

1 Institutional Change in China's Development: Myths of Tenure Security and Titling

Land registration is only a means to an end. It is not an end in itself. Much time, money, and effort can be wasted if that elementary truth be forgotten.

(Rowton-Simpson 1976:3)

1 Introduction

Land development and real estate have constituted a major portion of the economic growth and wealth generated in China. Well before the surge in real estate development, total average revenues from the sale of land use rights¹ had already aggregated to over a quarter of local government budgets during 1995–2002 (Lin 2009:274–275). Another report revealed that these revenues had increased to approximately 40 percent of local government budgets over the following next decade (Chovanec 2012b).² Similarly, real estate has also rapidly increased in significance (Stein 2012:4). According to the National Bureau of Statistics, real estate investment increased at a rate of 27.9 percent in 2011 compared to the previous year.³ Even with this extensive growth, China still has not completed the process of land registration, the contemporary origins of

¹ In particular, the revenue from “land conveyance” or *churangjin*, i.e., the sale of land use rights by the state to real estate developers in the primary land market (see also Chapter 2, Section 3.3). The real estate market was liberalized in 1998 with the initiation of national housing reform.

² It is important to recognize that the proportion of land revenues is difficult to calculate, as it is understated or even concealed from regular budgetary overviews. For instance, it is often neither included in local government’s intra-budgetary (*yusuan nei*) or extra-budgetary (*yusuan wai*) income stream, but is included in the ill-defined extra-institutional (*zhidu wai*) revenues. Moreover, for a more accurate picture, it is crucial not to focus on gross income, but instead on net income; i.e., the costs for expropriation and development should be excluded (Oral communication, 31 January 2013, Professor George Lin, Hong Kong University).

³ Chovanec, however, has calculated that this figure is incorrect because it is a *nominal* rate, whereas the GDP growth rate figures are *real* figures (adjusted for inflation). The *real* (and, therefore, comparable) rate of expansion for real estate investment in 2011 should be 20.0 percent, according to him (Chovanec 2012a:1).

which can be traced back to the early 1920s. It is also not expected that titling can be realized in the near future.

In a Western industrialized context, it would be inconceivable to purchase a home without concrete evidence of ownership (Palomar 2002:1; Ellickson 2012:3) which makes it difficult to comprehend how Chinese development could have occurred *without* secure, transparent, and formal property rights. Enigmatically, the country's double-digit growth and upsurge in land development have occurred regardless of the lack of established land processes over the previous decades (see Chapter 6). Therefore, the tantalizing paradox of Chinese development – economic growth in the absence of secure, private, and formal property rights – is perhaps nowhere more visible than with land as a means of production.

However, as will be discussed throughout this monograph, China's developmental paradox might not be a paradox after all, that is, if we abstain from focusing on institutional form in lieu of function. The first stage in developing the discussion that persisting institutions perform a function regardless of the form, this chapter focuses on one of society's vital institutions: the cadaster, or land registry. To accomplish this, two critical points will be substantiated. First, it will be established that the Chinese state's grand titling schemes never materialized. Second, it will be demonstrated that titling revolves around three "battlegrounds of bargaining" – sources of conflict that eventually require resolution: i) the status of state and collective ownership, ii) the fragmented authority over land, and iii) the distinction of land from housing.

In this context, it is maintained that the cadaster as a significant economic, social, and spatial institution is the ultimate consequence of development rather than its *sine qua non*. This chapter begins with an explanation of the relevance of the focus on the cadaster and titling in order to better comprehend institutional change. The subsequent section reviews the central state's titling efforts of urban and rural land from the beginning of the Republican Period in 1911 until the present. The final section discusses three parameters that affect the institutional dynamics and bargaining in regard to titling. To obviate any confusion, it is important to recognize that different rights can be titled, the most common of which concerns the rights to ownership and use (see also Table 1.2).

2 Theoretical Relevance of the Cadaster

2.1 *The Cadaster as an Institutional Epitome*

The Chinese state continues to encounter *fundamental* choices of institutional design, which is different from, for instance, Western Europe and

North America. One of the most noticeable examples of this is the cadaster. Fundamentally, the land registry or cadaster (derived from the French *cadastre*)⁴ is a system whereby ownership or use of land plots is registered (generally by the state) to provide proof of title. The cadaster is intrinsically entwined with concepts regarding the legal protection of ownership⁵ as the absolute, supreme right among legal rights⁶ and is perceived to be the nexus of control over land and real estate. Yet, in globalized, urbanized society, the cadaster is more than a medium on which to record rights (Rowton-Simpson 1976:3). In fact, in more advanced industrialized economies, the cadaster functions as an overarching institutional repository for data related to space, environment, land, real estate, infrastructure, and taxation. It should not be surprising that the cadaster is often, in fact, portrayed erroneously as an institutional epitome of Western capitalist development. As De Soto expresses in his book titled *Why Capitalism Triumphs in the West and Fails Everywhere Else*, “The formal property system is capital’s hydroelectric plant” (De Soto 2000:47).

2.2 *Title versus Deed*

The cadaster is the official register that records title, and the institutional intervention leading to its establishment is referred to as titling or registration.⁷ Titling considers the questions: whose land, how much, and where? Thus, it is the process by which rights such as ownership, use, and management are recorded per parcel to satisfy evidence of title, facilitate transactions, and prevent unlawful disposal. Yet, titling is more than surveying, measuring, and assessing various rights and claims

⁴ The French term is, in turn, attributed to the Late Latin *capitastrum* (a register of the poll tax) and the Greek *katastikhon* (a list or register), literally from *kata stikhon*, “down the line,” in the sense of “line by line.”

⁵ Ownership is legally considered to comprise all other rights (Van den Bergh 1996:172). In this regard, Honoré’s (1961:113) definition of ownership is relevant, conceptualized as “. . . the right to possess, the right to use, the right to manage, the right to the income of the thing, the right to the capital, the right to security, the rights or incidents of transmissibility and absence of term, the prohibition of harmful use, liability to execution, and the incident of residuary.”

⁶ However, Sonius has noted that “absolute ownership does not exist and has never existed. Ownership has always (. . .) been restricted by all types of regulations which, in the general interest or in the interest of others, deprived the owner of part of his absolute power over the object” (1963:19).

⁷ The terms are often intermingled. In strict terms, however, *titling* refers to establishing a legal relationship between property and a person. *Registration* is different, in that it is a proof required by the state to show that one has registered or paid any taxes/fees due. Titling is connected with registration, but not *vice versa*; i.e., titling includes registration, but registration does not necessarily include titling.

to land. Titling is also perceived as an act of institutional engineering, particularly in a developing context. It is then tantamount to the establishment of new social rules by the state (or a foreign donor, developing agency, or consultancy firm, for that matter) to modify local norms, values, and customs. However, as this chapter demonstrates, reality is more unruly.

Land titling is classified under common or civil law systems. The contemporary origins of the civil law version of land titling date back to the early nineteenth century, when the Napoleonic Code was established under *Napoléon I* in 1804. In accordance with the common law prior to the mid-nineteenth century, land owners were required to verify ownership of a parcel retroactive to the earliest grant of land by the Crown. The documents related to this chain of transactions were known as "deeds." As the *Domesday Book*⁸ was completed in 1086, there is substantial probability that many property exchanges could have occurred since that time. Consequently, ownership could be easily challenged, causing substantive legal costs. To solve these discrepancies, the premier of South Australia, Sir Robert Richard Torrens, introduced a title registration system in 1857 that was named after him. The "Torrens Title" is a system where a state register of land holdings guarantees an indefeasible title to those included in the registrar. Land ownership is transferred through the utilization of title registration instead of deeds. This innovative system facilitated transactions and certified ownership of an absolute title to realty. The Torrens System has become pervasive within the Commonwealth of Nations and is somewhat similar to the Napoleonic cadaster (Rowton-Simpson 1976; Dale and McLaughlin 1988).

