



Collective land system in China: Congenital flaw or acquired irrational weakness?



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ABSTRACT

With the level of urbanization in China now exceeding 50%, its collective rural land system is under increasing pressure, creating conditions in which there is increasing conflict between the efficient use of land for agricultural purposes and its retention as security for the rural population. This paper first examines the fundamental nature of China's collective land system by analyzing the collectivization history of China, then provides a comprehensive appraisal of the strengths and weaknesses of the collective land system's role in history and the challenges it faces in modern times. The main changes needed for the current collective system are identified as (1) the establishment of a new transfer mechanism for potential collective construction land, (2) the completion of land rights verification and consolidation work, and (3) the endowment of villagers with more rights to enjoy the distribution of land incremental value. The paper's main contribution is to question the relevance of collective rural land system in contemporary China, where a shift is now taking place from one of pure economic development to one involving more social concerns, and propose potential viable amendments to integrate the need for both perspectives.

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1. Introduction

After the foundation of the People's Republic of China (PRC) in 1949, following millennia of feudalism, the new socialist regime gradually established a dual land ownership system within a planned economy, with rural land being owned by village collectives and urban land owned by the state. After the introduction of its *Reform and Opening-up* policy in 1978, in order to adapt to the requirements of market-oriented economic reform, a dual land rights' separation system was established by separating land use rights from land ownership. However, at the same time, legislation placed heavy restrictions on the use of rural collective land, limiting the villagers' use of the land. On one hand, in countries where the

land system is based on private ownership, such as the United States, Japan and the UK,¹ the land can be freely disposed of and sold at a trading price determined by the market. In contrast, according to China land management law, land belonging to rural collectives is restricted to solely agricultural use and cannot be sold in the land market. On the other hand, the land development rights transfer system that exists in Europe and the United States, such as Britain's "Urban and Rural Planning Act" in 1947, stipulates that the government should pay compensation to the land owners who are deprived of their land development rights – an issue of considerable discussion the literature (e.g., [McConnell, Kopits, & Walls, 2005](#); [Micelli, 2002](#); [Renard, 2000](#)). However, such a system is lacking in both legal support and practice in China. These restrictions make it impossible for the villagers to obtain land value-added income by land use conversion such as from agricultural use to real estate development. For such change of use to occur, the local government must first obtain the land from the rural collective – an expropriation process in which the government can make substantial financial revenues. This is a main reason for the land expropriation conflicts and local governments' excessive reliance on land-related finance in modern China ([Lin & Zhu, 2014](#)). It is felt

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¹ Although, in law, all British land belongs to the monarchy, landholders with the Right Wing Yip are actually the owners of the land. As long as they do not violate the law and land planning or infringe upon the rights of others, they can use and dispose of the land as freely as they wish.

by many that the current restrictions on rural land ownership rights are insufficiently well adapted to China's burgeoning socialist market economy, and calls for reform are becoming increasingly louder from both academic and political quarters.

Much of this concerns the suitability of the current collective land system for China's social and economic development; the extent to which uneven development in the Chinese countryside is attributed to the collective land system; and the kind of reforms needed in the future to promote land use efficiency and villager welfare. In this paper, we examine the kind of reforms that need to be made in the future based on a realistic rather than doctrinal position.

This paper provides a holistic analysis of China's collective land system that is lacking in existing studies. First, the literature review is done by revealing many criticisms of the land system. A historical material analysis follows of the formation process of the system. This suggests that the weaknesses of the system may have been intentionally designed by policymakers to serve China's planned economy at that time, and is therefore termed a "congenital flaw". Next, an historical appraisal is made of the role of the system, its increasingly irrational weakness and current operational difficulties, to identify the challenges faced in the current era. Final comments are provided concerning the reforms needed to bring about improvements to the system in the future.

2. Literature review

China's village collective is a political or ideological concept while ownership is a legal concept from Roman law that is concerned with private law affairs (Jacobs, 2006). Obtaining a theoretical basis for the combination of these two concepts (collective and ownership) has been attempted in many existing studies and theories.

