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Tracing Agricultural Land Transfer in China: Some Legal and Policy Issues

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Abstract: This paper traces the evolution of land tenure changes in contemporary China since 1949. The transfer of land from peasant households to family farms and commercial sized units is on a vast scale and forms one of the greatest land reforms we have ever seen. The agrarian question forms both the policy and academic context in which this legislative account of land transfer is assessed and raises the question of whether land assembly in China resembles previous agricultural transformation policy and processes in industrialized countries or to what extent it has special characteristics of its own. The security of land holding in rural China, established with the household responsibility system, is seen to mature slowly over three to four periods of adjustment, always protecting the rights of peasants while improving conditions for increasing land productivity, resulting in an extension of the two rights of peasant holdings to three rights in the new millennium. The introduction of a third right, a land management right which is transferable from peasants to outsiders, has enabled a huge land assembly movement affecting millions of small holdings. This process of land tenure restructuring raises such questions as the consequences of the capitalization of agriculture, peasant land dispossession, proletarianization, and the prospect of a future land market in rural China, all topics for further research.



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Keywords: the agrarian question; land transfer; peasant rights; legislative policy; village elites

1. Introduction

The agrarian question in China provides the broad context of our research within which the issue of land assembly, a central element in the “capitalization of agriculture,” forms the particular focus of this paper. The agrarian question is a broad term which has come to have many meanings [1]. Here it deals mainly with the long-standing issue of the dichotomy between small-scale and large-scale farms in any one spatial context and the transformation of the former, the peasant food system, through the penetration of capital to form a commercial food system. The changing relations between smallholders and commercial forms of agriculture and the transformation of the peasantry and peasant lands, either by policy or through the market, is the subject of many scholarly articles in a variety of contexts [2–5]. For China, Ye raises the question this way [6]:

The evolution of land and agriculture in China has been closely connected to the overall framework of the country's development paradigm and the associated governance politics, which have a strong focus on the pursuit of accumulation, industrialization, and modernization. It is worth considering whether agrarian capitalism has arisen in China or will peasant agriculture still persist.

In most cases, the scaling up of peasant land holdings to form commercial size holdings is the main purpose of government policy and intervention in land tenure issues [7]. In this

way, various legislative forms of land consolidation of microfundia¹ have been achieved in the past, whether by enclosure movements (UK), land reforms (Italy, Ethiopia, and Latin America), or farm enlargement and land bank programs (Canada). In the current period, the concentration of land through various forms of ‘land grabbing’ has become a dominant form of land consolidation and is largely the result of aggressive capital penetration by both the private and public sectors [8].

In the development context, land assembly is a common feature of the third stage of modernization [9] in which the attention of the developmental state partly shifts from urban to rural areas where the formation of commercial-scale modern farming creates a market for capital investments, farm inputs such as agro-chemicals and farm machinery as well as the products (especially seeds) of biotechnology and, in this way, contributes to the growth and maintenance of the agro-industrial and manufacturing sectors, generally located in cities. In China, land assembly, officially called land transfer, is facilitated in several ways for the purpose of modernizing agriculture and has been a trend adopted with increasing legislative pressure by the State’s central authorities. Provision of low-cost food and raw materials has consistently been favored as an essential supply element of the urban-industrial complex in advanced economies [10]. How to transform small-scale farming into modern agriculture, therefore, is at the heart of the agrarian question for most policy regimes [11].

In China, this appears to be no less the case. Having adopted an ambitious policy of urbanization in which 60% of the total population of over one billion people was expected to live in cities by 2020², the Chinese view of future agriculture is one of food security for the 650 million people who will purchase their food in cities whereas only 30 years ago the majority largely fed themselves in the countryside. This geographical shift in food security objectives from “village to city” is being managed strategically by state policy in which land assembly has become a key component. The acquisition of farmlands for urban development has increased the pressure on the diminishing amount of good land available for agriculture. The mainstream argument is that without large-scale units of production for food and fiber, the transition to a system of industrial food supply will be limited.³ This forms our interpretation of the basic narrative of the Chinese agricultural development policy which, in effect, is largely economic in purpose.

By tracing the evolution of agricultural land holding policy since 1949, with emphasis from the end of collectivization and opening up in the 1978–1982 period to the present, we can identify the uneven, but inexorable, shift towards capitalistic forms of farming in China [12]. Today, land assembly is at the core of the agricultural modernization process—it is considered the basic precondition of modern farming—which until recently in China had been restricted by both legal and traditional means. On 3 December 2020, China announced all impoverished counties in China had been lifted out of poverty, marking the completion of the national goal of poverty alleviation⁴. Although not the topic of this article, there is little doubt that land transfer contributed substantially to this achievement and forms an important subject for further research.

Our paper will first trace the basic steps and legislative acts that have formed the legal basis of the complex transition in land holding in China up to 2020. The implications of this immense land transformation process can then be contextualized by using the framework of the agrarian question, as defined, to consider questions for further research. As such, this article contributes a chronological pathway for Chinese and non-Chinese scholars to explore and debate the consequences of the evolution of land transfer in China.

¹ Microfundia (atomized small-holding landscape) is a term frequently used by FAO in its journal *Land Reform* (now defunct) to indicate the opposite to Latifundia (large estates).

² 2014 March, The General Council published the new urbanization state plan: the urban population was targeted to reach around 60% of total population by 2020.

³ http://nfb.mof.gov.cn/zhuantilanmu/zhongguonongyezonghekaifazazhi/201508/t20150813_1418050.html.

