often cite some extreme cases, For instance, the case of Narita Airport in Japan, which they take as an exemplar of land expropriation to China… In China’s case, it is

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252 Interview with a female villager in Village D (22nd July 2015).
253 The 2011 Expropriation Regulation art 25.
unrealistic for our government to simply construct another airport expressway without land-taking, like the Japanese government did. There is no comparability between the two countries because China is still on its early stage of development. You know, several years ago, when I was having mid-career training in Hong Kong, many international peers admired China’s remarkable growth. Rapid urbanization is ongoing. It is just impossible for China to develop at an easy and slow pace as our Western counterparts do.254

Evidently, the notion of legal rights was interpreted as something at odds with the reality. This was in the sense that the legitimate demands for protected interests and justice or rights claims erected barriers to the state’s economic prosperity in conflict with the pursuit of high growth. In this light, a trade-off between rights and economic considerations was at stake.

The balance logic was even more evident in the circumstances where the expropriation project was assessed on a cost-benefit basis. As stated in Chapter 3, under the current government-managed urban development model, land was used as collateral to obtain bank loan for local authorities to finance the proliferation of public infrastructure projects in the locality. Local authorities relied strongly on converting more rural land to urban uses to repay the huge debt they loaned from the bank. In this instance, economic efficiency based on cost-benefit considerations was prioritized. One official remarked:

In consideration of the huge interest charge, the government has to clear up the land, sell it to the land developer and pay off the loan promptly. Otherwise, the interest accumulates on a daily basis to the price of an Audi car.255 Seriously, we are always reminded by our leader of the analogy that one-day delay equals to a loss of an Audi. In this regard, it is more cost-efficient that we meet a small group people’s demands for increased compensation. More importantly, we can save time.256

Obviously, in the eyes of local state actors, when demands or rights claims clashed with government’s pursuit of economic growth, economic efficiency should prevail. In other words, the fulfillment of tasks at a speedy pace was a first priority that took precedence over other considerations such as rights assertions and interest claims. The latter was seen more as roadblock standing in the way that must be cleared up at a negotiated price, as will be further discussed in the following section.

Land in exchange for social security

As noted, the loss of land meant not only a destruction of a secure source of income for farmers, but additionally a denial of their original way of life and a deprivation of social security. The occurrence of numerous landless farmers had posed a big threat to social stability. The central authority had thus constantly highlighted the significance of granting urban citizenship to the expropriated population.257 Urban hukou would enable the land-lost group access to a series of urban security services such as education, healthcare, and pension. The grant of urban hukou was deemed a countermeasure to appease the land-lost farmers by assuring them of a minimum subsistence. It was required that local governments incorporate the provision of urban social security services into their respective compensation and relocation scheme. Admittedly, the grant of urban hukou heralded progress in securing the interests of farmers, who had been stripped of land and still excluded from the urban social welfare system.

254 Interview with a female official, who was a section chief of Bureau of Housing Administration (BHA) of S City (6 July 2015).
255 Audi automobiles are among the official automobiles of choice for Chinese party officials.
256 Interview with a female official of UCIG of S City (4 August 2015).
257 World Bank and Development Research Centre (DRC) of the State Council, Urban China (n 24) 16-24.
Nevertheless, as stated in the preceding chapter, it had not yet been local governments’ legal duty to provide urban social service. Neither could local authorities afford the provision of public service to such a massive number of land-lost people. In the real operation, local governments implemented the policy in a transformative manner. ‘Land in exchange for social security’ (土地换社保) was a controversial local operation. When original intent of the grant of urban hukou was to assure land-lost farmers of a basic social security after their relocation, it was distorted in a way that urban hukou could only be attained on condition the expropriated household surrendered their land. Urban hukou that should be an entitlement to the expropriated people was utilized in exchange for the termination of land rights.258

As addressed, rural land was not only a means of production but also basic social security. Rural land expropriation was therefore uniquely associated with the change of farmers’ occupational and residential status from agricultural to non-agricultural. Expropriation Regulation of S City stipulated that the expropriated population that relocated with in-cash compensation were entitled to urban hukou.259 In so doing, it was expected the expropriated people could accomplish their change in their identity and occupation. The so-called ‘two conversions’ (转户 转型) was an identity change from rural resident to urban resident on the one hand. On the other hand, it was an occupational change from agricultural to nonagricultural.260 Insofar as the long-term subsistence issue was concerned, it was rendered as an individual issue and its solution in principle relied on market principles.261 In practice, after they received the one-off compensation, the relocated farmers were expected to arrange for themselves a series of issues. These included issues such as purchasing commodity housing units, finding new employment opportunities, and finding long-term subsistence and development in townships and cities.

Under the pattern of “land in exchange for social security”, the logic followed this pattern: one-off compensation in cash compensated the loss of land as a mode of production, and the grant of urban hukou was a compensation for a basic security attached to land. This appeared a fair deal at first glance. However, doubts could be raised. On the one hand, the compensation did not adequately address farmers’ long-term subsistence issue. The tendered compensation was insufficient for the restoration of a sufficient livelihood and the grant of urban hukou only guaranteed a minimum subsistence line. This left the expropriated group’s re-employment and their survival in the long run as unaddressed and insecure issues. On the other hand, “land in exchange for social security” dismissed the government from undertaking their due obligations. As critics point out, social security as a public good should be accessible to all citizens, whether they are urban or rural residents, and the government is held accountable for the provision of the services.262 Farmers should be equally entitled to the urban social security network.

258 Yep, ‘Containing Land Grabs’ (n 28). Yep gives an empirical analysis of how local authority enabled the depoliticization of resistances to land expropriation by incorporating them into township residence and urban citizenship).
259 Expropriation Regulation of S City art 29 (2008).
260 Interview with a male official, who was a manager in Urban Construction and Investment Group Company (UCIG) S City (4 August 2015).
261 Expropriation Regulation of S City art.34 states the District People's Government shall enroll the landless villagers’ employment training into the urban employment service system. Landless villagers’ employment adhere to the principles of market mechanism, laborer's choice of job at their initiative, and governmental adjustment on employment. Employment training funds shall be provided by the finance of local administration.
262 Zheng Xiongfei (郑雄飞), “Solutions to the Predicament of Land in Exchange for Social Security: A Social Ethical Analysis from the Perspectives of “Resources”” (破解 “土地换保障” 的困境: 基于“资源视角的社会伦理学分析”) (2010) 6 Journal of Sociology Study (社会学研究) 1. Zheng discusses the similarities and differences between land and social security from the perspective of resources and farmers’ entitlements attached to land and social security, thus claiming the government cannot discharge its obligation in providing the evicted with basic
Therefore, the exchange had blurred government’s obligation to every citizen, and the practice of land in exchange for social security was in fact recognition of the denial of farmers’ entitlement to social security services.

**Housing voucher as an alternative payment**

‘Housing voucher’ (购房券) was another local initiative that was provided to each expropriated person to purchase the commodity housing unit within the jurisdiction of S County.\(^{263}\) It was designed as a constitutive part of the one-off compensation in cash in the county. The voucher was handed out as an alternative form of cash payment to relocate the expropriated population. Notwithstanding that housing vouched was practiced beyond the established laws and local regulations, the vouchers were extensively used and villagers had to accept this form of payment.

The practice of housing voucher meant that the expropriated villagers could not receive the full amount of in-cash compensation, since part of the payment had to be effected in the form of the voucher. In D village, the total sum of compensation in cash reached approximately 400,000 yuan per capita.\(^{264}\) Since each voucher was priced at 152,800 yuan, one received less than two thirds of the original amount as promised. It was hard for villagers to reject the housing voucher that was arranged by the local authority ‘for their own good’. One official sought to justify the good will of the government. In his account:

The use of housing voucher is limited to purchase commodity resettlement houses. Government takes it as a special measure to guaranteeing the expropriated a residency. Many farmers were originally engaged with subsistence farming on a low income. The large sum of compensation was like a windfall for them. They may easily get dizzy with such as big amount of money. Some may lose their interest in working or making investment. Even worse, some spend lavishly in, for instance, purchasing expensive cars, gambling and even worse, taking drugs. In this case, they may use up the money in a short time and eventually become a huge burden for the government.\(^{265}\)

For villagers who would have to buy the commodity resettlement home in the locality, it did not make much difference between forms of the payment. That is, a 100 percent cash payment, or a combination of cash payment with the housing voucher. Nevertheless, it imposed a big burden on those who either already owned an urban housing unit to relocate or intended to settle down in other cities. The imposition of the housing voucher with its use limited in the locality had constrained the expropriated from choosing to live elsewhere. In this respect, it seemed the local government did not take into consideration the legitimate interests of the specific group. Therefore, it appeared they would rather say housing voucher was more a creation of the local government to maximize their own interest. This sort of intent was revealing when it came to the changing value of the voucher that was unilaterally determined by the government:

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\(^{263}\) S County is located in N Province. In the administrative division of the area, S County is one level under S City, which is a Prefecture-level city.

\(^{264}\) Interview with a male undergraduate village officer working in village G (6 July 2015).

\(^{265}\) ibid.
The housing voucher with its par value of 152,800 yuan per capita is limited within S County. In case one plans to relocate and buy a housing unit in the capital city or other places other than S County, the cash value declines to 40,000 yuan. The consideration is to protect local economy.266

In this light, the housing voucher was essentially a form of local protectionism, which did not genuinely secure the rights of the expropriated population as portrayed. The alleged good will was contested by villagers as well. In their view, there might be extreme cases in which farmers irrationally depleted their compensation money without even considering where to live and how, the majority would “cherish every penny and save the one-off compensation.”267

4.5.2 Farmers’ opportunist behaviors for bargaining

Thus far, it appears that farmers’ free choices on the so-called ‘voluntary exchange of land and relocation’ were constrained, and their rights and entitlements on land were reconfigured and limited to a discussion over economic concession. Farmers were left with few choices but to bargain with the local state actors before they gave their consent to the exchange.

In a context where economic gains became subject matter throughout the negotiation over the exchange of land, villagers might show their indifference to other concerns, for instance, the fairness of the policies, or even their own rights and entitlements. Several reasons were accountable for this. Firstly, villagers were generally less equipped with legal knowledge and thus had a comparative low legal awareness. Secondly, despite many who were suspicious of the policy, it was practically useless to bargain with the local state actors over the policy implementation, mainly because the governments play “both roles of a player and a referee, and they have the final say.”268 Likewise, they deemed it as frustrating the effort to both assert their rights and entitlements. In the words of one villager, “We farmers are doomed to fail if we contradict the government, so it is more realistic to demand for more compensation. This is the only thing we can do.”269 When D villagers had noticed there was little chance to retain their land or contradict the government, they turned to interest bargaining as a pragmatic and realistic alternative. Interest negotiation became the central yet sole concern for the affected farmers to secure their gains.

Planting ‘houses’

As addressed earlier, both household population with rural hukou and housing unit were crucial items for the compensation, and formal rules in laws and local regulations were incapable of regulating customary and informal practices in the rural society. Therefore, these two items, with their variables, were meaningful for villagers to make effort in maximizing their compensation. Subsequently this catalyzed opportunistic acts that are to be revealed in this section.

The LAL amended in 1988 identified the universal principle for the allocation of homestead land. That is, one household may solely apply for one housing unit, with its area not exceeding the standard limited by the provincial government.270 The stipulation, dubbed as the policy of ‘One household, one plot of

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266 Interview with a male undergraduate village officer working in village G (6 July 2015).
267 Interview with an elder male villager, who just experienced demolition but not yet relocated as of interview (8 July 2015).
268 Interview with an elder villager in Village D, who was negotiating with the local government on the compensation price for his case as of the interview (17 July 2015).
269 Interview with a male villager in Village D, whose parents-in-law’s house was subject to expropriation (25 June 2015).
housing unit’ (一户一宅), has not been satisfactorily implemented when it is not uncommon that one household may occupy two or more plots of housing units.

Several reasons can account for the weak enforcement of the legal statute. Firstly, there is a lack of clear and measurable definition of the term ‘household’ (户) in the current legal framework. Likewise, a concrete guideline to measure how a household shall be arranged is absent. In the rural area, there are varied forms of one-person household and multiple-person households. However, it remains under-regulated when it comes to the division of a multi-person household in cases where children become adults or get married. As a result, there is a wide variation in real practices. For instance, nuclear household (a married couple with children below the age of 18) may be seen as a household. However, it is also common that adult children’s parent(s) are incorporated into one of the adult children’s nuclear households. Secondly, homestead land is initially distributed to each household free of charge. In rural areas where land planning is generally weakly enforced, it is all too easy for farmers to take up more land either to build spacious rural homes, or to construct fixtures such as rural warehouses. Thirdly, tension arises from conflicting legal stipulations regulating the attainment of housing unit. The eloquent evidence is that a rural household within the collective could obtain a second plot, by way of alienation, donation, or inheritance of rural house. Those are counterexamples to the policy of ‘One household, one plot of housing unit’.

Given the foregoing discrepancy, farmers took advantage of the loophole to conduct opportunistic acts in order to maximize the compensation. One case in point was the occurrence of a ‘house-planting’ fever in the area to be expropriated. The ‘house-planting’ fever described farmers’ speculative acts to build more houses in a rush in order to gain more interests. Once the main structure had been completed, the newly-built house was qualified for compensation. The house, widely nicknamed as ‘fast-running’ (跑得快) house, was of low quality, unfurnished, or roughly unfurnished since its mission was primarily for demolition.

In the event of the erection of ‘fast-running’ houses, strict measures were taken to crack down on them. The houses were labeled as ‘undocumented houses’ (违章建筑). That is, the houses in question were not authorized or licensed by the local authority. Local authorities spared no effort in clearing up the unauthorized houses before initiating an expropriation project. Their resolution was manifested by the banners flying over the expropriation sites, reading “To regulate the undocumented buildings with an iron hand; to demolish the buildings with an iron hand; to impose a sanction with an iron hand” (铁腕控违, 铁腕拆违, 铁腕追责). The intensity of crackdown actions aside, it turned out not all the undocumented houses shall be cleared up without payment of compensation. It was not uncommon that many rural houses like old or ancestral houses were in use without official registration. Even if legally identified as undocumented, government’s decision over demolition should go through due procedures upon reasonable compensation for the loss, and the house should not be subject to removal without the

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271 It is the local policy in the Village D that adult children’s parent(s) shall be counted into the one of their adult child’s household. Interviewee with a male official engaged in demolition and eviction work in township government (23 July 2015).

272 There is no such stipulation that use-right to homestead is inheritable, however, collective members have the right to inherit rural house. Notwithstanding the inheritance of rural house does not extend to the land, in practical operation, it is hard to separate land from the house on it. In this case, it is common that the owner of the house occupies the housing unit.

273 Interview with a male judge working in the intermediate court of S City (29 September 2015).

274 Photo taken by the author in the field.
exhaustion of remedies, according to the law.\textsuperscript{275} However, it turned out in real practice the undocumented houses would be directly demolished with little compensation or with no compensation at all. In so doing, local state actors would accelerate the clearing up of the site. More importantly, the local authorities could be discharged from the duties to compensate for the ‘undocumented houses’ which were in themselves defined unclearly. Unsurprisingly, the forced demolition over ‘undocumented houses’ became source of fierce conflicts in the countryside.

\textit{Sham marriage}

Whilst obtaining an extra housing unit might be an expedient way for some villagers to increase material interests, to augment the family size with rural \textit{hukou} was another promising means. ‘Sham marriage’ (假结婚), or scam marriage, which pervaded in almost every expropriated place in China, was a typical practice.

Liao was in his sixties, living with his multi-person household in D village. It was a nine-person household, made up of Liao and his wife, their two adult children and their respective families. Liao got divorced with his ex-wife early in 2014 and soon married a woman who previously lived in an adjacent county. Villagers later knew Liao’s new wife was the mother of his daughter in-law. After divorce, his ex-wife still lived with the big family. The marriage was widely circulated as a ‘sham marriage’, whose sole purpose was to maximize compensation. According to the local expropriation policy, adult children’s parent(s) shall be incorporated into one of the adult children’s nuclear households. In Liao’s case, the family of origin, the 9-person household could only be divided into two ‘households’: the son’s household and the daughter’s household. For Liao and his wife they would be incorporated into either household. Owing to the sham marriage, Liao’s ex-wife, who by herself was legally entitled to compensation as a collective member with rural \textit{hukou}, may receive a higher compensation reaching the one-person household standard. Liao made this claim to the local official. However, local officials did not agree upon this. The reason was the one-person household compensation package. This package amount, which was always higher than the per capita compensation in a multi-person household, was mostly applicable to male villagers. Firstly, those of prime marrying age at the time of expropriation and second, bachelors that were hard to get married owing to their poor financial condition. The aim of the policy was to subsidize those who were likely to have a new family soon after the expropriation and might encounter financial problems to support his family given the loss of land. Liao’s ex-wife’s case was different. Eventually local officials agreed to compensate by treating the case as ‘half of one-person household standard’ (半边户), in the sense that half of the compensation would be paid to Liao’s ex-wife in her case which amounted to more than 200,000\textit{yuan}. At the same time, Liao’s new wife attained household registration in the village collective and was compensated as a household member. Needless to say, Liao and his family gained enormous profits from the sham divorce and sham marriage. It was circulated that Liao gave a sum of 50,000\textit{yuan} to his sham marriage ‘partner’ as a reward afterwards.\textsuperscript{276}

A series of local policies were enacted to regulate the sham marriage issue. For instance, it was stated that government department would not register for the divorce or remarriage two years prior to expropriation. The new-comer’s membership to the rural collective could only be attained upon the consent of more than two thirds of the village members. Local officials could refuse to pay compensation once it was recognized as a sham marriage. Despite the local policies, it was simply all too easy for

\textsuperscript{275} Administrative Compulsory Law art 44 (2011); The Property Law art 42 (2007). Administrative Compulsory Law of the PRC (行政强制法) was promulgated by the NPC on 30 June 2011.

\textsuperscript{276} Telephone interview with a male villager in Village D (14 August 2015).
villagers to take the advantage of the loopholes and make the sham marriage hard to be detected. For instance, two years was not a big obstacle to prevent the marriage from happening since one could foresee the timeline of expropriation from the spatial expansion in peri-urban areas. Neither did the consent from villagers erect a barrier since it was not common for them to reject the marriage. For instance, one villager from the collective commented on the incident, “Even though we know it was a sham marriage, nobody will directly oppose to it, after all, we were country fellows (乡里乡亲的). Moreover, the compensation is paid by the government, not by us.” Moreover, it was extremely difficult to tell the difference between a real marriage and a sham one at the very beginning.

In sum, driven by economic incentives, farmers exploited the loopholes in formal rules to augment the family size or increase the plots of housing units. In this instance, it is worth rethinking the existing compensation rules, which accommodated the existence and prevalence of opportunism in practice. As noted, the present compensation standard ruled out the market value formula which was a relatively more neutral and fair benchmark to evaluate the value of land. Instead, a government-set compensation price based on agricultural output value, alongside with family size and housing unit as a compensation benchmark, created uncertainties and contingencies in terms of the evaluation of land value. This mobilized both concerned parties to play with the rules, either through the manipulation of the rules, or the exploitation of loopholes. Given the rationale for government-managed compensation that is closely aligned with non-market factors, some analysts argue that Chinese farmers’ entitlements attached to rural land should be more understood as social security rather than property. The underlying reason is that when the grant of social security is profoundly grounded on the family size with hukou, the entitlements are changeable according to increased and decreased population size. In contrast, land property should be valued by market price, which has little bearing on changes in the size of the family or its residential registration. From this vantage point, compensation for the strip of rural land in the Chinese rural setting is indeed comparable to social security rather than real property.

4.6 Consensus-seeking: Reaching an Agreement

4.6.1 Bureaucratic absorption of resistance

Voluntary exchange and compensation put an emphasis on the informed consent from the expropriated party. This required the local state to take villagers’ independent choices seriously in terms of when and how to sign off the paper work. Despite there being little chance to say no or retain their land, villagers were faced with three choices concerning the written agreement. One: to covertly reject to sign. Two: to wait and see. Thirdly, to give explicit consent.

Policy adaptation

In order to obtain villagers’ consent without delay, local state actors offered a range of options in a sequential order for villagers to choose from. For those who signed up to voluntary relocation early, an economic reward was promised, in addition to a timely compensation payment. For those who were indecisive in providing their signature to a compensation agreement, they were ineligible for the reward. However, a timely payment was still ensured. For the resisters, they might incur such sanctions as forced

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277 Interview with an elder male villager, who just experienced demolition but not yet relocated as of interview (8 July 2015).
demolition and eviction, and their compensation would be discounted.\textsuperscript{279} The strategy was effective in mobilizing most villagers to relinquish their land, yet some would not compromise.

Against this backdrop, a strategic implementation of rules and policies was needed in order to obtain written consents from the expropriated population. For local state actors, soft measures to absorb resistance rather than conflicts with the expropriated group were optimal and secure provided central government’s prohibition on using violence such as forced demolition and eviction.\textsuperscript{280} In terms of real practice, a flexible implementation of rules was necessary to activate villagers’ compliance. One local state actor remarked:

The exchange of land is the bottom line that no one shall violate. In the face of diverse interest claims and demands, we have to address those concerns in flexible ways. As policy implementers, what we can do is to adapt the implementation within our discretion. For instance, humanitarian care is currently practiced in favor of the vulnerable families to help them gain more benefits.\textsuperscript{281}

In the words of local officials, an adaptive use of policies and rules was indispensable owing to the complexities on the ground. Rural land expropriation had more influential impacts on farmers’ livelihood, other than the land issue. The established rules governing compensation and relocation concerns were incomplete to address many other issues related with the livelihood of the expropriated population. Insofar as written consent was an essential prerequisite to the exchange of land, an innovative and adaptive implementation was deemed inevitable and beneficial.

‘Humanitarian care’, literally, was originally a government-sponsored policy to help some households go through extremely difficult situations. It was generally carried out in the form of ‘severe illness aids’ (大病补助) and ‘allowance for hardship’ (困难补助), with a sum of allowance applicable to some disadvantaged households who were trapped in poverty. However, the policy became an instrument for the local state actors to gain written consent, and the effects of the policy were highlighted in the context of rural land expropriation. These sorts of economic rewards were offered under the name of humanitarian aid or allowances to those reluctant to give their voluntary compliance. The beneficiary had to give their written consent in return. Given its nature of a policy distortion, the beneficiary was always asked not to disclose.

Flexible operations in carrying out land taking gained acceptance from the local authority. It became a rule that a specific governmental expense was listed in the local fiscal budget.\textsuperscript{282} The expense was identified as ‘unpredictable fees’ (不可预计费) in a local policy document. It accounted for 3 percent of the wholesale budget for each expropriation project and was entirely allocated to the township expropriation authority. The ‘unpredicted fee’ was defined as expenditure to handle with unexpected or emergency issues concerning ‘remaining issues in compensation and relocation, forced eviction ordered by the court, allowances for hardship for the expropriated households, and the coordination between different departments, and so on’.\textsuperscript{283}

Evidently, the monetary payment scheme was targeted at those villagers holding out on accepting compensation in order for them to accept concessions. The offer of payment was effective in cases where some villagers took this sum of money as a generosity from the government or an unexpected windfall.

\textsuperscript{279} Interview with a female official of UCIG of S City (4 August 2015).
\textsuperscript{280} The 2011 Expropriation Regulation art 31.
\textsuperscript{281} Interview with a male official engaged in demolition and eviction work in township government (23 July 2015).
\textsuperscript{282} The Municipal Government Office of S City, ‘Notice on several issues concerning Service Fee and Unpredictable Fee in Compensation and Relocation’ (关于征地补偿安置劳务费和不可预计费有关问题的通知) (1 August 2008).
\textsuperscript{283} ibid.
inaccessible to everyone, and thus they gave their consent in exchange. However, the policy implementation, which was an instrumental use of policy and rules, worked on conditions that local officials manipulated and maneuvered official knowledge all, without information being disclosed to the public. The lack of transparency not only allowed leeway for the official’s discretion but unavoidably created opportunities for rent-seeking and corruptive acts.

Economic rewards in exchange for compliance

Holdouts, ‘nail house’ in the Chinese term, were always a big headache for the local state actors to cope with. Notwithstanding that the local authorities were conferred coercive power, suppression was the difficult last choice for local government. On the one hand, huge interest would be charged if they chose not to coerce since land could not be cleared up in time. On the other hand, the evictees would resort to more confrontational resistance or even extreme actions once suppression was evoked. More often than not, the victims would file their complaints to the higher-level authorities, disclosing local officials’ malpractices to upper-level leaders.

More details concerning how the victims of forced demolition mobilized petition to file complaints on local official’s conducts will be elaborated on in Chapter 6. It is noteworthy that petitioners were mostly rendered as trouble-makers, and their complaints to the higher-level leaders posed threats to challenge and shame local authority. For this reason, local state actors were hostile to petitioners. Local authorities were responsible for managing petitioning within their jurisdiction. They would adopt various measures to circumvent complainants from accessing the superior leaders. However, the practice of economic rewards in exchange for compliance, among others, was deemed a feasible and effective solution to circumventing complainants. In the words of the local official, “We might as well offer the petitioners a small amount of money, rather than intercepting them on the way or letting them access the superior who then criticize or punish us for the petitioning.”\(^{284}\)

The act of tendering a sum of money to pacify the petitioners as well as absorb their resistance was known as ‘buying peace’ (花钱买平安), which was essentially a market exchange of compliance. This sort of exchange was considered not merely necessary for the tranquility of the local social order, but also meaningful for local officials’ political performance. It happened that some resistance might be halted, regardless of the unintended consequences generated. On the one hand, some petitioners were allured by the rewards and avidly asked for more monetary interests. On the other hand, more resisters would be encouraged to follow the suit in order to maximize their interests. In this light local governments were confronted with increasing financial and bureaucratic burdens.

4.6.2 Farmers’ concession

A pragmatic acceptance of rules

Faced with local government’s transformative policy implementation, farmers responded in their own way. Some villagers adapted their strategy after they witnessed failure in cases which farmers making rights claim were subject to sanctions.\(^{285}\) One villager, who was a military veteran and once served in the Vietnam War in the 1970s, employed his own strategy to deal with the government. The time he was seeking to resolve his dispute with the township government over the undercompensated issue he had returned from a collective petition to Beijing with hundreds of military veterans who demanded for a

\(^{284}\) Interview with a female official of UCIG of S City (4 August 2015).

\(^{285}\) More will be detailed in Chapter 5 concerning how the practice of rights is affected, frustrated, and suppressed by the power dynamics in China.
pension. Because the veteran already attained some experience on how to make claims against the central government authorities during their collective petition, he strategized the way in which he claimed against the local government. The interview with him was illustrative in the following section,

Interviewer: Are you seeking support from your organization to defend your rights?
Villager: I did not ask for help when my land was taken away in the beginning. However, because my rightful interest was infringed, I asked the veteran organization to mediate. The organization only intervened to ‘help the poor’ (帮贫扶困). Since we are all orderly and law-abiding citizens, we will not appeal for rights defense.

Interviewer: Do you mean it an improper expression of ‘rights defense’?
Villager: Not really. But if you mention so, the local authority becomes defensive, then everything changes. 286

The veteran made the claim in a ‘proper yet unthreatening’ sense that was permissible in the eyes of the authority. In a similar vein, the veteran organization intervened to mediate the dispute between the veteran and local expropriation authority. They made moderate suggestions to the authority on how to address the impoverishment rather than rights protection issue. Though all parties involved knew the dispute was profoundly caused by infringement on land rights, they all seemed agreed upon addressing economic vulnerability as a platform for negotiation.

Indeed, rights talk in the context of land expropriation was a politically sensitive issue. When rights assertion associated with social unrests and upheavals posed challenges and threats to the ruling regime, the authority was hostile to the talk of rights and deemed the legitimate demand as a disorderly behavior disrupting political order. Within this context a negotiation strategy that moved away from the talk of weiquan to the talk of economic vulnerability mitigated the political risks for the claimants and increased the chances of success to bargain with the local authority. 287

Rules are opportunities

As discussed earlier, current legal regulations provided complicated formula that moved beyond market value for calculating the compensation amount. The compensation became highly unpredictable provided the officials’ policy adaptation as well as their discretionary definition of unpredictable circumstances. An economic or market logic that was in place to gain consensus drove some villagers to grasp the possible opportunity to exploit compensation gains. Therefore, there were certain spaces in which the affected villagers could utilize to obtain an increase in compensation. A better knowledge of the nontransparent policies and rules, amongst other things, was regarded as crucial for the expropriated to successfully gain extra compensation.

It was circulated that Mi, an able man who had his own company in S City, had gained much higher compensation than others for his second house. Rather than being identified as an undocumented house, as frequently happened in the locality, Mi’s two-story house ended up being compensated as a registered warehouse which earned him a windfall. Though Mi refused to give the exact amount of compensation involved, he passed on his experience in the interview:

286 Interview with a male villager who is a veteran in Village P (6 July 2015).
287 The term “rights defense” in contemporary China appears to be sensitive. For an insightful discussion of the subject matter on weiquan in China, see Jonathan Benney, Defending Rights in Contemporary China (Vol 12) (Routledge 2013).
287 Interview with a male villager in Village D (7 September 2015).
Interviewer: Do you have an expectation on the amount of the compensation?
Villager: Not really. But from the very beginning, I know very clearly that I shall maximize the compensation by grasping the spirit of the policy (吃透政策).

Interviewer: What do you mean by ‘grasping the spirit of the policy’?
Villager: I mean I shall have the full picture of how all the policies could work to gain me more compensation. Some internal information could only be available from my friends working in the government.

Concurrent with local government’s instrumental attitude toward policy and rules to facilitate the operation of land-taking, farmers were ‘encouraged’ to make use of nontransparent policies and rules, and even exploited every loophole to favor their own interests.

Blackmailing the local state

One unintended consequence generated from the government act of ‘buying peace’ was harboring some resisters or petitioners to blackmail local states. Through an intensive interaction with the bureaucracy and the hierarchical mechanisms through petitioning, some petitioners had seized the stratification between central and local governance. They managed to play with the rules to attempt to seek more benefits. Those who relied on petition to gain profit were identified as ‘professional petitioners’ (上访专业户). They halted their work and were now full-time petitioning. For those experienced petitioners, they would mobilize petitioning as bargaining chips and take use of local states’ intent to buy peace to blackmail the officials. One official was browned off with this sort of engagement with the repeat petitioners, as he complained:

Some repeat petitioners would call us and ask us to bring them rice, oil, and other stuffs. If they are sick, we are sent to drive them to hospital and even pay the bill. We take care of them better than their family members could do.

In the official’s account, petitioners’ greedy acts were portrayed in sharp contrast with the local authority’s toleration. In practice, a private agreement would be reached between the ‘professional petitioner’ and the local authority to sustain the union in maintaining local stability. Local government promised to pay them a sum of money provided the petitioners that agreed not to resume petitioning or make more troubles. Nevertheless, the agreement was not always binding, and the coalescence between the parties was contingent upon time and space. During special ceremonies or holidays when all levels of governments were more concerned with stability maintenance, petitioners would make extra demands on the local authority by threatening to use the special occasion to shame the local authority. Under this condition, an additional reward termed ‘sympathy money’ (慰问金) would be handed out in exchange for compliance.

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288 ibid.
289 Some scholars, by shedding light on the behaviors modes of various petitioners through empirical analysis, categorize them into two groups. One, rights-protection petitioners and second, benefit-seeking petitioners. Whist the latter had developed into professional petitioners. See Tian Xianhong (田先红), ‘From Right-protection to Benefit-seeking: A Frame of Explanation for the Changing Logic behind Farmer Petition’ (从维权到维利: 农民上访行为逻辑变迁的一个解释框架) 2010 (6) Open Times (开放时代) 24.
290 Interview with a male village Party Secretary (4 August 2015).
291 ibid.
A transient state of stability was attainable under the pattern of ‘market-like exchange of compliance for benefits’.\footnote{Ching Kwan Lee and Yonghong Zhang, ‘The Power of Instability: Unraveling the Microfoundations of Bargained Authoritarianism in China’ (2013) 118 (6) American Journal of Sociology 1475, 1505.} It seemed an alliance was formed between the bureaucracy and the society under the market logic. However, the alliance was profoundly shaky. At the least, ’buying peace’ was nothing more than a comfort which could only cure the symptoms, not the disease. While little contribution could be made to addressing the real problems, the exceptional price to absorb resistance set a bad example for the followers, who would have higher expectations on the compensation to the extent that “it is not necessarily to the price level of ‘nail house’, but not too different.”\footnote{Interview with a male official from District-level Urban Construction and Investment Group Company (UCIG) (20 July 2015).} The economic concession to absorb resistance in turn boosted the compensation price to a new height. Against this backdrop, the price of buying-peace turned to be critical to the extent that it became the starting point of the next round of expropriation in the area. As one official commented, “In most expropriation projects, it is not the average compensatory amount but the price for ‘nail house’ matter. The final compensation for the ‘nail house’ sets the price for the next round of expropriation in adjacent areas.”\footnote{ibid.} At this point the remedy might be worse than the disease.

4.7 Discussion

This chapter demonstrates how property rights over rural land were practically bargained, negotiated, and compensated in the situation of land exchange in rural land expropriation. From the outset, the government formulated the compensation and relocation scheme with little public input from the expropriated. Rural land was compensated based on agricultural output value, with family size granted rural hukou and housing unit as crucial compensation benchmark. The evaluation criteria for rural land, grounded on the identity and status of a household, reflected that government denied the property attribute of rural land. Instead it was seen as a social security for the rural landholders.

