

©2010

Mi Shih

ALL RIGHTS RESERVED

DISPUTED RELOCATION AND PROPERTY DEVELOPMENT IN SHANGHAI,

1990—2005

by

MI SHIH

A dissertation submitted to the

Graduate School—New Brunswick

Rutgers, The State University of New Jersey

In partial fulfillment of the requirements

For the degree of

Doctor of Philosophy

Graduate Program in Planning and Public Policy

Written under the direction of

Robert W. Lake

And approved by

New Brunswick, New Jersey

MAY, 2010

ABSTRACT OF THE DISSERTATION

DISPUTED RELOCATION AND PROPERTY DEVELOPMENT IN SHANGHAI,

1990—2005

By MI SHIH

Dissertation Director:

Robert W. Lake

This dissertation research examines social conflicts over large-scale community displacement arising from capitalist property development beginning in the early 1990s in Shanghai, China. Using ethnographic, archival, and legal research methods, this research provides an in-depth analysis of residents' years-long opposition to forced relocation, through which they sought to assert claims of rights and interests in the context of China's still top-down property regime. It argues that two structural forces prevent a broader participatory movement from raising a fundamental challenge to the existing property development regime: the design and application of relocation law, and the state's power to exploit residents' fears of being accused as political subversives if they challenge the relocation process. These material and ideological forces act together to deflect residents' collective attempts to challenge the existing property regime and, instead, to channel opposition into a discussion of personal (i.e., individual) economic loss and its remediation through pecuniary compensation. This dissertation also examines

how law and state supremacy serve to deter and deflect conflicts by providing a source of legitimation for the developmental forces driving disputed relocation. The research advances understanding of how urban China's spatial modernization policy has turned into a source of social unrest, which in turn has enhanced the development of a civil and rights-conscious society in China.

Table of Contents

Abstract	ii
Table of Contents	iv
List of Table	ix
Chapter One Disputed Relocation in Urban China	1
1.1 Paradoxes of Disputed Relocation	4
1.1.1 Law and <i>chaiqian</i> conflicts	4
1.1.2 Civil rights and economic interests	6
1.2 Research Questions and Hypothetical Arguments	10
1.3 Structure of Chapters	15
1.4 Methodology	18
1.4.1 The topic and the site	18
1.4.2 Data collection methods	20
Chapter Two Capitalist Land Development, Social Conflicts and Law in Reform-era China	24
2.1 The State and China's Capitalization	25
2.2 <i>Chaiqian</i> as a Project of Spatial Modernization	31
2.3 Law, Rights (<i>quanli</i> , 權利), and Disputed Relocation	36
2.3.1 Law-based governance	36
2.3.2 Why does law work in China?	40
2.3.3 Challenge through law	45
2.3.4 Rights and its interplay between interests	49
Chapter Three The Evolving Law of Disputed Relocation: Constructing Inner City Renewal Practices in Shanghai	58
3.1 Introduction	58

3.2 Regulatory Regime in Post-reform China	59
3.3 Law, City Renewal, and Disputed Relocation in Shanghai	62
3.4 Codification of City Renewal Practices: The 1991 Shanghai Bylaws and Its Overriding	63
3.4.1 Regulating large-scale relocation	63
3.4.2 Initiating a private housing market	64
3.4.3 Curbing the speculative housing market	67
3.4.4 Experimenting with monetary compensation	71
3.5 Strengthening Market Expansion: The 2001 Shanghai Bylaws and Its Constraining Rules on Residential Relocation	73
3.5.1 Discrepancy in residential relocation between two laws	73
3.5.2 Selective use of law and intensifying conflicts	75
3.6 Conclusion	79
Chapter Four Governing Through Law: Rights-based Conflicts and Property Development in Shanghai	82
4.1 Introduction	82
4.2 ALL, government adjudication, and ruling	83
4.3 State Power, Changing Law, and Challenging Beyond Legality	87
4.3.1 Demolition Work and Its Rationalization	87
4.3.1.1 “All encompassing contracts” and direct state operation	87
4.3.1.2 “Labor-service contracts” and the state-business separation	90
4.3.1.3 Resilience of the old practices	93
4.3.2 Market-based Property Appraisal	97
4.3.3 Forced relocation	100
4.3.4 The mandatory role of government adjudication	102

4.3.5 Lin's case: struggling in the legal labyrinth	105
4.3.5.1 Lin's first, successful litigation under ALL	106
4.3.5.2 Lin's second, failed litigation under ALL	108
4.3.5.3 Lin's third, failed litigation under ALL	108
4.4 Conclusion	110
Chapter Five Groping Through Legal Actions: Disputed Relocation, Resistance, and Law	112
5.1 Oh, <i>Chaiqian</i> !	114
5.1.1 Conjuring up from <i>chaiqian</i> announcement	114
5.1.2 Confused, angry and ignorant	117
5.2 Groping Through Legal Action: Resistance in Everyday Encounters	122
5.2.1 The Zhang family: early legal consciousness and tragic loss	122
5.2.1.1 An agreement under coercion	131
5.2.1.2 Seeking an official investigation	132
5.2.1.3 Compounding conflicts and anger	135
5.2.1.4 Not a concrete administrative act?	139
5.2.2 The Chen family: persistent fighting and becoming <i>chaiqian</i> -savvy	141
5.2.2.1 Equivocal court ruling	146
5.2.2.2 Unmet promise and second <i>chaiqian</i>	149
5.2.2.3 Understanding policy and playing along the game	150
5.2.3 The Bao family: assault on human and political rights	156
5.2.3.1 Do not talk with reasons!	158
5.2.3.2 Violence and the state's conniving	161
5.2.3.3 Forced out and left homeless	163

5.2.3.4 <i>On the difficult road of shangfang (petition, 上訪)</i>	167
5.2.3.5 <i>One incident, three punishments</i>	169
5.2.3.6 <i>Not only a chaiqian problem anymore!</i>	173
5.3 Why Are Citizens “Unaware” of the State?	176
5.4 Shaping Forces of Resistance	180
5.4.1 Policing, punishment, managing anger	181
5.4.2 The state’s offering of economic resolution (jingji jiejie, 經濟解決)	185
5.4.2.1 <i>The purpose and use of economic resolution</i>	185
5.4.2.2 <i>The political effects of economic resolution</i>	191
5.4.3 Depoliticize resistance: Interested-based and individualistic?	196
5.4.3.1 <i>Protecting my own interests</i>	196
5.4.3.2 <i>Rights that cannot be reduced to interests</i>	199
5.4.3.3 <i>The emerging collective actions: unplanned, unorganized, and leaderless</i>	204
5.5 What Resistance has Achieved: Small, Tentative, and yet Inspiring	213
5.5.1 Zhang’s law learning: A found path out of legal labyrinth	213
5.5.2 Chen’s persistent inquiry: Empowerment and open information	222
Chapter Six Disputed Relocation and the Prospect of a More Autonomous Society	231
6.1 Disputed Relocation Revisited	232
6.1.1 Produced under the state’s facilitative role for capitalistic transformation	232
6.1.2 Governed by the state’s use of a law-based model of governance	234
6.1.3 Rights redefined and subordinated to the state’s reenforced control of public interests	235
6.1.4 Law as a politically safe and potent arena for resistance	237

6.1.5	The state's use of political punishments and economic resolution	239
6.1.5.1	<i>Violence, the state's conniving, and residents' fear of political ramifications</i>	239
6.1.5.2	<i>The state's use of economic resolution to deflect challenges to the property regime</i>	241
6.2	From Disputed Relocation to Rights to Cities? Remarks on Future Research	245
6.2.1	What rights are to be written into law?	245
	Bibliography	248
	Curriculum Vitae	254

List of Tables

Table 2-1 Per capita living area in Shanghai, 1950-1990 34

Table 2-2 Residential areas demolished 36

Chapter One

Disputed Relocation in Urban China

In March 2003, a Shanghai citizen, Lin,¹ petitioned China's central government in Beijing for an investigation into the case of her family being forcibly relocated by the Shanghai City Government in 1996. Her home, along with her entire neighborhood, had been demolished and replaced by a luxurious high-rise residential apartment building built by a private property development company and her request to be allowed to live in the new building, which was her legal right at the time according to the Shanghai bylaws on relocation,² had been denied by the Department of Housing and Land Management of Shanghai. Lin's petition to the central authorities in Beijing was denied and she was sent back to Shanghai under the escort of the Bureau of Public Security and detained for thirty-one days under the charge of "disturbing the order of society." Since then she has become an active participant in resistance actions asking for transparency in Shanghai city government's decision-making process and the release to the public of official documents relevant to property development projects citywide.

Lin's relocation experience was not unique. In Shanghai alone, more than one million households were relocated between 1991 and 2006, the majority of them displaced to the

¹ All names used in this dissertation are pseudonyms. Street names, dates of events, document numbers related to interviewees' experience are also altered in order to protect their identities.

² Article 49 of the 1991 Shanghai Bylaws on Urban Housing Demolition and Relocation Management.

outskirts and away from the inner city.³ This large-scale local migration is a conflict-laden process parallel to Shanghai's spatial modernization project.

The "365 Plan," begun in 1991, was aimed at rebuilding at least 3.65 million m² of deteriorated areas of tents, shanties, and old *linong* (old-style lane housing, 舊式里弄)⁴ before the turn of the Millennium. By 2001, the official statistic on the cumulative area of residential houses demolished between 1995 and 2001 was 21.43 million m², almost six times greater than the goal of the 365 Plan.⁵ Demolition on this scale manifested the intensity of city renewal and augured its further expansion. In the same year, the Shanghai City Government announced a policy goal with the target to renew another 20 million m² of *linong* in the following ten years.⁶ While the achieved renewal has received frequent praise and can be personally witnessed by any recent visitor to Shanghai, the collective and deeply political experiences of residential relocation mostly go unreported in China's mainstream media and remain largely under-researched.

³ Between 1991 and 1995, 300,000 residential households were relocated, 2.4 times more than the total number of households that were relocated from 1979 to 1990. (Construction in Shanghai 1991–1995, 1996:615). Between 1995 and 2006, the number of relocated residential households was 897,332 (Shanghai Statistics Yearbook, 2007). According to a study in 2004, Of the 72,728 households relocated in 2001, 97% were relocated to places other than their original neighborhoods in Shanghai (Li et al., 2004: 66).

⁴ *linong* (lane house, 里弄) is the residential housing which has historically characterized inner Shanghai. *Li* means neighborhood, and *nong* means lane or alley.

⁵ Shanghai Statistical Yearbook, 2002. Statistics on the demolished area of residential houses between 1991 and 1994 were not available in the statistical yearbooks.

⁶ The policy is called "the second round of inner city renewal (*dierlunjiuqugaizao*, 第二輪舊區改造)"

In this dissertation, I use “disputed relocation” to describe social conflicts over residential relocation arising from the real estate property development process beginning in the 1990s in Shanghai. The conflict-laden process of *chaiqian* (demolition and relocation, 拆遷) is the best manifestation of China’s accelerating urbanization. Rapid urbanization, which began about 150 to 200 years ago in Europe and North America, began in China only in the 1980s but has since become a widespread social phenomenon. Disputed relocation constitutes the most contentious urban problem in post-reform China. One *chaiqian* manager who agreed to an interview in his on-site office in a *linong* community described discontent with *chaiqian* as fierce as “a lidded, steaming boiler” where every city renewal project is “a potential stab into the overheated pot” whose bursting steam would likely cause trouble of social instability (Interview CQP1). Nowadays, land-related conflicts have become the dominant cause of Chinese citizens’ petitions (*shangfang*, 上訪) to the central government in Beijing. Seventy percent of protests in China are related to landed property development and have created an enormous caseload of lawsuits in local courts. Often, the sheer magnitude of relocation is viewed as an indicator of the progress of modernization that China’s reform policy aimed to achieve, expressed in the popular saying “one new landscape in a year, a great transformation in three years (*yinianyigeyang*, *sanniandabianyang*, 一年一個樣, 三年大變樣)”.

Chaiqian conflicts are an inherent characteristic of China’s capitalistic land development. China scholars who specialize in land politics have shown that the Chinese state is active in adopting land-centered strategies in order to promote and sustain

capitalistic development (Hsing, 2006, 2010; Lin, 2009; Lin and Ho, 2005; Zhang, 2006, 2009). However *chaiqian*-intensive, these land strategies are imperative in China's capitalist development. China's significant development through land practices is at the cost of massive neighborhood displacement and farmland conversion. Without an understanding of disputed relocation, it is impossible to understand China's transformation to a capitalist society.

1.1 Paradoxes of Disputed Relocation

1.1.1 Law and *chaiqian* conflicts

Two paradoxes surround the understanding of disputed relocation. The first paradox involves the simultaneous absence and presence of law in the inner-city renewal process. On the one hand, a widely-held viewpoint attributes the scale of disputed relocation to the problem of lawlessness and unlawfulness in China. In this view, as illustrated by Lin's experience described in the opening paragraph, disputed relocation is caused by the absence of the rule of law and the pervasive violation of existing law by officials responsible for administering *chaiqian* (Congressional-Executive Commission on China; Phan, 2005; Wilhelm, 2004). The Chinese terms "anomalies" (*buguifan*, 不規範), which means unregulated operations, and "incivilities" (*buwenmin*, 不文明), which refers to violence and inappropriate conduct, are seen as the driving forces which have intensified conflicts. Or as the Chinese officials have simply put it, "barbarian *chaiqian* (*yeman chaiqian*, 野蠻拆遷)" has given rise to disputed relocation.

Yet, on the other hand and paradoxically, disputed relocation has also originated from and grown increasingly intense within China's extensive legislation aimed to create a

regulatory system of land-related development (Potter, 1991; Clarke and Howson, 1996; Lin, 2001).

After a decade of lawlessness and anarchy during the Great Proletarian Cultural Revolution (1966—1976), China resorted to law in order to re-consolidate its ruling legitimacy. Under the Economic Reform and Liberalization (*jingji gaige kaifang*, 經濟改革開放) adopted in 1979, the need for attracting international capital has further compelled the Chinese state to accelerate its legal advancement in order to provide a stabilized, law-ruled environment for foreign investors. Legal scholars have pointed out that China's unprecedented outpouring of lawmaking since then is aimed in part to express an endorsement of the rule of law and is indispensable to advance China's economic growth in the reform era (see a detailed discussion on China's legal reform in *the China Quarterly*, 2007). Throughout the 1990s, Shanghai's local legislation on inner city renewal was adopted at such a fast pace that many regulatory pieces were implemented directly on the ground with trial status to experiment with innovative strategies of development (see chapter three). As grievances and discontent over *chaiqian* became prevalent, the Central Government in Beijing has since the early 2000s begun a major overhaul of old *chaiqian* and land-related laws. Shanghai has also enacted its own local regulations on a wide range of *chaiqian* affairs, setting limitations on government officials' involvement in demolition companies, specifying procedures for conflict adjudication, requiring certified agents for property appraisal, setting standards for monetary compensation, etc. (see chapter four). Many new rules at both the national and local levels have imported legal norms of Western liberalism, such as appraisal based on

market value, release of and access to information, and even community balloting for choosing appraisal agents. In short, the abundance of law as well as its absence is the context in which *chaiqian* conflicts have emerged.

As a result, law plays a highly conflicted role in China. Once described as “policy law” (Lubman, 1999: 131, also Potter, 1994), law is legislated as an important and indispensable part of the policy designed to promote capitalist development in China. And in the practice of inner city renewal and property development, the types of land development supported by law are inherently and highly *chaiqian*-intensive. Yet, law is not only used as a pawn by the state to realize development. China’s adoption of a law-based governance model has also created the social phenomenon of “rightful resistance” (Lee, 2007; O’Brien and Li, 2006; Perry and Goldman, 2002; Zhang, 2006). in which the Chinese state’s “fetish with courts and rule of law” (Shapiro, 2008: 328) has opened up a politically potent arena for residents to assert their claims of rights and interests in an authoritarian environment (Landry, 2008; Pei, 1997, 2003). This paradox requires a close examination of the relationship between *chaiqian* law and disputed relocation.

1.1.2 Civil rights and economic interests

A second paradox reveals itself in the manner in which the Chinese state has simultaneously politicized and depoliticized *chaiqian*. On the one hand, the Chinese state has responded to grassroots resistance to *chaiqian* by politicizing protest. Citizens are required by law to conform to *chaiqian* orders, even for private-oriented, profit-driven projects, interpreted by the state as meeting the call for the higher purpose of national

development. The 1991 Shanghai Bylaws, which governed all *chaiqian* operations in the 1990s, mandated that “evictees should comply with the needs of city construction and complete the relocation...(Article 5)” and that “...the evicted...in general should move to the city’s outskirts” (Article 49). Armed with these regulations, the state has silenced outspoken resisters through policing, violence, and politically-tinged charges such as “subverting the state’s authority” or “revealing the state secrets.” Claiming *chaiqian* conflicts are not politically sensitive is claiming that there is no *chaiqian* in China.

Yet, on the other hand and at the same time, the Chinese state has adopted a depoliticized approach to managing the society’s discontent with *chaiqian*. This has primarily taken the form of establishing an open, objective, and market-valued mechanism for compensating relocated residents whose houses and neighborhoods have been demolished. The 2001 Shanghai Bylaws required a written market-based appraisal for the value of *linong* housing to be demolished. Other legislation has been passed to especially address the methods and techniques for the calculation of monetary compensation.⁷ Within the community of relocated residents, there is a general acceptance that the wrong of under-compensation has been legally addressed and is now better practiced.

Reflecting the state’s policy some scholars and policy-makers have adopted an interest-based discourse, which treats disputed relocation as a conflict over individual

⁷ For instance, see the Guiding Opinions on Appraisal for Urban Housing Demolition and Relocation (*chengshi fangwu chaiqian pinggu zhidao yijian*), issued by Bureau of Construction, 1 December 2003. Measures on Appraisal Techniques for Shanghai City Urban Housing Demolition and Relocation (on trial) (*shanghaishi chengshi fangwu chaiqian pinggu jishu guifan*), issued by Shanghai City Government, 16 April 2004.

economic interests. In this view, impaired methods of compensation, insufficient compensation awards, and an uneven distribution of interests are at the center of residents' grievances, and disputed relocation is resolvable through better compensation. An example of this interest-based discourse is a statement by an American law professor at a roundtable on property seizure in China organized by the US Congress, asserting that disputed relocation as nothing more than an issue of money:

Since, in fact, there was little formal right to participate, the affected Chinese citizens and their friends resorted to the time-honored method of seeking redress from the power structure—harangue. Party officials and land administration leaders were contacted regularly and called to account for what were perceived to be abusive practices. The plot thickened when stories emerged about the emotional impact that destruction of these traditional urban communities had on the beloved older folks who had trusted in Communism their whole lives. There were some suicides that occurred while the bulldozers chugged toward the buildings, and other dramatic examples of how Chinese, like the rest of us, place an extraordinarily high value on the concept of “home.” *...Oh yes, there were stories of inadequate payments and abusive evictions. But these were not, so far as I can tell, the dominant complaint. Most of the complaints have been about nothing more than money. And neither these abuses nor the underpayments were condoned by law* (Congressional-Executive Commission on China, 2004: 69, emphasis added).

Similarly, Chen Yingfang's study on rural land acquisition in Shanghai also emphasized villagers' “hurt feeling of being deprived of interests” and attributed land-related conflicts to citizens' struggling to “express [claims of] interests” (Chen, 2003; also Yi, 2004). In an attempt to quantify the interests affected, some analysts have focused on evaluating the economic gains and losses caused by growth coalition practices and the property development process (Cervero and Day, 2009; Fang, 2006; Wu, 2004). In short, such characterizations interpret social protest as a technical problem concerning the accurate calculation of monetary compensation rather than a political problem of residents' rights in *chaiqian*.

The Chinese state's paradoxical practice of managing *chaiqian* conflicts through a depoliticized focus on monetary compensation while simultaneously targeting individual activists with political punishment is at the center of my analysis of disputed relocation in this dissertation. I use the state's different handling of "interest (*liyi*, 利益)" and "right (*quanli*, 權利)" to highlight and examine this political paradox (see chapter five). While the Chinese state has shown a great degree of leniency in the discussion of "interest redistribution," it has remained highly guarded against citizens' use of "rights" for defiant purposes and as the basis for the "rights-protection movement (*weiquan yundong*, 維權運動)," recently emerging in China, of which opposition to *chaiqian* has been an important part. Taking the position as a rights defender or a rights-protection lawyer has proven to be highly politically sensitive (Cohen and Pils, 2008, 2009; Fu and Cullen, 2008; Human Rights Watch, 2004; Pils, 2005; 2007). It is exactly because rights-protection can become a target of "severe striking (*yanda*, 嚴打)" by the state, some China scholars have argued for the strategic exploitation of legally-protected interests for reaching a more just society in China (Keith and Lin, 2001; Pei, 1997, 2003; Woo, 2002). But behind the facade of a cost-and-benefit-centered and depoliticized argument around interests is the state's policing of any rights-based resistance that might lead to a fundamental challenge to the capitalist property regime. Rights, a concept usually treated as natural or universal in the West, is subordinate to the state's definition and its fostering role for capitalist development in China (see a very thorough discussion on the Chineseness of rights by the renowned historian Wang Gungwu, 1980).

Looking only at one side of the state's paradoxical practice inevitably produces misunderstanding of disputed relocation. Believing that the conflict-laden land development process will eventually settle down into a depoliticized, benign discussion of the optimal distribution of interests as China's market economy matures is to be blind to the state's role in obscuring grassroots demands that contest state-defined rights. On the other hand, holding the view that the Chinese state is omni-oppressive leaves unexamined China's historically-proven ability of tolerating and absorbing social resistance in order to further strengthen its ruling legitimacy and governing power (see Perry, 2002). As a result, this dissertation is critical towards the assertion of an interest-based discourse on disputed relocation. It aims to closely examine the interplay between "interests" and "rights" in order to highlight and exemplify the state's paradoxical manner in dealing with *chaiqian* conflicts.

1.2 Research Questions and Hypothetical Arguments

This dissertation aims to examine the dialectic relation between the expanding capitalist property practice in urban China and ordinary people's everyday encounters with the resulting social exclusion. It seeks answers to three major questions. First, what is the role of the state in shaping disputed relocation? The large body of literature on China's land development has clearly shown that the Chinese state's deliberate employment of its political power and policy tools in order to facilitate various forms of growth coalition with private investors is the main cause that has compelled conflicts over relocation (Abramson, 1997; He and Wu, 2005; Hsing 2006a, 2006b; Lai, 1995; Leaf, 1995; Lin and Ho, 2005; Lin, 2009; Pils, 2007; Wu, 2004; Zhang, 1997; Zhang,

2002). Yet, few of these existing studies focus on how the state has in fact produced and responded to disputed relocation, not just through overt crackdowns but also through the Chinese state's adept management of social unrest. As shown in the following chapters, the Chinese state has enacted an unprecedented volume of law on land-related activities in order to establish a law-based model to govern disputed relocation. How does the new legal regime address relocated residents' grievances? How do the new regulations differ from the previous? What are the effects on disputed relocation? How does the new law both continue to promote private-oriented property development while at the same time manage disputed relocation? In answering these questions, this dissertation provides a deeper understanding not only of the social impacts of China's reform policies but also of China's reinvented governance over social issues on its path to market economy.

The second set of questions examined here concerns residents' experiences before, during, and after disputed relocation. Examining residents' changing perceptions towards the state-backed city renewal projects is important because *chaiqian* in fact was once expected and welcome by residents in *linong* communities. As shown in chapters two and five, *jiuqu gaizao* (inner city renewal, 舊區改造) was originally seen as a substantive project (*shishi*, 實事) which promised improvements to the deteriorated environment in *linong* neighborhoods. What has been the actual experience of residence as compared to their prior expectations? What are the sources of conflict? How are residents' complaints and discontent responded to by the local government? How has the state's handling of protest intensified and compounded disputed relocation? Revealing the process in which residents struggle to understand and participate in local property politics helps explain

why *chaiqian* has changed from a widely-perceived synonym for progress to a highly-contested operation of city renewal. It also provides firsthand accounts of how city renewal policy and property practices have impacted resident's everyday life and also resulted in social exclusion.

Lastly, this research seeks to understand how resistance to *chaiqian* originates under an authoritarian state. In a communist and authoritarian country such as China, the arenas of policy-making and governance tend to be politically alien and intimidating to ordinary citizens, since they evoke the looming images of the ubiquitous party-state. Yet, a wave of resistance to forced relocation and open demands for redress have been growing since the mid-1990s. Soon after starting my fieldwork research in Shanghai, I realized that filing lawsuits in court was an important and indispensable strategy adopted by relocated residents to challenge *chaiqian*. Challenging through law also means that residents work within the existing system of power and governance to demand redress. This heavy reliance on law is not inconceivable since open public protests remain politically prohibited in China. However, this also reveals the paradox of disputed relocation and resistance: while China's land law has helped facilitate a top-down property regime which creates the social problem of disputed relocation, the very same legal system also rules *chaiqian* resistance, which in turn hurts land-development profits and challenges the existing power structure. What are the processes surrounding the formation of resistance through law? What resistance strategies do residents use to legitimize their defiance in court? As discussed in chapter three, given coercive regulations that view relocation as a

necessary procedure in order to realize inner city development, what leeway do relocated residents have to pursue rightful resistance?

Shanghai, the largest, most urbanized city in China, has since long placed special policy weight on law to govern relocation. As early as in 1982, Shanghai already had Shanghai Measures on Demolishing and Relocating Housing;⁸ an piece of *chaiqian*-specific legislation probably existed in no other cities at that time. Generally, there is also a common recognition that Shanghai is the most advanced city in legal development and implementation. Focusing on Shanghai residents' relocation experience, this dissertation research unfolds the dialectic process in which disputed relocation is governed under a relatively full-fledged regulatory system of land development. The case of Shanghai will provide important implications to in other Chinese cities as they are also currently on their own paths to handle the social issue of disputed relocation through law.

While resistance and protest have at times turned into open demonstrations and intensive confrontations, opposition to relocation for the most part tends to be individualistic and isolated, usually involving personal negotiation with the local authority over economic interests such as the size of resettlement housing, the amount of monetary compensation *etc.* This frequently observed form of interest-centered resistance urges us to ask if it is what James Scott terms a “hidden transcript” of social resistance under conditions of dominance (1990). Is resistance to *chaiqian* simply interest-driven, as many observers claim? Or is an interest-based discourse a resistance strategy that appears because it has the sanction of the government? As resistance to *chaiqian* has been widely-

⁸ Issued by the Shanghai City Government on 8 November, 1982.

recognized as an important part of the rights-protection (*weiquan*, 維權) movement recently emerging in China, how do such monetary interests differ from rights? And how does the interplay between interests and rights shape disputed relocation? What goals do residents achieve by employing legal challenges through the courts, and what limits are inherent in their adoption of resistance through law? In answering these questions, this study not only advances the analysis of Shanghai's capitalist urbanization but also will contribute to understanding of China's fast-changing state-society relationship.

To answer the above research questions, my dissertation adopts as a basic premise that law relevant to *chaiqian* is an important prism through which to understand disputed relocation. And here I turn to the perspective on how law is socially constructed. This perspective argues that law is not determinate nor does it have an absolute meaning objectively stated within the statutory text. Rather, "the meaning of law is constructed and articulated through its interpretation, implementation and enforcement by agencies of the state" (Lake and Johns 1990: 493; also Clark 1985; Blomley 1988, 2004; Singer 2000).

The main goal of this dissertation research is to examine how relocated residents insert their claims of interests and rights into the powerful pro-growth coalition comprised of the Shanghai city government and private enterprises. The research will show that law has functioned as a politically safe channel through which relocated residents challenge disputed relocation. Yet given the paradox that law has been an integral part of the institutional design that facilitates *chaiqian*-intensive land development, this dissertation will also examine what dialogue and which political strategies have been sanctioned and

opened up to residents, and which opportunities have been eschewed and cracked down on in the state's response to residents' legal actions. I argue that two structural forces prevent a broader participatory movement from raising a fundamental challenge to the existing property development regime: the design and application of relocation law, and the state's power to exploit residents' fears of being accused as political subversives if they challenge the relocation process. These material and ideological forces act together to deflect residents' collective attempts to challenge the existing property regime and, instead, to channel opposition into a discussion of personal (i.e., individual) economic loss and its remediation through pecuniary compensation. This dissertation will also examine how law and state supremacy serve to deter and deflect conflicts by providing a source of legitimation for the developmental forces driving disputed relocation.

1.3 Structure of Chapters

Five chapters comprise the remaining body of this dissertation. Chapter two examines existing studies and theoretical debates relevant to the understanding of disputed relocation. The focus is on three main areas: China's capitalistic land development and the role of the state, Shanghai's residential environment and its inner city renewal policy, and social conflicts under the rule of China's legal regime. The first area examines the scholarly work on China's capitalization on which this dissertation research builds to consider the process through which residents confront and contest relocation. While recent scholarship has shed light on the role of the Chinese state in creating highly contentious land development as a result of its capitalist strategies, it has yet to address the role of ordinary citizens, not merely as passive victims or recipients of the benefits of

the land development bonanza, but rather as politically active agents who seek to understand, participate in, and even contest the property regime. Second, a brief review of the historically-inherited problem (歷史遺留問題, *lishiyiliuwenti*) of underinvestment in the residential environment since the Communist takeover in 1949 helps explain the change of residents' perception of *chaiqian* in Shanghai. It is in this context that Shanghai's inner city renewal policy and *chaiqian* was originally well-received by residents as a benign project of modernization. The last body of literature reviewed in chapter two examines the intersection of legal studies and China's grassroots resistance. This dissertation research builds on these studies, especially case studies on China, on the political relevance of law for resistance in authoritarian states to understand residents' use of lawsuits and legal language as consistent and indispensable strategies of resistance in disputed relocation.

Chapter three provides a close examination of the paradoxical relationship between law and disputed relocation. It traces legal statutes and regulations adopted since 1991 and shows how on the laws of inner city renewal were coded in ways to satisfy the development policy goals set by the Shanghai City Government. It reveals that residential relocation was secondary to and regulated according to the goal of land development but not vice versa. It also highlights how regulations on *chaiqian* evolved as the vicissitudes of property markets and social conflicts over relocation intensified so as to require the state's governance response. Chapter four then begins to understand residents' resistance to *chaiqian* through the very legal regime that had facilitated disputed relocation. It examines the Chinese state's recent establishment of a law-based model of governance

and how this shapes disputed relocation. The chapter examines three consecutive lawsuits filed by a Shanghai resident against the demolition company that violated her legal right of return settlement (*huiban*, 回搬) in the same neighborhood to demonstrate how the three important statutes relevant to *chaiqian*—Administrative Litigation Law, a legal channel through which residents were empowered to challenge the state; the PRC Supreme Court’s interpretations on relocation lawsuits; and the Shanghai Bylaws—were at work in court rulings over legal challenges to disputed relocation. Together, chapters three and four lay the groundwork for an introduction to China’s legal environment in which more in-depth accounts of resistant residents’ personal experience of *chaiqian* are situated, as documented in the following chapter.

Chapter five provides a thick description of several cases of disputed relocation. It documents the extended process, continuing over several years, in which relocated residents sought to understand *chaiqian* and also struggled to insert their claims of rights and interests into the existing property regime. Ethnographic accounts on three relocated families show the impacts of *chaiqian* on livelihoods, residents’ fear, grievances, and anger over relocation-related violence and punishments, their legal lawsuits against the local governments, everyday resistance, and also the sense of empowerment. Revealed in the process of residents’ encounters with government officials and demolition companies is the indispensable channel of law through which residents expressed their discontent and opposition. Compared to chapters three and four, which focus on and the written law codified in legal texts, chapter five examines how law was implemented on the ground and its impacts on grassroots resistance. Chapter five also discusses the Shanghai City

Government's adoption of "economic resolution (*jingji jiejie*, 經濟解決)," a strategy to resolve resistance through offering once-and-for-all monetary compensation. By recounting the dialogues and interactions surrounding the offers of monetary compensation, the chapter reveals how the state's employment of "economic resolution," together with threats of politically-motivated punishments, deflected residents' resistance actions for redress away from a struggle for rights and channeled them instead into negotiation over economic compensation.

In the conclusion, this dissertation research revisits the dialectic relationship between the Chinese state, its land-related law, and disputed relocation. It is found that disputed relocation is a product of China capitalist land practices which the state has facilitated and legitimized through legislation. To prevent disputed relocation from obstructing the momentum of capitalist transformation, the state has established a law-based model to govern *chaiqian* conflicts. The state's paradoxical use of law has compelled relocated residents to practice the resistance strategy of challenging through law to its highest effect. Through the combined use of political punishments, the law-based governance has reinforced the Chinese state's control in defining public interests to which residents' rights are subordinate. The question on who has the interpretation power to contest the state's selection of civil rights remains to be further examined in the future research.

1.4 Methodology

1.4.1 The topic and the site

Chaiqian is a sensitive research topic and China is a difficult research site. Two particular types of barriers to data collection during fieldwork periods reflected the

difficulty of researching *chaiqian* in China. First, agents who had first-hand involvement in *chaiqian* operation, such as *chaiqian* officials, *chaiqian* workers, staff of residential street committees, were extremely reluctant to agree interview requests.⁹ My interviews with *chaiqian* agents, few in number and brief in length, were all made through introduction by their acquaintances who previously had business interaction with them, such as property appraisal agents, property project managers, or friends. This makes a comparison between residents' ethnographic accounts and the official counterpart impossible.

The other main barrier is the climate of ignorance and self-censorship. Non-local property developers, such as those headquartered in Hong Kong, Singapore, or Taiwan, had shallow understanding of the actual process of *chaiqian* operation, which they financed, except of general information on the readiness of their sites. Local district governments assigned these property developers to specific demolition companies which then arranged all *chaiqian*-related affairs. Occasionally, a few developers were willing to let me unobtrusively observe in their project sites, however, their *chaiqian* managers, who had close affiliations with the local governments, refused to do so. These non-local property developers' ignorance of *chaiqian*, which they voluntarily maintained, added another distance to any research attempt from understanding *chaiqian* on the ground. Similarly, local researchers by a large degree self censored the topic on *chaiqian*. A scholar kindly reminded me that the data I could collect would likely be just anecdotes,

⁹ A university professor who once conducted a government-funded project on land development described to me that even with a introduction letter (*jieshaoxin*, 介紹信) issued from the district government office *chaiqian* workers and officials at the neighborhood level were still reluctant to provide full assistance.

because systematic data collection was unlikely, and therefore, he questioned what “theoretical contribution” this dissertation research could possibly make to the academia. Another university professor, who meant well by mentioning to me a few foreign researchers’ unsuccessful attempts at *chaiqian* research, told me she would never declare “my topic is on *chaiqian*” either in the fieldwork or in research proposals. “Find a different discourse to circumvent [*chaiqian*]” was her suggestion. In fact, local research on historical preservation of *linong* neighborhoods, social welfare for disadvantaged citizens, urban planning and development, legal studies on conflict adjudication, even political analysis on the role of Chinese state and civil society development, had all touched *chaiqian* conflicts in one way or another,¹⁰ but none had placed *chaiqian* at the center of their analysis in order to reveal the reason that *chaiqian* was treated as not researchable. This climate of self-censorship had veiled *chaiqian* with political sensitivity and emotional stress, and had further increased the difficulty of fieldwork research.

It is exactly because *chaiqian* had largely been shunned away in local politics, this dissertation research aims to reveal, rather than to simplify, the very complex, politically, socioeconomically, and emotionally, process of disputed relocation. It has done so through a combined use of ethnographic methods and legal document analysis.

1.4.2 Data collection methods

¹⁰ A good example is Xu, M. Q. (2004) *Shanghai zhong xin cheng jiu zhu qu fa zhan fang shi xin lun* [*A New Approach to Shanghai’s Inner City Redevelopment*]. Xuelin Press: Shanghai (in Chinese). And also Lu, Y. (2003) *Jiuchenggaizhao dui ruoshiqunti de yingxiang ji guihua baohu duice* [Impacts of Inner City Renewal on the Disadvantaged Groups and the Planning and Protection Strategies]. Unpublished Master Thesis. Tongji University.

The interdisciplinary nature of this research required a combination of ethnographic and archival methods to collect evidence. Two fieldwork research trips were carried out in Shanghai between May 2005 and March 2006.¹¹ Semi-structured, open-ended interviews were conducted with 24 relocated residents, eight property developers, four municipal *chaiqian* workers and managers, researchers at universities including East China Normal University, Tongji University, and Shanghai Academy of Social Sciences, and numerous practitioners of urban planning and real estate development. I adopted a snowball sampling strategy to create and expand my list of interviewees. Before beginning the fieldwork research, I identified a core of potential candidates, most of them researchers in social sciences and property development professionals in Shanghai and I made contact with most of my non-resident interviewees through this established network. To identify resident interviewees, I attended events, public gatherings, and protests in downtown Shanghai, and approached potential interviewees with requests for interviews.

For about 10 residents, I was able to interview them two or three times for more in-depth accounts of their relocation experiences. These residents had kept a large quantity of documents relating to their personal experiences with disputed relocation that they were willing to share with me. These invaluable documents, which were nearly

¹¹ I also visited a state-affiliated property development company in Liaoyang City in Liaoning Province in northeastern China. During a one-week period, I was allowed to conduct unobtrusive observation in the company's on-site *chaiqian* office and in the community to observe first-hand the accounts of relocation and negotiation. I also visited Nanjing University for a week and discussed my research ideas with scholars and graduate students in the School of Environment. These trips helped provide important observations and understanding for my research on disputed relocation in general.

impossible to obtain from any of the bureaus or archives in Shanghai, included court verdicts which adjudicated their civil suits against the City Government, petition letters they had written to both the Shanghai city government and the central bureaus in Beijing with the official letters of reply, and letters prosecuting them with charges related to “disturbing the order of society.” These interviews usually took place in residents’ homes and normally lasted more than one hour.

Five of the eight property developers who agreed to be interviewed were from Hong Kong, Singapore and Taiwan. Regardless of the origins of their investments, all of them had on-going *chaiqian* operations at the time of my fieldwork research. However, these developers were not directly involved in carrying out demolition and relocation. The actual operation was contracted out to district-based demolition companies appointed by the district government. Interviews with property developers mostly focused on their land-acquisition process, interactions with the local governments and demolition companies, and how they perceived disputed relocation. For interviews with *chaiqian* staff in *chaiqian* business, only two of the five interviewees agreed to a formal, semi-structured, sit-down interview with me. The others were only willing to engage in conversation-like interviews and were more hesitant in addressing my inquiries on *chaiqian* operations directly. Interviews usually took place in their on-site offices or in the alleys in the communities. To lessen the political sensitivity of the subject, I focused interview questions primarily on *chaiqian* law and its implementation on the ground, the *chaiqian* procedure in general, and the difficulties *chaiqian* staff encountered at work.

Archival research was carried out to collect government reports, policy books, news accounts, and legal documents. Many government materials were obtained and purchased from Shanghai City Library, especially its Shanghai Local Collection Room, the Library at Shanghai Academy of Social Sciences, and Shanghai Municipal Bureau of Planning and Land Resources. Legal documents and texts, especially those historical statutes or judicial interpretations issued in the early and mid 1990s, were copied from the Shanghai Municipal Archives. More recent pieces of legislation and case studies on law were purchased from different bureaus of Shanghai City Government or regular bookstores.

To triangulate the verbal accounts of relocation told by resident interviewees, I asked to review the legal documents and petition materials related to their *chaiqian* experience. Many respondents agreed to let me make copies of these documents and also responded to my questions about them. These written documents provide important evidence as how law has been utilized to rule disputed relocation. This dissertation adopts a narrative analysis to synthesize the written and verbal data into an analytically persuasive story.

Chapter Two

Capitalist Land Development, Social Conflicts and Law in Reform-era China

This dissertation research builds on studies and theoretical debates in three main areas: China's capitalization and the role of the state, Shanghai's policy of inner city renewal, and social conflicts under China's reformed legal regime. The first body of literature has abounded. Yet, it largely leaves unexamined the question that how citizens adversarially affected by land development have remained as politically active agents in the face of the top-down property regime. Existing studies have pointed out that China's transformation to capitalism is only made possibly by the state's facilitative role in land development. For local governments, land-centered practices, however conflict-laden they are, is an essential strategy to scale up development and to consolidate political resources. In other words, land development, to which *chaiqian* is the first step to realize, is indispensable to China's capitalist transformation. This dissertation will therefore examine the dialectic relationship between the state-backed land development and disputed relocation.

Secondly, the review of studies on Shanghai's inner city renewal policy sets up the historical and societal context in which disputed relocation has emerged. It helps explain why inner city renewal was originally well received by relocated residents as a benign project of spatial modernization, and how the "politics of compensation" (as shown in following chapters) has turned this initial welcome into conflicts. Lastly, legal studies on China's reformed law shed light on Chinese citizens' voluntary use of *chaiqian* law in order to challenge disputed relocation. China scholars have argued that "rights," an important language utilized in recent grassroots movements in China, connotes a

utilitarian concept in China. Rather than as something absolute, natural, or universal, rights are “weighted interests” controlled by the state in China. This dissertation will further examine the shape that grassroots resistance to *chaiqian* has taken under China’s legal regime.

2.1 The State and China’s Transformation to Capitalism

China’s capitalist mode of property development began in 1989 with the enactment of the Land Use Rights Reform that transformed the communist system into a market economy. Previous to this, private property rights were not recognized under the communist regime, with about 95.5 percent of urban land having been nationalized by confiscation and purchase since the Communist takeover in 1949. Land in urban areas was allocated to *danwei* (working units, 單位) for their use for infinite periods, with these working units providing housing, called welfare housing (*fulifang*, 福利房), for their employees. The amended Article 10 of the 1988 PRC constitution allows land use rights to be leased to private developers for up to 70 years. It states “No organization or individual may appropriate, buy, sell, or otherwise engage in the transfer of land by unlawful means. The right to the use of land may be transferred according to law.”¹² The separation of the inalienable land ownership,¹³ which still remains to the state, and the transferable land use rights, which are contractually leased to private developers, has best highlighted “capitalism with Chinese characteristics.” It preserves socialist ideology while at the same time encouraging capitalist practices. Since land was unfettered from the socialist

¹² The previous article reads “No organization or individual may appropriate, buy, sell or lease land or otherwise engage in the transfer of land by unlawful means.”

¹³ In China, the state has ownership over urban land, the rural land is collectively owned.

doctrines, land is no more a publicly-owned resource but a commodity with exchange use value. The residential housing built by private developers on leased land and sold to individual buyers is now called commodity housing “(*shangpinfang*, 商品房).” Under the reformed land regime, inner city renewal (*jiuqu gaizao*, 舊區改造) has become a dominant strategy of land development, one which local governments have fervently pursued. Inner city renewal generates revenues outside local governments’ budgetary limits and, at the same time, extend their political power beyond administrative boundaries (Hsing, 2006a, 2006b, 2010; Lin and Ho, 2005; Lin, 2009; Zhang, 2002; Zhang and Fang, 2004; Zhu, 2004; Wu, 2007; Wu, Xu, and Yeh, 2007). The fervent pursuit of land-centered redevelopment has led to rapid urbanization, large-scale residential relocation, and the resulting social exclusion and conflicts.

Studies on China’s land development have abounded. Lai and Zhang respectively documented, in detail, the reform process and the three leasing methods, negotiation, auction, and tender,¹⁴ through which private developers obtain the using rights of state-owned land from local governments (1995, 1997). This process is highly characterized by local initiatives, influence of foreign investors, corruption, and ground-breaking results of growth. Yeh and Wu’s work was the first which systematically categorized all the emerging forms of land development into seven types, each of which involved different sources of land (rural or urban), development agents (private or administrative), and fees of transaction (1996). They foresaw a profound restructuring of land use pattern from

¹⁴ Compared to negotiation, tender and auction usually reflect the market value of the leased land more accurately but are rarely used.

administrative allocation to market-led development. Observing the rapid surge of land prices in the Pearl River Delta at that time, Yeh and Wu also warned about the increasing conflicts between municipal governments and residents and the possible violence and social instability caused by disputes over compensation (1996: 351). It is well recognized that *guanxi* (關係) networks (translated as “interpersonal connections”), usually understood as conflated with corruption, have an inordinate role in China’s reform economy in re-channeling public property into private hands (He, 1998; Young, 2002). Over 90% of the land leased from the state to private users has been through negotiation—the channel that is “the least transparent, least competitive, and most easily manipulated” compared to the other two methods of auction and tender which reflect more closely to the true market value of land (Lin and Ho 2005: 431). According to Yeh and Wu, in the early stage of reform, between 1988 and 1994, 98.3%, was leased by negotiation between property developers and local governments.

Given China’s one-party state and its dominance over policy-making, there is much research which adopts a state-centered approach to examine land development and urban transformation in Chinese cities. The notion of “local state corporatism” developed by Oi describes local governments’ holding key positions in their corporate-like relationship with private enterprises (1992). Others follow the “growth machine theory,” a political-economic analysis developed by John Logan and David Molotch (1987), to explain how local governments develop formal or informal coalitions to capitalize financial gains from real estate and land development (He and Wu, 2005; Logan, 2002; Zhang, 2002; Zhu, 1999). Neoliberalism is another often-cited theoretical framework that many use to

understand China's continuous withdrawal from welfare provision to the increasingly rely on market forces, such as private home ownership of commodity housing, monetary compensation for relocated residents *et al* (Wang and Murie 2000, Lee and Zhu 2006, also see Harvey 2005: 120-51). Fulong Wu and others have addressed China's transformation to a market-oriented property regime in the face of globalization (Leichenko and Solecki, 2005, 2006; Logan, 2002; Wu, 2002, 2006). Some have conducted case studies to examine the socio-political and policy context in which cities realize their particular place-making strategies (Abramson 2006, Leaf 1995). Empirical studies have also provided evidence that city residents are economically less well-off as a result of China's private-oriented land development (Cervero and Day, 2009; Fang, 2006; Wu, 2004).

