

PROPERTY SYSTEM IN TRADITIONAL CHINA AND ITS ENLIGHTENMENT

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Abstract

The real property system in the Ming and the Qing Dynasties manifested itself as a dual structure of the macro and micro real property order spontaneously formed in local society. Taking “ye” (property) as the core concept and private contracts as the tool, the property rights system was composed of various managing hierarchies and transaction forms. The managing hierarchies were based on four influencing factors: operating profit, negotiability, management period and taxation risk. Various types of real property transactions, based on present and future values, formed a unified trading chain. The complex real property structure had the positive function of clarifying property rights and reducing transaction costs, and it was rooted in the socio-economic transformation of the Ming and the Qing Dynasties. Our observation is that the characteristics of the real property system in the Ming and the Qing Dynasties, i.e. concepts of abstraction and relativity, and flexibility of terms, are different from the property concept in the civil law system, whose core is the absolute ownership and the structure of “dominium ius in re aliena”. This observation can provide a useful reference for the current reform in China that aims at the separation of rural land rights.

I. INTRODUCTION

The inherent civil law rules concerning farmland industry in the Ming and the Qing Dynasties included special property arrangement rules, such as the two-owners-of-one-land system, the property rights of *dien*, live sale and absolute sale. Many Chinese scholars studying the economic history and legal history have accumulated a wealth of research on the basis of detailed first-hand historical materials, but there are still few theoretical studies from the perspective of civil law or property law. Taking a historical perspective, this paper explores the property system in the Ming and the Qing Dynasties by virtue of

the theories of new institutional economics and modern property laws, from a perspective of functional comparison.

II. DUAL STRUCTURE OF LAND RIGHTS IN THE MING AND THE QING DYNASTIES

New Institutional Economics holds that there are two indispensable tools for understanding institutional structures, namely, state theory and property rights theory.¹ The property structure in the Ming and the Qing Dynasties shall be understood from the perspectives of state theory and property rights theory, which forms a dual structure. At the macro level, the property structure was subject to the state's political powers, and at the micro level, the property structure was spontaneously formed in the civil society.

At the state level, North believes that the state has a comparative advantage of exercising power, and the essence of property rights is exclusive power.² Traditionally in China, there was no source outperforming the state's powers on land issues. Therefore, every citizen was a "customer" to be resettled. The decisive factor of land rights structure was not economic, but the consideration of "rewarding, granting, and awarding."³ As the old saying goes, "all the land under heaven belongs to the king", and thus the rights of landholders could not be expressed as "ownership". Political power control and land control (land occupation) were inextricably intertwined, i.e., the stability of political power promoted the periodic stability of property relations, and the turbulence of political power led to the reorganization of property patterns.

The state would provide a set of services (such as judicial protection), and thus the effect of property system imposed by the government was nothing more than the collections of taxes and maintenance of local peace. This stimulated the flourishing of civil society.⁴ At a stage where political situation was relatively stable, a

¹ DOUGLASS C. NORTH, *STRUCTURE AND CHANGE IN ECONOMIC HISTORY* (1st ed. 1981).

² *Id.*

³ Wu Xianghong (吴向红), *Dian zhi Fengsu yu Dian zhi Falü* (典之风俗与典之法律) [The Custom and the Law of Dian] 68 (2009).

⁴ See Cheng Nianqi (程念祺), *Guojia de Liliang yu Zhongguo Jingji de Lishi Bianqian* (国家的力量与中国经济的历史变迁) [National Power and the Change of Economic Power in China] 41 (2006).

native property system taking contracts as the tool and based on folk habits was constructed.

This property rights structure was not constructed or implemented by the state, but by the spontaneous customs, habits and other “unstated rules of right conduct”.⁵ Economic factors played a dominant role in the formation of property rights in civil society, where individuals distributed land incomes in multiple ways from the dimensions of power and time, resulting in a series of flexible, open and pluralistic transaction forms, such as *dien* sale, live sale, absolute sale, and tenancy.

The driving force for the government’s control of land lied in tax collection and transactional costs reduction. The government showed little appetite for how the remaining land output was distributed among relevant stakeholders, and thus this remaining part required refinement.

During the long-term conflict between state laws and customs, tacit agreement and function division had gradually formed: the state power had become a fixed burden on land by means of promises like “never imposing taxes” in civil contracts; and the property rights formed in civil society featured rational distribution of economic factors such as land, labor and capital in a flexible and efficient way.

III. MANAGING HIERARCHIES AND TRANSACTION FORMS

A. The Definition and Hierarchy of “Ye”

“Ye” (业, property) was the key concept of land rights structure in ancient society. Different from the concept of real rights, “ye” focused on land production. Its essence was “nurturing” rather than “dominating”, supported by a naïve subsistence ethic.⁶ There was an interdependent relation between people and “ye”, instead of one-dimensional control. Therefore, “ye” did not require exclusive ownership of the real property. Instead, people only need to obtain permission to use it from a certain level. On the same piece of land, a number of “ye” with different contents and forms can be set up at the same time, and each has its own value. When several types of “ye”

⁵ FRIEDRICH A. VON HAYEK, *THE CONSTITUTION OF LIBERTY* (1st ed. 1960).

⁶ Wu Xianghong (吴向红), *supra* note 3, at 251.

were formed and gained wide recognition from society, a set of “managing hierarchy of property” came into place. Property management declared the relations between people and “*ye*”. The person managing the property was called the “**owner**”. The hierarchical structure of “*ye*” had broad and narrow scopes. Broadly speaking, “*ye*” contained all relations built between people and property, and property management only differed in contents. In the narrow sense, the relation built between people and property should bring long-term gains, which showed a certain degree of exclusivity and resistance. Based on the narrow scope of *ye*, ordinary tenants who obtained income only according to his working contribution were generally not recognized as “owner”. The person who has the land use right was recognized as “owner”, for his income came from rent rather than labor. This land use right could be transferred. “**The right of collecting rent**” meant that the owner’s income was independent. Moreover, “*ye*” in the narrow sense can be further divided into “**big *ye***” (大业) and “**small *ye***” (小业)⁷. The right obtained by reclamation and inheritance was called “big *ye*”, while the right obtained by permanent-tenancy, two-owners-of-one-land or live sale was called “small *ye*”.