Understandably, the perception of rural land as social security rather than property rights made it not possible for local expropriation authorities to acknowledge individual inputs in improving the value of land. Neither did they admit that farmer’s investment was enhancing land use efficiency. This, first and foremost, had much to do with the institutionalized discrimination against the use of rural land. As earlier demonstrated in Chapter 3, the established statute imposed stringent restrictions on keeping rural land from engaging with non-agricultural usages. Farmers’ claims to the loss of investment were henceforth denied by local government who built their grounds upon the existing legal rules. Concurrent with the denial of farmers’ demands, local government made its own claim to take rural land with its compelling development discourse and justified its end in taking rural land. In the circumstance of claim-making, the notion of property was distorted, with its meaning downplayed to the level of social security. Development discourse was mobilized to not only justify the governmental action of land-taking with insufficient compensation, but also to prevail over individual demands for property interest by asking for an individual sacrifice. Given a distorted interpretation of property and a curtailed meaning of individual entitlements to land, farmers, who might not have a clear idea of what property rights they had at the outset, made claims on their survival problems, which was a more widely-discussed and acceptable topic for the government.
When it came to mutual negotiations, local governments took the initiative in making offers, such as ‘land in exchange for social security’ and ‘housing voucher’. In so doing, they discursively diverted farmers’ attention from focusing on general rights, which they deemed as imaginary rights on the book, to a direction where more specific and realistic discussions over economic interests are accepted. Local government’s negotiation strategies marked a shift from talk of legal rights to the realization of more realistic and pragmatic interests. Moreover, it explicitly limited farmers’ freedom of choices in voluntary resettlement, which left the expropriated farmers little choice but to focus their concerns on exploring more opportunities to maximize their gains as an alternative strategy. Therefore, it is not surprising farmers would carry out various opportunistic acts in obtaining more gains in the case where local authority initiated an entire discussion over economic interests.

In order to gain prior and written consents from the expropriated in the final phase of reaching an agreement, local government reset the rules for operation and adapted policy implementation in a non-transparent manner. Government-sponsored rule-resetting and policy adaption followed the market logic. Economic rewards were tendered both to activate compliance and to contain resistance. The non-transparent policy and rule implementation were instrumentally accepted by some farmers, who took advantage of these ambiguities and opacities to maximize their gains in the process. Additionally, the increasing requirement of accountability on the part of local government to maintain social stability was exploited by some speculative farmers through their continuous interaction with the local authorities to have their claims respected. Some took risks to put pressures on, and even to threaten, the local governments, which may bring them extra profits.

In-depth analysis of the bargaining and negotiation over the compensation for the loss of land rights, in the situation of rural land expropriation, revealed that the talk of rights was limited, redefined, and transformed into a realistic and pragmatic discussion over economic interest throughout the process. Pragmatic and realistic interests became a central concern, and the discourse of interest bargaining or negotiations seemed to substitute for the talk of rights. Economic interests became recurring foci not only in circumstances where the duty-bearers managed to curtail individual rights under the banner of public interests, but also where rights-holders sought to protect and further their interests. The discourse of material interests was overtly proposed as an optimal forum for both parties for a further discussion on land exchange. In this instance, an unspoken alliance appeared to be formed between the two parties to avoid the talk of rights to come up in discussion. This phenomenon in and of itself merits further exploration.

### 4.7.1 A Chinese perception of rights as interests

To be sure, the prevalence of interests in (even replacement of) rights discourse is a concretization of the abstract meaning of rights in contemporary China. The prominence of interests in talk of rights is a crux for understanding China’s conception of rights. A strand of studies addresses the relationship between rights and interests as objects of their research. Peerenboom offers his influential arguments that deontological rights have been conceived of as (or subsets of) utilitarian interests in China, and an interpretation of rights as interests derives from a conspicuous absence of distinction between rights and interests in Chinese thought.²⁹⁵ This sort of confusion is further evidenced by a former deputy director of the Legislative Affairs Commission of the PCSC, who expresses his doubt over the distinction between the two core concepts. In this discussion he claimed, “I have been striving to draw a clear-cut line

between rights and interests, however, thus far neither a single textbook has specified the distinction in an unambiguous way, nor I am fully convinced.”296 Xia, a Chinese prominent rights analyst, also notes that a utilitarian perception of rights has pervaded in Chinese thoughts which overly privileges the role of interests in social life.297 More scholars call for a distinction between the two connected but different notions given the indiscriminative treatment of rights and interests in terms of their meaning and significance. They urge the notion of a superiority of rights to interests, on the grounds that “rights are deontological in character whereas interests are consequentialist and utilitarian.”298 Other rights theorists, rather than merely relying on the deontological ethical nature of rights, employ an analytical approach to demonstrate a conceptual difference between the two. Central to their claim is that interest is not a right in itself but the essence of a right.299

That said, the interpretation of rights into the language of interests is as much permeated in Chinese conception of rights as is prevalent in the real practice. The overlap and intersection between rights and interests appear in the terrain of social resistance.300 While scholars interpret the protester’s resistance and protests as rights-conscious behaviors, Yu argues that ‘interests’ rather than ‘rights’ are the incentives that directly drive people to engage with social unrests and protests. Yu observes on the basis of his empirical work, most mass incidents in contemporary China are caused by interest infringements on vulnerable groups who hold a strong sense of ‘relative deprivation’ due to imbalanced and unjust distribution of interests in social transitions. As such, the grieved people, propelling by “what is his due interest”, make claims in the name of interests rather than political rights.301 Likewise, Perry also contests the prevailing assumption of political fragility of the Chinese political order grounded on her close examination of Chinese conceptions of rights. As Perry claims, the meaning of rights in China has a heavy bearing on socioeconomic justice. Contemporary rights invocation or protests may not denote an affront to state power, but a demand for socioeconomic security which seems less politically threatening.302

Drawn upon the foregoing analysis, it suffices to say that the notion of rights and interests are closely interrelated and interdependent in China’s case. Be this as it may, a Chinese conception of rights as interests still suffers from a lack of conceptual clarity and empirical evidence. While a strand of literature seeks to explore a normative difference between rights and interests, a very crucial and fundamental perspective on how rights have been practically translated into the language of interests is largely missing. This is the perspective of who translates rights into which kind of interests and in what circumstance rights are rendered as interests.

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299 Ma Ling (马岭), ‘“Interests are not Rights: Reflection on Xianfa Article 51’ (利益不是权利: 从我国宪法第 51 条说起) (2009) 5 Science of Law (Journal of Northwest University of Political Science and Law) (法律科学 西北政法学院学报) 74.
300 Kevin J O’Brien and Lianjiang Li, Rightful Resistance in Rural China (Cambridge University Press 2006).
4.7.2 An analytic model to understand a Chinese conception of property rights as economic interests

As partially addressed, a bilateral acceptance of a shift from rights talk to a discussion over economic interests has been embedded in different stages of rural land expropriation. This chapter formulates a three-dimensional analytic model to justify and test the proposition that rights were conceived as (or are subsets of) interests. The three dimensions, as shorthand, are referred to as balancing, choice-controlling, and depoliticizing. Each entails its own complexities. In brief, the first dimension, balancing indicates that the protection and promotion of individual property rights are traded off with transcendent values of economic development, public interest, and social stability maintenance, with the latter taking precedence over the former. Consequently, rights are reconciled with utilitarian interests through various calculations. The second dimension, choice-controlling, which is an embedded feature of a paternalistic yet authoritarian state, is employed by the local authorities as a strategy to make decisions for the subordinate. Those controlled choices disregard farmers’ interests in freedom of choice, and the significance of rights is devalued and leveraged with that of interests. The third dimension, depoliticizing, reveals that the notion of rights is transformed from imaginary rights “on the book” into a realistic and pragmatic interest, in a way to contain protests or resistance and to strengthen the subordinating group’s commitment to the status quo.

Balancing

The empirical data in this chapter suggested that individual property rights were constantly balanced with many other goals such as economic growth, urban development, and even social stability. The existing research focusing on the nature of the contemporary Chinese property institution has also pointed out, “A parallel exists in the Chinese property system between belief in material incentives and skepticism about individualism.” The belief, as embedded in the practice of property rights in expropriation operations, can be manifested as economic growth has been credited as a transcendent value and the pursuit of public or collective interests weighs heavier than that of individual interest.

To illustrate, firstly, the adoption of development-first strategy by ‘a pro-growth authoritarianism’ turned out to be effective in modernizing the economy. However, this proved ineffective in respecting and protecting individual legitimate demands for interest on land. Despite land expropriation being required to serve the public interest, in practices the takers did not necessarily justify whether or not governmental action served public interest. This is because the term of public interest was unclearly defined and local government initiated expropriation projects with their own interpretation. Numerous projects were launched under the name of public interest to force farmers to surrender their land to meet commercial ends or even serve private interest. The distortion of public interest aside, economic efficiency remained central to the implementation process. In ‘a pro-growth authoritarianism’ that highlighted economic efficiency, local government’s cost-benefit calculation was pervasive. As the two telling analogies

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303 The term “depoliticization” was originally by Wang used to indicate de-revolutionary tendency in Chinese politics and the west since the 1960s, and was later used by Lee and Zhang in their term “depoliticized domination” to describe the capacity of authoritarian regimes to contain and absorb social unrests. See Hui Wang, ‘Depoliticized Politics: From East to West’ (2006) (September–October) New Left Review 29; Lee and Zhang, ‘The Power of Instability’ (n 64).


(‘Narita Airport exemplar’ and ‘Audi car calculation’ in Section 4.5.1) expressed, when rightful interest claims or other legitimate demands clashed with the goal of rapid economic growth, it would be unrealistic for policy-makers or implementers to put much emphasis on individual claims and demands. In not rare cases where these sorts of claims and demands erected barriers to economic efficiency or prosperity, some local state actors would employ forced demolition or expedient measures such as economic rewards to clear up those barriers.\textsuperscript{306} In this light, a utilitarian calculation of reconciling individual’s rightful interests with economic efficiency or growth failed to protect the individual against the government’s pursuit of its own broad interest.

Secondly, under the government-managed urban development model, the significance of economic growth transcended many other commitments or values, such as the protection of individual property interest or well-being of certain groups of people. Land expropriation was discursively framed as fulfillment of all-round development, ranging from urban development and economic development, to long-term social development. The development or growth rhetoric was primarily utilized as justification for governmental acts of land-taking. Insofar as land expropriation was an indispensable route to greater development, individual sacrifice was rendered necessary and unavoidable. This unavoidably led to low compensation, forcible expulsion, and violation of legitimate rights and interests. Furthermore, when social stability became a paramount concern of the ruling authority, individual legitimate interest claims or rights assertion, in the eyes of some officials, were detrimental to the weightier goal of social tranquility. Although a socialist ideology envisaged that an intrinsic and fundamental harmony existed among the state, the collective, and individual interests, and the belief rejected contradiction among individual rights and the interests of the collective or the state, interest stratifications and conflicts appeared more prominent in social reality. The deprivation of certain groups of people like the expropriated farmers inevitably triggered social upheavals. This somehow suggested that the belief to maintain a harmonious integration of interests between the government and the people seemed to be only aspirational.

Notwithstanding a vaguely defined notion of property rights that obscured people’s perception of rights, the balancing process in which property rights were conceived of as utilitarian interests inevitably brought about unpredictable adverse impacts. As Peerenboom has noted directly, “The danger of an avowedly contingent theory of rights is that once one allows rights to be compromised to secure other normative considerations, the Pandora’s Box is open.”\textsuperscript{307} In the balancing process, property rights were directly equated with material welfare, which denied farmers’ legitimate demands and simultaneously dismissed local government from fulfilling its duty. This was typically reflected by local government’s policy distortion of ‘land in exchange for social security’. The exchange tacitly interpreted the realization of property rights as the provision of social security services. The equation was essentially a denial of farmers’ legitimate demands for the enjoyment of social welfare, which should be accessible to every citizen. Such an equation had therefore blurred government’s obligation to every citizen. However, given the dual urban-rural hukou policy which discriminated farmers by excluding them from the social security system, a simple claim of ‘demand’ failed to address the enduring question as to why farmers’ interests were politically controversial and in fact delegitimized. The point of view that the interests of the poor are not self-legitimating is succinctly stated by Alan Hunt. He argues that the discourse of right-claims

\textsuperscript{306} More analysis of how the government exerts various forms of power to carry out the taking of land will detailed in Chapter 5.

provides ‘an appropriate and socially persuasive rationale or justification for any “demand” advanced’.\(^{308}\)

Therefore, a transition from the ‘discourse of interest’ to the ‘discourse of rights’ is required ‘to achieve the project of counter-hegemonic political strategy’.\(^{309}\) This counter-hegemonic political strategy, however, was substantially sensitive and hardly achievable in existing political system. This will be further elaborated on by the third analytic dimension ‘Depoliticizing’ in the following sub-section.

\textit{Choice-controlling}

As earlier addressed, the established rules on compensation and relocation were predetermined by the government, leaving limited space for public participation or involvement. A recurrent theme in government-oriented urbanization premised on land expropriation was that the undertaking was to promote the overall development, which would presumably benefit all the people, including farmers. Nevertheless, the notion or value of development was predominantly defined, if not imposed, by the government, leaving rural landholders having little say in determining as to \textit{whether, when, or how} to engage development. Farmer’s choices were substantially limited under current land expropriation institution. Scholars advance this view:

\textquote{\textit{The system leaves no room for the possibility that residents ought to be “allowed” not to move at all, or that they ought to be allowed to make their own economic decision about how and when to “enjoy the advantages brought by increased value through urbanization”. Both in terms of the emotive value of land and its economic value, the system has therefore severely restricted their options from the start.}\(^{310}\)}

The limited choices were more severely impinged during the actual operation. As empirical analysis has indicated that, the mode of relocation was limited to compensation in cash to the local government’s advantage. ‘Housing voucher’ was imposed in the name of paternalism, and the requirement of prior and explicit consent was distorted in a manner that farmers were left with restricted options to sign off the paper work. As addressed, the restrictions on the expropriated population’s choices were always imposed under the name of paternalism for farmers’ good. Indeed, paternalism in authoritarian China had been all-pervasive particularly when the ruling party grounded political authority in boosting the economy and enhancing people’s socio-economic welfare. Much had been relied upon serving people’s interests to prove the legitimacy of the political government.\(^{311}\) Nevertheless, the idea of serving people’s interests in a paternalistic state often implied all-round interference in framing or altering people’s choices, or even taking their place to choose for their own good. The ideology that making choice in their best interests was operated to \textit{take their place to exercise their rights}, suggests that rights could be replaced by material interests or be even completely denied.

It must be noted that rights reflect various kinds of interests. Raz rightly points out, rights are to benefit what is in the interests of the right-holder to a large extent, and the justification for its existence largely grounds in that rights can serve the right-holder’s interest.\(^{312}\) Despite a close connection between rights and the interests that rights serve, Raz also claims that ‘rights exceed in importance than interest’ because the notion of right not merely reflects the right-holder’s interest, more importantly, it entails her interest in

\(^{308}\) ibid 324.


\(^{310}\) Pils, ‘Contending Conceptions of Ownership in Urbanizing China’ (n 203) 148.

\(^{311}\) Perry, ‘Chinese Conceptions of “Rights”’ (n 301).

freedom.” In this respect, rights do not merely reflect her interest but an additional independent reason is added. The independent reason, as Raz emphasizes, comes to the right-holder’s interest consists not only of material well-being, but also “the successful pursuit of and engagement in worthwhile pursuits, activities and relationships, and in the absence of factors which impede such success”. Therefore, “While it is true that rights are to benefit, the justifying benefit need not be the benefit one has a right to. It often is the freedom to control the fate of that benefit.”

In the situation of rural land expropriation, property rights to rural land meant something significant for farmers. Not simply because the land in question provided material security, but perhaps more importantly, property rights reflected their interests in being able to decide for themselves what would be best for them, to the extent that could bring them the greatest well-being. The choice-setting by merely recognizing farmers’ material interests in land, however, denied them another crucial kind of interest, that is, the agency or autonomous interest. Consequently, as revealed in real practices, farmers were hardly seen as real right-holders who could express their own words to control the fate of the land they held. Instead, farmers, together with their land, were no more than specific objects of local official’s expropriation tasks.

**Depoliticizing**

As previously mentioned, there was a transformation from imaginary legal rights to a negotiable discussion over material interests, which was achieved through economic exchange for compliance in the forms of ‘buying peace’ and transformative policy implementation. The market logic in establishing a commodified state-society relationship was credited by the local state actors to two things. That is, not only to obtain consent and activate compliance from the expropriated, but also to depoliticize protest by pacifying and containing resisters in the process of rural land expropriation. The depoliticized operation, in turn, was responded by the farmers with an instrumental and pragmatic acceptance of government-sponsored rules, and less with a challenge against the neutrality and equality of the rules. This explained why farmers’ claim, for some time, centered on demands for material interests, rather than challenging the existing political order or legitimacy. In this regard, the depoliticization prevented farmers from formulating political demands and consolidated, rather than weakened, the subordinating group’s commitment to the status quo.

However, the effectiveness of depoliticization was transitory and contingent since it was based upon the ‘commodified state-society bonds’. As the empirical data demonstrated, the adverse impacts generated from a market exchange for compliance were at least twofold. One was a distorted implementation of compensation rules that transcended the value of just, reasonable, or the like. The other was the dissemination of distributive injustice.

To illustrate, firstly, the market logic to activate compliance, rather than a reliance on right-based rules, led to uncertainty and discontinuity at the concrete level. Without challenging the neutrality and fairness of the government-generated compensation rules, some farmers interacted with their own informal knowledge to attain extra benefits. As the three kinds of villagers in Section 4.6.1 illustrated—the veteran, who resorted to social organization for support, evaded a clash with local government by highlighting his

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313 ibid.
315 ibid 132.
316 Lee and Zhang have observed similar practices elsewhere. Lee and Zhang, ‘The Power of Instability’ (n 291) 1504.
317 ibid.
impoverishment rather than making rights claim. The able man exploited the loophole to favor his own interests. Lastly, the professional petitioners blackmailed the local government for profit—the attainment of more compensation moved beyond the values such as fairness, just, or reasonability or whatsoever. Instead, it followed the law of the jungle. In the eyes of the expropriated villagers, gamesmanship was key to win out the expropriation negotiation. They were well aware that “four types of people will benefit, they are: i) the able man (有本事的); ii) the ‘nail house’; iii) the knowledgeable (有知识的) and; iv) the silver-tongued man (会说的).” As a consequence, more compensation was conditioned upon whether the expropriated could maintain a good relationship with the local state actors as a start. Also, whether she was more knowledgeable about compensation rules and policies, more stubborn in resisting, or more skillful in bargaining with the local authority. In contrast, the one who was intimidated, compliant, rule-abiding, and obedient with weaker bargaining power was doomed to lose out.

Secondly, and as a corollary of the first aspect, it generated overcompensation for a small group of people while it tolerated under-compensation for the majority. This was constantly described by the expropriated farmers as the violators gained whereas the law-abiding lost. The ‘nail house’ case was telling in this point. When local government offered extraordinary compensation to the ‘nail house’ in exchange for their compliance, it caused distributive injustice on the law-abiding households, who already accepted the pre-determined compensation standard in exchange for their removal. Since there were no real secrets in the village, the law-abiding realized they suffered a loss and the direct cause for their loss was their compliance, which contrasted with the resistive ‘nail house’. Given the paradoxical result, the law-abiding distrusted the government because the government-set rules that they originally abided by were trespassed by the government itself, who selectively applied a market exchange for compliance on a small selection of people. Within this context, the disparity between overcompensation and under-compensation undermined the validity and reliability of legal rules. Subsequently people gradually lost faith in justice.

The economic concession highlights the depoliticization of rights, which in itself has confined the articulated demands and claims to the non-political sphere. However, this has failed to consider dignitary interest in equality as another kind of interest. The ‘dignitary interest’ is given by Fallon as one amongst diverse interests that constitutional rights serve. Dignitary interest is discernible in cases where “any equality-based rights that assigned to the less-well-off would promote their interests in achieving a condition of equality”. Equally, in light of China’s rural land expropriation, property rights should reflect individual interests in achieving the condition of equality. The dignitary interest is desirable since equal treatment requires that everyone has equal benefits from the distribution of compensation benefits. The embedded value of equality would challenge the lawfulness of preferential treatment to a small group of people who could gain a larger share from the distribution.

4.8 Conclusion

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318 Interview with an elder male villager, who just experienced demolition but not yet relocated as of interview (8 July 2015).
320 ibid 355.
This chapter examines how a notion of property rights has been transformed and reformulated in the negotiation process surrounding compensation for the loss of land and the distribution of gains generated from land-taking. As revealed by their interactions throughout the process of land expropriation, the local government and farmers interpreted and reformulated property rights into pragmatic and utilitarian material interests. A perception as such is attributable to a vaguely-defined concept of property rights in Chinese property law. Perhaps more importantly, it reflects a concretized transformation of the ambiguous and abstract notion of property rights through social practice in response to a changing socioeconomic context.

A talk of rights as a discussion over material interest is meaningful in the practice of rural land expropriation. Insofar as local government is concerned, it is critical as a strategy for them to negotiate with and gain consent from the expropriated, which would arguably maximize the cost-effectiveness of the expropriation business. It is also an alternative repressive effort to dissolve antagonism and absorb resistance, which may placate those who are disgruntled and maintain social tranquility. The act of the government to invite compliance by proffering economic concession is conditionally accepted by the expropriated people. Some seek to exploit the economic opportunity with a strategic mobilization of resources such as social connection, negotiation skills, and resistance. This results in a small group of people that gain a larger share in the distribution of expropriation benefits, which leaves a vast majority suffering a loss during the distribution of gains.

The transformation of a vague notion of property rights into pragmatic and realistic material interest has two critical implications for the practice of property rights in the situation of rural land expropriation. On the one hand, it has weakened the authority of formal property rules in regulating the negotiation over the exchange of property rights. The market logic in exchange for compliance has largely excluded the role of property rules in governing people’s behaviors. Significant uncertainties and contingencies arise from the real operations as practiced. In the absence of formal legal rules to authorize and guide their negotiation behaviors, both parties sought to find a way to go around the rules, turning governmental land-taking into a forum to maximize their gains.

On the other hand, it has failed to achieve a condition of equality in distributing the gains. The situation in which a small group of people gain whereas a larger group loses out leads to discontent from the latter group. Local authority acquiesces in the uneven distribution results rather than attempting to rectify them, which aggravates the situation of unequal treatment. Under this circumstance, some disgruntled farmers choose to follow the suit of some winners, seeking to exploit more opportunities to bargain for a larger share in the distribution. One unintended consequence from economic concession over rights is that compensation and relocation in China tend to be increasingly costly issues for the government. That being so, economic concession has been a conditional and contingent strategy when government has stronger power to implement eminent domain. In many cases where economic concession is too costly or ineffective to achieve the end, repressive measures are prioritized to intimidate or suppress claimants. Yet, despite repression might work in some circumstances, more severe and even disparate resistance may be provoked, which unavoidably damages the authority of the regime. Under this circumstance, how does the central government, who delegates power to the local level, respond to or act on the growing conflicts in the countryside? How do the complex power relations among central and local governments, and perhaps the extended power relations with village authority, react to demand for the realization of property rights in land transaction? Correspondingly, how do rural landholders interact with dynamic power relations in order to further their property interests in the land? Those are the aims of the next chapter.
Chapter 5  Elusive Power: Barriers to the Exercise of Property Rights

5.1 Introduction

This chapter aims to investigate how the exercise of property rights is affected by the distribution of political power in Chinese governance, seen through the lens of state-society property relationships embedded in the processes of expropriation. The state-society property relationships have a complex constitution in eminent domain and vary in changing contexts. On the one side, the state is a general term referring to multiple levels of authority within the administrative bureaucracy. The central government represents the regime and grants power to local authorities to carry out eminent domain. It plays a determinant role in decision-making and supervising, despite a less visible role in the actual implementation. Local governments exercise the delegated power and are subject to central government’s scrutiny. On the other side, society is not confined to individual landholders. The rural collective is a nominal landowner and represents the community to manage the collective assets. It is hardly news, however, that the village authority rarely defies the government orders in regards to land-taking and more than likely will assist local state actors in fulfilling the task of demolition. As such, state-society property relationships appear more complicated in circumstances where multiple actors including central authority, local authorities, and the village-level authority all engage and interact in varying contexts. Their interaction inevitably exerts influences on the exercise of property rights.

In Chapter 4, the negotiation over compensation price for land as well as its distribution of gains from rural land conversion was demonstrated through the lens of property relationships between local government and rural landholders. Their interaction at the frontline revealed that farmers’ claims were constantly opposed by local state actors in power and indicated how the local government’s predatory takings to raise revenue trampled on property rights. On this basis, there is strong reason to argue that it is local government’s manipulation of the delegated power of eminent domain that is the primary, if not the sole, infringer of farmer’s property rights.\footnote{A look at the extensive report in Chinese social media on forced demolition which impinges on rights in the countryside suggests the embeddedness of the dualism between the local authority and the affected farmers, along with its irreconcilable confrontations.} This, however, is not the whole picture of expropriation practices. As earlier discussed, it is the complex power structure which encompasses the interrelations between central, local state actors and the village authority, rather than the local government in and of itself, which profoundly affects the effective exercise of property rights. Furthermore, rural landholders are by no means powerless. In the majority of cases where farmers are confronted with powerful constraints given their subordinate status, many may feel that they have little choice or otherwise internalize the constraints. Nevertheless, as shown in Chapter 4, in many cases villagers had mobilized resistance \textit{vis-à-vis} the government, be it overtly or covertly. Their interaction with the local authority, however, did not take away from the fact that their mobilization capacity might contribute to changes in governance or decision-making on the side of the powerful. Drawing from the foregoing, this chapter seeks to address two questions:

\begin{enumerate}
\item How do complex and interrelated power relations erect barriers to the effective exercise of property rights?
\item What is the extent to which rights actions have been able to challenge and transform the existing power structure and relations?
\end{enumerate}
This chapter unfolds in seven sections. Section 2 presents Gaventa’s ‘power cube’ model to examine power relationships and displays the research method for data collection and analysis. Section 3 unfolds powers at central, local and village levels that shape decision-making in the processes of land expropriation. Section 4 explains how various types and forms of power are exercised in ways that constrain property rights from being effectively exercised. Section 5 demonstrates how farmers develop various strategies to contest and challenge the powerful state actors through their participation. Section 6 discusses why dynamic power in the context of rural land expropriation poses barriers to the exercise of property rights and to what extent the power structure can be transformed by the expropriated group. Finally, Section 7 concludes with a reflection on the implications of power analysis for the realization of property rights.

5.2 Approach and Method

5.2.1 The power cube as a tool for power analysis

To put power structure and its interrelations into empirical analysis, this chapter is in demand for an analytic framework in which complex power structure and dynamic power relations can be reflected. The ‘power cube’, proposed by John Gaventa as a practical tool to operationalize power, may serve the purpose.322

The power cube is designed to analyze power dynamics. It is visually presented as entailing three sides—the levels, forms, and spaces of power and each side have at least three elements. The levels dimension consists of three subcomponents—the global, the national and the local levels at which power operates.

The forms of power focus on what Lukes identifies as ‘power cube’ entailing ‘three faces’ of power: visible power, hidden power and invisible power.323 Visible power that is associated with Robert Dahl’s work is defined as “A has power over B to the extent that he can get B to do something that B would not do otherwise”.324 Visible power is applied to political decision-making where there is direct (actual and observable) conflict of interests, or somehow with policy references.325 Based on the work of Bachrach and Baratz, hidden power examines both ‘decision-making and nondecision-making’ circumstances, with a particular concern for ‘potential issues which nondecision-making prevents from being actual’.326 Hidden power is applied to emphasize controlling the agenda of political decision-making. Invisible power is identified by Lukes as a radical view of power, the exercise of which is to internalize oppression by controlling people’s values and beliefs to the extent that people may be unaware of their rights, “either because they can see it as natural and unchangeable, or because they value it as divinely ordained and beneficial.”327 The locus of invisible power is more embedded in societal relations and social norms within a society whereby the powerful would mobilize the social resources to suppress ‘latent conflict’ which is against the ‘real interest’ of the subordinate.328

322 An intricate and visualized description of the power cube is available at <www.powercube.net> accessed 18 July 2017.
324 ibid 16.
325 ibid 19.
326 ibid 22-23. Emphasis is from the original text.
327 ibid 28.
328 ibid. Emphasis is from the original text.
Power relations and spaces are interrelated with each other. When power relations operate in various spaces; spaces with their boundaries are shaped by power relations.\textsuperscript{329} The spaces dimension indicates closed, invited, and claimed (self-created) spaces for political participation and spaces are arenas where the subordinate take measures or strategies to contest or challenge the established power relations. Closed spaces are those where decision are made with little consultation or involvement. Countervailing power attempts to open up the closed space in ways that make the processes decision-making more transparent and hold decision-makers account. Invited spaces indicate spaces in the form of regularized participation or one-off consultation by the powerful to restore legitimacy. More opportunities might be created in this space for invitees to advocate for their interests and exert influence on the processes of decision-making. Claimed (self-created) spaces emerge when the subordinate creates those spaces outside the institutionalized policy arenas by themselves for greater participation and involvement.\textsuperscript{330} Notwithstanding that closed, invited and claimed spaces are different sites to engage with power, there are interactions among them. Claimed space per se can be taken as an approach to the closed space, while involvement in the invited space may pave way for developing further strategies to claim or create spaces.

The power cube maps out power configurations in a series of practical exercises to better understand how power works in the development context. A practical application of the power cube would be meaningful, not only because it helps practitioners who seek to change power relationship to better analyze and understand the changing configurations of powers, but more importantly, it provides a reflective tool to map the types of power to be challenged and to look at the strategies for doing so.\textsuperscript{331} From this vantage point, Gaventa’s approach may be a proper entry point for us to disentangle the complex power structures and their interrelations that are embedded in the Chinese setting of rural land expropriation. Moreover, it can provide us with a tool to look into and reflect on the powerless farmers’ capacity as well as their activities in changing and challenging the power structures embedded in state acquisition. To be sure, the power cube is far from being perfectly designed. For instance, it risks in being static in its portrayal of power, as Gaventa himself admitted.\textsuperscript{332} We will come back to this point later.

5.2.2 A transformative use of the power cube

Prior to a transformative application of the power cube in this chapter, some clarifications are in order. Firstly, based on a trio of global, national and local levels in Gaventa’s approach, the levels dimension is narrowed down to a domestic scale entailing the central, local and village levels in the modified power cube (see Table One). Land expropriation is essentially a domestic issue in China whereas global actors rarely engage. It should be noted that both central and local levels are within the administrative hierarchy while the village level is outside the bureaucracy (to highlight this point, we mark the village level in red in Table One). The village authority assumes an important role in practice, most notably when they are taken as an extension of official power to carry out government operation of expropriation. At this point, it is meaningful to take village authority into consideration when we examine the levels of power. That said, it does not suggest the village authority is entirely subservient to local power without representing collective interest at the village level. The complex incentives for their decision-making and modes of action will be analyzed later.

\textsuperscript{330} ibid.
\textsuperscript{332} ibid.
Moreover, the political system in China consists of multiple authorities. Both central and local authorities are two main sources of power in the political system whose decision-making exert influences on the exercise of property rights. Though the two forms of power are deployed in a hierarchical order, their aims or interests are not always consistent, nor do they necessarily share congruent values to control land development, which will be elaborated on later. For the convenience of analysis, the central power in this chapter is identified as central government that represents the regime and authority at the top level. Multiple local authorities beneath the central government are composed by the provincial, prefectural, county and township governments in a hierarchical order and will be referred to as local governments. Nevertheless, in similar cases with central-local relations, local governments at various administrative levels have competing interests on land.

Secondly, the space for engagement in political participation is limited for both international NGOs and domestic civil society organizations. Given the increasingly political sensitivity in China in relation to land expropriation, these organizations have a limited opportunity to challenge the present power structures and relations. Civil society organizations are seldom able to make their endeavors in rights advocacy visible in public sphere. It is primarily the expropriated farmers, either as individuals or in collective forms, which are the main driving forces to challenge or change the power relations.

Finally, in terms of the real application, each side of the cube must be understood as “a dimension or set of relationships, not as a fixed or static set of categories.” As Gaventa highlights, “Like a Rubik’s cube, the blocks within the cube can be rotated – any of the blocks or sides may be used as the first point, but each dimension is linked to the other.” Since the aim of the chapter is to explore how the power structures and their interrelationships affect the realization of property interests, we start the application from the levels of power and turn to the forms of power along with their respective influences on property interests. We will conclude by analyzing how the expropriated farmers participate and engage with the power structure to seek opportunities for changes.

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333 Chinese administrative jurisdictions are five-layered hierarchy. Beneath the central government, there are provincial, prefectural, county and below-county jurisdictions. Prefectural-level cities cover both urban and rural territories; few counties are directly beneath provincial governments. Township government, which is frequently mentioned in this chapter, has the lowest level of administrative jurisdiction.


335 In China’s restrictive political environment, civil societies or NGOs have very limited political participatory space. In 2015, China enacted a policy to regulate social movement whereby the existence of numerous NGOs came to an end. Regarding the rights-related social movements in land expropriation, seldom social organizations participate in that it is regarded as a highly sensitive issue in China. As revealed by the media, some human rights activists or lawyers were punished or suppressed owing to their public participation in land-related grievances.


337 ibid.
Table One  The “power cube” with modifications (source: www.powercube.net)

5.2.3 Data generation and analysis

This chapter primarily employed in-depth interviews and participant observation to collect information. The methodological details of data collection are presented in Chapter 1. As previously addressed, in-depth interviews were primarily conducted with local state actors. Officials at central government and its various departments were not interviewed mainly due to access. Moreover, the power at the central level was generally remote and seldom involved directly into the actual implementation of land-taking at the locality. Central power manifests itself invisibly mainly through the tools of regulations and policy directives. As such, data to analyze the role of central power and its implications were mostly generated from documentary sources which entailed legal documents and central policy documents (such as administrative measures, notices, guidelines) regulating the operation of land expropriation.

