



What's Law Got to Do With It?

Competition among Legal, Political, and Social Norms in the Generation and Resolution of Rural Land Disputes

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Knowledge-Net for a Better World

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What's Law Got to Do With It? Competition among Legal, Political, and Social Norms in the Generation and Resolution of Rural Land Disputes*

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Introduction

Does formal law matter in determining who controls land rights? Property rights in land are an increasingly valuable asset in rural China. In asserting and defending their claims to land, rural residents, in principle, have recourse to a new body of “rights-protective” legislation and a rapidly developing system of courts (Fu 2009). However, there exist competing sources of law-like authority in this arena, namely the local Communist party-state and the semi-autonomous village. This reality can be conceptualized as a situation of legal pluralism, with the coexistence of multiple forms of official and unofficial ordering/regulation. This study finds that the interaction of these different forms of law-like authority over the land rights of Chinese farmers produces two significant results. First, such legal pluralism limits the impact of formal state law embodied in the Land Management Law, the Rural Land Contracting Law and the Property Law. Second, the situation of legal pluralism works to divert conflict over land rights away from the state itself, shielding the state from challenges to its power and authority.

The paper focuses on land takings disputes in which the state requisitions arable land for conversion to real estate or industrial development. Yu Jianrong recently identified these rural land conflicts as “the focal problem of rural China (Yu 2009).” Indeed, tensions over rural land have driven the issue of land rights to the top of the policy

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agenda of the Chinese party-state.¹ In 2007, the State Council initiated a nationwide campaign to end violations of land contracting rights.² Earlier State Council documents had already expressed concern about the increasing number of “mass incidents involving contracted land.”³ Concerns about instability arising from land disputes are echoed all the way down to the county level.⁴

In the context of land takings, the local Communist party-state—one source of law-like authority—seeks to generate substantial rents (in the form of land transfer fees) from the non-agricultural development of arable land, often with disregard for formal state law and yet tolerated by the state. The village committee/assembly—another source of law-like authority—seeks to limit eligibility for monetary compensation for requisitioned land and to limit eligibility for reallocation of remaining village land to a select group of insiders defined by village tradition. Formal state law—a third source of law-like authority—sets forth yet another set of principles/standards for land takings, including land use and land compensation standards. The state, in many cases, escapes direct legal challenge. At the same time, the local party-state relies on fat land-transfer fees to fulfill under-funded state mandates, and some villagers benefit disproportionately in the allocation of land and compensation. Although villagers do turn to the local courts for recourse in land takings disputes, most instances of litigation are civil cases reflecting disputes over who’s eligible for land and compensation rather than administrative cases challenging the legality of the taking itself or challenging the level of total compensation to the village. At issue are village norms and traditions, as villagers fight over the distribution rather than the size of the land-compensation pie. Moreover, the state allows this battle over distribution to occur by implicitly recognizing traditional village norms, even when they contravene formal state law. As Yu Jianrong (2009) writes of rural farmers, “the most notable characteristic of rights defense activities is that they are battles over financial interests and are not battles over power. Said more simply, it’s all about the money... they just want money. They don’t want your political power, nor do they want

¹ Rural reform, including land rights, was the central focus of the Third Plenum of the Seventeenth Central Committee, convened in October 2008. 中国共产党第十七届中央委员会第三次全体会议公报 (Report of the Third Plenum of the Seventeenth Central Committee Meeting of the Chinese Communist Party).

² 国七部委关于开展全国土地突出问题治理的通知 (State Council/Seven Ministry-Commission Notice Regarding Launch of Specific Governance [Procedures] Nationwide for Prominent Rural Land Problems), June 10, 2007. In addition to the State Council, the other leading agencies among the seven include the Ministry of Agriculture, Ministry of Land and Resources, Ministry of Supervision, Ministry of Civil Affairs, CCP Leading Group for Rural Work, the State Council Office for Rectification, and the State Bureau for Letters and Visits.

