

# Land Takings in the Private Interest: Comparisons of Urban Land Development Controversies in the United States, China, and Vietnam

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## Abstract

*Land-taking controversies around the globe have been making headline news recently. This article examines the similarities, differences, and ironies in what has been happening in China, Vietnam, and the United States. Even though these countries are different on many levels, their fiscal constraints and land management responses have led to strikingly similar public debates about the very nature of property rights and the legitimacy of local government.*

## Introduction

One week in June 2005, the news reported two land-taking controversies occurring on opposite sides of the globe. In the United States, communities debated the 2005 *Kelo v. New London* Supreme Court decision in which private homeowners and small business owners in New London, Connecticut, challenged their city's right to take their land for upper scale, private land redevelopment projects. Despite decades of case law supporting the use of eminent domain for economic development, the city's rationale that large business land users would revitalize the economy and generate more public revenues and, therefore, better serve the public interest seemed to now offend moral sensibilities. As a result of popular backlash, most states considered new legislation

limiting urban planning powers.<sup>1</sup> The same week that people rallied in New London to protest the Supreme Court decision, international news services gave reports about one of the most violent clashes over land takings in China. The confrontation in Shengyou was not an isolated incident but part of a growing number of protests in the Asian transition countries<sup>2</sup> as state planners expropriated land at astounding scales to feed historic rates of urbanization. One report estimates that in China, 70 million farmers had been relocated in 10 years (Yardley, 2004). Rather than being a coincidence, similar controversies are occurring in cities around the world.

This article offers a perspective on this global trend by examining the similarities, differences, and ironies between the land-taking controversies in China and Vietnam and what is currently happening in the United States. The increased and heightened public protests here and abroad are questioning the legitimacy of local government and its ability to identify the public interest in the face of increasing public-private partnerships. The political turmoil also indicates that societies around the globe are actively in the process of renegotiating and reconstructing their fundamental principles about property rights: the boundaries between private rights and residual public rights, and *who* deserves to have private property rights (Jacobs, 2003; Krueckeberg, 1995; Marcuse, 1996; Strong, Mandelker, and Kelly, 1996).

Studying this issue now in China or Vietnam is a politically sensitive topic. State-run media are often not allowed to cover protest incidents, and interviewing protesters could violate research protocols here in the United States. Interestingly, however, censorship ebbs and flows and certain local newspapers push the boundaries of what the state will allow. For example, the bloody clash in Shengyou was reported in the *Beijing News*, a state-run tabloid known for testing party censors, just 2 days after the incident (Pan, 2005). In addition, the international press and activist organizations outside these countries regularly report on the incidents. I collected media coverage about land-taking controversies in these two countries. I also interviewed key informants involved in urban land development in these countries during various fieldtrips between 1997 and 2008 and analyzed whatever data I could find about recent takings. Within these limitations, I found several interesting insights through comparative analysis.

## **Similarities: The Privatization of Public Finance, Conflicts of Interest, and the Social Reconstruction of Property Rights**

Over the past several decades, both in the United States and in the Asian transition countries, central government transfers to local government for economic development have decreased. Meanwhile, economists and politicians have lauded the trend toward fiscal decentralization as being more efficient because it decreases the size of the public sector and better tailors services to

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<sup>1</sup> Also, at the 1-year anniversary of the decision, President George W. Bush issued an Executive order prohibiting federal agencies from seizing private property except for public use. (See Bush, George W., *Executive Order: Protecting the Property Rights of the American People*, June 23, 2006.)

<sup>2</sup> Transition countries include a diverse group of nations that have been fundamentally reforming their economic institutions away from central planning to more decentralized, market-oriented institutions.

local preferences. Rather than rely on public coffers, cities are seen as being innovative if they engage in public-private partnerships to spur economic growth and finance public service provision.

In the transition countries, local government collaboration with the newly emerging private sector initially surprised many, given the nontransitioning Communist political institutions. It can be understood, however, as a coping mechanism. China's and Vietnam's rapidly growing cities have experienced explosive demand for urban public services. For example, in Vietnam's principal city, Ho Chi Minh City, the population increased by at least 1 million in 7 years, from 1993 to 2000, and average household incomes tripled. With little local revenue-raising authority and expenditures still being highly regulated by the central government, however, in essence, the local governments have an unfunded mandate to service their urban areas. What they do have control over, however, is land use. As part of the transition reforms, the centrally planned economies devolved land use authority down to not only the city government but, at times, to the subcity district levels of government. With their greater autonomy, district governments have devised their own detailed master plans and local economic development strategies.

