

## Dreaming in Chinese: Accountable Development

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ARTICLE

# Dreaming in Chinese: Accountable Development

BARBARA L. BEZDEK<sup>†</sup>

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## ABSTRACT

*Economic life in the PRC today is marked by rapid privatization, marketization, and urbanization. This triad of forces effects a profound restructuring of China's urban spaces and is giving rise to new forms of private, voluntary associations of citizens such as neighborhood campaigns of resistance to urban redevelopment. Civil society theory ascribes to such organizations outside of state control, the potential to constrain government officials by enabling citizens to express their collective interests more effectively, and to resist government encroachment more powerfully than they otherwise could. Because resort to China's courts has produced little protection for citizens' formal legal rights in the event of forced demolition, relocation, and compensation, urban homeowners have resorted to extra-legal modes of resistance including protests, petitions, and confrontations—some of them deadly. This article assesses the potential to construct an 'accountable development' frame as a set of strategies to channel resentment and resistance into bargained-for development agreements—situated between the market and the state, neither anti-regimist nor stymied by the 'turn from law.'*

## I. URBAN DEVELOPMENT, DEMOLITION, AND DISPLACEMENT IN CHINA'S POST-MAO PERIOD

China's rapacious urban redevelopment is colliding with Chinese citizens' impassioned desire for accountability for the dislocation and

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<sup>†</sup> Professor of Law, University of Maryland Francis King Carey School of Law. The title is my grateful allusion to Deborah Fallows' insightful and unassuming little book, *Dreaming in Chinese: Mandarin Lessons in Life, Love and Language* (2010). This gem, written by an accomplished linguist, served as an inspirational guide to the author's study of Chinese while a Fulbright Distinguished Lecturer in Shanghai in 2011.

destitution caused by incessant land-grabs. China's urban renewal generates tremendous inequalities of burden and benefit, and one byproduct is explosive popular anger, directed at collusive deals between local officials and a well-connected few. Perhaps of interest to China's demolition refugees and their advocates are the accountable-development practices that have arisen in the United States to mitigate the negative impacts of development on targeted neighborhoods.

Land is at the center of China's phenomenal economic growth. State-led urban modernization drives the leaders of China's government at all levels, eclipsing the industrial modernization of the previous generation.<sup>1</sup> Ubiquitous urban redevelopment has been imposed on tens of millions of citizens, often by means of forced and violent evictions, wreaking wholesale community destruction, inflicting further wounds through inadequate replacement housing and paltry compensation.<sup>2</sup> The surprisingly full array of laws and administrative procedures enacted to provide and protect property rights has done little to alter the reality for China's city dwellers.<sup>3</sup> Socialist land masters continue to engineer endless development projects, generating and appropriating the resultant land-value increase.<sup>4</sup> This in turn leads to massive and systematic demolition of old homes<sup>5</sup> and creates demand for new commodity housing,<sup>6</sup> rapidly

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1. See YOU-TIEN HSING, *THE GREAT URBAN TRANSFORMATION: POLITICS OF LAND AND PROPERTY IN CHINA* 9–10 (2010); THOMAS J. CAMPANELLA, *THE CONCRETE DRAGON: CHINA'S URBAN REVOLUTION AND WHAT IT MEANS FOR THE WORLD* 41–42 (2008) (discussing China's experiment in urban modernization in Shenzhen).

2. Hsing reports that between 1990 and 2007, inner-city redevelopment and farmland conversion displaced between 60 and 75 million people. YOU-TIEN HSING, *supra* note 1, at 2. China's urban transformation is occurring simultaneously with its rapid embrace of market-oriented economic policy and its abrupt retreat from the socialist State's role in providing for social welfare. *Id.* at 3.

3. The remarkable rate of China's urban expansion raises concerns about the urban and rural social disruption it engenders, and the apparent inability of the central government to maintain control over development. Erik Lichtenberg & Chengri Ding, *Local Officials As Land Developers: Urban Spatial Expansion In China*, 66 J. URB. ECON. 57, 57 (2009).

4. See generally Susan Whiting, *Values in Land: Fiscal Pressures, Land Disputes and Justice Claims in Rural and Peri-urban China*, 48 URB. STUD. 569 (2011) (exploring the justice claims and disputes over land rights which are causing major social unrest in rural China); Peter Ho, *Who Owns China's Land? Policies, Property Rights, and Deliberate Institutional Ambiguity*, 2001 CHINA Q. 394 (exploring the difficulties and ambiguities of the change in land ownership from the *natural village* to private ownership, especially in rural China).

5. There are four key social problems resulting from rampant demolition: lack of rights for evictees, lack of any organized system for resettlement, generally low compensation, and difficulties in obtaining legal redress. HUMAN RIGHTS WATCH, *DEMOLISHED: FORCED EVICTIONS AND THE TENANTS RIGHTS MOVEMENT* 24 (2004), <http://www.hrw.org/>

remaking China's cities through the destruction of historic and Mao-era communities, uprooting millions of citizens, and plunging many into destitution, despair, and unwinnable disputes with the one-party state that pins China's success to economic development.<sup>7</sup>

A. *The Rise of City-Building Fever*

In city after city, local government asserts its power to requisition land from its lawful occupants.<sup>8</sup> The relentless redevelopment is accomplished through partnerships between local governments, now-wealthy and well-connected businesses, and Party elites.<sup>9</sup> The result: a renewed China built upon urban poverty and shocking inequality.<sup>10</sup> China is certainly not the only country in the

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reports/2004/china0304/china0304.pdf. On the significance of China's land disputes in rural and urban settings, see Eva Pils, *Land Disputes, Rights Assertion, and Social Unrest in China: A Case from Sichuan*, 19 COLUM. J ASIAN L. 235 (2005).

6. Massive blocs of new housing go up in no time; but as commodity housing, not replacement housing for those whose homes are demolished. Shenjing He & Fulong Wu, *Neighborhood Changes and Residential Differentiation in Shanghai*, in CHINA'S EMERGING CITIES: THE MAKING OF NEW URBANISM 185, 191 (2007). While the 2007 Property Law includes a requirement that "compensation" be paid, it contains no standard for compensation, nor rights to relocation or replacement housing. See Wuquan Fa (物权法) [Real Right Law] art. 41 (promulgated by the Nat'l People's Cong., Mar. 16, 2007, effective Oct. 1, 2007) 2007 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 262 (China). Moreover, many of the housing units built in fact house no one: they stand unoccupied, unlit at night, serving as an investment vehicle for their purchasers but doing nothing to alleviate the chronic need for shelter in China's burgeoning cities. Shenjing He & Fulong Wu, *supra*, at 186.

7. See Pils, *supra* note 5, at 235–36.

8. See Eva Woo, *Shanghai to Move 760,000 Residents from Inner-City Area*, S. CHINA MORNING POST, Nov. 18, 2004, at 8; *China to Evict 170,000 Residents from Ancient City of Xian*, AGENCE FRANCE PRESSE, Nov. 3, 2004; *Xi'an Plans to Better Protect Ancient Walled Center*, CHINA DAILY, Nov. 3, 2004, available at 2004 WLNR 21236360; *Beijing Denies Reports on Large-Scale Evictions*, CHINA DAILY, Mar. 11, 2004, [http://www.chinadaily.com.cn/english/doc/2004-03/11/content\\_313640.htm](http://www.chinadaily.com.cn/english/doc/2004-03/11/content_313640.htm); Andrew Jacobs, *In Beijing's Building Frenzy, Even an 'Immovable Cultural Relic' is Not Safe*, N.Y. TIMES, Feb. 5, 2012, at A6.

9. For instance:

Study Times, the official organ of the Communist Party's prestigious Central Party School for training young officials . . . suggested that a major reason for the unequal distribution of wealth and opportunity was the alliance between party officials and private businessmen that has grown since the party abandoned doctrinaire socialism and made swift economic growth its main mission.

Edward Cody, *China Warns Gap Between Rich, Poor is Feeding Unrest*, WASH. POST, Sept. 22, 2005, at A16.

10. In 2010, the Gini coefficient for China reportedly reached 0.47. *Country's Wealth Divide Past Warning Level, Analysts Say*, CHINA DAILY, May 12, 2010, 2010 WLNR 9858001. "The Gini coefficient, which measures income distribution on a scale of zero to one indicates a moderate income gap if the number is between 0.3 and 0.4. A Gini index between 0.4 and 0.5, however, signals a large income gap." Fang Xuyan & Lea Yu, *Gov't*

modern era to have bulldozed its way to become developed and cosmopolitan. The U.S. urban renewal process during the 1950s and 1960s generated comparable inequalities and injustice.<sup>11</sup>

In China, all land is publicly owned, although recent constitutional and statutory changes guarantee private rights to own every other kind of property. The Chinese constitution provides that land in urban areas is owned by the state, and land in rural areas belongs to peasant collectives.<sup>12</sup> Development projects are built by local governments,<sup>13</sup> which stand to gain especially from high-profile projects like Special Economic Zones, tech parks, clusters of high-rise housing, and the huge New Cities.<sup>14</sup> Local governments control

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*Refuses to Release Gini Coefficient*, CAIXIN ONLINE (Jan. 18, 2012, 6:55 PM), <http://english.caixin.com/2012-01-18/100349814.html>. “When the Gini coefficient reaches around 0.5, it means the inequality problem is extremely severe and needs immediate action to bring it down.” *Id.* (quoting Chinese economist Zhou Tianyong). At .45, the U.S. Gini coefficient is in the same range. See Max Fisher, *Map: US Ranks Near Bottom on Income Inequality*, ATLANTIC, Sept. 19, 2011, <http://www.theatlantic.com/international/archive/2011/09/map-us-ranks-near-bottom-on-income-inequality/245315/>. The Chinese central government has endeavored to narrow the wealth gap between its rich and poor citizens. See, e.g., *Government to Reduce Income Gap Through Reform: Officials*, XINHUA NEWS AGENCY, July 17, 2006, available at <http://www.china.org.cn/english/MATERIAL/175032.htm> (reporting on government efforts to provide civil servants with larger salaries, subsidies to work in “remote and poverty-stricken areas,” increased fund allocation for pensions, low-income subsidies, and veterans benefits).

11. For a comparative analysis, see Yan Zhang & Ke Fang, *Is History Repeating Itself? From Urban Renewal in the United States to Inner-City Redevelopment in China*, 23 J. PLAN. EDUC. & RES. 286 (2004) (a comparative study of urban renewal in the United States in the 1950s and 60s with inner-city redevelopment in China since the late 1980s).