⁴ Xinhua News Agency, Beijing, November 23, Guizhou Province announced that the remaining 9 impoverished counties had withdrawn from the impoverished counties sequence. So far, all 832 impoverished counties in China have been lifted out of poverty.

2. Methods

In this paper, we use an in-depth literature review of both grey and published literature to trace the main features of land policy development from 1949 to the present, and especially to note the changes of policy to facilitate land transfer. In particular, we pay attention to the type of “Three-Right Separation Land Transfer,” ultimately identifying six problems of land transfer, especially those affecting the peasantry. The literature is drawn from different disciplines within social science with a focus on public policy and contributions from economics, sociology, and geography. The published Chinese literature consulted was selected by the two Chinese authors (specialists in law and public policy), primarily using the CNKI (China Knowledge Resource Integrated Database) to trace the policy and legal literature on the evolution of land transfer. Key words used to select secondary sources included land transfer, land policy, land reform, land law, and three rights separation. When available, details of the Chinese grey literature are included as footnotes. The published literature in English also provided some clear cases of land transfer in specific villages [13]. All cited published works are here referenced in English. This wide-ranging reference to international and Chinese scholarly work was selected and discussed among the three authors and items were rejected if they did not add to the public policy discourse on land transfer. Such a process illustrates the complex nature of land transfer management and the contested nature of the issues arising.

Other accounts of land transfer were gleaned verbally from associates who had undertaken village-level research since 2010 and had encountered land transfer as a notable event. Such accounts were in the narrative form and provided case-level evidence of the process and problems brought about by land transfer. Although these encounters were not selected systematically, their accumulation provided accounts of land transfer and attendant issues in most parts of the country and in many different land use environments. Over time these random accounts were assembled into a temporal structure and informally correlated with key policy changes. For example, a surge of land transfers was noted in several discussions that followed the passing of the policy of “accelerating the building of a new type of agricultural operation system” in 2013. In Nei Mongol, a study involving 12 villages and 360 interviews illustrated the process of land transfer to farmers from outside the area as well as among the villagers. This penetration of “replacement farmers” from outside the area of study was also noted in a doctoral thesis at Hong Kong Polytechnic. Another village project in Hubei Province reported by a colleague portrays the diminishing welfare of farmers affected by land transfer while another account in Yunnan Province reported the “liberating effects on peasants after land transfer.” These informal discussions with junior and senior colleagues occurred organically as opportunities arose and when it became clear that many village surveys and research undertakings took place amid land transfer events. Such accounts as well as many reports and documents contained descriptions of the contextual effects of land transfer. Overall, accounts from projects partially involving land transfer or with land transfer taking place in the background were gleaned from village-level research in the Provinces of Shandong, Sichuan, Shaanxi, Hebei, Hubei, Qinghai, Anhui, Henan, Yunnan, and Nei Mongol.

3. Land Tenure in China

China has a dual system of urban and rural land. In urban districts, land is owned by the State, while in rural and suburban areas, except where otherwise provided for by the State, land is collectively owned by peasants⁵. Rural land in China can be divided by its use into two major categories: agricultural and non-agricultural land. Agricultural land includes household contractual farmland and non-farmed agricultural land (reservoirs, wasteland, etc.). Non-agricultural land is mainly used for the residences of farm households and for village infrastructure.

⁵ Constitution of the People’s Republic of China (2018) Article 10 and Law of the People’s republic of China on Land Administration (2019) Article 9.

Currently, there are three basic types of land transfer [14]. There is property right transfer from village collectives to the State. According to the current law, this can be done by expropriation where the land is generally destined for construction or for uses in the public domain such as constructing public works or building roads, railways and forming government enterprises. The land is alienated from agriculture and the peasant loses access to the land, although with the compensation received, he/she may be able to farm other land by renting or some form of usufruct. The peasant can keep his house and his place in the village, but the direct link to the farmland is most often lost. Many such peasants relocate into townships and county towns to find non-farm jobs [15]. The experience with this approach is that the compensation offered by governments is often considered inadequate, but the recourse for legal appeal and adjustment is long and complex such that many peasants are not inclined to complain and are thus silenced [16,17].

The second type of land transfer is land contractual right transfer, which was common before the current trend of land transfer. This practice enabled the contractual right to be transferred to the village collective for management on a village scale. Such transfers were common in the cases of mass out-migration of farmers to urban locations (*nonmingong*). This constituted a form of land holding by the collective while able-bodied village members were away in cities.

The third type of land transfer is land management right transfer. This constitutes the main reason for the massive amount of land assembled into commercial units in the past few years, which, according to the law, should be transferred voluntarily, and the land must remain in agricultural use. Given that our interest in this paper is in the agrarian question, all these legal processes are of interest as they gradually dislodge the peasant from the land and allow land tenure to be reorganized on a national scale. However, it is the third process of the loss of land management right that affects the agrarian question directly as the land appropriated must be kept in agriculture and forms a larger land operating unit that can be capitalized and used for commercial forms of food and fiber production. This is the preferred route of the State. Such a process, in effect, is a land assembly process and requires the acquiescence of local government, as the collective, as well as the signed permission of individual peasants. By the end of 2015, 67.8% of contracted land in China had been transferred by this means.

From the perspective of the new private enterprise, it is not only the amount of land that is important, but the configuration of the assembled land to form a viable farming unit. In this sense, land assembly becomes an art of careful procedure and negotiation among different actors with a variety of tactics (sticks and carrots) to assist the process of collective agreement, as the case example in this article will illustrate. Therefore it is important to be able to trace the evolution of land tenure conditions in China as a reflection of the State's agricultural modernization policy and to note the shift from peasant land security to economic productivity.

