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A Theorem on Dynamic Disequilibrium: Debunking Path Dependence and Equilibrium via China’s Urban Property (1949-1998)

Peter Ho

Abstract

Neo-institutionalism has had a lasting influence on the study of property rights, with particular reference to real estate (i.e. land and housing). In this regard, two concepts need mentioning: equilibrium and path dependence. The former posits that institutions, such as a cadaster or private ownership, are the balanced outcome of actors’ interactions. The latter hypothesizes that institutions can become historically “locked into” structures of economic inefficiency, such as in the case of informal tenure and sharecropping. This paper questions these notions, and in contrast, proposes a Theorem on Dynamic Disequilibrium. Put differently, it conceptualizes institutional change as an endogenous, ever-changing and conflicting process in which no stable status is reached, yet, by which the *rate* of change differs. The paper employs detailed economic- and legal-historical analysis of Chinese urban real estate covering close to 50 years. It is shown that the current lay-out of China’s land and housing ownership was shaped by actors’ endless conflict and bargaining. This evolutionary process culminated in a constitutional debate on nationalizing all land; rural *and* urban. Markedly, 33 years after Mao took control the competent state agency still advocated acknowledging *private* land ownership in the cities. An important issue featuring in this debate is ex-ownership. Against the background of China’s renewed efforts to establish a national cadaster, the paper’s findings imply that titling and privatization might run into problems, lest role and *function* that institutional changes have played in history are accounted for.

Keywords: Realty; home ownership; land registration; lock-in effect; historical institutionalism, economic and constitutional history; land rights

I. Introduction

Neo-classically trained economists and political scientists have long sought to understand why property rights and institutions persist over time.¹ In this regard, persistent institutions have been conceptualized as the equilibrium of actors’ strategic interactions (e.g. Shepsle, 1979; Parsons, 1951). This might appear logical for formal,

¹ As Furubotn rephrased Libecap’s perspective, the question is “why seemingly “irrational” or “perverse” structures of property rights are adopted and are able to persist in society” (Furubotn, 1989: 25). A typical example of this line of reasoning is apparent in (Kuran, 2012: 1088).

private and secure property rights – institutions widely seen as *efficient* from a neo-classical and neo-institutionalist point of view (e.g. Weimer, 1997; De Soto, 2000). Yet, an immediate problem arises when institutions persist that are regarded as *inefficient*: informal, common and insecure property rights. Such institutions should have developed into more efficient arrangements by principle of teleology and competition (North and Thomas, 1973; Hannan and Freeman, 1977; Hawley, 1968; Alchian, 1950). Then, why didn't they?

One of the explanations is that of path dependence, which posits that past institutional trajectories narrow future developments.² Institutions can become “locked into” a historically determined state of inefficiency (Mahoney, 2000: 509). Simply reasoned, when *efficient* institutions persist it is regarded as equilibrium, whereas when *inefficient* institutions persist (i.e. “stagnate”) it is seen as historical “lock-in” that prevents equilibrium from arising. That argument seems to suffer from an apparent fault. To further the debate it is argued that notions of causation *and* stability might need to be seen in a different light.

For one, the article postulates that the genesis and mutation of institutions defy separation into “historical cause” and “path-dependent effect”, as they result from *endogenous*, spontaneously ordered interaction. Thus, opposed to the idea that institutions are a matter of *intentionality* and externally enforceable choice (as posited by, e.g. Rodrik, 2007; Acemoglu and Robinson, 2006; Capoccia and Kelemen, 2007), it will be shown that actors can have intentions, but that institutional outcomes are a different matter from what was intended. With this postulate, we return to a paradigmatic marriage between intentionality and spontaneous evolution present in certain foundations of Original Institutionalism (e.g. Veblen, 1914: 31 and 334).³

Second, contrary to the notion that institutions settle around equilibrium (e.g. Kingston and Caballero, 2009; Aoki, 2007; Eldredge and Gould, 1972), actors' interactions are defined as an ever-changing, conflicting process in which stable status is never reached. It is what will be put forward as a Theorem on “Dynamic Disequilibrium”: institutional change as a process of *perpetual* alteration, yet, by which the *pace* of change varies; at times, imperceptibly slow, at times, sudden and with shocks. The expression of that endless change is credibility or actors' perceptions of the use and disuse of institutional function (Ho, 2013; 2014).

To corroborate the argument, the article focuses on a crucial institution in China's development: the *ownership* of *urban real estate*, and examines how the state as a

² Another one is the “authoritarianism” argument, which holds that dictatorships can halt the evolution of institutions to more efficient arrangements due to their power to block reforms (Acemoglu and Robinson, 2006; North 1994: 360-1).

³ Veblen sought to integrate intentionality (or “sufficient reason” and human will) with the endogeneity and spontaneous order of evolution (Hodgson, 2004: 154-5). However, within original institutionalism (as common in any theoretical body of thought), there were also divergent views (e.g. Commons, 1924: 82). Note that in contrast to the more derogative term “old” institutionalism as often used in neo-institutionalist writings, the term “Original Institutionalism” is preferred here.

major social actor attempts to change institutional structures over time.⁴ Please note that an institution is here defined in a straightforward manner: a *set* of social rules as emergent through actors' endogenous interactions. In recent years, substantive attention has turned to China's real estate.⁵ Yet, the historical genesis of the property rights of Chinese land and housing is by and large *terra incognita*.⁶ We will see that their formation was critically influenced by the issue of ex-ownership, i.e. should the state recognize forced expropriations of land and housing from a revolutionary past? Sources that will be scrutinized include primary Chinese sources of the time, such as CCP (= Chinese Communist Party) and government notices, regulations, minutes, and rulings by the highest actor in the legal arena: the Supreme People's Court. These are complemented with secondary sources such as memoirs, interviews with survivors, biographies, and historiographies. The analysis covers the period 1949-1998, that is, the establishment of the People's Republic until the start of the Housing Reforms effectuated through the privatization of urban work-unit housing.⁷ The period beyond this has not been analyzed as that warrants a separate writing.⁸

To point out against what premises of neo-institutionalism this article is positioned, while providing the empirical evidence to substantiate the alternative paradigm, the article is strictly divided into two main sections: a theoretical versus an empirical part. The next part will therefore discuss notions of path dependence and equilibrium, and contrast these with a Theorem of Dynamic Disequilibrium. The second part comprises the institutional review of China's urban real estate covering approximately half a century. In order to maximally demonstrate how the state's intentions were incessantly shaped and altered through endogenous interactions with other actors, the economic- and legal-historical data have been presented in the order in which events have occurred.

I. Debunking path dependence and equilibrium

⁴ Urban real estate is defined as land in the city and the buildings on top of it, while ownership is conceptualized in its Western ideal-type definition of "the right to possess, the right to use, the right to manage, the right to the income of the thing, the right to the capital, to the right to security, the rights or incidents of transmissibility and absence of term, the prohibition of harmful use, liability to execution, and the incident of residuary" (Honoré, 1961: 370).

⁵ Many aspects have been scrutinized, ranging from price inflation and the overheated market (Wu *et al.*, 2012; Hou, 2009; Hui and Shen, 2006), regulation and planning (Stein, 2012; Zhang, 1997; Lu, 1997), to social housing and equity (Chung, 2013, Logan, et al. 2010; Wang et al., 2005).

⁶ To date historical studies have mainly examined parts of China's housing history, such as on Xi'an (Wang, 1995, 1992) or until the early period of reform in 1978 (Zhang, 1997).

⁷ Urban housing reforms had been carried out before 1998 as well. However, the official start of the privatization of housing did not take place until that year. The restructuring of the urban collective sector – represented by the work-units or *danwei* – effectively ended the "iron rice bowl", and not only affected urban workers' housing, but also their employment, health care, and social security (e.g. Zheng and Chen, 2009; Giles *et al.*, 2006; Oi, 2005).

⁸ For the institutional and economic-historical analysis of this period, see (Ho, forthcoming).

1. From stagnation to endogenous evolution

In the study of institutional change and property rights there are three issues at stake, in evolutionary terms known as: variation, extinction, and stagnation. The first relates to the question why there are different institutional forms; the second why certain institutions have vanished; and the last, why institutions seemingly persist. To explain for institutional variation, extinction, and stagnation, the change of institutions is often cast in terms of historical causation (see Isaac, 1997: 7; Geddes, 1991: 59; Tilly, 1988: 710) – known as path dependence or “lock-in”.