12. Mo Zhang, *From Public to Private: The Newly Enacted Chinese Property Law and the Protection of Property Rights in China*, 5 BERKELEY BUS. L.J. 317, 355 (2008). “Collective ownership used to mean the ownership held by the rural people’s communes, including the production brigades and production teams of the Mao era. Today the reference is to ownership held by rural collective economic organizations through the contracted responsibility system of each household.” *Id.* at 338 n.109.

13. There are several territory-based levels of governance throughout China, and today urban governments have authority over a hierarchically organized set of jurisdictions that includes urban districts, rural counties, and townships. YOU-TIEN HSING, *supra* note 1, at 94–95. This is a departure from the Mao era, when the vast majority of China’s people lived in rural areas. *Id.* Administrative authority was delegated from the central government to each province, and within each of these were municipal governments authorized to administer only the urban areas of prefectures and counties. *Id.* The central government reversed this rural-oriented system in the 1980s as a necessary aspect of China’s ‘opening up’ to modernization and integration with the global economy. *Id.* The resulting regional integration of rural and urban territory has allowed provincial governments to convert rural counties to urban status, creating municipalities out of vast rural expanses with new urban centers. *Id.* at 94–95.

14. Deng Xiaoping’s 1992 visit to the Shenzhen economic zone gave a green light to construct development zones (*kaifaqu*), more than half of which were developed by rural governments, converting farmland into industrial estates and rental housing, and some illegal

land and profit directly from land rents, which have become one of the most important sources of local revenue and capital accumulation.<sup>15</sup> Since the national land and housing reforms of the 1980s, infrastructure development, real estate, and housing have been China's growth-generating sector, accounting for 25 to 50 percent of local government income.<sup>16</sup> As the real estate market has proved lucrative, land speculation has also become important to local governments; the large fees from the transfer of land finance the provision of local spending.<sup>17</sup> Consequently, China's growing cities occupy the center stage in the politics of accumulation and distribution.

Local governments and their leaders both stand to benefit from the enhanced amenities and reputational gains of urban renewal,<sup>18</sup> and local officials may enjoy kickbacks.<sup>19</sup> A survey of twelve

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sales of land use rights to non-village developers. YOU-TIEN HSING, *supra* note 1, at 98–99. When the small manufactures that anchored the *kaifaqu* proved insufficient to the task of economic transformation, rural industrialism yielded to the 'New Cities' (*xincheng*) approach in the 2000s: mixed-use real estate projects offering new urban space for residential, commercial, cultural, and administrative activities. *Id.* at 102–04. Consequently, mega-urban projects have become a mark of ambitious urban government leaders who take on the mantle of chief planners and developers. *Id.*

15. Governments continue to garner revenue from land, as a proprietor, collecting receipts from direct land-leases and from renting government-built commercial and industrial facilities. *Id.* at 47–48. Because this form of revenue is outside the state budgetary system, it is fully retained at the local government level. *Id.* at 48. Land also generates revenue from taxes and surcharges on land appreciation and transactions, but this income stream is less stable because of tax evasion and avoidance. *Id.*

16. *E.g.*, *Last Year, Land Sales Revenue of Nearly 1.6 Trillion Yuan*, CHINA DAILY, Feb. 3, 2010, [http://www.chinadaily.com.cn/hqcj/2010-02/03/content\\_9420885.htm](http://www.chinadaily.com.cn/hqcj/2010-02/03/content_9420885.htm).

17. The fiscal squeeze felt by local governments dates from the tax-sharing system established in 1994: Taxes are collected at the local and intermediate levels, flowing toward the central government. At the same time, there has been a marked decentralization of responsibility to local governments to make the expenditures for basic public goods such as education and welfare. *See* Susan H. Whiting, *How Fiscal Pressures Drive Land Disputes and Shape Dispute Resolution Mechanisms in Rural and Peri-Urban China*, 3–5 (April 16, 2009) (unpublished manuscript), *available at* [http://www.yale.edu/macmillan/ruleoflaw/papers/Whiting\\_Yale\\_workshop\\_041609.pdf](http://www.yale.edu/macmillan/ruleoflaw/papers/Whiting_Yale_workshop_041609.pdf).

18. Local officials, judged by economic measures such as the number of jobs they create or buildings they develop, are thus "trying the same formula: manufacturing and export zones, research parks and self-styled Silicon Valleys." Howard W. French, *New Boomtowns Change Path of China's Growth*, N.Y. TIMES, July 28, 2004, at A1. Ambitious plans, often referred to as "face projects," are undertaken by local government officials who want to invest in real estate because it stimulates GDP growth in a short time and enhances the officials' performance record, which is considered important in appointments and promotions. Shrawan Kumar Acharya, *Inner City Revitalization in Beijing*, ASIAN SCHOLAR, 3 [http://www.asianscholarship.org/asf/ejournal/articles/acharya\\_s.pdf](http://www.asianscholarship.org/asf/ejournal/articles/acharya_s.pdf).

19. *See, e.g.*, Olivia Chung, *China's Land Income Leaking Away*, ASIA TIMES, June 13, 2008, [http://www.atimes.com/atimes/China\\_Business/JF13Cb01.html](http://www.atimes.com/atimes/China_Business/JF13Cb01.html) (noting that "China

thousand citizens in ten provinces in 2004 identified construction as the most corrupt sector in China.<sup>20</sup>

### B. *Removal of the People from the People's Land*

For China's citizens,<sup>21</sup> urban renewal and city construction is a nightmare. Chinese policy on resettlement is set out in national, provincial and municipal laws, but the problem of inadequate compensation is endemic, and often, cruel.<sup>22</sup>

Between 1990 and 2007, an estimated 60 to 75 million people were displaced by urban and rural land conversion and inner-city redevelopment.<sup>23</sup> It is estimated that Beijing and Shanghai alone have evicted some four million residents for urban redevelopment.<sup>24</sup> The frenzied process of land rights transfer, and its attendant dispossession, sets off explosive incidents of opposition and widespread social unrest. In 2004, there were 74,000 "mass incidents"<sup>25</sup> involving 3.7 million people, compared to 10,000 such incidents involving 730,000 people in 1994.<sup>26</sup> Many of these

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has for years been trying to make the sale and use of land more transparent;" and that land sales are "a major source of official corruption" in China; additionally citing to a National Audit Office investigation saying "Illegal transfers, corruption in land deals, and buying land on lease from villagers for non-agricultural use instead of through public tender auction, is rampant in major cities.").

20. Yongshun Cai, *Civil Resistance and Rule of Law in China: The Defense of Homeowners' Rights*, in GRASSROOTS POLITICAL REFORM IN CONTEMPORARY CHINA 174, 177 & 373 n.13 (Elizabeth J. Perry & Merle Goldman eds., 2007).

21. The common people (*läobäixing*) are 'the people' in the People's Republic of China, the ordinary common folks, and, throughout Chinese history, the have-nots. What they do not have has changed over the centuries, of course. In Imperial China, there were those with the power to rule, and the *läobäixing*; in Mao's era, the key was political; in contemporary China, the connotation is economic: "the cab drivers, office workers, migrant workers, small shopkeepers, beauticians, food sellers, the people on the street . . . all those who are trying to make the staggering adjustments to survive." DEBORAH FALLOWS, *DREAMING IN CHINESE: MANDARIN LESSONS IN LIFE, LOVE AND LANGUAGE* 66 (2010).

22. Intensifying social unrest across China conveys a deepening sense that the legal reforms of the past two decades have failed to provide adequate channels for resolving conflicts between government and citizens. Pils, *supra* note 5, at 235.

23. YOU-TIEN HSING, *supra* note 1, at 2.

24. Qinglan Long, *Reinterpreting Chinese Property Law*, 19 S. CAL. INTERDISC. L.J. 55, 67 (2009).

25. Minxin Pei, *China is Paying the Price of Rising Social Unrest*, FIN. TIMES, Nov. 7, 2005, available at <http://carnegieendowment.org/2005/11/07/china-is-paying-price-of-rising-social-unrest/7bz>. Since 1999, the Ministry of Public Security and its think tanks have adopted as the new standard phrase for protests "mass group incidents." Murray Scot Tanner argues that this term suggests "powerful sympathetic overtones" since it implies that the protestors are "the masses." Murray Scot Tanner, *China Rethinks Unrest*, 27 WASH. Q. 137, 144 (2004).

26. Minxin Pei, *supra* note 25.

incidents involved violent clashes with the authorities.<sup>27</sup> Human Rights Watch reported that official statistics acknowledged 1,500 violent incidents, suicide protests, and demonstrations related to demolition in 2003.<sup>28</sup> From September to December 2003, Beijing witnessed almost daily protests against demolition and eviction.<sup>29</sup> Authorities jailed many protesters and attempted to block and prevent protests by closing off streets.<sup>30</sup> Although critical essays and anonymous protests on Internet bulletin boards were often tolerated, protests on the streets were ruthlessly suppressed.<sup>31</sup> “Incidents of mass unrest increased nearly 50 percent from 58,000 reported in 2003 to an estimated 90,000 incidents in 2006.”<sup>32</sup>

Relations between urban residents, the state, and real estate developers have increasingly turned combative since the 1980s, when the implementation of the post-Mao opening-up policy and reforms encouraged rapid modernization urban development.<sup>33</sup> Faced with growing problems of land confiscation, forced resettlement, and inadequate compensation, residents complain to the local government and also organize for collective action to defend their residential rights.<sup>34</sup> Such campaigns of resistance to local development projects

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27. *See id.*

28. HUMAN RIGHTS WATCH, *supra* note 5, at 26.

29. *Id.*

30. *Id.*

31. *Id.*

32. Jamie P. Horsley, Public Participation in the People’s Republic: Developing a More Participatory Governance Model in China 1 (2009) (unpublished manuscript), available at [http://www.law.yale.edu/documents/pdf/Intellectual\\_Life/CL-PP-PP\\_in\\_the\\_PRC\\_FINAL\\_91609.pdf](http://www.law.yale.edu/documents/pdf/Intellectual_Life/CL-PP-PP_in_the_PRC_FINAL_91609.pdf).

33. Jiangang Zhu, *Not Against the State, Just Protecting the Residents’ Interests: A Residents’ Movement in a Shanghai Neighborhood*, PERSP., Sept. 30, 2004, at 25, 25, [http://www.oycf.org/Perspectives2/26\\_093004/Sep04\\_Issue.pdf](http://www.oycf.org/Perspectives2/26_093004/Sep04_Issue.pdf). One striking example reported in the western press is that of Wang Cuyun, who while attempting to prevent a demolition team from knocking down her house, was allegedly beaten by a worker and pushed into the ditch that had been dug around her property. “A bulldozer then covered Mrs. Wang with earth, burying her alive. By the time relatives had dug her out, she was dead.” Malcolm Moore, *Chinese Granny Buried Alive by Property Developers*, TELEGRAPH (U.K.), Mar. 6, 2010, <http://www.telegraph.co.uk/news/worldnews/asia/china/7374701/Chinese-granny-buried-alive-by-property-developers.html>.