“*Ye*” had various transaction forms. People had the right to property management through buying, live sale, leasing, and renting.⁸ The hierarchical structures and transaction forms of “*ye*” shaped rural society’s views towards ownership, trading and tenancy of land. For farmers, acquiring a land for farming to obtain legitimate benefits was the most serious concern. Therefore, any kind of hierarchical structures and transaction forms of land rights was based on two factors: “the operating income of the land” and its “legitimacy”. The so-called “selling lands” could not simply be considered as the disposal and transfer of lands as an “object”. Instead, it was a process through which the “former manager” transferred the right of property management to the “current manager”. The owner of land was to publicize the contract between “former manager” and “current manager”, which brought respect and

⁷ Hao Weihua (郝维华), *Qingdai Caichan Quanli de Guannian yu Shijian* (清代财产权利的观念与实践) [The Concept and Practice of Property Rights in the Qing Dynasty] 118 (2011).

⁸ Long Denggao (龙登高), *Diquan Shichang yu Ziyuan Peizhi* (地权市场与资源配置) [Land Rights Market and Resource Allocation] 102 (2012).

recognition from the members of society as it was proved by a legitimate source.

The managing hierarchy of property was based on the operation and income from a specific piece of land. The “former manager” and “current manager” could choose live sale or absolute sale to realize the transfer of rights. The general respect for this result in society had made “property management” more stable in the civil society.⁹

B. Permanent Tenancy: High Profit and Low Negotiability

The permanent tenancy system is a long-term “ye” with relatively high operating profits and low liquidity.

The permanent tenancy system which appeared in the Song Dynasty began to be popular in southeastern China after mid-Ming Dynasty. It spread throughout the whole country and became a major type of land tenancy in several regions in the Qing Dynasty and the Republic of China. Under the permanent tenancy system, the tenant farmers paid the rent to gain the autonomy of managing the land. As long as the tenant farmers were not in arrears with the rent, they would use the land with no time limitation. The owners could not revoke this contract. Furthermore, the tenant farmers could freely retreat from this land, and there was no personal attachment relationship between the owners and tenant farmers. However, the tenant farmers had no right to sublet the land.¹⁰

Five main elements resulted in the emergence of the permanent-tenancy system. First, in order to stabilize the tenancy relationship, at the end of the Northern Song Dynasty and the beginning of the Southern Song Dynasty, long-term tenancy contracts formed. New owners often promised to continue renting out the land to the same tenant, who is called “the tenancy farmers attached to the land”.¹¹ Second, the mortgage system was the origin of permanent-tenancy. Its basic function was to prevent rent in arrears and the system gradually developed in the trends of “the higher deposit and the

⁹ Terada Hiroaki (寺田浩明), *Quanli yu Yuanyi: Sitian Haoming Zhongguo Fashi Lunji* (权利与冤抑：寺田浩明中国法史论集) [A Comment on Rights and Injustice: Collected Works on the Chinese Legal History of Terada Hiroaki] 86 (Wang Yaxin (王亚新) trans.) (2012).

¹⁰ Yang Guozhen (杨国桢), *Mingqing Tudi Qiyue Wenshu Yanjiu* (明清土地契约文书研究) [Study on Land Contract Documents in Ming and Qing] 70 (2009).

¹¹ Zhao Gang (赵冈) & Chen Zhongyi (陈钟毅), *Zhongguo Tudi Zhidushi* (中国土地制度史) [History of China's Real Property] 299 (2006).

lower rent”. Only when the owner returned the rented silver, the tenant farmer would no longer manage this land. In the contract document, it was “selling the land without changing tenancy”. Third, live-sale was popular in the Song Dynasty. People who sold their land could still manage the land as a tenant farmer. The sellers’ followings could inherit this right before redemption. Fourth, in the process of land reclamation in remote provinces, the renovation of water conservancy projects in the southeastern provinces, and the re-cultivation after war or abandonment, the tenant farmer added value to the field and thus obtained the ownership. Fifth, while the owner of land transferred his land to the official, he could still cultivate in this land to feed himself. In addition, the servant system in Anhui and other places was also one of the causes.

In a word, returning the rented silver became the only way to exit this system. The basic investment strategy for the renter was “being the tenant farmer rather than buying lands”. The mortgage functioned as adding a deposit and reducing the rent in order to improve the operating income of the tenant farmers. The relationship between the mortgage and land rent reflected the trade-off between current cash flow and future earnings, as well as flexible and diverse configurations. Under certain circumstances, when the amount of deposit increased to a certain amount, the rent could be reduced to zero, which was equivalent to selling or live-selling the land to the tenant.¹²

Other forms of the permanent tenancy system also reflected the mechanism of the mortgage and rent. For example, the land reclamation was to convert the invested work into the capital of the industry, which was expressed as a permanent rent and appropriate discount on the amount of rent.

In conclusion, the permanent tenancy system allowed tenant farmers to cultivate the land for a long time unless their rent payments were in arrears. The tenant could freely terminate the contractual relationship with the landowner, but could not sublet the land as they wanted, which in turn caused poor liquidity of this

¹² Wu Xianghong (吴向红) & Wu Xiangdong (吴向东), *Wuquan Suoyou: Jiquan Nuyi Shehui de Diquan Zhixu* (无权所有:集权奴役社会的地权秩序) [The Order of Land Rights in Centralized Servant Society] 68 (2015).

system. The operation income varied according to the amount of the mortgage and rent.

C. Multiple Ownership: High Profit and Maximum Negotiability

The custom of two-owners-of-one-land spread throughout regions south of the Yangtze River and Taiwan in the Ming and the Qing Dynasties.¹³ It resulted from the division of land rights. A piece of land was divided into two parts conceptually, namely, “*tianmian*” (literally, the surface of land, on which the right of land-holding was based) and “*tiandi*” (literally, the base of land, on which the right of land-tenure was based), which belonged to different people and were enforced independently.¹⁴ The owner of the land surface had rights to use, rent, and dispose of “*tianmian*”; as for the owner of “*tiandi*”, he had rights to rent and dispose of the land itself. At the same time, the owner of “*tiandi*” bore the burden of paying taxes. From the perspective of “*ye*”, the two owners of the same land had no mutual subordination, and there were two separate sets of “**management origins**”.

