The Uncertainty of Land Use Rules: An Interpretative Framework[1]

*Zhang Jing**

本文通过四个土地案例探索基层社会秩序的性质，并尝试对土地使用规则不能确定的原因做出解释。文章指出，在政治和法律各自的活动领域及活动原则未经区分（分化）的状况下，不存在包含确定性原则和限定性合法性声称的法律系统，而是有多种潜在的规则“等待”被社会合法化。规则被“选中”的最后结果受到执行者身份、阐释公共利益的能力以及力量对比因素的影响，但它只在一次事件中使用。这不是法治秩序，而是对‘治’的规则进行选择竞争的政治秩序。其性质在于：不是根据确定的标准辨认正当利益（是否有理的“根据原则”），而是根据力量对比取舍各种规则（是否有人的“力量原则”）。因此，土地使用规则随着利益、力量的变动而不确定。对照“法律衡量模式”，作者用“利益政治模式”表达这一社会秩序的特征。

I. Existing Problems

There have been a great many land disputes in China's countryside in the last few years. In these disputes litigants for either party cite different policies and rules to demonstrate their "correctness." Some quote land contracts, maintaining that the land is the special property of the contractor who owns its production value. Some cite clauses from the *Land Law*, believing that as land is public property of all the villagers, it is they who should enjoy its value. Others base themselves on the idea of public ownership to argue that the government should have the final say. The key to such disputes lies in how the value arising from the use of land should be distributed. Different people appeal to different distribution rules. If we regard this value, coupled with resources on the land, as the generalized social wealth of rural society, the central question of land disputes like these lies in determining the rules of its distribution.

We aim here to grasp the nature of social order as exposed in these disputes, and attempt to interpret why the land use rules are uncertain. This will help us understand the rule of law in Chinese society. We proceed from the Weberian approach in legal sociology. In distinguishing between the idea of law used in *legal science* and in *sociology*, Max Weber held that the former is concerned with the inherent effects of law; sociology on the other hand uses a notion of law that deals with the reality in which members of society recognize and implement legal rules (i.e., give them effect).[2] Though China has no lack of laws and policies concerning land, they are not effective under all circumstances. From the perspective of legal sociology, it is necessary to look for answers

in social behaviour that make rules recognized. A "rule" here is, broadly, something that some action is supposed to abide by; something which, given basic principles as the media, institutionalizes an action—including both formal (legal) and informal (habitual or customary) aspects—as expected. We may also say that ineffective statutes fail to be institutionalized: the members of society attach no (practical) legitimacy (that is, extensive social cognition) to such rules. so what we are concerned here with are: How society chooses certain rules of land use? What logic is followed in the process of such a choice? How does it affect the determination of rules? We shall offer reasons why, in four case studies, the legal rules could not be institutionalized.

II. Knowledge as Provided by Law and Economics

Few scholars dispute that land use rules in China are marked by uncertainty. However, there are different views concerning the causes.

Roy Prosterman traces it to uncertainty concerning farmers' land rights. Though farmers exert a greater degree of ownership of land than before the dissolution of collective agriculture in 1979, there are still three aspects of uncertainty:

- The period set for the validity of the land use right by the farmers is insufficient and uncertain;
- There is the risk of losing land as a result of the change in population; and
- There is the risk of losing land as a result of requisition for nonagricultural purposes.

Uncertainty regarding usage rights is thus the main cause for the instability of the land system. For instance, the concept of "collective" is not clearly defined and it is unclear what entity has the collective right of the ownership of the land. Such obscurity gives rise to a rights vacuum. Farmers do no know who actually owns the land. Governments at all levels and collective economic organizations may get involved in the management of land use rights.[3] Prosterman's interpretation provides a convincing account of the impact of power entities (governments at all levels and collective economic organizations) on the use of land. It assumes, though, that the farmers are a force able to underwrite land rights in a stable way. This assumption, as our case studies will show, is not secure. Sometimes, farmers may resort to collective actions to terminate land agreements by force, demanding repeated readjustments so as to reduce differences among them in land-derived benefits.