However, as Dowson and Sheppard (1956:98) duly noted, "No genuine classification of the variant statutes according to differences in system is possible" and "even the distinction between Torrens and English origins becomes blurred as problems are re-examined and dealt with on their own in the light of modern developments." In summary, development may yield limitless institutional variations that can be perceived as credible according to social actors, and the Chinese cadaster as an institution is no exception.

3 Titling over Time: Property and Modernization

As illustrated previously, the cadaster is a crucial institution in the transactions and administration of land as a means of production, which is the

⁸ The *Domesday Book* is the oldest land survey of much of England and parts of Wales, executed under the auspices of William I of England.

reason that it may be difficult to avoid the concepts of modernization and economic progress in regard to titling. As societies evolve from predominantly traditional, agrarian economies into industrialized, highly capital- and technology-intensive economies, distinct stages of institutional development that appear or can be induced under specific socio-economic conditions may be discerned. However, beliefs regarding teleology and “institutional determinism” are often questioned (Inglehart 1997:206).

Certain scholars claim that the origins of Chinese titling date back 5,000 years and indicate that titling is a straight historical line of development from that time until the present (e.g., Hu 2007:1). In reality, however, registration efforts by the Chinese state have been heavily constrained, and titling has been an often-interrupted process, as will be demonstrated in the subsequent sections wherein a history of the state’s attempts to promote the cadaster as a new institution will be described.

3.1 *Republican Period (1911–1949)*

The subversion of the Qing Dynasty in 1911 ended over two millennia of imperial rule. The subsequent establishment of the Nationalist Republic can be regarded as the emergence of the modern Chinese nation-state. Therefore, this moment in time will be the beginning point of the institutional analysis of land titling. In 1922, the Nationalist Government proclaimed the “Regulations for the Registration of Real Property.”⁹ However, the Nationalist Government, while subjected to President Chiang Kai-shek, never realized complete territorial control over China even after the military “Northern Expedition” in 1928;¹⁰ therefore, titling did not achieve full fruition.

Armed conflicts that ravaged the country during the Republican Era had significant impact on land ownership. Changes in land ownership had occurred throughout the imperial era, when land was frequently abandoned during periods of war and social instability or when natural disasters occurred and land was inhabited by new owners (Stuart 1954:114; Osborne 1994:127, 136; Ho 2000a:354–355). These shifts in ownership considerably complicated titling. For example, in Longyan County (Fujian Province), one of the largest land reform projects while under Republican rule encapsulating approximately 18,000 hectares was achieved in 1929. After the Communist army assumed control over the

⁹ An example of a land title issued during that period is shown on the cover of Ho (2005).

¹⁰ Although nominally ruling over China, Chiang wielded effective control over only four provinces: Jiangxi, Zhejiang, Anhui and Jiangsu.

area, land was confiscated from landlords, rich peasants, and temples, and reallocated to poor farmers, tenants, landless farm laborers, and local Communist soldiers. However, six years later, in 1935, the Nationalists recaptured the area, and former landowners reclaimed ownership and "great confusion arose between the old and new owners of the land" (Shen 1951:100).

3.2 *Collectivist Period (1949–1978)*

After the Nationalists were defeated in the civil war and fled to Taiwan, Mao Zedong established the Communist State in 1949. The crucial difference with the Nationalist Republic was that, after the extended period of civil war, the state wielded *de facto* control over the country. This afforded the opportunity for nationwide titling. It should be noted that titling in the cities was legally less complicated because urban land was state owned and, therefore, exempt from titling (further explanation will follow).

In contrast, events in rural China took an entirely different course. The first and last attempt by the Maoist State to survey and register rural land was during the "Four Fixes" movement in 1962 (*si guding*), which was specified for the registration of land, labor, animals, and agricultural tools.¹¹ Even though it was initiated as a nationwide mass movement, the Four Fixes did not result in the creation of a cadaster, and its registers existed nowhere else other than as incidentals in state documents. It is questionable why it was so difficult to establish the cadaster as a credible institution. Contrarily, it can also be questioned why, under the prevailing conditions, the state would be permitted to establish a cadaster at all.

One explanation is that China's rural ownership structure was (and remains) as ambiguous as it was potentially explosive. In accordance with the Marx–Leninist ideology on the common ownership of the means of production, labor, capital, and, of course, land were increasingly transferred to state control.¹² During the Land Reform (1950–1952), landlords and rich peasants were expropriated, and their land assets were distributed to impoverished and landless farmers for private ownership; in many cases, this was accompanied by the issue of a private title.¹³

¹¹ Following the Four Fixes movement, titling was not attempted again until the period of the economic reforms in the 1980s.

¹² According to Marx–Leninist and Maoist ideology, the final historical stage of development consists of the realization of Communism, a classless society with common ownership of the means of production and with full social equality.

¹³ For an example of a private title issued during the Land Reform, see the photo in Ho (2005:46).

A number of years later, in 1956, private land ownership was abolished, and agricultural land¹⁴ was incorporated into the Higher Agricultural Production Cooperatives. The cooperatives were soon supplanted by the People's Communes – expansive, unmanageable collective units (sometimes holding up to 50,000 farm households) during the Great Leap Forward campaign in 1958. Consequently, the failure of forced collectivization during the Great Leap induced a minimization of communes in 1962. Simultaneously, the commune's ownership of land, labor, and capital was rescinded and divided into three levels¹⁵ (commune, brigade, and team) whereby the team (the actual physical village) was granted land ownership. The following information demonstrates how this legacy of ownership shifts, expropriations, and institutional rearranging continues to affect China's titling efforts.

3.3 *Reform Era (1978–Present)*

The trajectory of China's titling that was revealed at the beginning of 1978 emphasizes its incremental, unintentional, and unpredictable nature. The state may have ambitions and intentions; however, in the implementation thereof, these become merely minimal steps in a long, arduous process. To date, China is still without a national cadaster. Thus, despite theoretical foundations to the contrary, the country's capitalist growth over the approximate past three decades has occurred *without* formalized, legally protected property rights. In fact, it appears that the cadaster results from development rather than being an institutional precondition.

3.3.1 *Urban Registration* Titling in China's cities was fundamentally different from titling in the countryside. After the nationalization of industries and companies in the early 1950s, urban land was considered as being state owned, although, due to sensitivities, this was not legally stipulated for a long period of time.¹⁶ Land owned by the state was perceived as absolute and, therefore, did not warrant a title; a principle adhered to – and enshrined in regulation – until today.¹⁷ However, the

¹⁴ But not forest, grassland, and wasteland, which mainly remained state-owned.

¹⁵ This is also known as the implementation of a policy of “three-level ownership” (*sanji suoyou*).

¹⁶ These sensitivities relate to property owned by urban industrialists and entrepreneurs. As a result, urban land ownership was not addressed in the 1950 Land Reform Law. One of the few references to urban property found – and not even explicitly – is Article 12 of the “1947 Great Outline of the Land Law” (*tudifa dagang*) in Sun (1998:100).

¹⁷ See, for instance, Article 2 of the 2007 Land Registration Measures, that only states that “land registration refers to the titling of state-owned land use rights, collective land

principle did not signify that urban ownership was uncontested. The concept that urban land is tantamount to state ownership and, therefore, excludes *private* ownership was disputed up to the early 1980s. With the onset of the reforms in 1978, descendants of former capitalist entrepreneurs, industrialists, and wealthy families who had previously owned significant tracts of land in the cities secretly hoped to recover confiscated property.

Strikingly, a faction in the government attempted to revert or, at least, account for the existence of *private* land ownership, which, of course, blatantly contradicts Leninist–Marxist ideology (State Agency for Urban Construction 1982:1). However, the Constitution was revised and adopted shortly thereafter. A detailed account of the rationale behind this rapid constitutional revision is provided in Chapter 4 (Section 3.3), which discusses the Chinese housing market. For now, it suffices to state that the revision suppressed a potentially disruptive debate regarding private ownership by unequivocally stipulating that “urban land is state owned” (1982 Constitution, Article 1). Due to the constitutional revision, the titling of urban land is unambiguous: its ownership does not require registration, whereas the *use right of urban land* and the *ownership of real estate* are registered, respectively, by the Ministry of Land and Resources and the Ministry of Housing and Urban-Rural Development (see, in a following section, “Land versus Real Estate”).