4. Land Policy Development in China: 1949 to the Present

The gradual progress towards a land market in rural China is evident in the history of the land question from opening up (1980) to the current period (2020). In this section, we trace the gradual evolution of land policy which follows a trial-and-error practice mode of development, following a series of pilot tests. As elsewhere, the law tends to follow established practice and careful policy stages to enshrine new land regulations in the formal acts of State. In a single-party State with more than 618 million rural residents, it is inevitable that the governments at all levels are engaged in land policy and management with multiple degrees of application. However, although tracking the formulation and exercise of land policy over time and at multiple scales is complex, it is one of the few ways to untangle and comprehend the land question in China [18].

Some scholars argue that the formation of the land system in China should be divided into 3 phases, (1) peasant land ownership (1949–1952); (2) agricultural land under collective ownership (1953–1978); (3) and land under the household contract responsibility system

(1979–present). Other scholars argue that the process should be divided into 4 phases, the first being the land reform period (1949–1952), the change from feudal (landlord) land ownership to private peasant ownership; the second is to primary co-operatives (1953–1955), peasant ownership with a collective unified management system; the third was senior clubs and Communes (1956–1978), characterized as collective ownership with a unified management system of the land; the fourth is the late 1970s and early 1980s, with the implementation of the household contract responsibility system (HRS) and the abolition of the people’s commune system. Others classify more phases during the period from 1979–2000, for example, 1979–1983, the establishment of collective ownership with HRS, the second, 1984–1992, extending the period of contract to 15 years, the third from 1993 to the present, the term again being extended from 15 to 30 years which gave Chinese peasants more security [19–22]. Here we divide the 70 plus year time span into 4 phases according to major changes in farmers’ rights in rural land.

Phase 1, Peasants’ Private Land Ownership (1949 to 1952)

Before 1949, land ownership by private landlords existed and land transactions were quite frequent. A household’s wealth directly correlated with the amount of land it possessed. After the founding of the People’s Republic of China, Mao Zedong in 1950 published the Land Reform Law which stipulated that the basic goal of land reform was “to eliminate feudal, exploitative land ownership by landlords and implement peasant land ownership, so as to free the rural labor force, develop agricultural production, and open the way for the industrialization of New China.”⁶ China’s rapid advance in terms of land holding was termed “land to the tiller.”

The land reform (*TuGai*) movement enabled the government to confiscate the large holdings of landlords to reduce social inequality and distributed land rights to households on an egalitarian basis. By the end of 1952, with the exception of ethnic minorities in Tibet and remote areas, land reform in the countryside was complete. Feudal land ownership was eliminated, agricultural productivity improved, the worker-peasant alliance was further consolidated, and the conditions for the restoration and development of a national economy were created.

The land reform movement took place within a legal framework and was top-down from the central government. Land reform in this period was characterized as one type of private ownership from landlord to peasants. The law protected farmers as having full ownership of the land. The Land Reform Law Article 1 provides: “recognition of all landowners to operate freely, sale and leasing of their land rights.” But some scholars argue that this ownership was not private ownership, but a kind of ownership that belongs to the class of peasants [23].

The economic and social effects of land reform in this period are mostly positive: increased rural productivity; the promotion of China’s industrialization process and the mitigation of social unrest. Land reform respected the wishes of peasants [24] and gave a strong impetus to the historical process of China’s modernization. The negative impact was that the land parcels were too small and fragmented to allow large-scale production and agricultural modernization. More importantly, the macro-political and economic situation in this land property rights system did not meet the industrial development needs of New China. In effect, the agrarian question at this stage had become at least in part an Industrial Question.

Phase 2, From Peasant private land ownership to rural collective ownership (1953–1978)

From the spring of 1953, China began a top to bottom, government-led rural cooperative movement, following the footsteps of the Soviet Union, and started the collectivization

⁶ Land Reform Law of People’s Republic of China (1950), Article 1.

of all farming. The constitution, adopted in 1954, still recognized the private ownership of land⁷. However, the ownership and management functions began to be separated.

In 1956, the model regulations on the advanced Agricultural Producer Cooperatives were adopted. The policy required peasants to surrender land to collectives, and private ownership of land became “illegal”. This was the first official document stating the notion of collectively owned land. This kind of collective ownership has no clear place in law; for example, who can represent the collective is vague and remains so to this day. At this stage, ownership and use rights were unified by the cooperative team. In the advanced cooperative stage, farmers had no rights to quit the community, which according to Lin (1994) was the reason for reduced productivity and low labor enthusiasm.

By 1958, all land was either state (urban) or collectively (rural) owned. This dual type of land ownership structure remains to the present. In 1959, China began to implement the people’s commune system with a “three levels owned with production team based” (*sanjisuoyou, duiweijichu*)⁸ system in rural areas. Residential land belonged to the production team collective and was not allowed to be leased or sold. In this period, agricultural production plummeted, contributing to famines in which 15 to 30 million people died between 1958 and 1962⁹. Modest reforms, beginning in 1962, ratcheted back the production unit from the communes to village teams and restored private plots. Production then began a long, slow recovery.

This movement was implemented to achieve the industrialization of the country by taxing agricultural surpluses for the development of industry. Through people’s collective organization at the commune level, the state was able to acquire the agricultural surplus of farmers conveniently.

Phase 3, HRS (Household Responsibility System), and the Two Rights separation period established (1978–2012)

The rural reforms that began in 1978 from bottom to top opened a new era of public ownership and private management of rural land in China. On 1 September 1980, the Central Committee of the CPC printed and distributed “Issues Concerning Further Strengthening and Perfecting the Agricultural Production Responsibility System”, which promoted the rapid development of the Household Responsibility System (HRS) in rural areas across all of China. The HRS later developed into the household contract management system. Under the HRS, land ownership and use rights in land were separated: land was owned by the collective (the village), while operating rights on individual pieces of land were given to individual peasant households.