In this vast volume of literature, some scholars have begun to question the conventional view that sees the role of the Chinese state as a monolithic, all-powerful, impermeable black box, which has been greatly taken for granted in the current scholarship. This body of work has especially drawn insights from the relational approach to the state's scaling strategies mostly developed in the West (Jessop 1990, 2000; Peck, 2001). In Lin and Ho's evaluation of China's land strategies to prevent agricultural land conversion, they found that "when it comes to the issue of land development...the state becomes fragmented and disintegrated" by the conflicting interests of state agencies, both between different and on the same administrative levels (2005: 412). As a result, the state's land management has produced mixed impacts. On the one hand, loss of farmland has been significantly slowed down by restricting rural

housing expansion. On the other hand, farmland conversion to urban and industrial uses, most of which are financed or supported by the state projects, has remained high. The goal of farmland protection is also hurt by the pervasive illegal land transactions in which various state entities are in fact the main violators of law. Lin and Ho therefore argued that the Chinese state is a “complex, internally heterogeneous, and self-contradictory system, or systems, of power relations” that constantly reformulate their land strategies (p.431). Hsing, in her research on land politics at the level of township governments, holds similar findings (2006a, 2006b, 2010). She argues that China’s decentralization policies do not necessarily deliver the natural outcome of local state autonomy. Rather, it is through the highly contentious process of managing land resources and extracting revenues from land development that township governments consolidate their political power. Therefore, “landed property rights is a power process” in which the state agencies “face challenges and opportunities to define and defend the boundaries to their territorial power, and their governing capacity is tested and built” (2006a: 577, 591).

Although usually not a focal point of analysis, the emergence of social discontent is well recognized in the current scholarship on capitalist land development in China. Corruption and power abuses, which are nurtured by government officials’ involvement in illegal land operation, is a major source of discontent. However, what is implicit in the existing writing is the premise that social conflict is ultimately inevitable because China’s economic growth through land-centered development is effective, indispensable, and imperative. George Lin’s work on how local governments utilize land activities as scaling-up strategies in the face of intensifying global competition has argued for “the

imperative of original capital accumulation [through land]...as the fundamental force[s] underlying the growth and transformation of a region in a less developed and transitional economy such as China” (2009: 443). Using Joachim Hirsh’s words, China’s capitalist land development manifests that “the inherent contradictions within the capitalist mode of production create violent restructuring in every sphere of society and that social restructuring processes require to an increasing extent the intercession of the state” (1981: 593, also see Clark and Dear, 1984).

Although the current research explains the structural source of social exclusion in disputed relocation, they provide little insights into the dynamics of conflicts. In their analysis, relocated residents appear to be politically inactive agents. They leave unexamined the question on how ordinary citizens challenge the authoritarian Chinese state. Plotkin (1987) argues that in contemporary capitalist society, the politics of land-use conflict lies at the juncture of capitalist relations of property, grassroots community politics and an increasingly bureaucratic state. Lin and Ho also stated “without further rescaling...of the power involved in land conversion and transaction, it is doubtful that the processes of massive land development currently taking place in this most populous country of the world can be brought under control to ensure land use efficiency, environmental sustainability and social justice” (2005: 432). Given the top-down property regime, which views relocation as a necessary procedure in order to realize inner city development, what leeway do relocated residents have to pursue opposition to *chaiqian*? Under the new law-based model of governance, what shape does disputed relocation take? What parts of resistance strategies have the sanction of the government

and what parts are cracked-down upon? And what limits are inherent in their adoption of rightful resistance? What goals do residents achieve? And what limits are inherent in their adoption of rightful resistance? In answering these questions this dissertation not only advances the analysis of China's capitalist urbanization, but also will contribute to the understanding of the possible path to a more autonomous society in China.

2.2 *Chaiqian* as a Project of Spatial Modernization

Chaiqian only became a provocative term after China's Land Use Rights Reform. Previous to this, *chaiqian* was an operation to be conscientiously avoided by the local government. For unavoidable situations which required residential relocation, the principle of "first resettle, then *chaiqian*" was to be followed in order to "economize cost and stabilize society."¹⁵ Under Mao's socialist ruling and especially during the violent decade of Cultural Revolution (1966-1976), prolonged deficiency of investment in cities' infrastructure building led to the deteriorated environment in residential communities. Inner city renewal was often referred to and justified by local governments as a way to solve the housing problem "historically-inherited (*lishiyiliu*, 歷史遺留)." Therefore, when the Shanghai City Government first commenced its inner city renewal policy in 1991, *chaiqian* was initially well perceived by residents as an important project of substance; it was simply called *shishi* in Chinese (實事), for spatial modernization. *Chaiqian* was seen as the first step to realize development in the built environment, in which China had made little progress since 1949. From the perspective of reform,

¹⁵ See Shanghai Management Measures on Housing Demolition and Relocation, promulgated on October 20, 1982. At that time, this statute seemed to only be a local enactment in Shanghai and no national law seemed to exist.

chaiqian was a capital investment, involved large-scale construction, and promised to generate long-term return benefits. In short, *chaiqian* was key to cities' modernization and to the welfare of affected residents' futures. Although the term of *chaiqian* (demolish and relocate, 拆遷) clearly announced the coming destruction and disturbance, community residents embraced the potential that *chaiqian* represented and believed the trickle-down effects would eventually reach them. This perception was further nurtured and enhanced by local government that publicly praised relocated residents' "active contributions" to city development by making way for new construction.

Residents' willingness to participate in *chaiqian* also reflected their apathy to the socialist city experience in Shanghai. In 1949, the year that the Chinese Communist Party took over the regime, the per capita residential living area was 3.9 m². The proportion of all city housing which was officially classified as "poor-quality, low standards, and atrocious environment" was 66.4%, including 52.7% of old-style alley housing (*jiushi linong*, 舊式里弄, old *linong* hereinafter) and 13.7% of dangerous and simply-structured shanties (*weipeng jianwu*, 危棚簡屋, shanty hereinafter) (Chen and Geng 1999, p.62).

During the lawless decade of the Cultural Revolution (1966-1976), investment in the housing environment was at most minimal. In 1980, the figures of old *linong* and shanty housing were 41.38% and 9.93% respectively, and the per capita residential area remained at 4.1 m², virtually at the same level as in 1949 (Shanghai Real Estate Market 2004) (Table 1). The severe problem of housing forced citizens to exhaustively utilize their already constricted living space in order to accommodate family members. Self-help garrets, makeshift shelters, and trespassing in public space were common occurrences of

the resource-competitive life in inner-city Shanghai. The collective experience of this housing problem is still a vivid memory among many Shanghai citizens today. A Chinese developer who grew up in Shanghai, and had worked closely with the planning department of a district government for local development projects, recalled “People slept like socks in drawers! On top of beds were at least one or two layers of wooden slabs... you climbed up, lay down, remained still, and slept. Everything was done in one room” (Interview CQP2).

Poor infrastructure and unsanitary environments further worsened the problem of housing shortage. In a 1985 survey, 70% of city households did not have kitchens and needed to prepare meals over coal cookers in the hallways; 60% of families needed to rely on public water supply stations. In old *linong* and shanties, less than 10% of the families had kitchens and gas supply; most of them had no sewer connections and only had access to public toilets (Tao, 1995: 34). A scholar who visited Shanghai in the mid 1970s as a United National urban planning expert recalled what he saw at that time “...a system of open public space had not been implemented at all. Green urban parks existed nowhere. People’s inside-the-home activities spread all the way to the street...preparing meals, kids washing themselves in a basket...Sewer and drainage systems obviously were not in place. It was a summer; smells of food, sweat, humidity, and heat were all mixed up” (Interview RS1). In the 1980s, the housing situation in Shanghai was still described as “Every time when summer arrived, streets in Shanghai had millions of people camped out. It created quite a spectacle. This was exactly because [people] could not bear the packedness and sultriness inside the house” (Fan, 2004: 28). This was “people of the

1980s crowded in on the street roads of the 1930s and -40s” (Xu, 2004: 94). The great scale of the housing problem had spanned decades and also driven residents to look forward to any modernization effort.

Table 2-1 Per capita living area in Shanghai, 1950-1990

Year	per capita living area (m ² /person)
1950	3.9
1960	3.8
1970	4.4
1980	4.1
1990	6.6

Source: Shanghai Real Estate Monograph, 1999

Between 1949 and the end of 1980s, the policy efforts to alleviate the housing problem had been financially constrained and limited to sporadic projects under the centrally-planned economy. Before the 1980s, most of the renewal actions took place haphazardly in Shanghai and a full-fledged result was hardly noticeable. During the 1980s, a more systematic plan was implemented to renew 23 areas in inner Shanghai in which shanties and old *linong* houses were concentrated. The so-called “23 Areas Reform Plan” aimed to demolish old buildings and build high-rise residential apartments in deteriorated neighborhoods, such as Shimin Village (*shimincun*, 市民村) in Xuhui district, Yaoshui Alley (*yaoshunong*, 藥水弄) in Putuo district, and Xiling House (*xilingjiazhai*, 西凌家宅) in Nanshi district. It is worth noticing that unlike the previous renewal practices, which solely relied on the governmental budget, the “23 Areas Reform Plan” allowed

district governments to recruit private money from individual residents and work units (*danwei*, 單位) and also to retain a certain amount of revenue generated by the renewal. Under this model, the majority of affected residents were resettled back in the original neighborhoods after being temporarily housed somewhere else (Xu, 2004: 167). During the 1980s, when the “23 Areas Reform Plan” was carried out, the renewed area was greater than the total renewed area in the previous 30 years (Table 2). While China was still heavily socialist at that time, the experience in those ten years is widely recognized as a “meaningful exploration (有益的探索)” for future city renewal practices in Shanghai.

It was in this historical context that a collective desire for spatial modernization actions had emerged among *linong* residents in Shanghai. Therefore, when the Shanghai City Government announced its first 10-year inner city renewal plan, called the 365 Plan, in 1991, many residents naturally understood property development as benign projects which allowed for the option of rehousing on the original sites. In fact, the 1991 Shanghai Bylaws on Urban Housing Demolition and Relocation Management, which was the highest legal guidelines for all *chaiqian* operations Shanghai in the 1990s, did legally allow “return settlement (*huiban*, 回搬)” for residents to move back to their original neighborhoods through purchasing the newly built commodity housing. Article 49 specified that a preferential calculation for purchase price should be given to residents who requested to return.

However, the majority of affected residents were relocated to the city’s outskirts under the 365 Plan. According to Gu and Liu, “in the late 1990s, the annual demand for

resettlement housing was over 3 million m² but the actual supply of serviced resettlement housing was only 1.5-2.0 million m²” (Gu and Liu, 1997; Wu, 2004: 463). According to a survey, of the 72,728 households relocated in 2001, 97% were relocated to places other than their original neighborhoods in Shanghai (Li *et al.*, 2004: 66). A property developer once justified the *chaiqian* operation for a development project of high-end residential apartments because “the *linong* site should really be demolished for it has deteriorated as such,” however, she also recognized that “as city renewal advances, residents will only be moved further away, away to the outskirts. Here is no place for them.” (Interview CQP3). The developer was referring to Shanghai’s skyrocketing real estate market, which had become unaffordable for ordinary residents who then lost residency in the city. In 2001, the Shanghai City Government announced its second round of inner city renewal actions, which aimed to demolish 20 million m² of *linong* in the next decade.

Table 2-2 Residential areas demolished¹⁶

Periods	Ares demolished (million m ²)
1949-1980 (scattered renewal projects)	0.28
1981-1990 (the 23 Areas Plan)	0.33
1991-2000 (including the 365 Plan)	17.56
2001-2008	47.24

Source: Xu 2004, p. 160, 166; Shanghai Statistical Yearbooks

2.3 Law, Rights (*Quanli*, 權利), and Disputed Relocation

2.3.1 Law-based governance

¹⁶ Statistics on demolished areas are not available between 1991 and 1994 in Shanghai Statistical Yearbooks.

As disputed relocation has become an issue of social stability, the Chinese state has responded with a new model of law-based governance over land-related conflicts. The new model has officially condemned the abuse of power in *chaiqian* process. It has then strengthened its governance power with intensive enactments of law, ranging widely from *chaiqian* operation procedures, qualification requirements for *chaiqian* workers, property appraisal, compensation calculation, to administrative procedures on conflicts adjudication *et al.* In short, a regulatory system has been established to address the existing unlawful behavior and also to govern future *chaiqian* activities.

Many Chinese policy makers and judicial officials who are involved in *chaiqian* lawsuits have begun to critically examine the facilitating role of the Chinese state in *chaiqian* conflicts. That the state is a major agent who violates its own law is widely recognized. In a report written by the administrative review court of the Supreme People's Court in Shandong Province, it is stated that:

In all administrative cases involving urban housing *chaiqian*, the majority of *chaiqian* is [carried out] in the benign name of 'inner city renewal,' 'city greenification,' or 'affairs for public interests.' In fact, *chaiqian* that is truly for public interests is rare. Through investigation, it is found that in the policy framing of 'public-interest *chaiqian*,' inner city renewal has become a bottomless hole (Ye and Wang, 2004: 352). In 2001, at a national conference which was to disseminate the State Council's revised Regulations on Urban Housing Demolition and Relocation Work Management to local governments, six major causes of *chaiqian* conflicts were officially recognized: over-scaled, aimless *chaiqian* that had led to unruly construction and community displacement; unlawful and underpriced compensation; low-quality resettlement housing which had led to resistance to relocation; local governments' vested interests in *chaiqian* which had led to power abuses; low-quality (*suzhi*, 素質) officials who unlawfully

conducted *chaiqian*; and lack of dissemination of policy and law to the public.¹⁷ This kind of official condemnation of the government's own role in creating and intensifying *chaiqian* conflicts, directly made by the high-rank party cadres, shows that the Chinese state has begun to reconstruct its discursive and governance power over land-centered social discontent. Since then, many government documents, which aim to circulate nationwide and to guide local governance, have used forthright and open words to describe *chaiqian* officials' wrongdoings, such as they "eat, take, harass, extort (*chi, na, ka, yao*, 吃,拿,卡,要);" they "bang, smack, rob (*da, zha, qiang*, 打,砸,搶)" during *chaiqian* process; they "sever water, electricity, nature gas, phone service;" "beat up and yell at [residents] (*daren, maren*, 打人, 罵人)" in order to intimidate disobedient residents; they "violate rights and interests (*qinzhanyi*, 侵佔利益)" and "force [residents] to relocate (*qiangpobanqian*, 強迫搬遷)." Officially described, this kind of *chaiqian* is barbarian (*yeman chaiqian*, 野蠻拆遷).¹⁸ These words closely capture many relocated residents' grievances, anger, and frustration, and at times, echo with residents' reassured support of the people's state.

Under the new governance model, law is said to be the most important standard to realign the conflict-laden relationship between citizens and the state in *chaiqian*.

¹⁷ See a report titled Earnestly Carry Through the New Regulations, Enforce Housing Demolition and Relocation Work Management (認真貫徹新條例 加強房屋拆遷管理工作), given at the National Conference on Urban Housing Demolition and Relocation Work on 16 October 2001.

¹⁸ See Notice on Controlling the Scope of Housing Demolition and Relocation in Cities and Towns and Tightening Up Demolition and Relocation Management, issued by the State Council Office, 6 June 2004.

“Protecting citizens’ legal rights” and “to rule according to law (*yifa xingzheng*, 依法行政)”¹⁹ is the central foundation of the new governance model. The contour of this law-governed relationship can be roughly described with excerpts of a talk (*jianghua*, 講話) given by the Vice Director of the Ministry of Construction in 2002, the government branch that supervises land-related activities:

The management of housing *chaiqian* belongs to [the government’s] administrative acts, [the government] should administer according to law, [the government] cannot neglect (*buzuowei*, 不作為) either can it act arbitrarily... The government is to mainly supervise, instruct, coordinate, but not to engage into the actual affairs (*jutishiwu*, 具體事務) of *chaiqian*... The government should reform its [previous] all-including, all-involving (*dabao dalan*, 大包大攬) model... [The government] should withdraw its administrative management from those affairs that... can be resolved through civil law relationships... For instance, the determination for the price of *chaiqian* compensation in fact [should] belong to the civil affairs between evictors and evictees, some local governments start [to intervene] from their own, benign wills, but the static figures cannot reflect the dynamic market prices... either evictors are not happy or evictees are unsatisfied, lots of efforts and little applause...

In short, the Chinese state’s new model of governance over *chaiqian* is “under a fundamental transformation from administrative means (*xingzheng shouduan*, 行政手段) to legal means (*falv shouduan*, 法律手段).”²⁰ The law-governed *chaiqian* should be “fair, just, open” (*gongping, gongzheng, gongkai*, 公平, 公正, 公開) or, simply put, *chaiqian* should become “transparent” (*yangguang chaiqian*, 陽光拆遷, *yangguang* is literally translated as sunshine in Chinese). This law-based governance model is reified by

¹⁹ For instance see Urgent Notice on Earnestly Conducting Housing Demolition and Relocation Work in Cities and Towns and Safeguarding Social Stability issued by the State Council on 19 September 2003.

²⁰ see footnote 7

extensive legislation beginning in the early 2000s to revise old *chaiqian* law used in the 1990s.

However, the large amount of statutes and government announcements have rarely, if ever, addressed the use of labor re-education (勞動改革教育), unlawful detention and inquisition by police, and politically-motivated charges against resistant residents. The state's condemnation is made mostly to address individual wrongdoings but not the institutionalized practices of political punishment. For skeptical observers, China's continuing arrests of human rights defenders²¹ and the struggle of ordinary citizens in seeking redress (Phan, 2005; Pils, 2005, 2007; Wilhelm, 2004) have provided them every reason to suspect that the law-based governance is just another form of state propaganda. However, this new wave of discourse on *chaiqian* clearly signals that the state has recognized disputed relocation as the masses' great concern in China's reform era, and that a law-based governance model over land-centered development is urgently required. And as the following chapters will show, the implementation has in fact rendered a great impact on how *chaiqian* disputes are formulated, challenged, resolved, or denied.

2.3.2 Why does law work in China?

The turn to law in *chaiqian* governance is one manifestation of a much larger-scale project of establishing rule of law (*fazhi jianshe*, 法制建設) in reform-era China. This is post-Mao China's reconstructing of its political legitimacy through law (Baum, 1986; Lubman, 1999; Peerenboom, 2002; Potter 1994a). Deng Xiaoping's famous 16 characters

²¹ 10 May 2009, New York Times <http://www.nytimes.com/2009/05/10/world/asia/10dissident.html>. Also see discussions by Jerome Cohen, a law professor of New York University, at <http://www.usasialaw.org/?cat=29>.

highlight the significance of law in post-Mao China: “there must be law, it must be replied upon; it must be enforced; and law-breakers must be dealt with” (Keith and Lin, 2001: 6). In 2004, the State Council Office released the Policy Guidelines for Implementing Rule of Law as a political leitmotif of governance for the next ten years. The state-run newspaper, the People’s Daily, gave the headline “using power should be supervised, breaking law should be punished, violating rights should compensate” (21 April 2004). Reading the news report, some residents who were in the process of filing *chaiqian*-related lawsuits expressed that the government’s endorsement of rule of law had strengthened their faith in China’s judicial system.

This endorsement of law raises the question of how the model of law-based governance has worked. Viewed through the lens of the purely American-style democracy will not shed much light on this question. Early in the beginning of the 1990s, William Alford noted the complex, double-edged effects of China law and argued that “These reforms have neither been as full as the government’s propaganda would have us believe nor as fallow as its domestic and foreign opponents would like us to think” (1993: 52). Recent studies have also shown that while China’s legal regime is mostly designed for the purpose of controlling social stability, it has still created significant impacts on individual autonomy building, rights protections, and even on empowering citizens’ dissident actions (Potter, 1994a; Biddulph, 2003; Hand, 2006; Clarke, 2007). This makes the “how” question even more intriguing, since even an autocratic state such as China requires some degree of voluntary compliance from its citizens in order to transform legal texts to real effects.

Conventionally, law is seen as an instrument, or pawn, of the authoritarian state for its top-down ruling. Legal studies addressing the formalistic or instrumental use of law in China have abounded. For instance, Pitman Potter stated that although China has included the concepts of equality, justice, and private contracts in law, the problems of political inequality, lack of substantive fairness, and the superiority of state policies over private transactions are still pervasive in China (1994b). By now it is well recognized that China's law is highly politically contingent, serves as an instrument for economic growth, is coercive and is exercised through coercion. In short, China law is "policy law" which lacks independence, and the legal regime still remains largely "rule by law" rather than "rule of law" (Lubman, 1999; Zheng, 1999). Yet, the number of lawsuits that Chinese residents file for court review has increased greatly. The caseload has grown highest in civil and economic cases (Epstein, 1994; Pei, 1997;). Even in administrative litigation, which can be highly political sensitive and in which residents have much smaller odds to successfully challenge the government, there has been a significant climb in administrative cases. It is reported that the caseload of administrative litigation is currently stable at roughly 100,000 cases per year, with a typical "success rate" for plaintiffs of around 15-20 percent (Mahboubi, 2005: 4). And virtually every government office has been subject to some lawsuit, save the State Council itself (Pei, 2003; Landry, 2008).

How should we understand Chinese citizens' voluntary submission to law? Edward Epstein has argued that approaching the ideological power of law helps understand the complex effects of law on the society in post-reform China (1994). As an integral part of

the 1979 economic reform and liberalization (*gaige kaifang*), China's unprecedented legislation was originally intended to simulate and secure foreign investments and economic transactions. Epstein described that under the reform policy law had become an expression of reformed economic relations, especially in the economic and civil areas—such as personal rights, property rights, trades, and contracts. Therefore, law has redefined Chinese citizens' rights and obligations, which were previously determined by Mao's socialism. The legal enforcement has further reified these new definition of rights and obligation in the reform. Epstein concluded law's instrument-to-ideology transformation (1994: 39-40):

In ideological terms, formal dispute resolution has become a material form of the new legal consciousness...By materially translating rights and obligations into social relations (for example, contract, property, tort) through the system of dispute resolution, a mere system of legal ideas is becoming a functioning legal ideology

China's professionalization of legal education, also an important program of reform, has made private practice of law possible and in turn has introduced law to ordinary people in everyday life. Landry's survey shows that there is no evidence to suggest that Communist party members avoid using courts while nonparty residents are incited to rely on courts in order to solve their disputes. This equal acceptance of courts as institutions for dispute resolution is said to be "good politics, and is likely to strengthen China's reform efforts (2008: 234). Together, legal reform has not only accelerated the transformation described above, but also has enhanced the ideological power of law. As a result, Chinese citizens involved in disputes, which multiply rapidly as economic activities advance, have begun to experience their new relations in a legal forms, as each party in a dispute begin to invoke law in an attempt to support his or her claims.

Case studies have examined how the ideological power of law has insidiously controlled, changed, and reshaped individual behaviors and social values and how this transformation has further created uncertainties, social tensions, and conflicts in China. Alana Boland's work on water law showed that local city governments had tried to replace the previously socialist provision system with a market-based water supply system in order to redefine citizens' rights and obligations over water resources. The Beijing City Government's legal requirements for individual residents to sign contracts with privatized water companies, however, had stimulated city residents' opposition and normative questions on whether their relations with public resources, such as water, should be managed through private law (2006). Similarly, in her study on gender politics, Margaret Moo concluded that Chinese women defending their citizen rights in a market economy through lawsuits in agreement with Ewick and Silbey's statement that "each time a citizen participates in the legal process, whether to "applaud or to criticize, whether to appropriate or to resist," the participation sustains "legality as an organizing structure of social relations" (2002: 328). In sum, although law is implemented by the still authoritarian Chinese state, the Chinese citizens to a large degree have accepted, either unconsciously or voluntarily, and exercised law as a legitimate social norm and relation. This dialectic between law as instrument and as ideology in China is nicely described by Epstein that "in its instrumental form law facilitates domination but does not legitimate it. Legal legitimation...only occurs where law operates as an ideology without the need for coercion" (1994: 20).

Seeing law as ideology, the law-based model of governance has a more profound impact on disputed relocation, much more sophisticated than treating it as merely means for social control. E. P. Thompson famously noted “the essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation.” Otherwise, legal institutions “will mask nothing, legitimize nothing” (1975, in Ginsburg and Moustafa, 2008: 6). This means that Chinese law has the potential to empower ordinary residents to challenge injustice and social exclusion. The law-based governance may give rise to as much social tension as it does to conflicts resolution. This shaping process requires our close observation.

2.3.3 Challenge through law

As China has begun to import legal norms from the West to restore the regime’s political legitimacy that had eroded during the Cultural Revolution (1966-1976), and to fulfill the needs of reformed economy, the transplanted legal ideas have since become a potentially powerful channel for dissident citizens to challenge the regime. Pitman Potter described this paradox by using the Chinese proverb “riding the tiger (*qihunanxia*, 騎虎難下)” which means that law is as powerful as a tiger that can carry its riders far away but it is also dangerous, if not impossible, to dismount from it (1994a). William Alford called the China law a double-edged sword that dissenting residents can also wield for their own, very different ends (1993). It is also widely noticed that many participants or supporters of the 1989 Tiananmen democracy movement were law students or legal scholars whose demonstration originated by observing the clash between realities and legal ideals (Epstein 1994).

China's enactment of Administrative Litigation Law (ALL) is a good example of how borrowed legal models from the West could have both top-down and bottom-up impacts. In 1987 Party Secretary Zhao Ziyang called for the creation of an administrative law for citizens whose rights were infringed by state organs to be able to appeal in court. A draft on ALL was published in 1988, and the following year the central government organized several nationwide meetings to build consensus among local governments. It was not until 1991 that ALL went into effect. While the enactment of ALL itself is an extraordinary step for China, legal scholars have reminded that the Chinese ALL is fundamentally different from the Western counterpart for the Chinese courts are severely limited in their authority to review the state's actions (see detailed discussion on ALL's limits in Potter, 1994b, Lubman, 1999, and the impacts of ALL's limits on a *chaiqian* lawsuit in chapter four). For instance, Article 12 of ALL empowers citizens to challenge decisions involving personal and property rights, but it does not mention political rights, such as the freedom of association, assembly, speech, and publication (Ginsburg and Moustafa, 2008: 19). Nevertheless, ALL has significantly empowered Chinese citizens with legal rights to challenge the state.

Pei Minxin analyzed the increase in both courts' caseload and in citizens' awareness of ALL, and suggested that this was indicative of a more hospitable environment in post-reform China for individuals to assert and protect their rights in a broader sense (1997, 2000). Pei further argued that "despite the absence of revolution, China's limited reform has created enough public space to permit a small but tenacious dissident movement persistently to challenge the political legitimacy of the ruling regime" and characterized

China's dissident resistance towards the late 1990s as "waged non-violently in the arenas of public relations and legal procedures" (2000: 24, 30). In rural China, where villagers are generally less rights-conscious of their already meager bundle of rights than their urban counterparts, O'Brien and Li's study shows that both a strong legal argument in the courts and political resources are indispensable for a rural litigant to seek redress for injustice (2004). On China's legal reform, Benjamin Liebman similarly observed that "China's courts have become significant fora for the airing of rights-based grievances" (2007: 637).

The fact that Chinese protesters have held their opposition within the political system by deliberately using the state-sanctioned languages has urged China specialist, Elizabeth Perry, question whether the state-centered, Western theory on social movement, such as those developed by Charles Tilly, Theda Skocpol, Jack Goldstone, Mark Luper, and Manuel Castells, could fully explain the Chinese phenomena. In recent years, greater focus on the societal side of contention politics has revealed important understandings of China's social conflicts in particular and the changing state-society relationship at large.

In *Challenging the Mandate of Heaven*, Elizabeth Perry argues that China's colorful history of rebellion, from imperial, Republican, to Communist times, is markedly characterized by the close relationship between the state and society (2002). While sharing resemblance to other authoritarian states in using government repression to crack down social unrest, Communist China differs from others, Perry further points out, in that the Chinese state "[has] periodically encouraged—indeed compelled—its citizens to express their private criticisms publicly in the form of big-character posters, struggle

sessions, denunciation meetings, demonstrations, and the like” (p.xxiv). The Cultural Revolution was the most dramatic example of that notion gone astray. Yet, the various “rights talks,” such as the ones condemning *chaiqian* violence in previous sections, publicly given by Chinese high-rank officials do show that the Chinese state is proactive, constantly navigating “the shoals of sharply conflicting and potentially destabilizing class and group interests in a period of explosive social change” (Perry and Selden, 2000: 20). This statist effect on social protest is that “protesters remain unusually attentive to signals from the central leadership” and “the clever appropriation and inversion of officially sanctioned rituals and ceremonies for subversive purposes is a prominent feature of protest behavior” (Perry 2002: x, xxiii).

In *Rightful Resistance in Rural China*, O’Brien and Li’s research on contentious politics in villages has concluded with similar findings (2006). Building on James Scott’s theory of everyday resistance, which emphasizes forms of resistance that occur “within the official discourse of deference (1989, 1990: 106),” O’Brien and Li call Chinese villagers’ defiance “rightful resistance” because it “is [...] a product of state building and of opportunities created by the spread of participatory ideologies and patterns of rule rooted in notions of equality, rights, and rule of law (p.4).” By adopting rightful resistance, resisters typically adhere to established values among the powerful, but also turn existing laws, policies, and official discourse to new purposes (also see Scott and Kerkvliet, 1986). Therefore, resisters remain highly attentive to official policies and government officials who either sympathize with unjustly treated villagers, or who simply seek for their own political interests by turning resistance against other officials in

the fragmented and divided power relationship. For O'Brien and Li, the crucial tactics for villagers employing rightful resistance depends less on whether the system is open, closed, or improved but more on discerning which "structural opening" could be exploited and what would be an "opportunity for what" (p.47-49, 91-94). Therefore, rightful resistance is a complex process of obtaining information about beneficial policy and possible allies (central government, media, researchers *et al.*), and packaging the information into an "invariably noisy, public, and open" protest under the state sanctioned norms and languages (p.4). In the urban context, city residents have also employed the strategies of rightful resistance to defend their communities. For instance, an ethnographic study of a Shanghai community movement shows how urban residents argued against local government's development action but at the same time avoided a direct challenge to the state's political authority (Zhu, 2004). The movement's organizers sought to legitimize the opposition to the Street Office's unlawful converting of a community park to an exclusive center for retired government cadres by using the environmentalism discourse under which the park was argued to be preserved for its greenery functions. This strategy was seemingly neutral and politically safe because environmental sustainability, under which greenification as a basic component, was a policy goal promoted by the Shanghai City Government so as to meet the global trend.

2.3.4 Rights and its interplay between interests

In recent years, rights (*quanli*, 權利) or rights protection (*weiquan*, 維權) has become a common language that is greatly used and raised in resistance actions in China. It is widely agreed that China's recent lawmaking that either codifies rights or pronounces

their importance has made voicing of divergent even dissident viewpoints possible in China today. The use of rights in *weiquan* generally has a less provocative implication, ranging broadly from the narrower meaning of pecuniary protection, such as contract protection or consumer rights, to the more universal use, such as legal and housing rights. Highly provocative demands for human rights or political rights, such as democracy and liberation, certainly might be included and suggested in the use of *weiquan*, but explicit articulation is rare. The recent rights-centered approach has two important meanings. First, by voicing their grievances in the language of rights, ordinary citizens attempt to invoke the Chinese law for legal protection, such as private property rights, freedom of expression in the Constitution. Second, by explicitly demanding rights, resisters announce that these rights are something universal and address the existing gap between what is promised in law and what is realized on the ground. In short, by couching disputes in a discourse on rights, resistant residents try to present their cases as legitimate by seeking redress within the system and also to avoid political ramifications.

Yet in *chaiqian*, while law has been written to expand some claims of rights, it has also constrained others. For instance, the legal right of return settlement (*huiban*, 回搬), a request most frequently raised by relocated residents asking to move back to their original neighborhoods after the completion of city renewal, was legally protected by Article 49 of the 1991 Shanghai Bylaws but was removed entirely from the 2001 Shanghai Bylaws. On the other hand, under the 2001 Shanghai Bylaws compensation is to be calculated according to the evaluated market value, conducted by officially certified appraisal company, of the to-be-demolished house (not including the value of the land).

Although many complain that the monetary compensation of the appraised value could hardly allow them to remain residency in inner Shanghai, most agree that the 2001 Shanghai Bylaws are more “scientific” than the previous 1991 version and therefore prevent arbitrary, backdoor decisions over compensation.

This disparity urges us wonder what the term of rights (*quanli*) exactly means in the Chinese context. If we look more closely at the changing legal texts in the various areas of rights in *chaiqian* (see chapter three), the publicly announced statement of “protecting residents’ legal rights” might spur more questions than assurance.

In 1979, Wang Guagwu, a renowned China historian, writing at the very same time that China’s reform policy took place, contended that rights existed as reciprocal to duties in Chinese history, and power (the ruling regime or the elite who wished to overthrow it) was at the center that drove changes to the definition of this reciprocity. During the extreme time of the Cultural Revolution, everyone had duties but few had rights, since absolute power was lodged in the Great Helmsman, Mao Zhedong himself. Rights is a most versatile word, defined differently by different Chinese philosophical philosophies, chief among them Confucius. Wang argued that *quanli* (權利), rights in Chinese, “reveals a particular attitude towards the idea of rights which is contrary to Western usage” (1980: 175). In the West, the word of rights has the connotation of something absolute and universal, derived from the phrase ‘natural rights.’ In China, the character *quan* (權) means power, influence, and privilege, and *li* (利) means profit and benefits. And the combination of *quan* and *li* in many cases simply became shorthand for power and profit. As a result, Wang reminded that it was easy to see rights “not as universal principles, but

as instruments, as means to a higher end” in China (p.179). This end could be the revival of China in the early nineteenth century, Socialism under Mao, or national interests in contemporary China.

Addressing more specifically the profit (or interest) aspect of rights rather than a historical approach, legal scholar Randall Peerenboom has argued that rights in China are, to a large degree, simply viewed as a subset of interests which mostly have consequentialist or utilitarian definitions, such as the aggregated, economic outcomes (1995). Like Wang, Peerenboom believed the West sees rights at deontological in character while China holds the opposite. As a result, when United States and China discuss human rights, the two sides are often “sleeping in the same bed but dreaming different dreams (*tongchuang yimeng*, 同床異夢) (1995: 359).” In other words, the two sides use the same word but mean entirely different things, as the Chinese maxim metaphorically suggests. Peerenboom attributed to four sources of evidence to explain why China mostly treats rights as utilitarian but not deontological: linguistic, textual, anecdotal hypothetical, and institutional (p. 365-74). Simply put, Peerenboom argues that China has an interest-based theory towards rights, one that treats people as ends and fails to take the distinction between individuals seriously. The implications are that conceptually, rights might be just words if rights do not have special status that distinguish them from interests. At the practical level, when rights are interpreted as interests, the burden shifts to the individual to show that one’s interests are somehow more important than those of society.

Wang's and Peerenboom's works can also explain why rights and interests are most of the time used as one word or are seen as interchangeable without distinguishing them both by citizens and scholars alike in China. In recent years, there is also a politically deliberate reason to relate interests with rights in legislation. The Chinese leadership believes that the focus on "interests" addresses more closely the public anxieties over the immediate consequences of market competition and related societal change (Keith and Lin, 2001).

If the use of the word *quanli*, or rights, inevitably conjures up not only the image of the state and but also its interplay with interests under the state power, I believe it is important to examine disputed relocation, which recently has been couched in the language of rights. Relocated residents argue against rights violation, and in response, the government officials promise rights protection by law. What shape will disputed relocation take under this common language of rights?

On the one hand, for relocated residents, if resorting to rights also means rendering agreements to work within the existing legal framework, then rights expression is a politically safe channel through which to voice grievances. Eva Pils's article on rights activism in China has stated that "'*Wei quan*' [protecting rights] is a common, albeit recent, term in China and by itself not politically 'sensitive' (2007: 1225). According to Fu and Cullen's taxonomy, in *weiquan* lawyering in China, the majority are the so-called moderate or critical *weiquan* lawyers who mostly represent cases that are at most politically sensitive but not politically prohibitive (2008: 118). More importantly, these *weiquan* advocates all assert their claims of rights protection in the language of the

current legal framework so as to argue their concerns within the one party state regime. On the contrary, radial *weiquan* lawyers, who stand directly opposite to the state by representing or organizing politically dissident cases, receive harsh crackdowns by the state and are obviously still few in China.

Since basing challenges on an interest-based discourse creates fewer political ramifications, some scholars have argued that affected citizens could take litigation “gathering around interests rather than class or party” in order to “to struggle autonomously for group defined interests” (Woo, 2002: 325-327). In China, few *chaiqian* cases receive full, in-depth reporting. However, a widely watched, internationally-reported case in 2007 epitomized how adept articulation of legally-protected rights might work in *chaiqian* conflicts. Wu and Yang had persistently resisted *chaiqian* and rejected underpriced compensation in a city renewal project in downtown Chongqing. To force Wu and Yang to comply, the *chaiqian* company dug a 10-meter-deep, several-meter-wide, moat surrounding their house, which had been the only remaining building on the site since *chaiqian* began in 2004.²² The sharp contrast between the huge moat and the old, two-level house unexpectedly highlighted the huge banner of “citizens’ legal private property rights cannot be violated” hung outside the house. This almost theatric display of resistance immediately became the focus of the news report. The couple had resisted *chaiqian* skillfully and forcefully. Wu’s masterly citation of law, including the PRC Constitution, statutes issued by the State Council, a wide range of local regulations, many

²² See news reports and pictures on this event in Southern Weekend [nanfang zhoumo], 29 March 2007. <http://big5.southcn.com/gate/big5/www.southcn.com/weekend/all/200703290001.htm>, accessed on 13 February 2010.

times silenced *chaiqian* officials, incited applause from spectators, and also became the focus of news reports and on-line discussion. *Southern Weekend*, an independent medium, commented that this *chaiqian* event “[shows] *chaiqian* resisters are no more illiterate either in knowledge or in law who only know to kneel down in front of the gate of governments” (January 18, 2008).

However, if claiming rights also means inviting the state’s power of weighing interests between individuals and the society, then rights has indeterminate concept and is a weak tool to raise fundamental challenges. Another internationally-reported *chaiqian* protest over the “Eastern Eight Blocks (*dongbakuai*)” in Shanghai shows that rights are ultimately subordinate to the state power. Zheng Enchong, the lawyer who represented relocated residents and filed a collective lawsuit against the well-connected developer, Zhou Zhengyi, was jailed for three years under the charge of “disclosing state secrets.” It is reported that “*weiquan* movement” and “*weiquan* advocates” have been strictly controlled and cracked down upon by the Chinese government.²³ Elizabeth Perry once argued that there were two fronts that researchers should proceed in order to understand social protest in China. The first is the local contradictions that generate conflicts. The other is “the ways in which state actions serve either to immobilize or to intensify these ongoing modes of contention” (2002: xxvi). In light of the second front, this dissertation

²³ See Jacobs, A. 2010. China’s Defiance Stirs Fears for Missing Dissident. New York Times. <http://www.nytimes.com/2010/02/03/world/asia/03dissident.html?scp=3&sq=gao%20zhisheng&st=cse>, accessed on 13 February 2010. Also Wong, E. 2010. Editor Reviewing China Quake Deaths Is Sentenced. New York Times. <http://www.nytimes.com/2010/02/10/world/asia/10quake.html?scp=5&sq=gao%20zhisheng&st=cse>, accessed on 13 February 2010.

asks, what effect will the Chinese concept of “rights as weighted interests” have as a state action to immobilize disputed relocation?

In my interviews with relocated residents, many expressed that they received the resolution-like question of “how to economically solve the case once for all” at least at some point during their long-term confrontation with *chaiqian* officials. On some occasions that particularly required politically harmony, such as during the conference period of “Two Sessions (*lianghui*, 兩會)”²⁴ in Beijing or important international events, active residents would receive visits by *chaiqian* staff, who tried to calm down potential protests in order to maintain social order. Very often, the officials or staff would offer some type of short-term resolution, such as arranging housing, solving children’s schooling problems with transfer of school districts *et al.*, or other matters that residents were not able to achieve previously. This interest-based approach to residents’ rights-based opposition creates mix results. Some residents see the government’s concession on economically-termed resolution as a breakthrough in the usually stalled negotiation with the authority. And many were energized by these occasional victories and came to see disputed relocation as a process of waiting and seeking opportunities for substantive, yet small, results. Some felt frustrated and powerless because they knew that a special offer was a short-lived gesture and nothing fundamental had changed. During the seemingly endless process of resistance, many have accepted lump compensation under the combined effects of the state’s crackdowns and fatigue.

²⁴ “Two Sessions” is a shorthand for The National People’s Congress and Chinese People’s Political Consultative Conference.

This shows that disputed relocation is a work in progress under China's renewed model of law-based governance. Examining residents' everyday experience of confronting, negotiating with, and contesting *chaiqian* governance will shed important light on our understanding of disputed relocation in urban China.

Chapter Three

The Evolving Law of Disputed Relocation: Constructing Inner City Renewal Practices in Shanghai, 1990—2005

3.1 Introduction

This chapter examines Shanghai's extensive legislation on *chaiqian* in order to understand the paradoxical relationship between China's use of law and the origin of disputed relocation. Since China's adoption of Land Use Rights Reform in 1979, inner city renewal (*jiuqu gaizao*) has been Shanghai's dominant land development strategy. Paradoxically, this conflict-laden renewal process originates from China's extensive legislation to create a regulatory system of land and real estate development (Potter, 1991; Clarke and Howson, 1996; Lin, 2001; Clarke 2007). This chapter therefore seeks to understand a twofold question. How is the paradox of increasing social unrest amidst legal modernization situated within China's legal advancement to attain economic growth? More specifically, how is law used to realize and legitimate property market expansion which is itself inherently relocation-intensive? These questions are largely underresearched in the existing studies focused on the role of China's state in economic and urban development (Oi, 1995; Zhu, 2004; Lin and Ho, 2005; Hsing, 2006; Smart and Lin, 2007), land and housing reform (Lai, 1995; Yeh and Wu, 1996; Zhang, 1997; Logan et al., 1999; Wang and Murie, 2000), property rights and institutional change (Walder, 1992; World Bank, 1993; Ho, 2001), and urban governance in globalization (Solinger, 1992; Logan, 2002; Wu, 2006). More process-based studies (Leaf, 1995; He and Wu, 2005; Abramson, 2006) have revealed the social tension arising from urban

redevelopment but have not yet centered ordinary residents' struggles in their confrontation with law, the ultimate expression of the legitimacy of development actions.

This chapter analyzes law relevant to Shanghai's inner city renewal as an important prism through which to examine the dialectic relationship between property practices and disputed relocation. The main purpose is to show that law is not only a regulatory regime external to city renewal practices but is also by design an integral part of what has paved the way to today's real estate market in Shanghai. Through lawmaking and implementation, the City Government has played a significant role in initiating a nascent, private real estate market in the early 1990s. To respond to the vicissitudes of the market in the mid-late 1990s, legal expediency was adopted to continuously realize market growth through particular renewal practices, such as greenification and monetary compensation for displacement, which inherently required off-site, large-scale residential relocation. Shaped greatly by law, disputed relocation in turn has emerged as a force that could potentially challenge the very legitimacy of city renewal actions which those laws have helped to create.

3.2 Regulatory Regime in Post-reform China

China's unprecedented volume of lawmaking in the reform era represents its attempt to establish a law-governed system to both attain economic development and strengthen the regimes' legitimacy through the endorsement of rule of law (Baum, 1986; Potter, 1994, 1999; Lubman, 1999; Keith and Lin, 2001; Peerenboom, 2002; Clarke, 2007). Yet, land-centered conflicts have abounded. Lü Junhua's and Daniel Abramson's accounts of three Beijing redevelopment projects in the early 1990s showed that residents' discontent

derived from the loss of informal economy (such as extra self-built living space, home-run businesses, etc.), the loss of amenities associated with a good location in the inner city (such as school districts, hospital services, etc.), and the harsh situation of temporary housing caused by crude and swift relocation (Abramson, 1997: 73). Fulong Wu's survey analysis of relocated residents in Shanghai concluded that although the majority of surveyed residents were satisfied or neutral with the results, there was dissatisfaction with relocation outcomes among residents displaced by infrastructure building and real estate redevelopment (2004: 468). Li Zhang's ethnographic fieldwork in Kunming revealed that 'most families targeted for eviction are actually willing to give up the current place in exchange for a new home, but they are extremely dissatisfied with the politics of compensation' (2004: 256). The combined evidence suggests that the city's deteriorated environment, resulted from the pre-reform era, has turned longtime residents into willing partners of the city growth coalition, but residents' embrace of modernization does not necessarily ensure a satisfactory negotiation, nor does it assure their equal participation in the renewal process. In short, disputed relocation is a collective grievance stemming from both inadequate compensation and procedural injustice.

Two legal studies examining displacement conflicts argue that China's regulations on *chaiqian* (relocation and demolition) bode ill for the installation of rule of law as these regulations lack protection of private property rights and are subject to political interference (Wilhelm, 2004; Phan, 2005). The authors conclude that any legal remedies would only gloss over the currently flawed system if lacking market-based standards for compensation, participatory decision-making, and a better-defined public interest in the

regulatory regime. Although acknowledging the significant progress achieved by China's legal modernization, legal scholars also offer a general critique of the formalistic and instrumentalist use of law in China, often stating that they have led to unjust consequences. For instance, Potter argues that 'Regime ideals of justice as formalistic compliance with state rules and procedures presume that the policies whose enforcement is sought are themselves just' (1994: 339). Alford points to 'the willingness of states or individuals to use legality as an instrument to achieve their policy objectives but to depart from it when compliance with the law no longer serves the attainment of such ends' (1994: 65). In other words, China law has become an expression of the reformed economic relations and remains highly contingent on political and policy purposes (Epstein, 1994).

Recently, researchers seeing China society not through the lens of American-style democracy have begun to examine ordinary citizens' increasing use of law as a non-confrontational channel through which to encounter the top-down state (Perry and Selden, 2003; Potter, 2004; Chan *et al.*, 2005; Chen and Wu, 2006; O'Brien and Li, 2006). The significance is that once legal enactments are officially announced to the public, they become a double-edged tool that dissenting residents can also wield for their own, very different ends (Alford, 1994). While much work has documented the regulatory regime's recent writing of universal rights and globalized norms, such as freedom of expression, equity, and intelligent rights, into China Constitution and also especially in laws related to economic transactions (Potter, 2003; Clarke, 2007), research

on *chaiqian* law—whose implementation profoundly affects people’s everyday life—has still remained inadequate.

