



Three rights separation: China's proposed rural land rights reform and four types of local trials



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ABSTRACT

China's central government is promoting a new round of land reform in its rural areas, the core of which is the so-called 'three rights separation system'. In attempting to achieve the double goals of developing agriculture and maintaining the basic stability of rural society, central policy makers want to separate the original household right of contractual operation into a contractual right (right of disposal) and an operation right. When formally adopted, these two rights, combined with the village collective ownership, will constitute China's new structure of farmland rights. Many local governments are already using practical approaches involving the separation of the three rights, providing a valuable reference for its formalization in the future.

In this paper, we analyze four relevant existing approaches by case studies of four representative projects. The results show that, while all four have in different ways reached the goal of increased scale of farmland operations, all are facing different contradictions and conflicts among the collectives, local governments and farmers, due to different farmland interests, demands and endowment problems. In response, a new framework is developed involving three rights separation, entailing some new meanings. This involves the repositioning of the four leading players in the distribution of farmland rights – the state, collective, part-time farmers and professional farmers – in order to realize the free transfer, monetization and redistribution of farmland rights to meet the demands of all the parties involved. With this framework, collective ownership is limited to the management of the award and recovery of the contractual right instead of specific agricultural operations. The introduction of a *contractual right exit mechanism* encourages the contractual right to be sold back to the collective for awarding directly to the professional farmers. In this way, the transfer of the operation right to professional farmers is encouraged as far as possible to enable them to increase their operating area and agricultural income.

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1. Introduction

China's Household Contract Responsibility System (HCRS) was formally established nationwide in 1981, replacing the Maoist organization of the rural economy in which the farmers gave all their produce to the government for compensation in meeting production quotas. With the introduction of the HCRS, farmers could sell any surplus to the quota on the free market at unregulated prices, prompting a huge boost in productivity and farmers' income. Since then, however, low prices for agricultural produce together with the high-income potential of working in the city, has resulted in a massive exodus of farmers into urban areas, result-

ing in China's urbanization rate rising from 17.9% in 1978–54.8% in 2014¹; an average annual growth rate of approximately 1%. Considering China's vast population base, this means more than 10 million of the population migrating from rural to urban areas each year. Meanwhile, of the 749 million urban population estimated by the National Bureau of Statistics in 2014, 253 million are classed as "floating population". These are migrants who work in the city for most their time, but cannot enjoy the same welfare services as citizens with urban *hukou*² as they still have rural *hukou*. Due to the comparatively low income of farmers, they choose to be migrant workers leaving their farmland to be transferred to oth-

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¹ According to China Statistical Yearbook.

² A *hukou* is a record in the system of household registration required by law in mainland China. In 1958, the Chinese government officially promulgated the family register system to control the movement of people between urban and rural areas.

ers or just abandoned. China's land transfer rate reached 30.4% in 2014.³ The threat to China's food security has led to the need for changes in the rural land system to accelerate the transfer of agricultural land from the migrant workers to professional farmers, promote an appropriate scale of farmland operations and improve the efficiency of agriculture. Additionally, cities are as yet unable to provide adequate social security for all the floating population and the migrant workers' farmland still provides them with important social security. The problem, therefore, is how to stimulate agricultural efficiency while still ensuring the stability of society.

The practice of farmland transfer since the 1980s is regulated by such legislation as the Property Law, Land Administration Law and Rural Land Contract Law. According to the provisions of these laws, the right being transferred is the land contractual operation right. However, due to the period of land transfer being limited to the contract period, the transferred right is only the operation right, while the right to contract is not transferred out. That is, the farmers themselves are treating contracting and operation as separate.

The 2014 reform of three rights separation is substantially a process of legal discovery in formally legalizing the land transfer practice being used in many places over the past few decades. In clarifying that the farmland right that can be transferred is called farmland operation right, while the farmland contractual right (as well as its ownership) cannot be transferred, it calls for stabilizing the land contract right of farmers, releasing the right to operate the land and allowing farmers to use this operation right to finance mortgages from financial institutions. The proposal, therefore, constitutes a new and basic direction in the deepening reform of the rural land system in China, with the separation of the farmers' contract and operation rights, while still persisting in the doctrine of collective rural land ownership. In this way, policy makers hope to continue with the social security function of farmland by stabilizing the farmers' right to contract and deregulating the right of land operation to achieve better land use efficiency (Zhang and Zheng, 2015). According to its proponents, this separation of the three rights is regarded as constituting a "Pareto improvement" (Liu, 2015).