Legal scholars tend to think that contradictions in the rules show how " leaders have failed to determine the ultimate objectives of the land use system." For example, increased output, protection of farmers and natural resources, maintaining a balance between agricultural and nonagricultural uses, and environmental protection may vary in accordance with different land use systems designed for different purposes.[4] They argue that clearly targeted laws would help stabilize the system. This is correct given appropriate conditions. But what reason is there for jurists to think clearly legal definition of land rights would restrict people's behaviour, that is, people would act in conformity with the law? How should they explain the phenomenon of the law becoming powerless in face of concerted massive violation?

While there is a process of soliciting public opinion in the process of land-related

legislation in China, debates on legal rules are effectively confined to administrators and have little direct reference to members of the society owing to the way the participants are selected, the interests of those affected are organized and opinion is transmitted. So, when the law is endorsed, there is still an absence of consensus on its basic principles among the members of society. Consequently, the process of legalization inevitably has to find other channels to accomplish. We thus have to be very cautious in accepting the above-mentioned interpretation, for there is an absence of the legalization process which it posits as a given condition. We find that in villages that have a tradition of clearly defined land rights, the rules change frequently. Conversely, in villages that have no such tradition, contracts between the parties concerned are widely respected. Such paradoxes show that the "purpose of rules" and interpretations concerning "clearly defined land rights" are only partially valid, for they only set store by the weaknesses of the clauses in the law. Obviously, we should also take note of other conditions that make people law-abiding: under what circumstances does law indeed exert binding control on people's behaviour?

Economists and jurists share similar views on the above-mentioned factor of property rights. The former, however, raise another interpretative variable—the question of regional differences in the system. They maintain that the Chinese land system differs from region to region, above all as regards the degree of personalization of rights in land. Turner, Brandt and Rozelle have found that a major factor in regional difference that interferes with the readjustment of farmland is a pursuit of "overall production surplus." Village cadres focus on "maximizing production surplus," tending to readjust farmland to suit this objective.[5] In this interpretation, it should be noted, frequent land readjustment plays a positive role, for it "yields the whole village a greater total production surplus."

Gong Qishen and Dong Xiaoyuan point out that the focus on total production surplus is aimed at village welfare. Welfare is so important to the village because the rural insurance market is poorly developed. The village has to exercise its right to control the land, i.e. collective ownership, to bring into full play the land's role in social security. The basic argument is that given the threat to survival, the village collective, instead of seeking the Pareto Optimum, has to ensure the lives of the villagers don't fall below the subsistence line. Land readjustment provides a mechanism for sharing risk. When the collective benefit of land readjustment is greater than the collective costs, it becomes a collective choice, as it optimizes villagers' welfare.[6]

This interpretation shifts our attention from institutional to environmental factors, attributing differences in the farmland system to different survival conditions. As our Case Two shows, in County Q where environmental survival conditions and macro policies are virtually identical, different villages chose different land readjustment plans. Which is the more decisive, institutional factors (changes in the institution that may change the policy decision), or environmental factors (poverty that mandates risk sharing so as to guarantee collective survival)? This is still unclear. It is in fact quite important to distinguish the two factors, and indeed bears on the core issues of our interpretative model. Of the two, one refers to the legal environment (focusing on human relations), the other to the natural environment

(focusing on man's relations with nature). The latter is unable to provide an explanation of why, given identical survival conditions, people employ different systems.

