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# The End of the Urban-Rural Divide?

## Emerging Quasi-Commons in Rural China

**ABSTRACT:** The urban-rural divide in China was an entrenched feature of Chinese society in the Maoist era. This divide generated and continues to generate inequality as between the rural population and the urban population. In post-Deng China, legal and administrative distinctions between urban and rural have become blurred, especially with the development of rural-urban migration. Nevertheless, the urban-rural divide still exists, and the income of farmers is below that of urban residents. In this paper, it is argued that the emergence of the phenomenon of “quasi-commons” in rural China, crossing the “borders” of the urban-rural divide, may increase farmers’ income in the future and bridge this divide. The paper focuses on different forms of “quasi-commons” (the sharing and use of communal land) emerging in rural areas, including the farmland shareholding cooperatives and transforming rural land management rights into shares in joint ventures. There are divergent views held by Chinese academics and policy makers about “quasi-commons” in rural China, as well as the direction of change in the rural land system. However, most of the proposals for reform have been polarized between nationalization and privatization of rural land. Looking beyond this “boundary thinking” and drawing on the discourses of “the commons” (for example, the writings of Hardin, Heller and Ostrom), this paper analyses the theoretical models of both the nationalization and privatization schemes and their shortcomings. The present essay also analyses the prospect for, and the barriers to the emerging commons in rural China.

### 1. Introduction: definitions, discourses and approaches

The urban-rural divide (*chengxiang eryuan hua* 城乡二元化) in China became entrenched in the Maoist era. This divide generated and continues to generate inequality between the rural population and the urban population: in particular, farmers have been tied tightly to the countryside. In post-Mao, and especially in the post-Deng period, legal and administrative distinctions between urban and rural are becoming blurred.<sup>1</sup> The government now has made many efforts to bridge the urban-rural divide. For example, according to the Ministry of Public Security of the PRC, the ministry in charge of operating the household registration system (*hujū zhìdù* 户籍制度), 13 provinces, autonomous regions, and municipalities have abolished the category of rural household (*nongye hùkǒu* 农业户口).<sup>2</sup> Yet the urban-rural divide still exists, and there exists a large gap between cities and the countryside in many respects, including social security, infrastructure investment, education, and health care. Rather than focusing on the household registration system and rural-to-urban migration, as most literature has done, this paper looks at the rural land system and related governance issues, which have a fundamental impact on the urban-rural divide.

1 Decollectivization in 1978 loosened the control over the rural population on leaving the countryside, and urbanization and rural industrialization make the urban-rural boundaries blurred. The blurred boundaries are demonstrated in, e.g., rural-urban migration.

2 See Gong Zhiyan, Gong'an bu cheng shisan sheng shi qu quxiao nongye hùkǒu [The Ministry of Public Security Announces that 13 Provinces, Autonomous Regions and Municipalities Have Now Abolished the Rural Household], in <<http://news.sohu.com/20081209/n261100496.shtml>> (last visited 9 December 2008).

Under the urban-rural divide in contemporary China, rural land is collectively owned, and farmers may not in law dispose of their land freely and are vulnerable to compulsory land acquisition by the state. In the process of urbanization and industrialization, rural land is generating significant profits; however, local governments, officials, and property developers profit the most, while farmers are often excluded and sometimes exploited. Nevertheless, “quasi-commons” are emerging in rural China, including the setting up of farmland shareholding cooperatives and transforming rural land management rights into shares in joint venture. The focus of this paper is to explore the emerging “quasi-commons” in the transforming rural land system and how it could possibly bridge the urban-rural divide.

It may be useful to contextualize my central concerns by looking briefly at the current property system in China and its transformation. The legal reforms in the late Qing dynasty (1840–1911) and Republican China (1911–1949) introduced many aspects of the Civil Law system to China from Germany, via Japan. The Civil Code formulated by the Guomindang in 1929–1931 was based on the German law framework, which recognizes private ownership, but this code was abolished in 1949. Between 1949 and 1978, the means of production in the Chinese central planned economy was based on the former Soviet model, that is, public ownership (including state and collective ownership),<sup>3</sup> while private ownership was virtually abandoned.<sup>4</sup> In the Mao era (1949–1978), the conception of ownership in China was overwhelmingly influenced by former Soviet jurisprudence. Ownership was regarded as indivisible and absolute. Public and collective interests were superior to individual interests; acquisition and management of property was under an overarching administrative fiat.<sup>5</sup> Although civil law-making in the post-1978 era returned to the German Civil Law framework, a clear boundary between public ownership and private ownership still existed in the law, and a tri-ownership system including state ownership, collective ownership and private ownership has evolved and persisted. Yet in contrast to the relatively neat distinction between public and private ownership defined in law, the forms of property in post-Mao China in reality are not so clear-cut. Absolute ownership has been fragmented into the “contractual management rights” (*chengbao jingying quan* 承包经营权) of collectively owned rural land, the “enterprise management rights” (*qiye jingying quan* 企业经营权) of state-owned enterprises (SOEs), the “land use rights” (LURs) (*tudi shiyong quan* 土地使用权) of state-owned urban land and so on.

There is also a need to review briefly the discourses of “commons” and to define the term “quasi-commons” as used in this paper. The conception of “commons” is fluid

3 The Constitution (2004), Article 10: “Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law; house sites and private plots of cropland and hilly land are also owned by collectives”. Article 9 of the Land Administration Law (2004) defines collective ownership in the same way as Article 10 of the Constitution.

4 Private ownership was not formally abolished in 1949, and a mixed economy was adopted between 1949 and 1956 as a prelude to nationalization of private capital. Whether or not a complete system of public ownership was established is unclear. E.g., Article 11 of the 1954 Constitution recognized private property: “the State protects the right of citizens to own lawfully-earned incomes, savings, houses and other means of life”. Article 12 of the 1954 Constitution provides: “the State protects the right of citizens to inherit private property according to law”. See the English version of the 1954 Constitution, in: *Fundamental Legal Documents of Communist China*, ed. Albert P. Blaustein, 1962. The content of Article 11 of the 1954 Constitution was restated in Article 9 of the 1975 Constitution, but “the right to inherit private property” was abandoned in the 1975 Constitution.

