

MORAL ECONOMIES IN EARLY MODERN LAND MARKETS: HISTORY AND THEORY

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I INTRODUCTION

From a theoretical perspective, there are many reasons why robust land markets might fail to develop in any given economy. Several of these are directly related to law: property rights might not be secure enough to facilitate effective market exchange; the law might ban certain forms of transactions outright, or at least significantly encumber them; and so on. But even if these explanations are fully coherent and empirically verifiable, a committed social scientist would still likely want to go deeper: how did these anti-market legal institutions develop in the first place? Here, too, there are a number of possibilities. For example: under some circumstances, especially when the rich enjoy strong sociopolitical dominance, free exchange might result in snowballing wealth inequality, which the state might want to combat.¹ Alternatively, robust land markets might damage the interests of some politically powerful segments of society, which then lobby effectively to curb them.² In another possible scenario, information technologies and social capital are at sufficiently low levels that widespread market exchange could lead to massive amounts of confusion and potential fraud.³

When it comes to pre-industrial, early modern societies, however, a large volume of academic studies, ranging from the antiquated to the very recent, coalesce around a theory that is qualitatively different from those raised in the previous paragraph. These studies argue that the normative social belief that land

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1. See, e.g., THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* 571–73 (Arthur Goldhammer trans., 2014) (arguing that growing wealth inequality is a natural consequence of capitalism, and proposing taxation-based measures to combat it).

2. In many ways, this was what the English landed aristocracy did after the later eighteenth century by reviving entails and limiting the ability of creditors to seize collateralized land. See generally ALAN HARDING, *A SOCIAL HISTORY OF ENGLISH LAW* (1966); Claire Priest, *Creating an American Property Law: Alienability and Its Limits in American History*, 120 HARV. L. REV. 385 (2006).

3. See, e.g., Stephen Knack & Philip Keefer, *Does Social Capital Have an Economic Payoff? A Cross-Country Investigation*, 112 Q.J. ECON. 1251 (1997) (detailing the impact of low social trust and/or high information costs on property rights and their transfer).

is alienable—the very notion that selling land is morally permissible—is a modern phenomenon that only arises with the advent of a commercial society.⁴ Traditional societies, the argument commonly goes, operated under “moral economies” in which both the selling and buying of land, for reasons ranging from protection of the economically disadvantaged to ancestor worship to village solidarity, was seen as a serious moral offense.⁵ Correspondingly, these societies developed legal and customary institutions to ban, or at least encumber, land-selling. Therefore, moral factors did not merely influence or affect land markets, but rather the very act of buying and selling land was substantially moralized. There were, in other words, moral economies *in land*.

Often underlying such arguments is the assumption—sometimes unstated—that early modern farmers were less economically rational than their modern peers.⁶ That is, they were less keen on maximizing the economic value of their land and allowed internalized moral factors to interfere with the management of their most important economic asset. Some go so far as to argue that the moral condemnation of land alienation stemmed precisely from the economic importance of land in pre-industrial societies. This overwhelming economic significance psychologically prevented rural households from even-headedly considering market options that might, over the long run, have enhanced the overall welfare gains from agriculture.

The advent of modern commercialization and industrialization presumably dismantled most of these moral economies. This was not merely a matter of dismantling stable, closely-knit communities and introducing higher levels of demographic mobility, it involved a fundamental moral shift that, for better or worse, was then enshrined in legal institutions and implemented in everyday economic life.⁷ Land no longer had any special moral significance. Instead, it

4. This narrative has been told in many forms, and in studies of many regions. See, for example, WILLIAM JAMES BOOTH, *HOUSEHOLDS: ON THE MORAL ARCHITECTURE OF THE ECONOMY* (1993) (discussing the intellectual history behind capitalist conceptions of the household); THOMAS M. BUOYE, *MANSLAUGHTER, MARKETS, AND MORAL ECONOMY: VIOLENT DISPUTES OVER PROPERTY RIGHTS IN EIGHTEENTH-CENTURY CHINA* 94 (2000) (discussing the supposed decline of “moral economies” in Eighteenth Century China); PHILIP C. C. HUANG, *CODE, CUSTOM, AND LEGAL PRACTICE IN CHINA: THE QING AND THE REPUBLIC COMPARED* 74 (2001) (discussing moral prohibitions on land alienation in the Nineteenth Century Chinese economy); KARL POLANYI, *THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME* (1957) (arguing that the decline of moral economies was a central feature of modern history across the globe); JAMES C. SCOTT, *THE MORAL ECONOMY OF THE PEASANT: REBELLION AND SUBSISTENCE IN SOUTHEAST ASIA* (1976) (discussing the functioning and eventual decline of moral economies in Southeast Asia); E.P. THOMPSON, *CUSTOMS IN COMMON* 97–184 (1993) (discussing moral economies in early modern and modern England); CHARLES TRIPP, *ISLAM AND THE MORAL ECONOMY: THE CHALLENGE OF CAPITALISM* (2006) (discussing the erosion of moral economies in the Middle East); STEPHEN VLASTOS, *PEASANT PROTESTS AND UPRISINGS IN TOKUGAWA JAPAN* (1990) (discussing the role of moral economies in Japanese peasant uprisings).

5. See sources cited *supra* note 4.

6. See generally Donald N. McCloskey, Book Review, 89 *J. POL. ECON.* 837 (1981) (summarizing and critiquing this concept).

7. See sources cited *supra* note 4; see also, William James Booth, *On the Idea of the Moral Economy*, 88 *AM. POL. SCI. REV.* 653 (1994) (analyzing the character of modern and premarket societies, and the normative standing of the market).

began to be treated like any other market commodity, to be used and disposed of in the most economically profitable manner.

Through the years, this moral economy thesis has experienced multiple rounds of often-vigorous opposition. Naturally, the primary pushback was against the notion of a modern transition away from pre-commercial morality. Despite the same underlying premise, this critique came in two very different flavors. First, and perhaps more influentially, a significant number of critics have argued that early modern economies adopted a highly rational—for the most part, wealth-maximizing—approach towards property rights, and particularly towards the alienability of land.⁸ These economies were not encumbered by any moral notion of land inalienability. When their legal institutions limited alienability, it was generally for economically pragmatic reasons, not moral ones. Second, some critics argue quite the opposite. Instead, it is the modern end of the moral economy narrative that needs revision. Human economies have never fully shed themselves of their moral nature, and the notion that modern market economies are somehow amoral is deeply flawed.⁹ Rather than moving from a moral economy to a market-based one, we have simply shifted between different kinds of moral economies. In summary, the first line of critique argues that both modern and pre-modern economies tend to be pragmatically rational, whereas the second argues that both tend to be moral.

Despite these attacks, the moral economy thesis has enjoyed remarkable longevity in a number of fields and disciplines. In legal theory, for example, the notion of relative inalienability of land as both a pre-modern and moral phenomenon has made appearances, albeit controversial ones, in major articles on property and contract. Most famously, Guido Calabresi and Douglas Melamed's canonical article on property and liability rules suggests that "nonmonetizability is characteristic of one category of external costs which, as a practical matter, seems frequently to lead us to rules of inalienability. Such external costs are often called moralisms."¹⁰ These historical arguments are not without their normative counterparts. For example, Margaret Radin has argued that the inalienability of certain kinds of property, including land, may be justified under certain notions of human flourishing and morality.¹¹

Perhaps unsurprisingly, the impact of the moral economy thesis is particularly visible—and durable—in certain subfields of legal and social history. In Chinese

8. See McCloskey, *supra* note 6 (discussing the economic rationality of villagers choosing crops in Vietnam); see also *infra* parts II and III (summarizing a large amount of this literature).

9. See, e.g., Thomas Clay Arnold, *Rethinking Moral Economy*, 95 AM. POL. SCI. REV. 85 (2001) (illustrating the conception of a moral economy based on social goods through water politics in the American West).

10. Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089, 1111–12 (1972).

11. See generally Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849 (1987) (offering an alternative justification for market-inalienability that relates it to an ideal of human flourishing); Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982) (arguing for an intuitive view of property and personhood).

legal history, for example, the idea that there existed a stage where farmers had some sort of special moral attachment to land significantly influences even those studies that claim nominal opposition to at least some version of it.¹² In Southeast Asian and Middle Eastern history, such ideas—driven in large part by ethnographic studies of low-income rural communities and local religion—are arguably even more influential, and enjoy significant currency to this day.¹³

This article approaches these issues from both a broad historical angle and a theoretical one. Part II—the empirical core of the article—focuses on the Chinese economy and asks whether, at any point in its documented history, there is any substantial evidence of moral economies in land. The answer is most likely no. Part III surveys a number of debates over land markets and peasant rationality in other parts of global history, covering England, Japan, and parts of Southeast Asia. Although some of these debates remain inconclusive, there tend to be serious analytical defects in the way that moral economy narratives have been argued for, lending credence to their opponents.