Liu Shouying, Michael Carter and Yao Yang interpret this in terms of *cui bono* (who benefits?). They point out that the land system is a game played between the state and the farmers. As property rights are multi-faceted and the contract is incomplete, the property rights can not be complete either. When owner chooses to change their property rights, it depends how much they can benefit from it. For instance, before the inception of the household responsibility system, the land was owned by the state. Then, the state gave away part of the property rights over land, for household-based farming promoted Pareto improvement: it helped increase the total output of grain of the country and the income of the farmers. However, the state had all along maintained its control over land rights to ensure a sufficient supply of food grains and avoid market risk. Areas where the state exercised the greatest control are therefore those key ones which the state relied on for grain procurements. It was in non-grain producing areas that the state offered high flexibility for independent choice by farmers.[7] This means that an environmental difference–being a major grain producer or otherwise–affects the state's calculus of interests and hence selection of the land system.

Liu, Carter and Yao's study has two problems. First, it leans toward environmental determinism. In this interpretative framework, legal evolution contributes but little to human relations. Secondly, it overstresses the role of the state in change and control over land rights. In legal terms, this is the case. But, in reality, there is much room for change. Otherwise, how can we explain why, no matter how the state "freezes" the authority of the local government over land rights, there is still great loss of agricultural land across the country? This shows that the state is but one among a number of factors that influences changes in land rights. Their account makes the state inappropriately the only major entity to define rules and overlooks the social cognition of the law in practice.

The above studies focus on areas to which legal science and economics usually pay attention. The issue of the stability of land rights has implications outside these disciplines. Change in rights is to a great extent more a social and political rather than an economic and legal process. If we broaden our vision and proceed from an integrated legal, economic, social and political approach, we gain a richer outlook on the issue. True, the structure of ownership is determined by political factors and in turn redistributes wealth and political power.[8] Change in land rights means redefining some interests as legitimate and others as illegitimate. Given the choice, interests politics will vie to make arrangements in its own favour. Rather than efficiency, the object of such competition is to ensure a favourable redistribution of wealth. Only then is it politically acceptable. This shows that changes in land rights are not necessarily in accord with economic principles of efficiency. Such a target of competition is not all to support the institutionalization of given rules, for the rigidity of rules will limit the interest-oriented changes and opportunities. It means that changes in land rights is not necessarily in accord with the legal principle of stability.

III. The Existence of Multiple Land Use Rules

Case I: The State Policy

Farmer SH signed a contract for 200 hectares of barren sandy land with H township in D county in 1984. The contract stipulated that SH was held responsible for greening the land by planting trees and grass, with the timber to be shared on a ratio of 8: 2 between him and the township government. He persuaded seven others to join him. They bought saplings with money obtained from selling family property. The survival rate of the trees was 85%. SH became a model in controlling desertification. He went on to contract another 386 hectares of waste land, again on an 8:2 share. 127 farming households joined him in this contracting effort. The survival rate of trees was 10% in the first year and 20% in the second. In the third year, they consulted with scientists and the survival rate rose to 85%. The success encouraged more to engage in the effort. In 1986, SH ran the D County Sand Control Co. Ltd, and contracted 15,200 hectares of sandy land. The company organized the farming households as shareholders, to develop the land on a subcontract basis too. The sand control contract with the township stipulated that the benefits for the share-holders were market profits from timber sales. But in 1993, some of the share-holders cut down trees that were now approaching maturity for money and were punished by the county forestry bureau, as state policy stipulates that trees planted for sand control must not be logged; SH had no right to approve the logging. Sharp conflicts arose. The shareholders demanded that the contracts be honoured. SH had to borrow money from a credit cooperative to compensate their shares. Their labour over the past few years was in any case fruitless.[9]

In this case, the contract signed between the farmers and the township government had no authority. As its wealth lay in its protective belts of trees, the contract was nullified by the state environmental protection policy. This case shows that the national power may influence (change or obstruct) the effectiveness of contracts.

