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CHAPTER THREE

Restoring Private Ownership of Rural Lands to Safeguard the Basic Rights of Farmers

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The reform of the system of land ownership in China's rural areas is one of the most controversial topics at present. Among other things, the debate focuses on the issue of who owns the land, with a view to promoting and enhancing productivity in rural areas; maintaining the security of the agricultural economy; avoiding political risks and protecting social stability; etc. However, both sides of the debate address this issue from a government perspective with pragmatic arguments, in order to maximize their respective interests in the decision-making process (of course, the distribution of interests under the table contributes to the complexity of the public debate). In consequence, the debate has become an endless and meaningless controversy in which one side always raises challenges and the other side keeps rebutting them. It is not uncommon for both sides to become so overwhelmed by this kind of debate that real reform is delayed and disrupted. Such complexity and confusion largely derive from the fact that, in addressing this issue, parties are over-attentive to the empirical distribution of interests rather than natural rights.

Land ownership has already become the most outrageous issue in China's rural areas and even the whole Chinese society; the issue of the "enclosure movement" is already gravely serious; and farmers' rights to land are being comprehensively violated and are barely surviving. Under these circumstances, some farmers become aware of the real issue, and after plenty of appealing to authorities, consciously raise claims of land ownership. This movement also illustrates that the development of the society entails reform of the system of land ownership.

The farmer's predicament is an institutional outcome. It is the public ownership of land that disregards the farmers' basic rights. Under the emerging rule of law and democracy, so-called "owned by all" under the collective ownership regime has effectively nullified "everybody's" ownership. On the basis of the extensive surveys conducted, it is concluded that, at least in the current phase when the development of rural democracy and the rule of law remain premature, collective ownership is virtually government ownership, and government ownership is virtually ownership by government officials.
Thus, the system of “public ownership” is virtually “public lack of ownership,” which may easily transform into some kind of “private ownership” backed by administrative powers. This kind of transformation is the outcome of institutional discrimination against farmers. Therefore, such vague “public ownership” has to be changed to a kind of equitable and clear “private ownership”; that is, to a system of private land ownership under which farmers’ rights are fully recognized.

In this context, it is necessary to compare alternative systems regarding the reform of land ownership. From the perspective of citizens’ rights, the current disadvantageous status of farmers has well illustrated that the system of public ownership is not the best choice; in contrast, private ownership may be the least bad one. This chapter will analyze and compare the disadvantages of public ownership and the advantages of private ownership from the perspective of the protection of farmers’ rights, taking into account the regular rules of socio-economic development as well as the implications of the development of land ownership in China. It will be concluded that private ownership of land is the fundamental safeguard for farmers’ rights; one of the necessary requirements for the establishment of a modern agricultural system and the development of a social economy; one of the essential prerequisites for sustainable development; and the ultimate direction for reform, justified by both history and reason.

In the present China, the infringement of farmers’ civil rights often manifests itself through the infringement of their land rights, the protection of which is, therefore, an important “bottom-line” for protecting farmers’ civil rights.

1. RURAL LAND DISPUTES: SERIOUS INJUSTICE IN CHINESE RURAL AREAS

During the last three or four years, the Chinese government has received a massive number of cases of shangfang (direct appeals to authorities). According to media reports, most of the appellants were from the rural areas, among which most were victims whose land rights had been infringed. Having continued for more than ten years, land dispute claims have become the most serious issue not only for rural areas, but also for the entire Chinese society.

Shangfang cases have flooded not only the various levels of government, but also the media (particularly the Beijing media), which could provide truthful reporting.

The project team of the Chinese Academy of Social Sciences conducted a special statistical analysis by telephone and voice recordings, targeting the media audience of the central government. Between 1 January 2004 and 30 June 2004, 62,446 phone calls or voicemails were received, and leading the ranks were calls relating to the sanmang issue (issue about “agriculture, farmers and rural areas”) with 22,304 or 35.7 percent of the calls and recordings. Among those referring to the sanmang issue, 15,312 or 68.7 percent were regarding rural land problems, representing 24.5 percent of all of the feedback received for the study.
Since 2003, the author, as a journalist, has been receiving an average of two to three complaint calls or calls for help per day from various parts of China. Approximately 60 percent were calls for help or complaints from the rural areas, among which 60 percent were complaints about land disputes.

The author has carried out investigations in most of the provinces and regions in the eastern, central and western parts of China. Studies and analyses were conducted for 52 typical cases of land disputes in 22 provincial regions (and municipalities); they were conducted after also contacting and communicating with a large number of land-deprived farmers, and the local governments and the relevant departments. The current rural land disputes and intensified land enclosure movement point to the fact that, given the scope and number of people involved, rural land disputes have become the most serious social injustice facing present-day China.

Of the 52 cases studied by the author, 20 (39 percent) involved land expropriations of more than 1,000 mu (1 mu equals approximately 666.7 square metres). Wuhan city accounted for most of the expropriated areas: 100,000 mu expropriated in 1992 for building the Wuhan Economic Development Zone; and 32 were cases of expropriation of less than 1,000 mu, representing 61 percent of the total. Among these cases, the key complaints of farmers whose lands were expropriated were: (1) illegal expropriation; (2) use of violence; (3) lack of compensation; (4) low compensation; (5) retention of compensation; (6) chaotic resettlement arrangements; (7) greater poverty; (8) deception; and others. Expropriators were generally county and township governments expropriating the land for economic development, construction of enterprises and urban development. Many land expropriation exercises were opposed by farmers. Land expropriation cases inducing violence totalled 13, or 25 percent of the total. For example, the tarsus of Xiong Quangen, the farmers' representative of Banchangbei Farm at Shajingjie, Honggutan Xinqu, Nanchang City, Jiangxi Province, was broken by gangsters threatening that "whoever dares shangfang, their family shall be slaughtered." This must have been provoked by their repeated shangfang. In 2007, the government of Shafu Town in Qinnan District, Guangxi, forced villagers of several villages in Dashigu to lease land to the government at a rate of RMB 580 per mu per year. The farmers refused to comply. To achieve their end, the government had their newly planted rice paddy and tree seedlings flooded. When the villagers tried to prevent the sabotage, the government deployed nearly 200 policemen to beat them. Many were bleeding and seriously injured and had to be hospitalized.

Of these 52 cases, nearly all land-deprived farmers opted for shangfang and complained to higher authorities as a means of relief. Villagers from Yongquan Village of Longfeng Town in Longfeng District, Daqing City, Heilongjiang Province, reported the highest shangfang frequency of 1,359 times within three years or so. Retaliation against shangfang amounted to 23, or 45 percent of the total. The most serious retaliation was seen in three cases, in which more than 20 villagers who were shangfang representatives
were prosecuted and convicted for criminal offences, such as "disruption of social order due to illegal gathering" and "obstruction of public administration."

1.1 The Land “Enclosure Movement” Driven by Governments and Developers

To farmers, land is the basic guarantee of their livelihood, and the only capital on which they depend to build wealth. After the implementation of the Household Contract System in 1979, various levels of local governments subcontracted rural lands for agricultural production to agricultural households, during which time the farmers enjoyed a period of stability.

By the 1990s, industrialization and urbanization were in full steam. When state-owned urban land was comparatively scarce, rural lands located just at the outskirts of the urban areas became the top choice for factory construction and city development.