34. A great volume of incidents are cataloged and discussed in many fora, including Human Rights Organizations, government reports, scholarly publications, and news media. *See e.g.*, HUMAN RIGHTS WATCH, *supra* note 5; *Annual Report: China 2011*, AMNESTY INT’L (May 28, 2011), <http://www.amnestyusa.org/research/reports/annual-report-china-2011>; CONG.-EXEC. COMM’N ON CHINA, ANNUAL REPORT 2011, at 42–43 (2011), <http://www.cecc.gov/pages/annualRpt/annualRpt11/AR2011final.pdf>; Valerie Jaffee Washburn, *Regular Takings or Regulatory Takings? Land Expropriation in Rural China*, 20 PAC. RIM L. & POL’Y J. 71 (2011) (discussing the social unrest in rural China over government takings and exploring the institutional and legal framework surrounding the practice); Tat-Lin Lay

navigate China's ambiguous transition, in which the State rhetoric promotes legal reform and the concept of "rule of law," yet the authority of the law seems exceedingly deferential to the political powers of the administrative government.<sup>35</sup> Some Chinese observers suggest that these movements within China's cities resemble the grassroots urban movement that sprang up in the West in opposition to top-down urban planning.<sup>36</sup> The comparison is useful but drawn too broadly. In the United States, "urban renewal" in the 1950s and succeeding waves of urban gentrification displaced politically disadvantaged, lower wealth communities.<sup>37</sup> In China's contemporary economic boom, housing privatization and market reforms have generated tremendous national economic gains, yet as China's citizens are acutely aware, these gains are not shared equally.<sup>38</sup> Minxin Pei has analyzed the present social, economic, and political ills of China as in a "trapped transition,"<sup>39</sup> a transformative phase in which half-finished reforms have transferred power to new, affluent elites "who are using crony capitalism to generate high economic growth that is not sustainable."<sup>40</sup> Popular discontent rises when it appears that officials invoke the general public's interest as

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Angus, *China's Greatest Leap Forward And The Ones Left Behind—The Twofold Problem Causing The Rise In Land Disputes: Land Reclamation And Environmental Degradation*, 21 TUL. ENVTL. L.J. 341, 348 (2008) (observing that in 2006 China saw approximately 23,000 land-related riots—about 2.6 riots every hour); Xiaobo Zhang, *Asymmetric Property Rights in China's Economic Growth*, 33 WM. MITCHELL L. REV. 567, 580–84 (2007) (examining why outside investment growth in China has been strong, despite a relatively weak de jure property rights system for investors); Michael Wines & Jonathan Ansfield, *Trampled in a Land Rush, Chinese Resist*, N.Y. TIMES, May 27, 2010, at A1.

35. Zhu, *supra* note 33, at 34.

36. *Id.* at 26.

37. Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL'Y REV. 1, 47 (2003).

38. See Pamela N. Phan, *Enriching The Land or The Political Elite? Lessons From China On Democratization of The Urban Renewal Process*, 14 PAC. RIM. L. & POL'Y. J. 607, 619 (2005) (detailing the growth of "pro-growth coalitions" between private developers and local officials in which the local governments and state-owned enterprises that drive development decisions "often possess profit-making interests aligned with the non-public sector, rather than the local communities they serve").

39. Minxin Pei, *China is Stagnating in Its "Trapped Transition"*, FIN. TIMES, Feb. 24, 2006, <http://www.carnegieendowment.org/2006/02/24/china-is-stagnating-in-its-trapped-transition/bl6>.

40. Wing Thye Woo, *Assessing China's Capability to Manage the High-Probability Risks to Economic Growth: Fiscal, Governance and Ecological Problems*, in POWER AND SUSTAINABILITY OF THE CHINESE STATE 75, 93 (Keun Lee et al. eds., 2009).

justification for the land takings, yet it is evident that private land development pockets the profits.<sup>41</sup>

## II. “RULE OF LAW” PROPERTY RIGHTS IN CONTEMPORARY CHINA

In an interview with the Australian Broadcasting Corporation, tenants-rights activist Xu Honghai described the demolition of his home:

They forcibly demolished my home when there was no one at home. When we returned home, my home was gone. My home was flattened, and turned into ruins. We did not know where our belongings were . . . For a certain period, we set up a tent on the ruins for us to live in. But we were not allowed to live in that tent. My mum suffered from all of this and she passed away on October 13th . . . Lots of people put themselves on fire because of demolition . . . some of them committed suicide because of demolition . . . some of them took the so-called radical action because of demolition. I can understand them all.<sup>42</sup>

The People’s Republic of China is a young nation. Sixty years after its formation in bloody revolution and successive decades of internal chaos, its approach to “rule of law” and lawyers has been by turns one of rejection, then halting acceptance, followed by an astonishingly rapid embrace of the “Rule of Law State” model in 2009.<sup>43</sup> In 1979, when China reinstated law practice, there were just

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41. See Phan, *supra* note 38, at 640–41. See generally Theresa H. Wang, *Trading The People’s Homes For The People’s Olympics: The Property Regime in China*, 15 PAC. RIM. L. & POL’Y. J. 599 (2006).

42. John Taylor, *China Real Estate Boom: People Forced to Leave Their Homes*, ABC ONLINE (Austl.), Nov. 16, 2003, <http://www.abc.net.au/correspondents/content/2003/s989831.htm>. See also Phan, *supra* note 38, at 629–30 (describing the forced evictions and demolition of Liang Xufeng and Chu Jiaquan’s homes).

43. In 1996, China established “a socialist rule-of-law state (*yifa zhiquo, jianshe shuhui zhuyi fazhiquo*).” RANDALL PEERENBOOM, *CHINA’S LONG MARCH TOWARD RULE OF LAW* 6 (2002). For discussion of the contested meanings of rule-of-law and applications of these meanings to China, see Randall Peerenboom, *Globalization, Path Dependency and the Limits of Law: Administrative Reform and Rule of Law in the People’s Republic of China*, 19 BERKELEY J. INT’L L. 161 (2001) (exploring to what extent have China’s legal reforms been in response to the forces of globalization and China’s increasing integration into the global economy); Mo Zhang, *The Socialist Legal System With Chinese Characteristics: China’s Discourse For The Rule Of Law And A Bitter Experience*, 24 TEMP. INT’L & COMP. L.J. 1 (2010) (discussing China’s response to demands for a legal system premised on the “rule of law” through its efforts to develop a socialist legal system that maintains Chinese characteristics).

212 lawyers in the entire country.<sup>44</sup> In the ensuing years, this number has increased and China's legislators have gained more credentials, power, and expertise in law making, enacting rafts of new statutes and even inserting a "rule of law" principle into the Constitution.<sup>45</sup> The China Law Society reported that by the end of 2008, lawyers numbered more than 156,700, the number of law schools expanded to 610, and these enrolled more than 400,000 law students.<sup>46</sup>

In recent years a panoply of legislative enactments promise protection for increasingly privatized rights in property.<sup>47</sup> China's legal and political matrix shifted dramatically beginning in 1978, when the third Constitution and the central committee of the CCP no longer defined law and legal institutions as instruments of the proletariat dictatorship, but were instead embraced as a means to promote modernization.<sup>48</sup> The General Principles of Civil Law, enacted in 1986, maintains China's system of collective and state property ownership, yet recognizes four rights of ownership: to possess, use, profit from, and transfer property.<sup>49</sup> The national Property Rights Law of 2007 allows individuals and entities to own, buy, sell, lease, and mortgage housing units, although not the land,

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44. Zang Dongsheng, *Rise of Political Populism and the Trouble with the Legal Profession in China*, HARV. CHINA REV., Jan. 2010, at 79, 80.

45. *Id.*

46. *Id.*

47. The modernization of China's laws and legal institutions is significantly related to its engagement with China's desire to participate effectively in global trade and international influence. Since 1979, more than three hundred laws and regulations have been promulgated, most pertaining to commercial matters. Bureau of E. Asian and Pac. Affairs, *Background Note: China*, U.S. DEP'T ST. (Sept. 6, 2011), <http://www.state.gov/r/pa/ei/bgn/18902.htm> (summarizing legislation designed to modernize and professionalize the nation's lawyers, judges, and prisons; changes to the criminal law and the criminal procedures laws to introduce significant reforms; and new laws governing bankruptcy, monopoly, company law and labor law).

48. Suisheng Zhao, *Towards a Rule of Law Regime: Political Reform under China's Fourth Generation of Leadership*, in *DEBATING POLITICAL REFORM IN CHINA: RULE OF LAW VS. DEMOCRATIZATION* 230, 238 (Suisheng Zhao, ed., 2006).

49. This has been described as a process of borrowing bourgeois theoretical tools to produce new socialist legal concepts. See Edward J. Epstein, *The Theoretical System of Property Rights in China's General Principles of Civil Law: Theoretical Controversy in the Drafting Process and Beyond*, 52 L. & CONTEMP. PROBS. 177, 185 (1989) (examining the theoretical tools used by Chinese civil law theorists to draft and analyze property rights, the system and legal attributes of ownership, and the five kinds of "rights in things"). For discussion of China's Civil Law in the context of property, see Frank Xianfeng Huang, *The Path to Clarity: Development of Property Rights in China*, 17 COLUM. J. ASIAN L. 191, 206–209 (2004). Laws governing land were enacted experimentally and incrementally. See AMY L. SOMMERS & KARA L. PHILLIPS, *REAL PROPERTY LAW IN CHINA: A GUIDE TO FOREIGN INVESTMENT* 21–26 (2011).

which continues to belong to the State.<sup>50</sup> Nearly 70% of urban households owned their own homes in the first decade of the 21st Century.<sup>51</sup>

In the last two years, however, China experts are reporting a significant turn away from law, indicated by intense pressure on China's judges to mediate rather than to adjudicate disputes and to avoid rulings that will elicit citizen petitions,<sup>52</sup> thereby elevating the central government's concerns for social stability over the legal rights and interests of litigants.<sup>53</sup>

According to Carl Minzner, this about-face by the PRC is in one sense part of a global reconsideration of legal norms, one that can be seen in the United States as well as other nations.<sup>54</sup> Minzner argues that, in China, this is a political calculation to reject many of the legal reforms of the 1980s and 1990s, emblematic of a reconsideration of the roles of law, lawyers, judges, and adjudication in Chinese society.<sup>55</sup> Leading legal thinkers in China voice alarm,<sup>56</sup> and law students quietly question the prospects of law and lawyers to contribute to further social and political rights development during their lifetimes.<sup>57</sup> Further, this retreat from 'rule of law' norm building<sup>58</sup> poses both statist and populist risks for China.<sup>59</sup> On one hand, new official policies reward judges for mediating rather than ruling in controversial matters, which undermines the development of legal norms.<sup>60</sup> On the other hand, as the judiciary recedes from societal flash points, it is also susceptible to populist pressures in varying forms as citizens devise strategies to coordinate protests in

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50. Real Right Law (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 16, 2007, effective Mar. 16, 2007), arts. 39, 45, 47 (China).