Part IV examines the theoretical implications of these historical surveys. In particular, it asks whether a potential empirical rejection of the moral economy thesis within the context of historical land markets would necessarily imply an across-the-board rejection of any moral economy–based theory of property or contract. It argues that early modern land markets are a particularly unfriendly forum for moral economy theories. Moral economy proponents suggest that the special economic importance of land in pre-modern societies infused landownership with special moral significance.¹⁴ However, this logic is precisely backwards: the more economically important land is, the less likely it can coexist with moral condemnation of land selling. The more crucial land is to economic livelihood, the greater the pressure to maximize its material value and, therefore, the less room there is for systemic moralization.

This does not mean, however, that high levels of economic significance necessarily preclude the institutional inalienability of land. Quite the opposite: when landed agriculture is the primary form of economic production, many social groups and classes will often have strong material—rather than moral—incentives to oppose free alienability of land. If they are sufficiently powerful, they can impose legal or customary constraints against land alienation that protect their self-interest. In fact, this is exactly what occurred across large swathes of Chinese history. Groups at both ends of the social spectrum, ranging from titled aristocrats to rural smallholders, attempted, at various points in time, to institutionally limit the marketability of land and some succeeded in

12. See *infra* part II.

13. See, e.g., Timothy Gorman, *Moral Economy and the Upper Peasant: The Dynamics of Land Privatization in the Mekong Delta*, 14 J. AGRARIAN CHANGE 501, 501 (2014) (examining how people mobilize around notions of distributive justice, or moral economies, through a Mekong Delta case study).

14. See, e.g., HUANG, *supra* note 4, at 71 (characterizing Qing Dynasty land systems as driven by “a survival ethic”).

spectacular fashion.¹⁵ As a legal matter, pre-industrial societies often encumbered land alienation,¹⁶ but perhaps rarely for moral reasons.

In other words, early modern land markets were arguably among the places where one would least expect to find significant moral economies at work. Consequently, even if there are no major historical examples of moral concerns limiting land alienability, there is little reason to believe that such concerns cannot exert powerful influence over other parts of social life. In fact, social culture and morality may very well have exerted indirect influence over property institutions even if land use and alienability themselves were not substantially moralized.

A few examples of this process are summarized in Part V. Part V also considers whether these theoretical claims have any role to play in our understanding of contemporary legal systems. One curious consequence of multiple industrial revolutions and ongoing global market integration is that in many developing countries land is no longer quite as critical an economic resource as it used to be. At the same time, few would deny that, in most major economies, land is transferred more freely and regularly today than it was in the early modern era. Is this a problem for the theoretical framework outlined in Part IV? Though the answer is no, a closer look at these issues yields additional insights into the theoretical underpinnings of moral economy theories.

II

A *LONGUE DUREE* HISTORY OF CHINESE LAND MARKETS

Historians have argued about the presence of moral economies in historical Chinese land markets for several decades now, but have yet to reach any firm conclusion. What progress has been made demonstrates that, if moral economies truly burdened Chinese land markets, they did not do so nearly as recently as we once imagined. There is reasonably good evidence to suggest that, at least from the eighteenth century onwards, most rural households approached land selling from a largely utilitarian and materialistic perspective.¹⁷ Wealth maximization, rather than personal or social morality, seemed to have been the predominant concern. However, if this was the case for the last two centuries or so of pre-Republic history, is there any real reason, empirical or theoretical, to think that early eras were fundamentally different?

To answer this question, at least preliminarily, it is probably easier to work backwards in time, starting with a summary of what is known about the later Qing and Republic, and then project the analytical inquiries to earlier periods and dynasties. Though this will necessarily be an extremely broad summary, it still demonstrates that there is little reason to believe in the existence of moral economies in early modern China, given the state of the secondary literature.

15. See discussion *infra* part II.

16. See discussion *infra* part III.

17. See discussion *infra* pp. 116–21.

Frankly, it is rather difficult to imagine how substantive arguments to the contrary could be made.

The natural starting point is the nineteenth and early twentieth centuries—the period immediately preceding the People’s Republic—where the historical evidence is most robust. Writing in the early 1980s, the highly influential economic and legal historian Philip Huang sought to position his new manuscript on the rural economy of Qing and Republican North China as a revision to what he considered to be overly broad and general moral economy narratives of peasant societies.¹⁸ Such narratives, he argued, “overestimate[d] the role that moral constraints played” even in pre-modern economies.¹⁹ Correspondingly, he attempted to portray the institutional limitations on land alienation that one commonly observes in pre-1949 Chinese customary law as, for the most part, utilitarian reactions against an involutory subsistence economy. To be fair, this was not one of the central pillars of the book, which never quite commits itself to any concrete theory of how these institutional limitations were created and sustained. By the time Huang turned his full attention to legal history in the 1990s, he adopted a position that was surprisingly similar to the moral economy narratives he had previously critiqued. He argued that many of the institutional problems with pre-1949 land markets were products of “precommercial ideals of permanence in landholding,” which discouraged farmers from alienating their land, and set up transactional instruments in ways that made it enormously difficult for prospective buyers to permanently acquire land.²⁰

This claim soon came under attack from several angles. First, a number of economic and institutional histories that emerged in the later 2000s directly targeted Huang’s characterization of late Qing and Republican property customs as pre-commercial, arguing instead that they both allowed and, in fact, facilitated efficient land alienability.²¹ Second, several social histories, particularly a 2000 manuscript by Thomas Buoye, claimed that, by at least the mid to late Qing, social attitudes towards land had become significantly commoditized: most households seemed to treat land like any other economic resource—alienable so long as the price and circumstances were right—with scant evidence, if any, of any substantial moral economies.²² Third, some surveying the field from a more theoretical and perhaps distant perspective questioned whether “precommercial ideals of permanence in landholding” could substantively coexist with a growing body of economic research that portrayed the Qing farmer as aggressively wealth maximizing, particularly in the context of land use and management.²³ In other

18. PHILIP C.C. HUANG, *THE PEASANT ECONOMY AND SOCIAL CHANGE IN NORTH CHINA* (1985).

19. *Id.* at 23.

20. HUANG, *supra* note 4, at 74; *see also* MELISSA MACAULEY, *SOCIAL POWER AND LEGAL CULTURE: LITIGATION MASTERS IN LATE IMPERIAL CHINA* 234 (1998) (developing a similar claim).

21. *See, e.g.*, Kenneth Pomeranz, *Land Markets in Late Imperial and Republican China*, 23 *CONTINUITY & CHANGE* 101 (2008).

22. BUOYE, *supra* note 4.

23. *See generally* Taisu Zhang, *Social Hierarchies and the Formation of Customary Property Law in*

words, if there is strong evidence that Qing farmers were encumbered by moral economies in most other aspects of land use, why should market alienation be any different?

Before delving deeper into these questions, a quick outline of these debate-triggering property institutions will be useful. First, many villages across both North and South China had customary norms requiring potential land sellers to exhaust transactional options within their lineage (or village, in some cases) before offering it to outsiders. Essentially, they gave lineage members a right of first refusal. As a number of scholars have attempted to argue, this may have burdened the marketability of land.²⁴ Second, most village customs allowed landholders who collateralized their land—usually under mortgage-like instruments known as “dian” sales (conditional sales)—to retain an essentially interminable right of redemption.²⁵ If they so desired, debtors could redeem collateralized land many decades after the initial loan was issued. This created significant distortions in local land markets by making collateralized borrowing nearly risk-free to cash-strapped landholders. As a result, very few of them had any incentive to permanently sell land, which led to extremely low volumes of permanent alienation, and, consequently, fewer economies of scale in the form of large, capitalist farms, which in turn led to lower levels of labor productivity.²⁶

Though it might be tempting to characterize these institutional features as reflections of pre-commercial ideals, as Huang and others have done, a more careful look at their underlying politics and actual economic effect strongly dispels that impression.²⁷ Quite the contrary, dian institutions were the product of vigorous bargaining and negotiation by economically self-interested parties. There were coherent and powerful economic reasons for smallholders to desire interminable redeemability: essentially, the lack of well-paying forms of alternative employment in a pre-industrial economy meant that redeeming collateralized land was generally much more attractive than selling it outright.²⁸ Moreover, their ability to advance those interests via dian institutions stemmed directly from the amount of sociopolitical capital they possessed, rather than

Pre-Industrial China and England, 62 AM. J. COMP. L. 171 (2014) (summarizing and discussing relevant literature).

24. See PHILIP C.C. HUANG, *THE PEASANT FAMILY AND RURAL DEVELOPMENT IN THE YANGZI DELTA, 1350–1988* 107–08 (1990) (analyzing landownership in China by comparing the rights of topsoil and subsoil owners); SUCHETA MAZUMDAR, *SUGAR AND SOCIETY IN CHINA: PEASANTS, TECHNOLOGY, AND THE WORLD MARKET* 226–31 (1998) (discussing Qing law codes regarding land rights and small-peasant proprietorship); KENNETH POMERANZ, *THE GREAT DIVERGENCE: CHINA, EUROPE, AND THE MAKING OF THE MODERN WORLD ECONOMY* 70 (2000) (describing the practice of Yangzi Delta that those trying to sell or rent land had to offer it to kinfolk and or fellow villagers first).