As the household responsibility system became an accepted form of agricultural land tenure in the early 1980s, the State formally approved peasant rights to rural land in 1986 by stipulating that all peasants have had the right to undertake rural land contracts based upon family membership pursuant to the General Principles of the Civil Law. The HRS stimulated great increases in output and productivity. This success prompted a recommendation to renew contracts for an additional 30 years upon expiration of the original 15-year leases in the late 1990s. Both were codified in the 1998 Land Management Law (LML), which required that peasants receive written 30-year land use contracts. In 2002, a specific law governing rural land contracts granted peasants inheritance rights to their land and the ability to exchange land with one another, to sub-rent, to pool land, and to mortgage it for credit. The land contract had an extendable term of at least 30 years and could not be suspended without bilateral agreement. This was a huge step towards the mobility of rural land. The “Property Law,” promulgated in 2007, explicitly recognized the right to contracted land management as a usufructuary right. In this period the ownership did not change; land in rural areas was still owned by the peasants’ collective, as established in the

⁷ Constitution of People’s Republic of China (1954), Art.8. The state shall protect farmers’ land ownership and other productive assets in accordance with the law.

⁸ The means of production were owned on three levels and the production team was taken as the basic account unit.

⁹ Grain payments to the Soviet Union also contributed to the chronic shortage of food.

1982 constitution¹⁰, while the contractual management right could be separated from the collective and given to the individual household.

Although rural households have held individual rights to use the land since the 1980s, and although they became more secure and long term, these rights were not complete. In the first stage, the right could not be transferred or leased, until the LML was modified in 1988 to allow households to lease out their land. The right of land use could be transferred according to law. In 2005, the Ministry of Agriculture published Measures for the Administration of Circulation of Rural Land Contracted Management Right, which provided detailed regulations on the transfer of the contracted management right.

In all, the Household Responsibility System separated two rights on rural land, that the rural land property right is still owned by the collective to ensure public ownership, while the contractual management right is held by the farm household. This was a bottom-up movement, and the central government approved the local practice later and made it law. At that time, land played an important role as a social security net, a safeguard, and the land was distributed on an equity basis instead of efficiency and there were still strong restrictions on the transfer of rural land [25]. The HRS system encouraged the productivity of farmers and boosted the agricultural economy. However, for economists and agronomists alike, the land holding system was considered too small and fragmented, and thus not suitable for modern industrial agriculture and the scale economy.

Phase 4, The Three-Rights separation period (2013–present)

The Third Plenary Session of the 18th Central Committee of the CPC was held in November 2013. At that meeting, the central government initiated the policy of “Accelerating the building of a new type of agricultural operation system.” The document’s paragraph 20 provides that:

On the premise of upholding and improving the system for providing the strictest protection for farmland, we will endow farmers with the rights to land tenure, land use, land revenue, land transfer and mortgage and guarantee of contracted land use, and allow farmers to develop industrialized operation of agriculture by becoming shareholders using their contractual right. We will “encourage the transfer of contracted land-use right to big, specialized operators, family farms, farmers’ cooperatives, and agricultural enterprises, so as to develop large-scale agricultural operations in diverse forms . . . We will encourage and guide industrial and commercial capital to invest in rural areas to develop modern planting and breeding industries suited for commercialized management and introduce modern factors of production and operation models into agriculture.

This is the first time in a central policy that farmers are encouraged to transfer their land management rights while keeping the contractual right. The collective still has the property right, farmers have the contractual right and, in addition, farmers are now allowed to transfer their land use right—the management right—to others, including private enterprises. The Central Committee’s Document No. 1 for 2014, paragraph 17, confirms the three-rights separation policy. Under the premise of maintaining the stability of the HRS system and strict arable land protection, it entitles farmers to possess, use, transfer, and mortgage the use of contracted land. In 2014, the central government issued an opinion on how to guide the transfer of rural land management rights. In 2015, the central bank and some ministries together published the interim measures on the mortgage trial center and the NPC standing commission entitled 232 counties to establish management right mortgage centers. In November 2015, the State Council Comprehensive Implementation Plan also affirmed this policy. The Minister of the Department of Agriculture published a paper about “three rights separation as a great innovation in China’s rural reform” [26]. This is the reform from two rights separation of collectively owned land, where farmers

¹⁰ Constitution of People’s Republic of China (1982) Article 10: Land in the cities is owned by the state. Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law; housing sites and privately farmed plots of cropland and hilly areas are also owned by collectives (in most cases the village). The state may, in the public interest, requisition land for its use in accordance with the law. No organization or individual may appropriate, trade, rent or otherwise engage in the transfer of land by unlawful means. The rights to the use of land may be transferred according to law. All organizations and individuals using land must ensure its rational use.

were entitled to contractual management rights, to a three-rights separation system, “still collective owned, farmers entitled contractual right, but with diversified operation.” In July 2016, the Department of Agriculture published a trial regulation on the rural land operation right transfer market.

