Moral Economies in Early Modern Land Markets: History and Theory

Taisu Zhang*

Introduction

From a theoretical perspective, there are many reasons why robust land markets might fail to develop in any given economy, several of which 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. To list only a few: Under some circumstances, especially when the rich enjoy strong sociopolitical dominance, free exchange might result in snowballing wealth inequality, and the state might see a need to combat that.† Alternatively, robust land markets might damage the interests of some politically powerful segments of society, which then lobby effectively to curb them.‡ Yet another possible scenario would be that information technologies and social capital are at sufficiently low levels that widespread market exchange would lead to massive amounts of confusion and potential fraud.†† There are many other possibilities.

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: they argue, in some form, that the moral, or at least normative, social belief that land 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.¶ Traditional societies, the argument commonly goes, operated under “moral economies” in which

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* Associate Professor, Yale Law School. For comments and suggestions, I thank the organizers and participants of the 2016 Law and Markets Symposium at the Duke University School of Law. All mistakes are mine.


‡ In many ways, this was what the English landed aristocracy did after the later 18th Century, by reviving entailments and limiting the ability of creditors to seize collateralized land. See, e.g., ALAN HARDING, A SOCIAL HISTORY OF ENGLISH LAW (1966); Claire Priest, Creating an American Property Law: Alienability and Its Limits in American History, 120 H ARV. L. REV. 387 (2006).


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. Correspondingly, these societies developed legal and customary institutions to ban, or at least encumber, land-selling. The argument, therefore, is not merely that moral factors influenced or affected land markets, but rather that the very act of buying and selling land was substantially moralized—that 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. 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. In fact, some would argue that the moral condemnation of land alienation stemmed precisely from the economic importance of land in pre-industrial societies: its 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, but rather involved a fundamental moral shift: commercialization supposedly brought a shift in values that, for better or worse, was then enshrined in legal institutions and implemented in everyday economic life. No longer was land granted any special moral significance. Instead, it 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, but it also came in two very different flavors: First, and perhaps more influentially, a significant number of critics have argued that early modern economies adopted, in fact, a highly rational—for the most part, wealth maximizing—approach towards property rights, and particularly towards the alienability of land. They were not encumbered by any moral notion of land inalienability, and when their legal institutions limited alienability, it was generally for economically pragmatic reasons, not moral ones. Second, some critics argue that, quite the opposite, 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. Rather than moving from a “moral economy” to a market-based one, we have simply shifted between different kinds of moral economies. Crudely summarized, 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.

7 McCloskey, supra note 5. See also the general discussion in Sections One and Two, which summarize a large amount of this literature.
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 that relative inalienability of land was both a premodern and “moral” phenomenon has made appearances—controversial ones, to be sure—in major articles on property and contract. Most famously, Guido Calabresi and Douglas Melamed’s canonical article on property rules 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.”

These historical arguments are not without their normative counterparts: Margaret Radin has argued, for example, that the inalienability of certain kinds of property, including, potentially, land, may be justified under certain notions of human flourishing and morality.

Perhaps unsurprisingly, the impact of the moral economy thesis is particularly visible—and durable—in certain subfields of legal and social history. In Chinese legal history, for example, the idea that there existed a stage where farmers had some sort of special “moral” attachment to land has seemed to significantly influence even those studies that claim nominal opposition to at least some version of it. 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.

This paper approaches these issues from both a broad-strokes historical angle and a theoretical one. In Section One—the empirical core of the paper—it zooms in on one major economy and asks whether, at any point in China’s documented history we have any substantial evidence of “moral economies” in land. It argues that the answer is most likely no. In Section Two, it quickly 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, which lends credence to their opponents.

In Section Three, the paper looks into 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, in fact, a particularly unfriendly forum for moral economy theories: One common argument made by moral economy proponents is that the special economic importance of land in pre-modern societies infused landownership with special moral significance. I suggest here, however, that this logic is precisely backwards: Rather, the more economically important land is, the less likely that it can coexist with significant moralization of land alienation. The more crucial land is to economic livelihood, the greater the pressure to maximize its material value, and, therefore, the less room there will likely be for systemic moralization.