25. HUANG, *supra* note 4, at 74; MACAULEY, *supra* note 20.

26. See generally Taisu Zhang, *Property Rights in Land, Agricultural Capitalism, and the Relative Decline of Pre-Industrial China*, 13 SAN DIEGO INT’L L.J. 129 (2011) (exploring this phenomenon in greater detail).

27. Zhang, *supra* note 23.

28. *Id.*

from the moral sympathy and voluntary accommodation of wealthier creditors.²⁹ In other words, the creation and sustenance of dian institutions was primarily a utilitarian and political process, not a moral one. Moreover, it is not exactly accurate to characterize dian sales as a restraint against alienation. These sales simply maximized the control and freedom of the seller/debtor, who had the option of permanently selling his land, while taking away some control and freedom from the buyer/creditor. This is hardly the same as banning alienation *per se*.

Lineage rights of first refusal are more easily characterized as true restraints against alienation. However, they too lend themselves to coherent political economy-based explanations. In small, closely-knit communities—the majority of pre-1949 Chinese villages—reluctance to allow outsiders to buy land is not necessarily a moral issue, but rather a utilitarian one. As theoretical papers have demonstrated, the presence of too many outsiders tends to erode the level of trust between community members, which in turn can have sharply negative consequences for the efficacy of self-governance and everyday economic transactions.³⁰ This is more than merely an abstract conjecture: studies of village governance in North China indicate that villagers were strongly concerned about the political and economic consequences of outsider interference.³¹ As for sub-village groups such as lineages and clans, the political calculus was likely even simpler: the clan as a whole derived at least some sociopolitical influence and status from its cumulative economic clout. Therefore, they had a fairly strong incentive to at least explore the possibility of keeping land within the family.

Moreover, it seems unlikely that rights of first refusal were a significant burden on local land markets because they were, after all, rights of first refusal, not rights to veto sales. Beyond that, there were further reasons to doubt their broader economic significance. Importantly, most villages in South China and the Yangtze regions—where such norms were most common and tended to be relatively well enforced—were dominated by one or two major lineages.³² In other words, demanding that sellers first search within their own lineage did very little to limit the pool of realistic buyers because the lineage was so large. Individual landowners therefore had little incentive to resist such regulations. Indeed, they were very rarely the subject of litigation. For example, the Republican era archives of a Southern Zhejiang county court contain several

29. *Id.*

30. See Robert C. Ellickson, *The Market for Social Norms*, 3 AM. L. & ECON. REV. 1 (2001) (describing how new social norms are created and advanced within societies); see also Jonathan Bendor & Piotr Swistak, *The Evolution of Norms*, 106 AM. J. SOC. 1493 (2001) (explaining social norms through evolutionary game theory).

31. See, e.g., PRASENJIT DUARA, *CULTURE, POWER, AND THE STATE: RURAL NORTH CHINA, 1900-1942* (1988).

32. See SUSAN NAQUIN & EVELYN S. RAWSKI, *CHINESE SOCIETY IN THE EIGHTEENTH CENTURY 100-01* (1987) (discussing evolution of Qing society, economics, and culture in the eighteenth century); see also POMERANZ, *supra* note 24, at 72.

thousand cases concerning dian redemption, tenancy rights, and other land-related issues, but none, or at most very few, about lineage rights of first refusal.³³

How do these observations affect the pre-commercial ideals debate outlined at the beginning of this part? They tend to agree with both Buoye's argument that, by at least the mid-Qing, land was treated more as a commoditized economic resource than as a moral entity, and with the general observation that Qing and Republican farmers were quite aggressively wealth maximizing in land use and management.³⁴ Dian redemption norms did indeed create distorted—depending on one's notion of what is regular—local land markets in which the vast majority of land transactions were collateralized loans, rather than outright permanent sales, but these were active markets nonetheless. For example, according to Republican era surveys, ten to thirty percent of North Chinese village land was usually under a dian sale at any given time.³⁵ Lower Yangtze and South China land markets may have been, if anything, even more active, given the generally deeper levels of commercialization and market integration in those regions, and the much larger amounts of land contracts there that have survived to the present day.³⁶ Moreover, the existence of distortionary property institutions was far more likely to have been the product of political economies than the product of moral ones.³⁷ Huang was probably right that Chinese property institutions were rather hostile to the permanent buying and selling of land.³⁸ Despite this, the leap to a moral economy-based explanation is likely unwarranted.

Even so, the way that this debate unfolded is indicative of the enormous theoretical allure of moral economy narratives. Huang began by criticizing what he saw as an overly broad application of moral economy ideas to Chinese history.³⁹ However, he eventually arrived at a more or less similar conclusion.⁴⁰ Buoye made a more spirited attempt to argue against the existence of significant moral economies in mid and late Qing land markets, but in the process also assumed that they existed in the early Qing, and that there was a transition at some point.⁴¹ This is the weakest point in his argument: there is no evidence—whether in the book or elsewhere—that land markets functioned in a qualitatively different manner in the early Qing.⁴² Rather, the best current evidence suggests that basic property institutions, including those governing dian

33. Longquan Dang'an Hebian Mulu (on file with author).

34. See sources cited *supra* notes 21, 22.

35. NAGANO AKIRA, *ZHONGGUO TUDI ZHIDU DE YANJIU* [RESEARCH ON CHINA'S LAND INSTITUTIONS] 121–23 (Qiang Wo trans., 2004).

36. See, e.g., SHICANG QIYUE [SHICANG CONTRACTS] (Cao Shuji ed., Zhejiang Univ. Press 2010) (collecting some of the best preserved contracts from this region); see also QINGDAI NINGBO QIYUE WENSHU JIJIAO [QING CONTRACTS FROM NINGBO] (Wang Wanying ed., Tianjian Guji Press 2008).

37. Zhang, *supra* note 23.

38. HUANG, *supra* note 4, at 71, 74.

39. HUANG, *supra* note 18, at 23.

40. HUANG, *supra* note 4, at 71, 74.

41. BUOYE, *supra* note 4.

42. See David Faure, Book Review, 65 *BULL. SCH. ORIENTAL & AFR. STUD.* 621 (2002).

and permanent selling, were largely stable throughout the Qing, and likely extended back to the Ming (1368–1644). But, regardless of its empirical firmness, Buoye's belief in a Qing transition from moral to commercial economy underscores the resiliency of the moral economy thesis. When scholars—at least, scholars in fields other than economics—come across evidence against it, the impulse is often not to dismiss the thesis altogether, but rather to push it back to an earlier era. In this particular case, the push extended back to the early Qing, but that turned out to be insufficient. How far back will this search extend before solid evidence of moral economies is found?

One major difficulty with arguing for Ming, Yuan, or Song Dynasty moral economies, however, is that the availability of archival material begins to plummet once we move beyond the eighteenth century. The vast majority of existing land contracts and cases come from the Qing, and nearly all in-depth academic surveys of rural society were conducted in the early twentieth century.⁴³ County archives rarely contain material that reaches into the late Ming, much less earlier eras. As a result, moral economy narratives, like any other explanatory narrative about Ming social or economic trends, have a much more difficult time getting off the ground. It is no coincidence that the great majority of such narratives are situated in the Qing and Republic. Given the growing consensus that Qing land economies were not significantly moral, the basic standard of proof for any moral economy proponent should be, at the very least, to identify a robust reason why Ming land markets were substantively different—rather than merely assuming that pre-modern farmers had to have been less economically rational than modern ones. The lack of local archival material severely limits the range of possibilities.

Studies of later Ming land markets do reveal a plethora of claims, some made in litigation filings, some in literati commentary, that landowners generally desired to keep ahold of ancestral land, and that losing it was an embarrassing and sad event.⁴⁴ The problem is that such claims are even more plentiful in Qing archives.⁴⁵ Yet, scholars have generally found no corroborating evidence of moral economies at work, and have instead found much evidence to the contrary. Making moral claims about land that had been held within the family for generations was an extremely common rhetorical move in virtually all

43. Comparing the Ming collections of any county archive—if there are any—with the Qing collections will demonstrate the problem.

44. See YANG GUOZHEN, MING QING TUDI QIYUE WENSHU YANJIU [RESEARCH ON LAND CONTRACTS IN THE MING AND QING] 279 (1988) (discussing the redemption of land sales in Ming and Qing archives); Kishimoto Mio, *Ming Qing Shidai de "Zhaojia Huishu" Wenti [The Issue of "Zhaojia" and "Dian" Redemption in the Ming and Qing]*, in III-4 ZHONGGUO FAZHISHI KAOZHENG [EMPIRICAL STUDIES ON CHINESE LEGAL HISTORY] 423 (Terada Hiroaki ed., Zheng Minqin trans., 2003) (discussing the social history of "dian" redemption in the Ming and Qing); Yang Guozhen, *Shilun Qingdai Minbei Minjian de Tudi Maimai [Discussing Land Transactions in Qing Northern Fujian]*, in 1 ZHONGGUOSHI YANJIU [STUDIES ON CHINESE HISTORY] 29 (1981) (discussing the redemption of land sales in Ming and Qing archives).