Differing from Chapters 4 and 6 whereby a totally inductive approach was applied, this chapter combined deductive and inductive strategies to analyze the raw data. This chapter relied on Gaventa’s ‘power cube’ to investigate how complex and dynamic power relations and their interrelations affect the exercise of property rights. The power cube with a set of predetermined codes and categories directed me to formulate an initial coding scheme and identify the relationships among the codes and categories. Insofar as the power cube was initially applied to understand power structure and relations in global context, I refined the analytic tool to fit with my own research which aimed at understanding power at a local scale. In addition to the original deductive approach, I applied inductive strategy to revise the existing codes and categories (the levels of power) and identified a new category (the level of village power). The general analytic procedure was presented in Chapter 1. A coding book is attached as an appendix (Appendix F).

5.3 The levels of power
This section intends to examine decision-making at different levels of power that exert influences on property rights. Expropriation decisions can be analyzed along the vertical dimensions, ranging from central and local, downward to the village (ground) level. Since what is going on across all levels of power is significant, it is necessary to consider each level and their inter-relationships between them. Before an exploration of sources of power that affect the exercise of property rights, it has to be noted that the changing pattern of rural governance has significantly impacted the distribution of administrative power in rural society.

As stated in Chapter 2, prior to the adoption of economic reform policy, the state authority held direct control of rural society featured by a command-and-control system of governance. An ‘overall control’ was achieved through the grass-root political organization—the People’s Commune, which carried out all sorts of economic and political resource mobilization through mass movements initiated by the party-state or top leaders. The establishment of the HRS, as well as administrative villages in replacement of the People’s Commune, hallmarked withdrawal of state authority from rural communities. Governance was further deregulated with the noticeable abolition of agricultural tax in 2006 which put an end to centuries-old levies on farmers and the abandonment of decades-long family planning policy (‘one-child policy’) in 2015.

The changed pattern of rural governance had important implications on power distribution and operation in rural society. While the change in governance granted rural residents more freedom and autonomy, it weakened the state’s political authority in rural society. Consequently, the rural area witnessed the weakening of state power in controlling rural labor and its resources. This situation changed with the advent of fiscal recentralization which drove local government to convert more rural land for urban use to collect revenue. Local authority consolidated control over land resources in rural community with their heavy reliance on rural land to raise revenue.

With the prevalence of village-level democratic election in rural society, rural villages gained more autonomy to perform ‘self-governance’ and rural committee was legally defined as an autonomous organization. The underlying principles for self-governance are self-management, self-education and self-service. The elected committee members should be responsible for managing village affairs, including the management of land and other collective assets. However, self-governance has not been perfectly performed, nor have the elected village leaders always been independent or responsive. This has

338 In fact, an overall control was a defining feature of the authoritarian political system whereby the state held a tight and direct control over all aspects of the society. See Qu Jingdong (渠敬东), Zhou Feizhou (周飞舟) and Ying Xing (应星), ‘From Macromanagement to Micromanagement: Reflections on Thirty Years of Reform from the Sociological Perspective’ (从总体支配到技术治理: 基于中国 30 年改革经验的社会学分析) (2009) 6 China Social Science (中国社会科学) 104.
340 Several legal sociologists set forth empirical analysis on law implementation on the ground at the turn of this century. They point out certain rural areas are still beyond the reach of law, and the countryside is a marginal area of national power. See Jiang Shigong (强世功), Legal Institution and Governance: Law in State Transition (法制与治理: 国家转型中的法律) (CUP Press 2003) 220-233; See also Suli Zhu, Sending Law to the Countryside: Research on China’s Basic-level Judicial System (Springer Singapore 2016) 10-14.
something to do with the government, especially township authority, attempts to interfere in rural self-governance on the ground. We will discuss this point later.

5.3.1 The level of central power

Power at the central level generally manifests itself as the political will to make relevant decisions as well as the capacity to monitor and control its local agents. Power at the central level is embedded with its pursuance of specific targets despite conflicts among them. In eminent domain, central authority assumes multiple roles, including decision-maker, patron delegating power of eminent domain to local agents and supervisor monitoring local performance.

The central authority is a primary decision-maker who enacts laws and policies to manage rural land. It has been noted that land management is associated with the fulfillment of multiple goals, ranging from preserving farmland for food self-sufficiency and protecting farmers’ interests in landholding, to maintaining social order in rural society. As a supreme power representing the regime, the central government regulates rural land by imposing multiple targets on local governments. Chapter 3 has already demonstrated how the existing land law and expropriation institutions are established and have weakened farmers’ property rights. We will not dwell on it here. It is noteworthy that decision-making made at the central level is one source of power that constrain the security of property rights.

Moreover, the central government is a patron delegating eminent domain power to its local agents for implementation. Power is firstly delegated to local authorities to specify and enforce the implementation of rules. Since it is unrealistic to enact unitary rules given territorial diversity and differences in economic development in China, the Center grants local agents authority to specify their own rules to accommodate local circumstances. The LAL has left much room for the local authority to specify and adjust the rules for implementation. Another example is the distribution of land conveyance fee between the central and the local authority. The LAL amended in 1998 allowed 70 percent of land conveyance fee to stay the local level and required the remaining 30 percent be submitted to the Center. Although it was provided that the land conveyance fee should be used for readjusting cultivable land, the bulk of the fee generated from rural land conversion was in reality at the disposal of local government. It was believed such a distribution of the fee might enable local government to address the problem of increasing local fiscal expenditure. As was discussed in Chapter 3, after the fiscal reform in the early 1990s, the Center centralized favorable taxation and local authorities were confronted with local budget deficit. Rural land conversion through eminent domain provided an alternative source of local revenue. The delegation of eminent domain power, in couple with the allocation of land conveyance fee, revealed that the Center permitted, if not consolidated, local reliance on land to raise revenue through expropriation.

Lastly, the central government controls and oversees local land development. Rural land has been managed to accommodate multiple state goals. Embedded in national policy documents is that land development is required to accomplish competing values such as economic growth, urban transformation and the furtherance of farmer’s property interests. Faced with the tensions among these goals, local authorities somehow defy central wills and grab land to boost urban expansion and local economic prosperity at the expense of farmer’s loss. The predatory taking leads to rural unrests and poses threats to regime legitimacy and party-state authority. Unlike local government that is highly concerned with local economic growth, the central authority accords critical significance to both economic growth and stability.

maintenance (维稳). To reduce the scope of incessant land acquisition and placate farmers, the central government is committed to establishing a stringent land regime. One policy tool to control rural land development is the quota system of rural land conversion for non-agricultural use. The central authority draws an annual land-use plan and allocates a quota of rural land conversion to provincial governments, who would reallocate the quota down to levels of local government below the provincial level. The policy aims at rationalizing land use and reducing the scale of rural land encroachment. Another countermeasure to constraining local discretion is the reallocation of power division in farmland expropriation, which replaces the previous hierarchical review and approval system. The power to authorize land expropriation is recentralized at central and provincial authorities. Three circumstances in which land expropriation shall be authorized by the State Council are specified: 1) basic farmland; 2) cultivated land other than the basic farmland exceeding 35 hectares; and 3) other land exceeding 70 hectares. Land expropriation in all other cases must be approved by provincial authorities and report to the State Council. Additionally, policy initiatives are launched to require the total amount of farmland be maintained in the process of urban expansion. For instance, ‘linking urban and rural construction land changes’ (城乡建设用地增减挂钩) requires the reduction of farmland which is developed into urban land be compensated by same or larger area of rural construction land that is converted into farmland.\footnote{\ citation{345}}

5.3.2 The level of local power

In a unitary system, local government is subordinate to the central government. It is subject to the unified leadership of the central authority, in terms of implementing its various administrative regulations and decisions and holding accountable. Insofar as law-making is concerned, local regulations are set forth to fit local conditions, but the central authority can annul its legislation in case they conflict with the national laws. As such, central-local relations are conventionally perceived as superior-subordinate. This view, however, may blind casual observers the complexities in a regime with much diversity as in China. Based on central-local power division, Zheng defines central-local relations in the existing political system as a de facto federalism.\footnote{\ citation{346}} He characterizes the de facto federalism in three aspects: 1) both central and local governments have some activities on which they can respectively make their final decisions; 2) it is hard for the central to unilaterally impose its discretion on the local in virtue of decentralization; 3) the local authority assumes “primary responsibility over the economy and, to some extent, politics within their jurisdictions”.\footnote{\ citation{347}} It goes beyond the scope of this chapter to assess the rationale behind the formation of the de facto federalism. A notable point is that such a description at least reveals local government’s role vis-a-vis central authority in their interactive relationship. The role in question is positioned as both an agent of the central government and a local decision-maker to determine how to operate government land-taking.

To illustrate, local authority is granted power and authority and assume responsibility in implementing central policies. It is noteworthy that local government appears more accountable to central government than local constituents throughout the process of actual implementation. It has been well documented that local officials are appointed by the communist party committee in the Party-state regime and are chiefly responsible to their superiors and therefore they put more emphasis on the satisfaction of the central

\footnote{\ citation{345} The LAL art 45 (2004 amendment).
\ citation{347} ibid 107.}
leader than on the people under its administration.\textsuperscript{348} This attitude has influenced local priorities in implementing land policies. Notwithstanding the imposition of multiple state goals, local state actors have their own economic and bureaucratic interests attached to land. Typically, urban expansion and economic growth are visible results favorable for their performance achievements and career prospects. Given their dual roles as land users and enforcers of land use control, local state actors tend to circumvent and manipulate central policy to prioritize those favorable goals over the respect and protection for property rights. It has been much discussed how local government develops various coping strategies to go around the rules, regulations and inspections from the central government in terms of land use management.\textsuperscript{349} For instance, to avoid the formal approval procedure at the central level for land conversion, one common strategy is to divide mega land expropriation projects into small ones. Another strategy to bypass central scrutiny into farmland conversion is to play the rules of land classification. By taking advantage of the asymmetric information, local governments would secretly misclassify agricultural land that is needed for development into non-agricultural land.

Simultaneously, local authority is a decision maker who carries out the operation of eminent domain within its jurisdiction. Insofar as China still lacks a unitary expropriation law, it relies on local governments to set agenda for specific issues pertaining to the operation of land-taking. In this instance, local government gains autonomy in both enacting rule and enforcing the implementation of rules, this is often said by the expropriated villagers that local authorities partake of roles of ‘both referee and player’.\textsuperscript{350} In the situation of rural land expropriation, local authorities are public actors setting the agenda for expropriation of land under the name of public interest. At the same time, they are private-like actors who compete with farmers and attempt to maximize gains in the processes of rural land conversion. Driven by economic incentives and insufficient checks and balances on its power exertion, local authorities tempt to extract more profit from land, either by squeezing the compensatory price or utilizing its discretion at best to excessively expropriate land.\textsuperscript{351} In stark contrast with the wide discretion at the local level to determine critical expropriation-related issues, farmers had little chance for public participation, as much discussed in the previous chapters.\textsuperscript{352}

5.3.3 The level of village power

Legally speaking, rural village committee is defined as an autonomous organization that does not belong to the formal state bureaucratic system. It is beyond the direct administrative intervention from the state bureaucracies. In the reality, it is common practice that local authority stretches its authority over the village through finance control and personnel management in order to penetrate the administrative power into the village and extract more resources such as rural land. The financial control shifts the village’s autonomy over financial revenue and budget to the township level. In so doing, the township government can make the final decision for the village-level expenditure in the village. During the survey period in the locality, township government managed village financial resource under the pattern that township and


\textsuperscript{350} Interview with an elder villager in Village D (17 July 2015).

\textsuperscript{351} Empirical analysis is demonstrated as follows (Section 5.4.2 Hidden Power).

\textsuperscript{352} A detailed discussion over the restriction on public participation can be found in Chapter 2; Farmer’s limited choices are detailed in Chapter 4 (Section 4.7.2 Choice-setting).
town government manage village-level finance (村账镇管). The practice ran counter to organizational principles that characterized the village as an autonomous organization. More importantly, it damaged the village’s autonomy in its own affairs. According to a village cadre:

The mechanism is initially set up to fight against the mounting corruptions associated with the monopoly on power of the village cadres in rural community. But now the township authority has taken control of village financial resources since prime expenditures within the village must be approved and monitored by the township leaders.

Similarly, the personnel management, namely, the organizational control, was routinized in a way that local authorities would interfere in the process and results of village elections. There was a common view that village Party Sectary is directly appointed by the local authority as the ‘big boss’ of the village, while the elected director of the village committee assumed secondary status.

Village authority was easily faced with competing interests from the government (both central and local) and the community and therefore they must play conflicting roles. On the one side, village authority was expected by local authorities to assume more responsibility in implementing various state policies. As aforementioned, when local state actors shouldered their responsibility in promoting urban expansion, it was not news that local authorities (primarily township government) reassigned various responsibilities downwards to the village level. With the abolition of birth control and agricultural tax, rural land taking ascended to be the main task. In the daily operation, local state actors were highly dependent on village leaders to fulfill the task and the responsibilities were largely assigned to village leaders. One village Party Secretary commented on the scenario, ‘Though we are temporarily recruited into the working team for implementation, we do not just mediate between villagers and local authority as assumed. Instead, we are assigned with heavy responsibility and may be scolded if we can manage to fulfill the whole task.’

On the other side, village authority also represented the community interest. Village cadres were under the pressure of village election and they should serve the community interest, albeit election outcome might be subject to intervention from the local authority. In the situation of land taking, village authority should represent the collective to manage collective assets and receive land compensation fee (one among the three compensation items) from the local authority.

Village authority was thus faced with a dilemma when they had to both represent the rural community to defend their interests in landholding and assumed the responsibilities in fulfilling the task of demolition and eviction. While they were expected to be held accountable to facilitate land expropriation as if they were state actors, their priority was to fulfill the task of land-taking. Nevertheless, they would be seen as traitors if they overacted and harmed their peers’ interests since they were individuals mostly born and raised in the community with acquaintance group knit by tight social ties. Living in the crevice, the village authority had to interact with both the local leaders and their village fellows as a middle-man, which, in the words of the village Party Secretary, “both avoid being scolded by the local superiors and please their peers in the village.”

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353 Interview with a female “collage graduate serving as village officials” (13 July 2015).
354 ibid.
356 Interview with a male Village Party Secretary (4 August 2015).
357 ibid.
That being the case, some village leaders sought to find a more diplomatic approach. The simple solution was their under-defined role and power. In the existing political system, villager leaders were not civil servants, nor did they enjoy the social benefits (such as retirement pension) as civil servants do. In most cases, they would have to leave their position after a certain term (each term is 3 years). Therefore, when village leaders were informally assigned the responsibility or integrated into the bureaucracy for enforcement, their power or authority remained unspecified or obscured. The unspecified power and authority blurred their role in the real practice. This provided opportunity for village cadres to take advantage of the obscurity to accomplish the task. The village Party Sectary explained their tactic:

We respond to the local authority by complaining about the practical difficulties in enforcing owing to our unauthorized power and authority. Likewise, we gained sympathy from the villagers when we explained our reluctance in accepting the thankless task and unwillingness to harm any villagers’ interests.358

The informal or under-defined power or authority, however, paved way for village-level rent-seeking behaviors in the situation of rural land expropriation. Owing to their familiarity with the government-set expropriation rules, village cadres were apt to exploit the loopholes or seize potential opportunity to serve their individual needs. Ironically, in the real practice, local state actors tended to acquiesce in those behaviors, particularly when village leader behaved in subtle ways that were not obviously against the law provided their knowledge about the rules. One ‘college graduate village official’ (大学生村官)359 explained the rationale behind the acquiescence:

There appears a kind of tacit agreement between government officials and village cadres. This is because higher-level government leaders are well aware that village cadres, compared to their own situation, have limited incentives to fulfill the cumbersome task. They would rather take it as an informal economic reward to incentivize village cadres’ commitment to assuming more responsibility as long as their behaviors do not cross the line to illegality.360

5.4 The Forms of Power

This section uses empirical data to examine how an effective exercise of property rights has been constrained by three forms of power. State power is visible in the form of national laws and regulations that governing rural land expropriation. National laws and regulations in particular are reconfigured and transformed. Decision-making and policy specification constitutes visible power at the local level. A form of power is hidden regarding policy implementation in adaptive and distortive ways which evades from central supervision and mitigates resistance from the expropriated population. Central to invisible power is to shape people’s understanding of themselves and their perception of a natural and irresistible changes in their property and lives.

5.4.1 Visible power

Visible power is primarily wielded through state legislations that legitimize land expropriation by conferring government monopoly power on land taking. Much has been discussed concerning how the current expropriation institutions weakened property rights (in Chapter 3). Despite the constraints from

358 ibid.
359 The program of “college graduates as village officials” is presented in Section 6.1 (data collection) of Chapter 1.
360 Interview with a female “college graduates serving as village officials” (13 July 2015).
the legislations, visible power is mostly discussed from a theoretical stance. This sub-section offers a deeper exploration of how the ‘repressive potential’ of the formal rules is manifested on the ground.

*Manipulation of policy discourse*\(^{362}\)

China adopts a government-managed strategy to promote urban development. In the national plan, urbanization has been accorded paramount significance that is crucial to the restructuring of economy to a deeper extent, an integration of rural-urban development and the stimulation of domestic consumption and employment.\(^{363}\) Urbanism permeates the government-managed development mode. As Hsing comments, “By the mid-2000s, urbanism largely took over industrialism as the basis for political legitimacy and policy discourse.”\(^{364}\) Urbanism provides legitimacy for the state to engage with pro-urbanization activities, most notably, it enables the state to both fulfill “a nationalist, developmental obligations to make more rural land available for urbanization”.\(^{365}\) As local agents of the Center, local governments have relied on state policy discourse to not only lend legitimacy for their implementation, but more likely, they maneuver the official rhetoric to meet their needs, in the sense that they highlight the need of taking more land for development and urbanization whereas attach less importance to rights protection.

Their selective adherence to official rhetoric is to both legitimate their actions of land-taking and reduce the resistance. Given the predominance of urbanism in policy discourse, local authority depends on the policy discourse to justify their actions. To this end, they consolidate people’s recognition of urbanization as inevitable and mandatory. In some areas, the policy discourse of urbanization is disseminated through a series of propaganda apparatus. The apparatus could be banners, slogans and sound track. The use of apparatus is to bring outright pressure on the affected farmer and eventually attain their compliance. Banners are one of the most common means to publicize official policy. Slogans are also utilized via broadcast to target at a specific group of villagers, albeit more commonly found via public media such as telecast and network. Those are typical instruments for political mobilization, with a coercive rhetorical impact on the expropriated farmers. One villager recalled his feelings with the local mass mobilization:

> Because we did not want to move, the loudspeaker standing in front of the village headquarter broadcasted the expropriation policies all day long. It was so annoying. You can even hear intimidation, saying, “Anyone who obstructs the infrastructural construction in S City would be the sinner of the history.”\(^{366}\)

While the means of mass mobilization was not enough to force villagers out, a selective utilization of Party-state official rhetoric was applied to disguise local illegitimate decisions. In the village D, after villagers were informed of the news that their relocation mode was unilaterally changed from in-kind

\(^{361}\) Phillippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (Transaction Publishers 1978) 29. The term “repressive potential” is from the authors who use it to indicate every legal order has the repressive potential.

\(^{362}\) Here the use of the term “manipulation” has been inspired by van Dijk, who frames manipulation in his work as “a form of social power abuse, cognitive mind control and discursive interaction”. See Teun A Van Dijk, ‘Discourse and Manipulation’ (2006) 17 (3) Discourse & Society 359.

\(^{363}\) National New Type Urbanization Plan 2014-2020 (n 21).

\(^{364}\) Hsing, *The Great Urban Transformation* (n 118).


\(^{366}\) Interview with a middle-aged male villager in Village D (31 July 2015).
compensation to in-cash compensation without prior notice, they went to question the township authority. The Town Chief refused to give a response, albeit he was well informed about the story. He utilized the state policy to justify the legitimacy of local decision. In his words:

We are only executing the state policy to arrange compensation and relocation for you. No one may violate the policy. State policy is the baseline.

The Town Chief portrayed local decision as a constitutive part of state policy. In so doing, he could sidetrack farmers’ attention to challenge national policy rather than contest their own malpractice. Surely, he did so not only because of the embeddedness of urbanism in the state’s policy discourse, but also on the condition that farmer lacked knowledge about the formal rules. In this aspect, national policy was deliberately interpreted as ‘rules and violence’ which disguised local malfeasance and legitimated their abuse of power.

In summary, official policy discourse, portrayed as the imposition of the will of the state on the rural context, was in fact subject to local manipulation. Local state actors utilized this discourse to both deter farmers with disciplines and consolidate their recognition of mandated events that would be necessary for the justification of governmental actions and political authority. As will be discussed later, as a response to local manipulation of the official rhetoric, farmers strategized their resistance with their adherence to states’ policy discourse (in Section 5.5.1).

**Maneuver of Carrot and Stick**

National policies were often reconfigured through official rhetoric and technically transformed into local rules that led to a direct control over decision-taking by local government actors and indirectly influenced farmers’ decision-making. A reconfiguration of the national policy created a combined strategy of carrot and stick to serve local government’s interest.

Economic incentives were substantially endorsed by the authority as an effective carrot to incentivize the villagers to give up their land. In the S City, the material reward was provided in the local regulation in the form of ‘Incentive Payments for On-time Housing Vacation’ (按期拆迁房屋奖励费). A sum of 200 yuan/m² would be awarded to those who vacated their houses within the specific duration. The reward should be calculated according to the valid construction area of the housing plot whereas it was not applicable to the ‘unregistered construction’. Therefore, economic reward became an important factor to influence farmers’ decision-making in the sense they should not only surrender their land, but vacate their houses in a prompt and timely manner. While economic incentive was appealing and might account for quite a portion of the entire compensation for some people, it somehow turned into a punishment for those who failed to comply.

Apart from economic incentives, a set of coercive measures was designed to press the expropriated population to remove. The local regulation set forth that the expropriated people should vacate their land on schedule. In case they failed to do so, the county (or the district) authority could issue a ‘decision on vacation before deadline’ (限期腾地决定). For those who would still not comply, local authorities could resort to the court for a judicial enforcement. As such, a line of measures was adopted by local state

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367 Interview with three activists in collective action in Village D (14 July 2015).
368 Implementation Measures of S City art 18 (2008).
369 ibid art 12 (2008).
370 The Expropriation Regulations of S City art 15 (2007).
actors to coercively and oppressively press the expropriated group to surrender their land. One villager put it in this way:

The whole process goes like this: you had better not drag your feet, otherwise they would lose patience to talk with you; you had better sign the earliest agreement, or you suffer inevitable loss; you had better not challenge them, or you will subject to forcible eviction and greater loss.371

Seen from the position of the expropriated villagers, they were vulnerable in the face of the coercive local rules and practices. The vulnerability of the farmer, discursively, was the outcome of the local authority’s deliberate transformative interpretation of the national policy. Obviously, a combination of ‘carrots and sticks’ much stressed government power to expropriate land but dismissed local responsibility to respect or protect property rights.

5.4.2 Hidden power

Given an enduring gulf between law-making and enforcement in China’s case, it might be too hasty to conclude that power manifestation in enforcement is as visible and constraining as that in legislation. Visible power has its limits in the circumstance of land expropriation in rural society. Moreover, rural community is the locus where formal and informal rules intersect and, modernity and tradition interface. An exertion of hidden power is intertwined with and supplementary to visible power, which ensures the powerful government control the values and interests of the subordinate. This sub-section examines how local authority deployed power to prevent important potential issues from entering into the realm of decision-making by taking advantage of the situation in which the expropriate population lack knowledge, voices or representations. Hidden power was manifested as local adaptive implementation of policies and local authorities formulated strategic alliance to sidetrack and even deviate from central policies.

Local adaptive implementation

As noted, local governments could specify the details of the established statutes governing rural land expropriation for its own implementation.372 In terms of the arrangements on compensation and relocation, the law merely set the main parameters, which included the three compensation items and the principled calculus standard with limits on the multipliers. Nevertheless, compensation calculus in the actual implementation was not limited to the centrally-set three compensation items. Instead, more factors had to be taken into account. There were regional variations in compensation standard that was associated with economic development at the locality. Moreover, there were variations at the household-level in that compensation is calculated on the basis of multiple indices, encompassing agricultural output, household size, arable land per capita and housing units with its acreage, structure and indoor-renovations. Furthermore, rural land has till to date provided social and economic security for farmers.

One unexpected outcome was that the expropriated farmers made derivative demands, which were inextricably linked with land compensation criteria such as social security. During the survey period, many expropriated households required the expropriation authority to address their family difficulties before they consented to be removed from the land. The hardship or difficulties they faced could be miscellaneous, ranging from illness, injury in (traffic) accidents, children education and disputes over household registration for specific groups of rural residents (‘out-married’ women, conscripts, veterans, college students, imprisoned populations.) For instance, local expropriation authority promised one aged

371 Informal Interview with a group in G Village (23 July 2015).
372 The LAL art 47 (3, 4) (1988).
expropriated woman with a medical allowance of 10,000 yuan for her factures in an accident as a nominal compensation; in other circumstances where the expropriated had cancer or serious diseases, the demanded allowance would be higher. Therefore, in the case of rural land expropriation, a body of local specific policies was enacted to deal with the actual situation on a case by case basis, while laws and regulations were symbolically complied. Unsurprisingly, local implementations deviated from the established laws and regulations.

Notwithstanding that adaptation was desired given the complexity in the reality, the adaptation brought on local officials much pressure particularly when land expropriation remained highly controversial. During the interview, local officials and village leaders complained about the challenges they faced in the actual implementation. They had to cope with various problems that were unanswerable within the institutional framework which relied on their use of discretion to address them. Their discretionary practices, however, had to be skillful and cautious enough so as not to aggravate the disputes, much less trigger conflicts. One township government official commented on the challenges:

Land expropriation becomes the most challenging task after the birth control policy… The most challenging part is that how to respond to diverse interest demands which vary from household to household. Though we are required to comply with government policies, many policies are outdated and do not fit the reality. Under this circumstance, we, as policy implementers, have to implement with flexibility, either through other policy channels or to employ adaptive measures.  

Given that many implementation details remained unaddressed in the policy document, adaptations and flexibility were necessitated to better achieve the policy goals and to fit the specific conditions on the ground. One typical type of policy adaptation was through ‘resource transfers’ from different policy arenas or different channels to prioritize land expropriation. As mentioned earlier, local implementers were faced with derivative demands that were indirectly related to the compensation for loss of land. To exchange land with rural landholders in an expedient way, local governments transferred the resources from other policy arenas or channels to get their job done. One case in point was the adaptive use of ‘severe illness aids’ (大病补助) and ‘allowance for hardship’ (困难补助), as aforementioned in Chapter 4. The financial resources were transferred from the arena of social assistance to land expropriation to respond to the demands in question. According to local formal procedures, if the compensation reached a certain amount, “a joint review is required amongst several departments such as the department of civil affairs, land and resources and finance sector”. However, in an authoritarian system, it was not uncommon that ‘the big boss has the final say’ (一把手说了算). As a consequence, the transferred resource from social assistance, which should benefit the people or households in need of the assistance, were now normalized and standardized to be selectively applied to a few groups. Certainly, the adaptive implementation might as well benefit some expropriated households who were going through hardship,

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373 Interview with a male official engaged in demolition and eviction work in township government (23 July 2015)
374 ‘Resource transfer’ was analyzed in the case of collusion among local governments in China to implement state policies in a flexible way. See Xueguang Zhou, ‘The Institutional Logic of Collusion among Local Governments in China’ (2010) 36 (1) Modern China 47, 58.
375 Detailed in Chapter 4 (Policy adaption in Section 4.6.1 Bureaucratic absorption of resistance).
376 Interview with a female official, who was a section chief of Bureau of Housing Administration (BHA) of S City (6 July 2015).
377 Interview with a male official, who was a manager in Urban Construction and Investment Group Company (UCIG) S City (4 August 2015).
but it was also likely that the resources might be directed by the local agents to serve their own interests or the interests of a small part of the expropriated group.

In many cases, local policy adaption was accompanied by strategic use of working skills in the operation. One telling example was a deceptive adaption derived from nontransparent or non-consultative policy-making for the convenience of implementation. One village Party Sectary explained this distortive implementation that functioned well in the reality:

The tactic is necessary. For example, at the beginning, I know clearly that the compensation for your case may amount to 200,000 yuan. But we would only propose you 180,000yuan, which is also the amount specified in expropriation agreement that is publicized to all. Since almost every household [including your case] would demand extra compensation based on their own specific conditions prior to their agreement, I can meet your demand with the reserved amount of 20,000yuan. In this instance, you are grateful to me and vacate your house earliest as a payback.

The tactic works great for us since it not only conforms to the policy but earns us face as if we did you a big favor.\(^{378}\)

In summary, an adaptive implementation of policy through the transfer of resources, coupled with farmers’ lack of official knowledge concerning which resource was transferable and who were eligible to the gains, made it possible for local implementers to bypass the scrutiny from their superiors and coax the villagers into giving up the land. Indeed, adaptations of policy implementation to carry out responsibilities that assigned in a top-down manner were conducive to flexibly address problems and conflicts at the local level. Most notably, it could bridge the inconsistency between policy-making and actual implementation.\(^{379}\) Nevertheless, the adaption turned out distortive with unrestrained discretion. Owing to a lack of transparency or information disclosure, the informal use of strategies might lead to rent-seeking behaviors which in themselves were in subtler form and moved beyond the information of the outsiders.

*The bureaucratic collusion*\(^{380}\)

In an authoritarian regime where the decision-making and various resources are centralized at the top level, local government is delegated authority of implementing policies and promoting economic growth within its jurisdiction. Much has been researched that officials at various local levels would “form strategic alliances and develop coping strategies in ways that often sidetrack or sabotage state policies, or impose their own interpretation in the implementation, leading to systematic deviation from the original intention behind these policies”.\(^{381}\) Insomuch as local governments have vested interests in land and are driven by fiscal and political incentives for large-scale rural land conversion, they would collude through their informal and coordinated practice to achieve both ends of meeting policy targets and circumventing review and scrutiny from the central authority. Cases of bureaucratic collusion may take place between lower levels of local governments (for instance, between township and county), or among all local

\(^{378}\) ibid.


\(^{380}\) The term ‘bureaucratic collusion’ is borrowed from Zhou Xueguang’s analysis of collusion among local governments in response to the central state and its policies. See Zhou, ‘The Institutional Logic of Collusion among Local Governments in China’ (n 373) 47.

\(^{381}\) ibid 48.
governments (from the province down township), or even between local governments and individuals or organizations. The following cases reveal different forms of collusion whereby local governments are the leading roles.

The first instance was local collusive action to misclassify basic farmland into other types of rural land to evade central authorization for farmland conversion. As earlier indicated, the central government recently centralized power to authorize farmland conversion to the provincial and central authorities. In the village D, a tract of 500mu (33.334 hectares) rural land was enclosed to be freed up to construct a provincial key project of logistics industrial park.\(^{382}\) An announcement was published by the city government to notify the affected population.\(^{383}\) The land use plan was approved by the provincial government in that the acreage of rural land was less than 35 hectares. However, the legitimacy of land use plan was contested by D villagers, who claimed that the administrative approval procedure was inconsistent with the legal requirements. Most tracts of the enclosed rural land were basic farmland, which, according to the law, should be subject to the approval of the central authority—the State Council.\(^{384}\)

In fact, it was not difficult to collect evidence to justify the illegitimacy. The maple monument in the field, set up in 2011 headlined as ‘basic farmland protection area in H Town, S County’ was an eloquent testimony.\(^{385}\) The inscription on the monument listed all the detailed information, entailing the location, the purpose of use and prohibitions from misuse or other non-agricultural changes, for this basic farmland protection area. The site plan indicated that most arable land in village D had been charted within the protection area. Later, villagers became aware that county government had intentionally concealed the fact that the land was mostly basic farmland when it submitted the farmland conversion plan to the provincial government. Instead, basic farmland was misclassified into arable land, unused land, or other types of land. In so doing, they could avoid the legal procedural requirement that basic farmland, regardless of the acreage, should be approved by the State Council. Even though it was the county government made the land use plan in coordination with the township government, villagers did not believe that the provincial authority could have been so easily deceived by its subordinate officials, most notably, it was not a subtle affair to discover that most tracts of land in village D had been enclosed into basic farmland protection area. The compelling reason why provincial authority would authorize the land use plan was that the enclosed land would to be used to construct a logistic park, which was economically prosperous and more importantly, under the charge of the province’s deputy governor. As such, villagers insisted that “hierarchical bureaucrats shielded one another (官官相护), since they all had their vested interests in the expropriation program”\(^ {386}\)

The second instance was the collusion between local governments and the village leader. In village D, an area of 109mu not far from the planned logistics park was initially allocated to relocate the expropriated population. However, the township government decided to sell the planned relocation area to a private land developer at a price of 1.5 million yuan per mu to maximize the local revenue.\(^{387}\) To do so, the village Party Secretary issued a letter, without information of the villagers, indicating that “all village

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\(^{382}\) Files provided by D villagers.

\(^{383}\) ibid.


\(^{385}\) Photo taken in the field.

\(^{386}\) Interview with three activists in collective action in Village D (14 July 2015).

\(^{387}\) Files provided by D villagers.
members agreed with the arrangement and voluntarily disclaimed the right to a public hearing”.\textsuperscript{388} It was unclear whether the Sectary was instructed by the township government, or, he did so to seize personal gain from the deal, the village leader abused his power to bypass all the villagers to dispose their land for resettlement and the township government benefited enormously from the land transfer. Despite their repetitive petitions to the higher-level authority to report the collusive behaviors, villagers found it extremely hard to break through the web of interests formulated by alliance.

