

Urban Commons on Uncommon Ground: Experimenting With Co-Governance in China's Global Cities

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ABSTRACT:

Urban centers worldwide, including those in the U.S. and China, are powerhouses of wealth and opportunity yet suffer from increasing unaffordability and exclusivity. This begs the question: Can land use regulations be the key to making our urban environments prosperous and common? This paper navigates the growing discourse surrounding urban commons, which is a concept that views urban land as a shared resource, with individual usage influencing comprehensive economic and social outcomes for the community. The discourse moves beyond the traditional, growth-centric approach favoring the “optimal use” of land and contrasts it with an emerging co-governance paradigm. This alternative model encourages an equitable distribution of power and interests among communities, governments, and developers fostered through systematic collective action.

Building upon the urban commons discussion in the context of the U.S., this paper turns its gaze toward urban China. In a landscape marked by shifting state-society relations, economic upheaval, and rising demands for equitable property rights, China provides a compelling backdrop for examination. Through extensive fieldwork and a detailed exploration of historical, legal, and policy documents, this paper offers a ground-level perspective of China's pioneering foray into co-governance. This venture places indigenous neighborhoods and villages at the center of land redevelopment, empowering community members to negotiate with developers and local governments from a position of strength. It also allows for collective decision-making on future land

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development and thus harnesses the shared value that state-corporate alliances could lose or monopolize.

Despite these advancements, challenges persist. Intensified social conflicts and the uneven landscape of community power expose the vulnerability of communities facing deep-rooted pro-growth inclinations. This paper advocates for striking a balance between short-term power sharing and long-term institutions that regularize collective action. Such an approach is critical to the paradigm shift towards commonality and prosperity in urban development. As such, this paper promises to offer a wealth of actionable insights for legal scholars and urban policymakers in both China and the U.S.

I. INTRODUCTION

Should you find yourself in Guangzhou, one of Southern China's bustling global cities, you may be struck by a peculiar juxtaposition. Amidst the city's towering high-rises are ancestral shrines, drawing indigenous villagers together and signifying a resilient social fabric weaving its way through the urban transformation.¹ Echoes of age-old customs reverberate, painting a vivid tableau of tradition in a modern landscape. This unique blend of tradition and modernity prompts a compelling question: How can village communities metamorphose into a contemporary metropolitan space, all while safeguarding their social cohesion? This puzzle extends far beyond Guangzhou. In the last decade, various Chinese cities have embarked on pioneering institutional reforms in land use law in a quest to rediscover and harness community power.

China's experiments spark theoretical inquiries into the role of community in land development.² Such tension between development and community is not new to the United States ("U.S.") Jane Jacobs famously criticized the urban renewal programs utilized in the 1950s in New York City, spearheaded by Robert Moses, for destroying historical neighborhoods and dismantling the urban social fabric that was deemed critical for human flourishing.³ Today, however, community control over land use in the U.S. is often accused of perpetuating social exclusivity and potential segregation.⁴ In the middle of a looming housing affordability crisis, the complex relationship between community and development is once again in the spotlight.⁵ How can community power be structured to facilitate social cooperation on the one hand and preserve an equitable urban economy on the other hand?

1 Author's fieldnote dated 01.10.2020 (on file with Author).

2 Discussion of communities in urban and property law are widespread. On city-making as a process of building communities of strangers, see generally GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS (1999). On the mutual dependence of individuals and communities in property theory, see generally Gregory S. Alexander & Eduardo M. Penalver, *Properties of Community*, 10 THEORETICAL INQ. L. 127 (2009). On the institutions and practices of community participation in urban land use, see generally Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, 77 U. CHI. L. REV. 5 (2010); Hanoch Dagan & Michael A. Heller, *The Liberal Commons*, 110 YALE L.J. 549 (2001).

3 See JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 470-71 (2011).

4 For a recent discussion of the politics of community land use control and its impact on social exclusivity in American cities, see generally KATHERINE LEVINE EINSTEIN ET AL., NEIGHBORHOOD DEFENDERS: PARTICIPATORY POLITICS AND AMERICA'S HOUSING CRISIS 10-19 (2019); JESSICA TROUNSTINE, SEGREGATION BY DESIGN: LOCAL POLITICS AND INEQUALITY IN AMERICAN CITIES 23-45 (2018).

5 For example, for an up-to-date analysis of community and development in New York City, see Neil deMause, What Ever Happened to CBAs? The Rise and Fall of "Community Benefits Agreements" in NYC, City Limits (Jan. 18, 2022), <https://citylimits.org/2022/01/18/the-rise-and-fall-of-community-benefits-agreements-in-nyc/>.

To address the question, this paper engages in a discussion on “urban commons” in property law, urban law, and urban studies.⁶ The concept of urban commons offers a framework that bridges the normative claim to shared urban resources and the way in which those resources are governed. Through a more open and collaborative governing system, various groups and actors can come together and enhance the socio-economic values of urban common-pool resources available to all urban residents.

I first underscore urban land as a commons, the prosperity of which depends on the effective coordination between various land uses and users. The intense economic and social interactions inherent to an urban society create the “publicness” of land use; any use of land can potentially add to or subtract from the value of land in the nearby areas.⁷ Thus, proper land governance can generate the “commons value”—economic and social benefits for urban inhabitants due to the positive synergy of coordinated land uses.⁸ In contrast, rivalrous and wasteful land use can dissipate the value, leading neighborhoods and communities into a downward spiral of disinvestment and decay.⁹

Second, I identify two ideal types of land use regimes to govern land commons. In the pro-growth regime, private land development teams up with the state to repurpose urban land for the “best and highest use” through land use regulations, such as zoning and eminent domain. While the state-corporate growth coalition could generate some economic benefits from the commons, the dissociation between economic and social dimensions is deeply problematic, sometimes resulting in diminished social values of urban commons. The opposite model is the co-governance regime, where communities, governments, and developers share power and interest in land development. The institutionalized community participation and collective actions are conducive to both economic

⁶ For a discussion of urban commons in legal scholarship, see generally Nicole Stelle Garnett, *Managing the Urban Commons*, 160 U. PA. L. REV. R 1995 (2011); Sheila R. Foster, *Collective Action and the Urban Commons*, 87 NOTRE DAME L. REV. 57 (2011); Christian Iaione, *Governing the Urban Commons*, 7 IT. J. PUB. L. 170 (2015); URBAN COMMONS: MOVING BEYOND STATE AND MARKET, (Mary Dellenbaugh et al. eds., 2015); Sheila R. Foster & Christian Iaione, *The City as a Commons*, 34 YALE L. & POL'Y REV. 281 (2016). For a discussion of urban commons in urban studies and social science, see generally MARGARET KOHN, THE DEATH AND LIFE OF THE URBAN COMMONWEALTH (2016).

⁷ For example, population density is one factor that connects the use of individual land parcels with city-wide interests. Economists and urban law scholars have extensively written about the human capital spillover in urban agglomeration which is a function of population density. *See generally* EDWARD GLAESER, TRIUMPH OF THE CITY: HOW OUR GREATEST INVENTION MAKES US RICHER, SMARTER, GREENER, HEALTHIER, AND HAPPIER (2011); David Schleicher, *The City as a Law and Economic Subject*, 2010 U. ILL. L. REV. 1507 (2010); David Schleicher, *City Unplanning*, 122 YALE L.J. 1670 (2012). Part II of the article will elaborate on the topic.

⁸ *See infra* Part II, Section B. *See generally* Lee Anne Fennell, *Agglomerama*, 2014 BYU L. REV. 1373 (2015) (discussing positive and negative economic and social effects of land use).

⁹ Duncan Kennedy, *Legal Economics of US Low Income Housing Informality Analysis*, 4 J. L. SOC'Y 71, 90-91 (2002).

prosperity and social solidarity of the urban commons rather than the divorce of the two.

Third, I bring the theoretical endeavor down to earth by providing an in-depth empirical study of real-world cases. China's co-governance experiment beyond its old pro-growth regime offers important lessons on the promises of the alternative model and pathways of transition. The perils in this transition also serve as a cautionary tale on the deep-seated contradictions between community empowerment and urban development.

At the policy level, this paper does not aim to provide a comprehensive handbook for designing a co-governance land regime. The specific arrangements must be configured in different legal systems and reconciled with the respective value systems. Rather, I argue that China's experiment shows that the institutionalization of community power can be a critical move to relink the economic and social dimensions of urban land commons. The example has the potential to travel beyond China to other jurisdictions where the pro-growth tendency similarly dominates and the role of the community remains passive and uneven.

This paper is organized in the following manner: In Part II below, I discuss urban commons and propose divergent approaches to governing urban land. Drawing on the studies of commons, particularly the burgeoning concept of urban commons, I underscore urban land as a common-pool resource where various land uses influence one another through economic and social synergies and conflicts. The theoretical endeavor distinguishes between two ideal types of land regimes. The pro-growth regime relies on the state-corporate coalition to maximize the economic value of urban land. In contrast, the co-governance regime brings back the urban community, reconnecting economic values with social interactions underlying urban land commons.

Part III explores the pro-growth land regime that has long defined China's urban development. Its two pillars rest in the differentiated legal treatments of rural and urban properties and the monopolistic position of local governments in converting the former to the latter. Although the regime achieved considerable success in stimulating economic growth, the uneven property rules and closed-door decision-making have led to widespread social unrest, rampant informal housing, and a highly speculative real estate market.

Part IV closely examines a co-governance experiment in Chinese cities. Building on fieldwork conducted in Guangdong Province from 2019 to 2023 and an extensive analysis of historical, legal, and policy documents, I offer a firsthand account of the rise of communities in China's land development. This new co-governance regime utilizes the State's continuous supervision, developers' resources, and, most importantly,

communities' social relations rooted in history and everyday interactions. The central role of communities in bargaining and decision-making allows their members to collectively negotiate with developers and governments from a position of strength, thereby capturing common values usually dissipated or appropriated by the market and the State.

Part V focuses on the perils of China's current co-governance experiment. The growing stake in community decision-making and the lack of effective dispute-resolution mechanisms could defeat the very purpose of the co-governance regime. By examining intensified social conflicts and stalled legal innovations, I demonstrate the deep-seated contradiction between the economic and social goals of urban land commons. A one-time sharing of powers and interests might harness community power for more coordinated and less contentious land development, but what are the long-term institutional designs for equitable and sustainable urban land commons? The Conclusion provides a concise discussion of the broader implications of China's experience and the ways forward. From an urban commons perspective, one enduring challenge for China and other jurisdictions is reconciling the open-ended dynamics and fluidity of urban life with land use laws prone to different forms of pro-growth tendencies.

II. THE URBAN COMMONS AND THE PROBLEM OF GOVERNANCE

A. From the Commons to the Urban Commons

The concept of urban commons builds on the well-established study of the commons pioneered by Garrett Hardin.¹⁰ Commons, or common-pool resource, is a type of resource that is limited in number or value but not exclusive in use.¹¹ Users do not have the legal right to exclude others from using the resource, and an individual's use of the resource will subtract from the benefits available to others.¹² This feature renders common-pool resources vulnerable to the tragic conditions of rivalry, over-exploitation, and degradation.¹³ In Hardin's tale, the tragedy of overgrazing and underinvestment could only be avoided by either state

¹⁰ Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243, 1243-45 (1968).

¹¹ *Id. See also* ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION 2-8 (1990).

¹² OSTROM, *supra* note 11, at 30.

¹³ Typical commons include natural resources, such as water and air, and public property, like public roads and spaces. The study of the commons has massively expanded in scope over the last few decades. For comprehensive research on the commons, see generally ROUTLEDGE HANDBOOK OF THE STUDY OF THE COMMONS (Blake Hudson et al. eds., 1st ed. 2019).

control or private ownership.¹⁴ Modern neoclassical economics offer an even grimmer picture, declaring “the inevitability of privatization” and “the necessary failure of commons ownership.”¹⁵ Elinor Ostrom famously questioned the presumption that commons cannot sustain outside state coercion or endowment of property rights due to the uncoordinated, free-riding behaviors of self-interested individuals.¹⁶ In her empirical study of the self-organized management of common-pool resources, she found that small, close-knit groups can successfully conserve common-pool resources.¹⁷ More importantly, she raised the critical question of the roles of institutions.¹⁸ Proper institutional designs can facilitate resource-preserving social cooperation and prevent opportunistic overgrazing, even when the *ex-ante* social ties and norms are not strong enough to regulate individual behaviors.¹⁹ Hence, the framework of the commons can apply to a much broader world where groups of heterogeneous members and interests may overcome the tragedy with the right institutions.²⁰

The question of institutional design opens doors for legal scholars to debate the conditions under which commons can thrive.²¹ In *The Liberal Commons*, Hanoch Dagan and Michael Heller asked how commons can be “both liberal and prosperous.”²² Unlike Ostrom’s construction of commons institutions that seriously limit the alienability of commons resources, Dagan and Heller incorporated the liberal value of exit into the evaluative prism of commons resource management, asserting that commons need to allow members to come and go.²³ Furthermore, they argued that well-designed institutions can balance the centrifugal forces of exit and the social cooperation critical to the commons’ prosperity.²⁴ Law

14 Ostrom, *supra* note 11, at 8-13.

15 Dagan & Heller, *supra* note 2, at 563. For how neoclassical economics make the case for the inevitable privatization of commons, see Carol Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711, 711-12 (1986) (discussing how Posner embraced the Blackstonian idea that exclusive control over property enhanced wealth); Dagan & Heller, *supra* note 2, at 559-64 (identifying that from Harold Demsetz to modern day law and economics, scholars share the pessimistic view of commons property).

16 See Ostrom, *supra* note 11, at 6, 13-14.

17 See generally *id.* at 58-101.

18 *Id.* at 15-18.

19 *Id.* at 185-92.

20 Ostrom later expanded the design principles of commons institutions to complex economic systems. See Elinor Ostrom, *Beyond Markets and States: Polycentric Governance of Complex Economic Systems*, 100 AM. ECON. REV. 641, 652 (2010).

21 For another critical review of the question, see generally Henry E. Smith, *Semicommon Property Rights and Scattering in the Open Fields*, 29 J. LEG. STUD. 131 (2000) (discussing the instruments used in the open field of medieval England to maintain a semi-commons ownership that provided economic gain on both individual and commons level).

22 Dagan & Heller, *supra* note 2, at 566.

23 *Id.* at 553.