45. See, e.g., MACAULEY, *supra* note 20 (discussing customary land transactions in Late Imperial Fujian); Kishimoto, *supra* note 44.

macroregions throughout the later Qing,⁴⁶ but it did not seem to have much effect on property institutions. When, for example, smallholders wanted to reaffirm or enforce favorable *dian* redemption rules, they often had to do so with a political or social show-of-force, against sometimes bitter resistance by wealthier creditors.⁴⁷ By and large, only those who had an otherwise powerful economic incentive to keep ancestral land made claims about its moral sanctity.⁴⁸ Parties who had the opposite incentive—to purchase new properties—rarely employed such language, even in a negative fashion.⁴⁹ Therefore, it was likely a primarily rhetorical tool, similar to the greatly exaggerated pleas of poverty and ignorance that litigants routinely made before local courts, rather than evidence of deep-rooted moralization. But if this was the case during the Qing, is there any reason to think that similar claims made during the Ming should be interpreted differently? It seems unlikely. Quite the contrary, there is much circumstantial evidence from the mid-Ming that land markets were highly active, and that land selling was regarded as a commonplace event.⁵⁰ A large collection of land contracts from South China survives from this era, the earliest such collection currently available.⁵¹

Another potential argument for why the Ming—or at least the early Ming—might be different is that there is evidence of an increase in land selling from the early Ming to mid-dynasty. For example, a wide array of sources suggest that the mid-Ming state was having much greater difficulty keeping its tax registers up-to-date, strongly suggesting that a substantial increase in land-selling was taking place.⁵² Do these general trends make a case for the existence of moral economies in the early Ming? The straightforward theoretical answer is no: moral economies can, in theory, be broken up by commercialization, but the fact that one finds scant evidence of moral economies after a period of rapid commercialization is not a reason to believe that there were significant moral economies beforehand. The evidence of deepening commercialization in the mid-Ming merely suggests that early Ming land markets were less active, but illuminates nothing about the reason.

There are at least two logically coherent and empirically attractive explanations for the transition that have nothing to do with moral economies. First, the early Ming state was considerably more hostile towards demographic

46. See, e.g., MACAULEY, *supra* note 20; Kishimoto, *supra* note 44.

47. Zhang, *supra* note 23.

48. *Id.*

49. *Id.*

50. See Pomeranz, *supra* note 21; Yang, *supra* note 44.

51. Yang, *supra* note 44. A number of proverbs describing the increased frequency of land-selling also seem to gain popularity in this era. For example, the phrase “land changes ownership eight hundred times over a thousand years” originated in the Tang, but began to be referred to as a popular saying in the Ming. See, e.g., THE PRIEST HANSHAN DEQING [憨山德清法師], LONG CANG: MENG YOU JI [HIDING THE DRAGON: RECORDS OF DREAMWALKING] [龍藏:夢遊集], ch. 32 (1634) (referring to the phrase as a “popular saying”).

52. See TIMOTHY BROOK, THE CONFUSIONS OF PLEASURE: COMMERCE AND CULTURE IN MING CHINA 63–64, 79, 95 (1998) (discussing inaccuracy of mid-Ming population statistics).

and labor mobility than mid-Ming governments. The founding emperor of the Ming, in particular, envisioned a society where rural households neither migrated nor changed professions, and specifically attempted to prohibit, or at least burden, migration by imposing a labor-based head tax—essentially, free labor owed to local state projects—to each household at their initial place of registration.⁵³ The reasons for this were complex, including concerns over state revenue, economic inequality, labor markets, and general social stability, but such policies were, in fact, standard practice in China until around 800 AD.⁵⁴ The early Ming state made a serious effort at enforcing these labor taxes, but demographic and economic expansion, among other factors, eventually made enforcement increasingly costly. By the mid-Ming, circumvention of the head tax had become routine and relatively costless, which led to sharp increases in demographic mobility, and a corresponding rise in land selling.⁵⁵ One could argue, of course, that the fundamental driving force in this process was economic and demographic growth but such an argument would nonetheless overlook the extent to which aggressive state prohibition and taxation likely depressed land market activity in the early Ming.

Second, and perhaps more importantly, the twelfth to fifteenth centuries witnessed the decline of large aristocratic manors as a major source of agricultural production, gradually releasing large amounts of land into local markets.⁵⁶ Until the Song Dynasty (960–1279), the dominant players in agricultural production tended to be large manors owned by titled aristocrats or high level literati, which were sustained, not so much by their economic superiority, but by the political privileges granted to their owners.⁵⁷ As a number of scholars have documented, the political stature of these aristocratic families began to decline during the Song, and with this decline came the erosion of their economic position.⁵⁸ Small, commoner producers, often much more motivated

53. See generally Richard von Glahn, *Ming Taizu Ex Nihilo?*, 2007 MING STUD. 113 (2007) (discussing labor based taxes imposed by the first Ming emperor).

54. The transition from a feudal system in which land sales were nominally prohibited to a free-market system is one of the most important themes in medieval Chinese history. See, e.g., RICHARD VON GLAHN, *THE ECONOMIC HISTORY OF CHINA: FROM ANTIQUITY TO THE NINETEENTH CENTURY* 208–55 (2016); Hisayuki Miyakawa, *An Outline of the Naitō Hypothesis and Its Effects on Japanese Studies of China*, 14 FAR E. Q. 533 (1955).

55. BROOK, *supra* note 52.

56. VON GLAHN, *supra* note 54, at 273–95; Joseph P. McDermott, *Charting Blank Spaces and Disputed Regions: The Problem of Sung Land Tenure*, 44 J. ASIAN STUD. 13, 13 (1984).

57. See sources cited *supra* note 54.

58. See generally HILARY J. BEATTIE, *LAND AND LINEAGE IN CHINA: A STUDY OF T'UNG-CH'ENG COUNTY, ANHWEL, IN THE MING AND CH'ING DYNASTIES* (1979) (tracing the evolution of elite families during from the late Song to the Qing); BEVERLY J. BOSSLER, *POWERFUL RELATIONS: KINSHIP, STATUS, AND THE STATE IN SUNG CHINA (960–1279)* (1998) (tracing the evolution of political elites during the Song); ROBERT P. HYMES, *STATESMEN AND GENTLEMEN: THE ELITE OF FU-CHOU, CHIANG-HSI, IN NORTHERN AND SOUTHERN SUNG* (1986) (tracing the evolution of Lower Yangtze gentry families during the Song); Robert M. Hartwell, *Demographic, Political, and Social Transformations of China, 750–1550*, 42 HARV. J. ASIATIC STUD. 365 (1982) (discussing the political changes that came with the transition from Tang to Song).

and economically nimble than the old aristocracy, gradually became the dominant force in agriculture.⁵⁹ Their rise was not, however, a smooth one. In particular, the Yuan (1271–1368) and early Ming produced a new wave of major rural estates controlled by titled aristocrats and prominent gentry, who tended to benefit—relative to smallholders—from the sociopolitical upheaval created by Mongol conquest and retreat.⁶⁰ The state, too, came to own enormous amounts of land through seizures and reclamation, and essentially managed these estates as an absentee landlord.⁶¹ From the early to mid-Ming, these large estates once again declined due to a combination of population growth and redistributionist government policies.⁶² In other words, it was probably not until the fifteenth or sixteenth centuries that aristocratic and political privilege gave way, for good, to the privatized, secure, and fluid system of landownership that characterized the Qing economy. More than any other factor, this is probably the most important long term factor that fueled the growth of Chinese land markets, in fits and starts, from Song to Yuan, and then to Ming.

Not only do these explanations make moral economy theories unnecessary for understanding the early to mid-Ming growth in land selling, they actually provide positive reasons to be skeptical of them. Strong government control and extensive aristocratic landownership should have, at least in theory, worked against the creation of strong moral economies in land. In the traditional delineation of the theory, moral economies in land are the product of long-term, stable ownership.⁶³ Landowners need both time and security to develop the kind of psychological—and, more importantly, moral—attachment that sustain moral economies. State intervention and aristocratic landownership presented significant challenges on both fronts. Tenants of major aristocratic manors were, of course, tenants, and therefore lacked secure ownership. Even freeholders probably felt less than fully in control of their property due to the presence of an intrusive state apparatus. Apart from encumbering migration and land selling, this system also periodically seized significant amounts of land via eminent domain.⁶⁴ Chinese freeholders theoretically owned land at the sufferance of the emperor,⁶⁵ against whom they had nothing resembling a constitutional right of secure property ownership. By later eras, especially by the Qing, the imperial state's theoretical right of ownership had become almost purely nominal, but in

59. See sources cited *supra* note 56.

60. See LIANG GENG YAO, *ZHONGGUO SHEHUI SHI [A HISTORY OF CHINESE SOCIETY]* 246–47 (2014).

61. VON GLAHN, *supra* note 54, at 286–91 (analyzing impact of fiscal policy initiatives).

62. *Id.*

63. See, e.g., SCOTT, *supra* note 4.

64. Lin Jinshu, *Guanyu Mingdai Guantian de ji ge Wenti [A Few Questions about Ming State Landholding]*, 1988 *ZHONGGUO JINGJISHI YANJIU [STUDIES ON CHINESE ECONOMIC HISTORY]*, no. 1, at 73.