Case II: Village cadres have the final say

The major income of farmers in Q county of Hebei province comes from chestnut trees. In readjusting land distribution, it was necessary to evaluate the output of each chestnut tree and have the chestnut tree land contracted on the basis of the output and number of people of each household. The county had carried out the household production responsibility system since 1983, and readjusted and re-contracted the land between the farming households and village cadres in 1991 for a period of ten years. It was to be terminated in 2000. However, in a bid to limit short-term managerial styles and control population growth the state issued a new policy stipulating that land contracts would remain valid for 30 years. According to this policy, there was not to be any readjustment of land. Nevertheless, in practice, while some villages complied, others undertook "fine tuning," in the form of negotiated settlement between farming households as a result of demographic changes; those whose quota was reduced would be compensated with 25 kilograms of chestnuts from public land. Still others opted for major redistributions of contracted land among farming households of the entire village.[10]

This case shows the role of grass-roots cadres. Complying with a national government policy should not result in differences among different villages in the implementation of the contracted land policy; according

with the wishes of the farmers should not result in widespread discontent (which was the case in villages taking different options). The role of the grassroots cadres is to determine which rules are adopted in land redistribution and how to compensate for arrears. State policy at national or even county level can not unify such decisions. According to a village cadre, their authority stems from the fact that it is they who allocate contracts.[11]

Case III: Collective will

A county and town in Zhejiang jointly requisitioned about 18 hectares of land of Y village for urban construction. According to the rules of the city government, compensation of 900,000 yuan per hectare was to be paid, and an allocation of 25% of the amount of the land from other sources for family housing or village collective construction. The village was to get 4.6 hectares of land, an average of one room-size housing base for each household in compensation. As the land to be reallocated to the farmers was near the new city under construction and of great commercial value, they eagerly looked forward to their allocations. However, instead of allocating the land to villagers, the village cadres made a deal with the county construction department, that house construction would be undertaken by the Committee of Villagers, with the County Construction Department going through the formalities in connection with the house construction and one of these houses rented by it to open a tea house, and that 0.73 hectares of land would be given to county cadres to build a housing estate for them. More than one hundred villagers demonstrated against this arrangement, arguing that farmers were being denied the benefits of the re-allocated land. Though some of the land was returned, the villagers, not satisfied, brought the issue to the Provincial Bureau of Land Supervision and the Central Commission for Discipline Inspection of the CPC Committee. A plan to return the land to the villagers is under consideration.[12]

In this case, decisions made by village cadres were negated by collective will. Collective action by the villagers invalidated the land use contracts signed by the cadres. The implication is that even where there is no official procedure, villagers may intervene and substantially change rules they find unacceptable.

Case IV: Agreements between parties concerned

Several years ago, X village in Hebei province appropriated more than 66.6 hectares of land for the village public in land readjustment. Some of the public land was barren wasteland that was contracted to farmers for reclamation over a period of 15 years. Some of them had signed written contracts and others had only verbal agreements. They paid a contract fee for one year only. When a new village leadership assumed office, other villagers demanded that they pay the contract fee for subsequent years. Some contractors produced the 15-year-period contracts while others said that according to the verbal agreement they planted cotton for the village and the village would give them subsidies. But they did not receive any subsidy, and they therefore did not pay a contract fee any more. Taking into account the coexistence of written and verbal contracts, the village authorities agreed to re-sign contracts with the farmers, instead of demanding the payment of fee arrears. The villagers accepted this.[13]

This shows that contracts are widely recognized. When some people ask for changes in the rules of distribution, they also

tend to pay due attention to the original contract. However, when the ideas of the minority can hardly overpower those of the majority, the contracts are vulnerable. When interviewed, a cadre from another area in North China cadre proves this:

> A farmer took over an orchard on a contract that would terminate in 1995. If he carried out grafting, the contract would last for another three years. 1995 brought a bumper harvest. Many villagers, envious of his success, demanded that the village authorities recover the orchard and re-contract it. The contractor insisted on continuing the contract. However, he had only grafted some of the trees in the orchard. The contract did not state explicitly that grafting covered all or some of the trees. Both parties had reasons. We persuaded both and placed pressure on whichever party was open to persuasion. Finally, the contractor, who was a teacher, yielded.[14]

The principle of the cadres was to persuade both and place pressure on the party open to persuasion. This enables the stubborn and powerful to win. Obviously, the rule rather than weighing whose interest is legitimate, favours a powerful majority.