24 *Id.* at 574-77.

is particularly useful in creating a safety net to divide fruits fairly among members and promote well-tempered voices—fortifying the intrinsic social value of the commons—while protecting informed and sincere exit decisions.²⁵

However, both Ostrom's classical model and the liberal commons theory revolve around bounded resources that differ from the urban setting. As Dagan and Heller acknowledge, these types of commons are fundamentally different from "open-access" resources, as their commons comprise a *finite* number of legitimate resource users endowed with the right to exclude nonusers and outsiders.²⁶ The liberal commons model moves a step forward by granting members some mobility to join and exit the commons. Nevertheless, those resources are still more analogous to private property rather than the open-access resource shared and controlled by society at large, the latter of which lies at the heart of Hardin's narrative.²⁷ Urban commons, like open-access resources, often do not have "clear and locally understood" boundaries between legitimate users and nonusers.²⁸ A park or a neighborhood garden is more likely to be used by residents from adjacent areas, but the geographical proximity of frequent users does not divide urban residents into different legal categories. Also, unlike close corporations or liberal commons,²⁹ urban commons usually do not and cannot impose restrictions on the cooperation-damaging exits. Well-off businesses and households can easily leave a neighborhood or city without extra cost, leaving the commons in a downward socio-economic spiral of decay.³⁰ Therefore, seeing the city as a commons requires systematically rethinking certain core premises of previous commons research.

B. The Bittersweet Comedy of the Urban Commons

The first innovation of urban commons literature is to reorient the focal point from tragedy to comedy. That is, under what circumstances does the use of urban space make it more valuable for all stakeholders?

25 *Id.* at 577-79.

26 *Id.* at 556-57.

27 Hardin, *supra* note 10, at 1243.

28 "User boundaries" are the first and foremost design principle in Ostrom's modeling of the commons. Ostrom, *supra* note 20, at 653. *See also* Sheila R. Foster & Christian Iaione, *Ostrom in the City*, in ROUTLEDGE HANDBOOK OF THE STUDY OF THE COMMONS 235, 238 (Blake Hudson et al. eds., 1st ed. 2019) (explaining how urban commons are different from forests, underwater basins, and irrigation systems that were the subject of Elinor Ostrom's study of common pool resources).

29 Dagan & Heller, *supra* note 2, at 596-602.

30 The classical idea of "exit-enhancing" governance is the Tiebout model of local government, where zero-cost exit and institutions that support "shopping" local governments act as a sorting mechanism to cluster the same type of people in one place. Charles M. Tiebout, *A Pure Theory of Local Expenditures*, J. POL. ECON. 416, 419-20 (1956). On how the departure of well-off members can lock the commons in a downward spiral, see Kennedy, *supra* note 9, at 87-91.

In her seminal work *The Comedy of the Commons*, Carol Rose explored the widespread legal recognition of “inherently public property” that is collectively “owned” and “managed” by society at large (i.e., the “unorganized public”).³¹ Rose argued that “publicness,” in fact, created a unique type of value, justifying vesting some property rights in the “unorganized public.”³² These inherently public properties not only expanded the wealth of individual commons users but also enhanced “the sociability of the members of an otherwise atomized society.”³³ The nature of the inherently public property, Rose argued, was always to ensure public access to some physical locations to create social “returns to scales”—the more people that use the commons, the higher their value to each participant.³⁴

The comedy of the urban commons has been a constant theme accentuated in the study of cities.³⁵ Agglomeration economies make a strong case for the economic gains of urban life.³⁶ By engaging in everyday social interactions and encounters with others, urban inhabitants can acquire agglomeration benefits such as information spillover.³⁷ Legal scholars, such as Lee Anne Fennell, further conceptualize “urban interaction space” as a type of commons.³⁸ According to Fennell, the regulation of urban space needs to address the “participant assembly problem”—how to bring together users and participants “whose joint consumption and production activities will maximize social value.”³⁹ By residing close to each other, individuals, households, and firms can benefit from positive synergies through mutual learning and shared resources. Conversely, interactions can also yield negative spillover, especially through congestion and overcrowding.⁴⁰ In that sense, the urban commons is a bittersweet comedy, and the happy ending occurs when the use of urban space generates agglomeration benefits while reducing congestion impacts inflicted by that use.⁴¹

Urban commons can create economic and social comedies. The collective right to govern the city has been the throughline of many social and legal thoughts. First articulated by French philosopher Henri

31 Rose, *supra* note 15, at 720, 771.

32 *Id.* at 720, 771.

33 *Id.* at 723.

34 *Id.* at 772-73.

35 For a discussion of commons in an urban context, see generally Fennell, *supra* note 8; Foster & Iaione, *supra* note 6.

36 Schleicher, *supra* note 7, at 1685-89.

37 *Id.* at 1687-88.

38 Fennell, *supra* note 8, at 1374.

39 *Id.* at 1375.

40 *Id.* at 1380.

41 *Id.* at 1381.

Lefebvre, the concept of the “right to the city”⁴² is primarily understood as the common right to transform the process of urbanization to resist neoliberal market logic.⁴³ A wide array of legal scholars similarly embrace city-making as a common project.⁴⁴ Gerald Frug raised the question of the powerlessness of the city in the American legal order over four decades ago.⁴⁵ To empower the city, Frug argued, is to revitalize the idea of “being together with strangers,” where different kinds of people learn to live and collaborate with each other based on the fact that they live in the same geographic area.⁴⁶ This conceptualization of the community is a far cry from the traditional communitarian understanding that perceives a community as people with similar ideas and interests. Proponents of urban commons, such as Sheila Foster and Christian Iaione, made a more explicit link between the political economy of urban commons and the normative claim to urban shared resources by all inhabitants.⁴⁷ They contended that the value of urban common-pool resources is fundamentally related to human activities and networks where the resources are situated.⁴⁸ “[T]he commons fosters social relationships between the people within it, and consists of the relationship created between the users and the resource.”⁴⁹ In this sense, any public or private monopoly will inevitably impair, if not sever, the tie between the resource and the community, regardless of whether the land is used for high-value development or brings many economic opportunities.

Building on the urban commons literature, I define the benefits of a well-coordinated urban commons to land users as the commons value, which includes economic and social aspects. The economic value derives from an increase in positive synergies and a decrease in negative conflicts, and the social value includes sharing, mutual benefiting, and

⁴² HENRI LEFEBVRE, WRITINGS ON CITIES 147-158 (Eleonore Kofman & Elizabeth Lebas trans., 1996).

⁴³ David Harvey, *The Right to the City*, 53 NEW LEFT REV. 23, 23, 32 (2008). The idea has branched out into professional and governmental domains, in addition to inspiring uncountable urban movements around the globe. For example, in The New Charter of Athens 2003 and the United Nation’s Habitat III, the term “for all” is used to highlight the expansion of shelters and opportunities for all people living and working in the city. EUROPEAN COUNCIL OF TOWN PLANNERS, THE NEW CHARTER OF ATHENS, at Part A, § 2 (2003), <https://www.itc.cnr.it/ba/re/Documents/The%20New%20Charter%20of%20Athens%202003.htm>. See U.N., THE RIGHT TO THE CITY AND CITIES FOR ALL: HABITAT III POLICY PAPERS 24-27 (2016), <https://habitat3.org/wp-content/uploads/Habitat%20III%20Policy%20Paper%201.pdf>. “In Brazil . . . a 2001 federal law recognizes the ‘right to the city’ and mandates participation in planning processes.” This, of course, does not end the debate on the concept itself and how to implement it. Abigail Friendly, *The Right to the City: Theory and Practice in Brazil*, 14 PLAN. THEORY & PRACT. 158, 158 (2013).

⁴⁴ See generally FRUG, *supra* note 2. Foster & Iaione, *supra* note 6.

⁴⁵ Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1062-67 (1980).

⁴⁶ FRUG, *supra* note 2, at 118.

⁴⁷ Foster & Iaione, *supra* note 6, at 295-300.

⁴⁸ *Id.* at 306.

⁴⁹ *Id.* at 307.

collective decision-making in urban communities. The two dimensions of the commons value are not always in harmony. Social interactions do not always yield direct economic benefits to people in the area; therefore, social interactions may not generate the so-called “Pareto-irrelevant externalities.”⁵⁰ Still, these interactions based on shared urban experiences can serve as the social glue that makes bottom-up volunteerism and collective action work. From the perspective of the social value of urban commons, the idea of attracting the “right” urban residents and land uses to maximize agglomeration benefits can lead urban policies astray.⁵¹ Too often, urban land governance is reduced to a functional and effective land market where the government formalizes and commercializes land and manages externalities of land use, with no consideration for how land is used by urban residents and communities.⁵² In this light, the pursuit of economically “right” land uses could sever the link between economic prosperity and social cooperation. The contradictory aspects of the urban commons lend the comedy a bittersweet flavor.

In the remaining part of this section, I will illustrate two thematic types of land regimes used to govern urban commons. While both can improve land use to generate prosperity, there is a fundamental difference in how they handle social interactions in relation to wealth expansion.

C. The Pro-Growth Land Regime

I use the term “land regime” to denote the various approaches to governing urban land commons.⁵³ A regime decides the allocation of material interests between social groups through a set of property institutions, connecting the realm of property law with political economy.⁵⁴ Some regimes narrowly evaluate land use against its “highest and best use” and

50 Fennell, *supra* note 8, at 1387-88. Cf. RICHARD SCHRAGGER, CITY POWER: URBAN GOVERNANCE IN A GLOBAL AGE (2016) (arguing that rich and heterogeneous social dynamics in the city is the ultimate source of wealth).

51 On a critique of the “neo” programs that seek to change the residential make-up of the city, see Richard C Schragger, *Is a Progressive City Possible? Reviving Urban Liberalism for the Twenty-First Century*, 7 HARV. L. & POL’Y REV. 231, 233-37 (2013).

52 Fennell, *supra* note 8, at 1398-1401 (arguing traditional land use control such as zoning is insufficient to address the issue of urban agglomeration).

53 The term “regime” is borrowed from regime analysis in urban politics as elaborated by Clarence Stone and other political economists. *See generally* CLARENCE N. STONE, REGIME POLITICS: GOVERNING ATLANTA, 1946-1988 (1989); Clarence N. Stone, *Urban Regimes and the Capacity to Govern: A Political Economy Approach*, 15 J. URB. AFFS. 1, 17-23 (1993); Karen Mossberger & Gerry Stoker, *The Evolution of Urban Regime Theory: The Challenge of Conceptualization*, 36 URB. AFFS. REV. 810, 810-15 (2001).

54 Jeremy Waldron famously defines property law as the area of law concerned with the function of allocating material resources, a process of “determining peacefully and reasonably predictably who is to have access to which resources for what purposes and when.” JEREMY WALDRON, THE RIGHT TO PRIVATE PROPERTY 32 (1988).

prioritize the economic value of urban land commons over its social dimension. In theory, the state, the market, or the two allied, can move urban land use in a direction that promotes agglomeration benefits and reduces negative spillovers of congestion. However, these arrangements often deny a substantial part of urban inhabitants a direct share of the commons value and, most importantly, undermine social interactions critical to a flourishing urban economy.

The pro-growth land regime manifests in different urban political economies. One typical example revolves around the state-corporate growth machine that puts the pursuit of exchange value at the heart of the institutional structure of the city.⁵⁵ According to political economists Harvey Molotch and John Logan, various landed interests in the city—landholders, developers, financiers, and even local media—form a growth coalition that maximizes the value of urban land by intensifying existing uses or developing higher-value uses to increase the rents they can charge.⁵⁶ The strategies that use urban land to attract mobile resources and capital became even more relevant after the 1990s. The rise of neoliberalism pushed cities into fierce competition for private investments.⁵⁷ Cities needed to compete with each other for extreme mobile capital that has the capacity to “shop” their best locations, sometimes even on a national and global scale.⁵⁸

A regime that is prone to growth cannot sustain itself without supporting property rules that decide and justify the allocation of material interests between social groups. Though particular rules may differ from country to country, they share a close affinity in treating urban commons similarly. Here, I primarily use land use law in the U.S. to illustrate its key legal features: selectivity in property rules and under-institutionalization of community power in decision-making.⁵⁹

⁵⁵ JOHN R. LOGAN & HARVEY MOLOTH, URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE 23-27 (1987).

⁵⁶ *Id.*

⁵⁷ David Harvey, *From Managerialism to Entrepreneurialism: The Transformation in Urban Governance in Late Capitalism*, 71 GEOGRAFISKA ANNALER SERIES B HUM. GEOGRAPHY 3, 11 (1989). Jamie Peck & Adam Tickell, *Neoliberalizing Space*, 34 Antipode 380, 393 (2002).

⁵⁸ In the U.S., local governments can give out \$80 billion per year to attract business investment through subsidies. See Louise Story, *As Companies Seek Tax Deals, Governments Pay High Price*, N.Y. TIMES (Dec. 1, 2012), <https://www.nytimes.com/2012/12/02/us/how-local-taxpayers-bankroll-corporations.html>. One of the most recent examples is the fourteen-month bidding war among dozens of American cities around Amazon’s second headquarters. Improving land use by attracting a leading technology company motivates cities to participate in the bidding war and offer handsome incentives and subsidies. For example, New York State and New York City planned to pay \$2.988 billion in public funds to Amazon for its second headquarters. See S. 1146, 2023-2024 Reg. Sess. (N.Y. 2023) <https://www.nysenate.gov/legislation/bills/2023/S1146>.

⁵⁹ Of course, the pro-growth regime is not limited to the U.S. The Chinese case will be discussed in detail in Part III.

The most salient substantive feature is the selectivity in defining legitimate property interests and applying relevant rules.⁶⁰ From a comparative perspective, the U.S. urban authorities enjoy a higher level of control over land-use decisions than many other industrialized democracies.⁶¹ In landmark cases on zoning, including the *Village of Euclid v. Ambler Realty Co.*⁶² and *Village of Belle Terre v. Boraas*,⁶³ zoning is regarded as an instrument to maintain community character and, by extension, to limit land use in a way that benefits certain types of property.⁶⁴ The broad zoning power that local governments command can be easily adapted for exclusionary purposes, like fostering suburban homogeneity.⁶⁵ In “hot market” cities, the recent debate on upzoning and gentrification reflects the concerns that introducing new housing projects in populated urban neighborhoods provides leeway to evict underprivileged residents.⁶⁶ In addition to zoning power, state-sponsored economic and social segregation, such as the historical practice of “redlining,” which divides racial groups in housing locations⁶⁷ and the privatization of public spaces that evict the homeless population,⁶⁸ exemplify selectivity in property law and its enforcement.

To implement the selective property rules, the governing structure of urban land needs to recognize the authority of the pro-growth coalition in steering land development. One of the most critical dimensions is the breadth of eminent domain power. In the 1954 case of *Berman v.*

60 Legal scholars have long argued the importance of the state and its power to define and enforce property rights universally. KATHARINA PISTOR, THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY 23-46 (2019); Douglas C. Harris, *Property and Sovereignty: An Indian Reserve and a Canadian City*, 50 UBC L. REV. 321 (2017).

61 See LOGAN & MOOTCH, *supra* note 55, at 147-48. See also THE AMERICAN POLITICAL ECONOMY: POLITICS, MARKETS, AND POWER, 19 (Jacob S. Hacker et al. eds., 1st ed. 2021) (comparing the principal locus for key polices across the United Kingdom, France, Canada, Germany, and the U.S.).