From the political perspective, government officials were evaluated on the basis of their economic contributions during this period, the government therefore focused on economic performance and growth figures; building development zones and industrial parks became the key mission of local governments. Most of the places that the author visited had large industrial parks built. During a visit to Jinjiang city in Fujian Province in 2005, the author saw that the originally scarce basic farmland had been replaced by development zones, and several towns and townships were occupied by industrial parks. The parks were connected to one another, but few arable lands were seen. Visit any large province or small county-level township, and local officials will proudly show you the local industrial districts and development zones. Even administrative villages, in some cases, were occupied by industrials parks. Every place has been waving in investment capital. The truth is that Chinese rural areas had already seen a wave of campaigns for building township enterprises during the mid 1980s, prior to the current frenzy for “industrialization and urbanization.” At that time, the slogan was “every village shall see smoke oozing from industrial chimneys, and every hamlet shall build factories.” Yet, each of these “political campaigns” is actually premised on the expropriation of rural land.

From an economic perspective, high profits are sought by both government and enterprise. As a non-renewable resource, land is the most important resource for economic development, and an asset whose value growth is the fastest and greatest. While gains in the primary and secondary industries stabilize and thus become thinner, land value has been appreciating rapidly. The room for the appreciation of land value has been expanding. Land and housing have become everybody's core assets, as well as important bequests for the next generation. In recent decades, suburban lands and urban housing properties in developed cities have seen their value double every seven to eight years. The same trend is experienced in other Chinese cities. Seeing the general economic pattern, many cash-rich enterprises concentrate on land investments; that is, the “enclosure” and sale of land. The rapid growth of the real estate market is a case in point. While
enterprises are engaged in the land-rush, the larger players — governments — refuse to be left behind. Governments intervened in the entire process of national economic development, by monopolizing the primary market in which rural land is converted to urban development. Low land requisition costs became the engine for rapid urbanization and industrialization. Revenue from land concession became the major source of fiscal income and future public investments by local governments. And land mortgages became the main financing instrument for urban infrastructure and real estate investments. According to public sources, as early as 2003, income earned from land concession in Yiwu city was RMB 1.5 billion, or 60 percent of its extra-budget income. Liu Shouying, a researcher at the Agricultural Department of Development Research Centre of the State Council, discovered during an investigation in 2005 that,

in Shaoxing, Jinhua and Yiwu in Zhejiang Province, the income obtained after deducting the difficult-to-estimate land charges, direct land taxes and indirect taxes from city expansion accounts for 40 percent of the budgeted income. Net income from land concession accounts for around 60 percent of the extra-budget income. After adding up all the items, income generated from land accounts for more than half the local fiscal revenue.

*Land finance has become the largest moneybag for many local governments.*

Whether driven by political or economic motives, the strong demand and desire for land by governments and developers have themselves been driving *quandi* activities. Land encroachment and land enclosure activities in support of grand development plans have been widespread, taking place in every city and village, big or small, in China.

The present problem of Chinese farmers losing their lands and jobs has become a matter of immense gravity. Acute reduction of arable land combined with a sharp population increase has led to the continued decrease in area per capita of arable land. According to statistics from the Ministry of Agriculture, the total area of arable land in China is 1.951 billion *mu*; however, arable land resources per capita is only half that of the world’s average.

Non-agricultural constructions are concentrated mainly in suburbs and economic development zones where the population is dense and land scarce. Most people living in these areas have less than 0.7 *mu* per capita, and every one *mu* of arable land taken will result in 1.4 persons losing their land. According to statistics, within the agricultural population, approximately 150 million people have lost the lands on which they depend for their livelihood.

### 1.2 The Major Forms of Infringement and Deprivation of Farmers’ Land Rights

Infringement and exploitation of farmers’ land rights may be divided into several forms. The most common are the infringement and exploitation of land contract management
rights in the rural areas, and more serious is the infringement and deprivation of farmers' title to their land.

1.2.1 Infringement and Deprivation of Farmers' Land Contract Management Rights

By investigating the actual circumstances of farmers' land contract management rights, the author discovered that the so-called "permanence" of policies and regulatory provisions on contract rights does not prevent the frequent and wilful deprivation or infringement of the land contract rights and other relevant lawful rights enjoyed by farmers. The forms of such deprivation or infringement are as follows.

The most common is retracting and trading farmers' land contract rights by means of administrative powers, and non-implementation of the "second round of the lease," thus directly depriving farmers of the right to contract land. Take the Sumubao Village of Wuxing Town in Dengta City, Liaoning Province, as an example. A local grassroots organization recovered contracted land from farmers by force, and triggered a group shangfang action by several hundred villagers. Villagers involved in shangfang were detained and finally imprisoned.

Another common form is interference with farmers' independent right of production and management through the use of administrative powers, such as forced purchase and sale, as well as through restriction of lawful land transfers, the deduction of gains from land transfer, and other actions.

Many localities refuse to implement the "second round of the lease" policy. Arable lands suitable for the application of the household contract were not granted an extension of their land contracts for thirty years as provided by the policy, and land contract agreements were not signed with farming households.

In other cases, the contracting party would be forced to transfer his land contract right, such as through mandatory repossession of the contracted land of farmers to effect a land transfer; or the town/township government or village-level organization would take on the lease of farmers' contracted land before they could transfer the lease or contract out the land. These were the problems in the aforesaid Liaoning case, whereby villagers were imprisoned due to shangfang or qunti shijian ("mass incident" — a Chinese euphemism for a large protest, riot, demonstration, or mass petition).

Illegal contracting-out of rural land includes contracting to entities or individuals who do not belong to the collective economic organization without the consent of more than either two-thirds of the members of the economic organization or two-thirds of the village representatives.
Discrimination against the contract management rights of women is rife; they are the vulnerable among the vulnerable. To cite an extreme example, a woman from Village A marries a man in Village B. She cannot take with her the contracted land in Village A; on the other hand, Village B does not allocate her any contracted land. She divorces with her husband after giving birth to two children, with each of them taking custody of one child. She no longer has land from her parents' family, and receives no land from her husband's family. Under this land regime, women and their children have no land to make a livelihood. Many who work in the rural areas are aware that such cases truly exist.

Some local governments confiscate farmers' land at will under the pretexts of building scale and centralized management, and redistribute the acquired land to those which they regard as major farming households.

Omission by the administrative and judicial authorities, and the village-level organization also causes deprivation of rights; for example, the refusal by primary courts to accept cases on land contract disputes and the refusal by the rural land contract arbitration and management authorities to accept arbitration petitions for rural land contract disputes.

1.2.2. Infringement of and Deprivation of Farmers Land Title

Article 10 of the Constitution provides that “[r]ural and suburban lands shall be collectively-owned, save if otherwise provided under the law that such lands shall be State-owned. Rural housing land, and 'private plots' (ziliudi and ziliushan for villagers) are collectively-owned.” As such, rural lands are collectively-owned.

The villagers understand that being collectively-owned equals ownership by all villagers. Under the provisions of the Villagers' Organization Law, action for major matters and major economic interests concerning the village shall be carried out only upon obtaining two-thirds affirmative votes from the villagers' assemblies and village representatives' meetings.

That being the case, how do local governments and developers infringe upon and deprive villagers of their land rights?

1. After deliberation and resolution of the expropriation at the village assembly or villagers' meeting, some governments and developers will infringe upon farmers' land rights as follows:
   i. Requisition before approval, i.e. "enclosure" before submitting for approval. Local governments call it "board the ship then buy the ticket."
   ii. Submit less than the actual quantity of land requisitioned for approval. Due to strict State policies, the amount of land local governments may submit for approval is limited. However, as actual demand is high, the amount submitted for approval is less than the actual quantity "enclosed."
iii. Report good land requisitioned as wasteland. Officials report land as wasteland in the submission for approval, but in fact the “enclosed” land is either arable land or basic farmland.

The aforesaid is infringement on and deprivation of farmers’ land rights with “observance” of land expropriation procedures. In reality, most land expropriations and encroachments are carried out with a blind eye to the laws and regulations.