3.3.2 Rural Registration Preparations for rural titling in the period of reform began soon after the disbandment of the communes. What ensued was an extensive process in which the state attempted to specify new “rules of the game.” Over time, these rules increased in authority and scope, varying from mere “views” and “administrative measures” to “regulations” and “national laws” which were supported by decisions from the state’s highest authorities: the State Council and the Central Committee of the Communist Party.

In 1984, the State Council began to require a comprehensive survey of the nation’s land resources in order to facilitate land registration. This survey continued for 12 years and, according to estimates by the former State Land Administration, involved approximately 200,000 officials, local cadres, and surveyors and a total investment of 1.2 billion RMB (State Council 1984; Ministry of Land and Resources 2007b). Shortly after the survey began, the first Land Administration Law was adopted in 1986, which provided the legal framework for titling. This piece of

ownership, collective land use rights and land mortgage, easements, and other land rights (. . .)” (Ministry of Land and Resources 2008:1).

legislation was specified in subsequent years with rules that are more detailed.¹⁸

The year 2007 was critical due to the enactment of the long-awaited Property Law.¹⁹ This law made detailed stipulations regarding registration procedures, rights, duties, and liabilities. At the end of the year, the Ministry of Land and Resources (2007) proclaimed the “Measures on Land Registration.” Titling was added to the most significant political agenda during the 17th Party Congress in October 2008. The Chinese Communist Party (CCP) Central Committee stated that the “assessment of land rights, the titling and the issue of permits should be done well” (CCP Central Committee 2008:4). In its annual rural plans for 2010, i.e., the Number One Document,²⁰ the central state decreed in unusually authoritative wording that titles must be issued to “all rural collective economic organizations with ownership rights within three years” (CCP Central Committee and State Council 2010:5).²¹

However, when asked to comment, a senior official of the Ministry of Land and Resources stated, “It might be hard to complete land registration within 3 years.”²² By the end of 2011, the then Director-General of Land Titling, Zhu Lihua, announced that,

According to current records, 70 to 80 percent of the titling of [the ownership of, PH] rural collective land has been completed. (Zhu 2011)

¹⁸ In 1989, the former State Land Administration determined the initial primary issues in titling, which were described in the notice “Certain Views on Problems for Determining Land Rights.” These were improved and codified in “Several Administrative Regulations on the Determination of Land Use and Ownership Rights,” issued in 1995. Three years later, the Land Administration Law was revised, though this did not significantly modify the regulatory framework for titling.

¹⁹ The drafting of the Property Law took 14 years, spanning the period from 1993–2007, and was fiercely debated after an open letter to the National People’s Congress by Peking law professor Gong Xiantian. The letter, dated 12 August 2005, made allegations that the bill violated the Chinese Constitution and betrayed the Socialist System. With specific reference to the forced evictions of farmers and urban homeowners, Gong’s letter upset a number of individuals in society, causing public outcry, which delayed the adoption of the Property Law for two years (Tang 2007).

²⁰ The Chinese state’s most important annual rural planning document is the “Central Number One Document” (or *zhongyang yihao wenjian*) that dictates the main political ambitions for the coming year.

²¹ The document also indicated that there were “Constant bright spots in rural reform. The reform of collective forest tenure has had remarkable results; of 25 million *mu* [1 *mu* = 1/15 ha] of collective forest land, 15.1 million *mu* has been registered and leased to individual households, which accounts for 60 percent of the collective forest land” (CCP Central Committee and State Council 2010:5). However, in a critical article by He and Zhu (2008), it was pointed out that collective forest tenure reform and titling have led to substantial problems and disputes.

²² Interview ZXYB05042011, senior engineer, China Land Surveying and Planning Institute, Ministry of Land and Resources

Interestingly, just a few months earlier, an official communiqué of the Ministry of Land and Resources reported that

The issuance of permits is still very low while the permits for rural collective ownership, in most cases, only assess the land rights at the level of the *administrative* village and *not* for every rural collective with ownership. (Ministry of Land and Resources et al. 2011, italics added)

Why has the Chinese state not succeeded in creating a cadaster after approximately 100 years despite continued effort, investment, and strong political support? The answer to this question can be determined by the critical parameters that affect the bargaining over land titling between state-state and state-society actors. These actors conjointly constrain the intentions of the Chinese state, which ultimately experiences its plans as ineffectual or materializing in a different form.

In the final section of this chapter, each of these parameters will be individually addressed:

- i) The status of collective and state ownership
- ii) The fragmentation of authority over land
- iii) The separation of land from real estate

4 The Reach of the Chinese State

4.1 *State versus Collective Ownership*

To understand the first “battleground of bargaining,” it is important to travel back in time and examine how past institutions concerning state-owned and collectively owned land have influenced current land titling.

4.1.1 Collective Land Ownership During the Four Fixes movement, land ownership by the commune was abolished and “fixed” at the level of the then-production team, i.e., the existing natural village. This was not determined by law but, instead, by Party Decree in the Sixty Work Articles of the Rural People's Communes (*nongcun renmin gongshe liushi gongzuo tiaoli*) or, for the sake of brevity, the “Sixty Articles” (Ho 2005:47). Yet, granting land ownership to the production team did not completely ensure that the property was secure. During the Maoist period, the team's land was frequently expropriated without fair compensation “for reasons of economic development.”²³ In fact, vesting land

²³ See, for instance, the various expropriation cases described in Supreme Court (1997: 334–340 and 341–347) and the discussion of the team's land ownership in chapter 2 of Ho (2005).

ownership in the team was heavily contested, and it took years of discussions in the CCP Central Committee before the decision was made.²⁴

After the death of Mao in 1976, China decisively embarked on a path of economic reforms under the auspices of Deng Xiaoping. The communes were dismantled practically overnight between 1984 and 1985. As illustrated in Table 1.1, the commune, brigade, and team were replaced by new collective units, respectively termed as the town/township (former commune), administrative village (former production brigade), and the villagers' group or natural village (former production team). However, whether the natural village would obtain ownership of rural collective land as the production team's successor was not self-evident. Although decreed by Party regulation, later laws remained ambiguous regarding the term "collective" and, subsequently, about the level in which land ownership should be vested. For this reason, the natural village, as the least influential collective, has never been able to represent and safeguard its members' interests regarding land, let alone its ownership.

A jurist in favor of reinstating the natural village as the owner once wrote that

if the villagers' committee [of the administrative village] is mandated by all villagers, it is eligible to be the owner of land" but "in reality, the villagers' committee has become an extension of the political power of the township/town (...) as a result of which the collective ownership of farmers is often difficult to realize and farmers cannot enjoy the rights and interests of the collective. (Xu 1998:22)

China's Supreme Court made a landmark decision when it stipulated that the 1962 Four Fixes, during which land ownership was granted to the team, should be employed as the foundation for land titling.²⁵ The State Land Administration (later known as the Ministry of Land and Resources) proceeded in the same manner with its 1989 regulations on land ownership.²⁶

²⁴ This is also reflected in the revision of the Party Decree that stipulated collective land ownership. In the original 1961 draft of the Sixty Articles, Article 17, it is stated, "all land ... within the limits of the production brigade is owned by the production brigade." Yet, by the time the revised draft of the Sixty Articles was issued by the Central Party Committee on 27 September 1962, the team had been granted land ownership (CCP 1961:454; CCP 1962:137).

²⁵ See the review of the Supreme People's Court on "The Use of Policies and Laws for the Land Dispute between the Villagers' Committee and the Villagers' Group" described in Xiang (1996:293, 312–315).

