

Values in Land: Fiscal Pressures, Land Disputes and Justice Claims in Rural and Peri-urban China

Susan Whiting

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Abstract

This paper explores justice claims and legal recourse in disputes over land rights—a major source of unrest—in rural China. Local governments' search for fiscal revenue and the concomitant fiscalisation of land create the context for the recent wave of land disputes. The types of dispute and the contexts in which disputes arise shape the ways in which citizens seek recourse to threats to their property rights and shape the kinds of justice claim they make in the process. Citizens whose land rights are threatened by land takings orchestrated by local governments and outside developers are more likely to pursue both distributive and procedural justice claims in court than are citizens whose land rights are threatened by reallocation of land within the community. In the latter case, citizens are more likely to pursue distributive but not procedural justice claims through mediation. These patterns hold in both case study and survey evidence. Distributive justice is associated with the fairness of outcome of a dispute, while procedural justice is associated with fairness of the process of dispute resolution.

Land issues, world-wide, have reached new apogees of salience and divisiveness. Such controversies are not just about who gets land and who does not; instead, fairness and justice are central components of land conflicts (Gibson, 2008, p. 714).

Land disputes are one of the greatest sources of unrest in China today. The State Council (2004, 2007) has expressed official concern about the increasing number of violent incidents involving contracted land. The sense

of injustice on the part of citizens is readily apparent in the widespread unrest surrounding land disputes. This paper explores justice claims and legal recourse in disputes over land rights in rural China. It develops and tests the hypothesis that the types of dispute and the contexts in which disputes arise shape the ways in which citizens seek recourse to threats to their property rights and shape the kinds of justice claim they make in the process. I examine two distinct contexts—both of

Susan Whiting is in the Department of Political Science, University of Washington, Box 353530, Seattle, Washington, WA 98195-3530, USA. E-mail: swhiting@u.washington.edu.

which involve fiscalisation of land—in order to explore the ways in which citizens seek justice in land disputes. Fiscalisation of land refers to the management of land resources by political authorities for the purpose of generating fiscal revenue. This practice has become particularly acute in contemporary China (China Land Survey Planning Institute, 2006). In one context, fiscalisation of land involves land allocation decisions within the community in order to keep agricultural land in production and meet community revenue targets. In another context, fiscalisation of land involves payments to local governments for the transfer of land out of agricultural production to developers—often from outside the community. Distributive justice claims arise in both contexts; however, concerns about procedural justice become much more prominent when disputes involve the transfer of land to outside developers. Citizens whose land rights are threatened by a land taking are more likely to pursue their claims in court than are citizens whose land rights are threatened by re-allocation of land within the community. In the latter case, citizens are more likely to pursue their claims through mediation. These patterns hold in both case study and survey evidence.

Self-interested calculations of costs and benefits are indisputably important in motivating citizens to defend their property rights in land. Indeed, in both contexts explored in this paper, disputes over property rights in land rise to the surface when land values increase, as Harold Demsetz (1967) predicted

Demsetz hypothesized that property rights emerge when some change in the relative value of resources occurs that makes it cost-effective to internalize costs (Merrill, 2002, p. S332).

Indeed, the increasing value of land in both agricultural and non-agricultural uses,

detailed later, is an important premise for the disputes examined here.

At the same time, notions of justice also affect how citizens make legal claims. Gibson suggests that, in handling the dispute

the social context—or more precisely how that context is perceived by those making the judgment—will determine which principle stands out as the relevant principle to follow (Gibson, 2008, p. 701).

Distributive aspects of justice (i.e. fairness of the outcome) include deservingness, need and equality, while procedural aspects of justice (i.e. fairness of the process) include neutrality in decision-making and respect for the status of disputants by the decision-maker (Gibson, 2008; Tyler, 2006).

To develop specific hypotheses about the relationship between the context in which a land dispute occurs and the kind of justice claim asserted, the first two sections of the paper draw on interviews and documentary sources to present case studies of two counties—a poorer, cotton-growing county in Hunan Province of central China, and a wealthier, rapidly industrialising county in Shandong Province of eastern China. As Table 1 illustrates, the rural Hunan county derives about 40 per cent of its GDP from agriculture and only about 20 per cent from industry. Its location several hours by car from the provincial capital and away from major transport nodes has made it difficult to attract and sustain investment in industry. County residents have relied heavily on migrant labour opportunities to generate income. They are sensitive both to trends in migrant labour wages and to policy changes affecting the profitability of agriculture.

By contrast, the peri-urban Shandong county derives only about 5 per cent of its GDP from agriculture and more than 75 per cent from industry, resulting in a per capita

Table 1. Economic structure of case study counties, 2006

	<i>Primary</i>	<i>Secondary</i>	<i>Tertiary</i>	<i>Total</i>	<i>Yuan per capita</i>
<i>Hunan county</i>					
GDP (million yuan)	2 052	1 158	2 116	5 326	9 018.88
Percentage share	39	22	40	100	
<i>Shandong county</i>					
GDP (million yuan)	1 666	21 132	5 005	27 803	38 600.84
Percentage share	6	76	18	100	

Sources: County statistical yearbooks, 2006.

GDP more than four times higher. By the mid 2000s, it was one of the top-performing 100 counties in China, in the top 5 per cent in terms of economic growth (National Bureau of Statistics, 2006). Its location along the major highway linking the provincial capital of Jinan and the port city of Qingdao has fuelled industrialisation and has been a boon to the county and its residents.

While multiple types of land dispute occur in each county, the case studies focus on only one frequently occurring type in each locale in order to shed light on how context affects the nature of justice claims in land disputes. In the Shandong county, the focus is on the local authorities' ability to generate revenue from the conversion of agricultural land to non-agricultural uses, contributing to the increase in disputes over the level and allocation of compensation for land takings. In the Hunan county, the focus is on the legacy of the onerous agriculture tax and its continuing effect on disputes over the assignment of contracts involving agricultural land. The case studies suggest the centrality of distributive justice concerns, addressed through mediation, in land disputes involving contracting of agricultural land and the prominence of procedural as well as distributive justice concerns, addressed through law suits, in land-takings disputes.