In the new land reform from 2013, the bundle of household contractual management rights was separated into a contractual right and a management right. The reform impetus is from both the bottom up and the top down. At the local level, there are many farmers who move to the town or city to become migrant workers. For these people, agricultural income is just part of their gross income and farming is now only a diminishing part of their livelihood. They prefer to lease their land out to other farmers or leave it barren, but still keep the contractual land right as a safeguard, especially after the abolition of the farm tax in 2006. From the base level, this process first results in small-scale transfer and normally takes the form of farmers renting their land management right back to the collective and letting the collective rent it out to others (“*fan zudaobao*”). That is now the common practice of the three-rights separation. From the state level, this process meets the economic development requirements of a scale economy and appropriate land use according to the State and its interpretation of the agrarian question. The central government encourages diversified operation of rural land to meet the goal of food security. Under these two narratives, the three-rights separation policy came out, leading to massive transfers of farmland.

Apart from “*fan zudaobao*” practice, there are at least three other modes of three-rights separation land transfer:

1. Rural Land Share-holding System. The share-holding system facilitates the scale economy through land assembly. The official authority, the Land Resources Ministry, encourages this mode which permits companies to let farmers have a share of the collective economy, the share being calculated by the size of contracted land transferred. The share-holding reform facilitates the process of land accumulation. However, there is no clear or uniform legal protection of this practice. It cannot strictly follow the regulation governing private companies, since bankruptcy cannot occur. For example, in Chengdu, each county formed a transfer service center and, in 2008, they set up a platform for land transfer. Land was calculated as shares and given back to the collective to be managed as one unit.

2. Exchange system. Jiaying in Zhejiang Province followed this mode. It initiated the “*Liang fen Liang huan*,” two types of separate rights, that is residence land and contractual land. Contractual land could be exchanged for shares to boost the scale economy, residential land could be exchanged for money or a house in an urban center [27].

3. Land Trust Center. The Land Trust program was trialed in Anhui Province. The contract holders could consign in trust the contracted land to the center, and the center would manage it professionally with hired expertise, and a flow of capital. The benefits would be shared with the contract holders. For example, in October 2013, CITIC Trust Center cooperated with Suzhou Yongqiao District government to form the contracted land trust program No. 1301. The pharmaceutical corporation Bayer started collaboration with the CITIC Trust in February 2014 for innovation and development of modern agricultural technology based on the formation of land transfer and assembly¹¹. The collaboration aimed to introduce financial services via the CITIC Trust, together with technology and innovation through crop science applied to Chinese agriculture, leveraging the rich experience and expertise of the two parties. Three rights separation would make the contractual right and the management right separate, such that the contract holder can benefit from the contractual right.

Several land banking trials in Shandong, Ningxia, and Sichuan have piloted Land Trust Centers, Land Credit Cooperatives, and Professional Cooperatives in Agricultural Resources Management respectively, but without much success as the financial security and profitability of land trust and mortgage schemes are low and have not attracted private

¹¹ <http://finance.china.com.cn/roll/20131218/2055352.shtml>.

capital [28]. Capital resources held by extended families abound, however, and are often combined for investment purposes outside the financial and policy institutions of the state.

In 2017, the Number 1 document of the Central Committee proposed the “implementation” of the “three-rights separation” method for collective ownership of rural land, rural household contract rights, and land management rights. After the policy was introduced, there was an urgent need to revise the current law to implement the “three-rights separation” reform in accordance with the law, so that the reform results could be consolidated in a legal form. Thereafter, we witnessed the modification of the Rural Land Contracting Law in 2018.

The new revision of the Rural Land Contracting Law¹² added Article 9:

After contracting any land, the contractor shall have the conventional usufruct on the land for agricultural operations, and may conduct agricultural operations by himself or herself, or retain his or her land contracting right or circulate his or her usufruct on the contracted land for agricultural operations by others.

The revision clarifies that, with the consent of the contractor, the transferee can invest in improving the soil according to law, construct agricultural production supporting facilities, and obtain reasonable compensation for investment in accordance with the contract. With the written consent of the contractor and filing with the village economic organization, the transferee may transfer the land management right.

The financing mortgage guarantee of the management right is the added content of the new law, which provides a legal basis for the farmland mortgage. To alleviate the problem of difficult loans caused by the lack of effective collateral in the agricultural sector, the sources of funds for the development of agricultural business entities were broadened. After the pilot program of mortgages of rural land is trialed for several years, it becomes a common practice. According to the data of the People’s Bank of China, as of the end of September 2018, 1193 financial institutions in 232 pilot areas across the country had raised mortgage loans on rural land.

Furthermore, in May 2020, the Civil Code was adopted and in the Real Rights Chapter, it further confirmed the normalization of land transfer policy¹³. As can be observed, in China the law tends to serve policy, as policy always comes first. If policy breaks the barrier of a legal regulation, then the law is modified to follow the policy.

As to the discussion of the three-rights separation, scholars evaluate it from different disciplinary backgrounds. As for legal scholars, the focus on the interpretation of the management right and how to legalize the policy was of prime importance. Some scholars such as Sun Xianzhong, Gaoshengping argue that it is a kind of innovative property right with Chinese characteristics [29–31] while others such as Chen Xiaojun argue it is a kind of credit right based on the contract according to the traditional civil law [32–34].

From the economy perspective, many scholars have analyzed and explained the functional value and positive effects of the “three-rights separation” of rural land. For example, Pan Jun believes that the “three-rights separation” of rural land shows a balance between the efficiency and safety of the rural land system and breaks through the transfer of contract management rights and sees the functional value of solidifying the barriers of identity and solving the dilemma of rural land mortgage financing [35]. Kang points out that the “separation of three rights” new rural land system solves the three major problems of who will plant the land in the future, agricultural production efficiency and agricultural production financing, and believes land transfer will have the effect of releasing agricultural productivity [36].

To summarize the evolution of land policy and land law, we have constructed Table 1 which comparatively displays the key phases and events that trace land transfer in China.