11 See discussion in Section One.
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 we observe across large swaths of Chinese history: At both ends of the social spectrum, various social groups, ranging from titled aristocrats to rural smallholders, attempted, at various points in time, to institutionally limit the marketability of land, and some succeeded in spectacular fashion. As a legal matter, pre-industrial societies often encumbered land alienation, 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 we fail to find major historical examples of moral concerns limiting land alienability, there is little reason to believe that they 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—drawn primarily from my other work—are summarized in the Conclusion.

The Conclusion 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 Section Three? The answer is no, but a closer look at these issues yield additional insights into the theoretical underpinnings of moral economy theories.

Section One: 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—the field moves forward at a leisurely pace—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 18th Century onwards, most rural households approached land selling from a largely utilitarian and materialistic perspective. Wealth maximization, rather than personal or social morality, seemed to have been the predominant concern. But if this was the case for the last two centuries or so of pre-People’s Republic history, is there any real reason, empirical or theoretical, to think that early eras were fundamentally different?

To answer, or least preliminarily answer, this question, it is probably easier to work backwards in time, to start with a summary of what we know about the later Qing and Republic, and then project the analytical inquiries to earlier periods and dynasties. This will necessarily be an extremely broad-strokes summary, but the argument that I
hope to make—that there is little reason to believe in the existence of “moral economies” in early modern China—is, given the state of the secondary literature, not a terribly difficult one to make. There simply are no substantive arguments to the contrary, and frankly it is rather difficult to imagine how they could be made.

The natural starting point is the 19th and early 20th 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. Such narratives, he argued, “overestimate[d] the role that moral constraints played” even in pre-modern economies. 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 “involutionary” 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 that Huang had turned his full attention to legal history in the 1990s, he had adopted a position that was, given his earlier critique of moral economy narratives, surprisingly similar to them in substance: Many of the institutional problems with pre-1949 land markets, he now argued, 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.

This claim soon came under attack from a number of 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 “precommercial,” arguing instead that they both allowed and, in fact, facilitated efficient land alienability. 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. Third, surveying the field from a more theoretical and perhaps distant perspective, some 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. In other words, if we have strong evidence that Qing farmers were

14 HUANG, supra note 4, at 74. For a similar claim, see MELISSA MACAULEY, SOCIAL POWER AND LEGAL CULTURE: LITIGATION MASTERS IN LATE IMPERIAL CHINA 234 (1998).
15 E.g., Kenneth Pomeranz, Land Markets in Late Imperial and Republican China, 23 CONTINUITY & CHANGE 110 (2008).
16 BUOYE, supra note 4.
encumbered by moral economies in most other aspects of land use, why should we expect market alienation to be any different?

Before we go deeper into these questions, allow me to quickly outline what, precisely, were the property institutions that triggered this debate: 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—that is, they gave lineage members a right of first refusal. As a number of scholars have attempted to argued, this may have burdened the marketability of land. 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. 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: It essentially made collateralized borrowing nearly risk-free to cash-strapped landholders. As a result, very few of them had any incentive to permanently sell land, leading 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.20

Whereas it might be tempting to characterize these institutional features, as Huang and others have done, as reflections of “precommercial ideals,” a more careful look at their underlying politics and actual economic effect strongly dispels that impression. As I have argued in a recent manuscript, “dian” institutions were quite clearly the product of vigorous bargaining and negotiation by economically self-interested parties: Not only were there 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—but their ability to advance those interests via “dian” institutions stemmed directly from the amount of sociopolitical capital they possessed, rather than from the moral sympathy and voluntary accommodation of wealthier creditors.21 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”: as explained below, they simply maximized the control and freedom of the “seller”/debtor, who did have 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,” but they, too, lend themselves to coherent political economy-based explanations: In small, closely-knit communities—this describes the majority of pre-1949 Chinese villages—reluctance to allow outsiders to buy land is not necessarily a moral

19 HUANG, supra note 4, at 74; MACAULEY, supra note 14.
21 Zhang, supra note 17.
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 its self-governance and everyday economic transactions.\(^{22}\) This is more than merely an abstract conjecture: studies of village governance in North China indicate that villagers were indeed strongly concerned about the political and economic consequences of outsider interference.\(^{23}\) 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, and therefore had a fairly strong incentive to at least explore the possibility of keeping land within the family.