To test the hypotheses developed through the case studies, the penultimate section of

the paper presents preliminary data from two waves of representative household surveys in two rural counties in Hunan Province. (Comparable data are not available for Shandong Province.) The sample is a stratified, multistage sample with probability proportionate to size in each of two counties, sampling three townships in each county, two villages in each township and 72 households in each village. The completed sample size is 638, reflecting a response rate of 76.5 per cent. Of the households surveyed, 14 per cent reported experiencing some type of land dispute in the preceding 10 years. Of those, 56 per cent initiated action to address the dispute.

The final section of the paper brings together the findings of the case studies and the survey data to draw preliminary conclusions about the relationship between types of land dispute and justice claims in rural and peri-urban China.

Case Study 1: How Fiscal Pressures Drive Disputes over Agricultural Land Rights in Rural Hunan

Fiscal Pressures

This section demonstrates how pressure to collect agriculture taxes against a background of ambiguous land rights has contributed to

disputes over land rights and a search for justice in rural Hunan.¹ In the case study county, with the decollectivisation of agriculture, the first round of household contracts over agricultural land were in force from 1980 to 1995. Local officials issued a second round of contracts over agricultural land in 1995, and farmers received land use certificates documenting their claims. In exchange for land use contracts, farm households were required to pay taxes and fees; local governments relied on these revenues to finance local public goods. As subsequent paragraphs demonstrate, disputes over agricultural land intensified after 2004, when the abolition of agriculture taxes and other policy changes increased the profitability of agriculture.

Until their recent abolition, agriculture taxes constituted the single largest source of budgetary revenue in the rural Hunan county. In 2003, agriculture taxes accounted for about 40 per cent of budgetary revenue in this county (about 2.5 times the average for counties nation-wide) (see Table 2). County-level officials, under intense fiscal pressure to generate revenues to meet expenditure needs, sought to ensure the full collection of agriculture taxes by assigning fixed quotas for officials of each township to meet (author's interview).² Failure to meet these targets could result in the loss of a leading cadre's position or jeopardise his promotion prospects (Whiting, 2004).

This pressure to generate and collect agriculture taxes also reached below the township to the village, affecting the allocation of land use rights in agriculture (Brandt *et al.*, 2004). Village party leaders were also tasked with keeping agricultural land in production and collecting agriculture taxes. This task became increasingly difficult in the 1990s and early 2000s (Bernstein and Lu, 2003). Given the relatively heavy tax burden on farmers and the relatively low profitability of household

farming in the 1990s and early 2000s, farmers holding land use contracts abandoned the land in growing numbers as they sought work outside agriculture, often as migrant labourers. As one local party secretary put it

Before 1998, many people left for migrant labour because, at that time, agriculture taxes and fees were very high and cultivating the land was unprofitable. The result was that land was abandoned on a large scale (author's interview).

However, village cadres sought to ensure that farm land remained under cultivation for tax reasons.

In some cases, farmers deciding to leave farming made private land transfers (within the agricultural sector) to other local farmers to take over cultivation and to assume the tax and fee burden. In other cases, farmers simply abandoned the land. In these situations, village cadres intervened, transferring the land to other local farmers who would take over cultivation and assume the burden of taxes and fees (author's interview). According to one county official

Township governments and village party committees had to hand up taxes and fees according to land area, but they had no way of generating taxes and fees from abandoned land. Therefore, under the encouragement of the township government, village collectives took back abandoned land and reallocated it to others to plant (author's interview).

In the Hunan case study county, regardless of who initiated the land transfer, there was seldom a written record, nor adherence to any formal procedure for the transfer and registration of land use rights in accordance with the Rural Land Contracting Law and related regulations (author's interviews). In only a small minority of cases, farmers who abandoned farming actually signed agreements to return their land to the village

Table 2. Sources of budgetary revenue

Year	Percentage share of total										Amount (million yuan)	
	VAT	Business tax	Direct land tax	Including taxes	Agricultural taxes	Urban maintenance	Fines	Administrative fees	Sub-total	Other ^a		Total
<i>Shandong county</i>												
2001	18	8	2	57	4	3	1	2	94	6	100	346
2002	26	11	3	27	12	4	1	3	87	13	100	323
2003	26	13	4	19	9	8	4	3	86	14	100	439
2004	26	13	9	13	3	9	7	3	83	17	100	591
2005	34	10	13	9	0	8	1	3	78	22	100	1003
2006	31	9	16	10	0	6	14	3	90	10	100	1402
<i>Hunan county</i>												
2001	6	8	1	9	32	1	7	5	69	31	100	89
2002	5	11	1	4	41	1	6	19	89	11	100	103
2003	5	13	1	3	39	1	7	21	90	10	100	117
2004												
2005	7	20	4	4	0	3	10	31	78	22	100	105
2006	7	18	3	3	0	3	9	20	63	37	100	121

^a Residual.

Sources: County statistical yearbooks, multiple years.

collective (author's interview). Most transfers of land from the original cultivator to the new cultivator were made with nothing but verbal agreements. When village cadres were involved, they sometimes attempted to notify the original cultivator verbally *post hoc*, when the original cultivator returned to the home village for the annual New Year's holiday, for example. Importantly, new cultivators took on the burden of paying taxes and fees to local cadres. Moreover, the authority of local cadres to oversee land transfers without formal procedures went unquestioned by local farmers at the time (Xu and Jin, 2007).