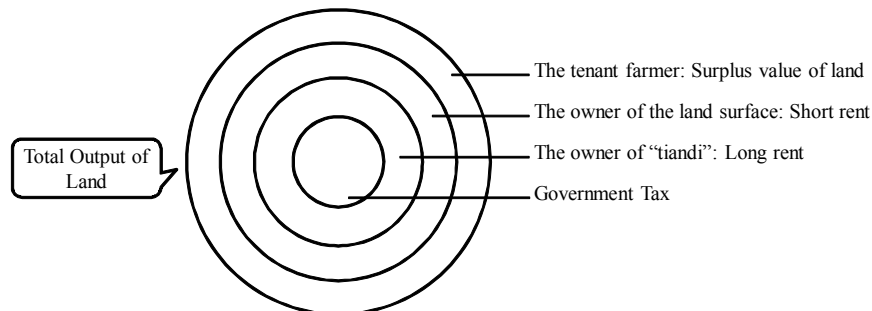


FIGURE 1. THE DISTRIBUTION STRUCTURE OF REAL PROPERTY IN THE TWO-OWNERS-OF-ONE-LAND SYSTEM

The distribution structure of land rights and profits in the two-owners-of-one-land system is shown in Figure 1. Among the total output of the land, the imperial court collected the tax; the owner of “*tiandi*” gained the after-tax income of long rent from the owner of

¹³ Ge Jinfang (葛金芳), *Zhongguo Jinshi Nongcun Jingji Zhidu Shilun* (中国近世农村经济制度史论) [On the History of China's Modern Rural Economic System] 242 (2013).

¹⁴ Hiroaki, *supra* note 9, at 227.

“*tianmian*”; the owner of “*tianmian*” gained the remaining income of short rent from the tenant farmers after paying the long rent; the tenant farmers gained the rest output of the land after paying the short rent.

The division of land rights in the two-owners-of-one-land system was simultaneously carried out from the two main directions of the owner and the tenant farmer.¹⁵ The differentiation among the owners was closely related to the servant system in the Ming Dynasty, and the differentiation among the tenant farmers evolved from the permanent tenancy system. In principle, tenant farmers could not sublet their lands. But when the lands were illegally sublet between individuals, it gradually became practices or customs. The owners of these lands had to give tacit consent to such practices. Thus, the content of permanent tenancy evolved into the surface of the land.

There were roughly three types of differentiation.¹⁶ First, the owner transferred land-holding right by selling the surface land while retaining his land-tenure right. Second, the land-tenure right was transferred, and the former owner reserved the land-holding right. For example, the former owner transferred the land-tenure right at a low price in order to avoid obligations like grain tax. Third, the land-holding right and land-tenure right were respectively transferred to different buyers or different family members.

The two-owners-of-one-land contract had a four-level land rights system.¹⁷ The first level was the decomposition of investment. Two owners controlled the same land in different ways. The actual owner inherited or bought the land-tenure right, while the tenant farmer obtained “*tianmian*” (surface of land) through renting or reclaiming lands. The second level was the decomposition of the land output. The imperial court, the owner with land-tenure right (the actual owner), the owner with land-holding right (the surface owner) and the tenant farmer obtained their due shares of the output. The mechanism of land income distribution took an abundant land output

¹⁵ After the middle of the Ming Dynasty, two-owners-of-one-land was popular. See Fu Yiling (傅衣凌), *Mingqing Nongcun Shehui Jingji*; *Mingqing Shehui Jingji Bianqian Lun* (明清农村社会经济; 明清社会经济变迁论) [Rural Economy in the Ming and the Qing Dynasties; Social and Economic Changes in the Ming and the Qing Dynasties] 51 (2007).

¹⁶ Yang Guozhen (杨国桢), *supra* note 10, at 307.

¹⁷ Long Denggao (龙登高), *supra* note 8, at 36.

as its precondition. The third level was the decomposition of management. Owners with land-tenure right managed infrastructures like water conservancy or soil conservation. As for owners with land-holding right, they were responsible for specific farming work, and all matters regarding the surface land were managed by them. The fourth level was the decomposition of risks. Owners with land-tenure right collected a stable and fixed rent which did not depend on good or bad harvest, and thus bore a low risk. In contrast, owners with land-holding right and the tenant farmers got high income yet with high risks.

No laws defined the proportion of value of the land surface and land ownership. The value of both was determined by their respective markets.¹⁸ It was generally assumed that the price of the land surface was relatively fixed.¹⁹ However, in areas where the deposit system was prevalent, the price of the land surface fluctuated with the amount of the deposit. The prices of the land surface and the land ownership were not synchronized. According to the historical trend, the price of the land surface rose while the price of the land ownership dropped. Three factors might explain this. First, with an easy trading procedure for the land surface, two parties could complete the transaction only by contact. There was no need to transfer registration or conduct tax payment. Moreover, the owner of the land surface directly occupied and used the land. As long as the total output of the land was sufficient, he could rent out the land surface to collect a stable “short rent” and become the second owner.²⁰ Furthermore, the continuous investment of the workforce gradually increased the productivity of the field. As long as the long rent was basically stable, the yield rate for the land surface owner usually rose. For example, among the total value of one piece of land in regions south of the Yangtze River, the price of the land surface accounted for two-thirds, while the price of the land ownership was about one-third.²¹ This price proportion changed the business

¹⁸ Zhao Gang (赵冈), *Yongdianzhi Yanjiu* (永佃制研究) [Research on Permanent Tenancy] 43 (2005).

¹⁹ Cao Shuji (曹树基), *Chuantong Zhongguo Diquan Jigou Jiqi Yanhua* (传统中国地权结构及其演化) [Traditional Chinese Real Property Structure and Its Evolution] 29 (2015).

²⁰ Yang Guozhen (杨国桢), *supra* note 10, at 93.

²¹ Long Denggao (龙登高), *supra* note 8, at 101.

patterns of the landowners. They tended to sell the land ownership and retained the right of land surface. However, the risk of merely maintaining the land surface was that, as a custom, this practice was not supported by the state law. Transactions of land ownership were common, but those of the land surface were not. Buyers of the land ownership were seldom the local people, and the land surface was transferred within its village.²²

The land surface was the essence of the landlord-tenant structure. It was a creditor-debtor relationship between the surface owner and the actual owner (with the land-tenure right). The income collected from the surface owner, i.e. the fixed rent, reflected the land-tenure right. The price of surface land was corresponding with land-tenure right so that it was much lower than the price of the land ownership. As one form of the consideration of the land rights division, the price of surface land reflected compensations for the owners in two aspects: one was the reduction of land income, and the other was the minimization of the property management scope.²³ Both the land ownership and the surface land could be freely circulated through a variety of trading forms. There was no time limit.

The emergence of the two-owners-of-one-land system meant that the land rights were decomposed into operational land rights (on surface land) and asset land rights (on land ownership). Firstly, holding an independent and stable property right, the surface owner was usually willing to provide further investment to enhance the productivity of the land. It not only formed a new increment of constant production, but also encouraged the tenant farmer to work on the land. Expected returns from land investments could be discounted to the farmer at the transaction price.²⁴ Secondly, the land became purely asset-based property whose owner did not involve land operations. The promotion of this system encouraged urban residents, industrialists and businessmen to purchase and invest in lands, greatly increasing participation in land rights transaction by different social classes. At the same time, the mutual replacement of capital and commercial property also provided

²² Zhao Gang (赵冈), *supra* note 18, at 43.