65. Mio Kishimoto, *Property Rights, Land, and Law in Imperial China*, in *LAW AND LONG-TERM ECONOMIC CHANGE: A EURASIAN PERSPECTIVE* 68, 71–73 (Debin Ma & Jan Luiten van Zanden eds., 2011) (discussing the theory of king's land, king's people, as the land was believed to originally belong to the King or sovereign).

the early Ming it was much more imposing, and may have significantly diminished the sense of personal ownership that commoner households felt—and, correspondingly, the likelihood that significant moral economies could emerge.⁶⁶

These problems were, in all likelihood, even more acute in earlier dynasties. The Yuan (1271–1368) and Song (960–1279) contained substantially feudal rural economies dominated by large aristocratic estates rather than private farms.⁶⁷ Moreover, the imperial state was, in many ways, even more intrusive than the early Ming state. The Song state was known for taking a relatively laid-back approach towards land selling per se: unlike a number of regimes both before and after, the Song state never attempted to ban land sales or systemically curb land accumulation.⁶⁸ That said, it also charged some of the highest land taxes in Chinese history and, from the late eleventh century to the thirteenth, attempted to micromanage agricultural production more intensively than any post-Tang Dynasty regime.⁶⁹ In other words, the further back in time, the more likely that the average agricultural household would be a manorial tenant, rather than a landowner, and the stronger the state's fiscal and regulatory presence would probably have been in everyday economic life. These trends suggest that significant moral economies did not exist in land. Correspondingly, explaining why Song and Yuan land markets tended to be less active than Ming and Qing markets—something that is difficult to prove empirically, but is nonetheless commonly assumed to be true⁷⁰—can be done using these trends, rather than the assumed existence of moral economies in land.

In sum, a chronological narrative of Chinese land markets would look something like the following: China began to transition out of a feudal land system around the tenth century. The process, which went through several dynasties and a variety of legal regimes, reached a critical point in the mid-Ming, after which commoner landowners truly became the dominant force in the rural economy. Prior to this point in time, there were two major factors—state intervention and aristocratic landownership—that not only made the existence of communal moral economies in land unlikely, but also rendered it analytically unnecessary. These factors provide far more persuasive explanations for any perceived lack of land selling in pre-Ming economies than does the moral economy theory. Land markets seemed to have advanced at more or less the same pace at which those factors receded. Therefore, barring the discovery of strong direct evidence of moral economies in land—and no such discovery has yet been made—there is very little reason to infer their existence from historical

66. See discussion surrounding *supra* notes 53–55.

67. See sources cited *supra* note 56 (discussing distribution of resources in economy).

68. Yu Qianqian, *Jiyu Boyilun de “Buyi Jianbing” Tudi Zhidu Fenxi* [A Game-Theoretical Analysis of Song Dynasty Land Policy], 2007 ZHONGGUO JINGJISHI YANJIU [STUDIES ON CHINESE ECONOMIC HISTORY], no. 1, at 159.

69. VON GLAHN, *supra* note 54, at 256–65, 268–69 (analyzing fiscal policy in the southern Song).

70. Hu Gang, *Ming Qing Tudi Shichanghua Qushi de Jiasu* [The Acceleration of the Marketization of Land in the Ming and Qing], 2005 GU JIN NONGYE [AGRICULTURE IN ANCIENT AND MODERN TIMES], no. 2, at 88.

circumstances, and actually very good reason to infer the opposite. After the mid-Ming turning point, however, reasonably compelling evidence of both highly active land markets and social commodification of land emerges. By the Qing and Republic, such evidence becomes quite overwhelming. In the end, it seems rather unlikely that moral economies, at least as traditionally defined, played a significant role in the history of Chinese land markets. Chinese land markets were indeed depressed or distorted for very long stretches of time—arguably for most of China’s documented history—but this was probably not the result of any widespread moral condemnation of land alienation.

China is, of course, more than just a country or an economy by European standards. It is—and was—essentially an entire continent, a multiplex of ecologies and regional economies that, for most of their late imperial history, only loosely shared a unified political system.⁷¹ The apparent lack of significant moral economies in Chinese land management therefore provides more than just one data point. Nonetheless, one might wonder whether moral economies in land were more manifest in other major early modern powers. Part III considers a few of these, seeking to identify analytical comparisons or similarities.

III

BETTER LUCK ELSEWHERE?

English history has probably been the arena where most battles over the moral economy thesis have been fought. Until the 1960s and 70s, the dominant theory in English social history, favored by prominent scholars such as R.H. Tawney and E.P. Thompson, was that England underwent a transformation from a collectivist moral economy to an individualistic commercial one: manor communities disintegrated, household farming rose to a position of prominence, and whatever traditional mores that bound farmers to certain customs against land alienation became obsolete.⁷² Correspondingly, land markets became unfrozen, and the alienability of land sharply increased both as a matter of law and as actual economic practice.⁷³ Depending on one’s perspective, this could either be a positive development, one in which a pre-modern, irrational peasantry came to better utilize their landed resources,⁷⁴ or a negative one, in which a moral peasantry lost the ability to engage in collective self-help and resistance against

71. See JONATHAN D. SPENCE, *THE SEARCH FOR MODERN CHINA* 75–78 (2d ed. 1999) (discussing economic and ecologic compositions of macroregions in mid-Qing China); G. William Skinner, *Regional Urbanization in Nineteenth-Century China*, in *THE CITY IN LATE IMPERIAL CHINA* 211 (G. William Skinner ed., 1977).

72. See generally R. H. TAWNEY, *RELIGION AND THE RISE OF CAPITALISM* (1926) (outlining the scope of this theory); R. H. TAWNEY, *THE AGRARIAN PROBLEM IN THE SIXTEENTH CENTURY* (1912) (detailing the beginning of this transformation); THOMPSON, *supra* note 4, at 97–184.

73. See sources cited *supra* note 72.

74. Weberian scholars, including Weber himself and others who worked to some extent in his tradition, such as Tawney, often bemoan the moral decline, but also tend to attribute early modern economic growth to it. See, e.g., TAWNEY, *RELIGION AND THE RISE OF CAPITALISM*, *supra* note 72; MAX WEBER, *THE PROTESTANT WORK ETHIC AND THE “SPIRIT” OF CAPITALISM AND OTHER WRITINGS* (Peter Baehr & Gordon C. Wells trans., Penguin Books 2002).

predatory aristocrats, gentry, and capitalists.⁷⁵ Weberians and Marxists alike seemed to accept this basic narrative.

The primary challenge came from studies of local sources: most famously, Alan Macfarlane's 1978 book *English Individualism* proposed a radical reinterpretation based on local material from Earls Colne.⁷⁶ First and foremost, he argued that there was really no legal or customary evidence of norms that forbid land selling.⁷⁷ Instead, individual landowners were largely free to buy and sell without fear of moral or social condemnation. Second, he argued that the lack of moral prohibition freed landowners to engage in large numbers of land sales, leading to extremely active land markets even in the thirteenth and fourteenth centuries.⁷⁸ Only rarely did land remain in a single household for more than a few generations. Third, Macfarlane saw in these relatively narrow empirical claims a broader revision to English social history. Instead of transitioning from collectivism to individualism, he argued, English society was more likely to have been individualist all along—exceptionally so, when compared with continental societies.⁷⁹ At no point in well-documented English history did social behavior significantly veer from an individualist ideal in which individuals pursued their own well-being without much regard for broader communal or even household welfare.

Predictably, this radically revisionist history triggered an immense debate between supporters and detractors.⁸⁰ After several decades of back-and-forth, controversy continued to swirl over some of Macfarlane's claims, especially the more general ones, but consensus began to emerge around a few basic points. As a "description of rights," wrote H.R. French and R.W. Hoyle in 2003, "*English Individualism* is surely accurate."⁸¹ Even in medieval times, there were neither significant legal nor social constraints on land sale. Instead, "there was always a market in land, both freehold and leasehold," and it was very common "for those who farmed the land to have no interest in it save their lease."⁸² However, Macfarlane's claim that land changed hands frequently in medieval times is on weaker ground. Archival evidence from Earls Colne, for example, suggest that land markets, while existent and functional, were not quite as active as he initially believed, and that land could often remain within a single household for several

75. See THOMPSON, *supra* note 4 (describing the evolution of rights, or lack thereof, of the peasantry).

76. ALAN MACFARLANE, *THE ORIGINS OF ENGLISH INDIVIDUALISM: THE FAMILY, PROPERTY, AND SOCIAL TRANSITION* (1978).

77. *Id.* at 62–130.

78. *Id.* at 102–30.

79. *Id.* at 165–89.

80. See JANE WHITTLE, *THE DEVELOPMENT OF AGRARIAN CAPITALISM: LAND AND LABOUR IN NORFOLK, 1440–1580*, 10–25 (2000) (discussing this debate); H. R. French & R. W. Hoyle, *English Individualism Refuted and Reasserted: the Case of Earls Colne (Essex), 1550–1750*, 56 *ECON. HIST. REV.* 595, 595–96 (2003) (discussing the debate on English individualism).