51. Yongshun Cai, *supra* note 20, at 175.

52. See generally Carl F. Minzner, *China's Turn Against Law*, 59 AM. J. COMP. L. 935 (2011).

53. See Yang Su & Xin He, *Street as Courtroom: State Accommodation of Labor Protest in South China*, 44 LAW & SOC'Y REV. 157 (2010) (discussing 'stability doctrine' effects on courts in southern China).

54. Minzner, *supra* note 52, at 935. See also Marc Galanter, *The Turn Against Law: The Recoil Against Expanding Accountability*, 81 TEX. L. REV. 285, 285 (2002).

55. Minzner, *supra* note 52, at 937.

56. *Id.*

57. See *id.* at 972–73.

58. E.g., Hailing Fu & Richard Cullen, *From Mediator to Adjudicator Justice: Limits of Civil Justice Reform in China*, in CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN CONTEMPORARY CHINA 25 (Margaret Y.K. Woo & Mary E. Gallagher eds., 2011).

59. Minzner, *supra* note 52, at 938–39.

60. *Id.* at 959–60.

the streets to sway court outcomes.<sup>61</sup> This retreat erodes the institutions most central to the Chinese authorities' efforts to build a bulwark against social (and regime) instability.<sup>62</sup>

Ironically, the pro-adjudication reforms were initiated to strengthen reliance on legal norms as a means to combat corruption, reduce local protectionism, and engage citizens in curbing corruption and abuse of power in the lowest levels of the bureaucracy.<sup>63</sup> But these legal reforms could not proceed deeply enough,<sup>64</sup> rapidly enough, to keep pace with the acceleration of citizen grievances that has accompanied China's rapacious economic development.<sup>65</sup>

"Rights-defense" (*weiquan*) lawyers and movements within China have garnered attention, praise, and support during the PRC's fitful modernization of its legal institutions.<sup>66</sup> These *weiquan* litigate issues such as consumer's rights,<sup>67</sup> environmental protection,<sup>68</sup> migrants' rights, food safety, and challenges to official corruption.<sup>69</sup>

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61. *Id.* at 962.

62. *Id.* at 939.

63. *See id.* at 943.

64. "Clean" countries are so, not by virtue of their criminal law responses to corruption, but because of strong legal and governance systems that militate against state capture of productive sectors and administrative corruption. Claus Sandgren, *Combating Corruption: The Misunderstood Role of Law*, 39 INT'L LAW. 717, 727 (2005). Transparency, in the form of public availability of official information; public procurement systems; reliable reporting and declaration of salaries and income, process of disgorgement of illicit gains from corrupt activities. *Id.*

65. THOMAS LUM, CONG. RESEARCH SERV., RL 33416, SOCIAL UNREST IN CHINA 8 (2006), available at <http://www.fas.org/sgp/crs/row/RL33416.pdf>.

66. *See generally* Hualing Fu & Richard Cullen, *Weiquan (Rights Protection) Lawyering in an Authoritarian State: Building a Culture of Public-Interest Lawyering*, 59 CHINA J. 111 (2008) (documenting the development of *weiquan* lawyering, suggesting a basic taxonomy of *weiquan* lawyering and analyzing how different types of *weiquan* lawyering are helping to shape to development of civil society within the PRC). *See also* Keith J. Hand, *Using Law For a Righteous Purpose: The Sun Zhigang Incident and Evolving Forms of Citizen's Action in the People's Republic of China*, 45 COLUM. J. TRANSNAT'L L. 114, 158-60 (2006) (discussing *weiquan* lawyering as a model of reform activism).

67. *See* Shai Oster, *For Chinese Consumers, a Superhero*, CHRISTIAN SCI. MONITOR, Jan. 25, 2000, <http://www.csmonitor.com/2000/0125/p1s5.html>.

68. For an excellent survey of citizen-led environmental activism, see Wang Canfa, *Chinese Environmental Law Enforcement: Current Deficiencies And Suggested Reforms*, 8 VT J. ENVTL. L. 161 (2007).

69. On citizen-led protests, see Ben W. Heineman Jr., *In China, Corruption and Unrest Threaten Autocratic Rule*, ATLANTIC, June 29, 2011, <http://www.theatlantic.com/international/archive/2011/06/in-china-corruption-and-unrest-threaten-autocratic-rule/241128/> (discussing recent social protests and their link with official corruption as indicators of ineffective political and legal institutions to redress grievances).

Governmental response to lawyers aiding demolition displaces illuminate the despair felt by many regular Chinese when they seek to defend their new legal rights and hold government officials accountable. Many inadvertently became *weiquan* lawyers when they came into conflict with the police while representing clients challenging the forced demolition of their homes.<sup>70</sup> Shanghai lawyer Zheng Enchong has been illegally confined at home for the past five years since his completion of a three-year prison term.<sup>71</sup> Beijing advocate Ni Yulan is again being prosecuted; her legs were irreparably broken during a previous detention.<sup>72</sup>

The political fault line remains whether these *weiquan* campaigns can be deemed both “regime supportive” and “rights upholding” at the same time. Thus far, there is scant evidence that this is the official view.<sup>73</sup> In a state comfortable with the rule of law, proponents’ appeal to provisions in the nation’s laws and the constitution in challenging local governments would not be seen as anti-regime actions.<sup>74</sup> However, China’s legal framework is not sufficient to trump the perception by the governing authorities that rights-defense activity risks destabilizing society.<sup>75</sup> Professor Jerome Cohen illustrates this point with the case of Chen Guangcheng, a self-taught lawyer who exposed forced sterilizations of Chinese women, and who was subsequently jailed for more than four years in 2006, ostensibly for disrupting traffic and damaging property:

Chen Guangcheng never saw himself as a “troublemaker” bent on damaging social stability and harmony. Indeed, he wanted to improve stability and harmony by using legal institutions to process social grievances in an orderly way

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70. Jerome A. Cohen, *China’s Lawyers Under Siege*, N.Y. REV. BOOKS, Nov. 8, 2011, <http://www.nybooks.com/blogs/nyrblog/2011/nov/08/chinas-lawyers-under-siege/>.

71. *Id.*

72. *Id.*

73. See, e.g., *id.* (debunking myths that persecution of lawyers and legal activists who bring cases under the new laws are either rare, legally justified, or local officials run amok without the approval of the central government); Peter Foster, *China ‘Waging Offensive’ Against Human Rights Lawyers*, TELEGRAPH (U.K.), Sept. 7, 2009, <http://www.telegraph.co.uk/news/worldnews/asia/china/6147086/China-waging-offensive-against-human-rights-lawyers.html> (reporting an Amnesty International study of “unprecedented offensive” against lawyers who brought petitions to challenge state-sanctioned land grabs or other legal-rights assertion).

74. See Cohen, *supra* note 70.

75. For crackdowns on lawyers, see *id.*; Eva Pils, *The Practice of Law as Conscientious Resistance: Chinese Weiquan Lawyers’ Experience*, in THE IMPACT OF CHINA’S 1989 TIANANMEN MASSACRE 109 (Jean-Philippe Béja ed., 2011).

as prescribed by law. His only mistake was to accept the law as it was written, as a true believer in the power and promise of China's legal reforms.<sup>76</sup>

In the balance of the paper, I view China's popular discontent over the dislocation, destitution and indignities of official land-grabs through the frame of the accountable-development advocacy movement that has arisen in the United States. My purpose is to consider the potential for convergences between Chinese citizens' impassioned desire for accountability from their officials and to discern in what quarters of modern China's nascent civil-society sector accountable-development advocacy might take root.<sup>77</sup>

### III. ACCOUNTABLE DEVELOPMENT

The demolition refugees in China and in the United States share fundamental concerns to mitigate the negative impacts of development. Many in China desire replacement housing, more complete compensation, and accountability by officials for the harms inflicted on targeted communities. In cases of land confiscation and home evictions, much of the popular anger has been directed at collusive deals between local officials and private investors and the lack of fair compensation to ordinary citizens.

The fundamental idea of accountability entails officials answerable to the public for their actions. Increasing incidents of social unrest are widely understood to relate to the developing rights awareness of many Chinese citizens, likely aided by the small but passionate networks of rights lawyers, citizen activists, and the Internet. Whereas the dominant theoretical understanding in international and national development practice has focused on top-down mechanisms such as elections, hearings, and consultations, a correlative element of accountability theory in development practice is the promotion of citizens' power, participation, and engagement at local levels in order to encourage more accountable and responsive government. Accountability in the context of development is better understood as a fiduciary rather than a political-process concept, inferring a duty in the stewardship of public resources to extract and fairly distribute the benefits as well as the burdens of the resources under management.

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76. Cohen, *supra* note 70.

77. *See infra* Part III.

The turn to accountable-development practice in the United States arose in response to the unequal distribution of the benefits of urban development (the public), while its burdens of displacement and destruction are borne by few.<sup>78</sup>

A. *Accountable Development as Cause Lawyering*

Today, the field of Community Economic Development (CED) is practiced by community-based organizations and advocates, and is a distinct field of “cause lawyering”<sup>79</sup> in the United States and arguably, in campaigns around the world. It has evolved in the United States in the second half of the twentieth century, a period of tremendous contestation, flux, and innovation.<sup>80</sup>

William Simon’s seminal study portrays CED as an orientation to deploy an assemblage of legal strategies animated by a set of social policies and grassroots practices that promote neighborhood revitalization.<sup>81</sup> It is a cause-oriented model of law practice in that the clients are typically communities or key nonprofit organizations within neighborhoods in need of economic development.<sup>82</sup> It features *transactional* forms of practice familiar to the vast majority of American lawyers.<sup>83</sup> CED lawyers negotiate deals between community-based nonprofit organizations, public funders, and private investors.<sup>84</sup> “Whereas cause lawyers have traditionally sought to mobilize claims of *legal rights* to advance systemic reform, CED lawyers attempt to mobilize *community participation* to change local

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78. PRITCHETT, *supra* note 37, at 6. In the American context, the “few” are most often poor minorities residents. See J. Peter Byrne, *Condemnation of Low-Income Residential Communities Under the Takings Clause*, 23 UCLA J. ENVTL. L. & POL’Y 131, 152 & n.63 (2005) (“In Baltimore, for example, urban renewal and highway project demolition displaced 10,000 families, 90% of whom were black.”).