2. Illegal Land Expropriation:
   i. Illegal land sales by village functionaries.
   ii. Illegal land sales by village committees and village branches.
   iii. Lease in place of expropriation: enters into a long-term lease agreement with the village committee, where it does not appear that land title has been transferred, but yet in fact the village committee has taken full possession of the land.
   iv. Mandatory (zhilingxing) requisition by county governments: to build large industrial parks and development zones, city and town governments would take forced possession of land from villages directly upon the issuance of orders by local governments, to fulfil their political missions. In 2003, the government of Baogai Town in Shishi City, Fujian Province, issued an order for the construction of a Baogai Footwear Industrial Park. As the villagers of Xueshang Village refused to accept the expropriation of their land by the town, village functionaries refused to give their stamp of approval on the document. The town secretary said, “punishment shall be issued if the approval stamp is not given.”

The most common land expropriation, enclosure and requisition practice across the country is to bypass the resolution phase of villagers’ assemblies and village representative meetings, while the higher level government and developer arrive at an agreement directly with the village functionaries. This practice is frequent and widespread. As said by Chen Xiwen, Deputy Director of the Office for the Central Financial and Economic Leading Group, CPC, in 2003, 6015 or 70 percent of the various levels and types of development zones (industrial parks) were built at will, and in violation of the law.

3. Infringement and Deprivation of Farmers’ Rights in Compensation and Resettlement Arrangements:
   i. Reduced compensation: while State compensation standards are already very low, certain local governments continue to depress compensation standards.
ii. Delayed payment of compensation.

iii. Retention of compensation.

iv. Deduction of compensation when passing through different levels of governments: depending on the nature of the land expropriation and source of compensation funds, some compensation is released to the provincial governments, other compensation to the municipal governments. These governments will transfer the funds to the county-level governments, which will then transfer to the tier-one town/township governments, and then through the village committee to the villagers whose lands have been expropriated. While passing through many hands, a part of the compensation disappears at each level. The many places that the author has visited seem to tell the same story. And the reason is because there is a lack of effective supervision of the administrative behaviour of public institutions.

The author found that most farmers would not have pursued the legitimacy of a land expropriation if the local governments and developers had been reasonable in their actions and compensations, ensuring that farmers are provided with another possibility of livelihood. However, deprived of a transparent process and the title to their lands, without compensation, farmers had to take action to protect their rights.

**Lives of Land-Deprived Farmers**

Most farmers have become social refugees, having been rendered landless and jobless, and without social security, as a result of the low compensation for land expropriation and the absence of equitable resettlement arrangements and a social security system.

Indeed, more than 100 million Chinese farmers have been estimated to have lost their lands, and several million are added to the pool each year. In 2004, Sun Shengwen, Minister of Land and Resources disclosed at a periodic joint-inspection meeting for land and market order governance and reorganization, that a preliminary finding on compensation and resettlement payments owed to farmers across the country amounted to RMB 9.88 billion, of which only RMB 5.99 billion had been paid. Farmers who rely on their land for a living, and whose lands have been substituted by a blank note, fall into greater destitution. According to the forecast, another 270 million mu of land will be converted to urban land within the next 20 years. This will translate into a more acute problem, as more farmers will become landless refugees. A study conducted by the 93 Society in 2003 indicated that 60 percent of the land-deprived farmers were living under extreme poverty; those who had a stable income and whose basic living conditions were not affected by the loss of land only accounted for 30 percent.

According to media reports, millions of young university graduates are unemployed under the harsh employment situation in China at present. Finding a job would be
more difficult for the land-deprived farmers, who have an absolute disadvantage in age, skill and education level.

Farmers lose their basic guarantee of livelihood as soon as their lands are taken away. Many farmers who are left with no land to farm, no job and no minimum insurance live at city fringes and do not enjoy any policy protection for employment, schooling of children or social security. Land-deprived farmers therefore are confronted with a crisis of survival, as their basic rights are trampled on and prejudiced.

For centuries, Chinese farmers have been living under the “land and family protection” model, whereby they rely only on themselves and their families for all their necessities of life, from birth until demise. However, with large parcels of collective rural lands being expropriated due to urbanization and industrialization, farmers are losing their only guarantee of livelihood. Combined with the inadequate social system in the rural areas and the currently meagre compensation and poor resettlement arrangements - not to mention that even minimum resettlement is not seen through - many land-deprived farmers have been reduced to urban poor.

Perpetual acquisition of land by the government and business enterprises - and without the minimum compensation - has led to the loss of the basic guarantee of a livelihood for many farmers. Land-deprived farmers were hence driven to appeal to the authorities (shangfang) for justice.

Land disputes in Chinese rural areas have now become organized and collective warfare. Many bloody conflicts arising from farmers protecting their land rights have occurred across China, the most renowned of which was the “Dingzhou murder” in Dingzhou City, Hebei, on 11 June 2005. A developer joined hands with the head of the local party committee to plan a deadly attack carried out by nearly 300 “gangsters” on farmers guarding their “expropriated land.” More than 100 villagers in Shengyou Village were injured, and six were killed.

According to the statistics provided by the Chinese Academy of Social Sciences project team, between January and June 2004, 87 conflicts between the police and farmers occurred during those six months alone. 48 or 55.2 percent of the conflicts arose because farmers tried to prevent construction from being carried out on expropriated or requisited land; 31 or 35.6 percent were due to local policemen preventing farmers from shangfang; 8 or 9.2 percent arose from sitting petitions by farmers at municipal governments’ offices, railroads, highways or major communication routes. And of the 87 cases, hundreds of farmers were injured, three died, more than 160 were detained, and some were even tied up and paraded through the streets as a public warning. Twelve had to be suppressed by special police or riot police, and seven by the military police. As many as several hundred policemen had to be deployed for certain instances. Crimes of which the farmers were convicted were mainly illegal gathering, disruption of social order and obstruction of public administration. Some even took enforcement actions against farmers’ groups for shangfang to Beijing or the provincial capitals, using the pretext of Falungong affiliation.
Methods Employed and Embarrassment Encountered by Farmers in Protecting their Own Rights

The author has discovered through frequent contact with land-deprived farmers that they are generally very passive even when their land rights have been infringed upon or deprived. Some take action to protect their rights, but there are few successful cases.

When their rights were infringed or deprived, Chinese farmers often responded in the following ways:

1. Tolerate it and keep silent. An absolute majority of farmers would choose to tolerate or give in as much as possible. There is a Chinese saying that “ordinary folks will not fight with government officials.” Historical incidents have proven that there have been few cases of ordinary citizens winning a case against the official courts. Hence, most Chinese farmers whose rights were infringed chose to tolerate the injustice and remain silent.

2. Seek out an upright official. Cases of farmers defending their rights are rare. Most choose the most traditional method in China which is that of seeking out one upright official after another, through the whole official hierarchy. However, most find their efforts to be of no avail.

3. Appeal (shangfang) from one level to another. When land rights have been exploited and infringed upon, some farmers’ representatives have sought out governments of various levels for resolution. This generally leads to a cyclical process: appeal to the township government, the township government passes the buck; appeal to the county-level government, the county-level government passes the buck; appeal to the municipal government, the municipal government passes the buck; appeal to the provincial government, the provincial government passes the buck; finally appeal to the central government, and then get referred back down to the local level by a Xinfang (“letters and visits”: complaining by writing letters and paying personal visits to the authorities) Transfer Advice. The farmers will then have to begin the entire process again, by appeal from one level to the next. Many shangfang farmers told the author that the passing-the-buck tactic used by the various levels and departments often dragged out the confidence of even the most determined and resilient. Many ended up mentally ill. In the worst cases, some Xinfang Transfer Advice may fall directly in the hands of those who violated the farmers’ rights, so that many farmers often become the target of retaliation and revenge. Many such evil deeds have occurred over the years. And successes due to shangfang are rare.