3.3 Law, City Renewal, and Disputed Relocation in Shanghai

Shanghai’s inner city renewal policy originated in a time when the city suffered from its dilapidated built environment at the turn of the 1990s. The per capita residential living area in Shanghai in 1990 was 6.6 m², representing just a 2.3 m² increase from 1976, the year in which the Cultural Revolution ended (*Shanghai Real Estate Monograph*, 1999). Tension over the deprived city environment created a collective desire for spatial modernization actions. The policy goals that the Shanghai City Government set up have been ambitious, yet they have been achieved. In 1991, an official announcement stated plans to demolish 15 million square meters of deteriorated areas, among which the priority was given to the 3.65 million m² of sizable and structurally dangerous tents, shanties, and *linong* (lane housing) communities (the so-called 365 Plan) (Xu, 2004). *Linong*, which has historically characterized inner Shanghai, occupied 35.4 million m² in 1990 and the figure had decreased 33% to 23.8 million m² by 2005. Tents and shanties took up 1.23 million m² in 1990 and are nearly non-existent in Shanghai nowadays.

Shanghai’s principal legislation on residential relocation has evolved through two versions since 1991: the Shanghai Bylaws on Urban Housing Demolition and Relocation Management of 1991²⁵ (1991 Bylaws) and the amendment to these bylaws in 2001²⁶ (2001 Bylaws). This legislation evolved over the course of a decade from a statute representing socialist ideology to one supporting the market economy. In the middle of

²⁵ Issued by the Shanghai City Government on 19 July 1991.

²⁶ Amended by the Shanghai City Government on 29 October 2001.

the spectrum, numerous statutes, despite holding a lower legal status and overriding the 1991 Bylaws in many ways, codified particular property practices to realize city renewal policy. Together, these legal enactments have paved the way for real estate market expansion in Shanghai.

3.4 Codification of City Renewal Practices: the 1991 Shanghai Bylaws and Their Overriding

3.4.1 Regulating large-scale relocation

The 1991 Bylaws represented the City Government's attempt to incorporate the anticipated decade of rapid development and large-scale relocation into a law-governed system. A management system was set up to delineate the administrative hierarchy and operating procedures (Articles 6 and 7). To justify demolition actions, evictors were required to obtain government-issued demolition licenses (Articles 3 and 13). To determine resettlement houses (*anzhifang*) for displaced residents, a numerical formula divided all relocation activities into two types, those remaining within the inner city and those moving to the city outskirts, and quantified the commensurate floor area requirements before and after relocation (Article 51).

Despite the objectivity projected by the relocation formula, the 1991 Bylaws incorporated numerous ambiguous terms. The ambiguity lay in the emergence of private enterprises in urban modernization and the challenge of aligning the new state-market relationship with a relocation process viewed as legitimate by those affected. For instance, Article 16 reads 'The People's Government can organize and coordinate demolition and relocation (*zuzhi tongyi chajian*),' but the ambiguity of the term 'organize

and coordinate' weakened opposition against government involvement in demolition efforts by private developers.

The ambiguity of obligations and rights became especially contentious when their final interpretation was left undetermined. Article 48 stipulates that location of resettlement sites 'should be *collectively* arranged according to . . . the principle of inner city renewal; evictees should abide by [the principle]' (emphasis added). Critical to residents' rights to return to the original neighborhood, Article 49 states that 'in the case of commodity housing development residents *in general* should move to the city's outskirts. If residents request to be relocated in the original site, [residents] should purchase the commodity housing built in the original site. . . .' (emphasis added). These exhortational and ambiguous terms, such as 'collectively' and 'in general' in the articles, reflect that the 1991 Bylaws stand as legally binding guidelines whose actual application is open for contestation between the state, property developers, and residents.²⁷

3.4.2 Initiating a private housing market

The Shanghai City Government's first step toward city renewal was to support private property investment whose development automatically led to land use conversion. The Provisional Rules of Utilizing Foreign Capital to Develop and Manage Commodity Houses for Domestic Buyers²⁸ (1993 Provisional Rules) represented the first legal initiative which combined the political and capital powers to realize such an attempt.

²⁷ For discussion on the language used in China's law, see Ross, C. and L. Ross (2000) Language and law: sources of systemic vagueness and ambiguous authority in Chinese statutory language. In K. G. Turner, J. V. Feinerman and R. K. Guy (eds.), *The limits of the rule of law in China*, University of Washington Press: Seattle, WA.

²⁸ Issued by the Shanghai City Government on 28 December 1993.

According to the 1993 Provisional Rules, the only criterion for a neighborhood to be chosen as a renewal site was that deteriorated housing, including tents, shanties, and *linong*, should occupy more than 50% of the built-up area. Apart from this indicator, analysis of the 1993 Provisional Rules shows that property developers' investment decisions largely determined the renewal plan and the location where renewal activities took place.

The first article of the 1993 Provisional Rules clearly states that '[the rules are made] in order to utilize foreign capital to develop and manage commodity houses for domestic buyers, and to accelerate the renewal pace in the city's old areas.' Critical to the formation of both renewal plans and renewal locations, Article 9 states, 'In utilizing foreign capital . . . *the needed sites [by foreign developers] for demolition and relocation should be incorporated in detail into each district government's inner city renewal plan; district government coordinates and sanctions [its renewal plan]*' (emphasis added). Under this article, location of development sites in the inner city, which were selected by foreign property developers' market strategies, and the resettlement sites to which original residents were to be relocated, became legitimate and founding components of each district's official renewal plan. Because of the policy emphasis on developing the suburban area of Shanghai, numerous new towns and resettlement sites were built up in the outskirts of the city (*Shanghai Urban Planning Monograph*, 1999; *Summary of the Comprehensive Plan of Shanghai 1999–2020*). The 1993 Provisional Rules viewed the development of commodity housing as commensurate with the completion of city renewal. As a result, the formation of the city's overall renewal plan became amorphous

and its venue was constantly contingent on foreign developers seeking a profitable return in inner Shanghai.

In 1995, the City Government formalized the 1993 Provisional Rules²⁹ (1995 Rules). Article 13 of the 1995 Rules became the most crucial codification of the state's direct involvement in residential relocation for private development, stating that 'The housing demolition generated by commodity housing development in which foreign capital invests is to be *carried out by the government in an organized and coordinated manner*' (emphasis added). The government charged developers a management fee of only 3% of the total actual cost of demolition. Despite the policy weight given to city renewal, community residents most of the time were only informed of relocation plans when the land had already been leased out to property developers. When implemented on the ground, many relocated residents experienced the government's 'organized and coordinated' supervision of relocation as a forcible encounter with government officials. This is illustrated by one resident's experience:³⁰

Two officers from the local demolition office (*dongqianban*) always proceeded the demolition work to us as a group. They came to obtain our household registration, proof of single child, and proof of house ownership. Initially [they came] with the staff of Street Office and tried to talk us into an agreement; later they came with policemen and hard tactics. No matter what, we never knew who the developer was. Everything operated through the government.

As a result, the 1995 Rules insulated foreign developers from face-to-face confrontations with displaced residents by legally allowing the district government to manoeuvre local bureaus into a task force for development projects.

²⁹ Issued by the Shanghai City Government on 28 August 1995.

³⁰ Interview June 2005, Shanghai.

In an urgent attempt to start up a private housing market, speedy, state-operated demolition was enthusiastically praised. *Xinmin Evening News* described the booming real estate market as ‘vibrant as the heat in a Shanghai July’ (18 August 1992). The Yang Pu district government announced its policy implementation for ‘no risk development’ (*Wenhui Daily*, 1 December 1994). And the Pu Tuo district government reported that 3,499 households, 62 work units, and 102,000 m² were relocated and demolished in less than 9 months, which set a new record at that time (*Wenhui Daily*, 7 June 1995). As one property developer vividly recalled ‘It was a time to turn the city over. Demolition symbolizes progress!’

As demolition-intensive as it was in the 1990s, the 1993 Provisional Rules and the 1995 Rules still legally allowed the ‘return settlement’ (*huiban*) by setting up a favorable price at which relocated residents could purchase the commodity houses built in their old neighborhood (Article 49 of the 1991 Bylaws; Article 10 of the 1993 Provisional Rules; Article 12 of the 1995 Rule). This regulation on return settlement gave residents the legal ground to reject compensation contracts that rehoused them in areas remote from their home neighborhoods. The majority of relocated residents’ actual experiences, however, contradicted what was allowed for in the law as their requests were usually denied by the local government. Through the codification of property practices, a real estate housing market with limited openness to relocated residents was being established.

3.4.3 Curbing the speculative housing market

Beginning in 1997, the official discourse on Shanghai’s city renewal began to be associated with a new policy objective that was contrary to encouraging the building of

commodity housing. In 1997, a government document, entitled ‘Opinions on Effectively Consume Vacant Commodity Houses and Accelerate Inner City Renewal’³¹ (1997 Opinions), reported that 55.7% of the 365 Plan had already been achieved and reiterated the goal of completion before the Millennium. The 1997 Opinions then set forth that:

The focus of city renewal . . . should be tightly combined with *the consumption of vacant commodity housing* [because the link is] beneficial to the improvement of Shanghai’s city image and investment environment, to the upgrading of residents’ quality of life, as well as to adjust the overall real estate housing stock . . . and to facilitate the benign circles of the real estate market (emphasis added) (Article 1). This string of justifications can be further illustrated by the statistics on the vacant commodity houses that were excessively developed in the previous years. In 1995, the vacant residential commodity housing on the market was about 3.46 million m², and another 5.30 million m² of new housing was built within the same year. The number climbed to 7.30 million m² in 1997 with another 9.68 million m² of annual development. By 1999, the vacant commodity housing was nearly three times the 1995 figure.³²

At first glance, the 1997 Opinions appear to be a legal expediency designed to alleviate the particular problem of a stagnant commodity housing market at that time by allowing peculiar renewal practices. When implemented, however, the 1997 Opinions had a much more far-reaching impact on shaping disputed relocation and became an important turning point in Shanghai’s legislation on real estate development.

One innovative but also controversial practice established by the 1997 Opinions was called ‘greenification.’ Article 3 states that ‘For any designated sites for city renewal,

³¹ Issued by the Shanghai City Government on 13 May 1997.

³² Statistics on vacant commodity housing in Shanghai are only available in the *Shanghai Statistics Yearbooks* up to 1999.

greenification (chaiwujianlou) can be used as city infrastructure building. According to the rules on city infrastructure building, *off-site relocation can be conducted once and for all*' (emphasis added). Greenification meant that property developers could reserve the land (*chubeitudi*) for development for three to five years after replacing the current community with gardening landscape.³³ To absorb the excessively vacant stock of commodity houses in the market, Article 3 also legally permitted the practice of 'exchanging vacant houses for land.' This legal design allowed property developers who held vacant commodity housing to 'directly participate in city renewal with the [vacant] houses, *exchange [vacant] houses for land*, and greenify the land permanently or temporarily; *the approved vacant houses are to be used for residential relocation*' (emphasis added). All relevant preferential policies, such as the exemption of transaction or environmental protection fees, access to preferential land leasing prices, and so forth remained intact with the introduction of greenification. In short, regardless of how informal and complex 'greenification' may have been when implemented on the ground, the central spirit of the 1997 Opinions and related legal texts³⁴ was clear: demolish, greenify, and reserve land for later development.

The 1997 Opinions generated two far-reaching impacts on disputed relocation. First, because 'greenification' enjoyed the same legal backing as city infrastructure building

³³ Also see Measures on Accelerating Renewal of Structurally-dangerous Houses in the Inner City, issued by the Shanghai City Government on 25 August 1998.

³⁴ For example, see Additional Opinions on Effectively Consuming Vacant Commodity Houses and Accelerating Inner City Renewal, issued by the Shanghai City Government on 18 December 1997. This document further specified the regulations on the process of greenification.

(e.g., the construction of highways, airports, railroads, etc.), the 1997 Opinions overrode the 1991 Bylaws on residents' legal rights of return settlement. More importantly, relocated residents tended to keep their dissent to a mutter of protest when demolition was announced in the name of state projects. The state's representation enhanced the perception that the public interest of the project was unquestionable and challenging it would lead to formidable consequences. Thus, in effect, 'greenification' not only held back redundant development in commodity housing but also forestalled and reduced possible resistance actions.

Second, since some of the green space created under the 1997 Opinions was temporarily reserved for later development, discontent grew when residents discovered that high-rise buildings were being erected a few years after their requests to move back to the original site were turned down.³⁵ The deeper impact was a growing sense of distrust of government actions related to city renewal. During a fieldwork period in 2005, I interviewed a resident at his nearly demolished community after he had visited the on-site demolition office to attempt to resolve an unsettled negotiation.³⁶ He stated that all of the residents had been informed that the site was leased out for the development of an upscale boarding school, which was classified as infrastructure building and consequently ruled out the option of return settlement. The resident's thoughts on the matter were indicative of the public's general distrust of renewal operations at the time:

³⁵ For instance, see Relocated Household's Experience in Shanghai (*Beijing Spring*, September 2005, Issue 148).

³⁶ Interview, July 2005, Shanghai.

Is this school a public school? I haven't heard of any public boarding schools in Shanghai. It [the development] is probably not about a school at all . . . But reasoning is pointless. It only aches your head. As long as what they [demolition office] offer reaches the bar set in your mind . . . A few years ago, people in Xiao Mu Qiao area were relocated. The demolition office said a city park was to be built. In the beginning it was indeed lawn. You can go down there after we talk; right now high-rise buildings are standing on the ground!

3.4.4 Experimenting with monetary compensation

The 1997 Opinions also began to experiment with monetary compensation, which eventually became the dominant method in city renewal practices. Article 4 provided the rationale for monetary compensation that reads, 'In order to increase the flexibility of relocation [methods] and accelerate the consumption of vacant commodity houses, monetary relocation should be provisionally used in designated renewal sites.' In short, 'greenification' and 'monetary relocation' worked together to curb the impetuous development of the commodity housing market in Shanghai. China's adoption of monetarization policy as a new form of urban governance has been generally analyzed through two perspectives. The pragmatic approach has argued against in-kind housing subsidy as it impairs feasibility (Dowall, 1994); the other has focused on the force of the global economy in turning policies neoliberal in China (Wu, 2001; Lee and Zhu, 2006). The analysis of the 1997 Opinions reveals that the introduction of monetary compensation was a contextually-sensitive, driven-from-within design intended to overcome the pressing problem of excessive commodity houses in the late 1990s whose continued existence would lead to a challenge to reform-oriented development.

The detailed rules on monetary relocation were quickly released and appeared in full in the government-run newspaper *Jiefang Daily* on January 15, 1998. In the news report, the director of the Demolition Management Bureau of Shanghai called monetary

compensation a government action to bridge the shortage of resettlement housing and the excessive supply of commodity housing. As an attempt to ensure that this bridge was established, the City Government promulgated the Provisional Rules on Demolition, Compensation, and Relocation for Renewal Sites of Structurally-dangerous Houses³⁷ (1997 Provisional Rules), whose Article 13 mandated that ‘the monetary compensation should be used only on vacant commodity houses or other commodity houses appointed by the government.’ Following the 1997 Provisional Rules, the City Government released several official documents related to the implementation of monetary compensation. The final ruling was that monetary compensation was to take the form of a ‘special deposit’ issued by government-appointed banks, and that the special deposit was ‘exclusively for the purchase of the vacant commodity houses or other commodity houses designated by the City Government. This special deposit was only valid for a one-time purchase and was not allowed to be cashed-in or used for mortgage.’³⁸

Under the 1997 Provisional Rules, the actual monetary value of a special deposit was formulated and fixed annually (Article 9). It equaled 80% of the average selling price of a vacant commodity house located in the fourth housing zone of Shanghai. A land gradient map (*tudijibie*) released by the Shanghai City Government divided the city into six zones expanding outwards from the innermost Shanghai.³⁹ According to the division, the fourth

³⁷ Issued by the Shanghai City Government on 8 December 1997.

³⁸ For instance, Article 3 of the United Notification on Payment and Use of Monetary Compensation for Renewal Sites of Structurally-dangerous Houses, issued by the Shanghai City Government on 17 August 1999.

³⁹ For the complete geographical boundaries of the six zones, see the report in *Jiefang Daily* on 15 January 1998.

zone covered Shanghai's outskirts and part of the rural area. The average selling price was also officially announced annually and set at 3,300 RMB per square meter for the fourth zone in 1998. Consequently, the policy of monetary compensation led to the heavily regulated transaction of commodity houses in the city outskirts where relocation mostly took place.

3.5 Strengthening Market Expansion: the 2001 Shanghai Bylaws and Their Constraining Rules on Residential Relocation

3.5.1 Discrepancy in residential relocation between two laws

In 2000, the Shanghai City Government announced the successful completion of the 365 Plan. Soon after that, in late 2001, the second round of inner city renewal officially began and targeted another 20 million m² of old *linong* (*Shanghai Economic Yearbook*, 2002: 273; Xu, 2004: 194). In the same year, two new legislative steps were taken to underpin the continuous pursuit of city renewal: the Provisional Rules on Encouraging the Return Settlement for Relocated Residents and Aiding the New Round of Inner City Renewal⁴⁰ (2001 Return Settlement Rules) and, nine months later in October, the amendment of the 1991 Shanghai Bylaws (2001 Bylaws). While both laws aimed to encourage real estate market expansion, they connected regulations on renewal practices with residential relocation differently, and the discrepancy developed into a new source of disputed relocation. The 2001 Return Settlement Rules were distinctive as it granted enormous subsidies to renewal projects intended to facilitate community residents to move back to their original neighborhoods. The rules for the first time proclaimed the

⁴⁰ Issued by the Shanghai City Government on 9 February 2001. It was numbered 68 therefore it is generally known and called as "document 68" by residents.

policy of return settlement (*huiban*) as an official channel through which affected residents were encouraged to actively participate in renewal activities. This is seen in the last sentence of Article 1 which states that ‘[the new round of inner city renewal] should realize the change from off-site, in-kind relocation to encouraging the purchase-based relocation that [allows residents to] return to [their] *original sites, original districts . . .*’ (emphasis added). To aid residents’ returning movement, Article 5, which eventually became a source of controversy, reads, ‘Any approved renewal sites on trial [the rules] are eligible for the following policy: the leasing price of land use rights is *zero . . .*’ (emphasis added). In addition to the zero land-leasing price, developers were also exempted from paying numerous fees. The justification for this substantial subsidy was ‘to encourage residents to purchase [houses] and return (*chuzihuiban*)’ (Article 5). Residents also enjoyed various preferential prices for purchase. These innovative designs were placed under the rationale of ‘utilizing market mechanisms’ and ‘realizing the transformation from the primary role played by the government and [private] enterprise to government assistance, enterprise operation, and resident participation’ (Article 1).

While the 2001 Bylaws also greatly supported the market economy, the legislation removed provisions for return settlement, which was legally allowed in the 1991 Bylaws and further encouraged in the 2001 Return Settlement Rules. As part of the goal of “deepening market economy,”⁴¹ the 2001 Bylaws adopts a de-politicized tone throughout the text. Explicitly political statements, such as those upholding party-state supremacy

⁴¹ See the booklet entitled *Shanghai Bylaws on Urban Housing Demolition and Relocation Management*. Shanghai Municipal Housing, Land and Resource Administration Bureau, October 2001:31.

accentuated in the 1991 Bylaws, were either entirely eliminated or greatly toned down in the 2001 articles. Specifically, the government is not allowed to conduct demolition either directly or indirectly by contracting with property developers, and ambiguous terms regarding the state's involvement, such as 'organize' and 'coordinate,' were completely removed (Article 17). Several articles detail how the amount of monetary compensation should be determined by market-value appraisal (Article 32-8). Under these regulations, property developers were required to contract with professional, certified appraisal agents to evaluate each *linong* house's market value (not including the land value on which it stands) and set monetary compensation. The purpose is to show affected residents that relocation and compensation are to be based on open, objective data and not on underhanded, personal negotiations.

Together with these significant changes is the elimination of articles concerning return settlement, which stands in especially sharp contrast to the 2001 Return Settlement Rules. Researchers have charged that the 2001 Bylaws and its market-oriented property practices have weakened residents' power in participating in local pro-growth politics and further marginalized their sociopolitical positions (Wilhelm, 204; Wu, 2004: 458; He and Wu, 2005: 15-19; Phan, 2005). Because the assessed market value of a house scheduled for demolition is almost always too low for residents to purchase a new home in the skyrocketing real estate market in inner Shanghai, the combined effect on the ground leads to a centrifugal pattern of community displacement to outlying areas.

3.5.2 Selective use of law and intensifying conflicts

The discrepancy in relocation regulations resulting from the overlap of existence between the 2001 Return Settlement Rules and the 2001 Bylaws created a new source of disputed relocation. Specifically, the use of one law inevitably provoked questions about the other and challenged the application of either. This problem has intensified especially when the practice of return settlement, which was once officially praised and also well perceived among affected residents,⁴² was declared eligible only for a few *linong* communities and eventually announced to be invalidated. A 2001 official document utilizing the 2001 Return Settlement Rules limited each district government to submit no more than two sites for the City Government's approval to resettle residents in their original neighborhoods.⁴³ At a press conference in 2003, the Shanghai City Government further announced that the practice of return settlement stipulated in the 2001 Return Settlement Rules ceased to be in force because the provisional rules were contradicted and superseded by the 2001 Bylaws.⁴⁴

Even though the legal statute on return settlement was invalidated in 2003, since the 2001 Return Settlement Rules was officially promulgated and implemented on the ground, it has been circulated among and demanded by community residents. The

⁴² The most widely known development was the Xin Fu Kang Li community in Jingan District (Xu, 2004; also the exhibition panels in the Shanghai Urban Planning Exhibition Center). Also see Youchang huiban, gaishan juzhu: jiuqu gaizao de Jing An moshi [Purchase-based return, improved residency: the Jingan model of inner-city renewal] (*Jiefang Daily*, 2 February 2001)

⁴³ The government document entitled Rules on Reporting and Approving On-trial Sites for Encouraging Relocated Residents' Return Settlement, issued on 4 April 2001.

⁴⁴ The Shanghai City Government press conference on 8 August 2003. <http://ej.eastday.com/epublish/gb/paper141/53/class014100022/hwz993610.htm>, accessed on 4 December 2007.

widely-reported conflicts over Zhou Zhengyi, a well-connected developer, and his renewal project in Jingan District began with a group-lawsuit filed by affected residents against the relocation decision which denied their requests of being rehoused in the original neighborhood in 2003.⁴⁵ In other sites, residents have also invoked the 2001 Return Settlement Rules when confronting the forceful renewal facilitated by the very same piece of law.⁴⁶

In an interview with a foreign property developer,⁴⁷ whose project was approved in 2001 and was in the beginning stages of demolition in early 2005, the developer expressed his anxiety to smoothly relocate current residents and explained that the 2001 Bylaws were being followed closely to ensure the legally binding conduct. He said, ‘We want to do this lawfully. Harsh demolition and relocation (*yeman chaiqian*) is the past.’ Toward this end, his demolition company had surveyed the community and estimated the proportions of families who wished to receive monetary and in-kind compensation. Public posting of each *linong* house’s appraised value outside the demolition company both showed the results of a third-party, professional judgment and augured the diminishing relevance of arbitrary negotiation replaced by market mechanism. When asked about the return settlement legally allowed by the 2001 Return Settlement Rules, he replied that it was not applicable to his project because a compound development of a

⁴⁵ See Displaced tenants’ lawsuits dismissed (*South China Morning Post*, 20 August 2003); also Shanghai residents lose suit implicating tycoon Zhou (Reuters, 20 August 2003).

⁴⁶ See Jiuqu gaizao: Shanghai qiuji caiqian budengshi [Inner city renewal: Shanghai seeks to resolve the inequality of demolition and relocation] (*21shiji jingji baodao* [21 Century Economic Report], 8 August 2006).

⁴⁷ Interview, July, August 2005; January 2006, Shanghai.

shopping center and office buildings, instead of residential apartments, was being built.

The developer, however, revealed that the land was obtained at a favorably low cost under the 2001 Return Settlement Rules because ‘it was classified as inner city renewal.’

The selective use of the two laws has unwittingly demonstrated to the increasingly rights-conscious residents that the development of more market-oriented property practices requires their closer observation of the law, its implementation, and its impacts in order to discern the changing status of rights and obligations in the city renewal process. During an interview with a longtime Shanghai resident,⁴⁸ I questioned him on how to justify his request of return settlement because the 2001 Bylaws ceased to provide such a legal channel. He disagreed with me immediately, stating that: ‘This is an incorrect reading of the 2001 Bylaws. It is true that the bylaws have no legal article on regulating the way to return [to the original sites], but [the bylaws] do not prohibit return settlement either. This thing [return settlement] should be left alone between us and the developers!’

The experience of disputed relocation, intensified by the denial of legal rights to being rehoused in inner city areas, has provoked fundamental questioning of fairness, transparency, and legitimacy of the increasingly market-oriented property practices. The escalating conflict over city renewal has prompted the Shanghai City Government to issue official documents emphasizing “lawful conduct” and “resolving contradictions

⁴⁸ Interview, January, February 2006, Shanghai.

(*maodun*) at its very early stage.”⁴⁹ This is what Pitman Potter describes as China’s utilization of law as “riding the tiger” (1994: 482). That is, although written laws and documents strengthen China’s development of a market economy, they also offer its citizens an officially sanctioned channel to articulate their claims of interests and rights when facing the possibly adversarial effects of the legal practices couched in the market economy.

3.6 Conclusion

In this chapter, I have tried to show how laws relevant to inner city renewal have evolved both as an attempt to rationalize property practices for market expansion and also as a significant source of conflicts over disputed relocation in Shanghai. This dilemma can be seen in the overriding of the 1991 Bylaws by legal documents with lower or provisional status and in the removal, by the 2001 Bylaws, of residents’ legal rights to be rehoused in their original neighborhoods. Read in isolation, each of the statutes discussed in this chapter may seem mundane; analyzing them together reveals important dynamics between law, property markets, and disputed relocation in Shanghai.

Law was used primarily as an instrument to make Shanghai’s real estate market happen. Unprecedented legislation was implemented in the early 1990s to initiate private investments in the inner city, amended to respond to the vicissitudes of the market in the late 1990s, and altered again to continuously strengthen market growth after 2000. While

⁴⁹ See Notification on Further Strengthening the Management Work on Housing Demolition and Relocation, issued by the Shanghai City Government on 6 March 2005. Also see Urgent Notice on Earnestly Conducting Housing Demolition and Relocation Work in Cities and Towns and Safeguarding Social Stability, issued by the PRC State Council on 19 September 2003.

law has greatly facilitated city renewal actions, the dominant intervention of the state and its legal codification of property practices have greatly marginalized affected residents, sociopolitically and spatially. Of the 72,728 households relocated in 2001, 97% were relocated to places other than their original neighborhoods in Shanghai (Li *et al.*, 2004:66). The result is the increasing scale of conflicts over disputed relocation. The evolving law on city renewal practices, including the discrepancy on return settlement between the 2001 Return Settlement Rules and the 2001 Bylaws, has illustrated to rights-conscious residents that the use of law is equally contingent on extralegal considerations and requires them to voice their grievances and discontent in order to insert their interests and assert their rights in the capitalist development process.

Legalization is an important but yet under-appreciated process underlying the significant achievement of spatial modernization in Shanghai. Shanghai's legislation on property practices shows that law is double-edged. Once publicly expressed and personally experienced, law leaves the monopoly of the state for political or economic purposes and becomes open to ordinary people for potential challenges to state practices. Under China's endorsement of rule of law and the rapidly changing state-society relationship, the prospect of disputed relocation in urban China is very much a work in progress.

The following three chapters examine more closely how Shanghai's *chaiqian* law has impacted on residents' livelihoods and their claims of rights. As revealed in residents' ethnographic accounts, disputed relocation was initially conflicts over compensation and resettlement. However, when the state's use of political punishments came into play,

disputed relocation soon became conflicts over legal and political rights. How the state has maneuvered its political and economic powers to prevent these rights-based conflicts into social protests, and at the same time, also to resolve them through discussions over individual compensation will be a focus of the next three chapters.

Chapter Four

Governing Through Law: Rights-based Conflicts and Property Development in Shanghai

4.1 Introduction

Shanghai's extensive enactment of land-related law should not be of surprise given the extraordinary development in legal reform and lawmaking in China's post-reform era. The new regulations, especially those promulgated in the 2000s, distinguish from those strongly state-backed policies in the 1980s and early 1990s in that they have greatly espoused the rule of law. How do these changing legislative practices fit into the heavily state-driven development model in urban China? Are they merely "the trappings of formal legality" as one legal scholar described China's use of law to legitimate its power (Alford, 1993: 61)? What effects do the legislative practices have on property practices and the residents affected by *chaiqian*? Compared to the harsh, aggressive *chaiqian* process experienced by millions of relocated residents under the old regulations, what shape will residents' challenges to *chaiqian* take under the new law?

Viewing law as an important prism through which to understand how the state governs *chaiqian* conflicts, this chapter examines the combined impacts of the Shanghai Bylaws (both the 1991 and 2001 Shanghai Bylaws) and Administrative Litigation Law (drafted in 1989, in effect in 1991; hereinafter ALL) on disputed relocation. Chapter has provided an in-depth analysis of Shanghai Bylaws, therefore, this chapter will provide a more focused review of ALL. ALL represents the milestone of China's establishment of an officially-sanctioned channel through which ordinary citizens are empowered to bring lawsuits

against the state in court. ALL, however, is also a greatly limited tool for dissidents to wield under the state's control in determining justice and public interests (Potter, 1994a).

Also beginning in this chapter, case studies of residents' of relocation experience will be presented. In the current chapter, I examine the case of Lin, a Shanghai resident's years-long lawsuits in which she invoked both Shanghai Bylaws and ALL to demand to move back to the original neighborhood after property development completed. Because forced relocation (*qiangzhi chaiqian*, 強制拆遷), a legally-allowed, coercive method involving use of physical force and political threats, tends to be arbitrarily employed to displace defiant residents, the 2001 Shanghai Bylaws has made government adjudication a mandatory practice before property developers can file for forced relocation. However well-intended it might be, what if residents refuse to accept the government adjudicated decisions? How does ALL come into play? What impacts does ALL have on residents' rights? The experience of Lin represents the confrontation between individual residents who raise their claims of rights and the property regime which seeks to govern social discontent through law. This chapter argues that although the new legislation has restrained the arbitrary use of forced relocation, this law-based governance model, at the same time, has also reinforced the government's control in determining social interests to which residents' individual rights are subordinate.

4.2 ALL, government adjudication, and ruling

In China's still deeply-politicized judicial system, the Administrative Litigation Law (ALL) has empowered defiant citizens to voice, question, and resist unlawful government decisions through legal actions which in turn may potentially sustain more grassroots

changes. Among the most litigated against under ALL are government acts involving property and personal rights, business activities, and licenses or permits (Pei, 1997; Liebman, 2007). Yet, ALL has three major, inherent constraints that weaken it to a “frail weapon” for challenging the state (Potter, 1994b; Lubman, 1999). As seen later in the chapter, these limits have significant impacts on local governments’ governing of *chaiqian* conflicts. First, under ALL the court is authorized to review only the procedural legality but not the substantive appropriateness of administrative actions. Because most Chinese laws are drafted to be “intentionally ambiguous” in order to grant the implementing agencies significant flexibility and broad discretion, the court is constrained in its ability to review administrative decisions that are questionable but not clearly unlawful. Second, ALL limits the court’s authority to review the inherent validity of administrative laws and regulations. Because only administrative agencies may interpret and determine the inherent validity of their laws, therefore, the court can only challenge an administrative agency when it violates its own rules. Third, the court can only modify an administrative decision when it is deemed manifestly unfair. Essentially, the court can only make an all-or-nothing review, either ratifying or overturning the government agency’s decision in question, but cannot substitute its own revised decision. In short, ALL opens an institutionalized but limited channel through which citizens can articulate claims to their rights.

Two legal perspectives on how to rule *chaiqian* conflicts, such as disagreement over compensation or opposition to relocation, has troubled the Chinese judicial system. The first one sees *chaiqian* conflicts as civil disputes between community residents and

private developers and rule them under civil laws; the other views *chaiqian* conflicts as political *maodun* (contradictions, 矛盾) between citizens and the state and position them under ALL. A similar public vs. private question has also occurred when urban residents took legal actions against unsatisfactory water delivery service whose management agency is under transformation from state-run to private-managed (Boland, 2006). In *chaiqian*, this question is further complicated by the intervention of government adjudication stipulated by the Shanghai Bylaws.

China has a long history of inserting governmental intervention to adjudicate (*caijue*, 裁决) civil disputes, such as conflicts over divorce, finance, family responsibilities, and property rights (Lubman, 1967; Huang, 2006). As the adjudication organs are an arm of the state, government adjudication is coercive and directly results in winners and losers because “an agreement [is not allowed to come] without reference to the values embodied in state norms” (Clarke, 1991: 295). As *chaiqian* has increasingly been pursued to make way for private investors and profit-oriented developments, the role of government adjudication and its legal status have been central to the thinking process and debates in China’s governance over *chaiqian* conflicts in order to foster greater social stability and market economy.

Receiving requests from local judges seeking national guidance, the PRC Supreme People’s Court in 1993 explained that residents’ legal lawsuits against *chaiqian* decisions were to be accepted as civil cases and to be judged under civil laws.⁵⁰ The Supreme

⁵⁰ Supreme People’s Court, Reply on Questions about the Application of Article 14 of Regulations on Urban Housing Demolition and Relocation, issued on 24 November 1993.

Court's reply letter (*fuhán*, 覆函) to local courts especially made clear that conflicts between evictors and evictees, "including the form and amount of compensation, the size and location of resettlement housing, and the provision of transitional housing and its periods...are conflicts of *civil interests (minshi quanyi) between the [two] equally civil parties*" (emphasis added). The PRC Supreme Court underpinned this ruling by firmly stating that even after conflicts as such were adjudicated by local governments, residents' lawsuits against the government decisions should still be accepted as civil cases. In short, government intervention should not alter the essence of civil relationship in *chaiqian* affairs.

The 1993 reply letter 1993 of PRC Supreme People's Court, however, was at odds with the *chaiqian* practices conducted on the ground and was short-lived. Throughout the 1990s, the state's representation of the private sector, through government-organized *chaiqian*, was the method to displace existing communities which were seen as obstacles to property development. After more than a decade of political and legal support for government-organized demolition, the boundary between the public and the private has severely blurred.

In 1996, the PRC Supreme People's Court reversed its 1993 ruling on the civil nature of *chaiqian* lawsuits. Specifically, the Supreme Court announced that only conflicts that have not been adjudicated by governments could be filed in court as civil cases. Once the government intervened in disputes, even those purely over pecuniary matters, and adjudicated, even against the will of the litigants, residents could only file lawsuits as

administrative cases to be ruled under ALL.⁵¹ This means that government adjudication, a practice made mandatory by the 2001 Shanghai Bylaws, automatically imposes ALL and its constraints on residents' lawsuits originally against property practices. This is what the State Council means by "administrative adjudication is the prior procedural of administrative litigation."⁵² In other words, residents challenging their relocation caused by private developers have unintentionally chosen the state as the opponent in their legal disputes over *chaiqian*.

4.3 State Power, Changing Law, and Challenging Beyond Legality

4.3.1 Demolition work and its rationalization

4.3.1.1 "All encompassing contracts" and direct state operation

In the 1990s demolition work was carried out under "*dabaogan*" (all around contracts, 大包幹) in Shanghai. *Da* and *bao* together mean "including everything;" *gan* connotes "do" or "conduct." *Dabaogan* describes the state's direct involvement in the demolition process by establishing demolition bureaus (*dongqianban*) or command stations (*dongqian zhihuibu*) as extended branches within the government. The leadership or main personnel positions of "demolition companies" are either filled by local officials or given out to their clans. When operating on the ground, the demolition companies have the political strength and administrative power to organize related government bureaus, such

⁵¹ Supreme People's Court, Reply on Questions about Acceptance of Cases Regarding Housing Demolition, Relocation, and Compensation, issued on 24 July 1996.

⁵² *Explanations on the Regulations on Urban Housing Demolition and Relocation Management*, edited by Legislative Information Office of the State Council, Policy and Regulations Bureau, and Housing and Real Estate Industry Bureau of the Ministry of Construction. Beijing: Zhishi chanquan chubanshe. 2005., p. 55.

as public security, housing and land departments, and residential committees, to push the *chaiqian* work forward. Driven by the booming real estate market of the 1990s, the number of demolition companies mushroomed. One developer recalled that there was a time when the *chaiqian* business was characterized by “anomalies (*buquifan*)” and “there were so many [names of] offices, command stations, companies flying out there” (Interview YF05).

Even demolition companies were numerous; a property developer was always assigned to a specific company directly by the district government. The only two major concerns that property developers and demolition companies needed to agree on were the total sum of payment and how soon the demolished site would be cleaned up. Once an agreement was reached, the actual implementation of the signed “all-around contract” was entirely under the control of the demolition company, including such decisions as how much manpower it required, where to recruit staffs, what regulations should be complied with, what tactics would be used during demolition, and how to smooth out conflicts and resistance, etc. Property developers did not bother to question executive details and had learned not to do so after their inquiries were sidestepped a few times (Interview DJD05). The cost for cleaning up a site took the form of a one-time, fixed amount directly demanded by demolition companies and was rarely contested or negotiated (Interview ZD05). Property developers never seemed to doubt that the demolition work would be swift because the earlier the work was done the more revenue was extracted. The demolition permits issued in the 1990s showed that short demolition periods, such as 6-8 months, were often approved by local district governments for

populous communities over one thousand households. Some property developers described the all-encompassing contract as a mechanism to motivate greater efficiency to counteract the “iron bowl” attitude commonly seen in state-owned enterprises under the socialist system (Interview YZS06).

Dabaogan was not only an innovative arrangement but also a development model that the state officially promoted through legislation. This can be seen in the implementation of “unified (統一, *tongyi*) conduct.” Early in 1989, the central government’s Ministry of Construction required that “...new-area construction and inner-city renewal [should] implement unified appropriation [of land] and demolition...”⁵³ Under this unified-operation model, City governments nationwide were also encouraged to establish their own development companies to carry out commodity housing construction and real estate development. Later, both the 1991 Regulations (Article 9) and the 1991 Shanghai Bylaws (Article 16) legalized “unified demolition,” and the State Council officially stated that “unified demolition organized by the government was the model supported by the state.”⁵⁴ As inner-city renewal became the dominant development activity (*Shanghai Real Estate Monograph*, 1999), the Shanghai City Government regulated that state-run unified demolition was the only demolition activity legally allowed.⁵⁵

⁵³ Several Opinions on Strengthening City Comprehensive Development, issued on 26 April 1989 by the Ministry of Construction.

⁵⁴ *Explanations on the Regulations on Urban Housing Demolition and Relocation Management*, 1991, p.26. Beijing: Zhongguofazhichubanshe.

⁵⁵ The Rules of Utilizing Foreign Capital to Develop and Manage Commodity Houses for Domestic Buyers, issued by the Shanghai City Government on 28 August 1995.

In 2005 I visited a well-resourced demolition company with a property developer who previously had done business with the company. The company had a gated, spacious forecourt. Inside the main building, office rooms were situated along narrow corridors and only a few uniformed staff were seen delivering document folders between rooms. I later learned that all of the buildings, facilities, and workers (about 200 of them) once belonged to a state-owned textile factory. When privatization called for the closure of the factory and the layoff of all workers, the demolition company established by the district government bought and converted the previous state-owned enterprise into a demolition business. Staff was rehired on a project basis; whoever had a project to work on was stationed in the demolition site's office; otherwise, the workers stayed home idle until called for a new project. The staff members I saw in the building were administrative personnel who only made up a small part of the previous labor force. The demolition company also recruited rural migrants (*nongmingong*) to run errands in the on-site demolition offices. Migrant workers were not involved in internal affairs or face-to-face negotiations with residents; rather, they were the main manpower for labor-intensive situations, such as tearing down houses, carrying out forced relocation, and loading furniture onto moving trucks, etc.

4.3.1.2 "Labor-service contracts" and the state-business separation

The escalating disputes over relocation, however, have urged state leaders to reform both the unified demolition policy and all-compassing contracts. In 2001 the State Council removed unified demolition from the 2001 Regulations. At a national meeting that aimed to disseminate the amended, new regulations, the Vice Minister of the

Ministry of Construction, who spoke to the participants from local governments, criticized unified demolition as a “misplacement of and encroachment by government functions.” He stated further that

some local governments...meddle with (*yuezudaipao*) and become directly involved in *chaiqian*; [they are] players and referees at the same time. [They] utilize the power in their hands and force evictees to sign unfair contracts, but the real evictors are hidden behind the curtain.⁵⁶

The real evictors were private developers of profit-oriented property development. The Ministry of Construction then further required that “The government’s role is mainly to supervise, instruct, and adjudicate development enterprises’ projects, but not to become involved in the actual affairs of demolition.”

This sharp turn in official discourse and in the regulations on demolition work illustrates that China’s legal regime has gradually changed its view of the demolition process from “state-organized involvement” to “civil affairs.” In the civil relationship that arises in the demolition process, evictors and evictees are considered to be two equal civil parties and “the state in principle does not intervene in civil relationships.”⁵⁷ In this new discourse, the state proclaims its separation from private property developers, who are not connected with government organizations in unified demolition, rather with entrepreneurially managed companies licensed by the state to carry out demolition work.

The Shanghai City Government immediately followed the central government’s change of motif on *chaiqian* governance in its 2001 Shanghai Bylaws. In addition to

⁵⁶ The National Meeting on Urban Housing Demolition and Relocation Work. 13 September 2002.

⁵⁷ See Chengshi fangwu chaiqian guanli tiaoli shiyi (城市房屋拆遷管理條例釋義), 2005, page 3, 12, 27.

abolishing unified demolition, Article 17 of the 2001 Shanghai Bylaws also requires that the signed contract between property developers and demolition companies be formally reported to the local government and be available for review during demolition periods. Also under Article 17, demolition companies can no longer charge property developers a lump sum as was common practice before the 2001 Bylaws. Under the new bylaws, demolition companies should “charge [developers] labor-service fees according to the labor they expend in the demolition work (*laowufei*, 勞務費); the rates for service fees are to be formulated by the Shanghai City Government.” In 2002 a subsequent legal document stated that “Demolition companies...are *nonprofit-oriented* (*buyiyingliweimudi*) and should charge labor-service fees accordingly” (emphasis added).⁵⁸ The regulations also prohibit individual persons from investing in demolition companies or holding company stocks. Although the Shanghai City Government has never explicitly explained how the labor service fee is calculated, the attempt in the new ruling was to prevent intentionally harsh and swift demolitions in order to gain profits from an all-encompassing contract.

In addition to the new legislation, the Shanghai City Government has also begun to rationalize the existing agents involved in the demolition business. Since 2001, the city government has abolished demolition command stations, merged some small-scale demolition companies together, and privatized some state-affiliated demolition units. For instance, 26 demolition companies were disqualified in 1998 alone (Wu, 2004b: 462).

⁵⁸ Article 3 of Shanghai Regulations on Demolition Company Management for Urban Housing, Article, issued by the Shanghai City Government on 1 January 2001.

After the rationalization, each district was left with only 2-3 demolition companies, and the number has been kept at this level since then.

4.3.1.3 Resilience of the old practices

Since the new legislation in 2001, the Shanghai City Government has required property developers to re-sign “labor-service contracts” with their demolition companies. However, the actual operational guidelines and standards regarding labor-service contracts is unclear, if not absent, in the letter of the legal texts. The stalemate, tension, and circumvention over the implementation of labor- service contracts reveal the resilience of the state-operated, unified demolition.

Although new legislation in the 2000s has banned government-organized *chaiqian*, demolition companies, which now are legally required to satisfy certain qualifications in order to be licensed by the state, are still in fact either affiliated with local governments or managed by clans of government officials. Private developers are still assigned to specific demolition companies by local governments as part of the land leasing contract. Property developers, especially foreign ones, need to rely on government-appointed demolition companies because only they can ask for collaboration from local police bureaus or residential committees (*juweihui*) which hold good knowledge of community residents’ socio-economic situations or detailed household registration data. One Hong Kong-based developer described the legal change to demolition company’s status as “one team under two name tags (*yigebandi liangkuaizhaopai*)” (Interview, YZS06). A planner who worked for a prominent development corporation in Shanghai forthrightly stated: “the relationship between demolition companies and the local governments is interrelated in

innumerable ways that cannot be severed easily by any form of [formal] contract. And a license [of a demolition company] represents invaluable resources that cannot be measured by the monetary capital that is officially declared” (Interview, ZML05).

When asked by the district government to replace his project’s all-encompassing contract with a labor-service contract, Yang, a foreign developer who obtained a *linong* (inner-city alley housing) community of about 500 households for his commercial center project, failed to complete the re-signing twice. The previous contract contained only two pages with simple statements of the total amount of payment and a brief project schedule. Worrying that the new contract would become open-ended because the demolition company might require unpredictable payments incurred by additional manpower input, Yang persistently asked “why a specific service was being charged for and how much more manpower was needed before the site would be ready for ground-breaking.” The reason for the two unsuccessful re-signings was that “we thought the fees they asked were too high, but we did not have a standardized price or experience in this matter to argue with” (YZS05).

The problem of the lack of reference is twofold. First, the Shanghai City Government has not yet announced the “formulated rates of service fees” as stated in the 2001 Shanghai Bylaws, and therefore the service fees are decided through negotiation. Second, after more than a decade of all-around contracts, property developers, especially foreign ones, have accumulated very little knowledge about the actual process of and work required by demolition efforts. An example given by Yang shows the general

incompetence of foreign property developers in their work with experienced, local demolition companies.