79. The growing literature on “cause lawyering” has yet to produce a precise definition since it is in constant transition as to adjust to changing configurations of state power, and thus, cause lawyering takes many forms around the globe. Generally, cause lawyering denotes the practice of law by those committed to furthering various ideological or redistributive causes by legal means, within or beyond the profession’s mainstream norms. See generally CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA (Austin Sarat & Stuart Scheingold eds., 2001); CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES (Austin Sarat & Stuart Scheingold eds., 1998).

80. See *supra* note 79.

81. WILLIAM H. SIMON, THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS AND THE NEW SOCIAL POLICY (2001).

82. *Id.* at 3.

83. See generally *id.*

84. *Id.* at 47.

economic circumstances through the creation of innovative institutional structures.”<sup>85</sup>

The origins of the American movement for accountable development can be traced to the war on poverty’s populist inclusionary policies, and in strenuous reaction to slum neighborhood destruction in the 1950s.<sup>86</sup> Socially and economically, this was a transitional time for America’s industrial cities. As the national economy and its new interstate highway system began to take shape, these industrial cities lost manufacturers and shed jobs. Federally financed loans promoted the rapid growth of the suburbs. The distribution of benefits in a robust market economy was extremely uneven. African Americans and other minority populations whose mobility remained severely limited by racial or economic discrimination, were disproportionately left out, excluded from the promise that all Americans could become full participants in a post-World War II “consumer republic.”<sup>87</sup> The CED movement arose out of this struggle of urban, inner-city residents to access public and private capital to build and operate essential community facilities and services, such as the construction or rehabilitation of affordable housing; employment innovations such as microenterprises and worker-owned cooperatives; and services that local markets did not provide to their neighborhoods, including affordable child care, health care, and access to credit.<sup>88</sup>

The 1980s, however, ushered in a strong backlash against government-sponsored antipoverty programs. The social welfare safety net for the nation’s poorest was curtailed as federal and state administrative agencies were redirected to eschew centralized federal regulation in favor of more local, market-oriented models of governance suggested by the practices of “privatization” of agency

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85. Scott Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS* *supra* note 79, at 302, 303 (emphasis in original).

86. SIMON, *supra* note 81, at 7–13. *See also* JAMES A. KUSHNER ET AL., *HOUSING AND COMMUNITY DEVELOPMENT: CASES AND MATERIALS* 518–22 (4th ed. 2011) (discussing state and federal urban renewal laws). For the classic critique of Urban Renewal and its devastation of intact neighborhoods, see MARTIN ANDERSON, *THE FEDERAL BULLDOZER: A CRITICAL ANALYSIS OF URBAN RENEWAL, 1949–1962* (1964).

87. *See generally* HOWARD GILLETTE, JR., *CAMDEN AFTER THE FALL: DECLINE AND RENEWAL IN A POST-INDUSTRIAL CITY* (2005) (chronicling the history and examining the cumulative effects of urban decline in a post-industrial city).

88. KUSHNER ET AL., *supra* note 86, at 502.

service provision and decision-making.<sup>89</sup> In addition, the federal courts became measurably less receptive to claims of civil, economic or social rights.

“Gentrification” describes much of the urban redevelopment that has taken place in the United States<sup>90</sup> and the term applies as well to China’s rush to remake its cities. In the United States, gentrification is widely understood as the process by which middle- and upper-income people move into previously lower-income neighborhoods to redevelop, revitalize, and revamp the community to suit them. Official justifications typically include the need to replace poor-quality housing with higher-quality housing.<sup>91</sup> The experience of abrupt brutal destruction of residents’ livelihoods in China has garnered the more fitting name, “life-world destruction.”<sup>92</sup>

Gentrification in the United States commenced with federal aid for “slum clearance” in the 1950s,<sup>93</sup> with little protection for the residents of decaying neighborhoods.<sup>94</sup> The underlying theory was that the destruction of run-down housing would also remove the problems of crime and poverty associated with it, thereby benefitting both the ejected residents and the city as a whole.<sup>95</sup>

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89. See generally MARTHA MINOW, PARTNERS, NOT RIVALS: PRIVATIZATION AND THE PUBLIC GOOD (2002); JOEL F. HANDLER, DOWN FROM BUREAUCRACY: THE AMBIGUITY OF PRIVATIZATION AND EMPOWERMENT (1996).

90. Gentrification in the United States has been the topic of considerable study and analysis by scholars and practitioners in law, sociology, urban planning, and geography. J. Peter Byrne, *Two Cheers for Gentrification*, 46 HOW. L.J. 405, 405–07 (2003). There is some debate about whether gentrification necessarily implies that the lower-income people who live in the neighborhood are pushed out, but indisputably, often lower-income residents are relocated to make room for higher-income residents. See KUSHNER ET AL., *supra* note 86, at 581.

91. E.g., THOMAS J. CAMPANELLA, THE CONCRETE DRAGON: CHINA’S URBAN REVOLUTION AND WHAT IT MEANS FOR THE WORLD 123–27 (2008) (describing the extensive destruction of the *hutong* neighborhoods and courtyard houses that blanketed Beijing for hundreds of years to make way for two new ring roads, eight new subway lines, a ninety-six mile light rail system, and to eliminate environments and people deemed unsightly or problematic by the central government).

92. YOU-TIEN HSING, *supra* note 1, at 73.

93. Initially, the federal government took a leading role in funding urban redevelopment, but in 1949, the federal Housing Act provided funds to local governments, which used the funding primarily for slum clearance. See Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 U. MICH. J.L. REF. 689, 699–701 (1994).

94. KUSHNER ET AL., *supra* note 86, at 581–84.

95. *Id.* at 700–01. See also Barbara L. Bezdek, *To Attain “The Just Rewards of So Much Struggle”:* Local-Resident Equity Participation in Urban Revitalization, 35 HOFSTRA L. REV. 37, 40 (2006).

Contemporary China's rapidly remade cityscapes share the key features of gentrification with American-style urban renewal. The legal frameworks provide what in practice are merely nominal procedural rights and substantive compensation for the poor whose neighborhoods are bulldozed, and the newly built city amenities benefit higher-income others, with the costs borne disproportionately by the displaced. As in China today, during America's slum clearance, low-income housing that was cleared under the U.S. Housing Act was replaced with high-cost housing, and the law lacked effective requirements for the replacement of the low-cost housing that redevelopment destroyed.<sup>96</sup>

Compulsory displacements that occur to accommodate new development raise major questions of social justice because they redistribute the losses and benefits of the development between particular interest-holders. Government officials, wielding the power to direct land and public resources into the redesign of urban spaces, in effect terminate the residency of some in order to construct shiny new private residences, shops, and entertainment venues for affluent in-movers.<sup>97</sup> In the United States, as in China, the restructuring of urban space by cities adapting to global economic changes adversely impacts the ability of low-income residents to remain. The inequitable allocation of ineluctable burden upon the displaced contrasts acutely with the vast wealth appropriated by the official-developer coalition, providing palatial new urban amenities for a wealthy few. In the United States, citizens and communities are changing the face of urban development through innovative strategies that offer more equitable and inclusive models for redevelopment.

In the U.S. context, the goal of CED is to revitalize disinvested neighborhoods targeted for reinvestment: to create physical, economic, and redistributive change in the planned project that delivers more affordable housing, employment opportunity, and other community amenities to the residents who face displacement.<sup>98</sup> For its proponents, CED expresses commitments to bottom-up neighborhood revitalization in lieu of state-sponsored or purely private market-driven redevelopment priorities.<sup>99</sup> Central CED

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96. See Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 *FORDHAM URB. L.J.* 305, 316–17 (2004).

97. Bezdek, *supra* note 95, at 37–38.

98. SIMON, *supra* note 81, at 69–72.

99. *Id.* at 114–18 (detailing six common types of organizational vehicles used by communities to provide legal form to their equity-enhancing activities).

principles have long been used to redefine redevelopment in order to minimize resident displacement and to strengthen membership in a geographically defined community, including the security of possession or ownership.<sup>100</sup> The “Accountable Development” strand of CED that has emerged in several U.S. cities seeks more forcefully to change city redevelopment policies by increasing community participation in the planning process, and compelling developers and local government agencies to redesign proposed development projects to be responsive to the needs of low-income residents in the project area.<sup>101</sup> A key component of many of these campaigns for accountable development has been a negotiated Community Benefits Agreement (CBA) through which the affected community obtains from the private developers, with city assent, specific agreements to provide specified levels of affordable housing, jobs, job training, wages, and other elements, in exchange for the community’s support for public subsidies and required official approvals.<sup>102</sup>

Typically, the means for securing a CBA is the leveraging of government programs and approvals for the private developer’s project. Accountability to the impacted community is engineered into the governing development agreements and official approvals, through resident participation in formulation of project objectives,<sup>103</sup> specific outcome targets,<sup>104</sup> reporting and monitoring provisions,<sup>105</sup> and increasingly, clawback provisions to retrieve public subsidies in the event the private developer fails to perform.<sup>106</sup>

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100. *Id.* at 143–44.

101. Bezdek, *supra* note 95, at 108–10.

102. See generally JULIAN GROSS ET AL., COMMUNITY BENEFITS AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE (2005), available at <http://www.goodjobsfirst.org/pdf/cba2005final.pdf>. These agreements are contracts that “almost always contain wage and hiring goals and may also include a grab bag of concessions, like a day care center, a new park, free tickets to sports events and cash outlays to be administered by the groups themselves.” Terry Pristin, *Square Feet: In Major Projects, Agreeing Not to Disagree*, N.Y. TIMES, June 14, 2006, at C6.

103. See generally Patricia Salkin & Amy Lavine, *Negotiating for Social Justice and the Promise of Community Benefits Agreements: Case Studies of Current and Developing Agreements*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 113 (2008).

104. See *Community Benefits: Practical Tools for Proactive Development*, PARTNERSHIP WORKING FAMILIES 13 (2008), <http://communitybenefits.org/downloads/CBToolsforProactiveDevelopment.pdf>.

105. *Id.* at 4.

