EXPROPRIATION IN THE NAME OF RIGHTS: TRANSFERABLE DEVELOPMENT RIGHTS (TDRs), THE BUNDLE OF STICKS AND CHINESE POLITICS

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ABSTRACT: Through an in-depth empirical investigation, this article discloses for the first time how and why land reform programs in the name of empowering and enriching farmers have been serving the

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purpose of Chinese local governments to compromise the rights revolution in the Chinese national expropriation regime. The concept of “transferable development rights” (TDRs) is simple: development rights from one parcel of land are lifted up and transferred to another. Upon a detailed examination of land tickets in Chongqing and Chengdu, the southwestern Chinese application of TDRs, this article reveals that local governments in both cities have created schemes of land tickets to circumvent the increasingly stringent national regulation of local governments’ expropriation power. But by reframing such practices as for rural rights and welfare, they have successfully gained acquiescence and even approval from the central government, eventually leading to the creation of a national market of land tickets. This case study demonstrates the “maximally protean and easily reformable” nature of the “bundle of sticks” and cautions against expanding the role of TDRs in China’s land reform.

INTRODUCTION

The largest migration in human history is taking place in China: in 1978, less than 20 percent of the Chinese population lived in cities; today, the share is more than half. China’s urbanization is projected to reach about 70 percent – some 1 billion people – by 2030.¹ In other words, 400 million Chinese have moved from rural areas to cities in the past four decades, and a further 600 million are expected to join them by 2030. The problem is that people move, but land does not. Exacerbating the situation is that people who have migrated cannot sell their land or houses in the countryside, and are thus leaving them unoccupied. To address this mismatch between property and people,

¹ International Bank for Reconstruction and Development, The World Bank, and the Development Research Center of the State Council, People’s Republic of China, *Urban China: Toward Efficient, Inclusive, and Sustainable Urbanization* *3 (2014), archived at <https://perma.cc/C43N-XCVW>. See also John Givens, *The Greatest Migration: China’s Urbanization* (Huffington Post, Feb. 2, 2016), archived at <https://perma.cc/78V3-QZJN>.

Chongqing² and Chengdu,³ two major cities in southwestern China, initiated reform schemes allowing land used for housing in faraway villages to be converted to agricultural use and a corresponding amount of farmland near towns to be used for urban expansion.⁴ These schemes in essence embrace the notion of “transferable development rights” (TDRs), that is, the development rights for one parcel of land being lifted up and transferred to another.⁵

The concept originated in the United States, with approximately 200 U.S. communities currently operating TDR programs in some form.⁶ The common goals of TDR programs include farmland and historic preservation, the protection of environmentally sensitive land, and the promotion of urban density. Land owners are granted TDRs as compensation for the development restrictions the government has imposed on their land and can transfer those rights to land developers who want to build somewhere else. The most vivid illustration of TDR operation can be found in *Penn Central Transportation Co. v. New York City*.⁷ After New York City rejected the Penn Central Transportation Company’s proposal to increase the altitude of an existing building on the ground of preserving Grand Central Terminal as an important landmark, the company was

² Chongqing is the fourth provincial-level city under the direct administration of the central government with over 30 million people and a territory of 82,269 square kilometers. Chongqing Statistics Bureau, *Chongqing Statistical Yearbook 2018* *4 (2018).

³ Chengdu is the capital city of Sichuan province with over 16 million people and a territory of 14,335 square kilometers. Chengdu Statistics Bureau, *Chengdu Statistical Yearbook 2018* *343 (2018).

⁴ *Reform’s Big Taboo: An Ambitious Plan for Social Change Has Run into Trouble* (Economist, Mar. 26, 2016), archived at <https://perma.cc/WN68-UPVP>.

⁵ Arthur C. Nelson, Rick Pruetz, and Doug Woodruff, *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs* (Island 2013); Sarah J. Stevenson, *Banking on TDRs: The Government’s Role as Banker of Transferable Development Rights*, 73 N.Y.U. L. Rev. 1329, 1329 (1998); John J. Costonis, *The Disparity Issue: A Context for the Grand Central Terminal Decision*, 91 Harv. L. Rev. 402 (1977); John J. Costonis, *Development Rights Transfer: An Exploratory Essay*, 83 Yale L. J. 75 (1973).

⁶ Nelson, Pruetz, and Woodruff, *The TDR Handbook* at 131 (cited in note 5).

⁷ 438 U.S. 104 (1978).

allowed to sell the “air space” to other developers who were not subject to U.S. landmark laws.⁸

TDR programs in the United States have not achieved their potential, at least not as envisioned by their architects. Even in New York City, the TDR market is underdeveloped for a variety of reasons, primarily limited by market demand owing to limited receiving zones.⁹ In China, TDRs have been entrusted with an even bigger ambition: to serve as the key to rural land reform, which is currently enmeshed in the mutually conflicting goals of development and preservation. On the one hand, local governments need land for industrialization and economic development. On the other, the central government is very concerned over the loss of arable land and the increasing number of landless farmers in the wake of rapid urbanization and industrialization. It has thus imposed a top-down land use quota system according to which city governments are allocated limited, and therefore precious, quotas for converting rural land to urban land.

By linking the rural areas where migrant workers come from with the urban areas where they work, farmers are encouraged to reclaim their residential plots of land for the purpose of generating the land use quotas that city governments need to convert rural land near the city center to urban land for development. As a result, city governments can obtain more land for development and, presumably, should be willing to give farmers something in return. That something could be cash paid for a land use quota, or it could be an urban hukou,¹⁰ coming with it the legal resident status in the city and the accompanying social welfare coverage.

However, it is unclear whether the various local reforms that take the name of TDRs are intended to grant farmers development

⁸ *Id.* at 124.

⁹ See Vicki Been and John Infranca, *Transferable Development Rights Programs: Post-Zoning*, 78 Brooklyn L. Rev. 435 (2012).

¹⁰ See, e.g., Kam Wing Chan and Will Buckingham, *Is China Abolishing the Hukou System?*, 195 China Q. 582 (2008).

rights or are simply another — easier — way for local governments to evade national laws and grab land from farmers. In the United States, TDRs belong to the original land owners who have been deprived of development rights owing to land use regulations. In Chinese local practice, however, it remains questionable whether farmers have any real control over the generation and transfer of land use quotas. For example, with respect to residential plot reclamation, reports on farmers being “forced to live upstairs”¹¹ indicates that they may not have given up their plots voluntarily.

In 2018 the State Council Office promulgated an ordinance on the transfer of land use quotas among provinces.¹² The idea behind this move was that relatively undeveloped provinces, particularly those in northwestern China, could preserve more arable land, whereas relatively developed provinces could use more land for development by buying the farmer’s land use quotas. Such a national market for land use quotas is unprecedented anywhere in the world. The policy’s real impact is yet to be seen, but it seems that the national government has embraced the idea of TDRs as a way of both maintaining a balance between arable land preservation and economic development while also promoting inter-regional equality. It is therefore important to review existing regional practices in China to better understand the theory and practice of TDRs.

Based on an in-depth empirical investigation of land tickets in Chongqing and Chengdu, the southwestern Chinese application of TDRs, this article reveals that local governments in both cities have created schemes of land tickets to circumvent the increasingly

¹¹ Yin Shuang, *The Hidden Concern Behind “Farmers Being Forced to Be Upstairs* (Guang Ming Daily, Nov. 4, 2010), archived at <https://perma.cc/Z2Z5-KK82> [(殷爽), “农民被上楼” 背后有隐忧, 光明日报].

¹² *Notice of the General Office of the State Council on Printing and Distributing the Inter-provincial Supplementary Cultivated Land Management Measures and the Urban and Rural Construction Land Increase and Decrease Linkage Savings Inter-provincial Transfer Management Measures*, General Office of the State Council of the People’s Republic of China (Mar. 10, 2019) [国务院办公厅关于印发跨省域补充耕地国家统筹管理办法和城乡建设用地增减挂钩节余指标跨省域调剂管理办法的通知].

stringent national regulation of local governments' expropriation power. But by reframing such practices as for rural rights and welfare, they have successfully gained acquiescence and even approval from the central government, with significant impact on the central government policy to create a national market of land use quotas. Land tickets in China face the same problems that TDRs do in the United States: (1) the baseline entitlement is unclear; (2) they are prone to manipulation by the government and are to serve as camouflage for takings;¹³ and (3) a real market with a functioning price mechanism is absent. In light of reforms aimed at granting farmers the right to transfer construction land directly, in essence taking their rights one step closer to fee simple,¹⁴ this article cautions against expanding the role of TDRs in China's land reform.

The article is structured as follows. Section I investigates the conceptual and institutional background of TDRs, particularly their inherent connection with takings. Section II examines the mechanism and market of land tickets, the southwestern Chinese application of TDRs. Section III reveals how land reclamation, the first step to generating land tickets, has become in practice another means of expropriation that evades national laws and regulations constraining local governments' expropriation power. Section IV explores the institutional incentives of local governments that are experimenting with TDRs. Finally, Section V concludes by cautioning against the expansion of TDRs and calling for an alternative approach to land reform in China.

¹³ See, e.g., William A. Fischel, *Regulatory Takings: Law, Economics, and Politics* 2 (Harvard 1995); Stewart E. Sterk, The Federalist Dimension of Regulatory Takings Jurisprudence, 114 Yale L. J. 203 (2004).

¹⁴ *Opinions of the State Council and the Central Committee of the Communist Party of China on Establishing and Perfecting the System, Mechanism and Policy System of Urban-Rural Integration and Development*, State Council of the People's Republic of China (Apr. 15, 2019) [中共中央国务院关于建立健全城乡融合发展体制机制和政策体系的意见].