IV. Competition over the Choice of Rules

The above cases show that there are four factors influencing changes to land rules in rural practice–national policy, village cadres' decision, collective will and agreement between parties concerned. Each of them may influence the final decision of the land rules, in spite of the fact that it is not necessarily the decisive power. If it wants to be a decisive power, it all depends on the concrete circumstances. What are these?

The capacity of the executive. The state theoretically has an authoritative position. In special events, it may adopt new policy options to change customs at the grass roots by force. The state is sometimes an executive, and sometimes it orders the grass roots to carry out its will. However, it is not in a position to ensure that its agents implement its policy on everything. Executives at the grass roots who enjoy the right to examine, approve, manage and distribute land may, in the capacity of agent of state, handle things opportunistically in light of the circumstances. The county government may interpret state policy in its own way, as may the village cadres. Land contracts signed by parties concerned may not necessarily accord with state land policy. The rules are not institutionalised, while the flexibility of the executives is. They thus play a flexible and opportunistic role in practice.

Capacity for interpretation (public reason). Village cadres have an advantage in this respect, for their roles are public ones. Public interest is always the most robust reason. The cadres of X village in North China supported land readjustment, for this enabled them to allocate some publicly-owned land, using the proceeds to finance public expenditure.[15] Cadres of Y village in Q county believed that they must redistribute the land, as a misdistribution would affect taxes.[16] Some cadres of towns and villages in Q county maintained that land contracting should remain stable and unchanged, fearful that new trees would be all cut:

> How will all the trees (planted by the contractors) be handled? Who owns them? If you tell people to hand them

> over to the collective, they will cut them all down. ..Who would contribute productive chestnut trees grown through one's hard labor to the collective? If nobody grows new trees and all those existing chestnut trees grown during the period of 1950s-1970s are getting old and unproductive, how will you develop an orchard culture?[17]

The balance of the forces. In mediating controversies in land redistribution, cadres of the Commission of Politics and Laws of the Q County Party Committee in Hebei province adopted the majority principle:

> There was a great debate in one village. When I called a meeting of Communist Party members and representatives of households, crowds gathered to listen outside the meeting room in a world of ice and snow. As we could not come to a unified conclusion, I asked each household to send a representative to vote. 85% voted against redistribution of land. We decided not to proceed with it in this village.[18]

Though the decision-making power of grass-roots cadres is critical, it has to be adapted to the level of support. When there is a controversy, it should be noted, the rule is invariably in favour of the powerful. When there is a tremendous public will, the collective will may change the decisions of either the state or the village cadres. The pressure of the collective will may also influence agreements by parties concerned. If it is generally accepted by villagers, the individual contract may proceed; if not, it has to be changed. This shows that in practice there is a process of recognizing the legitimacy of the national policy, cadre's decision or individual agreement by those involved. The implementation of rules largely depends on whether they are acquiesced to by those involved, rather than the authority of the executive organ and the set rules. This tacit consent is obtained not necessarily through an official process of opinion polling, but rather on observations in the process of implementation. If it can hardly be implemented, it means it is not acknowledged. Under most circumstances, collective will responds passively and is active only under extreme circumstances. Such responses as signals of whether it is acquiesced to influence whether the rules will be implemented continuously or forsaken. Under such circumstances, the popular majority becomes the decisive factor in choosing the rules. The case of W village is representative: a majority of villages became envious of the wealth accumulated by contractors, demanding that the latter return the land contracted for a period of 30 years to the collective. When negotiations failed, they revolted by seizing the land and chestnut trees by force and redistributing according to the polls. The contractors appealed to the county, which, adopting an attitude of turning the major issue into small one, affirmed the action of the collective.[19]