Changes in agricultural tax policy, along with other changes, sparked a marked increase in disputes over transfers of *de facto* property rights in agricultural land. With the symbolically important Document No. 1 of 2004, issued by the Central Committee of the Chinese Communist Party and State Council, the state signalled a set of major new policy initiatives to increase rural incomes and support the agricultural sector. These policies included the immediate reduction and phased elimination of the agriculture tax, increases in agricultural subsidies and increases in rural infrastructural investment. Coupled with increases in prices for agricultural commodities,³ agriculture began to appear increasingly profitable beginning in 2004. Those farmers who had abandoned the land for migrant labour faced a new opportunity structure, affecting their interest in land rights.⁴

The pull factors created by increases in the profitability of agriculture between 2004 and 2008 have been joined by push factors. One push factor was the stagnation of migrant labour wages in the late 1990s and early 2000s. Another push factor was created by the global economic slowdown that began in late 2008, resulting in the loss of factory jobs for migrant workers. As an official of the

Ministry of Agriculture indicated in a March 2009 press report

After rural labourers return to the countryside in large numbers, if they have already transferred their originally contracted land to others and the transfer contract has not expired—especially if there are still crops on the land, then it's very easy for disputes to occur; this is quite unfortunate for social stability in the countryside (Zhang, 2009).

Land Disputes and Approaches to Dispute Resolution

According to a report of the Hunan Province Statistical Bureau

Cases of rural land disputes have increased sharply. After the issuance of Document No. 1 (2004), a new 'planting fever' has swept the countryside. Migrant labourers are returning to their villages wanting land to plant. Those who transferred land are seeking to discontinue these arrangements and resume planting, even to the point instigating disputes—even some involving violent incidents. According to statistics of the relevant prefectural-level government office and its county-level subordinates, there were more than 6000 land disputes in the first half of the year (2004), more than twice the number during the same period of the preceding year (Hunan Province Statistical Bureau, 2004).⁵

In the Hunan case study county as of 2007, the author identified nine households that reported disputes specifically involving village handling of abandoned land. In one of the rural townships in the county, the township head, interviewed in 2008, reported that abandoned land alone accounted for about one-third of all land disputes in his township.

This section discusses how tax burdens shaped not only the distributive justice claims made by villagers but also the processes of dispute resolution undertaken. In making

justice claims, disputants can seek distributive justice (focusing on the fairness of the outcome in recognising the deservingness and needs of all disputants) and/or procedural justice (focusing on the fairness of the process, including the neutrality of the decision-maker and recognition of the status of the disputants). Disputants also face a menu of dispute resolution options; these options range from direct negotiation between disputants, mediation by a third party outside the court system (often a village leader), petitions to government agencies for assistance, litigation or public protest.⁶

Disputes over abandoned agricultural land are more likely to involve mediation and less likely to involve litigation or petitioning than are land-takings cases, for multiple reasons. In abandoned land disputes in Hunan, the parties to the dispute are typically members of the same farm community. Local community officials are implicitly a party to the dispute (motivated by their fiscal concerns, they initiated reassignment of land); in addition, local officials face explicit guidelines from higher-level party and government authorities to mediate disputes in order to prevent them from escalating.⁷ Compensation claims in disputes over abandoned land are typically small and linked to the payment of tax obligations; payment of taxes becomes a central issue of fairness (deservingness) and a basis for compensation in the context of mediation. Formal law is not the governing norm and this approach to community notions of fairness stands in contrast to bargaining in the 'shadow of the law'. 'Black-letter law' does not govern the outcome. Moreover, judges in the county court with jurisdiction over these farm communities seek to avoid volatile cases that may heighten community tensions and affect local political stability. In interviews and documents, local residents, officials and judges recounted the way the disputes came

about and the ways in which disputes were resolved.

Of the nine households who reported disputes over abandoned land in the Hunan county, seven sought to regain land that they had earlier abandoned and which had been reassigned to other households by village cadres. (The other two households sought to defend their occupation of formerly abandoned land.) Of these seven households, four initiated action in response to the dispute.⁸ One household that had earlier abandoned their land undertook direct negotiation with the household occupying the land; this household reported reaching a compromise solution with which they were "relatively satisfied". Three of the four households initiating action sought out village cadres to mediate the dispute. These households reported compromising in the course of mediation with the village cadre; nevertheless, one of these households (which had earlier abandoned their land) was "extremely dissatisfied", because they had to pay hundreds of yuan (compensation for past agriculture taxes paid by the new occupier) as part of the compromise solution. Even among dissatisfied parties to the dispute, it is clear that members of the community accepted the authority of village cadres. Moreover, these cadres were the mediators in every case despite the fact that they themselves were commonly implicated in the dispute (by having reassigned the land) and therefore were neither unbiased nor disinterested.

A separate set of case records from mediation committees of township justice bureaus in the Hunan county research site also document the mediation process and shed additional light on these findings.⁹ First, mediation records indicate that there were typically no written records of the land transfers. Secondly, they show that taxes were a key element in the dispute. One mediation over the disposition of formerly abandoned farm land recounts an

oral statement that the new occupier of the land had had to undertake all the taxes and fees levied on cultivated area: “the burdens levied by land area are all yours” (*mianji tande fudan ye shi nide*) (Case record no. 5). When the original land use rights holder sought the return of the land, the new occupier protested that he had been the one paying taxes and fees over several years: “These [past] few years, the burdens have all been mine; this year the contributions to repair roads—all these I paid” (*zhei ji nian de fudan dou shi wo, jinnian wei xiu gonglu de juanzi, dou shi wo chude*). Mediator, “You mean to say that now you are not willing to return the [land] area?” (*nide yisi jiu shi xianzai bu ken jiaohuan mianji?*). New occupier, “Yes” (*dui*). Because the new occupier had shouldered years of tax and fee burdens, he refused to return the land to the original land rights holder. In other words, such an outcome would be unfair by the criterion of distributive justice. The mediator proposed that the land should be returned to the land use rights holder after the coming harvest, but also that some compensation from the land use rights holder to the new occupier was appropriate—although not legally mandated *per se*—because the new occupier had undertaken all the taxes and fees over several years.