106. See generally *Community Benefits: Practical Tools for Proactive Development*, PARTNERSHIP WORKING FAMILIES (2008), <http://communitybenefits.org/downloads/CBToolsforProactiveDevelopment.pdf>. CBAs are arguably an extension of the long history in the United States of negotiations among developers, public officials and land use agencies, and affected community and other stakeholder groups such as environmental advocates and

In practice, the resulting public-private agreement is likely to augment the interests of the project participants.<sup>107</sup> This form of law practice contributes to the norm-building project of society less directly than rule-of-law discourse generally contemplates. CED instantiates a collaborative approach to collective action, and unlike the *weiquan* efforts in China, it is not state-oriented, seeking no rule change by court or legislature. CED as a form of legal action is essentially a collaboration between community-based actors, together with state and market players, to generate solutions to the problems of poverty, urban disinvestment, and economic transition.<sup>108</sup> Rather than look to public law as a source of constraint on powerful market actors or of rights expansion, CED utilizes private law to devise collaborative relationships that increase access to outside investment in the neighborhood, enlarge community participation in decisions about the development, and distributes economic benefits equitably.<sup>109</sup> Where more traditional public-interest rights-oriented cause lawyering aims to achieve universal public benefit, CED strives to produce a set of enhancements to a particular, geographic community of collective yet private interest holders.<sup>110</sup>

The role for lawyers in American CED campaigns is constitutive rather than litigious: lawyers help communities to navigate the process of real estate development, negotiate legal agreements, arrange access to capital, structure business entities, and counsel them as to compliance with tax, corporate, and regulatory requirements. U.S. transactional law practice rarely turns on direct assertion of legal or political rights. It is instead the expression of a profoundly law-embracing society that helps private economic actors to order their affairs in mutually beneficial respects.

### B. *The Translation Potential for “Community Development”*

PRC citizens discussing “community development”—at least, in English, with the author—have a hard time conceiving of development activities taking place at the initiative of any entities other than local or provincial government or their designees. This reflects the uniquely Chinese structure of residential social,

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organized labor. William Ho, *Community Benefits Agreements: An Evolution in Public Benefits Negotiation Process*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 7, 9 (2008).

107. Salkin & Lavine, *supra* note 103, at 121–22.

108. SIMON, *supra* note 81, at 41–46.

109. *Id.* at 69–78.

110. *Id.* at 41–43.

geographic, and physical space implemented in Mao-era cities. Community development is of course significantly defined by the political, cultural, social, and economic realities of the particular countries and communities where it is undertaken. The profound differences between the two nations' framework of laws, legal institutions, and cultures of disputing, rights-bearing, and citizenship, are essential sides of the prism of this analysis as well. The United States is a modern, prosperous, liberal welfare state, and practices of rights assertion and community advocacy formed in the crucible of its legal institutions and cultures of rights and rights assertion, cannot be sensibly proffered for introduction on the other side of the globe.

#### IV. POTENTIAL CIVIL SOCIETY CLAIMANTS FOR ACCOUNTABLE DEVELOPMENT WITHIN CHINA'S RESTRUCTURING URBAN SPACE

If "accountable development" can translate to China's distinct social, political, and legal frameworks, in what settings might the concept find sufficient independence from both State and private-market powers?

##### A. *Community Mobilization Strategies to Sidestep Inhospitable Legal Establishment*

Within the U.S. frame that informs community development practice, communities are places of social, economic, and human interdependence. These are the sites of our housing, education, health care, daily convenience shopping, the places where we raise our children, and engage in the many other activities that sustain us physically, emotionally, socially, and psychologically.<sup>111</sup> Thus, they are vital for the preservation of society. Land use is an essential ingredient for communities as they develop or preserve their character and pursue shared purposes.<sup>112</sup> Land-use law is one of the primary ways that communities establish priorities, and address fiscal, aesthetic, service, and lifestyle needs of their residents.<sup>113</sup>

In Western nations with social-democratic traditions, "community" is a social space standing between the individual and the State. Community is understood as a social space able to mediate

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111. James DeFilippis & Susan Saegert, *Communities Develop: The Question Is How?*, in THE COMMUNITY DEVELOPMENT READER 1, 3 (James DeFilippis & Susan Saegert, eds., 2008).

112. *Id.* at 4.

113. *See generally* THE COMMUNITY DEVELOPMENT READER (James DeFilippis & Susan Saegert, eds., 2008).

the relationship between the people and the government. This includes initiating self-help to address needs and provide services that the government is unwilling or unable to provide.

*B. From Mao to Market Housing*

Such talk of “community” in the American CED sense has no ready corollaries in China’s modern history. A major feature of China’s urban transformation is the profound transition underway in the structure of residential environments. The socialist cities of the Mao era were developed under a centrally planned economy, whose basic unit was the work unit (*danwei*), the site through which the state provided jobs, housing, meals, education, and healthcare.<sup>114</sup> The *danwei* was the center of social and economic life for most urban residents. The result was a peculiarly cellular city structure: Chinese socialist cities comprised of numerous independent workplace-based communities.<sup>115</sup> Each *danwei* was enclosed by a high wall and gate which produced the distinctly collectivized social life and socialist governance among co-residents.<sup>116</sup> Political education and oversight were achieved in each of the PRC’s urban residential neighborhoods through the elaborate and well-organized institution called the Residents Committee or street committee, established by the Communist Party in most major cities shortly after taking power in 1949.<sup>117</sup> The English word “Community” translates as *shequ*—a structure of close social and political control by the socialist state, the antithesis of the free-space understood in contemporary American community theory.

Further complicating a contemporary Chinese translation is the complex of policies of the central government to modernize China’s cities as economic engines. In the post-Mao era, policies of the central government aim to transform the State-run planned economy into a market economy. The *danwei*’s demise has been overshadowed in Western scholarship by the dramatic transformation of the physical

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114. David Bray, *Garden Estates and Social Harmony: A Study into the Relationship Between Residential Planning and Urban Governance in Contemporary China*, 4 (2011), available at <http://web.mit.edu/dusp/chinaplanning/paper/Bray%20paper.pdf>.

115. *Id.* at 5.

116. *Id.* In terms of political geography, the *danwei* compound effectively symbolized two interrelated principals: the primacy of the socialist Party in maintaining the nation, and the significance of labor to socialist practice. *Id.* at 6.

117. See Bong-ho Mok, *Grassroots Organizing in China: The Residents’ Committee as a Linking Mechanism Between the Bureaucracy and the Community*, 23 COMMUNITY DEV. J. 164 (1988) (explaining the role of residents committees in China).

and economic restructuring of Chinese cities. Rapid razing of hundreds of square miles of low-rise housing, industrial, and commercial buildings of the socialist decades is yielding an enormous number of huge new housing estates. These estates are privately developed, entrance is by purchase rather than government assignment, and are highly differentiated by price.<sup>118</sup> Primarily they house the emerging middle and wealthy classes.<sup>119</sup> In this context, “the community” has emerged to replace *danwei*.

Since the mid-1990s, the Chinese government has promoted the strategy of “community building” through “community” units based on place of residence to re-organize the urban population within China’s rapidly changing urbanism. This strategy is founded upon the Residents Committee system of the Mao era. The “community” unit has grown larger, its staff more professionalized, and its delegated responsibilities considerable.<sup>120</sup> Like the Residents Committees of old, the community is officially a “mass organization,” thus in addition to its health and welfare duties, one of its principal responsibilities is to mobilize “the masses” to participate as volunteers in the provision of daily maintenance and security work.<sup>121</sup>

In the United States, lawyering on behalf of grass-roots communities in the path of planned redevelopment is dependent upon mobilization by marginalized social groups to contest the plans of the state and market actors, and extract some participation and material benefit from the project as ultimately built.<sup>122</sup> The usual terrain of lawyering—the parameters set by the state for legal intervention such as substantive legal rights and procedural rules—recede as the locus of the lawyers’ representation shifts from the court house to the bargaining table.

In a small way, this turn to bargaining rather than litigation for legal rights, can be compared to the “turn from law” in China, discussed in the first section of this paper. After a period of expansion in the 1960s and 1970s, the very tools of liberal public interest litigators were restricted: Congress stripped federally funded

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118. BRAY, *supra* note 114, at 8.

119. *Id.* See also Min Zhou and John R. Logan, *Market Transition and the Commodification of Housing in Urban China*, in *THE NEW CHINESE CITY: GLOBALIZATION AND MARKET REFORM* 137–152 (John R. Logan, ed., 2002) (analyzing housing and real estate development reform in Chinese urban cities).

120. *Id.* at 10–11.

121. *Id.* at 11–12.

122. See generally Salkin & Lavine, *supra* note 103.

legal services lawyers of the authority to bring class action lawsuits, and barred them from lobbying, collecting attorney's fees, and engaging in political advocacy.<sup>123</sup>

Consequently, numerous mobilized communities and their cause lawyers have found "accountable development" to be a campaign that can gain traction within the shifted social policy framework, even though its prospects in court are speculative at best.<sup>124</sup> This is a constructive extra-judicial civic space that has the capacity to effect local change and potential to contribute to norm-production in a way that might be translatable to the PRC.

The principal form of private association that arose in the United States to express communities' interests in urban restructuring was the Community Development Corporation (CDC).<sup>125</sup> CDCs were often formed in response to local controversies, such as slum clearance and redlining by financial institutions.<sup>126</sup> A long-standing tenet of community development is that CDCs should be indigenous with governing boards comprised of area residents, businesses, and civic leaders.<sup>127</sup> Local groups, it was reasoned, would be more in tune with residents' needs and could give poor people more control over their communities.<sup>128</sup> Many of the early CDCs received funds from the federal Office of Economic Opportunity, and philanthropies such as the Ford Foundation.<sup>129</sup>

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123. See generally David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CALIF. L. REV. 209 (2003). In addition, the Supreme Court limited attorney's fee awards in civil rights and environmental cases and some states have enacted caps on attorney's fees and damage awards, while restricting the ability of law school clinics to undertake controversial cases. See generally Ann Southworth, *Conservative Lawyers and the Contest Over the Meaning of "Public Interest Law,"* 52 UCLA L. REV. 1223 (2005).

124. See generally Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399 (describing the integration of progressive social policy reforms into CED projects).

125. Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508 (codified as amended in scattered sections of 42 U.S.C.).

126. Cummings, *supra* note 85, at 451-54.

127. Yael Krigman, *The Role of Community Development Corporations in Affordable Housing*, 19 J. OF AFFORDABLE HOUSING & COMMUNITY DEV. L. 231, 242-43 (2010).