Although there is the usual confusion about definitions and use (e.g. Vergne and Durand, 2010: 736),⁹ the basic principle of path dependence is its conceptualization of the past as the cause for present institutions. In Sewell’s words (1996: 262-3): “[T]hat what has happened at an earlier point in time will affect the possible outcomes of a sequence of events occurring at a later point in time.”

Let us consider the issues that institutional theory seeks to explain – variation, extinction and stagnation – and review its conceptual vocabulary. The notion of path dependence postulates that institutions – through chains of “self-reinforcing” sequences – can become increasingly fixed into certain trajectories of change (Mahoney, 2000: 509). This argumentation may explain stagnation, and from a neo-classical economic view, the premise of self-reinforcing sequences is sufficient to explain the persistence of (inefficient) institutions.¹⁰ However, other than saying that institutions can become locked-in due to the sequence in which events occur and the choices that actors make, it does little to explain why some institutions stagnate and others do not. In this regard, a self-reinforcing event could be seen as a mere synonym for an “institutional vicious circle.”

Path dependence also hypothesizes that series of so-called “reactive” sequences (in which Event₁ triggers Event₂, which triggers Event₃, *ad infinitum*) can yield a serial of causally linked events (Mahoney, 2000: 508). Yet, again, that does not tell us substantially more about institutional variation, apart from saying that different events can trigger different chains of events. Last, but certainly not least, path dependence offers no explanation on the question of extinction, or the atrophy and demise of institutions.

The question of *variation* is asked when we, for instance, wonder why informal slums in developing countries can co-exist with semi-formalized, booming land markets in emerging economies, or with formalized, transparent, yet, failing real estate markets in industrialized economies. The question of *stagnation*, on the other hand, surfaces when we ask why land administration organizations and state bureaucracies can be inefficient (slow, opaque and irresponsive), yet, simultaneously resist serious change.

⁹ Or as ironically noted by two scholars: “Disagreement over path dependence is quite prevalent, such that even critics of path dependence substantially diverge in their understanding what is wrong with this concept” (Mahoney and Schensul, 2006: 456).

¹⁰ Self-reinforcing sequences are also known under the term “increasing returns”. See, for instance, (Arthur, 1994; Pierson, 2000).

Lastly, the question of *extinction* emerges in discussions over, for example, the toppling of regimes during land reform and agrarian movements, or an Arab Spring, for that matter.

If we were to make an analogy to evolutionary theory – correctly or erroneously applied in explaining institutional change – these questions would boil down to, respectively: Why do vertebrates coexist with invertebrates? Why have ferns changed little over millions of years? And why did dinosaurs go extinct? Let us contemplate this. A major scientific debate concerns the descent of birds from dinosaurs.¹¹ Strikingly, the notion that the chicken could be a far descendant of Oviraptorosaurus (Achenbach, 2014), does not necessitate the establishment of *causation* as a principle, but the *minute* study of artifacts, DNA fragments, fossilized traces, and geological formations. In an evolutionary sense, causation is thus *not* the issue, but demonstrating *how* the mechanism of causation works, is.

Likewise, path dependence might for institutional change be as much a truism as causation is for evolution.¹² What the study of institutions is in need of is a detailed archaeology or paleontology of institutional facts, traces, and formations, in a similar vein as observed in the study of biological evolution. It is only through empiricism that we might see how institutions develop and on the basis of what mechanisms, in order to further institutional theory. Contrary to the idea that “older style institutional economics was content with description, whereas newer style institutional economics holds that institutions are susceptible to analysis” (Williamson, 1996: 1792), should institutionalism: “[C]ome into closer touch with facts and embrace broader ranges of data than ‘orthodox’ economics has hitherto done” (Clark, 1927: 221).

The economic- and legal-historical institutional analysis of the second part of this paper will do exactly that. At this point, we might take the argument back to our conceptualization of institutions as a set of endogenously shaped, context-determined social rules (Ho, 2014: 18). By theoretical consequence, the institutional variety that we observe is the result of the myriad of endogenous interactions that *unintentionally* shape and reshape institutions per time and space; whereas the decline of institutions results from the disuse of functions that they perform amongst actors. This brings us to equilibrium.

2. Preoccupations with stability

Neo-classical economics, and neo-institutionalism in particular, might be so predicated upon the notion of equilibrium that it does not see that empirical reality could as well be characterized by an ever-present force of change. In their incisive

¹¹ The earliest study proposing the descent of birds from dinosaurs is (Huxley, 1870). His hypothesis was overturned by Heilmann (1926), whose thoughts remained influential for many decades. However, the turning point came with the discovery of a new theropod dinosaur in Montana in 1964, described by (Ostrom, 1976). A recent, authoritative study (Witmer, 2009) concluded that avian evolution went through a four-winged stage from the dinosaurs.

¹² As some students of institutional change remarked: “[E]very outcome in the social world is, after all, preceded by a series of historical events” (Mahoney and Schensul, 2006: 458).

work Freeman and Carchedi (1995: viii) ironically described the specter that haunts mainstream economics:

“Official economics is stuck with an unworkable paradigm – applying to an unstable world concepts derived from the assumption of stability”.

The argument here is that opposed to the idea that institutions can stabilize around a balance of actors’ interests, power divergences and resources, institutions are, in fact, subject to continuous change. The crucial difference is the **pace** of change.

Prior to contemplating this, it might be helpful to make a few clarifications on how an ideal-type institutional equilibrium is conventionally defined.¹³ A *static* equilibrium is conceived as a balance between actors’ aggregate perceptions and their actions with *no* net forces in the institutional arrangement; as a result, there are no institutional changes over time (see Figure 1). A *stable* equilibrium means that minor positive (e.g. at t_1) or negative disturbances (e.g. at t_3), will cause a temporary change before the institution returns to its *original* setup at t_2 . In a *dynamic* equilibrium various factors (land, labor, capital, and technology) can change with similar proportion but at unchanged ratios, causing the institution to be in flux, yet, over time in a state of consecutive equilibria (represented by stable lines between, e.g. t_1 - t_2 or t_5 - t_6).¹⁴ As a variation to the dynamic equilibrium, institutionalists borrowed the concept of “punctuated equilibrium”, developed by biologists Eldredge and Gould, who believed that: “The history of evolution is not one of stately unfolding, but a story of homeostatic equilibria, disturbed only ‘rarely’ (...) by rapid and episodic events of speciation” (1972: 84). In social terms: institutions are mostly stable, but can occasionally be subject to sudden change and diversification.¹⁵ The notion of equilibrium in its different conceptualizations has been widely applied in institutional theory, and in recent years focused on dynamic or punctuated equilibria (e.g. Kingston and Caballero, 2009; Aoki, 2000, 2007; Lindner and Rittberger, 2003: 468; Mahoney, 2000: 519; Weingast, 1998).

Contrarily, there are those who feel that equilibrium is insufficient to capture institutional dynamics. For instance, political scientist Thelen (2002) presented a lucid analysis of the discrepancy between the notion of (punctuated) equilibrium and

¹³ The notion of equilibrium could not be discussed without mentioning Léon Walras (1834-1910), who is widely considered to be the father of the theory on general equilibrium. This theory seeks to explain supply, demand, and prices in an entire economy with several interacting markets, by trying to prove that a set of prices exists that will result in an overall or “general” equilibrium. Walras expounded the theory in his *Éléments d'économie politique pure, ou théorie de la richesse sociale* or *Elements of Pure Economics, or the theory of social wealth* published in 1874.

¹⁴ Aoki (2007: 7), for instance, defined a dynamic equilibrium as an “equilibrium path allowing for endogenous formation of common knowledge” (Aoki, 2007: p. 7). See also (Groenewegen, 2011).