62 *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

63 *Belle Terre v. Boraas*, 416 U.S. 1 (1974).

64 *Id. See also Ambler Realty Co. v. Village of Euclid*, 297 F. 307, 316 (N.D. Ohio 1924), *rev'd*, 272 U.S. 365 (1926) (stating that the purpose of zoning is “to classify the population and segregate them according to their income or situation in life”).

65 See, e.g., Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047, 1081-89 (1996); Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 39-58 (1990).

66 See generally Jenna Davis, *How Do Upzonings Impact Neighborhood Demographic Change? Examining the Link between Land Use Policy and Gentrification in New York City*, 103 LAND USE POL'Y, 2021; Roberta Brandes Gratz, *New York City Promises Affordability Through Rezoning but Delivers Gentrification*, COMMON EDGE (Apr. 26 2021), <https://commonedge.org/new-york-city-promises-affordability-through-rezoning-but-delivers-gentrification/>; Andrés Rodríguez-Pose & Michael Storper, *Housing, Urban Growth and Inequalities: The Limits to Deregulation and Upzoning in Reducing Economic and Spatial Inequality*, 57 URB. STUD. 223 (2020).

67 See RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 63-67 (2017).

68 DON MITCHELL, THE RIGHT TO THE CITY: SOCIAL JUSTICE AND THE FIGHT FOR PUBLIC SPACE 195-219 (1st ed. 2003).

Parker,⁶⁹ the U.S. Supreme Court took up the meaning of “public use” in the Takings Clause and ushered in the era of urban renewal.⁷⁰ Since *Berman*, land takings that appropriate private property, consolidate land, and transfer titles to other profit-making owners have become legally acceptable, using blight as the justification.⁷¹ In the landmark case of *Kelo v. The City of New London*,⁷² the Court broadly interpreted “public use” to mean “public purpose,” which allowed land takings for economic development purposes, including new jobs and increased property tax revenues.⁷³ In the meantime, the broad eminent domain power under *Kelo* is not always restricted by the meaningful participation of the affected neighborhood in the planning process.⁷⁴ These substantive and procedural features risk eminent domain being overused, causing damage that just compensations cannot make up for. This is not to say that tools such as eminent domain are merely the means to pro-growth ends. However, current eminent domain legislation tends to limit its uses to poor, “blighted” neighborhoods, creating the potential danger of harming economically vulnerable groups.⁷⁵

Overall, the pro-growth regime may capture some economic gains in the commons value, but the divorce between economic benefits and social interactions in urban commons governance remains deeply problematic. Low-income households and communities, which are disproportionately influenced by urban land development, only have a marginal

69 *Berman v. Parker*, 348 U.S. 26 (1954).

70 *Id.* at 33-35.

71 Harvey M. Jacobs, *U.S. Private Property Rights in International Perspective*, in PROPERTY RIGHTS AND LAND POLICIES 52, 57-61 (Gregory K. Ingram & Yu-hung Hong eds., 2009).

72 *Kelo v. City of New London*, 545 U.S. 469 (2005).

73 Despite the swift and strong negative reaction to the Supreme Court’s decision in many states’ legislatures, state laws aiming to curtail *Kelo*-style economic development takings seemed to have little impact on the planning and development process. Specifically, in a 2010 study on the impact of post-*Kelo* state laws, researchers found that planners, municipal attorneys, and developers hardly felt any changes in planning and land development processes. Harvey Jacobs & Ellen Bassett, *After Kelo: Political Rhetoric and Policy Responses*, LINCOLN INST. OF LAND POL’Y (2010), <https://www.lincolninst.edu/publications/articles/after-kelo>. More recently, the Supreme Court refused to hear *Eychaner v. Chicago* and, by doing so, arguably expanded economic development takings in *Kelo*. See Jeremy S. Young, *U.S. Supreme Court Effectively Expands Its Controversial 2005 Kelo Decision*, NAT’L L. REV. (Jul. 7, 2022), <https://www.natlawreview.com/article/us-supreme-court-effectively-expands-its-controversial-2005-kelo-decision>.

74 Procedures for public participation in urban redevelopment vary greatly from state to state. In *Kelo*, New London Development Corporation first received initial approval from the city council and then held a series of neighborhood meetings to educate the public about the process. *Kelo*, 545 U.S. at 473. The relevant statute governing the *Kelo* case provides for due process rights such as notice and public hearing. See CONN. GEN. STAT. § 8-127 (2006). But it is not as expansive as redevelopment statutes in other states, which may give elected projected area committees veto power over redevelopment projects. Marc B. Mihaly, *Living in the Past: The Kelo Court and Public-Private Economic Redevelopment*, 34 Ecology L.Q. 1, 16-17 (2007).

75 David J Barron & Gerald E Frug, *Make Eminent Domain Fair for All*, BOS. GLOBE (Aug. 21, 2005), http://archive.boston.com/news/globe/editorial_opinion/oped/articles/2005/08/12/make_eminent_domain_fair_for_all/ (explaining the real risk of *Kelo* is the selective enforcement of eminent domain powers in so-called “blighted” areas).

influence over the decision-making process and are denied access to a large portion of its outcomes.

D. Situating the Community, State, and Market in the Co-Governance Regime

The commons model is not the antithesis of development. The ability to generate the commons value—economic prosperity and social solidarity—lies at the heart of urban commons governance. What makes the co-governance regime distinct, however, is the process through which land use is decided and which groups are entitled to direct shares of commons value. Similarly, the state and market can and should play significant roles in bringing prosperity to the urban commons. The state can provide rules and institutional channels to support community collective actions. At the same time, the market is an indispensable venue for urban commons to capitalize on economic opportunities and generate wealth.⁷⁶ The critical question is how institutional design can turn state power and market forces into supporting factors—to borrow the Polanyian term—re-embed the economic process in the social relations of city life.⁷⁷ I have distilled the key substantive and procedural elements of the co-governance regime into three interrelated dimensions: relatively equal entitlement for different property holders, community land control sensitive to individual entitlement, and institutionalized power-sharing among the state, market, and community.

The first and foundational objective of the co-governance regime is to reduce gaps in entitlements across different properties. In the pro-growth regime, people from certain groups or classes may face limitations on their property, ranging from unreasonable use restrictions to discriminatory market access.⁷⁸ This unevenness of property entitlements sets different groups apart, preventing meaningful encounters of diverse values and interests and impeding the very idea of “urban commons”—a shared resource belonging to all inhabitants—from taking root. In contrast, the co-governance regime grants greater entitlements to vulnerable landholders, permitting them access to resources and

⁷⁶ Foster and Iaione summarize the two supporting structures of urban commons—the “enabling state” and “economic pooling.” *See* Foster & Iaione, *supra* note 28, at 240.

⁷⁷ KARL POLANYI, THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME (2d ed. 2001).

⁷⁸ For example, the Federal Housing Administration (FHA) has notoriously used redlining to limit ethnic minorities’ access to FHA-insured mortgages until the 1960s. Despite its facial neutrality, the unjustifiable consideration of race in redlining creates significant legal gaps between properties owned by different ethnic groups. *See* Kenneth T. Jackson, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 207-09 (1985); Rothstein, *supra* note 677, at 65-66.

options.⁷⁹ At the same time, to sustain stable and healthy communities, some restrictions on the alienability of individual property might need to be in place to resist complete commodification and privatization. A renewed and subtle balance between individual freedom and community-wide interests is needed.⁸⁰

Second, the co-governance regime requires supporting rules for social coordination. Collective decision-making is critical in the governance of urban commons,⁸¹ generating tension between landholders' equal entitlements and coordination of individual actions. As scholars of the commons have pointed out, greater freedom of action often collides with community-wide interests and may jeopardize the realization of commons value.⁸² In the pluralist decision-making process, dispute resolution must be provided to enable governance of the commons.⁸³ This is particularly challenging for urban commons due to their open-access nature—which makes setting boundaries unusually complex—due to the multi-faceted and often irreconcilable interests.⁸⁴ Therefore, clear and institutionalized decision-making processes, such as community-wide votes on key issues, can potentially balance the diverse interests in the commons and the need for agreements. When disputes arise, access to effective dispute resolution for affected groups and individuals is also crucial for the healthy operation of the co-governance regime.

Lastly, the co-governance regime calls for institutionalized power-sharing among the state, market, and community. Despite the critical importance of community collective action, the co-governance regime relies upon governments and developers to provide necessary resources and administrative support to back up collective decisions. Traditionally, local governments invite community input in making land use decisions,

79 Those resources and options are not only justified under a utilitarian view of property to increase social utility, but also from the perspective of human flourishing/capacities. *See* Alexander & Penalver, *supra* note 2, at 135 (discussing human flourishing must include at least the capacity to make meaningful choices among alternative options).

80 Such restrictions can be in a fashion similar to Community Land Trust (CLTs), where previous purchasers promised to sell their subsidized houses to similarly low-income families. *See* James J. Kelly, *Land Trusts That Conserve Communities*, 59 DEPAUL L. REV. 69, 113-14 (2009).

81 Foster & Iaione, *supra* note 28, at 236; KOHN, *supra* note 6, at 19-31 (discussing the philosophy and political economy of solidarism which promotes the idea that all members of society have a rightful claim to a share of the social wealth).

82 *See* discussion *supra* Part II, Section A.

83 According to Ostrom, one fundamental principle of commons governance is accessible, low-cost means for dispute resolution, even in the most united communities. *See* Ostrom, *supra* note 20, at 653. I will elaborate on the issue of dispute and coordination in Part V.

84 Take community benefits agreements (CBAs)—a common forum for community participation and voices—as an example. The often-vague terms of CBAs and the pluralistic interests of the community, such as labor, housing, and environment groups, raise questions of legitimate representation and legal enforcement. *See* Been, *supra* note 2, at 21-24, 29-31; Edward W. De Barbieri, *Do Community Benefits Agreements Benefit Communities?*, 37 CARDOZO L. REV. 1773, 1789-90, 1808-09 (2016).

especially through public hearings in planning and zoning.⁸⁵ However, conventional institutions of participation are prone to the disproportionate influence of certain groups of residents or interests on land use.⁸⁶ In contrast, the co-governance regime centers governmental power around community collective actions, which go beyond merely inviting community voices. The exercise of governmental power should work in the background rather than the foreground, aiming to ensure compatibility between community decisions and city-wide interests and to assist communities in handling holdout problems.⁸⁷ As for market actors, like real estate companies, their investment and expertise are important for the necessary improvement of urban conditions that can better realize commons values. Nevertheless, their influence should be constrained by community land control to minimize displacement that results from urban redevelopment.⁸⁸ One way to make the market accountable is to demand that developers provide economic opportunities and community amenities to mitigate the impact of redevelopment.⁸⁹

⁸⁵ For an overview of public hearing requirements in contemporary land use regulation, see Anika Singh Lemar, *Overparticipation: Designing Effective Land Use Public Processes*, 90 FORDHAM L. REV. 1083, 1090-93 (2021).

⁸⁶ *Id.* at 1128-30; *See generally* EINSTEIN ET AL., *supra* note 4.

⁸⁷ Even when a community has made collective decisions on land use, individual residents whose land is necessary for a project with community benefits may still refuse to comply with collective decisions. *See* Lee Anne Fennell, *Common Interest Tragedies*, 98 NW. U. L. REV. 907, 927-28 (2004) (discussing the fragmentation holdout problem). *See also* Michael A. Heller & Rick Hills, *Land Assembly Districts*, 121 HARV. L. REV. 1467, 1507-08 (2008).

⁸⁸ The role played by private actors in community development programs is often controversial, as rising urban land prices often make locally-controlled development increasingly difficult. Lemar, *supra* note 85, at 1099.

⁸⁹ An exemplary institution in this regard is a CBA. *See* Been, *supra* note 2, at 17-18.

Table 1: Pro-Growth v. Co-Governance Land Regime

	Pro-Growth Land Regime	Co-Governance Land Regime
Individual Right Holder	Unequal treatment of different properties	Reduce gaps in entitlements across different properties
Community Voice and Action	Passive and uneven community participation	Community collective action, in coordination with individual interest
Leading Actor	State-corporate coalition	Institutionalized power-sharing between the state, market, and community

III. CHINA'S PRO-GROWTH REGIME AND ITS DISCONTENT

Perhaps China is the country most closely tied to the concept of “growth” during the last few decades. After experiencing tremendous economic growth in the past forty years, China has elevated from an isolated and underdeveloped country to today’s global powerhouse.⁹⁰ Land has been an integral part of China’s economic ascendancy.⁹¹ Legal scholars and political scientists have pointed out that “the Chinese [S]tate uses its political power, formalized in law,” to reassign land rights from lower-value, agricultural uses to higher-value, urban, industrial uses as part of the economic development process.⁹² In other words, China questions the rights hypothesis long held in mainstream political economy theory that secure property rights are a prerequisite for economic growth.⁹³

This section explores China’s pro-growth land regime, which was dominant from the 1990s to the 2010s and remains relevant today. I will demonstrate the legal, institutional, and political-economic basis that has sustained the regime for decades. Local governments are undoubtedly the leading actors in the play. Through the *de facto* partnership with real estate developers and middle-class home buyers, local governments utilize the differentiated legal treatments of urban and rural properties to fuel the urban growth machine. The aim here is not to engage in the conversation on property rights and economic growth in the abstract but to concretely show the type of urban land institutions used to simulate growth and the challenges they bring to the urban commons.

A. The Bifurcated Treatments of Land in Urban and Rural China

The dualism in urban and rural land is one of the most enduring institutions in contemporary China.⁹⁴ After China embarked on the well-known market reform that liberated most of its economy in the late 1970s, the State left rural land to villages with strictly circumscribed uses.⁹⁵ By contrast, the State generally held tight urban land but

⁹⁰ On China’s economic growth and transformation, see generally BARRY NAUGHTON, THE CHINESE ECONOMY: ADAPTATION AND GROWTH (2d ed. 2018).

⁹¹ See YOUNG HSING, THE GREAT URBAN TRANSFORMATION 5, 8 (2010).

⁹² See Susan H. Whiting, *Land Rights, Industrialization, and Urbanization: China in Comparative Context*, 27 J. CHINESE POL. SCI. 399, 400 (2022). See also Frank K. Upham, *From Demsetz to Deng: Speculations on the Implications of Chinese Growth for Law and Development Theory*, 41 N.Y.U. J. INT’L L. & POL. 551, 586-87 (2008); Xiaoqian Hu, *Property and Prosperity, a Demystifying Story*, 96 ST. JOHN’S L. REV. 591, 595 (2023).

⁹³ FRANK K. UPHAM, THE GREAT PROPERTY FALLACY: THEORY, REALITY, AND GROWTH IN DEVELOPING COUNTRIES 94 (2018). See also Hu, *supra* note 92, at 591-92 (2023).