128. See Salkin & Lavine, *supra* 103, at 114-15.

129. For accounts of the organization, funding, and activities of CDCs, see ROBERT HALPERN, *REBUILDING THE INNER CITY: A HISTORY OF NEIGHBORHOOD INITIATIVES TO ADDRESS POVERTY IN THE UNITED STATES* (1995) and NEAL R. PEIRCE & CAROL F. STEINBACH, *CORRECTIVE CAPITALISM: THE RISE OF AMERICA'S COMMUNITY DEVELOPMENT CORPORATION*, REPORT TO THE FORD FOUNDATION 19-26 (1987).

CDCs in the United States provide an alternative model to government administration of comprehensive community programs, and thus are a significant form of citizen empowerment.<sup>130</sup> The repeated experience around the country demonstrates that ordinary people have many of the skills of analysis and judgment needed to direct community development.<sup>131</sup> A significant share of CDCs generates housing for people with special needs. CDCs are increasingly being asked by other local institutions to develop community-serving facilities, especially day care centers, health care centers, youth centers, arts programs, and other social service providers.

C. *Building Civil Society: Sites of Potential Community Mobilizing for Accountable Development in the PRC*

Since Alexis de Tocqueville toured a young United States, the idea that the durability and quality of democracy increases with the number of citizens actively engaged in their communities has been a major tenet of democratic theory.<sup>132</sup> This remains an attractive proposition because of the importance attributed to ordinary citizens, ascribing to men and women in the street the potential to influence decisions that govern their lives.<sup>133</sup>

“Civil society” is theorized as the realm of organized social life that is “voluntary, self-generating, (largely) self-supporting, autonomous from the state, and bound by a legal order or set of shared rules.”<sup>134</sup> In liberal-democratic political theory, a strong and diverse civil society is necessary to guard against excesses of unchecked state power, an essential complement to strengthen the state’s capacity for good governance, and to assure its accountability.<sup>135</sup> Mobilizing structures that connect individuals to groups, such as NGOs, community associations, and work or

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130. Cummings, *supra* note 85, at 443–44.

131. See generally Salkin & Lavine, *supra* note 103.

132. Philip C. Kissam, *Alexis De Tocqueville and American Constitutional Law: On Democracy, the Majority Will, Individual Rights, Federalism, Religion, Civic Associations, and Originalist Constitutional Theory*, 59 ME. L. REV. 35, 47 (2007).

133. See *id.* at 61–62.

134. Claire Mercer, *NGOs, Civil Society and Democratization: A Critical Review of the Literature*, 2 PROGRESS DEV. STUD. 5, 7 (2002), available at <http://pdj.sagepub.com/content/2/1/5>.

135. *Id.* at 8.

friendship, can bring people together to act in collective self-interest.<sup>136</sup>

China's context is of course quite different. Kevin O'Brien and Rachael Stern describe "rightful resistance" which hinges on protesters locating support at higher levels for their efforts to check local misconduct.<sup>137</sup> The Chinese state is not a disciplined institution advancing distinct goals, but rather a contest among disparate actors to advance particular interests.<sup>138</sup>

The remainder of this section briefly surveys four loci in China's evolving civil-society sector, with particular reference to their potential to contribute to 'accountable-development' actions: *shequs*, homeowners associations, migrant enclaves in powerhouse cities, and China's emerging NGO sector.

#### 1. *Shequs*: Administrative "Neighborhoods" and Democratic Experimentation

An unavoidable feature of the PRC's urban residential neighborhoods is the elaborate and well-organized institution called the Residents Committee. The Communist Party established these in most major cities shortly after taking power in 1949.<sup>139</sup> Their primary tasks include the maintenance of sociopolitical order and the provision of social services such as sanitation, basic welfare for the handicapped and disadvantaged, literacy education, and mediation of civil disputes.<sup>140</sup> To the Party, if democratization is to be a public good, it has to be orderly, and such neighborhood party organizations are the "stabilizing force" in the process of democratic

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136. *Id.*

137. Kevin J. O'Brien and Rachel E. Stern, *Introduction: Studying Contention in Contemporary China*, in *POPULAR PROTEST IN CHINA* 11, 14 (Kevin J. O'Brien ed., 2008).

138. *Id.*

139. Bung-ho Mok, *supra* note 117, at 164.

140. Chow Bing Ngeow, *Democratic Development in China's Urban Communities* 44–46 (Jan. 1, 2010) (unpublished Ph.D. dissertation, Northeastern University), available at [http://iris.lib.neu.edu/pub\\_int\\_aff\\_diss/7/](http://iris.lib.neu.edu/pub_int_aff_diss/7/) [hereinafter Chow Bing Ngeow, *Democratic Development*] (explaining democratic electoral innovations at the 'street level' and community level (*shequ*) of local governance committees). For a discussion of the Residents' Committees and a bibliography of previous work about them, see Benjamin L. Read, *Revitalizing the State's Urban "Nerve Tips"*, 163 *CHINA Q.*, 806 (2000). In 2000, the Ministry of Civil Affairs began referring to these organizations as Community Residents' Committees (*shequ jumin weiyuanhui*). Jie Chen et al., *Popular Support for Grassroots Self-Government in Urban China: Findings from a Beijing Survey*, 33 *MODERN CHINA* 505, 505 (2007).

development.<sup>141</sup> China has been experimenting with enlarging the roles of residents in the governance of their neighborhoods since 1991 when the Ministry of Civil Affairs proposed a national plan for transforming the Resident's Committee into a welfare provider,<sup>142</sup> with the policy objective to ease the state's welfare burden while maintaining its political control.<sup>143</sup>

As a consequence of their expanded functions, a growing number of *shequs* bear some resemblance to many American CDCs in terms of their neighborhood-level activities. Some *shequs* have expanded their roles beyond their formal mandates because of the confluence of new social problems, a legal obligation to provide services, and an absence of the central government.<sup>144</sup> In one Jimo City, just outside of Qingdao, a *shequ* became an active market participant by providing jobs directly to residents.<sup>145</sup>

Elsewhere, *shequs* have provided medical services, vocational education, service hotlines, and job placement services.<sup>146</sup>

Nonetheless, *shequs* are not likely to be a significant crucible for a American-style grassroots movement that challenges the market forces of urban redevelopment, because of *shequs'* defining characteristics. The first is state dependence. Although *shequs* are supposed to be the embodiment of the local community, in general, residents have been unwilling to become involved as authentic volunteers.<sup>147</sup> Second, *shequs* suffer from legal ambiguity. Although the *shequ* experiment has been sanctioned by the central government, *shequs* have no legal standing.<sup>148</sup> Without legal status, *shequ* operations are completely dependent on the discretion of government officials.

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141. Chow Bing Ngeow, *Community Party Building in Urban China*, 2 INT'L J. OF CHINA STUD. 213, 227–28 (2011) [hereinafter Chow Bing Ngeow, *Community Party*].

142. Miu Chung Yan & Jian Guo Gao, *Social Engineering of Community Building: Examination of Policy Process and Characteristics of Community Construction in China*, 42 COMMUNITY DEV. J. 222, 225 (2007).

143. Chow Bing Ngeow, *Community Party*, *supra* note 141, at 222. The common term in the West is “community building.” In China, however, the official translation of this policy is “community construction.” *Id.*

144. James Derleth & Daniel R. Koldyk, *The Shequ Experiment: Grassroots Political Reform in Urban China*, 13 J. OF CONTEMP. CHINA 747, 757 (2004).

145. *Id.*

146. *Id.*

147. *Id.* at 766.

148. *Id.*

## 2. Homeowners Committees/Associations

In contrast, the development of the homeowners' committees (*yezhu weiyuanhui*) within urban *shequ* evidences a new and different form and potential for grassroots democratic development. The formal expression of the legal rights of homeowners instantiated in the Property Law of 2007 helps to articulate a class of interests not shared by the home-owning subset of residents within a *shequ*. The homeowners' committee within the new housing estates has more capacity for representing and articulating the interests of urban resident-homeowners.<sup>149</sup> Yet it has no correlative legal responsibility for doing so, since the Ministry of Civil Affairs policy documents and other official discourse on "grassroots democracy" direct attention to the elections and democratic governance of the *shequ* residents' committee, to which the homeowners' committee is subordinate.<sup>150</sup>

The homeowners' committee present an ambiguous class base in China, compared to U.S. 'accountable development' actions which have commonly been pursued by residents of low-wealth communities threatened by forces of gentrifying redevelopment projects which are facilitated by local government in the anticipation of higher municipal revenues from taxes paid by commercial ventures and higher-end residential in-movers.<sup>151</sup>

## 3. Migrant Enclaves

Rural-to-urban migrants and their urban settlements invariably come up when examining the development of post-reform Chinese cities. One scholar described the situation as:

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149. Chow Bing Ngeow, *Democratic Development*, *supra* note 140, at 244. For discussion of the property-restitution protests by owners of private homes socialized during the Revolution, which took shape in the late 1990s, see YOU-TIEN HSING, *supra* note 1, at 63–72.

150. *Id.* at 242–46. Whereas a *shequ* is the lowest level of governmental administration, these homeownership settings are buildings or blocks of buildings either privatized or newly built by private developers since the housing reform. In US usage these *xiaoqu* might better translate to 'housing development.' A *shequ* likely encompasses several *xiaoqu*, although a particularly large development might be coextensive with a *shequ*. Both Ngbeow and several of my law students in Shanghai in 2011 translate *xiaoqu* as 'neighborhood', although they lack experience of urban American neighborhoods to substantiate an equivalence or approximation.

151. See Salkin & Lavine, *supra* note 103, at 130 ("While CBAs have promise of achieving otherwise unattainable social justice goals . . . CBAs [are] yet untested and still in their infancy."). See also Bezdek, *supra* note 95, at 57–59 (discussing the nature of displacement in the United States because of city redevelopment).

China's rural migrants in cities are continually classified as a part of the rural population under the household registration (*hukou*) system, they have failed to receive official recognition as urban citizens and have been unjustly excluded from the rights and benefits of city residents. In response to this exclusion, Chinese rural-to-urban migrants have made a collective effort to overcome their impoverished surroundings by clustering in the suburbs of major cities and forming their own settlements, usually with other migrants from the same hometowns. Through these settlements, migrants have been able to create their own villages—or enclaves—with independent schools, medical services, and even their own type of security force.<sup>152</sup>

The political claims of these enclaves are based on seeking inclusion in the socialist state's responsibilities for social provision. Nonetheless, their creation and operations entail significant citizen-initiative in a form of community development that bears further study. For enclaves cleared away as part of urban reconstruction, their destruction occurs absent legal protection, although their shared territorial identity and the loss of physical anchors for work, family, community, and services may launch residents into protest actions.