¹⁵ Or as Thelen (2002: 99) describes it: “A good deal of thinking on institutional change falls back, explicitly or implicitly, on a ‘punctuated equilibrium’ model that suggest that institutions either persist or they break down as a result of some exogenous shock or environmental shift.”

empirical reality. Yet, in her article she refrained from asking the ultimate question: should we discard equilibrium?¹⁶ A possible explanation for her silence, but not hers alone, might be the fact that neo-institutionalism – which started out and grew influential in economics – traversed across disciplines and in its journey preserved certain neo-classically inspired foundations, including the predication upon equilibrium.¹⁷ It might also be the reason why in other social sciences the idea of “non-equilibrium” has been relatively little discussed to date, or even labeled anathema.

3. Progressive disequilibrium without collapse

Our understanding of institutions – particularly, land- and housing-based institutions – could be furthered if we reject the idea that institutions are consolidated, balanced forms of actors’ interactions. It is at this point that a Theorem on “Dynamic Disequilibrium” is posited, defined along two dimensions (depicted in Figure 1):

- 1) *Progressiveness*, or the premise that institutions are in perpetual flux, moving onward from one state to the other. That change, however, can manifest itself at different speeds – sometimes infinitesimally, imperceptibly small (resembling a nearly horizontal line, e.g. t_3-t_4); sometimes with great velocity, strides and shocks (depicted as a steep curve, e.g. t_2-t_3);
- 2) *Non-equilibrium*, i.e. the premise that institutional change never reaches a state of balance between actors’ interests, power and resources, as tension and conflict is present in any institutional arrangement: hence the *absence* of stable, horizontal lines in the figure below.

[Insert Figure 1 about here: Graphic depiction of different equilibria]

Source: illustrated by author

For one, allowing for the conceptualization of an alternative institutional universe in which equilibrium is supplanted by perpetual change might be paradigmatically less

¹⁶ Instead, she proposes two concepts in reaction, which in fact, uphold the equilibrium paradigm. First, the notion of institutional layering, developed by Schickler (2001), which “combines some elements of increasing returns and even ‘lock in’ with elements of institutional innovation (2002, 102). Second, a concept suggested to her by Wolfgang Streeck, i.e. institutional conversion, which draws “attention to the idea that institutions that were forged at one historical juncture, and thus as the product of one particular set of conflicts and interests, can in fact undergo a kind of transformation as they get redirected to new ends” (2002: 103). The second concept is not further elaborated upon in her 2002 writing.

¹⁷ Groenewegen and Vromen (1997) make a distinction between “new” and “neo” institutionalism, whereby the former is defined as those opposing “old” or “classical” institutionalism, and the latter as the later followers of original institutionalism. Yet, it is uncertain whether the scholarly literature makes that distinction, which in itself might be illustrative of the confusion over theoretical premises.

daunting as it seems. Rather than rethinking equilibrium in static, stable, dynamic or punctuated forms – by some seen as mere efforts to save the neo-classical paradigm (e.g. Freeman and Carchedi, 1995: viii) – the Theorem of Dynamic Disequilibrium might better account for empirical findings of minute changes of seemingly stagnant institutions. Or what Thelen (2002: 101) aptly described as:

“[O]ngoing subtle shifts beneath the surface of apparently stable formal institutions.”

Equilibrium is an analytical lens through which stagnation is rendered as an anomaly, explicable only through inefficiency or lock-in, while institutional change, in effect, never ceases as actors’ interactions never cease (lest humankind ends).

Secondly, equilibrium fails to grasp the inherent tension in actors’ multitudinous interactions, in which conflict is ever-present to destabilize and change. Outside economics, the idea of disequilibrium or non-equilibrium is more accepted for sociologists, anthropologists and political scientists, dealing as they are with frequent phenomena of violence, social movements and revolution (e.g. Coser, 1956: 31).¹⁸ In contemporary economics, the idea of instability was most consistently put forward by Myrdal.¹⁹ It has later been applied in various economic analyses (e.g. Berger, 2009; Martínás, 2006; Freeman and Carchedi, 1995; Arestis, 1992).

It is, however, crucial to acknowledge that Dynamic Disequilibrium is not tantamount to (instantaneous) collapse. As the MIT economist Fisher (1989: 6) duly noted: “Instability need not mean explosion but rather a lack of a tendency to converge to a particular equilibrium.” Contrary to Demsetz’ (1967) efficiency argument, distributional conflict is present in every institutional constellation; or as Libecap (1989: 2) phrased, conflict will be “inherent in any property rights arrangement, even those with important efficiency implications.” Thus, even when actors perceive an institution as *credible*, that does not *preclude* conflict (Ho, 2014: 16). At this point, we radically depart from the idea that conflict is the outcome of inefficiency, and are *diametrically opposed* to, for instance, Acemoglu (2003: 622) who would adhere to

¹⁸ Conflict theory constitutes one of the grand strands of thought in sociology. Early sociologists that have made important contributions to the conceptualization and study of conflict, include Ludwig Gumplowicz (1838–1909), Lester F. Ward (1841–1913), Emile Durkheim (1858–1917), and Max Weber (1864–1920). For more information, see for instance, (Randall, 1994).

¹⁹ Myrdal (1898-1987), a laureate of the Nobel Prize in Economics, used non-equilibrium in the development of his theory on Circular Cumulative Causation, on which he worked with Nicholas Kaldor (1908-1986). Regarding non-equilibrium Myrdal wrote (1957: 12): “[T]here is no such a tendency towards automatic self-stabilisation in the social system. The system is by itself not moving towards any sort of balance between forces, but is constantly on the move away from such a situation.” However, note that the term “contemporary economics” is used in the main text, as one of the foremost economists working on disequilibrium and conflict is perhaps Karl Marx (1818–1883). Apart from Marx’s dialectic-materialist analysis, conflict has only more recently become a topic of serious research in economics (Sandler, 2000).

theories that “internal conflict within the society leads to inefficient choices” (2003: 621). Whereas scholars in a neo-classical tradition would regard conflict as non-functional, and a reason to restructure or abolish “inefficient” institutions, the Theorem on Dynamic Disequilibrium regards it as an integral component.

To demonstrate how reconsidering causation and equilibrium could help further understanding of institutions and property rights the empirical section below will examine around 50 years of temporal change of China’s urban land and housing ownership. That analysis will reveal on the one hand, the *unintentional, endogenous* nature of institutional change; and on the other, the fallacy of a neo-classical and neo-institutionalist reading of China’s urban property rights as stagnant. In the empirical section below we will see that Chinese property rights are not “locked-in”, yet, demonstrate continuous change; incremental at times; sudden at other times.

II. China’s urban property: Revolutionary confiscations, constitutional revisions

Since the Communist take-over in 1949, the central state has sought to gain control over land through agrarian and urban land reform. This was driven by a mix of political, ideological, and planning considerations.²⁰ However, as we will see below, the central state as a major social actor may have had its intentions, yet, was concurrently constrained in realizing these – both internally, between state actors, and externally, between state versus society actors. These human interactions engendered an endogenously shaped institutional lay-out by which land is collectively owned in the countryside and state-owned in the cities.²¹

It will be argued that the endogenous nature of urban real estate becomes apparent in the way how the Chinese leadership dealt with, and was *forced* to deal with, land ownership in the cities. On the one hand, Marx-Leninist ideology is predicated upon the nationalization of land, labour and capital, a principle that a hard-lined faction within the Party continuously sought to push forward, not in the least to gain control over spatial planning, natural resources and mining. On the other hand, the risks of estranging the industrial, commercial elites and disrupting the urban economy forced the Chinese state to tread with caution.

For a good understanding of the urban property rights structure it is important to note that China’s ownership of land is separated from housing. In effect, since 1949 the central state has recognized private ownership of *housing* albeit legally encumbered with varying restrictions over time, whereas ownership of the *land* on which housing

²⁰ The state’s intention to control land was given in by the need to win over the rural populace for the Communist cause (see Chapter 1); to regulate spatial planning (see this Chapter), and the felt need to realize a Socialist, and subsequently, Communist stage of development according to Marx-Leninist ideology (Schram, 1991).

²¹ The property rights that underlie urban real estate are, therefore, a textbook example of a spontaneously ordered institution similar to the cadastre, land markets, and rural lease system (Ho, 2015, 2014).

is built has seen a major shift from private into collective hands (for the countryside) and into state hands (for the cities).