³ State Council Document (2004) No. 21

⁴ See, for example, 中共xx县委常委政法委, “关于预防和处置群体性事件地思考,” May 18, 2007, accessed at http://www.hnfx.net/fzxw/xs_content.asp?id=5757, July 14, 2008.



your position as an official.”⁵ As a farmer interviewed for this study highlighted, “Everyone wants higher quality land, and everyone hopes to receive more land, but in the village there are a lot of people and little land; so, conflicts arise (Author’s interview _).”

Theoretical Grounding

Theoretically, legal pluralism is a useful lens through which to view the dynamic interaction of plural legal orders (Merry 1988; McCann 1994; Galanter 1983). Merry (1988), in her oft-cited review of legal pluralism, identifies two types of legal pluralist analysis—one, reflecting the experience of colonial rule over “traditional” societies, and the other, identifying multiple sources of law-like authority within advanced capitalist regimes. “Legal order is pluralistic... Not only is official state law a maze of diverse, indeterminate, and often contradictory legal traditions, but in addition a multitude of relatively autonomous ‘indigenous’ law traditions contend for preeminence within the many subcultures and institutional terrains of society (Galanter 1983b as cited in McCann).” Liu Sida (2006, 79) suggests that the experience of post-socialist systems constitutes a new, distinct type in which “the coexistence of Western legal institutions, socialist political/economic system, and local traditional culture presents new patterns of interactions between [sic] multiple sources of law.” Furthermore, he calls for more studies of “the interactions between state law and local social and legal systems in micro-level social settings (Liu 2006, 79).” Zhang Jing (2003) similarly identifies competing norms in the specific context of rural land-use conflicts in China: households, villages, and local governments all uphold different principles, each claiming legal status. In her view, such conflicts devolve into struggles over power and interest, and, as a result, there is no single, identifiable legal norm by which such disputes are consistently resolved. Her perspective is consistent with studies of legal pluralism, which find that plural legal orders often limit the effectiveness of formal state law. In the view of Zhu Suli (2000), China is institutionally and professionally unprepared for thorough implementation of formal state law at the grassroots of rural society. Rather, he advocates relying on traditional norms upheld not by professionally trained judges but by judges deeply embedded in

⁵ Similarly, Elizabeth Perry (2009) argues that, “Although a discourse of ‘rights’ proclaimed by ‘citizens’ has replaced a Mao-era language of ‘revolution’ proclaimed by ‘comrades,’ it is not readily apparent that protestors today differ fundamentally from previous generations in either their mentality or their relationship to the authoritarian state.”



local communities. He Weifang, by contrast, regards Zhu's proposals as tantamount to abandoning the project of building formal state law altogether.

Beyond limiting formal state law, situations of legal pluralism may—surprisingly—promote the power of the regime itself rather than the rights of constituent groups. As Henry (1985, 306) points out, some plural legal orders “serve to reinforce existing social arrangements and to preserve the stability of the state rather than to reallocate power between groups.” Similarly, analyzing the context of globalization, Gad Barzilai (2008) highlights the place of political power in legal pluralist contexts. He lays bare “the imagined separation between state law and non-state legal orders, analyzing why state power is being maintained and how it is strategizing legal pluralism (Barzilai 2008, 399).” This perspective is consistent with the notion from the institutional literature that complementary institutions embodying complementary norms are necessary to achieve a coherent and effective ‘rule of law’ (Haggard).

Methodology

This paper draws on a multiple-method research design, including survey, interview, and documentary research. The survey, conducted in 2007, is based on a sample (probability proportionate to size) of 638 households drawn from six villages in each of three townships in each of two counties in a province of central China. The survey measures the incidence and type of land disputes, along with the types of actions taken by disputants and motivations for taking (or not taking) action. It also measures social, economic, and political attributes of households and individual respondents. Finally, it measures the individual respondent's legal knowledge, his/her social capital; attitudes regarding law, substantive justice, gender, and other attitudes. The study counties, where cotton is a major crop, rely on agriculture for 30-40 percent of GDP and host populations of 600-700 thousand registered population (Table 1). Fourteen percent of households in the sample report one or more self-defined land dispute(s) in the preceding ten years (Table 2). The survey captures multiple types of land disputes, which are condensed into four categories in Table 2: compensation for land taking, land-holding reallocation, abandoned or transferred land, and boundary/other disputes. This paper focuses on disputes over compensation for land takings, which account for nearly one third (29 percent) of the total. The paper develops one of the two survey counties as a case study to illustrate the dynamics among multiple sources of law-like authority over land.