5 See Pitman Potter, *Globalization and Economic Regulation in China: Selective Adaptation of Globalized Norms and Practices*, *Washington University Global Studies Law Review* 2(2003), no. 119, 126–127.

in the Western literature, and it absorbs many theoretical premises. Traditionally, the commons is associated with natural resources, but new kinds of commons are also emerging.<sup>6</sup> Dietz defines “commons” as “a diversity of resources or facilities as well as property institutions that involve some aspects of joint owners or access”.<sup>7</sup> The commons encapsulates “the emerging conception of access, conservation, and use...[as well as] many different grassroots movements”.<sup>8</sup>

There are many debates over the commons. The seminal essay in this field is Hardin’s *The Tragedy of the Commons*: the commons is traditionally associated with plots of land, and overexploitation of the commons by free-riders gives rise to the tragedy.<sup>9</sup> The commons also links to the question of the manner in which a resource can best be managed. For example, Hardin shows that the commons as an unregulated free set of resources open to use by all cannot exist, and “freedom in a commons brings ruin to all”.<sup>10</sup> In response to Hardin’s arguments, the concept of anticommunity emerged to describe the post-communist ordering of property in Eastern Europe, especially Moscow. Heller defines “anticommunity property” as “a property regime in which multiple owners hold effective rights to exclusion in a scarce resource”.<sup>11</sup> Enclosure is not always desirable. According to Heller, rational individuals collectively waste a scarce resource, and the “tragedy of the anticommunity” has emerged because there are too many owners or too much ownership.

In addition, “commons”, “common-pool resources”, “common property”, and “public good” are closely linked and often used interchangeably. However, there is a need to distinguish these related concepts. For example, a key challenge to Hardin’s model is that “Hardin had seriously confused the concept of common property with open access conditions where no rules existed to limit entry and use”.<sup>12</sup> “Common-pool resource” usually refers to “a natural or man-made resource system that is sufficiently large as to make it costly (but not impossible) to exclude potential beneficiaries from obtaining benefits from its use”.<sup>13</sup> “A public good” is “something to which everyone has access, but... one person’s use of the resource does not necessarily diminish the potential for use by another”.<sup>14</sup> The term “common property” implies “a kind of management arrangement created by humans rather than a characteristic of the resource itself”,<sup>15</sup> and it is “not everyone’s property”.<sup>16</sup>

The relevance of “the commons” to the Chinese context needs to be explored: “the commons” provides an approach to the question of property in China, and looks beyond the dichotomy of private property versus public property.<sup>17</sup> In this paper, I use

- 6 See, e.g., Jane B. Holder and Tatiana Flessas, *Emerging Commons*, *Legal and Social Studies* 17(2008), no. 3, 299–310.
- 7 Thomas Dietz [et al], *The Drama of the Commons*, in: *The Drama of the Commons*, ed. Elinor Ostrom [et al], 2002, 18
- 8 Holder and Flessas (note 6), 300
- 9 Garrett Hardin, *The Tragedy of the Commons*, *Science* 162 (1968), no. 3859, 1243–1248
- 10 *Ibid*, 1244
- 11 See Michael A. Heller, *The Tragedy of the Anticommunity: Property in the Transition from Marx to Markets*, *Harvard Law Review* 11(1998), no. 3, 668. Italics are in the original.
- 12 Dietz (note 7), 11. Italics are in the original.
- 13 See Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action*, 1990, 30.
- 14 See Dietz (note 7), 4–5.
- 15 *ibid*, 17
- 16 S. V. Ciriacy-Wantrup and R. C. Bishop, *Common Property as a Concept in Natural Resources Policy*, *Natural Resources Journal* 15(1975), no. 4, 715
- 17 On the works of “the commons” in the Chinese context, see, e.g., ed. Eduard B Vermeer [et al], *Co-operative and Collective in China’s Rural Development: Between State and Private Interests*, 1998,

the term “quasi-commons” to refer to the sharing and use of collective land jointly by farmers (usually within one “natural village” or one administrative village)<sup>18</sup> in rural China. “Quasi-commons” draws upon three important aspects of the conception of “the commons”: resources held in a communal manner, governance of such resources, and grassroots initiatives.<sup>19</sup> “Quasi-commons” also stresses “conservation” and “access” as emphasized in the commons discourses. The use of the term “quasi” highlights that, although “commons” in rural China resembles some aspects of the commons in the Western literature, there are many aspects that differ from the Western context. Communal use and governance of rural land in China are based on Chinese socio-economic conditions, as well as affected by legal and political institutions. For instance, there has been much local government involvement in “quasi-commons”. Thus, the distinctions between “communal”, “cooperative”, and “collective” could be blurred. “Quasi-commons” could be either “collectives” (referred to herein as government-directed property arrangements in rural China) or “cooperatives” (referred to herein as voluntarily formed property arrangements in rural China).<sup>20</sup> But the distinction between “collectives” and “cooperatives” is not clear-cut; cooperatives could also be absorbed and co-opted by the state. Quasi-commons are also different from collective ownership, which is mainly a fabrication of Chinese law and politics.<sup>21</sup> Looking beyond the boundary of the notion of private property versus public property/common property, this paper analyses “quasi-commons” in historical and contemporary rural China; the relations between “quasi-commons” and the urban-rural divide; and the barriers to, and the prospects for, “quasi-commons” in transforming China.

## 2. “Small community” and rural-urban uniformity in historical context

In traditional China no clear *legal* and *administrative* distinction was clearly drawn between cities and the countryside, even though symbolically or spatially the super status of the cities might be marked by surrounding city walls.<sup>22</sup> But throughout Chinese history there have been tensions between the large community (*da gongtongti* 大共同体) and the small community (*xiao gongtongti* 小共同体):<sup>23</sup> kinship as the most powerful

especially Margaret McKean, *The Role of Common Property Regime in Managing Common-Pool Resources in China Today*, 75–92 in this book; Peter Ho, *Institutions in Transition: Land Ownership, Property Rights and Social Conflict in China*, 2005, especially *Between Nationalization and Privatization: Common Property as the Third Way?* 157–185 in this book; Richard Sanders, *Organic Agriculture in China: Do Property Rights Matter?*, *Journal of Contemporary China* 15(2006), no. 46, 113–132.

18 “Natural Villages” emphasizes villages “in the sense of what is local and long-standing”, while “administrative villages” refers to “the collective” or “sub-government institutions”. See Stephan Feuchtwang, *What is Village?* in: ed. Vermeer [et al] (note 17), 47.

19 In this sense, “the commons” and “common property” are used interchangeably in this paper.

20 On the distinction between collectives and cooperatives, see also McKean (note 17), 82.

21 Some scholars emphasize the importance of collective ownership to agricultural modernization and rural development, but they do not distinguish collective ownership from “commons” or “quasi-commons”. See, e.g., Qian Forrest Zhang and John A. Donaldson, *The Rise of Agrarian Capitalism with Chinese Characteristics: Agricultural Modernization, Agribusiness and Collective Land Rights*, *The China Journal* (2008), no. 60, 25–47.

22 On rural-urban uniformity in traditional China see, e.g., F. W. Mote, *The Transformation of Nanking, 1350–1400*, in: *The City in Late Imperial China*, ed. G. William Skinner, 1977, 101–154.