⁹⁴ On the continuity between pre- and post-reform land law, see CHUN PENG, RURAL LAND TAKINGS LAW IN MODERN CHINA 212-52 (2018).

⁹⁵ *Id.* at 212.

increasingly allowed for high-value uses by private owners.⁹⁶ The bifurcated treatments of urban and rural land laid the institutional foundation for land governance in Chinese cities.

After the Communist Revolution in 1949, China's landmark post-reform constitution, the 1982 Constitution, cemented State ownership of urban land as an operating principle. Under Article 10 of the Constitution, "land in the cities is owned by the [S]tate."⁹⁷ Any type of commercial alienation of urban land was prohibited until the late 1980s, when the State found it necessary to create a vibrant housing market compatible with the booming economy.⁹⁸ In 1988, China amended both the Constitution and the Land Administration Law ("LAL") to legalize the transfer of land use rights for urban State-owned land.⁹⁹ On behalf of the State, local governments became the monopolistic providers of land in the city for all types of uses—industrial, commercial, and real estate.¹⁰⁰ Once land use rights are transferred by the State to private users, the land becomes a fully alienable commodity that can be freely traded on the market. Although those rights come with term limits ranging from forty to seventy years, their renewal is automatic and free from any requirement, effectively leading to private land ownership.¹⁰¹ The State monopoly over the primary land market and the highly commodified urban housing market make up the basic property rules in urban China.

In contrast, Article 10 of the 1982 Constitution has a parallel provision that prescribes the collective ownership of rural land by villages.¹⁰² Similar to urban land, rural land was initially deemed unalienable in the original text. When the Constitution and the LAL amendments in 1988 permitted transferring urban land use rights to private users, the door toward commodification of rural land was still shut. Except for limited

⁹⁶ See Xiaoqian Hu, "Put That Bucket down!": Money, Politics, and Property Rights in Urbanizing China, 43 VT. L. REV. 243, 257 (2019).

⁹⁷ XIANFA art. 10 (1982) (China).

⁹⁸ *Id.* art. 10, § 4. See also, Saul Kriger Wilson, *The Landlord State: State Ambition During China's Rapid Urbanization, 1978-2020* (June 2022) (Ph.D. dissertation, Harvard University) at 38-40 (on file with author).

⁹⁹ XIANFA art. 2 (amended 1988) (China); Zhonghua Renming Tudiguanlifa (中华人民共和国土地管理法) [Land Administration Law of the People's Republic of China] (amended December 29, 1988), <https://law.pkulaw.com/chinalaw/bd79a0260b2f3cfdbdfb.html>.

¹⁰⁰ On the variegated relationship between Chinese local governments and land regimes, see generally MEG E. RITHMIRE, LAND BARGAINS AND CHINESE CAPITALISM (2015).

¹⁰¹ See Donald Clarke, *China's Stealth Urban Land Revolution*, 62 AM. J. COMP. L. 323, 352 n.98, 365-66 (2014) [hereinafter *China's Stealth*]. See also Donald Clarke, *Form and Function in China's Urban Land Regime: The Irrelevance of "Ownership,"* 79 LAND USE POL'Y 902, 909 n.67, 910-11 (2018).

¹⁰² Article 10 states, "[l]and in the rural and suburban areas is owned by collectives except for those portions which belong to the State as prescribed by law; house sites and privately farmed plots of cropland and hilly land are also owned by collectives." XIANFA art. 10 (1982) (China).

rural construction land,¹⁰³ the rest of China's vast rural land, including farmland or villagers' house sites, cannot be altered for non-agricultural purposes, not even by its owners—villager households and collectives.¹⁰⁴ Selling or leasing rural land is explicitly outlawed. Over the years, the Chinese State has taken measured steps to remove restrictions on rural land.¹⁰⁵ The latest effort was the 2019 Amendment of the LAL, which partially legalized the transfer of land titles to outside users.¹⁰⁶ However, only rural land already designated for rural construction purposes enjoys the benefit of commodification.¹⁰⁷

Overall, the different treatment of urban and rural land is an entrenched principle in Chinese property law. While urban real property flourishes and increasingly resembles fully alienable rights, villagers' land is prohibited from partaking in the fruits of the booming housing market, which conflicts with the inherent implication of "land use rights."¹⁰⁸

B. Rise of the Pro-Growth Regime in Urban Land Development

The lingering urban-rural land dualism has great implications for land governance in contemporary China. The different legal treatments of different properties open a significant rent gap. Those who can legally convert land from rural to urban will be able to capture the value increase from agricultural use to industrial and commercial use.¹⁰⁹ As Chinese cities rapidly expanded into the countryside in the 1990s, local governments appropriated rural land and converted it into urban land ready for millions of new factories and homes.¹¹⁰ As shown by political scientist Saul Wilson, local governments achieved remarkable success in outlawing non-agricultural uses of rural land and monopolizing the legal

103 Rural construction land is a designated area within the village-owned land, usually a small part of the latter. It is for villagers to develop side-line production and agriculture-related industries. The designation of rural construction land needs to comply with State spatial planning and cannot exceed the quotes set by the central government. *See Land Administration Law of the People's Republic of China* (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 29, 1998, effective Jan. 1, 1999), art. 43 (China) [hereinafter Land Administration Law (1998 revision)].

104 *Id.* art. 4.

105 One of these innovations is Land Ticket (*di piao*) which allows the trading of development rights between rural and urban areas. *See* RAUL LEJANO & HONGPING LIANG, *Institutional Innovation and Rural Land Reform in China: The Case of Chengdu*, 8-10, 15-17 (2017).

106 Land Administration Law (1998 revision), *supra* note 103, art. 63. Land Administration Law (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 26, 2019, effective Jan. 1, 2020), art. 63 (China) [hereinafter Land Administration Law (with 2019 amendments)].

107 Land Administration Law (with 2019 amendments), *supra* note 106, art. 63.

108 "Land use rights" are rights to use state-owned urban land for a very long term; a fee is paid up front and the land is effectively commoditized for the period in question. *China's Stealth*, *supra* note 101, at 329.

109 Wilson, *supra* note 98, at 38.

110 HSING, *supra* note 91, at 94-115.

avenue between rural and urban land.¹¹¹ This method granted local governments access to the monopolistic revenue from land transactions and formed a pro-growth regime for urban land governance.¹¹² The land regime has two interrelated prongs: large-scale land takings without adequate compensation and increasingly secure property protection for urban land users.¹¹³ The state-corporate growth coalition is the axis of the regime, while rural residents suffer from displacement, insufficient access to land value, and a lack of meaningful participation.

The first prong—the displacement of millions of villagers on urban fringes—is rooted in the constitutional restriction on rural land transactions and statutory limits on compensation. The constitutional provision not only suppresses the use value of the rural land but also fortifies the monopoly of local government over rural-urban land conversion.¹¹⁴ As a matter of formal law, land takings are exercised through the power of eminent domain for public interest, and compensation is calculated based on the land’s “original use.”¹¹⁵ Before the 2019 Amendment of the LAL, the overall compensation was capped at thirty times the average annual output value in the three years prior to land takings.¹¹⁶ In reality, the monopolistic local governments systematically lack the economic incentive to pay villagers satisfactory compensation. According to a 2011 Landesa survey, the mean compensation paid to affected villagers was 18,739 yuan per *mu*, approximately 17,850 USD per acre.¹¹⁷ Considering the percentage of land takings used for profitable commercial development,¹¹⁸ the compensation for rural land is extremely low.¹¹⁹ The

111 Wilson, *supra* note 98, at 181-93.

112 For example, Hsing argues that the development of urban land is so pivotal to China’s local governments, it leads to the “urbanization of the local state.” HSING, *supra* note 91, at 7-14.

113 See discussion *supra* Part III, Section B.

114 XIANFA art. 10 (1982) (China).

115 In addition to the arrangement for social security of relocated villagers, there are three categories of land takings compensation: compensation for loss of land, resettlement subsidy, and compensation for standing crops and fixtures. Land Administration Law (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 29, 1988), art. 47 (China) [hereinafter Land Administration Law (with 1988 amendments)].

116 *Id.*

117 See generally LANDESA, SUMMARY OF 2011 17-PROVINCE SURVEY’S FINDINGS (2012), <https://web.archive.org/web/20200219044332/http://www.landesa.org/china-survey-6/>.

118 The 2016 Landesa survey suggested about half of land takings are for pure public interest purposes, including roads, bridges, schools, landscaping, parks, etc. In contrast, 32% of land takings involve some commercial interests such as urban real estate, factories, and industrial parks. LANDESA, 17- PROVINCE SURVEY ON FARMERS’ LAND RIGHTS IN CHINA (2016), <https://web.archive.org/web/20200918063555/https://www.landesa.org/resources/17-province-survey-on-farmers-land-rights-in-china-2016/>.

119 According to the official statistics, compensation for land takings made up half of the overall land transfer income in 2010. See Linmin Tang, *Zhongguo Tudi Churangjin Shouzhi Zhuagnkuang, 2007-2014 [The Situation of China’s Land Conveyance Fee, 2007-2014]*, 1 Caijin Zhiku (2016). According to some scholarly accounts, the percentage was lower than 20%. Sally

economic calculus is structured by the close decision-making system regarding land takings. At the height of the pro-growth regime, state bureaucracy alone made the land taking decision without meaningful input from affected villages nor rural residents.¹²⁰ Despite being severely affected by land takings, villagers only had the right to be notified and consulted after the taking decisions were made.¹²¹

The second prong of the regime is a booming urban land market and the increasingly secure property rights of homebuyers. Low-cost land acquired from rural residents is a strategic resource for local governments to pursue their developmental agendas. In some cases, the land will be used for infrastructure, such as roads, subways, and parks. In even more cases, land takings are not for projects involving public interests but for making space for profitable industrial and commercial development.¹²² Local governments can rent out parcels of land at a low price or even for free to attract investment and jobs.¹²³ The practice resembles the “bidding wars” among American cities to draw big companies to cities.¹²⁴ Alternatively, local governments can “lease out” land parcels on the market to the highest bidder.¹²⁵ Transferring land use rights to private users was so lucrative that land-related income became the central pillar of local government revenues.¹²⁶ An estimation shows that land-related revenues can account for 60 to 80% of local governments’ total revenues.¹²⁷

Although still taking the lead in formulating urban land use, local governments develop mutually beneficial relations with developers and homebuyers. Local governments and real estate developers become *de facto* partners in providing quality housing for middle-class homebuyers.¹²⁸ Not only do home buyers receive long-term—potentially permanent—and fully alienable property ownership, but their request for self-

Sargeson, *Violence as Development: Land Expropriation and China’s Urbanization*, 40 J. PEASANT STUD. 1063, 1069 (2013).

120 Sargeson, *supra* note 119, at 1069.

121 Land and Administration Law (with 2019 amendments), *supra* note 106, art. 48.

122 On how land becomes a critical state asset for ambitious local leaders, see RITHMIRE, *supra* note 100, at 83-109.

123 *Id.* at 97-101; HSING, *supra* note 91, at 113-15.

124 Story, *supra* note 58.

125 (招标拍卖挂牌出让国有土地使用权规定) [Regulations on the Transfer of State-Owned Land Use Rights by Bidding, Auction, and Listing] (promulgated by the Ministry of Land and Res., Apr. 3, 2002, effective July 1, 2002), art. 14 (China) [hereinafter Regulations on the Transfer of State-Owned Land].

126 According to the official data from the Ministry of Housing and Rural-Urban Development, about half of China’s urban infrastructure was funded by land convergence fees that local governments charged end-users. Lynette H. Ong, *State-Led Urbanization in China: Skyscrapers, Land Revenue and “Concentrated Villages,”* 217 CHINA Q. 162, 176 (2014).

127 Dingxi Huang & Roger C. K. Chan, *On ‘Land Finance’ in Urban China: Theory and Practice*, 75 HABITAT INT’L 96, 96 (2018).

128 On the making of the Chinese urban middle-class, see generally LI ZHANG, IN SEARCH OF PARADISE: MIDDLE-CLASS LIVING IN A CHINESE METROPOLIS (2010).

governance is often permitted.¹²⁹ In recent years, a salient example of self-governance is that homeowners in Chinese cities have organized thousands of homeowner associations (“HOAs”), whose operation mimics their American counterparts, to defend their property rights and the common interests of residential communities.¹³⁰

The sharp contrast between the two prongs of the pro-growth regime demonstrates a local pro-growth approach to urban land. Local government captures the economic return of urban commons, and social collaboration in governing urban commons is replaced by monopolistic state control. Indeed, the system has been relatively effective in preventing the rivalry and congestion of land use plaguing many cities in the developing world. However, the massive displacement and disassembling of old communities have become a hotbed for social grievances and unrest.

C. Limits of the Pro-Growth Regime

It is not surprising that the regime has faced fierce pushback.¹³¹ Waves of protests by landless farmers swept China in the late 1900s and 2000s, leading to a ten-times increase in land-related petitions from 1998 to 2004.¹³² In addition to the tremendous social costs and grievances, the pro-growth urban regime is also ineffective in regulating land use. The institution that enables local governments to have a monopoly over land supplies—the narrow legal path converting rural land to urban land—is too rigid and inflexible to accommodate various uses of urban land. Opportunities arise for inhabitants to use land in defiance of the State land use control, giving rise to the widespread phenomenon of informal housing.

Informal housing, initiated by villages in the peri-urban areas, is a powerful discontent to the regime that differentiates rural and urban property. Under urban-rural land dualism, villagers are entitled to use a small part of their land—usually house plots and construction land—for family houses and agricultural industries.¹³³ Despite the legal prohibition on private rural land development and transfer, villagers constantly seek

¹²⁹ See generally LUIGI TOMBA, THE GOVERNMENT NEXT DOOR: NEIGHBORHOOD POLITICS IN URBAN CHINA (2014) (discussing how Chinese local governments grant limited autonomy to middle-class residential communities); Shitong Qiao, *The Authoritarian Commons: Divergent Paths of Neighborhood Democratization in Three Chinese Megacities*, 71 AM. J. COMP. L. 388 (2023) (explaining the logic behind the different approaches to community self-governance in Chinese cities).

¹³⁰ Qiao, *supra* note 129, at 388-98.

¹³¹ For the complaints and grievances of dislocated villagers, see Ong, *supra* note 126, at 170-71. See also Sargeon, *supra* note 119, at 1063-66.

¹³² See CHRISTOPHER HEURLIN, RESPONSIVE AUTHORITARIANISM IN CHINA: LAND, PROTESTS, AND POLICY MAKING 42-43 (2016).