The author conducted periodic in-depth interviews in the province between 2007 and 2009 with stakeholders, including local officials, judges, lawyers, legal-aid providers, and farmers. These interviews provide crucial context for interpreting survey data. In addition, I have collected court, mediation, and related documents specific to land disputes in the province. These documents were produced in the context of disputes and represent unobtrusive measures free of the potential biases of reactive surveys and interviews. Finally, I have collected other relevant documents, including fiscal statistics, laws, and policy statements, for analysis.

Multiple Sources of Law-like Authority

The following sections explicate the multiple sources of law-like authority. First, formal state law embodies both substantive and procedural legal norms. Substantively, “black-letter law” indicates who has land rights and who, therefore, is eligible for land compensation and land reallocation in the context of land takings. Procedurally, “black-letter law” specifies which institutions are to provide hearings and to set and enforce remedies when rights claims arise and what formal legal procedures should be followed. Second, the systems of the Communist party-state have law-like authority. The official guidelines for leading cadre performance and evaluation shape how cadres use their political authority in land takings and land compensation decisions. In addition, the fiscal system creates incentives for land takings and land compensation that shape the use of political authority. Third, village collectives perpetuate traditional norms relating to gender and community membership that affect the distribution of land compensation and the reallocation of village land. These traditional norms are reinforced by appeal to the legal principle of village autonomy. Subsequent paragraphs address each of these in turn.

Formal State Law

This section highlights several legal rules particularly salient to land takings disputes. The most prominent laws governing rural land include the 1998 Land Management Law and



the 2002 Rural Land Contracting Law.⁶ Axiomatic to current rural land rights is Article 14 of the LML, which extends land tenure to thirty years for farmers contracting arable land in their villagers.⁷ The LML (and accompanying implementing regulations) also set compensation standards for compulsory acquisition of rural land (Article 47), including land compensation, resettlement subsidies, and compensation for crops and improvements. Compensation—paid to the village collective—is based on the use-value of the land in agriculture rather than on the current market value of the land, since a true market for agricultural land does not exist. Land compensation is set at 6-10 times the average annual production value over the last three years.⁸ Resettlement subsidies are similarly pegged to the past production value of the land rather than to actual resettlement costs to the farm household. Chapter 4 of the LML also articulates the policy of protecting arable land area. The Third Plenum of the Seventeenth Central Committee of the CCP subsequently specified a “red line”—the absolute area of arable land to be maintained at 1.8 billion mu. The 2008 State Council “Notice on Promoting Land Conservation and Efficiency of Land Use (关于促进节约集约用地的通知)” prohibits the conversion of arable land to construction land for industrial or commercial developments without approval of the county (or higher-level) government, according to the duly authorized land-use plan. Local officials can requisition land in the “public interest,” only vaguely defined in law.

In procedural terms, the Supreme People’s Court in July 2005, issued its “Interpretation of Issues Concerning Applicable Laws in Litigation of Rural Land Contract Disputes,” emphasizing the rights of farmers to file suit in court; it also stipulated the types of legitimate land compensation claims by farmers that lower courts should support.

With respect to gender equality, Article 5 of the Constitution asserts the equality of men and women. Moreover, the 2002 RLCL clearly establishes that women and men have equal land rights (Article 6). Article 30 of the RLCL further lays out the substantive land rights of married, divorced, and widowed women. In sum, there is no statutory support for differential treatment of men and women in the distribution of land-use rights. At issue in the contest between traditional village norms and farmers’—particularly

⁶ There is, in principle, a hierarchy of authoritative documents: the Constitution, Laws passed by the National People’s Congress, State Council regulations, ministerial- and provincial-level documents, etc. (Law on Legislation).

⁷ And yet, only 55 percent of respondents in the household survey correctly understood this to be the law. 27 percent thought the thirty-year tenure to be incorrect, 18 percent did not know.