23 These two concepts are proposed by Professor Qin Hui of Tsinghua University. “Large community” refers to centralization of government, and “small community” refers to self-governing organizations, e.g., kinship and grassroots associations. Qin Hui’s analytical model is derived from the writing of Ferdinand Tönnies – *Community and Civil Society*. See Ferdinand Tönnies, *Community and Civil So-*

small community might produce “self-governance” and “the commons”, but the central government tended to break such communities down and diminish their autonomy. Since the early Zhou (1046 BC–256 BC) dynasty, the idea that “under Heaven there should be only one ruler” has been a dominant theme.<sup>24</sup>

The reform of the Qin political system in the year 356 BC, known as the reform of Shang Yang<sup>25</sup> (*shangyang bianfa* 商鞅变法), was a significant step towards the centralization of the Qin. During the reform of Shang Yang, the population was divided into units and registered in the household system – *wu* (伍) composed of five households, and *shi* (什) composed of ten households. The wrongdoing of one household could make another nine households incur group responsibility. These measures of dividing the population into small units for control purposes laid down the legacy for the *bao jia* (保甲) system,<sup>26</sup> which continued to be used in imperial times and even into Republican China. Moreover, from the Qin unification (221BC) onwards, individual households were transformed into the category of “common people listed in the household register” (*bian hu qi min* 编户齐民),<sup>27</sup> subject to the direct control of the central government. The centralized government, an emblem of the large community, constrained the autonomy of small communities and individuals.

Yet, as Francis Fukuyama argues, “strong community can emerge in the absence of a strong state”,<sup>28</sup> Kinship could gain room to develop in the areas where the control of the central government was weak. For example, kinship was vulnerable in the North but strong in areas of South China such as the Pearl River Delta.<sup>29</sup> Although lineage-based communities were exclusive, they also linked together and formed a larger community.<sup>30</sup> Lineages performed a number of economic functions and played important roles in rural governance. For instance, lineages managed lineage land, and raised funds for famine relief, social welfare and education. They also played important roles in dispute resolution within the lineage.<sup>31</sup> No absolute and exclusive “private” property existed in traditional China; the private usually referred to kinship not the individual, and the distinction between the public sphere and the private sphere was also blurred. Many lineages held commonly owned lineage properties (*zuchan* 族产). In practice, half or more of the land in a village was tied up in indivisible lineage estates.<sup>32</sup> Lineage-based

*ciety*, trans. José Harris and Margaret Hollis, 2001. Tönnies focuses on a contrast linked to a theory of modernization between small-scale, kinship and neighborhood-based “communities” and large-scale competitive market “societies”. See Qin Hui, Ping Tengnisi “gongtongti yu shehui” [Comments on Tönnies’ “Community and Civil Society”], *Shuwu* (2000), no.2, 57–58.

24 Derk Bodde, The State and Empire of Ch’in, in: *The Cambridge History of China, Vol. 1, the Ch’in and Han Empires, 221 B.C.–A.D. 220*, ed. Denis Twitchett and Michael Loewe, 1986, 38

25 Shang Yang was the leader and designer of the reform. On the reform of Shangyang, see also Zhang Jinfan, Zhang Xipo and Zeng Xianyi, *Zhongguo fazhi shi* [The Legal History of China], 1981, 88–90.

26 Ten family households were organized into a *bao* (保), and 10 *bao* made up a *jia* (甲).

27 See Du Zhengsheng, *Bian Hu Qi Min: Chuantong zhengzhi shehui jiegou zhi xingcheng* [Common People Listed in the Household Register: the Formation of the Traditional Political Society], 1990.

28 Francis Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity*, 1995, 29

29 In Chinese history, North China was under stronger control by the central government.

30 Helen F. Siu, *Agents and Victims in South China: Accomplices in Rural Revolution*, 1989, 5

31 On the literature on lineage organization in Southeast China, see, e.g., Maurice Freedman, *Chinese Lineage and Society: Fukien and Kwantung*, 1966; James Watson, Hereditary Tenancy and Corporate Landlordism in Traditional China, *Modern Asian Studies* 11 (1977), 161–182; James Watson, Chinese Kinship Reconsidered: Anthropological Perspectives on Historical Research, *The China Quarterly* (1982), no. 92, 589–672.

32 See Rubie S. Watson, Corporate Property and Local Leadership in the Pearl River Delta, 1898–1941, in: *Chinese Local Elites and Patterns of Dominance*, ed. Joseph W. Esherick and Mary Backus Rankin, 1990, 241.

communities were important not only in the economic sense but also in the political sense. There were often interactions and tensions between lineages and the central government.

### 3. Against “commons”: Collectivization and the urban-rural divide

The land reform (*tugai* 土改) was the major project launched by the CCP in rural areas during the period 1949–1952 after the founding of the PRC in 1949.<sup>33</sup> Land and other property of landlords (including corporate landlords such as lineages, temples, and monasteries) was confiscated and redistributed so that each household in a rural village would have a comparable land holding. Property rights encoded in the land reform established complete private ownership of farmers. Land could also be freely transferred in the market. Private ownership of land therefore stimulated farmers’ enthusiasm for agricultural production.

Yet farming needed cooperatives and cooperative working. Farmers later voluntarily formed mutual aid teams (*huzhu zu* 互助组), based on arrangements among several households for sharing labor and means of production. In this kind of property arrangement, private ownership and common property were not mutually exclusive but existed side-by-side. However, this kind of “commons” did not last long. In 1953, the CCP initiated its first Five-Year Plan (1953–1957), and “socialist transformation” (*shehui zhuyi gaizao* 社会主义改造) and “industrialization” (*gongyehua* 工业化) became the key programs and were strongly modeled on the Soviet Union. Later still mutual aid teams were transformed into primary cooperatives (*chuji she* 初级社) in autumn 1954,<sup>34</sup> which were based on apportioning of agricultural income from the amount of land that the household owned and on the labor input of that household. During this period, land ownership still belonged to farmers, but use rights were held by primary cooperatives: rural land was “privately owned and publicly run” (*siyou gongying* 私有公营). Income distribution was still according to the quantity and quality of farmers’ land. In spring 1956, primary cooperatives were updated to “advanced cooperatives” (*gaoji she* 高级社), the formation of which was beyond the boundaries of “natural” villages (*ziran cun* 自然村). In rural areas during this period, farmers joined advanced cooperatives by handing in their assets, including land and also large production materials that had been distributed to them in the previous land reform. After being incorporated into advanced cooperatives, farmers could only keep a few “private plots” (*ziliu di* 自留地) to grow subsidiary food such as vegetables and fruits, as well as residential plots (*zhajiji di* 宅基地) on which farmers’ houses were built. Except for these private plots and residential plots, both land ownership and use rights belonged to advanced cooperatives, and rural land was publicly-owned and publicly-run (*gongyou gongying* 公有公营). Farmers were no longer permitted to be landowners, or even land users, but were transformed into members of cooperatives, that is, employees of “advanced cooperatives”. Income distribution was implemented through a system of work points (*gongfen* 工分) – according to the socialist principle, income is based on the work done by each person.