²⁶ See the "State Land Administration's 1989 Regulations on the Assessment of Land Ownership and Use Rights," which indicate 1962 – the year when the Sixty Articles were proclaimed, on the basis of which the Four Fixes Movement was performed – as the standard (Xiang 1996:293, 312–315).

Table 1.1 *Changes in land ownership in relation to the level of administration*

Administrative level	Type of ownership	Period of ownership change	
		1949–1998	After 1998
Central state Local state	State ownership	National government Provincial government/ Municipality under State Council Prefecture/City County/District	National government
			1962*–1984/85 After 1984/85
Collective	Collective ownership	Commune Production brigade Production team = Original owner	Town/township Administrative village Natural village /Villagers' group = New owner?

Source: Drawn by author

* Collective property changes before 1962, not shown in this table. From 1949 until the 1950–1952 Land Reform movement, agricultural land was commonly or privately owned. From 1952 until 1956, the management of agricultural land was gradually pooled into larger collective units ranging from Mutual Aid Teams and Lower Agricultural Production Cooperatives. The end to private land ownership was heralded in 1956 with the establishment of the Higher Agricultural Production Cooperatives. From 1958 until the Four Fixes movement in 1962, agricultural land was owned by the People's Commune.

Contrarily, others debated that supporting the natural village as the unit of collective land ownership would seriously impede development. The government of Zhejiang Province – one of China's flourishing, urbanizing regions – wrote in an intensely debated proposal to the National People's Congress,

If we allow ownership to the villagers' group, town and village planning will be difficult to implement, which will hinder economic growth. [It would be better if] the ownership right to collective land of the villagers' group is not stipulated.²⁷

Another argument championing the abolition of the ownership of the natural village is that the administrative village had engaged in duties of

²⁷ This was indicated in the "Remarks on the 'Land Administration Law (Revised Draft)' by Relevant Units and Personnel of Zhejiang Province" (National People's Congress Legislative Work Committee 1998:366).

land administration and acted as the *de facto* owner of collective land. For instance, research (Quanguo Nongcun Guding Guanchadian 1998) has indicated that the administrative village acted as the lessee of agricultural land in over 60 percent of sampled cases. Moreover, Mao and Wang (2004:45) ascertained that, in land concerns, the leverage and authority of the administrative village far exceeds that of the natural village or villagers' group; similar conclusions were also reached by others (e.g., Zhang 2013b; Xiao 2007).

It is perhaps for this reason that the Ministry of Land and Resources rescinded its earlier stance on the Four Fixes as a basis for title in recent draft regulations (and subsequently countering the natural village as owner). Instead, it advocates that "if (. . .) the rural farmers' collective has already abolished the boundaries of the leased land of the villagers' group, [the land] should be owned by that particular farmers' collective" (Article 24, Ministry of Land and Resources 2008).

Whereas the 2004 Revised Constitution maintains the ambiguous formulation that rural land is collectively owned *without* specifying the nature of the collective, the 2007 Property Law demonstrates even more significant change. For the very first time, national law distinguishes between levels of collective ownership:

- 1) "If it is owned by a farmers' collective of a village, the ownership shall be exercised by a *collective economic organization* or the villagers' committee [read: administrative village, PH] of the village on behalf of the collective";
- 2) "If it is owned by two or more farmers' collectives, the ownership shall be exercised by all of the *collective economic organizations* or the villagers' groups [read: natural villages] of the village on behalf of the collective"; and
- 3) "If it is owned by a farmers' collective of a town [read: town/township], the ownership shall be exercised by a collective economic organization of the town on behalf of the collective." (Article 60, 2007 Property Law)

However, despite this effort, the Property Law merely supplanted one ambiguity for another: the "collective" for the "rural collective economic organization." As attorney Li Jing duly noted,

[T]he Property Law (. . .) and other laws have made stipulations about the rural collective economic organization, but these stipulations have not, unclearly or inconsistently, defined the rural collective economic organization's concept, nature, functions, and forms. (Li 2009:529)

The rural collective economic organization originates from the collectivist era when communes, brigades, and production teams were administrative

as well as economic units responsible for agricultural supply, planning, and production.²⁸ Following the commune's demise, the organization's primary economic function was reverted to farm households, consequently resulting in the rural collective economic organization becoming a meaningless concept. On the local level, Guangdong Province has made the greatest strides in clarifying matters and clearly stipulated that "what is designated (...) as the rural collective economic organization, refers to the people's commune, the production brigade and the production team" (Article 3 in Li 2009:531).

Beijing Municipality, on the other hand, circumvents discussing the revival of previous concepts and, instead, approaches matters from the collectives' *current* function. In its "Measures for the Registration of Rural Collective Economic Organizations," it enumerates what are lawfully considered as rural collectives. Subsequently, preconditions for legal recognition and registration are described.²⁹ Considering the ambiguity surrounding collective ownership, it is significant that one regulation determined that "independent public institutions under rural collective economic organizations need (...) *not* submit ownership permits of collective assets, but [can suffice with] use permits of collective assets."³⁰ Thus, an option emerging from pragmatism has been made available for collectives to assume economic functions *without* proven ownership.

As ascertained from the previous information, it is evident that the debate regarding collective ownership currently continues. Moreover, it is also obvious that no overarching solution can be conceptualized; the resolution of collective ownership will eventually occur with a locally negotiated compromise that differs in time and space.

4.1.2 State-Owned Land As indicated previously, the land within cities is, by law, state-owned. In addition, state-owned land also comprises mineral resources, forests, grasslands, wasteland, and other natural resources *with the exception* of those resources belonging to collectives (Revised Constitution, Article 9, in NPC 2004). The Constitution's stipulation is of significant relevance as it denotes that the burden of

²⁸ This is also relevant for the People's Commune's predecessor, the Higher Agricultural Production Cooperative, which was established in 1956 (Ho 2005:5–6).

²⁹ These are, respectively, the "town/township collective economic organizations; village collective economic organizations; farmers' specialized cooperative economic organizations; and independent public institutions (*duli hesuan shiye danwei*) under rural, collective economic organizations" (Li 2009:531). For legal recognition, these organizations must "submit their statutes, copies of ownership permits of collective assets, and copies of identity cards of legal representatives" (Li 2009:531).

³⁰ It is added that "qualified organizations also need to register as a corporate legal person with the industrial and commercial management department" (cited in Li 2009:531).

proof rests with the collective and *not* the state.³¹ This would not have been problematic if it were not for the fact that collective ownership is ambiguous and, consequently, difficult to prove. *Ergo*, mineral resources, forests, grasslands, and wasteland are virtually, by definition, state owned.³²

Matters become even more debatable with the realization that state ownership is also disputed between various levels of administration (see Table 1.1), divided into central government (*zhongyang zhengfu*), provinces/municipalities under the State Council (*zhixiashi*, i.e., Beijing, Shanghai, Tianjin, Chongqing), prefectures/municipalities (*diqu/shi*), and counties (*xian*). As a result, local government – particularly, the county – can readily appropriate rights to grassland, forest, wasteland, and mineral resources on behalf of the state. In order to restrict local government's control over land, the 1984 Land Administration Law was revised in 1998 to determine that “the right of ownership of state-owned land is exercised by the State Council as representative of the state.”³³ In addition to this, the Legislative Work Committee of the National People's Congress issued a formal legal interpretation that “the various levels of local government are *not* the representatives for the ownership of state-owned land. They have no right to deal with state-owned land without authorization” (National People's Congress Legislative Work Committee 1998:68).

However, even after this revision, the county – being the nexus where local government functions converge – currently continues to play a decisive role in land matters. For instance, a study by Lin ascertained that in 2002 (four years following the revision of the Land Administration Law) close to 50 percent from a total of 18,100 ha of identifiable illegal land conversions had been approved by the county (Lin 2009:97–98). The contention between the natural village and the administrative village (and, in some cases, the township)³⁴ and the ambiguity regarding state

³¹ Note that this is different from the Constitution's stipulation on land in rural and suburban areas: housing land (*zhajidi*) and privately farmed plots of cropland and mountainous land (*ziliudi/shan*) are deemed as belonging to collectives unless proven otherwise (2004 Revised Constitution, Article 10).