In what I call fiscal socialism, Vietnamese local governments have leveraged this urban planning control to negotiate with the private developers to provide many of the public services and amenities. Local officials can require that private developers build the infrastructure the city has planned in exchange for approval of the developer's investment project and the administration of land titles. Because of the shortage of land with urban infrastructure and clear title, the huge increase in land values that can be derived from fiscal socialism is sufficient to overcome the up-front investment costs and risks (Kim, 2004). Development exactions can include roads, pavement, concrete sewer and drainage pipes, water supply, electricity, landscaping, and facilities such as schools. In Vietnam, infrastructure development accounted for 50 to 60 percent of the budget for projects producing parcels of vacant urban land in 2000 (Kim, 2008).

Compared with public-private partnerships in the United States, fiscal socialism involves greater investment risks for firms and consumers because of the lack of regulatory and institutional development. The firms may start construction and begin selling parcels, only to find that the project will not be approved or that land compensation negotiations have stalled. Consumers may pay for houses that are delayed in construction, rising in price, or never built. Because the official transfer and titling of the properties occur at the end of construction, which is financed along the way by customers and the firms' equity, the sunk costs provide some incentives for the developer and the customer to stay with the project as problems arise. The unabated growth of property values also acts as a deterrent in abandoning the project. To work successfully, however, this system requires detailed coordination between local government and the firms and effective intergovernmental communication. If all goes smoothly, fiscal socialism produces public infrastructure, the local government bolsters its legitimacy, the firms make a profit, and citizens can purchase houses that are better than what they had in the centrally planned economy.

Scholars have noted a similar situation in China, where the local governments have been called entrepreneurial states (Duckett, 1998; Oi, 1995; Wu, 2002; Yu, 1997; Zhu, 2004). Others have looked at the alliances that have been formed between the local government and the emerging urban elite into growth coalitions (Zhu, 1999). In any case, area scholars indicate that considerable extra-budgetary sources of public finance are drawn through fiscal socialism.

With both fiscal socialism and American fiscal decentralization, the increased involvement of corporate business capital in funding public services has led to serious conflicts of interest. Although land takings are always difficult, usually they are more understandable if the new use involves publicly funded works such as roads and infrastructure development. Suspicion and discontent arise when it appears that the state's police power is being used to profit private land development. Invoking the claim that these land takings are in the general public's interest becomes strained and the local government's legitimacy is called into question as news of these cases spreads. These sentiments were expressed in the United States when critics of the *Kelo v. New London* Supreme Court decision pointed out that, because the New London Development Corporation's board included a Pfizer corporation executive and an executive's spouse as members, it is unsurprising that one of its stated objectives was to design a plan that would "complement the facility that Pfizer was planning to build,"<sup>3</sup> thus compromising its ability to serve the larger public. As is well known now, this case touched off a national backlash in which most of the states in the union proposed legislation limiting the power of eminent domain.

Similarly, in the Asian transition countries, the most vehement protests involved the sentiment that the public sector has been pandering to corporate interests. For example, a major Vietnamese protest case that I investigated in Ho Chi Minh City involved the Binh Chanh district government, which altered its land use plan and increased the amount of land taken in order to extend the size of the parking lot of a French supermarket (Quynh, 2000a). In a city that had few cars at the time and for which the imported cheese and wine available at this supermarket would be unaffordable to most of the population, the displaced households were so outraged that they camped out on one of the city's most prominent boulevards for weeks. This demonstration was a remarkable sight in Vietnam, a country that does not normally allow such forms of dissent.

In the late 1990s, public protests about land conversion issues started occurring in various parts of Vietnam. The state-run media were not allowed to cover any violent protests. For example, from May to September of 1997, a media blackout occurred on the protests in Thai Binh province near Hanoi, where farmers had protested against local government corruption, punitive taxes, land disputes, compulsory labor contributions, and unfair rice prices. Similarly, in November 1997, foreign journalists were banned from covering violent protests in Dong Nai province, near Ho Chi Minh City, that occurred in response to the local authorities' expropriation of the Catholic Church's land in Tra Co commune (Human Rights Watch, 1997).