Based on primary and advanced production cooperatives, people’s communes (*renmin gongshe* 人民公社) were formed in 1958. This led to the formation of a col-

33 The early land reform was launched by the CCP in 1946 in some liberated areas (*jiefangqu* 解放区), three years before the foundation of the PRC; thorough land reform was conducted after the promulgation of the “Law of Land Reform of the People’s Republic of China” in 1950.

34 The exact time varied depending on different localities.

lectively owned land system. There are differences between people's communes and advanced cooperatives. For example, a farmer could withdraw from advanced cooperatives, take away his or her properties and get remuneration for his or her work in the cooperatives. After the formation of people's communes in 1958, however, farmers were deprived of such "withdrawal rights". Public ownership replaced farmer's private ownership over land.<sup>35</sup> Both rural land ownership and land use rights were collectivized. In terms of residential plots, "The Working Regulation of the People's Communes"<sup>36</sup> promulgated in 1961 provided that residential plots should be owned by production teams, and lease and transfer of residential plots were forbidden; houses built on residential plots belonged to farmers, and these houses were subject to lease and sale.<sup>37</sup> Property rights of residential plots and of farmers' houses were separated. In 1962, rural landownership was formally transformed into three-level agricultural collectives each headed by a branch of the Party: production teams (*shengchan xiaodui* 生产小队), production brigades (*shengchan dadui* 生产大队) and people's communes.

Based on collective ownership, production and consumption were put under highly centralized and extended state-party control. And yet, free riding continued to plague the efficiency of the communes.<sup>38</sup> For example, in 1958, communal dining halls (*gong-gong shitang* 公共食堂) were established in villages, cooking and dining were done in the communal kitchens, and free meals were provided for members "to eat as much as they wished" no matter how much work they had done. To many farmers at that time, free dining meant communism. However, because of waste and over-consumption, food was quickly exhausted.<sup>39</sup>

Collectivization (1956–1978) was intended to remove landlords<sup>40</sup> and governance by gentry in rural China, to eliminate private ownership, and to create collective proprietorship by farmers. The doctrine established in the collectivization period was that agricultural land should be concentrated into large collective farms in line with Soviet doctrine, because such collective farms were thought to provide better conditions for modernizing and planning the agricultural sector than small farms. Collectivization in China was modeled on post-1917 Soviet collectivization but ignored the differences in natural conditions and governance between the countryside in China and in the USSR. The big difference was between Russian extensive agriculture and existence of large estates and Chinese intensive agriculture and existence of smallholdings. Russian farmers in pre-1917 worked in communes (the *mir* or *obshchina*) in certain regions of Russia;<sup>41</sup> whereas Chinese farmers were governed by kinship especially in Southeast China. The consequences of eliminating private ownership and gentry governance in

35 In 1958, even private plots became public property, but private plots were soon restored in 1959.

36 "Renmin Gongshe gongzuo tiaoli (Xiuzheng Cao'an) 人民公社工作条例(修正草案)", promulgated on 15 June 1961.

37 This provision was further incorporated into the 1982 Constitution, Article 10.

38 On the "free rider" problem with collective agriculture in China see, e.g., Victor Nee, The Peasant Household Economy and Decollectivization in China, *Journal of Asian and African Studies* 21(1986), no. 3/4, 185–203.

39 See Gene Hsin Chang and Guanzhong James Wen, Communal Dining and the Chinese Famine of 1958–1961, *Economic Development and Cultural Change* 46 (1997), no. 1, 1–34.

40 "Landlordism" was shorthand for something more complicated. E.g., James L. Watson argues that "landlords" were not necessarily individuals; they were landowning "corporations" embedded in complex lineages. See James Watson, Hereditary Tenancy and Corporate Landlordism in Traditional China: A Case Study, *Modern Asian Studies* 11 (1977), no. 2, 161–182.

41 See A False Start: The Birth and Early Activities of the People's Commissariat of agriculture, 1917–1920, in: *Inventing a Soviet Countryside: State Power and the Transformation of Rural Russia, 1917–1929*, James W. Heinzen, 2004, 11–46.

rural China included the state stepping into the empty space left behind by the rural gentry. But there were (and still are) so many unavoidable local variations in geography, agricultural products and economic activities in China<sup>42</sup> that the central government was not able to make a comprehensive plan for rural development and direct every aspect of such development.

Collectivization was also accompanied by a substantial decrease in the number and scope of markets and the formation of planned purchase and supply.<sup>43</sup> Starting in late 1953, farmers were subject to a system of unified procurement and sale of grain. At that time, the state began creating a grain monopoly, and farmers were required to sell their “surplus” grain to the state at fixed prices.<sup>44</sup> The urban-rural divide was established during collectivization, and the household registration system was a product of the planned economy. In 1956, due to collectivization as noted above and natural disasters, the rural population did not have enough grain for its own consumption. Many farmers moved into the cities to seek development opportunities. However, the formation household registration system prohibited rural-to-urban migration.<sup>45</sup> The development of the city proceeded at the expense of the countryside. In 1958, the National People’s Congress (NPC) passed the “Regulation Concerning Residency Registration”, and the household registration system (*huji zhidu* 户籍制度) was formally established. Such a system made the gap between the rural and the urban even wider. The abolition of private property and assets after 1956 replaced the rich-poor distinction but ironically created a new urban-rural disparity.<sup>46</sup>

#### 4. Emerging quasi-commons in rural areas in post-Mao China

##### 4.1. The rural land system after decollectivization

From economic reform commenced in 1978, the communes began to be dismantled, and collectivized agriculture was gradually abandoned by the introduction of the “household responsibility system”.<sup>47</sup> This system was first initiated in 1978 at Fengyang County in Anhui Province, and expanded on a nationwide scale between 1980 and 1983:<sup>48</sup> the land of collectives was divided up and assigned to individual households. In terms

42 E.g., picking tea in mountainous area in Zhejiang Province involves a lot of manual labor, and this kind of work cannot just be done by a machine; wheat is grown in Northern China and rice is grown in Southern China, and growing rice is more labor intensive.

43 See Joshua Goldstein, “Introduction”, in: *Everyday Modernity in China*, ed. Madeleine Yue Dong and Joshua L. Goldstein, 2006, 17.

44 See Vivienne Shue, *Peasant China in Transition: The Dynamics of Development toward Socialism, 1949–1956*, 1980, 214–226.

45 See Zhang Wei, *Woguo xianxing huji zhidu: xingcheng, yanbian ji tezheng* [The Contemporary Household Registration System: Formation, Transformation and Characteristics], *Lilun Tansuo* [Theory Exploration] (2006), no. 4, 122.