After Yang was asked to sign a labor-service contract, he obtained the list of the resettlement houses previously purchased by his demolition company in preparation for residential relocation and examined for the first time the housing conditions. He then realized some of these resettlement houses were very old, small, and located in remote areas. Wondering who would want to move into such a “deteriorated house” and worrying the possibly delay cause by residents’ resistance, Yang questioned the demolition company why the down payments disbursed by his company were spent as such. The demolition company replied that these types of houses were suitable and also affordable for some community residents who lived in “economically difficult households” or had few family members. Since Yang’s company had no knowledge about the *linong* community, he had very little capability of controlling the demolition work financed by his company. I asked Yang if they had conducted any basic investigations into the community members’ livelihoods so as to evaluate the level of difficulty for demolition work before proceeding to lease land in 2001. He dismissed this question by answering that “We investigate the neighborhood to make sure it is in a good location. Dealing with the community is the demolition company’s job.” The location investigation included on-foot trips on a rainy day, during rush hours, and at night to determine the overall accessibility to major subway stations. The demolition company’s investigation of the community was done in collaboration with the local police bureau to gain access to information about each household’s family members and housing situation—the so-called

“double clear-up work (兩清工作).” A Chinese engineer who works in a government-affiliated development company confirmed that only demolition companies have access to the local police bureaus and the community-stationed residential committees (*juzhuweiyuanhui*) that hold household registration data and have a good grasp of residents’ socio-economic situations:

Police bureaus have very detailed data on each household. Ordinary people cannot go there [to request data]. Demolition companies can bring a reference letter from the district government and legal documents related to the project... Sometimes you even need to run checks with more than one police bureau under another district government’s jurisdiction to be sure if this resident owns additional houses in places other than this community. Even with a reference letter, not all police bureaus will cooperate. This work takes time, money, and it is not a job anyone can do (Interview ZD05).

Another Hong Kong-based development company encountered a similar problem.

Under the new labor service contract, the company intended to retake a certain degree of control over the demolition work. One such attempt by the developers was to sell the previously purchased resettlement houses back to the real estate market after learning that the district government, in response to social unrest over *chaiqian* policies, was hesitant to allow a speedy demolition that would relocate more than 3,000 families residing in the *linong* community. However, the resettlement houses, which included about 2,000 units, were purchased under the demolition company’s name to avoid the transfer taxation that was charged under the old practice of “*dabaogan*.” Because the demolition company “was assigned along with the approved development proposal” and the development company was unable to understand the obstacles specific to the *linong* community, what the developers held in their hands was “a written contract loosely tied to a demolition company over which no solid control exists” (Interview ZML05).

The two cases above show that under all-encompassing contracts the state's control of demolition work was a black box, and the new legislation that established labor-service contracts has not automatically led to transparency. One Hong Kong developer stated that “the relationship between demolition companies and the local state is interrelated in innumerable ways that cannot be severed easily by any form of contract. And a license [for a demolition company] represents invaluable resources that cannot be measured by the monetary capital that is officially declared (Interview ZML05, Interview YF05). Although the implementation of “labor service contracts” has indeed created a more cautious attitude and has slowed down demolition operations, private property developers' lack of knowledge of their targeted communities, petty corruption, and the local authorities' ubiquitous power ensure that the old practices resilient.

4.3.2 Market-based property appraisal

In the 1990s property appraisal was mostly utilized to calculate the total cost of construction materials whose prices were determined annually by the local state.⁵⁹ This practice was invented in the 1980s when socialism was the dominant ideology. Because in-kind compensation was the mainstream method used in the 1990s and the experiment with monetary relocation did not take place until 1997, the non-market appraisals were rarely contested. Since 1997, monetary compensation has become the dominant, policy-

⁵⁹ Shanghai Provisional Measures on Housing Appraisal (上海市房屋評估管理暫行辦法), issued on 18 March 1990 and revised on 14 December 1997. For a list of government-regulated evaluation standards, see www.shfdz.gov.cn/download.jsp?zhengce/20030630112347.htm.

supported practice.⁶⁰ The change has occurred in part because the supply of resettlement housing fell far behind the great demand created by large-scale relocation and in part because a high vacancy rate of commodity housing developed in the booming real estate market.⁶¹

When monetary compensation was written into the 2001 Regulations (Article 24) and the 2001 Shanghai Bylaws (Article 33), the policies stated that it was important to juxtapose relocation compensation with the market economy to create fairness, justice, and transparency in the *chaiqian* process. In regulations specifically on property appraisal, it was mandated that demolition companies could no longer determine property values arbitrarily and that they had to hire government-certified, professional appraisal agents.⁶² Under these regulations, appraisal agents are required to utilize the market values of properties in similar conditions as the to-be-demolished properties, such as the same type of *linong* house in a nearby area, to establish the appraised value. The new

⁶⁰ For monetary compensation see (上海市危棚簡屋改造地塊居住房屋拆遷補償安置試行辦法), issued on 8

December 1997. For vacant commodity, see Additional Opinions on Effectively Consume Vacant Commodity Houses and Accelerate Inner City Renewal, which was issued by the Shanghai City Government on 18 December 1997.

⁶¹ For instance, in the late 1990s, the annual demand for resettlement housing was over 3 millions m² but the actual supply was only 1.5-2.0 millions m² (Gu and Liu 1997, p.373). In 1995, the vacant residential commodity housing was about 3.46 million m², and by 1999, the vacant commodity housing was nearly three times the 1995 (Shanghai Statistics Yearbook, various years).

⁶² (關於修改上海市房屋拆遷評估管理暫行規定的通知), issued by the Shanghai City Government in 2004, document numbered 114. (城市房屋拆遷估價指導意見), issued by Ministry of Construction on 1 December 2003.

regulations also grant affected residents more procedural rights. One innovative part of the policy stated that community residents should, at least in principle, vote for the appraisal agents from a pool of at least five candidates whose background information is provided by demolition companies. The appraisal agent should also make the appraisal value available to the community, and if the residents disagree with the amount, they can ask for a re-evaluation or hire another agent to provide a second opinion.

Although the regulations on market-based appraisal slow down the demolition process, property developers have learned to see the new practices as a mechanism to prevent future conflicts. In an interview, one property developer revealed that about 40% of the *linong* community households participated in the voting organized by his demolition company with the help from the residential committee. Assuming I would raise questions about the turnout, he offered, “40% is not a problem. We are not working on democracy...Now that [the residents] have selected this one [property appraisal agent], they may complain about the appraised value of their house later but they cannot accuse us of making backdoor deals.” (Interview YZS06)

The major problem of monetary compensation is that the amount of the appraised value is almost always far too low for residents to purchase commodity housing in inner-city Shanghai. Most *linong* houses, which have historically characterized Shanghai and have been the main target for city renewal, have very limited space, commonly ranging from 10-30 m². Because the land value is not included in the property appraisal, residents of these *linong* houses often receive compensation far below the average housing prices on the market. A planner who worked for a prominent developer recalled that an old

woman who had lived in the *linong* community for decades was not opposed to demolition but insisted on being rehoused in the inner-city area so that she could receive care from her only child. This woman told the demolition staff that “I have nothing left but my own life. If I cannot stay [in the inner city] you can take away my life!” The planner, who was in her mid thirties and was troubled both by the delayed demolition schedule and social conflicts, said “She just has one demand and she is not really unreasonable, but she has said some things that you just cannot bear!” (Interview ZML06).

4.3.3 Forced relocation

Residents who refuse to relocate face the consequence of forced relocation (*qiangzhi chaiqian*), a legally permitted operation carried out by the the local authorities. Forced relocation is coercive yet it has been rather arbitrarily employed by the state, especially throughout the 1990s. The term has long connected resistant residents with the charge of subversiveness. A 1987 Shanghai government document referred residents who refused to sign compensation agreements for demolition “spike households (*dingzihu*, 釘子戶).”⁶³ In the State Council’s official explanations on the national *chaiqian* regulations in 1991, the term “spike” was continuously connected with phrases such as residents’ “excessive demands” or “unreasonable opposition to demolition decisions made in accordance with city planning.”⁶⁴ Although used informally nowadays, “spike household” was once a governmental term justifying the employment of forced relocation to uproot resisters

⁶³ Shanghai Price Bureau, Reply on Adjustments of the Temporary Standards for Housing Value Appraisal, issued on 11 June 1987.

⁶⁴ Footnote 4, p. 38.

because “[we] did not yield” (Interview WLZ05). “Spike” implies that some external force should be used to correct defiant residents’ intransigent stance against the state.

Loose regulations, together with the state’s intolerance of resistance, have contributed to the arbitrary use of forced relocation. If dissatisfied residents chose to file lawsuits against relocation, Article 23 of the 1991 Shanghai Bylaws regulated that “during the lawsuit process, demolition and relocation are *not to be suspended if evictors have provided resettlement or transitional housing*” (emphasis added). Article 24 then sanctioned local governments to use forced relocation if residents refused to move out without any legitimate reasons (*zhengdang liyou*), regardless of whether the conflict had been adjudicated. These articles effectively made each demolition project compulsory and therefore any legal action against it would only lead to empty results.

As a result, residents’ opposition to relocation especially in the 1990s could easily turn into violent confrontations with the local authorities during forced relocation. Relocated residents recalled that it only took short periods of time, such as one to three months, for a stalled negotiation to lead to their being forcibly relocated (Interview WLZ05; Interview XGZ05). The notifications of forced relocation (*qiangqianshu*) were not only delivered to residents personally by local officials but also posted in noticeable spots in communities as to publicize the consequences of defiance (Interview XGZ05). When taking place on the ground, forced relocation at times turned into so-called “savage eviction” (*yeman chaiqian*). Almost as a form of resentment against residents’ boldness in opposing eviction, and with the tacit consent of the local authorities, savage evictions involved fraud as well as threats and harassment, such as cutting off electricity, smashing

windows, accusing residents of political subversiveness, and hiring thugs to raid resisters' homes. The demolition companies sometimes caused serious injuries, or even death, at demolition sites when they began to demolish a house while the resisting family was still inside. By 1994, savage evictions had resulted in 92,000 households which remained in temporary housing.⁶⁵ This violent, aggressive practice has not only been criticized by human rights groups but has also led the government to urge control over the scale of relocation in order to prevent this "noticeable social conflict."⁶⁶

4.3.4 The mandatory role of government adjudication

The escalating social unrest eventually led the State Council to revise the legal statutes on forced relocation in 2001. The most significant change was to make government adjudication a mandatory practice before forced relocation could be used. The official explanations of the new *chaiqian* regulations state that "Only after [government] adjudication...can forced relocation to be carried out."⁶⁷ In 2003, the Ministry of Construction further issued Regulations for Administrative Adjudication Work in Urban Real Estate Demolition and Relocation (hereinafter Adjudication Regulations).⁶⁸ The Adjudication Regulations specified the steps and documents that local government should

⁶⁵ Shanghai City Government, Opinions on Strictly Controlling over Residential Relocation for Transitional Households during Inner City Renewal, issued on 28 February 1995.

⁶⁶ Human Rights Watch, 2004, *Demolished: Forced Evictions and the Tenants' Rights Movement in China*. retrieved on 23, August, 2006, from <http://hrw.org/reports/2004/china0304>. The State Council, Notification of Further Strengthening Housing Demolition and Relocation Management Work, issued on 6 March 2005.

⁶⁷ Footnote 7, p.59.

⁶⁸ Issued on 30 December 2003.

follow when carrying out adjudication. If a development project involves a large number of households resistant to relocation, local governments are even required to hold public hearings before proceed to adjudication (Article 7). The Adjudication Regulations stipulate that local governments “should fully listen to the opinions of the subject [residents]...should adopt [residents’] reasonable requests...should not make adjudication harmful to the subject [residents’] legal rights because [residents] argue against” (Article 10).

The legal revision originates from the central government’s reconsideration of the unrestricted use of state’s power for the increasingly private-oriented development in urban China. Official reports, especially those written by court jurists and legal scholars, have criticized demolition companies for intentionally taking advantage of state-operated demolition to arbitrarily issue forced relocation to swiftly evict residents.⁶⁹ High-ranking government officials have also recognized that the previous laws lacked substantive content and procedural details on forced relocation and that they had created space for intentional misuse.

The mandatory government adjudication is further strengthened by a series of requirements to increase the feasibility and transparency of relocation plans. First, property developers are required to demonstrate their financial ability to properly re-house affected residents. The 2001 Shanghai Bylaws ask property developers to purchase 30% of the total necessary resettlement housing prior to applying for a demolition permit

⁶⁹ *Analysis and Review of Housing Demolition and Relocation Cases*. 2004. Beijing: Zhongguoshehuikexuechubanshe.

(Article 12), and in 2005 this percentage was further raised to 70%.⁷⁰ Second, information related to relocation plans is required to be publicly posted in the community, a practice termed “up on wall” (*shangqiang*) by demolition companies. The so-called “five open pieces of information” include community residents’ housing conditions (structure, levels, floor space, etc.), residents’ family structure (family members and their eligibility for relocation, etc.), the appraised property value of residents’ current housing, the property value of the resettlement housing, and the conditions of the resettlement housing (location, structure, facilities, floor space, etc.).⁷¹ Because the announced information is broken down to the household level and is presented in tabular form, it enables community residents to anticipate not only their own relocation destination but also their neighbors’. The purpose is to show affected residents that relocation and compensation are based on open, objective data and not on underhanded or secretive personal negotiations, and no exceptions (*kouzi*) would be allowed for residents who ask compensation higher than what is regulated. Finally, the Shanghai City Government has continuously emphasized the importance of holding public hearings on relocation plans in the affected communities. Some district governments, especially those that have experienced intensive conflicts over *chaiqian* in the past, have even stricter rules than the 2001 Shanghai Bylaws in order to enforce demolition companies to hold public hearings. This can be seen in the change in legal wording from “should (*yingdang*)” to “must

⁷⁰ Shanghai City Government, Notification of Strengthening Housing Demolition and Relocation Management Work, issued on 6 March 2005.

⁷¹ Shanghai City Government, Notification of Further Improving the Public Announcement of Housing Demolition and Relocation. Announced to property developers in 2005. Obtained from Interview, YZS06.

(*bixu*)” in requirements for *chainqian* work because the latter term marks a strong obligation to the state and nonperformance entails punishment (Ross and Ross, 2000: 230).⁷² Called “residents’ mobilization plenums,” “roundtables for demolition work,” or “consulting meetings for demolition policy,” these meetings are usually presided over by directors of local street offices and attended by government officials from related departments, such as policy bureaus, housing and land management bureaus, and offices for letters and calls.

To be clear, what the Shanghai City Government has intended to change through the enactment of the new law is not the forward momentum of city renewal but the way it is achieved. Law is upheld to smooth out the demolition process and conflict resolution. In a pamphlet officially published to disseminate the 2001 Shanghai Bylaws and that is widely available in bookstores, it is written that “...[government] adjudication has no punitive purpose; its goal is to resolve disputes over housing demolition and relocation so as to vacate the site promptly.”⁷³ Many of my interviewees expressed that the new law had made *chaiqian* operation more normalized (*guifan*) but government adjudication still largely supported, sometimes even repeated, what demolition companies agreed to compensation. Meaningful negotiation through government adjudication had been rare.

4.3.5 Lin’s case: struggling in the legal labyrinth

⁷² For instance, Article 14 of the 2001 Shanghai Bylaws and Article 7 of Provisional Measures on Urban Housing Demolition and Relocation Management of Shanghai Jingan District, issued in February 2002.

⁷³ Published by Shanghai Housing and Land Resources Management Bureau in October 2001, p. 36.

The new rules on government adjudication has both lessened and tightened the opportunities for community residents who struggle to insert their rights in *chaiqian*. While the mandatory official adjudication has helped create a more cautious and restricted use of aggressive tactics by officials toward disobedient residents, it also confined the scope for residents' opposition to a legal process tightly connected with the state. This is precisely because under the Supreme Court's 1996 ruling if residents are dissatisfied with the government-adjudicated results they can only turn to administrative litigation. Under ALL, as Lin's case shows, the courts only review administrative cases based on the procedural legality but not on the appropriateness of the government adjudication decisions.

4.3.5.1 Lin's first, successful litigation under ALL

In early 1998 Lin learned that her home, which was located right off a major artery in inner-city Shanghai, was to be demolished for a commodity housing development project.⁷⁴ Her family of five lived in a space-constrained, traditional *linong* house (lane housing) of about 22 m² of actual living area. The developer initially offered Lin's family a resettlement house twice as large but planned to relocate them to the city's outskirts. Lin had become particularly savvy in changes to governmental policies since being laid-off from a once-state-owned, now-privatized factory. After reading the 1991 Shanghai Bylaws, Lin insisted on being re-housed within the original site through purchase-based return settlement (*chuzihuiban*), a practice legally permitted by Article 49. The developer

⁷⁴ Commodity housing (*shangpinfang*) is invested by private developers and sold to individual buyers in the market. It is a product of China's economic reform and liberation adopted in 1979.

asked for a purchase price of 522,400 RMB for the soon-to-be-built commodity apartment. Lin wanted to buy the new apartment but contested the asking price. Lin pointed out that the quote was deliberately overpriced by incorrectly using the government-issued price standards. Conflicts between Lin and the developer mounted and negotiations stalled. Six months later, the District Government announced its adjudication and ordered Lin to choose either the off-site, larger resettlement house in the outskirts or the purchase payment of 522,400 RMB for the on-site commodity apartment. Based on her close attention to government-released documents, Lin believed her case was legitimate and decided to file a lawsuit in the District People's Court against the District Government.

In late 1998, Lin unexpectedly and successfully won her litigation. The District Court ruled that the adjudication was made on the basis of a miscalculated purchase price, and the correct amount should have been about 511,000 RMB. The Court then revoked the District Government's adjudication by citing language in Article 54 in ALL that annulled a specific administrative act if "inadequacy of the essential evidence [exists]."

Still, the conflict between Lin and the developer remained unresolved because under ALL the court could only make an all-or-nothing judgment and could not revise administrative decisions. As a result, in mid 1999, the developer re-applied for another government adjudication and this second adjudication actually supported Lin's request for a lower purchase price. Citing the 1991 Shanghai Bylaws and related regulations, the District Government concluded that Lin's family should move out within five days of

receiving the adjudication letter and, at the same time, that a purchase contract should be signed to resettle Lin's family in the original site at a price of 433,150 RMB.

But two months later in 1999, Lin's family was forcibly relocated by the District Government before the purchase contract that had been specified in the adjudication letter was signed.

4.3.5.2 Lin's second, failed litigation under ALL

Since being relocated, Lin had repeatedly yet unsuccessfully demanded that the developer complete and sign the purchase contract. In 2001 Lin litigated for the second time against the District Government and asked the completion of the purchase contract which would enable her to move back to the inner city. In short, Lin litigated to have the adjudicated results realized. This time, however, the District People's Court cited Article 15 of the National Regulations, Article 23 of the 1991 Shanghai Bylaws (both of which focused on forced relocation) and reasoned that what Lin had requested was not the District Government's legal duties. The District Court overruled Lin by citing "the reasons for litigating against the defendant's [the District Government] non-act do not hold" according to Article 56 of a Supreme Court's Explanations on ALL in 2000.⁷⁵

4.3.5.3 Lin's third, failed litigation under ALL

Dissatisfied with the ruling of the District People's Court, in 2002 Lin appealed to Shanghai's City Intermediate People's Court. In her appeal letter, Lin argued that the District Government had a legal obligation to enforce its own adjudication by ordering

⁷⁵ Supreme People's Court, Explanations on Several Questions Regarding Implementing The Administrative Litigation Law, issued on 8 March 2000.

the developer to conform. To support her case, Lin cited Sections 1 and 5 of Article 7 of the 1991 Shanghai Bylaws which stated the following:

The main duties of the Housing and Land Management Bureaus in housing demolition and relocation management are: 1. To execute laws (*fa*), statutes (*fagui*), regulations (*guizhang*), and regulatory documents (*guifanxing wenjian*) on [housing demolition and relocation management]...5. To be responsible for the supervision and inspection of housing-demolition and relocation activities...

In defense, the District Government interpreted Article 7 against Lin's citation and challenge:

The Bylaws do not state that the Housing and Land Management Bureaus of district governments have the legal responsibility to execute the adjudication they made; [the Bylaws] do not state that district governments have the responsibility to supervise the Housing and Land Management Bureaus of district governments to execute adjudications.

The Intermediate Court, while acknowledging that Lin had twice written formal requests demanding that the District Government carry out the adjudication, accepted the District Government's interpretations of the 1991 Shanghai Bylaws. In fact, one of the three major limits of ALL is precisely that the court does not have the power to challenge the government's interpretation of its own law. The Intermediate Court rejected Lin's litigation by citing Article 61 of ALL, which states, "...if the facts are clearly ascertained and the law and regulations are correctly applied in the original judgment..."

As Lin's lawsuits evolved, her opposition had been channeled into questions of procedural legality as defined by ALL and away from the appropriateness of the actual substance of *chaiqian* compensation. In each of her three litigation cases ruled under ALL (1998, 2001, and 2002 respectively), the courts invoked different ALL articles and made contradictory rulings. Lin won the first one but lost the last two. Lin's sole and ultimate intention was to obtain a correctly calculated price and have it contractually

secured by the property developer's signing. From Lin's point of view, she merely wanted the state to intervene in order to ensure her legal rights, as further supported by the government adjudication, to purchase the commodity housing from the private developer at a lower price. However, she unintentionally began a lengthy journey that led her through complex legal disputes and political contradictions (*maodun*) with the authorities. As Lin's frustration and grievances grew, she became a frequent visitor to the City Office for Letters and Calls and participated in group petitions together with other relocated residents. After numerous petitions to various government offices in Shanghai and Beijing and her active participation in resistance actions, the District Government finally took action and ordered the developer to complete the contract with Lin in 2004.

4.4 Conclusion

In this chapter I have tried to show the significant changes that the China legal regime has made to property laws related to *chaiqian* practices. The legislation on the mandatory role of government adjudication has come into being amidst official condemnations of the arbitrary use of forced relocation and violence to displace resistant residents. These legislative practices represent China's attempt to utilize law to govern the emerging disputes over rights-related issues. This has raised expectations for the coming of a rule-of-law society in China as one legal observer described: "The Adjudication Regulation could change forcible eviction from a midnight raid, in which residents are bound and gagged, into a formal legal event attended by notaries and witnesses" (Wilhelm, 2004, p. 289). Lin's years-long experience, however, shows that a law-based system can be

equally oppressive, although perhaps less physically violent, for affected residents who seek to articulate their claims of rights facing the legal regime.

The new legislation has both lessened and tightened the opportunities for relocated residents to assert their rights in the *chaiqian* process. The mandatory practice of government adjudication has curbed aggressive demolition and has also opened an official channel for residents to express their discontent. However, if residents wish to challenge the adjudication decisions, the courts' review will be based on the legality of government adjudication but not on the appropriateness of compensation. As Lin's case showed, residents' legal efforts to gain better treatment or compensation will most likely not be successful under ALL.

The new regulations, which espouse the rule of law, have reinvented the role of the state in *chaiqian*. Facing an increasingly rights-conscious society, the Chinese state has learned to deal with conflicts over *chaiqian* adeptly. Although William Alford once described China's legal reform as having "...the effect of fostering far greater liberalization than any such regime could ever have intended (1993, p.62)," residents challenging *chaiqian* through legal actions seem to face an even more constrained environment in which to express their opposition. The next chapter will reveal more in-depth accounts of the resistance in everyday life in disputed relocation.

Chapter Five

Groping Through Legal Actions: Disputed Relocation, Resistance, and Law

In this chapter, I seek to reveal the process in which relocated residents struggled to understand the state-sanctioned *chaiqian* on their homes and later to assert their claims of rights and interests in *chaiqian* politics. This was a lengthy, emotional process accompanied by violent confrontation and ambiguous outcomes. Even now, some persistent residents still refuse to sign their names on the compensation agreements prepared by *chaiqian* officials. While their *chaiqian* dated back even to the mid-1990s and their houses are long gone, they have continued to seek resolution (*jiejue*, 解決) to their cases. Some of their experiences surrounding forced relocation (*qiangzhi chaiqian*, 強制拆遷) were so disruptive and frightening that I cannot help but wonder how resistance could have ever formed, let alone continued. Abuse of power, violations of rights, and loss of livelihood and even of life, were so rampant that resolution through economic compensation (*jingji jieju*, 經濟解決) would only partially, if not temporarily, redress discontent. The process of seeking redress involved encounters with so many different branches of the government—from administration, police, to communist party, at different authority levels, from district, city, to Beijing—that the way relocated residents managed to wade through these alien terrains itself requires a closer examination. This chapter aims to produce a “thick description” of disputed relocation.

Law has played a significant role in residents’ resistance strategies. This important phenomenon, “learning the state” in order to challenge it, urges us to ask how China’s recent law-based governance shapes disputed relocation. When relocated residents wrote

down their personal experiences in petition letters to the government, legal terms, citation of statutory articles, and headlines of policy announcements crisscrossed their stories. Framing their grievances and demands in the state's language, even though this sometimes made their stories appear to be mundane and lacking context, was a recommended instruction widely passed on among relocated residents. A resident who had a graduate degree and often helped edit others' petition letters said he always told novice petitioners that "not learning law is no way out" and "law is your only weapon." From this perspective, resistance to relocation took place within the existing system of authoritarianism rather than from outside. Since many active residents were self-educated in law, how did they understand law in relation to their *chaiqian* experience? Has law helped in seeking redress or has law served to maintain the status quo? How did residents combine lawsuits with other resistance strategies such as petitioning and open protest? This chapter will examine this active, voluntary learning of law, probably largest in scale among authoritarian countries in the world.

While disputed relocation is a collective experience, resistance and opposition for the most part tend to be individualistic and isolated. It is true that small-scale grouped sit-ins, collective lawsuits and petitions, protests, gatherings, consulting do occur at times. Organized, sustained movement, however, has yet to take place. I once asked an interviewee if she saw herself as taking part in a "social movement (*shehui yundong*, 社會運動)." She hesitated for a moment then answered "you could say we are in a social action (*shehui huodong*, 社會活動) because so many people are affected [by *chaiqian*]. But it is not a [social] movement." The term "social action" has a very politically

innocent connotation, and usually refers to activities such as a group of morning risers practicing martial arts in a park. In other words, a social action indicates the quantity of participants in an event but not their political agenda. How does the state's handling of *chaiqian* conflicts contribute to this deliberate, self-conscious examination over political alignment? At times, active residents received the state's offering to resolve conflicts through, and only through, economic compensation. What gave way in the dialogue of economic resolution? What was achieved? Does this mean that opposition to disputed relocation is to be fragmented and become merely personal negotiation for economic interests with the state?

To reveal this complex, deeply political, heavily economically influenced process of disputed relocation, I do not intend to reduce residents' experience to a few separate, narrowly-focused factors. Instead, this chapter documents the ethnographic accounts of residents' experience before, during, and after *chaiqian* in order to provide insights into disputed relocation—a source of social unrest and a potential beginning of autonomous society in urban China.

5.1 Oh, *Chaiqian*!

5.1.1 Conjuring up from *chaiqian* announcement

Chaiqian was originally favorably perceived among community residents, even though when mentioned nowadays it almost always suggests some sort of social tension and grievances. This initial inclination to *chaiqian* was especially strong in old, deteriorated *linong* communities in which people had long expected rebuilding actions to improve their living environment. Recalling his immediate reaction when he first learned

the *chaiqian* announcement in the neighborhood in 1995, Chen said he cried out silently “I will be liberated again!” in his mind. Chen worked as a a pastry maker before he started a small grocery store with his wife out of their *linong* house inherited from his parents. The Chen family had ownership over the house (not including the land). Although the house was cramped, tiny, and received virtually no improvement previously, it was a two-level, street-side unit in inner Shanghai. The *chaiqian* was part of Shanghai’s first ten-year, city-wide inner-city renewal project beginning in 1991. When *chaiqian* was announced, Chen and his wife were the so-called “individual business enterprise (*getihu*, 個體戶)” allowed under the 1979 economic liberalization and had made significant progress in income by running their home-based grocery store. Chen saw the renewal project as an opportunity to further participate in China’s capitalist development. There is no doubt that the *chaiqian* announcement energized Chen greatly as he equated it to Mao’s liberation of China by the Communist takeover in 1949.

The *chaiqian* announcement in Zhang’s neighborhood in 1996 conjured up the same expectation. The Zhang family, who lived in in the center of what is today’s the most expensive blocks in Shanghai, shared a kitchen and a lavatory with two other families in a *linonglinong* house. Zhang’s three family members lived in a one-room unit; her son slept in a makeshift bunk bed which was about one meter below the ceiling. Still, Zhang described that they lived in not-so-difficult conditions compared to the general housing situation in the mid 1990s. She worked as an operator in a state-owned factory. Her husband was a skilled tailor and ran quite a good business out of their home. When the rumored *chaiqian* for a Hong Kong-financed project was talked among neighbors in late

1995, Zhang and her husband visited the *chaiqian* office stationed in an elementary school in the neighborhood. At first, the staff could not tell them the exact *chaiqian* boundaries and was not certain if the *chaiqian* was for city infrastructure building or for commodity housing development. It was important to make certain of the nature of *chaiqian*; for infrastructure building, the government had greater power to relocate residents *en masse* to the city outskirts within a short period. Later, Zhang saw an “Informing Letter to Residents” (*gao jumin shu*, 告居民書, hereinafter the Letter) posted in the community. According to the Letter, the *chaiqian* was for an inner city renewal project and her address was not in the *chaiqian* list. But somehow, the Zhang family also received *chaiqian* notification which required them to move out. At that time, Zhang and her husband did not push for further clarification because they did not oppose *chaiqian* itself. But her family had long ago determined not to leave inner Shanghai nor to be relocated to the outskirts because “we did tailoring; people there [in the rural area] are, relatively speaking, in the lower class. Low-class people would not need to have clothes tailored.” Because the Zhang family knew, both from her office visit and the Letter, that the *chaiqian* was for a commodity housing project invested by a foreign investor, they had planned to purchase the newly built commodity apartment. On hearing her purchase plan, I took it to be ambitious (and to some degree not realistic), so I asked her if she even thought of being able to afford a commodity apartment. Zhang, irritated by this question, quickly said:

Paying the price difference? We were not worrying about it because our tailoring business was doing all right. On top of that, my brothers, and my husband’s brothers and sisters, their conditions were also OK. We could borrow, we have siblings!...If we

remained there and worked hard for a few years, *we could purchase a house* [emphasis added]! Do you know that? Deep at the bottom, we had no intention to leave.”

My other interviewees also expressed the same eagerness to become part of China’s rising middle class and private home owners. This expectation provided a strong foundation for the perspective which saw *chaiqian* as a reform-oriented, substantive project (*shishi*, 實事) which promised a benign future. Even in 2006 when I visited a soon-to-be-demolished community, a woman who lived elsewhere and worked part-time in a garment fabric store in the community openly expressed her longing to a better-equipped, more modernized residence. She said “who does not want *chaiqian*!” which reflected her regret that no *chaiqian* had yet happened in her neighborhood.

5.1.2 Confused, angry and ignorant

The initially well-received *chaiqian* announcement quickly turned into confusion and questioning as residents encountered difficulties in negotiating with officials on the ground. Xiao agreed to move to a newly-developed neighborhood described by the *chaiqian* staff when *chaiqian* began in his community in 1994. Although Xiao’s old *linong* community was conveniently located in the innermost area of Shanghai, he wanted to have a larger apartment for his family of five. At that time, he was just laid off from a state-run factory and the offer of a new apartment seemed good. In addition, his wife’s work unit belonged to a local government branch which supervised land development activities, and this *guanxi* (關係, usually translated as interpersonal relationship) had helped smooth out the encounters with the *chaiqian* staff. According to the agreements privately reached between Xiao and the head of *chaiqian* office, Xiao’s family was promised a 70 m² apartment and were told they should move out swiftly and

not to reveal this privately-made *kouzi* (口子, exception or special arrangement).

However, when Xiao, holding the “house reviewing slip” (看房單, *kanfangdan*) issued by the *chaiqian* office, went to check the apartment in the new development, he found it was so cramped and poorly-structured that “you could barely turn around in the hallway if the door is open.” The new neighborhood “looked rural, had no supporting facilities (配套, *peitao*⁷⁶), and the ground was bare with yellow dust. This cannot be it!” After that, Xiao told the head official that the resettlement house (*anzhifang*, 安置房) was not what was promised to him and his family were not moving out. Trying to placate Xiao, the head official urged him to accept the current deal and proposed to find a replacement unit and would later arrange to relocate the Xiaos again. Xiao disagreed and the exchange intensified. At some point during the argument, Xiao called the head official a liar who replied “so what if I deceived you!” When Xiao refused to talk any further about relocation, the head official warned “if you don’t leave then forced relocation is coming!” Xiao responded “I am waiting for it!” But Xiao admitted that he actually had no idea what forced relocation really meant when he snarled back at the head official of the *chaiqian* office.

When Fang was asked to relocate in 1997, she “did not even know where to start to understand *chaiqian*” and she was “blunt and clueless as in a haze.” The Fang family was doing well at that time. Her husband was in charge of the purchase affairs for a foreign company which exported food ingredients. Her father ran a fish booth in the alley of their *linong* community. It was a comfortable and fruitful time. Fang refused to move out but

⁷⁶ Such as markets, schools, hospitals, and necessary amenities.

had trouble finding a strong argument to support her objection. Fang's neighbor, who was once a low-level government officer (*guan*, 官) in a Western province and had previously dealt with *chaiqian* cases himself, gave Fang an example to explain how *chaiqian* should be operated and how they could challenge it. Fang's neighbor said:

Chaiqian is like opening a restaurant or running a grocery store. You at least need to obtain a copy of certificate to prove that you are qualified to run the business. You have to satisfy sanitary, safety requirements etc. these things required by the state law before you can even open the business. Now, the *chaiqian* company have not even shown us the *chaiqian* permit, how can they come to ask us to leave?

Fang described that "all at a sudden it was clear...like lifting up the veil that had been covering my face." Fang asked to be rehoused in the same neighborhood but this request was denied. Similar to Xiao's final confrontation with the *chaiqian* staff, Fang and her relatives ended their negotiation with intense arguments and physical skirmishes. Many neighboring families also resisted relocation but no one was permitted to move back through purchasing the new commodity apartments. In one event, some 250 resistant residents lay down on the ground to prevent the *chaiqian* workers and bulldozers coming into the neighborhood. Fang refused to sign the relocation contract and she even went to the district government to complain to the higher authority for intervention. But all efforts were to no avail when demolition suddenly took place without notification in advance. One day when Fang was out for errands, the *chaiqian* office swiftly tore down her house. Her father was alone at home but could not do anything except witness the demolition of their *linong* house. By the time Fang was informed and hurried back, the whole neighborhood was already leveled to the ground. Fang's father said the demolition company's behavior was lawless and bandit-like.

Zhang and her husband also tried to make sense of *chaiqian* and its impacts on their life. Although their *linong* house was not listed in the 1995 “Informing Letter to Residents,” the Zhang family was also among those asked to be relocated to a new town in the rural area. The opening paragraph of the several-page long “Informing Letter to Residents” read:

Dear Resident Comrades,

The *chaiqian* site of *Duanle* Road, number 47⁷⁷ is approved by the Shanghai Housing and Land Management Bureau and the *chaiqian* license is issued by the Housing and Land Department of XX District Government. From now on, the *chaiqian* work begins officially. Our company as a lawful *chaiqian* operation unit will proceed to the work of *chaiqian*, resettlement, and compensation to residents in the site.

According to Shanghai Land-leasing (出讓) Document numbered XX and the Contract numbered XX, the state carries out *jiuqu gaizao* (inner city renewal, 舊區改造) through land-use rights transfer of the state-owned land to improve residents’

living conditions, to transform the city’s functions and landscape, and to reform roads and infrastructure. After the completion of inner city renewal in Shanghai, we will have state-of-the-art architecture, full-functional residences, well-connecting traffic networks, advanced and convenient communication facilities. As we are deeply reminiscent of the arduous pioneering work of founders and architects, at the same time, we will always remember it was once on this site there were thousands and hundreds of ordinary people, individual businessmen, workers in all industries, [they] understood righteousness clearly, overcame many obstacles, moved away from this site and settled in only-just-developed residential areas to make contributions to next generations.

For those many residents who will be leaving this place as their generational ancestors’ homes and will move to newly-developed residential areas, although the living conditions are to be improved, but there are still various inconvenience and many difficulties which need to be overcome. This is exactly because of this, we will be passionate, conduct *chaiqian* lawfully, be honest and self-disciplined, insist on principles, and complete the *chaiqian* on this site with residents.

The following pages of the letter laid out the relocation and compensation plans annotated with corresponding articles of the 1991 Shanghai Bylaws. Additional payments were also included as incentives for families who voluntarily cooperated for early

⁷⁷ All titles and numbers used in this chapter are pseudonymous.

relocation. Under the section of “Relocation Principles,” it listed three points: First, it stated “according to the nature of this construction project and relevant regulations, off-site, in-kind resettlement (*yidixianfanganzhi*, 易地現房安置) will be used.” “Off-site, in-kind resettlement” meant residents would not be allowed to move back to the original site and compensation would be in the form of resettlement housing but not money. Secondly, it specified the locations of the resettlement housing. These two areas were in the outskirts of Shanghai. Because it was an inner-to-outskirts relocation, it allowed “For residents who will move to the resettlement houses in XX areas within the *chaiqian* deadline, each person can be rewarded with additional one m² (households which are forcefully relocated cannot enjoy this bonus area).” Lastly, it stated “Considering the difficulties residents may have in reality, the resettlement floor area that residents are entitled according to policy could be monetized at 6,000 dollars per square meter. So residents or [business] units could purchase houses, rehouse on their own accord in [other] relatively convenient locations, appropriate neighborhoods.”

These three “Relocation Principles” showed that the demolition company did anticipate possible opposition from community residents due to the long-distance relocation and intended to smooth out conflicts by providing larger resettlement housing or monetary compensation.

Residents’ early encounters with *chaiqian* show three general reactions among relocated residents. First, although not fully informed and clear about the relevant regulations on *chaiqian* procedure, community residents somehow realized that the *chaiqian* operations in their communities were legally flawed. Examples included the

privately-arranged deal Xiao's made under the *chaiqian* office's persuasion, the lack of *chaiqian* permit in Fang's site, and the use of "Informing Letter to Residents" instead of posting copies of the official *chaiqian* permit in Zhang's community. Second, affected residents were also energized by the possible opportunities of becoming new home owners of commodity housing built by inner city renewal projects. They were well aware of the value and amenities of their *linonglinong* locations and the social status of being urban citizens in Shanghai. They had determined to stay in the city by taking debts and working long hours. Third, although all of them wanted to remain in the original neighborhoods, few of them learned about Article 49 of the 1991 Shanghai Bylaw on return settlement. On the openly-announced documents, such as Zhang's "Informing Letter to Residents," excerpts of various articles of the 1991 Shanghai Bylaws were listed but Article 49 was left out. In Zhang's case, the "6,000 dollars for one square meter" and "resettle on your own accord" was the closest alternative to what Article 49 legally allowed.

5.2. Groping Through Legal Actions: Resistance in Everyday Encounters

5.2.1 The Zhang family: early legal consciousness and tragic loss

After seeing the Informing Letter to Residents, Zhang's husband, who had been taking certification courses at a law school of a university, handled this event by carefully reviewing all available legal documents; Zhang herself "was not earnest in studying." According to Zhang, her husband, a skilled tailor and also a learned (*siwen*, 斯文) man, had wanted to pick up his education which was interrupted during the Cultural Revolution. Before *chaiqian* took place, he had already passed several qualification

examinations on law-related subjects in a hope that one day he could be a self-educated, licensed lawyer (anticipating that his eyes would eventually fail, thus preventing him from continuing the family's tailoring business). Zhang's husband borrowed a copy of "Huang Ju Number Four Order," the publicly-known name for the 1991 Shanghai Bylaws, from their neighbor. This common name came from the fact the the 1991 Shanghai Bylaws was issued under the Shanghai Major Huang Ju and was numbered as the fourth document of that year. After reviewing the 1991 Shanghai Bylaws carefully, Zhang and her husband decided to utilize Article 49, which allowed return resettlement through purchasing the commodity housing built on the site. Zhang recalled "we eased the worries when we saw article 49." They then "calculated over [the money of purchasing commodity housing]" and "were ready to pay the price difference once the figure was told." When Zhang and her husband told the *chaiqian* officer that they wanted to be rehoused in the original site through article 49, the *chaiqian* officer was surprised by this demand and seemed not to know how to respond. At the end, the *chaiqian* officer said "you want return settlement? Go to talk to the foreigner then!" Zhang and her husband were told that the site was leased to a foreign developer whose company was based in Hong Kong. Within about a two-month period, the negotiation for Zhang's relocation was stalled. Zhang's husband, angry by the denial of return settlement, challenged the *chaiqian* office and asked the office to present the government-issued *chaiqian* permit as a proof that their *linong* house was in fact included within the *chaiqian* boundary every time when the *chaiqian* officials tried to "work on them (*zuogongzuo*, 做工作)."

Two months later, the *chaiqian* company filed an application to the district government for an official adjudication. The adjudication letter first declared that the *chaiqian* was authorized under a district government-issued *chaiqian* permit. It then stated that the resettlement house that Zhang's family were entitled to receive was 20 m². This was because "4 m² should be assigned to each person...for relocation [which is] from the city's inner built-up areas to the city's peripheral areas"—Zhang's 15.1 m² *linong* had three adults and a child registered as residents—and "each single child (獨生子女) could increase [another] 4 m²." The adjudication letter also documented that the *chaiqian* office had provided a matching resettlement house but "[Zhang] eventually rejected it based on the reason of remote location." The district government "was not able to mediate because both parties insisted on their own opinions." The letter reasoned that "...the applicant [the *chaiqian* company] conducts *chaiqian* according to law. There is no inappropriateness in the relocation to Zhang. It [the relocation] should be supported." In conclusion, the district government asked Zhang to relocate to a 30 m² resettlement house in a new town within three days after the adjudication letter was received. The letter also warned of legally-allowed forced relocation if Zhang refused to comply. The last part of the adjudication letter informed Zhang "If not consenting to this adjudication, [Zhang] could file a lawsuit to the District People's Court within 15 days after the adjudication letter is received. During the lawsuit process, because the *chaiqian* company has arranged resettlement to [Zhang], *chaiqian* operation is not to be suspended."

This adjudication letter is a typical template (*yangban*, 樣板) of how the government adjudicated disputed relocation at that time. The adjudication was made and worded

within the legal framework of the 1991 Shanghai Bylaws. Four articles were frequently used to support government adjudication over *chaiqian* conflicts: Article 23 on the power of government adjudication, Article 24 on the use of forced relocation, Article 46 on additional resettlement area for each single child, and Article 51 on standards of resettlement house size. At that time, the Zhang family, as many other residents, did not question these articles but insisted on their demands of moving back to the neighborhood. At one interview in which I met with a few relocated residents at the same time, Xiao said even the law itself should be a focus of debate. For instance, Article 51 provided a table which specified the area of resettlement housing depending on a resident's current houses' size (in square meters). According to the table, if a residents had a 6.6 m² per person *linong* in inner Shanghai, which was the average figure in the 1990s, the *chaiqian* company only needed to provide a resettlement house which was sized between 6 m² and 7 m² per person if relocating the resident to the outskirts (5-6 m² per person if relocation took place in inner city). Xiao asked "what if they [*chaiqian* officers] decided just to give you 6 m² but not 7 m², which actually happened often, could you accuse them of being unlawful? Not to mention, we may gain some from the increase of the house's size but lose significantly in terms of hospital services, school district, and social network associated with the location of inner Shanghai." Also, Article 23, which allowed *chaiqian* to continue even during the process of residents' lawsuits against the government's adjudication, largely negated any meaningful resistance to *chaiqian*.

The adjudication letter was personally delivered to Zhang's house by officials of the District Government's Housing and Land Management Bureau. Seeing the letter, Zhang's

husband said to the officials “are you mistaken? You have not yet shown me the *chaiqian* boundary [indicated in the *chaiqian* permit]...this does not seem right.” According to Zhang, the government officers or *chaiqian* workers never showed them the *chaiqian* permit and her husband had raised this question repeatedly since their request of return resettlement was rejected. About a month after the government adjudication was issued, the Zhang family received the Decision Letter for Limited Time Relocation (限期搬遷決定書). The Decision Letter asked the Zhang’s family to voluntarily move to the address designated in the Adjudication Letter or to face the consequence of forced relocation. A policeman and two officials from the district government delivered the letter and Zhang’s husband raised the same demand of seeing the *chaiqian* permit before any relocation plan to be made. The two officials replied harshly “you [better] not be so tactful (你要不太老練)”. This is not for you to see!” Zhang explained the officers were warning them “not to know too much.” Zhang immediately said “you don’t let us see it, this means you are not able to present it...this is robbing in the name of *chaiqian*!” The policeman, angered by the defiance, stamped his foot on the ground and shouted “The Communist Party asks us to do this [*chaiqian*]!”

Feeling the threats and pressure from the government officials and police, Zhang and her husband wrote a “reporting letter (*jubaixin*, 舉報信)” sent by certified mail to the governor of the District Government. They intended to express their complaints and also to draw the high-ranking officials’ attention to the case. In the reporting letter, they reiterated the contents of the Informing Letter to Residents, their encounters with *chaiqian* workers, and their demand to be relocated in the same site. Previous to this, they

had written to the Housing and Land Management Bureau, which was directly in charge of land-related activities in the district area, but had received no response. This time, the District Government responded officially through the Office of Letters and Visits, a government branch specifically established to deal with residents' complaints and petitions. The District Government's reply letter informed the Zhang family that "the XX Corporate will handle and answer [the reporting letter]." The XX Corporation was exactly the demolition company which was financed by the Hong Kong-based development whose identity remained unknown to the Zhang family. In other words, Zhang's letter of complaints were directed to the very same agent who carried out *chaiqian* operation! This also clearly reflects the prevalent practices of the so-called state-unified and organized *chaiqian* (國家統一組織拆遷) which means the government uses its administrative manpower and political power to carry out *chaiqian* work for private developers. This model of *chaiqian* was probably the typical *chaiqian* in the 1990s, even though the *chaiqian* entity might be called a *chaiqian* company instead of *chaiqian* office. The government's letter of response, which was clearly a misuse of power, was somehow read as a reassurance to the Zhang family in this very confusing, oppressive, and worrying process of disputed relocation. On receiving the reply letter, Zhang and her husband thought "the government surely speaks with reasons (講道理)...in addition, we did not think too much else [on the reply letter], assuming by the fact that the District Government did reply [to us] so this proves the government should have treated it with seriousness."