Such phenomena show that if the competitive process of legalizing interests is not accomplished in the early stage as defined by the *Land Law*, it is inevitably transferred to the process of the *execution* of the rules, which is thus reduced to a process of *selecting* them. The choice depends largely on relative access to power, information, interpretative power and clout. Consequently, there are no ready rules to judge land disputes. To a greater extent, it is power and the majority that decide. This may explain why agreements between parties concerned are

the weakest in terms of stability. What is agreed may be easily broken, for power and strength determine the process of rule selection. It is not the rules that weigh legitimacy, but interest that affirms the legitimacy of rules. Under such circumstances, minority interests cannot be protected. In Q county in Hebei province, when the contractors were aware that they had to hand over the trees they had planted, they cut them as way of countering the equalitarian attempt.

V. The Two Patterns of Social Order

The relations between actions and rules differ in different social orders. A comparison here is in order. Under a legal order in which property rights (comprising those of ownership, benefit and disposal) are defined explicitly on the individual, land use is not by way of "distribution" but of "voluntary trade." In this case, it is very simple: the parties concerned will do as the trade agreement defines. The rules are defined first, followed by execution in accordance with the rules. The rules assume a guiding role, and justice one of protecting the authority of the agreement. Once agreed upon, neither party or a third party has any right to change it. Anyone arbitrarily doing so faces litigation. Under such circumstances, there is a "restrictive basis of legitimate claims."[20] It authoritatively monopolizes legal empowerment, that is, it defines what acts are legitimate. This provides a unified standard for action. If there is any dispute, all actions are examined and judged by the common standard (rules). In another word, it is to employ rules to weigh action, not to use interest as the standard to choose the rules.

In contrast, the cases we have discussed above show all have an absence of unified criteria to judge people' s actions; there is much room for opportunist choice. When such choice is tied to interest, power and clout, it is the latter, rather than unified criteria, that determine the rules of the legitimacy of action. In the selection of land use rules, outcomes of competitive behaviour are determined by distribution expectancy and interest judgment; interest politics cover the whole process. Here an interesting question arises. In the restrictive legitimate claims system, relevant legal principles and rules are identical whereas the right of interpretation is special (professional) and relevant identity is specifically unitary. Members of society with different interests have to express their interests through identical criteria, and the legitimacy of their interests is restricted by these. Restrictions on the conflicting parties are identical as regards criteria of action, for the choice of rules has already been made in the stage prior to their formulation. In this way, disputes turn on whether a given interest is legitimate and should be protected. But, if what people face is not the restrictive legitimate claims system, different rules can all be the result of choice. The legitimacy of rules is determined by those who are more powerful; there is no universally acknowledged standard. Disputes can only be resolved by trials of strength.

Unlike the legal process, in the above cases interests are determined not by rules but by clout. If we define competition for the protection of interests as interest politics, the target of the above process is obviously to influence or control the determination of rules. This politicizes the nature of disputes, where not judgements of what is legitimate, but of what is just, correct or politically acceptable are critical. Obviously, this is not an order under rule of law, but one of interest competition. Rather than legal judgment,

what is relied on is interest negotiation. When disputes arise, village cadres, to use their own words, "work to persuade whoever can be easily persuaded," and in villagers, words, "What matters is not reason but having a backer in the power structure." This presents a sharp contrast to the generally accepted relations of law: the "reason" means basis in an order under the rule of law, whereas "somebody in the power structure" means clout in an order of interest politics; which is the key difference between them.

The above politicized change makes final decisions regarding land use rights an endless process of negotiation over degrees of clout. Uncertainty in the rules follows from this. The nonrestrictive legitimate system provides the condition, the practical possibility for the power and social force to select the rules in light of their needs interests and their interpretation. Under the restrictive legitimate claims system, such a process of competition is accomplished through the political market. The structure of differentiation of politics from law restricts the role, space and time of activities in interest politics. It allows interest politics to fully compete, mobilize social consensus and work for organized interest identity in a given stage. The law is established on the basis of these principles. This is its effective space, in which interest conflicts may be judged according to established standards. Interest competition is thus restricted, for it has to be done at the political market.