#### 4. Non-Governmental, Not-for-Profit Organizations

A recurrent theme in the English-language literature on NGOs is the view of civil society as a microcosm of democratic process and the association of grassroots civil movements with the articulation of people's aspirations.<sup>153</sup>

After coming to power in 1949, Chinese Communists suppressed civil society well into the late 1970s.<sup>154</sup> Since then, the regulatory environment and society space for non-state actors' roles in China

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152. Jong-Ho Jeong, *From illegal migrant settlements to central business and residential districts: Restructuring of urban space in Beijing's migrant enclaves*, 35 *HABITAT INT'L* 508, 508 (2011).

153. See Claire Mercer, *NGOs, Civil Society and Democratization: A Critical Review of the Literature*, 2 *PROGRESS IN DEV. STUD.* 5, 19 (2002), available at <http://pdj.sagepub.com/content/2/1/5> (cautioning that the roles of NGOs in democratic development are interpreted from a range of viewpoints, including the international financial institutions which themselves blur the distinction between the NGO and state sectors).

154. Jillian S. Ashley & Pengyu He, *Opening One Eye and Closing the Other: The Legal and Regulatory Environment for "Grassroots" NGOs in China Today*, 26 *B.U. INT'L L.J.* 29, 38 n.32 (2008).

have been on a roller coaster from zero tolerance in 1978, trending upward in official toleration and number and variety of organizations, and punctuated by significant setbacks.<sup>155</sup> A dramatic burst of citizen-organized groups was evident in the 1980s, but this trajectory was halted in the spring of 1989, when the Tiananman Square protests revealed the capacity of student, worker, and citizen resident associations to call for political reform,<sup>156</sup> prompting the central government to issue new Regulations on Registration and Management of Social Organizations.<sup>157</sup> The 1989 regulations established a dual-management system, which requires every social organization to gain approval and oversight by both the central Ministry for Civil Affairs and a supervisory agency in the social organization's field of endeavor.<sup>158</sup>

Today estimates of the number of NGOs in China are close to three million, yet experts readily acknowledge that the reality is impossible to establish since a majority are not registered.<sup>159</sup> Even more difficult to distinguish within China's socialist governance structure is the number of these which may have paid staff and even national or international support, and those which are "grassroots" organizations, which are typically smaller, issue-based, have little financial support, and are consequently ephemeral.<sup>160</sup> While no comprehensive account can be offered of grassroots or more formalized citizen-initiated civil-society organizations, there is a growing body of evidence of the expansion of this aspect of contemporary China.

The energetic emergence of a 'third sector' between the omnipresent Chinese state and its rampant marketization invites consideration of NGOs as building blocks of civil society—possibly, as engines of democracy, and plausibly, as precursors to community economic development organizations "with Chinese characteristics." The Chinese system of legal registration operates to manage and control the rise of social organizations. Yet the many conflicting political and economic incentives for both NGOs and government

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155. *Id.* at 38.

156. *Id.* at 39.

157. *See id.* at 42–45 (describing the key regulatory provisions for social organizations).

158. *Id.* at 39–40 (recounting significant drops in the number of registered NGOs at multiple points in time).

159. *See* Deyong Yin, *China's Attitude Toward Foreign NGOs*, 8 WASH. U. GLOB. STUD. L. REV. 521, 521–22 (2009).

160. *Id.* *See also* Mercer, *supra* note 134, at 6.

must complicate decisions by citizens to pursue social organization registration in China.<sup>161</sup>

NGOs do appear, however, to offer an experimental terrain in which to combine citizen initiatives with governmental cooperation and oversight through the dual management requirement (sufficient to guard against the subversive potential of NGOs), and with capacity-building support from international NGOs.

To illustrate: One of the most well-known ‘community development’ NGOs in China today is Shining Stone Community Action, a civic non-profit organization that provides consulting and training services to facilitate participation-based urban community development in China.<sup>162</sup> Founded in December 2002 by Song Qinghua and others, its mission is to “disseminate participatory ideas and methods, promote community participation, and build harmonious community.”<sup>163</sup> The organization’s primary activity is to promote participation-based approaches to community governance and development, and Shining Stone has developed a training program on socially sustainable communities and leadership development specifically for Chinese community leaders.<sup>164</sup> With this focus on building up citizens’ capacity, it augments official policies for democracy-building, and comports with a major focus of international NGO development practice.<sup>165</sup>

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161. See, e.g., Timothy Hildebrandt, *The Political Economy of Social Organization Registration in China*, 208 CHINA Q. 970 (2011) (presenting in-depth field research of Chinese NGOs in issue areas of environmental protection, HIV/AIDS prevention, and gay and lesbian rights).

162. SHINING STONE COMMUNITY ACTION CENTER, <http://www.communityaction.org.cn/> (last visited Apr. 4, 2012).

163. Press Release, UCLA Center for Chinese Studies, Civil Society with Chinese Characteristics: A talk by Song Qinghua (Nov. 23, 2009), <http://www.international.ucla.edu/china/events/showevent.asp?eventid=7653&eventdate=11/23/2009>.

164. *Id.*

165. Considerable attention is paid in international-development circles to “downward development,” the accountability of the international NGOs to the desires of the population they aim to aid. The U.S. analog would be conversations among charitable foundations as to their relationship to community beneficiaries of their grant-making and program support. Such discussion is beyond the scope of this paper. See Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217 (1999) (examining the role of policymakers, intermediaries, and communities seeking a say in their redevelopment, and concluding that technical assistance providers contribute to the disempowerment accompanying the implementation of policy agendas). Rather than address what might be viewed as the ‘supply side’ of international NGOs’ contribution to China’s third sector, in this paper my concern for accountability addresses the demand side, the quest by Chinese citizens for accountability within their society. For a sampling of rich case studies of American instances of urban communities wrestling such accountability in modern

Beginning in 2003, the founders designed and conducted multiple training workshops on their participation-based approach to community governance and development in many cities across China, including Beijing, Wuhan, Nanjing, Qingdao, Ningbo and Shanghai, earning favorable notice from government agencies. In 2003 and 2004, the Ministry of Civil Affairs invited founder Song twice as a key lecturer at its “China Urban Community Participation” training program, co-sponsored with the U.S.-based National Democratic Institute for International Affairs.<sup>166</sup> In 2005, Ms. Song initiated a new bottom-up model of community development in Haishu district, Ningbo city, helping local government agencies to modify their traditional top-down model to a new bottom up, participation-based approach to community development.<sup>167</sup> In 2006, Shining Stone launched the Program for Leadership Training and Cooperation for Sustainable Community Development in China to train mayors, other local leaders, and community residents to work together to protect public health and the environment.<sup>168</sup>

#### V. NEGOTIATING ACCOUNTABILITY OR BUILDING CIVIL SOCIETY: VARIANTS OF MOBILIZATION

The prospects for a community-accountable development movement in China are difficult to discern, but no doubt brewing. Nonetheless, there is little imminent prospect for an American-style, CBA strategy to be replicated in China anytime soon due to the fundamentally different loci of city power in China’s contemporary urban redevelopment scene.

The CBA strand of the accountable-development movement in the United States is an important advance in modifying the direction of redevelopment in American cities. Yet it is a creature of shifting economic and political fortunes of U.S. cities and thus the environment in which U.S. ‘growth coalitions’ operate.

CBA practices have burst on the scene in the United States following the profound decentralization of urban redevelopment

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urban redevelopment context, see PENDA D. HAIR, *LOUDER THAN WORDS: LAWYERS, COMMUNITIES AND THE STRUGGLE FOR JUSTICE* 120–139 (2001), available at <http://www.racialequitytools.org/resourcefiles/hair.pdf>; PETER MEDOFF & HOLLY SKLAR, *STREETS OF HOPE: THE FALL AND RISE OF AN URBAN NEIGHBORHOOD* (1994).

166. Press Release, UCLA Center for Chinese Studies, *supra* note 163.

167. *Id.*

168. The author met with trainees, and received Shining Stone training materials, while guest lecturing in Lanzhou, Gansu Province, in June 2011.

since the 1970s, whereas China's redevelopment remains firmly in the hands of local organs of the socialist state, vigorously committed to remaking the urban environs as emblems of China's national wealth and power. American urban renewal was similarly run by local powerbrokers, enabled by the concentration of power in government bureaucracies, and enabled the spending of development resources in largely unaccountable ways.<sup>169</sup> But since the 1970s, urban development economics have become decentralized with the loss of federal funding and public resources that stoked the upward class transformation and economic conversion of cities. American cities have become dependent on private capital and, facing competition with other localities for private resources, their leverage over developers has diminished. As a result, cities' capacity to attend to communities' economic and social welfare has declined as well, shifting the burden to communities themselves to step up as players in, rather than passive recipients of, the bargaining between developers and the city.

However, there is the very real prospect that China's burgeoning citizen activism is remaking societal norms as to the distribution of burdens and benefits of modernization's urban redevelopment. Disparate citizen practices of resistance and extra-legal activism may perhaps coalesce as "norm entrepreneurship" working at all levels, international, transnational, national, and local.<sup>170</sup> The audacious speed and scale of China's reinvention of its urban fabric carries with it changes in its social and political landscape, some under-studied, some perhaps unseen.<sup>171</sup>

## CONCLUSION

Urban housing demolition reveals both the difficulty and the possibility of progress toward rule of law in China. The pressure from the populace is so great because undercompensated housing demolition cuts across social and economic status in China's cities. Aided by the media and netizens, violations of housing rights fuel

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169. Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CALIF. L. REV. 1999, 2019–20 (2007).

170. Judith Resnik, *Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry*, 115 YALE L.J. 1564, 1670 (2006) (noting the necessity of working at multiple sites—international, transnational, national, local—as a "norm entrepreneur").

171. The spread and acceptance of accountable development, instantiated through CBAs in the United States, has taken place within a decade—all without any new statutes, regulatory requirements, or governmental policy pronouncements.

widespread resentment and threaten to undermine the legitimacy of the central government's expressed commitments to legal rights and credible institutions. Plainly, urban development under the rule of law is still a fragmentary dream. The possibility of progress toward the rule of law on a scale sufficient to constrain local-government actors appears to lie in the persistence of China's citizens to employ a range of extra-legal modes of resistance, including protests, petitions, and violent confrontations. While this resistance may provide incentive to the Chinese central government to "make the revolution before the people do," it is not at all certain that the resolution will be "to get the struggles off the streets and into the courts."<sup>172</sup> It is too early to tell whether China's nascent grassroots NGO sector will produce a form of community-accountable development organization with Chinese characteristics.

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172. Yongshun Cai, *supra* note 20, at 194.