46 Dorothy J. Solinger, *Contesting Citizenship in Urban China: Peasant Migrants, the State, and the Logic of the Market*, 1999, 32

47 On the transformation of the communes, see, e.g., Vivienne Shue, *The Fate of the Commune*, *Modern China* 10 (1984), no. 3, 259–283.

48 The third Plenum of the 11<sup>th</sup> CCP Central Committee in 1978 did not recognize the household responsibility system. The recognition was given by the Document No. 1 (*yihao wenjian* 一号文件) issued by the CCP Central Committee in Spring 1982. From 1982 and 1986, each year the CCP Central Committee published its policies on rural reform and economy in the form of the Document No. 1. The initial 15-year contractual period was also confirmed in these five documents. On the Chinese Rural Policy in the late 1980s, see, e.g., Flemming Christiansen, *Stability First! Chinese Rural Policy*

of responsibility land (*zerentian* 责任田), once their grain quota to the state had been fulfilled, farmers owned and could sell the rest of the grain produced beyond the quota. Farmers thus began to pursue economic goals in the re-emerging market. In fact, responsibility land and residential plots serve as basic social security for farmers. Although decollectivization loosened the control over rural migration to the cities, it did not bring significant changes to the urban-rural divide. The household responsibility system even acts as an obstacle to long-term rural-to-urban migration.<sup>49</sup> The village committee may re-divide the responsibility land every few years according to the changes in households in terms of births, deaths, marriages and migration. Leaving the village for a long time may lead to a decrease in responsibility land for that household.<sup>50</sup>

Moreover, the dispersed contractual management rights owned by individual households cannot meet the income and production requirements of farmers in the changing economic context. There are now differences between subsistence farming and farming for the market, and the latter needs a well-functioning market and cooperative working. However, collective ownership defined in law is not sufficient to explain who owns what in terms of the production, harvest and distribution of agricultural products.

Under the Property Law (2007), land use rights (LURs) of collective rural land were put into the category of “*usufruct*” (*yongyi wuquan* 用益物权), which refers to the right to use another’s property. LURs of collective rural land include contractual management rights, LURs of rural residential plots, and LURs for construction purposes. Since ownership of agricultural collective land is not transferable, leaseable or mortgageable *per se*, alienability of rural land actually refers to the transfer of LURs of rural land, which could happen between the state, legal persons and individuals. In terms of transferring contractual management rights, according to the 2002 Land Contracting Law (*tudi chengbaofa* 土地承包法),<sup>51</sup> contracts can be transferred but cannot be mortgaged. A more controversial question is whether or not residential plots and LURs for construction can be transferred or sold. According to the law, without approval from the government at the county level, farmers cannot assign cultivated land for residential purposes, and the LURs for residential purposes cannot be transferred.<sup>52</sup> In terms of selling LURs for both farming and residential uses, transactions directly with farmers are illegal and prohibited by a system of land use certificates. Developers must obtain land use certificates from land administrative bureaux at or above city or county level before proceeding with projects.<sup>53</sup> The use of agricultural land is unchangeable;<sup>54</sup> without approval from the people’s government at or above county level, farmers cannot contribute LURs to joint enterprises or joint ventures as investments, or assign LURs to township enterprises.<sup>55</sup>

Issues 1987–1990, in: *From Peasant to Entrepreneur: Growth and Change in Rural China*, ed. E. B. Vermeer, 1992, 21–40.

49 See Athar Hussain [et al], *PRC: Urban Poverty Strategy II, TA 4694, mimeo*, Asian Development Bank, 2008, 37.

50 See also *ibid.*

51 Promulgated by the Standing Committee of the NPC on 29 August 2002, implemented on 1 March 2003

52 Article 62 of the LAL (2004): “Reapplication for a house site by a villager in a rural area who has sold or rented out his/her house shall not be approved”.

53 See Anthony Gar-on Yeh, *The Dual Land Market and Urban Development in China*, in: *Emerging land and Housing Markets in China*, eds. Ding Chengri and Song Yan, 2005, 40.

54 The LAL (2004), Article 63

55 The LAL (2004), Article 60

#### 4.2. The rural land system under the urban-rural divide

Land acquisition (*tudi zhengshou* 土地征收) and requisition of LURs (*tudi shiyongquan zhengyong* 土地使用权征用) are the only way for farmers' LURs to enter into the market. Both the Chinese Constitution<sup>56</sup> and the Land Administration Law (LAL)<sup>57</sup> specify that the state, in the public interest, may lawfully acquire land owned by collectives. This sets the stage for compulsory land acquisition.<sup>58</sup> The LAL states that compensation shall be given in accordance with the original use of the acquired land,<sup>59</sup> and the compensation is through a package that includes compensation for the land, resettlement subsidies and compensation for fixtures (*tudi fuzhuowu* 土地附着物) to, and young or green crops (*qingmiao* 青苗) on, the acquired land. Although Article 42 of the Property Law (2007) expands the scope of compensation to "the premiums for social security of the farmers" in order to guarantee their normal lives and safeguard their lawful rights and interests, the compensation is still not specified to be paid at full market prices. Furthermore, local governments can acquire rural land from farmers at a low price and sell it to property developers at a high price. A great profit thus could be made because of the huge gap between these two different prices.<sup>60</sup>

What the "public interest" (*gonggong liyi* 公共利益) means is very vague in both the Constitution and the Property Law. Mansions, golf courses, and lavish government buildings are being established in the name of the "public interest" at the expense of productive agricultural land. Governments are ill equipped to address the issues that have emerged from land acquisition and requisition of LURs because the interests of governments are involved in these issues.

Moreover, because rural land is collectively owned, and what farmers actually hold are land use rights, when the state acquires rural land ownership from rural collectives, LURs of farmers are lost accordingly. In practice, land requisition in rural China is requisition of LURs of farmers for the purpose of urban development. Compulsory requisition of LURs of (both rural and urban) land is stipulated in Article 44 of the Property Law (2007): "for the purpose of emergency handling and disaster relief", real and movable properties of institutions or individuals may be reclaimed in line with the procedure and within the authority provided by law. The purpose of requisition of LURs of rural land is different from that of the permanent acquisition of collective ownership – "for the purpose of the public interest". Moreover, after *zhengyong*, the reclaimed properties are to be returned to the owner. According to Article 42 (3) of the Property Law (2007), when houses and other real properties owned by farmers are acquired, compensation for demolition and resettlement shall be paid, which is more than the compensation for the fixtures on land, as which farmers' houses were once treated. However, like the vague definition of the "public interest", the definition of "emergency handling and disaster relief" is still at the discretion of local government. Furthermore, there are no specific provisions for compensation. Apart from the compulsory requisition of LURs, farmers

56 The Constitution (2004), Article 10(3)

57 The LAL (2004), Article 2 (4)

58 *Zhengshou* is the compulsory acquisition of collective landownership; it is related to but different from *zhengyong*, which is taking of LURs. In this paper *zhengshou* is translated land acquisition, and *zhengyong* is translated requisition of land use rights; land seizure is a general term that refer to both *zhengshou* and *zhengyong*, as well as illegal conversion of rural land to urban use.