I. TDRs, TAKINGS, AND THE BUNDLE OF STICKS

Before looking more closely at TDR practices in China, we need to understand them in the context of their broader institutional background and conceptual framework. TDRs are inherently incoherent in nature, falling somewhere between property rights and regulatory takings. The view of property rights underlying TDRs is the “bundle of sticks” model, rather than the *in rem* conception. Both the institutional background of TDRs and their place within the bundle of sticks model have implications for TDR practices in China.

A. TDRs: BETWEEN TAKINGS AND PROPERTY RIGHTS

TDR programs in New York City and other U.S. cities owe many of their features to the legal and conceptual frameworks developed in the 1970s and 1980s by legal scholars John Costonis, Norman Marcus, and David Alan Richards.¹⁵ These scholars viewed TDR programs as a tool for helping to resolve the tensions between development and preservation goals. They also saw unused development potential as a community resource rather than a solely private resource, an idea that shaped their proposals for how municipalities should structure the transfer of development rights. The desire to preserve resources—such as historic landmarks, open space, and farmland—in areas facing strong developmental pressures has been the principal motivation for TDR proposals in New York City and elsewhere.¹⁶

However, as noted, TDRs are of a fundamentally incoherent nature. In *Penn Central v. New York City*,¹⁷ the most important regulatory takings case of all time, the U.S. Supreme Court upheld the historic preservation of Grand Central Terminal in part because the city offset the burden of landmarking with a valuable new

¹⁵ Been and Infranca, *Transferable Development Rights Programs* (cited in note 9).

¹⁶ *Id.* at 435.

¹⁷ 438 U.S. 104 (1978).

property interest—a TDR—that could be sold to a neighboring property.

The case related to two separate issues. The first was whether the regulation constituted a taking, and the other was whether just compensation had been provided if a taking had occurred. The majority opinion mixed the two issues.¹⁸ The Supreme Court confronted TDRs again in *Suitum v. Tahoe Regional Planning Agency*,¹⁹ in which Mrs. Suitum alleged that regulations preventing the development of her property near Lake Tahoe were in effect a taking, regardless of the availability of TDRs. The court's majority opinion focused on the issue of ripeness, holding that the property owner did not need to try to sell or transfer the TDRs to bring her claim.²⁰ The concurring opinion of Justice Scalia, joined by Justices O'Connor and Thomas, revealed the incoherent nature of TDRs:

Putting TDRs on the takings rather than the just compensation side of the equation is a clever, albeit transparent, device that seeks to take advantage of a peculiarity of our takings clause jurisprudence: whereas once there is a taking, the Constitution requires just compensation, a regulatory taking generally does not occur so long as the land retains substantial value. If money that the government regulator gives to the landowner can be counted on the question of whether there is a taking, rather than on the question of whether the compensation for the taking is adequate, the government can get away with paying much less.²¹

TDRs are therefore inherently related to land use control and takings. On the one hand, we can view them as another kind of

¹⁸ *Id.* at 104.

¹⁹ 520 U.S. 725 (1997).

²⁰ Robert C. Ellickson and Vicki L. Been, *Land Use Controls: Cases and Materials* 166 (Aspen 3d ed. 2005).

²¹ *Id.* at 166.

regulatory property rights similar to pollution permits.²² On the other, however, several questions arise out of the administrative origin of TDRs.

The first is whether land use regulations themselves constitute the deprivation of private property rights, and are therefore a taking.²³ The second is whether TDRs can compensate for the loss of development value. Another way of phrasing this question is to ask whether there is sufficiently strong demand for TDRs for their owners to realize the value of those rights in the marketplace. On the demand side, there is also the question of who the potential buyers of TDRs are and why they need to buy TDRs for development. Does the additional requirement of buying TDRs impose an unjust burden on development? Even if we regard the use of TDRs as a flexible instrument of land use control for the government, how should the market be designed to ensure that it operates in a way that is acceptable to both the suppliers and purchasers of TDRs? What would happen if the demand for TDRs were so weak that their owners' returns were insufficient to cover the loss of developmental value?²⁴

The final question that arises concerns the difference between the use of TDRs in China and the United States, with the former adding an additional step in TDR generation. Chinese local governments require farmers to reclaim their residential land to generate a land use quota, the Chinese counterpart of TDRs, and the process of generating that quota via reclamation is susceptible to manipulation. Might it constitute a taking? If reclamation plans are pushed through by the government and conducted on a large scale, the likelihood that farmers will lose control over their land is high. If local governments

²² See Christopher Serkin, *Penn Central Take Two*, 92 Notre Dame L. Rev. 913 (2016).

²³ See, e.g., Mark Fenster, *The Stubborn Incoherence of Regulatory Takings*, 28 Stan. Envir. L. J. 525 (2009); J. Peter Byrne, *Ten Arguments for The Abolition of the Regulatory Takings Doctrine*, 22 Ecol. L. Q. 89 (1995); Barry Appleton, *Regulatory Takings: The International Law Perspective*, 11 N.Y.U. Envtl. L. J. 35, 35 (2002); Vicki Been and Joel C. Beauvais, *The Global Fifth Amendment-NAFTA's Investment Protections and The Misguided Quest for an International Regulatory Takings Doctrine*, 78 N.Y.U. L. Rev. 30 (2003).

²⁴ Serkin, 92 Notre Dame L. Rev. at 913 (cited in note 22).

fail to call such an exercise expropriation and in effect evade the laws of expropriation, then farmers are left in an even worse position than under conventional expropriation.

B. TDRS AS ONE STICK IN THE BUNDLE

Scholars disagree about whether property rights are *in personam* rights or *in rem* rights. Traditionally, the *in rem* nature of property was widely recognized as the correct conception. Most famously, Sir William Blackstone defined property as “that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.”²⁵ According to Blackstone, property is “a right of a person with respect to something that avails against a large and indefinite number of other persons.”²⁶

Later, however, legal realists succeeded in promoting a rival conception, that of property as a bundle of rights. Ronald Coase went one step further, conceiving of property as a list of particularized use rights that individuals have when it comes to resources, i.e., *in personam* rights.²⁷ In recent decades, the “bundle of rights” view, or *in personam* concept of property rights, has faced considerable criticism, with critics arguing that this view has disintegrated the concept of property rights, which they believe is *in rem* in nature and has its own structure and style.²⁸

The conception of property rights underlying TDRs is the bundle of sticks rather than the *in rem* view. The right to develop a piece of property is but one stick in the bundle, and the underpinning

²⁵ William Blackstone, *Commentaries on the Laws of England* (Chicago 1979), in Thomas W. Merrill and Henry E. Smith, *What Happened to Property in Law and Economics?*, 111 Yale L. J. 357, 361 (2001).

²⁶ Id. at 361.

²⁷ R.H. Coase, *The Problem of Social Cost*, 3 J. L. & Econ. 1 (1960).

²⁸ J.E. Penner, *The “Bundle of Rights” Picture of Property*, 43 UCLA L. Rev. 711, 711 (1996); Merrill and Smith, 111 Yale L. J. at 361 (cited in note 25); Henry E. Smith, *Property as the Law of Things*, 125 Harv. L. Rev. 1691 (2012); Henry E. Smith, *The Persistence of System in Property Law*, 163 U. Pa. L. Rev. 2055 (2015).

premise of a TDR program is that this particular stick, i.e., “development rights,” can be separated from the rest of the bundle and sold. TDR programs use these “development rights” to facilitate a market that directs development toward pre-selected areas and to compensate property owners in areas selected for preservation for the loss of the development value of their properties.²⁹

One possible limitation to the bundle of sticks approach is that the bundle is malleable rather than having a prefixed and coherent structure or essence. Courts and legislatures may shape an owner’s bundle in a variety of ways, such as for regulatory or redistributive purposes. They may also remove or curb specific sticks, and even still the bundle will constitute property.³⁰

The U.S. Supreme Court has embraced such malleability in regulatory-takings cases, suggesting that because the bundle of sticks is malleable, a regulation that deprives an owner of only one stick does not amount to a taking that would require just compensation.³¹

In *Penn Central*, the Court used the “bundle of rights” theory to isolate the development rights that the Penn Central Transportation Company was losing from the control and use rights it still retained.³² Even in the subsequent case of *Lucas v. South Carolina Coastal Council*, Justice Scalia, the author of the Court’s majority opinion, acknowledged that the Court’s takings law “has traditionally been guided by the understandings of our citizens regarding the content of, and the State’s power over, the ‘bundle of rights’ that citizens acquire when they obtain title to property.”³³

Chinese land reform has managed to both maintain and disintegrate state and collective land ownership simultaneously by

²⁹ Meghan Ryan, Wes Rochester, and Laura Ingram, *TDR Citizens Guidebook 2* (Land Use Clinic 2009), archived at <https://perma.cc/QC65-DYFD>.

³⁰ Anna Di Robilant, *Property: A Bundle of Sticks or a Tree?*, 66 Vand. L. Rev. 869, 886 (2013).

³¹ Eric R. Claeys, *The Penn Central Test and Tensions in Liberal Property Theory*, 30 Harv. Envtl. L. Rev. 339, 357 (2006).

³² Id. at 357.