³² This poses problems, especially when customary or historical claims are involved. In this regard, it is important to recognize that forests, grasslands, wasteland, and a major proportion of mineral resources are located in border regions inhabited by ethnic minorities and former colonists who reclaimed the land for agriculture; see also Chapter 7, Section 3.3.

³³ At the same time, it clarifies that “The responsible department for land administration of the State Council [i.e., the Ministry of Land Resources, PH] is uniformly charged with the management and supervision of the nation's land.” See Articles 2 and 5 in the 1998 Revised Land Administration Law, in Fang (1998:207).

³⁴ Also illustrative is the court case of a natural village versus the local state (Xiangyang County) in Hubei Province. In the past, the land of this village had been expropriated so that the commune could construct a water reservoir. Following decollectivization, the land became state (county) property, with the argument that the natural village could not

ownership form the legacy that the reform state inherited under Deng Xiaoping. It is on these contested, institutional fundamentals that titling must proceed.

4.2 *Fragmentation of Authority*

The second “battleground” around which substantive bargaining between actors occurs is the fragmentation of authority over land administration. Tsinghua University vice-dean and law professor Cheng Xiao stated in an interview,

The main flaw of today's titling system is that the organization for titling is not unified. (...) As organizations are different, their procedures are different, and the required titling materials are different as well. (Cheng Xiao, cited in Song 2013:20)

In this regard, 2013 was a memorable year. The State Council, in its annual plan on the government structure, unequivocally called for the “unification of responsibilities over the titling of real estate, forest, grassland, land and others.”³⁵ To accomplish this, a separate agency would need to be established: a cadaster. At the time of this writing, such an agency (as well as its subordinate organs at the local state levels) is being established.³⁶

4.2.1 *Who Is Responsible for What?* The fragmented authority over land administration has agitated the Chinese state for an extensive period of time. In 1986, the newly proclaimed Land Administration Law made two significant, yet entirely contradictory, stipulations:

- Article 5 designated the State Land Administration – now the Ministry of Land and Resources – as the *sole* authority in the simultaneous “unified administration and supervision of land resources.”
- Article 9 determined that additional land (and water) resources – i.e., forest, grassland, wasteland (and fisheries) – would be addressed with *separate* laws.³⁷

legally own land. However, the county court ruled that the expropriation was illegal, as the natural village, by law, enjoyed the original land ownership (Supreme Court 1997: 341–347).

³⁵ The “Central Office for Organization and Personnel” (*zhongyang bianban*) has been made responsible for this task.

³⁶ As the Director of the Real Estate Registration Centre stated, “The Real Estate Registration Agency is being set up under the Ministry of Land and Resources. In fact, it is one work-unit but with two placards (*yige danwei, liang ge paizhe*). The Directorate General for Titling Administration has been changed into the Real Estate Registration Agency” (interview SYHB25032014).

³⁷ The use rights to fisheries and the embankments around fisheries would be addressed by the Fishery Law, and thus by the Ministry of Agriculture. However, oceans and seas within national boundaries would be encompassed by the State Oceanic Administration

The latter stipulation thus codified a historically cultivated situation in which land administration was, and still is, completely dissipated over various state departments (see Table 1.2).

More simply stated, the Ministry of Land and Resources is responsible for titling the *ownership* of collective land and *use* rights of state-owned land (employed by state and collective units or individuals). The State Bureau of Forestry is responsible for registering use rights of forest areas. Confusingly, the responsibility for the use rights to wasteland is the responsibility of either the Ministry of Agriculture or the State Bureau of Forestry, contingent upon how wasteland is defined; i.e., “forested grassland” or “grassy forest” (Ho 2003a:127). The Ministry of Agriculture, however, continues to be responsible for the use rights of collective land (see Section 4.2.2) and the use rights to grassland.³⁸

Some individuals maintain that, in essence, the Ministry of Land and Resources rules the cities, and the Ministry of Agriculture rules the villages. Fragmentation of authority becomes markedly apparent on the local level, as evidenced by the difficulties in coordinating titling as an inter-departmental commitment and, as a result, decelerates implementation and creates issues of multi-permitting. For instance, regarding the titling of housing land, a local land administration department complained,

Some regional and town governments do not attach importance to this work, and believe the titling and issuance of permits for rural housing land is just a matter of the Ministry of Land and Resources alone. (Haikou Municipality 2011)

Other government agencies also wrote to the National People’s Congress:

The province (. . .) has issued forest permits, but the greater part of forest has been occupied by individuals, townships, village collective economic organizations and local governments which, in some cases, have also been issued land permits (. . .). The Land Administration Law should bring the forest and land permits in line with each other. (proposal to the NPC, in Heilongjiang Forestry Bureau 1998:352).

To facilitate “unified land administration,” the State Land Administration was promoted to ministerial level in 1998, while the Ministry of Forestry was denigrated to the State Bureau of Forestry. This facilitated the advancement of the new Ministry of Land Resources to be able to exercise

(since 2013, merged with the Ministry of Land and Resources). Water resources are state-owned and fall under the Ministry of Water Resources, although there is contention whether underground water should fall under the Ministry of Land and Resources.

³⁸ Two units within the Ministry of Agriculture – the Grassland Section (*caoyuanchu*) and the Grassland Monitoring Station (*caoyuanjianlizhan*) – are (respectively) responsible for grassland law and policy-making as well as the enforcement of policies and laws.

Table 1.2 *Jurisdiction, lease term, and legal basis for titling*

	Type of property right	MLR	MoA	SBF	MOHURD	MOCA	MWR	Work-unit /collective	
Ownership of land	Ownership of collectively owned rural land	X ^I							
	Ownership of state-owned rural and urban land							Need not be registered by law ^{II}	
Use right of land	Use right to collectively owned land	Use rights of collectively owned agricultural land (lease rights, i.e. Household Contract System); lease term 30 years*		X ^{III}					
		Use rights of collectively owned grassland, forest, and wasteland; lease term 30 years*		?	?				
	Use rights of collectively owned rural construction land (housing), lease term: lifelong	X ^{III}							
	Use right to state-owned land	Use rights of urban housing and construction land (land used by national units/ministries separately titled); lease terms, see Table 5.1.	X ^{III}						
		Use rights of rural infrastructural land; expropriated for roads, railways, bridges, etc.	X ^I						
		Use rights of state-owned grassland (includes use for mining, military purposes, etc.); lease term 30–50 years**	X ^A	X ^A					
	Use rights of state-owned forest (includes use for mining, military purposes, etc.); lease term 30–70 years**	X ^B		X ^B					
Use rights of state-owned wasteland (includes mining, military purposes. Rights to riverbanks and riparian rights not legally determined); lease term undefined		?	?						
Ownership of real estate	Ownership rights of rural real estate ownership rights of urban real estate	X ^I				X ^C			
Use right of real estate	Use rights of rural housing use rights of urban real estate	?						? ?	
Others' rights	Determination of provincial-level boundaries					X ^α			
	Ownership and use of fisheries and beaches		X ^β						
	Ownership and use of oceans/seas within national territories	X ^γ							
	Ownership and use of water resources	?				X ^δ			
	Ownership and use of mineral resources	X ^ε							

I 2004 Revised Land Administration Law, Articles 11, 12, and 13

II Not listed in law, see Hu (1998:12)

III 2002 Rural Land Contracting Law, Article 23

A 2002 Revised Grassland Law, Article 11

B 1998 Revised Forest Law, Article 3

C 2007 Revised Urban Real Estate Administration Law, Chapter 5

^α 2002 Regulations for Management of Boundaries of Administrative Regions (*xingzheng qiyu jiexian guanli tiaoli*), State Council Decree 353, 23 May, Article 3

^β 2013 Revised Fishery Law, Article 11

^γ 2001 Oceanic Use and Administration Law, Articles 6, 19, and 32 (formerly registered by State Oceanic Administration, since 2013 absorbed by Ministry of Land and Resources)

^δ 2002 Water Law, Articles 2 and 3. However, according to Ma (2007), underground water resources are encompassed under the jurisdiction of the Ministry of Land and Resources

^ε 1996 Mineral Resources Law, Article 12

* 2004 Revised Land Administration Law, Article 14

** 2002 Rural Land Contracting Law, Article 20 (law is unclear whether the terms for forest and grassland lease also apply to collective land)

Source: Drawn by author. Note that the symbol “?” denotes that there is confusion over the task division on titling.

national authority over land, as it had been legally designated. Otherwise stated, it could better counterbalance the authority of the Ministry of Agriculture (which primarily controlled rural land)³⁹ and the former Ministry of Construction (which controlled urban housing). Interestingly, the Ministry of Construction was renamed the Ministry of Housing and Urban-Rural Development in 2008, which consequently expanded its authority to rural areas.