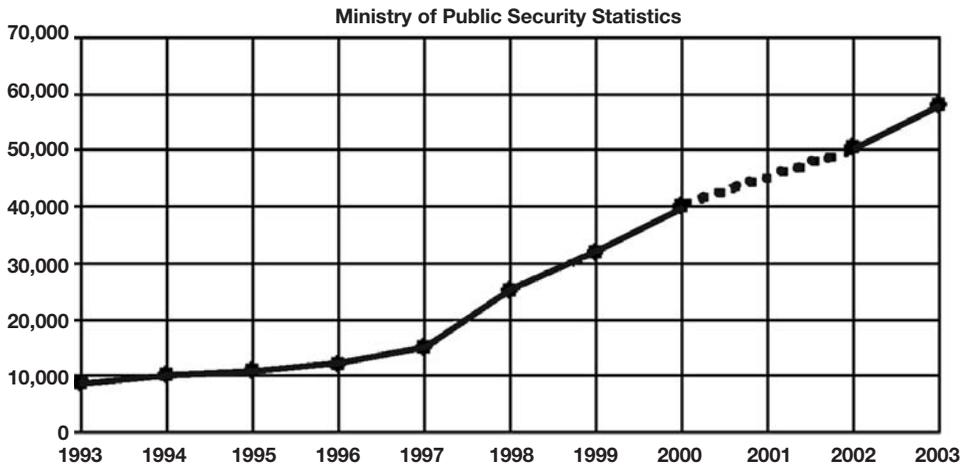
Protests against local governments have been on the rise in China as well. The government keeps statistics of such incidents, which are usually inaccessible, but the chart in exhibit 1 was made public and shows some sense of the increase. The "mass incidents" can range in number from eight people to hundreds of people and can range from peaceful sit-ins to violent protests. Although we cannot tease out the number of protests that concerned land takings, by many accounts, most of these protests are at their base about land control. Also of concern is not only the increase in the number of protests but also the increase in violence. Meanwhile, the protesters have shown increased savvy; even farmers use cell phones and video cameras to quickly link to outside media

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<sup>3</sup> O'Connor, Sandra Day, *Kelo v. New London*, dissenting opinion. 545 U.S. (2005): 2.

## Exhibit 1

### Chinese Social Protest (“Mass Incidents”), 1993–2003



Note: 2001 data unavailable.

Source: Murray Scot Tanner testimony before U.S.-China Economic and Security Review Commission

sources, bringing worldwide attention to their cause. Although most protests may not be violent, the number of protests has clearly increased and the local government faces increasing opposition and criticism.

As in the American case, the increased role that private funds play in public finance fosters an environment for more conflicts of interest in cities that desperately need financing but are supposed to serve the public's interest. In cases in which the benefits seem to fall disproportionately on the wealthy or privileged and the costs fall disproportionately on the poor and unprofessional, sentiments of injustice inevitably occur.

To cope with this unrest, the central governments in the Asian transition countries carefully craft the connection between economic growth and the public interest, emphasizing the need for new jobs and relief of the urban housing shortages. This argument is balanced by official documents that reemphasize that adequate compensation should be paid to those who are forced to relocate. The central government also vilifies local government officials who violate the public trust in their land management practices through their demotion, imprisonment, and capital sentencing.

In Vietnam, beginning at the end of the 1990s, it became a permissible and regular occurrence for journalists and citizens to publicly criticize lower level government officials in newspaper editorials (Quynh, 2000c; Trung, 2000). Also in China, my research shows a spike occurred in media coverage over land-taking controversies during the 2003–04 period. It is not clear what happened to allow this change in media coverage. An event can spark the reframing of a situation with long-dormant contradictions (Zald, 1996) as it did in the United States with the *Kelo v. New London* case. I could not locate any such single event, however, in China or Vietnam. Rather, there appears to have been a growing groundswell of dissatisfaction about the increasing wealth disparities. The social

movement literature suggests that agents can take advantage of political opportunities by strategically appealing to the central government's stated policies (for clean government, rule of law, and village-level democratic reform) as a shield (Li and O'Brien, 1996), which we can find being invoked in both countries. On the other hand, if we assume that irregularities in the handling of land conversions are commonplace, media attention to particular cases and officials may also be a function of internal governmental politics, especially because the state owns all the domestic media outlets.