Interviews with mediators suggest that compensation from the land use rights holder for taxes and fees paid by the occupier is often part of a successful mediated settlement. The land use rights holder may be dissatisfied about having to pay such compensation but, in mediation, it is a common condition for return of land to the use rights holder, leading to a more equitable distribution of resources than would have occurred in the absence of any compensation to the new occupier. Although the new cultivators never had formal land use rights to the occupied land, such compensation is a reflection of

their past adherence to the authority of village cadres and their past shouldering of the tax and fee burden of the village and locality. Such compensation—not found in the letter of the law—appears to be a key element in gaining ‘buy-in’ by the new cultivators who will lose the land they currently occupy, keeping the peace and maintaining political stability in the locality. A 2008 policy document, affirmed that land use contracts and certificates from the second round of land contracting (1995) would be the basis for returning land to those who had abandoned it, but that compensation to new cultivators should be paid

In situations in which rural households abandoned their land because the [tax and fee] burden was excessive in earlier years and because cultivation was unremunerative but have now returned and want to cultivate the land, their original land rights should be affirmed. ... the returning original farmers should pay the new cultivators appropriate compensation. While affirming the rights of the original land use contract holders, the contract holder must shoulder his obligations.¹⁰

None of the households interviewed and few of the records reveal escalation to the court system in cases involving disposition of abandoned land. However, a county justice bureau official interviewed by the author cited one instance of litigation in such a case, a case in which a family holding a valid land use certificate from the second round of contracting in 1995 had abandoned its land and neglected to pay relevant taxes and fees (author’s interview). Concerned about meeting tax targets, cadres reassigned the abandoned land in order to facilitate collection of the agriculture tax. Cadres reallocated the land to a family with two young children without making any formal changes to the pre-existing land contract. Rather, such reassignment had political rather than legal sanction. The young family worked

the land and paid the accompanying taxes and fees. After the abolition of the agriculture tax, the first family—holders of the formal land use right certificate—returned to reclaim their land and a dispute with the young family and the village cadres ensued. The certificate holders insisted on suing in the local court. The plaintiff won a favourable judgement on the basis of the Rural Land Contracting Law, privileging land use certificate holders, whose rights, in principle, remain unchanged for 30 years. No compensation was awarded to the young family occupying the land. When the family holding the land use certificates appeared with the judgement to take back the land, villagers rallied in support of the young family occupying the land and a violent incident ensued. The court judgement was not intended to provide distributive justice and the court had no effective way of enforcing the judgement.

Local cadres were, implicitly, party to the dispute, since they had reassigned the land. The court, in finding for the plaintiff, in effect found against the local cadres. Moreover, villagers felt that ‘morality’—but not the court—was on the side of the young family who had farmed the land, paid the taxes and fees, and supported their young children, all with the political sanction of local cadres. Despite the fact that the case had been adjudicated in court according to relevant laws and procedures, villagers felt the outcome was not consistent with distributive justice. As Tom Tyler (2006) highlights, distributive injustice claims are often accompanied by discontent and popular dissatisfaction.

Ultimately, the resolution was mediated by local officials, who sought to contain the conflict. Local cadres felt justified in their earlier actions and felt pressure to prevent further unrest and restore community harmony. Under pressure from local officials, the plaintiff agreed to rent the land to the

young family as long as their children were still in school, although the rent would be nominal. Ultimately, in lieu of regular rent, the plaintiff accepted a one-time payment. The county justice bureau official indicated that this case informed the local guiding thinking establishing that courts should not accept cases of disputes over abandoned land and that such cases should be mediated by relevant government agencies (author’s interview). In determining this new local policy, local officials made reference to the State Council document issued in 2004, which similarly emphasises mediation over litigation of such land disputes in the interest of maintaining political stability.¹¹ Separately, a judge in the Hunan county basic-level court cited internal guidelines in force at least as of 2007, prohibiting courts from taking these land dispute cases (author’s interview). He emphasised that the court was not effective *vis-à-vis* the government, since the court itself was—in reality—a part of the local party-state. He indicated that, when such cases came up, the court instructed plaintiffs to use the petition system or to seek mediation. The role of the courts in adjudicating disputes according to legal principles is not necessarily consistent with maintaining political stability and, in the case recounted by the county justice bureau official, made conflict more acute.¹²

Case Study 2: How Fiscal Pressures Drive Disputes over Land Takings in Peri-urban Shandong

Fiscal Pressures

This section demonstrates the very different dynamics in a peri-urban, industrialising county and the way in which fiscal pressure to generate revenues through land use policies affects farmers’ land rights and contributes to land disputes. Since major

reforms initiated by the central government beginning in 1994 and continuing through 2002 centralised control over fiscal revenue, local governments have been squeezed by a widening gap between available revenues and expenditure needs (Wong, 2009). Peri-urban counties in coastal areas, however, have been able to exploit increasing land values to generate revenues to close this fiscal gap. Government land requisitions for real estate and industrial development are concentrated in coastal provinces and are a major source of on-budget and off-budget revenue as well as a major driver of land disputes (Ping, 2006).¹³

The centralisation of control over revenue (including corporate and individual income taxes) and the subsequent abolition of agriculture taxes has affected the Shandong case study county, but the long-term effects of these changes were smaller here than in many other areas, in part because of the county's ability readily to exploit the value of its land for non-agricultural purposes. In 2001, locally controlled income taxes accounted for 57 per cent of local budgetary revenue, dropping to 27 per cent in 2002, following centralisation measures (Table 2). The reallocation caused a drop in *total* revenue in 2002, but by 2003 the county had already recovered, exceeding 2001 local budgetary revenue by nearly 100 million yuan due to dramatic growth in local VAT tax and business tax revenues as well as urban maintenance and construction tax revenue.¹⁴ By 2003, the county had stopped collecting the agricultural special products tax and the slaughter tax and, by 2004, had ceased collection of the agriculture tax. In 2004, the agriculture tax accounted for only 3 per cent of county budgetary revenues (compared with 40 per cent in the Hunan case), however; so, the impact was more minimal than in less industrialised localities.