Drawing from the foregoing illustrations, local authorities could hold control of the critical issues on the agenda. The collusion in subtle, secretive forms was placed and operated within a limited space. Illegitimate decisions were made and agreed upon among layers of bureaucracy, including the village level. Concerted decisions were made so that some potentially threatening demands could be avoided from being raised and villagers’ preference prevented from being articulated. Therefore, various collusive behaviors both infringed upon rights and defied central effort to rein in local discretion.

5.4.3 Invisible power

A recurring theme was that rural land expropriation was premised as an indispensable route toward urban transformation. To this end, the government attached significant importance to moral arguments and claims to justify its action. One typical claim was that land-based urbanization would bring about long-term development benefiting the entire society and consequently, individual sacrifice was inevitable and necessary, as was partly addressed in Chapter 4. In this sense, the form of invisible power was applied to shape or control the belief of the expropriated people.

\textit{Adaptation as an individual issue}

Central to a land-centered urbanization pattern was the conversion of rural land for urban use. Comparing to farmers’ core concerns regarding how to survive in the city area given their disadvantageous conditions in job-seeking, local authorities would rather reconfigure these concerns as individual issues. At this point, it suggested that it depended on the individual efforts and ability to benefit from urban development and the outcome would vary from individual to individual. An official commented on the expropriated farmers’ failure in addressing their own concern:

Farmers are accustomed to a self-sufficient mode of farming life from which they usually enjoy more leisure time and fun. It is unlikely to change their way of living in a short period. Many expropriated farmers are so reluctant to adapt to a regular working lifestyle in the city albeit they have to. They are unwilling to find a job even though some are competent, simply because they are: i) afraid of losing face; ii) too resistive to alter the status quo; iii) less-educated; and vi) too lazy to work.\textsuperscript{389}

Here, the expropriated farmers’ failure in finding a job or integrating into a city lifestyle was explained as their own fault. The comprehensive subsistence problem encountered the relocated farmers was recast as an individual issue and the fundamental solution rested on their individual personality, educational background, or even their mindset. In this sense, the ideology of urbanism was an illustration of an invisible power. The power was deployed to portray urbanization as beneficial and developmental in the long run whereas the issue of subsistence living of the expropriated was stripped from the grand narrative in development. The invisible form of power was in place, not only to forestall farmers’ repulsion or

\textsuperscript{388} ibid.
\textsuperscript{389} Interview with a female official of UCIG of S City (4 August 2015).
resistance against urbanization, but to let them accept the imperative of land expropriation that would be inevitable and necessary for the pursuit of urbanization. Nevertheless, while the failure of subsistence and development of the relocated was deemed as an individual woe, the systematic reasons for the cause of the failure, however, were kept off the discussion forum. In fact, the causes of the failure were multifaceted, ranging from how a relentless land taking was carried on with insufficient compensation and an unfavorable relocation mode, to the less investment in reemployment training. These all contributed to the landless farmers’ vulnerability, marginalization and even impoverishment.

A twisted notion of equality

As previously demonstrated, the prevalence of transformative policy implementation and their unfettered discretion gave rise to unequal treatment and distributive injustice on the affected farmers (Section 4.6.1 in Chapter 4). Villagers lost out because they were not the kind of people that were able, knowledgeable, or resistant enough, nor were they able to maintain personal ties with some officials. They however did notice the uneven distribution of compensation and gains. Unfairness became a source of the evicted villagers’ grievance and resentment. Against this backdrop, some demanded a higher compensation by turning back what they agreed before their removal from their house. Though they had no idea of how much extra compensation they might attain from the local authority, they were fully aware that it was the last chance before their land was cleared up. They made the comparison between what the successful winner gained and their unreasonably little compensation and claimed additional compensation in order to bridge the gap.

Their demand for equal treatment, or equal share of distribution, was demeaned by some officials as selfish and narrow-minded. Likewise, their claim on an extra amount of compensation was interpreted in the sense that they were ‘green-eyed’ (眼红) or jealous of their fellow villagers. In the eyes of local officials, the ultimate cause for villagers’ complaints and behaviors, as well as their attempts to pull back, was their low ‘quality’ (素质) that had much to do with their inferior education, skill, and vision. In a similar vein, their demands to have equal share with a few groups of people that were special in some cases were devalued as parochial thoughts, which radically stemmed from their inherent low quality. One village Party Secretary expressed his view towards this:

There is a presumption that farmers are more concerned with equal distribution than their individual gains. This is misleading. In fact, the state of equal distribution is only achievable on condition that no one is selfish. However, rural people are calculative. No one is willing to see their neighbors or relatives, other than themselves, better off. Rather than the case that someone else is wealthier than themselves, they would prefer everyone to remain worse-off.391

Admittedly, some villagers would be rather calculative or speculative in their pursuit of material benefit, particularly when there were loopholes in the distribution rules. It was also not uncommon that villagers made their claims based on explicit comparisons in case they were subject to inferior treatment. Most did not compare themselves with others whom they hardly knew, but instead with their fellow villagers, relatives, or friends in the village. The calculation or the comparison was actually a moderate requirement of equality as a result of their experience of inferior treatment. Their awareness was widely

390 Interview with a female official of UCIG S City (4 August 2015); For a detailed discussion of a suzhi discourse, which was conjoined with (in particular rural) population and the implementation of birth-control policy, see Andrew Kipnis, ‘Suzhi: A Keyword Approach’ (2006) 186 The China Quarterly 295; Ann Anagnost, ‘The Corporeal Politics of Quality (suzhi)’ (2004) 16(2) Public culture 189.

391 Interview with a male official, who was a manager of UCIG S City (4 August 2015).
interpreted as compatible with a Chinese conventional wisdom that “people do not worry about scarcity, they worry about equitable rule” (不患寡而患不均). They somehow were fully aware that everyone shall have an equal share in the distribution of compensation rather than a few groups have a larger share. Nevertheless, rather than trying to rectify the uneven distribution or make it fairer, local officials belittled farmers’ awareness of equality as their preoccupation with financial gain and unwillingness to make the smallest sacrifice. In this instance, local officials exerted invisible power over those who made explicit demands or claims based on comparison.

By downplaying or even twisting farmers’ simple notion of equality, invisible power was deployed to internalize the unfairness in the distribution process. People’s demands for a protection of their interests in equality were greatly controlled. Furthermore, the invisible power was particularly exercised to regularize the present distribution practice, which conferred a few group preferential treatments whereas subjected a larger group to inferior treatment. One underlying reason to sustain the distributive status quo was that it could better serve the local governments’ end in facilitating the operation of land acquisition.

5.5 Challenging Power: Various Spaces for Engagement

Spaces are those where “citizens can act to potentially affect policies, discourses, decisions and relationships that affect their lives and interests.” The boundaries of spaces identify the highly relevant matters as to what is possible, who can participate in, what voices can be made and under what conditions. The following sections examine how the expropriated farmers employed possible opportunities and channels to open up the closed space in terms of decision-making at both central and local levels that have been closed off to them. The rest of the chapter will also explore how they utilized the invited channels that were under strict control to advocate their specific interests and influence the processes of decision-making. Furthermore, how they claimed spaces where they built alliances with like-minded people in the struggle for the realization of their property rights.

5.5.1 Closed space

In terms of land expropriation, which has been discussed in Chapter 3, policy-making had been a closed space in which the affected farmers were rarely invited for involvement, nor did they have very chances to challenge, question, or oppose to the state-defined rules governing property rights. It was therefore extremely hard for the affected farmers to alter the omnipresent formal rules that had gone behind the doors. Notwithstanding that farmers hardly questioned national laws and regulations, they made their attempts to open up the closed space in their own way.

The expropriated farmers were skeptical of local rules that specified and adjusted central rules for actual implementation. The rules in some cases were contested as neither neutral nor reliable. One often-heard remark by the villagers during the survey was, “Local government is both referee and player. The

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392 Confucian said, ‘buhuangua er huan bujun 不患寡而患不均’, suggesting ‘Leaders of countries and noble houses don’t worry about having too few people, they worry about equitable rule’. See David Hinton (trs), Analects (Counterpoint 2014) 148. However, deviating from the original meaning of the Confucian, thinkers and theorists had interpreted into an idea of egalitarianism that had prevailed in China thereafter. The transformative understanding of the saying was that people do not worry about scarcity, they worry about equitable rule. For an elaboration of the transformative understanding of the saying, see Li Zhenhong (李振宏), ‘An Interpretation of Worrying about Equitable Rule rather than Scarcity’ (不患寡而患不均的解说) (2005) 89(6) Twenty-First Century (HK) 109.
394 ibid.
rules for operation [of demolition and relocation] are self-determined without referring to central policy. They are essentially imparity clause (霸王条款).³⁹⁵

Having witnessed or experienced local officials’ misdeeds, villagers had a clear sense that there existed a discrepancy between central and local decision-making concerning land expropriation. Their view was cemented when they would hear ‘beautiful promises’ from central leaders through the propaganda machinery (such as TV and newspaper), which occasionally exposed and condemned local officials who defied the Center and mistreated the people.³⁹⁶ One elder female villager lamented local authority’s act of forceful eviction:

The central policy is good for us. It respects our legitimate rights and interests, sketches a favorable plan for our long-term subsistence and emphasizes a transparent expropriation shall guarantee fairness, openness and justice. But everything is distorted at the locality. They [local authority] treat us badly. They cannot wait to clear up our houses because they are only concerned about how to speed up the intense campaign to get their job done.³⁹⁷

Farmers seemed to demarcate central and local authority as well as their policy-making. They divided power in ways that supported central rules but blamed local rules as unreasonable and stressed the central government was “benign” whilst the local government was ‘malign’.³⁹⁸

The villagers strategized to break through the closed space, depending on their ‘locating and exploiting divisions’ within the government or the officialdom.³⁹⁹ One typical strategy was that they employed the language of the state to talk with the local authority on the same table and even defied local officials. The language of the state was extensive, ranging from national laws and central policy directives, even to the central leader’s speech, which farmers believed were binding, not only on themselves but also on local authority and its officials. They would resort to the state’s official rhetoric to justify their claims or actions when they tried to negotiate with or resist against the local authority. More often than not, they acted in congruence with the established laws and regulations, regardless of its neutrality or fairness. In the words of the resisters, “we comply with laws and policies and we are law-binding citizens.”⁴⁰⁰ When they appraised their own compliance that sided with the central authority, they highlighted the local authorities’ unlawful acts that were ‘at odds with the original intent of central policy’ (违背中央精神).⁴⁰¹

The stark contrast here was to bring pressure on local authority and ultimately defy local orders concerning demolition and eviction. This was not a wholly new strategy for contestants both in and outside China, as scholars point out, to “parrot the language of the state in order to maximize the chances for a favorable outcome and minimize the likelihood of suppression from otherwise hostile official”.⁴⁰²

In the situation of land expropriation, the strategy might help reduce power asymmetry, which situated local authorities on the same platform from which the expropriated could talk and challenge them. In this instance, when policy discourse from the central state was relied on by local governments as basis of

³⁹⁵ Interview with an elder villager in Village D (17 July 2015).
³⁹⁶ Lianjiang Li, ‘Political Trust in Rural China’ (2004) 30(2) Modern China 228, 235.
³⁹⁷ Focus group discussion in Village D (22 September 2015).
³⁹⁸ Guo, ‘Land Expropriation and Rural Conflicts in China’ (n 8) 435.
⁴⁰⁰ Interview with a male villager who is a veteran in P village (6 July 2015).
⁴⁰¹ ibid.
⁴⁰² Perry, ‘Chinese Conceptions of “Rights”’ (n 301) 47.
ruling, farmers’ distinction between central and local policy rhetoric was a means to contest the space where decision-making was closed off to the voice of the expropriated as well as public scrutiny.

5.5.2 Invited space

Invited spaces were reflective of including stakeholders to take part in, or express their opinions on, such issues as decision-making and formulating policies. The spaces for policy-formulation and decision-making cannot be entirely closed even in an authoritarian state. To maintain the regime’s legitimacy, it is necessary for the authority to leave certain spaces open for political participation and involvement. In the light of land expropriation case, the authority provided, among others, two typical channels to invite for the engagement of the expropriated: petition and whistle-blowing (举报). As will be discussed in Chapter 6, petition is a political institution which enables citizens to file complaints to the higher level of authorities. Whistle-blowing is another political channel through which citizens can report and expose the officials’ misdeeds in anonymity or actual names to the Inspection and Supervision authorities. There are some similarities and differences between how the two function. Both provide spaces for political involvement for citizens and may invoke a political intervention from the higher-level authority. By comparison, while petition invites citizens to file their individual complaints and may seek their grievance redressed, whistle-blowing is mechanism internal to the CPC that focuses more on reining in abusive local officials and curbing their wrongdoings.

Petition could provide some possibilities for political engagement in an authoritarian system whereas spaces for participation were more controlled and many uncertainties arose from in regard to their ability to participate. A petition was also devised to redress citizens’ disputes. One possible route for petitioners to successfully get their disputes resolved was they might ‘cooperate’ with and saw the support of the higher-level authorities. In doing so, it was believed that petitioners must have some expertise and professionalism with regards to the undertaking of petitioning. To increase the odds for success, more specifically, to catch the higher-level authorities’ attention, it was a priority for petitioners to behave properly rather than triggering confrontations during petitioning which the higher-level superiors could easily see as intolerable or threatening. Moreover, it might enhance the chances of success if petitioners built alliance each other and then lodged a group petitioning. In cases where group petition was organized, petitioners would elect a leader who was more capable and skillful on how to file complaints to upper-level governments. For instance, in village P where the relocated villagers had a suspicion that village authority embezzled land compensation fee, one leader strategized the petitioning skills and successfully draw attention from the city government. In the words of the leader, “One critical strategy is to overcome softness with just softness, but never attempt to conquer hardness with hardness.” Derived from a military strategy, the strategy was adopted by the expropriated petitioners to deal with the petition officials. Petitioners were well aware that they had to act within the policy framework and show their ‘sincerity’ for this sort of invited participation. The overriding reason was that petition was substantially controlled. Citizens were invited to express their opinions but they were not allowed to take any threatening or trouble-making measures, even though their behaviors were to attract enough attention to their petitioning issues. In case petitioners broke the rules, they would subject to relentless suppression by local authorities who were responsible for managing petitioners.

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403 Insofar as dispute resolution is concerned, the authority provides both legal and political channels for citizens to redress their disputes, which will be detailed in Chapter 6.

404 Interview with a middle-aged male villager in Village P (16 July 2015).

405 ibid.
Whistle-blowing was accorded greater significance in inviting citizen’s contribution to rationalizing decision-making at local scale and perhaps more importantly, strengthening the Party-state’s ruling. A nation-wide large scale anti-corruption movement in a top-down manner was ongoing as of the survey. Central inspection teams were dispatched to the local areas, with their detailed contact information such as telephone number, mail address, office address public to the citizens. Insofar as land expropriation was frequently associated with power abuse or corruptions, whistle-blowing was an alternative to expose the local officials’ wrongdoings, albeit whistle-blowers did not necessarily stage their individual grievance. Nevertheless, some disgruntled villagers pinned their hope on the anti-corruption movement through whistle-blowing. Some aggrieved villagers wrote joint-letters to stage their written complaints to the inspection authority. Joint-letters were formulated by a group of complaints who suffered from the similar grievance.\textsuperscript{406} In villages D and P, disgruntled villagers sent piles of joint-letters to inspection authorities at various levels of government, from central down to the city government. However, in a similar case with petition, whistle-blowing was a mechanism designed to primarily supervise and control officials rather than to invite a broader consultation or ‘participatory governance’. When whistle-blowing was more targeted at individual officials with the exposure of their misdeeds, it required evidence collection for some cases which was a big burden on the whistle-blowers.\textsuperscript{407} Moreover, even if evidence was collected and presented, it was likely the official would be disciplined internally, which implied that the wrongdoers were chiefly subject to a party punishment rather than a legal one. This sort of internal punishment, not necessarily followed by reparable measures to the victims, failed to redress violations on villagers’ property rights. From this vantage point, despite opportunities and channels were provided to invite for rural citizens’ participation, the space was under control whereby participants could exert limited influence on decision-making at the local level.

\textbf{5.5.3 Claimed spaces (self-created spaces)}

Given the limited opportunities for participation in the invited space, the expropriated were claiming broader spaces to challenge and contest the powerful expropriation authority. In the process of claiming-making, villagers had created space in which they could strengthen their alliance and share relevant information. One strategy villagers developed was mobilizing mass media to build more alliance with other possible like-minded people outside the community, no matter they had similar experience or not.

An important platform that villagers used was Weibo (akin to a hybrid of Twitter and Facebook)\textsuperscript{408}, on which they could make their voice, build alliance with other expropriated people and seek social support. Some of them used morally charged language such as ‘miserable evictee’ (悲哀拆迁户) and ‘victimized evictee’ (黑拆户) to attract netizen’s attention. They made their own posts by inserting images and video files as evidences to describe their own situation and express their feeling of injustice. Moreover, they selected some posts from renowned expropriation lawyers who disseminated knowledge of expropriation

\textsuperscript{406} The letters are usually not anonymous and would be signed or thumb printed. When it is related to the matter in person, witness is listed who offers to provide evidence supporting the complainants’ allegations. It is composed of pages of narration, naming the complaints’ physical and emotional grievances, blaming the local cadre’s wrongdoings or malfeasance and ends with the complainant’s specific claims or demands.

\textsuperscript{407} Interview with a middle-aged male villager in Village P (3 August 2015).

\textsuperscript{408} Western social media platform such as Facebook, Twitter and Youtube are blocked in China. Weibo was launched in August 2009 and it was seen as the combination of 70% twitter and 30% Facebook. Comparing to WeChat, a more personal app released two years later, Weibo was powerful in engaging mass audiences. ‘Comparison of Chinese Social Media Weibo and WeChat’ (Attract China, 27 August 2015) <www.attractchina.com/comparison-of-chinese-social-media-weibo-and-wechat> accessed 19 May 2017.
and eviction, or reposted some expropriated netizens’ posts with the exposure of malpractices of expropriation authority. In the dissemination of knowledge or information-sharing, they made efforts to talk with government departments or other social media. For instance, one of the activists in village D posted her own situation of forced demolition and sought to inform the court and government departments by mentioning their official accounts through @ S City Intermediary Court, @ NPC, @ S City Government. Moreover, in the circumstance where villagers suffered injustice and mobilized litigation or petition for redress, villagers would follow them to learn their experience in resistance and update the role model’s latest results of their resistance actions or lawsuits.

Another social media platform was WeChat (微信, the Chinese version of Facebook), which soon became one of the most important apps across China since its release in 2011. With the prevalence of WeChat and the rising penetration rate of smart-phone in rural areas, Chinese farmers could have better access to news and information. Villagers created different WeChat Groups to keep in close touch with each other. With the usage of the communication app, villagers disseminated legal knowledge or local policies on land expropriation, shared the strategies to negotiate with the local official and updated any progress of their resistance to inspire one another.

Furthermore, in the light of village D’s case, when villagers were informed that the mode of relocation was changed at the discretion of the local authority who withheld all relevant information, they asked the authority to repeal the decision. They formulated collaboration within the community, with an attempt to catch effective attention from the higher-level authority. Moreover, they managed to build a network with local media and brought an administrative suit to the local court. They filed several lawsuits against government departments at different levels, including provincial, city, county, township governments to attain justice. When they claimed their property rights against local authorities and more actively created space for information and knowledge, villagers had raised their awareness on rights and law with a boost of self-respect.

5.6 Discussion

Based upon empirical analysis, this section discusses how dynamic power relations constrained farmers’ property rights from being effectively exercised during the processes of rural land expropriation. The power cube enables us a closer scrutiny into the complex relationships between government power and property rights, in the sense that it not only demonstrates who imposes what forms of power that affect the exercise of property rights, but also it provides us with a tool to rethink how the expropriated population employs possible strategies to challenge the power structure.

5.6.1 Power constraints on property rights

The power structure is shaped by rural land expropriation institution and the modern Chinese society. Power in the case of rural land expropriation came forth out of different levels—the central power, the multi-layered local power and village authority. Various level of powers all exerted significant influences on property rights. To illustrate, central government sustained a decisive role in making decisions, formulating policies and reviewing as well as supervising its local agents’ performances. Despite local governments being arguably subordinate to the central authority, they assumed delegated authority in enforcing rules and meeting policy targets in the locality. The divided power between central and local authorities created a leeway for the latter to adjust, circumvent and even defy central policy within their own jurisdictions. The increased diversity of power relations in the spectrum of rural land use control, as
scholars rightly point out, suggested that ‘the Chinese socialist state, instead of being a unified and coherent political entity, is better seen as a complex, conflictual, and internally heterogeneous institutional ensemble on which power relations are constantly mediated upward, downward, and sideways.’ When village authority became an extension of local government power, they acted in ways that enabled local state actors to deploy powers in all visible, hidden and, invisible forms. Unlike local authorities, village authority was not an independent subject who can execute policies of land taking, nor did they hold accountable to the government authority. Nevertheless, they assumed much responsibility in actual implementation in that they were in possession of the ‘local knowledge’ with deep embeddedness in the localized social network.

Constraints on property rights were manifested by various forms of power. From the outset, government power approached rural community in a visible form, namely, government acts of land acquisition were legitimized by state legislations and local regulations. In the absence of a consistent expropriation law, much space was left for local government to specify general rules to accommodate local circumstances. Given the direct conflict of interests between local authority and the expropriated farmers, it was important to stress various local implementation regulations aggravated, rather than strengthened, the protection for property rights. In practice, local officials interpreted state legislations as “rules and violence” in order to justify local operation of land-taking and facilitate governmental taking of land. That being so, formal property rules had their limits, in the sense that the general formal rules lacked flexibility for operation and the real situation in rural community was extremely complicated. Perhaps more importantly, formal legality laid out in national law or central policies required government to respect and protect property rights, which contradicted with local government’s fulfillment of other policy objectives. In this instance, hidden power was deployed instead to prevent potentially conflicting interests from occurring. Hidden power was manifested by adaptation on central policy and the collusive behaviors in decision-making at the local level, which circumvented or even denied formal legality. Workable expedient solutions that were not necessarily consistent with national laws and local regulations were devised to solve various problems on the ground. The hidden form of power exertion here reflected an instrumental use of law and rights. Previous research has informed us that formal legality is deployed and utilized in a highly instrumental fashion in China. As empirical findings in this chapter and Chapter 4 revealed, not only local government but the expropriated farmers utilized property law and rules as tools to achieve their own goals. Their compliance with formal legality was conditional and situational in the sense that they would depart from or abandon the law if the compliance did not serve their needs.

Another frequently-used form of power was the control of the expropriated population’s perception or belief in order to dissolve their potential resistance. In addition to moral claims that land development was beneficial to the entire rural society, the expropriation authority strategized their persuasive skills to deal with individual complaints. The expropriated people’s livelihood and their long-term development in the city were portrayed as individual issues that essentially depended upon personal efforts. Similarly, the

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410 The term “local knowledge” is from Clifford Geertz. As he articulates, “The shapes of knowledge are always ineluctably local, indivisible from their instruments and encasements.” See Clifford Geertz, Local Knowledge: Further Essays in Interpretive Anthropology (Vol 5110) (Basic books 2000) 4; Based on Geertz’s analysis, Zhu portrays the village authority as “carrier of local knowledge”. In his account, village authority, with their mastery of local knowledge, may pose danger to weaken the operation of state power in rural society. Zhu, Sending Law to the Countryside (n 339)16-21.
affected farmer’s demands for a protection of interests in equality or distributive justice were belittled and ultimately neglected. The deployment of invisible power therefore rendered the expropriated people to internalize the unfairness and to succumb to the status quo.

To sum up, those in power adhered to legal rules (visible power as defined in the power cube) in the beginning. They none the less took them as symbolic power in the instances where the rules could not bring about intended outcomes for the actual implementation. The similar case was with invisible power (to shape or control the belief of the expropriated population), the exertion of which could rarely generate quick effectiveness in the daily operation. Against this backdrop, the expropriating authority would weigh the pros and cons and therefore prioritized the deployment of hidden power to adapt or transform the enforcement. Their preference on hidden power, as a result of political expediency, was reinforced by the divided power between central and local authorities. However, hidden power that was featured by unchecked official discretion along with an instrumental enforcement of the formal rules left the security of property rights precarious.

5.6.2 To what extent have property rights been secured: a shell game to present

The manner in which how local government responded to the expropriated farmer’s claims to an increase in compensation rate or demands for protection of their property interests can be simply presented in the Shell Game. Various forms of power were like the shells controlled by local government who was the performer. The ball beneath the shells was claims or demands to be effectuated. The game started with the ball under a shell (visible power) that was visible to all. Notwithstanding that the formal legality, at the outset, provided property rights with certain kind of protection, local authority was apt to weaken or deny the protection given the direct conflicts of interest. The moment that farmers demanded for securing their property rights, local authority would interplay various forms of power, which resembled the shuffling of shells.

For the contestants, the key to winning the game was the right guess. Therefore, it was necessary to understand the performer’s strategy and know where the ball was at all times. Nevertheless, it was extremely difficult for the majority of rural residents to do so. One compelling reason, as mentioned previously, was government’s instrumental use of legality, which stripped away of the property rules of their predictability, authority, and reliability. The regularity of property rules appeared unstable and its manifestation relied on how it could serve governmental needs for the fulfillment of multiple tasks. The task-oriented deployment of power and strategies were elusive, which rendered it extremely difficult for the affected people to follow or respond. Therefore, in the very beginning of the game, most expropriated population would choose not to play the game since they had little clue on how to follow.

Exceptional cases were with a small group of people, who were lucky enough to win. As previously discussed in Chapter 4, with initial endowment, a small minority of people could maintain better relationships with local state actors and they were more informed of the compensation rules and policies, more resistant and more skillful in negotiating. In this instance, they were relatively more knowledgeable about the rule of the game or more confident to guess the right place for the ball beneath the shells. Those people who could win out were village cadres that had access to administrative and political power, persistent nail-houses and village elites.

Confronted with distributive injustice resulted from the current distribution pattern, a proportion of disgruntled people chose to follow the suit of the winner (especially the resisting households) who succeeded in maximizing their gains. There was a sense in which longer resistance might be proportional to larger gains. This was not only because resistance would directly increase costs when local government
invested heavily with bank loans, but also because the central emphasis on the policy objective of stability maintenance. However, since longer resistance also challenged local authority’s tolerance and their capability to manage resistance, a final outcome could lead to a crackdown on the resistance or otherwise buying off the resister. In this regard, timing was crucial yet a tricky matter to win out and the critical point of time rested with local authority’s calculation for benefits, costs and trade-offs between conflicting objectives. As such, it remained highly situational and occasional whether the contestant would win or lose.

Taken together, the random and elusive deployment of power which deviated from formal legality rendered the majority of expropriated people hard to follow. The uncertainty in deploying dynamic powers might be seized by a small group of people who could win out, but it tended to be a contingent issue when more followers attempted to follow and opted to play the game. They might either be subject to a crackdown or receive extra compensation. In any event, it was highly unpredictable to what extent farmer’s claims or demands would be effective.

5.6.3 How has power structure been transformed?

A closer look at the expropriated farmers’ strategy, based on the tool of power cube, invokes our reflections on the possibilities of how the expropriated population managed to challenge and change power relations. As empirical findings revealed, in spite of weakly protected property rights, the expropriated people were not as powerless as imagined. The previous chapter indicated that their modes of action or resistance operated beyond the jurisdiction of formal rules, which were responsive interaction with local government’s instrumental use of formal legality. The empirical findings in this chapter revealed that they strategized their actions to interact with dynamic power relations and structures. They stratified central and local power, in congruence with power divisions within the political system. While local officials and their malfeasance were targets of their resistance, farmers took a stand with the central power, in the hope of building alliances with and ultimately gaining the support of, the central power. Their political strategy did not necessarily question the neutrality and fairness of formal rules, which substantially weakened property rights in rural land and constituted a source of structural inequality, as we have discussed in Chapter 2 and 3. Their strategic adherence to central language without challenging the inherent structural inequality within it was “perhaps better seen as an affirmation of—rather than an affront to—state power.”

Despite their resistance against the powerful local state actors, there were stratifications among the expropriated farmers who were highly concerned with the maximization of economic gains. The complainants understood retaining their land was next to impossible, so they devoted their efforts to increasing the compensation rate. Consequently, a small minority received windfall profits, a proportion of followers might either win out or lose out, generally depending on their bargaining power, and the majority of people received insufficient compensation which they considered significantly reduced their original living standard. The economic differentiation obstructed collective action from being organized and sustaining. Under certain circumstance where collective actions were formed occasionally, it remained unknown how the interest-oriented movement would persist or they would ultimately be subject to dismantlement provided a fragmentation of the expropriated people. To conclude, an instrumental use of property rights and law might be effective in building countervailing power against the powerful local authorities. Nevertheless, social movements or collective action were less likely to occur or effectuate

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412 This resonates with Chapter 4 (in Section 4.7.1 A Chinese perception of rights as interests). See also Perry, ‘Chinese conceptions of “rights”’ (n 301) 46-47.
owing to a fragmentation of the expropriated people as a group, which therefore decreased the possibility of transforming the power structure.

5.7 Conclusion

This section closes with a reflection on the practical implications of power analysis, through the lens of the power cube, for the realization of property rights. As aforementioned, the central power which endeavors to constrain local power by providing technical improvements in legislation, without addressing the core issue of structural inequality associated with rural land and property rights, would fail to genuinely respect and protect property rights (as in Chapter 3). Certainly, more obstacles flow from current institutional arrangement on the bifurcated urban-rural land expropriation institution that derived from the dual land system and relevant institutions such as fiscal system. It is noteworthy that the failure is resonated by empirical findings in this chapter in at least twofold. One is that new provisions to safeguard rights have constantly been opposed by the powerful to forestall changes. This offsets or prevents central effort from yielding the desired outcome. The other is that farmers’ modes of resistance have always been interpreted as all threatening rather than demarcated and therefore the authority stringently controls, rather than permits, possible channels for the disgruntled farmers to articulate their claims.

Power asymmetry remains an intriguing issue for property relationships between state and society. In the specific context of rural land expropriation, the power asymmetry is consolidated by a powerful and privileged government which exercises unfettered power on rural society and a generally weak rural self-governance that has limited capability in defending collective property interest in land from being intervened. Admittedly, the reform of rural governance is an issue which deserves further attention to and may contribute to empowering farmers in dealing with the powerful expropriation authority. Yet, given the power asymmetry, it raises a question concerning how disputes triggered by the conspicuous power asymmetry will be redressed. Moreover, to what extent will the current dispute resolution mechanisms (for instance, the judiciary) be effective? To them I dedicate the coming chapter.
Chapter 6  Rights Remedy: Who Can Help?

6.1 Introduction

This chapter primarily deals with how Chinese farmers seek remedy for violations of their property rights in land expropriation cases. One recurring theme in this study is that the only viable way to convert rural agricultural land into urban uses in contemporary China is through state acquisition. The government-managed model for rural land conversion excludes the instances of private takings where voluntary negotiation and bargaining may take place between land owners and private land developers. Farmers are subject to compulsory acquisition monopolized by local authorities and a variety of land disputes arise from the processes of acquisition of rural land. This ranges from government decision-making on the taking of land, compensation and relocation arrangements for the expropriated population, along with the misconducts of local state actors that trample on property rights.

In the existing Chinese legal institutions, several remedial routes are provided for resolving land-taking disputes with government organs. Administrative reconsideration and administrative litigation are typical routes to channel grievance. Whilst administrative reconsideration and litigation are both formal routes enshrined in administrative laws to empower citizens to challenge state actors and their decisions, another route citizens always follow is petition (信访). Petition has been known as an extra-legal means that has been used extensively for civil dispute resolution in China. More will be elaborated on in the following sections concerning separate rationales of the available means for addressing infringements on rights. For the time being, it is worth noting that the Chinese state is attempting to institutionalize all the routes of redress. Moreover, some of their functions overlap with each other, most notably, petition overlaps with litigation in terms of dispute resolution and rights redressal. In short, both legal routes and non-legal routes are admitted and coexist with each other to serve as remedial mechanisms in China.

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413 To be sure, disputes in the case of expropriation are not limited between local governments and farmers, but also between the rural collective and its members regarding the distribution of compensation. As aforementioned, one of the particularities for China’s expropriation is that farmers are not individually compensated, but that the majority of compensation fee is paid to the rural collective. In this case, it is not rare that the village cadres, who have a great influence on village issues, would retain the compensation fee without distributing to village members. Even worse, corruption such as bribery and embezzlement of the compensation fee is rampant in many expropriated villages. That being the case, it is not uncommon in judicial practices that collective-level distribution scheme (e.g. decision-making on whether to distribute the compensation fee, how to distribute) is considered as a self-administered issue within the community, which somehow shall go beyond the jurisdiction of the court. An exceptional case is the court has the power to review such matter as confirmation of membership, for instance, whether the affected person has a membership right to the community or not, and correspondingly, whether she is eligible to enjoy a share in the compensation. Those cases are always seen as civil litigation. For the purposes of this research, this chapter excludes the discussion of civil litigation initiated by individual villagers as opposing to the collective to claim for a distribution fee, but merely focuses on disputes between villagers and government organs. Likewise, petition issues on expropriation are not confined to complain the local authority, but also village cadres. In most cases, however, as discussed in Chapter 5, village leaders who always assist in fulfilling the task of taking land are considered as an extension of government power. As such, petition in this chapter is primarily discussed concerning villagers’ complaints against local authority and its officials.