One of the important results of such differentiation is, in relative terms, mutual noninterference between the two logics and criteria of action. A barrier is thus set up that prevents legal authority from influencing interest competition, and vice versa. In the meantime, they maintain their own characteristics, stability (of rules) and (political) dynamism. The political area is guided by political relations, i.e., neutral rules that settle issues in the setting of rules and order. Without such structural separation there is no order under rule of law in its genuine sense, for interest may play a role in legal enforcement and justice at any time and change all existing rules. In differentiated institutional structure, actions follow set rules unless they are changed through a political process. In a non-differentiated institutional structure, interest-oriented actions may easily choose principles, and intend to change them in accordance with opportunities. In this way, rules can hardly be determined.

VI. Conclusion

We may now sum up our two models of social order.

1. In the interest politics model, rules are endlessly negotiated. In the legal equilibrium model, the basic principles for such negotiations have already been formed elsewhere (i.e., in the political arena); parties to them must obey them and cannot arbitrarily change them: otherwise they would incur intervention by specialist legal authorities who would force them to carry out the principles.

2. In the interest politics model, the parties may determine through competition what is legitimate and are the definers who may influence others in their choice. In the legal equilibrium model, those involved have little room for independent choice and decision and their role is but to expand and communicate the set rules. Judgments of the legitimacy of interest do not depend on power and clout but on whether such actions are in accord with the law.

3. In the interest politics model, rules are constructed and changed in the

continuous process of agreement and acquiescence; they are mass-oriented, for they have to be influenced by the ideas of the majority. When information may be easily monopolized, they are power-dominated, for those who are in grasp of information and in a position to interpret things are invariably the decision makers. In the legal equilibrium model, the rules are already established and are relatively stable. They must be interpreted by specialist legal authorities and brook no arbitrary alteration. They are authority-oriented and specialist, and can hardly be influenced by immediate interests.

4. The interest politics model permits differences in subjective cognition to influence the rules at any time and make decision through trials of strength and trade. Such trials of strength are also a sort of equilibrium mechanism: when decisions are extremely unfair there will invariably be some obstructions. The outcome is, however, unpredictable. For rules change as interest and strength change. When a case is handled, it does not mean similar cases in the future will follow suit. Without explicitly defined rules to guide people's behavioural expectations, if social conflicts of the same nature may recur they can only be tackled in accordance with the new interest context. A stable order of interest politics depends on satisfaction on the part of all parties; but the greedier party with more power, may influence the result under the excuse of lack of satisfaction. Opportunistic behaviour is hard to prevent, and the social costs for the equilibrium of order are higher.

The two patterns manifest and construct two diametrically opposed types of social relations and order. The difference between them is of great importance for the understanding of the order under rule of law in China.

* Zhang Jing, Professor of the Department of Sociology of Beijing University. Her intellectual interest is political sociology and legal sociology. Her publications over past five years include: *Units of Organized Interests: A Study of the Cases of Congress of Workers and Staff in the State-owned Enterprises* (2002), *Grass-roots Political Power: Problems in the Rural Institutions* (2000), *Corporatism: And Its Main Differences from Pluralism* (1998), *State and Society: A Collection of Research and Commentary Papers* (ed.) (1998), "Class Politics and Unit Politics: Organized Interests in Urban Society and Public Participation" (2003), "State Power Building and Rural Autonomous Units: An Analysis of Cases in Xicun Village of North China" (2002), "Public Space and the Growth of Civil Rights: A Selection of Cases of Communal Disputes in Shanghai" (2002) and "Village Rule As Embodied by Native Customs and Regulations" (2000). Address: The Institute of Sociology, Beijing University, Haidian, Beijing 100871 China. E-mail: zhangj@mail.disa.pku.edu.cn