²³ Wu Xianghong (吴向红) & Wu Xiangdong (吴向东), *supra* note 12, at 52.

²⁴ Long Denggao (龙登高), *supra* note 8, at 102.

farmers with multiple choices to maximize the use of family resources.

If judged at the outward appearance, the two-owners-of-one-land system and the system of permanent-tenancy only differed in whether the tenants could sublease lands. However, the purpose and function of the two systems were also significantly different. The essence of the two-owners-of-one-land system was reflected in the precise and reasonable division of the rent and land management. Due to its advanced form, the frequent circulation of the surface land and the investment attracting capacity had a decisive influence on the division of land rights in the local society. The permanent-tenancy system could not have such an influence. The two-owners-of-one-land system concealed the uncertainty between the government and the landowners through separating the management of the surface land and the land ownership. When the land-tenure right and the land-holding right were independent, the surface land became a high-quality asset that was close to the modern property.

D. Dien: Medium to Long-Term Contract with Maximum Profit

“*Dien*” (pawndage), known as live sale or flexible selling, refers to the sale of land with reservations, which was the most common custom. In ancient Chinese, the original meaning of “*dien*” as a verb is to control and to use. When used with lands, it means “to make somebody manage land”. The system of “*dien*” was formally formed in the Tang and the Song Dynasties.²⁵ Influenced by the unprotected interest-bearing credits and the cultural heritage of the family property, the “*dien*” system existed and spread universally.²⁶

The content of the “*dien*” system could be summarized as follows: the buyer paid for the owner to obtain four rights and benefits during the whole process from live-sale to absolute-sale or to redemption. First, the buyer could control the actual management of the land and get return; second, the buyer was not required to pay the rent; third, the buyer could freely transfer the land; last, the original owner of the land should absolutely sell his land to the buyer

²⁵ Guo Jian (郭建), *Zhongguo Caichan Fashigao* (中国财产法史稿) [The Historical Documents of Chinese Property Law] 133 (2005).

²⁶ *Id.*, at 155.

when he had no ability to buy it back.²⁷ “*Dien*” and the two-owners-of-one-land differed in their own basic perspectives to decompose land rights as “*dien*” stressed time limit. Before the expiration of the term, the buyer managed the property. After the expiration date, the original owner of land could redeem the land. If the land was not redeemed, the buyer would continue managing the property. Thus, a system of two-owners-of-one-property (“*ye*”) was formed.

According to the “*dien*” system, the buyer obtained the whole income from operation, without paying the rent. He could also transfer the land if he wanted because the liquidity was high as there was no need to transfer tax obligation. The pawn period was decided on consensus. After the expiration, unless the owner of the land redeemed or absolutely sold the land, the land would still be in hock. Therefore, “*dien*” was a high-quality, middle and long-term landlord-tenant system with the highest operating income and free circulation.

In ancient China, “*dien*” bore both the credit function (live-sale of lands for money) and the circulation function, while the former function reflected its fundamental value and resulted in the circulation of the operating income. These two functions respectively met the motives of the seller (the owner) and the buyer.²⁸ the owner pawned his land to obtain long-term interest-free loan, and the buyer aimed to obtain the income from operation. “*Dien*” could be seen as happening between the land rent and the capital interest, or between the land operation income and the pawn price. Although in practice the pawn price was proportional to the length of the pawn period, the balance between the rent and interest was the core of the “*dien*” system. It made the system insensitive to the time limit. No matter how long the pawn period was, it was harmless to both two parties. Therefore, the pawn period could be freely decided or changed without specific restrictions. In traditional types of private credit, the “*dien*” system suppressed compound interest through the “interest-rent balance” and got rid of the harm of usury. This was the essential difference between “*dien*” and other types of loans with interests such as escrow, which made “*dien*” the gentlest and most stable form of private credit instrument.

²⁷ Wu Xianghong (吴向红) & Wu Xiangdong (吴向东), *supra* note 12, at 68.

²⁸ Wu Xianghong (吴向红), *supra* note 3, at 256.

The modern civil law theory regarding the “*dien*” system as a type of right seriously misunderstood its connotation. The argument that whether the right of “*dien*” is a usufructuary right or a security interest has continued to this day in that “*dien*” has various connotations in different contexts and cannot be defined as a certain type of rights in the European civil law system. When it has a time limit, “*dien*” is a financial credit instrument, which manifests the security interest. As the buyer manages and possesses the land, “*dien*” also belongs to the scope of the usufructuary right. The condition that “the pawn period could be as long as one hundred years” was between the usufructuary and the owner.²⁹

The spread of “*dien*” system was intrinsically linked to the traditional ethics of reserving family property. “*Dien*” was designed to have a flexible time limit in order to meet individuals’ financing needs.³⁰ It created new management rights without changing the ownership of private lands. Philip C. C. Huang believed that the “*dien*” system reflected the survival ethics of the pre-commercial logic and gave special care to those who could not make a living by working on the land. They could fight against poverty or tide over the difficulties through live-sale while maintaining their ownership of the inherited land and enjoying the good name of filial piety. Besides, it reflected the increasingly commercialized market logic. For example, it allowed the buyer to freely transfer the land, and allowed the owner to extend the pawn period, bargain over the price or absolutely sell the land when he could not redeem his land.³¹

E. Transaction Forms of Land Rights

In the Ming and the Qing Dynasties, land rights transactions were roughly divided into three types: **absolute-sale**, **live-sale of land rights**, and **mortgage (land rights uninvolved)**. The absolute-sale is equivalent to the modern concept of sale. It means the ultimate transfer of land rights. Live-sale also requires transferring the land

²⁹ Hao Weihua (郝维华), *supra* note 7, at 136.

³⁰ Philip C. C. Huang (黄宗智) *Minshi Shenpan yu Minjian Tiaojie: Qingdai de Biaoda yu Shijian* (民事审判与民间调解：清代的表达与实践) [Civil Trial and Mediation in the Qing Dynasty] 94 (2001).

³¹ Philip C. C. Huang (黄宗智), *Fadian, Xisu yu Sifa Shijian: Qingdai yu Minguo de Bijiao* (法典, 习俗与司法实践：清代与民国的比较) [Code, Custom, and Legal Practice in China: Compare the Qing Dynasty and the Republic of China] 61 (2007).

rights for paying, while retaining the former owner's redemption right. Thus, the former owner could re-acquire the land or obtain further benefits by bargaining a price.³² If the seller agreed to the new price or the buyer was willing to obtain total possession of the land, the live-sale would be converted into the absolute sale.³³ *Dien* sale did not involve the transfer of property, but when the term expired and the owner was unable to redeem it, the initial sale could be turned into live-sale or absolute-sale. Live-sale and absolute-sale had a common social foundation, that is, on the one hand, for the sake of face, or looking forward to redemption in the future, on the other hand, to avoid taxation. This kind of property transaction model was not straightforward, but it was a true portrayal of the attitude of the local society towards rights.