¹³³ Land Administration Law (1998 revision), *supra* note 103, art. 43.

to rent out their land and housing for more lucrative purposes.¹³⁴ The choice is particularly attractive to those who live close to cities and can benefit from converting their well-located land into industrial and commercial use.¹³⁵ “According to the Chinese Ministry of Land and Resources, by 2007, Chinese farmers had built over 6.6 billion square meters of houses.”¹³⁶ To put the number into perspective, “in 2007, the total floor space of housing sold on the legal housing market was only 0.76 billion square meters.”¹³⁷ In the city of Shenzhen, one of China’s superstar cities, more than half of the floor space is built by villager-initiated housing.¹³⁸ Because the property rights of those buildings are incomplete and even problematic, they are commonly referred to as “small property” houses (*xiaochanquan fang*) in Chinese.¹³⁹ Of course, the incongruence between small property and State laws creates its own conundrum. China’s urban villages usually suffered from the same type of ills that plagued typical informal settlements: hyperdensity, hazardously built environments, poor sanitation, overpopulation, insufficient clean water and power provisions, and high crime rates.¹⁴⁰

In brief, China’s pro-growth regime achieves limited success in stimulating growth at a staggering social cost. The monopolistic approach to urban land produces a sharp antagonism between State-controlled land use and rampant self-built housing—a competition with no clear winner. The Chinese State does not have complete control over the rural-urban land conversion as it purports.¹⁴¹ Notwithstanding some encouraging local practices,¹⁴² villager-initiated housing is largely illegal according to State law; therefore, it cannot enjoy the full benefit of property protection.¹⁴³ After the year 2000, the State made substantial efforts to curb

134 For a historical account of informal use of rural land after 1949, see generally PENG, *supra* note 94.

135 For the surveys of informal land use in supposedly agricultural land in cities’ outskirts, see generally LI ZHANG, STRANGERS IN THE CITY RECONFIGURATIONS OF SPACE, POWER, AND SOCIAL NETWORKS WITHIN CHINA’S FLOATING POPULATION (2002); BIAO XIANG, TRANSCENDING BOUNDARIES: ZHEJIANGCUN: THE STORY OF A MIGRANT VILLAGE IN BEIJING (2005).

136 This data is from Shitong Qiao, *Small Property, Big Market: A Focal Point Explanation*, 63 AM. J. COMP. L. 197, 200 (2015).

137 *Id.*

138 *Id.* at 197.

139 For a thorough discussion of informal housing and small property, see generally SHITONG QIAO, CHINESE SMALL PROPERTY (2017); Hu, *supra* note 96.

140 Li Tian, *The Chengzhongcun Land Market in China: Boon or Bane? – A Perspective on Property Rights*, 32 INT’L J. URB. & REG’L RSCH. 282 (2008).

141 Wilson, *supra* note 98.

142 Regarding how Shenzhen extends protection to small property houses and the transactions involving these properties, see generally QIAO, *supra* note 139.

143 For example, Land Administration Law sets extensive legal liabilities for appropriating rural land for industrial and commercial purposes without proper state permission. zhōng huá rén mǐn gōng hé guó tǔ de guǎn lǐ fǎ (中华人民共和国土地管理法) [Land Administration Law of the People’s Republic of China] (promulgated by the Standing Com. Nat’l People’s Cong.,

land grabs and increase compensation for land taking through constitutional amendment and related legislation.¹⁴⁴ However, most reforms failed to address the underlying structural imbalance. The pro-growth regime remains intact, legitimized by the State's monopolistic position in land commercialization and animated by the state-corporate growth coalition. This is not to say that the voices of rural landholders and communities are entirely ignored in practice,¹⁴⁵ but they have yet to be fully included as stakeholders in the formal governing of urban land commons.

IV. THE EMERGING CO-GOVERNANCE REGIME IN URBAN REDEVELOPMENT

In conventional wisdom, state-led urban redevelopment is often seen as the very opposite of the idea of the urban commons.¹⁴⁶ This is how the iconic debate between Jane Jacobs and Robert Moses about New York City is usually presented.¹⁴⁷ But, in reality, their legacies are far more complicated.¹⁴⁸ The relationship between development and community is not a zero-sum game between state planning and community activism or a complete opposition between top-down and bottom-up. China's experiment to redevelop old urban communities and neighborhoods through the collaboration between the State, community, and developer is particularly illuminating.

The defining feature of the co-governance regime is the systematic involvement of urban communities as significant actors beyond individual market transactions or generic public hearings. The focus on collective decision-making bears resemblance to existing institutions of collective self-governance in other countries, ranging from land readjustment

June 25, 1986; rev'd by the Standing Com. Nat'l People's Cong., Aug. 28, 2004) art. 73-84 (China) [hereinafter Land Administration Law (1986 rev'd 2004)].

¹⁴⁴ Some of the examples include the introduction of public bidding in land sales to increase transparency and reduce corruption, and the constitutional amendment of 2004 that promulgates the constitutional protection of private property and compensation for takings, including land takings. Regarding the mandatory bidding in land sales, see *Zhaobiaod Paimai Guapai Churang Guoyou Jiansheyongdi Shiyongquan Guiding* (招标拍卖挂牌出让国有建设用地使用权规定) [Provisions on Transfer of the Right to Use State-Owned Construction Land through Tendering, Auction and Listing] (promulgated by Ministry of Land and Res., Sept. 1, 2007, effective Nov. 1, 2007), art. 2, 3, 4, (2007).

¹⁴⁵ For a discussion on how the Chinese state responds to land-related protests and makes policy changes, see generally HEURLIN, *supra* note 132.

¹⁴⁶ JACOBS, *supra* note 3, at 276-96.

¹⁴⁷ For an argument between Jane Jacobs and Robert Moses on New York City planning, see generally ANTHONY FLINT, *WRESTLING WITH MOSES: HOW JANE JACOBS TOOK ON NEW YORK'S MASTER BUILDER AND TRANSFORMED THE AMERICAN CITY* (2011).

¹⁴⁸ For a more complete picture of the struggle to renew American cities, see generally LIZABETH COHEN, *SAVING AMERICA'S CITIES: ED LOGUE AND THE STRUGGLE TO RENEW URBAN AMERICA IN THE SUBURBAN AGE* (2019).

in Japan and South Korea to Business Improvement Districts (“BIDs”) and Community Development Corporations (“CDCs”) widely adopted in the U.S.¹⁴⁹ The communities’ standing is cemented by institutions that empower communities to negotiate with other key actors and also allows community members to collectively control community-level decisions. Other important actors of land development, like local governments and developers, are still part of the game. Yet, the state-corporate coalition, once dominating the redevelopment process, withdrew from the front-line and instead collaborated with urban communities based on power and interest sharing.

This section explores how China’s co-governance experiment unfolds, focusing on the redevelopment of urban villages (*chengzhogncun*) in Guangdong province. China’s urban expansion in the 1990s and 2000s created a distinctive form of urban settlement—urban village—that is physically swallowed by urban space and formal housing, yet not integrated with the urban land use system.¹⁵⁰ As the oxymoron in the name indicates, these communities remain in an in-between status, enjoying the unexpected benefits of—and yet heavily burdened by—urban-rural dualism in the land. Using Guangdong Province as an example, this section explains how Chinese cities harness community power to create more cooperative and less contentious urban redevelopment.¹⁵¹

A. The Conditions of Urban Villages in Guangdong Province

Urban villages in Guangdong derive from a series of ubiquitous but somehow peculiar conditions. South China has a long history of strong village lineage groups and corporate self-organization.¹⁵² After China’s market-oriented reform in the 1980s, Guangdong Province on the southern coast became a major destination for overseas investment due to its geographical proximity to Hong Kong and the global market.¹⁵³ The social structure of villages facilitated the effective utilization of investment, while the relatively open-minded and pro-market local governments in Guangdong refrained from an all-out restriction on burgeoning rural

¹⁴⁹ For an in-depth comparison between these institutions, see Heller & Hills, *supra* note 87, at 1515-27.

¹⁵⁰ In the following parts, I sometimes refer to these urban villages as “communities.” I use the two terms interchangeably.

¹⁵¹ For a comprehensive account of the different approaches to urban villages, see generally Saul Wilson, *The Making of the Landless Landlord Peasant: Government Policy and the Development of Villages-in-the-City in Shanghai and Guangzhou*, 90 CHINA J. 54 (2023).

¹⁵² See ANITA CHAN ET AL., CHEN VILLAGE: REVOLUTION TO GLOBALIZATION 13-40 (3d ed. 2009).

¹⁵³ EZRA F. VOGEL, ONE STEP AHEAD IN CHINA: GUANGDONG UNDER REFORM 1-14 (1990).

industrialization and non-agricultural land use.¹⁵⁴ This combination put villages in a leading position to convert rural land to more productive industrial and commercial use.

In the 1990s, Guangzhou, the capital city of Guangdong, adopted bifurcated strategies for the restriction of non-agricultural use of rural land—the core principle of China’s land dualism. In most cases, the municipal government encouraged villages to develop their own land for other uses. However, when it came to major projects, like the construction of new downtown areas, the city carried out large-scale land takings and preempted the villagers’ land development.¹⁵⁵ Despite this, the limited financial resources and concerns about social stability impeded the government from expropriating village lands all at once.¹⁵⁶ From the perspective of villagers, farmland became less necessary for their livelihood as many found jobs or started small businesses in the city.¹⁵⁷ This resulted in a gradualistic approach where local governments took farmland in batches.¹⁵⁸ To further smooth out the process, the local government granted a reward of roughly 10% of expropriated farmland to villages for non-agricultural industries.¹⁵⁹

Using the gradualistic approach allowed local governments to acquire land for urban expansion at a relatively low socio-economic cost, but it also created its own problem later. In areas where the State had not expropriated the land, villagers converted the land to much more profitable non-agricultural activities, creating a mixture of residential, commercial, and industrial uses.¹⁶⁰ Some villages experienced a surge of industrial development that led to hundreds of factories, while some became regional retail centers of small electronics.¹⁶¹ The traditional village lineage groups quickly adapted to a non-agricultural lifestyle by taking the modern legal form of village shareholding companies.¹⁶² These companies managed the increasingly diverse portfolio of village collective assets—

¹⁵⁴ *Id.* See Him Chung & Jonathan Unger, *The Guangdong Model of Urbanisation: Collective Village Land and the Making of a New Middle Class*, CHINA PERSPS. 33, 34 (2013).

¹⁵⁵ As Wilson found, in the 1990s, the Guangzhou municipal government participated selectively in land markets to promote its economic goals while allowing other market actors to maintain a relatively free-wheeling land market. *See* Wilson, *supra* note 151, at 62-67.

¹⁵⁶ Author’s interviews with local officials, developers, and villagers in Guangzhou. Author’s fieldnotes dated 07.26.2019, 07.27.2019, and 07.30.2019 (on file with Author).

¹⁵⁷ Author’s interviews with developers and villagers in Guangzhou. Author’s fieldnotes dated, 07.26.2019, and 07.30.2019 (on file with Author).

¹⁵⁸ *See* Wilson, *supra* note 151, at 63-65.

¹⁵⁹ *See* Karita Kan, *Accumulation Without Dispossession? Land Commodification and Rent Extraction in Peri-Urban China*, 43 INT’L J. URB. & REG’L RSCH. 633, 639 (2019). In Guangzhou, the standard was between 5 and 10% of the expropriated farmland. *Id.* Villages in Guangzhou’s new CBD received thirty to fifty hectares as reserved land. *Id.*

¹⁶⁰ Wilson, *supra* note 98, at 171-72.

¹⁶¹ *See* Chung & Unger, *supra* note 154, at 33-37.

¹⁶² *Id.* at 34.

shop fronts, factories, dormitories, and even office buildings. Substantial cash income was distributed to villager members, or “shareholders,” in the form of dividends.¹⁶³ The collective management of assets helped villages maintain some level of social connection even after many villagers left collective agricultural activities.¹⁶⁴

The unique form of urban housing known as urban villages (*cheng-zhongcun*) is a product of this process.¹⁶⁵ Unlike other collectively owned assets in rural China, the use rights of housing sites and the ownership of self-built housing may belong to individual households.¹⁶⁶ The large influx of migrants to cities and the shortage of formal housing in the city called for cheap housing options.¹⁶⁷ For example, in Guangzhou, the average housing price increased more than five times from the 1990s to the 2010s, and the rent grew accordingly.¹⁶⁸ Villagers seized the once-in-a-lifetime opportunity.¹⁶⁹ Almost overnight, households rushed to double or triple their two- and three-story family houses.¹⁷⁰ A common arrangement was for the family to live on the top floor while renting out the lower floors.¹⁷¹ Despite the skyrocketing rent in Guangzhou, apartment rents in urban villages remained incredibly low. In the early 2010s, the rent was 20 to 40 RMB (3 to 6 USD) per day for a roughly furnished two-bedroom, which was only a fraction of the cost of formal housing options in the neighborhood.¹⁷² Naturally, those shabby buildings and narrow alleys became a haven for new migrants to the city. In the middle 2000s, Guangzhou’s 138 urban villages were estimated to house more than three million people.¹⁷³ Woven into the urban fabric, urban villages were

163 Chung and Unger, *supra* note 154, at 35. See also George C. S. Lin, *The Redevelopment of China’s Construction Land: Practising Land Property Rights in Cities through Renewals*, 224 CHINA Q. 865, 879 (2015).

164 Chung & Unger, *supra* note 154, at 34.

165 See HSING, *supra* note 91, at 123.

166 Land Administration Law (1986 rev’d 2004), *supra* note 143, art. 8, 9.

167 Yaping Wang et al., *Urbanization and Informal Development in China: Urban Villages in Shenzhen*, 33 INT’L J. URB. & REG’L RSCH. 957 (2009).

168 Statistics show that the available price of a residential apartment in Guangzhou rises from less than 4,000 RMB per square meters in 1999 to about 30,000 RMB per square meters in 2021. *Property Price: Residential: Guangdong: Guangzhou*, CEIC DATA (2022), <https://www.ceicdata.com/en/china/property-price-residential-prefecture-level-city/cn-property-price-residential-guangdong-guangzhou>.

169 Author’s interviews with local officials, real estate developers, and villagers in Guangzhou. Author’s fieldnotes dated 07.30.2019, 01.08.2010, and 05.07.2023 (on file with Author).

170 Author’s interviews with local officials and real estate developer in Guangzhou. Author’s fieldnotes dated 07.29.2019 and 07.30.2019 (on file with Author). See also Tian, *supra* note 140, at 290.

171 Author’s interviews with villagers in Guangzhou. Author’s fieldnote dated 01.08.2010 (on file with Author).

172 Zhujiang xincheng jueqi beihou de heijin jiaoyi [Graft Behind the Rise of Zhujiang New Town], CAIXIN WKLY. (Feb. 12, 2016), https://weekly.caixin.com/m/2016-02-12/100908569_all.htm [hereinafter *Graft Behind the Rise of Zhujiang New Town*].