The large increase in VAT and other taxes also reflects in part the growth of the single largest enterprise located in the case study county, also, reportedly, among the largest textile plants in the world by area. The enterprise occupies more than 310 hectares of land in the region and employs 150 000 workers (author's interview). According to a representative of the National Tax Service office, it is the single largest source of taxes in the county, providing 50–60 per cent of tax revenues. In addition, the conglomerate has attracted a large number of related enterprises to the county.¹⁵ The growth of this firm is related to the expansion of local development zones (termed 'zone fever') occurring in the case study county, as elsewhere in coastal areas (Cartier, 2001; see also Liu and Tao, 2007, p. 176).

One way in which local governments—particularly in wealthier, peri-urban areas like this one—cope with revenue inadequacy is by generating revenue through their ability to requisition land 'in the public interest' (Land Management Law). Local officials cite the creation of job opportunities and new revenue-generating economic activity through conversion of agricultural land to industrial or commercial purposes as the main motivations for land requisitions. In recent years, the case study county has requisitioned land to develop industrial parks and economic development zones and has approved major real estate development projects. Official data on the area of farm land requisitioned for these purposes are available beginning in 2004. These data (Table 3) show that from 2004 to 2006, between 3 and 5 per cent of the county's arable land was requisitioned each year, using land transferred from local farmers (author's interview).

These land requisitions can generate fiscal revenue in a number of ways (Zhang, n.d.; Liu,

Table 3. Requisitions of arable land, Shandong case study county

Year	Total arable land (area)	Arable land requisitioned (area)	Arable land requisitioned (percentage)
2001	1 066 262	n/a	n/a
2002	1 054 650	n/a	n/a
2003	1 009 271	n/a	n/a
2004	952 187	28 249	3.0
2005	950 384	41 654	4.4
2006	950 096	45 727	4.8

Sources: County statistical yearbook (various years).

2007). First, local governments use low-priced land to attract investors in industry and real estate as a means of increasing GDP growth and taxes.¹⁶ Local officials in the case study county highlighted their “great flexibility” in policies with respect to land (author’s interview). In response to such local government tactics, the 2007 Shandong Province State Land Resources Meeting highlighted the problem of local governments’ reducing or exempting land transfer fees in the name of “attracting investment” (*budeyi ‘zhaoshangy-inzi’ deng mingyi jianmian tudi churang shouru*). It called for the strict implementation of minimum standards for transfer of land for non-agricultural uses.¹⁷

Calls for stricter regulation and monitoring of local government land management practices notwithstanding (Pieke, 2005), in the case study county, tax revenues directly tied to land have increased rapidly in a short period of time: in only five years, the urban land use tax, farmland occupation tax and deed tax together grew from 1.6 per cent of local budgetary revenue in 2001 to more than 15 per cent in 2006 (Table 2). Taken together, these taxes exhibited an average annual growth rate of 110 per cent during this period. In terms of revenue sources indirectly linked to land and land development, two industries alone—the construction and real estate

sectors—accounted for nearly 50 per cent of all business taxes in 2005 and 2006.¹⁸ One official highlighted the extent to which taxes from the construction industry followed flexible local land management policies (author’s interview). Following the marked increase in requisitioned land in 2004/05, the county also experienced a more than doubling of VAT tax revenues in 2005 (Tables 2 and 3).¹⁹

Secondly, land transfer fees generate substantial off-budget revenue for local governments (Ping, 2006).²⁰ A special study commissioned by the State Council in another ‘top performing’ county found 1.18 billion yuan from land trades in 2003 alone, equivalent to nearly one-quarter of budgetary revenue (Zhang Y., n.d.). Nation-wide, these funds were estimated at 615 billion yuan in 2004, equivalent to 3–4 per cent of GDP (Ping, 2006). The land bureau in the Shandong case study county reported stable land transfer fees of about 100 million yuan annually, equivalent to less than 10 per cent of 2006 budgetary revenue. This politically sensitive figure may be understated, because land transfer fees are supposed to be subject to official fiscal management and yet often serve as off-the-books slush funds instead. Indeed, in 1997, the Shandong provincial government emphasised that the *public finance bureau* should collect all fees, including all funds over and above

compensation for farmers.²¹ However, in the case study county, the director of the county-level public finance bureau stated baldly that his office had “no control over” (*guanbuliao*) these funds (author’s interview).

Finally, land transfer fees are important revenue sources not only for local governments but also for village officials.²² Recent studies have begun to document “the important and increasing role that asset and land sales play as a source of village finance” (CCAP, n.d.). Village cadres themselves stand to benefit from land transfer fees that pay their salaries and cover their administrative expenses. Chan (2006) reports that land transfer fees are commonly shared across levels, with the county and township levels controlling about 60 per cent, the village controlling about 30 per cent and villagers receiving only about 10 per cent.

Land Disputes and Approaches to Dispute Resolution

Since agricultural land must first be converted to state land before being put to non-agricultural uses and since there is frequently a large gap between the valuation of land for compensation to farmers and the valuation of land for transfer to developers, local cadres can generate and control significant revenues as middle men in the land transfer process.²³ They subsequently become party to disputes with villagers, when villagers raise concerns about the procedures by which land was transferred or about the amount of compensation they receive.