Although the legitimacy of local government decisionmaking is often criticized in these land disputes, these controversies also have wider implications. They are indicating that society is reconstructing its basic principles about property rights. In the United States, some constitutional legal scholars viewing the *Kelo v. New London* case wondered why there had been so much fuss about the Supreme Court rulings. More than 50 years of precedent had been set, making the decision in this case predictable and actually surprising that the decision was not unanimous. Although the court decisions may be consistent, the public outcry indicates that the society in which the law is being applied has experienced significant changes.

In the past, the justification of land takings was utilitarian—more people in society would benefit from a change in land use (and land users). Previous U.S. cases outlined that these new land uses could include public works, privately operated but publicly used operations such as railroads, and situations that would rectify a public harm such as blight and land monopoly. The property rights of the few could be forced to defer to the benefit of the majority. With this latest turn of land takings for economic development, however, when public finances are driving the measure of public interest, the fear is that the main constituency that the city would serve would be the largest taxpayers. This concern was voiced by one of the dissenting U.S. Supreme Court members whose opinion was quoted more often than the opinion of the majority.<sup>4</sup> If a subset of private interests becomes the “public interest,” the legitimacy behind land takings erodes.

## **Contextual Differences: Social Norms About Property Rights, Political Spaces for Dissent, and Development Imperatives**

Although the changes in public finance, the resulting conflicts of interest, and the social reconstruction of property rights principles are similar in the United States and Asian transition countries, important differences also exist.

One difference involves how the property rights issue has been framed. In the United States, one argument of those opposing land takings involves the symbolic value of home and ownership, something that cannot be entirely compensated monetarily. For example, one of those refusing to move in the *New London* case was Bill Dery's family. The family's ancestors had owned the house for more than 100 years, and Mrs. Dery had been born in the house. Meanwhile, Suzette Kelo had

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<sup>4</sup> Sandra Day O'Connor wrote: “Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms” (O'Connor, Sandra Day, *Kelo v. New London*, dissenting opinion. 545 U.S. (2005): 12–13).

bought her house only 2 years before the city attempted to take it, and eventually she was offered double the market value. Still, she refused to sell, saying that the city fundamentally does not have the right to take her home for another private user when her house was in perfectly good condition. In fact, the final settlement included the city's physically moving her house to a new location. No monetary value could compensate the last seven holdouts in the New London case. The strong attachment and value that American society places on one's house have been constructed for hundreds of years, with the support of government policies, which have produced one of the highest rates of private homeownership in the world.

Meanwhile, in the Asian transition countries, the main point of contention in reports about land disputes involves inadequate compensation.<sup>5</sup> Determining a fair market value would be challenging in these countries, where plans usually involve a drastic change in land use from agricultural to commercial, and especially in the early years of transition when real estate markets were still being established and prices were not competitive. It is difficult to get exact figures on compensation levels offered and the price that private developers pay to local government for land use rights, because these records are not publicly available. Anecdotal accounts, however, recount figures that are fractions of their original property value (Liu, 2003; Sanli and Shilin, 1996). In any case, the disparity between compensation levels and private profits and government revenues is the main point of contention in these protests. Castle coalition arguments do not emerge in the Asian transition countries, because private property has been deconstructed for decades. First, of course, according to the constitutions of both countries, the state owns all land. This land ownership was implemented through mass land expropriations and "donations" during the Communist revolution. In China, in particular, agricultural collectives have remained strong during the transition. Furthermore, they have practiced a policy of "land readjustment," in which families would be allotted new parcels or their parcel boundaries would shift as a loss-sharing device during years of low agricultural output, thus limiting attachment to particular land parcels (Schwarzwalder et al., 2002). With China's history and institutional context, the idea of a sacred right to one's property does not entertain an audience in the same way that it does in the United States.