173 HSING, *supra* note 91, at 129.

increasingly integrated with urban economic and social lives rather than isolated informal enclaves that could be easily carved out. The low rent bred vibrant communities of small businesses—vendors, restaurants, convenience stores—that not only served community members but also provided affordable services to the broader population in the surrounding areas.¹⁷⁴

Time is also on the side of urban villages. The longer those communities exist, the more they become interconnected with the city, and the more costly it becomes for the government to expropriate the land.¹⁷⁵ In the early 2000s, Guangzhou city prioritized outward expansion rather than “fixing” the informal housing in the city center.¹⁷⁶ When the local government later returned to the inner city and sought to increase the State monopoly of land supply, it proved to be poorly timed.¹⁷⁷ In 2008, Guangzhou announced a grand plan to renew 138 urban villages in the next decade, with fifty-two of them being completely demolished and rebuilt.¹⁷⁸ The plan hit a national reckoning of forced displacement head-on.¹⁷⁹ At a time when the legitimacy of the Chinese State was being seriously eroded by violent land takings, the highly visible demolition in the city center was increasingly unimaginable.¹⁸⁰

In summary, the relaxation of land dualism in Guangdong during the 1980s and 1990s and the incorporation of villages in urban life rendered

174 Author’s fieldnote (on file with Author). For a comprehensive account of residents in urban villages and their diverse occupations around the 2000s, see L. Zhang et al., *Self-Help in Housing and Chengzhongcun in China’s Urbanization*, 27 INT’L J. URB. & REG’L RSCH. 912 (2003).

175 Author’s interviews with local officials and planning experts, many of whom attributed the prevalence of urban villages in Guangzhou to earlier government policy decisions (on file with Author). *See also* Wilson, *supra* note 151.

176 See SHUSEN LIN, GUANGZHOU CHENGJI [GUANGZHOU CHRONICLES] 136 (2013).

177 Wilson, *supra* note 151, at 64–65.

178 Lin, *supra* note 163, at 875.

179 One milestone of reforming eminent domain procedure was the Regulation on the Expropriation of Buildings on State-owned Land and Compensation passed in 2011. Guoyou tudi shang fangwu zhengshou yu buchang tiaoli [Regulation on the Expropriation of Buildings on State-Owned Land and Compensation] (promulgated by the State Council, Jan. 21, 2011, effective Jan. 21, 2011), CLI.2.144434(EN) (Lawinfochina) [hereinafter Regulation on the Expropriation of Buildings on State-Owned Land and Compensation]. The regulation was a response to rampant coercion and under-compensation in forced displacement cases during the 2000s. Wang Yijun & Ye Tieqiao, *Why Is It Difficult to Promulgate the New “Demolition Regulations,”* CHINA YOUTH ONLINE (Dec. 17, 2009), http://zqb.cyol.com/content/2009-12/17/content_2986821.htm. Although the regulation applies to house taking on state-owned land rather than land taking, in practice, local governments are required to follow the same procedural requirements. Zuiqao renmin fayuan guanyu Shenli sheji nongcun jiti tudi xingzheng anjian ruogan wenti de guiding [Provisions of the Supreme People’s Court on Several Issues Concerning the Trial of Administrative Cases Involving Rural Collectively Owned Land] (promulgated by the Sup. People’s Ct., Aug. 7, 2011, effective Sept. 5, 2011) CLI.3.157996(EN) (Lawinfochina)].

180 Author’s interviews with Guangzhou local officials (on file with Author). For how farmers’ resistance to state coercion leads to social instability, see generally YU JIANRONG, KANG ZHENG XING ZHENG ZHI: ZHONGGUO ZHENG ZHI SHE HUI XUE JI BEN WEN TI [CONTENTIOUS POLITICS: FUNDAMENTAL ISSUES IN CHINESE POLITICAL SOCIOLOGY] (2010).

it difficult, if not entirely impossible, to implement a highly discriminatory regime that denied the voice and interest of communities in land redevelopment. Meanwhile, many aspects of urban villages, including social ties and self-organization, provided essential conditions for community-based development and governance. These factors required local governments to move to more collaborative approaches to land use governance that worked with communities instead of replacing them.

B. Redeveloping Urban Villages Through Co-Governance

Broadly, the co-governance experiment has three interrelated dimensions: blurring differences, power-sharing and interest-sharing, and institutionalization of community power. First, the co-governance regime partially mitigates the differential treatment of rural and urban property in China. While urban land is moving in the direction of being a fully alienable commodity, rural land is still subject to many use restrictions. Although the root of the urban-rural land is the Constitution, local governments can make regulatory and procedural changes. In the old regime, local governments normally carried out a wide array of tasks, like setting compensation standards, enforcing takings and demolition, and transferring land titles, by themselves.¹⁸¹ In contrast, under the co-governance model, local governments create venues for communities and developers to directly negotiate the terms and conditions of redevelopment.¹⁸² After communities and developers reach redevelopment agreements, local governments exercise eminent domain to expropriate village land only as a matter of formality.¹⁸³ This workaround provides semi-market conditions for land in urban villages and, to a certain extent, property protection for villagers similar to urban property owners.¹⁸⁴ The blurring of rural-urban property differences legitimizes villagers' right to the economic benefits of land holding and provides necessary recognition of the subjective values of rural property ownership.

¹⁸¹ For a thorough review of local government relationships with real estate developers and villagers, see generally Wilson, *supra* note 98.

¹⁸² Author's interviews with real estate developers and villagers (on file with Author). *See also* Shenzhen jingji tequ chengshi gengxin tiaoli [Shenzhen Special Economic Zone Urban Renewal Regulations] (promulgated by the Shenzhen Urb. Renewal & Land Preparation Bureau, Mar. 22, 2021, effective Mar. 1, 2021), https://sf.sz.gov.cn/fggzywyb/content/post_9907361.html [hereinafter Shenzhen Special Economic Zone Urban Renewal Regulations].

¹⁸³ Author's interviews with local government officials and judges in Guangzhou (on file with Author).

¹⁸⁴ As discussed below, the scope of village-developer negotiation is subject to local government regulation and approval. Still, the capacity of landowners to directly negotiate with developers and sign contracts, without mandatory government land taking, indicates a market-like environment. *See* Guangzhou shi chengshi gengxin tiaoli zhengqiu yijian gao [Guangzhou Regulations of Urban Redevelopment (draft)]. *See also* Shenzhen Special Economic Zone Urban Renewal Regulations, *supra* note 182, art. 28, 29.

Second, important stakeholders engage in broad power-sharing and interest-sharing under the co-governance regime. One critical part is forming a *de facto* market mechanism where communities directly negotiate with developers and have the right to refuse the outcomes of negotiations. Anecdotal evidence suggests that village communities sometimes indicate to local governments which developers they want to work with.¹⁸⁵ The market mechanism that combines community-developer bargaining and government guidance provides necessary flexibility with relatively stable expectations. In addition, community members also benefit from the formalization of housing and public goods provision after redevelopment. The redevelopment largely removes the previous limiting conditions in old urban villages, such as the rampant informal economy and lack of municipal service. Nevertheless, formalization does not mean a full-scale commodification through the partitioning of collectively owned land into the property of individual households.¹⁸⁶ Instead, collective decision-making on community land use is the backbone of the co-governance regime.

Third, the co-governance regime institutionalizes community participation and encourages community collective action. In the previous pro-growth regime, villagers were passive actors waiting to be informed about land taking decisions without meaningful ways to influence the outcomes. On many occasions, decisions were made in a highly top-down fashion, which intentionally concentrated power, kept secrets from villages, and minimized potential backlash.¹⁸⁷ Even if local governments can offer compensation that reflects the fair market value of the expropriated land, it will certainly not make up for the subjective losses caused by past land takings and displacement.¹⁸⁸ The co-governance model flips the position of affected communities in land development to being agents of community change rather than being the last to be informed. Their stance is guaranteed by procedures, like multiple

¹⁸⁵ Author's interviews with real estate developers in Guangzhou. Author's fieldnote dated 07.28.2019 (on file with Author). The situation seems to have changed in the past few years. Some later interviews suggest that local governments may provide lists of developers to villages regarding who they believe are "qualified." Moreover, local governments tend to "suggest" state-owned companies or developers with state backgrounds to villages. Author's fieldnote dated 05.15.2023 (on file with Author).

¹⁸⁶ For example, Guangzhou requires 80% of households to approve a redevelopment plan. *Guangzhou shi jiucunzhuang gengxin shishi banfa* [Methods of Guangzhou on Implementing Old Village Redevelopment], art. 12, *Guangzhou Urb. Redevelopment Bureau* (2016), https://www.gz.gov.cn/zwgk/zcjd/content/post_3088642.html [hereinafter Methods of Guangzhou on Implementing Old Village Redevelopment]. The collective decision-making will be discussed in *infra* Part VI, Section C.

¹⁸⁷ Wilson, *supra* note 98, at 190-93. Sargeson, *supra* note 119, at 1063-64.

¹⁸⁸ As Michael Heller and Rick Hills argue, the process—rather than the substance—of eminent domain makes it a poor mechanism for measuring subjective values and making adequate compensation. Heller & Hills, *supra* note 87, at 1483-84.

community-wide referenda at different stages of development, all of which require high approval rates to pass. At the heart of institutional design is the reliance on the legal forms of village communities, as village collectives or shareholding companies, and the mobilization of their preexisting social capital.

C. Stakeholders and Their Interactions in the Co-Governance Regime

1. Local Government: Outsourcing Without Losing Control

Why would local governments be interested in carrying out the co-governance regime? If adopting a more critical perception of local governments and officials as self-interested actors, we might reasonably doubt whether they would willingly give up capturing the rent gap between rural and urban land. In addition to the general reasons, such as defusing hostility toward local governments, China's transition is closely linked to the big transition in China's political economy and the specific local conditions of the pioneering cities.

The switch to the co-governance regime happened at a time when massive urban expansion was gradually replaced by new urban development goals, like "new-type urbanization," that emphasized the quality, sustainability, and harmony of growth.¹⁸⁹ As the leading actor in land development, local governments are keen to spot alternative development potentials. In the city of Guangzhou, for example, the 2010 Asian Games was a critical event that redirected the city's approach to land development.¹⁹⁰ As one of China's largest cities and industrial powerhouses, Guangzhou lived in the shadow of its superstar neighbors in the south—Hong Kong and Shenzhen.¹⁹¹ As the 2008 global financial crisis hit the city's export-oriented industries, Guangzhou looked to the 2010 Asian Games as an excellent opportunity to rebrand itself as the new champion of tourism, service industries, and corporate headquarters economy.¹⁹² Rampant urban villages in the city posed a problem for these objectives, not merely because of the informal and ineffective use of land but due to the impediment to the new global branding Guangzhou sought to make in pursuit of inbound investment and capital.¹⁹³

¹⁸⁹ Lin, *supra* note 163, at 868.

¹⁹⁰ LIN, *supra* note 176, at 43-48; Hyun Bang Shin, *Urban Spatial Restructuring, Event-Led Development and Scalar Politics*, 51 URB. STUD. 2961, 2967-72 (2014).

¹⁹¹ Author's interviews with local officials in Guangzhou (on file with Author). *See also* Shin, *supra* note 190, at 2966.

¹⁹² Shin, *supra* note 190, at 2965-67.

¹⁹³ Author's interviews with planning experts and real estate developers in Guangzhou (on file with Author).

In experimenting with urban redevelopment, local governments profoundly alter their behaviors in relation to land and housing development. Instead of standing on the front line of land takings, local governments strategically outsource legal responsibilities for converting rural land to urban land to developers and village collectives.¹⁹⁴ The outsourced work includes some of the most labor-intensive and politically risky tasks, including household land registration, setting compensation standards, and negotiating with villagers.¹⁹⁵ Strategic repositioning does not mean that local governments lose control of urban development. Instead, local governments are in a key position to supervise the entire process—from certifying the redevelopment projects and approving their future land use—to setting up escrow accounts and conducting estimations of these projects' environmental and cultural impact.¹⁹⁶ The Guangzhou municipal government remains the most important player in urban land development, adjusting the pacing of redevelopment and maintaining the subtle balance between village communities, market forces, and the interest of the public at large.¹⁹⁷

Nevertheless, the innovations in local government behaviors and strategies are in great tension with the still-effective national regulations on rural land and local government land takings. Apart from the disparities between the rigid prohibitions on rural land transfer and the local permission of village-developer negotiation, the biggest challenges are bypassing procedural requirements for land takings mandated by high-level laws, including several national regulations.¹⁹⁸ For example, the mandatory bidding requirement in land sales, a process to increase transparency and reduce corruption, is effectively eliminated in almost all urban redevelopment projects.¹⁹⁹ This approach guarantees that the

194 Lin, *supra* note 163, at 877-80.

195 Author's interviews with real estate developers in Guangzhou (on file with Author). See also Lin, *supra* note 163, at 877-83.

196 For an overview of local government responsibilities in urban redevelopment, see Guangzhou chengshi gengxin banfa [Ordinances of Guangzhou City Urban Redevelopment] (promulgated by the Guangzhou Mun. People's Gov't, Sept. 28, 2015, effective Jan. 1, 2016), (China), http://www.gd.gov.cn/zwgk/wjk/zcfgk/content/post_2531950.html [hereinafter Guangzhou City Urban Redevelopment Ordinances].

197 For a case study of how Guangzhou municipal government acted as a key "place entrepreneur" in the redevelopment of one urban village, see generally Youliang Guo et al., *(De-)Activating the Growth Machine for Redevelopment: The Case of Liede Urban Village in Guangzhou*, 55 URB. STUD. 1420, 1429-31 (2018).

198 Regulations on the Transfer of State-Owned Land, *supra* note 125. In recent years, Chinese law is moving towards granting partial permission for rural collectives to sell the right to use rural construction land or to lease such land to industrial and commercial players. See Land and Administration Law (with 2019 amendments), *supra* note 106, art. 63. This may help to explain why this clear local deviation of land use regulation is not invalidated by the central authority.

199 The tension is partly reflected in the widespread use of administrative allocation (*huabo*) and contract-based transfer (*xieyi churang*) in urban redevelopment. Guangzhou City Urban Redevelopment Ordinances, *supra* note 196, art. 35. This is also confirmed by Author's interviews with

developer responsible for conducting land surveys and negotiating with the village community is likely to secure the redevelopment project. However, it also markedly increases the risk of corruption and insider trading.²⁰⁰

2. Village Community: Participation Through Collective Action

Impactful stakeholder participation is the hallmark of the co-governance regime. A crucial question arises: how can institutions be structured to guarantee broad and significant participation while also capturing the economic and social values of urban commons? If community participation remains passive, uneven, and under-institutionalized, powerful actors, like developers and resourceful homeowners, will command oversized influence on the process. In New York City, for example, community board hearings made it too easy for NIMBYs (Not in My Back Yard) to stop new housing construction.²⁰¹ China's imperfect approach is a mix of high requirements for community-wide approval, incentives for development, and reliance on social ties within the affected community.