⁸ The November 2004 Ministry of Land Resources “Instruction on Perfecting the System of Land Acquisition Compensation and Resettlement” clarifies the LML standards.



women's—statutory land rights, is the autonomy of the village collective as established in the 1998 “Organic Law of Villagers’ Committees.” However, Article 20 of the Organic Law indicates that the villagers’ assembly may formulate and revise the village charter, but it cannot contravene existing laws or infringe upon villagers’ rights.

In sum, according to law, farmers enjoy thirty-year tenure on collective land, are entitled to compensation should their collective be subject to a taking, and have recourse to the courts should these rights be violated. Women and men enjoy equal statutory land rights that supersede village autonomy.

Local Communist Party-state

The actions of the local Communist party-state also have law-like authority. The Communist Party is the supreme authority in any given jurisdiction, with power even over the courts. As the 2007 Constitution of the Chinese Communist Party (CCP) states, Leadership by the Party means mainly political, ideological and organizational leadership... Acting on the principle that the Party commands the overall situation and coordinates the efforts of all quarters, the Party must play the role as the core of leadership among all other organizations at the corresponding levels. It must concentrate on leading economic development, organize and coordinate all forces in a concerted effort to focus on economic development and promote all-round economic and social development. The Party must practice democratic and scientific decision-making; formulate and implement the correct line, principles and policies; do its organizational, publicity and educational work well and make sure that all Party members play an exemplary and vanguard role. The Party must conduct its activities within the framework of the Constitution and laws of the country. It must see to it that the legislative, judicial and administrative organs of the state and the economic, cultural and people's organizations work with initiative and independent responsibility and in unison.

The incentives for party and government executives to stay in power and the sources of revenue they have to work with shape the ways in which these leading cadres seek to govern land use.

The trials and tribulations of local governments in the context of China's ongoing fiscal reforms are well established (Whiting 2001, 2006; Wong). Since the institution of the tax assignment system in 1994, local governments have been subject to successful central government initiatives to centralize revenue control with only minor adjustments



to expenditure responsibilities. As a result, on the expenditure side, China's budget is extremely decentralized by international standards, with county governments responsible for significant portions of education and health spending as well as other public goods outlays. The mismatch between local government revenue and expenditure results in heavy reliance on inter-governmental fiscal transfers, which increased slowly after 1994 and have increased somewhat more dramatically since 2004. In light of the severe revenue constraints on the local-level of the party-state, local officials have strong incentives to find and exploit new sources of revenue.

Land-use fees have become a major source of local revenue throughout the country. The phenomenon is most prominent in the counties surrounding rapidly developing coastal areas, where demand for land and, concomitantly, land values are highest. In these areas, both budgetary and extrabudgetary revenue from land have increased rapidly (Whiting 2009). Extrabudgetary revenue is difficult to measure, but one national estimate placed off-budget funds from land transfers at 615 billion yuan as of 2004.⁹ Official sources offer lower estimates (Chan 2006; Statistical Yearbook of China 2004). This section reviews the fiscal situation of one of the survey counties as a case study in order to highlight the role of land-use fees, even in a relatively remote, rural county. Table 3 provides data on the county's (own) budgetary fiscal revenue from 2001 to 2007. It shows the loss of revenue from the abolition of the agriculture tax in this county in 2004, but only modest increases in the share of direct taxes on land, which increased from 1 percent of budgetary revenue in 2001 to 3-4 percent in 2005-07.¹⁰ Efforts to attract industry (detailed below) show little impact on budgetary revenues; the share of the VAT tax has held steady at about 6 percent from 2001 to 2007. Indeed, the major increase in revenue in this county is from increased inter-governmental fiscal transfers, reflecting the Hu-Wen regime's agenda for a "New Socialist Countryside." Following the abolition of the agriculture tax, these transfers have provided 70-80 percent of total combined revenue and have increased at a dramatic pace in recent years (Table 4). These inter-governmental fiscal transfers have even reached the village level, which in this county received 25,000 to 60,000 yuan on average (Table 5). The scale of intergovernmental fiscal transfers provides a point of reference for evaluating the magnitude of extrabudgetary land transfer fees generated by converting land from agricultural to real estate or industry.