Moreover, it seems highly unlikely that rights of first refusal were actually a significant burden on local land markets: They were, after all, rights of first refusal, not veto rights. But even looking beyond that basic point, there were reasons to doubt their broader economic significance. Most 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.\(^{24}\) In other words, demanding that sellers first search within their own lineage did very little to limit the pool of realistic buyers, because when the lineage was so large, most prospective buyers were in fact lineage members. One consequence of this fairly common situation was that individual landowners had fairly 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 thousand cases concerning “dian” redemption, tenancy rights, and other land-related issues, but—as far as I could tell—none about lineage rights of first refusal.\(^{25}\)

How do these observations affect the “precommercial ideals” debate outlined at the beginning of this Section? 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. “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: In North China villages surveyed during the Republican era, for example, anywhere between 10 to 30 percent of village land was usually under a “dian” sale at any given time.\(^{26}\) 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


\(^{23}\) E.g., Prasenjit Duara, *Culture, Power and the State: Rural North China, 1900-1942* (1988).

\(^{24}\) This point is made in Susan Naquin & Evelyn Rawski, *Chinese Society in the Eighteenth Century* 100-01 (1987), and Pomeranz, *supra* note 18, at 72.

\(^{25}\) Longquan Dang’an Hebian Mulu (on file with author).

\(^{26}\) Nagano Akira, Zhongguo Tudi Zhidu de Yanjiu [Research on China’s Land Institutions] 121-23 (Qiang Wo trans., 2004).
have survived to the present day. Moreover, the existence of distortionary property institutions was far more likely to have been the product of political economies than moral ones. Huang was probably right that Chinese property institutions were rather hostile to the permanent buying and selling of land, but 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, as noted above, began by criticizing what he saw as an overly-broad application of moral economy ideas to Chinese history, but eventually arrived at more or less a similar conclusion. 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. This is, as reviewers have pointed out, the weakest point in his argument: there is really no evidence—whether in the book or elsewhere—that land markets functioned in a qualitatively different manner in the early Qing. Rather, the best evidence we now have suggests that basic property institutions, including those governing “dian” 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, but rather to push it back to an earlier era. In this particular case, the push extended as far back as the early Qing, but that turned out to be insufficient. How far back do we have to go to find solid evidence of moral economies?

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 18th 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 20th Century. 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

29 To see this problem, simply walk into any county archive and compare their Ming collections—if there are any—with their Qing collections.
The problem is that such claims are even more plentiful in Qing archives—yet, as discussed above, scholars have generally found no corroborating evidence of moral economies at work, and in fact have 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 macroregions throughout the later Qing, 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. By and large, claims about the moral sanctity of ancestral land were generally made only by those who had an otherwise powerful economic incentive to keep it. Parties who had the opposite incentive—to purchase new properties—rarely employed such language, even in a negative fashion. It seems likely, therefore, that it was primarily a 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 very differently? That seems profoundly 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. A large collection of land contracts from South China survive from this era, the earliest such collection currently available.

Another potential argument for why the Ming—or at least the early Ming—might be different is that we do indeed have 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, which strongly suggests that a substantial increase in land-selling was taking place. 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 clearly not a reason to believe that there were significant moral economies beforehand. The evidence of deepening commercialization

31 See, e.g., Macauley, supra note 14; Kishimoto, supra note 30.
32 Zhang, supra note 17.
33 Id.
34 Yang, supra note 30; Pomeranz, supra note 15.
35 Yang, supra note 30. 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)
in the mid-Ming merely suggests that early Ming land markets were less active, but tells us nothing about the reason.