4.2.2 Tiling Rural Lease This sub-section deals separately with the tiling of the agricultural land lease right or contract right (*chengbaoquan*). The term “contract right” is derived from the agricultural lease system, officially referred to as the Household Contract Responsibility System (*jiating chengbao zerenzhi*). The contract right can be best defined as a land lease, a relationship between the rural collective (landlord or lessor) and a farm household (tenant or lessee). There is considerable confusion about the legal nature of the “contract right” and what it does or does not include. It is important to understand the difference between a “personal right” (*jus in personam* or *zhaiquan* in Chinese) versus a “real right” (*jus in rem* or *wuquan*). The latter is a right between a person and a property (the “*res*”) and is enforceable against any other person, such as in the case of ownership. The former, however, is a right between persons, and can only be enforced against another person. Strictly legally speaking, the agricultural land lease right is a personal right, as it is concluded between the rural collective (represented by the village head) and the farm household (conventionally represented by the husband). The agricultural lease system was also later applied to other land resources such as forests, grasslands, and wastelands (see Chapter 7, Section 3.2).

Despite extensive effort by the Ministry of Agriculture to establish a national registry of agricultural lease contracts, the initiative has been mostly in vain. The agricultural lease system or Household Contract Responsibility System has played a major role in China’s development. In the late 1970s, it emerged as a local institutional innovation in reaction to the failure of centrally planned production under the People’s Communes.⁴⁰ It soon led to the institutional dissolution of the communes. At this time, the lease was terminated between the collective and farmers with simple, hand-written contracts that lacked fundamental

³⁹ More specifically, land for agricultural purposes, rural housing land, rural construction land, and grassland, but not forest (for which the State Bureau of Forestry is responsible).

⁴⁰ The current agricultural lease system began as a local experiment by the Xiaogang Village, Fengyang County, in Anhui Province in 1976. However, at that time, there were various contracts in which rights over land and agricultural operation such as contracting output to

terms, such as an unambiguous description of rights and duties of the lessor and lessee.⁴¹ Additionally, the contracts were not issued to individual households but, instead, as single contracts to all villagers or, if there *were* individual contracts, uniformly retained by the village.⁴² Initially, the central government established the lease period at five years, subsequently extended this to fifteen years in 1984, and finally set it at a total of thirty years in 1993 (Cheng and Tsang 1995:44).⁴³ This meant that most contracts expired around 1999.⁴⁴

The nationwide campaign to renew the agricultural leases has become known as the 1998 "Second Round of Lease" (*di er lun chengbao*) – the first round being the official launch of the Household Contract Responsibility System in the mid 1980s. During that time, the Ministry of Agriculture attempted to formalize the contracts and called for the issuance of individual, standardized, and notarized contracts. However, despite the endeavor, many contracts were never issued, only partially completed, or left entirely blank (e.g., empty grid maps, empty tables clarifying quality/quantity of leased land, no boundary description).⁴⁵ Furthermore, changing customs in order to issue single contracts to an entire village or to prevent local cadres from keeping an entire village's contracts proved laborious.⁴⁶ In total, the number of contracts issued was minimal. Many years after the Second Round of Lease, surveys ascertained that fewer than half of the farmers had received a contract (e.g., Prosterman et al. 2009:21; Ho 2008:221).⁴⁷ Finally, the information in the government-issued contracts is quickly

the household (*bao chan dao hu*) and contracting labor to the household (*bao gan dao hu*) were returned to the farm household. The Xiaogang model, which later became the national model, advocated contracting both output and labor to the household (*da bao gan*). Many of these lease forms originated in the mountainous regions of provinces such as Anhui, Sichuan, Shanxi, and Zhejiang (see, e.g., Chen 2002).

⁴¹ As indicated in Section 4.1.1 (on collective land ownership), in most cases, the administrative village and not the original owner (i.e., the natural village) acted as the lessee.

⁴² As was also the case with the lease in the Xiaogang Village, see the photo of the original contract at www.china.org.cn/china/features/content_11778487_2.htm (accessed on June 2012). See also the photo in Appendix J (Ho 2005:246).

⁴³ The 30 years' lease term was later included in the 1998 Revised Land Administration Law, Article 14.

⁴⁴ There were regional variations in the lease at the initiation in which, as a result, the date of expiration also varied.

⁴⁵ This was also the case for land ownership contracts; see Appendices C and D in (Ho 2005:212–225).

⁴⁶ The same local custom also affected the efforts of the Ministry of Land and Resources to title collective land ownership. As a notice warned, "Land permits must be issued to the hands of the rights holder; it is strictly prohibited to withhold these under the pretext of a uniform administration" (Ministry of Land and Resources et al. 2011).

⁴⁷ The survey by Prosterman et al. (2009) is based on 1,773 households in 17 provinces; the survey by Ho was conducted among 1,140 farm households in 24 provinces and autonomous regions.

rendered obsolete, as changes are often not recorded or are registered informally.⁴⁸

In a renewed endeavor, the central government requested the completion of the titling of agricultural land lease before 2018 (CCP Central Committee and State Council 2013:6). The period 2013–2015 would be used to begin a national pilot – initiated in 105 counties, cities, and districts while, during the ensuing years, the titling would be introduced nationwide (Tuliuwang 2015).⁴⁹ An important feature of the pilot is its concerted effort to attempt collaboration between concerned ministries and departments. Chaired by the Ministry of Agriculture, a joint leading work team amalgamated five other state agencies, i.e., the Ministry of Finance, the Ministry of Land and Resources, the CCP Agricultural Office, the State Council Legal Affairs Office, and the State Archives (National Leading Work Team 2013). As the national pilot progressed, numerous problems in the titling of the agricultural lease have been reported (Lin 2015b).⁵⁰ These have also been ironically described as

Plots without a title; titles without a plot; a plot with multiple titles; a title with multiple plots, no plots or titles (*you di wuzheng, youzheng wu di, yi di duozheng, yizheng duodi, wu di wuzheng*). (Lin, 2015b)

Three broad categories of issues can be identified, as discussed below:

- 1) **Differences between the actual and the registered area.** These differences are caused by, among other things: i) illegal conversion of cropland into construction land by the rural collective, commonly done for real estate development; ii) double measuring standards to account for differences in land quality so that, for instance, one *mu* of high-quality land would indeed be recorded as one *mu* instead of 2–3 *mu* of inferior-quality land (Wang et al. 2015; He 2015); iii) under-reporting to avoid taxes in which the unit of measurement, the “official *mu*” (or *biaozhun mu*, equal to 1/15 hectare), could amount to several times of the “actual *mu*” (or *shiji mu*); iv) inability to link the individual tenant to a physical plot, as an entire village’s land holdings have been turned into shares or become part of a shareholding company (Lin 2015a); v) inaccurate surveying and mapping due to less technology during the Second Round of Lease (Hao 2015); and vi) unequal land distribution due to clientelism and favoritism, in which households of

⁴⁸ Villages generally retain an informal land record for their own purposes.