59 The LAL (2004), Article 47

60 See Yeh (note 53), 43.

are also vulnerable to the predatory behavior of local governments and cadres usually associated with illegal conversion of farmland to commercial and industrial projects.<sup>61</sup>

#### 4.3. Emerging quasi-commons in rural China

Nevertheless, farmers began to pool resources and circulate land use rights responsive to the needs of agricultural production and the market, although some of the initiatives contradict the formal, written law. In many places “recollectivization” has been the trend. For example, farmers at Xiaogang Village – the first village that distributed LURs to farmers – have now recollectivized their dispersed LURs for more efficient use and management of land. Farmers have transferred contractual use rights to one commercial company (not set up by farmers) which specializes in agricultural production and management in order to achieve intensive and cooperative farming and management of rural land (*tudi jiyue hua jingying* 土地集约化经营) by which farmers could gain more income. In the processes of recollectivization, different kinds of “quasi-commons” are emerging: some are promoted by farmers, and some are led by local governments or even commercial companies.

One kind of “quasi-commons” was called the Nanhai model (*nanghai moshi* 南海模式). In 1992, a farmland shareholding cooperative system (*tudi gufen hezuo zhi* 土地股份合作制)<sup>62</sup> was tested in Nanhai, a county level city of Guangdong Province.<sup>63</sup> Land use rights of individual farmers were collectivized by “natural” villages and then by the administrative village to which these villages belonged. The value of farmland was appraised and divided into shares. A shareholding cooperative was formed by the administrative village. The farmland was then rented out by the cooperative for industrial purposes. In this way, rural land could be used for industrial and construction purposes but not via land acquisition by the state. Farmers could thus enjoy the long-term profits of industrialization according to the shares they had. But one of the shortcomings of this model is that this kind of shareholding cooperative is controlled by administrative villages. Farmers could not monitor the operation of the cooperatives. Administrative villages, rather than farmers, enjoyed most of the profits.

Another kind of quasi-commons, called the Kunshan model (*kunshan moshi* 昆山模式), emerged in the early 1990s. Kunshan is a county level city of Jiangsu Province. This model resembles some aspects of the Nanhai model but also registers a departure from it.<sup>64</sup> In this model, the rural collectives obtained quotas of rural land for construction purposes through land reclamation, and then rural households could bid for these quotas. These rural households later formed cooperatives. LURs for construction purposes were thus held by cooperatives of farmers rather than administrative villages.

61 See Cai Yongshun, Collective Ownership or Cadres' Ownership? The Non-Agricultural Use of Farmland in China, *The China Quarterly* (2003), no. 175, 662–680.

62 On shareholding cooperatives (*gufen hezuozhi* 股份合作制), see, e.g., Eduard B. Vermeer, Shareholding Cooperatives: A Property Rights Analysis, in: *Property Rights and Economic Reform in China*, eds. Jean C. Oi and Andrew G. Walder, 1999, 123–144.

63 On discussion of the Nanhai model, see also Ting Xu and Tim Murphy, The City as Laboratory and the Urban-Rural Divide: The Revival of Private Property and its Limits in Post-Mao China, *China Perspectives* (2008), no.4, 26–34.

64 On the comparison between the Nanhai model and the Kunshan model, see, e.g., Zhou Qiren, Nongdi rushi de liangzhong moshi [Two Models for Rural Land to Enter Into the Market], *Jingji Guancha Bao* [Economic Observer], 7 November 2008. In <<http://finance.qq.com/a/20081007/002363.htm>> (last visited 30 December 2008).

These cooperatives then built factories and shops rented by outside investors. There was less government involvement in this property arrangement than that in the Nanhai model. In both models, the income of farmers may be more than that of urban residents.

Further local reforms of the rural LURs focus on allowing farmers to contribute rural land contractual management rights as shares to enterprises or joint ventures.<sup>65</sup> Despite the contradictory laws and regulations, on 1 July 2007, Chongqing allowed farmers to contribute LURs to joint enterprises or joint ventures as shares, provided that the use purpose of arable land is not changed. Yet these reforms are clearly against Articles 60 and 63 of the Land Administration Law (LAL).

### 5. The end of the urban-rural divide? Barriers to and prospects for quasi-commons in rural China

The examples above have revealed that “quasi-commons” may pave the way for rural land to enter into the market rather than through compulsory land acquisition by the state. The compulsory land acquisition may deprive farmers of their land use rights permanently while leaving little compensation for farmers, whereas in “quasi-common” farmers could still keep their land use rights and use these rights in a profitable way. Evidently, “quasi-commons” may boost rural income and rural productivity, stimulate rural consumption, attract urban capital, and diminish the urban-rural divide. If “quasi-commons” fully develops, it may bridge the urban-rural divide. However, we should note that “quasi-commons” emerges in a situation where there exists incomplete land ownership, land acquisition without fair compensation, and a lack of a social security system. Farmers do not have enough income from farming. In addition, in many cases, the involvement of local government makes the boundaries between “quasi-commons” and government-led projects unclear. Moreover, there have been many barriers to the development of “quasi-commons”.

One barrier is an argument among Chinese academics and policy makers about “quasi-commons” in rural China, as well as over the direction of change in the rural land system.<sup>66</sup> Some favor nationalization of rural land, and this approach is similar to permanent tenancy (*yongdian* 永佃), which was popular in Qing and Republican China. This approach supports the reclaiming of all the land by the state, and granting permanent land use rights to farmers by the state. The other proposal is privatization of rural land.

The differing proposals also reflect different political discourses. Currently, controversies in China surrounding the revival of private property and its implications for what modern China is or is becoming can be grouped into two major camps. The first is liberalism (*ziyou zhuyi* 自由主义) or neo-liberalism<sup>67</sup> (*xin ziyou zhuyi* 新自由主义)

65 The Land Contracting Law and the LAL conflict at this point. Article 42 of the Land Contracting Law allows farmers to contribute rural land contractual management rights as shares; according to article 60 of the LAL, farmers cannot contribute LURs to joint enterprises or joint ventures as investments, or assign LURs to township enterprises without approval from the government at or above county levels.

66 On the summery of different models of land ownership reform suggested by Chinese scholars see, e.g., Liu Rongcai, *Dangqian zhongguo nongcun tudi suoyouzhizhi gaige moshi yanjiu zongshu* [A Literature Review of the Research on the Current Rural Land Ownership System Reform in China], *Shangye Yanjiu* [Commercial Research] 18 (2006), 149–155.