Of course, another basic difference between the United States and these two countries is in their political institutions. In the United States, those challenging the city of New London had the opportunity to sue the city and halt the plan from going forward. The Supreme Court decided against Suzette Kelo because her local officials had been democratically elected, the plan had been introduced in public hearings, and the local court had approved the plan. That is, the majority of the public supported the plan. In China and Vietnam, with a one-party government and top-down urban planning process, protesters do not have much participation in urban development plans nor do they have many institutionalized venues for voicing their dissent. Petitions may be filed and appealed to higher and higher bureaus. Again, figures for the number of petitions would be helpful but are not publicly available. By some accounts, petitions are ineffectual and, at worst, if local of-

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<sup>5</sup> For the China case, I built a database of 83 publicly reported land-taking controversies that were published in newspapers from 1995 through 2006. More than one-half of these reports were published in 2003 and 2004, which suggests that presses were relatively open during this period. Although one must consider the bias of activist organizations, their reports can still be useful in gaining a sense of how these groups frame land-taking issues.

ficials are reprimanded, revenge is meted on the complainants (Kahn, 2004). Thus, one of the few methods to protest redevelopment has been to physically block the construction from occurring through “squatting,” sit-ins, and blockades. The limited institutionalized opportunities for voice help to explain the rise in the number of popular protests over land takings in Asian transition countries.

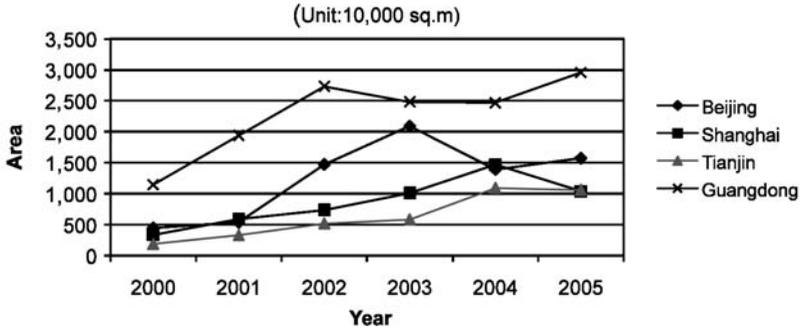
Another reason for the more turbulent nature of opposition in the Asian transition countries is related to another obvious difference between the two contexts: income levels. Although both the United States and the Asian transition countries take land for economic development, the former is primarily urbanized with relatively developed markets, whereas the latter is experiencing huge conversions of agricultural land into unregulated urban property markets. In the United States, the most controversial cases have usually involved declining and “blighted” urban centers that were in need of economic revitalization. The hope was that a new set of land uses might attract new populations and economic activity. On the other hand, in the Asian transition countries, which are in the midst of rapid industrialization and urbanization, the conflicts revolve around the unequal shares of rapid economic growth and, in particular, the increasing economic divide between rural and urban populations. Much of the land development has been occurring in the periurban and urban fringe areas because it is easier and cheaper to consolidate land parcels. The populations in these areas also are usually lower income populations than are their urban neighbors. With rapid urban population and income growth, the urban development pressures are great and the resulting potential for windfall gains more highly contested, which present a different dynamic from the urban renewal endeavors in the United States.

At the beginning of their respective transitions, China and Vietnam were among the poorest countries in the world, which made it easier for their governments to legitimate land takings. As in most developing countries, their overarching national agenda is economic development (Grindle and Thomas, 1991), which can trump almost any other public issue or right. In the early years of their transition, economic growth was a unifying issue among the population. This sense of mission helped fuel the massive scale in which land was taken. Requisitioning land was also aided by the lack of limits on how much land could be taken for proposed projects; with many debts now in arrears, clearly little accountability exists on the financial viability of projects, both public and private. Many instances of overbuilding and vacancies exist among the hundreds of local governments that have built industrial and import-export processing zones, new towns, and other ventures. Exhibits 2 through 4 give a sense of the overtaking of land by the government in China. These statistics were taken from the central government’s statistical yearbook. I chose to focus on the four major urban and fastest growing regions in China. Exhibit 2 shows that the land area taken, in general, has been increasing over the years. Exhibit 3 shows how much of this land was developed or under development, illustrating a decreasing trend starting in 2002, except in the province of Guandong, which started slowing in 2004. Exhibit 4 shows the amount of land taken that has been lying idle.