Given the criteria of litigation and petition as aforementioned, it raises the question as to how the two established mechanisms would work to address infringements on property rights. More questions arise: does one mechanism suffice to meet the end, albeit other mechanisms are also available? If not, how have the complainants sought to address their grievance and in what way? What kind of protection do legal institution and petition provide for right-holders in the situation of expropriation? Are both mechanisms effective in terms of rights remedy? Moving beyond the proposed view taking a contrasting stand towards litigation and petition, this chapter examines farmers’ modes of actions in mobilizing different routes of redress to dispute local authorities.

In keeping with the analysis of power relations to address interactions between rights and power in Chapter 5, this chapter envisages power relations as two types: vertical and horizontal relations of power. The vertical refers to power relations between central and local governments. The horizontal power relations are particularly identified as between the administrative power and the judicial power. In this chapter, it is argued that the ineffectiveness of litigation and petition to provide justice for the aggrieved is partly attributable to judicial power’s merge with, or subordination to administrative power at horizontal level; partly because inconsistency between central and local power interactions in their pursuit of competing objectives, such as economic development, social stability, and protection for property rights.

This chapter consists of six sections. Section 2 presents research methodology for this chapter. Section 3 outlines the process of land expropriation in chronological order. Three cases are studies in Section 4 to inform the research questions being investigated. Of the three cases, two are collective actions organized by D villagers to employ legal means and petition to seek redress. The third is an individual experience engaging both legal routes and petition. Section 5 discusses the rationale of litigation and petition for addressing grievance and unveils the underlying reasons for why farmers’ mobilization of different routes of redress is ineffective. Section 6 concludes with an analysis on power analysis at horizontal and vertical dimensions, whose relations and interactions sustain barriers to the enforcement of property rights.

6.2 Research Methodology

This chapter combined in-depth interviews, focus group discussions and documentary review in order to address the research question. An overview of the methodology has been outlined in Chapter 1.

Both in-depth interviews and focus group discussions were carried out with the expropriated farmers to collect information. The reason for doing so was that villagers made claims through litigation and petition in both collective and individual forms. In addition to in-depth interviews with individual informants to learn personal experiences, focus group discussions were organized to learn a wide range of attitudes and behaviors of the members in the researched group. Two group discussions were carried out with D villagers, and particularly, three were activists taking leading roles in collective action. All the members in group discussions were involved in petition and litigation practices that were organized in collective or individually. As a large part of the discussion revolved around their coordinated efforts on litigation and petition, I asked both leading actors and individual participants to not only spell out their roles in collective actions, but also respective actions they took. The three leading actors talked about how they organized the coordinated actions. Individual participants narrated their own, if any, particular stories and experiences as well as their attitudes toward the actions. In doing so, rather than simply focusing on the leader’s narratives, all the informants were given the chance to voice on the discussed topic from their respective perspectives. It has to be noted that the informants in in-depth interview and focus group
discussions overlapped because some of them were both involved in petition and litigation. The third case (Section 6.4.3) was exemplary in this point.

As aforesaid in Chapter 1, I interviewed judges at Intermediate People’s Court (IPC) and Basic People’s Court (BPC). In similar case with local officials, judges were alert to divulge information on any specific cases or give critical comments on the established institutions. Moreover, it was not likely to communicate with judiciary members about specific cases that were high-profiled. In Village D’s case, villagers had filed several lawsuits against government agencies at local levels (including county and city levels). Their litigation was still ongoing although they had lost all the suits. The case of Village D was sensitive and judges were all the more reluctant to disclose any further information. To overcome the obstacles in collective data, I accessed the judgments publicized on the Supreme People’s Court (SPC)’s official website. In addition, data from other documentary sources such as villagers’ written complaints such as joint-letter and legal documents or policy directives governing land expropriation that were publicly available were all supplemented.

The method of data analysis and a specific analytic procedure were presented in Chapter 1. Similar to the case in Chapter 4 (Section 4.2), this chapter applied a totally inductive approach to learn information from the qualitative data. The coding book to generate information has been displayed as an appendix (Appendix F).

6.3 The Mobilization of Administrative and Petition to Resolve Land Disputes in Rural China

Land disputes between government and rural people in rural land expropriation are mainly triggered by government decision to expropriate land and the subsequent decisions to compensate and relocate the dislocated. In the context of rural land-taking, government has wide power in defining ‘public interest’ and arranging compensation and relocation schemes. The statutory provisions prescribe that provincial and central government authorities have the power to authorize expropriation plans in local areas, with little involvement of legislature, judiciary or the general public. Likewise, the compensation standard for rural land is unitarily determined by government authorities. Unlike urban land expropriation regulations which accommodate negotiation with the affected population and invite independent third-party appraisal to evaluate the loss of land on a market-price basis, the compensation price for rural land is predetermined by government authorities and based on the annual output value of agricultural land. Although statutory provisions require that the compensation and relocation scheme be publicized to solicit opinions and suggestions from the affected, both procedural requirements are ex post, with solicited opinions rarely being considered for enforcement.

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416 The judicial hierarchy is organized by location. At the top level is the Supreme People’s Court (SPC) in Beijing. Beneath the SPC, there are Higher-Level People’s Court (HPC) at the provincial level, Intermediate People’s Court (IPC) at the prefectural level, and Basic People’s Court (BPC) which is at the lowest level of rural counties and urban districts. In addition, Peoples’ Tribunal can be established in large rural counties with dispersed population. See Stanley B Lubman, *Bird in A Cage: Legal Reform in China after Mao* (Stanford University Press 1999) 251.

417 The official website to publicize judgments is www.court.gov.cn/zgcpwsw.

418 Joint-letters are filed to government agencies and social institutions that are expected to respond. The government agencies are not necessarily confined to letters and visits offices, Party Inspection Commission which is an internal institution set by the Party to oversee the party member’s behavior is also included. In many cases, however, the complainants would also file written complaints to social media, attempting to arouse public attention and ultimately press local governments to take actions in response to citizens’ claims.
6.3.1 Administrative litigation

When disputes arise from rural land-taking, negotiation and arbitration, administrative reconsideration, and court adjudication may be used as means of resolution. Generally speaking, disputants are required to exhaust administrative remedies before they go through formal court proceedings. The effects of various administrative remedies, however, prove to be weak, given the unspecified mechanisms and contradictory stipulations concerning dispute resolution in rural land-taking. For instance, there are cases in which the complainant may only apply for administrative reconsideration. When provincial and central governments authorize to expropriate land and are responsible to hear the reconsideration cases, the reconsideration is final and not amenable to judicial review.\(^{419}\) By same token, before challenging the compensation and relocation scheme in the court, it is prescribed that complainants should go through negotiation with county-level or above government authorities. They may apply to the provincial and central government for adjudication if negotiation fails.\(^{420}\) Yet it remains unspecified how the adjudication system is operable. This confuses both government authorities and disputants in conflict. Moreover, the remedial effects are weak in circumstances where government agencies serve as their own ‘judge’ and rarely invalidate their own decision-making. Based upon the above, complainants who really seek to resolve their disputes with government authorities would have to resort to administrative lawsuits, albeit many had already been deterred by imperfect administrative remedial mechanisms.

When administrative litigation has been acknowledged as an extraordinarily difficult task for plaintiffs to undertake, it is even more challenging for Chinese farmers, who are from generally vulnerable and marginal groups, to file a lawsuit protesting the more powerful local government.\(^{421}\) Farmers may encounter unforeseeable difficulties in challenging government decisions on land taking in the court. The difficulty that confronts the affected farmers, in the first place, is how to have a case accepted. Judges are usually reluctant to engage in expropriation disputes, notably when rural community members form collective action to dispute government acts. More importantly, the legislative framework of administrative law and expropriation law pose substantive hurdles for complainants to get their cases heard by the court. Therefore, even if the plaintiff is able to eventually bring a lawsuit to the court, it is questionable whether the plaintiff could prevail in the case. It is not novel to assert Chinese citizens rarely win an administrative litigation, yet the high defendant success rate has always been subject to skepticism.\(^{422}\) Admittedly, government agencies are increasingly committed to the doctrine of

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\(^{419}\) The ARL arts 14, 30(2) (2009 Amendment).

\(^{420}\) The RILAL art 25 (3) (2011 Amendment).

\(^{421}\) It must be noted here that administrative reconsideration is usually prerequisite to litigation in expropriation cases, which gives much room for the local authority to correct its decision before a suit is instituted. For the convenience of the research, this chapter will incorporate the two routes under the headline of administrative litigation though the two routes work in different ways in the real practice. For a more thorough comparison between administrative reconsideration and litigation in terms of its advantages and ineffectiveness, see Randall Peerenboom, *China's Long March toward Rule of Law* (Cambridge University Press 2002) 417-18.

\(^{422}\) One striking example is the “zero record” of the governments’ failure in administrative lawsuits in Shanghai throughout the year of 2015. The finding is a by-product of an appraisal of an increasing acceptance of cases owing to the revision of Administrative Litigation Law (ALL) in 2014. As reported, the No.3 Intermediate Court of Shanghai, one of the two special courts in China to hear administrative cases involving regional governments, has altogether accepted 610 administrative cases in 2015. Inter alia, 242 cases are filed against the municipal government, which is 18 times more than those in 2014 (13 cases in all). Comparing to the surge in the caseload after the revision of the ALL, however, the court seems to have taken a modest, if not overly cautious, attitude to adjudicate the cases, in some cases as none, amongst the 242 cases, had been ruled against the municipal government.
administration by law (依法行政) and officials are obliged to act in lawful ways. Given rising contention over government taking which leads to escalated disputes between government and farmers, it is essentially unconvincing that government agencies could always win over administrative lawsuits simply because they have administrated in accordance with the law.

6.3.2 Petition (Letters and Visits)

Petitions, letters and visits in Chinese, have a long tradition in China. It had for long been used in the imperial society as an “imperial appeal” directly to the supreme ruler.\(^{423}\) To date, petition has been gradually institutionalized as an institutional tool and safety valve to appease resentment and absorb social tensions. The right to petition stems from the Constitution of the PRC. \(^{424}\) Petition is defined as citizens filing their complaints to offices at various levels of government authorities through letters or in-person visits (to officials to lobby their concerns). This provides methods to ‘criticize and make suggestions’ regarding relevant laws and regulations or government official’s specific wrong-doings, or to seek solutions to the daily problems.\(^{425}\) Petition is characterized as an administrative route to channel suggestions, complaints and criticisms. Owing to its function to channel grievances, petitioning on rights relief nowadays has occupied the bulk of the whole petition workload.\(^{426}\) More petitioners seem to prioritize this route to address their personal grievance at the outset, by way of bypassing the court.

When many scholars consider the petition mechanism as something like the ombudsman institution that originates from Sweden and prevails in western countries, petition in China has distinctive features. Firstly, it assumes multiple functions. In addition to its function of dispute resolution and rights redressal as manifestly stipulated which somehow overlap with those of the legal institution; it also assumes the functions of political involvement and information gathering. By collecting information from petitioning with which citizens voice their concerns, petition has been used as a criterion for the central authority to assess local performance and an indicator of the evaluating system to find out if local officials are competent or not. Therefore, petition has been synthesized as a multipurpose tool of governance.\(^{427}\) Secondly, different from the ombudsman institution that is considered autonomous as an intermediary power in many countries and works independently, petitioning offices in China are internal administrative bodies that are fundamentally bound by administrative orders. Petition offices do not have real power to resolve disputes or address grievance. After they receive letters and visits, they gather the information and forward it to relevant government departments who are responsible for handling them. Worth mentioning

See ‘The Shanghai Municipal Government was Sued for Over 200 Times within One Year’ (上海市政府一年当200多回被告) Beijing Times (京华时报) (Beijing, 18 January 2016) 10.

\(^{423}\) For a historical examination of Chinese complaint system where modern petition derived from, see Qiang Fang, ‘Hot Potatoes: Chinese Complaint Systems from Early Times to the Late Qing (1898)’ (2009) 68 (4) The Journal of Asian Studies 1105.

\(^{424}\) XIANFA art 41 (1) (1982).


\(^{426}\) According to Yu’s empirical analysis, amongst all the letters to one of the most influential programs in public media in China— ‘Focus Interview’ program at China Central Television (CCTV), land disputes over expropriation is the primary cause for grassroots complaints in China. In 2005, there were about 19,700 massive incidents caused by land disputes in rural China, which accounted for more than 65% of the total massive incidents. See Yu Jianrong (于建嵘), ‘Land Issue Became the Focal Point of Peasant’s Rights Maintenance’ (土地问题已成为农民维权抗争的焦点) (2005) 8 The World of Research and Study (调研世界) 22-23.

\(^{427}\) Minzner, ‘Xinfang’ (n 3) 177. See also Xiao Tangbiao (肖唐镖), ‘The Evolution and Reform of the Politics of Xinfang’ (信访政治的变迁及其改革) (2014) 1 Comparative Economic and Social Systems (经济社会体制比较) 127-136.
here, the court is open to petitioning. Petition offices are established in courts at different levels throughout China. The purpose is to rectify injustices and manage ineffectiveness of the court. However, in practice, it is often invoked to open a retrial, which will be discussed later.

Petition in China in recent years has confronted with a dilemma.\textsuperscript{428} The authority stresses petition channel shall be open and petitioner’s rights be securely guaranteed in order to ensure mass voices unimpededly heard and gather complete information on local governance. Given an open access to petition as well as promises to secure right to petition, petitioning channel appears more appealing. Petitioners take new and disruptive shapes of petitioning to attract enough attention to their individual cases. Group petitioners bypass the hierarchies to petitioning Beijing and take trans-boundary actions, which are regarded as having embarrassed the authority and posed threats to social tranquility.

To better regulate petition, the central authority has undertaken two significant reforms on the Chinese petition system. The first was the revision of Regulations Concerning Letters and Calls (hereafter to be referred as Petition Regulations) in 2005 based on the 1995 version.\textsuperscript{429} Given a marked increase in petitioning to the capital, the 2005 Petition Regulations aimed to regulate petition processes and to compel local authorities to take more responsibility in handling petitioning issues locally. To this end, a particular regulatory measure known as ‘Petition Control Target Management Responsibility System’ (信访治理目标管理责任制) was undertaken to monitor and supervise local officials’ performance in handling petitioning issues.\textsuperscript{430} The mechanism was originally adopted to straighten out the uneven petition caseload between central and local authorities by enhancing the local responsibility, but had unexpectedly led to violations of petitioner’s rights owing to local attempts to block the disgruntled to reach higher-level authority. In this sense, the objective of the reform was to control petitioners rather than guarantee or improve their wellbeing as asclaimed. The second was an administrative rule promulgated by the State Bureau of Letters and Calls (SBLC)—The Method of Further Regulating Accepting and Handling the Procedure of Petition Issues to Guide Petitioners’ Petitioning at Each Level According to the Law (hereafter to be referred as the 2014 Petition Method).\textsuperscript{431} The tenet of this reform was to separate litigation from petition, namely, authorities of letters and calls would not accept petition cases that should be solved within the framework of the law and dealt with by courts; the document on dispute settlement shall also be returned to the courts and hence guarantee their independence when resolving disputes. In this regard, the 2014 Petition Method mainly served purposes of clarifying the jurisdiction, improving the efficiency of handling petitions, helping people to file petitions in a stepwise manner and facilitating

\begin{footnotesize}
\textsuperscript{428} For an insightful discussion of petition paradox, see Jianrong Yu (于建嵘), “Petition Paradox” and Its Way Out’(“信访悖论”及其出路) (2009) 8 South Wind (南风窗)
\textsuperscript{429} Regulations Concerning Letters and Calls (国务院信访条例) was promulgated by the State Council in 2005, which substituted the 1995 version.
\textsuperscript{430} The system is a set of quantitative accountability indicators evaluating the liability and responsibility of the duty officer and official entity responding to all types of petitions. Most notably, the scope, location and frequency of petition are key assessment indicators. For an empirical analysis of how target management responsibility system is applied governing petition in rural China, see Xianhong Tian (田先红), ‘The Practical Logic and Realistic Dilemma of the Accountability System in the Grassroots Petition Governance: A case study of Town Qiao, Mid-Hubei Province’(基层信访治理中的 “包保责任制”: 实践逻辑与现实困境) (2012) 32 Society (社会) 164.
\end{footnotesize}
petitioning issues to be solved at the local level.\textsuperscript{432} However, doubts were cast on the reform despite optimism from the official side. One case in point was the reform failed to offer real and effective solutions to address petitioners’ grievances at the local level. As will be discussed in the following sections, petitioners’ distrust of authorities at the local level was exactly the underlying reason for them to bypass local authority and petition higher-level leaders in the first place. Before the credibility of the local authority is rebuilt and officials perform their duties in accordance with the law, it is questionable to what extent petition issues could be really solved at the locality. Moreover, returning petitioning issues with a legal basis to the orbit of legal institution was in itself a positive response to the prevailing criticism that petition in some cases would undermine rule of law in China. However, whether legal institution is the ultimate solution to expropriation-related problems that trigger petition remains another question.

\textsuperscript{432} The 2014 Petition Method art 1.
**Table One** The Process of land expropriation in chronological order in Village D

- **First half of 2011** Dissemination of the news on land expropriation
- **December 2011** Pre-expropriation Plan issued by the County BLR
- **August 2012** Land Use Conversion and Expropriation Plan authorized by the provincial government
- **September 2012** The First Announcement (Land Expropriation Scheme) by the county government
- **December 2013** Judicial Forced Enforcement against 4 households
- **May 2013** The Third Announcement (Enforcement Announcement) by the County BLR
- **March 2013** The Second Announcement (Opinion Solicitation Announcement) by the County BLR
- **November 2012** The one-off in cash compensation approved by the city government
- **April 2014 onwards** Construction concurrent with harassments on the locality
- **October 2014** “Village-team aided demolition” of 11 households
- **January 2015** ‘Savage demolition’ of 8 households
6.4 The Process of Land Expropriation as Experienced in Village D (in Table One)

In early 2011 D villagers were informed for the first time that their land was to be expropriated to establish a provincial key project—a logistic industrial park. The Village Party Secretary, head of Village D, intentionally disseminated the news to the villagers in advance of the expropriation so that villagers would seize the chance to transplant seedling trees into their paddy field where rice had been growing over the past years. As the Party Secretary told them, the compensatory standard for seedling trees per mu would be much higher than that of rice. Like many other residents dwelling in peri-urban areas who were routinely incentivized by such news as “making great fortune overnight” through expropriation, many villagers were excited about the news as well, not only because they were to grasp the rare opportunity for an unexpected windfall by replanting the plants, but also their place was selected as a base for a promising project which would hopefully boost local economy so that they could share the benefits in the coming future. Lucky as they were, D villagers were grateful to the Party Secretary and finalized replantation within days.

In December 2011, a Pre-expropriation Plan was announced by the County Bureau of Land and Resource (the County BLR). It was a prior notice on expropriation in Village D, notifying the affected of: i) the acreage, location and new usage of the land to be expropriated; ii) policy documents on compensation and relocation; iii) and a right to a public hearing. Since then, the news on expropriation had been known to all occupants. Villagers did not respond to the plan before everything was clearer, though they were afterwards shocked by the news that the village leaders, without letting them know, gave a written consent to the local authority, promising the villagers would not apply for a public hearing.433

In late August 2012, the Provincial Government approved the land use plan drafted by the County BLR, who applied acreage of 33.334 hectare (approximately 500mu) rural land in Village D for expropriation. The administrative authorization suggested two implications: one was the purpose of land was converted from agricultural to construction use; the other was the legal status of the land was changed from collective land to state land.

In September 2012, the County Government promulgated the Announcement of Land Expropriation Scheme in Village D. The scheme, jargoned as “the First Announcement” according to local officials, was to formally embark on land expropriation in Village D. In consonant with the approval issued by the provincial authority, it deliberately specified the time limit and place for a compensation registration, indicating villagers and right-holders could register their certificates or other documents for compensation.

In March 2013, the County BLR published the Plan of Opinion Solicitation on Compensation and Relocation for Land Expropriation (called Opinion Solicitation Announcement for short, or, jargoned as “the Second Announcement”), which stipulated: i) individualized compensatory amount for each household; ii) a provision of the one-time in-cash compensation for all evicted to relocate; iii) right to require a recheck on the acreage of the land within one week and right to public hearing within ten days as of the date of promulgation. No sooner after checking individual compensatory amount did some villagers find that their farmland had not been compensated at a higher price. The outcome was hardly acceptable to the affected villagers as many of them had been convinced that they would be compensated higher as long as they transplanted their fields. D villagers accused their Party Secretary of a deceit. Furthermore, they were agitated by the one-time in-cash compensation mode, which was a decision

433 File provided by D villagers.
unilaterally made by the local government against their will. In the eyes of villagers, the relocation mode with in-cash payment ran counter to their interests. As villagers complained, “With the limited one-off cash payment, we are expelled from our land and buy ourselves new apartments in the city or township areas, which is distant from our home and the project base as well as a hope of sharing the fruit of local economic development.” Villagers did not respond to the Opinion Solicitation Announcement in a formal way, nor did they exercise their right to a hearing, instead, they attempted to collect every bit of information after they learned the lesson from the Party Secretary.

In May 2013, the County BLR issued the Plan of Implementation on Compensation and Relocation for Land Expropriation (called the Enforcement Announcement for short, or, jargoned as “the Third Announcement”). In addition to a reiteration of the items such as the taking area, the compensation and relocation mode, it specified: i) a given date (within one week from the issuance date) for vacation; ii) right of the affected to apply to the county government for a negotiation or an administrative adjudication in case the negotiation proved unsuccessful; iii) a provision that enforcement should not be suspended during the period of appeal or litigation, according to the RILAL. For those who neither initiated a legal proceeding nor followed the decision of negotiation or adjudication within the given date, the County BLR might apply to the court for enforcement. In this light, the Third Announcement heralded a forthcoming mandatory taking, regardless of the villagers’ reluctance or opposition. On noticing that a policy change on compensation and relocation was out of the question, villagers rallied more frequently and expressed their discontent with the local authority. Some paid visits to the demolition office to recheck or bargain their individualized compensation amount. After three villagers applied the County Government for a negotiation to improve their compensation but failed, they proceeded with appealing to the city government for an administrative reconsideration over the expropriation decision. The main concern was focused on the compensation and relocation scheme issued by the County BLR. It was half a year later that the city government decided to sustain the original decision, on the basis that the scheme conformed to local rules enacted by the city government to regulate expropriation.

When administrative reconsideration at the city government level was still ongoing, the County BLR decided to quicken the taking process. Facing a tight construction timeline and the pressure of performance evaluation from the higher-level leaders, local officials at the township demolition office applied through the County BLR to the county court for enforcement in early December 2013. Despite the majority of the houses condemned for demolition still being there, the enforcement was applied against four activists, who were considered to have played leading roles in resisting the government plan. The enforcement was carried out in late December with a heavy police presence on site. Though villagers were expected to defer, the enforcement had little effect. Firstly, villagers were distrustful of the local officials who were deemed to have abused their power in taking revenge on the four evictees. Secondly, during their consultation and negotiation with the township government, villagers had invariably experienced ignorance, denial and even humiliation of their inquiries, which in turn further disillusioned their hopes of policy changes. Last but not the least the four victims were driven into fury after they experienced the manifestly unjust enforcement. They not only sought for redress for their sufferings, but also more actively organized and coordinated resistance against the local officials. As a result, within almost half a year, the township officials had only reached expropriation agreement with five

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434 Interview with three activists in collective action in Village D (14 July 2015).
435 The RILAL arts 25, 45 (2011 Amendment).
436 During their rally, other villagers, who were not affected but their land was to be encroached, joined them as well. Interview with Three Activists in Village D (14 July 2015).
households—‘one destitute, one immigrant and three worse-off households’, whereas the remaining still hold out.\footnote{437}{Interview with an elder male villager in Village D (31 July 2015).}

To break the impasse, local officials had attempted to persuade, buy off, and even intimidate the villagers. They concentrated on dealing with leading activists in order to disorganize the coordinated group. Consequently, one activist was charged with rumor-mongering (散布谣言) and illegal fund raising (非法集资) for class litigations and taken into detention for 15 days. Later, the Town Mayor intervened in his case and proposed to be a guarantor to set him free. Additionally, he promised an extra compensation to be paid for the leader’s sufferings in the judicial enforcement on condition that he withdrew litigation and petition and should also persuade other villagers to do so. The leader did not give his consent albeit he was later release. Another leader, whose business was trading in dispossessed trees in the vacated area, was subjected to criminal prosecution of illegally felling, destroying precious trees (非法采伐毁坏国家重点保护植物罪) and was sentenced to imprisonment of 105 days.\footnote{438}{A complaining letter prepared by D villagers for petitioning. File provided by D villagers.} Despite all the measures the local officials took on the resisters, none individual household, be leaders or other villagers, signed agreement with the local demolition office. That being so, construction on site had begun in April 2014, regardless of occupants’ resistance. Various harassments under the name of the construction, such as cutting off the electricity, disorderly accumulating clods in front of the house sites for road blockade, ‘negligently’ leaking machine oil into the well were put in place from time to time, aiming to pressure for villagers’ concession.\footnote{439}{Joint letter written for petitioning, with pictures of these harassing behaviors as proofs for rights violation, which was published online. File provided by D villagers.}

In October 2014, a new method, ‘Village-team supported demolition’ (村组帮拆) was initiated by the local officials and applied extensively to clear villagers’ residential sites. Eleven households in Village D had consecutively experienced the so-called supported demolition within one month. As a township official depicted:

Two working teams consisting of well-known figures in the locality, party members, village leaders and some villagers implement the demolition. The team members will firstly negotiate with the target households and help them maximize the monetary compensation, in case the soft measures fail, coercion will be indispensable despite the overt antagonism.\footnote{440}{Interviewee with a male official engaged in demolition and eviction work in township government (23 July 2015).}

The new method, originally created by the implementers to expedite the process, was required to report to the superior. Owing to the bad influence flowing from the use of force and violence on the locality, the superior announced a halt to the initiative on the basis that the working team, affiliated to the village committee, was not eligible to carry out administrative actions.\footnote{441}{ibid.} In other words, the upper-level authority deemed the working team had no authority and therefore denied its acts. Nevertheless, it did not express that the violence that had been unlawfully applied. Conversely, D villagers blamed the local officials explicitly in their joint-letter for their malpractice. In their articulation, the so-called ‘village-team aided demolition’ was notoriously violent. For the 11 victim households, they all suffered from violence to varying extent, among others, 4 households were forced to leave their houses late at night to vacate the houses, 3 households experienced break-ins and their sites were cleared during their absence and another 4 households were coerced to defer after a fierce clash with the working staff despite three
villagers were detained on site for their disruptive behaviors.\textsuperscript{442} To their ultimate disappointment, almost all the villagers called the police via the emergence line 110 for help. Notwithstanding the police were dispatched to the scene during the clash or afterwards, they simply took some records whilst no further feedback or reply followed thereafter.\textsuperscript{443} Homeless and destitute as they were, the victims became desperate to protest against the local authority.

In January 2015, shortly after the court of second instance dismissed the villagers’ claims, the township authority forced another 8 rural houses out and then cleared the sites. This time, the working team was composed of township officials and Village D cadres and supplemented by workers and employees from a local land developer. However, the workers and employees were discerned as ‘thugs’ who were hired by the land developer, in collusion with the local officials, to intimidate the occupants to vacate their land with the least possible delay. The forced eviction was exercised as the officials claimed that it was a judicial enforcement followed from villagers’ failure for their lawsuit. Nevertheless, the claim was eventually found out to be nothing more than another round of forced eviction under the disguise of judiciary enforcement since none of the victims had received any formal prior notice from the court. The action, differing in the form from the previous two, was depicted by the villagers as ‘savage demolition’ (拆)\textsuperscript{444}

6.5 Villagers’ Mobilization of Routes of Redress

Thus far villagers had been disappointed, frustrated, and disillusioned regarding their demands for a policy change on compensation and relocation. Given their sufferings from an array of local officials’ misdeeds, villagers had fostered a more pragmatic attitude and managed to mobilize all possible opening routes to address their grievances. This section presents three cases concerning how complainants in Village D had employed litigation, petition respectively and even an interplay of litigation and petition as routes of redress.

6.5.1 Case One: Suing local government authorities

In early 2014, villagers filed class litigation to Intermediate People’s Court (IPC) to challenge the expropriation decision approved by the County Government (issued by the County BLR). Their central concern was an imposition of in-cash compensation with low compensation amount. The court rejected to hear the case. As IPC argued, the approval was merely an internal administrative action that had generated no actual effects on the complaining party and the decision should not be amenable to judicial review. In other words, the city government who approved the decision was not a proper party for the affected villagers to oppose to. An appeal to the high court was rejected and the court decision of the first instance was sustained.

Given the first failure, three other villagers filed another lawsuit to the court in S County to challenge the County BLR, attempting to invalidate its decision-making on expropriation. The three villagers sought to challenge: i) the validity of an imposition of in-cash compensation; ii) the validity of a land use plan approved by the provincial authority; iii) the legality of government acts of forced demolition. On the basis of these claims, plaintiffs firstly argued that the County BLR unilaterally made the decision without the affected villagers’ participation. More importantly, they claimed the Provincial Government had no

\textsuperscript{442} Joint letter written for petitioning. File provided by D villagers.
\textsuperscript{443} ibid.
\textsuperscript{444} ibid.
authority to approve the land use plan in which the majority of the farmland in Village D had been enrolled into the protection zone of basic farmland in July 2011. The LAL required the expropriation of basic farmland, regardless of the acreage, should be subject to the approval of the State Council and cultivated land not exceeding 35 hectares (500mu) could be approved by the local authority. As such, the land use plan should have been approved by the central rather than the provincial authority. Lastly, the local officials had illegally and wrongfully evicted their houses, from which the victims had suffered a lot. At this point, plaintiffs insisted that the wrong-doers should be subject to legal responsibility and their losses compensated.

Yet, despite villagers had presented plenty of evidences supporting their position, the case was not adjudicated in their favor. In September 2014, the county court dismissed their claim regarding invalidating the in-cash compensation mode, arguing that the County BLR had made the decision in compliance with Expropriation Regulation of S City and Implementation Measures of S City. Though an alternative in-kind compensation mode was provided in the local regulation, it was the city government that had authorized the County BLR to apply an in-cash compensation mode in several towns (including Village D) within the jurisdiction of the county. Another important reason was that there was written evidence that villagers had consented to relinquish their right to hearing, albeit it turned out the written consent was given by the Village Party Secretary who agreed with in-cash compensation mode without villagers’ knowledge. In terms of the validity of the land use plan, as the court adjudicated, it should be reviewed in other cases, but the plan was still effective and binding before it was modified or annulled. Lastly, regarding the forced demolition that was protested by the villagers, the court argued that those government acts per se must not be determined in the court since it was just an administrative implementation in line with the administrative decision. In this regard, it should be the administrative decision, rather than the acts in themselves, that had generated actual effects on the affected party. On the basis of the foregoing, the court validated the expropriation decision made by the County BLR, emphasizing: i) the County BLR was a competent subject to make the decision; ii) the decision was in consistent with relevant laws and regulations; and iii) the administrative procedure had been met (at least no apparent violation). Consequently, the court rejected the plaintiff’s claims. To their dismay, in January 2015, the appellate court (IPC) upheld the original ruling on the same legal reasoning basis and dismissed their claims.

Needless to say, the judgment frustrated the villagers. The villagers insisted this was an injustice and suspicious of the impartiality of the court, blaming the court for their deference to the local authority. Their suspicion was justified by their lawyer, who was based in Beijing since local lawyers were not willing to engage in Village D’s cases. As the lawyer told them, the trial judge had privately admitted that they had to be more cautious in adjudicating this case, not only because the litigants formed a coordinated group, but the contentious decision on land expropriation was to establish a key development project that was taken charge by the Provincial Deputy Governor. Additionally, the lawyer complained that the Town Mayor had visited and pressured his boss in the law firm, warning him to keep a close eye on his staffs who should have behaved properly. After this case was closed, this lawyer was replaced by his colleague in the firm.

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445 This echoed with the power relations between central and local authorities detailed in Section 5.3.1(The Level of Central Power) in Chapter 5.
With suspicion of the independence of the lower court, villagers decided to apply to Higher People’s Court (HPC) which they believed would be less affected by local protectionism. The time when the fieldwork was finalizing, D villagers filed an application for retrial at HPC to both challenge the validity of the approved land use plan and the County BLR’s unilateral decision of in-cash compensation that deprived their rights of choice. Their application was rejected by HPC in April 2016.448

6.5.2 Case Two: Petitioning Beijing

When Chinese citizens encounter injustice resulted from wrongdoings of government agencies, many would start from launching complaints to upper-level authorities or other social institutions such as social media. Comparing to the costly, hard-to-get-into formal court proceedings, petitioning has seemingly provided an easy-to-get-into avenue for the pursuance of remedy. Moreover, it is considered worth paying for particularly when petitioners manage to draw attention from higher-level leaders, who may intervene in to prompt their inferiors to take remedial actions.

D villagers followed suit to some degree. They filed a complaint against the publicity of expropriation decision prior to their substantive sufferings from the forced demolition and petitioned gradually up the hierarchy at the outset. They asked the township level authority for a reasonable explanation for the decision when they were notified of the compensation and relocation scheme, but to no avail. They then visited county-level petition offices but obtained no positive response either. During the process of petitioning, township expropriation authority carried out forced demolition as well as continuous malpractices, attempting to force them out. By then villagers were assured that both county and township authorities were “allies” with their vested interest in taking their land. Villagers bypassed the two levels of governments, seeking to appeal to higher-level leaders that they believed would set everything right for them. The petitioning issues lodged were not only administrative decision on expropriation of land, but extended to their grievances resulted from forcible demolition with violence.