⁹ Ping Xinqiao (平新乔). 2006. "我国土地财政规模估计." 北京大学中国经济研究中心简报, No. 56.

Ping Xinqiao. 2006. "中国地方政府支出规模的膨胀趋势" 北京大学中国经济研究中心简报 No. 57.

¹⁰ Direct taxes on land include: the urban land-use tax, farmland occupation tax, and deed tax.



Land takings in two village small groups near the county seat illustrate the scale of funds that the local party-state derives from its role in land takings.¹¹ These land takings were both for the local industrial park, which has been vigorously promoted by local officials and is home to about a dozen small factories. In 2004, a land taking of 42 mu for the local industrial park (Figure _) from small group #1 provided 221,121 yuan in land transfer fees for the township and village and 50,728 for the small group (Case record _). Similarly, in 2006, a land taking of 14 mu for the local industrial park from small group #2 generated 36,639 yuan for the village and 54,940 for the small group (Case record _). In both cases, these funds exceeded formal transfers to the villages from higher levels. A village leader suggested the following typical breakdown of land transfer fees in the case-study county: the county receives the lion's share (40 percent); the township, village and small group share about 25 percent, leaving about 35 percent for the villagers themselves. Other estimates (Zhou and Zhou 2004 cited by Chan 2006) suggest that the county gets even more, while villagers typically get even less. The villages and small groups used these funds to pay cadre salaries and administrative expenses, creating a significant fiscal benefit to local officials from taking land for industrial development (Author's interview _).

The official guidelines for leading cadre performance and evaluation also shape how cadres use their authority in land takings and land compensation decisions. At the local level, where local leaders face significant pressure from their superiors to promote economic development, attracting investment (招商引资) is an important performance criterion. Higher level government officials, seeking to recreate the success of peri-urban counties in coastal areas in their own jurisdictions, set monetary targets for attracting investment. The prefecture in the central-China case study evaluates the targets at the county level and set a target of 300 million yuan in newly attracted investment for 2004.

Responding to this career pressure, local officials use cheap land to meet their targets. The deputy county executive heads the leadership small group overseeing land; the group includes the industrial park management office, town leaders, and the land resources bureau, among others. Local officials requisition land in the "public interest" and provide it to private investors at a discounted price. Indeed, local cadres in the case-study county highlighted their "great flexibility" in policies with respect to land. The slogan is "兴工强县, 民营富民, 加速提质, 超常发展." Preferential land policies for the new industrial park effective in 2005 included no-cost land-use rights for investments over 10 million yuan, a land lease with no payment for 15 years for investments of 2-10 million yuan, and

¹¹ Villages (administrative villages) in this region are divided into village small groups (natural villages or hamlets) for purposes of administering land.



land at 35,000 yuan/mu for investments from 0.5 to 2 million yuan. The county bureau for attracting investment (招商局) promises to handle all approvals as well as offering a 3-year tax reduction, forgiving the major local taxes under the tax assignment system, namely the locally controlled 20 percent of the VAT tax and 50 percent of the corporate income tax. Due to these preferential policies, even weak companies can survive for awhile. Indeed, one building built by a Guangdong investor in the industrial park failed to open for lack of funds and has been vacant more than three years (Figure _).

In interviews, residents and local officials from the case study county remarked with respect to the industrial park that, “Local officials are mainly striving for [career] achievement (Author’s interview _).” “The deals are only beneficial for a few leaders, with little contribution to local tax revenues or the local economy (Author’s interview _).” “Everybody knows this but nobody can say it.” To the point, the stated goal of attracting investment is to create jobs and to generate tax revenue. However, there is little evidence of new tax revenues (as noted above) and little evidence of jobs for local residents. They complain that new factory owners often reject local job applicants, citing inappropriate age, education level, or technical experience as factors precluding their hiring (Author’s interview _). As demonstrated above, however, the use of political authority to take land does generate significant extrabudgetary revenues for local officials.