¹² Decision of the Standing Committee of the National People’s Congress to Amend the Law of the People’s Republic of China on Rural Land Contracting (2018), Effective from 1 January 2019.

¹³ Art 339, 340, and 341 of Civil Code of the People’s Republic of China, which was adopted at the 3rd Session of the Thirteenth National People’s Congress of the People’s Republic of China on 28 May 2020, and shall come into force on 1 January 2021.

It is evident that policy change almost always precedes changes in the land law and that with the graduation from the two-rights to the three-rights division, the land tenure issue in China is far more complex and sophisticated than most land tenure reforms undertaken elsewhere.

Table 1. The Evolution of Rural Land Tenure in China since 1949.

Phases	Rural Land Status	Policy and Laws	State Role
Phase 1 (1949–1952)	Peasants' Private Land Ownership	Policy and law together. Land Reform Law 1950, and <i>Tugai</i> movement replaced feudal landlord ownership with "land to the tiller"	From top to local, the central government initiated the movement.
Phase 2 (1953–1978)	Unitary rural collective ownership	No legal basis only the policy. Agricultural Producer Cooperatives, all private land allocated to the state or the village collective.	From top to bottom, the central government initiated all movements.
Phase 3 (1978–2012)	HRS (Household Responsibility System), and the Two Rights separation	Policy first, law later. Under the HRS, land ownership and use rights in land were separated.	From bottom to top, opened a new era of public ownership and private management of rural land in China
Phase 4 (2013–present)	The Three-Rights separation and massive land transfer.	Policy first, law later. The three rights over rural land can be separated into (1) collective ownership of rural land, (2) rural household contract rights, (3) rural land management rights.	Bottom and top meet. Huge transfer of smallholdings and release of labor.

In effect, the rural land policy should not simply be equated with the unitary private property rights system of the modern West or be regarded as a system that must eventually be "developed" in that direction [37]. In sum, our research confirms Huang's point that Chinese land transfer is different in style and form from that which brought about land reform (land consolidation, land assembly, land banking) in the West.

5. The Players in the Rural Land Transfer Process within the Context of the Three-Rights Separation

In addressing why there is such a massive scale of land transfer in contemporary rural China, we need to review the roles of the players in the land transfer process within the context of the three-rights separation period. In China, there are many more players in the current land transfer process than in most other countries where land reform has been undertaken by central authorities.

In addressing why there is such a massive scale of land transfer in contemporary rural China, we need to review the roles of the players in the land transfer process. Unlike the HRS system introduced from the bottom up 30 years earlier, this land transfer movement has been initiated by the central government and is plainly top down. To meet the macro-economic goals of the State, government policy has promoted urbanization and industrialization to achieve and sustain national growth rates. This form of large-scale land transfer is not therefore from the will of farmers, but actually is sometimes against their will. In a process with many different actors, The agrarian question becomes one of political economy: "who benefits and who loses" in the complex process of Chinese rural land transfer.

There are several players in the large-scale land transfer 'game'. The central government is the initiator, having formed a national policy to encourage land transfers "to ensure future economic development and food security". The local governments follow the central government's directives in policy and make decisions on how to implement them, such as following any of the land exchange models cited above.

As for the cadre's role, some scholars argued that the expansion of the power of the village committee is a crucial point in the process of land transfer [38]. The expansion of the power of the village committee has caused serious infringements on the legitimate

rights and interests of farmers and land in the process of land transfer and caused many unstable factors at the grassroots level [39].

The middleman, as the representative of the village collective, is officially the representative of farmers, but holds administrative rights above farmers which, in effect, makes the collective more or less the representative of the local government. The middlemen have a very tricky role. They can negotiate price with the company who wants to use the land, and they can also argue with farmers over the land management transfer price and sometimes force farmers to accept the plan at a low price. This also represents an opportune space for rent seeking. There are many cases where farmers have fought against the collective community. The collective community thus has dual status: both the economic player and the plan maker. It is relatively easy for middlemen to gain private interests by facilitating rural land transfer [40]. In addition, there is no clear legal penalty for the collective community if found to be at fault [41].

In most cases, capital interests want to obtain the management right over the land. Normally such capital interests prefer to negotiate with the representatives of the collective instead of individual households to save time and transaction costs.

Farmers normally are in a passive state, at least at the beginning of the land assembly process. They have the contractual right, but normally cannot decide whether to transfer it or not. They also have little idea of a suitable price in the massive wave of land transfers. Farmers normally have no access to the justice system to have legal advice or protection, and sometimes they resort to the media or protest, but mostly they follow the other farmers, in a form of passive group behavior.

In the classic civil law system, property holders (freeholders) can dispose of land freely, but in China the situation is more complicated. First of all, who exactly is the collective is vague. Land is publicly owned, not owned by individual persons. Secondly, the contractual right is not the classic use right, as the right is distributed on the basis of membership in a collective (village).

In the HRS two-levels operating system, although the property right is owned by the collective, the contractual management right belongs to individual households, but all farmers still have the right to the community's land as they are village members. When land is transferred to outsiders with capital or to a commercial business enterprise, members actually lose control of the land as farmers. Conflicts arise when a household, fearing this disconnect, refuses to sign the document to transfer the management right of their contractual land.