According to the state land management bureau in the Shandong case study county, in anticipation of land takings, officials convene meetings of both the nominally elected village committee and the village party committee and then convene a meeting of all village households (author’s interview). Although the land management law requires approval by two-thirds of villages for changes to land

contracting arrangements, the bureau claims to require 95 per cent approval in this county. However, among the issues in dispute in land takings in the county are the failure of the village leaders to obtain the required approvals from villagers in advance of land takings, as well as the arbitrariness of village leaders in adjusting remaining arable land holdings among households in the wake of land takings. In contrast to the respect accorded the authority of village leaders in abandoned land disputes, their authority is explicitly questioned in the context of land takings. Moreover, while relevant laws require villages to provide documentation of property rights in land, another issue in dispute is the failure to provide land use certificates to document property rights of village households reflecting readjustments of land holdings in the wake of land takings. In one township where these problems were particularly acute, all cadres were subject to an administrative investigation and rectification to correct serious violations of the relevant laws involving land takings.²⁴

Another central issue in dispute is the amount, dispensation or misappropriation of compensation funds. Where land takings involve formal written agreements in the wake of consultations with village households, compensation per unit area is made explicit and the agreement becomes the basis for legal claims of households *vis-à-vis* the village.

Land takings disputes appear more likely to escalate to the courts than other types of dispute. The existence of writings makes claims more readily litigable. The relatively high value of land compensation in peri-urban areas may offset the cost of litigation. Moreover, the relatively high potential value of land compensation may bring to the fore violations of property rights that would have been ignored in other circumstances. Lawyers are more likely to be involved. Finally, the

presence of resource-rich industrial or commercial developers from outside the local community may contribute to the undermining of local authority relationships or trust-based relationships. Indeed, even assuming no corruption, village cadres and government officials have direct fiscal interests in controlling land transfer fees. In turning to the courts, villagers seek an arbiter that, at least in principle, can constrain government and village cadres.

While petitioning is an alternative to litigation, local officials are under significant pressure to contain conflict and prevent petitions to higher-level government agencies by citizens involved in land disputes. A township party secretary in the Shandong county highlighted the importance of maintaining political stability

The evaluation for political stability is pretty strict: [they record] petitioning and disturbances—especially whether they have reached a higher-level government. There's a monthly report, and at year-end, if there's been a serious disturbance, it's a single-item veto; you don't get any other bonus, even if the economy developed well (author's interview).

This pressure contributes to repression of petitioners by local officials (Minzner, 2006; Li 2008).

Courts, on the other hand, have accepted at least some land takings cases (as reflected in available case reports), despite overall emphasis on mediation and on maintaining political stability. In a commentary by judges of the basic-level court in the Shandong case study county, they advocate pre-trial mediation and highlight the importance of mediation by village cadres in particular.²⁵ However, as the subsequent examples show, village cadres themselves become parties to the dispute and may lose the trust of villagers, leading villagers

to seek recourse in the formal institution of the courts.²⁶

For example, the basic-level court in the case study county accepted a land compensation civil dispute stemming from a real estate development project initiated in 2006. The developer provided the village with compensation for the total area of land taken, including a one-time payment of 30 800 rmb (about US\$3850 in 2006) per mu to go to each villager whose land was taken. This arrangement was documented in a formal written compensation agreement. At issue in the court case was compensation for 1.22 mu (1 mu equals 0.667 hectares) of 4.37 mu of land contracted to the plaintiff in a land use contract dating from 1998.²⁷ In 1999, the village illegally transferred the 1.22 mu of agricultural land to a third party, without the knowledge or approval of the land use certificate holder. This illegal transfer became an issue only after the land acquired a high cash value following its conversion from agricultural (individually contracted collective land) to non-agricultural (state) land for development as commercial real estate. When the land use certificate holder did not receive any compensation (at 30 800 rmb per mu) following the conversion of the agricultural land to commercial real estate, he sued the developer, the village committee and the third party to whom the village had earlier transferred the agricultural land. The court found for the plaintiff, but found only the village committee liable for the full amount of unpaid compensation. The plaintiff found recourse in the courts, receiving a total of 37 576 rmb (about US\$4700 in 2006) in compensation for 1.22 mu of requisitioned land.

In another example, the basic-level court in the case study county accepted another land compensation civil dispute in which arable land was taken for the industrial park. In this case, the village did not recognise the owner

status of a divorced woman with land rights in the village, giving the compensation instead to her former husband's family. The divorced woman sued to enforce her rights to compensation and the court found in her favour.²⁸

A higher-profile land case in the county involved a challenge to the basis for the land taking itself.²⁹ The dispute arose when local officials took 130 mu of arable land 'in the public interest' (making reference to road building) that was immediately developed as commercial real estate. A villager filed a civil suit against the village claiming that the village failed to solicit the required approval of the villagers. While Chinese scholars have documented that local officials commonly—but incorrectly—treat rural land as effectively owned by the state (Shi, 2009), this suit sought recognition of villagers' status as the collective owners of the land. The villager also engaged a lawyer from Beijing to represent him. As new evidence emerged, the villager filed an administrative law suit, claiming that the township and county governments had also violated relevant laws. According to the Land Management Law and Urban Real Estate Management Law, for-profit development of land on this scale requires approval by the central or provincial government—approval that was neither sought nor received by the local government—and formal inclusion in regular urban planning processes—inclusion that did not occur. After losing his case in highly politicised deliberations in the basic and intermediate courts, the plaintiff was finally successful in the provincial high court in 2007. The high court victory followed an investigation at the behest of the villager by the provincial People's Congress and a related administrative review by the provincial-level State Land Resource Management Bureau that determined the land taking to be illegal.³⁰ Chinese media and Internet coverage of this dispute focuses on the rights consciousness of

the plaintiff and his commitment to receiving a full hearing of both the civil and administrative aspects of his dispute.