⁴⁹ A detailed list of the pilot sites is included as an appendix in the government notice (National Leading Work Team 2013). A list of the titling targets per province and year is included in Zhongguo Chanye Xinxiwang (2014).

⁵⁰ Generally, the township government is responsible for coordinating and conducting the actual titling work. In this regard, a report on titling problems by an official from Zhouzhai Township in Anhui Province is informational (Sun 2015).

equal size (but with better *guanxi*, or personal relations) have been distributed more land than others.⁵¹ To avoid conflict, the original size of the household is often maintained in the official records, with an obvious disadvantage being that the new titling is still inaccurate. Differences between the actual and the formally titled area often create a dilemma for land surveyors: if such plots are titled, it legalizes illegal behavior; if they are not titled, they remain a continuous source for disputes.

- 2) ***Existing land disputes.*** There is a wide range of causes that lead to conflicts over contract land. One major cause relates to farmers who (formally or informally) relinquished their contract rights. This generally occurred during the Second Round of Lease, when agriculture was still being taxed, making work in other sectors (e.g., in construction, transportation, manufacturing, or services) substantially more profitable. Relinquished contract land was repossessed by the collective and reallocated. However, during economic downturns, many farmers often returned to their home villages (Huang et al. 2011) and requested the reinstatement of contract rights. This trend was significantly amplified after the abolition of the agricultural tax in 2006 and its replacement with subsidies (Wang et al. 2015) coupled with a decrease in the demand for low-skilled labor (Zhang et al. 2011). A second cause for disputes is related to demographic changes. In various localities, the collective ceased the “small land readjustments” after the Second Round of Lease. However, currently, a number of farm households have increased in size due to birth and marriage, while others have decreased due to migration and deaths. As contract land is being reregistered, households in the former group are more strongly voicing demands to be distributed more land (see, e.g., Lin 2015a). A third cause of land disputes results from contract land that has been informally subleased to third parties. For various reasons, the subtenant is reluctant to surrender the land and return it to the original tenant. A final cause concerns the use of land resources other than cropland which, in many cases, have not been formally contracted to individual farmers, such as a) wasteland and barren hills; b) orchards, fisheries, and ponds; and c) ridges, ditches, and roads converted to cropland following land consolidation (Wang et al. 2015).
- 3) ***Costs and quality of titling, and tenure insecurity.*** The costs for titling have been estimated by the central government to be 35 RMB per mu. Under the explicit prohibition to impose any costs for the

⁵¹ Interview GPB16012015, Professor, China Agricultural University.

titling onto farmers, the central government provides a subsidy of 10 RMB per mu, with the remaining costs to be borne by the local government (Lin 2015a). However, there have been complaints about inadequate financial means for the titling.⁵² Others have also cautioned about the quality of the titling. The pressure of the stringent five-year deadline by the end of 2018 of which a total of 330 million mu of cropland in 195,000 villages dispersed over 1,988 counties must be completed (Lin 2015a) might not aid in safeguarding the quality and accuracy of the titling work. As a Deputy Director-General of the Beijing Municipality Rural Affairs Commission noted:

It is said that titling will be finished by 2018, and it will be finished by that time. Yet, how it will be titled and what the quality of it will be, nobody knows. (Interview LCG17112014)

Finally, although titling is performed for the reason of tenure security, it contradictorily leads to renewed conflict, redistribution, and insecurity. A certain portion of the rural populace believes that there could possibly be too much at stake if the state decides to extend the lease *automatically* with another 30, 50, or even 70 years. If the extension occurs on the basis of the current registration, it would be critical to renegotiate the contract now. This is especially the case for land-scarce farm households or those whose household has grown due to birth or marriage. As a result, conflicts that were dormant have been rekindled due to the titling (He 2015). Another group (e.g., those with sufficient land resources) is not supportive of the titling, as they can see it leads to renewed land distribution. Moreover, for this group, it might also not be advantageous due to uncertainty over the terms of the existing lease.⁵³ The Second Round of Lease will expire in 2028, which could possibly herald another sequence of negotiations and disputes in the forthcoming 10–12 years. National laws and regulations are silent on the issue, while the latest proclamation only mentions that agricultural contract rights should “remain unchanged for a long time.” Yet it fails to mention what a “long time” means or what the conditions will be for an extension beyond 2028 (CCP Central Committee and State Council 2014:4). These types of circumstances incite questions of what actual benefits the farmer might reap from formal registration of the agricultural land lease.

⁵² Interview DZXB15052014, Professor, Chinese Academy of Social Sciences.

⁵³ Interview ZXST, 11/12/2015, Member, National People’s Congress Rural Work Committee.

4.3 *Land versus Real Estate*

The third parameter of importance in the dynamics of and bargaining over land titling is the separate registration of real estate and land. Whereas the ownership of urban real estate is registered by the Ministry of Housing and Urban Rural Development (MoHURD), ownership of rural construction land and use rights of urban land are registered by the Ministry of Land and Resources (see also Table 1.2).

4.3.1 *Rural Housing* The registration of ownership of rural housing is ambiguous. During the Maoist and early reform periods, farmers were allowed to own only one dwelling per household. The collective granted the households the use right to a plot of rural housing land (*zhaijidi*) which could be employed for private purposes without paying rent, i.e., a type of “rural social housing.” Registration was deemed unnecessary because the land belonged to the collective, and anyone within the cohesive village community was aware of who owned which house and on what land it was located (Zhang 2005). The principle of “one household, one house” (*yihu yizhai*) was codified in the 1998 Revised Land Administration Law (Article 62).

With the onset of reforms, farmers increasingly migrated to cities while the countryside urbanized. As a result, a legal anarchy emerged in which rural property reserved for private use was sold illegally to urban and foreign investors. As land had been acquired at no cost (from the collective), substantive profits could be accumulated, which attracted investors into the market. Additionally, farmers devised methods to increase the size of their property by securing more than one plot per household⁵⁴ or by defying local regulations and enlarging their property (by encroaching on their own farm land).⁵⁵ The housing sold in this manner has popularly become known as “Small Property Rights Housing” (*xiao chanquan fang*), i.e., without full ownership.

Another type of “Small Property Rights Housing” results from urban sprawl. Due to the significant demand for land within rapidly expanding cities, rural land was (and still is) illegally expropriated at below-market prices and developed for urban real estate. However, even though the use of certain land has shifted from agricultural land to urban construction land, its ownership remains, more often than not, as a rural collective

⁵⁴ For instance, this could be accomplished by making use of ambiguity concerning the entitlement to housing land by (unmarried) children or upon divorce (filed for economic reasons).

⁵⁵ Each province and locality stipulates specific norms regarding the area of rural housing land for use by each farm household.

ownership. This indicates that the newly developed real estate is illegally constructed on land that does not belong to the city and, in fact, was reserved for agriculture. This situation frequently occurs on the rural-urban fringe.⁵⁶

Over the previous years, clandestine yet lucrative markets for “Small Property Rights Housing” have flourished at the rural-urban frontier (see Chapter 6, Section 3.2.3). However, by spring 2012, the Ministry of Land and Resources had more forcefully regulated the sale of such informal housing. A first crucial, but exceedingly complicated, step in this national “clean-up” campaign was to ascertain how rural housing property is registered, if at all, and to subsequently determine the authority over its titling which, as is depicted in Table 1.2, is not an easy task (Ministry of Land and Resources 2012; Anonymous 2012).

4.3.2 Urban Housing As was previously indicated, state-owned land is not registered. As a consequence, ownership of urban land is also not registered. However, China does register ownership and use of urban housing and other built structures, though this is registered by different departments. The rural collective provided its members with social housing, and the urban work-unit (*danzwei*) did the same for its workers during the Maoist and early reform periods.⁵⁷ Since the housing reform in 1998, work-units began to sell the housing that had been built between the 1950s and 1980s to employees at below-market prices. Over the past decade, employees often resold this housing in order to buy new property that was developed by private (and state) real estate companies. At the same time, work-units themselves also engaged in the construction of new property.