4. Take legal action. Few dare to sue. And those who could afford to do so and knew how were even fewer. Most importantly, many local courts refuse to accept cases of legal action taken by farmers in defence of their land rights.

Among the many cases on the defence of land rights which the author has investigated, about 80 percent or more of the farmers’ representatives had been arrested.
at some time or another due to *shangfang*, and approximately one fifth of the farmers' representatives were sentenced to imprisonment due to "extreme behaviour" during *shangfang*.

**Farmers' Own Choices**

Farmers employed various methods to protect their rights when title to their land – their basic right – was deprived or infringed upon; nonetheless, most failed.

Farmers realized that the fundamental cause to the repeated infringements on their rights, and their awkward and helpless efforts at protecting their rights, was the institutional deficiency in land right protection. In fact, it is the current system of collective-ownership of rural land that has led to the displacement of farmers' land rights.

As with what happened during the 1970s, farmers in Fengyang County of Anhui Province boldly "divided the fields among the households" (*fentian daohu*), many farmers across the country were courageous enough to propose the declaration of the "return of land rights to farmers" (*di-quan gui-nong*). The bold move of Anhui farmers succeeded in bringing about the household contract system, whereby the management right of rural lands was returned to farmers. Today, farmers are demanding the return of land titles.

- In November 2007, 40,000 farmers from 72 villages, including Dongrangang Village, in Fujin City, Heilongjiang Province, officially announced their possession of land title, and published an announcement to that effect across the country. This was the famous Fujin Declaration from China's rural areas. Thereafter, farmers from different locations started issuing the same declarations;
- More than 8,000 farmers in Qingwu District, Tianjin, took to protecting the title to their land of nearly 10,000 mu;
- 250 rural households in Shengzhuang Village in Yixing City, Jiangsu Province demanded that "dwellers shall own";
- Approximately 70,000 farmers in the Sanmenxiakou District of the Yellow River at Shanxi Province made a nationwide announcement that they will be taking back their land titles;
- A group of villagers in Suzhou City of Jiangsu Province submitted a Proposal on Land Privatization to the National People's Congress.

This leads to the questions: why do farmers choose a private land-ownership system? Why do they not recognize the original land regime?
2. FUNDAMENTAL CAUSES FOR THE ABSENCE OF A GUARANTEE OF FARMERS’ LAND RIGHTS

2.1 Unreasonable Institutions that Lead to the Hollowing of Farmers’ Land Rights

Article 10 of the Constitution of the People’s Republic of China provides that “[r]ural and suburban lands shall be collectively-owned, save if otherwise provided under the law that such lands shall be State-owned. Rural housing land, and ‘private plots’ (ziliudi and ziliushan for villagers) are also collectively-owned.”

The Constitution also provides that China’s economic system is a public-ownership system. As such, China’s State-owned lands and collectively-owned lands are publicly-owned. Rural lands are collectively-owned, hence also publicly-owned, lands.

Although Chinese farmers abolished the People’s Commune system (under which land-ownership rights and management rights were consolidated under collective units) in order to implement the collective ownership of farmland and a “separation of the two rights” whereby the household holds the management right, the rural land regime has remained essentially a public-ownership system from the perspective of property rights.

After investigating the final right of disposal over rural land in many cases, the author has discovered that “collective” ownership amounts in fact to “organizational” ownership. And “organizational” ownership is in fact ownership by the power-holders of the organization.

Hence, the reality is, rural land ownership is not equally distributed among every farmer; nor is it ascribed to the farmers’ collective group formed by every farmer. It is assigned to a “group” alienated from them except for a select handful of spokespersons.

How does this situation come about?

Fundamentally, inconsequential legislation has led to the displacement of the rights of farmers in collectively-owned land. Administrative powers prevail over legislated statutory rights as a result.

Current law provides that rural lands are collectively owned by the rural population, and the definition of collective ownership includes: collective ownership by village farmers; collective ownership by town/township farmers; and by farmers’ groups within a same village comprising two or more collective economic groups.

But, in the real world, “rural collectives” and “farmers’ collectives” are intangible collectives that differ from farmers’ collective organizations. Without any legal entity, they are neither legal persons nor natural persons. Hence, local governments and the relevant departments deliberately confuse “farmers’ collectives” with “farmers’ collective organizations,” and endow non-economic groups such as villagers’ assembles or villagers’ groups with legal personality. In doing so, they give them actual land title
to control the will of all "farmers' collectives." On the other hand, each member of a "farmers' collective" loses the direct right to participate and decide. In some places, such rights are even concentrated in the hands of the village branches.

According to current legal provisions, the village committee is a "self-managed, self-educated and self-serviced autonomous organization and autonomous group of the grassroots masses." It is not a collective economic organization. Hence, the village committee does not possess the basic legal standing of a title-holder. Rural land title-holders that are currently the law enforcers, i.e. the legal personality of the village committees, are in fact illegal. This implies that the villagers' collective rights are displaced. Village committees may appear to hold title, but based on the present laws, village committees lack the standing to hold title. The result is that rural land title is disconnected from the specific farmers concerned.

On the one hand, the village committee has no standing to hold title; on the other hand, other collective economic organizations in the village, such as township enterprises, demand to exercise their land titles. They could go as far as dividing and distributing rural land at will, without consent from the village collectives. Farmers' interests are prejudiced as a result, and so they encourage and prompt administrative intervention by township governments or village committees. Therefore, township enterprises or township governments could be possible infringers of farmers' land rights. Having diverse and dubious title-holders of rural land inevitably leads to ill-defined lines of responsibility, rights and interests, and thereby dampens the motivation of farmers to invest for the long term in their land; encourages the wilful expropriation of rural lands by the various governments at low costs; affects farmers' forecasts on land returns and risk uncertainties; and eventually drives the many actors to exploit the farmers.

Consequently, farmers' individual rights have been completely displaced by an abstract "collective" and controlled by administrative powers. In fact, the additional provision on land title in the Amendment to the Constitution adumbrates or, should we say, gives silent consent to this natural outcome. The Amendment to the Constitution states: "No organization or individual shall buy, sell or transfer collectively-owned land, and shall not lease or mortgage it. The State, however, may expropriate collectively-owned land."

The true implication of the provision is therefore; the "owner" does not have the right of disposition to his own property, and administrative authorities may dispose of property belonging to a few people (collective) in the name of the public. Having gone full circle, we now realize that the owner, as provided under the Constitution, does not truly "own," because the final right to decide does not lie with him. And administrative powers, which should rightfully be restricted by the Constitution, nonetheless receive powers above and beyond the basic property rights of individuals and collectives granted under the Constitution. This means that legislation has put administrative powers at a higher level than itself; yet, legislative powers must be higher than administrative powers.
under "the rule of law." Hence, finding that the Constitution is self-contradictory with respect to its purpose, it becomes clear that implicit in the mechanism of the Amendment to the Constitution there lies a serious paradox.

2.2 The Drawbacks of Rural Democracy

If, based on the system proposed by institutional designers, villagers are granted autonomy within their platforms for democracy, and also administrative powers can effectively represent the interests of each individual within the scope of its governance, then the assumption that "village collectives" and "each villager" are separate and opposed cannot stand. This would mean that even if there were legislative flaws, the aforesaid scenario would not come to pass. However, the current democratic state-of-affairs negates this perfect conception.

Based on the current Village Organization Law, important matters concerning the disposal of collectively-owned land must be carried out after resolution by the villagers' assemblies and villagers' representatives meetings. But what exactly is the true picture?