The Notification of Forced Relocation (強遷通知) was delivered to Zhang's house in one evening by the *chaiqian* officials. The forced relocation was scheduled to take place after two days at nine o'clock in the morning and the Notification asked Zhang's family to "be present and give cooperation." Zhang was worried by the Notification and was anxious about the uncertainties and unpredictability. But Zhang's husband did not budge. By the time when Zhang received the Notification, most of the some 1,200 households in the neighborhood had already left and what still remained were about a dozen families and a few other small business stores in the nearby market. Two days later in the early morning of the scheduled date for forced relocation, under her husband's reassurance Zhang left home for shopping. Zhang was very nervous, but that trip to the market was necessary because the Zhang family was in turmoil and had not shopped since the Notification arrived. No food was left in the house; Zhang recalled she bought small yellow fish in the market because they liked the taste of seafood. When Zhang returned to her street, she saw two beige-colored, moving vans parked on the sidewalk and a crowd of *chaiqian* workers and government officials, including the policeman who shouted at Zhang when he previously delivered the Decision Letter for Limited Time Relocation, all gathered downstairs in front of her *linong* house. Residents and onlookers, not allowed to stay on the sidewalk, were all at the curbside. Zhang looked up at her husband who sat in the second-floor balcony staring angrily and speechlessly downward at the crowd. Zhang, frightened, shouting, and having dumped all the groceries, rushed across the street to the house. Her husband, furiously stomping on the balcony, yelled at the *chaiqian* workers, calling "robbers! robbers!" Trying to stop Zhang, five to six women workers charged

ahead out of the crowd and grasped Zhang's neck to hold her back. Zhang, whose fingers grabbed firmly on the pedestrian railings and then were pulled open by force, was bound, dragged away on the road, and locked inside a toilet in the on-site *chaiqian* office. Before Zhang lost sight of her *linong* house, she saw that the *chaiqian* crew erected two ladders to reach the second floor and all of them were rushing upward. A fight immediately began between *chaiqian* workers and Zhang's husband, who was shouting "robbery" and "villains" and crying out for help. They struggled then pushed into the house and could no longer be seen from the street.

Zhang stayed locked in the toilet for about two hours and then was transported to a hotel whose name Zhang still remembered clearly. The hotel room, Zhang recalled, had no lights and was kept closely watched by a group of seven to eight people in order to prevent Zhang from running away. Later in the afternoon, Zhang's daughter was brought to the same hotel by the school teacher so she could stay with Zhang. It was a sleepless night for Zhang, who was struggling to leave and return home. The next morning, a person from the development company came to talk to Zhang. Leaning against the door frame, that manager told Zhang "the house was burned to ground!" Zhang tensed up and asked about her husband and was answered "he ran away!" Believing this, Zhang felt relieved, because "he was quite a clever person and this [running away] was not a thing that could not be done...there were two windows in the back and one of them was right next to the flat roofs of other houses that all adjoined together. Once out on the roofs there was no way to be found...So I believed his words."

The second day, Zhang was transferred to a multi-level building whose street name Zhang still recalled. In each floor, grille gates blocked the stairways and the only possible entrance was through a freight elevator. Zhang was locked in one room in which two of the three beds were used by people who kept Zhang from running away. The bed in the middle was for Zhang and her daughter. Staff of the development company also occupied two other rooms in the same floor so Zhang could be watched closely from outside her room. With telephone on the counter taken away and doors blocked, Zhang had no way to contact her family. After seeing her daughter out of school for a few days, Zhang insisted that studying was not a thing that could be cut short. This demand was accepted, and from then on, her daughter was allowed to attend school, but only under the escort by the staff both ways between the detention building and the school.

A few days later after, a manager of the development company came to Zhang and delivered the news of the death of her husband. Zhang passed out. When she regained consciousness her family was with her in the room and everyone was crying. Zhang asked the manager how her husband died but did not receive any response. Fights, skirmishes, and shouting erupted almost all the time between Zhang and the people who imprisoned her. Every time Zhang struggled to get out of the room, she would be immediately pushed back to the bed. Sometimes, Zhang made to the door and even reached the telephone, but the staff would rip the power cord out and violent confrontation erupted. Recalling that period her detention, Zhang said “it was like they were torturing me in a way that all my energy was drained so I did not even have energy

to think about my husband.” Zhang and her daughter stayed under this house arrest in a hotel for eight months.

5.2.1.1 An agreement under coercion

For eight months Zhang and her daughter lived there, detained under the development company’s surveillance. Zhang asked about how her husband died; no answer was given. Zhang fought to leave but in vain. During the period of detainment, Zhang had visits by people who claimed to be chairpersons of her workplace. They told Zhang that the state-owned factory was no longer profit-making and the unit was taken over by an other enterprise. They said that life would not be easy, since tailoring was no longer possible either, and advised Zhang to focus on how to raise up her daughter in the coming difficult times. They said to Zhang “you cannot bring back the dead (人死不能復生).” Recalling those conversations, Zhang considered them as “tricks they played to weaken me,” however, Zhang also “wanted to come up with a way to get out.”

Eight months later, the development company began to talk to Zhang about releasing her. The release was dependent on the dealing of relocation. The first condition that Zhang needed to agree to was to give up the previous request of return settlement—through purchasing the commodity housing—previously made together with her husband. If Zhang did not drop the request, the development company would not release her. Zhang had no choice, and agreed. The development company then would compensate Zhang one housing unit which was licensed for business use. This was due to the fact that the Zhang family had a home-run business before. But Zhang and her family raised the objection that the unit itself was smaller than Zhang’s old, now-demolished *linong* house

and this compensation was not justifiable. The development company then quickly agreed to add a second, residential house in a good location in inner Shanghai to the compensation package. The two compensation houses together were roughly equal to the area of Zhang's old *linong* house. Also included in the agreement was that the development company would be responsible of completing all the necessary logistic details, such as connection to utility services, household registration *etc.* According to the agreement, Zhang would "move out" the hotel within three days after the signing. There was no mention of the death of Zhang's husband in the agreement.

5.2.1.2 Seeking an official investigation

Zhang once said she "was not earnest in understanding *chaiqian* law" before forced relocation took place. But her first attempt to gain redress after regaining freedom was very much a legal action. Learning from a newspaper that a legal aid center in Guangzhou province provided legal assistance to citizens, Zhang immediately bought train tickets and traveled south. A female lawyer who Zhang said was a really nice person received Zhang and listened to her. The lawyer then told Zhang that the case was in a very complicated situation. But "all in all," the lawyer said, "a death must have a cause. Once you arrive home, report to the police immediately and ask [the police] to issue a cause of death." This legal advice was crucial to Zhang since she had not thought that a formal report was the first step to have her husband's death officially documented. The lawyer also informed Zhang that Shanghai also had its own legal aid centers. Spending just one night in Guangzhou, Zhang traveled back to Shanghai and talked to a lawyer about her case in the city's own legal aid center. After hearing Zhang's case, the lawyers

told her forthrightly that her case was not eligible to receive aid from the center.

However, the lawyer at the center suggested Zhang to seek help from other private, individual lawyers and also referred her to a law firm. Zhang said she could still recall what that the private lawyer said to her after she talked about the forced relocation in the office. “There might have had injustice in it,” the lawyer said, “But what are we? A cotton thread that cannot move the stone monument forward.” Zhang said she understood this metaphor that the meager capacity of a private lawyer cannot stand against the powerful force of the state. Since then, Zhang has never sought help from any lawyer.

With no lawyer willing to take her case, Zheng went to the district police bureau and reported her husband’s death in the *chaiqian* process. She asked the police bureau to investigate the abnormal (非正常) cause that led to the death. After a short period of time, the district police bureau replied with a “Notification of Case Not Established (不予立案)” to Zhang. The Notification was a brief statement that “ through review (審查), the Bureau deems [the request] has no sufficient condition for establishing a case (立案) and investigation.” The Notification also informed Zhang that she could apply for re-consideration (*fuyi*, 覆議) from the City Police Bureau. The re-consideration by the City Police Bureau held the same reason and officially rejected to have a case for Zhang’s request. Zhang then repeatedly asked the police bureau to issue an official explanation on why there was not sufficient reason to have an official case.

Since official channels led to no result, Zhang turned to petition (*shangfang*, 上訪). In the first year after she was freed, Zhang started to petition the District Government and

the City Government in Shanghai. Finally she decided to go to Beijing and appeal to the Central Government for an investigation into the forced relocation and the death of her husband. At that time, Zhang felt very intimidated, helpless, and most of all, useless of herself. She described her first, futile petition in Beijing. About a year after she was released, Zhang went to Beijing.

“I was not even a bit of use...I did not even know where to petition [in Beijing]. So I just mailed out the [petition] letter in Beijing, after that I just wandered aimlessly for three days in a park...While I was sobbing on a bench in the park, a senior, male comrade asked me if anything happened. I told him and he said you were indeed wronged. He also told me the address of the leader, (*lingdao*, 領導), Li Peng,⁷⁸ and suggested me to try to petition to Li.”

The idea of seeking personal, direct help from a high-rank official was inspiring, but Zhang was too frightened. She was afraid of possible retaliation by the local authorities if she sought help directly from a leader of the nation. But the idea of having a more active, high-profile petition had taken root. A year later, Zhang arranged for her mother to take care of her daughter. She then wrote a petition letter, carried relevant documents, and went to Beijing, hoping to petition Li Peng directly. In Beijing, Zhang found Li's place and approached the front gate. Guard officials stopped her and were obviously accustomed to all the capital-city petitioners from other parts of the country. They quickly made a copy of Zhang's materials (*cailiao*, 材料) and told her to leave. While Zhang was being steered away, Zhang described the exasperation and the change of her mindset at that moment:

“The more I thought the angrier I became. What was this Li Peng doing? Even after I had found the way here in person, he did not even put a hand (*guan*, 管) on this...I

⁷⁸ Li Peng was the fourth Premier of the People's Republic of China between April 1988 and March 1998.

grew bolder this time...so I thrust myself through the Xinhua Gate of the place where the Central Office of the Communist Party was stationed. Once I made the move, I was immediately arrested, pushed into a car, and sent to a police station. The Beijing police then reported to the Shanghai Office stationed in Beijing which later escorted me back to Shanghai. At that time, I was unable to write myself out and I understood nothing. But I suffered from injustice and I wanted to cry out loud (*nahan*, 呐喊)...This was my first time of open opposition.

5.2.1.3 Compounding conflicts and anger

Soon after Zhang was released from the detainment, one of her relatives went to examine the relocation house promised by the *chaiqian* officials for business use. After measuring the house, the relative found out that the house was only half the size of what was claimed in the relocation agreement. Zhang and her relatives angrily argued with the *chaiqian* company. She yelled at them for lying to her even after all the tragedy had happened. The manager of the *chaiqian* company quickly agreed to replace with another larger resettlement house which was also licensed for business use. Zhang went to see the house personally and felt the house was acceptable. In Zhang's understanding, everything agreed previously should remain the same except one of the two resettlement houses had been replaced by a larger one, closer to what was promised. However, the new house was located in another district. And when Zhang requested the *chaiqian* company to complete their household registration at the new address, the *chaiqian* company refused to do so. The *chaiqian* company said it had no power in another district and therefore could not transfer Zhang's current household registration to the address in another district.

Zhang's anger, grief, frustration, and distrust of the government had greatly intensified as the government tried to use political means to suppress Zhang's seeking of redress. In 2000, Zhang went to the City Government to petition as she did several times previously.

When she was there, the door of the receiving room in which petition residents were seen by government officials was half-latched. A security guard saw Zhang and told her that no individual petitioners (*gefang*, 個訪) but only group petitions for collective reasons would be received today. Zhang refused to leave and said there was no such announcement to restrict individual complaints. Finally, Zhang gave an excuse that she was also part of a group and inched into the office. When the officer stepped into the office, he recognized Zhang and several other so-called “regular petitioners (*laoshangfang*, 老上訪)” who the officer had himself had not only once escorted back to Shanghai from their petitions in Beijing. The officer raged at the appearance of these often-seen faces and shouted that none of these regular petitioners would be seen today. Equally angry, Zhang, Xiao (whom Zhang first met that day), and a few other residents decided to report this unreasonable rejection directly to the Mayor’s office located at another government building. While they were biking to the office, a police car stopped them, ordered them to park their bikes nearby on the street, and transported them back to the same receiving room in the City Government. It was an especially busy day and the receiving room was crowded with petitioners sent in by police cars. They waited until eight o’clock in the evening, when the face-to-face receiving finally took place. But they later found out that the officers were not willing to issue written records which documented the date, reason, and the handling of the petition. Based on their experience, without a record to prove that the petition was officially admitted they would later encounter great difficulties in asking government offices to complete the follow-up actions as promised by the officers who received them. The whole day would be wasted

if no written records were obtained. Arguments erupted and several petitioners including Zhang and Xiao refused to continue the receiving. At the end, Zhang, Xiao and a few residents left with empty hands. On their way to pick up their bikes, Zhang and other five residents were stopped again by the police. The police, who were aware of their petition actions, questioned why they gathered together and if they had any attempt to assemble a protest. It was a rainy evening and they told the police that they had no intention of doing anything but going home. Zhang explained that she was simply ready to bike home and others had asked a ride to a bus stop from Xiao and her. A low-rank policeman seemed to believe them and was ready to wave them away. However, his supervisor arrived and all six residents were sent the police station. There, they were investigated again, and criminally detained for 15 days under the charge of “gathering a crowd to disrupt social order.”

Zhang recalled that neither of them fully realized that the charge was real and actually in force until they were sent into the detention center. When Zhang saw the iron gate of the detention center pull open, a surge of fear seized her. Wondering what was the need of detaining her, Zhang became extremely scared and collapsed on the stairs leading to the female detention cell in the third floor. Zhang remembered that Xiao was also so frightened that his legs weakened and he had difficulties climbing to the fourth floor where male detainees were imprisoned. Seeing Zhang falling down on the stairs, Xiao told her “we will certainly be fine because we did not do anything illegal. You should hold yourself together strong.” Recalling that moment, Zhang said “Xiao’s good brain

made me realize I did not do anything wrong.” Xiao’s words gave Zhang a calmer mindset which helped her endure the detainment.

In the center, detainees were assigned to different labor tasks: women were to make paper bags, men were to punch holes and thread ropes. They worked about 12 hours a day and were required to satisfy performance criteria set up by the detainment center. If a detainee could not finish the workload assigned, he or she could not have lunch or dinner at the regular schedule; he or she could not eat until the criteria were reached.

As I have observed in almost all of my interviewees, the mishandling of conflicts especially after relocation took place—including power abuses, bureaucratic formalities, deception, negligence, unfulfilled agreements—is a main force that has driven relocated residents to become disillusioned citizens. This has also profoundly complicated *chaiqian*, changing it from conflicts over compensation into broader social unrest which raises questions about many fundamental aspects of the government and its governance; from accountability, transparency, justice, to political and legal rights. Even the State Council in 2003 urged local governments to prevent disputed relocation from turning into a social stability problem.⁷⁹ Zhang now claimed that the compensation agreements which were signed previously during the eight-month detainment were not valid. Since the agreements were reached when she was deprived of freedom and under threats of coercion, Zhang declared, she were not obliged to adhere to the agreements. In other words, conflicts had not only remained unresolved but had further evolved into an issue

⁷⁹ Guanyu renzhen zuohao chengzhen fangwu chaiqian gongzuo weihu shehei wending de jinji tongzhi [Urgent Notice on Earnestly Conducting Housing Demolition and Relocation Work in Cities and Towns and Safeguarding Social Stability], issued by the PRC State Council on 19 September 2003.

weighted with deep emotions and complicated ramifications. Zhang now petitioned and fought for three demands. First, she asked the authority to establish a formal case to fully investigate the death of her husband. She demanded the release of all evidence relevant to the death. Second, she asked the development company to compensate the entirety of her loss: her belongings, possessions, furniture etc. in the old *linong* house, in addition to the loss of business during forced relocation.⁸⁰ Last, she asked the development company to complete a publicly notarized compensation agreement which included the above two demands with her.

5.2.1.4 Not a concrete administrative act?

Three years after the forced relocation, and after many petition trips, Zhang received a “Petition Reply” from the City Police Bureau’s “office for answering letters and receiving visitors.” Excerpts of the “Petition Reply” read:

Comrade Zhang:

You requested the City Police Bureau to answer in written form about the death of your husband and the eight-month detainment of you and your daughter. It is now answered as below:

...On XX date the District Government organized relevant offices to carry out forced relocation according to law, your husband XXX in the balcony of the original residence on XXX road poured off gasoline from a iron tank which was prepared [beforehand]. The work staff on the site tried [their] best to stop the extreme behavior [of XXX], but XXX suddenly ignited a lighter, [and this] caused XXX’s death on the site, [this] also caused three workers serious fire burns. This outcome resulted from the arson act [of XXX’s behavior].

After this happened, relevant [government] units established a team of post handling (*shanhouchuli*, 善後處理), at the same time in order to guarantee a normal life for you and your daughter, to stabilize emotion, [the team] temporarily settled you and your daughter in XX hotel and also appointed staff responsible to provide care. Your accusation of unlawful detainment is groundless according to law.

⁸⁰ In a petition letter Zhang wrote in 2002.

This Petition Reply angered Zhang. She saw the policy bureau as abetting the wrong of forced relocation and aggravating her suffering by refusing to administer an investigation. Did the police collect evidence on the site when physical confrontation erupted back then? Was there forensic evidence? Where were the witnesses? If the police did none of these and had not shown any of these, how could they even justify the denial of having a case to investigate? Zhang raised many questions. She believed that this Petition Reply proved that the police bureau had intentionally eschewed its responsibilities and therefore had in fact assisted oppression and injustice. Basing her charge on the Petition Reply, Zhang filed a lawsuit in the District People's Court against the City Police Bureau for its dereliction of duty by “not taking actions (*buzuowei*, 不作為).”

But the district court did not accept Zhang's application of lawsuit. The rejection was based on legal reasoning justified by China's Administrative Litigation Law. The district court informed Zhang that a petition reply was not a document could be legally challenged. Zhang was told by the court staff that “the documents you bring in with a lawsuit should be something that can be sued in court. How can you sue [based on] a petition reply!” Zhang did not give up. She passed the district level and brought the case directly to the City People's Court. Using the same rationale, the city court rejected Zhang. The judicial officer who received Zhang explained to her that “a petition reply cannot be sued [because] it is not a concrete administrative act (具體行政行為)...You could ask the Police Bureau to re-consider [the Petition Reply] but you cannot sue it at court.”

In fact, the denial of Zhang's application was not entirely case-specific either place-specific. Instead, it was part of the limits inherent in China's Administrative Litigation Law (ALL). According to Article Two, Section Two of ALL, the courts may not accept litigation applications directed at administrative decisions or orders "of generally binding force." In Sichuan Province, in the case of land disputes surrounding *chaiqian* for the "Zigong High-Tech and New Technology Industrial Development Zone", resistant villages who believed they were under-compensated by local government's deliberate misuse of an illegal document had also failed to establish a lawsuit against the petition reply they received (Pils, 2005). Legal scholar Pils concluded that "[p]etitioning also produced a reply in the form of a document that could not be challenged, and also appears to have had no effect" (p.271).

What can be less concrete an act than asserting to a widow that her husband committed suicide without even agreeing to conduct an investigation? Zhang accused the police bureau and the court "speaking nonsense...irresponsible and blinded to the truth." Zhang described the process of seeking redress as painful and to no avail as "you go to petition, all right. If [officials of] petition offices really have no way to answer you, they ask you to go to the court. The court then does not allow you to sue. This is that you can do nothing about this...they just shuffle out of it (他就推啊), [and] you would just perish in this dead-end alley."

5.2.2 The Chen family: persistent fighting and growing *chaiqian*-savvy

Before *chaiqian* took place in Chen's neighborhood In 1993, he and his wife had run a grocery store out of their *linong* home inherited from his parents. Their ground-level

linong house faced a major road which passed through the old French Concession in one of the most commercially-thriving areas in inner Western Shanghai. Chen's home-run business was the so-called "individual enterprise (*getihu*, 個體戶)," a government-supported activity under China's economic reform and liberation policy in 1979.

Although their storefront was small, only 13 m², the Chen family had obtained and renewed a license of business-use house (*yingyeyongfang*, 營業用房). While Chen's family enjoyed a steady business, crowding both the family life of five and the business activities of the store into a tiny *linong* home of only 22 m² was a painful problem, and the Chen family had longed for improvement. The Chen family included their parents-in-law, Chen and his wife, and their son. Therefore, when *chaiqian* was announced in 1993, Chen was excited and felt "he will be liberated again."

However, the Chen family immediately encountered a difficult negotiation with the demolition company. The demolition company soon filed for a government adjudication. The adjudication letter issued by the District Government documented the gap between what the Chen family demanded and what the demolition company offered. Because Chen's old *linong* was licensed for business use, the compensation included both residential and business coverages.

The Chen family demanded:

For residential:

- Two apartment units, both should feature two bedrooms and one living room, and
- One of the two units should be located on *Daning* Road, which was not far away from the original community (The adjudication document did not provide detailed information in terms of the sizes of the apartments which the Chen family demanded)

For business:

- 400 thousand RMB for business loss, or
- An area equal to the original business size (13 m²) somewhere in the original neighborhood

The demolition company offered:

Plan 1

For residential:

- Two newly built apartment units
- One was located on the fourth floor, 24.4 m², and had two bedrooms.
- The other another was located on the second floor, 17.75 m², and had one living room.
- Both apartments were located on Yuanping Road, which was in the marginal area of Shanghai

For business:

- 104 thousand RMB for business loss (or 8,000 RMB per square meter)

Plan 2

For residential:

- Two newly built apartment units
- One was located on the second floor, 12.2 m², and had one bedroom
- The other was located on the fourth floor, 27 m², and had two bedrooms and one living room
- Both apartment were located on Yuanping Road, which was in the marginal area of Shanghai

For business: same as plan 1

Plan 3

For residential together with business:

- One street-side *linong* (21.1 m²) and its second-floor garret (10.6 m²)
- The *linong* was located on Riverbank Road in the original community's district
- The *linong*'s street-side location was supposed to provide an advantage and convenience for business use. And,
- One newly built apartment with one bedroom, one living-room (18.91 m²) on the first floor
- The apartment was located in Jiangqiao Second Village, which was a new town in the rural outskirts of Shanghai

As shown in the adjudication document, three major disagreements occurred: first, if the business loss to be monetarily compensated, the demolition company only agreed to pay about a quarter of the amount that Chen asked for. Second, if the demolition company compensated the Chen family with newly built residential apartments, these apartments

would be located far away from inner Shanghai. Third, if a convenient, inner city location to be provided as in Plan 3, the Chen family were to accept a *linong* only as old and poorly facilitated as his previous *linong* home and one apartment in the rural area; also, no monetary compensation would be paid for their business loss. Plan 3 also showed that the demolition company also fully appreciated the unexploited values associated with the inner location of a *linong* house. Therefore, Plan 3 was clearly a manifestation of the trade-off between new apartments in rural areas and a good location of an old *linong* in inner Shanghai. In short, the demolition company asked the Chen family either to end the family business and move into newly constructed apartments in remote areas (Plans 1 and 2) or to retain their entrepreneurship in the city with the caveat of living in the rural area, far from where their business would be in the city (Plan 3). The Chen family did not agree with any of the three plans and refused to be relocated.

The district government adjudicated on the dispute and assigned Plan 3 to the Chen family. The adjudication read as follows:

[The District Government] has summoned the two parties involved to adjudicate disputes and to explain the relevant policies. In the process of adjudication, the adjudicated party [the Chen family] insisted on its own opinions and refused to accept the applicant's [the demolition company's] compensation plans. The District Government has argued that the applicant [the demolition company] has conducted the resettlement appropriately within the range of the relevant policies, that the adjudicated party [the Chen family] insisted on excessive demands, and that the District Government does not support [these demands]. In order to ensure a smooth progress of city building and to protect the legal rights of all parties involved in the demolition, according to Articles 23, 44, 51 and 55 of the 1991 Shanghai Bylaws, [...] the Chen family should move to the address indicated [in Plan 3] within 5 days after receiving this adjudication, and the original house should be demolished by the applicant.

Legally speaking, the Chen family's demands might be excessive when measured by what was allowed in law. However, the District Government use of law in adjudicating

conflicts was also flawed. According to Article 49 of the 1991 Shanghai Bylaws, affected residents had the legal right to be resettled in their original neighborhood. Article 49 required that for inner-city renewal projects that aimed to develop commodity housing, “residents in general should move to the city’s outskirts.” However, the article also ruled “if residents request to be relocated in the original areas, [residents] should purchase the residential commodity houses built on the same site.” The purchase price of such a commodity house was based on the difference of the construction costs of commodity houses between the inner city and the marginal areas. In other words, Article 49 not only legally opened a channel through which residents could remain in the inner city but also granted a preferential purchase price.

So why did the Chen family not invoke Article 49 of the 1991 Shanghai Bylaws and request a return settlement in the original neighborhood? In an interview, Chen said that they did not understand *fa* (law, 法) at that time and recalled that “information on relevant laws and polices was scarce and nowhere to be found.” More importantly, his family never had the access to negotiate the relocation plans directly with the developer. Everything was talked through the demolition company which was effectively a branch of the District Government. Did his family ask around in the neighborhood for other residents’ experience and strategies? “Everyone was clueless as we were...we were at least relatively better in [rights] consciousness.” Why was the Chen family not happy about the compensation plans, particularly about Plan 3? Chen argued although Plan 3 did provide an inner residence, the fact that the compensation consisted of one city *linong* and one rural apartment would lead to separation of their family and their aging parents-

in-law. Since they wanted their son go to a city school and the *linong* was not spacious enough to accommodate the whole family in addition to business activities, their parents would be left living in the rural area without nearby care.

Two weeks after Chen received the adjudication letter, the decision of within-the-deadline relocation (限期拆遷) was issued to his family; a week later the notification of forced relocation (強制拆遷) was sent to his home. Chen and his wife hung up signboards and banners with slogans such as “the weak are the prey of the strong,” “punish corruption,” and “our livelihood is severed.” At that time, very few residents resisted openly. However, the Chen family’s early rights consciousness was bolstered by the fortune that one of their relatives was at some point a cadre of a communist party branch in Beijing. Although it was never clear how close their relative was to the power or what connections their relative still had with high-rank party members, the existence of this possible *guanxi* (interpersonal relationship, 關係) did seem to help the Chen family gain some special considerations and treatments. During confrontations with the demolition company, they were verbally threatened but not physically hurt. The Chen family’s defiance also attracted a neighbor’s attention. This neighbor also ran a private business in the neighborhood and he himself was previously relocated to the area from somewhere else. He told Chen that it was not an easy task to fight against the government and it would be better-off for the Chen family to have a back-up plan. He further suggested that Chen accept Plan 3 provided by the demolition company, while at the same time filing a lawsuit against the District Government.

5.2.2.1 Equivocal court ruling

At the end, the Chen family were still were forced out of their old place before they signed any compensation agreement. Chen immediately decided to bring their case to the court. In particular, the Chen family challenged the adjudication decision made by the District Government and asked the court to overrule the decision. Chen sought help from licensed lawyers who represented the family in court. Chen's main worry and discontent were documented in the court verdict: "...the [adjudicated] resettlement (Plan 3) would lead to their old parents living separately from their children's care. In addition, the adjudicated [*linong*] unit on Riverbank Road had been assigned to several families in the past." Also documented in the court verdict, the District Government stated "[t]he adjudication is lawful. Although the unit on Riverbank Road was [previously] assigned to other families, [those assignments] never came to effect. That unit is vacant presently. [The District Government] sustains its adjudication." The District People's Court rejected Chen's lawsuit and ruled that "The District Government's compensation for the Chen family *both assures the business demands and assures the residential needs*, the area of resettlement [houses] is in accordance with law (emphasis added). Therefore, the plaintiff's [Chen] request of canceling the adjudication decision has no sufficient reason." After losing the case, Chen brought the case to a higher court, only to return with the same ruling.

In one of the outside-the-court negotiations with the demolition company, Chen raised questions again on the *linong* house on Riverbank Road. Chen's main concern was whether the *linong* was good for business use, because their now-demolished house had a business license. Chen felt the court's wording of "both assure *the business demands and*

assures the residential needs” was equivocal especially the assigned *linong* did not currently have a business use license. A high-ranking official of the demolition company told Chen “you should take the court verdict with you and apply for it. The court verdict is your warranty... You have not even done that how could you know you will not get [the license]!” To close the case with the Chen family, the demolition company also made a private arrangement which replaced the rural apartment with a *linong* unit in inner city. In short, the Chen family signed on the agreements of relocation and received two old *linong* units (one of which was said to be licensed for business use once the application was made) both located in inner Shanghai.

Although the Chen family seemed relatively successful in this battle, the process was very stressful. Chen told that when the demolition company heard that Chen would bring the case to the court with help from professional lawyers, some with degrees earned in schools in USA, the demolition company sent out staff in the neighborhood to comment on this strategy: “[Chen] wants go to court? He litigates one case, he loses one case. He will not get even a penny.” Chen said that the demolition company’s intention to scare off any other possible attempt of filing a lawsuit created a tense “wait and see” atmosphere toward his family in the neighborhood. While their home-run business was gone, Chen and his wife had to find a temporary residence, pay rents, and still had to pay for lawyers’ fees which amounted to almost 1,800 US dollars. Their son was still in kindergarden and the tuition was also burdensome. After forced relocation, the litigations took the Chen family almost nine months, as well as two more until the agreements over

compensation were finally reached. Various kinds of stresses made the Chen family “live like walking ghosts” and “not sure how they mentally survived.”

5.2.2.2 Unmet promise and second *chaiqian*

After the Chen family settled in their after-relocation residence, Chen began the application for a business license for the *linong* on Riverbank Road. He sent in application documents to the District Government but only received a denial after waiting for a long time. The District Government did not explain the reason of rejection and only provided a statement that “the license cannot be issued.” Chen therefore presented the court verdict which documented that the compensation arrangement would “both assures the business demands and assures the residential needs” to the District Government to prove that his application was legitimate and legally supported. However, the official of the District Government told Chen forthrightly that a court verdict had no superior power over administrative decisions. And after all, “what did the statement of “two assurances” actually mean in terms of administrative operation?” Chen was asked by the government official in charge of his license application. In short, Chen was told that the District Government did not respond to a court document which had no clear instruction.

Since first rejected, Chen had tried a few more attempts; all were unsuccessful. Chen then sought help from a legal aid center in Shanghai, but the director of the center was not willing to accept Chen’s case. He told Chen that cases involving *chaiqian* conflicts with the local government were not eligible for receiving aid. Chen also petitioned the City Government but all efforts were in vain. The unmet promise angered and frustrated Chen. On the one hand, Chen did not want to spend more money on lengthy lawsuits with

meager odds of success. Especially, the lawsuit would probably be overruled based on the verbatim meaning of “the two assurance” but not its meaningful fulfillment. The equivocal verdict would make it difficult for the Chen family to prove that the demolition company failed to meet its compensation arrangement. On the other hand, the family felt deceived by the demolition company’s deliberate manipulation of words. While many residents ran small or street-vendor-like business without any formal permission or license, Chen knew well from their previous long-term experience in business that a *linong* with a business license, no matter how deteriorated the building was, had a much higher value than a *linong* simply for residential use which was *linong*’s most common, ordinary function. Chen therefore strongly saw this unmet promise as a deliberate hurt to their economic interests.

In 1998, about five years after their first relocation, the Chen family were asked to relocate again for another commodity housing project by a different demolition company. The development project took place in the *linong* community where a unit was privately arranged for the Chen family after their first relocation. This time, the Chen family were again the last household to be forced out of the community. The agreed compensation included monetary compensation and an apartment in the rural area.⁸¹

5.2.2.3 Understanding policy and playing along with the game

For quite a few years, Chen felt he “cannot penetrate (*chibutou*, 吃不透)” the problem of *chaiqian* when they confronted with the government-like demolition company or the

⁸¹ Interviews with the Chen family were mostly focused on their first relocation experience. Their second relocation was not often mentioned and when it was much less detail was provided.

government itself. The term “cannot penetrate” reflected the deep frustration that ordinary citizens felt when they were unable to grasp how affairs related to relocation were arranged. Probably because of the politically-privileged family background, Chen received relatively lenient punishments compared to the extremely aggressive *chaiqian* practices many other residents had experienced. Yet Chen was still detained several times by the police under politically-motivated charges, whose periods of detainment lasted from over two weeks to a month. Even though Chen represented a relatively less oppressed case in *chaiqian*, the Chen family still struggled for years to understand the policy and politics behind city renewal development.

Chen listed evidence of their ignorance. First, during their first lawsuit in 1994, they did not obtain any copy of the relocation documents the the demolition company claimed to have, such as Approval of Development, Planning Document etc. All of these documents were legally required for new developments and constructions, and without them a *chaiqian* permit simply could not be legally allowed. In addition, plaintiffs and defendants had a right to review the documents used by either side in court. It did not cross Chen’s mind that he should have asked for copies, nor did his lawyers never remind him. Second, Chen, even in consultation with his lawyers, signed the equivocal compensation agreements which vaguely stated that the arrangement assured both business and residential needs. The fact that these obvious flaws went unnoticed showed how ignorant of the law and of their rights the Chen family was. Third, Chen did not know about the 1991 Shanghai Bylaws. Chen commented on his lawsuit process: “we did not understand law, all right. But it seemed the lawyers did not either or they just played

dumb in front of [the system]!” Last, and perhaps most important, the Chen family found themselves lacking political and legal savvy in order to gain enough leverage to protect their interests in the *chaiqian* process. As Chen said, “If you do not understand policy, you will be in a disadvantaged situation.”

After experiencing two relocations, several lawsuits, numerous face-to-face confrontations, petitions, detainments, Chen said now he understood the policy of *chaiqian*. In Chen’s words: “the [renewal] plan for Shanghai is to demolish all those [*linong*] not facilitated with flush toilets and [natural] gas pipelines.” While the Shanghai City Government had never published a map of designated renewal areas, the second round, city-wide renewal policy, which was announced in 2001, indeed planned to demolish 20 million m² areas of old *linong* housing. The first round, more commonly called the 365 Plan, had demolished/renewed more than 3.65 million m² old *linong* housing. Therefore, all existing *linong* communities were potential sites for future property development. While most residents were only greatly affected by *chaiqian* operation itself, demolition and relocation was just one of the property practices in the land development circle. The circle was described by Chen as: “the government has spent so much money to have the site leveled out and [residents] relocated. Afterwards, it still needs investments and construction of housing. Where to get so much money? The money has to come from the selling of the new houses being built. If houses cannot be built, they cannot be sold, then the money [spent] cannot be circulated back, [the circulation] is then dead. This is the rule of the game! If you manage to grasp this game rule, you would be able to win [something]. Back then, we did not understand this game

rule so we did not have the power of initiative (*zhudongquan*, 主動權) either.” Because the property developers needed to keep their capital afloat in order to realize profits of return, Chen believed if residents managed to prolong their resistance and not to sign any agreement over compensation arrangement, the demolition company would eventually have to start talking with residents on the terms of compensation.

However, the government’s support of and coalition property developers made the one-to-one, transaction-like, civilized negotiation impossible. Chen certainly was well aware of the political ramifications that accompanied resistance and persistent demands for negotiation. Therefore, Chen believed that the crucial strategy for ordinary residents in order to confront the authority of Shanghai’s property fever was to “hold in hand the evidence of their illegal behavior.” If you did not have evidence of illegality, “[the government and developers] are ruthless.” Chen then enumerated what relocated residents should do when facing *chaiqian* politics. First was to raise questions on the *chaiqian* permit: “Does it actually exist? It needs to be presented publicly. Can the demolition company present all the legally required documents for the permit?” The next step was to check if the compensation offered by the demolition company fell below what was regulated by law. Third, if given temporary housing, relocated resident should demand a living stipend (*shenghuofei*, 生活費) which was legally required. Fourth, if an agreement over compensation was signed, relocated residents should insist on having the agreement notarized in court. Last, residents should petition and discuss their cases with other fellow residents because “once people talk over a problem as a group they will

always be enlightened...So when you are stuck, ask around. Fellow residents would give you a response.”

Chen’s strategies of rights protection in *chaiqian* was a combined product of his personal experience and China’s legal modernization. In the past twenty years, China has made a widely recognized effort in legislating and circulating law to its citizens.

Although Chen described *chaiqian*-related law was as hard to access as classified information when he was first relocated in the early 1990s, more recently law, legal interpretations, and case studies specially published by the government has been widely available. These new documents provided relocated residents with renewed, state-sanctioned, politically-safe languages when they encountered government officials. After reading these materials (along with other banned or politically sensitive publications concerning various rights protection actions recently emerging in China, such as “*Will the Boat Sink the Water? The Life of China’s Peasants*” and on-line discussions on personal grievances⁸²) Chen felt he was greatly enlightened (*qifa*, 啟發) in the way of rethinking their relationship with the state, and citizens’ rather passive, victim-like position in property practices, which are mostly dominated by the powerful in China.

Two actions were formed and pursued by Chen as an enlightened citizen. The first concerned a more proactive participation in Shanghai’s city renewal. The other sought redress for the denial of issuing a business license, and this part will be addressed later in section 5.2. In Chen’s second relocation, part of their compensation was an apartment in the rural area. The 17th floor apartment was newly built. However, the Chen family saw

⁸² Such as Chinese Human Rights Defenders <http://www.crd-net.org/Article/> <http://www.crd-net.org/Article/>

that apartment as a very lousy one because it was dim inside due to lack of sunlight.

Taller surrounding buildings blocked the sunlight and created a dead corner shadow on their apartment. In the winter, sunlight exposure was even worse. In fact, how many hour an apartment can be exposed under sunlight has long been a priority consideration when Shanghai citizens evaluate the worth of a house. This is because the winters in Shanghai are severe yet Shanghai does not have systematic heating pipelines installed as part of the infrastructure (compared to Beijing. The problem of “right to sunlight (*rizhaoquan*, 日照權)” has intensified since new, pencil-like buildings are constructed and then create a wet, shady, and cold environment for the houses dwarfed underneath. In some cases, the City Government has even asked the developers to reduce building height by permitting only a lower floor area ratio. The apartment Chen saw was also extremely noisy because it was close to highways on which trucks and wagons transported goods between Shanghai and smaller cities in the south. In addition to all the physical and environmental defects, the most serious problem, in Chen’s opinion, was that the apartment would not increase its value because further development in that rural area was not likely in the future. Or, in Chen’s words, “this apartment will not have an opportunity of *chaiqian*, or a chance of its value increasing.”

Chen explained that their previous *chaiqian* had left the family disadvantaged (*chiquile*, 吃虧了) in this game of land development in Shanghai. Now that they had a better understanding of how *linong* was in fact treated as a medium through which capital was circulated and reproduced, Chen wanted to get back what he believed his family had unfairly lost in the previous two relocations. Therefore, Chen sold the apartment in the

rural area and used the money to purchase an old *linong* house in a *linong* community which was said to be a potential site for renewal activities in the future. The purpose was:

“...as an investment...Because once we have figured out the policy on inner city renewal, we at any rate still want old houses, houses that have not been demolished... [The purchased *linong*] is in inner city, the house itself is lousy, but the location is good, *chaiqian* should be coming soon. When *chaiqian* [takes place], if you negotiate well and then it will be advantageous for you...Yes, I investigated [the area of the *linong* community] before I bought [the *linong*]. The *linong* has doubled its price since I bought it, just in two years. Although it is an old house, within two years, [the price] has gone up 100 thousand dollars!”

Chaiqian, which once brought confusion, frustration, grievances to the Chen family, had now also energized them. This change was all because Chen had become *chaiqian*-savvy. The Chen family wanted to “find ways to get back the loss generated by our previously not understanding the policy from the two old *linong* houses (the one they purchased and the one on Riverbank Road)” by “continuing to fight with [the government] for a few years to come.”

5.2.3 The Bao family: assault on human and political rights

Within the five-year period between 2001 when relocation first occurred and 2006, Bao and her husband, Tsao, each spent one and a half years in the camps of Re-education through Labor under the charge of “attacking the state organs.” The Bao family was once the proudly-claimed “household of ten thousand (*wanyuanhu*, 萬元戶)” which suggested their state of well-being by having a saving account close to ten thousand dollars. Bao herself ran a small grocery store out of their home for which the good location near a major bus stop brought her continuous business. Taso was a driver for a government-affiliated company and also did delivery for private companies to earn extra income.

Inherited from Bao's parents, they also had private ownership over a relatively spacious house with a second-floor attic.

In early 2001, *chaiqian* was announced in the neighborhood. Residents including Bao and Tsao, were not surprised by the news because the adjacent neighborhood was already demolished in previous years under the same development project of commodity housing. Bao and Tsao received a document titled "Opinions Regarding Private House Demolition" which surveyed their preference in compensation arrangements. Excerpts of the document are paraphrased as below:

Bao homeowner,

Currently due to the need of city building, your house at XX address must be demolished within recent days. According to the Procedures on Compensation and Resettlement for Demolition and Relocation of Residential Houses,⁸³ private homeowners could choose either of the two compensation methods for their legal private homeownership:

First option: renounce homeownership; [receive] compensation for the estimated [monetary] value of the original private home as according to the Procedures.

Second option: Retain the status of private homeowner; exchange ownership with the evictor who provides a house at XXX address. According to the Procedures, the ownership exchange also involves payments for the price difference between the two houses. You must have a sufficient economic capability for retaining home ownership and for paying the price difference.

The document asked Bao to make a decision between the two given options within two months. Bao and Tsao did not want either. In the return sheet, Bao wrote down that they demanded "return settlement," which expressed her family's wish of moving back to the original neighborhood. However, the demolition company told her that the only way to move back was to purchase the commodity housing which was to be built by a private

⁸³ The full title is the Temporary Procedures of Shanghai Municipality on Compensation and Resettlement for Demolition and Relocation of Residential Houses on Land-Plots Clustered With Shaky Sheds and Crude Shacks Designated to be Reconstructed (for Trial Implementation)

developer. Although not fully informed about the exact price of the soon-to-be-built apartments, the Bao family knew it would likely be unaffordable for them. The first part of the development, already completed a few years ago in the adjacent neighborhood, was now a gated community of high-end apartments. Bao response was: “*Jiuqu gaizao* (inner city renewal) should create well-being for the masses (*laobaixing*, 老百姓). If we had that kind of money, where couldn't I buy a house?...But now you say there is no moving back, to be honest, we cannot do anything about it. So the remaining problem is how [the demolition company] plans to deal with us?”

5.2.3.1 Do not talk with reason!

The demolition company had two plans to offer to the Bao family. One was monetary compensation, the other was to rehouse the Bao family elsewhere. Both plans became sources of conflicts. According to Bao's ownership certificate (similar to title deed to a house in USA), the first level of Bao's house had about 60 m² and the second-floor attic was about 15 m². However, the demolition company refused to include the attic area into the calculation for the monetary compensation. This deliberate omission would lead to less monetary compensation or a smaller resettlement house. Bao was angry and argued that “Our houses was built [when it was still] in the Old Society,⁸⁴ we inherited the house from our parents. We did not build the attic ourselves, it is not illegal construction (*weizhangjianzhu*, 違章建築). Our ownership certificate can prove that [the attic] is recognized by the government. How can they not account [the attic] in? They are just not

⁸⁴ Old Society or Old China was a term used to refer to the time before the Chinese Communist Party took over the power in 1949. The term of New China especially referred to People's Republic of China.

talking with reason!” The calculation by the demolition company led to a monetary compensation of less than 30 thousand RMB per person for the Bao family. Bao knew that “together we would get about 60 thousand RMB.⁸⁵ Where can you buy a house with that little money in Shanghai?” Since monetary compensation was not a realistic way to cope with life after relocation, the Bao family turned to in-kind compensation of housing provided by the demolition company. However, the Bao family immediately found that the rehousing plan was equally unreasonable and unacceptable.

Initially, the demolition company assigned a house located in the outskirts along a bypass highway. Once learning the rural location of the resettlement house, the Bao family did not even care to argue about how many square meters the house had and immediately refused this arrangement. Bao’s husband, Tsao, explained the reason: “At the time of relocation, I still had a danwei (work unit, 單位). My company was in the east side of Shanghai, close to the Bund.⁸⁶ We drivers do not work for a fixed amount of hours a day. Our schedules and routes are decided and shifted by the company. Now you want to relocate me to there, this would be asking me to commute from the west of Shanghai to the east of Shanghai. Not to mention there is no public bus running between there [the resettlement house] and downtown. I did not even have the means of transportation if we really moved to that place. Are you [the demolition company] going to destroy my livelihood?” The demolition company even contacted Tsao’s danwei to verify his work

⁸⁵ About 85 hundred USD at an exchange rate of 7:1 ratio.

⁸⁶ The Bund, or called *waitan* (外灘) in Chinese, run along the western bank of the Huangpu River. The Bund was part of the former Shanghai International Settlement. Today, many of the historical buildings were protected for preservation purposes and it is one of the most famous and popular tourist areas in Shanghai.

situation. Learning that Tsao was facing relocation and his future residence was still unsettled, the supervisor of Tsao's danwei urged him to press for a resettlement house which allowed him to continue the driving shifts. Tsao's danwei also temporarily suspended his work schedules but agreed to hold his position until the Bao family resolved relocation arrangements with the demolition company. However, since the first dispute over the location of the resettlement house, the Bao family had not had any further visits or news from the demolition company. Anxious and uncertain, Bao and Tsao personally went to the chaiqian office and addressed the chaiqian official who was in charge of their relocation case. The chaiqian official told them that their situation required special arrangements and was beyond his abilities, so he had reported the case to "the upper level" and told them they should wait for a decision made from above.

The wait lasted for nine months. When the demolition company finally resumed the negotiation it was already in the winter of 2002. The Bao family insisted again that they would not go to a place where it was impossible for Tsao to commute to his workplace. "Our grocery store is already gone. Why are you asking me to move to a place that is like giving up my only *danwei* income?" After this second skirmish, the electricity and water supplies to Bao's house were severed. Windows and doors were broken. Later, debris and garbage torn down from the existing buildings on the site were piled up in front of Bao's house. Passage through the front door was difficult and the sanitary conditions of the surrounding environment became unbearable. Once, Bao accidentally stepped into a rusted nail which caused one of her legs to swell badly. After Tsao's protests, the

demolition company agreed to pay for the medical costs, clean up a narrow path, and also to re-connect the utility supply.