Now that China and Vietnam are two of the fastest growing economies in the world, however, disenchantment with the unevenness of economic gains has grown and popular protests have been gaining momentum, threatening the stability and legitimacy of the government. This scenario has become a serious enough issue that it is now difficult to research the topic and media outlets have been censured. In both China and Vietnam, the national government has attempted to distance

**Exhibit 2**

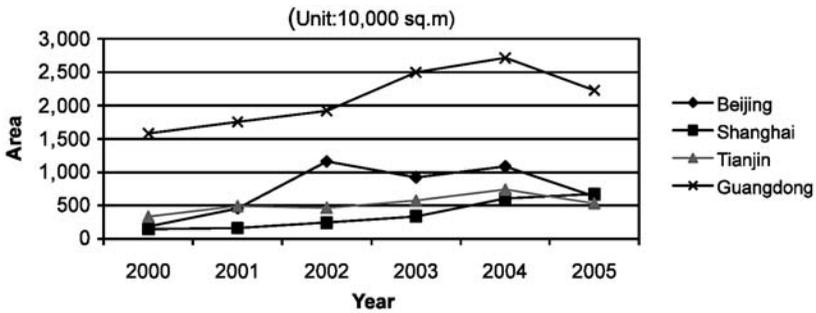
Area of Land Use Right Acquisitions, Four Regions in China, 2000–05



Source: Chinese National Statistics Yearbook, 2000–05

**Exhibit 3**

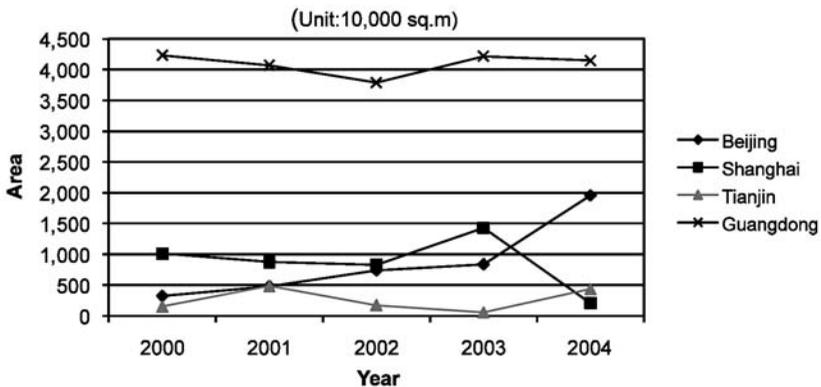
Area of Developed Land: Four Regions in China, 2000–05



Source: Chinese National Statistics Yearbook, 2000–05

**Exhibit 4**

Area of Recently Acquired Land Without Any Development Activity: Four Regions in China, 2000–04



Source: Chinese National Statistics Yearbook, 2000–05

itself from these incidents. China also ordered a temporary freeze on economic development zone land takings in 2004 in the interests of food security. In Vietnam, the social discontent over urban land development was so widespread and carried enough legitimacy that a landmark political event occurred in 2000. The central government dispatched five legal teams around the country to settle some of the most controversial land disputes. Farmers were given an opportunity to have an audience with these central government representatives and to present their evidence. In most of the cases, the central government representatives sided with the farmers (Quynh, 2000b).