First, villagers' assemblies. This is the highest authority in the village. All major matters of the village must be finally decided by the villagers' assembly. As a "collective," this is the authority which best represents the interests of all villagers from a jurisprudential standpoint. Unfortunately, it appears pitiful when exercising its powers. After visiting many Chinese villages across the country, the author discovered that many villages almost never organized a villagers' assembly after the division of fields among households (fentian daohui); the same applied to Shengyou Village at Dingzhou City in Hebei Province, the place where the "Dingzhou murder" was committed. Also, the younger farmers in most villagers are working in other places throughout the year, making it impossible to convene a villagers' assembly for major matters such as land expropriation. Thirdly, residents of many villages are very scattered; this makes the calling of meetings very difficult. More importantly, as time goes by, and as villagers discover that their opinions have often been vetoed by the "organization" representative deployed by the higher authority, their enthusiasm dampens. Therefore, in reality, there were few villages which were able to convene villagers' assemblies to deliberate on issues of land disposal.

Villagers' representatives meetings. At present, the convening of villagers' assemblies at places which somehow respect farmers' rights is still possible. But, in reality, the villagers' representative is usually designated by the village chief or the village secretary; at times, the township government will make the appointment directly. When the several dozen villagers' representatives of Shengyou Village in Dingzhou City refused to comply with the city's illegal land expropriation request, a deputy secretary from the city went and "dismissed" all the villagers' representatives. He later appointed a new villagers' representative.

Finally, there is the village committee. Although the village head should be elected by the villagers' assembly, election is usually directly controlled by the township.
seriously affects the village's autonomy. There are worse cases. The township government may directly organize and intervene in the elections or designate a particular person to act as the village head. In worse cases still, a village Party branch is set up in all villages, and the major powers in the villages are held by the secretary. Under the principle of "the party governs all," the village head, village committee, head villagers' sub-group and villagers' representatives are governed by the secretary. At the same time, the village secretary is usually designated and his election arranged by the township Party committee; the township's secretary is usually appointed by the township organization. As such, the village "organization" must submit to the orders of the township "organization," and the township "organization" will fully obey the county "organization." Many village functionaries told the author that they have in fact no jurisdiction over land because those with such jurisdiction are the land management departments of the tier-one county-level governments. This means that land rights are in fact far removed from the farmers and the small farmers' collectives, and have become highly concentrated. This explains why many decisions taken at villagers' representatives meetings are opposed by most villagers, resulting in a bizarre situation whereby "our collective" opposes "our collective."

Some pointed out that, although there remain many problems in the village democracy whereby villagers exercise their own powers and the village functionary often has the final say, there are some villages that did well in protecting the rights of farmers, and farmers do live quite happily. The author has witnessed the same. Under the current institutional framework whereby a specific functionary represents everybody's powers and interests, the greatest wish of the people is to see an upright and good government official; that is, to see a good person govern. However, this is not an eager anticipation of democracy. It puts its hopes in the most undependable probabilities, and reveals that Chinese villages are still lacking in normal democratic qualities and have stayed put in the days of chiefdom. Farmers, who account for the majority in the villages, thus remain in a disadvantageous position.

3. THE IMPORTANCE AND URGENCY OF RESTORING PRIVATE LAND OWNERSHIP

3.1 Restoring Rights to the People and Transforming the Virtual Non-Existence of Public-Ownership to Ownership by Every Family to Guarantee the Fundamental Rights of Farmers.

Based on the previous section, we know that public ownership is a risky system of ownership. Farmers do not hold the most fundamental rights; instead, such rights are "centrally controlled" under the organization. Before the democratic regime matures, these important powers often concentrate in the hands of the organization managers. Such managers are not only entities with their own independent intentions and personal
identities, they are also removed from farmers and their specific interests. Hence, farmers' land rights run the perpetual risk of being exploited and infringed upon by the power-holders.

Under such circumstances, between public ownership and private ownership, private ownership is, at the very least, the least bad option. Firstly, the original intent of "public ownership" was the sublimation of "private ownership." It was founded on the recognition that everyone has these basic rights of ownership, and is thus a hybrid form of ownership which aimed to better realize the fundamental interests of the general public and to promote equality.

Based on this original intent, a 100-person collective in a village owning the land in the village is intrinsically the same as a 100-shareholder company. But why then should the former example be described as "collective ownership" under "public ownership," and the latter "shareholding" under "private ownership"? It appears that "public ownership" and "private ownership" have little to do with the number of people. The real difference lies in the fact that if the 100 shareholders' collective truly benefits everybody, then the company, as a standard entity, will have a sound and democratic management system that allows every shareholder to benefit. Therefore, the shareholders will, on the premise of interest maximization, assign part of their interests to the company's administrative system, and arrive at some compromises to allow the company to continue its operations. If some shareholders feel this is unfair, or if they are not optimistic about the company's future, such that their personal interests may be prejudiced, then they may withdraw their personal shares from this collective at any time. However, on the contrary, under public ownership's collective ownership system, although land belongs to everyone, the plot of land of every villager is part of the large collective and cannot be taken out at the will of every villager. Whether or not the administrative management system of this piece of land is reasonable and effective, the villagers are unable to withdraw or assign their own share. This, in fact, has gone against the original intent of "public ownership." "Public ownership" in this case is none other than a reckless venture from the standpoint of utility; it does not demonstrate any superiority of collectivism, or any value preference.

To guarantee the fundamental rights and personal interests of farmers, collective ownership should have an "exit mechanism," i.e. a mechanism to endow farmers with the basic freedom to choose if they wish to hand over their own land to the current administrative management system for centralized management of its title. At the same time, in order to ensure that any specific plot of land can make its exit effectively, land should carry specific dimensions and be registered under the name of its farmer. That way, each small plot of land will have a specific owner. If modern agricultural development, especially certain types of agriculture, demands collective efforts; and if the administrative management system which farmers may choose or establish at their own will is able to manage and ensure that the individual gains exceed the losses and
guarantee the fundamental rights of every farmer; then farmers will make their choice based on personal benefits and they will assign part of their interests to the organization and join this collective. In essence, this right to choose is a basic civil right.

This in fact differs little from private ownership's shareholding system. Thus, differentiating public ownership from private ownership becomes meaningless. Restoring land title to every farmer is as good as land privatization. At present, certain locations in Guangdong Province have abolished the traditional "land expropriation" during urbanization. Instead, a compromise of "buy shares of land title" (diquan rugu) — converting the collective land resources in the original village into shares and giving these shares to the farmers — was struck with the farmers. To a certain extent, this is a silent acknowledgement of farmers' title to the land; more specifically, it is a respect of the basic property rights of farmers, as land owners, and their civil rights, as equal individuals. Compared to land expropriation and compensation, there is a fairly large difference in its degree of civilization and in outcome.

3.2 Clear Property Rights to Facilitate the Establishment of a Modern Agricultural System and Agricultural Development

The first premise when establishing a modern enterprise system is "clear property rights." On such a premise, explicit rights and duties, and a separation of government administration and enterprise management, will allow enterprises to develop on a healthy and free platform. This is the experience derived from China's development of its secondary and tertiary industries.

Building a modern agricultural system and developing modern agriculture rely on the same principles. Land is the core production factor and most important capital in agricultural production. Privatization of land title is the most important condition for creating an advanced agricultural market economy. According to Coase's theorem, so long as there are clear property rights in a market under the rule of law, and where freedom to trade is permitted and where the cost of exchange is zero or sufficiently low, resource allocation will be optimized. Even though the initial distribution of property rights was unequal, a fair and even market mechanism will facilitate automatic adjustments.