1. Backing-off from nationalization: Urban land and housing (1949-1966)

The promise of land-to-the-tiller was the lever by which the CCP won over the farming population to the Communist cause, and enabled it to strengthen its rural power base (Ho, 2005: 5). Consequently, substantive institutional changes in the rural land ownership structure were possible. To be sure, in 1956 private land ownership was formally abolished with the establishment of the Higher Agricultural Production Cooperatives. Interestingly, whereas China's villages witnessed numerous and profound ownership shifts, the cities were initially left undisturbed. The caution with which the central authorities had to maneuver in the cities was evident even months before the People's Republic of China was established.²²

As early as April 1949, Chairman Mao and Commander-in-Chief, Zhu De, jointly issued a military decree stipulating that the "rural feudal land ownership system is unreasonable and should be abolished", but simultaneously warned that "urban land and housing, cannot be handle in the same way as rural land issues" (*bu neng he nongcun tudi wenti yiyang chuli*)" (Article 7, Chinese People's Revolutionary Military Commission, 1949). *Private* land ownership in the cities was even formalized in the "Common Program of the Chinese People's Political Consultative Conference" (CPPCC), which served as the nation's *de facto* Constitution until 1954 (CPPCC, 1949).

Article 3 of the Common Program ruled that the state "should protect the economic interests and private property of workers, peasants, the petty bourgeoisie (*xiao zichan jieji*) and the national bourgeoisie (*minzu zichan jieji*)." The petty and national bourgeoisie are of interest as they refer to, respectively, small-scale urban merchants and the entrepreneurial class that emerged in the wake of the Opium Wars and China's increased exposure to foreign influence since the mid 19th century. The latter was ideologically set apart from feudal, monopolist and capitalist "big compradors" or the "big bourgeoisie," which Mao Zedong referred to as the "Four Big Families – Jiang, Song, Gong and Chen" (Article 6 in Mao, 1947).

While urban, private land ownership was protected, the central authorities at the same time gradually sought to step up control over the cities.²³ This occurred by undermining the status of housing ownership of large, private home owners. They were increasingly forced to rent out (part of) their property against a fixed payment through the State Rental Housing Scheme, also known as the "Socialist

²² The People's Republic of China was formally proclaimed on 1 October 1949.

²³ This process is comparable to the countryside, where farm operation was step-by-step brought under the control of the collective. Since Land Reform in 1950, individual farms were first merged into Mutual Aid Teams (*huzhu zu*), subsequently in 1954 into Lower Agricultural Production Cooperatives (*chuji nongye shengchan hezuoshe*), and since 1956 into Higher Agricultural Production Cooperatives (*gaoji nongye shengchan hezuoshe*). Collectivization culminated in the establishment of the People's Communes (*renmin gongshe*) two years later, in 1958 (Madsen, 1991: 624-646; Ho, 2005: 5-6).

Transformation of Urban Private Rental Housing” (*Chengshi Siyou Chuzu Fangwu Shehuizhuyi Gaizao*). In 1956, the Party issued a notice, which stipulated:

“To strengthen state control, the rental of private property should fully abide by national policy, while its ownership should be gradually changed”, to which was added that “privately owned urban space, road infrastructure, and other assets shall all be nationalized (*yilü shou gui guoyou*).” (Article 5 in CCP Central Secretariat Second Office, 1956: 4).

Interestingly, the 1956 Notice is unclear about *what* other assets should be nationalized. Below we will see how – during the Cultural Revolution – the notice’s ambiguous notion of “other assets” (or *deng dichan*) was expanded to include *all* other assets. Despite the powerful rhetoric, vested interests seen related to the capitalist “Four Big Families”, coupled to the increasing urban population and the shortage in housing forced hardliners within the state into a moderate, pragmatic stance. The initial purpose of the 1956 Notice, therefore, was a relatively incremental institutional change by bringing private rental under government auspices and *not* to confiscate private housing or to nationalize urban land.

Under the policy of state rental housing a threshold was set above which the housing rent would be fully collected by the state. In return the landlord would receive a fixed rent of 20 to 40 percent of the original rent within a given term. The thresholds were as follows:

- i) A gross floor area (construction area) of 150 m² (around 10 rooms) in large cities;
- ii) A gross floor area (construction area) of 100 m² (around 6-7 rooms) in medium cities; and
- iii) A gross floor area (construction area) of 50-100 m² (around 3-6 rooms) in small cities and towns (State Housing Administration, 1964: 1).

Illustrative of social actors’ endogenous interactions that shape and reshape the state’s intentions, the State Rental Housing Scheme met with significant resistance. By the early 1960s it was reported that “nationwide 14% of the cities and about two-thirds of the counties have not executed or completed the [rental] reform yet” and local governments were called upon “to accelerate the Socialist Transformation of Urban Private Rental Housing” (Central Administration for Industry and Commerce, 1961: 1). Some years later, problems of an entirely different nature had emerged as the notion of “state rental housing” had swung to an unintended extreme: “state confiscated housing.”

Despite revolutionary verbosity, a report by the State Housing Administration openly admitted the problems:²⁴

²⁴ As the report wrote: “All cities across the country and one-thirds of the towns have executed the transformation of private housing. Private housing that has been included [in the scheme] amounts to approximately 100 million square meters. The full use of existing urban housing serves the cause of

“[T]he threshold has been set too low in some localities, as a result of which limited property of workers, poor and middle rich peasants (...) was entered into the housing reform; some localities have abolished the threshold, and exercised state rental as long as property was rented; other localities have rented out a proportion of housing set apart for own use; not a few localities have left insufficient housing for own use; while the fixed rent for homeowners is lower than 20 percent of the original rent” (State Housing Administration, 1964: 2).

Not unexpectedly, the State Rental Housing Scheme caused confusion over housing ownership. In the same report, distributed by the State Council to all provincial-level High Courts, it was signaled that “[s]ome homeowners feel that property that has entered the State Rental Housing Scheme (...) is still private ownership” (*ibid*: 2). The relatively incremental, yet, continuous shifts in urban property rights described here would soon make place for an entirely different pace of institutional change. With the advent of the Great Proletarian Cultural Revolution the institutional structure of urban property underwent sudden and violent shocks, underscoring the principle of Dynamic Disequilibrium: incessant change at varying speeds. A prelude to this change in speed is apparent in an interpretation by the Supreme People’s Court sent to the Guangdong Provincial High Court, which stated:

“The owner of property that has entered state rental has in fact lost ownership; thus, if the owner dies, the rented property can not be inherited by his relatives, but they can continue receiving fixed rent from the state” (Supreme People’s Court, 1964: 1).

2. Revolutionary seizures of housing and land: 1966-1976

In the 1950s, it was found that private real estate amounted to over 50 percent of the total immovable stock in 7 out of 10 of surveyed major cities (Figure 2 below). Not surprisingly, the amount of foreign-owned real estate was highest in Shanghai (7.6%), as one of the nation’s most commercialized cities at the time, followed by Harbin (4.46%) and Qingdao (4.16%). In Maoist and Marxist-Leninist terms, private housing was considered an exponent of the old, feudal society and a sign of capitalist exploitation. As the Maoist faction in the Party noted with indignation:

“Most large homeowners belong to the feudal nobility, warlords’ and bureaucrats’ offspring, as well as former speculators. For instance, large home-owners in Beijing account for 88.4 per cent of the total private-owned property, while the descendants of Li

socialist construction, and has played a positive role while making great achievements” (State Housing Administration, 1964: 1).

Hongzhang occupy over 100,000 square meters of housing area” (CCP Central Secretariat Second Office, 1956: 1).²⁵

It was this indignation that Mao Zedong sought to tap into when mobilizing urban youngsters as Red Guards to fight against, amongst others, large urban homeowners and landlords as “the last tail of capitalism”. What subsequently occurred in the revolutionary upheaval was not only the upturning of the property rights of housing, but also of the land underneath it.²⁶

[Insert Figure 2: Proportion of public, private and foreign-owned urban real estate]²⁷

Source: Drawn on the basis of data from (CCP Central Secretariat Second Office, 1956: 1)

In August 1966, Red Guards of the renowned Beijing 14th Middle School put up a “Notice to all Compatriots” to “eradicate all exploitation” and effectuate that:

“[H]ousing shall without exception be owned by the public, while tenants no longer need to pay rent to homeowners!” (Red Guards of the Beijing 14th Middle School, 1966: 1).²⁸

In less than two weeks of that same month reportedly over 114,000 Beijing households had been “searched and confiscated” (*chaojia*), while 85,198 people had been sent back to their hometown. In Shanghai, Red Guards raided respectively 84,222 households from 23 August until 8 September, while in Tianjin the assets of 12,000 households had been confiscated by mid September (Ding, 2008: 26).