In comparing these two Asian transition countries, resistance in Vietnam appears to have had marginally more effect in altering the terms of fiscal socialism to benefit the displaced. Because of the civil unrest over land compensation controversies, the government revised the official land compensation regulations. Originally, Decree 22 gave much authority in the land compensation councils to the district authorities who had incentives to help the firms and pressured farmers to sell cheaply. In 2004, Decree 197 revised these guidelines, giving the city more oversight of this process. It also introduced new language directing the district authorities “to settle citizens complaints, denunciations related to compensation, support and resettlement” and “to guarantee impartiality and equity when considering and deciding on the compensation, support, and resettlement.”<sup>6</sup> As a result, private investors now negotiate directly with the farmers and agree on a price usually without the active intermediation of district governments. Officially, if the negotiations come to an impasse, the city can ultimately determine the price. But as a result of Decree 197 and the shifting political tide, the city government has become wary of entering into land compensation negotiations between private firms and farmers. In addition to this decree, around 2003, the newly installed top bureaucrats in Ho Chi Minh City started enforcing a more formal and exact reading of the regulations and instituting closer oversight of district government activity. Ho Chi Minh City’s fiscal socialism system of land development slowed to a crawl, if not a halt. The terms of fiscal socialism have shifted so that individual farmers have the ability to hold up projects by refusing to agree to a compensation price, much to the chagrin of private developers. “If the farmer protests and petitions, the government is on the farmer’s side. By law, the state could force them to sell, but so far it is impossible to do,” said one of the developers I interviewed. To cope, developers will now either offer above-market compensation prices, decrease the size of their project, and/or compensate farmers with future developed parcels. Another strategy has been to move development projects farther away from the city and to move to newer markets within the country, where provincial governments are more eager to help private developers.

Interestingly, in comparing China’s and Vietnam’s fiscal socialism, some critics of China’s government have framed Vietnam’s transition as the more progressive and democratic. For example, Chinese newspaper reports focus on Vietnam’s political institutions, which are said to be more accountable to citizens than China’s. Some also marvel at how Vietnam’s land and real estate markets seem to represent a genuinely open market in comparison with China’s. China’s markets are dominated by very large firms, with few small and medium enterprises, making it more difficult for new firms to enter these markets, whereas new entrants and firms varying in size have characterized Ho Chi Minh City’s land and real estate markets. In any case, this backhanded way of criticiz-

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<sup>6</sup> Article 43 of Decree 197/2004/ND-CP.

ing the Chinese government by praising a smaller, lower income country has not gone unnoticed; the Chinese Communist Party has now banned public discussion of Vietnam's transition (Abrami, Malesky, and Zheng, 2007).

In October 2008, China's Communist Party Central Committee announced a major policy change that allows farmers to individually sell their land use rights into the market. Although the intention of the policy is to improve farm efficiency and food security by consolidating parcels into larger farmer operations with scale economies, this land has also been susceptible to urban development. Because another goal of President Hu Jintao is to assuage the increasing wealth gap, the individually alienable property rights should improve the farmers' bargaining positions in compensation negotiations.

## **Ironies**

The conflation of public and private interests has led to ironies, curious for some and bitter for others. One pillar of the Communist revolutions involved redistributing wealth through mass expropriations and "donations" of property to the state, in the name of the public. Now, one could loosely say that in these Asian transition countries, where the state retains ownership of all land in name, public property is being taken for private use. Planners in these countries have played such a dominant and sometimes coercive role in relocating lower income people to make way for privately funded development. Although these actions cannot be called land takings in the sense that the state owns all land to begin with and users do not have as strong a sense of private property rights as they do in the United States, the dynamic is the same in that people are resisting being moved and have a sense of injustice directed particularly at local governments.

Further ironies in both the United States and the Asian transition countries involve strange political bedfellows. What it means to be at the political "left" has changed. According to one colleague in Beijing, the "left" has become a dirty word among those who might have wanted to help common people through government welfare programs in other contexts. Instead, neoliberal market policy advisers who are advocating reforms on "scientific" or technical grounds are the main oppositional discourses against a government whose policies seem to be favoring the rich and powerful. In addition, disenfranchised and relocated people, as well as historic preservationists, are pushing for property title reform as a means to limiting government power rather promoting free markets.

Meanwhile, in the United States, several observers have noted the ironies of libertarian property rights advocates asking for stronger, top-down protection of property rights from the courts and accusing the private sector of public harms. Curiously, in the *Kelo v. New London* case, these advocates joined the left in trying to limit the powers of eminent domain in cases of urban renewal. Of course, the more general issue is dissatisfaction with how local government is using its tremendous power of eminent domain.

This article has argued that the source of the conflicts of interest and the debate over property rights and social justice emanate from structural constraints. A core dilemma is the amount of independent funding available to public servants in planning economic growth that will benefit their community. Although important differences exist in institutional contexts, planners around the globe share these constraints.

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