³³ 505 U.S. 1003, 1027 (1992).

discarding the *in rem* conception of ownership altogether. Its path better fits the “bundle of sticks” rather than the *in rem* view of property rights.³⁴ The two main achievements of Chinese land reform, i.e., the establishment of land use rights (LURs) in urban areas and the establishment of land management and contract rights (LMCRs) in rural areas, are both examples of the stick-by-stick approach.³⁵ Understanding property as a bundle of sticks provides a logical basis for separating urban LURs and rural LCMRs from public land ownership, and also for rearranging the sticks to adapt to social and economic developments.³⁶

In the past decade, land tickets, the Chinese counterpart to TDRs, experimented with by the local governments of Chongqing and Chengdu serve as a more recent example of the stick-by-stick approach to land reform in China and have already had a nationwide impact. It is therefore important to understand the administrative origin and incoherent nature of TDRs and their inherent connection with takings to understand TDR practices in China. The stick-by-stick approach to Chinese land reform, although effective, comes with its own attendant problems, including political maneuvering in the reform process³⁷ and weakness in the space of individual rights. All of these problems are exemplified in the TDR practices of Chongqing and Chengdu.

There are different models of land reform in China that claim to be TDRs, but this article is concerned primarily with the TDR practices in southwestern China, Chongqing and Chengdu in particular, primarily due to their impact on national land reform—considering the TDR practices in Chongqing and Chengdu to be a

³⁴ Shitong Qiao, *The Evolution of Chinese Property Law: Stick by Stick?*, in Yun-chien Chang, ed., *Private Law in China and Taiwan* 182 (Cambridge 2015).

³⁵ *Id.* at 183.

³⁶ *Id.* at 189.

³⁷ Shitong Qiao, *The Politics of Chinese Land: Partial Reform, Vested Interests and Small Property*, 29 Colum. J. Asian. L. 70 (2016).

success, the central government in 2018 authorized creating a national market for the transfer of land use quotas across provinces.³⁸

II. THE MECHANISM AND MARKET OF LAND TICKETS

The governments of both Chongqing and Chengdu have claimed that granting farmers land tickets has enabled farmers to benefit from the urbanization process and promoted equitable development within their territories.³⁹ Therefore, the necessary questions to investigate here are whether land tickets really constitute new rights for farmers, how much farmers have benefitted from such practices, and whether there is a real market for land tickets.

On paper, the governments of both cities have emphasized their respect for farmers' willingness to generate and transact land tickets, but transaction records reveal that farmers are neither the holder of land tickets nor a party to the transactions at all. Examination of the government-initiated and government-driven land reclamation process casts serious doubt on whether farmers are voluntary participants therein. Both the meaning and value of land tickets are subject to manipulation, and both the sellers and purchasers of land tickets in Chongqing and Chengdu alike have primarily been government investment vehicles.

A. WHO GENERATES AND TRANSFERS LAND TICKETS?

On paper, the land reclamation process can be initiated only upon an application submitted by a farmer. The governments of both cities also require that a portion of land sufficient to meet the housing

³⁸ Notice of the General Office of the State Council on Printing and Distributing (cited in note 12).

³⁹ Zhang Qianqian, *One of the Series of Reports on New Urbanization Construction: Chongqing Land Ticket Reform Test*, National Development and Reform Commission (May 18, 2019), archived at <https://perma.cc/5D6D-J82L> [新型城镇化建设系列报道之一：重庆地票改革试验情况]; Editor's Note, *Great Reform in Sichuan* (China Daily, Aug. 15, 2018), archived at: <https://perma.cc/VA7J-JJF9> [蜀都沃土 改革华章].

needs of the relocated farmers be retained.⁴⁰ They further require the approval of a land reclamation proposal by the majority of village members and their upper-level governments.⁴¹ The district and county-level governments in both cities have established specialized companies to carry out land reclamation.⁴²

Provided that the district- or county-level land administration officials are satisfied with the quality of arable land after reclamation, a land use quota is generated.⁴³ After removing the portion necessary for housing and developments in the village, the local land administration officials accumulate a certain number of such quotas and consolidate them into a package representing a land ticket that is ready to be traded.

The land ticket exchanges in both cities are mediated through periodic auctions and, in theory, any natural person, legal person, or organization is eligible to bid for the tickets. After deducting reclamation expenses, the revenue is then distributed to farmers and collectives as compensation. The holders of land tickets are entitled

⁴⁰ *Forwarded Notice of the Municipal Bureau of Land and Resources and Other Departments on Improving the Land Transaction System to Promote the Comprehensive Improvement of Rural Land and the Construction of Rural Houses (for trial implementation)*, The General Office of the Chengdu Municipal People's Government (2010) (hereinafter *Chengdu Notice on Improving the Land Transaction System*) [成都市人民政府办公厅转发市国土局等部门关于完善土地交易制度促进农村土地综合整治和农房建设工作实施意见(试行)的通知]; *Notice of Further Regulation of the Management of Rural Construction Land Reclamation*, Chongqing Municipal Bureau of Land and Housing (2011) [重庆市国土房管局关于进一步规范农村建设用地复垦管理工作的通知].

⁴¹ *Notice of Further Regulation* (cited in note 40).

⁴² Zhang Huiqiang, *The Development Path of Legal Transfer Right – A Case Study of the Independent Transfer of Collective Construction Land in Chengdu*, *Journal of Public Administration*, *119, *123 (2014) [合法转让权的发育路径——成都集体建设用地自主流转案例分析]; Cao Yapeng, *The Social Process of "Quota Transfer": An Empirical Study Based on the Chongqing Ticket System*, *Journal of Social Development* 55 n. 2 (2014) ["指标漂移"的社会过程：一个基于重庆地票制度的实证研究].

⁴³ *Notice of Further Regulation* (cited in note 40).

to purchase urban LURs and then use the tickets to develop the land so bought.⁴⁴

Both Chongqing and Chengdu claim that they fully respect the choices of individual households in the foregoing process, but it is unclear how they do so. The mechanisms adopted by the two cities are considered in turn below.

1. *Chongqing*

Different levels of the Chongqing city government issue various kinds of certificates during the land reclamation process, each like their own property right. The first one is a certificate of construction land reclamation qualification (建设用地整理合格证),⁴⁵ which is issued by the county-level government if the inspection of a reclamation project identifies no problems.⁴⁶

In the next stage of the process, the city-level land authority conducts another inspection, after which it issues a registration number to the aforementioned certificate of construction land reclamation qualification (建设用地整理合格证备案号).⁴⁷ Upon receipt of this registration number, the county-level land authority can then revoke the original land rights certificate of the reclaimed land and register the change in status of the land use due to the land reclamation.⁴⁸ The Chongqing Land Ticket Regulations emphasize that land rights holders do not change because of reclamation.⁴⁹ In other words, until this stage, farmers still enjoy control over their land, at least on paper.

⁴⁴ Id. at 1.

⁴⁵ The Chongqing City Ticket Management Measures, Order No. 295, Art. 15 [重庆市地票管理办法].

⁴⁶ Id.

⁴⁷ Id. at Art. 17.

⁴⁸ Id. at Art. 18.

⁴⁹ The Chongqing City Ticket Management Measures, Order No. 295, Art. 19 [重庆市地票管理办法].

The next stage is the transaction stage. According to the Chongqing Land Ticket Regulations, land ticket transactions include the initial assignment and transfer. After receiving a registration number from the city land authority, the rights holder can apply for an initial assignment. Only then is the real land ticket issued, at which point it can be further transferred.⁵⁰

The problem is that my examination of the transaction records on file with the Chongqing Rural Land Exchange (重庆农村土地交易所) identified no individual rural household as the holder of any of the aforementioned certificates.⁵¹ The exchange publishes the results of all land ticket transactions on its website, and I identified 84 notices of such transactions published as of June 8, 2018. Most of the corresponding certificates covered the reclamation of rural construction land within one or more villages.

Although the individual households concerned may have agreed to such reclamation, there are two problems. First, it is difficult to assemble all of the land within one or multiple villages; the process involves administrative mobilization, rendering it similar to urban renewal or rural land expropriation. In these situations, expropriation agreements are the preferred mode of action, with forceful expropriation a rarely used last resort in modern times owing to social stability concerns and mass media coverage.⁵² Second, as individual households clearly do not hold any certificates generated through land reclamation, it is therefore difficult to say that they have any post-reclamation property rights. Without property rights, they cannot participate directly in the land ticket market, and indeed, they do not participate as the transaction records clearly indicate.

What occurs between the entity in charge of land reclamation and individual households is thus something of a black box. I examined the judicial decisions related to land reclamation in

⁵⁰ Id. at Art. 20.

⁵¹ Statistics on Chongqing Land Ticket, on file with author. [重庆地票统计数据].

⁵² Qiaowen Lin, et al., *Conflicts of Land Expropriation in China During 2006–2016: An Overview and its Spatio-temporal Characteristics*, 76 Land Use Policy 246 (2018).

Chongqing to figure out what the process looks like on the ground. As it turns out, a reclamation agreement is usually signed between the village or town-level government and the farmers concerned. When disputes over the nature of such agreements have reached the courts, the farmers have generally argued that they are administrative agreements just like the compensation agreements incurred in expropriation, whereas the government has argued that they are civil contracts between equal parties.⁵³ As the Chongqing government and its local regulations present the process as voluntary, it is actually more difficult for farmers to seek judicial remedy through administrative litigation than it would be in the case of outright land expropriation.⁵⁴

2. Chengdu

The Chengdu city government emphasizes that “rural collectives and households owning land rights decide by themselves important issues such as whether to participate, how to finance, how to build houses, how to allocate benefits, and how to adjust property rights.”⁵⁵ On paper, rural collectives and households can determine the ownership of the land use quotas generated through land reclamation: if these entities conduct the reclamation themselves,

⁵³ *Wu Mingcheng v. People's Government of Tanghe Town in Jiangjin District, Chongqing City and Chongqing Municipal Bureau of Land Resources and Bureau of Housing Management*, Chongqing 5th Intermediate People's Ct. (2015) (Appeal to Affirm the Administrative Judgment) [吴名成与重庆市江津区塘河镇人民政府、重庆市国土资源和房屋管理局土地行政确认二审行政判决书]; *Lian Fenghua v. Bureau of Land Resources and Housing Management of Chongqing Tongliang District Government, Chongqing Tongliang District Land Reclamation Center and Chongqing Tongliang District Shaoyun Town People's Government*, Tongliang District Civil Ct. (2015) (Homestead Use Rights Dispute Case) [练丰华与重庆市铜梁区国土资源和房屋管理局、重庆市铜梁区土地整理储备中心、重庆市铜梁区少云镇人民政府宅基地使用权纠纷案].