There are, in fact, 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 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.37 The reasons for this were complex, including concerns over state revenue, economic inequality, labor markets, and general social stability, but such policies were actually quite common in pre-modern legal systems. In particular, it was standard practice in China until around 800 AD.38 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.39 One could argue, of course, that the fundamental driving force in this process was economic and demographic growth—which may very well have been true, 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 12th to 15th Centuries witnessed the decline of large aristocratic manors as a major source of agricultural production, which gradually released large amounts of land into local markets.40 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 as by the political privileges granted to their owners. 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.41 Small, commoner producers, often much more motivated and economically nimble than the old aristocracy, gradually became the dominant force in agriculture. 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—

38 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)
from the sociopolitical upheaval created by Mongol conquest and retreat. The state, too, came to own enormous amounts of land through seizures and reclamation, and managed these estates as, essentially, an absentee landlord. From the early to mid-Ming, these large estates once again declined due to a combination of population growth and redistributionist government policies. In other words, it was probably not until the 15th or 16th 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 longue duree factor that fueled the growth of Chinese land markets, in fits and starts, from Song to Yuan, and then to Ming.

In fact, 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. 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—which, apart from encumbering migration and land selling, also periodically seized significant amounts of land via eminent domain.

Chinese freeholders theoretically owned land at the sufferance of the emperor, 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 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.

These problems were, in all likelihood, even more acute in earlier dynasties. If we extend our time travels back to the Yuan (1271-1368) and Song (960-1279), we begin to encounter rural economies that were substantially feudal, dominated by large aristocratic estates rather than private farms. 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—but also charged some of the highest land taxes in Chinese history and, from the late 11th Century to the 13th, attempted to micromanage

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43 VON GLAHN, supra note 38, at 286-91.
44 E.g., SCOTT, supra note 4.
45 Lin Jinshu, Guanya Mingdai Guantian de ji ge Wenti [A Few Questions about Ming State Landholding], 1988(1) ZHONGGUO JINGISHI YANJU [STUDIES ON CHINESE ECONOMIC HISTORY] 73.
46 Kishimoto Mio, 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).
47 See sources cited in supra note 40.
agricultural production more intensively than any post-Tang Dynasty regime.\(^{48}\) In other words, the further back we go 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 are, as discussed above, trends that argue against the existence of significant moral economies in land. Correspondingly, if we were ever tasked with 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 true\(^{49}\)—these trends, rather than the assumed existence of moral economies in land, would be the obvious candidates.

In sum, if we were to reverse the time-travel exercise and tell a chronological narrative of Chinese land markets, it would be something like this: China began to transition out of a feudal land system around the 10\(^{th}\) Century. The process, which goes through several dynasties and a variety of legal regimes, reaches 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 less likely, but also rendered it analytically unnecessary: they provide far more persuasive explanations for any perceived lack of land-selling in pre-Ming economies than a moral economy theory would. 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 circumstances, and actually very good reason to infer the opposite. After the mid-Ming “turning point,” however, we begin to encounter reasonably compelling evidence of both highly active land markets and social commodification of land. 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.\(^{50}\) The apparent lack of significant moral economies in Chinese land management therefore provides more than just “one data point.” Nonetheless, one has to wonder whether moral economies in land were more manifest in other major early modern powers. The next Section briefly considers a few of these, seeking to identify analytical comparisons or similarities.

\(^{48}\) VON GLAHN, supra note 38, at 256-65, 268-69.

\(^{49}\) Hu Gang, Ming Qing Tudi Shichanghua Qushi de Jiasu [The Acceleration of the Marketization of Land in the Ming and Qing], 2005(2) GU JIN NONGYE [AGRICULTURE IN ANCIENT AND MODERN TIMES] 88.

Section Two: 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 and commercialized 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. Correspondingly, land markets became unfrozen, and the alienability of land sharply increased both as a matter of law and as actual economic practice. Depending on one’s perspective, this could either be a positive development, one in which a premodern, irrational peasantry came to better utilize their landed resources, or a negative one, in which a moral peasantry lost the ability to engage in collective self-help and resistance against predatory aristocrats, gentry, and capitalists. Weberians and Marxists alike seemed to accept this basic narrative.