Procedural justice claims, focusing on the neutrality of the decision-maker and the recognition of the plaintiff's legal status, are much more prominent in land takings disputes than in abandoned land disputes. In the case of both the divorced woman and the villager just described, part of dispute was the failure of the relevant authorities in the Shandong case to recognise the status of disputants. In turning to the courts, the plaintiffs sought a venue where their status would be recognised. By contrast, in the case of abandoned land disputes in the Hunan case study, village cadres recognised the status and claims of both parties to the disputes and brokered a compromise solution intended to provide distributive justice.

Preliminary Tests of the Hypotheses

This comparative case study demonstrates that the fiscalisation of agricultural land can result in multiple types of dispute over property rights. It suggests that the specific nature of the dispute influences the kinds of justice claim that citizens make. Procedural justice claims, manifested in court-based adjudication, are significantly more prominent in land takings cases than in abandoned land cases. In a first test of this hypothesis, I compare mediation and litigation rates in actual land takings compensation and abandoned/transferred land disputes in a household survey ($n = 638$) representative to the county level and conducted in two counties (one the case study county, the other a county closer to the provincial capital) in Hunan Province in 2007. Overall, 14 per cent (89) of the 638 households reported experiencing some kind of land dispute in the preceding

10 years; 4 per cent specifically reported land takings compensation disputes and 2 per cent specifically reported abandoned land disputes. While households with both types of dispute attempted mediation (39 per cent in land takings and 50 per cent in abandoned land disputes), 19 per cent of households in land takings disputes went to court, while no households in abandoned land disputes did so, a difference significant at the 0.02 level (chi-squared). In the second, 2008, wave of the household panel survey in Hunan Province ($n = 621$), respondents were randomly assigned to two groups for hypothetical—as opposed to experiential—questions. One group was presented with a hypothetical question concerning a typical dispute over abandoned land, while the other group was presented with a hypothetical question concerning a typical dispute over land takings. Respondents were asked about which actions (negotiation, mediation, litigation, petition, protest, etc.) they would take, if any, in the face of such a dispute. Respondents might be expected to evince a greater willingness across-the-board to go to court in an abstract, hypothetical scenario, since they would not be confronted with real costs, community pressures or political obstacles. However, comparing the responses of those presented with a hypothetical land takings dispute and those presented with a hypothetical abandoned land dispute, nearly 10 per cent more of the respondents presented with a land takings dispute indicated the intention to go to court, a statistically and substantively significant difference.³¹ Moreover, the survey also probed the reasons for households' choices. The top three reasons given for going to court were: trust in the court (*xinren fayuan*); fairness of the court process (*fayuan pan shi gongping*); and, appropriateness of courts for handling legal matters (*sheji dao falü de shi jiu shi shang fayuan jieju*).³² The top three reasons

given for seeking mediation were: trust in the mediator (*xinren tiaojieren*); authoritative-ness/effectiveness (*you quanwei, guanyong*); and, customary practice (*women zheli xiguan zhemme zuo*). These preliminary findings support the hypothesis that different types of dispute, even within the same community, affect justice claims and recourse to courts and the formal legal system.

Conclusion

Fiscalisation of agricultural land results in multiple types of dispute over property rights. Disputes within the agricultural sector over abandoned land are more prominent in the rural, agricultural county in Hunan. They came to the fore after the value of land in agricultural uses increased after 2004. These disputes are embedded within the political confines of rural communities. In this context, despite the promulgation of major legislative acts intended to strengthen farmers' recourse to the courts, few farmers in disputes over abandoned land found recourse in the courts. Moreover, mediation of abandoned land disputes resulted in a different allocation of resources than mandated in 'black-letter law'—allocations of resources that more closely accorded with community norms of distributive justice. Specifically, mediated outcomes typically awarded compensation in land disputes to farmers occupying land who had paid taxes even though they lacked a legal land use certificate. While receiving compensation in the course of the dispute, these farmers nevertheless were required to return the land to the original certificate holders.

Disputes over takings of agricultural land for non-agricultural uses are most prominent in the peri-urban, industrialising county in Shandong. These disputes reflect the high value of land in non-agricultural uses, which local governments readily exploit to

generate fiscal revenue. While based in the village political economy, these disputes also reach outside the village and entail written agreements involving outside parties. Local residents question the neutrality of village officials, who benefit financially from land takings and who fail to recognise the legitimate status of the residents, undermining the effectiveness of these officials as mediators and highlighting the importance of the courts as possible venues in which to seek procedural justice. Villagers turn to the courts because they believe that the judge will serve as a neutral, third-party arbiter and will accord respect to their status as citizens with rightful claims. Indeed, one of the main reasons survey respondents gave for going to court was the fairness of the court process. This is not to say that courts succeeded in meeting these expectations, but rather that, in the context of land takings, procedural justice is as important as distributive justice in villagers' attempts to resolve their disputes.