⁵⁴ *People's Government of Ciyun Town, Jiangjin District, Chongqing City v. Tan Keyu*, Chongqing 5th Intermediate People's Ct. (2015) (Appellate Civil Court Judgment) [重庆市江津区慈云镇人民政府与谭克玉建设用地使用权纠纷二审民事裁定书].

⁵⁵ *Chengdu Notice on Improving the Land Transaction System* (cited in note 40).

then they own the quotas; if they authorize investors and governmental reclamation agencies to do so, then they can decide on quota ownership by contract.⁵⁶ In practice, however, I was unable to find a single case of an individual household or village holding a land use quota under its own name.

I examined all 253 land use quota transactions published by the Chengdu Rural Property Rights Exchange (成都农村产权交易所), and found that: (1) in 147 of the transactions, the Chengdu Land Reserve Center (成都土地储备中心) had acted as the transferor;⁵⁷ (2) corporate entities accounted for another 98 transactions; (3) the Chongzhou Land Reserve Center (崇州土地储备中心) accounted for four; and (4) local governments had acted as the transferor in the remaining four transactions. No rural collective or household acted as the transferor in any of the transactions, which indicates that rural collectives and households do not hold outright ownership of the land use quotas generated from rural land reclamation. The real question is how local governments and their affiliated land reserve centers obtained those quotas from the farmers in the first instance.

In reality, they do so through a process of centralized expropriation. A county-level government often makes a plan to generate a certain number of land use quotas in its jurisdiction, which are then further divided into projects located in different towns within the county. Take the Chengdu county of Qionglai as an example. Qionglai has planned 11 rural land reclamation projects and created three centralized living areas for relocated farmers. These three areas occupy 2,106 mu (347 acres) of land, with 920,000 square meters of housing space for 21,600 farmers, all of whose original residential plots were reclaimed. The government thus

⁵⁵ *Implementation Suggestions on Perfecting Construction Land Quota Transaction Institutions and Promoting Rural Land Synthetical Arrangements* by Bureau of Land Resources of Chengdu City, Bureau of Land Resources of Chengdu City (2011) [成都市国土资源局关于完善建设用地指标交易制度促进农村土地综合整治的实施意见].

⁵⁶ These land use quotas represent 66 percent of the total area of all the quota transacted.

claimed that this remote county in Chengdu has achieved an urbanization rate of 85 percent.⁵⁸ It further claimed that it had achieved this remarkable figure by leading a team headed by the county party secretary. At the village level, the team set up a villagers' assembly to discuss compensation standards and other relocation measures.⁵⁹ Although there was no forceful demolition, it is hard to believe that in the face of such top-down mobilization and community pressure the farmers concerned had any real possibility of saying "no." An interviewee in Chengdu revealed that the local government often sets a deadline by which all households within a given project area need to be relocated.⁶⁰ The requisite signatures are obtained from farmers in one way or another, or simply forged.⁶¹

As in Chongqing, when individual farmers in Chengdu seek remedy from the local courts, they find them unhelpful for two reasons. First, a court cannot review the legality of local government reclamation plans, which, according to Chinese law, are abstract administrative actions that are exempt from litigation.⁶² Second, for specific operations, precisely because the government implemented its plans through a villagers' assembly, the local courts have considered the matter to be an autonomous village affair, and such affairs are also exempt from litigation.⁶³

⁵⁷ *Qionglai Land Reclamation Plan 2016-2020*, Qionglai City Government (Dec. 2018) [邛崃市人民政府, 邛崃市土地整治规划 (2016-2020 年)].

⁵⁸ *Id.*

⁵⁹ *NSD Interview Notes*, Xinping Township, Xinjin County (Jan. 14, 2009) (on file with the author).

⁶¹ *Long Peigang v. Shizhu County Bureau of Land Resources and Housing Administration and Others*, Chongqing City 4th Intermediate Ct. (2016) (Second Instance Civil Judgment of Property Rights Disputes) [隆培刚与石柱县国土资源局、石柱县三星乡人民政府等物权保护纠纷二审民事判决书].

⁶² *Yu Xiong v. People's Government of Qionglai City*, Sichuan Province High Ct. (2015) (Administrative Case) [喻雄诉邛崃市人民政府其他行政行为案].

⁶³ *Yu Xiong v. Villager's Committee of Zhuanwiao Village, Daozuo Country, Qionglai City and Others*, Sichuan Province High Ct. (2017) (Confirming Void Contract Dispute) [喻雄诉邛崃市道佐乡砖桥村村民委员会等确认合同无效纠纷案].

B. THE MALLEABLE MARKET

The city governments in both cities dominate the transfer of land tickets through their investment vehicles and by manipulating the meaning and content of those tickets. The land ticket markets in the two cities barely function as evidenced by the near non-existence of a secondary market, with prices holding steady across transactions and over time despite rapidly rising land prices.

1. *The Malleable Meaning and Content of Land Tickets*

The city governments in Chengdu and Chongqing have clearly manipulated the meaning and content of land tickets to influence their prices and transactions.

What are land tickets for? The first possibility is to serve as a market entry permit. In China, urban land is owned by the state, while individuals and private entities can own LURs and houses. City governments monopolize the primary market of LURs and sell those rights through public auctions. The Chengdu city government initially made land tickets as permits to participate in LUR auctions. The second possibility is to serve as land use permits. Hence developers do not need land tickets to purchase LURs, but they do need them to exercise those rights, i.e., to build on the land in question.

Under the first policy, developers were uncertain about the supply of land tickets and worried that they would lose their chance to participate in the city's real estate market. As a result, the first auction of land tickets in December 2010 ended up with an average price of RMB 724,900 per mu, a high price that would significantly increase the cost of real estate development in Chengdu. Accordingly, the Ministry of Land and Resources ("MLR") read the situation as potentially creating a real estate bubble and intervened. The Chengdu government then shifted to the second policy, requiring developers to provide land tickets only to exercise their LURs.

This change in policy reduced the average price to RMB180,000 per mu in 2011,⁶⁴ and the price has hovered around RMB300,000 per mu since 2015.⁶⁵ However, these prices are decided by the government according to the cost of land reclamation rather than being driven by market supply and demand.

In Chongqing, the government manipulated the size of the land ticket package to influence prices. To limit price and market competition, most land tickets cover areas larger than 1000 mu (164.7 acres), and are purchased by the investment vehicles of the Chongqing city government. The large size of land tickets renders them unaffordable and unsuitable for other market participants.⁶⁶

2. Market Participants and Prices

Public transaction records show only the size and area of the rural land being reclaimed, not the sellers. As discussed previously, individual households and village collectives rarely hold rights to the certificates generated in the land reclamation process, most of which are held instead by land reclamation companies, which are government investment vehicles in the main. We can thus assume that they are the sellers.

For the purchasers of land tickets in Chengdu, we have meaningful data. As of June 5, 2018, there had been a total of 253 transactions in Chengdu city,⁶⁷ with the transferee a corporate entity in every case. Of the 17 major corporate entities involved, 11 are specialized real estate development companies. The top transferee,

⁶⁴ Zhang Ming, *Chengdu Land Ticket "Access" Changed to "Appropriate Use"* (China Business Journal, July 22, 2011), archived at <https://perma.cc/F8VU-R42N> [成都地票“准入”变“准用”].

⁶⁵ *Announcement on Transactions of Construction Land Quotas*, Chengdu Agriculture Equity Exchange (Jun. 5, 2019), archived at <https://perma.cc/X7EG-UUUW> [建设用地指标交易成交公告 (成都农村产权交易所)].

⁶⁶ Pu Jie, *Several Theoretical Issues on Cross-Provincial Trading of Cultivated Land Occupation and Compensation Index*, Theory and Reform 1, 8 (2017) [耕地占补平衡指标跨省交易的几个理论问题].

⁶⁷ *Announcement on Transactions of Construction Land Quotas* (cited in note 65).

Chengdu Ren Ju, is a state-owned corporation that focuses on real estate development and capital market operations.⁶⁸

Three characteristics of the Chongqing market are notable. First, there are very few secondary transactions. Ninety-nine percent of all transactions are initial assignments, showing a lack of real market demand.

Second, since early 2014, all initial assignments have been achieved at the listed price instead of by auction. According to the transaction rules, only when both of two requirements are satisfied will there be an auction: (1) there are two or more purchasers, and (2) the total area these purchasers want to purchase is larger than the supply in the notice.⁶⁹ This means that since early 2014 there has been little market competition, with only one purchaser applying for land tickets less than or equal to the supply.