The primary challenge came, as it often does, from studies of local sources: Most famously, Alan Macfarlane, in his 1978 book English Individualism, proposed a radical reinterpretation based on local material from Earls Colne: First and foremost, he argued that there was really no legal or customary evidence of norms that forbid land selling. 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 did, in fact, free landowners to engage in large numbers of land sales, leading to extremely active land markets even in the 13th and 14th Centuries. 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. At no point in well-documented English history did social behavior significantly veer from an individualist ideal-type in which individuals pursued their own well-being without much regard for broader communal or even household welfare.

Quite predictably, this radically revisionist history triggered an immense debate between supporters and detractors. After several decades of back-and-forth, controversy continued to swirl over some of Macfarlane’s claims, especially the more general ones, but consensus had at least begun to emerge around a few basic points: As a

52 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. E.g., TAWNEY, RELIGION, supra note 51; MAX WEBER, THE PROTESTANT WORK ETHIC AND THE SPIRIT OF CAPITALISM (Peter Baehr & Gordon C. Wells trans., Penguin 2002).
53 THOMPSON, supra note 4.
“description of rights,” wrote H.R. French and R.W. Hoyle in 2003, “English Individualism is surely accurate.” Even in medieval times, there were neither significant legal nor social constraints on land-selling. 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.” Macfarlane is on weaker ground, however, when he claims that land changed hands very frequently in medieval times. 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 generations. 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. 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.

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. More recently, however, several scholars, most notably Mark Ramseyer, have challenged this narrative by demonstrating that economic resources, including both land and labor, that were once assumed to be inalienable under the early modern moral economy were, in fact, both institutionally alienable and frequently alienated. This was particularly true of land: The Tokugawa Shogunate actually outlawed the permanent selling and buying of land, but as recent scholarship has demonstrated, the ban was almost completely circumvented in local practice. 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 fully title to the “creditor.” The high volume of land purchases made by richer farmers was, in fact, one of the main reasons for the displacement of smallholders during the later Tokugawa. If anything, land alienability led to communal disintegration, rather than the other way around.

Even in Southeast Asian studies, the “home field” of James Scott’s landmark study The Moral Economy of the Peasant, moral economy theories have encountered

56 French & Hoyle, supra note 55.
57 Id.
59 Vlastos, supra note 4, at 17-18; Penelope Francks, Rural Economic Development in Japan 96-97 (2006).
62 Scott, supra note 4.
significant skepticism. Scott’s manuscript 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 marshalled 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. More specifically, Popkin also argues that Vietnamese landownership had a fairly high turnover rate well before the modern colonial era.

For now, the debate continues in many fields. What this paper has thus far attempted to show, however, is 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 very well have, 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, at some point a truly 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, as discussed above, 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.

But 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 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.

**Section Three: A (Partial) Theory of Early Modern Land Markets**

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64 Apart from the examples discussed above, such a debate also continues to be important to the economic history of the Islamic world, compare, for example, TRIPP, *supra* note 4.
This Section provides a theoretical argument for why—within the context of early modern land markets—moral economy proponents should bear the heavier burden of proof. The basic argument is very simple: the greater and more complex a resource’s economic value, the less likely that it will be subject to significant moral economies. Given the extremely high economic value of land in early modern societies, there should therefore be a general presumption, subject to potential 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 ones.

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.\(^{65}\) Otherwise, if so-called “moral economies” were merely equilibriums 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, intuitively, 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, of course, 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.\(^{66}\) That may very well be true, but it would not negate the fundamental distinction between moral and materialist utilitarianism, in which economic gain is considered the primary motive.

What I attempt to argue here is that, 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 likely 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, there are at least three major theories of cognitive behavior that lend support: First, the “system one/system two” theory of cognitive decision-making that Daniel Kahneman and others have raised to prominence in recent years suggests that we reserve our conscious thinking—“system two” “slow thinking”—for only the most important decisions, whereas most decisions are made somewhat subconsciously using “system one” “fast thinking.”\(^{67}\) Under this commonly accepted framework, the most salient decisions, the ones that command conscious intellectual effort, tend to be the most

\(^{65}\)The works identified in *supra* note 4, for example, would likely uniformly reject any suggestion that “moral” economies might simply be the expressive symptoms of political economy.


important and difficult ones. Going back 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. In addition, the more economically 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, and there is little reason to believe that early modern societies were significantly different. Quite the contrary, 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. 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 cognitive 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. 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

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70 On early modern household decision-making, see, for example, MACFARLANE, supra note 54; JAN DE VRIES, THE INDUSTRIOUS REVOLUTION: CONSUMER DEMAND AND THE HOUSEHOLD ECONOMY, 1650 TO THE PRESENT (2008).