Yet, despite the occasionally formulaic reply with no substance, villagers’ endeavors had not achieved any favorable outcomes. Villagers had filed countless complaints to petition offices at various levels of the hierarchy. Their complaining files, each with dozens of pages though, were never seen or heard of again. It was as if a stone were dropped in the bottomless ocean. Given the fruitless efforts, they deemed authorities at all levels were just ‘kicking the ball’ (踢皮球) that led them nowhere.449When villagers learned the Provincial Inspection Team would ‘handle official business on the spot’ (现场办公) for a certain period at the County BLR, D villagers submitted their complaining files to the team, but only found out their files were soon returned to the township government, which was an undifferentiated outcome from their prior experiences.450 When petitioners became more experienced and knowledgeable, they recognized that hierarchical powers from provincial downwards to township levels were attempting to protect each other. A close-knit ‘community of interest’ was formed because of the high-profiled project initiated by the provincial authorities. Against this backdrop, villagers adapted their strategy and sent petitioning to Beijing, attempting to arouse effective attention from central leaders, who would arguably take a neutral stand and be concerned about people’s livelihood and their lawful rights rather than the single concern of economic growth.

448 Follow-up interview with a male villager in Village D, who was plaintiff in the case (5 February 2017). The written judgment was provided by D villagers.
449 Focus group discussion (22 September 2015).
450 Joint-letter issued and signed by D villagers to the Discipline Inspection Commission. Files provided by D villagers.
It was not a one-time but many visits were needed in order to seek support from the highest authority. Amongst their visits to petition Beijing, one particular visit was illustrative of how they organized their effort to petition Beijing on a special occasion, with an attempt to gain attention of the highest leaders. Though it was not their first time to petition Beijing, D villagers decided to take the national celebration event as a particular opportunity to lodge a petition. One week before the 70th Anniversary of Victory in the War of Resistance against Japanese Aggression on 3 September, a group of 14 villagers were dispatched to Beijing. They were divided into three groups, each with no more than 5 people since they were clear about the regulating rules that “petitioners should not exceed five people”.451 Immediately upon their arrival in Beijing on 28 August, they were intercepted and withheld by the police, who sent them to ‘Majiatalou’ (马家楼) Building that was widely known as a base for receiving petitioners coming from local areas throughout China. The next day, an officer from National Petition Bureau received them and recorded their grievances. Simultaneously, the news was immediately disseminated downward to local governments and a group of 22 staff members were dispatched to take them back. All the 14 petitioners were soon kept in custody in the County Public Security Bureau (the County PSB), facing threats of a jail term. Fortunately, owing to their coordinated action, village leaders at home made complaint calls to both the Provincial PSB and the Provincial Inspection Group. The petitioners were ultimately released.

6.5.3 Case Three: Alternating between litigation and petition

While petitioners in coordinated action might exempt from being sanctioned, individual petitioners would not have the same treatment. In October 2014, after Ling, a female villager in Village D, encountered the so-called “village-team supported demolition” when her house was demolished early in the morning and her family members were moved out with violence, she protested against the violence and voiced her grievance to hierarchical government authorities. Ling was soon regarded as a persistent and active petitioner owing to her repeated petitioning to different petitioning offices at local level and her in-person visits to Beijing. Like many other petitioners, she appealed to the center with skipping-level petitioning which not only violated the petition procedure, but humiliated local officials in that they failed to address her problem locally.

In December 2014 Ling paid in-person visit to Beijing with another petitioner. In February 2015 they reached Beijing for a second time, and ended up being rounded up immediately by security police in the capital city. Likewise, they were intercepted and detained before they could lodge complaints. After they were sent back, they were respectively given 10 days and 5 days in detention by the County PSB. The administrative punishment was charged for their illegal acts of ‘abnormal petition’, which “disturbed the order of government organ and made it impossible for work to proceed normally”.452

Ling therefore filed an administrative lawsuit to the county court to challenge the County PSB’s punishment. She claimed that the administrative detention was unlawful since she had not least disturbed the social order, not mentioning having obstructed the government organ from working properly. Moreover, she protested the reasoning that their petitioning acts were illegal and abnormal. As Ling argued, every citizen was granted right to petition by Constitution, she had just exercised her legitimate

452 Public Security Administration Punishments Law art 23 (1) (2005). Public Security Administration Punishments Law (中华人民共和国治安管理处罚法) was promulgated in 2005 and amended in 2012. It provides that a penalty of 5 to 10 days in administrative detention may be given in case one disturbs the order of any organ, social organization, enterprise or public institution and makes it impossible for the work, production, business, medical services, teaching or scientific research to proceed normally, but has not caused any serious loss.
rights as such. In the absence of more convincing reasons, Ling regarded the aim of the administrative detention was essentially a retaliation from the local authority to suppress their petitioning.

Ling failed her case. As the court explained, the sanction had been made consistent with the 2005 Petition Regulations, which stated that petition could be legally protected only when petitioning to designate offices at scheduled office hours, or petitioners were threatened with legal consequence for their ‘abnormal petitions’. In a similar vein, Ling’s claim was dismissed by the court of second instance afterwards. Ling was outraged yet unreconciled. Given the accumulated grievance and the incapability of the court to provide justice, Ling had to shift her attention back to petitioning to convey her grievances over violations of both her property rights and her personal rights. She joined the group petition to Beijing at the national event and was almost punished by another detention, like many others. Though Ling’s resistance was still ongoing, it was likely that she, as well as many other petitioners sharing similar experiences, might incur more sanctions for their repeated petitioning. That being the case, they would still have to swing between litigation and petition, expecting one/both mechanism to return them justice.

6.6 Discussion

Given the villagers’ mobilization of litigation and petition in adaptive and strategic ways and their frustration to seek justice, this section intends to discuss the reasons why the application of permitted routes of redress had been ineffective in addressing the real problems in rural land-taking.

6.6.1 Why is administrative litigation ineffective in redressing infringements of rights?

Difficulties in getting a case heard

As noted, it is extraordinarily hard to get an administrative case accepted by the court. This is especially true with land expropriation cases. The difficulty has been vividly depicted as “no registration, no acceptance and no representation”. This suggests, in general, the court is too cautious to register the case, judges are too reluctant to accept the suit, and the lawyer is unwilling to help. The court’s reluctances aside, it is noteworthy that the difficulties in getting a case heard have much to do with various limitations on judicial power.

On the whole, the court has limited scope of review. Before the NPC decided to amend Administrative Litigation Law (ALL) for the first time after it was adopted in 1989, the law had distinguished between specific and abstract administrative actions which excluded the latter from being subject to judicial review. According to the 1989 ALL, litigants could make claims for legitimate rights and interests that were infringed by ‘specific administrative acts’ (具体行政行为). Those so-called specific administrative acts were enumerated as 8 areas in Article 11, which should be limited to its infringements on personal and property rights, precluding other rights such as political rights. Article 12 provided some instances

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454 Interview with a female official from District-level Demolition and Relocation Office (1 July 2015).
455 The ALL art 11 (1989). Land Administration Law of the PRC (行政诉讼法) was promulgated in 1989, revised in 2014 and in 2017. It has to be noted that many instances of administrative litigations in this chapter were filed before the ALL was amended in 2014, which means courts followed the 1989 ALL to adjudicate cases.
456 The ALL art 41 (1989); See also The SPC, Interpretation on Several Issues Concerning the Implementation of the Administrative Litigation Law of PRC (最高人民法院关于执行《中华人民共和国行政诉讼法》若干问题的解释) (24 November 1999) art 1 < www.npc.gov.cn/npc/lfzt/2014/2013-12/20/content_1817962.htm> accessed 9
that were not amenable to judicial checking, which included administrative rules and regulations, or decisions and orders with general binding force, additionally, actions such as state acts, internal administrative acts and final administrative decisions were also excluded from judicial reviewing. Therefore, the stipulations had largely limited the court’s scope of review. In addition to the limited review scope, some procedural rules were in place to restrain the court from inquiring into the protested administrative decisions. For instance, there were cases that the complainant could only apply for administrative reconsideration and the reconsideration was final. As provided in Administrative Reconsideration Law (ARL), administrative reconsiderations that have already been heard by provincial or central agencies should be final and the suit would not be accepted by the court.\(^{457}\)

It is noteworthy that the term “specific administrative acts” was eliminated in the revised version of the 2014 ALL. The enumerated matters were extended to 12 areas, \textit{inter alia}, it was required that suits against expropriation, appropriation and compensation decisions should be accepted.\(^{458}\) The revision was deemed to grant more power to the court to challenge some abstract administrative acts. In this regard, the revision took a step forward in overcoming the chronic difficulty in ‘getting a case accepted’. Nevertheless, it remains unknown to what extent the court would be willing to accept expropriation-related cases in the future, given a surge in the caseload after the promulgation of the revised ALL. Moreover, to get a case accepted was only the first step. Complaints were still much concerned with how the court would check government’s decision-making that directly impacted how they would be relocated and their loss of land be compensated. Ultimately, it remains to be assessed how the court would exercise its power to check the government discretion in making expropriation decisions.

\textit{Restrains on substantive and procedural review}

In general, the Chinese courts have limited power to rein in administrative decision in the regime of administrative laws. The court is restrained from exercising interpretative power. According to the law, the court is restricted from interpreting laws, regulations and other normative documents. Its interpretative power must be confined to specific cases.\(^{459}\) Contrasting with the court, the administrative agencies are granted broad interpretative power. The State Council, for instance, is authorized to change or revoke regulations issued by subordinate ministries and commissions, or resolve conflicts between regulations issued by local government and by the ministries and commissions at the central level.\(^{460}\) The interpretative power is also delegated to other administrative agencies who draft the regulations. In case the court finds there is a lack of clarity or the interpretation is inconsistent with laws and regulations, the

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March 2016. The scope of review, which has been narrowly designated as merely involving personal and property rights, excludes other important rights (for instance, numerous important political rights) from being reviewed. However, Chinese court has expanded its jurisdiction in a cautious manner in recent years’ practice, which goes beyond the scope of personal and property rights. A telling example is the right to education. Yuwen Li and Yun Ma, ‘The Hurdle is High’ in Hualing Fu and Yuwen Li (eds), \textit{Administrative Litigation Systems in Greater China and Europe} (Ashgate Publishing 2014) 23.


\(^{458}\) The ALL art 12 (2014).


\(^{460}\) XIANFA art 89 (1982); The ALL art 53 (1989).
court shall refer it to agencies such as the State Council for adjudication or interpretation.\(^{461}\) In any case, the court finds the normative documents unlawful, though, it has no authority to repeal or revoke it, but only to decide not to use it as a basis for determining the legality of an administrative act.\(^{462}\)

Moreover, the court has limited power to review government decisions. The ALL provides that laws, administrative regulations and rules enacted by the local People’s Congress have binding force on the court, regulations issued by ministries or commissions under the State Council or government rules and other normative documents that are enacted by local governments are excluded from the jurisdiction of administrative law. In other words, the court should simply ‘refer to’ (参照) these governmental rules and normative documents. However, it is not uncommon that the court is bound by government rules and normative documents in reality in that “there is no superior legislation on point and the court finds the Rules or Normative Documents reasonable”.\(^{463}\) As a consequence, without necessarily applying them directly, the court rarely challenged the legality of various governmental rules and normative documents, regardless of the validity and reasonableness. In other words, although governmental rules and normative documents have exerted influences on the property rights and interests of the expropriated population, as one judge commented, “These rules and documents are not within the jurisdiction of the court”.\(^{464}\)

It must be noted that administrative laws have granted power to the court to rein in government decision in several exceptional cases. For instance, the court is authorized to invalidate the decisions which violate the procedural rules or in any case the administrative organ has no authority or exceeds its authority to act. Notwithstanding that the authorization are rarely invoked to overturn government decisions mainly because the court would choose to tolerate minor procedural wrongs which they believe are insignificant for attaining substantive justice. Equally noteworthy is that government bodies both at central and local levels that are required to comply with the principle of ‘administration by law’ are attaching more significance to procedural regularity.\(^{465}\)

In the realm of administrative cases concerning rural land expropriation disputes, the court has undertaken a less effective role in judicial review of substantive requirements for expropriation. As was discussed in Chapter 3, government authorities were required to meet substantive requirements in the sense that land expropriation should be carried out in the public interest with compensation. However, the actual judicial practice generally falls short of substantive review to challenge whether land is expropriated out of public purpose. An insufficient review of public interest is partly attributable to constraints on the court from interpreting statutory stipulations, partly because the criterion of public interest is vaguely defined and therefore could hardly be applied as checks and balances on government power. However, more often than not, the review which is undertaken to address the disputes take place after the government decision has already been made and land has been expropriated.\(^{466}\) In other words,

\(^{461}\) The ALL art 53 (1989).
\(^{463}\) Peerenboom, China's Long March toward Rule of Law (n 421) 422.
\(^{464}\) Interview with a female judge serving at Land Tribunal of Intermediate People’s Court (IPC) (29 September 2015).
\(^{465}\) One respondent judge also claimed that nowadays local governments were increasingly acting in accordance with procedural norms. In expropriation cases, court seldom reins in expropriation decision based on administrative procedural flaws. Interview with a female judge serving at Land Tribunal of IPC (29 September 2015).
judicial review of the requirement of public interest is almost absent before the enforcement of rural land expropriation. This contrasts with many other legal systems where the court is granted power to review whether eminent domain shall be invoked to serve public interest before government operation of land-taking, which would arguably ensure the legitimate end of the taking of the land. In the Chinese case of rural land expropriation, it would be less meaningful for the court to adjudicate land disputes or declare that land-taking fails to serve any public purpose provided a lack of judicial review of public interest before the enforcement of land expropriation, simply because neither the land acquired will be returned to the expropriated nor their vacated houses or other private property are reparable.

Likewise, in terms of requirement for compensation, the court has little saying on the standard which is set by the government. Compensation standard and its calculus formula are provided by the LAL and local regulations, which move beyond the jurisdiction of the court. Furthermore, in any case the court finds the compensation decision unlawful, it has no authority to repeal the decision or determine the compensatory amount on its own. Rather, it is legally required to ask the government agency to make another decision which shall be more reasonable. Insofar as it resides in the discretion of the government bodies to justify the reasonableness of the compensation standard, it remains practically impossible to challenge either the procedural or substantive injustices.

The excursion of judiciary enforcement

Legally speaking, local government agencies may apply to the court for enforcement in case the affected party, who is not satisfied with the arbitration decision, fails to initiate a legal proceeding or apply for administrative review on government decisions. Article 13 of Administrative Compulsion Law expresses judicial enforcement in the case of land expropriation should be a preemptive order issued by the court to authorize the government to carry out a forced eviction. The original intent of judicial enforcement is to protect rights of the disputants as a last resort and simultaneously and put an end to the disputes. Nevertheless, judicial enforcement has been instrumentalized as a compulsory measure for local expropriation authorities to facilitate implementation and warrant compliance during the processes of operation. In general, no substantive requirements are explicitly required for an application of orders, except for procedural ones. For instance, the administrative body shall apply within 3 months from the day that time limit for filing a lawsuit or apply for administrative review was completed. The court’s reluctance to antagonize local authorities aside, it is not easy for the judges to refuse since local expropriation authorities would generally meet procedural obligations before their application. However, it is the substantive issues such as arbitrary interpretation of public interest and a low compensation that rendered resistant farmers to defy government orders to give up their land. Ironically, judges tend to issue orders for judicial enforcement, without necessarily touching upon these substantive issues.

Moreover, the issuance of judicial order for enforcement suggests that the court would be further engaged with executing its order. During the process of actual implementation, the court would notify both parties of the court decision of judicial enforcement. Judges are in charge of executing the decision, none the less, it is common practice that the majority of participants are local officials backed up by hundreds of police to enforce the social order. The mixture of trial and enforcement calls the impartiality

467 The ALL art 70 (2014).
468 Administrative Compulsion Law of the PRC (ACL) (中华人民共和国行政强制法) was adopted in June 2011 and came into effect in January 2012; The 2011 Expropriation Regulation art 28. Noticeably, before 2011, not only the judiciary, but also the administrative agencies had the power to decide for an enforcement of forced demolition before attaining the occupants’ consent.
469 The ALL art 07 (2014); The ACL art 53 (2011).
of the court into question and undermines the validity of judicial enforcement in land expropriation. When judicial enforcement fails to address the real concerns of the affected population, it has actually deviated from its original role of safeguarding lawful rights of rural landholders as a last resort and is comparable to forced demolition that is legitimized by judicial power. Not surprisingly, the enforcement itself encounters resistance. Moreover, one unintended outcome is that more petitions and protests are ushered towards upper-level courts and other government offices after the enforcement on the targeted group.

The excursion of judicial enforcement in land expropriation has put the court to the frontline of the contention. Pressure rises from fierce confrontation and persistent petitions. To relieve the court from rising pressures, the SPC (Supreme People’s Court) seeks to take a neutral stand in handling application for judicial enforcement in expropriation. In 2011, the SPC issued an urgent notice to strictly regulate the judicial enforcement on land expropriation and demolition, requesting district courts be more cautious in receiving applications for land expropriation.\(^470\) In 2013, the SPC issued an instruction to refrain the court from accepting cases concerning the application for forced demolition of illegal buildings.\(^471\) In 2014, the SPC issued another notice concerning the forced demolition, proposing to ‘separate judgment from enforcement’ (裁执分离).\(^472\) Scrutinizing a series of reforming measures reveals that the court is more cautious not to encourage a wave of discontent from improper enforcement on eviction and demolition, albeit forced demolition initiated by administrative actors are still rampant throughout China.

### Incapability of the court for dispute resolution

Thus far, Chinese courts have had a limited role in reining in administrative decisions on expropriation. The limitation is further reflected by judicial practice as an ineffectiveness of the court to resolve disputes. Indeed, unlike courts in other jurisdictions whose role may be more active and aggressive in checking government’s exercise of eminent domain power, the performance of Chinese courts appears far less satisfactory. At the outset, judicial review is almost absent before government decisions are put into enforcement. When disputes arise from government arrangement on compensation and relocation, the court is restrained from inquiring into the reasonableness of the decision-making. Moreover, in any case the decision-making concerning compensation scheme proves unreasonable, the court has no power to shift or rectify the amount.

Yet, despite all these limitations and constraints, the court is put at the frontline to resolve the disputes and they are faced with a predicament in adjudication. On the one hand, grievances are mounting to assert rights and make claims. On the other, urbanization has been on the top agenda of the central policy and land expropriation is a critical strategy to bolster economy and advance the local level of urbanization rate. The court in this instance is faced with striking a balance between the fulfillment of government goals and

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\(^470\) Owing to the enforcement of judicial forced demolition, there was frequent occurrences of malicious events such as self-immolation by the victim to defend their house property in 2011, the SPC then issued an urgent notice to strictly regulate the judicial enforcement on land expropriation and demolition (on 9 September 2011 but revoked within one day), see Gui Shen, ‘The Urgent Notice could Rarely Circumvent Bloodshed Demolition’ (<https://www.publiclaw.cn/?c=news&m=view&id=3012>) accessed 26 September 2016. Shen was one of the five scholars to advise the NPC to revise the demolition regulations at Peking University Law School.


the protection of landholders’ property rights. Under the condition of indeterminate expropriation laws and various constraints on judicial action, the court appears to have either rendered the disputes “beyond the attention of law”, or, sustained the government decision.473

In China’s judicial practice, of course, there are means potentially available to get a case reviewed and reopened. Comparing to the Western judicial systems in which the principle of non bis in idem is at issue, a variety of means are available in China to correct all possible wrongs for judicial actions. The complaining party may attain a retrial by appealing to a higher court, or lodging petition to letters and visits office in the court. In addition, supervision from the court itself or higher-level court and procuratorial review could also trigger a reviewing or reopening.474 For complainants who suffer from expropriation and their disputes remain unresolved, it somehow suggests they can employ those means to get their cases reheard or reviewed. As such, court opinion in China is considered as having the trait of low degree of finality. Nevertheless, in case complainants obtain a retrial, it is very likely that they base their ground on prior complaints and therefore, the retrial could rarely overturn the court’s original order. However, the retrial may subject relevant parties into the circulation of trials.

Given the incapability of the court to address their concerns, it calls into question whether the litigants would have a faith in law and legal rules even if they seek their cases reviewed or reopened. In fact, judges were complaining about the plaintiffs not taking legal proceedings seriously when they were hearing expropriation cases. In one judge’s words:

In some demolition cases, supporters with similar experience will audit the trial. You can see that they rarely view litigation as a venue to solve their disputes. Instead, they merely take the court as a platform for them to contest the state apparatus and vent out their anger…475

6.6.2 Why petition can rarely yield positive outcomes?

Problems shall be solved locally

The central authority has made it a principle that petition issues shall be solved locally ever since they encounter a petition tide in Beijing. The principle requires that petitioners who lodge complaints to Beijing or higher-level leaders shall be advised to talk to level-down local governments that have the power to solve problems locally. In the light of Village D’s case, while it was less likely to get positive reply since villagers were complaining against the township officials, returning petitioning issues to the local somehow suggested a forthcoming revenge on petitioners. Insofar as local authorities were required to take more responsibility in handling petition issues, they were granted more power to manage petitioners and hold them under control. As stated earlier, Petition Regulation in 2005 had regularized petition. While local authority was required to manage petitioning issues within jurisdictions over the locality, petitioners should abide by the law and social order to lodge complaints in specified time and place, or they would be faced with legal consequences.476 Against this backdrop, when petitioners were ‘caught’ in Beijing and returned to local jurisdictions, they would be accused of having lodged ‘abnormal petitioning’ and subject to punishment such as detention.

473 Interview with a female official, who was a section chief of Bureau of Housing Administration (BHA) of S City (6 July 2015).
474 For a detailed discussion of the various means to get a case reheard, see Lubman, Bird in A Cage (n 418) 269-271.
475 Interview with a male judge from the Civil Division of IPC (29 September 2015).
Yet, whether solving petitioning issue locally could be a right solution for the authority to effectively managing the mounting petitioning remained an acute problem. When local authorities were held accountable to handle petitioning issues, they assumed both roles of ‘player and judge’ in disputes, which conflicted with the fundamental principle of equality between the parties to a contract. This was the underlying reason for petitioners who bypassed the local petition offices to appeal directly to the higher-level authority, rather than solely counted on the local state actors as problem-solvers to correct their own misdeeds. In circumstances where local governments assumed responsibility in resolving petition issues, it somehow suggested they must touch upon root causes of expropriation. Notably, it required a breaking down of government monopoly on rural land conversion for urban uses and farmers would be allowed to profit from developing rural land in their own ways. In the real practice, however, the requirement of enhancing responsibility was more tentatively localized as putting more emphasis on maintaining social order by means of appeasing, circumventing and suppressing petitioners from reaching the upper-level leaders, but less on problem-solving or redress of individual grievances.

Local authorities’ toolkit to control petitioners

Though the ‘Petition Control Target Management Responsibility System’ were cancelled in 2013 after its eight-year-long existence, local officials were still liable to handle mounting petitioning issues. One of the most cumbersome problems facing the local authorities was how to effectively manage petitioners who were employing new and disruptive forms in lodging petition. These forms of petitioning entailed ‘repeated petition’ (重复访), ‘entangled petition’ (缠访) and ‘trouble-making petition’ (闹访).\(^{477}\) Insofar as some cases had lingered for years or outcomes of their cases had been less satisfactory, some people would file complaints repeatedly for the same case (‘repeated petition’), or they would haunt local leaders or officials for a long time without necessarily committing illegal acts (‘entangled petition’). In certain situation, they would cause some trouble, for instance, protests, sit-ins, traffic blocking surrounding, obstructing the performance of government administration, to arouse more attention from the government leaders (‘trouble-making petition’).

When social order and economic growth as well as a sound political performance remained core concerns for local officials, they adopted a variety of countermeasures—both carrot and stick to cope with newly-emerged shapes of petitions.\(^{478}\) To hold petitioners under control, local authority thwarted petitioners’ grievances being heard or prevent them from bypassing authorities to appeal to higher-level leaders. Some physical violence such as beatings, detention or house arrest on petitioners hit the headlines from time to time. In addition to deterrence, officials also chose to appease petitioners. In many cases, local governments would buy off ‘seasoned’ petitioners by way of offering them monetary incentives routinely. The temporary solution had led to some undesirable consequences. Most notably, petitioners played the rules and blackmailed the local authority as full-time ‘professional petitioners’.\(^{479}\)

Carrot and stick did not always work in the situation where the root cause of petition remained untouched. Some petitioners insisted in making their claims and they did not fear more deference simply because they had nothing to lose. In this instance, some preventative measures were regarded necessary to keep persistent and thorny petitioners under close scrutiny. In Village D, local officials, in hand with

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\(^{478}\) This resonates with the discussions in Chapter 5 (Maneuver of Carrots and Sticks in Section 5.4.1 Visible Power).

\(^{479}\) This resonates with the opportunistic behaviors of the farmers detailed in Chapter 4(Blackmailing the local state in 4.6.2 Farmers’ Concession).
village cadres and some party members, carried out a ‘one-on-one supervision’ on the active petitioning household.\textsuperscript{480} In one villager’s word:

Each potentially active household is taken charge, with our movements and actions under close surveillance. In case we leave the town, whether for travelling or leave the locality, local officials will keep a wary eye on us.\textsuperscript{481}

Moreover, local government had a coalition with the police in Beijing, who were expected to assist in blocking complaints directly to the central leaders.\textsuperscript{482} These measures were deemed imperative not only because resistance in Village D was high-profile in the locality and their petitioning had set a bad example which hindered the implementation of follow-up expropriation in adjacent areas. More importantly, villagers’ access to higher-level leaders was deemed as humiliation for local officials, which for them was barely tolerable.

The contingency of central intervention

Petitions have long been in existence as a direct appeal to the highest leader who would intervene in to set things rights for the complainants. Many petitioners counted on the upright, powerful upper-level leaders who may intervene in, correct the wrongdoings of the local officials and eventually return the justice to the aggrieved. However, upper-level leaders were required to refrain from directly answering complainants, which would arguably both discourage petitioners from flooding the capital and guarantee the procedures of petitioning.

Yet, despite the requirements, petition remains a significant governance tool for the central to assess and oversee local governance. While central leaders might be less concerned with redressing personal grievance, they somehow attach significance to political performance of local officials, whose wrongdoings affect regime legitimacy. In this regard, violations on rights which have extremely negative impacts would still trigger central attention and intervention. Though there are no set rules to justify central intervention, previous research has highlighted certain determinant factors that are seen to affect regime legitimacy or social stability would trigger central intervention into the petitioning issue, such as forms of petition (letter or visits, individual or collective), the social concerns over the petition (for instance, media coverage, casualties).\textsuperscript{483} The rationale for an intervention, however, has incurred more gravely disruptive petitions, which attempt to catch effective attention from the upper-level leaders. In this light, a vicious circle took shape when petitioning renders redress for violations of rights conditional on factors outside the case.

Yet the petition system requires complainants to ‘up the ante’, at the same time, that it desires social order above all else: it is perverse! The process of petitioning was a struggle against the local authorities who have greater advantages over the petitioners. When mounting complainants favor the route of

\begin{enumerate}
\item Follow-up interview with a male villager in Village D (4 February 2017).
\item ibid.
\item Focus group discussion (22 September 2015).
\item Cai, ‘Local Governments and the Suppression of Popular Resistance in China’ (n 68); Based on his empirical analysis, Ying points out there is particular criterion for state agencies to intervene in petitioning issues in accordance with the degree of urgency, which can be described as, ‘Visiting is generally more urgent than letters; repeated and skip-level petitions than the normal ones; petition to Beijing than within the province; collective than individual’ (来访比信访紧急，缠访比一般上访紧急, 越级上访比一般上访紧急, 进京上访比省内上访紧急, 集体上访比个人上访紧急). See Xing Ying, The Story of Dahe Emigrants (大和移民上访的故事) (Joint Publishing 2001) (三联书店) 371.
\end{enumerate}
petition and petitioners flood into Beijing, dispute resolution detracts attentions from reasoning, rationality or justice to a direction in which how much power or resources that petitioners can ultimately mobilize. These struggles are costly as well. The higher price petitioners pay for petitioning the greater possibility can they invoke central intervention in the petitioning cases. In extreme cases, death is the biggest bargaining chip that a petitioner could hand in order to attract central attention to the petitioning case.\textsuperscript{484} However, the invocation of central attention is necessary but not sufficient for petitioners to successfully fight in the arena. In many cases, petitioning efforts turn out futile even if petitioners take life as price. Ordinary petitioners in this instance would subconsciously wonder if it is really worthwhile especially when they are confronted with a life-to-death choice. One activist lamented: “Everyone is looking for ways to seek support from the central leader. But the point is who is willing to pay the price of life?”\textsuperscript{485}

6.6.3 Why does interplay of litigation and petition worsen the grievance?

The changing nature of the disputes

Despite various measures to seize control of (potential) petitioners, it is unrealistic for local officials to achieve their ends given extensive petitioning in many regions. As a countermeasure to central requirement of an enhanced responsibility in managing petitioning, local authorities opt for imposing sanctions on some petition representatives both as a revenge on their trouble-making behaviors and a deterrent to more possible followers. It turns out the imposition of sanction serves the purpose of managing petition at the expense of petitioners’ legitimate rights, which inevitably leads to accumulated grievances. In Ling’s case, when the redress of her prior plight caused by forced eviction had not yet been redressed, her acts of petition had aggravated her grievance, rather than relieve the plight or resolve the disputes.

It is notable here, as things evolve, the nature of the disputes has been changing, which worsens the situation to aggravated grievances. As Ling’s case revealed, while prior infringements on property rights were fueled by local priority on fulfilling the task of land expropriation, the authority’s political concerns resulted in her succeeding sufferings from petitioning sanction. Phrase it differently, though Ling’s claims over violations of her property rights remained almost unchanged, her petitioning behavior to seek redress were defined as those that ‘abnormally’ undermined social stability. In short, the nature of the dispute had shifted from individual claim to land to a matter with social political significance.

The shifted nature of the disputes had invoked ‘stability maintenance apparatus’ for government to manage resistance and maintain party-state authority.\textsuperscript{486} Noticeably, local authorities’ ‘creation of new ways to criminalize behavior’ could withstand the scrutiny of the central authority.\textsuperscript{487} The overriding

\textsuperscript{484} The tragic incidents initiated by petitioners to stage desperate protest against expropriation and ask the central leader for a response routinely hit the headline for recent years in China. The extreme protests are suicidal behaviors, such as drinking pesticide and self-immolation. ‘China Residents Drink Pesticide to Protest Demolition of Homes’ (Fox News World, 11 December 2013) <www.foxnews.com/world/2013/12/11/china-residents-drink-pesticide-to-protest-bulldozing-homes.html> accessed 10 December 2016.

\textsuperscript{485} Interview with an elder villager in Village D (17 July 2015).


\textsuperscript{487} Randall Peerenboom, ‘What Have We Learned about Law and Development? Describing, Predicting, and Assessing Legal Reforms in China’ (2006) 27(3) Michigan journal of international law 823, 856. As Peerenboom points out, The Ministry of Public Security had called on public security to redouble its efforts in attacking a variety of deviant behavior, including interfering with traffic when begging, interfering with government activities when
reason was that local authorities endeavored to guarantee social order and regime legitimacy, which was consistent with core concerns at the central level. Equally noteworthy is that a shift to the political sensitive nature of the dispute rendered government decision immune from judicial review, as will be ensured in the following sub-section.

Self-restrained Court

When social stability is at stake, Chinese courts are expected to take a politically correct stand. Within a social political context where courts have not yet been separated from administration and its practice is expected to keep in pace with the Party policies, courts tends to refrain itself from getting involved into some ‘highly sensitive’ cases that challenge government authority and its policy-making. In cases where the dispute with a clear legal basis has to be accepted, the court is prone to support the decision-maker’s position.

As repeatedly stated in this chapter, petition was hold under control in a sense that it should be lodged in designated time, location and must not ‘disturb public order’, or it would be defined as ‘abnormal petition’ and petitioners faced with legal consequence. However, the 2005 Petition Regulation failed to clearly define what should be regarded as ‘abnormal petition’ or what constituted ‘disturb public order’. The under-defined terms were utilized by administrative bodies at their discretion to impose sanctions under the name of administrative detentions. This order punished the petitioners and relabeled them as disruptive to public order. Against this backdrop, when judges were engaged in these cases concerning administrative decision-making on detention, they must take the political consequence into consideration. Additionally, social consequence is another critical factor that largely concerned the court. When administrative detention was occasionally utilized as a tool to punish and deter petitioners, lawsuits filed to challenge administrative decisions always aroused attention from many other petitioners who experienced similar sufferings. As such, these cases tuned out not only individually relevant, but collectively significant with far-reaching social consequences. In this instance, the court would choose to sustain government decisions on the basis of political and social judgments, rather than ‘set a precedent’ for petitioners which would run the risk of opening up the ‘floodgate’ of petitioning cases.488

6.7 Conclusion

This chapter demonstrates a complex and dynamic citizens’ reaction to state-governed means of dispute resolution. When considering how Chinese citizen resort to permitted mechanisms for rights remedy, a large body of literature has premised its analysis on a common assumption, that is, citizens, in particular the disadvantaged groups see petition as a stronger and reliable mechanism than legal institutions to address their individual grievance. The assumption has been echoed by a Chinese saying—“trusting petition rather than the law” (信访不信法).489 On this basis, some even argue that “Xinfang [petition] petitioning officials for relief, and so forth. The way of handling social problems is the ‘creation of new ways to criminalize behavior’.


replaces formal legal channels as the locus for citizen dispute resolution". The assumption derives its view from the understanding that formal, legal, and modern legal institution should persuasively prevail over the informal, non-legal, and traditional petition mechanism, both in institutional form and in effects. If the opposite were true, it would undermine rule of law in China. Without furthering investigating the processes in which social actors interact with the two mechanisms in real practice, the casual observer might assume that Chinese citizens treat litigation and petition as mutually exclusively. It could also be thought the weak enforcement of property rights through formal legal institutions forces citizens to pin their hope on non-legal mechanism such as petition to resolve their land disputes. However, a different picture emerged from the empirical findings in this chapter. It was shown that in practice there was no such clear-cut picture when the expropriated farmers sought to mobilize the two routes. In fact, the complainants altered, alternated or integrated the use of litigation and petition to maximize their opportunities of success for rights redressal. Their deployment of strategies, however, cannot be simplified as a matter of individualized preference. In an authoritarian regime, their mobilization of routes of redress was essentially “managed participation” in the sense it had been dominated and controlled by public powers. Therefore, it is more appropriate to say that farmers’ strategies were context-specific responses to dynamic power relations embedded in the social and political environment in rural China.