Third, the minor fluctuation in land ticket prices does not match the rapidly increasing land prices in Chongqing during the same period. Prices remained nearly the same across different transactions from 2012 to 2017.⁷⁰

III. LAND RECLAMATION AS ANOTHER NAME FOR EXPROPRIATION

Land reclamation can constitute land expropriation in the following situations. First, when it occurs without farmers' consent. Reclamation in such cases is direct expropriation because the government is exercising coercive power to deprive farmers of their land rights. Second, when land reclamation generates land tickets, which enables the government to expropriate land beyond what the top-down land use control system allows. Third, when the government and village collectives serve as the intermediary and

⁶⁸ *About Habitat*, Chengdu Xingcheng Habitat Real Estate Investment Group Co., Ltd. (Jun. 5, 2019), archived at <https://perma.cc/3ZKW-R7TQ>.

⁶⁹ See e.g., *Announcement on Land Tickets Public Transaction in Chongqing Land Exchange, Chongqing Agriculture Equity Exchange*, No. 1 (2018), archived at <https://perma.cc/L6CH-NH8K> [重庆农村土地交易所地票公开交易公告].

⁷⁰ *Announcement on Transactions of Construction Land Quotas* (cited in note 65).

exercise de facto control over the land reclamation process and the trading of land tickets, with farmers themselves having no control over either, even though they may have given their consent. In this last situation, not only does their nominal consent not prevent farmers from being exploited by the government and village collectives, it actually becomes a barrier when seeking remedy through administrative litigation, as documented above.

A. LAND RECLAMATION WITHOUT CONSENT

The local regulations of both Chongqing and Chengdu emphasize that reclamation must be voluntary.⁷¹ However, judicial decisions from both jurisdictions reveal cases in which houses were demolished and residential plots reclaimed without the knowledge or consent of the rights-holders. Such involuntary reclamation in the cases examined occurred in situations where the rights-holder did not reside in the disputed house, because, for example, (1) they had relocated elsewhere; (2) they were working in a city as a migrant worker and had not been notified when their house was being demolished; or (3) they shared the house with another party because of an inheritance or some other similar transaction.⁷²

In *Chen Zuoliang*, the plaintiff had relocated to a different village but still had a house in his original village. Although he had legal certificates to prove his property rights, the township government still demolished his house and reclaimed the land under the

⁷¹ *Urban and Rural Construction Land Increase and Decrease*, Art. 16, National Ministry of Land and Resources [城乡建设用地增减挂钩试点管理办法]; The Chongqing City Ticket Management Measures, Order No. 295, Arts. 2, 3, 9 (cited in note 45); *Implementation Opinions of Chengdu Municipal Bureau of Land and Resources on Improving the Construction of Land Use Index Trading System to Promote Comprehensive Improvement of Rural Land*, Chengdu Bureau of Land and Resources [成都市国土资源局关于完善建设用地指标交易制度促进农村土地综合整治的实施意见].

⁷² *Fan Anhe v. People's Government of Ganshui Town, Qijiang District, Chongqing and Others*, Chongqing Qijiang District People's Ct. (2016) [范安和与重庆市綦江区赶水镇人民政府、重庆市綦江区国土资源和房屋管理局案].

impression that the house had been abandoned.⁷³ The court confirmed the illegality of the demolition. In *Ma Renji*, the plaintiff worked in a city as a migrant worker and only discovered that his house had been demolished after returning home. It turned out that he shared the house with his brother Ma Rende, who had applied for land reclamation. The township government approved Ma Rende's application without further investigation of the property rights pertaining to the house.⁷⁴

In another case, the Yongchuan district government land bureau relied on an application from a township government to reclaim the land of a rural household that had not signed a reclamation agreement.⁷⁵ The same government agency lost another case in the same court for reclaiming another villager's house without consent, with the court confirming the illegality of the demolition.⁷⁶

Overall, reclamation without consent is the exception rather than the rule, but it has occurred in at least the aforementioned cases, if not in others. Because rural land reclamation is initiated and driven by local governments which need to assemble land within one or multiple villages into a single land reclamation project, finding a way to ensure that land reclamation does not become another name for land expropriation is no easy task.

⁷³ *Chen Zuoliang v. People's Government of Yongxin Town, Qijiang District, Chongqing City, Chongqing Nan'an District Ct.* (2015) [陈佐良与重庆市綦江区永新镇人民政府案].

⁷⁴ *Ma Renji v. People's Government of Panlong Town, Rongchang District, Chongqing and Others, Rongchang District Ct.* (2016) (Administrative Judgment of First Instance Requiring Confirmation of Illegal Demolition) [马仁继与重庆市荣昌区盘龙镇人民政府等要求确认拆除行为违法一审行政判决书].

⁷⁵ *Jia Yingming v. Yongchuan District Bureau of Land Resources and Housing, Chongqing City and Others, Yongchuan District Court* (2015) (Administrative First Instance Judgment) [贾应明、黄万碧与重庆市永川区国土资源和房屋管理局其他一审行政判决书]; *Jia Yingyong v. Yongchuan District Bureau of Land Resources and Housing, Chongqing City, Yongchuan District Court* (2015) (Administrative First Instance Judgment) [贾应勇与重庆市永川区国土资源和房屋管理局其他一审行政判决书].

⁷⁶ *Huang Fayou v. Yongchuan District Bureau of Land Resources and Housing, Chongqing City, Yongchuan District Court* (2015) (Administrative First Instance Judgment) [黄发友与重庆市永川区国土资源和房屋管理局其他一审行政判决书].

The Chongqing courts at various levels have confirmed the illegality of land reclamation without consent. Although such judicial confirmation may strengthen farmers' claims for compensation, it does not give them their land back. As one judgement stated, the land reclamation project had now been completed, and the decision was therefore irrevocable.⁷⁷ Furthermore, the condition of consent is also taken to be satisfied if rights-holder accepts compensation after reclamation even if they had not provided explicit consent either before or after it took place.⁷⁸

B. EXPANDED SCOPE OF LAND EXPROPRIATION

It is not only that land reclamation can become another name for land expropriation for the parcel which the land use quota is generated, i.e., the sending zone. Land tickets also expand local governments' land expropriation power in the two following respects. First, local governments are able to expropriate more land using the additional land use quotas generated by land reclamation. Second, the local governments may need to expropriate additional land in order to relocate farmers from the sending zones.

The first expansion of land expropriation is intuitive, and is inherent in the institutional design of land tickets. In one case, land tickets also become a way for a local government to legalize its illegal land expropriation. In this case, the Qijiang district government of Chongqing expropriated 250 mu of rural land to build a factory without obtaining approval from the upper-level government. This

⁷⁷ *Cheng Mingli v. Zhong County Bureau of Land Resources and Housing*, Chongqing Zhong County People's Ct. (2017) [陈明理诉忠县国土资源和房屋管理局].

⁷⁸ *Yin Jiancheng v. Kaizhou District Bureau of Land Resources and Housing, Chongqing City, Kaizhou District Ct.* (2016) (Administrative First Trial 0234 No.93) [尹见成诉重庆市开州区国土资源和房屋管理局]; *Jiang Zhaowu v. People's Government of Jiulongshan Town, Kai County, Chongqing City 2nd Intermediate Ct.* (2014) (Administrative Final Decision No. 00011) [姜照武诉开县九龙山镇人民政府]; *Jiang Moumou v. People's Government of Jiulongshan Town, Kai County, Kai District Ct.* (2013) (Administrative First Trial No.00037) [姜某某诉开县九龙山镇人民政府].

illegal expropriation was eventually publicized by the MLR and circulated by People's Network as a "significant illegal land use case."⁷⁹ However, the Chongqing city government land bureau only asked the Qijiang district government to use land tickets from a previous land reclamation to legalize the current expropriation.⁸⁰ It is evident from this case that it is simpler to expropriate land using land tickets than to gain the approval of an upper-level government.

The second expansion, that accommodates the local governments' need for additional land to relocate farmers from sending zones, arises because those governments have no incentive to spend the land use quotas generated through land reclamation. Instead, they may sign agreements with other villages to use their land to build new housing for farmers from a sending zone. By forcing an agreement with a village, the government can disguise the expropriative nature of its actions.

In one case in Chengdu, a township government signed an agreement for "the transfer of [a] rural land contract and management rights" with the intention of using the 143 mu of rural land in question to construct housing for relocated farmers. The village collective lost arable land preservation funding because of this contract/expropriation and sued the township government. The village collective alleged that the land reclamation had been illegal land expropriation, whereas the township government contended that it was not expropriation because there was a contract. In reality, however, both the process and procedure were similar to land

⁷⁹ Renmin Wang, *The Ministry of Land and Resources Reported 8 Investigation of Land Violation Cases*, People's Network (2018), archived at <https://perma.cc/H7VG-WHQH> [国土资源部通报 8 起土地违法案件查处结果].

⁸⁰ See e.g., *Wang Fuqiang v. Chongqing City Bureau of Land Resources and Housing Management*, Chongqing City 5th Intermediate Ct. (2017) [王富强诉重庆市国土资源和房屋管理局案]; *Liu Mingqi v. Chongqing City Bureau of Land Resources and Housing Management*, Chongqing City 5th Intermediate Ct. (2017) [刘明其诉重庆市国土资源和房屋管理局].

expropriation. It was even called “expropriation” in internal local government documents.⁸¹

The courts in Chengdu have consistently avoided deciding these cases on the merits of the government action in question. The Jintang Basic Court, for example, rejected a case on the basis of the statute of limitations, and the Sichuan High Court rejected a claim on the grounds that the 85 plaintiffs lacked the right to sue the district government in the first instance, as the government itself had not signed the contract or implemented the expropriation in question.⁸²

What is wrong with an expansion of land expropriation? It is entirely possible that local governments really do need more land for development. However, as previously discussed, the Chinese central government has created a top-down system to regulate the land expropriation power of local governments. Hence, land expropriation disguised as land reclamation can easily spiral out of control because it is not called expropriation, and farmers’ consent is thus often assumed. For example, a government could argue that because a certain instance of reclamation was not expropriation, it is not subject to the public hearing and transparency requirements of land expropriation. In at least two judicial decisions issued by the courts in Chengdu, the government justified its refusal to provide land reclamation information on the grounds that no expropriation had taken place and that the reclamation had been consented by the farmers, even though in the cases in question it was precisely the farmers whose land had been reclaimed who were requesting the information.⁸³

⁸¹ *He Mei & Others v. People’s Government of Qingbaijiang District, Chongqing*, Chongqing People’s High Court (2017) (Administrative Final Decision) [何美诉成都市青白江区人民政府行政裁定书].