During this adjustment process, the property rights must specify every interested entity participating in the game. Otherwise, any deficiency in rights will lead to injustice. In reality, the vulnerable party will often be compelled to accept unreasonable actions; and dubious right ascription will prevent accurate valuation, and result in the failure of value leverage.

Efficiency will only emerge with clear property rights. All market actors will arrive at compromises or establish cooperation based on plans that guarantee their interest maximization. In developed countries, especially countries and regions which have achieved success in agricultural modernization, land is circulated and its allocation
optimized among farmers, giving rise to professional family farms of scale. On this premise, different capital and forms of ownership systems find their way into production, warehousing, transportation and processing, etc., giving rise to a detailed division of labour and the effects of collectivization. In the various transportation segments, farmers generally join in the different cooperatives. In deep processing, different companies join in, such that the entire agricultural production chain is freely and efficiently formed by a rich diversity of ownerships, and costs are reduced and efficiency enhanced. But the prerequisite is clear property rights. And the preliminary and central starting point to these is that every family owns title to its land. One who has perpetual property will have determination.

For China, where the population is enormous and land scarce, low agricultural productivity is a very serious problem. The population is ever-increasing, and urbanization is picking up speed. Hence, for the material assurance of the people's livelihood and the long-term benefits of urbanization, establishing a highly efficient and modern agricultural system is a necessary course that must be followed. Privatization of property rights is the beginning.

3.3 Property Rights Protect the Environment and Render Development Sustainable

When land becomes private property, and when the mechanism for value-preservation and value-adding is in place, everyone will treasure their "own" land. They will not allow their land to be left idle, deteriorate or depreciate; nor will they over-cultivate "public" farmland, or engage in unrestrained deforestation or over-grazing. This will effectively mitigate problems such as reduction in fertility of land and desertification. These are the most pronounced forestry problems in present-day China.

On 17 June 2006, Zhu Lieke, Deputy Director of the State Forestry Bureau, said that desertification is seriously threatening the living spaces of China, and severely restricting its socio-economic development. Every year, direct economic losses incurred due to land desertification amount to more than RMB 54 billion. 889 counties and districts in 30 provinces across the country were found with sanded land, occupying 1,739,700 square kilometres, or 18.12 percent of the national land area.

When the author was researching in the major prevention and control areas for wind and sandstorms in Beijing and Tianjin, many villagers reported that it was the unrestrained logging of "collective forest lands" by grassroots functionaries that appeared to be the more serious cause. At the same time, because of the specificities of the forestry business, contract and management both utilize wood timber forests. As it takes many years to groom seedlings to fully-grown trees ready for logging, and even so, trees cannot be completely logged all at once, continued operations must be carried out as required under regulations. At this time, having only the "right to contract" will send a strong signal that "perhaps they might just change it anytime. No one knows to
whom this plot of land ultimately belongs.” Illegal activities often happen, and “fewer approvals, more logging” is a commonly reported phenomenon. Also, many forest farmers are unwilling to invest in nurturing forests, because they do not have title to the specific plot of land. Their sons and grandsons have no succession rights. Thus, they have neither the patience nor confidence for long-term operations, and lack the “fair-mindedness” needed to preserve the land for better valorization into the future.

Under these circumstances, if land were privatized, with clear property rights, not only would the collective forest lands not be destroyed by power-holders under the name of the collectives, but farmers would also be able to better manage a piece of forest land for the future and for later generations. They would be more driven to plant trees and nurture forests, and the perplexing desertification problem in China would be resolved over time.

The same goes for crop-farming and animal husbandry. Land, by itself, is an extremely precious and non-renewable resource. Management-by-plundering will result in irreversible destruction.

### 3.4 Privatization of Land Title has Important Significance in Reducing Social Disputes, Ensuring Social Stability, and Stabilizing Local Fiscal Revenue

Friedrich A. Hayek once said that “without property rights, no other rights are possible.”

There have been many controversies in Chinese rural areas; one of the most important is the unfair distribution of wealth. Wealth is distributed unfairly because it belongs to the collective, the controller of which — i.e., the cadre leader — is responsible for the distribution of goods to the members of the collective. To allow one individual to distribute collective wealth is, in fact, endowing this individual with a lot of power. Without sound supervision and the rule of law, such distribution is usually unfair.

However, when land title becomes privatized, the distribution of the land’s value and all added-value will be carried out by the title-holder. The “organization” shall have no right to interfere. The legal relationship of wealth distribution is very clear, which means that social controversies due to wealth distribution and possession will be substantially reduced.

Also, after land privatization, the market price of land will increase, and so likewise will land transactions and local fiscal revenues. This enables institutionalization of the local fiscal measures, infrastructure, effects between land prices, and elevates the income and efficiency of local government officials. Local governments of western countries rely very much on land taxes and real estate transaction taxes, which are founded on private land title and the free market.

Yang Xiaokai has said:
Some say that the demise of many Chinese dynasties was due to land annexation by local despotic powers, and that privatization of land ownership may lead to social problems. In fact, land annexation by despotic powers had resulted from the lack of legal protection of land title. According to the Qing dynasty’s records on court disputes, the right to repurchase sold land at the original price restricted the free transaction of land, and became the cause of many cases of homicide and social unrest. Many current land disputes in Guangdong are also the result of inadequate protection of the private land title.

4. Evolution of China’s Land Regime and Historical Choices

China is an agricultural country whose lands are principally located in inland areas, whose people are highly dependent on land, and who have always had a great admiration and love for the land. The Chinese compare the sky and the earth to the emperor and empress or to their mother and father, and Chinese mythology has it that their ancestors were made from yellow soil by Nü Wa, a mythological character. For thousands of years, people have obtained food and wealth from the land, and have planted the roots of their lives in the land. Land is their family heirloom and provides the source and meaning of their lives. In Chinese history, the loyalty of court officials, the rise and fall of dynasties, and other such events, were nearly always closely interwoven with changes to the land system.

Since 1949, Chinese rural land has witnessed four phases of change, and the difficulties encountered during this period fully attest to the natural flow of history.

4.1 Private Ownership and Private Operation

Around 1949, the Chinese government confiscated all of the lands of landlords and distributed it equally among the farmers. This reform saw the implementation of the policy of “the grower shall own his land.” Land title and management rights belonged to the farmer, who owned and managed his own land. Land title was freely transferrable and circulated, bought and sold, leased, panned, and bestowed. The State managed land through land registration, the issuance of permits, the collection of deeds, taxes, and so on.

Ownership of land provided a huge motivation for the farmers to produce. By 1952, and within only three years, national food production in China grew by 42.8 percent, cotton by 193.7 percent, total agricultural output rose by 41.4 percent and the buying power of farmers doubled. Under free competition, land was transferred and circulated, its allocation optimized, and the percentage of middle income and rich farmers increased every year. The formation of a class of “middle income farmers” at that time, i.e. of a spindle-shaped social structure, told of an increasingly healthy economy.
4.2 Private Ownership and Collective Operation

Farmers working independently by household often encountered the problem of insufficient production tools and capacity. Hence, some began combining production and operation, without altering ownership on their lands. Cooperation teams of different forms were organized to fill each other's needs. Called “Agricultural Cooperatives” (nongye hezuohua) or “Primary Agricultural Cooperatives” (chuji nongye hezuoshe), this model was widely promoted by the Chinese government.

The government’s choice of this model was largely inspired by the Soviet Collective Farms. To avert the economic risks of a small and independent farmer and to achieve economies of scale, agricultural cooperatives mushroomed across the country.