Notes

1. This paper was read at the *International Symposium on Law and Society* (11-12 October 2002) and later at the 233rd Biweekly Forun of Beijing Tianze Institute. I hereby express my thanks to Mao Yubshi, Sheng Hong, Wang Yaxin, Qiang Shigong, Zhang Min, Guo Xinghua and other scholars for their comments.
2. Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, vol. 1, p. 311.
3. Roy Prosterman, "Approaches to Solving Existing Problems in Land System in China" in Liao Jianping, ed., *Chinese and Foreign Schol-*

ars on the Countryside, Huaxia Publishing House, 1994, pp. 236-239.
4. Erwin Reich, "Legal Regulation for Stable Agrarian Land Use – Importance in and Experiences from Western Countries," *ibid.*, pp. 243-253.
5. Yao Yang, *Freedom, Justice and Institutional Changes*, Henan People's Publishing House, 2002, pp. 195-196.
6. Yao Yang, *The Evolution of the Inductive System under Collective Decision-making – the Positivistic Analysis on the Evolution of the Stability of the Farmland in China*, Henan People's Publishing House, 2002, p. 204.
7. Yao Yang, *Freedom, Justice and Institutional Changes*, *op. cit.*, pp. 197-198.
8. Gary D. Libecap, *Analysis of Property Rights Agreements*, Chinese translation, China Social Sciences Publishing House, 2001, p. 13.
9. CCTV program "the Worries of SH," June 2002.
10. Xu Fuhai, "the Consequential Game as a Way of Expression of Farmers' Interest and Rural Order–Investigations on Land Readjustment and Responses of Farmers in Three Villages in Hebei," 2002.
11. Minutes of a discussion session with Chairman of D Villagers Committee, July 2002.
12. Zhang Yongle and Song Qiudao, "Investigation in Y Village of Zhejiang," 2001.
13. Minutes of interviews with farmers in X Village in Hebei, August 2000.
14. Xu Fuhai, minutes of interview with ZH of an Agricultural Economic Station in Hebei, 2001.
15. Interviews with cadres of X Village, August 2000.
16. Minutes of talks with village cadres in Hebei, July 2002.
17. Xu Fuhai, minutes of interviews with village cadres, March 2002.
18. Minutes of talks by cadres of the Commission of Politics and Law of the Q County Party Committee, July 2002.
19. Xu Fuhai, minutes of investigation in Q County, 2002.
20. Zhou Xueguang, "An Institutional Theory of Reputation," a paper presented at the Academy of Management Annual Meeting, 2000, USA, p. 31.

References

1. James M. Buchanan and Roger D. Congleton, *Politics by Principle, Not Interests: Toward Nondiscriminatory Democracy*, the Press Syndicate of the University of Cambridge, 1998.
2. Jules Coleman, "Market Contractarianism and the Unanimity Rule," *Social Philosophy and Policy*, 1985, no. 2: 69-114.
3. Friedrich A. Von Hayek, *Economy, Science and Politics*, Chinese translation, Jiangsu People's Publishing House, 2000.
4. Robert M. Unger, *Law In Modern Society*, the Free Press, 1976.
5. Gao Daoyun, Gao Hongjun and He Weifang, ed., *American Scholars on Chinese Legal Traditions*, China University of Political Science and Law Press, 1994.
6. Harvard Yenching and SDX Joint Publishing Co., ed., *Confucianism and Liberalism*, SDX Joint Publishing Co., 2001.
7. Peter Stein and John Shand, *The Legal Values of Western Society*, Trans. Wang Xianping, China People's Public Security University Press, 1990.
8. T. Skocpol, *The State and Social Revolution*, trans. Liu Beicheng, Guiguan Book Company, 1998.
9. Otsuka Hisao, *The Basic Theory of Community*, trans. Yu Jiayun, Taiwan Lianjing Publishing Company, 1999.
10. Martin Loughlin, *Public Law and Political Theory*, trans. Zheng Ge, the Commercial Press, 2002.

—*Translated by* Zhu Shida
Revised by David Kelly