⁸² *The 10th Group in Dongfang Village, Xiangfu County, Qingbaijiang District v. Xiangfu County People’s Government*, Jintang Basic Court (2016) [青白江区祥福镇东方村10组诉祥福镇人民政府]; *He Mei & Others* (cited in note 81).

⁸³ *Deng Renlin & Deng Renlv v. People’s Government of Danjingshan Town, Pengzhou City*, Chengdu Qingbaijiang District Ct. (2017) (Administrative First Trial Judgment) [邓仁

C. LAND RECLAMATION WITH CONSENT, BUT WITH NON-NEGOTIABLE PRICE, QUANTITY AND PAYMENT

Farmers cannot sell land; they can only give it up for reclamation. Although land reclamation requires farmers' consent, it imposes non-negotiable compensation standards, which can be even lower than the compensation standards in the cases of expropriation for two reasons: (1) regulations often define only subsets of the reclaimed land as requiring compensation, even though the farmers are losing control over all of the land, and (2) the payment process is itself controlled by the government and often lasts a year or longer.

1. *Uniform Compensation Instead of Negotiable Price*

Because land tickets are not inherently connected with a particular plot of land and are sold at a uniform price on the market, land reclamation compensation does not differentiate among villagers with differing qualities of houses and those located in different parts of Chongqing or Chengdu.

In Chongqing, compensation for land reclamation is supposed to be comparable to that for land expropriation.⁸⁴ However, detailed examination reveals that it is often less in practice. For example, in 2017, the price for a land ticket in Chongqing was RMB 279 per square meter. According to Chongqing city policy, that money should be allocated between the village collective and farmers at a ratio of 15:85.⁸⁵ Assuming that not a single penny is withheld

林、邓仁吕与彭州市丹景山镇人民政府政府信息公开一审行政判决书]; *Liao Chengyu v. People's Government of Danjingshan Town, Pengzhou City, Chengdu Qingbaijiang District Ct.* (2017) (Administrative First Trial Judgment) [廖成玉与彭州市丹景山镇人民政府政府信息公开一审行政判决书].

⁸⁴ Notice for the Issuance of Guiding Opinions on Regulating the Use of Land Ticket Fees to Promote the Reclamation of Rural Collective Construction Land (Trial), No. 384, Chongqing Municipal Bureau of Land Resources and Housing Management (2010) [关于印发《关于规范地票价款使用促进农村集体建设用地复垦的指导意见（试行）》的通知].

⁸⁵ Notice of Chongqing City Bureau of Land Resources and Housing Management on Adjusting the Distribution and Disbursement Standards of Land Ticket Fees, Chongqing

somewhere in the bureaucratic system and that the administrative cost is zero, farmers should get RMB 237 (USD 34.2) per square meter. However, even in remote districts of Chongqing, the compensation standard in the case of expropriation is more than RMB 260 per square meter for houses with clay walls and tiles.⁸⁶ Only for a simple shed or shack would the compensation be less than RMB 200 per square meter.⁸⁷ Hence, only in the latter case would land reclamation actually bring a farmer more compensation than land expropriation.

Villagers surveyed during fieldwork studies by faculty members and students from the National School of Development in 2009 complained that the compensation for rural land reclamation was even lower than that typically paid in rural land expropriation cases.⁸⁸ The government's response was that the reclaimed land still belonged to the rural collectives, and therefore no compensation for the land was warranted.⁸⁹

The result, as local officials confirmed, is that compensation received for land reclamation is usually insufficient to cover the cost of new housing.⁹⁰ The experience of one such villager, Mr. Wang, is a case in point. He had a residential plot of 290 square meters, for which he received compensation of roughly RMB50,000, including RMB40,000 in housing compensation and RMB10,000 in compensation for the loss of his crops. As Mr. Wang no longer had a house, he needed to buy an apartment, which cost RMB54,000, and

City Bureau of Land Resources and Housing Management, No. 170 (2011), archived at <https://perma.cc/B2M3-7UX2> [重庆市国土房管局关于调整地票价款分配及拨付标准的通知].

⁸⁶ See, e.g., *Notice of Fengdu County on Adjustment of Compensation Policy for Land Expropriation*, Fengdu County (2013) [丰都县人民政府关于调整征地补偿政策有关事项的通知].

⁸⁷ Id.

⁸⁸ *NSD Interview Notes*, Xinping Township, Xinjin County (Jan. 14, 2009) (on file with the author) (cited in note 59).

⁸⁹ Id.

⁹⁰ Id.

decorating it cost an additional RMB10,000.⁹¹ Not only did Mr. Wang not gain any extra cash from the compensation, he was substantially out of pocket as a result of his relocation.⁹²

2. *Eligible Reclamation Area Prone to Manipulation*

A frequent issue of litigation in the Chongqing courts is the area of land eligible for compensation. A major area of dispute is whether a courtyard and other areas and facilities surrounding a house are eligible for compensation. The area specified on land tickets actually includes such surrounding areas and facilities, which are usually bigger than the area of the house itself, but in practice, village collectives often insist that it is only the house that is being reclaimed, with the vacant land around it constituting a collective asset.⁹³

Moreover, because the law specifies that only real estate with a legal certificate can be reclaimed,⁹⁴ and as the vacant land around a house has no such certificate even if it has been under the de facto control of the house owner for an extended time, village collectives often refuse to compensate householders for that land, thereby depriving farmers of a large part of the compensation paid out for land reclamation.

In the most egregious cases, village collectives simply make deliberate “mistakes” in reporting the area for compensation, with

⁹¹ *Id.*

⁹² *NSD Interview Notes, Xinping Township, Xinjin County* (Jan. 14, 2009) (on file with the author) (cited in note 59).

⁹³ See, e.g., *Wu Dejian v. People's Government of Shimen Country, Yunyang County and Yunyang County Bureau of Land Resources and Housing Management*, Yunyang County Ct. (2015) (Administrative First Trial Judgment) [吴德见与云阳县石门乡人民政府,云阳县国土资源局和房屋管理局其他一审判决书].

⁹⁴ *Chongqing City Rural Construction Land Reclamation Project Management Regulations (Trial)*, Art. 2, Chongqing City Bureau of Land Resources and Housing Management (2009) [重庆市农村建设用地复垦项目管理规定(试行)].

only the most tenacious villagers being able to successfully obtain justice through petitions or the courts.⁹⁵

3. *Administrative Compensation Instead of Market Payment*

All of the revenue obtained from selling land tickets, after the deduction of administrative and reclamation costs, is supposed to be paid to village collectives and individual farmers at a ratio of 15: 85 percent. However, the costs to be deducted are out of the farmers' control, and they often have to wait a year or longer before receiving full compensation. In such cases, the government can simply say that the land ticket transaction has not yet taken place. It is difficult to determine why one land ticket is considered to be sold while another is not, even though there is no difference between the two.

D. A CAVEAT

None of this is to deny that farmers in rural Chongqing actually welcome land reclamation in some cases. A review of Chongqing court decisions actually turns up cases of farmers suing the government for not approving a reclamation application.⁹⁶ A survey conducted in Zhuoshui, a remote township in the Qianjiang district of Chongqing, collected responses of 181 farmers, 34 of whom had their land reclaimed. More than half of these farmers said they were either neutral or satisfied with the land reclamation.

That should not come as a surprise. Reclamation is the one of only two ways of "cashing out" vacant housing in remote Chongqing, as there is no lawful market for rural houses and the illegal market is not well developed. The other way is direct expropriation, which is also welcomed by farmers in many cases.

⁹⁵ *Tian Huailin v. Xiushan Tujia and Miao Autonomous County Bureau of Land Resources and Housing Management*, Chongqing City 4th Intermediate Ct. (2016) [田怀林诉秀山土家族苗族自治县国土资源和房屋管理局案].

⁹⁶ See, e.g., *Deng Pingyun v. People's Government of Pushun Town, Dianjiang County*, Chongqing City 3rd Intermediate Ct. (2016) [邓平云诉垫江县普顺镇人民政府等]; *Liu Xianguo v. People's Government of Pushun Town, Dianjiang County*, Chongqing City 3rd Intermediate Ct. (2016) [刘建国诉垫江县普顺镇人民政府案].

This survey also asked the respondents about their understanding of land reclamation, specifically whether they considered it to be different from land expropriation. The majority answered “no,” testifying to my argument that land tickets are but another name for expropriation.

IV. WHY? RURAL WELFARE AND RIGHTS IN THE CENTRAL-LOCAL DYNAMICS

It is important to put land tickets in context to understand their evolution. China has dual land ownership, and local governments, which enjoy state land ownership, are permitted to expropriate collectively owned rural land and convert it into state-owned urban land. Local governments rely on revenue from land sales and on subsidized land for economic development and urbanization. However, this model has served to displace millions of farmers, triggering hundreds of thousands of mass protests and conflicts each year. In the past two decades, the central government has gradually strengthened the regulations on the expropriation and conversion process owing to concerns over rural instability, which has resulted in a rights revolution in national law and politics concerning rural land. Accordingly, it has become much more difficult for local governments to exercise their expropriation power. However, they still need land and revenue for economic development. By framing land ticket practices as protecting the rights and welfare of farmers, local governments have succeeded in gaining the central government’s acquiesce and even approval for those practices, even though they are all just expropriation by another name.