By the end of September of 1966, the Beijing Housing Administration promulgated that the “fixed rent has already been halted temporarily starting from 1 September” (*guding zijin (...) zanting fangang*, Article 7, Beijing Housing Administration, 1966: 2). This effectively ended the policy of state rental housing. Under a substantially more controversial measure it was stipulated that:

²⁵ Li Hongzhang (1823–1901) was a famous politician, general, and diplomat of the late Qing Empire. He quelled several major rebellions and served in important positions of the Imperial government, including the viceroyalty of Guangdong and Guangxi, as well as Zhili.

²⁶ In general, “the Cultural Revolution produced ‘an extremely complicated situation’ in which (quoting Mao) it was ‘hard’ to distinguish between ourselves and the enemy” (Bridgham, 1970: 1). The chaos around urban land property rights is just one area in which societal upheaval became evident.

²⁷ The 1956 data used here refer to real estate (*fangdichan*) and thus include residential, as well as commercial real estate.

²⁸ As the original Chinese text reads: “*Fangchan yilü guigong, zhuhu yilü bu xiang fangzhu jiao zuzi.*”

“Apart from that what belongs to the production team as regulated by the Sixty Articles, all privately owned, urban land shall be nationalized (*chengshi siyou tudi yilü gui guoyou*, Article 5, Beijing Housing Administration, 1966: 2).²⁹

The local Beijing directives led to great confusion. In response, the State Housing Administration, Ministry of Finance and the General Tax Authority jointly issued a notice in which they tried to clarify matters in a typical Q&A-fashion. The first question on top of the list was: “Should the nationalization of urban land be uniformly effectuated through central proclamation, or should it be proclaimed and executed by the provinces and prefectures?” The answer read:

“Regarding the issue of land nationalization, the central [authorities] have already provided instructions (...). Today, 10 years later, the proposition to nationalize the land is not too early, but too late (*bu shi tai zao er shi tai wan le*), (State Housing Administration and Ministry of Finance General Tax Authority, 1967: 1).

In reply to the second question – what categories of urban land should be nationalized – the joint notice provided a straightforward interpretation of the 1956 Party document discussed above:

“Regarding what is [described] (...) as ‘road infrastructure, and other assets’, this should include the privately owned housing land (*siyou zhajidi*) upon which buildings are constructed in the cities (State Housing Administration, Ministry of Finance, and General Tax Authority, 1967: 1).³⁰”

Thus, the ambiguous notion of “road infrastructure and other assets” was expanded to enable the nationalization of all urban land, or as Chinese scholar Hua (2007: 1) described it, a “Red Guard-style ‘land nationalization’ (...) scheme to rob citizens’ property” (*qiangduo shimin caichan de jihua*). Less than 4 months later, in February 1968, the Beijing Revolutionary Commission (the *de facto* municipal government) demanded that “one should confiscate and nationalize real estate within the aforementioned range” (Article 4 in Beijing Revolutionary Committee, 1968: 1).³¹

²⁹ The Sixty Articles refer to Party Regulations proclaimed in 1962, which restructured the ownership of the People’s Communes into a “three-level ownership” by which collective land was to be owned by the lowest collective level: the production team (or physical village).

³⁰ Note that in this important text, the word *zhajidi* actually refers to urban housing land, and not solely to rural housing land as defined in the 1982 Constitution, and also commonly understood today. Also the term *chengzhen tudi* instead of the currently used “*chengshi tudi*” is used intermingled to refer to urban land.

³¹ This range was defined as “landlords, rich peasants, counter-revolutionaries, bad elements, rightists and their offspring (*di fu fan huai you ji qi ziniu*).”

History has also handed down textual material on the confiscation of urban property in more remote areas of the Chinese country, such as for instance, in the Guangxi Autonomous Region (appendix in Supreme People's Court, 1985). Illustrative is also the constitutional revision adopted in 1975. The 1954 Constitution still stipulates that the "State may – in the public interest and according to the conditions prescribed by law – expropriate, requisition, or nationalize urban and rural land, as well as other means of production" (see Article 13). By contrast, its revolutionary 1975 pendant had deleted the phrase "in the public interest" (Article 6).

Although it might be tempting to simplify history, it does not serve the understanding of institutions or the endogenous forces shaping them. In this regard, it is important to realize that even within the heydays of the Cultural Revolution, the state was no monolith. Telling is the earlier cited directive by the Beijing Housing Administration (1966: 2, Article 8), which led to so much confusion. At the end, it emphatically states:

"The suggestions above have a strong political nature (*zhengce xing hen qiang*), and should therefore only be formally implemented after they have been reported to and approved by the People's Municipal Committee."³²

As surprising is the appendix, which states:

"On 7 October 1966 the Office of the Beijing Municipal People's Committee Secretariat notified by telephone. Comrade Wan Li instructed: 'Rent should initially not be collected for private houses for own use, while property rights issues are a matter for a later time (*chanquan wenti yihou zai shuo*)'" (Beijing Housing Administration, 1966: 2).³³

The voices of actors opposing rash nationalization were not lost in the socio-political turmoil of the era, and resurfaced in the debates that shaped one of China's foremost legal institutions: the Constitution.³⁴

3. Redesigning the National Property Rights Structure? (1976-1982)

³² These were the official legislative organs before they were replaced by so-called Revolutionary Committees at all administrative levels.

³³ Wan Li is a renowned reformist politician. From 1958, Wan Li was Secretary of the Beijing Municipal Party Committee (under Peng Zhen), and concurrent Vice Mayor of the city government. He was purged during the Cultural Revolution, but restored to his Beijing posts in 1973. In 1977 he became Party Secretary of Anhui Province where he oversaw the rural reforms. From 1988 until his retirement in 1993 Wan Li was appointed Chairman of the National People's Congress.

³⁴ The Constitution as a "set of social rules" can be seen as one of the most important legal institutions of a country (Llewellyn, 1934).

“According to the spirit of the Constitution, there are *various ownership systems* for urban real estate” (State Agency for Urban Construction, 1982: 1; italics added).

“Urban land is *state-owned*” (1982 Revised Constitution of the People’s Republic of China, Article 10, section 1, italics added).

In the years after the ending of the Cultural Revolution, social actors’ struggle over urban ownership continued.³⁵ Important is the 1982 proclamation by the predecessor of the current Ministry of Housing and Urban-Rural Development, the State Agency for Urban Construction, which called for the recognition of *private* land ownership (see quote above).³⁶ However, in full reverse, China’s top legislators pushed institutional change in the opposite direction, and adopted the revised Constitution just a couple of months later, which unequivocally stated that urban land is state-owned.

The heated debates over less than 3 years of legal revisions that led to this situation are the subject of this section. The constitutional revision formally began on 18 August 1980 when China’s paramount leader, Deng Xiaoping wrote to Parliament that the “central government will propose the Third Session of the Fifth National People’s Congress to revise the Constitution” (Deng, 1980: 299).³⁷ The proposal for the constitutional revision and the establishment of the commission leading it, were issued 12 days later by the CCP and the State Council. The National People’s Congress adopted the proposal on 10 September, effectuating the installation of the Constitutional Revision Commission (*Xianfa Xiugai Weiyuanhui*). The commission comprised 103 commission members, chaired by Ye Jianying, with Song Qingling and Pengzhen as deputy chairs.³⁸ The full commission met for the first time on 15

³⁵ For instance, in 1979 the Revolutionary Committee of Quanzhou City, Fujian Province, reportedly still propagated nationalization of urban land (appendix in Supreme People’s Court, 1991: 190-93). Or, as Zhou (1989: 21) aptly noted: “[B]efore 1982 China had not formally proclaimed that land in all cities would be nationalized. (...) As a result, urban land for a relatively long term exhibited the coexistence of state, collective and private ownership forms, predominated by state-ownership.”