The essence of property trading was transferring land income. According to the requirements on redemption, it was divided into two sets of procedures: “*huo*” (live-sale) and “*jue*” (absolute-sale).³⁴ Mortgage (land rights uninvolved) and live-sale retained the possibility of returning the pawn price and redeeming the property. The absolute-sale meant losing the possibility of re-claiming the management.

Mortgage (land rights uninvolved) and live-sale were prevalent in the trade of land. In addition to the possibility of redemption, another important reason was that the price of mortgage (land rights uninvolved) and live-sale was far lower than the absolute sale.³⁵ It effectively reduced the cost for all parties to purchase land. Although the customs such as bargaining price left much room for the entanglements, the seller sought to increase the credit from the buyer based on economically reasonable reasons, such as the increase of the land price, inflation, etc. The balance mechanism, which adjusted the imbalance of interests between two parties over a longer time, could be regarded as the beginning of installment payments of specific property transactions.³⁶

³² Long Denggao (龙登高), *supra* note 8, at 69.

³³ Hao Weihua (郝维华), *supra* note 7, at 136.

³⁴ Terada Hiroaki, *supra* note 9, at 218.

³⁵ Wu Xianghong (吴向红), *supra* note 3, at 35.

³⁶ Long Denggao (龙登高), *supra* note 8, at 72.

The frequency and time of bargaining price were not restricted in practice. The only constraint was that “the total price after finding the post should not be higher than the price of absolute-sale”. Since the reign of Emperor Qianlong in the Qing Dynasty, “additional price” had evolved into a contractual format. After the transaction parties negotiated the price, they signed contracts on “selling price” and “additional price” separately.³⁷ As a means of discounting by stages, “bargaining price” controlled the risk of private usury and provided relatively safe long-term credit. This made mortgage (land rights uninvolved) and live-sale important financial tools in the social security system.

F. The Influencing Factors and Value of Land Ownership

The value of land rights depended mainly on four factors: profit, negotiability, period, and risk. Lower profit, lower negotiability, shorter period and higher risk would make the value of property low.

TABLE1: FACTORS OF THE MANAGEMENT OF “YE”

System	Profit	Negotiability	Period	Risk
Rent	Low	Low	Short	nonexistent
Permanent -tenancy	Depend on deposit	Low	Can be permanent	nonexistent
The surface of the land	High	High	Permanent	nonexistent
The subsoil	Higher	High	Permanent	Existent
Dien	Highest	High	Flexible	nonexistent

Although the general tenancy system, as the primary level of the property, was free of taxation risks, it did not possess negotiability for the short period for plowing. The owner of land had the right to withdraw this contract. And the tenant farmer was unable to transfer this right, so the negotiability was low.

³⁷ Cao Shuji (曹树基), *supra* note19, at 33; You Chengjun (尤成俊), *Mingqing Zhongguo Fangdi Maimai Sulizhong de Xiguan Quanli —yi “Tanqi” wei Kaocha Zhongxin* (明清中国房地买卖俗例中的习惯权利——以“叹契”为中心的考察) [*The Customary Rights in the Case of Chinese Real Estate Sale in the Ming and the Qing Dynasties - An Investigation Based on “Tanqi”*], 4 FAXUEJIA (法学家) [THE JURISTS] 16 (2012).

Permanent-tenancy formed on the basis of the general tenancy system without the limit of the period and the possibility of the landlord withdrawing contract arbitrarily. In this system, with the higher deposit and the lower rent, the tenant farmer could weigh the present cash and future earnings. Therefore, the operating income was rather flexible, and the value of the property was higher than that of the general rent.

On the basis of the permanent-tenancy system, the right to manage the surface land occurred. On the one hand, the surface owner could freely and independently transfer the land. On the other hand, this right was not limited to a period. Therefore, with the highest negotiability and the best conditions for managing period, it had the highest value of a property.

The land ownership could also be freely circulated, and there was no constricting time limit. However, due to fact that the landowner bore all the taxation risks and had no right to occupy the land for use, the scope of the land management was minimized to the collection of huge rents. The operation income was fixed into the reminding part after tax. The value of a property could be reflected in the land market, that is, the price of the surface land was often lower than that of the land ownership.

In “*dien*” system, the buyer possessed the land without rent, so the operating income was the highest. He could freely transfer this right. Generally, the buyer did not need not bear the burden of taxation.

In short, rent, permanent-tenancy, the surface land, the land ownership, and “*dien*” were concrete expressions of “capitalization” and “management” of landlord-tenant structure. The profit, negotiability, period, and risk were used to judge the value of property. The landlord-tenant structure gradually took shape after undergoing adaptation, selection and standardization.

IV. THE PROPERTY RIGHTS SYSTEM

A. Contract: A Tool for Land Rights Distribution and Transaction

Different from Europe in the Middle Ages, ancient China was not constrained by the complex feudal law of property. The landlords

were not privileged class, while the tenants were not slaves. There was no close personal dependence between them.³⁸ The division and transaction of land rights in rural society were mainly carried out in civil contract.³⁹ The existence and effectiveness of the contract were not determined by the government as the customs functioned as law. Whether it was a contract notarized by the government, or a contract not officially certified, they both had the same legal effect. These contracts were recognized by the customary law. Since the mid-Ming Dynasty, the Imperial Household Department began to print contracts to assure procedural justice. Forty *wen* was asked to be submitted as a cost of producing a contract, and at the same time, the land rights and tax obligations were transferred.⁴⁰ When disputes arose over the property, the parties mostly used the contract to prove the legitimacy of their management. The government often dealt with disputes in accordance with two rules: one was whether the contract was certified by the government, and the other one was whether the property was transferred.

The interests of both parties to the transaction were written in the contract, so contractual management was crucial to the division of landlord-tenant structure. The general paradigm of trading was:

management content = contract name + contract limitation.⁴¹

“Contract name” refers to the type of contract. Different trading objects (farmer-owned land, government-owned land, clan land, etc.) and different trading methods (live-sale, absolute-sale, etc.) could be combined into multiple contract types to cope with the complex and volatile trading needs in practice. If the name of the contract could not distinguish itself or meet the specific transaction needs, a text description would be added to the contract. The purpose was to accurately define the specific management content of the landlord-tenant structure and the rights and obligations of both parties.