Village Norms and Traditions

Given the financial interests at stake in land takings, disputes easily arise among villagers, and many villagers appeal to traditional norms to assert their own eligibility to land and compensation. However, traditional norms are contested by disadvantaged parties. So, as one villager interviewed put it, “as soon as there’s a taking, there’s a dispute [among villagers]. The disputes show up in the unfair distribution of the compensation payments; unfair [re-] allocation of land also leads to disputes (Author’s interview).” This section highlights the role of traditional gender norms in defining villagers’ eligibility for land and compensation in the context of land takings. Contested gender norms are one source of civil disputes among villagers. To illustrate, I draw on the 2006 compensation and land reallocation plan for one small group in a village bordering the county seat in the case study county in which 13.6 mu of land was taken for the industrial park.

In some cases, cash compensation to households can be substantial. In this taking of 13.6 mu of land, cash compensation was based on the taxable land area per household as



of 1991, making 40 households in the village eligible. (Pegging compensation to land area as of 1991 also had the effect of excluding many households currently in the village.) Eligible households were to receive 1450 yuan per mu of land taken. Average compensation to the forty eligible households was 6100 yuan (\$790). Based on national statistics, per capita net income of rural residents as of 2006-7 was 4140 yuan (\$540); so, the amount of money and land at stake was not trivial.

Only 230 mu of land remained in the village after the taking. Seventy-one households (a total of 242 people) were affected, but only some were deemed eligible by traditional principles to receive re-allocations of land following the taking. Land re-allocation was done on a point basis, with full-status residents receiving 10 points, equivalent to 1.24 mu of re-allocated land. Women were deemed ineligible or only partially eligible in multiple ways, despite the fact that residency in the small group was highly coveted due to its location near the county seat. Indeed, the phenomenon of “married-in men” was common in this small group, because of its locational advantage.

Based on agreement of the village assembly, “standard” long-term residents were accorded ten points for each family member. These residents included all married sons and their families. These families had between two and seven members, and wives and children each received a full ten points. For example, 徐 XX’s family had seven members and received the full 70 points. They were re-allocated 8.68 mu of land, up from their pre-taking land area of 6.58 mu. If a long-term resident household had multiple daughters and no sons, only one daughter was recognized as a head of household. Her husband and children received the full ten points each. If a daughter’s parents had built her a house in the small group before marriage, that daughter received ten points, but no points for her husband or children. On this basis, for example, 曹 XX’s family, which had three members, received only ten points. They were re-allocated only 1.24 mu, down from 2.4 mu of land prior to the land taking.

If long-married daughters had moved back to the small group before the land taking and had all agricultural taxes and fees in the past, then the daughter received only eight points and no points for her husband and children. On this basis, 刘 XX’s families were re-allocated only 0.99 mu of land, down from 1.89 mu before the taking. If a married daughter’s hukou (household registration) had been in the small group continuously since before May 18, 2006, then she was re-allocated 0.3 mu of residential land only. She received 0 points, and the residential land was recorded under her parents’ or her brother’s name. So, on this basis, for example, 李 XX received 0.3 mu up from zero. It is noteworthy that points matter for the future. The agreement of the village assembly



includes a clause calling for the adjustment of land holdings on the basis of these points after all future takings.

Married-out sons living outside the small group were awarded a one-time payment of 1000 yuan, while married-out daughters received nothing.

Thus, traditional village norms, reflected in the agreement of the village assembly mitigated against equal land rights for all women, contrary to “black-letter law.” Nevertheless, the small group leadership itself, upholding traditional norms, threatened a collective petition to higher levels if higher level leaders did not mediate and diffuse challenges to the plan by disadvantaged villagers deemed ineligible for re-allocation of land or compensation. The practice of traditional norms has resulted in women without land holdings; more than a quarter of women identified in the 2007 household survey had no land. Only 33 percent of women had land in their natal village, 41 percent had land in the marital village, and 26 percent of all women identified in the survey had no land.