81. French & Hoyle, *supra* note 80, at 621.

82. *Id.*

generations.⁸³ There likely were institutional, political, or social reasons holding the land market back, even if moral condemnation of land alienation was not one of them. Finally, the notion that English society was fundamentally individualistic from a very early time has largely been accepted, especially in light of recent scholarship demonstrating substantial commercialization in medieval England.⁸⁴ Scholars have cast doubt, however, on Macfarlane's characterization of socioeconomic individualism as a distinctively English feature, noting that the difference he attempts to draw between English and continental socioeconomic behavior was poorly documented.⁸⁵

Early modern Japanese history is another field where the moral economy narrative was once particularly ascendant. From the early Tokugawa to the Meiji era, there is a fairly well-documented process of rural communal disintegration and peasant displacement, which generated a symbiotic narrative of moral and social change.⁸⁶ More recently, however, several scholars, most notably Mark Ramseyer, have challenged this narrative by demonstrating that economic resources, including both land and labor, once assumed to be inalienable under the early modern moral economy, were both institutionally alienable and frequently alienated.⁸⁷ This was particularly true of land. The Tokugawa Shogunate actually outlawed the permanent selling and buying of land, but as Ramseyer and others have demonstrated, the ban was almost completely circumvented in local practice.⁸⁸ Nearly all local villages recognized a form of fake ten-year mortgage that was essentially a permanent transaction—the debtor would simply default after ten years, thereby leaving full title to the creditor.⁸⁹ The high volume of land purchases made by richer farmers was one of the main reasons for the displacement of smallholders during the later Tokugawa.⁹⁰ If anything, land alienability led to communal disintegration, rather than the other way around.

83. *Id.*

84. *E.g.*, Ian Rush, *The Impact of Commercialization in Early Fourteenth-Century England: Some Evidence from the Manors of Glastonbury Abbey*, 49 *AGRIC. HIST. REV.* 123 (2001).

85. H. R. FRENCH & R. W. HOYLE, *THE CHARACTER OF ENGLISH RURAL SOCIETY: EARLS COLNE, 1550–1750* 21 (2007) (“But nowhere in *English Individualism* is it demonstrated that the French peasant land markets operated any differently from English peasant land markets.”).

86. *See* PENELOPE FRANCKS, *RURAL ECONOMIC DEVELOPMENT IN JAPAN 96–97* (2006) (discussing Tokugawa and Meiji peasant movements); VLASTOS, *supra* note 4, at 1–20 (discussing Tokugawa peasant movements).

87. *See* HERMAN OOMS, *TOKUGAWA VILLAGE PRACTICE: CLASS, STATUS, POWER, LAW* 222–42 (1996) (deconstructing this concept on a more micro-level); J. MARK RAMSEYER, *ODD MARKETS IN JAPANESE HISTORY* 26 (1996) (calling into question the concept of land inalienability in Japanese history); Osamu Saito, *Land, Labour and Market Forces in Tokugawa Japan*, 24 *CONTINUITY & CHANGE* 169, 191 (2009) (applying this concept to Tokugawa market forces).

88. *See* sources cited *supra* note 87. The Tokugawa Shogunate was the last feudal Japanese military government, and was in power from 1603 to 1867.

89. *See* sources cited *supra* note 87.

90. *See, e.g.*, THOMAS C. SMITH, *THE AGRARIAN ORIGINS OF MODERN JAPAN 157–64* (1959) (discussing the development of new class relations between large and small land landholders).

Even in Southeast Asian studies, the home field of James Scott's landmark study *The Moral Economy of the Peasant*,⁹¹ moral economy theories have encountered significant skepticism. Scott's work soon inspired Samuel Popkin to produce what could plausibly be called a counter-manuscript, *The Rational Peasant: The Political Economy of Rural Society in Vietnam*, which not only argued that Vietnamese peasants were far less moral and far more utilitarian and rational than Scott acknowledged, but also marshaled a wide array of sources from European and African history to argue against the presumption that the "morally irrational peasant" was a major historical phenomenon anywhere.⁹² More specifically, Popkin also argues that Vietnamese landownership had a fairly high turnover rate well before the modern colonial era.⁹³

For now, the debate continues in many fields.⁹⁴ This article has thus far attempted to show, however, that in several major economies—China in particular, but also England, and perhaps Japan—there is very little evidence that moral economies significantly burdened land markets at any stage of well-documented history. Other factors may have burdened land markets, some demonstrably so, but moral aversion to land selling is a more empirically elusive creature. This should create, at the very least, a presumption against any knee-jerk application of moral economy theories to explain pre-modern land market distortions. In fact, it might do more than that: barring overwhelming empirical evidence, any argument for why moral economies in land existed in other historical societies should ideally also explain why they existed in some parts of the world, but not others. If moral economies in land were not a universal phenomenon, then there should be a comparative theory that explains their emergence.

The moral economy narratives examined here tend to share one major methodological defect that lends considerable credence to their opponents. For the most part, they do not consider alternative explanations for their empirical findings. In the Chinese case, for example, moral language employed in land contracts and litigation documents was all too often taken to be unproblematic evidence of moral economies—when it almost certainly was not. Political economy-based alternatives are rarely taken seriously in this literature, perhaps due to the methodological gaps between various branches of the social sciences, but ultimately to the field's detriment. It makes it very difficult to be confident that the moral economies under discussion were truly moral, especially when so many of them eventually fail to withstand careful scrutiny.

This brings up the question of burden of proof. If a historical phenomenon seems to lend itself to both a moral economy explanation and political economy

91. SCOTT, *supra* note 4.

92. See generally SAMUEL L. POPKIN, *THE RATIONAL PEASANT: THE POLITICAL ECONOMY OF RURAL SOCIETY IN VIETNAM* (1979).

93. *Id.* at 83–132.

94. Cf. TRIPP, *supra* note 4 (outlining how this debate continues to be important to the economic history of the Islamic world).

one, which side should bear the heavier burden? That is, which side should be responsible for making at least a prima facie case that the other side will likely fail to explain the phenomenon? In the specific context of land markets, the fact that moral economies apparently played no significant role in the documented history of several major socioeconomic systems may tilt the burden towards the moral economy camp, but nonetheless, one has to wonder if there are more systemic, theoretical reasons to think so.

IV

A (PARTIAL) THEORY OF EARLY MODERN LAND MARKETS

This part provides a theoretical argument for why moral economy proponents should bear the burden of proof within the context of early modern land markets, which they have yet to meet in any compelling way. That is, until persuaded otherwise by the bulk of existing evidence, it should be presumed that there were no widespread moral economies in early modern societies that substantially burdened the alienation of land—not necessarily that there was no moral condemnation of land selling, but that such condemnation was not powerful enough to actually prevent most people from selling land when it was in their economic interests to do so. The basic argument is simple: the greater and more complex a resource's economic value, the less likely that it will be subject to significant moral economies. Therefore, given the extremely high economic value of land in early modern societies, there should be a general presumption, subject to rebuttal, that early modern land markets were largely unfettered by the moral condemnation of land sales. For reasons explained in the Conclusion, this presumption does not necessarily apply to post-industrial societies.

For a moral economy narrative to be truly distinct from a political economy one, there must be at least some element of subjective morality in the process, either via conscious normative internalization or through cognitive habit.⁹⁵ Otherwise, if so-called moral economies were merely equilibria of consciously utilitarian and materialist bargaining, they would be analytically indistinguishable from materialist political economies even if expressed in moral language, and therefore meaningless. There are two major kinds of subjective moral behavior that can avoid this problem. First, individuals might pursue a line of action due to conscious moral reasoning—a conscious decision to do, or not do, something because of a moral belief. Second, they might pursue that line of action out of subconscious habit, but, when forced to justify it, make sincerely moral arguments. One could argue that these processes are not necessarily inconsistent with utilitarian theories of microeconomic or political behavior. Internalized moral norms are merely part of one's utility function, and influence behavior like any other personal preference.⁹⁶ That may be true, but it would not

95. See, e.g., sources cited *supra* note 4 (rejecting any suggestion that moral economies might simply be the expressive symptoms of political economy).

96. Neoclassic versions of this assumption often assume utility functions to be exogenous. Cf. Gary S. Becker & Kevin M. Murphy, *A Theory of Rational Addiction*, 96 J. POL. ECON. 675 (1988) (outlining

negate the fundamental distinction between moral and materialist utilitarianism, in which economic gain is considered the primary motive.

On a societal basis, there may be a tradeoff between moral and material economies concerning a given resource: the more important the latter, the less important the former—and vice versa. This will seem intuitive to most people. After all, we generally believe that our moral beliefs are more likely to be compromised when the economic costs of obeying them are higher. But are there more intellectually rigorous ways of delineating the argument?

Fortunately, at least three major theories of cognitive behavior lend support to this argument. First, the system one/system two theory of cognitive decisionmaking that Daniel Kahneman and others have raised to prominence in recent years suggests that individuals reserve conscious thinking—“system two” or slow thinking—for only the most important decisions, whereas most decisions are made somewhat subconsciously using “system one” or fast thinking.⁹⁷ Under this framework, the most salient decisions, the ones that command conscious intellectual effort, tend to be the most important and difficult ones. Applying this framework to the context of early modern land markets: whereas a farmer might employ system one thinking to quickly discard a piece of worthless wasteland, system two would most likely kick in if the land involved was critical to his livelihood. In other words, the cognitive salience of a decision—land selling, for example—should theoretically increase when its economic significance is extremely high. This reduces the likelihood that early modern land markets were regulated by subconscious moral habits.