In the co-governance experiment, individual members of the involved village can cast votes in at least two referenda at different stages.²⁰² One vote is on whether to initiate the redevelopment process in the first place, and the other vote is whether to accept the development agreements between the village and the developer. The threshold for approval varies from city to city, ranging from 80 to 95%.²⁰³ Beyond the supermajority requirement, the new rules grant villagers more liberty about what they can ask for in the redevelopment. Developers are obliged to build rehousing projects for the community in the same location.²⁰⁴ In principle, the floor areas of rehousing are based on the legal

real estate developers and lawyers in Guangzhou. Author's fieldnotes dated 07.31.2019, 05.07.2023, and 05.15.2023 (on file with Author).

200 Among a handful of urban redevelopment pilot projects in Guangzhou, at least one had severe repercussions that led to the arrest of several high-ranking officials of the city, including Guangzhou's former deputy mayor. *Graft Behind the Rise of Zhuijiang New Town*, *supra* note 172. Part V will provide a thorough discussion on the danger of "legal vacuum."

201 A telling example is given by Rick Hills. He discusses that the institutional insistence on in-person rezoning hearings can privilege some homeowners. See Rick Hills, *Brooklyn NIMBYs' Trumpian Tactics: How Insistence on In-Person Hearings Privileges Older, Wealthier Homeowners*, PRAWFSBLAWG (Jan. 24, 2021, 3:11 PM), <https://prawfsblawg.blogs.com/prawfsblawg/2021/01/brooklyn-nimbyss-trumpian-tactics-how-insistence-on-in-person-hearings-privileges-older-wealthier-hom.html>.

202 Methods of Guangzhou on Implementing Old Village Redevelopment, *supra* note 186, art. 12. Shenzhen Special Economic Zone Urban Renewal Regulations, *supra* note 182, art. 25, 32. This is also confirmed in my interviews with real estate developers in Guangzhou (on file with Author).

203 For example, in Guangzhou both numbers are 80%. See Methods of Guangzhou on Implementing Old Village Redevelopment, *supra* note 186, art. 12. In Shenzhen, both numbers are 95%. Shenzhen Special Economic Zone Urban Renewal Regulations, *supra* note 182, art. 25, 32.

204 Methods of Guangzhou on Implementing Old Village Redevelopment, *supra* note 186, art. 12-13.

part of their original houses, normally three-and-a-half floors on their house sites.²⁰⁵ On top of that, villagers and developers can apply to the government for a 10% increase in floor space for rehousing projects.²⁰⁶ In addition to rehousing, the agreements often entail the provision of public goods and amenities in the redeveloped community, including kindergartens, schools, and supermarkets.²⁰⁷ Despite the various limits on what can be negotiated, the new arrangement offers much better incentives than the previous land taking model, which only offered meager compensation based on previous agricultural land use.²⁰⁸

How is it possible to reach 80% or even 95% community-wide approval for redevelopment projects? In addition to flexible incentives for villagers, the co-governance experiment relies on the social structures of urban villages to mitigate differences in preference and coordinate collective actions. Rural residents in Guangdong Province are traditionally organized in village collectives, which are semi-political organizations backed by lineage groups and clans, and members enjoy limited self-government.²⁰⁹ The village collective's leadership usually comes from the big surnames in the village, which command moral resources to motivate and persuade individual households.²¹⁰ After China's economic reforms, village collectives evolved into the legal owners of village collective-owned land and assets, sometimes in the name of village shareholding companies.²¹¹ In urban redevelopment projects, these legal entities and their leadership often take on the most pivotal and cumbersome tasks, including conducting household land registration for villagers, negotiating with developers on compensation schemes on behalf of entire communities, and ensuring individual households' compliance after agreements are reached.²¹² Since village collectives combine economic functions and social power, they are the ideal vehicle for creating bargaining power and coordinating collective actions. However, the social structure of villages and their governance, especially the oversized and

205 *Id.* art. 13.

206 *Id.*

207 Author's interview with real estate developers and planner experts in Guangzhou. Author's fieldnote dated 07.28.2019 (on file with Author). *See also* Guo et al., *supra* note 197, at 1430.

208 *See* discussion *supra* Part III, Section B.

209 CHAN ET AL., *supra* note 152, at 16-19.

210 Author's interviews with villagers in Guangzhou. Author's fieldnote dated 07.26.2019 and 01.08.2020 (on file with Author).

211 Chung & Unger, *supra* note 154, at 34. For more details on the shareholding system and the distribution of shares, see Tian, *supra* note 140, at 295; Kan, *supra* note 159, at 640.

212 Author's interview with villagers, Guangzhou, China. Author's fieldnotes dated 01.04.2019 and 06.28.2019 (on file with Author). For a detailed account of how village committees negotiated deals with developers, see Guo et al., *supra* note 197, at 1428-29. For a historical perspective of village heads as "intermediaries" between local governments and villagers, see Wilson, *supra* note 98, at 172-79.

largely unaccountable influence of village heads, gives rise to rent-seeking and illicit behaviors that endanger collective action itself.²¹³

3. Real Estate Developer: A Box of Chocolates

The co-governance regime also involves changes in the legal frameworks that regulate real estate developers' behaviors and their interactions with other stakeholders. In the pro-growth model, developers purchase land use rights from local governments, develop commercial buildings and houses, and profit from selling houses to millions of home-buyers.²¹⁴ Case studies suggest that many local governments enlisted developers in the land taking stage to help with demolition. However, the practice was never a part of formal law and was explicitly outlawed after 2011 due to the violence and corruption involved.²¹⁵ In contrast, in the co-governance model, developers are legally entitled to be a part of the process and negotiate with villagers directly from the beginning. For example, the Guangzhou municipal government explicitly encourages market players (*shichang zhuyi*) to participate during both the initial formulation of the urban redevelopment plan and the later physical implementation of land development.²¹⁶

The repositioning of developers is partly driven by the competitive market environment and the Government's increasingly stronger stance in regulating the real estate market. On the one hand, China's skyrocketing real estate prices produce bubbles and endangers macroeconomic stability, and unaffordable housing triggers massive discontent.²¹⁷ After 2010, various housing purchase regulations were rolled out in major cities, ranging from price capping to individual quotas for home purchases.²¹⁸ On the other hand, a centrally imposed system of land conversion quotas that sets a ceiling on the conversion from rural land to urban land restricts land supply in Chinese cities.²¹⁹ These factors significantly

213 See *infra* Part V.

214 See discussion *supra* Part III, Section B.

215 Regulation on the Expropriation of Buildings on State-Owned Land and Compensation, *supra* note 179, art. 27. Regarding real estate companies overseeing demolition projects and the violence involved, see LYNETTE H. ONG, OUTSOURCING REPRESSION: EVERYDAY STATE POWER IN CONTEMPORARY CHINA 78-80 (2022).

216 Methods of Guangzhou on Implementing Old Village Redevelopment, *supra* note 186, art. 26.

217 *Why Housing in China is so Unaffordable and Attempts to Fix it Have Failed*, S. CHINA MORNING POST (Feb. 6, 2023, 7:15 AM), <https://www.scmp.com/magazines/post-magazine/long-reads/article/3209060/why-housing-china-so-unaffordable-and-how-beijings-attempts-fix-it-have-failed>.

218 Yaoyao Li et al., *Effect of the Housing Purchase Restriction Policy on the Real Estate Market: Evidence from a Typical Suburb of Beijing, China*, 94 LAND USE POL'Y, 2020, at 2.

219 YUAN XIAO & JINHUA ZHAO, PAULSON INST., FIXING CHINA'S DISTORTED URBAN LAND QUOTA SYSTEM 1 (2015), http://transurbaneuchina.eu/wp-content/uploads/2017/01/PPM_Land-Quotas_Xiao-and-Zhao_English_R.pdf. For an in-depth discussion on the effect of land quotas on

limit developers' ability to profit, directing their attention to a less competitive market—the redevelopment of old villages and neighborhoods. By joining the process at an earlier stage, developers could invest in undervalued projects and "lock in" sizable profits ahead of time.²²⁰ On top of that, local governments also reward developers who take on the task with future returns. Widely used tools, like granting higher density permits and flexible compensation, attract and incentivize developers.²²¹

With the increased responsibility and risks came potentially high returns. Redevelopment projects are like a box of chocolates—some might be tasty, but others are not. In the pro-growth land regime, developers purchase a parcel of "clean land" from local governments, which ensures the land is ready for use.²²² In the co-governance regime, developers get a complex mix of assets and liabilities. Major underlying risks include the prolonged legal procedure and expanded scope of participation—a necessary outcome of the more participatory and collaborative land regime. The experience of Guangzhou suggests that the process can be as fast as three years or as slow as ten years.²²³ As we will discuss in Part V, many factors can delay or even derail the process. To smooth out the problems, developers need to persuade and convince community members to approve redevelopment plans in every possible way. Sometimes, this includes providing handsome compensation and attractive rehousing arrangements.²²⁴ In most cases, developers need good public relations with communities by funding community events and public amenities.²²⁵ One developer joked about their daily work, saying: "Nowadays, we need to

real estate price in China, see generally Jianshuang Fan et al., *Impact of Land Quota and Land Supply Structure on China's Housing Prices: Quasi-Natural Experiment Based on Land Quota Policy Adjustment*, 106 LAND USE POL'Y, 2021.

220 In some of the most successful redevelopment projects, the gross revenue margins can reach 60% or even higher. *Fang qi zhengxiang wakuang zuoxiang zhao pai gua shu beili run lu* (房企争相挖矿: 城市更新坐享招拍挂数倍利润率) [Real Estate Companies Rush to Mine: Urban Renewal Enjoys Multiple Profit Margins from Bidding, Auctions and Listings], SOHU (Mar. 19, 2019), https://www.sohu.com/a/302399235_114986.

221 Bin Li & Chaoqun Liu, *Emerging Selective Regimes in a Fragmented Authoritarian Environment: The 'Three Old Redevelopment' Policy in Guangzhou, China from 2009 to 2014*, 55 URB. STUD. 1400, 1413 (2018). In the U.S., local governments similarly offer developers density bonuses if they meet a set of public policy goals, such as the inclusion of affordable housing in the development. BARIKA X. WILLIAMS, ASS'N FOR NEIGHBORHOOD & HOUS. DEV., *NYC INCLUSIONARY ZONING: A DISTRICT-BY-DISTRICT ANALYSIS OF WHAT WAS LOST, GAINED, & WHAT REMAINS* 7 (2015), <https://anhd.org/wp-content/uploads/2015/07/ANHD-Inclusionary-Zoning-Rpt-7-15.pdf>.

222 See discussion *supra* Part III, Section B.

223 Author's interviews with real estate developers in Guangzhou. Author's fieldnotes dated 07.29.2019 and 07.30.2019 (on file with Author). See also Lin, *supra* note 163, at 877-83; *Graft Behind the Rise of Zhujiang New Town*, *supra* note 172.

224 For example, developers commonly work with village collectives to bargain with the local government for high FAR (floor-area-ratio) for on-site resettlement housing. Guo et al., *supra* note 197, at 1430.

225 Author's interviews with real estate developers in Guangzhou. Author's fieldnote dated 07.28.2019 (on file with Author). Of course, "public relations" sometimes entails flushing village leaders with gift money and other material benefits. See Kan, *supra* note 159, at 643.

visit villager households one by one to ensure required votes, just like politicians in the West. We joke that we are the pioneers of grassroots democracy in China.”²²⁶

To sum up, while the pro-growth regime remains a strong national principle, localities are implementing innovative institutions to share power among various stakeholders and formulate co-governance schemes for land development. It is noteworthy that village and neighborhood communities take major responsibility for coordinating with external and internal actors whose interests and preferences are often not aligned. The potential overstretch of community capacity becomes a critical factor that unsettles the promising co-governance regime.

V. CLASHES AND REMEDIES IN THE CO-GOVERNANCE REGIME

In commons and urban commons research, capable dispute resolution is a key condition for making community self-governance work.²²⁷ Despite empowering communities as vital decision-makers in land development, China’s co-governance experiment is surprisingly underprepared to resolve disagreements within communities. So far, we have yet to witness effective legal remedies to address noncompliance with community decisions and holdout problems, which has seriously limited the application and dissemination of the co-governance regime in broader scenarios.

This part of the article argues that the lack of dispute resolution in China’s co-governance regime is not a technical glitch that can be easily fixed, but it reflects deep-seated contradictions in its institutional design. The intentional “narrowness” of community participation is in tension with the social conditions for commons governance: cooperation and trust cultivated in repeated interactions. A single, dramatic change—such as a community-wide referendum—may push community members to deliberate and vote, but at the same time, it tends to create tunnel vision that reduces diverse interests and preferences to economic benefits.²²⁸ The dilemma is exacerbated by the long tradition of pro-growth urban policies in China. Community participation is constantly under pressure to achieve economic success while reducing social contentions.

²²⁶ Author’s interviews with real estate developers in Guangzhou. Author’s fieldnote dated 07.28.2019 (on file with Author).

²²⁷ See generally OSTROM, *supra* note 11; Foster & Iaione, *supra* note 28.

²²⁸ “Narrowness” is often treated as an advantage of community decision-making on land redevelopment. For example, Heller and Hills argued that their proposed “land assembly district” is good at “focus(ing) the residents’ minds on a single, dramatic decision that no one can afford to ignore: the sale of the neighborhood.” They further contended that “the narrowness of the decision increases the neighbors’ homogeneity of interest, while the impact ensures that they will likely show up to vote.” Heller & Hills, *supra* note 87, at 1518.

The co-governance experiment could face serious political setbacks when the model fails to meet these expectations.

A. Majority Versus Minority: Divisions and Conflicts in Communities

As alluded to earlier, an urban redevelopment project must reach an extremely high approval rate in the community to proceed, usually 80 to 95%.²²⁹ In relatively closed communities with homogenous identities, strong social ties, and informal norms, this level of high approval is not inconceivable.²³⁰ However, the governance structure of village communities in urban China—a product of China’s rapid urbanization and enduring urban-rural land dualism—often impairs the social cohesiveness that can be otherwise employed to overcome divisions.

The first issue is the proliferation of village assets and their lagging governance. In the early phase of urban expansion in Guangdong, nearby villages whose land was taken received compensation in the form of cash and retained construction land to support villagers’ livelihoods.²³¹ Many village communities used the retained land and compensation funds to invest in manufacturing and service industries, which later created handsome returns.²³² As farmland disappeared, villages took the legal form of village shareholding companies to manage the ever-growing collective assets.²³³ In contrast to the big increase in wealth, village governance does not adapt well to the effective management of collective assets. In part, the transformation from collectives to companies does not change the allocation of power and authority in those communities. It is not a surprise that a company’s leadership is the same as the previous village’s leadership.²³⁴ However, social division and membership stratification can take place along class and residency lines, which may further derail collective action.