The setup of a primary agricultural cooperative is as follows. Except for a small private plot, members hand over their land to the cooperative. The cooperative becomes the central coordinator for the use of land, and members of the cooperative receive returns according to the quantity and quality of land contributed. Primary agricultural cooperatives recognize that land is the personal property of the farmers, and that only the right to its use is transferred from the individual to the collective.

In fact, starting with private ownership, agricultural modernization and commercialization driving private ownership and generating diversified modes of shareholding and cooperation is a natural and normal process of agricultural development. Although China’s agricultural cooperatives were still immature at the time, they had their strengths. Nonetheless, this immature model soon became a “communist” venture.

4.3 Public Ownership and Collective Operation

As of around 1957, the country was swept by a wave of “communism” and many still immature primary cooperatives started on even more radical socialist reform. Farmers handed over not only the management rights of their land to the collective, but also their title to the land. They wanted to “run towards communism.” The Advanced Agricultural Cooperative (gaoji nongye hezuoshe) was thus born. Within just one year, the agricultural cooperatives quickly became People’s Communes (renmin gongshe). By early November 1958, there were 26,572 People’s Communes, with 99.1 percent of total farmers joining their memberships.

By forming People’s Communes, farmers contributed to the commune all their lands under the various agricultural cooperatives: private plots; graveyards and housing land belonging to members of the cooperatives; their production resources, such as farm animals and agricultural tools; and all public property. The commune took over the central planning, production and management of land, and distributed the returns equally. Rural land was collectively owned and managed. With increased public ownership, land use and management rights were completely under the command of the commune, effectively a fusion of the government and the collective. By keeping
control and management of land production and operation through highly centralized planning, the transfer or lease of any right associated with the land was absolutely prohibited. In fact, after the reform, what had originally been the personal property of farmers became the property of the government.\(^3\)

Collectivization of land rights, in essence, caused farmers to lose all their personal land. They became general workers who perform collective tasks based on uniform orders, and rewards were calculated based on a work point system. Collective operations differed in nature from flexible cooperation among farmers. Passive working attitudes and aggressive eating from the public rice pot became the norm. Agricultural productivity deteriorated drastically. China’s agricultural sector suffered a disastrous setback; not only did productivity decline, many people suffered and died from starvation. Certainly, this disastrous outcome may have partially resulted from many natural calamities. But farmers who lost their land lost the opportunity for independent management, their last chip. They could do nothing but bear hunger.

### 4.4 Public Ownership and Private Operation

At the end of 1978, a touching episode took place at Xiaogang Village in Fengyang County, Anhui Province. Eighteen farmers, who refused to starve and beg any longer, took the chance of being “arrested” by defying the system. They affixed their red ink-stained handprints on a piece of paper, and announced that they would implement “contracting of work to households” (baogan daohu or the “Baogan System”) for their collectively owned land. It was fortuitous that the reform and opening-up was underway, and their insight did not turn them into “policy rebels” or “capitalist factions”; instead, they became heroes who initiated rural land reform in China. That year, the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China decided to implement rural land reform. By 1983, shuangbao daohu (“household double guarantee” - dabanagin and baochan daohu combined) was implemented in more than 95 percent of the production brigades (sheng-chan-dui).

The Household Responsibility Contract System represents the abolition of the consolidation of land titles and management rights under the People’s Communes. The system allows land management rights to be contracted out to farmers, and the contracting units are individual households. This is a change from the previous highly centralized land ownership and land use rights, and the malpractice of the single manager mode. The relationship between farmers and land went through a material change, such that the benefits to farmers were pegged to their land output; this was a change welcomed by the farmers.

In 1993, the Chinese government initiated a second round of the land contracting exercise. Relevant documents and laws were promulgated, providing that the term for contracting land may be extended for another 30 years upon the expiration of the 15-year rights mandated by the earlier document under the same terms. Farmers were also permitted to subcontract, transfer, acquire shares or lease among them.
The new land regime was encouraging, and farmers' readiness to produce was a stabilizing force for the society and an impetus for agricultural and rural economic development. Also, the massive exodus of the labour force to the cities brought a fresh energy boost for the rapid development of the secondary and tertiary industries. However, the loss of ownership remains a shackle to farmers' confidence and remains a true lack of fundamental protection. Even today, such missed ownership is a drag on agricultural development that continues to harm farmers' interests, and many other problems as earlier described.

A glimpse at human history will tell us that rural public-ownership has been rare. And looking at the land histories of each country, we will discover that private ownership of rural land is a very stable regime, and the one most used in China's traditional society.

During the Liberation War, the Chinese Communist Party (CPC) relied on the simple slogan of “Down with the Haves, share among the Have-Not’s” (da tuhao, fen tiandi - literally “fight the local despots and redistribute their land”) to win the fervent support of Chinese farmers. When the CPC assumed power, land was immediately distributed to the farmers, by which rapid restoration and development of the agricultural economy during the early days of governance was achieved. Cooperatives were established subsequently, and land originally belonging to farmers then became collectively-owned land during the advanced cooperatives era. Therefore, in essence, the lawfulness of farmers having the eventual title to these lands was not extinguished.

Looking back at history, it is clear to us that returning the land to the farmers is fundamental to protecting their interests, and the best route to facilitating agricultural and social development.

5. Analysis of Several “Concerns”
There have been many opposing voices in recent years on the restoration of private land ownership. The following sets forth the author’s views toward some of these reservations:

5.1 “Privatization Will Affect the Essential Qualities of Socialism”
The essential spirit of socialism is to liberate and develop productivity and to eradicate exploitation and social polarization. Based on what has already been said, the privatization of land is the most pressing road to take for the maximization and development of productivity, and a demonstration of the spirit of socialism.

If land originally belongs to the people, its distribution to everybody would merely be the government's decentralization of management to give the people true power. This is also the original object of socialism.

Thus, privatization of land title is a requisite of socialism.
5.2 “Privatization Will Lead to Farmers’ Massive Loss of Land and Further Social Instability”

First, the massive “loss” of land by farmers is a natural consequence in history. In the history of mankind, many developed countries have evolved from being agricultural and rural countries into industrialized and urban states. Large rural populations were released from lands and entered the cities to carry out different types of occupations. Cities of all sizes began to enlarge as their populations multiplied. Through market transactions, rural land was transferred into the hands of major growers, which became a family farm holding many lands. In the US alone, the agricultural population was reduced from a level in the 1860s of 81.23 percent to 60.23 percent in the 1900s. Its agricultural population is even smaller now, at only two percent. Within 150 years, the US has transformed from a major agricultural country to a modern industrialized nation, and from a country which is rural-based to one that is urban-based.

China’s strategy of transforming the country into an industrialized city during the past years is no doubt a correct direction. Large rural populations are migrating to the cities through different channels. Any observant person would notice the mushrooming of large numbers of “villages with empty nests.” At the same time, cities of various sizes have been expanding, and many new cities, towns, and satellite cities have come into existence. The population of many new cities is basically made up of people who have migrated from the rural areas during the last thirty years.

Thus, the author judges that the process of large numbers of farmers selling their lands is a necessary component of urbanization.

Second, the way in which farmers “lose” their lands should guarantee their best interests. The question is whether farmers should be free to sell and transact their own land, or whether the government should represent “farmers’ interests” to assist in such endeavours. To “lose” a massive amount of land is an irreversible and natural consequence of history. But the key lies in “losing” it justly and reasonably, and the critical issue is whether social problems will arise as a result.

If farmers are forever without actual ownership, losing land will naturally cause them to become true “proletarians” or refugees. For compensation is still income obtained from the restricted trading of property, and what the government gives the farmers is merely a token of compensation.