Women were also disadvantaged procedurally; it was difficult for them to find effective recourse in the courts, despite the guarantees in the Rural Land Contracting Law. In another taking of 100 mu of arable land for a commercial plant nursery in the case study county, a married-out woman whose household registration was still located in the village challenged the unfair distribution of land compensation and attempted to file suit a civil suit against the village in court. However, the local court refused to accept her case. The court cited “too many cases of this kind in the county” and made reference to its demonstrated inability to implement the judgment at the village and small group levels in similar cases. It was unable to implement the judgment that sought to uphold the law guaranteeing the equality of land rights for men and women, because traditional village values differed from “black-letter law.” The result was active local resistance to implementation of court judgments. The court came under pressure from the local government not to press for implementation of judgments that were likely to result in local conflict, since it would undermine political stability—a priority of the local government. The local court even acknowledged the existence of legally binding judicial interpretations stating that the basic-level courts should accept cases brought by women defending their land rights. In this case, the court explicitly directed the plaintiff to seek a remedy through petitioning the local government, itself an interested party to the dispute. Pushed into petitioning, the woman failed to find effective recourse in the local court or through the local government.

The case study findings illustrate how legal authority is marginalized in favor of social and political authority. Fu (2009) and Barzilai (2008) similarly suggest that social norms can be promoted for political purposes, undermining legal norms. They also



suggest that litigation (i.e. a formal legal procedure) is more conducive to establishing legal norms than is mediation, which often privileges social norms, or petitioning the government, which often privileges political norms. While aggrieved parties in the case study may attempt litigation, they face significant obstacles, when the court refuses to accept the case and the pushes the aggrieved party into petitioning, out of legal channels.

These hypotheses find support in the survey data. For those households experiencing takings of arable land, 80 percent reported a great or very great impact on their lives, and nearly three-quarters (73 percent) initiated some action in the face of the taking. As Table 6 shows, villagers disputing land-takings compensation petition the government (46 percent) and pursue litigation in the courts (19 percent) at significantly higher rates than in other types of land disputes. Despite these attempts, land-takings compensation disputes are significantly less likely to be resolved (only 35 percent) than other kinds of disputes. Finally, households disputing land-takings compensation are significantly more likely to be extremely dissatisfied, even after seeking some kind of recourse.

Discussion

The case study findings shed light on the survey results. It is the responsibility of the county justice bureau and the basic-level court to promote knowledge of the law. Indeed, in recent years, Hunan Province conducted special campaigns to promote legal awareness and to “Mobilize the Justice System to Resolve Social Conflict and Promote Social Harmony,” among others. Citizens are increasingly aware of their rights, including land rights. Aggrieved parties approach the courts, particularly in relatively high-stakes cases like land takings, with an expectation that the law matters. However, they find that political power and traditional values trump law. The major investment by the state in the official promotion of law fails in the face of powerful local officials with competing fiscal and career interests and traditional norms that are privileged in the interest of political stability.

In this way, legal pluralism masks political power. All the law suits in response to land takings identified in the survey were civil suits challenging the distribution of land and compensation within the village and not administrative suits challenging the legality of the taking itself or questioning the total amount of compensation available to the village or small group.



The state has passed and popularized laws to protect the rights of citizens; it has expanded the courts and the judiciary; and it has developed the legal profession. Nevertheless, based on the survey, interview, and documentary evidence examined here substantive legal norms are not evident in the handling of land disputes. In this case, women are more vulnerable to losing their land and to receiving lower compensation. Procedurally, women fail to find recourse in the courts. Courts refuse to take many cases, and self-interested governments dominate the disputing process. While legal norms do not hold sway, political sources of law-like authority are evident. Career incentives, like attracting investment, drive takings. Emphasis on political stability shapes the dispute resolution process. Traditional village norms about the status of women in the village are also evident. Local officials defer to the village—not the law and the courts—in the interest of preserving political stability and harmony among the majority of grassroots residents. ■



Tables

Table 1

	County A	County B
Population	590,540	703,579
Rural (percent)	74.8	84.8
GDP (billion yuan)	5.33	7.15
Primary		
billion yuan	2.05	2.17
% share of total	38.5	30.3
Secondary		
billion yuan	1.16	2.81
% share of total	21.7	39.3
Tertiary		
billion yuan	2.12	2.17
% share of total	39.7	30.4
GDP per capita (yuan)	9,019	10,158

Sources: County statistical yearbooks

Table 2

Most recent land dispute, by type	Frequency	Percent
Compensation for land taking	26	29.2
Land readjustment	23	25.8
Abandoned/transferred land	12	13.5
Boundary/other	28	31.5
Total	89	100.0