³⁸ RICHARD HENRY TAWNEY, *LAND AND LABOR IN CHINA* (1st ed. 1932).

³⁹ The contract in rent came up in the Song and Yuan Dynasties. The large-scale implementation was developed after the middle of the Ming Dynasty. See Fu Yiling (傅衣凌), *supra* note 15, at 71.

⁴⁰ Pu Jian (蒲坚), *Zhongguo Lidai Tudi Ziyuan Fazhi Yanjiu* (中国历代土地资源法制研究) [Research on the Legal System of Land in China] 336 (2011).

⁴¹ Wu Xianghong (吴向红), *supra* note 3, at 213.

As an economic tool based on agreement, the contract made local society more efficient and divided landlord-tenant structure into different forms with flexibility and high efficiency. It built a new contract based on tenancy contract, while adding more social and economic variables, such as permanent-tenancy, multiple ownership and the mortgage system. The tenancy contract developed towards two extremes: one was a system with low self-reliance where the tenant farmer provided only labor; another was a system that the tenant farmer was fully authorized to operate the land and bear all risks and benefits.

B. The Theoretical Framework of Land Rights Transaction

Although the dominant property structure was quite different in each region in traditional China, property differentiation prevailed.⁴² In general, there was a rural land market with unified form and content.⁴³ As a form of tenancy transaction, all property transactions were alike, achieving the optimal allocation of land, capital and labor through tenancy relations, buying and selling relations and employment relations guaranteed by contracts. We thus construct a theoretical framework for land rights trading, in which the differences between varying property transactions were reflected in the trade-off between “current income” and “future income”.

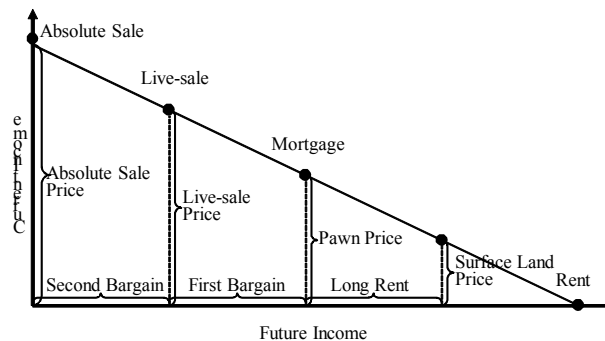


FIGURE 2. THEORETICAL FRAMEWORK FOR LAND RIGHT TRADING

⁴² See Philip C. C. Huang (黄宗智), *Huabei de Xiaonong Jingji yu Shehui Bianqian* (华北的小农经济与社会变迁) [The Peasant Economy and Social Change in North China] (2000); Philip C. Huang (黄宗智), *Changjiang Sanjiaozhou de Xiaonong Jiating yu Xiangcun Fazhan* (长江三角洲的小农家庭与乡村发展) [The Peasant Family and Rural Development in the Yangzi Delta] (2000).

⁴³ Cao Shuji (曹树基), *supra* note 19, at 12.

Initially, when tenant farmers rent the land, the landowner would sell the possession and the rights of the land to them without any current income, in exchange for the maximum future income from the rent.

Then, when the farmers accumulated certain assets, they could exchange landlords' promise of "no arbitrary default" with mortgages. As a result, the landowner obtained current income, at the cost of tenancy duration and discounted future income. Higher deposit entailed lower rent, recording negotiation between both parties on current and future income.

Next, the current income of pawners was the pawn price. Since the price interest and the land rent were offset, pawners' future income was the "bargaining" from the pawnee.

Then, as the pawner offered a price to the pawnee, live-sale emerged. The current income of the owner was the live-sale price and future income the bargaining after absolute-sale.

In the end, absolute sale was the only form causing owner replacement, where the seller could obtain the maximum current income. However, as the property was completely transferred, the seller no longer enjoyed any future benefits.

In the Ming and the Qing Dynasties, the above-mentioned "differentiation of land rights" shaped the property structure of the local society, without weakening the land structure stability. On the contrary, the land rights market developed well and even the alternation of dynasties did not affect the operation of the land rights of civil society.⁴⁴ The multi-level "ye" structure and diversified transaction types have lowered the transaction threshold of the land market. Apart from traditional labor gains, farmers' financing demands formed by unsynchronized production input and harvest (including adjustment of time and various elements) in the agricultural society where financial instruments were scarce, were also solved through differentiated land rights and transactions.

C. The Causes and Functions of Complex Land Rights Structure

Some scholars negatively evaluated the complex property structure in traditional Chinese society. In the case of *dien*, Eriksson

⁴⁴ Long Denggao (龙登高), *supra* note 8, at 130.

believes that “Under the *dien* system, current landowners realize that the owner of future interest may drive them away at some point. This complicated policy may lead to irrational use of land and less investment in land improvement, constituting, probably, an important reason for China’s poor economic performance during the Qing Dynasty and the Republic of China.”⁴⁵

As a custom, *dien*-related disputes became the most frequently accepted cases by the government because of the uncertainty of transaction nature and non-disclosure of the existence of the rights. However, as a high-quality system in rural society, *dien* had played the role of “funding” and helped land circulation. It served as the most moderate and stable type of private credit source. Although landlords may reduce land investment to some extent, the duration could be negotiated by both parties, and medium to long-term duration provided certain expectations for the owners’ investment.

The new property theory emphasizes the role of property rights in economic history. In this theory, clear property rights can reduce transaction costs, which is the key to the well-functioning of the market mechanism.⁴⁶ Whether the property rights structure is simple and whether the property rights are clear are actually two issues. The linear structure of property rights in the Anglo-American property law increases the division of land rights over time, and is thus more complicated than that in the civil law system. However, different property rights have different degrees of force. Therefore, instead of the simplicity of the land rights structure, the transaction costs under different property rights structures are the key point.

The essence of property rights is exclusiveness. The absolute ownership in the civil law system is a thorough solution to establish the exclusiveness of property rights, but not the only one. The civil land rights structure in the Ming and the Qing Dynasties and the Anglo-American property rights system have also realized the exclusiveness of right to some extent through devices such as contracts, in the absence of the absolute ownership. Although these structures have spawned many civil disputes, they have achieved the

⁴⁵ Robert C. Ellickson, *The Cost of Complex Land Titles: Two Examples from China*, Yale Law & Econ. Research Paper No. 441, 2011, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1953207.

⁴⁶ CONTRACT AND PROPERTY IN EARLY MODERN CHINA (Madeline Zelin, Jonathan K. Ocko and Robert Gardella eds., 2004).

rational allocation of resources flexibly and efficiently at low transaction costs.