In the domain of legal institutions, the matter of how litigation could enforce property rights is aligned with power balance between judicial power and administrative power. In a context where judicial power has been markedly constrained and the administrative power is overly prized, justice-seeking is highly contingent as long as “China’s judicial system remains deeply embedded in politics”. While the role of the court was assumed to rein in the government decision and protect the rights of the people, judicial power had more of the time succumbed to, even merged with administrative power. In expropriation-related cases, particularly where petitioning was staked, it proved that legal decisions might be all too easily based on political judgments and infused with political considerations. As such, when it comes to the rights enforcement through formal legal institutions, law was substantially politicized and the court’s decision was more political than legal. Consequently, legal institutions had limited capability in setting legal constraints on government power and in guaranteeing the security of rights.

In a similar vein, petitioning is essentially a political tool for political power to govern the society. The petition mechanism was originally designed by the authority to invite citizens’ political participation and evaluate local officials’ performance. Nevertheless, in the setting of rural land expropriation, petitions pose a dilemma for central government to govern. That is, the central government has to strike a balance between maintaining social tranquility and safeguarding petitioners’ rights. The dilemma is passed on to local governments who are required to assume more responsibility in handling petitioning issues. Nevertheless, the manner in which local governments find a way out of the dilemma is to prioritize both goals of economic growth and social stability over respect and protection for rights. For as long as local officials are not directly responsible for the constituent and there continues to be circumstances where local authorities are confronted with multiple yet conflicting goals, local officials selectively opt for meeting the central requirements that are higher and rewarding but give less consideration for petitioners’ claims. While rights claims via petitioning are on the rise, their forms are considered threatening to an

490 Minzner, ‘Xinfang’ (n 3) 176.
491 ibid.
authoritarian political regime. Insofar as some newly-emerged forms have seemingly transgressed the boundary of ‘rigid stability’, it is believed that the preservation of social stability is merely achievable through imposing ‘pressure’, namely, suppression.\footnote{Jianrong Yu, ‘Reassessing Chinese Society’s ‘Rigid Stability’: Stability Preservation through Pressure, Its Predicament and the Way out’ (当前压力维稳的困境与出路——再论中国社会的刚性稳定) (2012) 9 Exploration and Free Views (探索与争鸣) 3. Yu uses the term ‘rigid stability’ to describe that social stability nowadays is intimately associated with China’s authoritarian regime and is based on state violence, with an attempt to maintain absolute stability with the exclusive use of political power.} In this aspect, the issue of rights security has been treated as competing, if not rivaling, with the subject matter of social stability.\footnote{ibid.} In other words, social tranquility and rights protection are posed as an either-or thesis, rather than a both-and one. Therefore, before central and local powers reach a consensus in pursuing consistent goals and, before a rights-oriented solution is genuinely accepted, the either-or problem persists and the protection for landholders’ property rights as well as petitioners’ personal rights remains precarious.

In sum, drawing on the rationale of both legal institution and petition mechanisms as well as their effects in redressing farmers’ grievances, we can draw a conclusion that neither route is currently capable of protecting property rights from government interference in the context of rural land expropriation. Phrase it slightly differently, neither are property rights capable of insulating farmer from the encroachment by the governmental power, nor can they be fully protected or remedied by the given legal institution or petition system. That being said, it raises the question: are they still property rights after all?
Chapter 7 Conclusion

7.1 Introduction

Property rights have played a puzzling and controversial role in China’s economic reforms, under which spectacular economic growth has been achieved. The recognition that China has grown without robust property rights poses a challenge to conventional property theory prevalent in the West. While the extent of the linkage between Chinese property rights and economic growth remains debatable, another intriguing and prominent issue follows from China’s commitment to urban transformation: that is, local governments rely on forcibly acquiring land from rural areas through state acquisition to exploit increased land value in order to boost urban expansion and local economic growth. This has deprived rural residents of the opportunities to benefit from what was once their land. This misfortune is compounded by the insufficient compensation levels set by the government, which are unable to support a new life in the city after displacement. Justice claims and rural unrest surrounding land disputes add another chapter to the Chinese growth phenomenon, which can be summarized as “while the failure of formal property protections in China has led to injustice, it cannot be said to have hindered growth.”

The chapters in this study have examined the three seemingly contradictory but interconnected elements — ‘insecure property rights’, ‘economic growth’ and ‘social injustice’ — and explored the role of property rights in the urban development context at the intersection of economic growth and social injustice. Situating its analysis in the setting of land-centered urban expansion in China’s countryside, this study examined how a unique idea of Chinese property rights in rural land had been acted upon or practiced in the processes of expropriation over rural land through the lens of interactive property relationships between state and farmers. The objective of this study was to give a critical assessment of the practice of rural property rights in China’s ongoing urban transformation, in which rural land conversion constitutes an integral part and a critical driving force. In this concluding chapter, I summarize the theoretical and empirical findings in this study; further explore the implications for rural land property rights that both shaped and were shaped by rural land expropriation as a process of the state’s reassignment of property rights; discuss the state’s latest commitments to reforming the institutions of collective ownership and rural land expropriation; and, finally, put forward policy implications for advancing farmers’ property interests in rural China’s continuing urban transformation.

7.2 Summary of the Research

The property rights regime over rural land has been restructured over time by the state in order to achieve a political and social restructuring of rural China, most notably as means towards the twin goals of economic growth and agricultural development. Yet, as existing scholarship has highlighted, these series of reforms shared in common that they fell far short of clear institutions that could secure individual property rights and constrain the state. This view was advanced in this study, which has revealed the ways in which the Chinese state has created and reordered property rights, establishing the institution of state acquisition to take rural land, in order to consolidate government control over rural land resources whilst substantially neutering property rights for farmers.

496 Upham, ‘From Demsetz to Deng’ (n41), 555.
497 Rithmire, Land Bargains and Chinese Capitalism (n1) 176.
7.2.1 Property rights in rural land expropriation: meaning and function

Chapter 2 described the way in which the state created and reordered rural property rights to suit its varying socioeconomic goals. The establishment of a two-tier land system in rural China, characterized by a separation of collective ownership from use rights, laid the foundations for the property arrangement of rural land through the process of extensive market economic reforms. Over time, rural property rights evolved along a pattern whereby land ownership in collectively owned rural land was formalized and use rights became concretized. Without clarifying its nature or meaning, collective ownership was retained regardless of its inherent ambiguities, whilst use rights in rural land were consolidated with substantial limitations on how rural land users could exercise them. The coexistence of collectivized ownership rights and the creation of individual use rights as ‘usufruct’ embodied a “peculiar and problematic combination of socialist and liberal conceptions of property”.498 The new and hybrid property institution suited the changing environment of urban transformation that was based upon mass rural land conversion. The formalization of land ownership without identifying who represented the ‘collective’ who was to exercise ownership, accompanied by deficient governance in the rural community, ceded control of land from rural collectives to local authorities. Likewise, despite a legal recognition of use rights as usufruct and the creation of more types of new property rights to both protect land users’ interests and maximize rural productivity, the substantive limitations on the free transfer of use rights remained intact in legal documents. This maintained the government monopoly on rural land, which enabled local authorities to convert massive tracts of farmland to urban uses, and therefore gain them substantial profits.

Chapter 3 detailed how the established rules governing rural land expropriation weakened rural property rights. Rural land expropriation derives from and constitutes China’s dualist land system, whereby land is either state owned or collectively owned. By prohibiting rural, collectively-owned land from being freely transferred, the law designated state acquisition of rural land as the sole means by which rural, collectively-owned land can be converted into urban land for non-agricultural purposes, such as construction, commercial and residence uses. By using the delegated power of eminent domain, local governments confiscated collectively-owned land, changed rural land into state-owned urban land, and raised massive revenue through leasing out the newly-converted use rights to private land developers in market-value transactions. Local governments became highly reliant on land, most notably, the conversion of rural land through state acquisition, to accumulate capital in order to continue the processes of urbanization.

The current institutional arrangement of state acquisition of rural land, with vague and under-defined procedural and substantive safeguards for expropriation, has strengthened local dependence on a land-centered mode of urban expansion. Disregarding notions such as just, fair, or adequate, rural land is compensated with a government-set price based on annual agricultural output value, which is far below the price for converted land on the open market. The compensation offered is mostly insufficient for the relocated population to establish themselves in urban areas with similar living standards. The requirement of public interest in the process remains undefined, which has led local governments to give their own interpretation of the term. Procedural requirements largely exclude public participation in governmental decision-making; contain no neutral appraisal mechanism to assess the value of the land and houses before local authorities determine compensation levels; and, more importantly, lack judicial review of compensation and relocation schemes.

7.2.2 Empirical findings

498 Pils, ‘Waste No Land’ (n 4) 8.
Chapter 4 presented the negotiation process between local government and the affected farmers, in which both developed tactics for bargaining over the exchange of rural property rights. The findings of the empirical study revealed that with little thought on the nature and meaning of rural property rights, stakeholders who had vested interests in rural land sought to maximize their material interests. Noticeably, a transformative interpretation of property rights that transformed the notion of property rights into pragmatic and realistic material interests was formulated during the interaction between local state actors and the expropriated group. Firstly, a balancing approach was at work that weighed socioeconomic goals such as economic efficiency and social stability heavier than farmers’ demands for respect and protection. Secondly, the local authority limited farmers’ choices in they were able to exchange their land and property. Lastly, a commodified state-society property relationship took shape, in which the authorities used financial incentives to decrease resistance and to ensure farmers’ compliance. A transformative conception of property rights as pragmatic material interests led to an effective exchange of land in many instances. Yet a balancing approach that privileged economic efficiency and social stability over property rights delegitimized farmers’ demands for the protection of their property interests in holding land. The deprivation of farmers’ freedom of choice failed to protect their dignity and their autonomous interests in property rights. Moreover, the idea of property rights was depoliticized as means to achieving social and economic ends but instead created instability, which eventually, consolidated, rather than overcame, the expropriated group’s commitment to the status quo.

The practice of property rights as realistic material interests entailed a deviation from formal property rules. As a result, the negotiation process that exchanged rural property rights mostly took place outside the legal framework. The key factors that affected whether individual farmer households lost or gained in the process were whether they had a good relationship with local state actors; whether they were knowledgeable about compensation rules and policies, and whether they were more stubborn in resisting than others. In sum, how skillful they were in negotiations. Consequently, a small number of households did well and the majority lost out, raising issues of fairness and distributive injustice.

Chapter 5 began from the position that farmers’ claims to their property rights were often opposed by those who were able to exert power on them. It utilized the power cube as an analytical tool to understand power configuration in practical exercises, and investigated how power structures and their interrelations erected barriers to the exercise of property rights in rural land expropriation. Power on the ground was deployed by a variety of entities such as central government, local government, and village authorities. The exertion of local power was highly influenced by and intertwined with power at the central and village levels. Local power, at the outset, manifested itself in the use of formal property rules to challenge property rights. Yet to ensure the implementation of land acquisition, which was consistently contested by the interviewed farmers, local power deviated from formal legality to employ hidden and secretive forms of power to achieve its end. The practice of hidden and dynamic power exertion made it extremely difficult for farmers to understand or challenge the process in order to defend their property rights.

Correspondingly, farmers displayed an instrumental use of property rights and law to both strategize their resistance and maximize their compensation throughout the process of resisting local power. The scenario in which dynamic power affected property rights and how the farmers responded was analyzed using the metaphor of the ‘shell game’. The shuttling of various forms of power, like the moving shells in the game, rendered the realization of property rights a highly contingent and uncertain issue. Yet, despite their inferior bargaining position, farmers were not powerless and they took actions, where possible, to challenge local authority actions. However, their attempts to achieve immediate individual interests led to
a fragmentation of farmers as a group, which prevented the formation of collective action to challenge the current power structure.

Chapter 6 was based on three case studies and revealed that farmers mobilized different routes of redress to resolve disputes with government where they felt aggrieved or that their rights had been violated. Bringing a claim to law and petition (xinfang) mechanism were the two institutions that exist to provide rights redress for Chinese citizens. The findings here challenged the popular belief that Chinese citizens ‘trust petition rather than law’ concerning their resolution of disputes. In practice, the complainants combined, alternated, and adjusted litigation and petition strategies in a complementary rather than mutually exclusive manner in order to enhance the possibility of attaining justice. The reasons why farmers strategized their use of both routes to justice was because neither mechanism met their needs: because of the imbalanced power relations between the administrative and the judiciary in China’s current system; and because petition is essentially a political tool of governance utilized by the state. The power asymmetry between the judiciary and the government is reflected by the fact that judicial power is markedly constrained, whereas administrative power is overly prized. Moreover, despite the petition mechanism being designed to resolve disputes, the means by which the system could provide redress for violations of property rights, and the mechanisms by which citizens could mobilize it, are strictly managed and controlled by the authorities. In this regard, the complainants’ exhaustion of the established legal and political procedures to seek remedy for violations of their property rights was actually a context-specific response to dynamic power relations embedded in rural China’s complex social and political environment.

7.3 Rethinking the Role of Property Rights in Rural Land Expropriation

The fact that China has achieved remarkable economic growth with weakly enforced property rights in existing institutions (including courts) challenges what scholars have labeled as the ‘rights hypothesis’, in which “economic growth requires a legal order offering stable and predictable rights of property”. By following a similar logic, under which rapid economic growth couples with weakly protected property rights, contemporary rural China provides interesting material concerning the role of property rights in stimulating urbanized growth in the countryside. A deep understanding of how property rights have been rearranged and exercised in the processes of government-initiated rural land expropriation to fulfill both national and local goals of urban transformation and capital accumulation may contribute to demystifying the controversial correlation between property rights and economic growth.

7.3.1 The nature of collective ownership in rural land reform

Collective ownership has evolved over time to fit the changing socio-economic conditions in rural China. Notwithstanding that collective ownership was originally organized by collective members, who pooled their private property in a collective and held collective property jointly and indivisibly, the form and substance of collective ownership has gradually developed into a ‘tricky’ and ‘fictitious’ category over the years of reform. Collectivization was a significant turning point. Collective property was placed under the socialist state’s command in order to facilitate its extraction of sufficient agricultural resources from rural areas in order to sustain industrialization and urbanization. Collectivization truncated collective

ownership to the extent that collective members could ultimately enjoy only ‘hollow’ property rights to collective property (including land), whereas the state held absolute control.\textsuperscript{501}

Collective ownership has undergone significant reforms during the years of economic reform since 1978, with property rights being rearranged to ensure rural China’s economic performance. The HRS sparked the separation of ownership from use rights, and the establishment of a two-tier land system that brought many changes to the form and content of collective ownership. Most noticeably, collective ownership developed into a richer characterization of property rights as a bundle of rights that moved beyond the simpler dichotomy of private and public ownership.\textsuperscript{502} Later reforms were undertaken to consolidate the right to utilize rural land for land users. Nevertheless, one prominent feature was that the right to exclude, which might secure collective property from outside intrusions, did not feature in the reforms. Rather, other property rights within the bundle such as “residual control rights and rights of alienation remained in officials hands’.\textsuperscript{503} Therefore, insofar as the state held \textit{de facto} control of collective property, ownership reform under the HRS and other land reforms did not lead to substantive changes in the nature of ownership. In circumstances where the state exercised the regulatory power to prohibit rural land from being sold or transferred in a market transaction but devolved power to local governments that then forcibly acquired land from the collective legal owners in order to convert rural land for urban uses so as to generate revenue, it makes more sense to think of collective ownership as quasi-state-ownership, instead of the ‘communal-property rights’ or ‘quasi-private-ownership’.\textsuperscript{504}

The analysis in the thesis does not suggest that either public or private ownership would have been more effective than collective ownership in securing property rights. Had collective ownership been faithfully practiced, it has its own advantage in protecting small-holding farmers and ensuring collective decisions over land use. However, the changing social and political environment in rural China has changed the form and performance of collective ownership. A better knowledge of ownership reforms in the past and present enhances our understanding of the changing nature of collective ownership, which in turn affects the role and function of property rights in the context of a rapidly developing countryside. When examining the role of property rights in urbanization, it is necessary to keep in mind that the state combines \textit{de facto} ownership rights to land with the ultimate \textit{de jure} control of collectively-owned rural land. It is this combination that has established the preconditions for local governments to assume a monopolistic position in supplying rural land for urban uses through reassigning property rights in land.

\textbf{7.3.2 Rural land expropriation: the state’s reassignment of property rights}

The institution of state acquisition has authorized the government to confiscate collective ownership, transfer property rights to the state, and ultimately to reassign land to private land developers. Rural land expropriation is essentially a process of the state’s reassignment of property rights. The use conversion of rural land from agricultural to non-agricultural is crucial to the state acquisition of rural land – a process that generates enormous appreciation in land values. Owing to the state’s holding of \textit{de facto} ownership rights to land, the government initiates the ‘fiscalization of land’, namely, “the management of land resources by political authorities for the purpose of generating fiscal revenue” in the regime of rural

\begin{itemize}
  \item \textsuperscript{501} Fengzhang Li (李凤章), ‘From Property Rights on Stilt to Antithetical to Rights: The Nature of Collective Landownership and its Evolution’ (通过 “空权利” 来 “反权利”: 集体土地所有权的本质及其变革) (2010) 5 Law and Social Development (法制与社会发展) 16.
  \item \textsuperscript{502} Putterman, ‘The Role of Ownership and Property Rights in China's Economic Transition’ (n71) 1048.
  \item \textsuperscript{503} ibid 1052.
\end{itemize}
Land fiscalization was originally operated with state-owned land when a land-leasing system was established in the late 1980s. Since local governments were designated as both representatives of state ownership and as recipients of land use fees, they could directly raise land conveyance fees by leasing out urban use rights at the same time as indirectly collecting revenues as real estate tax. State acquisition made it possible for local governments to generate more funds through fiscalizing rural land. Under Chinese land law, rural land is not allowed to be sold or mortgaged without government permission, and the conversion from agricultural to non-agricultural purposes is inhibited: only local governments are authorized to supply rural land to meet urban needs through state acquisition. By exercising eminent domain power, local governments convert rural land into urban land and simultaneously lift the limits on property rights in rural land, enabling the newly-created land rights to be leased out to private land users in a market-based transaction. Throughout the process, revenue is the biggest driving force for local governments to invoke their eminent domain power.

Rural land has been the means to fulfilling both national and local economic goals. This has required successive governments to restructure property rights through destroying rural property rights and creating new urban property rights. In particular, local governments initiate numerous acquisition projects to convert rural land into urban land to accumulate capital, which then further finances the construction of urban infrastructure and advances the urban sprawl in rural areas. The processes of rural land expropriation have thus required the restructuring of property rights and the redistribution of the gains from rural land conversion.

A major impetus for the Chinese state to reassign property rights from rural to urban areas is to enlarge land utility and generate greater wealth. The rationale for governments to restructure property rights in rural land can be formulated in the following way: firstly, rural land use is inefficient for agricultural (in part because of legal constraints on non-agricultural uses). Secondly, the conversion of rural land into urban uses for commercial and industrial purposes is market efficient. Thirdly, government is a rational actor that acts in the interest of the common good. The existing rules regulating rural land use lend theoretical legitimacy to these propositions, which henceforth justify government’s direct involvement in transferring property rights for both public and private uses in order to prioritize the goal of urbanization.

An equally controversial and challenging issue concerns the uneven distribution of the generated gains. The one-off compensation payment to the collective and individual farmer households is based on the output value of farmland, regardless of the market-value price at which land is leased out to private developers. During the transfer of rural land rights from the collective to the state, the village collective and farmers receive a small portion of the profit and the largest portion is extracted by local governments. The one-off compensation payment has lowered many farmers’ original living standard and is far from being adequate for farmers to establish an urban life after their displacement. Rural land is under-compensated primarily because the compensation price deviates from “the true value of land”, which refers to “the leasehold price developers are willing to pay for it”. Drawing on how government distributes the gains, some scholars contest that “the conversion of rural land rights from the collective to the state is still deemed to be an administrative allocation rather than a market transaction.”

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505 Whiting, ‘Values in Land’ (n 7) 570; Rithmire, Land Bargains and Chinese Capitalism (n1) 34.
506 Rithmire, Land Bargains and Chinese Capitalism (n1) 176.
508 ibid 1931.
Therefore, seen from the rationale for local governments to restructure property rights and redistribute the gains, one may draw a conclusion that rural land expropriation is profoundly a government-managed, rather than a market-led, mode to develop rural land. This mode, built upon the state’s de facto control of collective ownership and administrative allocation of land revenue, has led to the over conversion of rural land for urban uses. Some local state actors even hold the view that only government control of rural land through efficient and coercive eviction could quickly enhance the level of urbanization and boost local economy, which could ultimately ‘create a new China’.\footnote{Debate: Without “ Forced Eviction”, There would be no “ New China”? (大讨论: 没有“强拆”就没有“新中国”) (Caixin, 12 October 2012) <http://policy.caing.com/2010/qiangchaitaolun> accessed 12 March 2017. This debate was sparked by a letter from an official from Yihuang, where an evictee committed self-immolation to protest against the forced eviction. The official justified government violence by claiming if there was no forced eviction, there would be no urbanization; without urbanization, there would be no new China.} Unsurprisingly, with an increasingly high dependence on land conversion to ensure sufficient revenue, local governments show preference for a consolidated control of rural land and a heightened level of monopoly over rural land supply for urban uses, not the reverse.

Despite the substantial wealth generated by this sort of development mode, government management of rural land development has led to some prominent risks that could be termed as government failures. The first and most contentious risk is that local exploitation of rural land resources does not necessarily benefit society as a whole. In the absence of a clear definition of public interest, local interpretation extends the scope of public interest to include commercial and private interests in maximizing land revenue. Rent-seeking and corrupt behaviors are noticeably rampant in the case of rural land expropriation. The second risk concerns an exacerbation of the urban-rural gap.\footnote{James, ‘Expanding the Gap’ (n194).} The enormous value increases generated by government-led conversion of rural land have mostly been invested in urban infrastructure construction to further boost levels of urbanization, rather than being used to improve agricultural infrastructure and subsidies, or to increase rural social security.

The third relates to cumulative rural grievances as a result of an unequal distribution of gains to farmers. Admittedly, the uneven distribution of land gains is caused first and foremost by both the flawed institutional arrangements of collective ownership and state acquisition. Yet, an interesting phenomenon arising from the state’s reassignment of property rights is that the practice of distribution deviates from the rules laid out in laws, most notably farmers’ legal entitlements attached to collective property (land and houses) and the government duty to respect and protect property rights. As legal owners and users to rural collective land, rural residents are neither given the opportunity to decide for themselves to develop their land, nor are they able to benefit from the huge profits generated by government-managed rural land conversion. Therefore, farmers are in fact deprived of their entitlements to rural land. Moreover, this process of reassignment fails to provide redress for harms done to property rights, primarily because the court system is ineffective, if not absent, in providing justice for property rights violations. The grievances and unrest among a growing number of miserable landless place cumulative pressures on the ruling party.

### 7.4 Reshaped Property Rights and their implications for Rural Land Expropriation

Collective ownership reform and property rights changes have generated far-reaching implications in terms of the government’s reassignment of property rights, as well as the distribution of profits generated
by rural land expropriation. As argued in Chapter 1, while the context of rural land expropriation is shaped by the evolving ideas of property rights, this specific context in which state and society interact through the redistribution of property rights, in turn, shapes the meaning of property rights, including the ways in which social actors act upon them. Drawing on the empirical findings in previous chapters, this section wrestles with how the meaning and function of property rights are reconfigured and transformed in the Chinese rural setting.

Firstly, rural land expropriation is a process of restructuring property rights whereby the meaning of property rights has been determined by the state in a top-down manner and reframed by the farmer by their behavior. Existing research has highlighted that China exhibits a ‘state-centered’ view of property rights in which the state imposes both “authoritarian” and “utilitarian” constraints on property rights. When urbanism was accorded high significance in an era of urban transformation, rural property became a means by which rural society was subordinate to the imperative of economic growth. The subordination was effected in tandem with regulatory institutions that placed limitations on the exercise of rural property rights on the part of rural land users. Farmers were subject to restrictions to use, alienate, and profit from rural land. The restrictive, if not discriminatory, curtailments on property rights laid the foundation for rapacious land seizure across rural China, which deprived farmers of both the utility and the value of their land.

A ‘state-centered’ understanding of property rights and its embeddedness in the legal order is being contested on the ground. Mounting conflicts are triggered by the uneven distribution of the increased land value between government and rural community, providing evidence of farmers’ resistance to the imposed state understanding. This resistance is also suggested by the prevalence of a grey market in rural areas, under which farmer transacted rural land with private land users for non-agricultural purposes in direct defiance of the law. In this sense, despite the imposition of a state-centered understanding of property rights, the relationship is by no means single or unidirectional from top to down. Farmers brought their own understandings of property rights and their own goals to their interactions with local authorities, which in turn reshaped the meaning and function of property rights in practice. Though they reframed property rights in ways that rarely went beyond the context of this interaction, such reframing might challenge both a state-centered understanding of property rights and the governance logic of an authoritarian state. The state’s series of reforms to the rural land system that emphasize the granting of more property rights to farmers and seek to ensure their enjoyment of these property interest – discussed in the following section – partly illustrate this point.

Secondly, property rights and rules were instrumentalized in practice, with various actors including local state actors, farmers, and judges applying property rights and law in highly instrumental ways. Their compliance with law and regulations was conditional and situational in the sense that they would depart from or abandon the law if it did not serve their needs. Local state actors relied on positive legal norms to lend their actions legitimacy and to facilitate their operation of land acquisition. In circumstances in which local state actors assumed legal duties, such as full consultation with the affected farmers or respecting voluntary relocation, that they assumed would obstruct them from fulfilling the task, they manipulated and circumvented rules and regulations. Likewise, in situations in which lawful methods were unable to provide them with redress, many farmers took initiatives to get around the law. For instance, they attempted to take advantage of the inconsistency between formal rules and local circumstances to realize their immediate interests and resist the local authority operation. Moreover, judges rendered decision by weighing various interests at stake; in particular, they based their decisions

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511 Pils, ‘Waste No Land’ (n 3) 5-8.
on political considerations that disregarded the binding quality of law. In short, property rights and rules were instrumentalized to the extent that they became an “empty vessel that can be filled in any way desired” to satisfy desired ends.\footnote{Brian Z Tamanaha, ‘The Tension between Legal Instrumentalism and the Rule of Law’ (2005) 33 Syracuse Journal of International Law and Commerce 131; See also Brian Z Tamanaha, Law as a Means to an End: Threat to the Rule of Law (Cambridge University Press 2006).}

Lastly, and as a result of the first two points, where the state’s reassignment of property rights in rural land expropriation led to an uneven distribution of gains that triggered disputes between local authorities and farmers, the role of property rights was redefined through dispute resolution. As noted, both local governments and farmers have vested interests in accessing rural land and compete for a larger share in enjoying its increased value upon conversion.\footnote{As addressed in Chapter 1, this study primarily concentrates on property relations between state and society via close scrutiny of concrete disputes between local authorities and farmers. For a more thorough analysis of the competitive claims to gains from rural land conversion, see He and others, ‘Property Rights Redistribution, Entitlement Failure and the Impoverishment of Landless Farmers in China’ (n 507).} Given their conflicts of interests, both parties moved away from formal rules, particularly when they deemed formal legal authority neither effective nor efficient to address the dispute. When distribution rules went beyond the confines of formal legality, “the redistribution of land rights in China’s urban villages clearly follows the distribution of bargaining power”.\footnote{\textit{id} 1933.} In so doing, both local authorities and farmers sought to mobilize resources to strengthen their positions. These resources varied from formal legal authority and political consideration for social stability, to interpersonal connections and the like. Local governments, as the powerful actors, enjoyed the privileged share of gains and ultimately won out owing to their control of rural land and their exercise of eminent domain power, whilst farmers had fewer chances to attain a larger share since they generally had less bargaining power.

However, the distribution of bargaining power was fluid and dynamic, rather than static and unchangeable. In some cases, local authorities’ advantageous bargaining position could be reversed and farmers were not always powerless. In circumstances in which local authorities and farmers diverged in their opinions as to how property interests should be evenly distributed, courts were absent in mediating the dispute, since courts were constrained from reviewing government decisions on compensation and relocation schemes. In the face of resistance, however, local government resorted to either buying off resisters or to deploying violence through forced eviction. In this situation, farmers, accordingly, either sought to blackmail local governments or employed extreme behaviors to both enhance their bargaining power \textit{vis-a-vis} local authorities and to seek help from higher-level government authorities to support their claims. In many cases, an economic exchange that consisted in buying-off the aggrieved party and blackmailing local governments (depending on the perspective) worked to contain resistance and peacefully resolve a dispute. Nevertheless, in a not insignificant number of cases, both governments and farmers resorted to escalating violence to strengthen their positions. In these instances, both parties would seek to justify their deployment of violence: local governments claimed that their use of forced eviction and further suppression was in the service of national goals, such as generating greater social wealth and building the state.\footnote{\textit{id} 507).} Similarly, disgruntled farmers claimed their fierce confrontational behavior was the result of local officials’ malpractices and mistreatment.

Where fiercely violent incidents have been triggered by divergent land interests, they have developed into conflicts that are deemed to threaten social order and even regime legitimacy. Eventually, rather than
seeking to resolve the disputes via legal institutions, political mechanisms such as xinfang (petition), weiwen (stability maintenance) were invoked as ‘means of conflict resolution’. The increasingly prominent roles of political mechanisms in addressing land disputes suggest the incapacity of legal institutions to resolve conflicts between government and rural citizens. What this in effect means is that property rights are unable to establish effective limits to political power or to secure landholders’ rights against state intervention. Put differently, despite property rights being explicitly laid out in the law, they are unenforceable through legal institutions. Courts are ineffective, as repetitively mentioned, not only because they are constrained from procedurally and substantively reviewing government expropriation decisions, but more importantly, even if judges accept cases, they acquiesce in, if not explicitly support, government acts of coercive acquisition as long where the assumption can be maintained that social welfare is advanced through, among others, general wealth-generation. In short, given that property rights are in general unenforceable and that law is ineffective, political remedies, self-remedies, and violence are used as necessary means of land conflict resolution.

7.5 Rural Land Reform and Urban Transformation in Tomorrow’s China

The Chinese government’s commitment to reforming rural land tenure and to establishing a fairer expropriation system is not new. The issuance of new policy documents have not yet brought about the intended change to the pattern of land-centered urbanization, nor have they been able to calm rural unrest. It is undeniably true that the established legal documents, especially the LAL and other related laws, have ensured that these reforming endeavors are fruitless. Initiatives for revision of the LAL and for reform of collective ownership have encountered formidable resistance from vested interest groups. The explorative and gradual reforms proposed by central government to the rural land expropriation system and collective ownership are suggestive in this aspect.

7.5.1 Proposal for reforming the rural land expropriation system

Despite consecutive reforming efforts, the central government initiated an experimental project in 2015 to reform expropriation of rural land. As noted, key legal provisions laid out in the LAL and other laws governing rural land expropriation were seen as big hurdles to further reforms. As such, the NPC authorized selected jurisdictions in China’s 33 provinces to derogate from existing provisions for a fixed period of three years (till 31 December 2017). It was expected that the implementation effects of the temporary rules would enable the central government to accumulate evidence on how best to reform further the rules on rural land and the institution of state acquisition. The avowedly systematic rural land reform, also known as ‘Reform of Three Pieces of Land’ (三块地改革), consists of three parts: 1) to allow rural construction land to enter the land market directly without local government as an intermediary; 2)

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516 Benney, ‘Weiwen at the Grassroots’ (n 489).
517 Those legal stipulations include: Articles 43 and 63 of the LAL regulating rural construction land, and Article 9 of Urban Real Estate Management Law on rural construction land to be converted into urban for circulation; Articles 44 and 62 governing rural land use conversion and authorization for rural house site land; Article 47 stipulates compensation formula for rural land expropriation.
to increase the compensation rate for rural land expropriation and; 3) to moderately encourage the transfer of rural homestead land, as well as its use as collateral.\(^{519}\)

The reform permitting the free transfer of rural construction land for commercial use (经营性建设用地) is intended to unify the use of construction land use markets in urban and rural areas. This would allow rural land holders to negotiate directly with private land developers, without the involvement of local government, which would arguably increase their income. In this respect, this reform was a positive response to the demands for the integration of the urban-rural land system under the slogan ‘same rights, same prices’ (同权同价). That is, use rights over rural construction land should be incorporated into a unified land use market and transferred with the same rights and at the same prices with those of state-owned urban construction land.\(^{520}\) However, one contentious point was that land under reform was confined to the ‘inventory’ (存量) of rural construction land that had originally been used for TVEs (township enterprises) and rural public utilities, which excluded rural homestead land that accounted for up to nearly 90% of rural construction land.\(^{521}\) As articulated by the proposal, homestead plots were instead moderately encouraged for use as transfer and as collateral for bank loans on condition that the transfer occurred within the collective. This suggests homestead plots, which are remain an integral part of social security for farmers, are barred from being directly transacted with private land users outside the village collective and therefore their value remains disconnected from the market value.