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. 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 person herself/himself. 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 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 had 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. The above paragraphs suggest that neither was likely.

What, in the end, 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, closely-knit communities—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

72 MATTHEW H. SOMMER, POLYANDRY AND WIFE-SELLING IN QING DYNASTY CHINA: SURVIVAL STRATEGIES AND JUDICIAL INTERVENTIONS (2015); RAMSEYER, supra note 60.
73 SOMMER, supra note 72.
74 E.g., POLANYI, supra note 4; SCOTT, supra note 4.
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. Not only is there no empirical support—within, at least, 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 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. The previous sections have argued, however, that they have not satisfied this burden.

**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 the previous section are actually beneficial for moral economy proponents: As a theoretical matter, we really should not have expected to find robust evidence of early modern moral condemnation of land alienation 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? As discussed above, 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, closely-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” scrutiny 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 briefly outline an example drawn from some of my previous work. It turns back to the mortgage redemption institutions discussed in Section One, 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.\textsuperscript{75} It demonstrates, therefore, how moral 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, as discussed above, 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 60 to 80 percent of its full value while retaining a right of redemption. 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, such a right was mandatorily attached to all “dian” sales.\textsuperscript{76} 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. At the same time, it severely hampered the ability of wealthier landowners—who tended to be the creditors in a “dian” sale or the buyer in a permanent one—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.\textsuperscript{77}

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. 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.\textsuperscript{78} On issues that were crucial to their economic livelihood—“dian” redemption almost certainly qualified, as 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, there is much evidence to suggest that the intervention of lower income political elites in support of infinite redeemability was crucial to its institutional entrenchment.\textsuperscript{79} Without it, the opposition from large landowners would have been extremely difficult to overcome.

But this merely 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. Why were things different in China? The answer most likely lies in normative status hierarchies, the social norms of status distribution, that rural communities operated under: Late imperial and Republican

\textsuperscript{75} Taisu Zhang, Cultural Paradigms in Property Institutions, 40 YALE J. INT’L L. (forthcoming 2016).
\textsuperscript{76} Id.
\textsuperscript{77} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Id.
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. 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 11th Century to social predominance by the 16th or 17th largely because people believed that they were a morally desirable or “natural” means of social organization. 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. Without widespread societal internalization of such hierarchies—of which there is substantial evidence beginning in the 12th and 13th 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 Section Three, 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

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80 Id.
81 Id. For specific examples, see, e.g., ZHANG ZAIJI (张载集) [COLLECTED WRITINGS OF ZHANG ZAI] 258-59 (Zhonghua Shuju ed., 1978); 2 ER CHENG Ji (二程集) [COLLECTED WRITINGS OF CHENG HAO AND


统思想) [The Traditional Thought of the “Heretic” Li Zhi], 16(2) CHONGQING ZHIYE JISHU XUEYUAN XUEBAO (重庆职业技术学院学报) [J. CHONGQING TECH. INST.] 78 (2007). For a more general survey, see LU DAOQIAN (陆宝千), QINGDAI SIXIANG SHI (清代思想史) [INTELLECTUAL HISTORY OF THE QING] (2009).
philosophical and ethical writings by intellectual and political elites at all levels that explicitly endorsed these hierarchies, whereas there were very few that paid any attention to the issue of land alienation. 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 “internalizable” 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, if we allow for any possibility of non-self-interested norm internalization at all, 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, highly 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 early modern-to-modern transition 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. 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. As discussed above, 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. Nonetheless, it is rather interesting to observe 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,

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82 Zhang, supra note 75.

83 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.

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.