Second, a considerable body of psychological research—which goes back to Freud, Piaget, and Kohlberg, but remains influential today—argues that individuals tend to acquire their internalized normative preferences at a young age and that younger children tend to be more normatively malleable than older ones, and vastly more malleable than adults.⁹⁸ In addition, the more economically

a theory of rational addiction); George J. Stigler & Gary S. Becker, *De Gustibus Non Est Disputandum*, 67 AM. ECON. REV. 76 (1977) (analyzing taste, addiction, and exogenous preferences. *But see* David Krackhardt, *Endogenous Preferences: A Structural Approach*, in DEBATING RATIONALITY: NONRATIONAL ASPECTS OF ORGANIZATIONAL DECISION MAKING 239 (Jennifer J. Halpern & Robert N. Stern eds., 1998) (proposing a model of endogenous preferences over exogenous functions); Robert A. Pollak, *Habit Formation and Dynamic Demand Functions*, 78 J. POL. ECON. 745, 745–46 (1970) (formulating a model of consumer behavior based on habit formation).

97. *See generally* DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011) (delineating the outlines of this theory of cognitive decisionmaking).

98. *See, e.g.*, JEAN PIAGET, THE MORAL JUDGMENT OF THE CHILD 13–108 (Marjorie Gabain trans., 1965) (developing this theory); *see also* LAWRENCE KOHLBERG, THE PHILOSOPHY OF MORAL DEVELOPMENT: MORAL STAGES AND THE IDEA OF JUSTICE 409–12 (1981) (outlining six stages of moral development); RICHARD WOLLHEIM, SIGMUND FREUD 177–218 (1971); PARENTING AND CHILDREN'S INTERNALIZATION OF VALUES: A HANDBOOK OF CONTEMPORARY THEORY (Joan E. Grusec & Leon Kuczynski eds., 1997) (discussing internalization of values and preferences by children); Joan E. Grusec & Jacqueline J. Goodnow, *Impact of Parental Discipline Methods on the Child's Internalization of Values: A Reconceptualization of Current Points of View*, 30 DEV. PSYCHOL. 4 (1994); K.V. Roe, *Early Empathy Development in Children and the Subsequent Internalization of Moral Values*, 110 J. SOC. PSYCHOL. 147 (1980). For a more recent application of these ideas, see Amir N. Licht, *Social Norms and the Law: Why Peoples Obey the Law*, 4 REV. L. & ECON. 715, 733 (2008) (citing HANS Kelsen, PURE THEORY OF

significant a resource, the less likely adults will entrust children with them. This is broadly true, in modern societies, of major decisions concerning finance and property,⁹⁹ and there is little reason to believe that early modern societies were significantly different. Indeed, the early modern family patriarch generally held greater control over household socioeconomic decisions than any comparable figure in modern households, and children were rarely involved.¹⁰⁰ Putting these arguments together, one would have at least some reason to be skeptical of moral economy-based theories of early modern land markets. As a general matter, individuals were probably only exposed to issues of land management and alienation at a fairly advanced age, well after their most cognitively malleable years.

Third, a number of influential cognitive studies have shown that individuals are more likely to accept norms and beliefs that agree with their previously held dispositions and preferences.¹⁰¹ Assuming that most individuals, even children, have an innate and usually strong preference for material gratification and wealth accumulation, it would follow that an individual would likely have a harder time accepting—and therefore internalizing—norms that distinctly damage his or her economic interests. This is essentially a formal and theoretical way to express the aforementioned intuition that people are most likely to disobey moral commandments when the material cost of obedience is highest.

Examples abound. Despite clear and severely worded moral commandments against wife and child selling in early modern China and Japan, violations were nonetheless so common among the poor that scholars have been able to identify what can only be described as mature and well-regulated markets for wives and children.¹⁰² In comparison, whatever moral stigma a land sale or purchase might have carried—and it is highly questionable whether they usually carried any—was mild, whereas the economic importance of a land sale was generally much greater. In an agricultural economy, land, if well maintained, kept its value, whereas human labor rapidly lost value over time. Consequently, a parcel of land large enough to support one person was generally vastly more expensive than the

LAW 193–278 (1989)).

99. See, e.g., Haiyang Chen & Ronald P. Volpe, *An Analysis of Personal Financial Literacy Among College Students*, 7 FIN. SERVS. REV. 107, 114 (1998) (concluding that college students have poor financial literacy); Annamaria Lusardi et al., *Financial Literacy Among the Young: Evidence and Implications for Consumer Policy* (Nat'l Bureau of Econ. Research, Working Paper No. 15352, 2009), <http://www.nber.org/papers/w15352> [<https://perma.cc/QH4H-DF4N>] (indicating some consensus that this is true in contemporary populations).

100. See, e.g., MACFARLANE, *supra* note 76 (discussing medieval and early modern household decision-making); Alexandra Shepard, *Manhood, Credit and Patriarchy in Early Modern England, c. 1580-1640*, 167 PAST & PRESENT 75 (2000) (discussing social norms of patriarchy in Early Modern England).

101. See, e.g., Dan M. Kahan et al., *Cultural Cognition of Scientific Consensus*, 14 J. RISK RES. 147 (2011) (explaining the scientific basis for this confirmation bias).

102. See generally MATTHEW H. SOMMER, POLYANDRY AND WIFE-SELLING IN QING DYNASTY CHINA: SURVIVAL STRATEGIES AND JUDICIAL INTERVENTIONS (2015) (identifying the full scope of this market); RAMSEYER, *supra* note 87.

person himself.¹⁰³ Having the ability to buy and sell land was, therefore, much more economically important than having the ability to buy and sell human beings. If an extremely explicit moral (and legal) prohibition was unable to stop the latter, then one can only wonder what kind of moral commandment would have been necessary to stop the former, and what kinds of extreme socioeconomic conditions could have created such a commandment. It is frankly more logical to assume, until proven otherwise, that they rarely existed.

It is easy to imagine that socio-moral condemnation of land alienation benefitted, and therefore appealed to, certain individuals or groups, but vastly more difficult to imagine anything approaching a social consensus emerging in favor of such norms. Too many people would lose out under such a consensus, ranging from wealthier households looking to purchase land to desperate landowners in dire need of cash, to neighbors looking to make micro-adjustments to boundaries. Peasant households may very well have strongly preferred not to sell land, but that hardly meant that they did not want the freedom to do so. Government officials, on the other hand, may indeed have preferred to keep peasants locked in place—it made tax collection and administration much easier—but few scholars would accept elite political preferences or ideology as evidence of societal moral economies. Social consensus is, in the end, what a true moral economy narrative requires. It has to at least be strong enough to make dissidents fearful of reputational sanctions. But, more ideally, the deterrence against norm violation would simply be guilt. This analysis suggests that neither likely existed.

What do these cognitive insights suggest about moral economies? To begin with, moral regulation is more likely to emerge over resources that are less cognitively salient and more likely to be seriously dealt with at a young age. Perhaps more importantly, the less the moral norms clash with individual economic interest, the greater their chance of taking root. Within the specific context of land markets, scholars have also proposed other conditions for their emergence—for example, that they usually emerge in response to long-term, sustained ownership over land, and that they tend to emerge in stable, close-knit communities¹⁰⁴—but those conditions tend to be compatible with the arguments made here. Neither long-term, sustained ownership nor communal closeness implies extreme economic significance. In fact, they are quite unrelated. The only proposed condition that is distinctly incompatible is the somewhat common suggestion that the extremely high economic value of land in early modern societies actually aided the development of moral economies against land alienation.¹⁰⁵ Not only is there no empirical support—within the confines of Chinese and English history—for such a claim, but its logic is probably backwards. The extremely high economic value of land in early modern societies

103. SOMMER, *supra* note 102.

104. See, e.g., POLANYI, *supra* note 4; SCOTT, *supra* note 4.

105. See, e.g., HUANG, *supra* note 4, at 71 (characterizing Qing Dynasty land systems as driven by “a survival ethic”).

is, in theory, more likely to have worked against, not for, the emergence of such moral economies.

In other words, by expending so much energy on land alienability in early modern economies, moral economy proponents likely picked one of the most inhospitable terrains conceivable to apply their theories. This may have been a conscious choice—it sometimes pays to tackle the hardest problems first—but more likely reflected a somewhat curious understanding of human psychology. A more conventional understanding suggests that, in the context of early modern land markets, the burden of proof should be higher for moral economy proponents than for their opponents. They have not satisfied this burden.

V

CONCLUSION: MORAL ECONOMIES IN OTHER CONTEXTS

If most early modern societies were indeed morally tolerant of land alienation, does this negatively reflect on the empirical viability of moral economy theories in general? This is where the theoretical problems with pre-industrial land markets discussed in parts II and III are actually beneficial for moral economy proponents. As a theoretical matter, robust evidence of early modern moral condemnation of land alienation should not have been expected in the first place. It is much better to encounter empirical difficulties with higher-hanging theoretical fruit than with lower-hanging ones.