³⁶ The notice also stated: “The urban land and real estate administrations shall (...) distinguish between the *different situations* in land ownership and use” (State Agency for Urban Construction, 1982: 1). Before March 2008, the Ministry of Housing and Urban-Rural Development was known as the Ministry of Construction.

³⁷ Today, the term “revision” (or *xiuding*) is generally used to denote that a law is replaced by a new version, while “amendment” (or *xiugai*) only refers to the partial alteration of, or addition to a law’s content. In addition, the Chinese “*xiuzheng*” is alternatively used to denote a legal amendment, but is not a common term. The changes in the 1982 Constitution, however, were so profound that here the term revision is consistently used instead of amendment.

³⁸ There is an obvious continuity in leadership here. At the time, Marshall Ye Jianying was concurrent Chairman of the NPC Standing Committee; Song Qingling, the second wife of the founder of the

September 1980, during which a Secretariat was established with Hu Qiaomu as Secretary-General.³⁹ He organized the secretariat's first meeting on 17 September (Xu, 2003: 559-63) and 13 days later, the Drafting Team of the Secretariat moved to the quiet surroundings of Yuquanshan at the imperial Summer Palace. A detailed task division was implemented, with separate sub-commissions for the preambles, main text, and the sections on the state's organs, and rights and obligations.⁴⁰

On the morning of 10 February 1981, the Drafting Team of the Secretariat gathered for its 10th session. Reporting back to the full team, Hu Sheng, involved in the sub-commissions on the preambles and main text, said:

“There are some issues about which we are still uncertain, such as for instance, the question of land ownership...” (Xu, 2003: 603).

For sure, the first two drafts of the Revised Constitution did not mention land ownership.⁴¹ The first time that land ownership did appear was in the 28 February version of the Discussion Draft, which stated: “Land is owned by all people or by the collective” (Xu, 2003: 609-10). Recalling the drafting, Peking University law professor Xiao Weiyun, stated:

“[I]n previous versions of the Constitution, China had not made any comprehensive and clear stipulations about [land ownership]. (...) [R]egarding cities and peri-urban land ownership, mountains, grassland, beaches and so forth, no stipulations had been made yet” (Xiao, 1986: 42).⁴²

Due to health problems of Hu Qiaomu, Peng Zhen had taken over his work as the Secretary-General of the Drafting Team since July 1981 (Peng, 2012: 115-120). From 27 February until 16 March 1982, the Constitutional Revision Commission met for its 2nd Plenary Session.

Chinese Republic, Sun Yat-Sen, was his predecessor; while Peng Zhen was to succeed Ye Jianying as the future Chairman of the NPC Standing Committee.

³⁹ Hu Qiaomu was then also concurrent Secretary of the Secretariat of the CCP Central Committee.

⁴⁰ These were delegated to, respectively, Hu Sheng, Gong Yuzhi and Lu Zhichao (preambles); Hu Sheng, Gu Ming, Xiao Weiyun, Wang Shuwen and Xu Chongde (main text); Wang Hanbin, Zhang Youyu, Wang Shuwen, Yang Jingyu (rights and obligations); and Xing Yimin, Gu Ming, Gu Angran, Xu Chongde, Sun Li and Xu Kongrang (state organs). See (Gu, 2009: 76; Peng, 2012: 117).

⁴¹ These are the 20 February Draft of the Constitution (*xianfa caogao*) and the 28 February Draft for Discussion on the Constitution (*xianfa taolungao*, Xu, 2003: 603).

⁴² Xiao's statement is corroborated in an interview with one of the other drafters, Wang Hanbin, who recalled: “It was not until the drafting of the Constitution that we discovered that the 1954 Constitution had made no stipulations regarding land ownership at all. That was strange, how could it be that there were no regulations around land, which is such a critical issue? Therefore the land ownership system had to be defined this time” (Wang cited in Zhao, 2013).

At this meeting, Peng Zhen had two documents distributed: the “Revised Draft of the Constitution of the People’s Republic of China – Discussion Version”, accompanied by a legal interpretation of its text. Article 10 of the Draft stated: “Urban land is state-owned, while rural land and peri-urban land are collectively owned.” The legal interpretation read: “These regulations reflect the actual situation of China. More concrete regulations are pending on the drafting of land laws, yet, regulatory principles are included in the Constitution, and are beneficial for the development of rural collective economic organizations and urban construction” (Xu, 2003: 619).

The two documents were the starting signal for a major clash amongst the nation’s highest policy-makers, which would extend far beyond urban land ownership. It would question the very foundations of China’s land ownership as defined in the 1954 Constitution and the Sixty Articles for the People’s Communes. From the start, the discussions turned to the nationalization of *all* land – rural, urban and peri-urban.⁴³ The official notice by the former State Land Administration to recognize *private*, urban land ownership thus also represents an opposing group of social actors within the Chinese leadership (see: 1982 Proclamation at the start of this section).⁴⁴

Central to the debates was the question whether non-state ownership would allow for sufficient state control over land. Those in favor argued that nationalization was essential for spatial, infrastructural and environmental planning. In their view, non-state-ownership hampered development, regardless whether that was done for urban housing, mining, or military airfields. Their argument was succinctly voiced – not by the drafters themselves – but by a local official:

“[T]he urban area in present cities is constantly changing (...). In the future more and more counties, towns, industrial and mining areas will be upgraded to cities (...). The land of these new cities previously belonged to the collective. After they are approved as cities, does [that land] become state-owned? (Wu Minrui, Office of the Hunan Provincial Party Committee cited in Xu, 2003: 721).⁴⁵

Those against, put forward three arguments in defense:

⁴³ One and a half weeks after the start of the 2nd Session (on 9 March 1981), the discussion already turned to the nationalization of rural and peri-urban land (Xu, 2003: 637).

⁴⁴ However, it might be difficult to judge whether there was actually little support, or whether political realities at the time determined that the discussion on urban land – which would imply a return to private ownership – was finished. In this regard, the main concerns were voiced by the former President of the Supreme Court, Jiang Hua, who stated that sudden nationalization would risk neglecting differences in housing land in medium versus large cities, and also risk disregarding situations with and without state rental housing (Xu, 2003: 559-563).

⁴⁵ By way of illustration, the official added: “For instance, the area of Changsha before liberation was 6.7 square kilometers, right now it is 53 square kilometers, and hereafter it will expand even more.” In addition, “before 1957, there were nine cities in Hunan Province, presently there are 15” (Wu in Xu, 2003: 721).

- i) *societal*, i.e. rash nationalization would incite large-scale conflict and endanger social stability;
- ii) *historical*, i.e. rural land had been in collective hands for decades;
- iii) *efficacy*, i.e. state-ownership is no more effective than other property forms, as the state can always resort to expropriation for public interest.

A major proponent was Yang Xiufeng, President of the Supreme Court and Vice Chairman of the Legal Affairs Commission of the National People's Congress (NPC) Standing Commission. In his words:

“Common ownership of the means of production has a dual form [i.e. state and collective, PH], and results from historical development. Comrade [Hu] Qiaomu says that the nationalization of rural land has no meaning, and will result in major upheaval.⁴⁶ I agree, what use does it have to do so? (...) There is no need to nationalize, and there is no rush to deal with it.”⁴⁷

Yang Shangkun, the acting Vice Chairman of the powerful Central Military Commission, concurred:

“Land in the cities is state-owned, but during redevelopment in Tianjin there were three families that refused to move (*ying bu ban*). In Beijing's Guang'anmen, there is a similar situation. Nationalization creates uproar; we have stipulations on expropriation. That's sufficient.” (Yang cited in Xu, 2003: 680-682).

After protracted discussions, the debate was finally concluded: to formally nationalize urban land after 33 years of ambiguity, yet, to leave rural land in the hands of the collective, in effect, the village communities. The revised Constitution was adopted on 4 December 1982.

