

incentives to permit local policy makers to embrace the political risks inherent in bottom-up policy experimentation” (p. 210). This statement, indicating a departure from the policymaking process and governance model under Deng as well as under Jiang Zemin and Hu Jintao, opens new areas of inquiry that could be further pursued.

This is an interesting analysis of unorthodox policymaking in China and a must for everyone interested in China’s unique development process. The volume is also highly recommended for students of comparative politics. One can find the original versions of the various chapters elsewhere, but it is useful to have them collected in one volume.

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Rural Land Takings Law in Modern China: Origin and Evolution

CHUN PENG

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Focusing on rural land takings law, Chun Peng has produced the rare doctrinal study that will be appreciated by scholars of both law and social science. He analyses the “historical lineage” of the current legal framework governing rural land takings and finds “no substantial alteration” (p. 110) from China’s first (1954) constitution to the current (1982) constitution and contemporary land laws. The core of the argument begins with chapters four and five, which focus on Article 13 of the 1954 Constitution, examining its relationship to East Germany’s 1949 Constitution, China’s 1915 Land Acquisition Law, and the KMT’s 1928 Land Expropriation Law, among others. Chapters six and seven focus on Article 10 of the 1982 Constitution and make the case that it is not a drastic departure from the 1954 Constitution. In light of the minor role of the constitution in the functioning of the Chinese legal system, specific constitutional underpinnings of land law may get more attention than they deserve. Most insightfully, Peng draws a contrast with the classical liberal tradition to identify a social function of property that prioritizes national development over individual rights.

Peng identifies four enduring features of China’s land takings law. First, state plans regarding land are in the public interest by definition: “[u]nder the socialist principle, the state is the embodiment of public interest, which is superior to and at the same time in harmony with private interests” (p. 208). The state, through economic and, more recently, spatial planning, undertakes the mission of development (i.e. urbanization and industrialization) on behalf of the people. Second, expropriation decisions are essentially non-justiciable, according to Peng, although some types of administrative litigation involving land takings have increased over time (p. 253). “[F]or a variety of reasons [that Peng discusses], both the national and local courts in China have so far failed to take on the task” of reviewing expropriation decisions (pp. 263–64). Third, voluntary transactions of land were forbidden during socialist transformation in the mid-1950s, and since then the state has exercised a monopoly on the conversion of rural to urban land for non-agricultural uses (p. 133). This monopoly is a reflection of the “rural–urban divide, under which rural collectives carried out agricultural production to serve industrialization that was the sole responsibility of state government” (p. 219). Fourth, compensation for the taking of rural land is determined by subsistence or livelihood needs. Peng argues that, legally, rural land “serves not as a return-

maximizing investment or commodity, but a source of welfare and social security to the peasants” (p. 238). The historical lineages are not always crystal clear, but Peng makes a persuasive case. Overall, this legal framework, which he claims has been consistent over the course of six decades, endows the state with largely unconstrained power to manage land.

Peng acknowledges that the socialist, planned-economy logic of China’s land regime faces political, economic, and legal challenges in the present. In chapter eight, he touches on the issues of “small property rights” (*xiaochanquan*; that is, the informal use of rural land for urban housing); quotas for conversion of rural to urban land and their evasion by local governments; and experiments to allow rural construction land to enter the urban market without formal expropriation by the state. Peng recognizes the tensions in land law introduced by post-Mao reforms without advocating a course of action to resolve them.

Peng’s introduction and conclusion bookend his doctrinal analysis with a critique of the existing literature on rural land takings in China, which he characterizes as embedded in the transition paradigm (after Thomas Carothers, “The end of the transition paradigm,” *Journal of Democracy*, 2002). Peng’s book has no bibliography, alas, which makes the literature review and documentary analysis less accessible to the reader. For Peng, contributors to this literature see Chinese law through an exclusively Western lens, interpreting Article 10 of the 1982 Constitution as China’s “takings clause,” analogous to the Fifth Amendment to the US Constitution. Therefore, they assume, according to Peng, that Chinese takings law should similarly protect *de facto* – albeit not *de jure* – private property against the grasping hand of the state through a popular notion of the public interest, market-based approach to just compensation, and commitment to rule of law, including judicial review. Viewed in this way, however, sociological and doctrinal scholars find Chinese law to be “ineffective” and “defective” (p. 24), respectively. By contrast, Peng rejects the idea that “the core function [of Article 10] ... is [or should be] to protect land rights of rural collectives and residents from the expropriation power of the state” (p. 12).

From an epistemological perspective, Peng concludes that the “comparative approach is likely to blind us to those legal experiences that are unique to China ... and cannot be comprehended through comparison” (p. 25). This is an unfortunate conclusion to draw, since it is through comparison – identifying and analysing variation (differences as well as similarities) in law and practice – that scholars can best explain patterns in socio-legal phenomena and understand their preferred single cases. Peng’s polemical tone in the introduction and sweeping rejection of a comparative perspective may blind readers to the important insights in this fine doctrinal analysis.

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Legal Lessons: Popularizing Laws in the People’s Republic of China, 1949–1989

JENNIFER ALTEHENDER

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Jennifer Altehenger’s fine book details government efforts to popularize law in the People’s Republic of China between 1949 and 1989. Using a rich array of archival