Moreover, the experimental rules intended to change the original compensation standard that was based on the annual agricultural output value of rural land. In doing so, it provided that local authorities should formulate more reasonable compensation standards by increasing compensation values for land by taking into consideration local economic conditions. It also stressed the need to explore new ways to reasonably compensate expropriated farmers, ensure them access to the urban social security system, and provide farmers with more opportunities to develop land. Yet, in spite of the promise contained in these new requirements, one substantive flaw is that the reform does not give a clear or measurable definition of what a reasonable compensation standard is; nor does it provide concrete guidelines on how to increase the compensation price. In fact, the experimental project has thus far stalled, principally because local authorities have little incentives to implement them.\(^{522}\) The impasse in part reflects local government’s reluctance to change the status quo given their strong reliance on land, and in part reveals that simply increasing the compensation rate or the provision of urban social services is not sufficient to bring about substantial reforms to rural land expropriation.

\(^{519}\) ibid.


\(^{521}\) A research report from the Rural Economy Research Group of Development Research Center of the State Council (DRC) shows, until the end of 2013, rural construction land that can be used for commercial use accounts up to 13.5 percent of the total amount of rural construction land. Rural Economy Research Group of DRC (国务院发展研究中心农村经济研究部课题组), ‘Deepening Reform on Collective Ownership over Rural Land’ (深化农村集体产权制度改革) China Economic Times (中国经济时报) (Beijing, 18 March 2016) A10.

7.5.2 Reform of the rural land system

In 2016, the Chinese government embarked on another reform rural land, this one entitled ‘The Separation of Three Rights’ (三权分置) which was officially labeled as “another remarkable institutional innovation of rural land reform after the HRS”.523 The objective of this reform is to regulate and facilitate the circulation of contracted rural land use rights to suit the changing environment of growing urban expansion in rural areas.

The government believes that the present rural land system, set up under the HRS, with small farm landholding and fragmented plots of arable land, has adversely impacted the scaling-up of agricultural production and the transformation of Chinese agriculture from subsistence farming to agricultural modernization.524 Official statistics indicate that more than 30% of a total amount of 230 million rural households had transferred their contracted land in the form of sublet, lease, and exchange by June 2016 to more capable and skillful farmers.525 It is therefore imperative, according to the government, to reform existing rural land tenure to accommodate the accelerating trend of land circulation. To do so, the policy document attempts to derive new property rights from rural land use rights that were established under the HRS. Contractual management rights constituting land use rights are divided into two types of rights: contractual rights and management rights. Within the premise of collective ownership, farm households that were formerly entitled to contractual management rights are permitted to trade the divided management rights with developers from outside the community, while retaining contractual rights as members in the village collective. Most notably, the derivative management rights are allowed for mortgaging, guaranteeing, and investing in rural cooperatives as shareholding.526 In so doing, the reforms are anticipated to increase the scale of management rural land use and maximize agricultural productivity.

On condition that the policy document is fully implemented, such a proposed reform is likely to have significant impacts. The first and most important likely impact is that this reform is apt to ensure food self-sufficiency and increase agricultural productivity. A prominent phenomena accompanying rural China’s urbanization is the ‘hollowing village’ (空心村). This occurs when rural populations in inner villages voluntarily migrate into cities or urban fringes and their rural dwellings and agricultural lands are left unoccupied or are abandoned.527 This phenomenon is exacerbated by institutional barriers such as the hukou policy that discourages internal migration and land use policies limiting rural land from being freely transacted. The hollowing villages and the dwindling level of productive arable land because of outright acquisition of farmland for urban uses threaten food self-sufficiency in China. A separation of contractual rights and management rights in this light would hopefully accelerate the transfer of farmland to professional farmers, which is more likely to increase the scale of farmland operation and enhance agricultural efficiency.

A second benefit associated with allowing farmers to transfer management rights may be that it increases their income. Rather than abandoning their lands or having them compulsorily taken by the government, farmers may choose to transfer management rights to outside developers or professional farmers while retaining contractual rights after they migrate into cities. This may gain them a stable income. This is noticeably beneficial for rural residents who are subject to urban-rural transformation in that this income will be a supplement to their social security when many still lack access to the urban social security system. Furthermore, the creation of management rights as well as their free transfer with outside developers may stimulate the development of a rural land market that has been absent in rural areas for decades.

Yet, despite the proclaimed optimism, potential risks arise. The first risk is associated with the reform’s adherence to collective ownership, which maintains rather than mitigates the risk of government intrusion into private land ownership. The policy document articulates that collective ownership is the foundational principle for this reform. Given the lack of clarity over collective ownership, local governments still hold de facto control of collective ownership, which enables them to exploit rural land resources through outright acquisition. The second risk is this reform, like its predecessors, rarely addresses how to secure farmers’ property rights. In line with the separation between contractual rights and management rights, this reform explicitly proposes to grant more property rights to management rights holders, namely, outside developers or professional farmers. Management rights holders are allowed to use lands as collateral for loans or invest these rights as shareholding in rural cooperatives. Ironically, various use restrictions are still imposed on the farmers who retain contractual rights. An unequal entitlement to land between farmers holding contractual rights and outside developers holding management rights may subject farmers to exploitation by the latter, who are generally more powerful agribusiness companies or village elites.

7.6 Securing Property Rights in China’s Urban Transformation

While the enduring “three rural issues” (farmer, agriculture, and the countryside) are top concerns of the Chinese government, urbanization is posited as a proper solution to addressing these issues. Land expropriation has been credited by local state actors as a necessary route to bring about progress in urbanizing rural China. Urbanization has been understood as a linear and simple process, defined by key signifiers. These signifiers are largely confined to material and physical ones, such as GDP and other material criteria, rather than the enhancement of life-opportunities of rural citizens. It is of course clear that the revenue from the ‘fiscalization of land’ is greater than that of land used only for subsistence farming. However, one should not equate the value of rural land with the expansion of capital value or the maximization of productivity. The social value of land, such as food security and the preservation of arable land, entails that rural land means something differently to farmers than to urban planners. Holding a parcel of land not only enables farmers to resume subsistence farming or make possible investments but, perhaps more importantly, it retains their social connections in the rural community. Thus far, the subjective value of land has not yet been embodied in any compensation scheme for land expropriation and local state actors have not taken it into consideration. This, however, does not necessarily mean that the denial of subjective value to land is just or reasonable. In fact, the interviews done in this study suggest strongly that land constitutes an integral part of farmers’ lives; and that many land-bound farmers value land more highly than income or financial compensation precisely for its subjective significance, such as social ties.
A pro-growth notion of development has curtailed the meaning or value of property rights, especially when rural land expropriation is premised as a viable route toward urbanization. As Pils has highlighted, China has followed a utility-driven justification of rights whereby the government creates and destroys property rights in the service of economic efficiency and welfare. However, without effectively protecting farmers from being forcibly evicted or addressing the problem of access to justice in contentious evictions, which both affect basic rights (human rights), China’s property rights and land tenure system are far from truly credible. This section provides policy recommendations for how to secure property rights, which may contribute to enhancing the credibility of property rights and rural land tenure, and ultimately further farmers’ legitimate land interests in the ongoing urban transformation.

7.6.1 Is an increase in compensation a solution?

On addressing the protection of property rights of famers who are subject to expropriation, a taken-for-granted solution might be a direct increase in the compensation rate. However, with regard to the question of whether an increased compensation standard is a solution, the answer may be ‘yes’ in some areas, and ‘no’ in others.

When disputes arise over rural land, it appears that farmers are, most of the time, complaining about the inadequacy of compensation payments, and are seeking a larger share of the increased value of the land. However, as existing scholarship notes, conflicts over rural land expropriation is more contentious at the periphery of the cities, suggesting farmers in the more prosperous regions are less willing to relinquish their land. Likewise, as empirical analysis in light of Village D’s case also demonstrated, many farmers had become less dependent on farming income because of the income that they derived from various opportunities in a more vibrant property market located near hubs of commercial development. Without taking into consideration of the increased opportunities for farmers to increase their land income in peri-urban areas, government compensated all rural land on the basis of its agricultural output. As such, tension was triggered by farmers’ different calculation as to the pre-expropriation value of their land. Without compensation levels that adequately reflected the existing value of their land, many were reluctant to relinquish their land and resisted expropriation. The gap, therefore, between what farmers felt that they deserved and what they got fueled the tension in the urban fringe.

In sum, while an increase in the compensation rate might be a fairer solution for farmers in remote rural areas that are less developed, an increased compensation rate based on agricultural output value will not be enough to appease farmers in wealthier peri-urban areas where farmers are subject to removal but are excluded from direct engagement in the land market. Given that the urban sprawl expands outward from the urban fringe where land prices rise, an increase in compensation is necessary but not sufficient to ease conflicts over the value increase in rural land. In fact, given the lack of a land market in rural area, a neutral compensation standard is out of the question. In the absence of a reasonable evaluation of land value, a small group of farmers will expect a windfall and attempt to hold out until they receive it, which drives local government to either buy them off or deploy suppression. In the absence of the integration of urban and rural land markets, a meaningful yet challenging solution may instead come from the current land system is to allow farmers to engage in rural land development, thereby assuring them of a steady income from land.

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529 Yep, ‘Containing Land Grabs’ (n 28).
530 ibid 274.
7.6.2 Reinstating the enforcement of property rights as a possible solution

There has been an understanding that property rights and rural land tenure lack credibility owing to inadequate protection of basic rights from forced evictions and the insufficient provision of redress for harms done to property rights.\textsuperscript{531} Forced evictions and the problems of access to justice are of course reflective of the course of property rights and rural land tenure. But these are not the whole story. As revealed in this study, in circumstances in which disputes arose, local governments employed additional monetary compensation and forced eviction to resolve disputes, both of which circumvented property rules laid out in the law. Adopting similar behavior in the absence of a third party to mediate, many farmers either extorted additional monetary compensation from local authorities or deployed violent resistance in response to forced eviction. In addition, they filed complaints to higher-level government leaders, which the authorities perceived to be intolerable actions. Where governments’ forced evictions, farmers’ fierce resistance and threatening behavior and the problem of access to justice all suggest property rights and rural land tenure lack credibility, this lack of credibility can largely be attributed to the unenforceability of property rights aggravating land disputes.

Where unenforceable property rights are associated with legal constraints on judicial review, the absence of the court in mediating disputes before expropriation decisions were enforced, and the inefficiency of the court in adjudicating forced eviction cases after the enforcement of expropriation decisions, corroded the binding quality of property law and rendered property rights empty. The combination of unenforceable rights with a lack of willingness to consult farmers entailed that local government and farmers assumed a starkly confrontational situation. As conflicts escalated, both sides suffered. Put differently, a zero-sum, indeed a ‘lose-lose’ situation, emerged from the process of reassigning property rights from rural community to government.

One significant lesson that can therefore be drawn from rural China’s experience of restructuring property rights between local governments and rural community is that, in addition to governments’ insufficient respect and protection for property rights, a lack of enforcement is another significant factor in the undermining of rural property rights. Were property rights to be enforceable – in particular, where courts able to provide sufficient redress for violations of property rights – property rights would resume their role in constraining government power and protecting property rights from state intrusion. More importantly, with imposition of obligations on both parties to meet their respective legal responsibilities, enforceable property rights could ensure reasonable predictability in how property rights are redistributed from farmers to local governments – to the benefit of both local authorities and farmers. A guarantee of enforcement of property rights might not only restore the credibility of property rights and rural land tenure but could entail agreement on property rights as the normative ground for dispute resolution. In so doing, a “win-win” situation may be eventually achievable between government and rural communities in developing rural land in a new-type urbanization.

7.6.3 Property rights, urbanization and beyond

Admittedly, effective enforcement of property rights is not enough to prevent potential infringement of property rights in the process of state’s reassignment of property rights, given existing legal systems have not been able to protect them. Farmers still fear arbitrary government expropriation, inadequate compensation, and even the embezzlement of compensation gains by village elites. These fears, as has been discussed in earlier chapters, are attributable to complex reasons, including the ambiguous and

\textsuperscript{531} Pils, ‘Assessing Evictions and Expropriations in China’ (n 528).
vague nature of collective ownership, the flawed rural land expropriation system, and local governments’ fiscal incentives to raise land revenue to compensate for their budgetary deficits. Moreover, as urbanization has been a top priority for the Chinese government and will remain so in the following decades, rural land holds strategic significance for local governments and its expropriation is essential to achieve their goals. As such, a better protection of farmers’ property rights and the furtherance of their property interest in landholding require systematic reforms in contemporary China.

Where expropriation threats to rural land are mainly triggered by local governments, a government-managed development mode that is centered on land is problematic, as noted earlier. In the context of urbanization, local governments can of course take land for development. But this does not mean government taking is the only viable way to convert agricultural land to urban use. The central government has also recognized that more opportunities need to be given to farmers, allowing them to take the initiative in developing rural land and in benefiting from rural land. In this light, the matter of how to protect farmers’ property interests needs to be discussed in the context both of government-initiated land expropriation as a means to develop rural land and of village’s initiatives to develop land.

In circumstances in which local governments take land for development, established rules regulating rural land expropriation shall be improved in order to transform the manner in which government reassigns property rights and distributes land gains. As a major reform of the system of collective ownership cannot be undertaken under the current political system, more concrete and feasible solutions concern standardizing expropriation law by integrating urban and rural land. In so doing, the definition of public interest needs to be clarified and consideration given to limiting the scope of rural land conversion for purely commercial or even private purposes. Additionally, loss of land shall be compensated at a just, fair, or adequate rate, as determined by market-valued standards. Moreover, in addition to guaranteeing effective public participation and judicial review of government decision-making, local governments should be required to establish open dialogue with the affected farmers over compensation and relocation schemes that recognize the profound impact of expropriation on their way of life. Furthermore, in a situation in which many local governments are heavily reliant on acquiring rural land in order to compensate for budgetary deficits and to meet their responsibility to provide public goods and services in the locality, a pressing need is to improve the public finance system by decentralizing revenue and recentralizing the burden of the provision of social security services. Simultaneously, local governments shall reinvest a substantial portion of the land profits from rural areas to increase farmers’ social welfare and improve rural infrastructure.

The Chinese central government is keen to explore new ways to develop processes of inclusive urbanization. Most notably, some local experimental projects are encouraged to provide platforms for rural collective to develop land in their own ways, without the involvement of local governments. Those projects are mainly directed at reconstructing the rural collective economy rather than dissolving the rural collective, and are anticipated to allow farmers to profit from land development and ensure distribution of the benefits within the collective. Nevertheless, more reforms are needed in order to ensure truly inclusive development. At the present time, when major political reforms are out of the question, a first priority is to improve the rural governance system by removing local state bodies from village governance and by enhancing village democratic governance in order to prevent rural elite from seizing control of collective assets. These are keen concerns awaiting further research.

As a conclusion, a reflection on the current government-managed mode of urbanization is necessary. When urbanization is undertaken in a top-down manner in which bureaucratic organizations are the principal actors and vehicles for implementing state-managed strategy, less is focused on the role of
farmers themselves, who are largely envisaged as passive recipients in the development process. With little participation or involvement, rural residents have only a marginal influence on what urbanization means or where it leads. Therefore, a transformation of an urbanization that is land-centered into a new type of urbanization that is people-centered, as promised by the central government, needs to meet not only material criteria, such as the provision of city social welfare services to migrant workers, but more importantly, must deliver on the human dimension. In effect, this means allowing rural communities to decide what development means to them by allowing them how to decide for themselves how they wish to integrate into urban living, and, more importantly, how rural communities can live alongside and contribute to urbanization and economic development. Only then can the rapid urbanization, economic growth and widespread improvement in living standards of which China is justifiably proud be shared with rural communities and social stability be ensured.
Appendices

Appendix A: Legal Context of Rural Land Expropriation in China

- **Property Law** (物权法) (2007)
- **Land Administration Law** (土地管理法) (1988)
- **Urban and Rural Planning Law** (城乡规划法) (2007)

**National Regulations**


**National Provisions**

- **Measures for the Administration of Examination and Approval of the Use of Land for Construction** (建设用地审查报批管理办法) (1999)
- **Measures for Announcement of Land Expropriation** (征收土地公告办法) (2001)

**Local Regulations**

- **Measures for Implementation Regulations on Expropriation Compensation and Resettlement of City** (市征地补偿实施办法) (2008)

In China, legislation regulating rural land expropriation includes Constitution (宪法), national laws (法律) promulgated by the National People’s Congress (NPC), regulations (法规) that include national administrative regulations (行政法规) enacted by the State Council and the local regulations (地方性法规) enacted by the Local NPC, rules (规章) including national administrative rules (部门规章) introduced by the Ministry of Land and Resource (MLR, ministry of the State Council) and local rules (地方政府规章) introduced by local governments.

According to the Legislation Law (amended in 2015), the Constitution has the highest legal authority, but its provisions cannot be directly applied by the court to adjudicate cases or interpret statutory laws. National laws have higher legal authority than regulations and rules both at national and local levels; national administrative regulations assume higher legal authority than local rules. But national administrative rules and local rules have the same legal authority.
### Appendix B: Interview List with Villagers

<table>
<thead>
<tr>
<th>No.</th>
<th>Date</th>
<th>Means</th>
<th>Affiliation</th>
<th>Remarks</th>
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<tr>
<td>1</td>
<td>25 June 2015</td>
<td>In-depth interview</td>
<td>Village D</td>
<td>Pre-expropriation, negotiating with expropriation authority</td>
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<tr>
<td>2</td>
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<td>Village D</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>22 July 2015</td>
<td>In-depth interview</td>
<td>Village D</td>
<td></td>
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<td>4</td>
<td>17 July 2015</td>
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<td>Village P</td>
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<td>5</td>
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<td>Village D</td>
<td>Expropriation underway, not yet relocated</td>
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<tr>
<td>6</td>
<td>17 July 2015</td>
<td>In-depth interview</td>
<td>Village D</td>
<td></td>
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<tr>
<td>7</td>
<td>23 July 2015</td>
<td>Focus group discussion</td>
<td>Village G</td>
<td>Expropriation underway, not yet relocated</td>
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<tr>
<td>8</td>
<td>22 Sep 2015</td>
<td>In-depth interview</td>
<td>Village D</td>
<td>Post-expropriation, under disputes</td>
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<tr>
<td>9</td>
<td>03 July 2015</td>
<td>In-depth interview</td>
<td>Village P</td>
<td>Post-expropriation, under disputes</td>
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<tr>
<td>10</td>
<td>06 July 2015</td>
<td>In-depth interview</td>
<td>Village P</td>
<td>post-expropriation, under disputes</td>
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<tr>
<td>11</td>
<td>07 July 2015</td>
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<td>Village P</td>
<td>Post-expropriation</td>
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<tr>
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<td>07 July 2015</td>
<td>In-depth interview</td>
<td>Village P</td>
<td>Post-expropriation</td>
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<tr>
<td>13</td>
<td>08 July 2015</td>
<td>In-depth interview</td>
<td>Village P</td>
<td>Post-expropriation</td>
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<td>13 July 2015</td>
<td>In-depth interview</td>
<td>Village P</td>
<td>Post-expropriation</td>
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<tr>
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<td>14 July 2015</td>
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<td>Village D</td>
<td>Post-expropriation</td>
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<td>16</td>
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<td>Village D</td>
<td>Post-expropriation, under disputes</td>
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<td>In-depth interview</td>
<td>Village D</td>
<td>Collecting follow-up information</td>
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## Appendix C: Interview List with Local Officials, Village Cadres, and Judges

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<th>Affiliation</th>
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<tr>
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<td>Sub-district Office</td>
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<tr>
<td>2</td>
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<td>District-level Demolition and Relocation Office</td>
</tr>
<tr>
<td>3</td>
<td>06 July 2015</td>
<td>In-depth interview</td>
<td>Bureau of Housing Administration (BHA)</td>
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<tr>
<td>4</td>
<td>10 July 2015</td>
<td>In-depth interview</td>
<td>Township Government</td>
</tr>
<tr>
<td>5</td>
<td>13 July 2015</td>
<td>In-depth interview</td>
<td>College graduates serving as village officials</td>
</tr>
<tr>
<td>6</td>
<td>20 July 2015</td>
<td>In-depth interview</td>
<td>District-level Urban Construction and Investment Group Company (UCIG)</td>
</tr>
<tr>
<td>7</td>
<td>20 July 2015</td>
<td>In-depth interview</td>
<td>District-level UCIG</td>
</tr>
<tr>
<td>8</td>
<td>20 July 2015</td>
<td>In-depth interview</td>
<td>District-level UCIG</td>
</tr>
<tr>
<td>9</td>
<td>23 July 2015</td>
<td>In-depth interview</td>
<td>Township Government</td>
</tr>
<tr>
<td>10</td>
<td>23 July 2015</td>
<td>In-depth interview</td>
<td>College graduates serving as village officials</td>
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<td>In-depth interview</td>
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<td>12</td>
<td>04 Aug 2015</td>
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<td>S City (UCIG) (Director)</td>
</tr>
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<td>Intermediate People’s Court (IPC)</td>
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Appendix D: Coding Book for Chapter 4

Theme 1: The beginning of expropriation
[This cluster includes a number of codes which apply to the first phase of negotiation between local government and farmers over the exchange of rural land.]

1.1 Official scheme of compensation and relocation
- This expresses the local government devised a compensation and relocation scheme to compensate farmers’ loss and relocate them after their houses are demolition.
- A one-off compensation in cash
- “To promote urban and rural integration, it is not likely for the local state to leave rural land in these areas only for farming. More importantly, under the current trend of urbanization, it is foreseeable they would be subject to expropriation for the second time if we give them rural land to construct resettlement houses now”.

1.2 Farmers’ balance sheet of compensation and loss
- This expresses farmers notice there is a discrepancy between what they deserve and what they will be compensated.
- Compensation cleavage
- “Had it not been for the expropriation, my sick husband’s medical expense and my son’s college education fee would be guaranteed. I did not have to worry about our life. Now I can only afford two small apartments with this sum of compensation, plus a cheap car, at most. It is impossible for us to restart a new business. My livelihood is destroyed.”

Theme 2: Competing claims
[This cluster includes a number of codes which apply to the second phase of negotiation between local government and farmers who make competing claims for bargaining over land.]

2.1 Denial of farmers’ entitlements
- This expresses local government claiming for a larger share in value increase by denying farmers’ initial entitlements to land.
- Non-agricultural use of land, illegality of the behaviors
- “Collective land is yet to be documented for non-agricultural use, and farmers pay no tax or whatsoever, naturally we do not consider this sort of income for compensation.”

2.2 In the name of development
- This expresses government makes moral claim to justify their acquisition of land under the name of development, which requires farmers’ individual sacrifice.
- Development discourse
- “No expropriation, no development”, “Without demolition, it is no more than land; after demolition, land earns money”.
2.3 The claim of right to subsistence
- This expresses farmers make claims to higher compensation rate to sustain their living.
- Address the subsistence problem
- “We lose everything and then have to start from scratch. Now everything is almost free for us, like food, water. In contrast, everything is too costly in the city, even the property management fee is a big burden for us. We will have no money left after moving into the city. It only takes us 3 to 5 years to return to poverty.”

2.4 The claim of right to development
- This expresses farmers make claims to a higher share in increased value in their land which will be converted into urban commercial uses.
- Enjoy the benefit from land developing
- “It is simply so ridiculous that the government takes everything far below the market value and asks us to buy everything at a market price.”

**Theme 3: Bargaining chips**

[This cluster includes a number of codes which apply to the third phase of negotiation between local governments and farmers who make different bargaining chips to justify their bargaining position.]

3.1 Trade-off between rights and realistic interests
- This expresses local state actors attempt to persuade farmers to accept realistic interests rather than make justice or rights claims which will erect barriers to the state’s economic prosperity in conflict with the pursuit of high growth.
- cost-benefit analysis,
- “In China’s case, it is unrealistic for our government to simply construct another airport expressway without land-taking, like the Japanese government did. There is no comparability between the two countries because China is still on its early stage of development.”

3.2 Land in exchange for social security
- This expresses local government transforms the policy of urban social security provision by asking the expropriated household to surrender their land in exchange for urban hukou.
- Urban hukou, social security service
- “Urban hukou that should be an entitlement to the expropriated people was utilized in exchange for the termination of land rights.”

3.3 Housing voucher
- This expresses local governments apply housing voucher as an alternative payment for compensation, which they believe will protect the expropriated right to housing.
- Commodity housing unit, local protectionism
- “The housing voucher with its par value of 152,800 yuan per capita is limited within S County. In case one plans to relocate and buy a housing unit in the capital city or other places other
than S County, the cash value declines to 40,000 yuan. The consideration is to protect local economy.”

3.4 Planting ‘houses’
- This expresses farmers deploy opportunist behaviors by constructing more building structures to maximize compensation.
- One household, one plot of housing unit, fast-running houses
- “To regulate the undocumented buildings with an iron hand; to demolish the undocumented buildings with an iron hand; to impose a sanction with an iron hand.”

3.5 Sham marriage
- This expresses farmers’ another form of opportunist acts of scam marriage to maximize compensation.
- Rural hukou, household
- “Even though we know it was a sham marriage, nobody will directly oppose to it, after all, we were country fellows. Moreover, the compensation is paid by the government, not by us.”

Theme 4: Reaching an agreement
[This cluster includes a number of codes which apply to the fourth phase of negotiation between local governments and farmers who seek consensus to reach an expropriation agreement.]

4.1 Policy adaptation
- This expresses local government adapts local policies in an attempt to increase the compensation rate for the resistive farmers.
- unpredictable fees, severe illness aids, allowance for hardship
- “As policy implementers, what we can do is to adapt the implementation within our discretion. For instance, humanitarian care is currently practiced in favor of the vulnerable families to help them gain more benefits.”

4.2 Economic rewards in exchange for compliance
- This expresses local state actors use economic rewards to buy off resistive farmers or petitioners to obtain their compliance.
- Buying peace, nail-house
- “We might as well offer the petitioners a small amount of money, rather than intercepting them on the way or letting them access the superior who then criticize or punish us for the petitioning.”

4.3 A pragmatic acceptance of rules
- This expresses farmer make their concession to give up their land and house through conditionally accept the government-initiated rules.
- Defending rights, help the poor
“Because my rightful interest was infringed, I asked the veteran organization to mediate. The organization only intervened to ‘help the poor’. Since we are all orderly and law-abiding citizens, we will not appeal for rights defense.”

4.4 Rules are opportunities

- This expresses farmers take use of the loophole of local polices to gain extra compensation.
- Undocumented house, unpredictable circumstances
- “But from the very beginning, I know very clearly that I shall maximize the compensation by grasping the spirit of the policy. I mean I shall have the full picture of how all the policies could work to gain me more compensation. Some internal information could only be available from my friends working in the government.”

4.5 Blackmailing the local state

- This expresses farmers take advantage of local government’s intent of buying peace to blackmail the officials.
- Professional petitioners, sympathy money
- “Some repeat petitioners would call us and ask us to bring them rice, oil, and other stuffs. If they are sick, we are sent to drive them to hospital and even pay the bill. We take care of them better than their family members could do.”
Appendix E: Coding Book for Chapter 5

Theme 1: The levels of power

[This cluster includes a number of codes that apply to decision-making at different levels of power that exert influences on property rights.]

1.1 The level of central power

- Power at the central level generally manifests itself as the political will to make relevant decisions as well as the capacity to monitor and control its local agents.
- Goal: economic growth, protecting farmers’ interests, land management, stability maintenance
- Decision-maker, patron delegating power to local agents, supervisor monitoring local performance

1.2 The level of local power

- Power at the local level refers to local governments that are subject to the unified leadership of the central authority, in terms of implementing its various administrative regulations and decisions and holding accountable.
- Goal: economic growth, political performance, land expropriation, protecting farmers’ interests, stability maintenance
- Agent of the central government, a local decision-maker to enforce land expropriation

1.3 The level of village power

- Power at the village level refers to rural village committee that is an autonomous organization and does not belong to the formal state bureaucratic system, but undertakes responsibility in fulfilling the task of demolition and eviction
- Goal: fulfilling the task of demolition and eviction, defend villagers’ property interests,
- Representative of village interest, Mediator between local governments and villagers

Theme 2 The forms of Power

[This cluster includes a number of codes that apply to various types and forms of power exercised to constrain property rights]

2.1 Visible power

- Visible power designates state legislations that legitimize land expropriation by conferring government monopoly power on land taking.
- Manipulation of policy discourse, Maneuver of Carrot and Stick
- “We are only executing the state policy to arrange compensation and relocation for you. No one may violate the policy. State policy is the baseline”, “Incentive Payments for On-time Housing Vacation”, “decision on vacation before deadline”

2.2 Hidden Power
Hidden Power refers to emphasize controlling the agenda of political decision-making and internalize oppression by controlling people’s values and beliefs to the extent that people may be unaware of their rights.

Local adaptive implementation, The bureaucratic collusion

“We, as policy implementers, have to implement with flexibility, either through other policy channels or to employ adaptive measures.” “hierarchical bureaucrats shielded one another”

2.3 Invisible power

Invisible power indicates the powerful mobilize social resources to shape or control the belief of the expropriated people.

Adaptation as an individual issue, A twisted notion of equality

“Farmers are unwilling to find a job even though some are competent, simply because they are: i) afraid of losing face; ii) too resistive to alter the status quo; iii) less-educated; and vi) too lazy to work.” “Rural people are calculative. No one is willing to see their neighbors or relatives, other than themselves, better off. Rather than the case that someone else is wealthier than themselves, they would prefer everyone to remain worse-off.”

Theme 3 Spaces for challenging power

[This cluster includes codes that apply to the expropriated farmers employ possible opportunities and channels to open up the closed space in terms of decision-making at both central and local levels that have been closed off to them]

3.1 Closed space

Closed space refers to decision are made with little consultation or involvement. Efforts to open up the closed space means to make the processes decision-making more transparent and hold decision-makers account.

Local rules as imparity clause

“Local authorities’ unlawful acts were at odds with the original intent of central policy.”

3.2 Invited space

Invites spaces refers to invite stakeholders to take part in, or express their opinions on, such issues as decision-making and formulating policies.

Petition, whistle-blowing

“To overcome softness with just softness, but never attempt to conquer hardness with hardness”; Writing joint-letters to inspection authorities at various levels of government.

3.3 Claimed spaces (self-created spaces)

Claimed space refers to the expropriated population build alliances with each other or like-minded people to challenge and contest the powerful.

Mass media, litigation, collective action

Wechat as a means to attract public attention to individual miserable experience.
Appendix F: Coding Book for Chapter 6

Theme 1 Ineffective litigation in redressing infringements of rights

[This cluster includes a number of codes apply to how the aggrieved villagers file lawsuit to the court but does not work.]

1.1 Difficulties in getting a case heard

- Difficulties in getting a case heard means the court is reluctant to accept administrative litigation case filed by the expropriated population against local government bodies.
- Specific administrative acts
- “No registration, no acceptance and no representation.”

1.2 Restraints on substantive and procedural review

- This means the court has limited power to rein in administrative decision in the regime of administrative laws.
- Limited interpretative power
- “These rules and documents are not within the jurisdiction of the court.”

1.3 The excursion of judiciary enforcement

- This expresses that judicial order for compulsory enforcement has been instrumentalized as a compulsory measure for local expropriation authorities to facilitate implementation and warrant compliance during the processes of operation.
- Reluctant to antagonize local authorities
- “Local government agencies can apply to the court for enforcement in case the affected party, who is not satisfied with the arbitration decision, fails to initiate a legal proceeding or apply for administrative review on government decisions.”

1.4 Incapability of the court for dispute resolution

- This expresses the judicial practice of the court is ineffective to resolve disputes between local government bodies and the aggrieved farmers.
- Striking a balance
- By applying a balancing approach between the fulfillment of government goals and the protection of landholders’ property rights, the court either rendered the disputes ‘beyond the attention of law’, or, sustained the government decision.

Theme 2 Petition rarely yields positive outcome

[This cluster includes a number of codes apply to why petitioning could seldom bring about desired outcome to petitioners who seek support from higher-level leaders to redress their grievance.]

2.1 Problems shall be solved locally
• This expresses central government has made it a principle that petition issues shall be solved locally.
• Both roles of ‘player and judge’, kicking the ball
• Local authority’s land-seizure and the wrongdoings of its officials that are the root cause of farmers’ grievance, but they also assume the role of problem-solver.

2.2 Local authorities’ toolkit to control petitioners
• This expresses local governments employ various measures to manage petitioners who were employing new and disruptive forms in lodging petition.
• carrot and stick, one-on-one supervision
• “Each potentially active household is taken charge, with our movements and actions under close surveillance. In case we leave the town, whether for travelling or leave the locality, local officials will keep a wary eye on us.”

2.3 The contingency of central intervention
• This refers to it is contingent for central government to intervene in to correct the wrongdoings of the local officials and eventually return the justice to the aggrieved petitioners.
• Social stability, regime legitimacy
• “Everyone is looking for ways to seek support from the central leader. But the point is who is willing to pay the price of life?”

Theme 3 An interplay of litigation and petition worsen the grievance

[This cluster includes a number of codes apply to the complaints combine the use of litigation and petition, which aggravates their grievances.]

3.1 The changing nature of the disputes
• This means the nature of dispute changes from land dispute to political sensitive issue.
• Abnormal petitioning, stability maintenance
• “Though Ling’s claims over violations of her property rights remained almost unchanged, her petitioning behavior to seek redress was defined as those that ‘abnormally’ undermined social stability.”

3.2 Self-restrained Court
• This expresses courts tends to refrain itself from getting involved into some highly sensitive cases that challenge government authority and its policy-making.
• Political consequence
• “The court would choose to sustain government decisions on the basis of political and social judgments, rather than ‘set a precedent’ for petitioners which would run the risk of opening up the ‘floodgate’ of petitioning cases.”
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