To illustrate this point in more detail we can draw upon the work of Xu [42], who studied the political sociology of land assembly in a village in Sichuan. Adopting an actor approach, she demonstrates that with loosening of restrictive legislation, a land assembly process can emerge that is based on old peasant values of status and authority being assigned to village leaders while new functions and roles are being created by emergent leaders and outsiders. These may be referred to as new village elites. In this case, capital interests in assembling land meet the desired government outcomes of farm enlargement, if peasants can be persuaded to give up their land management entitlements. To this end, there is collusion and moral pressure brought to bear on farmers by new economic players (middlemen), new village leaders (rent seekers), and outsiders with capital resources to assemble land. Xu shows that protest is minimal and resistance is resolved by moral persuasion as hesitant farmers are told they are "holding up progress", "delaying payments to fellow farmers" and putting the whole enterprise at risk by not signing the transfer. The case also illustrates that local village leaders need not be directly involved in the negotiation and can sanction the proceedings simply by attending as honored guests the public meetings where their presence alone lends official authority to the transfer process. In this way, local leaders maintain their middleman status, while, in effect, they are promoting the interests of the outsiders, as well as self-interest, in the process of land transfer.

In this type of land assembly, where a large family farm emerges—in the above case of approximately 200 mu (1 mu = 1/15 hectares)—the interests of the State and capital are

met. However, the outcome for the peasant is more questionable, as his/her role and status are transformed from a farmer to that of a laborer on a commercial agricultural holding. Land transfer on a large scale, therefore, is clearly associated with the growth of wage labor, an important feature in the capitalization of agriculture. In this subtle and compliant way, hundreds of thousands of peasants are being dispossessed of the use of their land, a commercial farming system is being established and the preconditions for a market in land are being created in rural China.

6. The Problems of Policy Implementation Related to Land Transfer

Land transfer stimulates the rural economy and elevates land to a living form of capital, but it also raises many problems.

First of all, how can the collective community and local government interests in assembling farmland be regulated? Since the collective community normally makes the transfer decision, how to protect the interests of individual farmers becomes very important. There are cases of violent fighting against land transfer. According to the law, the transfer should be made voluntarily, but it is common that, in many provinces, local governments have forced land transfer by administrative means. A number of cases revealed that in some places, land was transferred by force or by way of moral suasion, as in the case cited above where new village elites can put pressure on villagers. They can also do this by blocking access to irrigation water or causing damage to field crops. For example, a farmer, Mr. Jinxuhua from Xiwang Village in Tai'an city, Shandong Province, never reached a land transfer agreement, but his family's contracted land was taken by force in December 2015, and family members were beaten when they fought against the seizure.

Second, how can capital invested in land be regulated to ensure that it is used for farming and to contribute to food security. According to the data of the Department of Agriculture, until July of 2014, the amount of contractual land transferred to enterprises already accounted for 38.647 million mu and, until the end of 2015, the transferred contractual land area reached 33.3% of all arable land in China. Nationwide, land transfer reached 0.4 billion mu. The Law of the People's Republic of China on the Contracting of Rural Land Article 10 provides that "the state protects the contract-undertaking party's right to transfer the operation of the contracted land lawfully, voluntarily, and for compensation." Here, lawfully means "the land transfer should be under one condition that the land use doesn't change and is still used for agriculture." How to ensure land is used for food security purposes is uncertain, however, especially as newly formed commercial farms tend to change the land use from food crops to cash crops, most often for export.

Third, how to protect the farmers' right to enjoy the incremental benefits of land assembly is difficult under the current legal framework. There is no market for rural land in China, so what is a fair price for land is always unclear and is easily manipulated by elite players. As there is no objective third party to evaluate the compensation rate, there have been many abuses of land value.

Fourth, how to maintain the social function of farmland? As is well known, for the peasants, farmland is a basic resource and ultimate security for their life. Even when they work in the city, when they got old and would like to come back to the village, they still need farmland to maintain their living. In China, the social welfare system for farmers has not yet been perfected, and as there is no guarantee that the income from land transfer is reliable, so the social function of farmland will be insecure.

Fifth, how to keep the sustainability of land management? Already, there are situations where the income of new scale farmland management is not good, which will bring many risks and problems. Some scholars call it "Infinite Land Transfer." [43]. That is, after a scale operation, those who obtain the management right find that the benefit from the land is too small to make money or they even lose money, and then they prefer to transfer the land again; perhaps a third buyer appears, even a fourth. In Shandong, some large grain growers have returned land to farmers [44]. Such unlimited circulation makes land transfer

and scale management propositions lose their attraction such that the environmental and social sustainability risks of scale food production can become very high [45].

Sixth, how to make sure the confirmation of the land transfer and the conformation of the right can be carried out at the same time? The procedure is like this: after the confirmation of the land registration, each household will get the registration certificate afterwards, usually in 1 to 3 months, and thus officially get their right of management and recognition of the contract. However, after a long time, more than half a year generally, many peasants still cannot get their certificates. Because the approval procedure is so long and complicated, it needs a large investment of manpower, time, and financial resources to complete.

Although there is no property transfer allowed, and farmers still have the contractual right to the farmland, no matter in what mode, their land right has become a kind of living capital, which could give them shares, rent or fixed compensation. However, it also de-links the peasants from their land, although some may still have the opportunity to work on the newly assembled holding as an agricultural laborer. In this case, the land remains in agriculture and so do many peasants, but as laborers, not as farmers. In effect, this is a form of rural proletarianization and the peasant link to land is loosened. These identified common problems present challenges for the State to upgrade land policies that will enforce the law while transforming Chinese agriculture into a modern structure. In addition, these problems form a list of topics for further research, mostly applied research that could provide evidence-based policy information that would improve the effectiveness and the fairness of land transfer.