Third, establishing farmers’ title to their land is the only way to maximize wealth and protection for farmers while they “lose” their lands. Establishing farmers’ title to their land will give farmers huge leeway in the disposal of their land. Some worry that this may lead to an over acquisition of land, resulting in some farmers losing their homes, and therefore a bigger social disaster. But such a disaster could happen if farmers’ land title is not established. On average, several million mu of land are converted to non-agricultural usage every year. An aggregate of more than one hundred million farmers can never return to their lands. With the figure growing, is this not devastating? If farmers have
title to their lands, land transfer prices will be greatly elevated, the power strata will no longer make exorbitant profits, and this by itself is sufficient discouragement of over acquisition and infringement.

As more than a hundred million — or perhaps even a greater number — of farmers move into the cities, there is no proper solution to settlement of the lands under their management as farmers; the lands are either entrusted in the hands of other people, or left uncultivated. However, if the land titles were to belong to the farmers, those who chose to become urban dwellers could sell their land to major farmers, so that the land would be freely, naturally and legally transferred to these big farmers. Economies of scale and centralized management would be achieved and the land owners would obtain a sizeable sum to purchase housing or property in their new places of residence. Everybody’s rights would be protected, unemployment would be under control, and farmers would become wealthier because of the freedom to trade their lands.

Some authorities have estimated that cumulative differential income from land sales since the reform and opening-up have amounted to more than two thousand billion RMB that has flowed from farmers to other social organizations. Who says that farmers’ income cannot be increased? If this sum is left for farmers, farmers transferring land will become wealthier. The average land area given to each farmer in many urban-rural combination zones in eastern China is 0.7 mu. These developed areas usually pay farmers between a few thousand RMB to twenty or thirty thousand RMB per mu, and sell the land for a few million RMB in the market. This tells us that some local governments and developers have “legitimately” robbed that few million RMB originally belonging to the farmers.

Transactions between farmers are also very important. One farmer who is better at rearing ducks can concentrate on doing so, and the extra land he has could be productively sold to another who is better at cultivating. Another advantage is that after collectivization, land wastage due to ridges between the small fields will be greatly reduced, and more land will be released for productive use.

The problem of the huge population and scarce land in Chinese rural areas is currently pronounced, and industrialization and urbanization also imply that there will be a huge exodus of farmers from their lands. However, there is a huge difference between leaving by will and leaving by force. Thus, land privatization is necessary, and allows farmers to leave their lands voluntarily, and not otherwise. They would then maximize their interests based on their own circumstances. From the human rights perspective, farmers are thus given basic freedoms, and from a material perspective, land resources can become the true guarantee of farmers’ livelihoods.

Fourth, restoration of land rights to farmers will give rise to a more stable society. The difference between a person who has property rights and one who does not is like that between a gentleman and a gangster. The former thinks first of his intrinsic interests, generates a sense of awareness of his social responsibilities to maintain the
current order and will of the community, and opposes revolution. The latter, who has no private interests, fears neither the good nor the bad. He will choose the quickest route to making a fortune, and his greatest hope is to destroy the current order to find opportunities. The controllers of property rights under a public-ownership regime lie between these two categories. As soon as they discover that they might lose their power, they will want to do anything to take it back, even if this means destroying the social order. The earlier Hunan farmers' movement is a typical case in point. Although some holders of power and power resources will own land and receive personal gains, stability of a minority is not reliable stability. Converting dubious ownership structures into clear title in the hands of everyone, especially farmers, is the only avenue to permanent stability.

5.3 “Privatization Will Lead to a Food Crisis”
This problem will not arise under a market economy. Only inflexible administrative orders under a planned economy result in this problem. The invisible hand is more effective than a visible hand directing; an agricultural product will produce greater profits when supply fails to meet demand, because greater profits will produce a supply pull. Hundreds and thousands of products provide the market with diverse possibilities for market regulation, and no one will suffer from hunger simply because production of one type of food has decreased. The government will only have to ensure that the macro-level control measures are in place, that there is sufficient agricultural land not used for developing secondary and tertiary industries, and that they restrict land transactions that convert the land usage. Sufficient agricultural production will thus be secured.

This is not all. Land privatization sets the foundation for creating a modern agricultural regime, and provides the requisites for the swift building up of agricultural productivity. This way, under highly efficient collectivized production, food production quantity and quality per unit area can only increase.

5.4 “Privatization Will Lead to Further Wealth Disparity in the Rural Areas”
There is a fundamental principle here: wealth disparity arising as a result of free competition is more reasonable and fairer than disparity emerging from direct compulsion. Fair competition-created wealth disparity is harmless, while power-compelled wealth disparity is detrimental. In the process of building and developing a market economy, the existence of a certain level of wealth disparity is justifiable, and evidence of equity.

Based on Deng Xiaoping’s principle of “let those who got rich first lead the way to universal riches,” disparity is the beginning of universal progress. So long as the starting point is an equal footing, and no plundering or infringement exists, not only will unreasonable wealth disparities not develop, disparity will in fact be more effectively controlled.

On a macro perspective, for more than 50 years urban-rural disparity in China has been increasingly widening. This is embodied in the urban-rural inequality brought
about by policy discrimination. Decision-makers cannot employ a bird’s-eye view when developing the rural economy. Instead, they should respect farmers’ autonomous right to choose, in the same way that they have with respect to the development of the urban economy. They should allow the agricultural economy’s primary market to take shape freely and healthily, adjust itself, and play its rightful role.

Given the present circumstances, it is somewhat absurd to ask if “a new wealth disparity will occur after the privatization of land” from a theoretical standpoint; it is perhaps even a pseudo-issue. Wealth disparity brought forth by free competition cannot be any worse than the current wealth disparity caused by institutional discrimination because, fundamentally, the vulnerable are competing against an institutional upper-hand and are in a compromised position; put otherwise, people without their own rights in their hands are competing with those who are close to or holding power... and there is a huge difference between fate being held in one’s own hand and being held in those of another.

6. CONCLUSION AND RECOMMENDATION

To conclude, the privatization of land is not only a necessary resolution of the current social problems in China, but also in line with the law of historical development and essential for socio-economic growth. Most importantly, it is to be hoped that privatization will alleviate the deprived circumstances of Chinese farmers today, and, in so doing, build a harmonious society that is fair and free from discrimination.

From a legislative perspective, the recognition of the land rights of farmers equates to guaranteeing their fundamental and most important private property, and provides the foundation for the elimination of policy discrimination and the recognition of the economic status of farmers (to a certain extent). Farmers with title to their land will be able to determine their own fates. The right of disposition over their own land ensures their freedom of speech in various social relations through which they will enjoy social equality, and walk away from the shadow of discrimination.

Finally, privatization provides the tool to effectively delineate what is private from what is public. Economic status and political freedom provide a platform to progressively build a secure democratic regime and a rule of law by adversarial means and compromise. And equality and human rights will be thus further stabilized and reinforced.

Contemporary China has included the protection of the private property of its citizens in the Constitution, and formulated the Real Rights Law. This is a good start. To continue its reform process, China must take major steps to change the rural land regime. For this is a natural choice, due to our respect for farmers, for human rights, and for history.

The next steps should be:
1. The Chinese government must regard the protection of farmers' land rights as the fundamental policy for the protection of farmers;
2. The current land contract right must be further consolidated;
3. Reform of the land regime must be implemented as soon as possible, with the key task being to restore land title to farmers. Hence, revision of the provisions concerning the rural land regime under the Constitution and relevant laws and regulations must be completed as soon as possible in order to truly confer rights on farmers.

Restoration of the private ownership of land is thus the only way to lay the foundation for guaranteeing the fundamental and basic human rights of farmers.

ENDNOTES
1 Ronald Coase proposed that it is unimportant whether the initial distribution of statutory rights is efficient, so long as there is zero exchange cost.