As established in the socialist transformation period (1953–1956), rural land is owned by the community as formalized by the 'village collective' and, as each farmer in the local community is a member of the collective, (s)he is the owner in theory. However, an individual farmer's ownership rights cannot be exercised without being combined with other farmers in the collective. Even then, the collective cannot independently enjoy civil rights and assume civil obligations (Yang & Zhong, 2009) – this is the responsibility of the 'village committee'. At present, therefore, rural land is owned by the village collective but the exercise of its ownership rights is mainly by the village committee (Zhu, 2009). If the village committee fails to discharge its responsibilities, such as representing the collective members rights and interests when they are infringed, the collective members will not be able to enjoy the collective property (Hobhouse, 1913).

In practice, the will and behavior of the village committee is not legally bound by the will of the village collective (Gao, 2009), leaving the village collective without any form of retribution should its will not be satisfactorily pursued by the village committee. As Ho (2005) points out, uncertainty is a part of the system's operation and the fuzziness of China's system in rural land property rights is partly attributed to the central leadership intentionally leaving sufficient room for maneuver to cope with emergencies. For example, it is not possible to determine what level of collective units (natural village or villagers' group) hold real power over the land. This intentional fuzziness has become an excuse for local governments to seize the collective's land in order to promote land planning in the new era of *Reform and Opening-up*.

A similar restriction on the collective's rights is in its limited power and functions of land ownership. In civil law theory, the complete power and functions of ownership comprise four parts: possession, use, benefit and disposal, but are not fully enjoyed by

the collective land ownership. For example, the use of collective land is limited to agricultural production, peasant house construction, the establishment of township enterprises and other construction that is closely related to the collective. It cannot be used for real estate development or other projects potentially capable of generating enormous economic benefits (Xie, 2008). It also has limited disposal opportunities, because rural collective land can only be expropriated by the governments at its agricultural use value (Lee, 2007), which is generally far less than would be obtained by selling directly to developers (Li & Liu, 2011). Furthermore, Article 184 of the "property law" forbids raising capital by mortgaging collective land ownership, cultivated land, residential land, private plots of cropland and hilly land. On the other hand, as Shao (2007) observes, the enriched functions of individual farmer's land contract management rights after introduction of the *Reform and Opening-up* policy has effectively replaced the basic rights of China's rural collective land ownership by mere caretaker responsibilities.

Other comments on the collective land system mainly focus on how this kind of property rights system arrangement influences rural agricultural efficiency. Li, Rozelle, and Brandt (1998), for example, intimate that, under the current system, the collective enjoys the right to land ownership while the villagers enjoy land use rights for a fixed period. This kind of rural land rights arrangement is not stable. It leads to frequent land adjustment, thus reducing the villagers' long-term investment in the land (Li et al., 1998) and institutional constraints weaken land-related investment incentives (Lai, Peng, Li, & Lin, 2014). In contrast, though, Kung (2000) finds the frequency of land adjustment and villagers' land contract security to be positively correlated.

A great deal of literature is therefore focused on the weaknesses existing in China's collective land system, but with little consideration of their causes. This can be understood in terms of the historical development of collective land ownership as summarized in the next section.

3. Congenital flaw: re-thinking the nature of collective land ownership from an historical perspective

The collective land system in China began after the Land Reform Movement period in which the Communist Party and the state were preparing for socialist transformation. At the end of 1951, the Central Committee of the Communist Party (CCCP) of China issued a notice "Mutual aid and cooperation in agricultural production decisions (Draft)". This provided agricultural mutual aid and cooperation in the form of simple labor cooperation, mutual aid groups and agricultural producers' cooperatives. On 16 December 1953, the CCCP also released its "Decision of the Central Committee of the Communist Party of China on developing agricultural producers' co-operatives", requiring the developed agricultural production cooperatives to combine with the state-owned socialist economy in supply, production and marketing, to be gradually incorporated into the national economic plan.

On 9 November 1955, "The draft model charter of agricultural production cooperatives" provided the further development of agricultural production and cooperation, dividing it into primary and advanced stages during which the conversion of farmers' private land ownership to collective ownership increased more rapidly. In the primary stage, the document announced that

... we will phase out land compensation to commune members, and farmers' other means of production will gradually be transferred to be collectively owned, by purchase or other mutually beneficial ways until, finally, the cooperatives'

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