5.2.3.2 Violence and the state's conniving

The improved situation only lasted for a month. Within that month, Bao and Tsao did not petition any government office either at the district or the city level. At that time, they thought since the demolition company had said that their case was already sent to the higher authority they should wait for a decision. To their surprise, one day they found the state of “no heat, no water, and surrounded by garbage” happening again. Bao went to the *chaiqian* office but before she could even start to complain the manager of the demolition company said quickly that “the problem will be solved tomorrow morning.” Next day, after waiting for the whole morning in vain, Taso headed to the *chaiqian* office in an attempt to question the manager. Taso recalled how his visit became the turning point which characterized the beginning of violent oppression:

“I went to find this guy, Chen [the manager of the demolition company]. I said “you told my wife you would get rid of the garbage problem today. We had been waiting. How come you did not come.” [Chen] did not even bother to cast me a look! These boss people always have rogues around them in the *chaiqian* sites, it is well known. I do not know what signals or gestures [Chen] made, suddenly several people charged forward and beat me. I ran out of the office and they chased after me. The chasing and beating continued all the way to the road until my wife and a security guard of the adjacent community stopped them.”

Bao also describe what she saw and what happened to her:

“I was wondering at home why my husband had not come back with [workers]. So I walked to the *chaiqian* office. Once I got to XX Road I saw my husband was running. His face was all bruised. I got scared and asked “Why are you running? why are you running?” He said those rogues in *chaiqian* office beat him up. I immediately turned back to the office...I thought I was a female comrade; they would not hit a woman. There were three of them. I shouted at them “Why do you think you can hit people? You are not talking with reason! You are hoodlums. We are going to the police station right now!” I then walked up and pull their sleeves. They started hitting me and said

“[Beating] is already easy on you. Hit you until you move away yourself!” I was hit to the ground and lost consciousness.”

Called in by an unidentified onlooker, the police finally came and brought Bao and Tsao to a local police station. At there, Bao and Tsao received medical examination and were issued Injury Diagnosis Certificates. Copies of both of their certificates proved that they had external wounds in their chests, heads, and abdominal areas. The police even phoned the *chaiqian* office and asked the *chaiqian* staff to take Bao and Tsao to a hospital in order to receive medical treatments. However, the *chaiqian* office completely ignored this request from the local police which obviously had no control over the demolition company in the area. Bao and Tsao were left alone, untreated, and without further assistance in the police station. They finally got some money from Bao’s sister, who heard of the incident and rushed to the station, and decided to go directly to the City Government. Their obvious, dark-purple bruises immediately alarmed the police stationed in the city hall building. Bao and Tsao were transported to a city government office which was specially designated to accommodate citizens in emergency situations. Probably taken aback by Bao’s badly beaten face and swollen arms, the city government police took photos of Bao and also documented the report made by Bao and Tsao. The city police then phoned the district police station, which previously failed to enforce its order on the demolition company, to bring Bao and Tsao back to the neighborhood. The demolition company was also contacted by the city government police.

While the practice of informing the violators of law of what had transpired was clearly against the rule of law, demolition companies, as in Bao’s case, were treated as an extended branch of local governments. And “local cases should be resolved locally by

local jurisdiction” was a principle that Chinese authorities often used to handle citizens’ petitions and protests. Therefore, *chaiqian* staff were informed to take back their “problems” instead of being officially investigated or even arrested. When handing down a case to a lower-level government, the higher authority could send out an implicit message that a citizen’s complaints had been made and registered beyond the local authority and how the case to be resolved was under supervision. This practice could at times strengthen citizens’ rights protection. However, it had very frequently turned into a mechanism of shirking responsibilities or even of exercising retribution, especially because corruption and cronyism still dominated in China.

When Bao and Tsao were taken back to the neighborhood, it was already eight o’clock in the evening. After they received medical treatments in a hospital, they were sent home. Starting the next morning, Bao’s house had been closely watched by people under the demolition company’s command; including residential committee cadres, local police, and social welfare workers. Even Bao and Tsao’s shopping trips to the market were tracked. Petitioning was also impossible because their outside activities were severely limited. Bao and Tsao had been under this semi-house arrest until they were forcibly relocated at the end of 2002.

5.2.3.3 Forced out and left homeless

On a day in late December, while Bao and Tsao were at home, the *chaiqian* crew unexpectedly came and started demolishing the house. They were dragged out of the house, left on the street, and witnessed their house torn down to the ground. Prior to the day of demolition, the Bao family did not reach agreements with the demolition

company, nor did they receive any notification of forced relocation. During forced relocation, Bao and Tsao were not physically hurt but the unexpected operation had left them unprepared, disoriented, and homeless. They were not informed where their clothing, furniture, and other properties were moved. The clothes they wore and whatever they were able to take were all they had after being forced out of the house. In the evening, Bao and Tsao decided to go to the Kangping Road Office (commonly called as *Kangban*, 康辦), a city government building which was said to be the official residence for the government's leaders. Tsao explained the reason that they went to *Kangban*:

Kangping Road is where leaders of the City Government live. Police patrol the area. [If they see you] not in the right outfit or out of place, they would either have you dismissed from the area or will have your identification checked. It is safe for us to stay at night. To be fair, the police in *Kangban* were relatively lenient. [The police] saw us...that [time] was the coldest period in Shanghai, five or six degrees [centigrade] below zero. We did not take out even one pair of socks with us! [The police of] *Kangban* called us into their office and then phoned the city government which then phoned our local police station. We were taken back by the local police station. However, since that night, Bao and Tsao had been forced into a semi-homeless living

condition. Bao recalled both with anger and embarrassment:

When we were back to the neighborhood, [the local police] let us stay in a small hostel for that night, and said next day was to resolve things. They let you have hot water to bathe, but the [next] morning no one paid any attention to you. For half a month, we had to stay in the custody room with arrested prisoners in the police station, just slept on the long benches. In worse situations, we had to just spend nights on the floor in the police station. To say something not decent to hear between us, a female comrade⁸⁷ (*nvtongzhi*, 女同志) cannot even clean her privates, legs, cannot wash her face, or brush her teeth under this situation!

Eventually, Bao and Tsao moved in to temporarily with Bao's brother. Around the same time, Tsao began to actively petition various government offices in an attempt to

⁸⁷ "Female comrade" (*nvtongzhi*, 女同志) is a communist term used to refer to women especially during in Mao's socialist ruling in China.

resolve the unsettled affairs of relocation. He first went to the district government but failed to receive any response. Then Tsao petitioned directly the Letters and Visits Office operated under the City Government. The city petition office accepted Tsao's report by asking him to fill out petition forms. Tsao at some point inquired of the official who received him in the city petition office "how his case will be handled," and Tsao was answered that "this thing should still be resolved locally. But we will send [your petition forms] down to the local." "The local" meant broadly all government offices under the District Government. However, the only local office Tsao could have access to was the district petition office which, in Tsao's experience, had been reluctant and had even deliberately neglected to take action to redress the abuse of power by the demolition company.

At that time, Bao and Tsao had two immediate demands. First, they wanted to see the official documents which permitted the forced relocation. Under their persistent petitions, Bao and Tsao only received a copy of the document almost four months after they were forcibly relocated. The second demand was to know the whereabouts of their clothes and belongings. Getting back their clothes was urgent because of the harsh winter weather and the unstable living conditions. Eventually, the demolition company took Bao and Tsao to an apartment in which all of their properties were said to have been stored since forced relocation. Tsao was shown a three-page "Family Property Registration" which was handwritten on regular, non-heading, paper sheets. The registration papers contained entries such as "one air conditioner," "one chair," "two comforters;" the last page was also signed by three witnesses including a demolition official, a cadre of the

neighborhood residential office, and a local policeman. Tsao was also asked to sign on the paper to indicate his receiving of the properties. The hand-scribbled, unofficial-looking registration angered Tsao. Tsao shouted “this is how you register our private properties? What if some items are lost?” Refusing to sign on the papers, he instead asked for for a more detailed and notarized account of their properties. However, this request never received a response.

Also in that day when Bao and Tsao were led to an apartment to take back their clothes, they were also told that the apartment was to be their resettlement house. The apartment was located in a remote area in which many heavy industries, manufacturing factories and warehouse scattered. The area looked nothing like inner Shanghai with many factory buildings were already left vacant or had become dilapidated. The area also lacked important amenities, such as hospitals, banks, supermarkets, or parks—all of which were accessible in the inner city. The only public transportation to connect the area to inner Shanghai were buses which ran much less often than other busy lines in the city. A one-way ride from the Shanghai Train Station which was a major transportation hub to the resettlement apartment could easily take one and half hours. Prior to that day, Bao and Tsao never learned anything about the apartment, its location, its facilities, or its neighboring areas. However, the apartment would be their future residence as an exchange for their then-privately-owned, now-demolished house. Bao and Tsao refused to accept the apartment but the demolition company staff who showed them the apartment did not care about their rejection. Bao and Tsao took their clothes and went back to live with their relatives.

5.2.3.4 *On the difficult road of shangfang (petition, 上訪)*

About a month after forced relocation, Tsao petitioned in Beijing in order to seek redress. He traveled alone, but the inspiration of “petitioning the central” was gleaned from Tsao’s numerous visits to various offices in Shanghai. When Bao and Tsao visited *Kangban* (康辦), a city government office, other residents who also had long-term, still-not-addressed grievances told them privately “Shanghai does not let you complain. Then, you complain to the central in Beijing.” After hearing similar suggestions several times in the district petition office, Tsao decided to travel to Beijing. In Beijing, he spent nights in cheap, home-run rental rooms near the area of Beijing South Railway Station. In the daytime, Tsao stayed in long lines in the joint petition office commonly called “Two Offices” (*liangban*, 兩辦; the Central People’s Government and the State Council) to report the violent beating by demolition company and their destroyed livelihoods by forced relocation.

Since the “Two Offices” was the highest-level petition office open to citizens nationwide, getting a case registered into the system was extremely important for discontented residents who wanted to see redress actions realized at the local level. How long was Tsao able to talk to the petition officials in the “Two Offices?” What was it like when reporting his grievances in the “Two Offices?” Tsao explained “No, they do not let you talk. You prepare your materials beforehand, fill out [petition] forms, then hand them in. Once [documents] are in computers, they don’t pay attention to you...But they are also polite to you.” Being polite meant that officials in the “Two Offices” generally did not treat petitioners rudely or harshly.

However, while it took money, effort, and time to make trips to Beijing, petitioners most of the time were quickly captured by the police sent out by Shanghai's Beijing-stationed Office (zhujingban, 駐京辦). This was because local governments saw their citizens' capital-city-petitioning as inimical to their political strength of social control, and the Central Government saw the influx of discontent citizens from locals as a potential trigger for social instability. Therefore, governments at both levels worked together to send petitioners back to their home cities. Tsao described how this reduced the strength of his petition activities in Beijing: "If you are lucky, you could still petition other government offices in the next few days. If you are not lucky, once you hand in [petition form] in the Two Offices, immediately afterwards, Shanghai's Beijing-stationed Office comes to catch you and to escort you back to Shanghai. They do not let you complain anymore in Beijing."

Regarding Tsao's few petitions in Beijing, each trip was harder than the previous one. After he was brought back from his first petition trip, the local surveillance surrounding Bao and Tsao's place had increased to prevent Tsao's further petition attempts. To avoid being stopped by the local police, in one trip Tsao first traveled down south to his home city in another province from which he then took a train north to Beijing; in another instance he had to leave in the middle of night. On one occasion, the planned trip was canceled because he could not find way to circumvent the police standing outside his residence.

In the early 2003, about four months after being forcibly relocated, while Tsao was in Beijing he was urgently contacted by Bao, who informed him that a meeting with the

District Government Governor was already scheduled by Shanghai's Beijing-stationed Office. The Beijing-stationed Office previously received Tsao's petition and had sent a letter to the District Government's petition officer to set up a meeting for resolving Tsao's complaints. The letter whose copy was forwarded to the Bao family read:

XX District Government Petition Office:

Your district resident Tsao has petitioned in Beijing because he does not accept forced relocation. Through the reporting of our office director, a receiving [of Tsao] by your district's Governor has been scheduled on XXX date. Please properly arrange [the meeting].

The letter was signed by the director of the Beijing-stationed Office. Because the Beijing-stationed Office was a branch directly under the City Government and was superior in political hierarchy than the District Government, Bao and Tsao had high expectation for the incoming meeting with the District Governor. An order for official responses passed down to the local authority from a higher-level government was the best hope any petitioner had. Therefore, after learning the scheduled meeting, Tsao immediately returned to Shanghai from Beijing in preparation for the meeting four days later.

5.2.3.5 One incident, three punishments

On the scheduled day of the meeting, Bao and Tsao arrived the District Office's petition office with all relevant documents which showed what they had demanded and encountered since disagreements over relocation first occurred. This trip led to nothing but confrontations which immediately resulted in Tsao being detained for a month under the charge of "assembling and attacking the state organ" and, five months later, a second detainment which followed by a sentence of one-and-half-year Re-education through Labor for both Bao and Tsao. Confrontations, which in fact did erupt that day in the district petition office, were described differently from what the Bao family recalled,

what the detainment document recorded, and even what the Re-education through Labor Decision Letter stated. Tsao believed that the District Government manipulated and manufactured the evidence of confrontations in order to punish his persistent petition in Beijing even after he was released from the first detainment.

Bao and Tsao's accounts:

The following are excerpts of a letter Tsao wrote after he was released to appeal the one-month detainment:

[That day], following the schedule arranged, my wife and I arrived the District Government in order to wait for the Governor's receiving. However, contrary to our expectation, the director of the petition office announced that we would be brought to a hospital for medical examination because we just came back from the SARS⁸⁸ infected area. If our examination showed negative results, then we should arrange ourselves for a place and be in quarantine for ten days. After that, the Governor would then receive us. We agreed to conduct medical examination and quarantine but we raised questions. First, we had been back [in Shanghai] for a few days, how come relevant government offices did not ask us to do any examination or quarantine? Second, we were not able to find a quarantine place ourselves, so the government should assist us. Third, because we were deceived several times, we had lost confidence in the District Government. Therefore, we asked the district petition office to issue a written appointment which could secure a meeting with the Governor for ten days later. The director [of the petition office] ignored us completely and finally sneaked away from the office. We patiently waited longer but no one paid further attention to us. We then decided to go directly to the District Government building to look for the Governor and asked for the meeting to be held according to the arrangement.

At the entrance of the District Government building, the security guard, after reviewing the letter issued by the Beijing-stationed Office, told us he would contact the Governor for us. After a while, the security guard showed up and said the Governor will receive [us] after 30 minutes. So we went back to the petition office but no one received us until almost noon. We again went to the District Government building in an attempt to ask for a precise explanation. However, we were called back [to the petition office] by a policeman who claimed there would be a governor receiving. [The policeman] even let us have lunch but restricted our freedom of

⁸⁸ Severe Acute Respiratory Syndromes. In 2003, Beijing was listed as an endemic area by the World Health Organization.

movement. We had then waited [in the petition office] until seven o'clock in the evening. All of the sudden, the police and several unidentified people forcefully handcuffed us and, without any procedure, took us into custody in the local police station under the name of "SARS [prevention]."

What was recorded in the detainment document:

Tsao was detained for a month. When released, he was issued a Release Authorization which stated: "...Tsao was detained because of '*assembling and attacking the state organ.*' Now because '*the case [was] minor (qingjieqingwei, 情節輕微),*' according to the Criminal Procedure Law of the People's Republic of China, release [Tsao] (emphases added)." This statement of "the case [was] minor" stood in sharp contrast to what was stated in the Decision over Re-education through Labor five months later. When Tsao challenged the legality of detaining him for a month without any official investigation, the district police bureau issued him a letter which justified the detainment and recorded the confrontations as "...staff of the petition office advised and stopped Tsao because Tsao recently returned back from Beijing, a SARS affected area. But Tsao *did not listen to the advice, behaved unreasonably and was provocative, assembled and attacked the state organ...* (emphases added)."

After seeing the district government's accusation, Tsao described the state of his mind as recalcitrant. Tsao asked "just my wife and I, how can two persons qualify as an assembly? Show me the evidence of my attacking the state organ?" During detainment, Tsao was warned by the police to end his petition actions otherwise other possible punishments, such as a sentence of Re-education through Labor, would follow. However, instead of obeying deferentially, Tsao immediately began the appeal process which challenged the legality of detainment. When the District Police Bureau rejected his appeal

(as showed in the above paragraph), Tsao petitioned the Ministry of Public Safety in Beijing and other central government offices to investigate into his case and the abuse of police power.

Also around this time, Bao and Tsao had run out of alternatives but needed to move in the resettlement house which was assigned to them by the demolition company. The resettlement house was an apartment in a four-level building in a community. Tsao explained why they eventually gave up their original rejection to the resettlement apartment:

Why we gave up? First, summer was coming. We had to have a place to live. Second, we really ran out of economic resources, and relying on relatives and friends was not a long-term solution. I was going to petition in Beijing, but then my wife, was a woman left alone. In addition, she is also a outside girl (外來妹, *wailaimai*).⁸⁹ [She] has no relatives or close friends in Shanghai. After some thoughts, we really had no other options, so we moved in.

What was stated in the Re-education through Labor Decision:

In the end of 2003, two months after Tsao's Beijing petition, the police busted in Tsao's home and took him away without any procedural or warning in advance. Tsao was detained for a month, during which period Bao was also arrested and detained. After a month of detainment Tsao was sentenced to Re-education through Labor for one and half years and then was immediately sent to a re-education camp. While Tsao was in the re-education camp, he received an official Decision Over Re-education Through Labor which documented his punishable behavior leading to the sentencing. The re-education decision was presented again as a result of the confrontations on that very same morning

⁸⁹ The term of "outside girl (外來妹, *wailaimai*)" refers to young women who are not born or raised in Shanghai. The terms also implies the lack of local knowledge and social supports.

in the district petition office. Bao also received the same sentence. Part of the official decision document read:

Now it is investigated: In the morning of XXX, Tsao went to Shanghai XX District Government and asked for the District Governor to receive [him]. When told that because he just returned from the SARS affected areas, according to relevant regulations [Tsao] could be received only after being put in quarantine, Tsao then tried to enter the district government building with force. Even when the security guards on duty tried to stop Tsao, Tsao still roared with anger, caused the elevator of the building to stop operation for thirty minutes, and disturbed the working order of the District Government. After Tsao was persuaded into a reception room of the district petition office, Tsao again intended to break into the office area of the District Government through the reception room. When Tsao was stopped by work staff, Tsao used his head to hit a staffer. Tsao was then held back by other work staff.

It had become clear to Tsao that he was punished three times for the same incident with government officials. The first time was a one-month detainment under the charge of “assembling and attacking the state organ.” The second time was another one-month detainment which was immediately followed by the third punishment of labor re-education for one and a half years. While many active petitioners had developed some degree of bitter familiarity with government policing, such as surveillance, investigation, and detainment etc., the politically-charged punishments against Bao and Tsao were disproportionate even to veteran petitioners’ eyes. Tsao questioned the abuse of power which was manifested clearly by the inconsistency between the state’s documents:

You had already detained me, investigated me, and then released me...The Release Authorization means the thing is over. You even left a record stating “the case was minor [so to release me]!” This means whatever happened in that day, you had already punished me, [the reason of punishment] does not exist anymore! Now you impose another charge against me, Re-education through Labor, and it is again because of [the confrontations in] that day. Is it right that you hook three charges around me for the same one thing?

5.2.3.6 Not only a chaiqian problem anymore!

All of Bao and Tsao's questioning on the punishments, of course, could only be expressed after they were released from the labor re-education camps. The channel of expression was through filing lawsuits in courts. A few months after regaining freedom, Bao and Tsao filed an administrative lawsuit against the sentence of Labor Re-education. The open court session was first scheduled in a very small courtroom which could not accommodate any other relocated residents who wanted to attend the session to observe the ruling. Tsao refused to proceed with the session and asked the court to reschedule the ruling in a larger courtroom. The second time, the court again arranged a 15-person courtroom for the open session and even Bao was not allowed to enter the courtroom. The court informed Tsao that if he again refused to proceed with the ruling session in the arranged room then his lawsuit would be deemed permanently closed. Without any choice, only Tsao and his lawsuit representative were present at the courtroom. According to Bao and Tsao's written record of that day which was also signed by the participating residents, outside the courtroom, about 30 relocated residents were waiting for the result together with Bao. Surrounding the court building, about 30 plainclothes and 20 court policemen patrolled the area in order to prevent Bao and other residents crowding into the courtroom hallways. Inside the courtroom, Tsao recalled that the court judge several times interrupted him and his legal representative while they were raising questions. The judge was also obviously biased towards the defendant, the Committee of Re-education through Labor, because almost all the charges Tsao raised were either deflected or answered directly by the judge.

According to the court verdict, during the session, the Committee of Re-education through Labor provided several police records to support the charge of “assembling to attack the state organ” against Tsao. The records were police interrogations of the District Government officials who were said to be at the scene of the district government building where Tsao conducted punishable behavior. Challenging the validity of the police records, Tsao questioned that since some of the police witnesses were government security supervisors, then there should have been visual evidence, such as government building’s surveillance video tapes or photos, that documented his behavior. Tsao challenged “the defendant should have showed in court the relevant video tapes. The defendant did not...provide the relevant records of police reporting, summoning [witnesses], and written investigation of the scene...either the Injury Diagnosis Certificate of XXX [whom was said be attacked by Tsao], [the defendant] cannot prove the behavior [that is] accused.” Also documented in the court verdict, the defendant, the Committee of Re-education through Labor, refuted Tsao’s challenge by stating “...that the defendant did not take surveillance tapes as the factual evidence for [making] the decision of Re-education through Labor has no connection to this case.” The court ruled that “...after reviewing relevant evidence, the defendant’s decision over [Tsao’s] Re-education through Labor...holds the correct application of law, complies with legal procedures, and should be sustained according to law.” Citing Section 1 of Article 54⁹⁰ of the Administrative Litigation Law, the court rejected Tsao’s challenge against the labor reeducation. At the

⁹⁰ Section 1 of article 54: If the evidence for undertaking a specific administrative act is conclusive, the application of the law and regulations to the act is correct, and the legal procedure is complied with, the specific administrative act shall be sustained by judgment.

end of the court session, Tsao asked for a copy of the court's verbatim transcript. The court rejected Tsao's request by citing Article 30 of the Administrative Litigation Law. Article 30 allowed courts to restrict citizens' legal rights to reviewing, investigating, and collecting materials relevant to their administrative lawsuits if the information involves state secrets. Tsao bitterly laughed out "I am filing an administrative lawsuit, I am the masses (*laobaixing*, 老百姓). How is it possible that I can have any secret between you [the state]?"

Five years since forced relocation, *chaiqian* problem had evolved far beyond from the original conflicts over property compensation and relocation arrangements. In its entirety, Tsao said what happened in these five years was without any rhyme or reason (*momingqimiao*, 莫名其妙). For Bao and Tsao, *chaiqian* had become "a problem on [we] as a human beings and [that problem] had not been resolved." Tsao said "*chaiqian* had caused too deep a hurt to our rights as persons (*rensheng quanli*, 人身權利) and political rights...we were persons clean of spots and now we are carrying criminal charges. Re-education through Labor, this is in your personal profiles for generations, it follows you!" Injustice and power abuse compelled Bao and Tsao to continue their resistance.

5.3 Why are Citizens "Unaware" of the State?

How did the practice of defying government officials in an authoritarian, communist country such as China, originate? Soon after I began documenting the ethnographic accounts of relocation, I found the mere fact of residents' resisting the state-backed *chaiqian* required a reexamination of how citizens perceived the omnipresent authoritarian state in everyday life. To my surprise, many residents seemed oblivious to

the capabilities of an authoritarian state and its tendency for coercive punishment to grass-roots defiance. Separation from the state was one reason behind residents' ignorance of the state's role in *chaiqian*. I asked Huang "weren't you aware of what the state could do? Its nature?" Huang answered "I did not have contacts with the state [previously] (從前沒有接觸)." I worried that the word "contact" might suggest that my question was too abstract and Huang might be referring the state as something tangible, such as an official or an office. I asked again, based on my US experience of seeing taxes on each shopping receipt, "No contact? But you pay tax to the state. You must have also needed to apply for licenses of some sort from the government at some point. When you did all these, when you talked to government officials, didn't you get a feeling about the state?" Huang said "we lived in a way of 'two points, one line (兩點一線).' I worked in a food store, my husband worked in a state-owned mechanic factory. Before *chaiqian*, we only moved between the point of our house and the point of our work places. We walked along the same line between these two points. Tax? Every month when we received the payment stubs, the amount was already after-tax. Tax was small anyway. Yes, we did talk to the street office⁹¹ from time to time, but everything was normal." Bao and Tsao had a similar response. They said they were "honest people who did not have to have any interaction with the police before relocation."

In addition, China's socialist Mass Line ruling, which immersed many residents' life experience into Mao's maxim of "from the masses, to the masses," also delayed their awareness of the state's vested role in profit-oriented development. In the early 1990s,

⁹¹ The lowest level of the district government in China.

when Shanghai like all other cities in China, began experiments with capitalist land practices, few, including those who actually carried out *chaiqian* operation on the ground, could fully depict the final working relationship between political power and private money. Therefore, both relocated residents and government officials were “crossing the river by groping through pebbles” as one high-ranking manager of a *chaiqian* company said. Information on city renewal policy in general, and on-site *chaiqian* operation in particular, was severely limited. The only access to information was what the state provided. This was illustrated by *chaiqian* officials’ common reference to their jobs as “thought work (*sixiang gongzuo*, 思想工作).” In the government’s perspective, successful “thought work” meant that residents came to voluntarily comply with *chaiqian* operation. In many residents’ experience, however, “thought work” was a mechanism for controlling information. Many residents felt that they failed to detect the rampant violation of rights in the process negotiation until violent confrontation erupted.

Chen said that during the last stage of negotiation, they were in fact convinced in large part by what a high-rank official of the District Government promised about relocation arrangements. When the Chen family later encountered difficulties in obtaining an business license for the resettlement house, Chen had become a disillusioned citizen. He said “the person who talked to you was the leader (*lingdao*, 領導) in the district, was the head of the Office of Letters and Visits. It was the leader who talked to you about this [relocation arrangements]!” Chen then explained the socialist environment of his childhood that attributed to his believing in the *chaiqian* official and the promises they made:

I am close to fifty now. How did I grow up?

[We] live in new China, born under the red flag (生在新中國, 長在紅旗下)

We are the successor of Communism (我們是共產主義事業的接班人)

To adorn is to adorn the brightest red flower (戴花藥戴大紅花)

To ride is to ride the swiftest steed (騎馬要騎千里馬)

To sing is to sing the song of the Great Leap (唱歌要唱躍進歌)

To listen is to listen to the teaching of the Party (聽話要聽黨的話)

We grew up according to this model of thinking (*siwei*, 思維). The leader is the community party, the community party is the leader...The government stepped forward and talked to me. How could I have imagined it would have problems!”

Lastly, power abuse, unchecked in the authoritarian politics, grew to unprecedented levels since China’s headlong leap into capitalist development. In Zhang’s case, her husband simply did not believe the *chaiqian* office would use physical force to relocate them. Zhang explained what the reasoning that led to their defiance when facing the threat of forced relocation. First, her husband firmly believed in the law’s authority under which a forced relocation issued without the presence of its preceding *chaiqian* permit was unlawful. In short, no permit, no relocation. When Zhang recalled, she sighed “he believed in the law of our country too much.” Second, when they asked around about other residents’ experience, no one seemed to fathom that Shanghai was in its fervent pursuit of city renewal and that some extreme means and abuses of power were practiced with the government’s tacit consent. Acquaintances of theirs who were involved in *chaiqian* in other districts had talked about the government notification of forced relocation. According to the hearsay, the notification of forced relocation was a threatening tactic to get rid of tough households or stubborn residents (*dingzihu*, 釘子戶).

It was said that *chaiqian* crew tended to bully residents into compliance. “Showing this thing [notification of forced relocation] is to threaten people; the masses (*laobaixing*, 老百姓) get intimidated and then run away!” Third, little was known about the developer’s background. The Zhang family did not realize how tightly the coalition had formed between the developer and the local state. Residents saw the neighborhood’s *chaiqian* mainly as a private investment project, although it was supported by the local government. Shanghai’s first 10-year, city-wide renewal policy was officially commenced in 1991, and the Zhangs only began to observe and learn locally about *chaiqian* when it took place in their neighborhood around 1995. In the free time outside their work, the Zhangs overheard that the same developer did have records of hurting noncomplying residents during *chaiqian* process. Previously, the staff of the company had beaten someone who lived in a nearby area so badly that it caused vomiting and a concussion. Another abuse by the same company caused a resident a bleeding spleen. However, the Zhangs at that time did not think that the developer had too much “a color of government (政府色彩).” Because “all cases were eventually smoothed out through money spending” and “the government did not seem to have a hand in it.” For the *chaiqian* cases they had heard, “they were just about *chaiqian*...there was no such thing as setting fire and killing people!” Considering everything and comparing what the law said to what the *chaiqian* company had done, Zhang’s husband in the end still believed that “they would not in fact use force to relocate.”

5.4 Shaping Forces of Resistance

As revealed previously in section 2, resistance to *chaiqian* had emerged even under China's authoritarian property regime. *Chaiqian* resistance is significant because it signals the emergence of a rights-conscious society in China. However, it is equally important to ask how resistance was conditioned by the existing ruling system in order to be tolerated, responded, and managed. By examining the growing force of resistance helps us understand why defiant residents usually chose to pursue individual petition or negotiation with the authority, but not group actions or open protests. It also helps explain why resistance mostly took place within the legal system, which had been widely recognized as a mechanism to support the one-party state supremacy but not autonomous civil society. Situating *chaiqian* resistance in its development also sheds light on how relocated residents struggled to remain politically-active agents facing omnipresent means of social control in China. Rather than searching for a definite answer as to whether resistance to *chaiqian* fits within the broad category of the democracy movement, this section of the chapter is concerned with the dialectic relationship between resistance strategies and the broader sociopolitical conditions.

5.4.1 Policing, punishment, managing Anger

Since policing was an inherent part of life in disputed relocation, managing emotions towards the looming political punishments had become an inevitable and crucial task for residents resistant to *chaiqian*. Anger grew out of residents' years-long process of resistance and petition in which they struggled to have dialogues with government officials. Residents' demands for face-to-face conversations were originally only to seek resolution over unsettled relocation affairs, but had evolved into and had become greatly

entangled with, addressing grievances over other injustices that happened since relocation first took place. A relocation official who observed this collective anger and grievance described *chaiqian* resentment as fierce as “a lidded pot with boiling water.” However, anger could not be shown outright. Behaving “overly-agitated” (*guoji*, 過激) was considered rebellious, and could lead to political ramifications if it was accused by the authority. In Zhang’s case, the local police bureau had more than once used the reason of “preventing the behavior of being overly-agitated” to justify the police surveillance stationed in her neighborhood. Therefore, residents had learned self-restraint when they asked questions, made comments, and even revealed emotions in the face of government officials. Li, who was highly regarded among relocated residents for his education and literacy, said residents “should not use inflammatory words just to express their grievances, should stick to the facts.” Li’s reasons for this suggestion were “their personal experience [of *chaiqian*] itself is telling enough, you don’t need to manufacture anything inciting. Plus, that [being overly-agitated] always brings trouble to yourself.” For this reason, when Li helped edit residents’ petition letters he tended to delete words which he considered too strong or excessive to describe residents’ anger toward the authorities.

However, continuing obstacles in the process of seeking redress—many deliberately neglected or even created by the existing system—compelled discontent residents to become persistent petitioners. After years of trying to deliver their cases in court or to the government, many relocated residents felt that their grievance and loss had grown far beyond what the government was willing to, or able to, resolve through compensation.

During a physical confrontation in a petition trip, Huang was reported by the police as overly-agitated and behaving aggressively, which resulted her being sentenced to two-year Re-education through Labor under the charge of “attacking organs of the state.”

Huang described her hard-to-contain feeling when she encountered government officials:

My resentment is over on the top of my head when I see our government...their words just anger me. They [the government] would at times send down people [officials] to talk to me. Everyone had this one sentence for me [when I complained]: it was not me who tore down your house. Don't target at me, this was not my demolition. Although every official claimed that he was sent here to talk over contradictions

(*maodun*, 矛盾) and compensation, Huang felt if the delegate was not willing to

recognize or investigate the wrongdoings and the wrongdoers' responsibilities then “he is just a gesture...there is no use of talking.” Tsao also expressed his anger mixed with a sensation of being powerless:

[If we] complain [that the government] does not pay attention to us, [the government] after all still occasionally sends someone to have a talk with you. Since the official represents the government, I have to tell him the sequence of events in the entire process with clarity, [have to] provide relevant documents, but then he would just leave with no response. Afterwards, there would be some other people who also say to represent the government. If I do not trust the [next] government official it seems not respectful. If I do trust him, then he takes away my [petition] materials and just never shows up again. [The case] drags on for years.

In fact, residents often lost the ability to contain their “overly-agitated” behavior, because the urge to express their emotions and grievance had become so strong. Even Li, who stressed the importance of being reason-oriented and levelheaded, also lost control during an encounter with district government officials who contacted Li in order to prevent possible resistant actions. Li recalled that he had a home visit by the district government a few days after a group of about two hundred residents protested outside a conference center that hosted an international meeting with participants of foreign

government officials and business persons in 2004. Although Li did not take part in the protest, his relatives and some acquaintance residents were actively involved.

Representing the district government, two officials and one policeman came to Li's house and asked if he helped network the protest. They warned Li not to take part in any scheme challenging the authority. While Li denied his involvement, the conversation with the officials intensified as Li began to talk about his own relocation experience. Li described the interaction between the government visitors and him and how his anger erupted:

I was telling them why residents walked onto the street. I was recounting what happened to me when my family were relocated...that four to five women rushed up in a crowd, two grabbed my hands, two held down my body tight, and a woman cadre just slapped on my face, both sides. I felt so humiliated and shocked...That cadre had poor education level, and other women were probably just *nongminggong* (migrant workers, 農民工) from the rural area. The policeman was one of our neighborhood household register police (*hujijing*, 戶籍警) and I previously encountered with him on other occasions. He probably heard me telling this experience before, so he probably had heard enough. While I was talking, I saw his head drooping, his face full of boredom, impatience, and antipathy...Suddenly, I did not know where I got this surge of anger, all the blood seemed to have run into my brain. I thrust forward, grabbed his head with both of my hands, and wanted to shook his head while I was yelling something. The policeman, frightened by this sudden movement, backed away several steps and was shouting "what are you trying to do? what are you trying to do?" And the other two immediately pull me down. I said I was just mimicking the attack [by the *chaiqian* workers], trying to show what happened to me. I asked them "even so you are already so exasperated. Can you imagine how we feel?"

It was in this highly oppressive environment in which residents needed to remain self-conscious of their manners while seeking redress. Li said "this is like you do not know where to situate your angry emotion (*nuqi*, 怒氣). Especially, no one seems to be responsible for your suffering." After years of lawsuit and resistance, residents often found the key persons, either of the demolition companies or of the district governments,

who were originally in charge of their *chaiqian* had long gone from their previous positions. And relocated residents needed to frequently repeat to different officials about their grievances, demands, and the ever-lengthening experience of disputed relocation. For many residents, resistant actions many times seemed endless and aimless, and their anger had grown intensified as conflicts evolved.

5.4.2 The State's offering of economic resolution (*jingji jiejie*, 經濟解決)

5.4.2.1 The purpose and use of economic resolution

Economic resolution (*jingji jiejie*, 經濟解決) had become an important and frequently used strategy by local authorities when dealing with resistant residents who persistently demanded redress for wrongdoing in *chaiqian*. Economic resolution meant that the government agreed to monetarily compensate a resident, once and for all, for all major *chaiqian*-related grievances. In exchange, the government demanded the resident, by signing his or her name on a “resolution letter (*jiejueshu*, 解決書),” to terminate resistance actions, especially petitioning in Beijing or posting the complaints on the internet. When making such an offer, government officials almost always made clear that the compensation money should end all inquiries, responsibility-seeking, and lawsuits over *chaiqian* incidents, no matter how unjust. In other words, conflicts over disputed relocation were resolved, economically and also politically, as potential resistance was prevented.

The Li family's meeting with the local officials reflected how the state intended to smooth over potential opposition through economic resolution. In 2001, the Li family experienced a harsh relocation, which was aggressively carried out by a demolition

company that announced the *chaiqian* was to develop a public urban park. Li's father, a 65-year-old citizen, was seriously wounded when the demolition crew raided his *linong* home and he refused to make room for demolition. Li had an intense physical conflict with the migrant workers hired by the demolition company and was dragged out of his home. The house was torn down even before any procedure of government adjudication began. Li was outraged by the harsh and violent relocation that his family experienced. He had a graduate degree and viewed himself as an intellectual. His father was retired as a former communist cadre. Li believed that if the commonly-recognized privilege attached to his family's sociopolitical background could not prevent them from being forcibly relocated, then the majority of ordinary citizens must have been in a much more disadvantaged position when facing property development practices. Li said he did not really believe those violent stories he heard about forced relocation until he himself was violently relocated. He said forced relocation "suddenly woke [me] up by a gush of cold water pouring down on my head." Since then he had been actively involved in various rights-protection movements.

Probably because of the communist background of Li's father and Li's own ability to articulate and to write, which had helped draw attention from other residents and media, later in 2002, the demolition company signed a resettlement contract with the Li family and agreed to take responsibility for his father's medical bills. But Li, who since then had seen *chaiqian* violence as evidence of China's lack of civil society, still demanded an official investigation on the wrongdoers. As an official response to Li's persistent protest, the District Government called for an investigation meeting in an attempt to resolve the

Li family's case in late 2004. Before the meeting, the District Government explained to the Li family, in part to calm down Li's anger, that the *linong* house had to be demolished in such a swift manner because the *linong* had already been identified by the District Government as a "structurally dangerous house." The Li family later found out that anyone could require the District Government to appraise the structure safety of their houses by paying the service fees.

The minutes of the meeting showed how economic compensation was used to deflect relocated residents' challenges to the property regime. The excerpts of the minutes shown below were from two conversations between Li, his sister, Ming, the demolition company, and the district government official who presided over the meeting.

The first conversation took place at the meeting, not long after Li began to recount and complain the violent confrontation happened during demolition:

Li: Before we were forcibly relocated, my family did not receive official documents or adjudication procedures [...].

The District Government: I would like to know what *the real demand is [behind] your petitions?* (emphasis added)

Ming (Li's sister): According to the demolition permit [announced], there were nine government offices involved in demolition operation. I want to know who they are. Also, [the demolition company] said the our house was structurally dangerous [so it had to be demolished swiftly]. I want to see the [inspection] evidence; I want to have the original document as well as a copy of it.

The District Government: You raised these questions because you want to *talk about the compensation conditions again?* (*zaitanyicitiaojian*) (emphasis added)

Ming (Li's sister): Yes.

Li: It is not appropriate to talk about re-negotiation before we figure out the wrongs and the parties that committed them.

Then later, close to the end of the meeting, the following conversation ensued.

The District Government: Will the demolition company compensate [for Li's father suffering]?

The demolition company: It is comprehensively arranged in the resettlement plan.

The District Government (talking to Li and Ming): There must be an ultimate goal of [your] petition actions. You can explicitly declare *what your demands are on resettlement* (emphasis added). Your father is quite ill. If you have any thoughts you can also talk about them.

At an interview with Li, he argued that the above excerpts reflected the essence of the Shanghai authority's dominant strategy in handling *chaiqian* conflicts—that while the authority was willing to renegotiate economic terms of compensation in order to silence resisters, a sign that the state had conceded wrongdoings—residents' demands for investigation and conviction for the wrongdoings were always refused, in an attempt to uphold the status quo and the party-state supremacy. Li explained that during the meeting, whenever they raised questions or accusations on *chaiqian*, including the violence, the persons who committed the violence, the government offices involved, the violation of law etc., they were responded by suggestive questions, such as “*what the the real demand is?*” or “*you want to talk about the negotiation again?*” from the presiding government officials. By employing this conflict resolution strategy, the government directed residents' opposition to a discussion of economic compensation by asking “what do you want?” And if residents really began to negotiate with the government, “all their time and energy are invested in [the negotiating] and not to mention most of the time the government just does not keep its word.” This was the reason that Li stopped his sister at the investigation meeting when she said yes to the question on re-negotiation from the district government officials.

Zhang was also offered “economic resolution” six years after her husband died in forced relocation. After one of her Beijing petitions ended with a police escort back to Shanghai, a high-ranking official in charge of *chaiqian* affairs in her district initiated a

talk with Zhang in an attempt to close the entire case so as to stop Zheng from publicizing details of the conflicts. According to the resolution plan offered by the District Government, it was said that Zhang's case was to be resolved by the following compensation: for the death of her husband, the compensation was 400 thousand RMB;⁹² for the loss of all other family properties, including business loss, possessions which were burned down etc., another 400 thousand RMB would cover as compensation; in addition, the District Government would agree to transfer the ownership of one resettlement apartment under Zhang's name. In sum, a compensation of 800 thousand RMB and a privately-owned apartment would "finish up everything all together" as stated by the official. The condition for this economic offer was that Zhang should drop all her petitions and lawsuits against the District Government for judicial redress. If Zhang "wants to seek legal responsibilities then the offer is off," as the official framed the resolution compensation.

Zhang rejected the resolution plan. She retorted to the official "how much was Sun Zhigang compensated?"⁹³ In 2003, Sun Zhigang, a college graduate who was mistreated as an illegal migrant while he traveled to Guangzhou Province to work in a clothing factory, was beaten to death in a police detainment center. The nation-wide anger over this incident eventually pushed the State Council Office to abolish the controversial form of administrative detention called "custody and repatriation (*shourong qiansong*, 收容遣

⁹² About 57,000 US dollars by a 7:1 ratio.

⁹³ For detailed discussions on the death of Sun Zhigang and its impacts on China's legal reform, see Hand, K., 2006, Using law for a righteous purpose: The Sun Zhigang incident and evolving forms of citizen action in the People's Republic of China. *Columbia Journal of Transnational Law*, 45, 114-195.

送)" under which Sun was arrested. Zhang argued that if the death of Sun Zhigang could lead to a legal reform of "custody and repatriation" at the national level, then her husband's death should at least deserve an officially-pursued legal recourse. By comparing the two incidents, Zhang pointed out that "economic compensation" would not resolve any state-society conflicts if the origin of injustice was not redressed. Therefore, Zhang demanded "I want legal recourse. Did this site have a *chaiqian* permit or not?...If you did not have a *chaiqian* permit, [the operation] was not only illegal but also reckless...So do not talk to me about [compensation] figures [for his death]. Now you just return the property that my family lost [in *chaiqian*], the 400 thousand dollars, to me. Once I have this [amount of] 400 thousand dollars, I then have a source of livelihood. Should I be afraid of not being able to clear the incident of my husband's death?" The resolution plan, however, was a package whose exact purpose was to halt resistance and the challenge to authority by compensating grievances in economic terms. The official, of course, rejected Zhang's demand, and the political contradiction between Zhang and the local District Government remained unresolved.

"Economic resolution" was not only used in high-profile *chaiqian* cases. Active residents periodically received small-scale, short-term resolution offers when the authority saw a need to harmonize the political atmosphere. This usually happened before international summits or political meetings convened in Shanghai, or when the Beijing Central Government expressed concerns over social stability. One such offer Fang received happened in 2005, ten years after her family were forcibly relocated. In the circle of a group of acquainted residents active in resistance, Fang was one of the widely

recognized “tough resisters.” Since her house was unexpectedly torn down in 1995, she had refused to sign her name on the compensation agreement prepared by the *chaiqian* officials. In the past ten years, her family were several times forced to move away from one rental place to another because of *chaiqian* officials’ frequent interrogation of the landlords and neighbors. In 2005, before the “Two Sessions” convened in Beijing, Fang was visited by a manager of the demolition company, accompanied by a local policeman. Because the time of “Two Sessions” was close to the Chinese New Year, the manager said he was here to “pay Fang a courtesy call,” a tradition that many Chinese practiced among families and friends during New Year holidays. The manager, whom Fang had no contact with previously, then asked Fang not to travel to Beijing during the “Two Sessions” and certainly not to petition. He claimed that his company was willing to resolve the years-long case with Fang and “everything could be talked over.” Before he left Fang’s rental place, he laid down a red envelope with money contained inside, another Chinese tradition to show piety, devotion, or good wishes. When I interviewed Fang and a few other residents in her place, she pointed to the red envelope containing 500 dollars to us to indicate that her persistent resistance was not completely ineffective.

5.4.2.2 The political effects of economic resolution

These economic offers, even though they guaranteed no meaningful resolution, did significantly and effectively mold residents’ understanding of the state’s handling of their resistance. First, residents did temporarily hold back resistance. This effect was in part because residents in fact needed the economic compensation to cover living expenses; many of them had lost their previous sources of income during relocation. Bao described

why negotiating for the amount of a monthly government subsidy called “the minimum life guarantee” (*zuidishenghuobaozhang*, 最低生活保障), as mundane and materialistic as it might sound, was a necessary and important part of their resistance actions:

Since *chaiqian*, both of us had not worked. He had no shifts to drive; my little store was gone. Residents at the door-front area were relocated to elsewhere, I had no business to run. We had no source of economy and could only depend on the minimum guarantee...Before, the government only gave 200 dollars [a month] for both of us. Many times we confronted the government officials just to talk over this. I asked “what to do? He had have no work for two years.” Eventually, they agreed to give [Tsao] 200 dollars, and give me also 200 dollars...”

Bao’s explanation clarified that residents’ capability to resist was conditioned by their socioeconomic status, which itself was much affected by the state policy in China. Other relocated residents also expressed their anger and fear over that “the meanest [tactic] of the government is to sever your [source] of money and food so you will not be able to sustain [resistance].” A relocated resident commented “the more destitute you were, the less resistant you were.” In Bao and Tsao’s case, they continued to resist after successfully negotiating for an improved amount of minimum life subsidy. Yet, others had dropped open resistance even though their grievances still remained.