7. Discussion and Conclusions

As this paper shows, land reform in China has long been in its formative stages and it is not yet possible to offer conclusive evidence of its impact. Clearly, the transformation of land-holding in China has been initiated and in many areas is well advanced. However, this historical analysis is intended to add to the debate about the socio-political processes and the implications of a major land reform policy that enables land to be assembled by agricultural, business and state interests in China, while at the same time assuring peasants that their land and residential rights are secure. Farm households are able to remain members of the village collective, keep their house and yard, hold the right (theoretically) to re-possess their former lands and have the option (also theoretical) of working for the newly formed commercial farm. As has been demonstrated, the process of creating a scenario where land assembly becomes the accepted norm has been long and cautious. Land security has been one of the egalitarian policies of post-Maoist China and represents one of the remaining symbols of socialist belief. The opening of the 'flood gates of capital' is rapidly transforming the land use structure and tenure system of China in those areas where commercial scales of agriculture are physically possible. If this amounts to 'Capitalization without capitalism' remains an open question [46]. What is clear, however, is that the impact, so far, is geographically variegated with almost total land being transferred in the good land areas of lowland and Eastern China and much less in the many mountainous regions in the South and West.

The land transfer process has strong top-down tendencies being directed by central authorities and supported by legal processes and implemented by local governments, although sometimes overzealously at the village level. The active participation of the local state is, in part, a result of the land tax reform in 2006 which abolished the land tax, a major source of revenue for local authorities [47]. Assembling land provides opportunities to redress this fiscal imbalance. The Household Responsibility System established the bi-modal land-holding and management system that secured the rights of peasants to household lands within a communal "village" system. Recent abrogation of this dual and balanced land system with the introduction of a third right, one that enables the essential features of a freehold system to be attached to land, will have a huge impact on the structure and role of agricultural land-holding in the near future.

In terms of the agrarian question, the duality of peasant holdings and commercial enterprises in the same spatial system has been initiated in the Chinese context as a result of farm-size differentiation. It is also an example of land and class differentiation. The current flood of land transfers represents a major upscaling of land being assembled for commercial farming purposes. It will absorb some of the capital available in China's shift to a more domestic economy. Critically it reflects the will of the State to form a modern agricultural system based on family farms (minimum 200 mu), cooperatives, and new forms of business association that promote large-scale production in the name of food security and economic development. In addition, food safety is said to be easier to monitor in a commercial production system, irrespective of the anecdotal evidence that food contaminations derive mainly from large-scale food businesses rather than from peasant holdings. In this way, the Chinese path reflects the conditions and directions that almost all so-called modern agricultures have passed through: government intervention to upscale holdings through land tenure changes, support for capital enterprises to penetrate and consolidate farm holdings, and a common narrative that this is in the national interest of food security. Nevertheless, the instruments by which land is being assembled into commercial units is strictly Chinese, the progression from two to three rights symbolizing peasant village security while enabling commercial enterprise to be formed.

In China, this major national project would not be possible if it were not for extenuating circumstances; the outmigration of more than 140 million farmers (*nongmingong*) creating the increasing presence of untended and abandoned land, the land tax relief for farm operators introduced in 2006, and the careful introduction through pilot projects of cooperatives and family farms as supplementary legal vehicles for land assembly. The three rights over ownership, management, and land use ensures, at the macro level, a relatively orderly and flexible system of land transfer that basically deprives the peasants of their control over village land resources and makes them available to be agricultural laborers or to migrate "out." In a "reservoir" interpretation of China's unfolding rural policy, rural areas can still be seen as pools of labor. Dispossessed laborers can migrate into cities or become agricultural workers in the countryside, only now they have questionable land rights to return to. Up to this point, there have not been many legally tested cases of peasants reclaiming their small land plots as the contract time of transfer is now a minimum of 10 years. Many contracts, however, could be challenged in the future.

Forming a supply of materials for food security and export is one thing, but the cost of detaching rural society so quickly and drastically from its roots and identity is likely to have serious social as well as environmental consequences. Awareness of this dilemma has guided the Chinese authorities to manage the land transfer issue very carefully through legal and policy measures that have incrementally enabled a rural land market to appear on the horizon while continuously extolling the virtues of the collective. Despite the different starting points and variety of instruments used in China to promote modern agriculture, the end-point already appears to be the same as elsewhere. The response to the agrarian question is basically the same also, the key farm structure being that a major proportion of the food supply will come from fewer than 20% of the farm units. This suggests that the majority of farms will remain small and relatively unproductive in terms of output, but of immense value as traditional and creative ways to occupy marginal areas where land assembly is less feasible. Over time, two hundred mu will become the new normal for "small."

The response to the agrarian question in China is to geographically separate the new wave of land assembly through the market and with State guidance to form large farm units in lowland areas with good soils and infrastructure and to continue with traditional forms of agriculture in upland and inhospitable areas, often in areas where ethnic minorities predominate. Such remote areas and communities can then be subject to poverty alleviation programs that favor relocation to urban areas. Only in zones of good land near cities do the two scales of farming come into close association. The smaller units provide alternative forms of production for urban consumers such as organic farms, Community Supported

Agriculture operations [48], and agro-tourism ventures [49], while the larger units are run as commercial enterprises with wage labor. As with the global experience, laborers on small farms can also work on local bigger farms in times of high labor demand. In this way, the relations between labor and capital are mediated through farm size, which, in China, requires that land assembly projects proceed to enable the process of agricultural modernization to continue. The consequences, both negative and positive, of land transfer have yet to be fully realized and form a long list of research questions about China's agrarian future: for example, the differential geographical impact of land transfer, the social consequences of rural community dispersal, and the long-term land use implications of an emergent system of commercial farming.

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