67 This side is influenced by mainstream economists in the West who interpret their mission as promoting “neo-classical” ideas, including those of Ronald Coase and Richard Posner. See also F. A.

that regards free markets, individual liberty and private property rights protected by “the rule of law” as the *sine qua non* for sustained economic growth. Neo-liberalists have been largely influenced by the writings of Ronald Coase in which “transaction costs” are the key to the understanding of economic institutions.<sup>68</sup> The second is the “new left”<sup>69</sup> (*xin zuopai* 新左派) who cherish “new collectivism” and warn against the dangers of diminishing state-ownership and encroachments upon social equality. The new left stresses the role of the state. Accordingly, the privatization proposal is the neoliberal project transforming public property into private property, while the nationalization proposal is a project along the lines of the new left.

The neo-liberal project transforming public to private property is based on a society underpinned by trust, contract, clearly defined property rights and the rule of law. Chinese society, however, has individual trust but lacks trust in the system. There is a lack of well-functioning market of circulating rural LURs, and too many government interests (especially those of local governments) are involved in this “market”. Moreover, some people worry that, without a functioning social security system, loosening the control over the circulation of rural LURs may make farmers transfer contractual management rights cheaply to big agricultural conglomerates, making another way of land seizure. The number of landless farmers could increase, and a new form of inequality could thus emerge.<sup>70</sup> Without cooperative arrangements and the constraint of government power over land acquisition, privatization will be ineffective.

The polarization between nationalization and privatization has oversimplified the reality of the Chinese property regime. There exist variations, tensions and intricacies in terms of different forms of *de facto* ownership. At the same time, the boundaries between public ownership and private ownership are blurred. In contrast to the official, and indeed legal, support for *unitary* and *exclusive* property rights, the reality of the property regime has seen the *fragmentation* of property rights. For example, local governments have *de facto* control over collectively owned rural land. The problem with nationalization or state ownership is: does government ownership refer to state (Beijing?) ownership or local government ownership? To what extent or in what sense can the state own, if various kinds of agencies or other users can gain access to resources and have the *de facto* power to make decisions on how to use resources?<sup>71</sup> In terms of the privatization proposal along the lines of neo-liberalism, it cannot explain why the Chinese economy grows fast, while property rights remain vaguely defined and weakly enforced.

The polarization between nationalization and privatization ignores the communal sphere in rural China. Individual rural households cannot cope with issues such as

Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, 1982. For the analysis on Chinese neo-liberalists see, e.g., Wang Hui, *China's New Order: Society, Politics, and Economy in Transition*, 2003.

68 See, e.g., R. H. Coase, The Nature of the Firm, *Economica* 4(1937), no. 16, 386–405; R. H. Coase, The Problem of Social Cost, *Journal of Law and Economics* (Oct. 1960), 1–44.

69 The new-left in China is an ideological tendency in opposition to capitalism that first arose in the mid-1990s. It criticizes the problems faced by China during its modernization such as inequality and the widening gap between the rich and the poor. On the new-left see Wang Hui, Contemporary Chinese Thought and the Question of Modernity, in: *Whither China: Intellectual Politics in Contemporary China*, ed. Zhang Xudong, 2001, 161–198; Zheng Yongnian, *Discovering Chinese Nationalism in China: Modernization and International Relations*, 1999, 52–69.

70 See, e.g., the recent increasingly scarce employment of rural migrant workers in the Pearl River Delta as a consequence of the global financial crisis.

71 The problems with social security provision (e.g., provision responsibilities and finance sources) also lie in the complex central-local relation.

environmental protection and food security that need cooperative efforts.<sup>72</sup> In rural China, there is also weakness in finance, technology, public services, and information provision. In particular, the social security system does not keep in pace with other aspects of rural reform. The flaw of the household responsibility system is that it just grants farmers the tenure of small landholdings similar to what farmers had in the pre-1958 era, but overlooks the difference between subsistence farming and farming for the market in the post-1978 period, as well as between ordinary farming activity and collective or pooled-labor activities. Farming for the market needs markets and cooperative working; pooled-labor activities need cooperation between farmers as well. For example, in the village I visited in Henan province in June 2007, there was reciprocity among villagers over time in relation to pooled labor. Household A helped household B last year, household B should help household A this year.<sup>73</sup> Some problems with the lack of technology and information may be overcome by pooling resource together.

Thus, it is worthwhile to explore the implications of “the commons” for the Chinese rural land regime. Common property and private property are not polar opposites; they are mutually constitutive rather than mutually exclusive, and there are many theoretical discourses to support this argument. Flessas notes that from the original grant of the world, use and appropriation are the logical steps in order to make the things of nature beneficial to humanity, “the concept of appropriation and legitimating the taking of resources is also part of the discourse of the commons”.<sup>74</sup> For “common-pool resource”, Ostrom argues that “it is essential to distinguish between the *resource system* and the flow of *resource units* produced by the system, while still recognizing the dependence of the one on the other”.<sup>75</sup> “Resource units are what individuals appropriate or use from resource systems”.<sup>76</sup> Therefore, theoretically, private property and common property could coexist.

Many empirical case studies have corroborated the theoretical premises of the co-existence between private property and common property,<sup>77</sup> including some examples of “quasi-commons” as noted in this paper: mutual aid teams set up in 1953 are a typical example of the side-by-side existence between private property and common property. Yet it is insufficient to look at the commons just through an economic lens. The Chinese reality is not only far more complex than the above theoretical premises, but also different from the empirical cases in other countries, due to its peculiar socio-economic conditions, and legal and governmental institutions. The difficulties with the formation and operation of “the commons” include “identification”, “controlling” and “monitoring”. For example, how to hold farmers together? And to what extent should the government be involved in “the commons”?

The economic reform commenced in 1978 is “groping for stones to cross the river”, as Deng Xiaoping called it. This metaphor indicates that economic reform is directed by the ongoing facts without clear guidelines or legal rules, or else that guidelines and legal rules often lag behind the pace of economic reform. Moreover, China’s economic reform is not just a “planned and top-down” project directed by Deng Xiaoping, who is

72 See, e.g., the recent food security scandals such as contaminated milk powder in China.

73 But unlike mutual aid teams in the 1950s, this reciprocity does involve cash payment. On this also see, e.g., Scott Wilson, *The Cash Nexus and Social Networks: Mutual Aid and Gifts in Contemporary Shanghai Villages*, *The China Journal* (1997), no. 37, 91–112.

74 See Tatiana Flessas, *The Repatriation Debate and the Discourse of the Commons*, *Social & Legal Studies* 17(2008), no.3, 387–405.

75 Ostrom (note 13), 30. Italics are in the original.

76 *ibid.*

77 See, e.g., Ostrom (note 13).

often regarded as the chief designer of market reform. Similarly, Beijing did not and is not able to conceive a unified and comprehensive plan that oversees every process and aspect of economic reform. The reality has been far more complex and intricate.<sup>78</sup> In fact, many initiatives that have propelled the reforms are from the grassroots.