Zhao was not among those who were seen as active resisters by the local authorities. The District Government reached a compensation agreement with her after the forced relocation caused great damage to her family. The forced relocation, which took place in 1999, resulted in burns on her face face and almost 60% of her body. The police deemed self-immolation as the cause of fire. Zhao denied the act of self-immolation. According to Zhao’s account, in that day of forced relocation, in order to stop a crew of *chaiqian* workers who burst into her home, she held up a bottle of oil and a lighter in front of her and gestured to set up a fire if the *chaiqian* crew ever moved toward her. However, the

crew ran forward without stopping. As they struck Zhao down, the oil bottle was knocked over and the oil spilled down on Zhao. In the chaos of struggling and pushing, the lighter was also struck down and Zhao was suddenly on fire. During an interview, Zhao denied self-immolation and charged “if they did not use violence to force in, how could the fire go off!” Zhao was hospitalized for several months and during that time the District Government began to negotiate with Zhao on the compensation plan which was eventually accepted by her family.

At the interview, one of the residents, who introduced Zhao to me, sneered at the over million dollars monetary compensation and said Zhao had given in too easily because “the [compensation] money was little compared to just the cost of the medical sponges used to absorb the blood water oozing from [her] wounds.” She judged that Zhao was not persistent enough. Zhao did not want to discuss the compensation itself; rather, she greatly grieved over the hurt that forced relocation had created to her life. In tears, Zhao said the following with low voice: “my face is repulsive. And my skin is so rough that you cannot bear to touch. For a woman, this is a problem. This has effects. He does not want to be with you and you cannot blame him. This is creating a family problem. It is easy for men to find women. Who would want to stay with you?” Zhao was referring to her husband and the possibly permanent damage to her marriage after forced relocation.

Second, while these economic offers did indicate that resistance had struck a nerve of the state, the looming threats of political punishments, inherent in the state’s offering, also restrained residents from questioning the fundamental aspects of autocracy in *chaiqian*. As a result, residents either were compelled to engage in negotiation talks, or

struggled to explore politically-safe channels for resistance. At an interview with Li and his sister, Ming, I asked why and how they came to agree the resettlement agreement prepared by the *chaiqian* officials after the forced relocation seriously injured their father. Ming explained that they had to sign on the agreement at a talk meeting (*tanhua*, 談話) held by a high-rank government official in the City Government building. The talk, which essentially failed to reach agreements or conclusions, lasted until evening. While Li was in a hurry to end the talk because their father, hospitalized at that time, was frightened and eagerly expecting to see Li everyday, the government official did not allow them to leave the room unless Li signed his name on the prepared document. Ming recalled the official told them explicitly that they would be better off by signing the agreement because “So if [the demolition company] forcibly relocated you? Was the police going to establish a case for you? Who is going to determine the justice for you? If you keep insisting, legally, I can send you to a Labor Reeducation Camp...” Li then wanted to write down a statement on the prepared document that he reserved the rights to further appeals and he in fact did not recognize the way compensation was arranged. But Li was not allowed to do so. Li and Ming were told that not a single word could to be written down because the endorsed document would be later reported to the higher level of the government as an evidence of resolving state-society conflicts. As for Li’s attempt to appeal, Li was told that he was entitled to and he could do so in the future. This also reflected the widely recognized problem that local courts had been overburdened by an influx of land-related lawsuits under the governments’ deliberate use of the judicial

system as a way to contain social conflicts. At the end, without any choice, Li signed the resettlement agreement.

The state's offering of economic resolution always was accompanied with political implications. Meng was in her sixties and had been active in petitioning even after she was twice sentenced to Labor Reeducation Camps. Her neighborhood was demolished in the mid-1990s in the name of urban greenification. However, community residents later found out that commercial malls and high-rise building were erected on the site. The District Government had once tried to talk Meng into a resolution plan, but Meng did not believe that the local government's intention was in good faith. While Meng was still hesitant about the meeting, her son and daughter were both visited at their work units (*danwei*, 單位) by local officials, who asked them to talk their mother into an agreement. From their employers' point of view, a government official's visit at the workplace was a sign of possible trouble, and Meng's son and daughter felt the risk of losing their jobs. They were upset and had intense fights with Meng. Meng recalled that her daughter yelled at her after failing to convince Meng to give up resistance: "do you know why they are knifing you and sending you to Labor Reeducation? That is because you do not accept to talk. They are willing to talk to you!" The risk of political ramifications was so high in *chaiqian* resistance that among all the relocated residents I interviewed, none of them involved their children in their resistance actions. Some of them even kept their children completely ignorant of their petitions, lawsuits, and protests. Ironically, the separation from and ignorance of *chaiqian* politics had led many to believe that economic compensation was to be the center of *chaiqian* conflicts resolution. Therefore, Meng said

“*chaiqian* is a problem that belongs to the old generation” which suggested that “the younger generation does not understand the political implications of *chaiqian* movement because [they are] kept away from it.”

5.4.3 Depoliticized resistance: interest-based and individualistic?

5.4.3.1 *Protecting my own interests*

Large-scale *chaiqian* has compelled resistance, but organized movement has yet to happen in Shanghai. While resistance and protest at times turn into confrontations and political demonstrations, opposition to relocation for the most part tends to be individualistic and isolated, usually involving personal negotiation of economic interests with the local authority. One Chinese developer who had worked through several projects in Shanghai and in other cities explained the absence of organized resistance as “residents are not a block of iron (*bushitiebanyikuai*, 不是鐵板一塊).” This statement means that residents have diverse interests and are not bound together by common agendas or goals; therefore residents do not act collectively. The central message of this metaphor is that residents are interest-driven and are only concerned with protection of their own interests. The result is fragmented resistance which can be easily fragmented by the authority’s case-by-case handling, especially through economic compensation. This statement is commonly shared by property developers, who see the expanding *chaiqian* cost created by each resident’s demands for higher compensation as the main cause of the increasing difficulties in *chaiqian*.

Used in a similar context, “*boyi* (game playing, 博奕)” is also a common term especially to describe an individual resident as an active negotiator facing the authority.

“*Bo* (博)” in Chinese means “play” or “gamble.” “*Yi* (奕)” literally means “chess” or more generally “game.” “*Boyi* (博奕)” is also the Chinese translation for Game Theory developed in field of applied mathematics. Together, “game playing” describes the dynamic process in which residents explore how unyielding *chaiqian* officials are, speculate possible gains and losses, adjust negotiation strategies, and finally settle on their hard-earned, best-calculated compensation terms. Under this perception of “gaming for interests,” resistance becomes a personal business or choice. This viewpoint sees *chaiqian* resistance as individuals’ lone fighting for a better position in China’s redistribution process of economic interests. Since conflicts are at the individual level, the concept of social movement does not exist even though disputed relocation is a collective experience.

“博奕” or “game playing” has become a buzzword in *chaiqian*-related conversations. For instance, at a discussion meeting, a graduate student in urban sociology said the reason that residents behaved as spike households which resisted *chaiqian* was to “game (*bo*, 博)” for more.⁹⁴ It was also said that when risking forced relocating, spike household should be astute in deciding when to push forward and when to give up. One miscalculation would trigger forced relocation. A scholar who was also a high-rank director at a university research institute commented: “It is true that the interests of some individual residents were hurt during the process of *jiuqu gaizao* (inner city renewal, 舊區改造), but how do you measure the loss and the gain? The city has improved its

⁹⁴ At a seminar organized by Professor Chen Yingfang at Eastern China Normal University in 2006.

environment and landscape greatly, people has upgraded their living conditions, and the city's tax revenues have increased. How do you calculate the net result?" He suggested that individual residents when fighting for their own interests, an actual sign of progress in a middle-class society, should also bear in mind the achievement of public interests which Shanghai as a city pursuing development needed urgently.

The narrow pursuit of "protecting my own interests" had played a large role in relocated residents' participation in resistance actions. Xiao recalled how some residents clearly defined their actions as merely interest protection and nothing else. During a petition event in the City Government building in 2003, more than a hundred relocated residents displaced by different renewal projects formed into a spontaneous protest which openly and boldly demonstrated their anger just off the busiest road in Shanghai, People's Avenue (*renmindadao*, 人民大道). 2003 was a *chaiqian*-intensifying year in Shanghai. There was the widely-reported case of Zhou Zhengyi, a well-connected developer and his highly controversial renewal project, the so-called East Eight Block in Jingan District, had caused a group-lawsuit. There was also international attention to the three-year sentence of Zheng Enzong, the rights-protection lawyer who represented the relocated residents, under the charge of "revealing the state secret."⁹⁵ Other sensitive cases had caused *chaiqian* conflicts to become a focus of social issues. To remove the scene of open protest at People's Avenue, the City Government transported all the resisters to the city's petition office via two grand buses. In the buses, the atmosphere was excited and spirited.

⁹⁵ See Displaced tenants' lawsuits dismissed (South China Morning Post, 20 August 2003); also Shanghai residents lose suit implicating tycoon Zhou (Reuters, 20 August 2003).

Xiao and a few residents who also participated in the protest recalled they were chanting slogans, such as anti-corruption, rights protection, anti-barbarian *chaiqian*, and singing “The Internationale (*guojige*, 國際歌)” on the way to the petition office. Proud of the collective action and inspired by the possibility of progressive changes, Xiao recalled that he heartily raised up his arm and cried out loud “國家興亡, 匹夫有則 (*guojiaxingwangm pifuyouze*, the rise and fall of a nation, [even] an ordinary person has responsibilities).”⁹⁶ Just right after Xiao put down his arm, a resident behind him coldly said “What the rise and fall of a nation? I am here only for my own business!”

It was this kind of clear preference for individualistic action that made organized resistance even more difficult in Shanghai. This was reflected by what Huang said “we are all for individual interests, all for protecting individual rights.” In 2006, when a few active residents helped spread the public call launched by Gao Zhisheng, a rights-protection lawyer in Beijing, for a relay hunger strike nationwide to protest “violent and rights-infringing government action,” they faced skepticism from residents, who asked “will joining the relay hungry strike benefit me? If not, I am getting involved.” In the end, fewer than 100 residents in Shanghai joined the strike movement. Chou attributed this type of doubt to what he called “petty citizen (*xiaoshimin*, 小市民)” attitude.

5.4.3.2 Rights that cannot be reduced to interests

While interest protection was indeed a strong characteristic and focus of demand in disputed relocation, many residents’ struggles and demands could not be easily reduced to

⁹⁶ This maxim is a quotation from *Rizhilu* (日知錄, Record of the Sun Knowledge) by Gu Yanwu who was a scholar in the late Ming and early Qing period.

an issue of pecuniary gain and loss. Many residents saw *chaiqian* as a rights issue, which more broadly included economic interests, personal, legal and political rights, and rights to the city. Huang described how relocation hurt her family's interests and rights:

You see how good the location of our old neighborhood was. Two subway lines go through the back area and the front area has so many bus stops. It is a convenient location. My son goes to XX school in XX district. He always stays late to have additional lectures. After school it is at least 9 o'clock. How late would he be home if we really moved to XX? It is just impossible to go to XX! If there were a subway line with straight connection, maybe it would have worked out. We will retire one day and we need to think for our next generation.

The place where Huang was to be relocated is generally considered to be the edge of the city. Further west, it becomes the rural area of Shanghai. When I visited the resettlement community where Huang was asked to move to in 2003, it took me almost two hours one-way (including waiting, switching lines, and staying in bus) from Shanghai Train Station area, which is a major transportation hub. One of Huang's old neighbors was also relocated to the same resettlement community and I first met both of them in the neighbor's apartment. All apartment buildings in the community were three-level, box-like, structured with bricks and steel, with cement exteriors. Each apartment unit had its own kitchen, independent bathroom, a separate bedroom from the remaining area, all of which were features absent in most of the *linong* houses in inner Shanghai. While the resettlement apartment provided convenience and necessary facilities, the building itself looked poorly constructed; and vertical cracks could be easily seen. Because the resettlement community was close by run-down industrial factories and warehouses, there had been unverified talks about redevelopment plans for the whole area. Huang said if this district government decided to begin *chaiqian* here then resettlement would take place somewhere in the rural area even further from the city.

Since being released from the labor re-education, Huang had not been able to find a job and her family of three relied on her husband's single income. "If we really moved [to resettlement house], either we stayed at home, did not go anywhere, or we spent a lot on commuting. It [relocation] is just not feasible." Because the Huang's family lost the private ownership over the old house (not including the land), she felt that the *chaiqian* had deprived their well-to-do (*xiaokang*, 小康) status. "Does not the government say we should develop toward a well-to-do society (*xiaokangshehui*, 小康社會)? We were already!"

Like Huang, other relocated families had their own concerns and ways of calculating the impacts of *chaiqian* on their current life and next generation's in Shanghai. These ranged from children's schooling, access to hospitals and amenities, commuting to work or job opportunities, possibilities of continuing small home-run business, etc. Marriage for children was also a very important consideration. "No city girl in Shanghai would marry a young man who lives in the rural area!" a woman said outright when I interviewed in her story in a soon-to-be-demolished community. She wanted *chaiqian* as a way to improve her living conditions but wished to stay in the city because she was concerned for her son's future.

Sometimes, considerations over *chaiqian* were very personal. Liu gave an example from his previous experience working in a local *chaiqian* company to explain how diverse and troublesome (麻煩, *máfan*) residents' demands could be. During a *chaiqian* project in the end of the 1990s, Liu's company had to deal with a handicapped resident who agreed to be relocated only if the *chaiqian* company promised a designated parking

spot for his over-sized, three-wheeled motorcycle. The resident insisted on a secure and close-by spot for his only transportation means. Liu's company talked to a current resident who lived in the ground-level in the resettlement building and arranged a spot in the hallway for parking. However, a year later the handicapped resident came back to Liu's company and complained that the neighbor had taken back the spot in the hallway and now he could only park his motorcycle somewhere far way and was worried it would be stolen if not kept nearby. The handicapped resident demanded resolution. Liu said "Who could take care of this? Many demolition companies are project-based and disbanded after the *chaiqian* is completed. This is beyond our ability." So what was the resolution for this handicapped resident's parking problem? "Our head [of the company] threatened him away" Liu replied.

All these practical, everyday-life concerns were also weighted by the strong desire to maintain a city citizen's status, which had still been considered a social privilege under the legacy of China's *hukou* system (household registration, 户口). These tangible and intangible demands could not be easily measured into monetary compensation, as the authority had intended to do.

Because of the great impacts created by relocation, people in the *chaiqian* business who sympathized with relocated residents sometimes saw residents' opposition as self-help actions for securing more bargaining chips in the very disadvantageous process of negotiation. Yuan, who was a senior consultant for a Hong Kong-based property management company and had also previously participated in several development projects, stated "in the early 1990s, everything [was done] under [Deng Xiaoping's]

‘development is an unyielding principle (*fazhanshiyingdaoli*, 發展是硬道理).’ *Chaiqian* was easy in the beginning because everyone was still ‘groping through the river.’ Now residents are as savvy as developers, the degree of difficulty for *chaiqian* is much greater now. Yuan then candidly said “no matter how great the neighborhood becomes after renewal, it will not be theirs. Deep down, residents know it. They are just taking [*chaiqian*] as an advantage to negotiate for a relatively better-off location, not somewhere way way remote. But in fact, the later you are relocated, the further away you will be relocated [from the city]. That is it.” Yuan was referring the fact that the skyrocketing real estate market in inner Shanghai would eliminate any chance for relocated residents to be rehoused in the inner city.

I heard similar remarks from Ma. Ma was a collage graduate who worked in a foreign property development company which in 2001 obtained a large site in a “golden block” in inner Shanghai but had encountered sluggish relocation since then. The district government had held back issuing *chaiqian* permits, since the district recently experienced several conflicts over large-scale relocation. Prior to this position, in the 1990s, Ma worked for a state-run real estate company that brokered resettlement houses for relocated residents. At that time, her company was one of the numerous companies participating in one of Shanghai’s greatest-scale, state-led renewal plans which relocated twelve thousand households. Ma’s job was to persuade residents to accept her company’s resettlement houses and to complete transactions with them. Her good performance at that time made her a “model worker” of the company and she was publicly awarded by the district director. During my interview with Ma, she expressed her ambivalent feelings

toward resistant residents in the 2000s. On the one hand, she did not seem to use any means except forced relocation to convince current residents to accept inner city renewal. On the other hand, she did not believe that giving residents a more modernized, better-equipped house through relocation could solve their problem of becoming socially and economically disadvantaged. Ma explained why *linong* neighborhoods which had historically characterized Shanghai were where the masses (*laobaixing*, 老百姓) had lived:

Good locations, diamond-valued areas are for sure where ordinary residents live. It is exactly because they are low-income, disadvantaged, so after liberation [by the Communist Party in 1949] got rid of property owners and wealthy families [in inner Shanghai] by revolution, these [good areas] were distributed to the poor masses [to live]. A house itself cannot change the fact that you are poor. If you do not have floating capital, good education, you are still disadvantaged overall. These [current] residents' third generation are at the age of high school, so they want to stay in the city, they try to take advantage of this opportunity [of *chaiqian*] as a way to merge into a more mainstream, middle-class life. Sometimes I understand them. This indeed is an opportunity for them, they have to *bo* [play the game].

5.4.3.3 The emerging collective actions: unplanned, unorganized, and leaderless

In August 2005, a group of about two hundred residents gathered outside of the Shanghai Centre Building, which is home to a number of Western media and foreign corporations. These protest residents were from different communities in different districts; their relocation time varied, and the grievances were personally specific and had evolved in their own courses of petitioning and lawsuits. They were all protesting against aggressive *chaiqian* practices, corruption, power abuses, violation of rights, and lack of transparency in the judicial system. In those few hours, while holding signboards, protesters chanted slogans, sang L'Internationale, and showed documentary materials (*cailiao*, 材料) related to their *chaiqian* cases to curious onlookers. Because the location

of the gathering is in a busy and popular area for tourists and commercial activities, the protest enjoyed a few hours of publicity to Shanghai citizens and foreigners alike. A spectator, surprised by the public assembly and the bold slogans, such as “Chenliangyu,⁹⁷ step down!” “anti-corruption,” “democracy not autocracy,” asked “has it been already so politically open in Shanghai?” In the following weeks, follow-up gatherings—some vehement protests, some quiet sit-ins—continued to take place periodically. In late 2005, several participants were arrested in different districts and were detained for more than one month without receiving formal investigation or charges. In 2006, when Gao Zhisheng, a famous (or infamous in the government’s eye) rights-protection lawyer in Beijing, launched a public call for a relay hunger strike nationwide to protest “violent and rights-infringing government action,” many relocated residents in Shanghai also joined and signed their names on the open letter.⁹⁸

While most still go unmentioned in Shanghai news reports, these gatherings mark the beginning of a collective action to challenge *chaiqian* practice and its supporting power structure in Shanghai. These protests, which almost guarantee political ramifications to participants, also show that the viewpoint on “gaming for my own interests” is not sufficient to fully explain disputed relocation. The emergence of collective action also

⁹⁷ Chenliangyu was the mayor of Shanghai. He was arrested in 2006 and deprived of political rights because of large-scale scandal of corruption and bribery.

⁹⁸ For detailed discussion on Gao Zhisheng and his rights-protection lawyering, see Pils, E., 2007, Asking the tiger for his skin: Rights activism in China. *Fordham International Law Journal*, Vol. 30, 1209-1287. Cohen, A. J. and Pils, E., The Disappearance of Gao Zhisheng. *The Wall Street Journal Asia*, 9 February 2009. Gao Zhisheng was taken away from his home in Beijing on February 4, 2009 by the police and no one has since heard of Gao’s whereabouts.

requires a deeper understanding of the common sayings of “diverse personal interests make the solidarity of resistance impossible” or “residents are not a iron block.”

Ironically, many resistant residents first met other fellow residents in the plaza in front of the Shanghai City Government at 200 People’s Boulevard (人民大道, *Renmin Dadao*), a place generally believed to have open and secret surveillance in place. Because every Wednesday was the “receiving day for letters and visits (*xinfang* or petition),” discontented citizens carrying materials related to their cases came to what they called “number 200” to petition the City Government to investigate their complaints and grievances. “Number 200” was described by relocated residents as “a marriage agency (*hunyinjiेशaosuo*, 婚姻介紹所) for all of us” which meant the city government had unintentionally played matchmaker for residents previously unknown to each other by compelling them to petition together. Every Wednesday, when “number 200” was crowded with petition residents, anyone raising a subject or complaint could immediately gather an earnest audience. Residents with similar problems quickly formed into groups where discussion enthusiastically took place. At “number 200,” residents talked about their own experiences, presented their written petition letters, exchanged resistance strategies, and offered suggestions to others. Chou described the atmosphere surrounding the Office on every Wednesday:

You thought you were alone but you are just one of many. You have to be there at 9 sharp in the morning, otherwise you cannot even get into line. People are from all over, carrying all sorts of problems with them. In the plaza [in front of the Office] people immediately and automatically begin to form into groups to discuss different topics. You explain your problems, others offer theirs, someone else might just as well provide some perspective that you never thought about. You feel you are being understood and informed. It is a place to reach out.

It is said among relocated residents that if you had not made a trip to “number 200” than you were a novice in disputed relocation. While civil society still remains largely invisible in urban China, “number 200” has become a major venue where relocated residents made their first connections with each other. In other words, “number 200” is a space in which new energy, ideas, and actions are inspired and formed.

Once a connection was established, resistant residents showed enormous capacity for passing information within the trusted circle and quickly responding to outside signals from the larger political environment. One good example of how relocated residents remained highly attentive to possible opportunities to express their opposition happened in the Shanghai Municipal Library in 2005. In the summer of 2005, the Shanghai Municipal Library organized a series of public lectures on various topics related to the future development of Shanghai, one of which was titled “Shanghai Urban Planning for 2020.” Before the lecture began at three o’clock, the lecture hall was already packed with an audience of more than three hundred. During the presentation, the speaker, who was the vice director of Shanghai City Planning Bureau, talked about major planning goals for Shanghai, including developing Shanghai as the financial center of China, construction of traffic lines and subways, historical building protection, and housing plans etc. The content of the talk was nearly identical to the comprehensive plan of Shanghai,⁹⁹ also made and published by the Shanghai City Planning Bureau. There was no interaction between the speaker and audience until the topic of suburbanization (*jiaoquhua*, 郊区化)

⁹⁹ Shanghai Urban Planning Administration Bureau (publication year not specified) *Shanghai shi chengshi zongti guihua gaiyao 1999—2020* [Summary of the comprehensive plan of Shanghai 1999—2020]. Shanghai Urban Planning Administration Bureau: Shanghai (in Chinese).

was mentioned. While the speaker was saying that the city intended to control and manage its rapid growth in the center by developing four major new towns in the rural area, a woman in the audience suddenly stood up and asked loudly “if suburbanization is such a good thing, why don’t you move to the suburb and let me stay in the city center?” Immediately following her, several people also stood up and raised similar questions on “suburbanization.” I later learned that these angry listeners were relocated residents and they took suburbanization as another policy term, similar to inner city renewal, which encouraged residential relocation.

After the eruption of the first challenging questions, the atmosphere inside the lecture hall was like a pot of boiling porridge. While a few residents tried to move forward to talk about their relocation experience to the speaker—who had quickly stepped down from the stage—others were either observing with interest or giving their own opinions and criticisms. Almost no one remained seated. Even though a high-rank official of the library tried to calm down the audience and asked them not to subvert the lecture, the security guards were still called in to control the situation. The lecture was eventually resumed, only to finish with a hasty conclusion.

While this improvised protest was not likely to secure any specific resolution over any specific case, it in effect opened up a candid (however brief and small in scale) discussion of *chaiqian* and the government’s role in a public space. After the lecture hall was closed down, a few participants continued an intense discussion which drew an attentive audience in the library’s front plaza. Surrounded by a wall of least two to three listeners deep, at the center three people argued sharply and loudly. One lecture participant blamed

protest residents for being selfish, disturbing the society's order, and hurting others' rights in public space. Two relocated residents tried to defend themselves and said that they had no channel to seek justice. The argument lasted for about one hour with a steady audience. Although receiving some harsh criticisms, relocated residents spoke boldly about the government's vested interests in *chaiqian* and the abuse of power, seen from their own experience. Most of the listeners offered little commentary, but few had left before the library guards eventually ordered the group to be dismissed. This type of collective gathering, quickly formed when active residents see official activities that might offer a stage for expression, is a typical *chaiqian* protest which has recently emerged. These protests are not planned in advance, decided a few days or even a few hours before an opportunity appears.

Also in 2005, the City Police Bureau announced a receiving day for petitions in order to resolve "contradiction between people and the government." The announcement was made in newspaper on the morning of the receiving day. However, over five hundred residents still gathered in front of the government building. Even facing heavy police forces and under a video camera operated by a policeman, a lively protest with signboards, banners, and slogan erupted on the pedestrian sidewalk. Protesters wore white vests on which accusations were written in black ink, some brought their young children and old parents with them to show the great impacts on their family, others held enlarged signboards so bus riders passing by the building could also see their protest. Residents took no action which would seriously obstruct traffic functions or orders. As usual, the protest was intensive but also short-lived. The scale and intensity of gatherings

were contingent on the larger political atmosphere. During the period of the important annual “Two Sessions”¹⁰⁰ in Beijing, residents generally believed the government control was tighter and punishment was more severe in order to prevent social unrest so gatherings were less likely to happen. However, residents also saw international conferences, summits, or major local events as an important opportunity to gather together to express their discontent.

These highly mobile gatherings were said to be the result of residents’ simultaneous participation, but not by active organization. Active residents never claimed—in fact, they even denied—that any network or organization was ever formed by any resister. When asked about how they came together, residents usually talked about these gatherings as a natural, unintended outcome of coincidence, a casual happening or a grouped behavior out of previous acquaintance. Some of the “simultaneous” happenings were described as: when a group of residents went to the petition office and demanded for release of information on their own cases: “yes, it was by chance that everybody decided to go there on the same day,” or “we were in Beijing together...so it was natural that we went to the petition window [in Shanghai] together as well.” When a resident was released after his one-year imprisonment, a group of residents already waited outside of the detainment center to welcome him, and the resident a few weeks later went to a district court with the same group to hear the court ruling over a *chaiqian* lawsuit. I asked him if he had kept contact with those relocated residents so they would know when he was released. His answer was indicative of how important maintaining the

¹⁰⁰ “Two Sessions” is a shorthand for The National People’s Congress and Chinese People’s Political Consultative Conference.

“simultaneousness” of grouped actions was: “I did not contact them [I asked: they contacted you then?]. No. This is [because] we were old neighbors, they came to pick me up. They told me about [the court ruling] and then I tagged along.” While asked to explain how a group of people without a network could quickly gather together, it was answered “it is just one phone call. Words travel fast among us.” During an interview with Fang, who was an active petitioner, a resident who only knew Fang by name but saw her contact information on an open petition letter called in to ask for suggestions. This new resident had just been forcibly relocated and desperately needed to consult with someone. Fang only replied “go to number 200 with your materials,” finishing the phone call quickly. Fang explained to me that “there is no use to say anything over the phone. If he goes around and listens to our discussion at number 200, he would feel more enlightened than any lawyer could make [him].” In fact, relocated residents hardly ever discussed their cases or actions over the phone. Since most residents frequently visited number 200, which was a public, official place for petition, they exchanged information more freely and also reduced the risk of being wiretapped.

Grouped gatherings did not (and could not) have a *tou* (leader, 頭), who networked individual residents together. The reason for a leaderless gathering was in part because each resident was predominantly concerned with his/her own, different, specific *chaiqian* problems. However, the more important determinant was the fear of drawing a politically motivated charge for organization and assembly. Chen described why gatherings were ultimately just a temporary group of individuals loosely connected with each other:

Cannot have a *tou* (leader, 頭). Sometimes outside people might say petitioners [should] have a representative to represent us. No one can represent no one, I represent

myself! Although [we] go to petition together, there cannot be a representative, [the government] does not allow you to have a *tou*...Because the meshes of government and its policy are really fine...Therefore, organization is really difficult and if the government sees that you are the *tou*, [you will be] immediately arrested.

Meng also commented on the impossibility of solidarity among relocated residents:

Relocated residents, not to mention organizing together, if [someone] has some sort of little ability of calling people together, [he] would be immediately taken away. It is exactly because relocated residents are a motley crowd (*wuhezhizhong*, 烏合之眾), are not a block of iron, therefore crackdown [on the gatherings] has not happened yet. Existing imprisonment targets individuals. Arrest a few to threaten many. If [there is] a genuine assembly, then [there will be] a genuine crackdown.

This fear of being accused as part of a “genuine assembly” was also reflected in

residents’ cautious separation of these gatherings from political activities. Even the most active residents frequently declared that gatherings were not “anti-party or anti-socialism.

We just speak out our sufferings,” or “it is not like that we are doing a political

movement,” or “it is not true that we are networked (*chuanlian*, 串連) together.” These

active residents also highlighted the subtlety between “social movement” and “social

activity.” Chou said “movement” was not the right word to describe their collective

participation, and at most “a social action” could be used to describe their gatherings.

Because “we usually stay within the circle of ours, everyone sort of knows each other, gets along better. Others we don’t really interact with.” This demarcation was mainly

caused by residents’ worries over government surveillance. Experienced petitioners did not easily accept new petitioners who were suspected, even groundlessly, as government-

planted eavesdroppers in the community of relocated residents. Active petitioners

generally believe that some fellow relocated residents would report their plans, such as

traveling to Beijing, gatherings, or open letter signing etc., to the government in exchange

for better compensation treatments for themselves.

In addition to this cautious attitude towards new faces, what residents commonly called “petty citizenship (*xiaoshimin*, 小市民)” also weakened the expansion and solidarity of resistance. “Petty citizenship” referred to a deferential and even trusting attitude to the state and its authority even when citizens expressed their discontent. In another word, while citizens clearly acknowledged that their interests and rights were hurt by members of the power structure, they remained humble in front of the state, trusting that a judicious official would redress the wrongs. This was especially clear when residents faced high-rank government officials who did not have directly vested interests in the local politics. Chou told a story to explain his definition of petty citizenship. In a petition trip in Beijing in 2006, while Chou was waiting in line in a government building, he found a person nearby was also from Shanghai. The family of this fellow Shanghai citizen was just recently forcibly relocated and he immediately hurried up in Beijing to seek redress from the Central Government. During their conversation, Chou talked about the trip as petitioners usually did in order to pass the time and to share information. However, the fellow citizen was reluctant to discuss his own case because “he felt he was not supposed to mingle with [other petitioners] since [he] has already made to the central office, to Beijing.” Chou said “he held a great hope that the government would resolve the problem for him so he thought he should only deal with the government. This is the greatest problem of petty citizens!”

5.5 What Resistance Has Achieved: Small, Tentative, and yet Inspiring

5.5.1 Zhang’s law learning: a found path out of a legal labyrinth

In the lengthy process of seeking redress, residents had learned to thoroughly explore the existing legal system to present their claims in the same official terms as those used in the government documents. Residents' usually-unsuccessful lawsuits had also become a good starting point for them to study the legal articles quoted by the judges who denied their cases. From there, residents would trace back the original law, collect the Supreme Court's interpretations, and check how these articles were previously used in similar cases. Persistent searching and self-education had often empowered residents.

After forced relocation, Zhang began to learn about the 1991 Shanghai Bylaws. In a letter she wrote in 2001 as an attempt to reveal the entire process of conflicts to the high-rank government, Zhang raised questions on every problematic *chaiqian* operations in accordance with relevant regulations. Zhang listed articles 10 and 17 of the 1991 Shanghai Bylaws and questioned why the demolition company did not publicly post a copy of the demolition permit, the demolition boundary, and the deadline of demolition in the community. Zhang continued and asked: "what exactly is the project of construction (*jianshexiangmu*, 建設項目) for the demolition permit numbered XX? [The Informing Letter to Residents] claimed: 'the state [carries out inner city renewal] through land-use rights transfer of the state-owned land.' Is this 'state' the State Council Office? the City Government? the District Government? or the corrupt officials who wave the flag of the state?"

Zhang's challenge toward the lack of specific information on the "project of construction (*jianshexiangmu*, 建設項目)" was both important and effective. As pointed out by Zhang, article 13 of the 1991 Shanghai Bylaws legally required a government-

approved construction project as a prerequisite of issuing *chaiqian* permits. The original Informing Letter to Residents that was distributed to Zhang's community in 1996 only claimed the *chaiqian* was for inner city renewal (*jiuqu gaizao*, 舊區改造). It did not specify the exact title of the project nor did it provide the government document number approving the construction. In Zhang's other petition letters, she also pointed out that the site had remained idle for about five years after demolition. And Zhang accused that the *chaiqian* under the absence of the project of construction was just the local government's trick to vacant existing communities for later land speculation.

Zhang's petition letters, many times titled as letters of accusation, had evolved over several versions. From hand-written to computer-typed, from several pages long to a concise listing of questions, from very descriptive and emotional to the frequent citation of law. Zhang said "I did not write well before but I have been learning...People had also helped read [the letters] and then I would revise." What had not changed in these writings was the constant citation of law, ranging from *chaiqian*-related regulations, ALL, to PRC Constitution.

After several years of petition, in 2004 the District Government held a petition investigation meeting which was attended by Zhang and other relevant parties and subsequently issued a document titled Reply to *Chaiqian* Petition to Zhang (hereinafter the Reply). The Reply answered several questions previously raised by Zhang. The first question surrounded the project of construction. The Reply stated: "After reviewing relevant documents and also reporting to the Housing Management Bureau for approval, the housing *chaiqian* permit was issued in the same year. *The project of construction was*

tudipizu (land leasing, 土地批租) (emphasis added).” The second question concerned the demolition boundary. The Reply stated that Zhang’s house was within the boundary approved by the *chaiqian* permit, which Zhang claimed she never saw or received, and that the demolition company did not expand the scope of demolition without authorization. The third question was on the cause of the death of Zhang’s husband. The Reply concluded: “The Shanghai Police Bureau has issued you a written reply...this event was the result of XXX’s behavior of arson. Therefore, there will be no further investigation.” The fourth question concerned Zhang’s complaints that she “was under surveillance by police stationed [in the neighborhood].” The Reply answered: Through investigation, your emotion was overwhelming after the death of your husband. In order to prevent unexpected [incidents], starting from the perspective of protecting yourself and [your] family and of maintaining the society’s order, comrades of the residential committee and police often visited your house to do the thought work (*sixianggongzuo*, 思想工作) on you. There was no such thing as stationed surveillance.”

While the Reply was largely just a formality which promised no meaningful redress to the wrongs, the Reply did reveal “the project of construction was land-leasing (*tudipizu*),” which was a new piece of information to Zhang. In Chinese, *tudi* is land, *pi* refers to permit or approve, and *zu* indicates rent or lease. Together, *tudipizu* means very generally as land leasing which includes all land activities in China since no individual has private land ownership and any development project needs to be approved by the state which leases out land. Once receiving the Reply, Zhang immediately filed a lawsuit against the District Government to the District People’s Court. Zhang claimed that it was not until

the Reply in 2004 that she learned that the project of construction for the *chaiqian* permit was land leasing. Zhang then argued that the *chaiqian* operation in 1996 was illegal because the District Government failed to announce this piece of information. Zhang further pointed out that the her legal right of returning settlement was also severely violated by the District Government, whose adjudication denied her request as unreasonable. Zhang litigated against the District Government and asked for its adjudication made in 1996 to be either invalidated or ruled as illegal.

The district court rejected Zhang, a frequent result of administrative litigation under ALL. In the court verdict, the District People's Court first confirmed that through investigation the *chaiqian* permit issued by the District Government did specify land leasing as project of construction. However, the district court did not address if the *chaiqian* permit was publicly announced. The court verdict merely stated that when Zhang received the adjudication in 1996 she must have been aware of the *chaiqian* permit. However, according to a copy of adjudication that Zhang still reserved, there was no statement on the type of development or the construction project for *chaiqian*. In other words, the district court made no clear statement regarding Zhang's claim that she was not informed of land leasing as project of construction.

The legal reason that the district court rejected the case was because Zhang had waited too long to file a lawsuit against the District Government. The District People's Court ruled, citing Article 35 of the Supreme People's Court's judicial opinions on Administrative Litigation Law (1991), that Zhang should have filed a lawsuit within one

year after learning an administrative act, which means a year after she received adjudication in 1996.

At this point, procedural formalities seemed to become the dominant factor that decided the ruling over Zhang's lawsuit in seeking redress. The court did not provide any substantive evidence to deny Zhang's accusation on the district government's failure of releasing legally-required information. Discontent with the ruling made by the District People's Court, Zhang criticized that the court lacked independent authority and was irresponsible. Zhang said "the court could easily verify what I said by interviewing our old neighbors. At that time, hundreds of people were relocated, why cannot [the court] just summon a few and question them whether they in fact saw the *chaiqian* permit or was informed that land leasing was the project of construction!" Seeking a different ruling, Zhang brought the same lawsuit further to the City First People's Court. The city court supported the district court's reasoning and again rejected Zhang.

Zhang described her feelings of fighting her case in courts as "playing the lute to a cow," which meant preaching to deaf ears. She felt her challenge to the unlawful *chaiqian* under which she was deprived of important information was not addressed in court. And it was impossible for Zhang to challenge the court's use of Article 35 on the one-year litigation limit because it had now been almost eight years since *chaiqian* took place.

While she lost the case, the court's legal reasoning had raised Zhang's curiosity. The citation of Article 35 by both the district and city courts had drawn Zhang's notice to ALL and its related judicial articles issued by the Supreme People's Court. When ALL (Administrative Litigation Law) was issued in 1989, it was the first law which allowed

citizens to sue the government in court and was widely seen as a milestone in China's development to a rule of law society. To provide clarification on how ALL should be implemented, the Supreme People's Court issued judicial opinions on ALL in 1991.¹⁰¹ This set of opinions had 115 articles and its Article 35 was used to reject Zhang's case. In 2000, the Supreme People's Court abolished the judicial opinions and replaced with a new promulgation of judicial interpretations on ALL.¹⁰² The 200 interpretations have been in effect since then. While the majority of laws, especially those legislated by the Supreme People's Court or by the Central Government, are widely available both in bookstores and on-line nowadays, in the 1990's up-to-date publication was slow and access to these legal documents was limited. It was especially difficult for residents to obtain local regulations which were unilaterally made by city governments. The problem was made worse by local governments' frequent issuing of measures, notifications, policies which were lower on status and even contradictory to central government's law, but were used in practice to realize local governments' policy goals (see chapter three). However, there has been a significant improvement in making law available to citizens. At the Shanghai Municipal Archives, there are chronologically-organized, bound folders of Shanghai-specific regulations and most of them are available for visitors' review or copying. Most of my interviewees recognized this noticeable change for better circulation and availability of law. This is confirmed by legal scholars who asserted that "China is

¹⁰¹ Supreme People's Court, Opinions on Several Questions Regarding Implementing The Administrative Litigation Law, issued on 11 July 1991.

¹⁰² Supreme People's Court, Interpretations on Several Questions Regarding Implementing The Administrative Litigation Law, issued on 8 March 2000.

probably the only country in the world where the government makes it an explicit and specific long-term strategy to imbue its citizens with knowledge of the law” (Fu and Cullen, 2008).

In this improved, more hospitable environment, Zhang’s persistent actions helped her find a possible path to challenge the previous court denial to her case based on Article 35. Believing that the city court lacked independent authority to challenge the City Government’s own mistake, Zhang travelled north in an attempt to petition the Supreme People’s Court and other Central Government offices in Beijing. When Zhang went the Supreme People’s Court, there was already a long line of petition citizens who came from different provinces with different grievances and complaints. Feeling that the line was hopelessly long, Zhang walked into a bookstore located in an alley close by the Supreme People’s Court. There she searched for law books on ALL and its ruling cases.

An explanation request made by Fujian Province Supreme People’s Court in 2002 on the ALL litigation time limits caught Zhang’s attention. In answering Fujian Province, the PRC Supreme People’s Court stated:

For the concrete administrative acts which administrative organs make after PRC Administrative Litigation Law was in effect on October First 1990, if the subjects (*dangshiren*, 當事人) do not know of the concrete administrative act, the calculation of litigation time limit should apply Article 42 of PRC’s Judicial Interpretations on Several Questions Regarding Implementing Administrative Litigation Law.¹⁰³

And Article 42 of PRC’s judicial interpretations reads:

The litigation time limit for a specific administrative act involving real estate property is within 20 years since citizens are informed.

¹⁰³ August 2 2002, numbered 6.

Zhang believed application of article 42 could be a breakthrough in her case denied by the one-year litigation limit. She was extremely excited and energized by this discovery and said “this Beijing trip is not in vain...I am so delighted.” The law book cost over a hundred dollars, so she jotted down the explanation given by the PRC Supreme People’s Court and Article 42 on her notebook. When Zhang returned to Shanghai, she immediately drafted an appeal in preparation for a lawsuit to Shanghai Supreme People’s Court. In the appeal letter, Zhang wrote:

Even though it is not true that the *chaiqian* permit was posted on the site in 1996 as claimed by the Reply of 2004, I still learn from the Petition Investigation Meeting that the project of construction was land leasing. *Land leasing is what land [use rights] transfer is commonly called, it should not be used for the project of construction...*In order to protect [my] legal rights, and petition [alone] cannot make clear what truly happened...I therefore file an administrative litigation lawsuit against the legality of the [1996] *chaiqian* permit...According to Article 42 of PRC Supreme People’s Court judicial interpretations on Administrative Litigation Law, it is clear that here does not exist the problem of litigation time limit...

At the time when I interviewed Zhang in 2006, she was still in the process of preparing the appeal letter. The preparation involved writing a draft, showing the draft to other residents who knew the law or were better educated—or had a higher level of culture (*wenhua shuiping*, 文化水平), as Zhang called them. She then revised the wording, and lastly, had the letter typewritten. She was determined to complete the lawsuit process at all judicial levels in Shanghai. If her case was to be rejected by the city’s highest court, she planned to file a lawsuit to the Supreme People’s Court in Beijing as her last resort.

Zhang was not under the illusion that her invocation of Article 42 would suddenly lead to any fundamental change in the difficult ruling process. She had heard that some other residents’ lawsuits were either directly rejected by the Supreme People’s Court or were left undecided for years. However, she firmly believed that an appeal based on article 42

would highlight how her case had been previously unjustly treated and the future ruling would also be an ultimate test on the independence of China's legal system. "My case should not fail. Because you [the Supreme People's Court] have the law, regulation, and judicial explanation...[unless] your own people pervert the law to rule [the case], to deprive my rights of litigation...If [the Supreme People's Court] still denies me then there is no further road for me to continue on." Until now, Zhang had struggled for redress and resolution mostly through institutionally-permitted channels. To Zhang, it was vital to complete her lawsuit at every judicial level within the existing legal system before she openly turned her seeking of justice by using the other discourses, such as democracy or human rights. The fate of her case remains to be seen for years to come.

5.5.2 Chen's persistent inquiry: empowerment and open information

Since the early 2000s, there has been a noticeable and significant effort by the Chinese state to make law on *chaiqian* and land-related activities available to Chinese citizens. This was part of China's legal modernization project. Chen was one of the millions Chinese who enthusiastically undertook self-education of law relevant to inner city renewal. His family purchased copies of the 1991 Shanghai Bylaws, case studies on *chaiqian* ruling, regulations on real estate development, land leasing, and the PRC Constitution.¹⁰⁴ At that time, Chen was troubled by the denied application for the business license for his resettlement house, and he did not seem to have any leverage over the demolition company. His family's experience reverberated as he read through what

¹⁰⁴ Books on legal cases of *chaiqian* can be easily purchased in bookstores in Shanghai. Without delving into the conflict itself, these case studies give instructions in terms of applications of legal articles.

was written in the articles of the Shanghai Bylaws. Chen felt enlightened (*qifa*, 啟發) in terms of understanding how to position himself as a relocated subject in the *chaiqian* process. During an interview, I asked Chen what convinced his family of the significance of law given the well-known fact that China's law was highly contingent on politics. His thoughts on the question were indicative of the empowerment process that displaced residents' experienced:

After demolition I began to search for information, to learn (*xuexi*, 學習), to re-educate myself (*zaijiaoyu*, 自我教育). We have come to realize that we have to understand law. It is your weapon. During the most intense confrontation with the demolition company, I was often trapped in my own ignorance. Many times, I did not agree with them [the demolition company] but could not pinpoint what was wrong. I was full of emotion but my brain was too empty to back up my arguments.

Article 13 of the 1991 Shanghai Bylaws on legal requirements for issuing a *chaiqian* permit quickly drew Chen's attention because it was the source of how the state authorized demolition companies. According to Article 13, four documents must be approved prior to a *chaiqian* permit to be issued: project of construction that specified the development's goals (hereinafter Construction Doc.), planning permit that stated the physical layout of development (hereinafter Planning Doc.), land leasing document that proved the legal transaction of land from the government to the developer (hereinafter Land Doc.), and finally plans of relocation and compensation. He had saw a copy of the *chaiqian* permit but he never saw any of the first three documents. Chen recalled that the court verdict which denied his lawsuit against the local government's adjudication in 1994 listed titles of the first three documents of his neighborhood's *chaiqian* but the verdict did not provide their contents. At that time, Chen was not even conscious that he had rights to review the contents of the documents used in court.

Since the Chen family was relocated, Chen had been wondering about the background of the demolition company. Also, because he had read the Shanghai Bylaws several times, he wanted to know the exact contents of the documents required by Article 13. He decided to use the titles cited by the court verdict as search keys to locate the actual documents. In 2002, he applied for the open release of information on the Construction Doc., Planning Doc., and Land Doc. to the District Government. The process of obtaining the three documents and information on the demolition company showed how China's modernized legal system worked, and more importantly, how ordinary citizens learned to use the system to empower themselves.

Among the three documents Chen asked for open release, the Planning Doc. and Construction Doc. were allowed to be partially released; the Land Doc. was rejected. This reason of rejection for releasing the Land Doc. was cited as "law or regulations exempt from open release," which was the most ambiguous one among the other five including "state secrets," "commercial secrets," "individual privacy," "government information currently under investigation," and "information relevant to law enforcement or to personal safety of enforcement agents." The partially released part of the Construction Doc. was only one page, containing essentially only the title of the development project and a statement that the District Government principally agreed to the development. All numeric information, such as the square meters of the site, how many households and work units were to be relocated, how many floor levels or square meters of the completed construction had, and the total amount of investment money were all blanked out in the copy released to Chen. The partially released Planning Doc., also one page, stated the

boundary of the site that the District Government agreed the development company (which was also the demolition company) to plan for, and the size of the site, about 12 thousand square meters of land, for the development project.