A. THE RIGHTS REVOLUTION IN NATIONAL LAW AND POLITICS OF LAND

Article 10 of the Chinese Constitution provides that urban land is owned by the state and rural land by collectives. However, the boundary between urban and rural land is not static, as city and county governments can expropriate the latter and convert it into the former.

Three considerations drive the politics of the Chinese land regime: development, stability and the food supply. Local

governments are the key drivers of urbanization and industrialization, and they rely on their power to expropriate rural land from farmers and either assign it to industrial investors as a subsidy or sell it to real estate developers to finance urban infrastructure and other facilities. The central government understands the importance of land to local economic development, which is one of the reasons that it has granted local governments the power to manage land. From 2003 to 2012, cities across the country expropriated 37,400 square kilometers of rural land at an average price of RMB 30,000 to 40,000 per *mu*, which was calculated according to the agricultural value of the land.⁹⁷ The total revenue realized from selling that land on the urban market was RMB 15.2 trillion, a sum that has supported China's rapid urbanization.⁹⁸

Owing to rural land expropriation being a key contributor of Chinese urbanization and economic development over the past three decades, there has been a rise in the number of landless farmers. According to an official estimate, there will be more than 100 million landless farmers by 2030.⁹⁹ Land expropriation often worsens farmers' lives, and land-related conflicts are now the top grievance filed in rural China.¹⁰⁰

This brings us to the second and third concerns in the politics of land: rural stability and food self-sufficiency. Both are contrary to the transfer and development of rural land. China is a unitary regime in which local governments are agents of the central government and

⁹⁷ Zheng Zhenyuan, *New Urbanization and China's Land Reform*, Lecture (Apr. 23, 2013) (on file with the author) [(郑振源)(新型城镇化与中国土地制度改革)].

⁹⁸ Id.

⁹⁹ Gu Ruizhen et al., *To Realize the Saving and Optimization of Land Usage: Who was Affected by the Red Line of 1.8 Billion mu arable land?* (Xinhua, July 7, 2007), archived at <https://perma.cc/7UK9-MGHM>. [(顾瑞珍) 实现节约集约用地 1.8 亿亩耕地“红线”牵动了谁].

¹⁰⁰ According to a report of the People's Daily, land expropriations have become the most frequent subject of petitions made by Chinese farmers. *Land Expropriation: Top Reason for Chinese Farmers' Petitions* (People's Daily, Jan. 30, 2007), archived at <https://perma.cc/ZPM5-TR9C>.

should thus share its concerns. However, owing to their differing incentives, local governments tend to overemphasize development at the expense of stability and food self-sufficiency, both of which are national public goods. Economic development can be measured by the annual GDP growth rate and is thus visible, and there is a direct connection between land development and economic development. However, the risk of social instability or inability to supply food to the citizenry during a crisis is a problem at the national level—"a common pool that will be overfished by competing local leaders."¹⁰¹ The central government has incorporated social stability as a key criterion for evaluating local government officials, but those officials have tended to devote resources to "maintaining social stability" by cracking down on organized resistance rather than reducing land expropriation, as doing so would jeopardize its goal of economic development.

In the past two decades, the central government has regulated local governments' land expropriation power in two ways. The first is by controlling the total amount of rural land expropriation, with the central government setting the amount to be developed during fixed periods of time across the country.¹⁰² Local (province, city, county, and township) governments then make land use plans for their jurisdictions in accordance with the national plan and the plans of higher-level governments, subject to the approval of the central government and/or province-level government.¹⁰³ According to these land use plans, the various levels of government have certain land use quotas determining how much rural land they can expropriate each year.

The second way is strengthening the protection of rural land rights. With real estate expropriation having become the top cause of

¹⁰¹ Jonathan Rodden and Susan Rose-Ackerman, *Does Federalism Preserve Markets?*, 83 Va. L. Rev. 1521, 1544 (1997).

¹⁰² *National Principles of Land Use Planning (2006-2020)*, State Council (2008) [全国土地利用总体规划纲要 (2006—2020 年)].

¹⁰³ Land Administration Law of the People's Republic, Standing Commission of the National People's Congress, Art. 21 (1998) [中华人民共和国土地管理法].

social instability in China, the central government has passed a series of laws aimed at disciplining local governments, beginning with a 2004 constitutional amendment, stipulating that “[c]itizens’ lawful private property is inviolable.” The Chinese legislature also passed the Property Law in 2007 to provide comprehensive protection for property rights. Article 4 of the 2007 Property Law stipulates that “the property right of the state, the collectives, the individual persons and other obligees are protected by law, and no units or individuals shall encroach on it.” The central government has also reformed the land expropriation regime¹⁰⁴ and judicial system¹⁰⁵ to contain local governments’ expropriation power. Moreover, social stability has also become more important in evaluating local officials, making them more cautious about expropriating rural land in a way that may trigger social conflicts.

Overall, the traditional method of rural land expropriation is facing increasingly stringent regulations. Rural welfare and rights have become the central government’s major concern when considering any proposal for rural land reform. Local governments have therefore been pressed to find an alternative way to obtain land from farmers to maintain their desired levels of economic development.

B. LAND TICKETS REFRAMED AS RIGHTS AND WELFARE FOR FARMERS

Central-local politics drove the launch of land tickets in Chongqing and Chengdu. In Chongqing, it was Bo Xilai, a prominent political figure and candidate for a position in the Standing Committee of the Politburo of the Communist Party of China (“CCP”), who made land tickets one of his signature “common

¹⁰⁴ *Regulations for the Implementation of the Land Management Law of the People's Republic of China*, State Council (2014) [中华人民共和国土地管理法实施条例].

¹⁰⁵ *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases Concerning Rural Collective Land*, Supreme People's Court (2011) [最高人民法院关于审理涉及农村集体土地行政案件若干问题的规定].

wealth" (共同富裕) policies, which were supposed to promote both development and equality.¹⁰⁶ Owing to his substantial political resources and influences, Bo was able to gain the acquiescence of the central government by reframing land tickets as a means of advancing rural social welfare and rights, thereby addressing the central government's concern with rural welfare. In Chengdu, it was the urgent demand for disaster relief after the Sichuan Earthquake that forced the MLR to relax land use regulations and allow land ticket practices. In both cities, local government evasion of national land use regulations existed before the birth of land tickets, and initially faced regulatory barriers and even enforcement obstacles by central government agencies. Only after reframing these illegal practices as a form of rural welfare and rights protection and rebranding them as land tickets, thereby addressing the central government's concern over social instability, did the two cities obtain support from the central government.¹⁰⁷

1. *Rural Welfare and Rights as Political Capital: Land Tickets as Bo Xilai's Poster Child*

While Bo Xilai was in charge of Chongqing, one of China's four provincial-level cities, he took land use quota transfers, which were already being practiced among local governments in Zhejiang province,¹⁰⁸ to the next level, branding them as a means of empowering farmers, which, together with the anticorruption measures he implemented, was part of his populist ideology.

Bo took up the position of party secretary of Chongqing in 2007 as part of his widely acknowledged ambition to obtain a seat on the

¹⁰⁶ See, e.g., François Godement, *One or Two Chinese Models?* (European Council on Foreign Relations, Nov. 2011), archived at <https://perma.cc/Q7T4-X9ZQ>.

¹⁰⁷ *Reform's Big Taboo* (cited in note 4).

¹⁰⁸ Wang Hui and Tao Ran, *The Zhejiang Model of TDRs*, in Case Studies in China's Institutional Change, 138–66 (China Financial and Economic Publishing House 1999) [(汪晖)(陶然), 论土地开发权转移与交易的浙江模式(张曙光), 中国制度变迁的案例研究(第八集)].

Standing Committee of the CCP Politburo within five years. To realize that ambition, he needed to perform well as party secretary, and, as previously noted, the key to economic development in Chinese cities has traditionally been land development. Chongqing was no exception.

Immediately after taking office, Bo made rural land reform his priority. The city initially tried out a practice called land shares, converting farmers' land rights into shares and making the latter transferrable. However, the central government sent a team to Chongqing to investigate, and quickly put a stop to the experiment out of concerns over farmers losing their land.¹⁰⁹

Bo was one of the country's most powerful local leaders at the time, with considerable political capital and support to govern Chongqing. Just before he took office as the city's party secretary, the central government had designated Chongqing and Chengdu as comprehensive experimental zones for urban-rural integrated development,¹¹⁰ a designation that afforded the two cities greater flexibility in policy experimentation and innovation than other cities. Nevertheless, to conduct rural land reform, Bo still needed to cater for the central government's concerns over rural welfare and stability, meaning that farmers' interests had to be protected.

In response to those concerns, Bo and the Chongqing city government developed the system of land tickets, which they touted as a way of transferring wealth from urban to rural areas and of enriching farmers and converting them into urban citizens with genuine capital. The idea sounded plausible: farmers would generate land tickets through rural land reclamation and transfer them to

¹⁰⁹ Yin Hongwei, *Chongqing's "Land Transfer" Reform Faced Fluctuation and the Reform of the Land Securitisation System was Stopped by the Central Government* (People Online, Nov. 10, 2008), archived at <https://perma.cc/GL6R-6BUF> [(尹鸿伟) 重庆“土地流转”掀波澜 股田制改革被中央叫停 (人民网)].