This paper aims to analyze and critique several different approaches that have been innovated and practiced by some local places in China over the years involving the separation of farmland operation transfer rights. In doing so, the aim is to engage in the debate over how this new policy can aid China in progressing toward the multiple and interwoven goals of developing agriculture, increasing rural incomes, protecting farmland and ensuring national food security levels. First, we examine the functions of the farmland in modern China and their relations with the three rights of ownership. Following this, four case studies are briefly introduced of different kinds of local approaches conducted by four cities in four provinces involving three rights separation. Next, a comparative analysis and evaluation is made of the four cases. Finally, concluding remarks discuss the likely prospects of this policy in addressing rural China's underlying economic issues and its potential for implementing throughout the country.

2. The land rights system and practice: an international perspective

The choice of land rights system has always been a hotly debated topic for human society and the definition and institutionalization of property rights in land have been an important issue for societies throughout history (Feder and Feeny, 1991). Land reform has

played, and continues to play, a central role in political economies, creating much disagreement between a variety of ideologies and political parties (Holden et al., 2013). The strongest motivator for land system reform in any time period is to produce a land system that can adapt to, and promote social advancement.

The history trend of property rights research has gradually shifted from being focused on collective communities to emphasizing individuals (Dewey, 1972). India, Russia, Germany and Mexico all have famous histories rooted in village communities, even if varying somewhat in their progress (Powell and Henry, 1972; Haxthausen, 1847; Georg Ludwig, 1854; Blum 1971). In a village community, land belonged to the village, with the arable land being allotted to the members or households of the community by more or less permanent arrangements and the waste or excess land remaining undivided.⁴ As time passed, the collective land system is facing decreasing popularity. The current common view is that the collective system is economically incompatible with individualistic cash-cropping because it discourages motivated investment and cannot provide security of tenure (Joralemon, 1983). The demand for increased specialization has been the most important force behind this shift (Demsetz, 2002).

A complete private land rights and good land transaction environment is regarded as an important condition by contemporary institutional economists to realizing the optimal allocation of rural land resources (Coase 1960; North 1990; Cheung 1969). People who are not secure in their property rights will not invest labor and other resources in the fertility and productivity of their agricultural land (Ubink et al., 2009). Nowadays, most countries in the world have a private land system by which rural land transactions can be made through the free sale or lease of rural land (El-Ghonemy, 1999). Free land transactions can promote the scale of land management. It is believed that land fragmentation has a significant detrimental effect on productivity and efficiency (Rahman and Rahman, 2009; Duke et al., 2004). However, scholars have a different understanding of the relationship between the scale of land management and its business performance. On one hand, large farms can help increase the input of the agricultural labor force and production materials to increase agricultural output. On the other hand, the land yield of small farms can be significantly higher due to their more intensive use of land and resource input per hectare than larger estates, although this decreases and tends to disappear in countries where holding fragmentation is very high (Cornia, 1985).

3. The functions of farmland in the Chinese context and their relation with the three separated rights

The economic theory of institutional change has long held that, when governments find the dividends of the existing system disappearing, they will institute top-down mandatory institutional reform in order to reverse the situation (Lin, 1989; North, 1990). The fluctuation of China's agricultural factor productivity correlates closely with changes in its agricultural policy (Mead, 2003). Specifically, after the implementation of the HCRS, the farmers' production enthusiasm was greatly liberated once they were allowed to enjoy the fruits of their own labors. These initial reforms triggered an unprecedented acceleration of agricultural growth in China (Brandt et al., 2002), but it was only in the first few years that the countryside experienced any real gains (Walker 2008). At the same time, the state-owned land transfer system accumulated a huge amount of land revenue for local governments to use for infrastructure construction on an unprecedented scale. However, the

³ According to Han Changbin, Minister of Agriculture in his report to Standing Committee of the National People's Congress. <http://news.sina.com.cn/o/2015-08-28/doc-ixhkaeq8783114.shtml>.

⁴ Village-community. (n.d.). Dictionary.com Unabridged. Retrieved February 08, 2016 from Dictionary.com website <http://dictionary.reference.com/browse/village-community>

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