Table 3

	VAT	bus.tax	direct land	inc taxes	ag taxes	urban maint	finest	admin fees	subtotal	other*	total	level, mil yuan
2001	6	8	1	9	32	1	7	5	69	31	100	88.62
2002	5	11	1	4	41	1	6	19	89	11	100	102.79
2003	5	13	1	3	39	1	7	21	90	10	100	116.59
2004												
2005	7	20	4	4	0	3	10	31	78	22	100	105.38
2006	7	18	3	3	0	3	9	20	63	37	100	121.19
2007	6	17	3	3	0	2	6	18	55	45	100	147.88

*residual

Source: County statistical yearbooks, multiple years.



Table 4

	Level, million Yuan			% annual increase		% share of total		
	2005	2006	2007	2006	2007	2005	2006	2007
VAT/excise tax rebate	12.39	12.90	13.20	4.1	2.3	5	4	3
income tax rebate	4.32	3.70	4.32	-14.4	16.8	2	1	1
<i>earmarked subsidies</i>	<i>57.33</i>	<i>79.43</i>	<i>138.01</i>	<i>38.5</i>	<i>73.8</i>	<i>21</i>	<i>23</i>	<i>27</i>
<i>regular intergov. fiscal transfers</i>	<i>54.42</i>	<i>79.42</i>	<i>121.48</i>	<i>45.9</i>	<i>53.0</i>	<i>20</i>	<i>23</i>	<i>23</i>
<i>wage adjustment subsidy</i>	<i>46.07</i>	<i>71.01</i>	<i>95.95</i>	<i>54.1</i>	<i>35.1</i>	<i>17</i>	<i>20</i>	<i>18</i>
<i>rural tax reform subsidy</i>	<i>77.42</i>	<i>77.42</i>	<i>103.48</i>	<i>0.0</i>	<i>33.7</i>	<i>28</i>	<i>22</i>	<i>20</i>
rural education reform subsidy	0.00	0.00	7.69			0	0	1
subsidy for governments in difficulty	10.47	8.52	16.16	-18.6	89.7	4	2	3
system subsidy	0.00	2.00	2.00		0.0	0	1	0
state subsidy to increase development	0.00	3.13	6.40		104.5	0	1	1
state enterprise subsidy	0.27	0.27	0.27	0.0	0.0	0	0	0
reconciliation subsidy	12.37	13.49	10.66	9.1	-21.0	4	4	2
income from debt to loan conversion	0.00	0.80	0.00			0	0	0
total	275.06	351.29	519.62			100	100	100

Table 5

	Land Taking Compensation	Abandoned/ Transferred Land	Land Readjustment	Boundary/ Other	Differences Significant (Chi-Sq)
<u>Percent Attempting</u>					
Mediation	39	50	39	50	0.77
Petition	46	8	17	29	0.05
Litigation	19	0	0	4	0.02
Other	19	0	4	11	0.21
<u>Percent Resolved</u>	35	83	52	64	0.03
<u>Percent Extremely Dissatisfied</u>	78	56	17	15	0.08
Number of cases N=89	26	12	23	28	



Table 6

	Revenue source		Expenditure items					township	township	
	from transfers	county funds	total	cadre salaries	social ins.	admin exp.	family plan.	"chifan"	total	
城关镇	30,000	420,000	450,000	120,000	50,000	160,000	120,000	450,000	3,200,000	4,700,000
官挡镇	320,000	660,000	980,000	440,000	140,000	130,000	270,000	980,000	3,300,000	4,560,000
安生乡	260,000	490,000	750,000	340,000	150,000	110,000	150,000	750,000	3,100,000	4,480,000
All county	6,820,000	10,500,000	17,320,000	7,270,000	3,980,000	2,530,000	3,540,000	17,320,000	68,720,000	94,100,000



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Susan Whiting (Ph.D, Michigan; B.A. Yale) is Associate Professor of Political Science and Adjunct Associate Professor of Law and International Studies at the University of Washington in Seattle. She specializes in Chinese and comparative politics, with particular emphasis on the political economy of development.

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