This partially-opened information did not alleviate Chen's absent knowledge about the demolition company. Nevertheless, Chen and his wife felt greatly encouraged by the possibility that knowledge of law could serve as a new language to interact with the state. Especially, in the partially-released copy of the Planning Doc. it was stated that the land was “*huabao* (allocate, 劃撥)” to the development company. The act of allocating land, by its nature, was administrative: an transfer of land from the state, the omnipresent owner of all urban land under socialism in China, to various state working units.¹⁰⁵ According to China's Land Management Law (*tudi guanli fa*, 土地管理法), which was the highest legal guidance for all land activities, “allocation” was only applicable to land activities that were predominantly for public purposes, such as military uses, infrastructure building, energy facilities etc.¹⁰⁶ Therefore, the cost of a piece of allocated land was very low or free of charge. All other land activities should be conducted according to the “paid transfer of land use rights” (*tudi youchang zhuanrang*, 土地有償轉讓). “Paid transfer of land use rights,” or sometimes more commonly called “land

¹⁰⁵ For detailed discussion on allocated land and how it is different from leased land attached with land use rights fees, please see Yeh, A. G-O. and F. Wu (1996) The new land development process and urban development in Chinese cities. *International Journal of Urban and Regional Research* 20.2, 330-53.

¹⁰⁶ See Article 2, 52, 56, and 58 of Land Management Law, promulgated on August 28, 2004.

leasing,” was in fact the central mechanism of creating a capitalistic land market under the Land Use Rights Reform adopted in 1989.

The term “allocation (*huabao*, 劃撥)” struck Chen, as its legal definition was nothing close to what his family experienced during *chaiqian*. Chen questioned:

Huabao! If we did not apply for open release of government information, we would never know it was *huabao*. The District Government allocated land; gave the land to private developers for free. In fact, according to law...it is clear that allocated land has many many favorable policies for the developer. So why not let us move back to the neighborhood? Why be so mean to us relocated residents?

The fact that the development company received a piece of allocated land under favorable terms in inner city motivated the Chen family even more to probe for information about the company. Based on their previous experience as an “individual business enterprise (*getihu*, 個體戶),” Chen knew every company should officially register its business license which contained the business activities it was legally allowed to run. Also, according to Article 16 of the 1991 Shanghai Bylaws, a demolition company should be licensed by the city government as qualified to operate *chaiqian*. Therefore, a month after receiving the partially opened information, Chen went to the State Administration for Industry and Commerce in the Beijing Central Government in order to obtain a copy of the business license of the demolition company. This type of information belonged to local governments’ archives, but Chen was clearly aware that without pressure from a higher authority the Shanghai City Government would not respond positively to his request.

In Beijing, Chen told the officer at the State Administration for Industry and Commerce that he only wanted see a copy of the demolition company’s business license

because he would like to know the business activities registered on the company's business license, and nothing else. Chen told the officer that he himself was once required to hang his own business license on the wall in his small grocery store. Since a business license was such a standard piece of information and a request to review it was so justifiable, the State Administration for Industry and Commerce agreed to issue a transfer letter (*zhuansongdan*, 轉送單) for Chen to carry with when he made the same request to the Shanghai City Government. The transfer letter stated:

Shanghai Bureau for Industry and Commerce:

Your citizen Chen has visited our Administration to report the question on the business license of the demolition company. Please receive [Chen] and handle [his request] according to relevant articles of Regulations on Letters and Visits (*xinfang tiaoli*, 信訪條例)

Back in Shanghai, rather than going to the City Government alone, Chen contacted the six other Shanghai citizens he met previously during petition trips in Beijing, all of whom carried their own transfer letters issued in Beijing in a hope to find their own needed information from the City Government in Shanghai. When they were received by the officer in the Office of Letters and Visits, all of their requests were first rejected. In the receiving office, Chen and the other six residents started to argue one by one with the officer. Chen recounted with excitement how he, and others, at the end successfully obtained the information needed:

That morning there were seven of us there in the city hall for our individual requests. We all went to Beijing to petition so we knew each other. In the beginning the officer [of the Bureau of Industry and Commerce] just kicked [our requests] out. But there were seven of us; each of us had a question to argue with him that he had no reason to deny us since we all carried a transfer letter from the central government. He was reluctant but eventually accepted our applications. All of us, seven individuals, got what we needed that day!

The released copy of the business license contained no entry which appeared confidential. Yet, among the basic information on the demolition company (such as the date of registration, address, license number, etc.), the Chen family was excited by one piece in particular. In the section “business of operation,” the company’s registered business was listed: “real estate management and development, housing construction and renting, materials of construction, decoration and design, and installation (not including building construction).” Based on this information, the Chen family believed that the demolition company’s operation of the demolition of his old home in 1993 was illegal because no demolition activities were registered in the business license. Chen asked “How could the company *chaiqian* us? *Chaiqian* was not even within the business it was allowed to operate!”

At the time the interview with the Chen family was conducted in 2005, it was unclear whether Chen’s reading of the business license would generate any legal or significant impacts on the end results of his family’s long-term opposition to the local authorities. His reading and interpretation would likely run the risk of literalness. The government

could easily reason that the issuing of *chaiqian* permit itself had sufficiently proven the qualification of the demolition company for *chaiqian* operation.¹⁰⁷

Yet, it was the exact process of re-doing the *chaiqian* “thought work (*sixiang gongzuo*, 思想工作),” previously performed by government officials in order to shape a certain type of ideology of *chaiqian* by providing selected information, that relocated residents had gained a sense of empowerment. To navigate the possible leeway in the legal system, resistant residents had probably initiated the largest scale of self-education of law that any state-sponsored program could achieve in urban China. This in turn had not only continued the practice of “waving the red flag to oppose the red flag (*dazhehongqi fanhongqi*, 打著紅旗反紅旗),” a long-established form of resistance in China, but had also provoked a close examination of how law was implemented in the real world. The action of extracting information from China’s government system also stimulated consciousness of civil society development. Chen reflected on his action of connecting seven residents to approach the officer, seeing it as “good communication (between us) so we have a stronger strength and not to be deceived easily.” Through this type of

¹⁰⁷ A similar debate on whether courts should accept residents’ lawsuit against *chaiqian* permits that have already been issued by local governments have recently emerged between judges, legal scholars, and officials in the judicial system. The viewpoint against the acceptance of such a lawsuit is that a government-issued permit itself represents a already-conducted government review; and the review process itself is sufficiently valid, therefore should not be allowed for legal challenges. See Ye, Z-C. and X. Wang (eds.) (2004) *Fangwu Chaiqian Anli Jingxi Yu Shenli Shiwu* (Case Studies on Housing Demolition and Relocation and Ruling Practices, 房屋拆遷案例精析與審理實務). Zhongguo shehui chubanshe (Chinese Social Sciences Publisher, 中國社會科學出版社): Beijing (in Chinese).

networking--despite being semi-collective and only loosely connected--relocated residents had sought to redefine their position in *chaiqian* politics in Shanghai.

Chapter Six

Disputed Relocation and the Prospect of a More Autonomous Society

Modern China is under a relentless transformation to capitalism. The 1989 Land Use Rights Reform began the capitalist mode of land practices by unfettering land from Mao's socialist doctrines. The subsequent, extensive legislation on land development have greatly channeled both foreign and domestic investment capital into Chinese cities. This great transformation has led to profound changes to almost every sphere in China. Spatially, significant amount of commodity housing (*shangpinfang*, 商品房) have been built to replace existing welfare housing (*fulifang*, 福利房) and old communities, both for the purposes of profits making and of improving quality of life. Socially, the size of the middle class and private home owners has greatly expanded; as a result and politically, there has also been an increasing demand for a broader participation in public domain.

It is at this intersection of China's capitalistic transformation and rapid urbanization that this dissertation examines how the Chinese state has used law to both facilitate land development, and at the same time, manage social conflicts over conflicts over residential relocation.

The three sets of questions asked in the introductory chapter have led the course of this dissertation research. The first question concerns the Chinese state's role in producing and handling disputed relocation. The intent is to understand the evolving law on relocation. Through these laws, the state has facilitated capitalist property development, and at the same time has regulated disputed relocation produced by the *chaiqian*-intensive practices to maintain social stability. Second, this research examines relocated

residents' experience before, during, and after *chaiqian*. The task is to trace residents' ethnographic accounts in order to produce an analytically persuasive story of disputed relocation. Third, the last inquiry raises the question on how resistance originates under the authoritarian state. The examination centers on the process in which residents challenged *chaiqian* through lawsuits and petitions (*shangfang*, 上訪). The answers to these three sets of questions argue that two forces, both created by the Chinese state, are essential to our understanding of disputed relocation. The state's use of economic resolution and its employment of political punishments have worked together to prevent a collective movement to raise fundamental challenges to the property regime, and also have worked to channel disputed relocation into personal negotiation with the local authority for economic compensation. Without an understanding disputed relocation, it is impossible to understand the potential for, and barriers to, sustaining *chaiqian* resistance into the development of a more autonomous society in China.

6.1 Disputed Relocation Revisited

6.1.1 Produced under the state's facilitative role for capitalistic transformation

Disputed relocation is a product of Shanghai's land-related legislation to facilitate inner city renewal. While renewal projects have provided commodity housing for China's expanding middle class who seek for private ownership, quality of life, and modernized residency, this progress is at the expense of the livelihoods of long-term city residents usually at the bottom of the socio-economic hierarchy. Disputed relocation reflects the pressing problem resulting from China's widening gap between the wealthy, the powerful and the poor, the powerless.

The close examination of law shows that the Chinese state has selectively used law to forge a growth coalition with private property developers in order to strategically initiate, and to continue to sustain, a real estate market. This requires the state to intervene or directly carry out relocation through employing political and administrative resources for private property developers. The state's strategic selectivity, however, has also greatly excluded relocated residents from meaningfully participating in local land politics.

Contrary to the conventional belief that absence or inadequacy of legal regulations has led to *chaiqian* conflicts, chapter three shows that legislation on *chaiqian* has been extremely fast-paced. It is in the environment of abundant law in which disputed relocation originates. Examination of law shows that relocated residents' rights to resettlement (*anshi*, 安置) and compensation have been designated as secondary to the policy goal of rebuilding "old neighborhoods (*jiuqu*, 舊區)" and "dangerous and simply-structured shanties (*weipeng jianwu*, 危棚簡屋)" in Shanghai. The evidence manifests in legal codifications on relocation that have evolved according to the changing needs of inner city renewal. An illustrative example is the 'Opinions on Effectively Consume Vacant Commodity Houses and Accelerate Inner City Renewal' (1997 Opinions).¹⁰⁸ In order to prevent the further increase of the vacancy rate of commodity housing, which had been excessively built previously under regulations preferential to renewal practices in the mid 1990s, the 1997 Opinions allowed private developers to carry out greenification (*chaiwujianlou*, 拆屋建綠) which included practices of demolishing *linong* communities, greenifying existing sites, and reserving the land parcels for future

¹⁰⁸ Issued by the Shanghai City Government on 13 May 1997.

development. Most importantly, greenification denied residents' legal rights of return settlement (*huiban*, 回搬) in their original neighborhoods, which was allowed by Article 49 of the 1991 Shanghai Bylaws, by legally authorizing “*greenification (chaiwujianlou) can be used as city infrastructure building... off-site relocation can be conducted once and for all*” (article 3, emphasis added).

In sum, law is not a thing-like set of rules external and objective to *chaiqian*. Rather, law embodies the state's role in facilitating spatial modernization projects and capitalistic property development. Law is an important design internal to the state's strategies in expanding and coping with the vicissitudes of Shanghai's newborn real estate market. Disputed relocation is produced and facilitated under the state's use of law to pave the way to a capitalistic land market.

6.1.2 Governed by the state' use of a law-based model of governance

To prevent disputed relocation from turning into an obstacle that would obstruct the momentum of capitalistic transformation, the state has established a law-based model to govern conflicts over *chaiqian*. Since the early 2000s, law on land development has been greatly revised both at the national level and locally in Shanghai. Compared to law promulgated in the 1990s, the amended law has eliminated political statements on party-state supremacy and incorporated principles of market economy. It has highlighted the state's assertion of protecting residents' legal rights and interests, rationalized *chaiqian* operation so as to separate the state' direct involvement in private-oriented demolition, required government adjudication as a prerequisite for the use of forced relocation, regulated procedures on public hearings and information circulation, and specified

measures of using market values for compensation. In short, law, rather than those with powerful, is said to govern *chaiqian* conflicts.

6.1.3 Rights redefined and subordinated to the state's reenforced control of public interests

What has also been rewritten is residents' rights in *chaiqian*. The law-based governance reenforces the state's grip on defining public interests to which residents' rights are subordinate. Two sets of rewritten regulations demonstrate the state's strengthened control over rights definition and practice. The first is the modification of residents' legal right of return settlement (*huiban*, 回搬). While Article 49 of the 1991 Shanghai Bylaws legally allowed return settlement, which was also a dominante demand made by residents, the frequent violation of this right has led to increasing discontent. Reflecting the Shanghai City Government's attempt to tackle this major source of conflicts, in 2001 the Provisional Rules on Encouraging the Return Settlement for Relocated Residents and Aiding the New Round of Inner City Renewal (the 2001 Return Settlement Rules)¹⁰⁹ for the first time legally proclaimed that residents' right to returning to '[their] *original sites*, [*or*] *original districts*...' (Article 1, emphasis added)' should be legally encouraged. However, the 2001 Shanghai Bylaws, issued nine months later than the 2001 Return Settlement Rules, completely removed the legal right to return settlement. The replacement of the 2001 Return Settlement Rules by the 2001 Shanghai Bylaws had unintentionally resulted in the internationally braodcasted report on the *chaiqian* of "East Eight Blocks" in Jingan District in Shanghai and on the rights-

¹⁰⁹ Issued by the Shanghai City Government on 9 February 2001.

protection lawyer, Zheng Enchong, who represented a group of residents in a lawsuit. In 2003, the Shanghai City Government further announced the abolition of the article on return settlement in the 2001 Return Settlement Rules.¹¹⁰ The discrepancy between two codifications shows that the definition of rights is either absolute nor natural. Rather it is under the state's control made by weighing the social and political conditions.

The second change to residents' rights occurs in the use of legal system under which *chaiqian* conflicts are ruled. Since 1996, the PRC Supreme Court has ordered that *chaiqian* conflicts, once they were adjudicated by the local governments, are to be treated as administrative cases, and therefore to be ruled under China's Administrative Litigation Law (ALL). Because the 2001 Shanghai Bylaws has made government adjudication a legally-required procedure, all residents' challenges, even they are purely over pecuniary matters, have become administrative litigation against the state rather than civil lawsuits against private developers. In other words, revised law has turned *chaiqian* conflicts into political *maodun* (contradictions, 矛盾) instead of civil disputes. Treated as administrative litigation, residents' *chaiqian*-related lawsuits are consequently impacted by ALL's inherent constraints on the ruling over litigation in order to maintain the state's supremacy.

This dissertation shows that the legal practice of government adjudication has both lessened and tightened the opportunities for community residents who struggle to assert their rights in *chaiqian*. The mandatory adjudication has helped create a more cautious use of forced relocation and physical violence. Yet, it has also tightly bound residents'

¹¹⁰ The announcement was made on 8 August 2003.

claims of rights with the state's definition. Under ALL, the courts are authorized to review only the procedural legality but not the substantive appropriateness of the state's administrative actions related *chaiqian*. *Chaiqian* lawsuits have thus become a formal review over legality and have turned away from discussion over justice and fairness.

6.1.4 Law as a politically safe and potent arena for resistance

Law has functioned as a politically safe channel through which to challenge *chaiqian* in an authoritarian property regime dominated by the state. For relocated residents, challenging through law involves navigating channels in the petition system and between different governmental hierarchies. Residents need to learn the regulations relevant to their cases, formulate their oppositions in the official language used by the government officials, diligently document the incidents of rights violation in their *chaiqian* process and file lawsuits, all while remaining highly attentive to the state's change in policy and governing orientation. In other words, relocated residents have learned to fully comprehend "the red-letterhead documents (*hongtou wenjian*, 紅頭文件)"¹¹¹ issued by the state in order to practice the custom of "waving the red flag to oppose the red flag (*dazhehongqi fanhongqi*, 打著紅旗反紅旗)"¹¹² to its highest effect.

The ethnographic research of this dissertation echoes the recent scholarly criticism questioning the conventional viewpoint which sees the Chinese state as static and

¹¹¹ In China, law and government announcements are issued in the documental form of red letterhead. Therefore, The symbol of red letterhead shows the authority of the state. See the use of "red-letterhead documents" by Pils, E. 2005. Land disputes, rights assertion, and social unrest in China: A case from Sichuan. *Columbia Journal of Asian Law*, Vol. 19, 235-291.

¹¹² See a detailed discussion by E. Perry. 2002. *Challenging the mandate of heaven – Social protest and state power in China*.

monolithic. In-depth interviews show that openings and leeway created between intergovernmental dynamics (such as the Beijing Central Government versus local governments, the national laws versus local regulations, or the Shanghai City Government versus the district governments etc.) are where Chinese citizens' petitioning and resistance actions were possible and usually took place. The research reveals how "benign" policies or decisions made from the top have often resulted in contradictory, even negative, outcomes on the ground.

Outcomes of residents' challenging through law show that this resistance strategy is still a work in process. It occasionally produces successful outcomes, such as in Lin's case where the demolition company was eventually compelled to sign a return settlement contract under the combined effects of Lin's lawsuits and petitions. However, challenging through law, most of the time, fails to reach meaningful results, and can even lead to punitive ramifications, such as in Bao's case where legal challenges in court were futile and continuing petitions had led to detainment. Yet, it is in this process of groping through the legal system that residents have gained an understanding of local land politics and a sense of empowerment.

Zhang's years-long search for a legal precedent in order to establish a case in court best manifests law as a politically potent arena for resistance. For years, local courts had cited Article 35 of ALL Judicial Opinions,¹¹³ which required a one year litigation limit, to deny the eligibility of Zhang's case, which had been almost 10 years since her family was forcibly relocated, to be accepted in court. Her discovery and use of Article 42 of Judicial

¹¹³ PRC Supreme People's Court's Judicial Opinions on Administrative Litigation Law, issued on 11 July 1991.

Interpretations,¹¹⁴ which legally gave a 20-year litigation time limit to administrative cases involving real estate property, was certainly an embodiment of how a red-letterhead document could topple injustice supported by another red-letterhead document. While the final outcome of residents' legal challenge actions still remain to be seen, law has provided a possible channel through which a more just, autonomous civil might be reached.

6.1.5 The state's use of political punishments and economic resolution

Two forces created by the Chinese state are essential to the understanding of disputed relocation: the state employment of political punishments and the state's use of economic resolution. Working together, the two forces deflect *chaiqian* resistance from developing into a meaningful challenge to the property regime and channel disputed relocation into personal negotiation of compensation.

6.1.5.1 Violence, the state's conniving, and residents' fear of political ramifications

As residents' experiences of forced relocation (*qiangzhi chaiqian*, 強制拆遷) unfolds, what is also revealed is the state's overt or tacit involvement in the use of violence in *chaiqian*. In the 1990s, local district governments employed political resources to directly operate demolition. Government branches, usually called "*chaiqian* command station (*chaiqian zhihuibu*, 拆遷指揮部)" or "*chaiqian* office (*chaiqian bangongshi*, 拆遷辦公室)," commanded local police bureaus, residential street committees (*jumin jiedao weiyuanhui*, 居民街道委員會), and even residents' work units in order to carry out

¹¹⁴ PRC Supreme People's Court's Judicial Interpretations on Several Questions Regarding Implementing Administrative Litigation Law, issued on 2 August 2002.

demolition. *Chaiqian* was legally allowed to be a state-operated, political task under which there was little tolerance for questioning the state's representation in private-oriented development projects. In this context, as Zhang's experience has especially shown, the state-issued forced relocation arbitrarily and openly resorted to violence to remove opposition to *chaiqian*. Disputed relocation elucidated the prevalence of corruption, lack of transparency, violation of rights, and abuse of power in land politics in China.

What has driven the physical violence as a tool for oppression in almost all spheres of residents' everyday life is the state's institutional design to use political punishments to control grassroots opposition. This ranges from the state's employment of deliberate neglect, surveillance, police visits, detainment, and sentence to Labor Reeducation Camps. Residents' detailed accounts of their confrontation with government officials depict a vivid picture of the state-sanctioned use of political punishments, including: neglecting the growing anger among relocated residents, seen in Huang's case when the government officials did not want to hear her complaints by responding with "Don't target at me, this was not my demolition;" shirking responsibility in the petition system, shown in Bao and Tsao's case when they were sent back to their local district police by the city government officials because "local cases should be resolved locally within local jurisdiction;" detaining residents under politically-tinged charges, evidenced by Zhang's eight-months imprisonment without any legal procedure; sentencing resistant residents to labor reeducation camps, shown by Huang's and Meng's experience. In short, it was the state which sanctioned and employed "barbarian *chaiqian* (*yeman chaiqian*, 野蠻拆遷)."

The state's use of political punishments also prevented the formation of a broader participation movement. Residents denied that the grouped gatherings in which they actively participated were any sort of social movement because doing so would indicate the existence of collective political agendas. While acquainted residents had the ability to swiftly circulate information and to protest as a group in public, they did not easily extend their network—a label that was also denied by them—to recently-relocated residents who were new to *chaiqian* conflicts. Residents deliberately maintained their grouped actions as leaderless and unorganized, and therefore only temporarily formed to utilize public events for open appeals, so as to avoid political ramification and charges. In short, the fear of political punishments fragmented the potential of a collective agenda and movement in *chaiqian* resistance.

6.1.5.2 The state's use of economic resolution to deflect challenges to the property regime

Outside the formal channel of dispute resolution in the courts, the state had at times approached persistent resisters and suggested to settle their cases through economic resolution. Through economic resolution, the state was willing to monetarily compensate, once and for all, a relocated resident, with the nonnegotiable requirement that the resident terminated all resistant actions. In other words, the state politically prevented potential resistance as it economically settled conflicts.

The state's use of economic resolution had profoundly shaped disputed relocation. First, at the most noticeable level, economic resolution had weakened and held back resistance. Zhao did not pursue judicial redress for the forced relocation, which resulted

in serious burns to her body, after her family reached a compensation plan with the local authority. Fang also held back open resistance actions during a “Two Session” period, when social harmony was politically emphasized, after a demolition official visited her with an envelop containing money. This effect reflects that economic compensation, especially when it came in a large sum, had effectively reduced the resistance mobility of residents, most of whose original livelihoods had been greatly affected after relocation. Li once expressed his worry over the future of *chaiqian* resistance as China’s economic power had grown to enable local governments to more actively employ the strategy of economic resolution on a full-fledged scale:

Regular petitioners (*laoshangfang*, 老上訪) maybe are just around only hundreds at most in Shanghai. To resolve resistance, The City Government could ask ‘what do you want?’ After all, many of these families are not well-off...How much [compensation] does it take to resolve a [resistant] family? One million? Two millions? The City Government could spend [money] to resolve a few of those really resistant families. You have to understand this is a government that has a full capability to do so. And we still have not had a truly meaningful NGO or civil society anyway.

Regular petitioners referred to residents who had persistently resisted by either refusing to sign the relocation agreement or by actively and openly seeking redress. Since land-related revenues had been a well-known “extra-budgetary coffer (*yusuanwai xiaojing*, 預算外小金庫),”¹¹⁵ Li and many others believed that the Shanghai City Government could easily manipulate its coalition with private developers, who would ultimately cover the expenses of economic resolution.

Therefore, the state’s emphasis on individual interests and monetary compensation in handling disputed relocation has resulted from China’s rise, and successful expansion, of

¹¹⁵ For instance, see Hsing, Y-T. (2006). Land and territorial politics in urban China. *The China Quarterly* 187, 575-91.

a market economy. With China's continuing control over rights-protection movement and grassroots resistance, this interest-based emphasis in turn will likely to strengthen China's momentum on the path to a market society.

Second, the reduced frequency and strength of resistance also left at the sources of conflicts intact and the resulting social exclusion unaddressed. Because the conditions of economic resolution were controlled by the state to consider only monetary matters, to accept an offer of economic resolution was to enter a negotiation for pecuniary terms of compensation. Borrowing a maxim frequently used during Mao's socialist ruling, Li charged that the Shanghai City Government mostly ignored the political account (*zhengzhizhang*, 政治帳) of disputed relocation, which referred to the political implications and social impacts grown out of *chaiqian* conflicts, by playing the calculation over its economic account (*jingjizhang*, 經濟帳), which meant offering and negotiating compensation terms with relocated residents. The state's use of economic resolution had left meaningful challenges and changes to the existing property regime difficult.

Lastly, when the state combines its use of economic resolution with political punishments, resistance for the purpose of negotiating for better compensation (such as the size or location of the relocation house, extra money for the loss of businesses operated out of *linong* homes, stipend for transitional periods before relocation affairs were settled, etc.) has become the seemingly only way open for relocated residents to have a meaningful control over their fate. This is evidenced by often-heard announcements of "I am here only for my own business!" made by resistant residents,

like the resident how rejected the idea that his participation in a grouped protest of over a hundred residents constituted any political agenda. The fact that residents had made accentuated statements that their resistance was only individualistic and interest-driven was indicative that the state's management of disputed relocation was effective. By creating fear in residents of being accused as political subversives, the state prevented a broader, organized, collective movement that could potentially challenge the capitalist property regime and its supporting power structure. By allowing space for discussion over economic interests, the state channelled *chaiqian* conflicts into personal negotiation for pecuniary compensation.

Viewing disputed relocation from this perspective, the often-observed form of resistance—isolated, scattered, individualistic negotiation for better compensation—is only the outcome of the state's control over *chaiqian* conflicts. Only when the role of the state is unfolded is the complex process revealed, in which relocated residents are conditioned to be tolerated by the still top-down system, while they continue to explore possible leeway to contest existing city renewal practices. Therefore, scholarly statements, such as residents struggle to “express [claims of] interests,” or cost-and-benefit-centered analysis on the impacts of relocated residents' economic well-being, or common sayings, such as relocated residents “game playing (*boyi*, 博弈)” for more, stops the analysis only at the appearance of disputed relocation. In other words, without taking the Chinese state seriously, these interest-based studies eventually would lead to a flawed conclusion of disputed relocation: that with China's headlong leap into modernity and

maturity of the market economy, the conflict-laden inner city renewal process will eventually settle down into a benign discussion of the optimal distribution of interests.

6.2 From Disputed Relocation to Rights to Cities? Remarks on Future Research

6.2.1 What rights are to be written into law?

Imagine a capitalistic property regime under which *chaiqian* is operated entirely according to law. Imagine a legal regime which clearly defines residents' interests, rights, and duties in *chaiqian*, rather than one in which the powerful and their *guanxi* network (interpersonal relations, 關係) rule *chaiqian* conflicts. A society as such certainly has moved a significant step away from the violence-laden barbarian *chaiqian*. Yet, is it a society less oppressive?

China is currently on its path to establish a fully law-based *chaiqian* system. Since 1991, China has twice conducted major overhauls and rewriting to its *chaiqian* law, and the third nation-wide legislation is on the way. While still a work in progress, recent *chaiqian* legislation has sent out clear messages: corruption and abuse of power are severely condemned, principles of market economy should fully govern the affairs of compensation, community participation should be encouraged in an environment of open information, and the state should separate from direct involvement in private development projects. What still remains behind these seemingly good-faith attempts of governance is the looming question: which and how residents' rights to cities will be selected by the state to be written into *chaiqian* law and to receive legal protection? And who has the power of interpretation to contest the selection of rights? While this question

had emerged during the research period, this dissertation has yet to collect more evidence to fully examine the formation process of rights in urban China.

Two examples that occurred during my fieldwork research highlight how certain rights had already been excluded in order to facilitate capitalistic property development in Shanghai. At an interview, a *chaiqian* manager of a demolition company, while complaining of *chaiqian* operation as a messy and thorny task, once said “Strictly according to [the 2001 Shanghai] Bylaws, we do not need to relocate residents to areas of good [supporting] facilities (*peidao*, 配套). The Bylaws regulate nothing on [access to] hospital services in the resettlement areas. The Bylaws only say compensation has to be equal market value. Why should I bother to listen to [residents’] demands for hospital services?” Ironically, in the 1980s, when socialist ideology still dominated, Shanghai’s *chaiqian* law specially regulated that supporting facilities, including hospitals, markets, utility supplies etc., to be provided in the resettlement areas. When the right to amenities in cities is not written in law (or is removed from law), will community residents have the power to voice their contesting interpretations in order to secure their rights? Another example occurred during an interview with Xiao. Concerning the change to residents’ rights between the 1991 Shanghai Bylaws and the 2001 Shanghai Bylaws, Xiao questioned “Why was our right to return settlement removed from the 2001 Bylaws? Because if the state let you move back to the inner city then property developers will make less out of land.” He then stated “...This thing [return settlement] should be left alone between us and the developers!” Will his interpretation of how the right of return settlement is to be realized outweigh the state’s counterpart?

As China advances its legal development, conflicts as such, which center more on the contesting interpretations of the legitimate use of law to determine rights rather than on the violence of forced relocation, will become a common form of disputed relocation in a law-governed era. The development of ordinary citizens' contesting interpretation of law requires further research efforts.

Bibliography

- Abramson, D. (1997) 'Marketization' and institutions in Chinese inner-city redevelopment: a commentary of Lü Junhua's Beijing's Old and Dilapidated Housing Renewal. *Cities* 14.2, 71-75.
- Abramson, D. (2006). Urban planning in China: continuity and change. *Journal of the American Planning Association* 71.1, 197-215.
- Alford, W. (1994) Double-edged swords cut both ways: law and legitimacy in the People's Republic of China. In W-M. Tu ed., *China in Transformation*, Harvard University Press: MA
- Alford, W. (2003) The more law, the more...? Measuring legal reform in the People's Republic of China. In N. Hope, N. D. Yang and M. Li, editors, *How Far Across the River? Chinese Policy Reform at the Millennium*. CA: Stanford University Press.
- Baum, R. (1986) 'Modernization' and legal reform in post-Mao China: the rebirth of socialist legality. *Studies in Comparative Communism* 19.2, 69-103.
- Biddulph, S. (2003) The Production of Legal Norms: A Case Study of Administrative Detention in China. In *UCLA Pacific Basin Law Journal*.
- Blomley, N. (1988) Interpretive practices, the state and the locale. In J. Wolch and M. Dear (eds.), *The power of geography: how territory shapes social life*, Unwin Hyman: Boston.
- Boland, A., (2006) From provision to exchange: Legalizing the market in China's urban water supply. In M. Dong and J. Goldstein, editors, *Everyday Modernity in China*. Washington: University of Washington Press, 303-331.
- Cervero, R. and J. Day (2009) Residential Relocation and Commuting Behavior in Shanghai, China: The Case for Transit Oriented Development. WORKING PAPER UCB-ITS-VWP-2008-4
- Chan, K-M., H. Qiu and J. Zhu (2005) How Chinese NGOs strive to survive. *Social Transformations in Chinese Societies: The Official Annual of the Hong Kong Sociological Association* 1, 131-59.
- Chen, G. & Wu, C. (2006). *Will the boat sink the water? The life of China's peasants*. NY: PublicAffairs.
- Chen, Y.F. (2003). *Zhengdi yu jiaoqu nongcun de chengshihua [Land confiscation and urbanization in the outskirts of Shanghai: A survey in Shanghai]*. Shanghai: Wenhui Press.
- Clark, D., (1991) Dispute resolution in China. *Journal of Chinese law*, Vol. 5, 245-296.
- Clarke, D. and N. Howson (1996) Developing PRC property and real estate law: revised land registration rules. *East Asian Executive Reports* 15, 9-17.
- Clarke, D. (2007) Legislating for a market economy in China. *The China Quarterly* 191, 567-85.
- Congressional-Executive Commission on China, 2004. *Property Seizure in China. Roundtable*. [http:// www.cecc.gov](http://www.cecc.gov).

- Construction in Shanghai: 1991—1995* (1996) Shanghai Scientific Popularization Press: Shanghai (in Chinese).
- Dowall, D. (1994) Urban residential redevelopment in the People's Republic of China. *Urban Studies* 31.9, 1497-1517.
- Epstein, E. (1994) Law and legitimation in post-Mao China. In P. Potter (ed.), *Domestic law reform in post-Mao China*, M. E. Sharpe: NY.
- Fang, Y. (2005) *Residential Satisfaction Conceptual Framework Revisited - A Study on Redeveloped Neighborhoods in Inner City Beijing*. Unpublished Dissertation. Design and Planning, College of Architecture & Planning, University of Colorado at Denver.
- Fu, H. and Richard Cullen, R. (2008) Weiquan (rights protection) lawyering in an authoritarian state: Building a culture of public-interest lawyering. *The China Journal*, No. 59, 111-127.
- Ginsburg, T. and T. Moustafa (eds.) (2008) *Rule by law: the politics of courts in authoritarian regimes*. NY: Cambridge University Press.
- Hand, K. J. (2006) Using law for a righteous purpose: The Sun Zhigang incident and evolving forms of citizen action in the People's Republic of China. *Columbia Journal of Transnational Law*, Vol. 45, 114-195.
- He, S. and F. Wu (2005) Property-led redevelopment in post-reform China: a case study of Xintiandi redevelopment project in Shanghai. *Journal of Urban Affairs* 27.1, 1-23.
- Ho, P. (2001) Who owns China's land? politics, property rights and deliberate institutional ambiguity. *The China Quarterly* 166, 394-421.
- Hsing, Y-T. (2006a). Land and territorial politics in urban China. *The China Quarterly* 187, 575-91.
- Hsing, Y-T. (2006b). Brokering power and property in China's townships. *The Pacific Review*, V. 19, N.1, pp.103-24. *Jiefang Daily* (1998) Baozhang chaqian dangshiren de hefa quanyi guifan chengshi fangwu chaqian guanli xingwei [Protect the legal rights of evictees and rationalize city housing demolition and relocation management work] 15 January.
- Hsing, Y-T. (2010). *The Great Urban Transformation: Politics and Property in China*. Oxford University Press.
- Huang, P. (2006) Civil adjudication in China, past and present. *Modern China*, Vol. 32, 135-180.
- Human Rights Watch. (2004) *Demolished: Forced Evictions and the Tenants' Rights Movement in China*. Web site at <http://hrw.org/reports/2004/china0304>.
- Lai, L. W. C. (1995) Land use rights reform in China: some theoretical issues. *Land Use Policy* 12.4, 281-89.
- Lake, R. and R. Johns (1990) Legitimation conflicts: the politics of hazardous waste siting law. *Urban Geography* 11.5, 488-508.
- Leaf, M. (1995) Inner city redevelopment in China. *Cities* 12.3, 149-62.
- Lee, C. K. (2007) *Against the law : labor protests in China's rustbelt and sunbelt*. CA: University of California Press.

- Lee, J. and Y-P. Zhu (2006) Urban governance, neoliberalism and housing reform in China. *The Pacific Review* 19.1, 39-61.
- Leichenko, R., and W. Solecki (2005) Exporting the American dream: the globalization of Suburban consumption landscapes. *Regional Studies*, 39.2, pp. 241–53.
- Liebman, B. (2007) China's courts: Restricted reform. *The China Quarterly*, Vol. 191, 620-638.
- Li, Z., F. Wu and H. Lu (2004) Dangdai woguo dadushi de shehui kongjian fenyi [Socio-spatial differentiation in China: a case study of three neighbourhoods in Shanghai]. *Chengshi Guihua [City Planning Review]* 28.6, 60-7.
- Lin, A. L. (2001) Shanghai fangwu chaiqian wenti yanjiu [Research on problems of housing demolition and relocation in Shanghai]. *Zhengfu fazhi yanjiu [Government Legal System Research]*. HYPERLINK "<http://www.chinalaw.gov.cn/jsp/contentpub/browser/contentpro.jsp?contentid=co5892755455>" www.chinalaw.gov.cn/jsp/contentpub/browser/contentpro.jsp?contentid=co5892755455, accessed on 2 June 2007.
- Lin, G. C. S. and S. P. S. Ho (2005) The State, land system, and land development process in contemporary China. *Annals of the Association of American Geographers* 95.2, 411-36.
- Lin, G.C.S. (2009) Scaling-up Regional Development in Globalizing China: Local Capital Accumulation, Land-centred Politics, and Reproduction of Space. *Regional Studies* Vol.43.3,pp.429–447.
- Lin, G.C.S. (2009) *Developing China: Land, Politics, and Social Conditions*. London: Routledge.
- Lo, M-C. M. and E. M. Otis (2003) Guanxi civility: processes, potentials, and contingencies. *Politics & Society* 31.1, 131-62.
- Logan, R. J., Y. Bian, and F. Bian (1999) Housing inequality in urban China in the 1990s. *International Journal of Urban and Regional Research* 23.17, 7-25.
- Logan, R. J. (ed.) (2002) *The new Chinese city: globalization and market reform*. Blackwell Publishers: MA
- Lubman, S. (1967) Mao and mediation: Politics and dispute resolution in communist China. *California Law Review*, Vol. 44, 1284-1359.
- Lubman, S. (1999) *Bird in a cage: legal reform in China after Mao*. Stanford University Press: CA
- Mitchell, D. (2005) Property rights, the first amendment, and judicial anti-urbanism: The strange case of Virginia v. Hicks. *Urban Geography*, Vol. 26, 565-586.
- O'Brien, K. and Li, L. (2004) Suing the local state: Administrative litigation in rural China. *The China Journal*, Vol. 51, 75-96.
- O'Brien, K. J. and L. Li (2006) *Rightful resistance in rural China*. Cambridge University Press: NY.
- Oi, J. (1995) The role of the local state in China's transitional economy. *The China Quarterly* 144, 1132-49.
- Peerenboom, R. (1995) Rights, interests, and the interest in rights in China. *Stanford Journal of International Law*, Vol. 31, 359-386.

- Peerenboom, R. (2002) *China's long march toward rule of law*. Cambridge University Press: NY.
- Pei, M. (1997) Citizens v. mandarins: Administrative litigation in China. *The China Quarterly*, Vol. 152, 832-862.
- Pei, M. (2003) Rights and resistance: The changing contexts of the dissident movement. In E. Perry and M. Selden, editors, *Chinese Society: Change, Conflict, Resistance*. NY: RoutledgeCurzon.
- Perry, E. and M. Selden (eds.) (2003) *Chinese society: change, conflict, resistance*. RoutledgeCurzon: NY.
- Phan, P (2005) Enriching the land or the political elite? lessons from China on democratization of the urban renewal process. *Pacific Rim Law and Policy Journal* 14.3, 607-57.
- Pils, E. (2005) Land disputes, rights assertion, and social unrest in China: A case from Sichuan. *Columbia Journal of Asian Law*, Vol. 19, 235-291.
- Pils, E. (2007) Asking the tiger for his skin: Rights activism in China. *Fordham International Law Journal*, Vol. 30, 1209-1287.
- Potter, P. (1991) China's new land development regulations. *China Business Review* March-April, 12-4.
- Potter, P. (1994a) Riding the tiger – legitimacy and legal culture in post-Mao China. *The China Quarterly* 138, 325-58.
- Potter, P. (1994b) The administrative litigation law of the PRC: Judicial review and bureaucratic reform. In P. Potter, editor, *Domestic Law Reform in Post-Mao China*. NY: M. E. Sharpe.
- Potter, P. (1999) The Chinese legal system: continuing commitment to the primacy of state power. *The China Quarterly* 159, 673-83.
- Potter, P. (2003) Globalization and economic regulation in China: selective adaptation of globalized norms and practices. *Washington University Global Studies Law Review* 1, 119-50.
- Potter, P. (2004) Legal reform in China: institutions, culture and selective adaptation. *Law & Social Inquiry* 29.2, 465-95.
- Ross, C. and Ross, L. (2000) Language and law: Sources of systemic vagueness and ambiguous authority in Chinese statutory language. In K. Turner, J. Feinerman, and K. Guy, editors, *The Limits of the Rule of Law in China*. Seattle: University of Washington Press.
- Scott, J. (1990) *Domination and the Arts of Resistance*. New Haven: Yale University Press, 1990.
- Smart, A. and G. C. S. Lin (2007) Local capitalism, local citizenship and translocality: rescaling from below in the pearl river delta region, China. *International Journal of Urban and Regional Research* 31.2, 280-302.
- Singer, J. (2000) *Entitlement: the paradoxes of property*. Yale University Press: New Haven.
- Shanghai Economic Year Book* (2002) Shanghai Academy of Social Sciences Press: Shanghai (in Chinese).

- Shanghai Real Estate Monograph* (1999) Shanghai Academy of Social Sciences Press: Shanghai (in Chinese).
- Shanghai Statistics Bureau (various years) *Shanghai statistical yearbook* (in Chinese).
- Shanghai Urban Planning Monograph* (1999) Shanghai Academy of Social Sciences Press: Shanghai (in Chinese).
- Shanghai Urban Planning Administration Bureau (publication year not specified) *Shanghai shi chengshi zongti guihua gaiyao 1999—2020* [Summary of the comprehensive plan of Shanghai 1999—2020]. Shanghai Urban Planning Administration Bureau: Shanghai (in Chinese).
- Solecki, W., and R. Leichenko (2006) Urbanization and the metropolitan environment lessons from New York and Shanghai. *Environment* V. 48.4, 8-23.
- Solinger, D. (1992) Urban entrepreneurs and the state: the merger of state and society. In A. R. Rosenbaum (ed.), *State and society in China: the consequences of reform*. Westview Press, Boulder, CO.
- Walder, A. (1992) Property rights and stratification in socialist redistributive economies. *American Sociological Review* 57, 524-39.
- Wang, Y. P. and A. Murie (2000) Social and spatial implications of housing reform in China. *International Journal of Urban and Regional Research* 24.2, 397-417.
- Wang, G. (1980) Power, rights and duties in Chinese history. *The Australian Journal of Chinese Affairs*, Vol. 3, 1-26.
- Wenhui Daily* (1994) Yang Pu tudi pizu you xindongzuo zhiding wufengxian kaifa zhengce weihu touzizheliyi [Yang Pu has new actions for land leasing; no risk development policy to guard investors' interests] 1 December.
- Wenhui Daily* (1995) Gaizao guimo da dongqian chuang xingao shigong santian yicenglou [Large-scale renewal sets up speedy demolition and relocation; one floor being erected within three days] 7 June .
- Wilhelm, K. (2004) Rethinking property rights in urban China. *UCLA Journal of International Laws and Foreign Affairs* 9, 227-300.
- Woo, M. (2002) Law and the gendered citizen. In E. Perry and M. Goldman, editors, *Changing Meanings of Citizenship in Modern China*. MA: Harvard University Press.
- World Bank (1993) *Urban land management in an emerging market economy*. World Bank: Washington, D.C.
- Wu, F. (2001) China's recent urban development in the process of land and housing marketisation and economic globalisation. *Habitat International* 25.3, 273-89.
- Wu, F. (2002) China's Changing Urban Governance in the Transition Towards a More Market-oriented Economy. *Urban Studies*, 39:7, 1071-1093.
- Wu, F. (2004) Intraurban residential relocation in Shanghai: modes and stratification. *Environment and Planning A* 36.1, 7-25.
- Wu, F. (ed.) (2006) *Globalization and the Chinese city*. Routledge: NY.
- Xinmin Evening News* (1992) Jinnian benshi tudi pizu jingren dongqian fangyuan ruhe jie jue [At an astounding rate of land leasing, how to solve the problem of shortage of resettlement housing?] 18 August.

- Xu, M. Q. (2004) *Shanghai zhong xin cheng jiu zhu qu fa zhan fang shi xin lun* [A new approach to Shanghai's inner city redevelopment]. Xuelin Press: Shanghai (in Chinese).
- Ye, Z. C. and X. Wang (eds.) 2004. *Housing Demolition and Relocation Case Analysis and Court Ruling (Fangwu Chaiqian Anli Jingxi Yu Shenli Shiwu, 房屋拆遷案例精析與審理實務)*. Beijing: 中國社會科學出版社. (in Chinese)
- Yeh, A. G-O. and F. Wu (1996) The new land development process and urban development in Chinese cities. *International Journal of Urban and Regional Research* 20.2, 330-53.
- Yi, Jitzuo. (ed.). (2004) *Social development report of Shanghai 2004*. Shanghai: Shanghai Academy of Social Sciences Press.
- Zhang, L. (2004) Forced from home: property rights, civic activism, and the politics of relocation in China. *Urban Anthropology* 33.2-4, 247-81.
- Zhang, L. (2006) Contesting spatial modernity in late-socialist China. *Current Anthropology* 47.3, 461-84.
- Zhang, T. (2002) Urban development and a socialist pro-growth coalition in Shanghai. *Urban Affairs Review*, Vol. 37, 475-499.
- Zhang, X. Q. (1997) Urban land reform in China. *Land Use Policy* 14.3, 187-99.
- Zhao, L. (2003) Chaiqian shinian beixiju [A 10-year drama of demolition and relocation]. *Nanfang Zhoumo* [Southern Weekend], retrieved June, 26, 2009, from <http://www.southcn.com/weekend/commend/200309040001.htm>
- Zhu, Jiangan (2004) *Between the family and the state: An ethnography of the civil associations and community movements in a Shanghai linong neighborhood*. Unpublished Dissertation. Department of Anthropology. The Chinese University of Hong Kong.
- Zhu, J. (2004) Local developmental state and order in China's urban development during transition. *International Journal of Urban and Regional Research* 28.2, 424-47.

Mi Shih**Curriculum Vitae****Education**

Rutgers University, PhD in Planning and Public Policy, May 2010

National Taiwan University, College of Engineering, Urban Planning, M.S. 2000

National Taiwan University, College of Agriculture, Rural Sociology, B.S. 1995

Academic Appointments

Part-time Lecturer, Rutgers University, Spring 2007, Fall 2008 – 2009

Part-time Lecturer, Pratt Institute, Spring 2007

Graduate Assistant, Rutgers University, January 2003 – May 2005

Publications

Shih, M. 2010. "The Evolving Law of Disputed Relocation: Constructing Inner City Renewal Practices in Shanghai, 1990-2005." *International Journal of Urban and Regional Research*, 34.1.

Shih, M. 2010 "Governance through Law: Rights-based Conflicts and Property Development in Shanghai." *Urban Geography*. Forthcoming.