Yet, as opposed to the power of elites that push for economic and legal reforms, the other source of power that is also of importance for reforms – the grassroots initiatives (either individual or communal) – is often ignored. These grassroots initiatives always run into obstacles to get recognition in the law; in many cases, these initiatives even get suppressed. Grassroots organizations are also weak.

Many villages now have direct and competitive elections, a form of direct democracy (*zhijie minzhu* 直接民主) at the grassroots as a supplement to the indirect democracy (*jianjie minzhu* 间接民主) of the People's Congress at the higher levels.<sup>79</sup> However, under the dual authority of Party and government, the Party secretary of the village is still appointed by the higher-level authority of the CCP. The fifth plenum of the 16<sup>th</sup> CCP Central Committee, which ended on 11 October 2005, put forward “Constructing the New Socialist Countryside” (*jianshe shehui zhuyi xin nongcun* 建设社会主义新农村) as the foremost task facing China in the 2006–2010 five year period, aiming to reduce the urban-rural disparity, illegal confiscation of rural land for development projects, unauthorized conversion of agricultural land to industrial projects and so on.<sup>80</sup> Agricultural tax was also abolished in 2006. However, rather than encouraging self-governance of farmers, “Building the New Socialist Countryside” is a strong state intervention into countryside construction influenced by new-left ideas.

In terms of grassroots organizations and property management in rural China, Article 10 of the LAL and Article 60 of the Property Law provide that collectively owned land shall be managed and administered by the village collective economic organization<sup>81</sup> (*jiti jingji zuzhi* 集体经济组织) or the villagers' committee (*cunmin weiyuanhui* 村民委员会), but villages' groups, the rural self-governing organizations at the basic level, do not hold much power. This situation has been shaped by the transformation of reorganizing rural China in the post-1978 era. In the early 1980s, when the communes were dismantled, the production teams at the lowest level of the communes diminished fastest. After the township (*xiangzhen* 乡镇) replaced the commune, the administrative village (*xingzheng cun* 行政村) took the place of the production brigade, and the villagers' group (*cunmin xiaozu* 村民小组) superseded the production team,<sup>82</sup> the villagers' group was weak while power was diverted to the administrative village level and the township level. This kind of arrangement of collective ownership has entered into a paradoxical situation: although the *de jure* owner of rural land is the collective, the *de facto* owners are multiple. Although the role of government should be limited to public service such as social security and information provision, in “quasi-commons” emerging in rural China, there is often too much involvement of local governments.

78 See also James Kyngé, *China Shakes the World: A Titan's Rise and Troubled Future and the Challenge for America*, 2006, 12–14.

79 See Jean C. Oi and Scott Rozelle, Elections and Power: The Locus of Decision-Making in Chinese Villages, *The China Quarterly* (2000), no. 162, 515.

80 See, e.g., Richard McGregor, China Launches “New Deal” for Farmers, *Financial Times*, 22 February 2006. In <<http://www.ft.com/cms/s/74029202-a389-11da-83cc-0000779e2340.html>> (last visited 29 April 2007).

81 “The village collective economic organization” is not clearly defined in law.

82 See Peter Ho, Who Owns China's Land? Policies, Property Rights and Deliberate Institutional Ambiguity, *The China Quarterly* (2001), no. 166, 405.

Given the features of economic reform and legal reform in China, the private, informal power from the grassroots has always been the bearer of the risks generated by the reforms. The power from the grassroots breaks through the old planned system, but in the meantime it disobeys the law; or it obeys the law, but does not conform to policy. Power from the grassroots lingers in the gray area between “the legal” and “the illegal”. Moreover, under the “quasi-federal” structure of government, whether an informal institution is successful or gets legalized is largely due to the attitudes of local governments, which can play roles in either facilitating or obstructing the emergence of informal or grassroots institutions.<sup>83</sup>

## 6. Conclusion

Apart from examining the top-down projects aiming to bridge the urban-rural divide (for example, abolishing the household registration system), it is worth exploring the grassroots initiatives. “Quasi-commons” in rural China, as grassroots initiatives of farmers, may boost farmers’ income, promote self-governance of farmers, and bridge the urban-rural divide. Some kinds of emerging “quasi-commons” in rural China have been recognized and encouraged by recent Party policy. The third Plenum of the 17<sup>th</sup> CCP Central Committee (hereinafter the Plenum) held on 9–12 October 2008 has set a new round of rural reforms in motion, and has brought new changes to rural land use rights. There are several important aims in the decision (*jueding* 决定)<sup>84</sup> of the Plenum published on 19 Oct 2008 (hereinafter the decision). First, it confirms that contractual management rights of rural land will remain unchanged and stable for a long period (*baochi wending bing changjiu bubian* 保持稳定并长久不变). The decision also permits various means of contractual management rights circulation (*tudi chengbao jingyingquan liuzhuan* 土地承包经营权流转), including subcontracting (*zhuangbao* 转包), leasing (*chuzu* 出租), exchanging (*huhuan* 互换), transferring (*zhuanrang* 转让) and shareholding cooperatives (*gufen hezuo* 股份合作).<sup>85</sup>

Yet there are many barriers to the development of quasi-commons. Among the barriers, the flaws in the existing land system are paramount. In particular, since 1978, private property has been selectively granted to farmers through dismantling rural communes and the introduction of the household responsibility system. However, rural land is still owned by collectives rather than farmers, and farmers only enjoy limited land use rights. Collective ownership remains a constraint for farmers to fully engage in and enjoy benefits from marketization. Moreover, while Beijing may be “seeing like a state”,<sup>86</sup> local governments have the ability to mobilize resources and are pursuing their own interests. The lack of self-governance by farmers and the lack of communal

83 A typical example of the success in individual cooperative housing construction was in Wenzhou, Zhejiang Province, because of the strong business associations, sufficient local finance and support from the local government in Wenzhou.

84 Zhonggong Zhongyang guanyu tuijin nongcun gaige fazhan ruogan zhongda wenti de jueding [The Decision of the CCP Central Committee on Several Crucial Issues Regarding Rural Reform and Development 中共中央关于推进农村改革发展若干重大问题的决定], available in <<http://politics.people.com.cn/GB/1026/8194064.html>> (last visited 19 October 2008).

85 Article 32 of Land Contracting Law (2002) already provides that “contractual management rights obtained through household contract may, according to law, be circulated by subcontracting, leasing, exchanging and transferring or other means”.

86 James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, 1998

governance of resources still hinder the formation of “the commons” in rural China. Whether or not “quasi-commons” could create new socio-economic spaces and even new social organizations would be the subject of a future paper.<sup>87</sup>

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