Currently, work-units are still evident – and particularly, larger, state-run units, e.g., state companies, universities, and government departments that own and allocate housing (which makes up a significant component of an employee’s benefits package).⁵⁸ The main variance with the collectivist

⁵⁶ In Beijing, examples of this illegal real estate are Hongfuyuan, a well-known area of Small Property Rights Housing located in the Changping District, as well as Shigezhuang or Baigexin Village.

⁵⁷ In Chinese, this is indicated as the policy of housing allocation (*fen fang*) by the work-unit. In addition to housing, the work-units also provided a wide range of other services including pension, disability, health insurance, and sometimes education (through schools operated by the work-unit).

⁵⁸ Major academic institutions such as the universities of Tsinghua and Peking own substantive property assets for staff. For instance, the expensive Weibohao compound in the Haidian district has an entire block designated for Peking University staff, while Tsinghua University acquired new land for property development through the expropriation in 1997 of 300 mu of land from the Dashiqiao Village of the former Xiyuan Production Brigade in Haidian District. State ministries also own property such as

past is that housing is no longer provided at no charge but, instead, long-term, non-marketable use rights are purchased. Thus, the use right cannot be sold but can be inherited. However, the term of use is uncertain, and it is also unclear whether it can be inherited by third-generation descendants, as that situation has not yet occurred. It is significant to distinguish between privately owned real estate and housing provided by work-units because *ownership* to the former is registered by the Ministry of Housing and Urban-Rural Development, whereas the non-marketable, long-term *use right* to the latter is registered by the work-unit.⁵⁹

5 Dashed State Intentions of Institutional Engineering: Concluding Observations

The initial national rules regarding registration were enacted in 1922. However, the Chinese state's endeavors for institutional change through titling have never materialized. This implies that the recent phenomenal growth in land and real estate has occurred in the absence of legally protected and secure property rights. In spite of elevated political urgency and support by the CCP Central Committee, it does not appear as though China's grand engineering project of titling can be completed soon. This chapter has demonstrated that institutional change of titling involves actors who are bargaining over three sources of conflict. These relate to the ambiguous nature of collective and state ownership, the divided and conflicting authority over land policy, and, lastly, the divided administration of land and real estate. In this aspect, it was posited that the completion of a cadaster is the final result of development rather than its precondition. As demonstrated in the following chapter, this hypothesis stands in stark contrast with neo-liberally inspired theories of development (e.g., De Soto 2000; Ellickson 2012; Palomar 2002; Micelli et al. 2000).

Stein (2012:4) described Chinese real estate and land development as a situation in which “[r]eal estate developers are building award-winning office towers, modern shopping malls, and five-star hotels, and tens of millions of urban families are scraping together the money to buy their own apartments.” China's rapid urbanization has also

Building 7 at Zhongguangcun South Avenue 22, which is partially owned by the Ministry of Agriculture and the Ministry of Science and Technology.

⁵⁹ There are various feasible situations. For instance, the work-unit sells the use right to an employee who subsequently obtains a permanent, inheritable but non-marketable use right. In this case, the transfer of use right is usually recorded by the work-unit. The work-unit can also sell ownership, in which case the deed transfer will be recorded by the Department for Housing under the Ministry of Housing and Urban-Rural Development.

concurrently stimulated increasing conflict over land and housing. For this reason, demands for legally protected property rights have reverted in full force, with many fearing that the acceleration of titling is too slow and that, hence, China could face socio-economic destabilization. Paradoxically, the central state's increasingly ambitious goals for titling – registration of all rural, collective land by 2018 (CCP Central Committee and State Council 2010:5) – has led to the establishment of “empty institutions,” as titles were issued only in name or not at all. In addition, titling itself has created conflict, forcing the state to continuously postpone and readjust its plans. As a Vice-Director of the influential Information Center of the Ministry of Land and Resources stated, “Once you start titling, conflicts that were dormant flare up again.”⁶⁰ This description might be particularly true for the titling of rural collective land and, in fact, explains why titling never fully proceeded to the original land owner, the natural village.

As perceived by the central state, the challenge for titling becomes one in which the government must mitigate illegal shifts in ownership, or it must deliver justice to forced expropriations with the risk of opening a Pandora's box of conflict. To many, this appears as a devilish dilemma. Some within the Ministry of Land and Resources have, therefore, championed leaving the titling of land voluntary. A high official stated,

The Ministry of Land and Resources favors voluntary titling: once land has been titled, it is legal, but conversely, when it has not been titled it is not necessarily illegal.⁶¹

Others, on the other hand, argue that specific circumstances should be identified under which titling should *not* occur:

When there are illegal land deals, titling should not proceed. Instead, the situation should be examined and explained in the work report at the end of the year. (Henan Provincial Land Administration 2009)

The dilemma of titling versus non-titling could be resolved in additional ways. For one, the state could register *without* legitimizing by introducing a “negative, causal system” of titling as, for instance, exists in the Netherlands. The *negative* nature of titling implies that registration is a precondition for ownership; yet, if one's property is registered, it does not automatically entail ownership. The *causal* nature of the system

⁶⁰ Interview LXBB27062013.

⁶¹ Literally: *bu dongchan dengji fa* (Zhao Long, oral communication, study visit on Dutch land registration and spatial planning hosted by ProLAND project, 2 October 2007). (Zhao Long was Vice Director General of Land Titling and is currently Vice Minister of Planning of the Ministry of Land and Resources.)

indicates that, if property has been appropriated illegally,⁶² the sale will be voided.⁶³ The negative, causal system of titling protects the *lawful* owner while still allowing maneuvering space for titling to continue.⁶⁴ Second, the state could codify the passage of time in order to solve conflict.⁶⁵ In this manner, a person can automatically become a landowner if no formal appeal is lodged during a period of 20 or 30 years, regardless of whether the property has been titled or not (Van Es 2011).

Some have wondered why China's land titling has been so difficult and why insecure, non-transparent, and informal property rights continue to persist. The first question has been explained by investigating the bargaining around institutions of which this chapter is but an example, albeit a crucial one, when land as means of production is addressed. In this perspective, the state is just one of many social actors that shape and negotiate institutions. It is worth mentioning that the state is no monolith but should be analytically divided into various actors that are sectionalized between ministries and agencies at different levels. As a result of bargaining, the state is not an external enforcer of institutions but exists as one of the participants in the "game." It implies that the state can have intentions but that these are shaped into something different or even completely unintended. This has been conceptualized in institutional theory as endogenous, spontaneously ordered development.

The second question is at the core of this monograph's debate, which maintains that, when institutions persist, they fulfill a function. In this context, it is postulated that the function of China's insecure, untitled, and legally unprotected property rights might lie in fostering development in all of its positive *and* negative dimensions. Both critical questions – on institutional function and on endogenous, spontaneously ordered development – will be discussed in subsequent chapters.

⁶² Appropriation is only legal when three conditions have been met: i) there is a title, i.e., there is an agreement to sell between the buyer and seller; ii) the seller is entitled to sell, i.e., he has not illegally obtained the property he is selling; and iii) there is an act of transfer, i.e., the property has changed hands from seller to buyer.

⁶³ However, this also indicates that the buyer incurs an increased risk of closing a deal that might be annulled if the property was illegally acquired. To compensate for this risk, an extra safeguard has been built into the Dutch system with the requirement that all rights and information of property must be examined by the notary prior to the sale.

⁶⁴ The Dutch negative, causal system of land titling was established and officially confirmed by a ruling of the Dutch Supreme Court 80 years following the introduction of the first Dutch Civil Code in 1838 (Leon Verstappen, oral communication, professor in Dutch Notary Law at the University of Groningen, 3 October 2007).

⁶⁵ Also known as the principle of acquisitive prescription ("verjaring," in Dutch).