229 See discussion *supra* Part IV, Section C.

230 Regarding the use of informal norms and moral authorities in rural governance, see generally LILY TSAI, ACCOUNTABILITY WITHOUT DEMOCRACY: SOLIDARY GROUPS AND PUBLIC GOODS PROVISION IN RURAL CHINA (2007).

231 See discussion *supra* Part IV, Section A.

232 For example, Shipai Village, located in the north of Tianhe District, owns large numbers of commercial real estate in the surrounding areas. The area was once the largest electronic retail market in Guangzhou. Author’s fieldnotes dated 01.05.2020 and 01.08.2020 (on file with Author).

233 Siu Wai Wong, *Reconsolidation of State Power into Urbanising Villages: Shareholding Reforms as a Strategy for Governance in the Pearl River Delta Region*, 53 URB. STUD. 689, 693-96 (2016).

234 According to Chung and Unger’s survey, the line between village collectives and sharing holding companies is extremely blurry. “The Party secretary of the village usually became the Party secretary and CEO of the village’s shareholding company, and village officials occupy the seats of the company’s board of directors.” See Chung & Unger, *supra* note 154, at 34.

One such social division arises from the different membership statuses for those living in urban villages and those living outside. In many villages, households working and residing in the village received full membership during the conversion to shareholding companies, while villagers who worked elsewhere (e.g., as migrant workers in the city) only received partial membership.²³⁵ The two types of membership translate into different voting power in the management of collective business and varied distribution of dividends.²³⁶ Members are further divided due to their different involvement in the informal housing business. Some households are better situated to benefit from their informal rental housing—their close relationship with village leadership may have rewarded them the privilege to build more and higher rental apartments during the 1990s and 2000s housing rush.²³⁷ Since villagers' compensation was partly decided by floor area, villagers in possession of larger housing plots or taller apartments in the pre-redevelopment period were able to secure more resettlement apartments or greater monetary compensation.²³⁸ As a result of those differences, members of village communities may disagree with each other, sometimes in a highly confrontational fashion, about their deals with property developers.

The most telling example is Xian Village near the heart of Zhujiang New Town—Guangzhou's Central Business District ("CBD"). Xian was among Guangzhou's first batch of urban redevelopment projects.²³⁹ The village of 4,000 residents has a split social structure: it hosts two big families, and its population is nearly evenly split between two types of members—full members and partial members.²⁴⁰ Soon after the project began in 2009, the village leadership and the developer came up with a compensation and resettlement plan.²⁴¹ The plan disappointed many villagers who accused the leadership of colluding with government officials and developers, benefiting themselves at the cost of the village.²⁴² The years-long conflicts among the majority, minority, developers, and local

²³⁵ Author's interviews with villagers and planning experts in Guangzhou. Author's fieldnotes dated 07.26.2019, 07.27.2019, and 01.05.2020 (on file with Author).

²³⁶ *Id.*

²³⁷ *Graft Behind the Rise of Zhujiang New Town*, *supra* note 172. See also Kan, *supra* note 159, at 643-45.

²³⁸ *Graft Behind the Rise of Zhujiang New Town*, *supra* note 172; Kan, *supra* note 159, at 643-45.

²³⁹ Author's interviews with real estate developers and villagers in Guangzhou. Author's fieldnotes dated 06.28.2019 and 07.30.2019 (on file with Author).

²⁴⁰ *Id.* For a detailed account of the origin and ramifications of this high-profile urban redevelopment project, see generally DAVID BANDURSKI, DRAGONS IN DIAMOND VILLAGE: TALES OF RESISTANCE FROM URBANIZING CHINA (2016).

²⁴¹ Author's interviews with real estate developers and villagers in Guangzhou. Author's fieldnotes dated 01.04.2019 and 07.30.2019 (on file with Author).

²⁴² For a more detailed account of how urban redevelopment can reinforce the preexisting class lines in communities, see Kan, *supra* note 159, at 641-45.

governments led to high-profile criminal charges against several village leaders and local government officials.²⁴³ Until early 2023, a handful of households who refused to sign the redevelopment agreement still lived in the rubble of the dilapidated village ringed by skyscrapers.²⁴⁴ Almost no one benefited from the standstill. A large parcel of land has remained an unusable junk field at the center of the city's CBD for several years.²⁴⁵ The community was divided by huge economic interests: the minority who refused to leave live in horrible conditions, while the majority who have successfully moved to new residential towers nearby cannot enjoy the promised benefits.²⁴⁶ The deterioration of social trust in communities and subsequent failure to coordinate collective action can prove fatal to the governance of urban land commons.

B. The Rise and Fall of Legal Innovation

Division is not a problem *per se* unless it is left unaddressed. As pointed out by political scientist Susan Whiting, Chinese courts are more suitable for dealing with land compensation cases than resolving village disputes.²⁴⁷ However, courts in Guangdong have been struggling with land issues arising out of the co-governance model, and the courts' efforts to find innovative solutions turned out to generate as many problems as they solved.

One central legal issue underlying many redevelopment projects is how to enforce the majority rule in a divided community. Many villages attempt to avoid devastating social confrontations like Xian Village and pass redevelopment plans through supermajority votes. However, the unsatisfied minority often refuses to leave.²⁴⁸ When the majority brought those cases to the courts, judges had to decide who and on what basis, they could legally remove the holdouts from their land and houses. Such cases never happened before in the pro-growth model of land development. In "traditional" state-led land takings cases, the legal questions and parties involved are relatively clear: local governments appropriated land

²⁴³ *Graft Behind the Rise of Zhujiang New Town*, *supra* note 172.

²⁴⁴ During the Author's first visit to the village in 2019, the number of remaining self-built apartment buildings was around 200. Upon the Author's visit in May 2023, the number was no more than twenty. Author's fieldnote dated 01.04.2019 and 05.11.2023 (on file with Author).

²⁴⁵ Author's fieldnotes dated 01.04.2019 and 07.30.2019 (on file with Author).

²⁴⁶ The social division was evidenced by the drastically different narratives put up by opposing villagers in the community newsletters and the wall of the ancestor's temple. Author's fieldnotes 20190104 and 20190628 (on file with Author).

²⁴⁷ Susan Whiting, *Values in Land: Fiscal Pressures, Land Disputes and Justice Claims in Rural and Peri-Urban China*, 48 URB. STUD. 569 (2011).

²⁴⁸ The holdout problem exists in every community I have investigated. In most instances, disagreement can be solved in a reasonable time and manner. However, it occasionally leads to violence and bloodshed. *See* discussion *infra* Part V, Section B.

from villagers, and villagers brought local governments to the court for unjustified land takings and inadequate compensation.²⁴⁹ Nevertheless, the question remains: what type of causes of action are available for the majority and the holdouts when a village enters into a redevelopment contract approved by an 80 to 95% majority? The answer is far from clear, as the national legislation, such as LAL, has not recognized the co-governance experiment nor provided applicable rules.²⁵⁰

The novelty of the co-governance model requires local courts to creatively interpret existing laws. For example, courts in Guangzhou developed an innovative solution to address the majority-minority problem that arises out of the co-governance model. Rather than treating these cases as land taking disputes between villagers and local governments, Guangzhou courts consider them as civil disputes among members of village collectives and shareholding companies.²⁵¹ This approach allows village collectives to enforce the majority-approved redevelopment agreements and reclaim the minority's house sites based on the collective's power over its members.²⁵² The innovation was once seen as a successful model of "judicial activism" to achieve zero forced displacement by local governments.²⁵³ Between 2008 and 2012, about 100 cases were brought to court in Guangzhou. Except for those resolved through mediation, the majority emerged victorious in all the courts' verdicts.²⁵⁴ However, the promising legal innovation was marred by a villager's tragic death during a conflict with a village majority that tried to enforce a favorable court verdict.²⁵⁵ This event prompted the Guangdong Provincial High Court to intervene and manage its political implications.²⁵⁶ In its judicial

249 See generally Wenzheng Mao & Shitong Qiao, *Legal Doctrine and Judicial Review of Eminent Domain in China*, 46 LAW & SOC. INQ. 826 (2021).

250 See discussion *supra* Part III, Section B.

251 For a strong example of a court using this approach, see Guangzhoushi liede jingji fazhan youxian gongsi su liyingguang zhajijidi jiufenan [Guangzhou Liede Economic Development Corporation v. Li Yingguang], Zhong-216, Guangzhou Intermediate People's Court, (2008).

252 *Id.*

253 For a newspaper interview with a Guangzhou judge who ruled on those cases, see Huarui Wang, *Linqiangchai Shi Yinwei Lingjuli* [Full Understanding Leads to Zero Forced Demolition], RENMIN FAYUAN BAO [PEOPLE'S COURT DAILY], Mar. 11, 2011, at 4. These cases were later regarded among the top ten cases of judicial activism in a national competition. See *Quanguo Fayuan Shida Jianxing Nengdong Sifa Linian Youxiu Anli* [Top 10 Cases of Implementing Judicial Activism], RENMIN FAYUAN BAO [PEOPLE'S COURT DAILY], Nov. 17, 2012, at 2.

254 *Guangzhoushi Qiangzhi Jiucun Gaizao Zhong Quanli Zhuti Banqian Tujing de Bianqian* [The Evolution of Displacement Policies in Old Village Redevelopment in Guangzhou], WANG JING & GH L. FIRM (Aug. 31, 2021), <https://www.wjngb.cn/jofacolumn/info.aspx?itemid=2379> [hereinafter The Evolution of Displacement Policies in Old Village Redevelopment in Guangzhou].

255 Author's interview with judges in Guangzhou. Author's fieldnote dated 07.31.2019 (on file with Author).

256 Although there is no direct evidence of causal relations, the High Court's interpretation came only a few weeks after the incident. Judges in Guangzhou whom the Author interviewed shared this point of view on the High Court's motive. For a discussion of how Chinese courts react

interpretation, the High Court argued that transferring rural land is the sole responsibility of the State and must follow the formal land taking process.²⁵⁷ An effective agreement signed by the village majority and developers cannot be used as the legal basis for evicting villagers who refuse to leave.²⁵⁸ Until 2020, intracommunity conflicts were a legal vacuum on which almost no courts were willing to rule.²⁵⁹

After the enforceability of redevelopment agreements was denied, cities in Guangdong struggled to find alternative methods to address the holdout problem. Courts in Guangzhou followed the instruction of the Guangdong High Court and required the parties to first submit disputes to local governments for adjudication.²⁶⁰ However, the legal procedure of government adjudication is so ambiguous that it has failed to produce any successful resolution of disputes for several years.²⁶¹ Other cities, like Shenzhen, took a different approach. Shenzhen's city legislation allows the use of eminent domain power to address holdouts if more than 95% of community members have signed the redevelopment agreement.²⁶² In the cases of Guangzhou and Shenzhen, the State is brought back as both a safety valve and an overriding actor when collective action fails. It remains to be seen when the more assertive local governments could introduce a new method of balancing the interests of different players in the co-governance regime.

The coordination conundrum exposes the limits of the current co-governance experiment. While institutionalized community participation may seem like a promising approach for urban land development, it may backfire when the pro-growth tendency remains dominant, and rules for coordinating collective action are in short supply. Making a single high-stake decision that homogenizes members' interests could

to the pressure of social stability, see generally KWAI HANG NG & XIN HE, EMBEDDED COURTS: JUDICIAL DECISION-MAKING IN CHINA (2017).

257 Guangdongsheng gaoji renmin fayuan guanyu yifa tuoshanchuli she sanjiu gaizao jiufen anjian de tongzhi [Notice on the Legal and Proper Handling of Cases Regarding Three-Old Redevelopment], Guangdong People's High Court, 2012/6/8.

258 *Id.*

259 Author's interviews with judges in Guangzhou. Author's fieldnote dated 07.31.2019 (on file with Author). The 2012 interpretation from Guangdong Province High Court was quietly abolished in 2020, which potentially opens doors for more flexible and innovative dispute resolution. As of yet, I have not found any court rulings that deal with the community's internal disputes and holdout problems in Guangdong Province. This is confirmed by my interview with lawyers in Guangzhou. Author's fieldnote dated 05.15.2023 (on file with Author).

260 Author's interviews with judges in Guangzhou. Author's fieldnote dated 07.31.2019 (on file with Author).

261 See The Evolution of Displacement Policies in Old Village Redevelopment in Guangzhou, *supra* note 254.

262 Shenzhen jingji tequ chengshi gengxin tiaoli [Regulations of Urban Redevelopment in Shenzhen Special Economic Zone] (promulgated by the Standing Comm. People's Cong. Shenzhen Mun., Oct. 29, 2020), art. 36 (China), https://www.sz.gov.cn/en_szgov/laws/content/post_10098098.html.

actually intensify, rather than alleviate, conflicts among heterogeneous values and preferences. The one-time, dramatic change that decides an entire neighborhood's future could be detrimental to the social coherence in those communities. The dilemma serves as a cautionary tale that more genuine support for pluralist interests and collective actions is necessary to maintain the ties between the economic and social values of the urban commons.

VI. CONCLUSION

Developing urban land in contemporary cities creates a dilemma. While there are good reasons to revive distressed neighborhoods to accommodate growing urban populations, development projects often result in social exclusion and the privatization of urban spaces. State power and market forces collude to prioritize the "highest and best use" of urban land, leading to a troubling juxtaposition of urban poverty and gentrification around the world. Meanwhile, the benefits of development are seldom felt by and shared with underprivileged city dwellers. So, how can we design urban land development to make our cities both *prosperous* and *common*? This paper addresses the question of urban land development in the urban commons framework. The commons value, which includes economic gains from social coordination and benefits of social cooperation and solidarity, can be best realized through a co-governance regime. Such a regime would entail broad power and interest-sharing among affected urban communities and other stakeholders. Furthermore, community power needs to be institutionalized in a way that minimizes the disproportionate influence of voices and supports the collective action of community members.

This paper accounts for the exciting promises and cautious tales of transitioning to a co-governance regime through an in-depth case study of China's ongoing experiment, which places urban communities at the center of land development. To facilitate this transition, there are several useful points of intervention, like narrowing the gaps in the legal treatment of different properties, institutionalizing communities' control over the decision-making process, and utilizing social capital within the community. Governments and developers can also be forces for good by offering them supervision, capital, and expertise that communities generally lack. These institutions and arrangements are critical in re-embedding land development in social relations that are vital to the success of urban commons. It should be noted, however, that there is an inherent tension between the idea of urban commons as a shared resource for all city dwellers and the institutional design of co-governance. On the one hand, co-governance requires a relatively clearly defined community to make key decisions, which may lead to new forms of exclusion and

inequality. On the other hand, the constant pressure for growth still works from the background, tweaking community power to pursue economic success at the cost of social cohesion. Without robust rules to support everyday social interactions and careful consideration of heterogeneous interests, the institutionalization of community collective decisions may ultimately undermine community power itself.