4. Dealing with the revolutionary past (1982-1998)

During the early 1980s, the Chinese countryside witnessed an institutional transition which resulted in reinstating individual land *use*, while consolidating public land *ownership*. In the cities, a similar institutional reconfiguration occurred, which assumed the form of a revived, private home ownership predicated upon state-owned land ownership: thus, the separation of land from housing. For the state, a major challenge existed in the way how to deal with the legacy of the Cultural Revolution, in effect, to find means to compensate expropriated middle class home-owners,

⁴⁶ Yang Xiufeng refers here to Hu Qiaomu, the previous Secretary-General of the Drafting Team.

⁴⁷ Other powerful politicians allegedly supported Yang's view, including Jiang Hua, the former President of the Supreme Court and Peng Zhen, Hu Qiaomu's successor overseeing the drafting process. See the respective quotations cited in (Xu, 2003: 680-682). Peng Zhen's moderate role here is remarkable, as he has conventionally been portrayed as one of China's foremost hard-line leaders (e.g. Pei, 2006: 74).

landlords and industrialists, while avoiding raking up the hugely sensitive issue of ex-ownership.⁴⁸

When the People's Communes were disbanded in the countryside, the former Ministry for Rural-Urban Construction and Environmental Protection issued a remarkable set of "Suggestions" for urban housing. The Ministry maintained that due to "erroneous 'leftist' thought, problems had remained which urgently need solving", not in the least "the lack of clarification by the state on housing ownership" (1985: 1). Several important suggestions were made:

1. "Housing which has entered the State Rental Housing Scheme according to (...) political guidelines, should be nationalized and uniformly managed by the housing departments";
2. "Housing that has been wrongly altered without following (...) political guidelines, should be rectified according to policy and pragmatism";
3. "[P]rivate rental housing that has entered [the scheme] after September 1961, and which has not received rent or for which the period of rent did not reach 5 years, (...) should receive compensation..." (*ibid.*: 1-2).

What could be the potential magnitude of the Socialist ex-ownership problem? According to estimates in 1982, the proportion of land in private *and* collective hands in 226 cities amounted to a mere 4.5 percent or 335 square kilometers of the total built area (Zhou, 1989: 21). This implies that at the start of the reforms, the overall majority of urban land, i.e. over 95 per cent, was owned by the state. The ex-ownership question, at least for urban land, might thus not be a serious issue. It is uncertain, however, whether the figure above is an overestimation to play down the percentage of private land at the onset of the reforms.⁴⁹

For starters, it was found that in 1956, the year when the State Rental Housing Scheme was imposed, over 50 percent of urban real estate (land *and* housing) was actually in private hands.⁵⁰ More than two decades later, during the late 1970s and early 1980s, this percentage had drastically fallen, with 75 percent (or even higher) of urban households living in public housing (Huang, 2004; Logan et al., 1999). Thus, it can be inferred that the remainder – estimated to be around a quarter or lower – lived in some kind of private housing. Most of this housing likely dates from before the

⁴⁸ Another challenge was how to solve the question of affordable housing, thus, to answer to the needs of an expanding urban population, without squandering the basis of its credibility: the Socialist promise of protecting the poor. Due to space this latter question will not be dealt with in this paper.

⁴⁹ Overestimation of land statistics, but inspired by a reversed logic (i.e. to demonstrate that land tenancy was serious, and Land Reform was thus a justified cause), has also been observed in identifying the percentage of landholdings by landlords and rich peasants. See (Madsen, 1991: 626-7).

⁵⁰ Based on a survey carried out in Beijing, Tianjin, Shanghai, Jinan, Qingdao, Shenyang, Harbin, Nanjing, Wuxi and Suzhou. The survey sample is unknown, it was only noted that in Harbin approximately 3,000 households were part of the study (CCP Central Secretariat Second Office, 1956: 1). At the time, housing and land were not separated, so one can assume that the percentage of real estate reflects similar percentages for housing ownership, as well as for the land underneath it.

State Rental Housing Scheme, and by and large represents the property left for own use.

The legacy of nationalized urban land *and* housing has not been solved to date and continues to be a source of conflict between social actors. Several (fairly indecisive) reports and advices by the Supreme Court (1985, 1991) on local disputes involving pre-revolutionary housing are a testimony to this. Some of these cases have made international headlines (e.g. Ford, 2010).⁵¹ Illustrative of the complexity of the issue is a highly unusual query on the legal interpretation of the Constitution by the Supreme People's Court (1990: 2) to the government:⁵²

“In handling disputes over use rights of urban housing land the Court encountered problems in relation to ownership and use (...). After the 1982 Constitution stipulated that ‘urban land is state-owned’, does the ownership of urban housing land *and* of the housing on top of it – originally owned by individual citizens – automatically change into a use right?”

The State Land Administration (1990: 1) confirmed this was the case. Interestingly, it remained silent on the other query by the Supreme Court whether “the housing on top of” the land (*qishang yongyou fangchan*) was also nationalized.

At the time of writing, there is no national movement advocating compensation or reinstating ownership for expropriated homeowners, although various Chinese scholars have become more vocal on the issue (Cheng, 2013). For instance, well-known renegade historian Zhang Lifan (2010: 10) noted that:

“When the urban ‘Land Reform’ was written into the Constitution as a *fait accompli*, citizens were not given any compensation for the loss of property. During the early period of reform, public consciousness of rights was weak, while there was apprehension against ‘private ownership’, and nobody dared raising objections (*wu ren ganyu tichu yiyi*).”⁵³

⁵¹ An interesting opposite case, is the property allegedly owned by a famous revolutionary People's Liberation Army General, Zuo Quan (1905–1942). Although the property is prominently located in the middle of the campus of the Chinese Academy of Agricultural Sciences (CAAS), no one has dared to touch on its ownership to date. Oral communication, CAAS senior official, 20-10-2015.

⁵² In normal circumstances, it would be the other way around as the Supreme Court should be the final instance of appeal and legal interpretation of the Constitution.

⁵³ Zhang (2010: 10) also noted: “The National People's Congress incorporated the protection of private property in the Constitution in 2004, and it proclaimed the Property Law in 2007; but to a great extent this protected the class that ‘got rich first’ (*xianfu jieceng*, in reference to Deng Xiaoping's adage to allow some people to get rich first) since the economic reforms. It will be very difficult to protect the long-term interests of all citizens, if we do not retroactively protect a group of citizens whose rights were infringed upon in the past (*zhuisu baohu bufen gongmin guoqu bei qinhai de quanyi*) (2010: 4).

Similarly, writing for the influential Southern Weekend (*Nanfang Zhoumo*), a jurist at the National Police Academy cautioned that “[t]here is a great difference between the power and value of ownership versus these of use; as land ownership was downgraded to use [in 1982], we need to consider a fair compensation for the difference in price” (Yang, 2012: 1).

Over time, however, the issue of revolutionary ex-ownership would gradually lose force due to a new policy: the privatization of public housing. In 1998, the State Council called to: “Make a beginning to halt the distribution of housing-in-kind (*tingzhi zhufang shiwu fenpei*), and gradually implement the commercialization of housing (Article 4 in State Council, 1998).⁵⁴ The Housing Reforms transferred much of the Socialist work-units’ property into individual hands, thereby boosting private home ownership, and providing the starting signal for China’s booming real estate market.

III. In conclusion: Back to institutional theory

A major paradox in neo-institutional theory is how to account for the persistence or stagnation of inefficient (read: informal, common and insecure) institutions and property rights. One of the explanations offered is that of path dependence, a notion of causality, suggesting that present institutions can become locked into inefficiency as a result of actors’ choices from the past. The discussion about “persistence” or “stagnation” is of significance for the study on land and housing in relation to the legitimization it can offer to titling, privatization and formalization as institutional interventions. Contrarily, this article argues that the issue in understanding institutional change is not the principle of causation, but rather the minute study of institutions over time and space, as also propagated by Original Institutionalism.

That detailed study reveals a dual matter. First, that institutions derive from an endogenous, spontaneously ordered development in which actors’ intentions in establishing or changing institutions are reshaped into something unintended in the interaction with other actors. In other words, institutions as resulting from human action but not from human design, as Scottish philosopher Adam Ferguson (1782: 205) aptly described.⁵⁵ In this article we saw that China’s ownership of urban real estate is a strong case-in-point. By minutely charting the debates, disputes, and distributional conflicts over the ownership of urban real estate – as enshrined in historical Chinese sources – we got a clear picture how it emerged through actors’

⁵⁴ As early as 1984, the State Council had approved the nation’s first pilots with the subsidized sale of public housing (*gongyou zhufang butie chushou*) (Xu, 2008: 1). A good account of the housing reforms from until 1994 is provided in (Wang and Murie, 1996).