The functions of the complex property structure lie also in its social and economic effects. The evaluation of this system should be based on its corresponding socio-economic history. In the long term, land rights structure is a product of economic and social variables.⁴⁷ Specifically, human-land relations and tax structure have exerted a profound impact on property rights structure.

In terms of human-land relations, He Bingdi proved the existence of Malthusian population pressure in China through an estimation of population change in the Ming and the Qing Dynasties.⁴⁸ Overpopulation was the basic cause of traditional China's rural crisis. The limited land could not meet the needs of large population, and such shortage prompted the scattering and averaging of land rights. Against the backdrop of the free trade of property, the strong bargaining power generated by population increase, which allowed more people to join in the trade of land and further scattered the land ownership. This made pledge prevalent then. When the population density reached a certain level, the small-scale peasant economy based on the multi-subsidiary inheritance system naturally spawned a land market for trade. Every son of the farmer had the opportunity to inherit the land from his father. If a son inherited a piece of land that was not enough for household survival, they could buy or rent additional land at land market. Such transactions promoted property trade and intensified land rights differentiation.

In terms of tax structure, traditional China had experienced an evolution from the dual system of "serving and levying" to the single system, in which tax collection was based on the amount of land rather than the population.⁴⁹ The competition among the government, land owners and tenants in land output and agricultural profits emerged as property rights structure changed, propelling the development of property structure.⁵⁰ In addition, the long-term

⁴⁷ Yao Yang (姚洋), *Tudi Zhidu He Nongye Fazhan* (土地、制度和农业发展) [Land, Institution and Agricultural Development] 21 (2004).

⁴⁸ HE BINGDI, *STUDIES ON THE POPULATION OF CHINA, 1368-1953* (1959).

⁴⁹ Zhao Lisheng (赵俐生), *Zhongguo Tudi Zhidu Shi* (中国土地制度史) [History of China's Land System] 141 (2013).

⁵⁰ KATHRYN BERNHARDT, *RENT, TAXES AND PEASANT RESISTANCE: THE LOWER YANGTZE REGION, 1840-1950* (1st ed., 1992).

conflict between the customary practices and state law concerning the property rights structure also affected the property structure to some extent.⁵¹

V. THE PROPERTY SYSTEM IN ANCIENT CHINA AND THE CIVIL LAW SYSTEM

The concept of ownership is a historical product rather than an exclusively legal construction. Whether a certain legal status can be defined as ownership is a question to be determined under a certain context rather than a logical question. The concept of “*proprietas*” in Roman law emphasizes the complete, exclusive, unified, comprehensive and indivisible rights of possession regarding properties, which is consistent with the spirit of individualism in modern western liberalism.⁵² The German Civil Code adopted the Roman-style unified ownership, making ownership the center of the entire property law.⁵³

The principle of absolute ownership is one of the three basic principles of modern civil law. Although modern property law restricts and amends this principle, the status of ownership as an absolute right remains unshakable.

Under the concept of ownership centralism, the structure of “*dominium-Jura in re Aliana* (他物权)” in the civil law system stipulates the characteristics and the content of substantive right as well as the limited power of *Jura in re Aliana*; for instance, usufructuary right on land cannot be created arbitrarily by contracts between individuals. This is completely different from the situation in the Ming and the Qing Dynasties, where individuals could create a managing hierarchy of property that met the needs of transactions by means of private contracts. Therefore, the civil law property system is intrinsically inadequate in terms of flexibility.

⁵¹ Guo Jian (郭建), *supra* note 24, at 22.

⁵² M. Talamanca, *Considerazioni conclusive* [Concluding Remarks], LA PROPRIETÀ E LE PROPRIETÀ [THE PROPERTY AND PROPERTIES] (E. Cortese eds., 1988).

⁵³ Wang Yang (汪洋), *Luomafa* “Suoyouquan” Gainian de Yanjin ji Dui Liangda Faxi Suoyouquan Zhidu de Yingxiang (罗马法“所有权”概念的演进及其对两大法系所有权制度的影响) [The Evolution of the Concept of Ownership in Roman Law and Its Impact on the Ownership Systems of the Two Legal Systems], 6 HUANQIU FAXUEPINGLUN (环球法律评论) [GLOBAL LAW REVIEW] 160, 144-160 (2012).

The essential difference between the property structure in the civil law system and that in the Ming and the Qing Dynasties is that the right to disposal was possessed by the owner during the Ming and the Qing Dynasties. Based on the completeness and elasticity of absolute ownership, *Jura in re Aliana* could only be validated when part of the original right of ownership is temporarily separated and returned to the owner as a derivative right.⁵⁴ It means, one could temporarily enjoy the right to use or possess something through the contract, but these rights will eventually return to the owner. By contrast, in the land rights structure of the Ming and the Qing Dynasties, the rights enjoyed by land operators and landowners had no time limit, and the period of *dien* was also extremely flexible.

Inheriting the absolute-ownership-centered property system in the civil law system, China's property law establishes the system of state ownership and collective ownership of land in the realm of real estate, and creates two usufructuary rights (contracted land management right and homestead land use right) on the basis of collective land ownership.

From January 2014 to 2016, the Central Committee of the Communist Party of China and the State Council issued a few documents emphasizing the "separation of rural land rights" reform, which targeted the collective ownership of land resources. This reform divides rural land property rights into three components: non-tradable ownership, non-tradable contractual rights and tradable land use rights. The purpose of the reform's distinction of the contracting right from the operating right is to differentiate between a farmland's function of subsistence and that of private marketing, in order to achieve their respective values.⁵⁵

The basis of the "Separation of Three Rights" (三权分置) reform is the collective ownership of land resources. Similar to the property rights structure in the Ming and the Qing Dynasties, the actual users of land do not enjoy ownership. Emphasizing the equality of land use

⁵⁴ Xie Zaiquan (谢在全), *Mingfa Wuquan Lun* (民法物权论) [Property Law] 109 (2011).

⁵⁵ Wang Yang (汪洋), *Jiti Tudi Suoyouquan de Sanchong Gongneng Shuxing — Jiyu Luoma Shizhu yu Woguo Nongcun Jiti Tudi de Bijiao Fenxi* (集体土地所有权的三重功能属性——基于罗马氏族与我国农村集体土地的比较分析) [*The Triple Functional Attributes of Collective Land Ownership — Based on A Comparative Analysis of Roman Clan and Rural Collective Land in Chin*], 2 *BIJIAOFA YANJIU* (比较法研究) [JOURNAL OF COMPARATIVE LAW] 12, 13 (2014).

among farmers, this structure maintains the relationship between the farmers and Rural Collective Economic Organization⁵⁶ and considers the survival of collective members as the primary goal. Besides, in pursuit of agricultural economic benefits, this system seeks to promote rational allocation of resources through a relatively free circulation of substantive rights, which achieves corresponding market functions. With these two distinct values coexisting behind the right to operate contracted land, long-term stagnation of the reform in China is indeed inevitable.