Notes

1. The introduction and parts I and II of Ho (2005) provide excellent background on these issues.
2. For a thorough review of the fiscal pressures facing local governments in China, see China Development Brief (2007); Wong (2009).
3. Global cotton prices, for example, increased from about 40 cents per pound in 2002 to about 60 cents per pound in 2004, after years of declining prices (Baffes and Gohou, 2005).
4. Interviews with farmers and local officials reflect the changed opportunity structure. Prior to 2004, accounts of gross receipts per mu in the case study county ranged from 500 to 900 yuan. Taxes and fees were consistently reported at approximately 300 yuan per mu, with costs approximately 200 yuan per mu, leaving meager net receipts of 0–400 yuan. After 2004, accounts of gross receipts per mu ranged from 1500 to 2000 yuan. (author's interviews).
5. This report refers to the prefectural-level unit in which the case study county is located.
6. State Council Document 2004 No. 21 refers to experiments in arbitrating land disputes by part-time arbitrators with the county agriculture bureau, subsequently formalised in the Rural Land Contracting Dispute Arbitration Law now under consideration (*Zhonghua renmin gongheguo nongcun tudi chengbao jiu fen zhongcai fa (songshengao)*, 9 March 2007). However, there is no evidence of arbitration as an available option in the case study counties.
7. From the perspective of a township or village official, escalation includes disputes visible at the county level, including petitions to county government agencies, litigation at the county's basic-level court or protests large enough to elicit a county-level response (author's interviews).
8. In the other three cases, the household newly occupying the land initiated action to resolve the dispute.
9. Case records constitute a convenience sample of 30 disputes recorded in justice bureau records in the Hunan county.
10. Translated from a 12 March 2008 policy document prepared by the County Economic Management Office (*Xian jingji guanli bangongshi*) in the Hunan county. In discussing compensation, the statement also makes reference to compensation to new cultivators for productivity-enhancing improvements to the land.
11. Indeed, a party official in the Hunan county reported that public order has become a primary criterion in job performance measures for local party leaders (author's interview).
12. This view is echoed by Zhu Suli (2000) in his widely cited book, *Sending Laws to the Countryside (Songfa xiexiang)*.
13. Liu Mingxing and Tao Ran find that
 In richer regions, local governments, especially those at the county and township level [*sic*], are generally able to provide decent public goods and services to residents and businesses, since they not only enjoy higher tax revenues coming from the development of non-agricultural sectors, but can draw on additional high income

- from the sale of rights to develop local land (Liu and Tao, 2007, p.169).
14. County Statistical Yearbook (various years).
 15. These include seven additional firms with output valued at over 100 million yuan, 16 with output over 10 million yuan and 87 with output over 1 million yuan (see: Shandong zouping's Weiqiao Group allows 150 thousand to go 'from rural to urban' (*Shandong zouping weiqiao chuangye jituan rang 15 wan ren 'nongzhuanfei'*). (<http://www.texnet.com.cn/2007/01/22/151724.html>; accessed 13 February 2008).
 16. 2007 Shandong Province State Land Resources Meeting (2007 *shandong quansheng guotu ziyuan huiyi*).
 17. In 2004, 31 August was set as the national deadline after which local governments were instructed to end negotiated pricing for land for industrial use and to implement competitive bidding, auctions or public listings. "Because these funds lack Ministry of Finance oversight, they easily shade into corruption; real estate developers, for example, may provide kickbacks to local government officials who make available land at low prices, shortchanging the farmers who lose access to the land in the process" (Whiting, 2007).
 18. County Statistical Yearbook (*xian tongji nianjian*) (2005, 2006). Note that the totals for business and income taxes by sector do not match the totals for business and income taxes reported elsewhere in the same source; totals for all other taxes by sector do match the total for all other taxes reported elsewhere in the same source.
 19. According to the party secretary of one township in the case study county, as higher-level monitoring of land management practices tightened in late 2007, it became more difficult to use low-priced land to attract investment and the break-neck growth in tax revenue slowed concomitantly.
 20. According to this study of land transfer fees, conducted in 2004, Shandong was one of the provinces generating the most off-budget funds from land transfers.
 21. Notice Regarding Strengthening Collection Management of Transfer Fees for Use Rights over State Land, Shandong Provincial Government (1997).
 22. Villages are not constitutionally defined as part of the formal government hierarchy, although their leaders are integrated into the system through membership in or oversight by the ruling Chinese Communist Party.
 23. Compensation for takings of collective land is divorced from the real market value of the land. It is set in the Land Management Law at six to ten times the average yield, while compensation for resettlement costs is set at four to six times the average yield (Land Management Law 1998, art. 47). Subsequent documents seek to bring compensation more in line with the cost of social security for farmers dispossessed of their land (Property Law 2007, art. 42).
 24. "Solidly develop specific solutions to prominent problems of rural land" (*zhashi kaizhan nongcun tudi tuchu wenti zhuanxiang zhili*) (<http://www.binzhou.com.cn/Article/ShowInfo.asp?ID=207>; accessed 14 July 2008).
 25. China Court Network (*Zhongguo fayuan wang*), 10 October 2008.
 26. Javeline and Baird (2007), writing about Russia, suggest that the perception that they are not well represented by political institutions is a major factor motivating citizens to litigate.
 27. "Farmers angrily sue village committee for taking back contracted rural land on its own authority" (*zanzi shouhui fabao tudi cunmin yuangao cunweihui*). Anhui Rural Network (*Anhui nong wang*), 1 January 2008 (website accessed 14 July 2008).
 28. "Father-in-law forcibly takes daughter-in-law's compensation with no legal basis court orders return" (*gonggong qiang ling erxi buchangfei yu fa wuju fayuan pan guihuan*). Shandong Talent Network (*Shandong rencai wang*) 28 November 2006 (website accessed 14 July 2008).
 29. "Chaotic administration of Shandong development, intermediate court operates as it pleases" (*Qilu kaifa luan xingzheng erji fayuan suiyi xing*). (<http://xuguoxianglawyer.blog.sohu.com>; accessed 11 November 2008).
 30. "Shandong villager finally achieves victory in eight-year [effort at] rights protection" (*Shandong cunmin weiquan banian zhong huo shengli*). China's Private Sector Technology and Economy (*Zhongguo minying keji yu jingji*), No. 6 (2008).

31. Seven per cent more in the land takings 'treatment' group indicated they would go to court even without a lawyer, while 8 per cent more in this group indicated they would go to court if they had the assistance of a lawyer (both differences significant at the 0.05 level or better (chi-squared)).
32. The top three reasons respondents gave for *not* going to court were: prior resolution of the dispute by other methods; cost; and, litigation was not the customary practice.

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