⁵⁵ In his words: “Every step and every movement of the multitude, even in what are termed enlightened ages are made with equal blindness to the future; and nations stumble upon establishments, which are indeed the result of human action, but not the execution of any human design” (1767: 205). The precise reference in Ferguson’s *An Essay on the History of Civil Society* is Part III, Section 2, page 205. His book was originally published in 1767.

interactions. Out of ideological considerations, the Chinese state may have hoped to nationalize the cities' privately owned land and housing. Yet, that intention was constrained, altered and cast into different institutional forms dependent on the state's interactions with other actors *and* with itself.⁵⁶ In this regard, Kohli and Shue (1994: 2) stated: "States may help mold, but they are also continually molded by, the societies within which they are embedded."⁵⁷

Second, detailed institutional analysis – or an institutional archaeology, as it were – also reveals that institutions do not persist or stagnate. What is perceived as persistence features, in fact, infinitesimally minor changes under an apparent layer of institutional stability. That finding touches on the very foundations of neo-classical economics – and neo-institutionalism in particular.⁵⁸ Within the neo-classical paradigm built on the principle of equilibrium, it is impossible to explain why *inefficient* institutions can sustain balance ("persist") inasmuch as *efficient* institutions do. Neo-institutionalism has come up with revised versions of the notion of equilibrium, such as stable, dynamic, punctuated equilibrium or multiple equilibria to account for the dilemma of change versus stagnation.

This article maintains that these conceptual revisions continue to fall short in explaining what can be observed at a more granular institutional level. The institutional processes that can be seen there suggest *continuous* change, rather than consecutive equilibria punctuated by change; or stagnation alternated by institutional progress. In this regard, Thelen (2002: 101) made the crucial observation that "if we look at particular empirical cases (...) even 'sticky' institutions that persist over long stretches of time undergo subtle but very significant changes in terms of their form and functions."⁵⁹

To account for that *fundamental* rift in the understanding of institutional change, a Theorem of Dynamic Disequilibrium was put forward. This theorem postulates that at any given infinitesimal time-point, institutions are *never* in balance but in continuous *movement* to a new state, regardless how fast or slow, or how tiny or big that movement may be. The institutional change of Chinese urban real estate is a

⁵⁶ This view thus differs from *local state-led* growth – or "local state corporatism" (e.g. Oi, 1995). The endogenous, spontaneously view on development maintains that also the local state is but one actor constrained in its intentions, and refrains from portraying the Chinese (local or central) state as intentionally designing, leading and implementing development.

⁵⁷ Similarly, Migdal (1998: 28) depicted society as "a mélange of social organizations" in which the state is but one organization among numerous others.

⁵⁸ As Pierson and Skocpol (2002: 704) noted: "Rational choice scholars tend to focus on 'rules of the game' that provide equilibrium "solutions" to collective action dilemmas. Historical institutionalists, meanwhile, probe uneasy balances of power and resources, and see (...) struggle among unequal actors."

⁵⁹ Let us be clear, also in the biological sciences from which institutional theory – for better or worse – borrows its ideas, this insight is increasingly supported by empirical studies. See, for instance, (Heijmans *et al.*, 2008; Childs *et al.*, 2012; 2015; Byrne and Nichols, 1999).

demonstration of this perpetual momentum of disequilibrium, evolving in waves and stages, through:

- 1) A period (1949-1966) of incremental change in urban property rights as the state was forced to navigate between ideology and pragmatism. Urban property rights developed from a mix of (predominantly) private and public ownership, to one in which private ownership was restricted through state rental;⁶⁰
- 2) A stage (1966-1976) of sudden, imposed nationalization, resulting in societal upheaval and shocks to the institutional structure. Despite forced expropriations, private ownership was never *formally* abolished;
- 3) The early post-Mao period (1976-1982) when actors engaged in protracted disputes over ownership as bound by revolutionary legacy. Although historically important, the 1982 Constitution's stipulation of state-owned urban land is an incremental change: it codified what had taken place 16 years earlier, and could only do so *after* lengthy debates lasting 21 months;
- 4) A span (1982-1998) when China's institutional structure of urban real estate was still challenged, yet, over time consolidated into its current constellation: privately owned homes and state-owned land with the possibility of private land lease.

Endogeneity and disequilibrium are principles with which one can describe the nature of institutional change. We have used them to analyze how the ownership of Chinese urban real estate was formed over the decades. However, two questions that we did not answer is *why* institutions are shaped as they are, i.e. the question of variation; and *why* do certain institutions vanish, i.e. the question of extinction. We have seen above that path dependence as rooted in causation may not adequately account for variation and extinction, other than maintaining that contingent events in the past can spark chains of “path-dependent”, “reactive” or “self-reinforcing” events in the present. Contrarily, one principle may account for this: the functional use and disuse of institutions (see: introduction to this themed issue). As a *set* of rules of actors that govern and *are* governed by them, institutions form the aggregate, perceived reflection of economic, socio-political, and cultural functions. These functions develop in the endogenous interaction between actors, and in actors' adaptation to the physical environment.⁶¹ *Ergo*, as long as institutions fulfill a function they appear

⁶⁰ From the data presented here, the ratio of private versus public ownership can be estimated at around 6:4. It is unclear whether landlords were actually allowed to sell their property once it was encumbered through state rental.

⁶¹ This might be a future area for research, i.e. to examine how actors' endogenous interactions are shaped in adaptation to natural disasters, and how this is translated into institutional function. This research endeavor, however, needs to be critically distinguished from studies that turn the argument around, and look at the impact of natural disasters on economic growth, and assess if this might be correlated to institutional form (e.g. common or civil law, democratic or non-democratic institutions), see e.g. (Yamamura, 2013; Raschky, 2008). The credibility thesis posits that there will be *no correlation* between institutional form, natural disaster and growth. By contrast, it looks to uncover how disaster, and the term over which it occurs (short e.g. earthquake or storm, versus long term e.g.

stable – albeit subject to incessant change – and conversely, when they fail to perform that function they may suddenly change, atrophy, or become extinct.

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shortage in oil and gas) might affect actors’ endogenous interactions, and in turn, institutional functions.

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Insert Figure 1: Graphic depiction of different equilibria

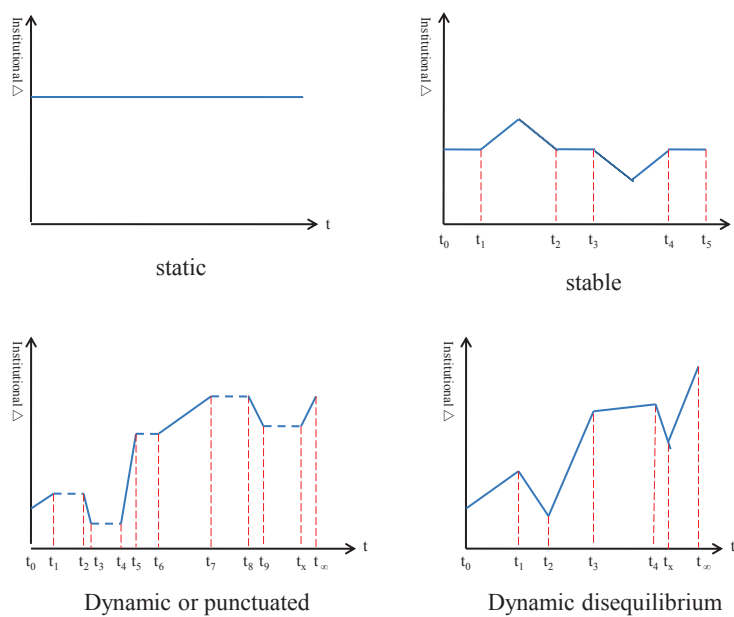


Figure 2: Proportion of public, private and foreign-owned urban real estate⁶²

⁶² The 1956 data used here refer to real estate (*fangdichan*) and thus include residential, as well as commercial real estate.