¹¹⁰ Zhang Qin et al., *Why the Urban and Rural Comprehensive Reform Pilot Zone has Taken Place in Chengdu and Chongqing* (Xinhua, June 14, 2007), archived at <https://perma.cc/4GZ9-DTHU> [(张琴) 统筹城乡综合配套改革试验区为何花落成渝].

developers who needed them for urban land development.¹¹¹ Farmers could even keep the arable land generated through rural land reclamation and earn money by selling land tickets. Accordingly, the central government approved the establishment of the Chongqing Land Ticket Exchange, allowing rural land reclamation and the transfer of land tickets citywide.¹¹²

Although Bo failed in his quest for membership of the Politburo Standing Committee and is now in prison for corruption and murder,¹¹³ similar schemes of TDRs have been implemented by local governments in more than 20 provinces across China.¹¹⁴ Huang Qifan, the former mayor of Chongqing and the primary designer of the land ticket experiment, has hailed the Chongqing Land Ticket Exchange as a success,¹¹⁵ and leading Chinese economists have also applauded it.¹¹⁶ The Chongqing experiment also served as the basis for the nationwide transfer of land use quotas authorized by the

¹¹¹ Huang Qifan, *Experiment and Effect of the Ticket System – – Thoughts on the Innovation of Chongqing Land Transaction System* (Study Times, May 4, 2015), archived at <https://perma.cc/4M4T-R4NP> [(黄奇帆) 地票制度实验与效果 – – 重庆土地交易制度创新之思 (学习时报)].

¹¹² *Several Opinions of the State Council on Promoting Chongqing's Urban and Rural Reform and Development*, State Council (2009), archived at <https://perma.cc/5MAT-V8BE> [国务院关于推进重庆市统筹城乡改革和发展的若干意见].

¹¹³ See, e.g., Kathrin Hille, *Bo Xilai Trial Exposes the Man and His Rivals* (Financial Times, Aug. 26, 2013), available online at <https://www.ft.com/content/6d183392-0e0d-11e3-bfc8-00144feabdc0> (visited on Sep. 21, 2019) (Perma archive unavailable).

¹¹⁴ Zhou Qiren, *The Road Map for Land Market Development*, (Economic Observer Online, Aug. 20, 2014), archived at <https://perma.cc/G3LV-ZLL2> [(周其仁) 土地入市的路线图 (经济观察网)].

¹¹⁵ Huang Qifan, *Innovation of Chongqing Land Transaction System* (cited in note 111).

¹¹⁶ See, e.g., Zhou Qiren, *Return Rights and Empower: Laying a Solid Foundation for Long-term Development* (Economic Observer, July 2, 2009), archived at <https://perma.cc/ZXK8-LQ3Q> [(周其仁) 还权赋能：奠定长期发展的可靠基础 (经济观察报)]; Jia Kang, *The Chongqing Land Ticket System Under Land Quota Balance Is Worthy Of Recognition* (21st Century Business Herald, Oct. 14, 2016), archived at <https://perma.cc/PS2R-HR8E> [(贾康) 重庆占补平衡下地票制度值得肯定 (21 世纪经济报道)].

central government in 2018.¹¹⁷ However, as this research has revealed, farmers in Chongqing are not the owners of land tickets, nor has there ever been a real market for these land tickets with prices determined by supply and demand.

Clearly, the enthusiasm seen for land tickets by the Chongqing city government, as well as other local governments nationwide, is rooted in the system's ability to circumvent top-down land use controls and free up land for urban finance and economic development. Rural welfare and rights have primarily served as an excuse to address central government concerns. Whether such welfare or rights have really improved is questionable indeed, particularly given farmers' lack of control.

2. *Rural Welfare and Rights after the 2008 Sichuan Earthquake:
Land Tickets as Disaster Relief in Chengdu*

The Chengdu city government had already been reclaiming rural land to generate urban land use quotas for a few years before the 2008 Sichuan Earthquake, a practice largely similar to Chongqing's land tickets. The motivation, unsurprisingly, was circumvention of the stringent top-down land use control system instituted by the 1998 Land Administration Law, which was enforced primarily by limiting the urban land use quotas allocated to local governments. However, rural land reclamation was limited in scale and amount until the 2008 earthquake.¹¹⁸

The general idea of the Chengdu practice was to designate one area for rural land reclamation and link it with another parcel designated as an urban development area, with the land use quota generated from the former used to legalize development in the latter. From 2006 to 2008, Chengdu carried out 15 such projects, generating a land use quota of 6980.23 mu and relocating 7578 rural households

¹¹⁷ Notice of the General Office of the State Council on Printing and Distributing (cited in note 12).

¹¹⁸ Zhou, *Return Rights and Empower* (cited in note 116).

comprising 24,869 residents to newer, much less spacious housing, though arguably of higher quality.¹¹⁹ According to a government survey conducted in 2006, rural residents in Chengdu occupied an average of 154 square meters of construction land. If that was reduced to 70 square meters through rural land reclamation, 650,000 mu worth of land tickets would be generated for the city government.¹²⁰ However, the city government could not implement that plan without approval from the MLR.

The Sichuan Earthquake brought with it the means for the approval the Chengdu city government sorely needed to further its ambitious land reclamation initiatives. The city suffered great losses during the earthquake, with 4,276 deaths, 1,271 missing, and 26,413 injured. Moreover, the earthquake destroyed 490,000 houses, mostly in rural areas.¹²¹ The city government faced a huge challenge in housing those left homeless by the earthquake. Rebuilding all of the houses destroyed would have costed roughly RMB 27 billion, double the average annual fiscal surplus of the Chengdu city government from 2003 -2007.¹²² In other words, the city government simply did not have the money to rebuild houses for its rural residents.

However, it turned that shortfall into a persuasive argument in requesting MLR approval to expand the scope and amount of rural land reclamation, as the earthquake had already destroyed numerous houses in any event. The urgent need for rural housing in the wake of the earthquake changed the formula of the MLR's policy considerations. It responded quickly and positively, granting the Chengdu city government the authority to reclaim rural land for the purpose of disaster relief. Its approval included three specific items. First, the Chengdu city government was exempted from ex ante MLR

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Zhou, *Return Rights and Empower* (cited in note 116).

approval for rural land reclamation.¹²³ Second, it could launch as many land reclamation projects as it needed, and land use quotas could be transferred across counties within Chengdu.¹²⁴ Third, the Chengdu city government could issue certificates to the holders of land use quotas, making them both more akin to property rights and more marketable, in an effort to encourage investment in such projects.¹²⁵

These policies served as the institutional foundation for a land use quota market in Chengdu and the establishment of the Chengdu Rural Property Rights Exchange in 2010.¹²⁶ It is quite clear that without the Sichuan Earthquake and subsequent urgent need for disaster relief, particularly housing for farmers rendered homeless by the earthquake, the MLR would not have granted the Chengdu city government the permission to develop such a market. To conclude, reframing land reclamation as a means of securing farmers' rights and welfare played a crucial role in bending the MLR to the requirements of the Chengdu city government.

CONCLUSION: CONFUSION OVER AND THE DANGER OF TDRs

It is easy to consider TDRs property rights and ignore their inherently incoherent nature as something in between property rights and government regulation. However, upon closer examination of the situation in China, we can see that they actually pose a serious risk to farmers and have become an alternative means for local governments to engage in land expropriation. Land ticket practices have greatly expanded the expropriation power of local governments. Worse still, as those governments are acting under the camouflage of land reclamation, it is difficult to hold them

¹²³ *Notice of the Ministry of Land Resources on Implementing the Special Support Policy for Safeguarding Post-Disaster Recovery and Reconstruction*, Ministry of Land Resources (June 13, 2008), archived at <https://perma.cc/L8U3-M6LV> [国土资源部关于实行保障灾后恢复重建特殊支持政策的通知].

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

accountable under the existing expropriation regime with its accompanying protections for farmers, minimal though they be.

This is precisely why local governments have created land ticket schemes to circumvent the increasingly stringent national regulation of their expropriation power. By reframing such schemes as grounded in rural rights and welfare, those governments have succeeded in gaining central government acquiescence and even approval, eventually leading to the creation of a national market of land use quotas.

For these reasons, it is important to put TDRs back into the context of takings rather than thinking about them as a form of property rights. They originate in government regulation, or regulatory takings, and their expansion poses grave risks to individual property rights.

There are two different approaches to the Chinese land reform: one takes property as the “law of things” and emphasizes the integrity and entirety of land rights for farmers while the other takes the “bundle of sticks” approach to disintegrate public land ownership in China. The latter approach has proven flexible and pragmatic in the Chinese context, but with significant information and administration costs.¹²⁷ TDRs have exacerbated the problems of that approach. The bundle of property rights in China is “maximally protean and easily reformable.”¹²⁸ It is therefore time to give the bundle of property rights more concrete meaning and to impose clearer boundaries between the government and farmers in China. It is also crucial to understand the political economy behind the evolution of TDR practices and their impact on interactions between the central and local governments and between local governments and farmers.

A national market of transferable land use quotas as proposed in the aforementioned central government ordinance could expose hundreds of millions of farmers nationwide to the risk of land expropriation, counteracting the achievements of the rights

¹²⁷ See, e.g., Qiao, *Stick by Stick?* (cited in note 34).

¹²⁸ *Id.*

revolution in Chinese national law and politics in the past two decades. And given the high administrative and information costs involved, this system is likely to compromise the ordinance's goals of reducing poverty and promoting inter-regional equality.