As for the implementation of the “Separation of Three Rights”, the most controversial issue is whether the land management right is more closely analogous to the credit-related use right or the new usufructuary right. Some scholars support the former. In line with the logic of current law, the structure of “land ownership — the right to operate the contracted land — credit-related use right” spares major changes to the current system, which will save institutional reform costs. The credit duration length could be set according to the creditors’ own needs; or special clauses could be stipulated in the contract to return the land to the usufructuary upon specific occurrences.⁵⁷

Most scholars prefer stipulating the land management right as a substantive right to establish a more stable and reliable system. This alternative can provide a longer term for land operators, enable a third party to claim rights, and allow convenient circulation and mortgage.⁵⁸ The right to operate contracted land is separated from the ownership, and thus the land management right stems from the right to operate contracted land, not directly from the ownership. Land management right is, therefore, a secondary usufructuary right established by a relevant party to exercise the right to operate

⁵⁶ Rural Collective Economic Organization is a special organization in China. In the rural area, farmers joint voluntary, and all their production materials (land, larger agricultural tools, farm animals) are collectively owned, collectively organized for agricultural production and management.

⁵⁷ Gao Shengping (高圣平), *Xinxing Nongye Jingye Tixi xia Nongdi Chanquan Jiegou de Falv Luoji* (新型农业经营体系下农地产权结构的法律逻辑) [*The Legal Logic of the Property Rights Structure of Agricultural Land under the New Agricultural Management System*], 4 FAXUE YANJIU (法学研究) [CHINESE JOURNAL OF LAW] 76, 82 (2016).

⁵⁸ Sun Xianzhong (孙宪忠), *Tuijin Nongdi Sanquan Fenzhi Jingying Moshi de Lifa Yanjiu* (推进农地三权分置经营模式的立法研究) [*Advancing Legislative Research into the Operational Model of Farmland Subject to Division of Three Rights*], 7 ZHONGGUO SHEHUI KEXUE (中国社会科学) [SOCIAL SCIENCES IN CHINA] 160 (2016).

contracted land. In conclusion, the relationship between contract right and management right is structured as a multi-level system of “usufructuary right—secondary usufructuary right”.⁵⁹

The revised Law of the People’s Republic of China on the Contracting of Rural Land in 2018 clearly stipulates that after contracting the land, the contract-undertaking party enjoys the right to operate the contracted land himself, or to transfer the management right to others. The state protects the contract-undertaking party’s right to transfer the operation of the contracted land lawfully, voluntarily, and for compensation. Moreover, the state protects the legitimate rights and interests of the operators. No institution or individual may infringe upon these rights and interests. The contract-undertaking party has the right to occupy the rural land within the time limit stipulated in the contract, and independently carry out agricultural production and operation activities to obtain profits. This law does not determine the status of the legal usufruct of the land management right, which is intended to be stipulated in the property part of the civil code.

The interpretation difficulty of “separation of rural land rights” results from the concept and structure of “*dominium-Jura in re Aliana*” in the civil law system. Compared with the property system in the Ming and the Qing Dynasties, the idea of “separation of rural land rights” is akin to the “two-owners-of-one-land” system. From a structural point of view, “farmer’s contractual right” is similar to the land ownership in the “two-owners-of-one-land” system, and its function is equal to the rent that the farmland owner collects from the farmland user; “land management right” is akin to the land operating right in the “two-owners-of-one-land” system, eliminating non-private factors such as membership rights. “Land management right” is defined as a pure property right in nature and can be disposed of and transferred freely.

With the rapid development of social and economic life, in addition to the traditional function of use and gain, property could also be utilized through various legal and financial instruments such

⁵⁹ Gao Fei (高飞), *Nongcun Tudi Sanquan Fenzhi de Fali Chanshi yu Zhidu Yiyun* (农村土地“三权分置”的法理阐释与制度意蕴) [Legal Interpretation and Institutional Implication of “Separation of Three Rights” in Rural Land], 3 FAXUE YANJIU (法学研究) [CHINESE JOURNAL OF LAW] 38 (2016).

as mortgage, pledge and securitization. Trading, instead of production, has become the major means for people to seek wealth. The faster the circulation, the greater the benefits.⁶⁰ In such an environment, the absolute protection of property rights is abandoned.⁶¹ The relationship between land management right, farmers' contracting right and collective ownership in the "Separation of Three Rights" presents a flexible rights structure. Land management right can be regarded as the right separated from farmers' contracting right from the dimension of time, enjoying an independent status within the period and belonging not to the contracting right or ownership.

As a new type of property rights, land management right can be freely transferred and disposed of, just like the "ye" (property) during the Ming and the Qing Dynasties. In terms of land transfer, the primary and secondary market can be established respectively based on the contractual right and land management right. In terms of free land disposal, land managers can not only dispose of part of the land management right and functions of the land management right, but also divide the land. They can also divide the management right by time. Within the time range covered by the management right, the cut period is taken as "subprime land management right", which is also an independent property right.⁶² The subprime rights can also be freely disposed of (for example, be paid to others), and the original land manager retains the ownership when the "subprime right" is terminated; hence, the original intention of the reform of "separation of rural land rights" is achieved.

⁶⁰ Ran Hao (冉昊), *Lun Quanli de Xiangduixing Jiqi zai Zhongguo de Yingyong-Lai zi Yingmei Caichanfa de Qishi* (论权利的“相对性”及其在当代中国的应用——来自英美财产法的启示) [*Research On the Relativity of Rights and Its Application in China: Enlightenment from the Anglo-American Property Law*], 2 HUANQIU FALÜ PINGLUN (环球法律评论) [GLOBAL LAW REVIEW] 56 (2015).

⁶¹ Zhang Songlun (张松纶), *Caichan Fa Zhexue* (财产法哲学) [Philosophy of Property Law] 159 (2016).

⁶² Wen Shiyang (温世扬), Wu Hao (吴昊), *Jiti Tudi Sanquan Fenzhi de Falü Yiyun yu Zhidu Gongji* (集体土地“三权分置”的法律意蕴与制度供给) [*The Legal Implication and System Supply of Collective Land “Three Rights Separation”*], 3 HUADONG ZHENGFA DAXUE XUEBAO (华东政法大学学报) [JOURNAL OF EAST CHINA UNIVERSITY OF POLITICAL SCIENCE AND LAW] 78 (2017).