But what, exactly, would be the lowest hanging fruit? It would likely involve social or economic resources that are relatively distant—at least as a matter of perception—from basic material livelihood and sustenance and draw serious individual engagement at relatively young ages. Moreover, they should ideally be managed and used over the long term by stable, close-knit communities.

One potential concern is that such low-hanging fruit would necessarily be economically insignificant due to their relative distance from material sustenance. In other words, if moral economies only exist where they have very little socioeconomic impact, why study them at all? This, however, is a misunderstanding. The distance that really matters is a perceived one. Moral economies may very well exist over resources that seem somewhat distant from the economic livelihood of most individuals—and therefore do not trigger the kind of system two scrutiny¹⁰⁶ and self-interested concerns that likely were triggered by early modern land sales—yet still have profound, if somewhat less direct, material consequences.

To illustrate this point, the following paragraphs outline an example drawn from some of my previous work. It turns back to the mortgage redemption institutions discussed in part II, and seeks to provide a cultural—and, in many ways, moral—explanation for them that does not rely on conventional moral economy theories of land inalienability.¹⁰⁷ Therefore, it demonstrates how moral

106. See KAHNEMAN, *supra* note 97.

107. See generally Taisu Zhang, *Cultural Paradigms in Property Institutions*, 41 YALE J. INT'L L. 347

norms can impact land markets without directly commenting on the specific moral meaning of land sales.

The dian sales that dominated the late imperial and Republican era Chinese land market were essentially a form of mortgage. They allowed landholders—usually smallholders, who were more economically vulnerable and therefore more likely to engage in collateralized borrowing—to sell land to a creditor for some sixty to eighty percent of its full value while retaining a right of redemption.¹⁰⁸ Compared to mortgage instruments in other early modern economies, dian sales gave an unusually strong right of redemption to debtors. Not only were debtors allowed to hold essentially unlimited rights of redemption, but under most local customs, this right mandatorily attached to all dian sales.¹⁰⁹ After the dian sale, the seller could, at any time, convert the dian sale into a permanent one, upon which he received an additional payment, generally equal to the difference between the original loan and the land's full value, while surrendering his right to redeem.

This arrangement tended to maximize the debtor's ability to redeem his land, which, under early modern economic conditions, was usually highly desirable. This won it broad popularity and support among smallholders, who were much more likely to need to trade land for cash.¹¹⁰ At the same time, it severely hampered the ability of wealthier landowners—who tended to be the creditors in dian sales or the buyers in permanent ones—to securely acquire land, and therefore tended to draw their ire. In other words, dian redemption norms were an example of smallholders advancing their institutional preference despite significant opposition from their wealthier neighbors.¹¹¹

How did this happen? For the most part, it was a straightforward reflection of the political clout of smallholders. Unlike in, for example, early modern English and Japanese society, smallholders were surprisingly well represented among the political elite of most rural villages and towns.¹¹² In some Northern Chinese villages, for example, below-average landholders could occupy half the positions on the village council, and a surprisingly large number of village heads were close to landless.¹¹³ On issues that were crucial to their economic livelihood—dian redemption almost certainly qualified because it directly affected the stability of their landownership—smallholders were therefore able to draw upon fairly substantial sociopolitical resources, and could sometimes win significant victories. In the specific context of dian redemption, evidence suggests that the intervention of lower income political elites in support of infinite

(2016) (discussing how culturally defined social hierarchies influence the creation of property institutions).

108. *Id.* at 380.

109. *Id.* at 380–81.

110. *Id.* at 381–84.

111. *Id.* at 384.

112. *Id.* at 389–92.

113. *Id.* at 390.

redeemability was crucial to its institutional entrenchment.¹¹⁴ Without it, the opposition from large landowners would have been extremely difficult to overcome.

But this begs the question of how smallholders came to hold such sociopolitical stature in the first place. After all, many, quite possibly most, other early modern societies tended to allocate status and power on the basis of wealth and therefore saw their local politics dominated by large landlords.¹¹⁵ Why were things different in China? The answer most likely lies in normative status hierarchies, the social norms of status distribution, which rural communities operated under. Late imperial and Republican Chinese society broadly embraced the Neo-Confucian social ideal that individuals should self-organize into large kinship networks, and that social rank within those networks should be determined by age and generational seniority.¹¹⁶ This allowed a number of low-wealth but high-seniority individuals—most villages had a number of these—to obtain status and political influence quite disproportionate to their landholding.

Moreover, the proliferation of these Neo-Confucian status hierarchies was at least partially a cultural or moral process of norm internalization. They spread from relatively constrained beginnings in the eleventh century to social predominance by the sixteenth or seventeenth largely because people believed that they were a morally desirable or natural means of social organization.¹¹⁷ Socioeconomic and political incentives alone cannot satisfactorily explain this rapid expansion, largely because the socioeconomic or political benefits of establishing Confucian gerontocracies were profoundly ambiguous, and quite possibly negative in many circumstances.¹¹⁸ Without widespread societal internalization of such hierarchies—of which there is substantial evidence beginning in the twelfth and thirteenth centuries—it is hard to imagine how they came to dominate social life in virtually all parts of the Chinese core by the late Ming.

In other words, there was a chain of causation from culturally internalized norms of status allocation to actual distributions of sociopolitical status, to the property institutions that emerged from bargaining between social groups of varying sociopolitical stature, and then to the distortions in the land market that were caused by these institutions. But why were status distribution norms morally internalized when norms against land alienability most likely were not? Returning to the basic theoretical framework outlined in part III, one could plausibly speculate that social hierarchies were both less directly linked to everyday economic life and far closer to the philosophical core of Neo-Confucianism. In fact, there were enormous amounts of philosophical and ethical writings by intellectual and political elites at all levels that explicitly endorsed

114. *Id.* at 391.

115. *Id.* at 390–91.

116. *Id.* at 393–97.

117. *Id.* at 397–410.

118. *Id.* at 406–08.

these hierarchies, whereas there were very few that paid any attention to the issue of land alienation.¹¹⁹ Moreover, there is at least some basis to suspect that status criteria, by virtue of their extremely early introduction in the average person's life—they are commonly believed to be some of the first norms that children are exposed to—may be more internalized than property norm preferences, which are generally not developed until many years later. In fact, status criteria are encountered and accepted so early in most people's lives that, allowing for any possibility of non-self-interested norm internalization, they would probably be one of the most likely candidates.

The lack of empirical support for moral economies of land selling does not, therefore, rule out the possibility—indeed the likelihood—that moral economies existed in other dimensions of socioeconomic life. These were true moral economies in the sense that they were moral norms that had, in the end, significant economic consequences. One might even call the kind of causation chain outlined above a moral economy of land selling, in that it describes a process by which moral norms affected the institutional framework and economic operation of land markets. It just was not a moral economy of land selling in the conventional sense, which focuses on the moral condemnation of land alienation *per se*. If moral economy theories are to regain their foothold in early modern history, they should discard that conventional perspective in favor of broader, more complex understandings of the relationship between moral norms and economic activity.

A final question to consider is whether, and how, the above discussion can address the transition from early modern to modern that inspired most of the moral economy narratives of land alienability in the first place. Most scholars would agree that land markets in contemporary societies are generally more active and free than those in early modern societies.¹²⁰ At the same time, at an individual level, the economic significance of landholding has often decreased, given that most households in developed countries, and an increasing share of households in developing countries, no longer rely on personal landholding for income. That is, the material obstacles that prevented the moralization of land alienation in early modern societies have now largely disappeared, but few moral economies, if any, have emerged in their absence. Is this a problem for the theoretical arguments made above?

There is no reason to think so. The emergence of moral economies in land alienation can be affected by a number of factors, of which land's economic significance is only one. Several of the other factors, including the geographical stability of individual landholders and the closeness of local communities, clearly work against the emergence of moral economies in the more mobile and commercialized modern era.¹²¹ Nonetheless, it is rather interesting to observe

119. See generally *id.* at 347–414.

120. Virtually all the historical scholarship cited in this paper, whether for or against the moral economy thesis, agree with this basic empirical assessment—they differ on how to explain it.

121. See Yun-chien Chang & Henry E. Smith, *An Economic Analysis of Civil Versus Common Law*

that the reasons why such moral economies failed to emerge in pre-modern and modern history are probably quite different. The same socioeconomic forces—industrialization, capitalism, the development of a modern labor force—that decreased the importance of landholding also accelerated geographical mobility and the disintegration of local communities. Modern economic development giveth, but also taketh away.

Property, 88 NOTRE DAME L. REV. 1, 47-55 (2012) (developing a transaction cost explanation for civil and common property law); Avner Greif & Guido Tabellini, *Cultural and Institutional Bifurcation: China and Europe Compared*, 100 AM. ECON. REV. (PAPERS & PROC.) 135, 135 (2010) (presenting a conceptual framework for exploring rise of Europe and China).